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

Date of Decision: 5th January, 2015

+CRL.A. 200/2011

RAM KUMAR @ RAJESH

..... Appellant

Through: Mr. R.N. Sharma, Advocate

versus

STATE

..... Respondent

Through: Ms. Jasbir Kaur, Additional Public
Prosecutor for the State along with ASI
Pradeep Kumar, PS Aman Vihar.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The present appeal has been preferred against the conviction and sentence of the appellant dated 12th November 2010 and 15th November 2010 respectively whereby the appellant was convicted for offences under Section 304B/498A of the Indian Penal Code 1860 (hereinafter referred as IPC) and was sentenced to undergo Rigorous Imprisonment for ten (10) years for offence u/s 304B IPC and Rigorous Imprisonment for three (3) years and fine of Rs 10,000 in default of which to undergo Simple

Imprisonment for 5 months for offence u/s 498A IPC. Benefit u/s 428 Cr.P.C was also given to the appellant.

2. The gravamen of the prosecution case succinctly stated is as under:-

The appellant got married to Seema on 8th July 2003. However on 29th September 2007, Seema (hereinafter referred to as deceased) committed suicide by hanging herself in her matrimonial home. Information in the form of DD no. 26-B (Ex.PW11/A) was received on 29th September by Inspector Shyam Singh, posted at PS Aman Vihar that a lady named Seema had been admitted to Sanjay Gandhi Memorial Hospital(SGMH). He along with Constable Satbir reached the hospital. The deceased was declared brought dead by the doctor. The dead body of Seema was shifted to the mortuary in SGMH. Thereafter, they reached the spot i.e. D-234, Inder Enclave, Phase-II, Mubarakpur, Aman Vihar, Delhi where the crime team was called. They inspected the spot and photographs were taken. One printed *lungi* lying in the room which was used for hanging was seized vide seizure memo Ex.PW15/A. Statement of the parents of the deceased were recorded on 1st October, 2007 and Executive Magistrate made his endorsement. Postmortem of the dead body of the deceased was conducted and the dead body was then handed over to the parents of the deceased. Thereafter, case was registered

vide FIR no. 41/07 u/s 498A/304B/34 IPC and further investigation was entrusted to Inspector Deen Dayal.

On 1st October 2007, appellant Ram Kumar was arrested vide arrest memo Ex PW14/A. On 20th December 2007, the rest of the accused in the case namely Bhuri Singh, Shri Niwas, Ram Nath and Lavkesh were arrested. The disclosure statements of the accused persons were also recorded and after completion of the investigation, charge sheet was filed against the appellant and the other accused persons under sections 498A/304B/34. The appellant and the co-accused persons were then committed to the court of Sessions, where they pleaded not guilty to the charge and claimed trial.

3. At the trial, the prosecution examined as many as 16 witnesses to prove its case. All the incriminating evidence was put to the accused persons while recording their statements under Section 313 Cr.P.C. wherein they denied the case of prosecution and claimed false implication in the case. Appellant Ram Kumar took the plea that he kept his deceased wife with love and care and the entire allegations levelled against him are without any substance and that the complainant had falsely implicated him for the purpose of extorting money. None of the accused preferred to lead any evidence in their defence.

4. After considering the evidence adduced by the prosecution, the learned trial court held that in view of the testimonies of the parents of the deceased namely PW1 Phoolwati and PW2 Hari Ram, it was clear that the prosecution has been able to prove beyond reasonable doubt that accused Ram Kumar @ Rajesh subjected the deceased Seema to cruelty or harassment for or in connection with demand of dowry and such cruelty or harassment was meted out to the deceased Seema soon before her death and accordingly convicted him u/s 304B/498A IPC and sentenced him as mentioned above. As regards the other accused persons, Learned Additional Sessions Judge held that the allegations against them are vague and general in nature and that the prosecution had failed to bring home the guilt against them beyond reasonable doubts and therefore acquitted them of all the charges.

