

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

**Judgment dated 14<sup>th</sup> May 2010**

**Crl. Appeal No.2/2001**

# Rehmat Begum ..... Appellant

Through : Mr. Ajay Digpal, Adv.

Versus

State (NCT of Delhi) .... Respondent

Through : Mr.Lovkesh Sawhney, APP

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

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

**G.S. SISTANI, J. (ORAL)**

1. Crl.Appeal No.1/2001 was filed by the husband of the deceased. Crl.Appeal No.2/2001 has been filed by the mother-in-law of the deceased. By a common judgment dated 09.12.2000 and order on conviction dated 18.12.2000 both the husband and mother-in-law have been held guilty for the offence committed under Sections 498-A and 304-B of the Indian Penal Code, 1860 (hereinafter referred to as, "IPC"). Both the mother-in-law and husband have been sentenced to undergo seven (07) years of Rigorous Imprisonment for the offence under Section 304-B of the IPC. The husband and mother-in-law have been sentenced to undergo Rigorous Imprisonment for three (03) years under Section 498-A, IPC and to pay a fine of Rs.5,000/-, each, and in default thereof they have been directed to undergo Rigorous Imprisonment of six months. The present appeal has been filed by the

mother-in-law and is directed against the aforesaid judgement and order of conviction.

2. The facts as noticed by the learned Additional Sessions Judge, necessary for the disposal of the present appeal, is that on 28.09.1998 at about 3:40 a.m., information was received by the Police Post, Turqman Gate, which was recorded vide DD No.3 to the effect that Sayara Bano (wife of Rizwanuddin), was admitted in the hospital by one Kayamuddin with burn injuries. Investigation of the case was marked to SI Subodh Kant who went to LNJP Hospital along with HC Anil Dutt and Constable Surya Kant and collected the MLC of the deceased. At the Police Post, SI Surya Kant met Smt. Rauf Nisha, mother of the deceased, and recorded her statement at about 8:30 a.m. In her statement, mother of the deceased informed that Sayara Bano (deceased) was her eldest daughter and was married about eighteen (18) months ago to Rizwanuddin. After her marriage, deceased used to come to her parents' house almost every Sunday and would complain that her mother-in-law, Rehmat taunted her on small things and would say *"Tumne Dahej Me Diya Kya Hai, Kabare Ka Maal. Itwar Bazar Ka De Diya Hai, Jo Is Ghar Me Rakhane Layak Hi Nai Hai"*. Mother of the deceased informed the police that Rizwanuddin used to come late after consuming liquor almost every day and would beat Sayara. Mother of the deceased also stated that she along with her Jethani-Smt. Salma (wife of Iqbal Ahmed), had gone to meet the mother-in-law and husband of her daughter with a view to advice them and talk to them about the grievance of Sayara, however, both of them misbehaved, abused and told them that in case she wanted her daughter to be happy, she should meet the requirements of her in-laws and pay Rs.25,000/-. Mother of the deceased also informed the police that Fifteen (15) days prior to her death, Sayara had come to her house weeping and told them that she was being harassed by her husband and mother-in-law as the payment of Rs.25,000/- was not made till then. Thereafter, mother of the deceased had gone to the house of the appellant along with Miraz, (son of her sister) and had met the

appellants and assured them that Rs.25,000/- would be paid soon and left her daughter in her in-laws house. The mother of the deceased had learnt about the admission of her daughter in LNJP Hospital in a burnt condition at 3:00 a.m. from Papo, sister of Rehmat, and she reached the hospital at about 3:30 a.m. where she found her daughter lying in the hospital with burn injuries. On the basis of the statement of the mother of the deceased, an FIR was registered.

3. During trial, twenty one (21) witnesses were examined by the prosecution. Four (4) witnesses were examined by the defence. Statement of the appellants was also recorded under section 313 of Cr.P.C. It would be useful to discuss the evidence of some of the material witnesses in detail.
4. PW-1, Mohd. Arif (neighbour of appellants) deposed in his examination-in-chief that it was a Sunday, but he did not remember the date. About 3/4 months back, at about 1:30 a.m., he was present at his house. He heard some voices and came to the portion of Rizwan. He saw Sayara in flames (who was the wife of Rizwan). PW-1 deposed that he put water on Sayara from a tub lying there. At that time, the family members of Rizwan, were sleeping in the house. He called the family members, who were sleeping on the lower floor of the house and took Sayara to the hospital. PW-1 deposed that he did not know anything else about this case.
5. In the cross-examination by learned APP, PW-1 deposed that his statement was recorded by the police. He admitted that the incident took place on 28.9.1998. PW-1 also deposed that it was incorrect that when Sayara was seen by him in flames, at that time, Rizwanuddin and his mother, Rehmat, were standing there. Further, it was incorrect that he saw a white can in the hand of Rizwanuddin. PW-1 deposed that he had not stated so in his statement to the police. PW-1 was confronted with portion C of his statement, Ex.PW/1-A where it was so recorded. PW-1 also deposed that it was incorrect that he had been won over by the appellant.
6. In his cross-examination by counsel for appellant, PW-1 deposed that

Rizwan and deceased, Sayara, were residing together on the second floor of the house and were having separate kitchen and the appellant, Rehmat (mother of Rizwan) and other family members were residing on the ground floor of the house. PW-1 further deposed that there was a very thin wall between his house and the house of Rizwanuddin and they could hear the talks of each other from their respective portions. He had never heard any dispute or quarrel between Sayara Bano and her in-laws including her husband. He also did not hear any quarrel on the day of the incident or immediately few days prior to the occurrence. There was no neighbour present at the place of occurrence.

7. PW-3, Rauf Nisha, mother of the deceased (w/o Intzar Ahmed) deposed that the marriage of her daughter, Sayara Bano took place with Rizwanuddin, about 2 years back. PW-3 deposed:

My daughter was kept well by Rizwanuddin for 2/3 months after the marriage. Whenever my daughter used to come to reside with us normally on Sunday, she used to complain to me that her mother-in-law, Rehmat was not happy with the dowry brought by her and she used to taunt every time by saying that junk has been given in the dowry. (Kabari Ka Saman Diya Hai). My daughter also used to complain that her husband, Rizwanuddin used to consume liquor every day and after consuming liquor he used to bear her daily with a view to pressurize her to bring money from her parents. About 4 months prior to the incident, I accompanied by my Jethani (sister-in-law), Salma had gone to the house of appellants. There, we were abused by appellants and were turned out of the house. They had also stated that in case we wanted to see our daughter alive, we should fulfill their demands and they also demanded Rs.25000/- from me which I paid to my daughter Sayara Bano for handing over the same to her husband, namely Rizwanuddin. Again thereafter, my daughter complained to me that appellants are again harassing her for bringing more dowry from us. About 15 days prior to the incident, my daughter, Sayara Bano, again came to meet us on Sunday and she again complained that the appellants were demanding Rs.25000/- and a flat.

I had gone to meet my daughter Sayara Bano at her in-laws house in between the period of 15 days alongwith my nephew Miraj. I again met Rizwanuddin and Rehmat but they did not even care to hear. At about 3:00 a.m. on 28<sup>th</sup> of the month I

was informed by Papo, sister of Rehmat that my daughter Sayara Bano has been burnt and she has been taken to JPN Hospital. I then went to JPN Hospital and there I found that my daughter has sustained burn injuries. My statement was recorded by the police as well as by Magistrate. My statement is Ex.PW-3/A which bears my signature at point-A. The statement before the SDM by me is Ex.PW-3/B which bears my thumb impression and signature at point-A.

