

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

+ **Crl.M.A.No.14594/2010 & Crl.L.P No.322/2010**

% **Date of Decision: 26.10.2010**

The State (NCT of Delhi) Appellant
Through Mr.Lovkesh Sawhney, APP.

Versus

Sh.Rohit Sethi & Another Respondents
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR.JUSTICE S.L.BHAYANA

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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CRL.M.A.No.14594/2010

This is an application under Section 482 of the Criminal Procedure Code read with Section 5 of the Limitation Act seeking condonation of delay of 55 days in filing the criminal leave petition.

The reasons disclosed in the applications constitute sufficient cause for condoning the delay in filing the petition seeking leave to appeal.

Consequently, the application is allowed and delay in filing the petition for leave to appeal is condoned.

Crl.L.P.No.322/2010

This is a petition under Section 378 (3) of Criminal Procedure Code by the State seeking leave to appeal against the judgment dated 25th February, 2010 acquitting the respondents in the Sessions Case No.15 of 2008 arising out of FIR No.31 of 2005, under Sections 498A/304B/34 of Indian Penal Code, Police Station Krishna Nagar, Delhi.

While acquitting the respondents, namely, Sh.Rohit Sethi, the husband of the deceased and Sh.Jagmohan Sethi, the father-in-law, the trial court has held that the presumption under Section 113-A and 113-B of the Evidence Act, has been successfully rebutted by the respondents and no cruelty to the deceased, Mamta has been established, except for making general, vague and inconsistent allegations. Reliance has been placed on the fact that even on the date of incident at about 10:15 am the deceased had a telephone conversation with her mother, Smt. Sita Devi (PW2), and at that time the deceased was perfectly well and she did not make any complaints about anything nor did she tell anything about the alleged demand. The trial court has noted the material contradictions and improvements in the testimonies of the witnesses and thus held that it has not been

established beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the respondents in connection with the demand of dowry.

It is a settled law that the High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the findings are against the evidence on record or unsustainable or perverse. However, before reversing the finding of acquittal the High Court must consider each ground on which the order of acquittal is based and should record its own reasons for accepting those grounds and not subscribing to the view of the trial Court that the accused is entitled to acquittal.

This also cannot be disputed that in reversing the finding of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favor of the accused which is rather fortified and strengthened by the order of acquittal passed in their favor. Even if on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favors the accused should be adopted. The view taken by the trial Court has an advantage of looking at the demeanor of the

witnesses and observing their conduct in the Court. Such a view is not to be substituted by another view which may be reasonably possible in the opinion of the High Court. Reliance for this can be placed on 2009(1) JCC 482=AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622 Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts have held that the golden thread which runs through the web of 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 favorable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

This Court has heard the learned counsel for the petitioner in detail and has also perused the trial Court record. The case of the prosecution is that the wife of Sh.Rohit Sethi, namely, Mamta committed suicide by hanging herself from the ceiling fan on 23rd of

January 2005. Sh.Jagmohan, father-in-law on finding out about the suicide being committed by his daughter-in-law intimated the family members of the deceased Mamta, his son Sh.Rohit Sethi, husband of the deceased and also to the police. The deceased Mamta got married on 21st October, 2001 to respondent No.1 and from the marriage she has a daughter aged about 2 years.

The main allegations are that respondent No.1 used to misbehave with the deceased and used to pressurize her to bring money from her parents for running his business. Many a times the parents of the deceased had given Rs.2,000/-, Rs.5,000 and Rs.10,000/- so that respondent No.1 would not trouble the deceased. Allegation was also made about the quarrel between the deceased and respondent No.1 and on coming to know about the quarrel, the parents of the deceased had taken her to their home. However, after 5-6 days deceased's father-in-law, respondent No.1 and mother-in-law came to the place of the deceased's parents and apologized and also assured that respondent No.1, husband of the deceased, would not trouble her in any manner. Further allegation is that the respondent No.1 did not change his ways despite assurances by the parents of the respondent no.1 and again demanded Rs.5,000/-. It is alleged that a day before the suicide, respondent No.1 demanded a generator of 5 KVA so that there would not be any electricity trouble in his factory. Sh.Sanjay Chawla, PW1

