

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ Crl.Appeal No.249/2009

% Judgment reserved on :28th September,2011
Judgment delivered on: 05th December, 2011

VINITA & ANR.

..... Appellants

Through:Mr.K. K. Sud, Senior Advocate
with Mr.Atul Sahi, & Mr.Harendra Singh,
Advs

versus

STATE N.C.T. OF DELHI

..... Respondent

Through : Ms.Ritu Gauba, APP for State.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The instant appeal is being filed by challenging the judgment dated 19.03.2009, whereby the learned Additional Sessions Judge has held guilty the appellant No.1/Smt.Vinita under Section 498 A of Indian Penal Code, 1860, appellant No.2/Nitin under Section 304 B and 498 A Indian Penal Code, 1860.

2. Vide order dated 24.03.2009, the appellant No.1/Smt.Vinita was sentenced to undergo RI for two years U/s 498-A IPC with fine of ₹ 5000/-. The appellant No.2/Nitin has been sentenced to undergo RI for ten years for offence U/s 304-B IPC and to undergo RI for two

years for offence U/s 498-A IPC with fine of ₹ 5000/-. The benefit of Section 428 Cr.P.C. has been given to both the appellants/convicts.

3. The case of prosecution in brief is that on 26.04.2001 Sh.Vijay Khanna, SDM, Rajouri Garden recorded the statement of Shri Jitender Singh Daani father of victim Sarika(deceased) wherein Shri Jitender Singh Daani stated that his daughter Sarika(deceased) was married to Nitin Sharma /appellant No.2 on 02.10.2000. On the very next day of marriage,Smt.Vinita/appellant No.1 mother-in-law of Sarika(deceased) demanded ₹ 5 Lacs from her for the construction of top floor of their house. Smt. Vinita/appellant No. 1 has also threatened Sarika(deceased) that if she would keep her son Nitin/appellant No.2 happy only then she would keep her happy. The newly wedded couple even did not go for honey-moon. He has met with the small demands of in-laws of his daughter as per his financial conditions but mother-in-law, father-in-law, brother-in-law (Devar) and mother of mother-in-law of Sarika(deceased) kept on torturing her. On 30-31/3/01 his wife fell sick due to cervical attack but he did not inform it to Sarika(deceased) as her in-laws were already bothering her. However, one day Sarika (deceased) and Nitin/appellant No.2 suddenly visited their house and on looking at ill health of her mother, Sarika (deceased) became upset and with the permission of Nitin/ appellant No.2 she stayed back at his house for overnight.

4. On the next day while leaving for his office, he asked his wife that since mother-in-law of Sarika(deceased) usually remain annoyed with them, it would be appropriate if her permission is obtained for

keeping Sarika (deceased) for some more time. But on asking, mother-in-law of Sarika (deceased) replied in very unusual manner that why our younger daughter would not take care of her mother. On this account Sarika (deceased) tried to contact Nitin/appellant No. 2 seven/eight times on his mobile phone but he did not receive the calls because the calls were made from telephone number of their residence. Then Sarika(deceased) contacted Nitin/appellant No. 2 from the telephone number of neighbouring house No.15-A. Nitin/appellant No.2 shouted at her on phone and asked her to mind her own business. In the evening when he returned, found Sarika (deceased) was crying at that time. His father also came to his house to meet him. His father also became very upset with such conduct of Nitin/appellant No. 2. Then he alongwith his father, wife and daughter went to house of Mrs. Bela and Anil Aunty & Uncle (Mausi & Mausua) of Nitin/appellant No. 2 to discuss in this regard. There Smt. Bela requested them that since she was residing in the joint family, we should wait for him at the house of Smt. Manju, accordingly they went there. Anil returned at 11.00 PM. After hearing them, he assured that he would talk to Nitin/appellant No.2 and further asked to send Sarika (deceased) to his house at 10.00 AM in the morning and he would advice Nitin/appellant No. 2 to take her alongwith him. On next day, he made phone call to Anil to inform him that he was sending Sarika(deceased) to his house to which Anil replied that Vinita/appellant No. 1 & Laxmi Narain (mother-in-law & father-in-law of deceased) had asked him that they would take Sarika(deceased) to their house only after sorting out some points including the demand of ₹ 5 Lacs. It badly hurted

Sarika(deceased) and them. After few days, after collecting some courage, he himself made request to Smt. Vinita/appellant No. 1 that he was not in position to fulfill their demands and they should keep Sarika(deceased) in their house as their own daughter. On his insistence Vinita/appellant No. 1 allowed him to visit her house. Then he alongwith his father, his wife and sister-in-law went to the matrimonial house of Sarika(deceased).

5. However, there the conduct of in-laws of Sarika (deceased) made them very upset as Vinita/appellant No. 1 time and again was stating that earlier she was behaving like mother and now onward she would behave like mother-in-law. She further said that Sarika(deceased) would have to pay for the period she had stayed at her parental house and also insisted that Sarika(deceased) should join some job. Sarika remained twenty nine days with them when her 'Chura' was not yet removed. She used to wear 'Mangalsutra' only and used to wear the clothes of her sister despite newly wedded bride. Under the fear of society, he sent his daughter to house of his father at F-176, Mansarover Garden. There she used to remain alone on the upper floor of the house. At about 12.00 midnight, when his father and his sister Pushpa were sleeping, Sarika(deceased) took out some tablet from her purse and went to bathroom. There she started vomiting and at this his father woke up. On suspicion, his father asked Pushpa to look into the matter and, accordingly, Pushpa knocked at the door of bathroom and asked Sarika(deceased) that if door would not be opened then she would break it. Sarika(deceased) opened the door but her

condition was very serious. She immediately became unconscious. On hearing noise, wife of his nephew also came to the spot and thereafter, she went to call doctor from Nursing Home. His father informed him in this regard on phone and when he went to the spot he found Sarika(deceased) was in unconscious condition. With the help of doctor they took Sarika(deceased) to Nursing Home, where the doctor on duty after examining her stated the condition of Sarika (deceased) was serious. Then they took Sarika (deceased) to Ganga Ram Hospital, however, there the doctor on duty declared her clinically brought dead. His daughter Sarika(deceased) had committed suicide as Vinita/appellant No.1 (mother-in-law), Laxmi Narain (father-in-law), Nitin/appellant No.2 (husband), Neeraj Sharma (Devar) had mentally tortured her.

6. On basis of statement of Shri Jitender Singh Daani, FIR U/s 304-B/498-A/34 IPC was registered at PS Kirti Nagar. The investigation of case was entrusted to IO SI Daya Ram. The site plan of the spot was prepared. A sulphas tablets and Viscera sealed with seal of DDU received by IO from the concerned doctor were taken into possession. Accused Laxmi Narain, Vinita/appellant No. 1, Nitin/appellant No. 2 and Neeraj were arrested. Accused Tara Rani Kakkar was granted interim anticipatory bail by High Court. The photographs, invitation card of marriage alongwith one letter in the handwriting of Sarika(deceased) were taken into possession. The samples were sent for expert opinion to CFSL, Hyderabad. The list of dowry articles given in the marriage of Sarika(deceased) was given to the IO.

Thereafter, offence U/s 406 IPC was added to the investigation. After completing other formal investigations, charge sheet U/s 498-A/304-B/406/34 IPC was presented in court against accused Laxmi Narain, Vinita/appellant No.1, Nitin/appellant No. 2, Neeraj and Smt.Tara Rani Kakkar (mother of Vinita/appellant No.1).