5. Aggrieved by his conviction and sentence imposed upon him, the present appeal has been preferred by the appellant.

6. Challenging the findings of the learned Additional Sessions Judge, learned counsel for the appellant, Mr R.N. Sharma submitted that the learned trial court failed to appreciate that the allegations levelled by PW1 Phoolwati and PW2 Hari Ram are not only vague and general in nature but the same suffer from material contradictions. It was further submitted that

the amount of Rs.10,000/- and Rs.5000/- which PW1 claimed to have given to her daughter were meant for day-to-day household expenses and as such even assuming the prosecution case to be gospel truth without admitting the same, even in that case the same cannot be covered within the definition of “Dowry” as defined under Section 2 of the Dowry Prohibition Act. It was also submitted that during the subsistence of marriage of deceased with the appellant, there was absolutely no complaint either to the mediators or to any other authority and neither PW1 nor PW2 ever approached any of the accused persons including the appellant by making any complaint of any kind to them regarding the harassment or the demand of money claimed by them and as such their testimonies does not inspire confidence. Furthermore, prosecution has failed to produce any other evidence except bald statement made by the parents of the deceased and there is no evidence available on record which may lead to the conclusion that the deceased was subjected to cruelty or harassment soon before her death and as such prosecution has miserably failed to satisfy requirements of Sections 304B IPC. In the absence of any nexus between the death of the deceased and the alleged dowry related harassment, no offence u/s 304B and 498A IPC can be said to be made out. The learned Trial Court has given undue weightage to the vague and inconsistent statements of interested witnesses being the parents

of the deceased. It was further submitted that the learned trial court has convicted the appellant only on account of the fact that he is the “designated” and unfortunate husband of the deceased, otherwise there is absolutely not even a single allegation which may separate the case of the appellant when compared to the role attributed to the other acquitted persons and the allegations are not specific qua the appellant and hence he is liable to be acquitted of the charges against him.

7. Per contra, it was submitted by Ms. Jasbir Kaur, learned Additional Public Prosecutor for the State that the essential ingredients of Section 304B IPC are fully attracted in the instant case, inasmuch as, it stands proved that the deceased committed suicide within seven years of marriage. From the testimony of PW1 and PW2, it is proved that the deceased was subjected to harassment on account of demand of dowry which compelled the deceased to take the extreme step of committing suicide. Moreover, the death had taken place within the matrimonial home. As such, it was for the accused to explain as to why the deceased committed suicide. As regards certain variations in the testimony of the prosecution witnesses, it was submitted that parents of the deceased belong to a poor strata of society and are uneducated persons and therefore, certain variations have crept in their testimony. But on material aspects, their testimony goes unchallenged and

there is no reason to disbelieve the same. Under the circumstances, the appellant was rightly convicted by the learned Trial Court. The impugned judgment does not suffer from any infirmity which calls for interference. As such the appeal is liable to be dismissed.

8. I have given my anxious thoughts to the respective submissions of learned counsel for the parties and have also perused the Trial Court record.

9. The dowry system is in existence from time immemorial in different forms and in different sects of society. The sacred ties of the marriage are given deplorable form and the vows taken by the husband at the alter of marriage are pushed in oblivion and continuous demand every now and then is either directly made by the husband or his relatives to the parents of the bride at the time of marriage or subsequent thereto.

10. Section 2 of the Dowry Prohibition Act, 1961 (hereinafter to be referred as 'the Act') defines the term 'dowry' as under:

“Sec. 2 Definition of 'Dowry': In this Act “dowry” means any property or valuable security given or agreed to be given either directly or indirectly-

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

(b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person, at or before (or any time after the marriage) (in connection with the marriage of the said parties), but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

11. Section 304-B Indian Penal Code which deals with dowry death, reads as follows:

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

Explanation.--For the purpose of this Sub-section, '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.

12. The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B Indian Penal Code, the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

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

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

“113-B. Presumption as to dowry death.--When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman 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 304-B of the Indian Penal Code (45 of 1860).”