brother of the deceased has a business of renting of generators. The allegation of selling the jewelry of the deceased given to her at the time of the marriage was also made which had allegedly upset the deceased. It was also alleged that respondent No.1, husband, was having illicit relations with another girl since before marriage and continued even after the marriage which fact was in the knowledge of the family members of the respondent No.1 and still they got him married against his wishes to the deceased and he did not like her. The allegation of quarrel and abuses by the mother-in-law to the deceased were also made. It was asserted that considering the nature of the deceased Mamta, it cannot be believed that she could commit suicide. It was also contended that it is suspected that either her husband or father-in-law and mother-in-law had given her mental tension that forced her to commit suicide. The statement of these allegations were recorded by the SDM and a case under Section 304-B read with Section 34 of Indian Penal Code was made and on completion of investigation, charge-sheet was filed and the case was committed to the Court of Session. Respondent Nos.1 and 2 and mother-in-law of the deceased did not plead guilty and claimed trial. After filing of charge sheet, the mother-in-law of the deceased had died.

The prosecution had examined 18 witnesses and on conclusion of the statements of witnesses, the statements of respondent No.1 and 2

were recorded under Section 313 of the Criminal Procedure Code. The respondent No.1 has disclosed that he is running a Garment Manufacturing Unit and earns a substantial amount and that he had never taken any loan from any bank or institution. He also stated that his wife, deceased, was ill tempered and used to take up irrelevant issues on personal basis and used to go into deep depression. In order to come out of her deep depression she had opened a boutique in the house under the name and style of 'Mohini Exclusive' and necessary funding for this was provided by him. It is asserted that in the circumstances, the allegations that he demanded dowry are baseless. Respondent No.1 also disclosed that deceased did not go to her mother's house primarily on account of her Bhabhi. After earning losses in business on account of taking care of his wife during her pregnancy and thereafter, instead of taking help from her parents for re-establishing the business, he took up a job to earn and save money to re-establish his business from his own money.

Regarding the incident when Mamta, committed suicide, he stated that he had a meeting on that day with a Libyan delegate. He stated that though his wife was depressed even on that date, because he could not go for lunch at her parent's house on account of the meeting, , he still left for the meeting with the Libyan party, at NOIDA where he received a shocking news at 12.15 p.m. about Mamta

committing suicide from his father. He rushed back where after allegations have been concocted against him. He also contended that the deceased never complained to him nor to his elder brother's wife or friends or neighbors about the allegations now made against him. Respondent No.2 also stated that the allegations made by the witnesses against him are false and no demand was made by him, as has been alleged against him. In any case he never treated the deceased with cruelty nor harassed her in any manner.

The accused/respondents also examined 5 witnesses, namely, Ramesh Chand Kapoor DW1, Ajay Kumar DW2, Kapil Bhatia DW3, Sanjay Kaushish DW5 and Chander Shekhar Chhabra DW5. Before the trial court, the respondents refuted the version of the prosecution on various points which had been crystallized by them as under:-

(i) There is no dying declaration or suicide note of the deceased though she could have made it under the circumstances as shown by the prosecution that she was alone at the second floor of the house in her occupation, if at all the same was on account of inducement of any of the accused persons.

(ii) As per the testimony of PW-1 (Sanjay Chawla) and PW-2 (Smt. Sita Devi), the incidence of suicide was conveyed to them by the accused Shri J.M.Sethi on telephone at about 12-12.15 p.m on 3.01.2005 while the rukka was sent for registration of case at 7.30 P.M. There was enough time to invent and introduce facts after deliberations, consultations and legal advice.

(iii) The police on reaching the spot did not initially record the statement of mother, brother and other relatives of the

deceased present at the spot, for registration of the case, due to the fact that none of them had any allegations to make against the accused persons at that time. The police arrived at 1.30 PM and could have recorded statements of persons gathered there at the spot to prima facie decide whether or not a case could be registered. Instead they waited for the SDM to arrive at 4.00 PM.