7. Vide order dated 29.3.09 accused Laxmi Narain, Neeraj and Tara Rani were discharged. Accused Vinita/appellant No.1 was charged U/S 498-A IPC only and accused Nitin/appellant No.2 was charged U/s 498-A/304-B IPC. Formal charges were framed accordingly against accused Vinita/appellant No.1 and Nitin/appellant No.2 to which both accused pleaded not guilty and claimed trial.

8. The prosecution has examined 19 witnesses in support of its case. PW2 is Shivender Kumar. He is maternal uncle of deceased Sarika (deceased) deposed that after the marriage of Sarika (deceased) with accused Nitin/appellant No.2 he came to know through parents of Sarika (deceased) and Sarika(deceased) that accused Nitin/appellant No.2 himself and his family members were making the demands of dowry. She used to remain depressed. One month prior to the incident, mother of Sarika(deceased) fell sick and Nitin/appellant No.2 and Sarika(deceased) came to their house to find about her well being. Sarika(deceased) requested Nitin/appellant No. 2 to allow her to stay at their house to look after her mother; accordingly, Nitin/appellant No.2 left her there. Sarika(deceased) used to call Nitin/appellant No.2 on cellphone but he seldom reply to the same and told her that he would take her back if their demands would be met by her parents. On

26.4.01 he received telephonic message that Sarika(deceased) was not well as taken to Ganga Ram Hospital. When he reached Ganga Ram Hospital she was already dead.

9. PW3 is Ranjit Singh grandfather of the deceased Sarika(deceased). He submitted to the effect that after 2/3 days of his marriage Sarika(deceased) informed him that Nitin/appellant No. 2 and his relative himself used to demand money from her parent for construction of house. She was used to be taunted that her grandfather was '*Crorepati*' despite nothing was given either car or cash in the dowry. The accused persons used to object her visiting his house. She used to make complaint that whenever she receive telephone call, her in-laws hear from the other line. On 26.3.01 Sarika(deceased) alongwith Nitin/appellant No. 2 visit her parents. She found that her mother was not well as she was suffering from cervical pain. After taking permission from her husband, she stayed back to look after her mother. Mother of Sarika(deceased) called up Smt.Vinita/appellant No. 1 to which Vinita replied that why Sarika(deceased) needed there as there was younger daughter to look after her. On 04.04.2001 Sarika(deceased) called Nitin/appellant No. 2 on his cell phone but he did not pick the same. Thereafter she went to house of her neighbour and again called her husband on mobile phone who picked up the phone and told her that the entire 'Daani' Family is a liar and she can do whatever she likes. On 04.04.2001 he himself, parents of Sarika(deceased) and Mausī in the evening hours went to house of Bela, Mausī of accused Nitin/appellant No. 2 to settle the dispute. But

Smt. Bela advised them to go to the house of one Manju who was also a mediator of the marriage as her in-laws were residing on the upper floor and she did not want them to know about the incident. He called up Anil to the house of Manju who arrived here at 11:00 PM Mother of Sarika(deceased) called up Smt.Bela in the morning to find out as to whether Nitin/appellant No. 2 would come to their house to take her back to which she replied that Vinita/appellant No. 1 asked her not to sent back Sarika (deceased) till all the disputes are decided.

10. Further deposed that on 06.04.2001 he alongwith Sarika(deceased)'s and her parents, her sister, his elder son and his family went to Mussoorie and returned on 11.4.01. On 12.4.01 Sarika (deceased)'s father called up Vinita/appellant No. 1 to fix time for the meeting but she replied that she had no time. At about 9/10 p.m. on the same day he himself along with his younger daughter went to the house of accused persons, where both brothers, brother in law and sisters of Vinita/appellant No. 1 were present. Elder brother of Vinita/appellant No. 1 told that if Sarika(deceased) was not interested in staying at her matrimonial home then they should amicably decide the matter. On this, mother-in-law of deceased stated that she was mother upto now and onwards she would show them as to what mother in law is. His son Jitender (father of the deceased) also met Nitin/appellant No. 2 at hotel on 24.04.2001 but the meeting was not fruitful and failed.

11. He further deposed, on 24.04.2001 Sarika(deceased) called Nitin/appellant No.2 and desired to meet him. On 23.04.2001 Sarika

(deceased) gone to meet Nitin/appellant No.2 somewhere. He promised her that he would talk to his family and they would again meet on 25.04.2001. Sarika(deceased) met him on 24.04.2001 at Connaught Place. Sarika(deceased) left for her parental home on 24.04.2001 and again came back to his home on 25.04.2001 at about 11 am. In the evening on 25.04.2001 at about 7p.m. she told that she was going to meet Nitin/appellant No.2. He advised her to take someone alongwith her but she stated that Nitin/appellant No.2 has asked her to come alone. She went to meet Nitin/appellant No. 2 and came back after about one and half hour. She cried a lot when she returned back and told him that now she neither belongs to her Maika nor Sasural as Nitin/appellant No. 2 has told her that everything was over. Thereafter Sarika(deceased) went to third floor of the house where his grandson was staying. He along with his daughter, who came from America were sleeping at the second floor and Sarika(deceased) was also supposed to sleep with them. At about 12.30/01:00 a.m. Sarika(deceased) came down stair, he got up and asked her as to what she was doing, she replied that she was taking some medicine. He asked his daughter as to which medicine Sarika(deceased) was taking to which she replied that she take medicine for good health. She used to take such medicine in past also. Thereafter, they heard that Sarika(deceased) was vomiting. Rest he deposed on the line of PW-4 J.S. Daani inter alia.

His statement was recorded by SDM on 01.05.2001 which is Ex. PW3/A bears his signatures at point A to F. He told the SDM that

the remaining tablets were taken out from the purse of Sarika(deceased) by his daughter Pushpa and were handed over to the Doctor. His statement was also recorded by the IO on 26.4.01 and proved the same Ex. PW3/B.

12. PW4 is J.S. Daani, father and complainant in this matter. He has also deposed on the similar lines to that of PW3 Ranjit Singh, however he further submitted to the effect that on 25.4.01 Sarika(deceased) again went to house of his father and on that day at about 12.00 night he was informed by his father that Sarika(deceased) had consumed something, he rushed to his house alongwith his younger daughter and wife. They reached there and found Sarika(deceased) was lying unconscious. He took her to nearby nursing home where the Doctor declared her to be in serious condition, then they took her to Ganga Ram Hospital, where she was declared dead. On the next day at about 11.30 am at PS Kirti Nagar his statement was recorded by the SDM. Statement was proved as Ex. PW4/A. After 5/6 days of death of his daughter Sarika(deceased) letter written by Sarika(deceased) but not signed, found in her room which was handed over to the police and the same was seized by seizure memo Ex. PW4/C. Letter is mark A. He requested the police to send mark A to comparison with the handwriting of Sarika(deceased) which obtained from her educational record.

13. PW7 Smt.Parvesh Daani is mother of deceased Sarika(deceased). She also deposed on the similar lines to that of evidence of PW3 Sh.Ranjit Singh and PW4, Sh. J.S. Daani. However,

she further deposed to the effect that his daughter Sarika(deceased) on very next day of marriage told her that her mother in law had demanded ₹ 5 lacs for construction of another house. Two/three days prior to Karvachauth, Sarika(deceased) told her on phone that accused Vinita/appellant No.1 had expressed her desire that apart from the other gifts and articles a diamond set be also given on occasion of Karvachauth. On reaching home Nitin/appellant No. 2 got angry with Sarika(deceased) and even slept her. Vinita/appellant No.1 and Nitin/appellant No. 2 told her that how her mother had dared to telephone Nitin/appellant No. 2. On 25.3.2001 she sustained cervical attack. On 26.03.2001 Sarika(deceased) visited their house with Nitin/appellant No.2. Sarika(deceased) expressed her desire as to why she could not be informed about her illness to which she told her that he did not want to bother her as Vinita/appellant No. 1 was not happy with her. Thereafter, Sarika(deceased) went to kitchen to prepare tea. Nitin/appellant No. 2 asked her as to whether she had talked to her mother for ₹ 5 lac. But she expressed their inability to meet their demand to which he further asked that people do a lot to make their children happy.

