

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

% Judgment reserved on: 10.01.2014
Date of Decision: 20.01.2014

+ CRL.A. 540/2013
RAMESH KUMAR Appellant
Through: Mr R.S. Malik and Mr Sahil Malik,
Advs.
versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through: Mr. Feroz Khan Ghazi, APP for the
State.

+ CRL.A. 571/2013
SUNIL Appellant
Through: Mr R.S. Malik and Mr Sahil Malik,
Advs.
versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through: Mr. Feroz Khan Ghazi, APP for the
State.

+ CRL.A. 572/2013
SAHIB Appellant
Through: Mr R.S. Malik and Mr Sahil Malik,
Advs.
versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through: Mr. Feroz Khan Ghazi, APP for the
State.

+ CRL.A. 574/2013
RAJ RANI Appellant
Through: Mr R.S. Malik and Mr Sahil Malik,
Advs.

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through: Mr. Feroz Khan Ghazi, APP for the
State.

+ CRL.A. 576/2013
RAVINDER @ KUKU Appellant
Through: Mr R.S. Malik and Mr Sahil Malik,
Advs.
versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through: Mr. Feroz Khan Ghazi, APP for the
State.

+ CRL.A. 578/2013
MANJU Appellant
Through: Mr R.S. Malik and Mr Sahil Malik,
Advs.
versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through: Mr. Feroz Khan Ghazi, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

On 6.11.2009, deceased Priyanka, wife of the appellant Ramesh Kumar, daughter-in-law of the appellants Sahib Singh and Raj Rani and sister-in-law of the appellants Manju, Ravinder and Sunil was brought to Saroj Hospital & Heart Institute, Rohini by the appellant Ramesh with history of poisoning. The information in this regard was given by Duty Constable to Police Station Alipur and was recorded there vide DD No.21A. She died soon after arrival at the hospital and information in this regard as given by Dr. Ravi

Gupta of the hospital to the Police Station Alipur at about 8.30 pm and was recorded their vide DD No.14A. On death of Priyanka, statement of her father Shri Sukhbir Singh was recorded by the Special Executive Magistrate. In his statement, Shri Sukhbir Singh stated that Priyanka got married to Ramesh in April-2007, but one month after marriage, her in-laws started harassing her. He also alleged that one day they broke her nasal bone, for which she was operated in the hospital in Prashant Vihar. He further alleged that since very beginning, dowry was demanded from him and one day Priyanka informed him on telephone, of the beatings given to her and harassment meted out to her and asked him to call her back through her brother. After half an hour, Ramesh informed him on telephone that his daughter had consumed poison and they were taking her to Jagjivan Ram Hospital. He suspected that his daughter was killed for dowry. He named all the six appellants in his complaint to the Special Executive Magistrate. On the basis of statement given to him by Shri Sukhbir Singh, the Special Executive Magistrate directed registration of a case, whereupon an FIR under Sections 498A/304B of IPC was registered and the investigation was handed over to ASI Hari Om. The postmortem on the dead body of Priyanka was conducted in Babu Jagjivan Ram Samarak Hospital and four ante mortem injuries caused by blunt force were found on her dead body. Injuries number 1 and 2 were opined to be of recent duration whereas injuries number 3 and 4 were stated to be four-five days old.

2. All the appellants were charged under Section 498A and 304B of IPC read with Section 34 thereof. Since they all pleaded not guilty to the charge, as many as 17 witnesses were examined by the prosecution. One witness was also recorded in defence.

3. The following, according to the complainant, were the demands made by the appellants from time to time:-

- (a) demand by the appellant Sahib Singh of ring for himself and his father, chain and ring for Ramesh and ear-tops for his wife and daughter and one car, at the time the marriage talks took place;
- (b) demand and payment of Rs 70,000/- for honeymoon when Priyanka came to her house on 15.04.2007, the next day of marriage;
- (c) demand of Rs 10,000/- in cash, 10 costly suits and clothes for the entire family at the time of delivery of child by Priyanka. The demand is alleged to have been met;
- (d) demand and payment of Rs 15000/- for the operation of the child of Priyanka and Ramesh;
- (e) demand of Rs 3,00,000/- for General Staff Nurse training of Priyanka though the date of demand was not stated, Rs 1,00,000/- is alleged to have been paid by borrowing from Sonu, brother-in-law, the younger son of the complainant;
- (f) the appellant Ramesh called the complainant on 06.1.2009 at about 4.00 PM and handed over the phone to Priyanka who complained that she was beaten and was being asked to bring Rs 5,00,000/- from her father for purchase of a plot of land. One AC car is also alleged to have been demanded.