(iv) The police or the SDM did not record the statement of any of the neighbours which was vital. The police did not record any statement of any of the neighbours even thereafter during investigations. No independent persons were made a witness in the case despite their availability.

(v) Prior to the incident, no grievance by way of complaint was made against the accused persons to the police or any other authority. On the contrary, the testimony of the mother (PW-2) brush aside such allegations when she stated that the deceased was perfect and happy when she spoke to her at around 10.15 a.m of the date of incident, and had no complaint to make.

(vi) The deceased had been given full hand to conduct in her own manner in the matrimonial house to open and continue to run a boutique shop on the ground floor of the house for passing her time while she was staying with accused Rohit on the second floor.

(vii) The expectancy period prior to her delivery, during the delivery and thereafter held at the matrimonial house, all the expenses were borne by the accused Rohit and his father. She was given medical attendance at odd hours and even during the working hours at the cost of the accused Rohit suffering his business.

(viii) The grievance against the accused was made for the first time only after the incident when the statement of Sanjay Chawla (PW-1) and Sita Devi (PW-2) was recorded by the SDM on that day in the evening i.e after about 5-6 hours of the incident. PW-1 has not made any allegations of demand of car or Rs.3 lac etc and Ravinder Chawla (PW-7) also in his statement to the police u/s 161 Cr.PC dated 23.01.2005 did not make any such allegations. Later on, PW-1 & PW-7 have made material improvements in their depositions before the Court so as to strengthen their allegations.

(ix) There is no allegation that Mamta was ever turned out of the House or she ever left the matrimonial house herself. Had there been any serious matter of harassment or demand of dowry making her stay in the matrimonial home difficult or uncomfortable she could have easily left the matrimonial home herself to avert the precipitated situation as her parental home was also in Delhi and accessible through public transportation.

(x) The mother and brother of the deceased (PW-2 & PW-7) had not stated that Mamta came back from her matrimonial home and remained with her parents on account of harassment, cruelty etc. She could have left the matrimonial home on her own.

(xi) If at all she had any serious apprehension of ill treatment or demand of dowry she could have informed about the evil consequences on telephone to her mother and brothers. No such averment is made in the testimony of her mother.

(xii) Assuming, without admitting that the family members of Rohit had to come to take back Mamta, as alleged, it is submitted that if the accused and his family members had no love and affection for her, they would not have bothered to take her back home. That apart they would not have acceded to the request of Mamta to open and continue with the boutique shop.

(xiii) There is no cogent or reliable evidence for recording a finding that deceased was subjected to any specific instance of cruelty or harassment in connection with demand of dowry soon before her death.

(xiv) Prosecution is not at all certain as to when the accusations of harassment were conveyed to the witnesses by the deceased. On such bald and vague allegations, the guilt of the accused persons cannot be held to be proved against them.

(xv) The allegation about illicit relationship is devoid of any merits have not been substantiated by any supporting material. The subsequent events would further support the case of the defence that the accused Rohit has not remarried again after the demise of the deceased.

(xvi) That part of the jewellery of the deceased was sold by her and her brother Ravinder through M/s.Mehrasons and the proceeds thereof have gone in the account of her brother Ravinder. That apart, the jewellery on the body of the deceased has been shown as a case property. The allegations regarding selling of the jewellery by accused Rohit is baseless.

(xvii) The allegations against the accused persons are vague and not specific. These are allegations made at random against the members of the family without assigning any specific role to each one of them.

(xviii) There are material contradictions, inconsistencies, exaggerations, improvements and embellishments in the deposition of prosecution witnesses that goes to the root of the case regarding the instances of demand and harassment and also on the other relevant matters alleged which make the case of the prosecution highly doubtful.