14. She further submitted that on 24.04.2001 her younger daughter and sister in law Pushpa and Sarika(deceased) went for shopping. At 10.30 in the night when Sarika(deceased) came to their house to drop her younger sister Anushka, she informed that Nitin/appellant No.2 had told her about demand of ₹ 5 lacs.

15. PW8 Manju Shah deposed that Sarika(deceased) came to her house for making telephone call. While talking to someone she was crying. Sarika (deceased) never talked to her regarding her matrimonial life.

16. This witness was cross examined by Ld. APP as witness was resiling from her earlier statement. But in her cross examination she did not depose anything else.

17. PW9 is Shikha Daani, sister of deceased Sarika(deceased) who has deposed Sarika(deceased) was not happy after marriage and stopped laughing and her excitements were also finished. She told her mother in law that if she would keep keeps her son happy only then she would keep her happy. They tried to call her sister on Diwali, Karvachauth and Holi, however, she did not come. She alongwith her family members requested Nitin/appellant No. 2 to bring her sister to their house but he never brought her to their house. She came to know regarding demands made by in-laws of her sister only on the day when her sister made telephonic call from the house of Manju Shah. They found one letter written to her in handwriting of her sister Sarika(deceased) which is mark A. She had handed over this letter to her father.

18. She further supported the case of prosecution and deposed that on 24.04.2001 her sister remained with her. They went for shopping and on 25.04.2001 to her grandfather's house, from there, she went to meet Nitin/appellant No. 2.

19. On 25.04.2001 she received a call from her 'Taya Ji' that Sarika(deceased) had done something herself. She alongwith her parents went there. They took Sarika(deceased) to nearest nursing home from where they took her to Ganga Ram Hospital, where she was declared dead. Rupees Five Lacs were demanded by her in-laws, however, she did not know by whom. This fact was told by Sarika(deceased).

20. PW10 is Mrs.Manju, family friend of Sarika(deceased). She submitted that her husband and father of Sarika(deceased) were working in the same office. She was mediator to the marriage of Sarika(deceased) with Nitin/appellant No. 2. After 2/3 months of marriage, she met Sarika(deceased) at her parental house. She did not seem to be happy. She suspected that her in-laws were greedy.

21. On 04.04.2001 parents, grandfather, Bua and Sarika(deceased) came to her house. Nitin/appellant No. 2 did not attend the phone calls of Sarika(deceased). Nitin/appellant No. 2 had attended the call of Sarika(deceased), when she made call from neighbourer house and told her something. Sarika(deceased)'s father also called Smt. Bela and Nitin/appellant No.2 to sort out the issue but she did not know what had happened in the meeting. It was decided in the meeting that Sarika(deceased) would go to the house of Bela in the morning and Nitin/appellant No. 2 would take her back to matrimonial home.

22. This witness was cross examined by Id. APP as she was resiling from her earlier statement. But during cross examination witness has

denied to make statement from portion A to A on Ex. PW10/X i.e. statement U/s 161 Cr. P.C.

23. PW11 is Veena Daani, Aunty (Chachi) of deceased Sarika(deceased). She deposed that Sarika(deceased) talked to her daughter, only through her she came to know that Sarika(deceased) was not happy at her matrimonial home as they were greedy people.

24. This witness also cross examined by Ld. APP as she was resiled from her earlier statement. During cross examination the witness was confronted with his statement U/s 161 Cr. P.C. Ex. PW11/X from portion A to A and portion B to B, however denied the facts as stated under Section 161 Cr.P.C.

25. PW5 is Dr. Virender Singh of Sarovar Nursing Home. He did not support the case of prosecution. He denied that he never treated any patient as mentioned in statement U/s 161 Cr. P.C. nor he has made any such statement to the police.

26. The witness was cross examined by Ld. APP but has not stated anything supporting the version of the Prosecution.

27. PW6 is Dr. Kunta Prasad, CMO Ganga Ram Hospital deposed that at about 2.45 a.m. one patient Sarika(deceased) was brought by Sh.J.S. Daani. The patient was not responding, he clinically declared her dead on 26.04.2001 at about 2.45 am. The patient had brought with the history of Alphos tablet regarding which he had given his observation in the MLC Ex. PW6/A prepared by him.

28. PW12 is Dr. M.M. Narnaware, who conducted post mortem of dead body of deceased Sarika(deceased) and submitted that on 26.04.2001, his report is Ex. PW12/A. The Viscera was preserved, sealed and handed over to IO, but opinion was not recorded on the postmortem report, till the result of chemical analysis. He also handed over the inquest papers to IO and exhibited 10 papers of inquest as Ex. PW12/B.

29. PW1 is HC Birmati, who proved the FIR as Ex. PW1/B and endorsement on original rukka as Ex. PW1/A.

30. PW-13 is ASI Rai Singh, MHC(M) deposed, on 26.04.2001, IO/SI Daya Ram handed over him a 'Fard' of FIR, four sealed parcels and two sealed samples, were endorsed was vide entry No.1463, which is Ex.PW13/A. I.O. also deposited articles of personal search i.e. ₹ 210/- and relevant entry in this regard were made in the same serial, same is Ex.PW-13/B. He further submitted that on 26.06.2001, two sealed parcels and two sample seals were sent to CFSL Hyderabad, though Ct.Dharam Singh vide RC No.118/21, he made entry in this in the same serial number. Photocopy is Ex.PW-13/C. On 18.10.2001 HC Jaswant Singh deposited one report from CFSL along with 'Viscera'.

31. PW-14 Vijay Khanna, SDM deposed that on 26.04.2001 he had conducted the proceedings in this matter and recorded the statement of witnesses i.e. Jitender Singh and Ranjit Singh, father and grandfather of deceased respectively.

32. PW-15 is H. Ct. Jaswant deposed to the effect that on 26.06.2001, the sealed exhibits regarding the case were sent to CFSL Hyderabad through Ct.Dharam Singh vide RC No.118/21. Report of the same was obtained on 18.10.2001 by him and entry for sending the pullandas in CFSL Hyderabad and receiving the report were made by the Munshi in malkhana against the entry no.1463. Entry regarding sending the pullandas and receiving the report are encircled portion and the photocopy of the same is Ex.PW15/A.

33. PW-16 is Ct. Dharam Singh. He is linked witness who took samples to CFSL.

34. PW-17 is H C Naresh Kumar, who deposed that on 25.04.2001 he was working as duty officer from 12 a.m. to 8 a.m. On receipt of information regarding the death of Sarika from Ganga Ram Hospital was registered in register No.II, page no.076, book No.14157 on 25.07.2001 at serial No.33, photocopy of the same is Ex.PW17/A.

35. PW-18 is Daya Ram. He has supported the version of prosecution and proved the documents prepared by him during investigation.

36. Ld. trial judge has mainly relied upon the prosecution witnesses PW-4 J S Daani father of the deceased, PW-7 Parvesh Daani mother of the deceased, PW-3 Ranjit Singh grandfather of the deceased.