8. PW-3, mother of the deceased in her cross-examination by counsel for the appellants deposed:

It was correct that the kitchen of my daughter Sayara Bano and her husband was separate from Rehmat. It is also correct that my daughter and her husband, Rizwanuddin used to reside on the second floor of the house. Rehmat with her other 5 sons and 2 daughters have been residing on the first floor of the house. On the ground floor, one Swalin resides. Adjoining to the house of appellants Arif resides on the first floor. I had visited the house of Arif many times. I cannot see what is happening in the house of appellants while remaining present in the house of Arif (PW). I was not tutored by any police officer before coming to the Court before giving the evidence. My daughter was also sick of Rizwanuddin as he used to consume liquor daily and after consuming liquor, he used to beat her. This was the only reason why my daughter was not happy with Rizwanuddin. Vol. in addition to it, she was tired of dowry demand. Whenever, my daughter used to come to our house on Sunday, she used to complain that her husband came too late and used to consume liquor and that her mother in-law used to taunt her with regard to dowry. I had once gone to the house of appellants with my Jethani and on other occasion, I visited the house of appellants with my nephew Miraj.

Ques. In your statement Ex.PW3/A you had stated to the police that my daughter came 15 days prior to the occurrence and told me that she was beaten by accused persons as we had not fulfilled the demand of Rs.25000/- and today in the Court you have stated that Rs.25000/- was paid four months prior to her death? Which of is your statement is correct.

Ans. My both statements are correct. First of all we paid Rs.25000/- about 4 months prior to the incident and again a sum of Rs.25000/- and a flat was demanded about 15 days prior to the incident by the appellants.

I had stated in my statement to the police that the accused persons had told us that in case we wanted to see our

daughter alive, the demand of Rs.25000/- should be fulfilled (Confronted with her statement Ex.PW3/A where there is no mention of *if we wanted to see our daughter alive.*)

I had stated in my statement made to the Magistrate that about 15 days prior to the incident, my daughter Sayara Bano came to meet us on Sunday and she again complained that the appellants were demanding Rs.25,000/- and a flat. (Confronted with her statement Ex.PW3/B where there is no mention of any incident about 15 days prior to the incident.) I had no direct talk with Rehmat who is my cousin in connection with the demand of dowry. Rehmat used to demand dowry from my daughter. Rizwanuddin, never demanded any amount or dowry from me directly.

It is incorrect to suggest that no demand was ever raised by the accused persons from my daughter. It is incorrect that no amount of Rs.25000/- and flat was ever demanded or paid/given at any time. It is incorrect that I had stated about the demand of Rs.25000/- before the Magistrate on being tutored by somebody in order to falsely implicate the appellants.

9. PW-4, Sh. Mirajuddin @ Miraj, deposed that deceased, Sayara Bano was the daughter of his Khala (Mausi). The marriage of Sayara Bano took place with Rizwanuddin. As per PW-4, whenever Sayara Bano used to come to her parent's house, she used to complain that her in-laws were harassing her that she does not know household work and that she had not been taught to do domestic work by her parents and that she was also being taunted as to what type of junk she had brought. She also used to complain that her husband used to consumer liquor, come late in the night and she was not at liberty to go to the place where she wanted to go. PW-4 further deposed that on the eve of Bakri-Id, in 1998, his Khala (the mother of deceased) had sent meat to the matrimonial house of the deceased as per the custom but the appellants had returned the same on the third day as a result of which, his Khala felt very much upset. About 3/4 months prior to the incident he had come to know that Rizwanuddin had demanded Rs.25,000/- and his khala had paid the said amount to her matrimonial house but he could not say to whom the said sum of Rs.25000/- was delivered by his Khala at the house of the appellant. PW-4 stated to not know anything

else.

10. In his cross-examination by learned APP, PW-4 deposed that his statement was recorded by the Police and he had not stated to the police that mother-in-law of deceased, Sayara Bano used to taunt the deceased as to what junk had been given by her parents in dowry. (*Confronted with his statement, portion A to A of Ex.PW/4-A where it was so recorded*). He further deposed that Rizwanuddin, used to come late in the night after consuming liquor and used to beat the deceased. He had not stated to the police that Rizwanuddin used to demand money from the deceased. (*Confronted with his statement portion B to B where it was so recorded*). He had no knowledge that the deceased Sayara Bano came to her parent's home about 15 days prior to the incident and had told that she had been badly beaten by her husband and mother-in-law. (*Confronted with his statement Ex.PW/4-A portion C to C where it was so recorded*). In his presence, deceased, Sayara Bano, had never told her mother that since Rs.25,000/- had not been given to the accused persons, she was being beaten up by them. He had not made such statement to the police. (*Confronted with his statement portion D to D where it was so recorded*). PW-4 further deposed that it was incorrect that he alongwith deceased, Sayara Bano and his Khala had gone to the house of appellants. PW-4 deposed that it was incorrect that at that time appellants were assured that Rs.25,000/- would be given to them very soon. (*Confronted with his statement portion E to E where it is so recorded*). He deposed that it was correct that when he came to know that Sayara Bano had sustained burn injuries, he had gone to JPN Hospital at about 8:00 a.m. on 28.9.1998. When he went to JPN Hospital, he found Sayara Bano in a burnt condition.
11. PW-4 in his cross-examination by the learned APP further deposed that it was correct that deceased, Sayara Bano used to remain upset as she was harassed by the mother-in-law and the husband on account of bringing less dowry as well as for bringing the dowry, goods of very inferior quality (Junk goods). It was correct that deceased, Sayara Bano

used to say everytime, when she used to come to her parents home, that she was being harassed and taunted by them for bringing less dowry and for bringing dowry goods of inferior quality. He used to hear the conversation between the deceased and her mother and on one occasion, the deceased had told this fact in his presence to her mother. As per PW-4, it was correct that after her marriage the deceased had become weak as she was constantly taunted but otherwise, the deceased was not suffering from any disease.

12. In the cross examination by learned counsel for the appellant, PW-4 deposed that the deceased used to say that as a result of constant harassment at the hands of her mother-in-law and Nanad, she had become weak. PW-4 deposed that it was incorrect that deceased, Sayara never told in front of him that her in-laws used to harass her and used to say that she does not know household work and that she had not been taught to do domestic work or that she was taunted as to what type of junk she had brought in dowry. It was incorrect that Sayara never complained to him that her husband used to consume liquor and come late in the night. PW-4 had not stated in his statement to the police that deceased, Sayara, used to complain that she was not at liberty to go anywhere as she liked. She had also not stated about the incident of Bakr Id as well as sending meat etc. PW-4 deposed that it was incorrect to suggest that any sum of Rs.25,000/- was given by his Khala to any of the in-laws of deceased, Sayara Bano. It was further incorrect that no demand was made at any time of Rs.25,000/- by Rizwanudddin. It was incorrect that deceased, Sayara, was never harassed or taunted in her in-laws house by any of her in-laws. It was also incorrect that mother-in-law and husband were not responsible for the death of deceased in any manner.

13. PW-5, Salma Begum, deposed that for two-three months after her marriage, Sayara Bano, did not tell them anything but later she informed that her husband, Rizwanudin, used to come to his house after consuming liquor (daily) and beat her and that she was sick of her life. PW-5 further deposed that Sayara Bano also used to say that this

fact should not be disclosed by her to anybody else. Deceased Sayara Bano also used to tell her that her mother-in-law harassed her and taunted her by saying that her father had given junk in the dowry. On one occasion, she had gone to the in-laws of Sayara Bano alongwith her Deverani and there the mother-in-law of Sayara Bano had misbehaved with them and had demanded Rs.25,000/- from them.