4. PW-3 Shakuntala Devi is the mother of the deceased Priyanka, whereas PW-8 Sandeep Kumar and PW-9 Karambir are her brothers. PW-3 has corroborated the deposition of the complainant as regards demand of ring for Ramesh, his father and grandfather and tops and chain for his mother and sister. She has also corroborated his deposition with respect to demand of Rs 70,000/- for honeymoon, demand of Rs 10,000/- and 10 suits at the time of birth of the child, demand of Rs 15,000/- for the treatment of the child and payment of Rs 1,00,000/- for training of Priyanka. She also stated that on 02.11.2009, Priyanka had told her that all the accused persons had demanded a big car for which she was beaten and thereafter she sent her son Sandeep to

her matrimonial house, but the accused persons asked for pardon. She, however, did not corroborate the deposition of the complainant with respect to demand of Rs 5,00,000/- on telephone on 06.11.2009 for purchase of plot.

5. PW-8 Sandeep Kumar has corroborated the deposition of the complainant with respect to demand of Rs 10,000/- and 10 costly clothes at the time of birth of the child and has claimed that the demand was made by father-in-law, mother-in-law, brother-in-law and sister-in-law of Priyanka on telephone. He also corroborated the deposition of the complainant with respect to payment of Rs 1,00,000/- for training of Priyanka. According to him, in August, 2009, when there was a quarrel between Priyanka and her husband, they reached her house on receipt of a telephone call from his sister and were told that Ramesh, Raj Rani, Sabih Singh, Manju and Ravinder had given beating to her to fulfil their demand of a big car. He also corroborated the deposition of complainant with respect to payment of Rs 15,000/- for the treatment of the child. He also claimed that on 02.11.2009, Priyanka called him on telephone and complained that her husband, father-in-law, mother-in-law, *Jeth* (brother-in-law), *Nand* (sister-in-law) and *Nandoi* (brother-in-law) were beating her and when he reached there and informed his father, the accused persons apologized. He also stated that on 06.11.2009, Priyanka called them on telephone and informed that her husband, father-in-law, mother-in-law, *Jeth* (brother-in-law), *Nand* (sister-in-law) and *Nandoi* (brother-in-law) had assembled and were planning to beat her.

6. PW-9 Karambir has also broadly corroborated the deposition of the complainant with respect to demand of jewellery at the time of talk of marriage, demand of Rs 70,000/- for honeymoon, demand of Rs.10,000/- along with 10 suits at the time of birth of the child and the demand of Rs 15,000/- for the treatment of the child. He also corroborated the deposition of PW-8 with respect to the beating given to Priyanka on 02.11.2009, in

connection with demand of a big car. According to him, Priyanka called his father on 06.11.2009 and informed that the accused persons were beating her.

7. In order to succeed in charge under Section 498-A IPC, the prosecution required to prove that the appellants had subjected deceased Priyanka to cruelty, as defined in the explanation to the Section. It is not every cruelty which is punishable under Section 498-A of IPC. The cruelty, as defined in the explanation to 498-A of IPC, is altogether different from the cruelty, which can be subject matter of proceedings, under the provisions of Hindu Marriage Act. The cruelty, so as to attract penal provisions, contained in Section 498-A of IPC, has necessarily to be a willful conduct which is of such a nature that it is likely to drive a woman to commit suicide or cause grievous injury or danger to her life or health. The use of the expression 'willful' in the explanation to Section 498-A of IPC indicates that the conduct attributed to the accused, in order to be culpable, needs to be deliberate, aimed at causing injury to the health of the woman or bringing misery to her. If the accused knows or is reasonable expected to know that his conduct is likely to cause injury to the life, limb or health of the aggrieved woman or if his conduct is of such a nature, that causing injury to the life, limb or health can be a natural consequence for the woman, who is recipient of such a conduct, it will attract criminal liability on the part of the husband or his relative, as the case may be. Everyone is presumed to intend the natural consequences of his act and such a presumption must necessarily be drawn even if there is no intention to cause any injury or harm to the woman. Whether the conduct in question is likely to drive the woman to cause injury to her life, limb or health, will depend upon a number of factors such as social and economic status of the parties, the level of awareness of the aggrieved woman, her temperament, state of her health, physical as well as mental and how she is likely to perceive such a behavior. If a woman is harassed with a view to coerce her or any of her relatives to meet any unlawful demand for any

property or valuable security, it will also constitute cruelty, as defined in the explanation to Section 498-A of IPC. Of course, the expression 'cruelty' would take in its ambit mental cruelty as well as physical torture of the woman. If the conduct of the accused with a woman is likely to cause a reasonable apprehension in her mind that her living with the husband will be harmful and injurious to her life and safety, such a conduct would attract criminal liability, envisaged in Section 498-A of IPC.

