

*** THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: 13.08.2009
Judgment delivered on: 16.12.2009

Crl. Appeal No. 359/2006

SANJAY Appellant

vs

STATE Respondent

Advocates who appeared in this case:

For the Appellant : Mr. K B Andley, Sr Advocate with Mr M Shamikh,
Advocate

For the Respondent : Mr R N Vats, Additional Public Prosecutor

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may
be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported
in the Digest ? Yes

RAJIV SHAKDHER, J

1. This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to in short as the 'Cr.P.C') against the judgment dated 28.04.2006 and sentence dated 02.05.2006 passed by the Additional Sessions Judge, New Delhi.

2. By virtue of the impugned judgment, the appellant has been convicted under Sections 498A/304B of the Indian Penal Code, 1860 (hereinafter referred to in short as the 'I.P.C'). Consequently, the appellant has been accorded punishment whereby he has to undergo rigorous imprisonment for a period of seven years and also to pay a fine of Rs 2,000/- in respect of his conviction under Section 304B of the I.P.C. In default of payment of fine, the appellant would be required to undergo a further simple imprisonment for a period of two months. In regard to the appellant's conviction under

Section 498A of the I.P.C, he has been sentenced to rigorous imprisonment for a period of two years with a fine of Rs 1,000/-. In default of payment of fine, the appellant would be required to undergo a further simple imprisonment for a period of one month. Both sentences are to run concurrently.

3. The prosecution's case is briefly as follows:-

3.1 On 06.08.1994, at about 3.20 pm, a telephonic information was received by the police personnel at Police Station Ambedkar Nagar that one Smt Baby r/o 14/481 Dakshinpuri had hung herself. This information was diarized and entered under DD No. 13A. The said DD No. 13A was forwarded to SI Om Prakash (PW12). SI Om Prakash (PW12) alongwith SI Rajesh Kumar and Constable Karambir Singh proceeded to the address where reportedly the incident had occurred. On reaching the site of the incident, they found the body of the deceased laid out on a bed with two pieces of Scarf (Chunni) lying near her body.

3.2 Immediately, SI Om Prakash (PW12) informed the Crime Investigation Team. SI Om Prakash (PW12), thereafter, took the body of the deceased Smt Baby to All India Institute of Medical Sciences (hereinafter referred to in short as the 'AIIMS'). He also informed the concerned SDM, i.e., one Ms Namita Dutt (PW3) as regards the occurrence of the incident.

3.3 On the next day i.e., 07.08.1994, the SDM recorded the statement (Ex PW2/A) of Sh Suresh Kumar (PW2) who is one of the brothers of deceased and thereafter directed the registration of the FIR based on the said statement.

3.4 Consequent thereto, a rukka was received at Police Station Ambedkar Nagar based on which Sh Sunil Yadav (PW10) recorded a FIR (Ex PW10/A).

4. After investigation, a case was registered against the appellant, his father Sh Munshi Ram, since deceased, his mother Smt Ramshri and his sister Asha. Asha was declared a proclaimed offender on 05.12.1995. In the result charges were framed by the trial Court vide order dated 16.04.1996 against the appellant and his mother under Section

304B read with Section 34 of the I.P.C and Section 498A read with Section 34 of the I.P.C.. Since the appellant and his mother pleaded that they were not guilty a trial was conducted.

5. By the impugned judgment, the trial court, as noticed above, convicted the appellant of the offence under Sections 498A/304B of the I.P.C. The mother of the appellant Smt Ramshri was acquitted of the charges framed against her.