14. PW-5, in her cross-examination deposed that in fact, deceased, Sayara Bano, had visited her house on the date when the incident took place. i.e. on 26.10.1998 and left her house at 9:00 p.m. They had tried to stop her but she stated that she was in a hurry and had to reach home at the earliest, because if she would reach her home late, a quarrel would take place at her home. As per PW-5, on that day deceased, Sayara Bano had come to her house as a function was being held in connection with the fixing of the date of the marriage of her son. PW-5 deposed that she used to accompany her devarani, sometimes, when they visited her daughter's matrimonial home. Latest she had visited the matrimonial house of her daughter about 15 days/one month prior to the incident. At that time the mother of Rizwannuddin, namely Rehmat, met them. PW-5 further deposed in her cross-examination that Arif was residing next to the house of Rizwanuddin on the first floor. The stairs of Rizwannuddin and Arif were common upto first floor and thereafter the stairs were different for going to the second floor. When she last visited the matrimonial house of the deceased, appellant, Rehmat, had misbehaved with them and Sayara Bano and her Nanad quarreled with each other on account of cooking of the food. The appellant, however, never demanded any money from them when they visited the matrimonial house. On the last occasion, Sayara Bano told them that her mother-in-law was demanding Rs.25,000/-. PW-5 deposed that it was incorrect to suggest that she had never visited the house of the appellant 15 days/one month prior to the incident or that the appellant had never misbehaved with them. It was further incorrect to suggest that deceased, Sayara Bano never told them that her mother-in-law was demanding

Rs.25,000/-. It was further incorrect to suggest that Sayara Bano never told her that her husband Rizwanuddin used to daily come to his house after consuming liquor and beat her and she was sick of her life. It was incorrect to suggest that Sayara Bano never told her that the appellant used to harass her and taunt her by saying that her father had given junk in the dowry. It was incorrect to suggest that the accused persons (before the trial court) were not responsible for the death of Sayara Bano. It was further incorrect to suggest that she was deposing falsely. It was also incorrect to suggest that no demand of Rs.25,000/- was made by Rizwanuddin or his mother.

15. PW-8, (father of the deceased-Intzar Ahmed) deposed in his examination-in-chief that deceased, Sayara Bano, was his daughter and was married to Rizwanuddin. As per PW-8, Rizwanuddin and his mother, Rehmat, started harassing and beating his daughter, Sayara Bano, after  $\frac{3}{4}$  months of the marriage. On every Sunday, when his daughter, Sayara Bano visited his house, she complained that her husband used to daily consume liquor and beat her under the influence of liquor. His daughter also told him that the accused persons used to taunt her that they have been given junk (kabarh) in dowry. That Rs.25,000/- were demanded from Sayara and she was asked to bring the said amount from the parental house. PW-8 further deposed that Sayara Bano had taken Rs.25,000/- from his wife after  $\frac{4}{5}$  months of her marriage and had handed over the same to the accused persons (before the trial court). After  $\frac{1}{2}$  months, his daughter, Sayara Bano further told him that the accused persons were demanding one flat and a sum of Rs. 25,000/-. His daughter, Sayara Bano, also told him that the accused persons were threatening that their demands have to be fulfilled at any cost. PW-8 also deposed that his wife, Rauf Nisha and his *bhabhi*- Salma Begum, also went to the matrimonial house of the deceased. Both his wife and bhabhi tried to make the accused persons understand not to make such high demands and harass Sayara Bano, but they reiterated that their demands have to be fulfilled. Thereafter his wife and bhabhi were turned out from the house. This whole

incident was narrated to him by his wife and bhabhi. Thereafter, he went to Bhavnagar, in connection with his work. On the night of 27/28.9.1998, he received a telephone call that his daughter, Sayara Bano, was seriously ill and he should come back to Delhi. On 28.9.1998, when he reached Delhi Airport at about 9:45 a.m., his relatives told him that his daughter had sustained burn injuries and had expired. Again said that his relatives informed him that his daughter had been burnt to death. His statement was recorded by the S.D.M. on 29.9.1998. His statement, Ex.PW-8/A, bears his signature and thumb impression at the place marked 'A'. PW-8 also identified the dead body of his daughter and the SDM had recorded his statement Ex.PW-8/B which bears his signature and thumb impression at point 'A'.

16. In the cross-examination by learned APP, PW-8 deposed that it was incorrect that he himself had handed over Rs.25,000/- to his daughter for handing over the same to the accused persons. Again said he had handed over Rs.25,000/- to his daughter for handing over the same to the accused persons and at that time his wife was also there.
17. In the cross-examination by counsel for the appellant, PW-8 deposed that it was correct that his daughter, Sayara Bano, and Rizwanuddin used to reside on the top floor of the house in a small room. There was no kitchen on the top floor and kitchen was situated on the first floor. PW-8 deposed that after four months of the marriage he came to know from his daughter that she was being harassed by her husband Rizwanuddin, who used to beat her under the influence of liquor. PW-8 deposed that he had stated in his statement, Ex.PW-8/A, that his daughter used to come to his house on every Sunday. (*Confronted with his statement Ex.PW-8/A where the word 'every Sunday' is not recorded*). As per PW-8, his daughter, Sayara Bano, met him about one month prior to the incident. At this stage, a Court question was also put:

“Que.You have stated in your statement before SDM that I had left for Bhavnagar in connection with my business on 16-9-98 whereas today you have stated in the Court that you had left for Bhavnagar about one and one fourth months prior to

the incident and was way away to Bhavnagar during this period. Which of your statement is correct?

Ans. My statement made before the Ld. SDM in this respect that I left for Bhavnagar on 16-9-98 is correct.

18. PW-8 further deposed that in his statement made before the SDM, he had stated that the accused persons started harassing and beating his daughter after 3/4 months of the marriage. After 4/5 months of her marriage, his daughter, Sayara Bano, told him that there was a demand of Rs.25,000/-. However, they did not make any demand directly from him. PW-8 further deposed that he paid the amount of Rs.25,000/- after one week of the demand made by the appellants. When the money was given to his daughter, Sayara Bano, he was present in his house. He had told the SDM that the accused persons were demanding Rs.25,000/- from his daughter. *(Confronted with his statement Ex.PW-8/A where the name of appellant, Rehmat for demand of Rs.25,000/- was not mentioned)*. But PW-8 could not tell as to whom the money was handed over by his daughter after she took Rs.25,000/- from them. His daughter was depressed as her husband, Rizwanuddin, used to come to home after consuming liquor daily and used to beat her. PW-8 deposed that he had stated in his statement to the SDM that after 1/2 months after the first amount was paid, his daughter told him that there was a demand for a flat and a sum of Rs.25,000/-. *(Confronted with the statement, Ex.PW-8/A where the word 1/2 months and the demand of Rs.25,000/- was not mentioned for the second time)*. He had not stated in his statement, Ex.PW-8/A, to the SDM that his wife, Rauf Nisha and his bhabhi, Salma Begum, went to the matrimonial house of the deceased. He had also not stated in his statement that both his wife and his bhabhi tried to make the accused persons (before the trial court) understand not to make such demands and harass Sayara Bano. PW-8 further deposed that it was incorrect to suggest that no demand was ever made. He deposed that it was incorrect to suggest that his daughter was neither taunted nor harassed on account of demand of Rs.25,000/- at first instance and

demand of Rs.25,000/- and a flat at the second instance. It was further incorrect to suggest that his daughter was never taunted or beaten regarding the dowry items brought. It was incorrect to suggest that Rizwanuddin never gave any beatings or harassed his daughter under the influence of liquor. It was incorrect to suggest that he was deposing falsely.