If the woman is harassed on account of her failure or the failure of her relatives to meet an unlawful demand for property or valuable security, that also constitutes cruelty, within the meaning of Section 498-A of IPC. The expression 'harassment' has not been defined in Section 498-A of IPC, but its dictionary meaning is to subject someone to continuous vexatious attacks, questions, demands or other unpleasantness, etc. But, it is not harassment of every nature which is punishable under Section 498-A of IPC. In order to attract criminal liability, there should be torture physical or mental, by positive acts. Such acts should be aimed at persuading or compelling the woman or her relatives to meet an unlawful demand of any property or valuable security or it should be actuated by the failure of the woman or her relative to meet such a demand.

Before a person can be convicted under this Section, which deals with what is described as 'dowry death', the prosecution must necessarily prove the following ingredients:-

- i. The death of a woman must have been caused by burn or bodily injury or otherwise than under normal circumstance;
- ii. Such death must have occurred within seven years of her marriage;
- iii. Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
- iv. Such cruelty or harassment must be for or in connection with demand for dowry;

v. Such cruelty or harassment is when to have been meted out to the woman soon before her death.

The term 'dowry' has not been defined in Section 304-B of IPC, but, since this expression has been defined in Section 2 of Dowry Prohibition Act, it is required to be given the same meaning for the purpose of under Section 304-B IPC as held by Hon'ble Supreme Court in **Satvir Singh & Ors. Vs. State of Punjab and Anr.** 2001 (4) Crimes 45.

Section 2 of Dowry Prohibition Act defines dowry as under:

"2. Definition of 'dowry'.- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

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

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

at or before ³[or any time after the marriage] ⁴[in connection with the marriage of the said parties, but does not include] dower or *mahr* in the case or persons to whom the Muslim Personal Law (*Shariat*) applies."

A careful analysis of the above-referred definition would show that dowry would include that property or valuable security which is actually given or which is agreed to be given, in relation to the marriage of person in question. The property or valuable security may be given or may be agreed to be given before marriage or at the time of marriage or at any time after the marriage, so long as it is connected with the marriage. But, there has to be a link between the property given or agreed to be given and the marriage. If at any time before or at the time of or even during marriage, the parents of a woman or any other person related or connected to her agree to give some

cash, valuable security or property to her husband or in-laws after marriage, that also would be covered within the definition of dowry as the agreement or promise in such a case would be attributable to the marriage or proposed marriage and if there is demand for any cash property, valuable security etc. which is promised, but not given, it would constitute demand for dowry. If the husband of the girl or any other person related or connected to him, demands something from the girl or her parents or any other person related to or connected with her, saying that the article being demanded by them was expected to be given or ought to have been given in marriage, that also, to my mind, would constitute demand of dowry because even though such an article may not have been agreed or promised to be given by the girl or her family members, it might have been in the contemplation of the boy and/or his family members, on account of the expectation that such an article would be given at the time of marriage. Therefore, such demand would be considered to be a demand in connection with the marriage though made after the marriage has been solemnized. Even demand of articles such as T.V., fridge, jewellery, clothes, furniture, car etc. which usually are given or expected in marriages in our country, would, considering the objective sought to be achieved by incorporating Section 304-B in Indian Penal Code and enacting Dowry Prohibition Act, 1961 fall within the purview of Section 304-B of IPC. In fact, in **Pawan Kr. & Ors. Vs. State of Haryana** AIR 1998 SC 958, the Hon'ble Supreme Court has specifically held demand of T.V., Fridge, etc. though not agreed to be given or promised or even demanded prior to or at the time of marriage, to be a demand for dowry for the purpose of Section 304-B of IPC. If cash or some property, etc. is demanded by the boy or his family members, after marriage, saying that they were expecting such cash, property, etc. to be given in marriage, and the girl, or her parents or any other person related or connected to her promise to fulfil such a demand, that also may fall within the purview of dowry, as the promise though made after marriage,

would nevertheless be referable to the marriage, having been made with a view to preserve the marriage. But, if the demand is made after marriage and it is in respect of a property or valuable security, which was not demanded, was not expected to be given and also was not in contemplation at any time up to solemnization of marriage, demand of such cash, property or valuable security, etc. cannot be said to be in connection with the marriage and, therefore, would not constitute demand of dowry.