37. He has pointed out that all these three witnesses has categorically stated that on the next day of marriage the accused Nitin/appellant No.2 along with family member started demanding ₹.5

lakhs from the deceased for the purpose of construction of their house. This demand by the accused persons continued till the death of Sarika.

38. The Trial Judge has recorded that the prosecution has proved beyond reasonable doubts that demand of ₹ 5.0 lakhs by accused Nitin/appellant No.2 was actual demand of dowry under the garb of construction of another floor of their house. The accused had repeated this demand time and again. As per the deposition of PW-7 Parvesh Daani, accused had demanded ₹ 5.0 lakhs from her on 24.04.2001, thereafter, deceased had committed suicide. As per statement of witness/PW7 accused had demanded said amount from the deceased. She had brought it to the notice of PW7 Parvesh Daani who also deposed on similar line.

39. It is further recorded that the deceased had undergone mental cruelty as discussed above. As per Section 113A and B of Indian Evidence Act, if the wife commits suicide within 07 years of marriage it would be presumed that she was subjected to cruelty by her husband or by his relatives. As a matter of fact, the marriage between the accused and Sarika took place on 02.10.2000, whereas Sarika had committed suicide on 26.04.2001 within span of 08 months only.

40. Therefore, Id. trial judge has opined that in the light of entire evidence she had committed suicide due to demand of dowry immediately before her death i.e. the meeting of the deceased with the accused Nitin on 24.04.2001 and 25.04.2001 as has come in the evidence of PW3 Ranjit Singh. This witness has also proved that on

24.04.2001 when Sarika after meeting accused Nitin was crying and saying that she neither belongs to her '*Maika*' nor '*Sasural*'. PW7 Parvesh Daani has also deposed that Sarika went to meet Nitin on 24.04.2001, thereafter she told her that Nitin was demanding ₹ 05 lakhs, therefore, she could not join her matrimonial home. The meeting between Nitin and deceased could not succeed as the demand of dowry was not fulfilled and on the very next day of the meeting she committed suicide.

41. Sh. K.K. Sud, learned Senior Advocate appearing for the appellants has submitted that the marriage between the appellant No.2 and the deceased took place on 02.10.2000. She used to take "Centrum Medicine" which constitutes Sulpha. It is admitted that she died after consuming the aforesaid medicine, while staying with her grandfather.

42. It is further submitted that as deposed by the witness, firstly, the deceased was taken to Sarovar Nursing Home, however, there is no proof, rather, PW 5/Dr. Virender Singh had denied the fact that on 25.04.2001, no such person visited his hospital.

43. He further submitted that from the date of marriage till the death took place, no complaint was ever made against the appellants.

44. On 25.03.2001, on the occasion of opening of showroom of factory, the appellants attended the functions. In between the time from marriage to death, at least on 12 occasions, both the families attended the festivals or get together happily and there was no complaint against each other. On these occasions, both the appellants, father of the

appellant No. 2 and Nani of the appellant No. 2 also attended the occasions apart from the other relatives. It is also the admitted fact that from 26.03.2001 till the date of incident i.e. on 25.04.2001, the deceased never lived with the appellants.

45. Even, the cause of death was not recorded by Doctor of post mortem. Viscera report as received from FSL was never shown to Autopsy Doctor.

46. On 26.04.2001, the statement of the complainant was recorded on 02.05.2001, Supplementary statement was recorded, wherein, lot of improvements were made by the complainant which are as under:-

The first statement of Sh. Jitender, father of the deceased was recorded on 26.04.2001, wherein, he stated that she had gone to the house of his father at F176, Man Sarovar Garden and her father asked Sarika as to what she was doing and she told his father that she was taking medicine and on that pretext, she consumed intoxicating and poisonous tablets and fainted at about 12'o'clock mid night. He got intimation of this incidence and reached at the spot. Firstly, he took her to Sarovar Nursing Home, thereafter, on the advice of the Doctor, she was taken to Sir Ganga Ram Hospital. Her daughter was fed up with her in-laws behaviour.

47. On 26.04.2011, the statement of Mr. Ranjeet Singh, Grand-father of the deceased was recorded, wherein, he stated that so far as his opinion is concerned, Sarika had deliberately consumed 'Sulphose' or some other tablets because was she was under duress due to her in-laws' behaviour.

48. On 26.04.2011, SDM recorded the statement of Sh. Jitender Singh, the father of the deceased, wherein, he stated that on the very next date, the appellant No. 1 demanded Rs.5 lacs so that she could construct the upper floor and also question the girl that if she pleases the boy (appellant No.2) only then, she would keep the girl happy. He kept fulfilling their petty demands off and on as per his position. In-laws of his daughter i.e. her brother-in-law, mother-in-law, kept on torturing regularly in different ways finally with his wife Sh. Parvesh Daani while cleaning the house during Navratra, developed the survival problem on 30-31.03.2001, but in spite of that, he considered it not proper to inform his daughter because her in-laws family were already harassing her a lot.

49. The said witness further deposed, his daughter and son-in-law came to her house and seeing her mother ill got perturbed and stayed at his house for a night to look after her mother with the permission of his son-in-law. While going for office, he told his wife behaviour of the daughter's mother-in-law remained so bad, hence, her mother-in-law should be informed and asked if she would allowed Sarika to stay in her parent's house for a few days. But mother-in-law/appellant No.1 rebuked saying why younger daughter would not look after and for these reasons, deceased daughter tried 7/8 times to contact his son-in-law on mobile phone, but he did not attend the phone call as residence's phone number came on the screen of his mobile. For this reason, Sarika tried to contact her husband by making call from neighbour's house. This time he attended the call being a new

number. He shouted on her daughter, she to his house and started weeping in the Evening. His father came to his house as he was very worried, and daughter went to Janakpuri to meet Mausī and Mausā of boy (Smt. Bela and Anil) and discussed his behaviour.

50. It is further stated that the appellant No.1 & Sh. Laxmi Narian Sharma got very angry and before bringing the girl to their home, wanted to clarify some matters which also included the demand of ₹ 5 lacs.

51. After some days, he gathered some courage requested the appellant No.1 that it was beyond his capacity to give this much of amount and requested to treat her daughter as her daughter. But she refused to meet him. He along with his family members including his father, his wife, and sister-in-law(saali) reached at the matrimonial house of his daughter but he was shocked and surprised to see the strange behaviour of his daughter's mother-in-law. She repeatedly said that so far she was treating her (Sarika) as her own daughter but now onwards she would show that she would show her as mother-in-law. The deceased will have to bear penalty for the period she lived in her parents' home. The girl was in shock and her behaviour was confirmed from the fact that she lived in her parents' home for the last 29 days, whereas the 'Chura' was intact and used to wear the clothes of younger sister, whereas, she was a newly wedded girl, but had to wear the clothes of her younger sister.

52. Learned Senior Advocate has submitted that there are unanswered arguments/questions by the prosecution which completely renders the prosecution's allegations in their entirety as false and a farce.

Belated allegations:-

Mother of the deceased PW7 Smt.Parvesh Daani stated in the Court only that Sarika lost weight and she advised appellant to take care and on their return to home Nitin slapped Sarika on 14.03.2001.

53. PW9 Ms.Shika Daani, younger sister of the deceased Sarika has admitted that she made no reference to Sarika having lost any weight or to being unhappy.

54. PW4 Shri J. S. Daani (father of deceased) stated that one day prior to *Holi* he and his wife visited the appellants. Everything was normal at the matrimonial house of Sarika. His younger daughter had to appear for her board exams in the year 2001. This witness had also admitted that Sarika used to help Sikha in her studies. Sarika had been coming to see her ailing mother – whenever she had fallen sick.