19. PW-10, S.I. Champat Singh, deposed that on 28.9.98 he was posted in District Crime Team. He inspected the spot and got the place of occurrence photographed. At the spot, he found one stove containing kerosene oil, one plastic can of white colour which was without kerosene oil and smell of kerosene oil was coming. Besides this, burnt clothes and burnt match-sticks were found present there. No chance prints were found present there.
20. In the cross-examination by counsel for the appellant, PW-10 deposed that the plastic can which was found present at the spot was of 2/2½ lt. of capacity. The stove was made of iron and its tank was of round shape, which was almost full. The stove was found outside the kitchen in open space within a radius of one meter. PW-10 further deposed:

I did not find any blackening sign of smoke on the walls at the second floor at the place of incident. I did not observe any burn marks on the floor on the second floor as the water was found lying at the place of incident. The kerosene oil can was lying at a distance of one foot from the stove. The stove, kerosene oil can, burnt clothes and burnt match sticks were lying in open space. The plastic can was lying at a distance of about 1/1½ ft. from the wall of open space. The piece of cloth having the width of 3"x1" was found lying unburnt while its corner were found burnt and the said piece of cloth was having smell of kerosene. The cloth was of 'Mehroon colour' (dark red colour). I also visited the room and kitchen situated on the 2<sup>nd</sup> floor. I cannot say which articles were lying in the kitchen. It is incorrect that I had never visited the spot. It is incorrect that the stove, cloth, plastic can and match sticks were not found at the spot. It is incorrect to suggest that I am deposing falsely.

21. PW 12, Sh. Raj Kumar, SDM deposed that on 28.09.1998,

information was received from the police regarding admission of Sayara in LNJP hospital, in burnt condition. He went to LNJP Hospital for recording statement of Sayara, but the doctor declared her unfit for statement. On 29.09.1998, he went to the mortuary of the hospital, where he recorded the statement, Ex. PW8/B of Intzar Anhmed and statement of Naushad Ahmed which is Ex. PW12/A. Both the relatives of deceased identified the dead body of Sayara. On the same day, he recorded the statement of Rauf Nisha which was Ex. PW3/B and she put her RTI at point A and also signed the same in his presence. He also recorded the statement of Intzar Ahmed which was Ex. PW8/A and Intzar Ahmed put his LTI and signatures at point A in his presence. The dead body of deceased, Sayara was thereafter sent for post-mortem vide his application, Ex. PW12/C .

22. PW-16, SI Subodh Kumar has deposed that on 28.09.1998 he was posted at P.S. Turqman Gate. He left alongwith HC Anit Dutt to the spot at 1796, Turqman Gate and found an iron stove containing kerosene oil, one piece of cloth of Mehroon colour (some hair were sticking to it) and smell of kerosene oil was coming from it. He also found one plastic can from which smell of kerosene oil was coming out; one match box of 'slims brand' which was half burnt. PW-16 correctly identified the stove (Ex. P1), plastic can (Ex. P2), cloth piece (Ex. P3) and match box (Ex. P4).
23. In the cross-examination by counsel for the appellants, PW-16 deposed that the tank of stove was still having some kerosene but the same was partly empty and that he could not tell as to how much kerosene was found in the same. As per PW-16 he also found a gas stove inside the kitchen which was other than the stove recovered by him. Further he did not notice any marks of smoke either on the walls or on the ceiling of the second floor. The place of occurrence was an open place. He did not notice marks of smoke either on the second floor including the stairs coming down to first floor. PW-16 voluntarily deposed that the floor of the second floor was probably washed with water. He further deposed that it was incorrect to suggest that he did

not conduct the investigation properly and fairly.

24. PW-17, Dr.Sunita Kaushik has deposed that on 28.09.1998, she was working in JPN Hospital as Sr.Resident in the Burns and Plastic Surgery Department. On that day, one Mr.Rizwan r/o.1796 Turqman Gate, Delhi, was brought with the alleged history of sustaining burns while saving his wife, whose clothes had caught fire by cooking on kerosene oil stove. The history was given by the patient i.e. Rizwan himself. On examination, patient was found to have second superficial burns on both hands and a small patch on the nasal tip and cheeks. PW-17 deposed that the MLC Ex.PW-17/A was under his hand and bears his signature at point 'A'.
25. PW-19, Dr.Reena Pal has deposed that on 28.09.1998 she was working as Junior Resident in JPN Hospital, New Delhi. On that date at about 2:45 a.m. w/o Rizwan r/o 1796 Turqman Gate, Delhi was brought by Kayam, the brother-in-law of Sayara with the alleged history of sustaining burn injuries as Dupatta had caught fire from stove. The alleged history was given by the person who brought the patient. PW-19 deposed that on examination, she found vitals to be stable; chest, heart was also normal; patient was conscious and oriented. There were burn injuries over the face, chest, abdomen and arm of Sayara. PW-19 also deposed that she gave the necessary treatment to the patient and admitted her to the burns and plastic ward. She also deposed that the MLC, Ex.PW-16/A was prepared and the same bears her signature at point-A.
26. On cross-examination by counsel for the appellant, PW-19 stated that when history was given by the person who had accompanied the patient, the patient was at some little distance. She further deposed that she did not remember as to whether the patient was within the hearing of the aforesaid information. A question was put to this witness by the Court, as to why she did not enquire the cause of injuries from the patient? The answer was given that, since the patient was suffering from 70% burns, it was not feasible to enquire from her. However, she was able to tell her name and her husband's name, but not the

address. PW-19 deposed that it was incorrect that history as written in MLC, Ex.PW-16/A was given to her by the patient or that the history given “by brought” were added later at the instance of police.

27. PW-21, Inspector J.P. Singh has deposed that he was the SHO at the time when case FIR No.279/98 was registered against Rizwanuddin. He has stated that the exhibits of this case were not sent to CFSL by SI Subodh Kumar.

28. Counsel for appellant, Rehmat, has submitted that the judgment passed by the learned trial Court is 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 appellant guilty of the offence under section 498-A IPC, much less under section 304-B, IPC. It is contended that the learned trial Court failed to take into consideration the basic requirement of section 304-B IPC and completely lost track of the fact that it was mandatory for the prosecution to prove that soon before the occurrence the deceased was subjected to cruelty or harassment by the appellant 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 of any harassment meted out to the deceased soon before the occurrence. It is contended that none of the witnesses in their statements before the police or before the Court have alleged any incident of harassment committed upon the deceased by the appellant for and in connection with demand of dowry soon before the occurrence.

29. Learned counsel for the appellant has contended that there is no evidence 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”. Counsel

has also relied upon the decision in ***Biswajit Halder @ Babu Halder and Others Vs. State of WB*** reported at **2008 (1) SCC 202** as well as in ***Tarsem Singh Vs. State of Punjab*** reported at **2008 (16) SCALE 148** to canvass his argument that before convicting a person under section 304-B IPC, the basic 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 of dowry. 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 Sayara Bano. Counsel for the appellant has further relied upon the decision of ***Appasaheb and another Vs. State of Maharashtra*** reported at **2007 (9) SCC 721** in support of his argument that even otherwise, the demand made from parents of the deceased to meet the domestic expenses cannot be said to be demand for dowry.