In **Satvir Singh** (supra) while dealing with this issue, the Hon'ble Supreme Court, inter alia, observed as under:

“Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304B should be any property or valuable security given or agreed to be given in connection with the marriage.”

In **Appasaheb and Anr. Vs. State of Maharashtra**, AIR 2007 SC 763, the Hon'ble Supreme Court observed as under:

“In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India.”

Demand for something which has not been agreed to be given at any time before or at the time of marriage and which is not in the contemplation of the boy and/or his family members and which is neither expected by them to be given in the marriage, nor which is an article of the nature usually given in a marriage, cannot be said to be connected with the marriage. The use of the expression ‘in connection with the marriage of the said parties’ leaves no room for the interpretation that any and everything demanded after marriage, without anything more, would constitute demand of dowry. Such an interpretation would render the expression ‘in connection with the marriage of the said parties’ totally redundant and, therefore, cannot be said to have been intended by the Legislature. It is settled proposition of law that penal statutes need to be strictly construed and even if two views in the matter are

reasonably possible, the interpretation, which would favour the accused, needs to be given by the Courts. No doubt, Section 304-B of IPC is a social legislation aimed at preventing dowry deaths which is a social evil that needs to be eradicated at any cost. It is also difficult to deny that in our society there are demands other than those covered under the definition of dowry are made after the marriage and such demands do result in subjecting the girl to cruelty and/or harassment if she or her parents or relative are unable to fulfill the demand. Such a demand, if followed by cruelty or harassment would constitute offence punishable under Section 498-A of IPC. But, it is difficult to accept that the demands which are not at all referable to the marriage, would also constitute dowry demand punishable under Section 304-B of IPC in case the woman is subjected to cruelty or harassment for or in connection with such a demand. The remedy, to my mind, lies in the Legislature stepping in and making even such demands subject matter of offence punishable under Section 304-B of IPC.

8. As regards demand of ring for himself and his father, chain and ring for Ramesh and ear tops for his wife and daughter and one car by the appellant Shri Sahib Singh, father-in-law of Priyanka, at the time talks for marriage took place, I find that no such demand was alleged by Shri Sukhbir Singh, father of the deceased in his statement to the SDM on 7.11.2009. In fact, there is no allegation at all of any demand of jewellery, car or any other article, before the marriage of Priyanka with Ramesh. This allegation was made for the first time in the statement made to the Investigating Officer under Section 161 Cr.P.C. on 26.11.2009. Therefore, this part of deposition of the family members of Priyanka does not inspire confidence and appears to be an afterthought. In any case, there is no allegation of any of the appellants harassing the deceased or subjecting her to cruelty in connection with the aforesaid demand alleged to have been made at the time talks for marriage took place.

9. As regards demand of Rs.70,000/- for honeymoon at the time Priyanka came to the house of her parents on 15.7.2007, again there is no such allegation in the FIR registered on the statement of Shri Sukhbir Singh. Moreover there is no allegation of any harassment of Priyanka or any cruelty to her in connection with the aforesaid demand of Rs.70,000/- which is alleged to have been made, by her parents.

10. As regards demand of Rs.10,000/- in cash, ten (10) costly suits and clothes for the entire family at the time of delivery of child of Priyanka, again there is no allegation in this regard in the statement made by Shri Sukhbir Singh to the SDM and this allegation cropped up for the first time in the statement of Shri Sukhbir Singh made under Section 161 of Cr.P.C. on 27.11.2009. When the parents of Priyanka came in the witness box they did not allege any harassment of Priyanka in connection with the aforesaid demand.

11. As regards demand of Rs.15,000/- for treatment of the child of Priyanka and Ramesh, I find that there is no allegation in this regard in the statement made by Shri Sukhbir Singh to the SDM. This demand was alleged for the first time in the statement made to the Investigating Officer on 27.11.2009. In any case, the demand of money for the operation of the child could have been made only by Ramesh and not by any other appellant since it was the responsibility of Ramesh alone to arrange money for the treatment/operation of his child.