6. In support of the case, the prosecution has cited 13 witnesses. The appellant has cited two witnesses. The appellant's statement was also recorded under Section 313 of the Cr.P.C by the trial court. The learned counsel for the appellant Mr K B Andley, Senior Advocate assailed the judgment of the trial court on the following grounds:-

- (i) the trial court failed to appreciate the ingredients of the provisions of Section 304B of the I.P.C and the evidence brought on record by the prosecution for proving its case in regard to the defence under the said section. He elaborated his submissions in regard to the same by stressing on the aspect that the appellant could be convicted in respect of the said offence only if there was evidence on record to show that dowry had been demanded by the appellant "*soon before*" the death of Smt Baby;
- (ii) a reading of the testimony of the prosecution witnesses would clearly show that there was no harassment or demand for dowry for articles "*soon before*" the death of Smt. Baby;
- (iii) in so far as the appellant's conviction under Section 498A of the I.P.C. is concerned, the same was erroneous in view of lack of any direct evidence. The testimony of the brothers of the deceased with regard to the demand for dowry was hearsay. Such evidence is admissible under Section 32 of the Evidence Act, 1872 (hereinafter referred to as 'Evidence Act'), which is related to the cause of death as in the case of a dying declaration;

(iv) a perusal of testimony of various witnesses, who deposed on behalf of the prosecution, would show that there were inherent contradictions in the statement made to the court, an aspect which the trial court failed to appreciate. In order to demonstrate this, the learned counsel brought to fore the following:

(a) in the statement (Ex. PW2/A), of Suresh (PW2) (the brother of the deceased) recorded on 07.08.1994, based on which a FIR was recorded, there is no mention of demand of dowry of Rs 50,000/- by the appellant. The deposition of PW2, on this aspect in the Court, is definitely an improvement;

(b) while PW2, in his statement before Court, adverted to the fact that on 24.07.1994 a sum of Rs 7,000/- was paid as cash to the appellant on his demanding dowry; this was not an aspect which was alluded to by the other prosecution witnesses PW4 and PW5. As a matter of fact PW4 deposed that the appellant had demanded a sum of Rs 30-40 thousand for setting up a shop. The trial court, based on the same evidence, has acquitted the other accused, i.e., the mother of the appellant, while curiously has convicted the appellant; and

(c) lastly, the SDM (PW3), who had recorded the statement, based on which the FIR was registered, was not fully examined-in-chief and hence, she could also not be cross-examined. This, according to the defence, was the fatal flaw in the case.

7. The learned counsel for the appellant in support of his submission cited following judgments:

Bhairon Singh vs State of Madhya Pradesh, (IV) 2009 SLT 793 (SC)

and Goverdhan vs State of Madhya Pradesh, 2007 (3) Crimes 247.

8. As against this, Mr R. N. Vats, learned Additional Public Prosecutor (in short the 'APP') submitted as follows:

8.1 It is not disputed that the marriage of deceased Smt. Baby with the appellant took place in 15.02.1994, and her death took place on 06.08.1994. Consequently, the first

ingredient of Section 304B of the I.P.C. stood proved, as the death is occurred within seven years of marriage.

8.2 The testimony of the prosecution witness Dr. Sudhir Kr. Gupta (PW1) clearly brought to fore the aspect that the death of Smt. Baby had taken place on account of unnatural circumstances. The cause of death was opined as Asphyxia, as a result of antemortem, hanging by a ligature. Therefore, the second ingredient of Section 304B of the I.P.C. was also established, as there was no reason to doubt the veracity of the opinion recorded in post mortem report (Ex.PW1/A).

8.3 As regards the third aspect, he submitted that a close perusal of the testimony of each of the prosecution witnesses would show that the deceased, Smt. Baby, was harassed with dowry demands. The brother of the deceased, Suresh (PW2), had clearly adverted to the fact that on 24.07.1994 a sum of Rs 7,000/- had been paid in cash to the appellant, and furthermore just two days before Smt. Baby committed suicide, she had visited her matrimonial home (i.e., on 04.08.1994) at which point in time she had complained of having harassed for dowry. It was thus submitted that the third ingredient, that there should have been demands for dowry, soon before the unnatural death of a victim, that is, within seven years of marriage, was also clearly established. It was further submitted that no suggestion whatsoever was made to the prosecution witnesses with regard to the payment of Rs 7,000/- to the appellant on 24.07.1994 or the demand for dowry, or even with regard to the deceased having visited her matrimonial home on 04.08.1994, and the events which transpired on that date. It was thus submitted that there was nothing, which was brought on record to have the court disbelieve the evidence of the prosecution on the aspect of harassment of the deceased Smt. Baby, on account of demand for dowry.