30. Learned counsel for the appellant has also submitted that there are material contradictions in the statements made by prosecution witnesses. Counsel submits that evidence of the prosecution 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. Counsel for the appellant submits that the learned trial Court failed to apply the evidence led in defence by the appellant particularly by the wife of PW-1, who clearly stated that the deceased, Sayara Bano made a dying declaration to her on the way to the hospital, that she sustained injuries by accident. It is contended that Sayara Bano had died on account of an accident.
31. Learned counsel for the appellant has next contended that the investigation in this case was very casual inasmuch as, the material seized was not sent for examination to the Forensic Science Laboratory (FSL); post mortem report of the deceased was not proved; and furthermore the SDM did not even visit the spot. It is further contended on behalf of the appellant that the only witness relied upon in the

present case is PW-3 (mother of the deceased), and there are material contradictions in the statement made by PW-3 before the police on 28.09.1998 and the statement made by PW-3 before the SDM immediately on the next day i.e. 29.09.1998.

32. Learned counsel for the appellant has further contended that as admitted by the prosecution witnesses, there was no direct demand by the appellant and it was only Sayara Bano (deceased) who had stated to her parents that there was a demand for dowry. Furthermore, Intzar Ahmed (PW-8, father of the deceased) was declared a hostile witness and his version cannot be relied upon. It is further submitted by counsel for the appellant that the charge framed against the appellant by the Court was defective and has caused serious prejudice to the appellant. Counsel submits that no case is made out against the appellant.
33. Contrary to the submission of learned counsel for the appellant, counsel for the State has contended that a clear cut case is made out against the appellant. Learned counsel for the State has submitted that the prosecution has been able to prove its case beyond any shadow of doubt. He submits that on careful reading of the testimony of material witnesses, it is clearly established that on account of the persistent demands made by the appellant as well as her being subjected to cruelty in relation to dowry, Sayara Bano ended her life and thus, there is no infirmity in the judgment and order of conviction. The harassment at the hands of the appellant was not only continuous but also specific with regard to bringing 'junk' as dowry at the time of marriage and subsequent demands for more dowry. Counsel submits that it is clearly borne out from the record that at the first instance Rs. 25,000/- were demanded and paid to the appellant and at the second instance Rs. 25,000/- and a flat was demanded. Learned counsel for the State has submitted that in so far as the alleged dying declaration is concerned- as per the MLC, the history about accidentally receiving burns was not given by the patient but 'by the person who brought the patient to the hospital'. Learned counsel has contended that the fact that no chance

prints could be lifted from the spot and no smoke was detected, goes to show that the entire place had been cleaned up by the appellant and other members of her family so as to wipe out valuable evidence and the same raises a serious presumption against the appellant. Learned counsel further contends that there are contradictions in the evidence led by defence witnesses and points out that there is an anomaly as regards whether the patient was taken to the hospital in a rickshaw or in a Maruti van. He lastly contends that there was no defect in the charge framed against the appellant. Learned counsel submits that the harassment meted out to the deceased by the appellant was continuous and there is a live link between the death of Sayara Bano and the incidents of harassment for and in connection with the demand of dowry. He submits that there is no infirmity in the judgment and order of conviction passed against the appellant.

34. I have heard learned counsel for the parties and carefully gone through the record of the case. The submissions of learned counsel for the appellant can be summarized as under:

- i. Judgment passed by the trial Court is contrary to the material on record.
- ii. Material contradictions in the evidence led by prosecution witnesses.
- iii. Ingredients of section 304-B, IPC have not been established.
- iv. The evidence of defence witnesses has not been relied upon.
- v. Dying declaration made by the deceased to DW-1, has been ignored.
- vi. Investigation in this case was very casual.
- vii. Charge framed against the appellant by the Court was defective.

35. The submissions of learned counsel for the State can be summarized as under:

- i. Prosecution has been able to establish its case beyond any shadow of doubt.
- ii. Persistent demands of dowry made by the appellant.

- iii. As per the MLC, the history about accidentally receiving burns was not given by the patient but 'by the person who brought the patient'.
- iv. Chance prints could not be lifted from the spot as the entire place had been cleaned up by the appellant.
- v. Contradictions in the evidence led by defence witnesses.
- vi. There is live link between the death of Sayara Bano and the incidents of harassment for and in connection with demand of dowry.

36. On 28.09.1998 at about 3:40 a.m., information was received by the police post, Turqman Gate, vide DD No.3 that one Sayara Bano (wife of Rizwanuddin) had been admitted in the hospital with burn injuries, by Kayamuddin. Sayara Bano eventually succumbed to her injuries on 28.09.1998 at about 5:00 p.m. On the basis of the statement of the mother of the deceased that Rizwanuddin (husband) and Rehmat (mother-in-law) had harassed Sayara Bano (deceased) for and in connection with dowry, soon before her death, a case was registered against Rizwanuddin and Rehmat. Trial Court finding merit in the case of the prosecution convicted Rizwanuddin and Rehmat, under section 304-B/498-A, IPC. Against the judgment passed by the trial Court, the present appeal has been filed.

37. Learned counsel for the appellant has informed that during the pendency of this appeal, Rizwanuddin (husband of the deceased), appellant in CrI. A. 1/2001 has expired, and as such the appeal filed by him stood abated. The present appeal has been filed by the mother-in-law and this Court is to analyse whether the judgment and order of conviction passed against Rehmat (mother of the deceased), is based on evidence on record and settled principles of law.

38. Before analyzing the facts and circumstances, it would be appropriate to recall the law with respect to 304-B/498-A, IPC. In the case of **Prem Kanwar Vs. State of Rajasthan** reported at **(2009) 3 SCC 726**, the Apex Court has very elaborately set down the law with respect to dowry death. The same is reproduced as under :

“12. “6. Section 304-B and Section 498-A read as follows:

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

*Explanation.*—For the purposes of this sub-section “dowry” shall have same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

\* \* \*

*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 purposes 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.'

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

*'2. Definition of “dowry”.*—In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or 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 in Section 30 of the Indian Penal Code (45 of 1860).’

8. The Explanation to Section 304-B refers to dowry ‘as having the same meaning as in Section 2 of the Act’; the question is: what is the periphery of dowry as defined therein? The argument is, there has to be an agreement at the time of the marriage in view of the words ‘agreed to be given’ occurring therein, and in the absence of any such evidence it would not constitute to be a dowry. It is noticeable, as this definition by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. This position was highlighted in *Pawan Kumar v. State of Haryana*<sup>1</sup>.

9. The offence alleged against the [accused] is under Section 304-B IPC which makes ‘demand of dowry’ itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304-B refers to ‘demand of dowry’, it refers to the demand of property or valuable security as referred to in the definition of ‘dowry’ under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence, that could be either direct or indirect. It is significant that Section 4 of the Act was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word ‘agreement’ referred to in Section 2 has to be

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<sup>1</sup> (1998) 3 SCC 309 : 1998 SCC (Cri) 740.

inferred on the facts and circumstances of each case. The interpretation that the [accused] seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. 'Dowry' definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry.

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

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

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

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been 'soon before her death' subjected to cruelty or harassment 'for, or in connection with, the demand for dowry'. Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death..."

39. In the case of **Hira Lal Vs. State (Govt. of NCT), Delhi** reported at **(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.”

40. As detailed by the Apex Court in **Prem Kanwar** (*supra*) and **Hira Lal** (*supra*), 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 her death she must have been subjected to cruelty or harassment by her husband or relative of her husband; and, (iv) such cruelty or harassment must be in connection with the demand of dowry. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under section 113(B) of the Evidence Act.