14. Supreme Court in a recent case of **Sultan Singh v State of Haryana** 2014 XI AD(SC)15 held:

*“14. We may also note that the presumption under Section 113-B of the Indian Evidence Act has been enacted to check the menace of the dowry deaths and in appreciating the evidence, the social background of the legislation cannot be ignored. In **Pawan Kumar v. State of Haryana**, 11 WR Cr. 25, it was observed:*

11. It is true, as argued by learned Counsel for the Appellants, that in criminal jurisprudence benefit of doubt is extendable to the

accused. But that benefit of doubt would arise in the context of the application of penal law, and in the facts and circumstances of a case. The concept of benefit of doubt has an important role to play but within the confines of the stringency of laws. Since the cause of death of a married woman was to occur not in normal circumstances but as a "dowry death", for which the evidence was not so easily available, as it is mostly confined within the four walls of a house, namely the husband's house, where all likely accused reside. Hence the aforesaid amendments brought in the concept of deemed "dowry death" by the husband or the relatives, as the case may be. This deeming clause has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost. of course, the prosecution has to prove the ultimate essential ingredients beyond all reasonable doubt after raising the initial presumption of "deemed dowry death."

15. The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10.08.1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B Indian Penal Code and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the

demand of dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:-

- (1) The question before the court must be whether the accused has committed the dowry death of the woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B Indian Penal Code);
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives;
- (3) Such cruelty or harassment was for or in connection with any demand for dowry;
- (4) Such cruelty or harassment was soon before her death.

16. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B Indian Penal Code are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case

presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B Indian Penal Code and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be

existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

17. Adverting to the case in hand, it is undisputed case of the parties that the deceased got married to the appellant on 8th July 2003. The deceased committed suicide on 29th September 2007, hence, the incident occurred within seven years of the marriage

18. It also stands proved that the death of the deceased was not caused under normal circumstances. PW13 Dr. V.K Jha, Medical Officer at Babu Jagjivan Ram Memorial Hospital conducted the post-mortem on the body of Seema aged about 23 years w/o Ram Kumar and gave his report Ex.PW13/A. He deposed that on internal examination, the stomach mucosa was hemorrhagic. On examination of uterus, it contained dead female foetus of weight 2.5 kg and length 34 cm. He opined that the cause of death is asphyxia as a result of ligature pressure on neck structure produced by antemortem ligature hanging. Investigating Officer PW15 Inspector Shyam Singh had deposed that when they reached the spot i.e. the matrimonial house of the deceased, One *Printed Lungi* was lying in the room which was used for hanging and the same was thereafter seized vide seizure memo Ex

PW15/A. Under the circumstances, it stands proved that the deceased committed suicide. Therefore, it is proved that the deceased died “otherwise than under normal circumstances” since suicide committed by a woman comes within the purview of Section 304B IPC as held by Hon’ble Supreme Court in *Smt. Shanta and Anr. v. State of Haryana*, 1991 Cr.LJ 1713; *Kans Raj v. State of Punjab*, 2000 Cr.L.J. 2993 & *Satvir Singh & Ors. v. State of Punjab*, 2001 Cr.LJ 4625.

19. It is now to be seen whether deceased Seema was subjected to cruelty or harassment by appellant and whether the same was in connection with demand of dowry.

20. The prosecution case mainly depends upon the testimony of the parents of the deceased namely PW1 Phoolwati and PW2 Hari Ram. It has come in their testimony that their daughter Seema got married to accused Ram Kumar on 8th July 2003 as per the Hindu rites. They gave dowry articles to the accused persons at the time of marriage of their daughter Seema as per the demand made by them. They further deposed that their daughter was treated well for one year after the marriage. Thereafter all the accused namely, Bhoori Singh, Ram Kumar(appellant), Sri Niwas, Ram Nath and Lavkesh Kumar started harassing their daughter and was asked by the accused persons to bring money from her parents. This fact was told to