55. Learned Senior Advocate further submitted that on farce regarding 'Crorepati' / explanation of car and cash in the marriage of granddaughter was baseless, imaginative and insinuatory allegation as to appellant Vinita having said that the grandfather PW3 Sh.Ranjit Singh was a 'crorepati', to bolster the case only in deposition before the Court; whereas the same was not set up in the earlier statements of PW3, PW4, & PW7 Smt.Parvesh Daani (who made a statement before the SDM on 02.05.2001, seven days after the occurrence i.e.

25/26.04.2001.) Therefore, neither he is in fact 'Crorepati' nor was any expectations from him. Thus, the allegations of demanding dowry is baseless and concocted one.

56. It is submitted, PW3 Shri Ranjit Singh (grandfather) was a retired divisional manager from Oriental Insurance Company. His last drawn monthly salary was ₹ 5,000/- and was having a pensioner only getting ₹ 1,300/- per month and had no other source of income. He was aged 88 years and was living in DDA flat bearing No.176, Second Floor, Mansarovar Garden, New Delhi. He had several liabilities to marry his other daughters i.e. Pushpa, (who was present in the house at the time of occurrence and was never examined by the police, SDM or even by the Court).

57. He further submitted that in addition, PW4 Shri J. S. Daani (father of the deceased) has admitted in his deposition that he was living in flat bearing No.16-A, Pocket – B, Keshavpuram, Delhi (a refugee rehabilitation colony). He was also working as divisional manager in Oriental Insurance Company and his wife was a pensioner of ₹ 1,300/- per month and, therefore, there was no other earning member in the family. He further submits that no demand was made by the accused. It is admitted in deposition that it was a simple marriage. On his birthday i.e. 09.10.2000, Nitin – appellant No.2 had gifted him a shirt. Sarika had stayed at their house on many occasions for 3-4 days after her marriage. Further he admitted that articles, gift etc with respect to '*Karvachauth*' were purchased by Sarika during her stay in their house and were taken to her matrimonial house. He did

not know if Sarika had told her mother about the demand of diamond set, whether on phone or personally. He did not remember when his wife told him about it. She was not in the habit of telling him such things as he was an asthmatic patient. He further admitted that Sarika did not tell him directly about the demands of her in-laws and their behaviour towards her.

58. This witness has been confronted with the statement made before the police Ex.PW4/D-1 regarding cash and Ex.PW4/A regarding demand of diamond set. This witness has also admitted all visits and participation of two families till 26.03.2001.

59. Learned Senior counsel for the appellants has also commented upon the falsity of story of visit to Bela on 04.04.2001. The said Bela is not a witness examined by the police or by the Court, there was no occasion to meet Bela or discuss with her about any demands of appellants in view of what is on the record.

60. PW3 Shri Ranjit Singh (grandfather of the deceased Sarika) stated that he had not personally attended any meeting regarding marriage proposal. His son Jitender Singh (PW4) had informed him about the marriage. He further admits that he cannot tell the date when Sarika informed him that appellants were demanding money or car from her parents. He has further admitted that despite Vinita's objection to Sarika's stay at her mother's place when her mother was not well, she stayed at her mother's house. He did not visit the matrimonial house of Sarika alone after 26.03.2001 till her death. They have two telephone connections at their house. Further admitted

that he did not know whether Sarika had called Nitin on 03.04.2001 either from his house or her father's house on mobile phone of Nitin and Nitin had responded/attended those calls. He did not know as to whether Sarika had called Nitin on 03.04.2001 in the afternoon from her father's house and in the evening from his house and Nitin on his mobile phone for 03:30 minutes and 01:40 minutes respectively. He also did not know as to whether Nitin had called up from his mobile phone No.9810201529 twice in the evening at his residence on phone No.5911678 for duration of 0.23 and 2.29 minutes respectively and the said calls were attended by Sarika. Neither he nor any of the family members talked to Nitin on his mobile phone number on 03.04.2001.

61. He submitted that this witness PW3 Shri Ranjit Singh had further deposed that Jitender had informed him that Sarika had called Nitin on his mobile phone on 04.04.2001 and Nitin disconnected the phone after seeing her number. He could not tell the phone number or the number of the neighbour from where Sarika had called on 04.04.2001. He also could not tell about the conversation between deceased Sarika and Nitin from the said phone number. He also did not remember as to what was discussed in that meeting. Neither Sarika nor any family member told him that Sarika and her husband were not having physical relations. He also did not remember the name of the place where they had stayed during their visit to Mussourie between 06.04.2001 to 11.04.2001. They had returned to Delhi on 11.04.2001. He had never visited the house of appellants on the occasions of festivals etc.

62. He further deposed, the atmosphere was healthy and happy. There was no dispute or any other discussion. His birthday falls on 16th March. He admitted that Vinita and her husband had come to his house on 16.03.2001 to wish his birth day. They had dinner on that day. They did not discuss with him anything else on that day.

63. Learned Senior Advocate for the appellants further submits that PW-3 did not know as to what had transpired in the meeting between Jitender and Nitin on 12.04.2001 and 24.04.2001. He did not know as to how Sarika had fixed her meeting with Nitin for 23.04.2001 and from where she had spoken to him on 22.04.2001. He also could not tell as to what Sarika had told Nitin on 22.04.2001.

64. Learned Senior Advocate, on medicine further submitted that this witness admitted that he was also taking Centrum, which was sent by his daughter from America for him. His daughter Pushpa had thought that Sarika was also taking 'Centrum' on the date of incident. It is further admitted in his statement that Ex.PW3/B he had not stated that appellants had demanded cash or car or any other dowry. He did not know as to whether he had told anything in Ex.PW3/B that Sarika had taken medicine at 12:03/01:00 AM in the night. He did not remember as whether he had told the Investigating Officer regarding the meeting dated 23.04.2001 and 25.04.2001. Even the attention of the witness was also drawn to the statement Ex.PW3/B and he admitted to having not stated the above facts therein.

65. This witness had no knowledge of meeting of Sarika and Nitin fixed on 23.04.2001 and 25.04.2001. It is only introduced as 'hear-

say' as an improvement in the line with PW7 who falsely deposed so in the Court only. If any such thing had happened on 03.04.2001, the family would not go to Mussorie on 05.04.2001 to 11.04.2001. Talks of phone calls of Sarika on 03.04.2001 build false story of Bela's meeting and yet does not react and coolly goes with Sarika and family for holiday to Mussorie after alleged meeting Bela on 04.04.2001.

66. Even PW4 Shri J. S. Daani, in his examination-in-chief admits that all demands were told by Sarika to her mother alone. No demand was made by appellants when the marriage was finalised. He further deposed that on 06.04.2001, he alongwith his wife had gone to Mussorie and Sarika had also accompanied them. They went by two cars i.e. one his own and another was of his father. Before leaving for Mussorie they had not personally contacted either Nitin or his mother or any other member of the family. They stayed in a guest house of Oriental Insurance Company. He did not make any phone calls to Nitin or his family members from Mussorie. This witness also admitted that they had returned to Delhi on 11.04.2001.

67. Learned Senior Advocate has further submitted regarding the allegations from 26.03.2001 to 21.04.2001. He had once gone to matrimonial house of Sarika, the date of such visit was not remembered by the witness. On that occasion, the house was locked, as was told later on that mother of Vinita was sick and nobody was at the house. During that particular period, he had never personally or otherwise talked to Nitin, Vinita or Laxmi Narain, which exclude

falsely alleged meeting with Nitin on 04.04.2001, 12.04.2001 or 15.04.2001.