12. As regards demand of Rs.3.00 lakh by Ramesh and payment of Rs.1.00 lakh to him for the training of Priyanka, I find that there was no such allegation with respect to the said demand in the statement made by Shri Sukhbir Singh to the SDM. When the complainant came in the witness box he stated that the aforesaid money was arranged by him from his relative Sonu because he did not have sufficient money with him. However, Sonu has not been produced in the witness box. An adverse inference, therefore, needs

to be drawn against the prosecution that had Sonu been produced in the witness box he would have supported the case with respect to giving a loan of Rs.1.00 lakh to the complainant for the training of his daughter. In fact, even in his statement made under Section 161 of Cr.P.C. on 27.11.2009, no demand in this regard was attributed by the complainant or his wife to the appellant and the only averment made by them was that they had spent Rs.1.00 lakh on the training of Priyanka. If they had spent money on the training of Priyanka without there being any such demand from the appellants, that does not constitute any offence punishable under Section 498A or 304B or 306 of IPC by the appellants.

13. As regards demand of Rs.5.00 lakh through Priyanka on telephone on 6.11.2009 for the purchase of a plot and demand for an AC car at that time, I find that, in his statement to the SDM though the complainant alleged that a quarrel took place between Priyanka and Ramesh on 6.11.2009, he did not claim that Priyanka had told him, in the presence of Ramesh that she was being beaten and asked to bring Rs.5.00 lakh for purchase of a plot besides an AC car. The statement to the SDM was made on 7.11.2009, i.e., on the very next day of the alleged demand. It is extremely difficult to believe that while making statement before the SDM on the very next day of the incident, the complainant despite his mental state at that time, would have failed to refer to this demand. Having taken place just a day earlier, the above referred incident would certainly have been fresh in the mind of the complainant, when he made the statement before the SDM on 7.11.2009 and, therefore, omission to refer to the said demand in the statement made to the SDM creates serious doubt on the truthfulness of the deposition in the Court in this regard. Moreover, even in his statement under Section 161 of Cr.P.C. made on 27.11.2009, the complainant did not refer to any such demand on 6.11.2009, though he did say that on that day Priyanka had informed him on telephone that she was beaten by her in-laws. More importantly, neither the

mother of Priyanka nor either of her brothers referred to any such demand, either when they were examined in the Court or in their statements under Section 161 of Cr.P.C. I also find that according to PW8-Sandeep Kumar, Priyanka had told them on telephone that her in-laws were planning to beat her. He did not say that Priyanka had complained that she was being asked to bring Rs.5.00 lakh for purchase of a plot and for an AC car. PW9-Karamvir also did not refer to the demand of Rs.5.00 lakh for purchase of a plot on 6.11.2009 and only alleged beatings to Priyanka. Smt. Shakuntala Devi, mother of Priyanka, also did not corroborate the deposition of her husband with respect to demand of Rs.5.00 lakh and an AC car on 6.11.2009.

Therefore, it would be difficult for the Court to accept the deposition of the complainant made in the Court in this regard.

14. In his deposition in the Court PW8, Sandeep Kumar, brother of the deceased, Priyanka, stated that in August, 2009, there was a quarrel between Priyanka and Ramesh and when he reached their house on being informed in this regard by Priyanka, he was told that the appellants, Ramesh, Raj Rani, Sahib Singh, Sunil, Manju and Ravinder, all had given beatings to her to fulfill their demand for a big car. However, the name of none of these appellants was given by this witness in his statement under Section 161 Cr.P.C. with respect to the beatings given to Priyanka in August, 2009. If the quarrel took place between Priyanka and her husband, the logical inference would be that she was beaten by her husband alone and not by other appellants, who, in any case, were not residing with Priyanka and Ramesh. It would be pertinent to note here that Priyanka and Ramesh had admittedly started residing separately on the upper floor of the house about one (1) year after the marriage. Admittedly, neither the sister-in-law (Nanad), Manju and brother-in-law (Nandoi), Ravinder nor her brother-in-law (Jeth) Sunil, were residing with Priyanka and her husband. Therefore, there could be no occasion for them to give beatings to Priyanka.