41. Learned counsel for the appellant contends that the trial Court committed a manifest error in convicting appellant, Rehmat and failed to appreciate the evidence as per the settled position of law. Learned counsel for the appellant has contended that neither any harassment was ever inflicted upon the deceased by appellant, Rehmat nor any demand for dowry was made by her. It is further submitted that even otherwise, there are material contradictions in the evidence of witnesses of the prosecution including PW-3 (mother of the deceased), who is the star witness of the prosecution. I have carefully examined the evidence of all the prosecution witnesses including the evidence of Rauf Nisha, mother of the deceased (PW-3). PW-3 has deposed in her examination-in-chief that whenever her daughter (Sayara Bano) used to visit the parental house (normally on Sundays), she used to complain that her mother-in-law (Rehmat) was not happy with the dowry brought by her and that her mother-in-law used to taunt her every time by saying that junk had been given in the dowry (*Kabadi ka saman dia hai*). As per PW-3, her daughter had also complained that her husband, Rizwanuddin used to consume liquor everyday and after which he would beat Sayara with a view to pressurize her to bring money from her parents. PW-3 has further stated that about four months prior to the incident (death of Sayara), PW-3 had also visited the matrimonial house of her daughter, Sayara along with Jethani, Salma (PW-5). At their house, both of them were abused by the appellant and threatened that in case they wanted Sayara to be alive,

Rs.25,000/- should be immediately paid. Soon thereafter, Rs.25,000/- were handed over to Sayara for giving the same to her husband, Rizwanuddin. However, Sayara yet again complained that she was being harassed for bringing more dowry and about 15 days prior to the incident, Sayara had complained that another sum of Rs.25000/- and a flat was also demanded. PW-3 has further deposed that she had then visited the matrimonial house of her daughter, Sayara, along with her nephew, Miraj, however, both Rizwanuddin and Rehmat did not even care to hear them. As per PW-3, she had informed that her husband (PW-8) was out of station and as soon as he would come back they would consider the demands.

42. I find that although PW-3 has stated in her examination-in-chief that about 15 days prior to the incident, her daughter, Sayara had complained that there was a demand of Rs.25000/- as well as a flat, however, during the cross-examination, PW-3 was confronted with her statement (Ex. PW3/B) made before the SDM on 29.09.1998 i.e. immediately on the next day of the death of Sayara Bano, where there was no mention of any incident about 15 days prior to the incident. PW-3 was also confronted with her statement (Ex. PW3/B) wherein it was not mentioned that she had visited the matrimonial house of the deceased with her nephew Miraj. Further PW-3 admitted in her cross-examination that she did not have any direct talks with appellant, Rehmat in connection with the demand of dowry. On a careful analysis of the evidence of PW-3, I find that her major grievance of PW-3 is against Rizwanuddin (husband of the deceased) (who has since expired during the pendency of the appeal) and that her grievance against appellant, Rehmat pertains only to the fact that appellant, Rehmat used to taunt Sayara Bano that junk had been brought by her in dowry. I also find that PW-3 has admitted in her cross-examination that she never had any direct conversation with appellant, Rehmat with regard to demand of dowry. Further PW-3 has also deposed that when about four months prior to the incident (death of Sayara), PW-3 had visited the matrimonial house of Sayara, where after Rs.25,000/- were handed

over to Sayara, the said amount was to be given to her husband, Rizwanuddin. None of the witnesses of the prosecution have deposed that any money in the form of dowry or otherwise was ever handed over to the appellant. Thus I find that it is not the case of PW-3 that Rs. 25,000/- were handed over to Sayara to be given to appellant, Rehmat or Rehmat benefited in any way from the amount received. In my considered opinion, on the basis of the evidence of PW-3, it cannot be said that cruelty or harassment was meted out to the deceased 'for or in connection with demand of dowry', by appellant, Rehmat, which had a live link between the demand and her death. Even otherwise, the said amount of Rs. 25,000/- given four months (approx.) before the death of Sayara Bano, cannot be said to have a live link with the death of Sayara Bano. What would constitute a period 'soon before the incident' would depend upon the facts of each case. While there is no definition of 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. Yet what is important is that there must exist a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. In my considered opinion, from the deposition of PW-3, it is not established beyond reasonable doubt that 'soon before the death of Sayara Bano', she was subjected to cruelty or harassment by appellant, Rehmat for and in connection with demand of dowry.

43. In so far as PW-8 (father of the deceased) is concerned, I find that PW-8 was declared a hostile witness. No doubt it is settled position of law that merely because a witness has been cross-examined by the party that had produced the witness, it does not imply that the entire evidence of such witness be held as otiose, however on a careful scrutiny of the evidence of PW-8, I find that it cannot be said that a clear cut case is made out against appellant, Rehmat, under section 304-B, IPC. PW-8 has deposed before the Court that his daughter, Sayara Bano had complained to him that her husband used to daily consume liquor and beat her under the influence of liquor. His daughter

also told him that both Rizwanuddin and Rehmat used to taunt her that they have been given junk (*kabarh*) in dowry and that they were demanding Rs.25,000/-. As per PW-8, after 4/5 months of the marriage, Sayara Bano also took Rs. 25,000/- from his wife (PW-3). However, during the cross-examination, PW-8 was confronted that in his statement (Ex. PW-8/A) before the SDM, the name of appellant, Rehmat was not mentioned for the demand of Rs. 25,000/-. Further as against his deposition in the examination-in-chief, PW-8 also admitted in his cross-examination that he did not know as to whom the amount of Rs. 25,000/- was handed over by Sayara Bano after she took the said amount from the parental house. Further while PW-3 (mother of the deceased) has deposed in her cross-examination that when she had given Rs. 25,000/- to her daughter, PW-8 was out of station, contrarily, PW-8 has deposed before the Court that when the money was given to his daughter, Sayara Bano, he was present at his house. The anomaly is very much evident. PW-8 also admitted that the appellant, Rehmat, never demanded any money directly from him. Even otherwise, as already held above, the payment of Rs. 25,000/- cannot be said to have a direct bearing on the death of Sayara Bano. PW-8 has further deposed that after the initial demand of Rs. 25,000/- having been fulfilled, after 1 ½ months, his daughter had informed him that the appellants were demanding another sum of Rs. 25,000/- and also a flat. However, yet again during the cross-examination PW-8 was confronted with his statement (Ex. PW-8/A) wherein the demand of Rs. 25,000/- was not mentioned for the second time also. In so far as the allegation of PW-8 regarding the demand of flat is concerned, I find that it is not clearly borne out from the record that appellant Rehmat was behind the said demand. A careful reading of the evidence of PW-8 (father of the deceased) before the Court would also show that he has stated that his daughter Sayara Bano and Rizwanuddin (husband of the deceased) used to reside on the top floor of the house in a small room. PW-3 has also stated that it was correct that the kitchen of her daughter, Sayara Bano, and her husband was separate from the appellant, Rehmat. PW-3

also admitted in her cross-examination that her daughter, Sayara Bano, and her husband used to reside on the second floor of the house. On the second floor, there was one room and one kitchen. Appellant, Rehmat, with her other five sons and two daughters used to reside on the first floor of the house. As such, I find merit in the contention of learned counsel for the appellant that since Rehmat (mother-in-law of the deceased) was not residing on the same floor as where the deceased and her husband Rizwanuddin were residing, and that they had a separate kitchen, I find that appellant, Rehmat had no significant role to play in the married life of the couple and even otherwise, she would not have derived any benefit out of the demand of flat. In a case bearing similar facts and circumstances namely **Prem Singh Vs. State of Haryana** reported at **(1998) 8 SCC 70**, the Apex Court gave benefit of doubt to the accused and observed that, *“when A-2 was residing separately from her son and when there was no positive evidence on the record to show that either A-2 was instigating A-1 to demand additional amount of dowry/money or for that purpose telling him to cause ill-treatment or harassment to Sumitra, it would be unsafe to hold A-2 responsible for an offence punishable under Section 304-B IPC. Moreover, such an additional payment of money was to benefit A-1 alone and not A-2 because there was no evidence on record to suggest that A-1 was helping A-2 either by giving some money and/or other benefits. If this be so, in our opinion, the High Court was not justified in convicting Shanti (A-2) for the offence under Section 304-B IPC. It is for this precise reason, we give benefit of doubt to A-2 and acquit her of the charge under Section 304-B IPC.”*