68. It is further submitted, this witness further deposed that he could not say whether Sarika had been staying with them for about a week prior to 16.03.2001 to help Shikha in her studies. He did not remain on long leave after the marriage of Shikha till her death. His post was such in the office that he could not take leave from office as he was incharge. He did not remember any particular date when he had taken leave from his office. He further deposed that there been occasions when Sarika had called him up on telephone and he had talked her. He could not tell the day of the week when the telephone calls were received from Sarika. Sarika had told him that while she used to talk over telephone, her in-laws used to hear the conversation from the other line.

69. Learned Senior Advocate further submitted that there was no parallel telephone in the house of appellants. None was seized by the police nor any evidence of telephone department.

70. PW3 Shri J. S. Daani, grandfather of deceased Sarika stated that Vinita was Class-I officer in DMS having duty hours from 09:00 AM to 05:00PM. The house of appellants was at a distance of about 1½ KM away that of witness. Sarika was otherwise keeping well and generally happy.

71. He further submitted that learned Public Prosecutor erroneously placed reliance on **Ashok Kumar v. State** 2010 (12) SCC 350 as this

decision in no way takes a different view than what has been held in enormity of decisions on the subject which are highlighted and appended hereinabove.

72. Learned counsel further submitted that the ingredients of Section 304B Indian Penal Code, 1860 as also the expression that ‘woman should be subjected to cruelty in relation to meeting of demands made soon before death, which must be in connection with the marriage. The presumption by way of deeming fiction under Section 113B of the Indian Evidence Act, 1872 could be raised and that for the same the pre-condition is that the ingredients of Section 304B Indian Penal Code, 1860 must be satisfied and proved. It holds that the presumption does not aim merely on account of death being unnatural and within seven years of marriage.

73. Learned counsel for the appellants vehemently urges that such a presumption is rebuttable one. The enormity of the material on record shows that Nitin, the husband and his mother Vinita have successfully demonstrated on the basis of the facts appearing in the evidence of the relation witnesses that no presumption is liable to be raised. Among various other earlier decisions, the Court also relied upon **Appasaheb & Anr v. State of Maharashtra** 2007 (1) JCC 147.

74. Learned Senior Advocate, alternatively has argued on the point of sentence and submitted that RI for ten years to husband Nitin is unwarranted. The Courts have always reduced sentence under Section 304B Indian Penal Code, 1860 to seven years when the Apex Court upheld the conviction in **Ashok Kumar** (supra). Mental trauma for

eleven years, old and retired parents, discharge of three relations by the Court unchallenged. Having already undergone nearly seven years out of the ten years sentence awarded; two daughters after re-marriage. Business of printing press already closed down and investment of family already under waste due to false implications warrants the reduction of sentence to minimum of seven years.

75. He relied upon decisions in which the sentence had been reduced to seven years under Section 304B Indian Penal Code, 1860 as under:-

Ashok Kumar v. State of Haryana 2010 (12) SCC 350;

Pradeep Kumar v. State 2010 (12) SCC 350;

Kans Raj v. State of Punjab 2000 (5) SCC 207;

Sharad Birdhichand Sarda v. State of Maharashtra AIR 1984 SC 1622: and

Sant Raj v. State of Haryana (1998) 8 SCC 605.

76. Learned Senior Advocates for appellants has relied upon the judgment of Apex Court in **Tarsem Singh & Ors v. Amrit Kaur 1995 Crl.L.J.3560** wherein on Section 498A Indian Penal Code it was held that:-

“The cruelty must be one which is likely to cause grave injury or danger to the life, limb or health (of course, either mental or physical) of the woman. Mere statement that the woman had fallen ill may not constitute cruelty within the meaning of Section 498A Indian Penal Code unless the illness, either mental or physical, is of such nature as to cause grave injury or danger to life, limb or

health. Similarly, the harassment must also such as should have been actually meted out by the accused. Simply because the husband and others did not call the wife to the matrimonial home, it cannot amount to harassment. Driving her out from the matrimonial home to parental home will be harassment, but not calling her back to the matrimonial home cannot amount to harassment, although the husband at the worst can be stated to be guilty of desertion if he makes the stay of the wife in the marital home unsafe and, therefore, makes her to leave matrimonial home.”

77. He relied upon another decision of Karnataka High Court in **State of Karnataka v. T. Balu 2000 Crl.L.J.2165** wherein it has been held on Section 498A Indian Penal Code it was held that:-

“When there is no clear cut evidence on record as to what the real problem between the husband and wife was, which could have been anything from incompatibility to disagreement or something more serious. The evidence in this regard is inconclusive. In the absence of clear-cut evidence indicating dowry related cruelty of sufficient gravity which has a definite nexus to the suicide which really are the legal ingredients whereby the prosecution has to establish that it was the grave misconduct of the accused husband that virtually drove the wife over the brink and triggered of the suicide, a conviction under Section 304-B IPC, is not permissible.”

78. Learned Senior counsel relied upon another decision of Apex Court in **Pashaura Singh v. State of Punjab & Anr 2010 (10) SCC 749** wherein it has been held in para Nos.12 & 13 as under: -

“12. In so far as offence under Section 498A is concerned, the High Court in its earlier order

dated April 29, 2004 in the petition filed by the family members, observed thus:

‘I have perused the First Information Report registered against the petitioners.

The only allegation against the petitioner is that they started harassing Kamaljeet Kaur Gill for not bringing more dowry. No demand of dowry has been made by the petitioners, nor is there any specific entrustment, as alleged in the First Information Report of dowry articles to the petitioners. Parties have divorced each other, as per the order of the Supreme Court of British Columbia (Annexure P-1). Order is dated February 25, 2001. It is after this divorce that Pishora Singh got married in India on January 2, 2002.’

Moreover, in the affidavit of Kamaljeet Kaur referred to hereinabove, there is not a word about demand of dowry or harassment on account of dowry by the appellant.

13. We have no hesitation in holding that the first information report lodged by Balwant Singh is manifestly attended with malafides and actuated with ulterior motive. The prosecution of the appellant is not at all legitimate, rather it is frivolous, vexatious, unwarranted and abuse of process. The appellant has made out a case for quashing the first information report and all subsequent proceedings pursuant thereto”.

79. Learned Senior counsel relied upon another decision of Apex Court in **Harjit Singh v. State of Punjab** 2006 (1) JCC (SC) 1 wherein it has been held in para Nos.15 to 18 as under: -

“15. Section 304B of the Indian Penal Code reads as under:

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

Explanation.- For the purpose of this subsection, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

16. A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. The Parliament has also inserted Section 113B of the Indian Evidence Act by Act No. 43 of 1986 with effect from 1.5.1986 which reads as under:

'113.B- Presumption as to dowry death.-*When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected*

by such person to cruelty or harassment for, or in connection with, any demand for dowry the Court shall presume that such person had caused the dowry death.

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

17. From a conjoint reading of Section 304B of the Indian Penal Code and Section 113-B of the Indian Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304B of the Indian Penal Code.

18. The ingredients of the aforementioned provisions are-:

(1) That the death of the woman caused by any burns or bodily injury or in some circumstances which is not normal;

(2) Such death occurs within 7 years from the date of her marriage

(3) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband;

(4) Such cruelty or harassment should be for or in connection with demand of dowry; and

(5) is established that such cruelty and harassment was made soon before her death."