15. It has come in the deposition of Smt. Shakuntala Devi that on 2.11.2009, Priyanka had told her that the appellants had demanded a big car for which she was beaten and thereafter she had sent her son, Sandeep, to her (Priyanka) matrimonial home. However, there is no reference to this demand in the deposition of the complainant, Shri Sukhbir Singh, nor was any such demand referred to in his statement to the SDM. More importantly, considering the financial status of the family of Priyanka, it is highly improbable that either Ramesh or his family members would demand an imported car from them. In the ordinary course of human conduct no one is likely to make a demand which he knows could be impossible for his in-laws to fulfill. In any case, the demand for car could have come only from Ramesh since his parents were not residing with him and his sister, her husband and his brother were residing altogether separately. In the facts & circumstances of the case, I am inclined to believe the depositions of PW3, Smt. Shakuntala Devi, PW8, Sandeep and PW9 Karambir in this regard only to the extent that deceased Priyanka was beaten by her husband on 2.11.2009 and on coming to know of it from Priyanka, her brother visited them and Ramesh and may be his parents apologized for the beatings given by Ramesh to Priyanka.

16. DW1, Head Constable Ram Niwas is the police official who on receipt of a copy of DD No.27A dated 9.10.2008 recorded at Police Station Alipur went to the place of the appellant Ramesh in Village Ramzanpur and made inquiry from Priyanka. Ex.DW2/A is the complaint made by Ramesh. In his complaint to the SHO, dated 9.10.2008, Ramesh alleged that Priyanka had beaten him and also gave a tooth bite on his right hand. DW1 recorded the statement of Ramesh as well as Priyanka on 23.11.2008 which are Ex.DW1/B and DW1/C respectively. In his statement, Ramesh alleged that Priyanka had been abusing and maltreating him. He also alleged that she had been saying that she did not like him and his family and shall not live with him. In her statement, Priyanka alleged that since about 1½-2 months of her marriage, her

husband used to abuse her and her husband had beaten her a number of times. She further alleged that her husband suspected her and she had informed her family members about it. She also alleged that though she has started residing separately from her in-laws, along with her husband and child, on the upper floor of the house, her husband continued to fight with her and used to say that he had no connection with her. She also stated that she was fed up with her husband and did not want to live with him. It would, thus, be seen that, no demand of dowry was alleged by Priyanka in this statement. No beating to her in-laws was attributed by her and her allegation was that it was her husband Ramesh who had suspicion on her and had been beating her.

17. In my view, the prosecution has failed to prove any cruelty to or harassment on Priyanka in connection with the demand of dowry, soon before her death on 6.11.2009. Therefore, no offence under Section 304B of IPC stands proved against any of the appellants. No cruelty to or harassment of Priyanka by any of the appellants other than Ramesh, could be proved beyond reasonable doubt. Hence, the charge under Section 498A of IPC does not stand established against any of the appellants except appellant Ramesh.

18. During the cross examination of PW3 Smt. Shakuntala Devi, it was suggested to her that due to one Vicky, who appears in the photograph mark A and who is related to one Mahender Singh Gehlot, who in turn is related to the witness, Priyanka used to quarrel with the appellant Ramesh due to Vicky and for that reason she did not want to stay with Ramesh. It was further suggested to her that appellant Ramesh never allowed Vicky to enter his house as he never liked him. It was also suggested to the witness that because of the said reason, Ramesh used to call them and complain about the conduct of Priyanka. The above referred suggestion given to PW3 clearly indicates that the appellant Ramesh suspected that Priyanka liked Vicky, did not want to marry him (Ramesh) and the couple used to quarrel with each other on the issue of Vicky visiting their house. In fact, during the course of arguments

also, the contention of the learned counsel for the appellants was that Priyanka was having an affair with Vicky and that is why she did not like Ramesh at all. The person named Vicky also appears in the photograph mark C sitting, between Priyanka and Ramesh. It was suggested to PW8 Sandeep Kumar that the above referred person was present throughout the marriage and due to interference by him Priyanka used to quarrel with Ramesh. Yet another suggestion given to this witness was that Ramesh never allowed Vicky to enter his house and, therefore, Priyanka used to quarrel with him. It was also suggested to the witnesses that Ramesh used to complain about the aforesaid conduct of Priyanka to his parents. When PW9 Karamvir was cross examined, it was suggested to him that Priyanka used to quarrel with Ramesh over Vicky and Ramesh never liked visits of Vicky to his house. As noted earlier, in her statement recorded by DW1 on 23.11.2008 also Priyanka had stated that the appellant Ramesh used to suspect her. The above referred facts and circumstances clearly show that the appellant Ramesh suspected that Priyanka likes Vicky and was having an affair with him and the couple used to quarrel with each other on account of the above referred suspicion harboured by Ramesh.