44. On a careful analysis of the evidence of all the three prime witnesses (PW-3, PW-5 and PW-8), I am of the considered view that the allegations for demand of dowry made against appellant, Rehmat (mother-in-law) are completely general in nature and only relate to the fact that appellant, Rehmat used to taunt the deceased that junk had been given in dowry. Both PW-3 (mother of the deceased) and PW-8 (father of the deceased) have stated that no amount was directly

demanding by the mother-in-law or any amount was ever paid to her. However, relying upon their evidence, it is established that appellant, Rehmat (mother-in-law of the deceased), subjected the deceased to cruelty and harassment and showed her dissatisfaction with the items of dowry and taunted the deceased. It is settled position of law that section 498-A, IPC creates a distinct and separate offence as against section 304-B, IPC. In section 498-A, IPC 'cruelty' has been defined in the Explanation to the said section, through two limbs. The first limb of section 498-A defines 'cruelty' in clause (a) of the Explanation as *any willful conduct which is of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical)*. The second limb i.e. clause (b) of the Explanation to section 498-A, provides that 'cruelty' shall also include harassment with regard to demand of dowry. **(Gopal Vs. State of Rajasthan, 2009 (2) SCALE 704).**

45. On a careful appreciation of the evidence of PW-4, Mirajuddin @ Miraj (who was declared a hostile witness by the prosecution), also, I find that it cannot be said that any case is made out against appellant, Rehmat under section 304-B, IPC, however, his evidence certainly points out in the direction that appellant, Rehmat had harassed Sayara in terms of section 498-A, IPC. PW-4 has stated in his examination-in-chief that whenever Sayara Bano visited her parental house, she used to complain that her in-laws were harassing her and taunting her that she does not even know house hold work and what type of junk has been brought in dowry. PW-4 has stated that about 3/4 months prior to the death of Sayara Bano, he also came to know that Rizwanuddin had demanded Rs.25,000/- which amount had been duly paid in the house of the appellant, but he did not know as to whom the said amount was delivered. In the cross-examination by counsel for the State, PW-4 denied having visited the matrimonial house of the deceased along with PW-3. In the cross-examination by counsel for the appellant, PW-4 went back on his statement regarding the payment of Rs.25,000/- in terms of dowry. However, this statement of his does not water down

the portion of his evidence wherein he has clearly stated that Sayara Bano used to remain upset on account of the continuous harassment received by her at the hands of the appellant.

46. At the same time, I find that PW-5, Salma has also made a categorical statement that Sayara Bano had informed her that her mother-in-law, Rehmat used to harass her and taunt that junk had been given in dowry. Further as per PW-5, Sayara Bano had complained to her that Rizwanuddin used to daily consume liquor and beat Sayara Bano. PW-5 has also corroborated PW-3 (mother of the deceased) that on one occasion she had visited the matrimonial house of Sayara Bano along with PW-3 and that the mother-in-law of Sayara Bano had misbehaved and demanded Rs.25,000/- from them. In the cross-examination by counsel for the appellant, PW-5 has stated that when she visited the matrimonial house of Sayara Bano, the mother-in-law of Sayara Bano had misbehaved and the Nanad of Sayara Bano had quarrelled on account of cooking of food. Thus, on the basis of the evidence of PW-5, it can certainly be held that the acts of appellant Rehmat of harassment to Sayara Bano would certainly attract section 498-A, IPC but appellant Rehmat cannot be held guilty under section 304-B, IPC.

47. Further I find that there is no evidence on record to suggest that appellant, Rehmat was present at the scene of the incident on the fateful night when Sayara Bano suffered burn injuries. Rizwanuddin (husband of the deceased) had examined himself as a defence witness. In his deposition, Rizwanuddin as DW-3 stated that he was a 'kabari' by profession and on the fateful night intervening 12/13.09.1998, he had reached his house at around 12:15/12:30 a.m. As per Rizwanuddin he came late to the house as he had to load some vehicle in connection with his business. When he reached his house, his wife was sleeping. He woke her up and Sayara asked her to warm the food. She started preparing chapattis and since then there was no gas Sayara cooked the food outside the kitchen on a stove. She worked outside the kitchen because there was not much space in the kitchen which was of small

size. While Sayara was doing all this, as per Rizwanuddin, he took a nap. Then he heard sound of cries and came out only to find that the maxi of Sayara was in flames. He got perplexed and tried to save Sayara from fire by using his hands and also made noise, "Bachao Bachao". At that time, his neighbour Arif and Arif's wife, Samsad came to his house. Arif then poured water on Sayara, which was lying in a tub. Thereafter Arif went downstairs to wake up Rehmat and other family members. I find that all the four defence witnesses have stated that appellant Rehmat, and other family members of the house were sleeping downstairs when the incident took place. It is settled position of law that defence witnesses are entitled to equal treatment and equal respect as that of the prosecution and if after careful scrutiny of their evidence, the Court finds a portion thereof to be trustworthy and convincing, the same is to be relied upon.

48. Learned counsel for the appellant has further contended that Samsad, DW-1 (wife of Arif) has categorically deposed that Sayara Bano had herself informed that she had caught fire while she was preparing food for Rizwanuddin and the said portion of her evidence has not been appreciated by the learned trial Court. Further, Rizwanuddin as DW-3 also affirmed the deposition of DW-1. No doubt as per Rizwanuddin (DW-3) and Samsad (DW-1), when Sayara was being taken to the hospital, Sayara had informed Samsad that she had caught fire accidentally and further as per Rizwanuddin, (DW-3) Sayara had also given the history of her burns to the doctor in the hospital, however, I do not find merit in the deposition of Rizwanuddin and Samsad, inasmuch as, per the MLC, Ex. PW-16/A the *history of sustaining burns injury, 'as the 'dupatta' caught fire', was given by the person who brought the patient.* PW-19, Dr.Reena Pal has also affirmed before the Court that the alleged history of accidentally receiving burns was given by the person who brought the patient. PW-19 has deposed that on 28.09.198 while she was working as Junior Resident in JPN Hospital, New Delhi, *on that date at about 2:45 a.m. w/o Rizwan r/o 1796 Turqman Gate, Delhi was brought by Kayam, the brother-in-law of*

*Sayara with the alleged history of sustaining burn injuries as her Dupatta had caught fire from stove. The alleged history was given by the person who brought the patient.* PW-19 also deposed that on examination, she found that *there were burn injuries over her face, chest, abdomen and arm of Sayara.* She also deposed that she gave the necessary treatment to the patient and the patient was admitted to the burns ward. She also deposed that the MLC Ex.PW-16/A was prepared and the same bears her signature at point-A. PW-19 was categorically questioned by the Court as to why did she not enquire the cause of injuries from the patient? PW-19 answered that since the patient was having 70% burns it was not feasible to enquire from her. PW-19 stated that it was incorrect to suggest that the history written in the MLC, Ex. PW-16/A was given by the patient or that the history given “by brought” was added later, at the instance of the police. Nothing has been brought on record to show that Dr. Reena Pal was deposing falsely or that she was a false witness. Dr. Reena Pal, PW-19 is an independent witness and was firm in her deposition before the Court that the person who had brought Sayara to the hospital, had given the history of burns received by Sayara.