them by Seema whenever she visited their house or talked with them. They gave money to their daughter several times as per the demand made by the accused persons as per their financial position but even then accused continued to harass and subjected their daughter to cruelty and again demanded money. It has further come in their testimony that in the year 2006 on Raksha Bandhan, Seema came to their house and informed about the demand of Rs.10,000/- from her. Thereafter, PW1 gave Rs 10,000 to her daughter to give the same to the accused persons and also pacified her by saying “*beti tu chinta matkar sab kuch theek ho jayega*”. Although PW2 Hari Ram has stated this amount as Rs 5000 but this is only a minor variation. They further deposed that six months after that all the accused persons gave beatings to their daughter and she was sent to their house to bring money from them. At that time PW1 was able to arrange Rs 5000 only and gave the same to her daughter to hand it over to the accused persons and again pacified her. They further requested the accused persons not to raise any further demand of money as they are poor persons and earn their livelihood by selling some clothes by way of pheri. But all the accused persons did not pay any attention to their request and continued to harass their daughter on account of not fulfilling their demand of dowry. It has also come in their testimony that thereafter their son-in-law Raj

Kumar(appellant) demanded money from them and despite their hardship, they paid a further sum of Rs.1000/- to him in their house. Despite the request, all the accused persons gave beatings to Seema and further asked her to take her share from the property of her father and threatened her that if she failed to bring her share of the property, they will kill her. Thereafter they requested accused persons that they have to look after a large family and it would be very difficult for them to give or transfer the share of their property to their daughter or son-in-law, however, the accused persons did not accept their request. It has further come in their testimony that the demand of the share of property was made by the accused persons one month prior to the death of their daughter. On 29th September 2007, they learnt about the death of Seema in the evening. Thereafter they went to the police station and came to know that the dead body of Seema was lying at Sanjay Gandhi Hospital Mortuary. They got their separate statements recorded on 1st October 2007 before the SDM which is Ex. PW1/A and Ex.PW2/B. The mother of the deceased also deposed that at the time of death, her daughter was 5-6 months pregnant.

21. Both these witnesses had been cross-examined at length but except for some minor variations, nothing material could be elicited to discard their testimony.

22. Learned counsel for the appellant submitted that the allegations levelled by PW1 and PW2 are not only very vague and general but also full of material contradictions.

23. While appreciating the evidence, the Court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without affecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons. {Vide: ***State Represented by Inspector of Police v. Saravanan and Anr.***, AIR 2009 SC 152}.

24. In ***State of Rajasthan v. Smt. Kalki and Anr.***, AIR 1981 SC 1390, while dealing with this issue, Hon'ble Supreme Court observed as under:

"8.....In the depositions of witnesses there are always normal discrepancies, however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person."

25. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

26. In the instant case, the testimonies of PW1 and PW2 were recorded in 2008. It must be borne in mind that some of the incidents stated by them occurred two-three years prior to the recording of the statement. Moreover, these two witnesses are illiterate persons and hence some contradictions and variations are bound to occur but these may be regarded only as minor variations and in any event cannot be stated to be of such nature as to destroy the root of the prosecution case. PW1 and PW2 have corroborated each other on the fact that the deceased was being beaten and threatened with regard to taking a share of the property of her father. PW1 and PW2 have also corroborated each other with regard to the demands but there are only some contradictions with regard to the amount that was given to their daughter in fulfilling the demand of the accused. However, the same is irrelevant as it is clear that there were specific demands made by the appellant with regard to money and also with regard to the share in the

property of PW2 Hari Ram. Hence, the contradictions as submitted by the learned counsel can only be termed as minor contradictions which should not be given undue importance and only pertains to the insignificant aspects and therefore the same is not sufficient to discard the testimony of these witnesses.

27. Learned counsel for the appellant has also submitted that the amount of Rs.10,000/- and Rs.5000/- which PW1 claimed to have given to her daughter were meant for day-to-day household expenses and as such even assuming the prosecution case to be gospel truth without admitting the same, even in that case the same cannot be covered within the definition of “Dowry” as defined under section 2 of the Dowry Prohibition Act.

28. The word “dowry” in Section 304B IPC has to be understood as it is defined in Section 2 of the Dowry Act. There are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". When Section 304B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of “dowry” under the Act. The argument that there is no demand of “dowry” in the present case, has no force. In cases of dowry deaths and

suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride.