19. The above facts and circumstances leaves no reasonable doubt and in fact it is an admitted case that the relationship between the appellant Ramesh and Priyanka were far from cordial and the couple used to frequently fight with each other. The statement made by Priyanka to DW1 HC Ram Niwas also shows that during the course of quarrel, Ramesh used to give beatings to her and she was totally fed up with the same.

As noted earlier, it has come in the deposition of PW3, PW8 and PW9 that on 2.11.2009, the couple had a quarrel with each other and during that quarrel also Ramesh had given beatings to Priyanka. It has also come in the deposition of the witnesses that sometime in August, 2009, Ramesh had

caused injuries on the nose of Priyanka for which she was treated in a hospital in Prashant Vihar, Delhi. The aforesaid incident also finds mention in the complaint which Shri Sukhbir Singh made with SDM on 7.11.2009, immediately after the death of Priyanka. Ex.PW7/A is a certificate issued by Dr. Mahesh Anand of Anand E&T Hospital. Though the certificate was issued on 29.11.2009, it refers to the treatment of Priyanka in the aforesaid hospital on 29.8.2009. As per this certificate, Priyanka came to the hospital on that date with history of assault by her in-laws followed by nasal bleeding and after setting of nasal bone no local deformity, she was discharged on the same day. The doctor who issued the aforesaid certificate came in the witness box as PW7 and stated that on 29.8.2009, Priyanka had come with history of assault by her in-laws followed by nasal bleeding and on her examination, he found bone deformity in the nasal bridge. Though this doctor did not refer the matter to police, he explained that since the patient did not want the matter to be referred to police, no such course of action was adopted by him. There was nothing unusual in Priyanka not wanting to report the matter to the police since despite incessant quarrels with Ramesh, she was not contemplating any legal action against him and it is not unusual for the doctor to accede to the request of the patient not to report such family incidents to the police when the injured herself does not want the matter to be reported. Though neither his hospital had a radiologist nor any x-ray of Priyanka has been produced, I find no reason to reject the oral testimony of the doctor who had no reason to make a false statement. The deposition of doctor coupled with the certificate issued by him, corroborates the oral depositions of PW3, PW8 and PW9 with respect to the injuries caused at the nose of the deceased Priyanka by the appellant Ramesh.

20. PW10 Dr. K. Goyal conducted postmortem on the dead body of Priyanka and found the following injuries on her body:

1. Reddish bruise 1.5x1 cm over lateral side of right malar region, 2x2 cm over upper lateral aspect of right arm.
2. Reddish abrasion 3x1 cm over top of left shoulder
3. Dark brown scabbed abrasion slightly separating at margins of size 3x2 cm over lateral aspect of left elbow.
4. Diffused bruise 9x6 cm bluish green in colour over middle front of left thigh.

Injuries no.1 and 2 were recent in duration and injuries no.3 and 4 were 4-5 days old. Though, he admitted that injuries number 1 and 2 could be possible by way of fall, there is no evidence of the deceased Priyanka having fallen soon before her death on 6.11.2009. When the appellant Ramesh came in the witness box as DW2 he did not claim that Priyanka had fallen soon before she was taken to hospital and had suffered the aforesaid injuries at that time. The above referred fresh injuries corroborate the deposition of the prosecution witnesses with respect to Priyanka calling on her to her father on 6.11.2009 and complaining about the beatings given to her. Injuries number 3 and 4 which were found to be about 4-5 days old corroborates the deposition of the witnesses with respect to beatings given to Priyanka on 2.11.2009, for which the appellant Ramesh had apologized to her father.

21. In the facts and circumstances of the case, I am of the considered view that since the appellant Ramesh suspected that his wife did not like him and was having a sort of affair with one Vicky, there used to be quarrel between the couple about this issue and the appellant Ramesh used to frequently giving beatings to Priyanka during the course of such quarrels.

22. If the husband of a woman since the time of marriage suspects that she had a pre-marital affair or has an extra martial affair and during the quarrel on account of such suspicion frequently gives beatings to her, such a willful

conduct on the part of the husband is likely to drive a woman of average temperament either to commit suicide or to cause grave injuries or danger to her life limb or health. She may for sometime tolerate such an insinuation on the part of her husband in the hope that his suspicion would subside with the passage of time, but she may not be able to live with an insinuation forever, particularly when the suspicion of the husband is accompanied by frequent beatings and physical injuries to her. Sooner or later, a stage is likely to come in the life of such a woman, when she would be unable to cope up with such misbehavior and physical violence and will be driven to the extreme step bringing an end to her continuous miseries by committing suicide. A woman may withstand the physical violence at the hands of her husband, but she cannot accept, indefinitely, her character assassination at the hands of her husband. The miseries of such a woman become more acute when such character assassination is also accompanied by physical violence at the hands of her husband. The husband, if he persistently suspects the character of his wife and subjects her to physical violence on account of such suspicion, creates a situation which leaves the wife with no option but to bring her continuous mental and physical torture to an end by taking her own life. The husband, in such circumstances, would certainly be guilty of causing physical cruelty within the meaning of Section 498 of IPC.