The trial court after considering the law laid down by the Courts, Raman Kumar v. State of Punjab, 2009 CrL. L.J. 3034; Hazarilal v. State of M.P. 2007, (8) SCALE 555; Gopal v. State of Rajasthan (2009) 3 SCC (CrL.) 1343; Satvir Singh v. State of Punjab (2001) 8 SCC 633; K.Prema S.Rao v. Yadla Shrinivasa Rao (2003) 1 SCC, 217; Appasaheb and another v. State of Maharashtra 2007 (1) Crimes 110 has held that the case of harassment and cruelty as well as demand of dowry has not been made out against the respondents.

The learned Additional Public Prosecutor has not disputed that to construe harassment following ingredient are essential:-

“(1) Woman should be tormented i.e. tortured either physically or mentally through constant interference or intimidation;

(2) Such act should be with a view to pursue or compel her to do something which she is legally or otherwise not expected to do by using force or threats:

(3) Intention to subject the woman should be to compel or force her or her relatives to fulfill unlawful demands for any property or valuable security.”

In the light of the law detailed hereinabove, the trial court has noticed that after Sh.Sanjay Chawla (PW1) and Sh.Ravinder Chawla (PW7), brothers of the deceased had reached the spot after being intimated at 12.15 p.m., the statement of Sh.Sanjay Chawla was recorded by SDM on the basis of which an FIR was registered vide DD-18/A at 7.50 p.m.. In his statement Sh.Sanjay Chawla who appeared as PW-1 before the Court, did not make allegation of demand of dowry against the mother-in-law, father-in-law, Jeth and Jethani and he made allegations against respondent No.1/husband that he used to demand from the deceased to bring Rs.2,000/-, Rs.5,000/- and Rs.10,000/- for his business and the amounts as demanded from time to time were given so that respondent No.1 does not create any problem for the deceased. But even PW1 did not give the details as to when and how many times the alleged amounts were given. It has not been deposed by him as to whether the amounts as alleged by him were given to the deceased or to the respondent no.1. In order to secure these amounts how the deceased was harassed or treated with cruelty has not been

explained nor has the Learned Additional Public Prosecutor been able to show any evidence linking these incidents of demand and alleged harassment or cruelty. Learned Additional Public Prosecutor is unable to show any such harassment or cruelty which can be linked to these alleged demands of Rs.2,000/-,Rs.5,000/- & Rs.10,000/- for business. What emerges from the perusal of the testimonies of the witnesses is also that the allegations of the demands are more omnibus in nature. There is no evidence as to when these alleged demands of Rs.2,000/-, Rs.5,000/- and Rs.10,000/- were made and to whom the amounts were paid and how many times. In the circumstances, the findings of the trial court that even if these demands were made, for which there is not sufficient evidence, they were more in the nature of financial help rather than dowry. In any case no cruelty or harassment of any type has been established which can be attributed for meeting these demands and in the circumstances this finding of the trial Court cannot be held to be unsustainable or perverse.

Similarly as Sh.Sanjay Chawla PW-1, brother of the deceased was in the business of renting generators, demand for generator for his factory by respondent No.1 cannot be construed to be a dowry demand. It has also been held that demand of generator is not associated with any type of cruelty or harassment. In Union of India v. Garware Nylons Ltd. AIR 1996 SC 3509 and Chemical and Fibres of India v. Union of

India, AIR 1997 SC 558, it was held that a demand of money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing something cannot be termed as a demand for dowry, as the said word is normally understood. In the circumstances, if the son-in-law needed a generator, his asking his brother-in-law who is dealing in it has been held to be quite natural than arranging the same from a third person and it cannot be construed as a demand for dowry. In the circumstances, if the son-in-law needed a generator, his asking his brother-in-law who is dealing in it has been held to be quite natural than arranging the same from a third person and it cannot have been construed as a demand for dowry. There is no evidence that the brother of the deceased had refused to rent the generator to the respondent no.1 and on account of it she was harassed or treated with cruelty.