29. In view of the statements of PW1 Phoolwati and PW2 Hari Ram, it is clear that there were continuous demands for money by the accused and that she was beaten and harassed in order to fulfil those demands. The submission of the appellant that the amount claimed to have been given by these two witnesses to her daughter were only meant for day-to-day expenses and the same cannot be covered under the meaning of “dowry” is devoid of merit. These two prosecution witnesses have specifically stated that on three different occasions, their daughter told them that the accused persons were demanding money and that they also gave her beatings. On one occasion, the appellant himself visited the parents of the deceased and demanded money from them. Thereafter, there was also a demand for a share in the property of PW2 just one month prior to her suicide and she was beaten and threatened of being killed if the same was not fulfilled. These demands for money were not with regard to any financial stringency of the

appellant but were made to her parents in connection with her marriage. Moreover the demand for a share of property comes well within the meaning of “dowry”.

30. Hence, it is proved that the deceased was subjected to cruelty and harassment by the appellant and the same was in connection with demand of dowry.

31. Let us now see whether the last ingredient under Section 304B IPC being that such cruelty or harassment is shown to have been meted out to the woman “soon before her death” is proved or not.

32. Supreme Court in *Mustafa Shahadal Shaik v The State of Maharashtra* 2012(11)SCC397 held as follows:

“8. To attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304B Indian Penal Code and Section 113B of the Evidence Act is present with the idea of proximity test. In fact, learned counsel appearing for the Appellant submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to the same while considering the evidence led in by the prosecution. Though the language used "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the

*alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. These principles have been reiterated in **Kaliyaperumal v. State of Tamil Nadu**, AIR 2003 SC 3828 and **Yashoda v. State of Madhya Pradesh**, (2004) 3 SCC 98.”*

33. With these principles in mind, let us analyze whether the cruelty or harassment meted to the deceased was “soon before the death”. Both the parents of the deceased have deposed that in the year 2006 on Raksha Bandhan, their daughter came to their house and told them that the accused were demanding money from her. Thereafter, they deposed that six months after that, their daughter was beaten and sent to their house for bringing money from them. In the month of August, 2007, i.e., one month prior to the incident, she was beaten by the accused and sent to their house and was also threatened that if she failed to get a share of the property of her father, she would be killed. As such, it is proved that the deceased was subjected to cruelty and harassment by the appellant soon before her death.

34. As regards the submission of learned counsel for the appellant that there was absolutely no complaint either to the mediators or to any other authority and PW1 or PW2 never approached any of the accused persons including the appellant by making any complaint of any kind to them regarding the harassment or the demand of money claimed by them and as such their testimonies does not inspire confidence is devoid of merit. The

mere fact that no complaint was made by the parents of the deceased either to the mediators or in the Anti-Dowry Cell regarding illegal demands of dowry or harassment by the accused does not lead to conclusion that no such demands were made because it is clear from the testimony of the mother that she was repeatedly trying to pacify her daughter and was hopeful about things getting better at her daughter's matrimonial home. Besides that, generally in Indian society, it is the desire of the most of the parents that their daughter should live at the matrimonial home and the matter is normally not reported either to any authority or relatives due to societal pressure or till the situation goes out of control. So far as complaints to accused and his relatives is concerned, it has come in the testimony of parents of deceased that they were making requests to them not to harass their daughter and not to demand money.

35. Under the circumstances, it was rightly concluded by learned Trial Court that the prosecution succeeded in proving all the ingredients of Section 304B IPC. Therefore, a presumption can easily be drawn under Section 113B of the Indian Evidence Act against the appellant. Although this presumption is rebuttable, but the onus was on the appellant to rebut the presumption by producing evidence in this regard. The appellant has not led any evidence in defence to show as to why she would commit suicide. In his

statement u/s 313 Cr.P.C, he has taken a plea that his in-laws had not returned the loan which they had taken from him for construction of the house and, therefore, the deceased was very disturbed. However, apart from this statement, the appellant has not led any evidence to prove this fact. The parents of the deceased although admitted in their cross examination that they did ask the appellant for a loan for construction of their house but he hadn't obliged them with it. Nothing has been brought on record by the appellant to prove that he lent any amount to parents of the deceased for construction of house. Moreover, even if this fact was true, from the testimony of the mother of the deceased and from the medical evidence, it is revealed that the deceased was about 5 months pregnant. Committing suicide is one of the hardest things to do and no lady would want to end her life especially knowing the fact that she was bearing a child within her; until and unless she had been harassed and tortured to the extent that she couldn't think of living in this world.

