

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 14th January, 2015
Judgment Pronounced on: 29th January, 2015

CRL.REV.P. 345/2006

KANWAR PAL

..... Petitioner

Through: Mr. K.T.S. Tulsi, Sr. Adv. with
Ms. Priyanka Aggarwal & Ms.
Mandakini Singh, Advs.

versus

SHAKUNTALA AND ORS.

..... Respondents

Through: Mr. Suresh Chandra, Adv. for R1-
R5
Mr. P.K.Mishra, APP for State.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. As the State has not preferred any appeal against the judgment of acquittal passed by learned Additional Sessions Judge (hereinafter referred to as trial court) dated 19.11.2005 vide which the respondents no.1 to 5 have been acquitted in FIR No.281/2001, PS Geeta Colony, aggrieved by the same, Kanwar Pal, father of the deceased (hereinafter referred to as the petitioner) filed the present

revision petition to set aside the same and to punish the respondents no.1 to 5.

2. Factual matrix, as emerges from the record, is that the daughter of the petitioner, namely, Savita was married with respondent no.2 Ashok Kumar on 26.11.2001 and it has been alleged that on 25.12.2002, dowry death of the daughter of the petitioner was caused by the respondents no.1 to 5 due to harassment and cruelty in connection with demand of dowry. Deceased Savita was found hanging on 25.12.2002. After the inquest proceedings by the SDM, the FIR of the case was recorded. On completion of investigation, report under Section 173 Cr.P.C. was filed. After compliance of provisions of Section 207 Cr.P.C, on the basis of the report, the learned MM took the cognizance and committed the matter to the Court of Sessions as the matter was exclusively triable by the Court of Sessions.
3. The learned trial court framed the charges for offences punishable under Section 498A read with 34 IPC as well as under Section 304B read with 34 IPC against the respondents no.1 to 5 on 14.10.2003.
4. To prove its case, the prosecution examined 17 witnesses. After conclusion of prosecution evidence, the statements of the respondents no.1 to 5 were recorded under Section 313 Cr.P.C. in which they have claimed innocence. The respondents no.1 to 5 examined 4 defence witnesses to prove their defence. The learned

trial court vide judgment dated 19.11.2005 arrived at the decision to not found guilty of the commission of the crime, acquitted all the accused persons/respondents no.1 to 5 of the charges under Section 498A/304B read with 34 IPC.

5. Feeling aggrieved by the act of the State not filing the appeal against acquittal of the respondents no.1 to 5, the petitioner, father of the deceased, filed the present revision petition to set aside the same and to punish the respondents no.1 to 5.
6. At the outset, it has been argued by the learned Senior Counsel for the petitioner that the evaluation of the material/evidence available on the record would lead to conviction. So, it resulted into procedural irregularity, overlooking of material evidence, misreading of the same, miscarriage of justice and renders the judgment of the learned trial court dated 19.11.2005 redundant as not sustainable in the eyes of the law.
7. Learned Senior counsel for the petitioner relied upon the statements of PW1 Kunwar Pal, father of the deceased, PW2 Sunil Kumar, brother of the deceased and PW4 Smt. Kamlesh, mother of the deceased. It was argued that all the ingredients of offence under Section 304B IPC were fully satisfied. There were minor discrepancies or contradictions in the statements of witnesses which are immaterial. The FIR itself records that demands of dowry were being made. Motorcycle and cash were given in the marriage. Deceased was not allowed to meet her relatives and she was not

even given proper food. The trial court has failed to raise the presumption under Section 113B of the Evidence Act. There were injuries on the neck of the deceased which were not explained, which added to the circumstances of the commission of offence under Section 304B IPC with the aid of Section 113B of the Indian Evidence Act.

8. In support of the contentions raised, learned Senior Counsel for the petitioner has referred to reported judgments in case of **(2004) 8 SCC 251 Arun Garg Vs. State of Punjab and Anr.**; **(2005) 12 SCC 104 Devinder Singh and Ors. Vs. State of Punjab**; **(1998) 3 SCC 309 Pawan Kumar Vs. State of Haryana**; **(2010) 7 SCC 518 Uday Chakraborty & Ors. Vs. State of West Bengal**; **(1981) 2 SCC 752 State of Rajasthan Vs. Smt. Kalki & Anr.**; **(2005) 2 SCC 388 Kamesh Panjiyar @ Kamlesh Panjiyar Vs. State of Bihar**; and **(2005) 12 SCC 72 Satbir Singh & Ors. Vs. State of Haryana**.
9. In **Arun Garg's** case (supra), it was observed that once the essential ingredients of Section 304-B are satisfied, the presumption under Section 113-B of the Evidence Act would follow. This rule of evidence is added in the statute by amendment to obviate the difficulty of the prosecution to prove as to who caused the death of the victim. Section 304-B was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combating the increasing menace of dowry death. By the same Amendment Act, Section 113-B has been added in Evidence Act for raising a presumption.