9. In order to appreciate the submissions made by the learned counsel for the parties, it may perhaps be necessary to briefly note as to what each of the witnesses had to say with regard to the issue as to whether the deceased Smt. Baby was harassed for dowry *soon before her death* within the meaning of Section 304B of the I.P.C. and/or was

subjected to cruelty within the meaning of Section 498A of the I.P.C. The fact that the deceased got married on 15.02.1994 and that her death on 06.08.1994 had occurred on account of unnatural circumstances is not only proved but also not been put in issue by the appellant.

10. On the aspect of death of Smt. Baby being unnatural, the learned APP has, in my view, correctly relied upon both the postmortem report (Ex. PW1/A) as also the testimony of Dr. Sudhir Dr. Gupta (PW1) who has proved the report. The cause of the death in the postmortem report (Ex.PW1/A) is recorded as Asphyxia, as a result of antemortem, hanging by a ligature. This aspect is also supported by the testimony of other prosecution witness Suresh (PW2) who said that he had found the body of the deceased on the bed with marks under her neck as well as on the bottom portion of the face. Similarly, Manju (PW5) deposed that when she reached the house, the deceased was found dead, and she had noticed marks on her neck. This was also adverted to by Ashok Kumar (PW6), the other brother of the deceased, who said that when he saw the body of the deceased the tongue and eyes were protruding out. Therefore, as indicated above, the evidence of the prosecution really seems to require analysis with respect to the aspect as to whether the deceased was harassed for dowry *soon before her death* or was subjected to cruelty.

11. Suresh Kumar (PW2), in his first statement to the police (Ex. PW2/A) given on 07.08.1994, had stated that the appellant was not happy with the watch and the furniture which had been given at the time of marriage as part of the dowry and that the appellant desired that he be given another watch. It is also recorded in the said statement that it is for these reasons that his sister Smt. Baby had hung herself. In his deposition in Court, PW2 stated that the marriage between the appellant and the deceased Smt. Baby took place on 15.02.1994; the expenses on the marriage were made according to the capacity of the family; the appellant had started harassing and physically abusing his sister and demanded dowry; the appellant complained that the dowry articles, given at the time of marriage, were of poor quality; the appellant demanded Rs. 50,000/- in cash, one scooter

and a wrist watch apart from a demand of Rs 50,000/- to purchase a shop; the appellant was paid on 24.07.1994, a sum of Rs 7,000/- in cash, and; lastly, that on 04.08.1994, the deceased had come to the matrimonial house along with the appellant in a perplexed state, and at which point in time, she had said that she was being harassed by the appellant and that it would be perhaps her last visit to the matrimonial house. In the cross-examination, PW2 did not say anything contrary to or inconsistent with what was stated by him in his examination-in-chief.

12. Smt. Suman (PW4), one of the sister-in-laws of the deceased, deposed to the effect that her father-in-law (i.e., the father of the deceased) had incurred expenses according to his capacity at the time of marriage of the deceased; whenever the deceased visited their house she complained that both the appellant and his mother harassed her for dowry; on 04.08.1994, when the deceased had visited their house she had told them that the appellant and his mother demanded a sum of Rs 30-40 thousand for setting up a shop; and at that time the father-in-law had paid 50% of the money demanded by the appellant, and; lastly, that the appellant used to bring the deceased to their house every Sunday for demanding dowry. In her cross-examination, PW4 denied the suggestion that the appellant had not demanded Rs 30-40 thousand for setting up a shop. PW4 also denied the suggestion that on 04.08.1994, the deceased had not visited her matrimonial home. She also denied the suggestion that the father-in-law had not given money to the appellant. PW4 also denied the suggestion that the deceased was in love with some other person before marriage, that is, one Mr Deepak,

13. In similar vein, Smt. Manju (PW5), who is also the sister-in-law of the deceased, supported the case of the prosecution. In addition, she said that the appellant harassed the deceased with regard to the fact that she had brought insufficient dowry; and that the appellant would often taunt that the deceased belongs to a family of paupers. PW5 specifically adverted to the fact that when the appellant visited her house along with the deceased they had tried to persuade the appellant not to harass the deceased. She stated

that the appellant, instead of accepting their advice, complained about the sub-standard quality of the articles given at the time of marriage. In her cross-examination, PW5 consistently denied all suggestions that the appellant did not harass the deceased on account of dowry.