In *Sunil Bajaj v. State of M.P*, 2001 CrL.L.J (SC) it was held that greater care and caution is required to scrutinize the evidence and in arriving at the conclusions whether the ingredients and of offense of section 304 B of IPC are made out or not. While doing so it is also to be kept in mind that ingredients of cruelty as contemplated under section 498 A are of much higher and sterner degree than the ordinary concept of cruelty applicable and available in other legislations. To invoke the provision of section 498A IPC the tests are of much stringent nature

and intention is the most essential factor.

The learned Additional Public Prosecutor has not been able to show as to how the deceased was tormented, either physically or mentally or intimidated on the basis of the testimonies of the various witnesses. From the evidence on record, it is apparent that there is no allegation of physically tormenting the deceased. The High Court in *Savitri Devi v. Ramesh and Others*, 2003, CrL. L. J., 2795 had observed as under:

“It appears that the legislature was mindful of the fact and situation that this provision may be exploited that it defined ‘cruelty’ and for that purpose ‘harassment’ falling within the parameters of “intentional conduct” of such a degree that may either drive the woman to commit suicide or cause danger to life, limb or health or cause ‘grave’ injury. Of course “health” means not only physical but mental also. But unfortunately, these provisions have been abused by the Investigating and Prosecuting Agencies and exploited by the woman and their relatives to such an extent that these have proved to be most ineffective in curbing the evil of dowry as well as disciplining the husband and his relatives to treat the woman in human and humane manner and give the bride or wife proper respect and honour.”

There is no cogent evidence that the deceased had disclosed to her parents about any alleged physical violence. In *Santosh Kumar v. State of M.P*, 1997 Cr. R 846 it was held that if a woman is treated with physical violence so much so that it would lead to her committing suicide, on some occasion the woman would have told her mother or

father or some other reliable person about her sufferings.

The trial court has also taken into consideration the alleged quarrel which had taken place between the deceased and husband almost after 3 and ½ years of marriage. If the allegations as made by the prosecution are correct then there would have been more quarrels between the husband and wife on account of the alleged demands which were made for the business by the husband from his wife. Even on the solitary altercation, the prosecution version itself reveals that the father-in-law and mother-in-law of the deceased came to the house of the parents of the deceased and apologized and also assured that no misbehaviour of any type shall be indulged in the future. In these circumstances, on perusal of the evidence, this Court is also of the opinion that the inferences of the trial court in this regard cannot be termed as unsustainable or perverse or suffering from any such illegality so as to grant leave to appeal to the petitioner.

Learned Additional Public Prosecutor has not been able to show any such cogent evidence from the testimonies of various witnesses so that the allegations about the demand for a car of Rs.3,00,000/- (three Lakhs) can be inferred. Rather Sh.Sanjay Chawla, brother of the deceased on whose complaint the FIR was registered, himself did not depose anything about the same when he had discussed the matter

with the father-in-law and mother-in-law of the deceased. Similarly, from the evidence on record, selling of jewelry by Rohit Sethi is not made out which is further augmented by the fact that even at the time of the suicide, the deceased was wearing a gold chain, two gold bangles, one pair of gold ears tops, four gold rings. If respondent No.1 had sold the jewelry of the deceased, she would not have had so much on her person.

The trial court has also noticed and inferred that if respondent No.1 was having an illicit relation with some other woman even prior to marriage, the marriage would not have survived for 3 and ½ years. The identity of the woman with whom respondent No.1 allegedly has illicit relation has not been established as the name given by the wife of Sh.Sanjay Chawla, namely, Twinkle is of a “Mona”, but Mona is the name of the real sister of respondent No.1. Learned Additional Public Prosecutor has not been able to point out such facts from the depositions of the witnesses which will make these inferences by the trial court unsustainable so as to entail any inferences by this Court against an order of acquittal.