36. Apex Court in *Thanu Ram v State of Maharashtra*, (2010) 10 SCC 353 has observed that ordinarily, a woman in her advanced stage of pregnancy would not commit suicide even when she has been treated with cruelty, it would only be in extreme and extenuating circumstances that a woman may decide to take her life and of her unborn child and that would

be when she reaches a point of no return. Similar view has been taken in *Surender v State of Haryana*, (2006) 12 SCC 375.

37. It was aptly observed by *Hon'ble Justice Dipak Misra* in *Gurnaib Singh v State of Punjab*, (2013)7SCC108 that:-

“Respect of a bride in her matrimonial home glorifies the solemnity and sanctity of marriage, reflects the sensitivity of a civilized society and, eventually, epitomizes her aspirations dreamt of in nuptial bliss. But, the manner in which sometimes the brides are treated in many a home by the husband, in-laws and the relatives creates a feeling of emotional numbness in the society. It is a matter of great shame and grave concern that brides are burnt or otherwise their life-sparks are extinguished by torture, both physical and mental, because of demand of dowry and insatiable greed and sometimes, sans demand of dowry, because of the cruelty and harassment meted out to the nascent brides treating them with total insensitivity destroying their desire to live and forcing them to commit suicide a brutal self-humiliation of "Life".

38. Hence, the appellant has failed to rebut the presumption raised against him. The appellant was thus rightly convicted by the learned Trial Court under section 304B IPC.

39. The appellant was also charged for offence under Section 498A IPC which reads as under:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful

demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

40. The object of inserting the above section by the Amendment Act 46 of 1983 which came into force w.e.f. 25.12.1983 was with a view to punish the husband or his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The prosecution evidence, which has been discussed above clearly prove the ingredients of cruelty and hence no further elaboration is required.

41. As regards the last limb of the argument of counsel of the appellant that the learned trial court has convicted the appellant only on account of the fact that he is the “designated husband” of the deceased, otherwise there is absolutely not even a single allegation which may separate the case of the appellant when compared to the role attributed to the other acquitted persons, this submission is totally devoid of merit. Mere acquittal of some of the co-accused by itself does not lead to the conclusion that all deserve to be acquitted in case appropriate reasons are given on appreciation of evidence both in regard to acquittal and conviction of accused (vide *Amrit @ Amritlal v. State of MP*, (2004) 12 SCC 224; *Raja v. State*, (2013) 12 SCC 674 and *Durga Burman (Roy) v. State of Sikkim*, 2014 VIII AD (SC) 547). There was a specific role assigned to the appellant by the prosecution

witnesses. Moreover, the co-accused were living separately from the appellant and the deceased and they used to visit the house of the parents of the deceased occasionally and there were no specific roles assigned to any of them by the parents of the deceased. Therefore, learned Additional Sessions Judge had rightly convicted the appellant while acquitting the other accused persons for offence u/s 304B/498A IPC. Impugned judgment of conviction does not suffer from any infirmity which calls for interference. However, keeping in view the facts and circumstances of the case, substantive sentence of ten (10) years imposed under Section 304B IPC is modified and reduced to seven (7) years. Sentence and fine awarded under Section 498A IPC remains unaltered. The appeal stands disposed off accordingly.

42. The sentence of the appellant was suspended vide order dated 16th May, 2011. He is directed to surrender forthwith, failing which the learned Trial Court to take appropriate steps for getting him arrested for serving the remainder period of his sentence.

Trial Court record be sent back along with the copy of the judgment.

(SUNITA GUPTA)
JUDGE

JANUARY 05, 2015/rs