14. Sh. Ashok (PW6), the other brother of the deceased, Smt. Baby, deposed to the effect that after marriage the appellant and the members of his family started harassing deceased for bringing insufficient dowry. He specifically testified that in the second month of marriage, the appellant had demanded an amount of Rs 10,000, in cash, which was paid by the family to the appellant for the sake of their sister, that is, the deceased. He deposed that the demands of the appellant, however, did not abate. PW6 also adverted to the effect that the appellant had demanded a two wheeler scooter and Rs 50,000/- to set up a shop. He also testified that the appellant had threatened that if he was not paid the said sum of Rs 50,000/- he would not be responsible for the safety of his sister. He further stated that on 04.08.1994, the appellant had sent the deceased to their house for the purposes of having the deceased persuade the family to give Rs 50,000/-, if she was desirous of staying with her in-laws. In the cross-examination, when confronted with the statement made to the police (Ex. PW6/DA), it came through that eventhough PW6 had not referred to the fact that the deceased was harassed within two months of the marriage, it was mentioned by PW6 that the deceased was harassed and threatened. Furthermore, in his cross-examination it also emerged that in his statement to the police (Ex.PW6/DA) it is not recorded that the appellant had threatened that in case if he was not paid Rs 50,000/- he would not be responsible for the safety of the deceased. He, however, denied the suggestion that the appellant had not demanded Rs 50,000/- or two wheeler scooter or the fact that Rs 10,000/- was paid in cash to the appellant.

15. Mr Soren (PW7), father of the deceased, testified that the appellant and the deceased got married on 15.02.1994. At the time of marriage, PW7 spent about Rs 70-80 thousand. He also deposed that several household articles were given as gifts to his

daughter, which included bed, sofa set, Almirah, TV, Box, utensils, clothes and jewellery. He testified that after marriage, the deceased was harassed by the appellant and his family members on account of insufficient and sub-standard quality of the articles given as gifts at the time of marriage. He specifically adverted to the fact that the appellant had demanded a sum of Rs 50,000/- for setting up a shop and that part of the money was paid by him. In his cross-examination he was confronted with statement made by him to the police wherein it was not recorded that the appellant had demanded Rs. 50,000/- for setting up a shop. He also accepted the fact that he was, at the relevant point in time, working in the American Embassy as a *safai karamchari* at a salary of Rs 5,000/-. He also accepted the fact that he has seven children and that prior to the marriage of the deceased he had married three other children. He denied the suggestion that the deceased had committed suicide because she was not happy with her married life with the appellant or that prior to the death of the deceased, father-in-law had come to his house to persuade the deceased to live in harmony with the appellant. He denied any suggestion that the appellant did not harass his daughter for dowry or that the appellant had not made any specific demand. He volunteered that at the time of arrival of the *baraat* the appellant had demanded Rs 20,000/-.

16. It is evident, upon perusal of the testimony of prosecution witnesses PW2, PW4, PW5, PW6 & PW7, that the appellant did harass the deceased with regard to the fact that the dowry, that she had got with her at the time of marriage, was both insufficient and of poor quality. The period between the death of Smt. Baby and the date of the marriage is only six months. One of the ingredients under the provisions of Section 304B of the I.P.C. for a person to be convicted under the said provision, is that, the prosecution should be able to prove that the deceased was subjected to cruelty and harassment by the husband or the relative of the husband for or in connection with demand for dowry *soon before her death*. However, *soon before her death* would mean in the recent past and not immediately before the death of the victim. There must be some “proximate and live link”