The trial court has also inferred on the basis of the statements of Smt.Sita Devi, PW-2, mother of the deceased that respondent no.1 had treated the deceased with cruelty or harassed her on account of alleged

demands of Rs.5,000/- and Rs.10,000/-. Even these demands of Rs.5,000/- and Rs.10,000/- are generic in nature without giving any particulars, as these demands were made and met by the parents and family members of the deceased. Similarly, there is no evidence for inflicting cruelty by respondent No.1 on the deceased for meeting the alleged demands of respondent No.1. Generic allegation about demand and harassment without any specific dates or near about dates and times were not relied upon by the Apex Court in (2001) 9 SCC 417, *Sunil Bajaj Vs State of M.P* and it was held that conviction cannot be on the basis of vague and inconsistent and generic allegation. In *Surinder Kaur v. State of Haryana*, (2004) 4 SCC 109, at page 111 the Supreme Court had not relied on allegations of harassment which were omnibus in nature and which had been made without any specific instances only to involve the entire family.

The trial court has also disbelieved the allegation of the deceased that the parents of Respondent No. 1 did not pay attention to her and used to take the side of Respondent No. 1. The reasoning of the trial court is that had it been so the parents of Respondent No. 1 would not have gone to the house of the deceased's parents and would not have apologized and brought her back to the matrimonial home.

There is no proximate demand to the time of the deceased committing suicide. Prosecution's version that a demand of car was made has been disbelieved. The reason given by the trial court cannot be held to be unreasonable or unsustainable or perverse. It has been held that the brother of the deceased has not deposed that his wife, Twinkle had stated that it was conveyed to her by the deceased on telephone on 20th January, 2005 that on account of alleged demand of car she had been harassed and treated with cruelty. The said witness, brother of the deceased is rather doubtful whether his sister was murdered or if she committed suicide on account of cruelty or harassment meted out to her in order to extract money and other favors from her family.

The mother of the deceased also had a telephonic conversation with the deceased two hours before the deceased committed suicide. In her depositions she has not disclosed that any complaint of harassment or cruelty was made by her to her mother. If the deceased had any cause to commit suicide on account of harassment or cruelty inflicted on her by the respondents, she would have definitely communicated something about it to her mother two hours before she committed suicide. The mother rather deposed that during the telephonic conversation she found her daughter to be normal. She also did not depose that on account of alleged demands for small amounts at times,

the Respondent No. 1 used to harass her or used to inflict cruelty on her. In the circumstances even if, small amounts were given to Respondent No. 1, in absence of any proof of any harassment or cruelty, no case as has been propounded by the prosecution is made out against the Respondent No. 1. The mother of the deceased in her deposition about the quarrel between the deceased and the Respondent No. 1 which was almost after 3 1/2 year of marriage does not attribute it to the demand for car or for the demand of rupees three lakhs. The learned additional public prosecutor has failed to show any cogent evidence on the basis of which it can be inferred that the deceased was treated with cruelty or harassed for any alleged demands. The allegations of small amounts demanded are also omnibus in nature and there are no grounds to interfere with the reasoning and the inferences of the trial court and thus there are no grounds to grant leave to appeal to the petitioner.

The evidence of the other witnesses also does not show that the demand for rupees three lakhs or a car was made, as before the SDM these facts were not disclosed and later on a handwritten statement dated 3rd March, 2005 was produced with these allegations which are apparently an afterthought. Some of the witnesses who had given a statement before the SDM had gone to the extent of denying their statements recorded before the SDM and rather stated that when their

statement was taken by the police, the SDM was not present. The allegation of demand of rupees three lakhs or a car is clearly based on the improvements made by these witnesses and cannot be accepted to inculcate the respondents. The Supreme Court had excluded from its consideration the improvement made by witnesses in Khalil Khan vs State of M.P 2004 SCC (Crl.) 1052 holding that it is not safe to rely upon the evidence of the witnesses who make improvements. On account of inconsistencies between the version of occurrence before the court and the statements made before the police, such testimonies were not relied on by the Supreme Court in State of Haryana v. Gurdial Singh, 1974 SCC (Crl.) 530=(1974)4SCC494 and Gangula Mohan Reddy v. State of AP (Crl App No. 1301/2002), AIR 2010 SC 327 dated 5th January, 2010, which has also been referred to and relied on by the trial court. In the circumstances this Court does not find the inferences and the reasoning of the trial court to be perverse or unsustainable so as to grant leave to appeal against the judgment of the trial court.