23. Section 113A of Evidence Act, which came to be inserted with effect from 25.12.1983, to the extent it is relevant provides that when the question is whether the commission of suicide by a woman had been abetted by her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband. For the purpose of above Section cruelty has the same meaning as given in Section 498A of IPC.

24. In the facts and circumstances of the case, as discussed hereinabove, the Court shall be justified in drawing a statutory presumption under Section 113A of the Evidence Act and presuming that the appellant Ramesh had abetted suicide by his wife, by her character assassination and subjecting her to repeated physical violence, on account of suspicion about her character. Though the above referred statutory presumption is rebuttable, the appellant has not been able to discharge the burden placed upon him. No other reason for committing suicide by Priyanka has come on record and the evidence produced during trial proves beyond reasonable doubt that Priyanka committed suicide only because of the mental and physical cruelty to which she was subjected by her husband.

25. Though the appellant Ramesh was not charged under Section 306 of IPC, there would be no necessity of framing a separate charge under Section 306 of IPC against him considering that he was charged under Section 498A as well as 304B of IPC.

In K. Prema S. Rao and another versus State of Andhra Pradesh [(2003) 1 SCC 217], the Apex Court found that though the deceased woman was subjected to cruelty and harassment, that was not in connection with any demand of dowry, referring to the definition of cruelty as given in Section 498A of IPC and the statutory presumption under Section 113A of Evidence Act, the Apex Court noticing that the wife had committed suicide within seven years of her marriage, held that the case of conviction and sentence under Section 306 of IPC had been clearly made out even though acquittal for the offence under Section 304B of IPC could not be disturbed. The Apex Court, rejected the contention of accused that in the absence of charge, he could not be convicted under the aforesaid Section, noticing that all the facts and ingredients constituting the said offence were written in the statement of charge. In the case before this Court also, the charge against the appellant

Ramesh referred to subjecting the deceased Priyanka to mental and physical cruelties as also to her death other than those under normal circumstances within seven years of her marriage. Moreover, as noted by the Apex Court, mere omission or defect in framing the charge does not disable the criminal court from convicting the accused for the offences which is found to have been proved, on the basis of evidence on record and mere omission on the part of trial Judge to mention Section 304B of IPC does not preclude the Court from convicting the accused, for the said offence, when found proved. The Court in this regard also placed reliance upon the provisions of Sections 215 and 221 of Cr.P.C. The Apex Court felt no necessity to remit the matter to the trial court to frame charge under Section 306 of IPC and directing retrial of that charge.

A similar view was taken by the Apex Court in Rajeev Kumar versus State of Haryana [2013 (13) Scale 410], where the Hon'ble Supreme Court, referring to the decision in K. Prema S. Rao (supra) and relying upon section 113 A of the Evidence Act, convicted the appellant under Section 498A and 306 of IPC.

26. For the reasons stated hereinabove, the conviction of appellant Ramesh under Section 498A is confirmed. He is acquitted of the charge under Section 304 B of IPC but is convicted under Section 306 thereof. The appellants Sunil, Sahib Singh, Raj Rani, Ravinder @ Kuku and Manju are acquitted of all the charges framed against them.

27. The appellant Ramesh is sentenced to undergo RI for two years and to pay a fine of Rs.2,000/- or to undergo SI for three months in default of payment of fine under Section 498A of IPC. He is also sentenced to undergo RI for five years and to pay a fine of Rs.10,000/- or to undergo SI for six months in default of payment of fine under Section 306 of IPC. Both the

sentences shall run concurrent. The appellant Ramesh shall also be entitled to benefit of Section 428 of Cr.P.C. He is directed to surrender forthwith before the Trial Court to undergo the remaining sentence. If he does not surrender forthwith, the Trial Court shall take steps to procure his presence and commit him to prison to undergo the remaining sentence.

All the appeals stand disposed of accordingly.

JANUARY 20, 2014/*rd/bg/b'nesh*

V.K. JAIN, J.