between the “effect of cruelty based on dowry demand and concerned death” [See *Thakkan Jha & Ors vs State of Bihar (2004) 13 SCC 348 at page 251-352 at para 7 and Baldev Singh vs State of Punjab VII (2008) SLT 626*]. The prosecution witnesses on this aspect of the matter have deposed consistently. As a matter of fact, PW2 has specifically adverted to the fact that a sum of Rs 7,000/- was paid by his brother, Ashok Kumar (PW6) to the appellant on 24.07.1994. Similar assertion was made by Ashok Kumar (PW6) that a sum of Rs 10,000/- was paid in cash by the family to the appellant. The father of the deceased, Soren (PW7), also testified that he had paid part of the money, which the appellant had demanded for setting up a shop. This aspect was also supported by one of the sister-in-laws (PW5) of the deceased. It is quite possible that in relation to the aspect as to the amount of money, which was demanded and paid, there may have been an exaggeration or hyperbole by the prosecution witnesses, but what definitely comes through on analyzing the evidence of the prosecution witnesses, is that, deceased was harassed on account of the fact that she had brought insufficient dowry and hence there was a constant demand for dowry. Therefore, in my view, once the prosecution was able to prove the ingredients of Section 304B, which are that (i) the death of the deceased was under unnatural circumstances (ii) the death occurred within seven years of marriage (iii) that the deceased was subjected to cruelty and harassment by the husband or the relative of the husband, and lastly, (iv) that the harassment or cruelty was connected with the demand for dowry: then the presumption under Section 113B of the Evidence Act will get triggered and it shall be presumed that the husband or the relative of the husband had caused “*dowry death*”. In my opinion, the evidence placed on record by the prosecution clearly points to the fact that the deceased Smt. Baby was subjected to harassment and cruelty which was connected to the demand for dowry. As observed above, the other ingredients of provisions of Section 304B of the I.P.C. are not only proved but also have not been disputed by the appellant. In these circumstances, the ingredients of cruelty, as given in Explanation ‘b’ to Section 498A of the I.P.C., also stands fulfilled.

17. The submission of the learned counsel for the appellant that the testimony of the prosecution is inadmissible as it is hearsay and the exception carved out under Section 32(1) of the Evidence Act does not get attracted as it is not related to the cause of the death, is, in my view, not tenable. My reason for coming to this conclusion is that a close scrutiny of the evidence of the prosecution would show that they have referred to the incidents of demands made by the appellant *to them and monies being paid consequent thereto, to the appellant*. The testimony of PW2, PW6 and PW7, in that regard, is quite clear. Therefore, the submission of the learned counsel for the appellant that the evidence ought to be excluded based on the principle that it is “hearsay” is untenable. Consequently, the applicability of Section 32 of the Evidence Act is not required to be commented upon by me.

17.1 There is another reason why the submissions of the learned counsel for the appellant, based on the provisions of Section 32 of the Evidence Act, do not hold much water. The Supreme Court in the case of *Kans Raj vs State of Punjab & Ors 2000(3) SCALE 429* at page 435, paragraph 6 and page 437, paragraph 9 while, discussing the scope, ambit and width of Section 32 of the Evidence Act dealt with an objection raised on behalf of accused-husband charged with offences under Section 304B/306/498A of the I.P.C. that ‘statements’ made by the deceased-wife to her parents, brother and acquaintances before her death were not admissible in view of the provisions of Section 32 of the Evidence Act.

17.2 A three Judge Bench of the Supreme Court while rejecting this contention raised by the accused-husband laid down the following propositions:-

“(1) Section 32 is an exception of the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a *homicide* or a *suicide*, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, *the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.*

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. *For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context.* Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of Clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant.”

17.3 The Supreme Court went on to say in paragraph 12 at page 441 that expression “circumstances of transaction which resulted in her death” not only include those which have direct nexus between the circumstances and death but *would also include “circumstances which have nexus with the transactions which resulted in death”*.

17.4 Finally, in paragraph 13, which is also material for the present case, the Supreme Court observed as follows:-

“In view of this legal position statements of Ms. Sunita made to her parents, brother and other acquaintances before her death are admissible in evidence under Section 32 of the Evidence Act.”