80. He further relied upon another decision of Apex Court in **Tirath Kumar @ Raj Rani v. State of Haryana 2005 (3) JCC 1740** wherein it has been held in para Nos.3 to 6 as under: -

“3. It is not disputed that the incident had taken place within seven years of marriage. Section 304B IPC requires the following ingredients to be established before the presumption can be drawn under Section 113B of the Indian Evidence Act :

(a) 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 ;

(b) it must be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative ;

(c) such cruelty or harassment must be in connection with the demand of dowry.

4. If the aforesaid ingredients are established then the death shall be called as dowry death. Once the aforesaid ingredients are established by the prosecution the presumption under Section 113B of the Indian Evidence Act shall be drawn.

5. It is contended by Mr. Jaspal Singh, learned senior counsel appearing for the appellants that in the present case both the trial court and the High Court have committed an error in law as well as in fact for recording the conviction of the appellants under Section 304B as no demand of dowry or ill-treatment in regard to the demand of dowry has been established soon before her death. We have been taken through the evidence of PW4 Om Prakash, PW5 Sham Lal Datta, PW7 Raj Rani and PW10 Baldev Raj on which reliance has been

placed by both the trial court and the High Court for recording the convictions of the appellants. Going through the evidence threadbare, we do not find any evidence to show that soon before her death she was subjected to cruelty by the husband or in-laws in connection with a demand of dowry.

6. The aforesaid ingredients having not been established the appellants are entitled to the benefit of doubt. The conviction and sentence recorded by the trial court and affirmed by the High Court are set aside. They are acquitted of all the charges. Accused No.4 Tirath Kumari is on bail her bail bond and surety shall stand discharged. Accused No.1 Vimal Kumar is in custody, he shall be set at liberty forthwith if not required in connection with any other case.”

81. Learned senior counsel for appellants further relied upon another decision of Apex Court in **Appasaheb & Anr v. State of Maharashtra** **2007 (1) JCC 147** wherein it has been held as under: -

“A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for ‘dowry’ as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B Indian Penal Code, 1860 viz, demand for dowry is not established, the conviction of the appellants cannot be sustained.”

82. Learned senior counsel for appellants also relied upon another decision of Apex Court in **Durga Prasad & Anr v. State of Madhya Pradesh 2010 (3) JCC 1852** wherein it has been held in para Nos.14 to 16 as under: -

“14. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to allow the benefit of doubt to the Appellants having particular regard to the fact that except for certain bald statements made by PWs1 and 3 alleging that the victim had been subjected to cruelty and harassment prior to her death, there is no other evidence to prove that the victim committed suicide on account of cruelty and harassment to which she was subjected just prior to her death, which, in fact, are the ingredients of the evidence to be led in respect of Section 113-B of the Indian Evidence Act, 1872, in order to bring home the guilt against an accused under Section 304-B IPC.

15. As has been mentioned hereinbefore, in order to hold an accused guilty of an offence under Section 304-B IPC, it has to be shown that apart from the fact that the woman died on account of burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be 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. Only then would such death be called "dowry death" and such husband or relative shall be deemed to have caused the death of the woman concerned.

16. In this case, one other aspect has to be kept in mind, namely, that no charges were framed against the Appellants under the provisions of the Dowry Prohibition Act, 1961 and the evidence led in order to prove the same for the purposes of Section 304-B IPC was related to a demand for a fan only.”

A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for ‘dowry’ as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B Indian Penal Code, 1860 viz, demand for dowry is not established, the conviction of the appellants cannot be sustained.”

83. He relied upon another decision of Apex Court in **Hazari Lal v. State of Madhya Pradesh** 2007 (3) JCC 1988 wherein it has been held as under: -

“The strong material is required to see as to how the deceased was being harassed or subjected to cruelty. There must be some harassment and cruelty is insupportable and indefensible – There is a vast difference between ‘court have been’, ‘must have been’ and ‘has been’. In the absence of any material, the case falls to first category. In such a case, conviction is impermissible.”

84. Learned senior counsel for appellants relied upon another decision of Apex Court in **Sunil Bajaj v. State of Madhya Pradesh** 2001 (9) SCC 417 wherein it has been held as under: -

“Allowing the accused’s appeal on reappreciation of evidence, the Supreme Court held:

- (1) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;*
- (2) Such death must have occurred within 7 years of her marriage;*
- (3) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;*
- (4) Such cruelty or harassment must be for or in connection with demand of dowry.*

It is only when the aforementioned ingredients are established for an offence on establishment of commission of that offence on the basis of evidence. May be direct or circumstantial or both. But in case of an offence under Section 304-B Indian Penal Code, an exception is made by deeming provision as to nature of death as ‘dowry death’ and that the husband or his relative, as the case may be, is deemed to have caused the such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the abovementioned ingredients of the offence are proved by the prosecution.

In the present case, there was no dispute that the first two ingredients of Section 304-B Indian Penal Code mentioned above were satisfied. Question was whether the remaining two ingredients were also satisfied or not.

From the evidence on record it was clear that there was no evidence of demand of dowry or subjecting S to cruelty for or in connection with dowry other than general, vague and inconsistent statements of interested and motivated witnesses, PWs 4, 5, & 6, being the parents and brother of S. It had come in the evidence of these witnesses that the appellant and his family were not that comfortable financially. There was no demand of dowry either at the time of marriage or subsequently. There was no evidence as to how the father of S arranged the money said to have been demanded by the appellant. There were contradictions and serious omissions in the statements of PWs 4, 5 & 6. The conduct of the appellant bringing girls of bad character to his house nothing to establish that this mental cruelty was for and in connection with demand of dowry; may be S could not withstand and tolerate the conduct of her husband of being in the company of other girls of bad character and may be on account of the same she has put an end to her life. PWs, 4, 5 & 6, on account of S having died of burns, obviously were angry against the appellant and had every reason to involve the appellant in the offence under Section 304-B Indian Penal Code.

The trial court did not properly and objectively consider the evidence to reach a conclusion that the appellant was guilty of the offence. It may be also noticed here that the appellant was acquitted for the charge under Section 306 IPC. The High

Court, in the first appeal did not analyse and scrutinize the evidence for reappraisal and disposal of the appeal in a summary way. Both the courts committed serious and manifest error in concluding that the appellant was guilty of the offence which the crucial and necessary ingredient that the deceased S was subjected to cruelty or harassment by him soon before her death for or in connection with demand of dowry was not established and also looking to the evidence and circumstances cumulatively. Under these circumstances, the impugned judgment is unsustainable as it suffers from infirmity and illegality.”

85. Learned senior counsel for appellants further relied upon another decision of Bombay High Court in **Datta Mahadev Wadile v. State of Maharashtra** 1993 II DMC 96 wherein it has been held as under: -

“Mere quarrels or mere cruelty would not be sufficient to level a charge of cruelty within the meaning of explanation to Section 498A. The degree of the conduct of the husband must such that it would reasonable be expected of a wife to commit suicide or to cause grave injury or danger to her life, limb or health.”

86. Additionally, learned senior counsel for appellants relied upon another decision of Bombay High Court in **Yashoda v. State of Madhya Pradesh** 2004 (3) SCC 98 wherein it has been held as under: -

“The determination of the period would depend on the facts and circumstances of a given case. However, the expression would normally imply that there has to be reasonable time gap between the cruelty inflicted and the death in question. If

this is, the legislature in its wisdom would have specified any period which would attract the provisions of this Section. However, there must be existence of proximate link between the acts of cruelty alongwith the demand of dowry and the death of the victim.”

87. After hearing both the learned counsels, I note that on 25.03.2001, on the occasion of opening of showroom of factory, the appellants attended the functions. In between the time from marriage to death, at least on 12 occasions, both the families attended the festivals or get together happily and there is no complaint against each other. It is also admitted fact that from 26.03.2001 till the date of incident i.e. on 25.04.2001, the deceased never lived with the appellants.