Perusal of the statements of Twinkle Chawla (PW-3) who is wife of Sanjay Chawla (PW1), Shri Shanker Gandhi (PW5); Smt. Santosh Khurana (PW-6) and Ravinder Chawla (PW-7) reveals various improvements and inconsistencies which had also been noticed by the trial Court. The deceased was the niece of her maternal uncle PW-5. His statement about demands made on Holi, Diwali and Lohri have

apparent improvements from his statement under section 161 of Cr. P.C. When confronted with his statement under section 161 of Cr. P.C on various aspects where improvements were made by him, he repeatedly referred to the statement given by him in writing on 3rd March, 2005. His statement given later on 3rd March, 2005 could not be a statement under section 161 of the Criminal Procedure Code and on the basis of same, it cannot be inferred that there are no inconsistencies and improvement in his statements. The learned Additional Public Prosecutor is unable to explain as to how a statement prepared by some of the witnesses after considerable time after the incident under legal advice and which is signed by them can be construed to be a statement under section 161 of the Criminal Procedure Code. The learned public prosecutor has not explained as to how a signed statement by the witnesses submitted by them to the police can be taken as a statement under section 161 of the Criminal Procedure Code. The statements of these witnesses were not part of the charge sheet nor were they given to the accused. The application to take these statements on record was also declined by order dated 7th September, 2006. From the statement of PW-1 and PW-2 made before the SDM, it cannot be inferred that the accused had harassed the deceased and this finding of the Trial Court cannot be held to be unsustainable. Alleged harassment on account of demand for generator two days prior to the death of the deceased also cannot be inferred on

account of infirmities in the statements of various witnesses and improvements made by these witnesses. The denial of statement by Smt. Sita Devi before the police on 24.01.2005 has been disbelieved by the Trial Court and on perusal of facts, this Court does not find any illegality in the findings of the trial Court. Similarly on perusal of the statements of other witnesses before the police under section 161 of Cr. P.C and other facts and circumstances the denial of these witnesses that they had not made any statement before the police cannot be accepted. Rather the accused have deposed that some of the witnesses had demanded from them a certain sum of money and had threatened them that if the demand made by them is not met, the respondents shall be implicated in the dowry death case.

The testimonies of the defense witnesses also cannot be rejected altogether. The trial Court has relied on *Budh Nath Pandey v. State of UP*, AIR 1981 SC 911; *Laxmi Singh v. State of Bihar*, 1976 SCC (CrL.) 671; *Dr. S.L.Goswami v. State of M.P* 1972 SCC (CrL.) 258 for this proposition. The learned counsel for the State also cannot dispute that the testimonies of defense witnesses cannot be ignored altogether. It had been held that the defense witnesses are entitled to equal treatment as that of prosecution witnesses.

In the circumstances the findings of the trial court that the respondents have rebutted the presumption under section 113-B of the evidence act, cannot be faulted nor have any grounds been disclosed on the basis of which it can be inferred that the presumption has not been rebutted successfully by the respondents. No other grounds have been raised by petitioner which would ex-facie show that the orders of the trial court are illegal, unsustainable and perverse in law and in the facts and circumstances. On the analysis of facts and circumstances on the basis of the evidence of the prosecution and defense, this Court does not differ with the conclusions of the Trial Court acquitting the respondents of the charge made against them under section 498A/304 B read with section 34 of IPC. There are no grounds to grant leave to appeal to the petitioner in the facts and circumstances. It would also be relevant to note that where a view taken by the trial judge is a reasonable and probable view, merely because some other view may also be probable or possible, would not justify any interference by the Appellate Court in the facts and circumstances. In the circumstances petition seeking leave to appeal is dismissed and leave is declined.

ANIL KUMAR, J.

S.L.BHAYANA, J.

OCTOBER 26, 2010

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