49. Learned counsel for the appellant has next contended that the investigation in this case has been very casual and the post mortem report has also not been proved. In so far as the contention with regard to post mortem report is concerned, I find that PW-14 has specifically proved the said post mortem report. PW 14, Dr. Akash Jhanjaa has deposed:

I have seen Doctor Vinod Chauhan while writing and signing during my official course of duty as such I can identify his hand writing and signatures. I have seen the post mortem report No. 738/98 of Smt. Sayara, W/o Mohd. Rizwan, R/o 1796 Turkman Gate, Delhi. This post mortem report is in the hand writing of Doctor Vinod Chauhan and bears his signatures. The Post Mortem Report is Ex. PW14/A and bears his signatures at point A which I identify. This doctor has left the college and department and his present whereabouts are not known.

As per the post mortem report given by the said

Doctor it was found by him that the death of deceased Shaira (sic Shayara) was due to shock consequent upon around 94% dermo epidermal burn injuries. All the injuries were anti mortem, recent in duration and were caused by flames.

50. As per section 47 of the Indian Evidence Act, which pertains to the chapter relating to 'relevancy of facts', 'the opinion of any person acquainted with the handwriting of the person who is alleged to have signed the document is relevant'. Section 47 of the Indian Evidence Act reads as under:

**"47. Opinion as to handwriting, when relevant.—**

When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

*Explanation.*—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him."

51. In the present case, PW-14 on being shown the post mortem report, deposed that the same was in the handwriting of Dr. Vinod Chauhan and bears his signatures. Since PW-14 has categorically identified the post mortem report, it cannot be said that the same has not been proved.
52. Learned counsel for the appellant has also contended that the material seized by the prosecution was admittedly not sent for examination to the Forensic Science Laboratory and the same certainly affects the credibility of the case set up by the prosecution. I find that PW-16, SI Subodh Kumar has deposed that on 28.09.1998 he was posted at P.S. Turqman Gate and at the spot he found an iron stove containing kerosene oil; one piece of cloth of Mehroon colour (some hair were sticking to it) and smell of kerosene oil was coming from it;

one plastic can from which smell of kerosene oil was coming; and, one match box of 'slims brand' which was half burnt. PW-16 correctly identified the stove Ex. P1, plastic can Ex. P2, cloth piece Ex. P3 and match box Ex. P4. In the cross-examination by counsel for the appellant, PW-16 also deposed that he also found a gas stove inside the kitchen which was other than the stove recovered by him. In my considered opinion, in the facts and circumstances of this case, no benefit can be derived either by the appellant or the prosecution by the mere fact that the material seized was not sent for examination to the laboratory.

53. Learned counsel for the appellant has also contended that the charge framed against the appellant by the trial Court was defective and the same has caused serious prejudice to the appellant. On this point, I am in firm agreement with the opinion rendered by the learned Trial Court that no prejudice has been caused to the appellant. Section 221 of the Code of Criminal Procedure specifically lays:

“(1) if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.”

54. I have carefully gone through the charge framed against the appellant and it specifically mentions that the appellant was being charged for the offences punishable under section 498A/34, IPC and Section 302/34 IPC; and alternatively under section 304-B/34 IPC. In light of the provisions contained in section 221, CrPC, that *if a single act or series of acts is of such a nature that it is doubtful which of*

*several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences,* I find that it cannot be said that the charge framed against the appellant was defective. Further the charge is very specific and from the very beginning the appellant was aware of the nature of allegations levelled against her so as to enable her to lead adequate evidence in the defence. The charge fulfills the fundamental principle of criminal law that the accused person must have notice of the charge which he / she has to meet. Accordingly, I do not find any prejudice to have been caused to the appellant.

- 55.** 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 soon before her death, the conviction of mother-in-law under section 304-B IPC is set aside. However, I find that there is no infirmity in the judgment passed by the learned ASJ, holding appellant, Rehmat guilty for the offence punishable under section 498-A IPC. It would also be relevant to refer to the decision rendered by the Apex Court in the case of ***Kans Raj Vs. State of Punjab & Ors.*** reported at ***AIR 2000 SC 2324*** wherein it has been laid by the Apex Court that:

“A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.”

- 56.** As a final court of facts, the High Court is entitled to re-appraise the evidence and arrive at its own independent conclusion as to the guilt or innocence of the accused. This Court must thus be satisfied that the

case of the prosecution is substantially true and that the guilt of the appellant has been established beyond reasonable doubt. It is only when the prosecution has proved its case beyond reasonable doubt that conviction cannot be disturbed in appeal. It will be useful to reproduce the observations of the Hon'ble Supreme Court in the case of **Kali Ram Vs. State of Himachal Pradesh, AIR 1973 SC 2773** which are as follows :-

*“Another Golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations.*

*Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.*

*The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record.* Indeed, the courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, however is more apparent than real.

*It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in*

*the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether.*

57. Having taken into account the rival contentions of the counsels and in view of the evidence on record, I am of the considered opinion that the prosecution has been unable to establish that the deceased, Sayara Bano, was subjected to cruelty and harassment 'soon before her death', 'for or in connection with the demand of dowry, by appellant, Rehmat, in terms of section 304-B, IPC. However there is sufficient evidence on record to show that the deceased had been subjected to cruelty/harassment in terms of section 498-A, IPC, inasmuch as, appellant, Rehmat taunted Sayara Bano that the dowry brought by her at the time of marriage was junk. PW-3, mother of the deceased has given firm evidence against her with regard to this fact. The evidence of PW-5 and PW-8 also lends support in this regard.
58. Accordingly, judgment dated 09.12.2000 passed by the learned trial Court with respect to the conviction of appellant, Rehmat under section 304-B, IPC is set aside. However her conviction under section 498-A, IPC is upheld. In so far as the Order on Sentence dated 18.12.2000 passed by the trial Court, is concerned, appellant Rehmat was awarded 3 years of RI under section 498-A, IPC and which is the maximum sentence that may be awarded under section 498-A, IPC. As per the latest nominal roll received from Central Jail, Tihar, appellant, Rehmat has undergone a period of two years, four months and twenty five days, in jail. The remission earned by the appellant is stated to be one month and 10 days. As per the nominal roll, conduct of the appellant during her incarceration was satisfactory and no other case is pending

against her. In the case of ***State of Punjab Vs. Prem Sagar and Others***, reported at (2008) 7 SCC 550, a two judge Bench of the Supreme Court, while analyzing the factors which Court should take into consideration while awarding sentence, 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. Accordingly, judgment dated 09.12.2000 passed by the learned trial Court with respect to the conviction of appellant, Rehmat under section 304-B, IPC is set aside. However her conviction under section 498-A, IPC is upheld. Order on Sentence dated 18.12.2000 is modified to the extent that appellant, Rehmat is sentenced to the period already undergone in jail, keeping in view her age, medical condition and the fact that she has lost her son, husband of the deceased, at a young age.

59. Bail bonds of appellant, Rehmat be cancelled and surety be discharged.

60. Appeal stands disposed of in above terms.

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

**May 14, 2010**  
"msr/ssn"