88. The cause of death was not recorded by the doctor concerned who conducted the post-mortem. Despite the report received from the FLS, it was never shown to the autopsy doctor, therefore, the cause of the death is not known and nor proved.

89. PW4 Shri J. S. Daani (father of the deceased) has stated that one day prior to *Holi* he and his wife visited the appellants. Everything was normal at the matrimonial house of Sarika. His younger daughter had to appear for her board exams in the year 2001. Deceased Sarika used to help Shika (younger sister of deceased) in her studies. Sarika had been coming to see her ailing mother – whenever she had fallen sick.

90. PW3 Shri Ranjit Singh (grandfather of the deceased) was a retired divisional manager from Oriental Insurance Company. PW4

Shri J. S. Daani, father of the deceased has admitted in his deposition that he was living in flat bearing No.16-A, Pocket – B, Keshavpuram, Delhi (a refugee rehabilitation colony). He was also working as divisional manager in Oriental Insurance Company and his wife was a pensioner of ₹ 1,300/- per month and, therefore, there was no other earning member in the family. He has further admitted that no demand was made by the appellants. It was also that it was a simple marriage. He admits that on his birthday i.e. 09.10.2000, Nitin – appellant No.2 had gifted him a shirt. Sarika had stayed at their house on many occasions for 3-4 days after her marriage. Further he has admitted that articles, gift etc with respect to '*Karvachauth*' were purchased by Sarika during her stay in their house and were taken to her matrimonial house. He did not know if Sarika had told her mother about the demand of diamond set, whether on phone or personally. This witness had been confronted with the statement made before the police Ex.PW4/D-1 regarding cash and Ex.PW4/A regarding demand of diamond set. This witness has also admitted all visits and participation of two families till 26.03.2001.

91. PW3 Shri Ranjit Singh (grandfather of the deceased Sarika) had admitted that he did not know whether Sarika had called Nitin on 03.04.2001 either from his house or her father's house on mobile phone of Nitin and Nitin had responded/attended those calls. He did not know as to whether Sarika had called Nitin on 03.04.2001 in the afternoon from her father's house and in the evening from his house and Nitin on his mobile phone for 03:30 minutes and 01:40 minutes

respectively. He also did not know as to whether Nitin had called up from his mobile phone No.9810201529 twice in the evening at his residence on phone No.5911678 for duration of 0.23 and 2.29 minutes respectively and the said calls were attended by Sarika. Neither he nor any of the family members talked to Nitin on his mobile phone number on 03.04.2001. This witness had also admitted that neither Sarika nor any family member told him that Sarika and her husband were not having physical relations. He has further admitted that on his birthday i.e. 16.03.2001, atmosphere was healthy and happy. There was no dispute or any other discussion on that day. He has also admitted that Vinita, appellant No.1 and her husband had come to his house on 16.03.2001 to wish his birth day. They had dinner on that day. They did not discuss with him anything else on that day. Regarding the phone calls made by appellant No.2, Nitin to deceased Sarika, a day before in Connaught Place, New Delhi has also not been proved because these calls have not been proved by the service provider. In the absence of that merely deposing by other witnesses, has no weight.

92. The ingredients of Section 304B of Indian Penal Code, 1860, a woman should be subjected to cruelty in relation to meeting of demands made soon before the death, which must be in connection with the marriage. The presumption by way of a deeming fiction under Section 113B of the Evidence Act, 1872 could be raised and that for the same, the pre-condition is that the ingredients of Section 304B Indian Penal Code, 1860 must be satisfied and proved. The presumption does not aim merely on account of death being unnatural

and within seven years of marriage. Until and unless, it is established that soon before the death, the deceased was subjected to cruelty by her husband or in of his relative for or in connection with any demand of 'dowry', such death shall be called 'dowry death' and such husband or relative of the husband shall be deemed to have caused her death. The Parliament has also inserted Section 113 of the Indian Evidence Act, 1872 by Act 43 of 1986 with effect from 01.05.1986, as discussed above. The purpose of this kind of 'dowry death' shall have the same meaning as in Section 304B of the Indian Penal Code, 1860 (45 OF 1860).

93. If it is to be presumed that money was demanded by the appellants for the construction of one portion on the terrace of the house, then that demand for money on account of some financial stringencies or meeting some urgent domestic manure cannot be termed as demand of dowry, as is decided in *Appasaheb & Anr (supra)*.

94. The Trial Court has not considered the facts which were in favour of the appellants and has convicted the appellants only on the evidence led by prosecution against them. Any evidence which is in favour of the accused has equal weight and Court has to weigh evidences from both sides before reaching to any particular conclusion.

95. In the present case, both the families had attended, as discussed above, as many as 12 festivals. Had there been any harassment or cruelty being committed by the appellants, there would have no such type of cordial relations between both the families. The appellants

would not have even attended the birth day of the grandfather of the deceased. It is also evidence on record that the deceased Sarika was staying with her parents to help her younger sister Shika in preparation of board exams and attending her ailing mother. It is also on record that appellant No.2, Nitin used to visit his mother-in-law, as and when she fell ill and Sarika was staying with her parents with wish and consent of the appellant No.2.

96. In addition, accused persons namely, Neeraj and Tara Rani were discharged vide order dated 23.03.2009. The said order got finality, as neither the state has challenged the same nor the complainant / informant.

97. PW-8 Manju Shah has not supported the prosecution story.

98. PW-9 Shikha Daani, younger sister of deceased is heresay on the demand of dowry (₹ 5 Lac).

99. PW-10 Mrs. Manju has deposed that deceased Sarika did not seem to be happy. She suspected that her-in-laws were greedy.

100. PW-11 Ms. Veena Daani, aunt of deceased has also deposed on heresay.

101. PW-5 Dr. Virender Singh from Sarover Nursing Home has also not supported the case and denied the deceased being treated at his Nursing Home.

102. PW-12 Dr. M.M. Narnaware, who conducted post-mortem. The viscera was preserved but no opinion was recorded on the report.

103. From the date of marriage till the death took place, no complaint ever made against the appellants.

104. On 25.03.2001, on the opening of showroom of factory both the appellants attended the function. From 16.03.2001 till date of death the deceased remained with the parents only. Additionally PW4 Sh.J.S. Daani, father of the deceased has admitted all visits and participation of both the families.

105. The demand of diamond set on '*Karvachauth*' seems to be unbelievable, when the parents of deceased were not in position even to fulfill the demand of alleged ₹ 5 Lacs.

106. Keeping the above discussion into view, I am of the considered opinion, no cruelty was committed by the appellant. Demands of dowry has not been proved. Therefore, question of proximity of cruelty for demand of dowry does not arise. Cause of death has not been established. Admittedly, she died within 7 years of marriage, however, the appellants cannot be held guilty for the same.

107. Keeping the above discussion into view, I am of the opinion that learned Trial Judge has gone wrong in convicting both the appellants, therefore, I hereby set aside the impugned judgment dated 19.03.2009 and order on sentence dated 24.03.2009 and acquit both the appellants from all the charges.

108. Appellant No.1 is on bail. Her personal bond and surety bond stands cancelled.

109. Appellant No.2 is in custody, also has completed more than 06 years. Therefore, I direct the jail authorities to release him forthwith.

110. Copy of order be sent to Jail Superintendent, for compliance.

111. Accordingly, Criminal Appeal No.249 of 2009 stands allowed and disposed of.

112. No order as to costs.

SURESH KAIT, J

December 05, 2011

J/MK/jg