17.5 The Supreme Court finally in that case upheld the conviction of the husband by observing as follows:-

“Having critically examined the *statements of witnesses*, we are of the opinion that the prosecution has proved the persistent demand of dowry and continuous cruelty and harassment to the deceased by her husband. The contradictions pointed out are no major contradictions which could be made the basis of impeaching the credibility of the witnesses. Reference to different sums of money demanded by Rakesh Kumar in the statements of PWs 5 and 6 cannot, in any way, be termed to be contradictory to each other. At the most some of the amounts referred by one witness and not mentioned by the other can be termed to be an omission which in no case amounts to a major contradiction entitling the respondent No. 2 of any benefit. Ram Kishan, PW5 has categorically stated that Rakesh Kumar accused had raised a demand of Rs. 15,000/- for scooter and refrigerator immediately after the marriage which was fulfilled by giving him a sum of Rs. 20,000/-. His demand of a colour TV was also fulfilled. The continuous harassment connected with the demand of dowry is shown to be in existence till 21st September, 1988 when the deceased is reported to have come to her brother's house and met her parents.”

17.6 The facts of the present case are similar, if not identical. Therefore, once evidence is admissible, i.e., statements made by the deceased Smt. Baby to her relatives for the purposes of Section 304B of the I.P.C., then surely, it could be used for the purposes of Section 498A of the IPC.

17.7 The judgment of the Supreme Court in the case of *Bhairon Singh (supra)* is clearly distinguishable as the court was dealing with the conviction only under Section 498A of the I.P.C. The issue before the Supreme Court was whether the statement made by the deceased to her brothers regarding torture by the accused-husband could be relied upon by invoking the provisions of Section 32 of the Evidence Act. The Supreme Court observed as follows:-

“since for an offence under Section 498A *simplicitor*, the question of death is not and cannot be an issue for consideration, we are afraid the evidence of PW-4 and PW-5 is hardly an evidence in law to establish such offence. In that situation Section 32(1) of the Evidence Act does not get attracted.”

17.8 Hence, the said judgment has no application in the instant case as the conviction of the appellant is also under Section 304B of the I.P.C. The same position obtains vis-à-vis the judgment of the Single Bench of Chattisgarh High Court in *Goverdhan* (*supra*).

17.9 In these circumstances, the testimony of the SDM pails into insignificance as even without it the prosecution has been able to prove its case beyond a reasonable doubt.

18. As stated above, any exaggeration or improvement by the prosecution witnesses or even a hyperbole as regards the demand of dowry by itself, would not persuade me to believe that there was no harassment of the deceased in connection with demand for dowry, as rightly contended by learned APP, there was no suggestion was made to PW2 with regard to his testimony that on 24.07.1994 a sum of Rs 7000/- was paid in cash to the appellant, in connection with his demand for dowry. Similarly, PW2 was not confronted with regard to the fact that the deceased had visited the matrimonial home on 04.08.1994, just two days before her death in a perplexed stage as she was being harassed on account of demand for dowry. As a matter of fact, the testimony of Shri Ram (DW1) clearly brings to fore that the relationship between the appellant and his wife was not cordial. This aspect was also noticed by the trial court. The suggestion of the appellant made in his statement under Section 313 of the Cr.P.C. that his wife Smt. Baby had committed suicide as she was forced to marry him despite the fact that she was interested in marrying another person; was obviously a plea of desperation, which was not backed by any material evidence.

19. The last submission of the learned counsel for the appellant that on the same evidence the trial court had acquitted Smt. Ramshri, mother of the appellant, while it has convicted the appellant, is also untenable in my view. It has come in the evidence of Manju (PW5) that the body of the deceased was found in the house of Asha, the fourth accused (who has since been declared proclaimed offender), the sister of the appellant. The prosecution has not proved that at the time of the death of Smt. Baby or immediately

before, the appellant and the deceased were living with Smt. Ramshri, i.e., the mother. Even in his statement (Ex.PW2/A), made to the police by Suresh (PW2), there is no reference to the mother of the appellant. In these circumstances, the trial court, in my view, correctly gave the benefit of doubt to Smt. Ramshri, the mother of the accused. This, however, would not in my view, impact the case of the prosecution as against the appellant.

20. In view of the discussion above, I am of the opinion that the prosecution has been able to establish its case beyond a reasonable doubt. Consequently, the judgment of the trial court is sustained. The appeal is dismissed.

RAJIV SHAKDHER, J

DECEMBER 16, 2009
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