10. In *Devinder Singh's* case (supra), it was observed that the deceased wife who could be the best person to speak about such demands, as the demands were allegedly made to her, is no more, the only remaining evidence can be that of the parents of the deceased to whom she would be supposed to mention about such demands in order to ascertain if they could meet the same. The conclusion was inescapable that the accused made demands for dowry from the deceased and made her life miserable. It became unbearable for her to face the accused persons in such circumstances and she had to ultimately take her life.
11. In *Pawan Kumar's* case (supra), it was observed that 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 the house, namely the husband’s house, where all likely accused reside, the 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. It was further observed that earlier law was not sufficient to check dowry deaths hence stringent provisions were brought in, so that persons committing such inhuman crimes on married women should not escape, as evidence of a direct nature is not readily available except of the circumstantial kind.

12. In *Uday Chakraborty's* case (supra), it was observed that though specific allegations of demand and dowry were not made in the complaint, but during the course of investigation these facts came to light from the evidence on record and from the statements of various persons made to that effect. The father of the girl who lodged the complaint, can hardly be blamed for not lodging an elaborate and specific complaint at that time, as it was a tragic moment for him being the period immediately after the death of his daughter. That time was of pain and agony for him and the accused cannot take any advantage of this submission or fact, as the subsequent statements of different witnesses have fairly established that she was tortured and harassed for satisfying the demand of dowry.
13. In *Kalki's* case (supra), it was observed that PW1 was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. She was the wife of the deceased, but she cannot be called an interested. It was further observed that a witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be interested.
14. In *Kamesh Panjiyar's* case (supra), it was observed that black-stained rough skin on both sides of neck of deceased was found. It was noticed by the doctor that blood stained fluid was trickling from the side of mouth and brain matters were found congested.

Evidence of witnesses amply established demand of dowry and ill-treatment of the deceased shortly before the date of occurrence. It was further observed that nothing was brought on record to explain injuries on the neck of the deceased. On similar point, judgment in case of *Satbir Singh* (supra) has also been relied upon.

15. The ratio of the case law mentioned above, shows the cause and justification to incorporate the provision of Section 113B of the Evidence Act read with Section 304B IPC raising the presumption with regard to dowry death. The presumption in the dowry death case is to be drawn on the fulfilment of the ingredients mentioned in Section 304B IPC read with Section 113B of the Evidence Act.
16. Case of the petitioner was examined in the light of above referred judgements. The first witness in the present case is PW1 i.e. petitioner Kanwar Pal, father of the deceased. He has stated that deceased Savita was his daughter who was married with accused Ashok Kumar. His daughter was kept properly by the accused persons for about one month. Thereafter, the accused persons started harassing his daughter for bringing insufficient dowry. They started demanding dowry articles from PW1 and his daughter. After marriage, accused Ashok had demanded Rs.1,00,000/- from him to enable his brother to purchase shop. Mamta, sister in law of his daughter used to harass her as only Rs.20,000/- were given to her brother in the marriage though he was a govt. servant. His daughter used to visit them. She used to complain that accused

Ashok Kumar, Mamta, Sanjay, Shakuntala and Raj Kumar used to harass her on account of dowry demands. PW1 further stated that on the marriage anniversary of his daughter, he had given cash of Rs.20,000/- and golden kangan weighing 5 tolas to accused Ashok Kumar and accused Shakuntala. Whenever he visited the matrimonial home of his daughter, he was not allowed to see her by the accused. The accused also did not allow her to talk with them on phone. Accused Sanjay and Shakuntala used to give beatings to his daughter frequently. They used to give her beatings as they had failed to fulfil their dowry demands. PW1 had visited the matrimonial home of his daughter on her birthday 10/12 days prior to occurrence. On that day also, he was not allowed to see his daughter. Accused kept the articles taken by him on the birthday of his daughter. There was no change in the behaviour of accused persons towards his daughter and they continued to harass her. He further stated that on 25.11.2002 at about 3.30 p.m., telephone was received at their residence which was attended by his wife. She was informed that condition of his daughter was critical and she had been taken to Jeewan Life Nursing Home. PW1 and his wife reached within 15 minutes there. They found the dead body of his daughter lying on a stretcher outside the nursing home. There were rope marks on the neck of the deceased. Accused persons had not given any information, either to them or to the police and they took his daughter to the nursing home directly. The nursing home officials/doctors informed the police. On 26.12.2002, he sent

complaints to various authorities that his daughter had been murdered by the accused persons on account of dowry demand. SDM had recorded his statement Ex.PW1/A on 25.12.2002.

17. PW1 was cross-examined at length. During cross-examination, PW1 has shown to have made various improvements therein. The improvements made by him are that his daughter during her visits to them used to complain that accused persons started demanding dowry articles from him and his daughter; after the marriage, accused Ashok had demanded Rs.1,00,000/- from him to enable his brother to purchase shop; Mamta, sister in law of his daughter used to harass her as only Rs.20,000/- were given to her brother in the marriage though he was a government servant; accused Ashok Kumar, Mamta, Sanjay, Shakuntala and Raj Kumar used to harass her on account of dowry demands; he had given 5 tolas of golden kangan to accused Ashok Kumar and Shakuntala; he was not allowed to see his daughter by accused; he had visited the matrimonial home of his daughter on her birthday about 10/12 days prior to the occurrence; on that day he was not allowed to see his daughter; accused kept the articles taken by him on the birthday of his daughter; there was no change in the behaviour of accused persons towards his daughter and they continued to harass her; accused persons had not given any information either to them or to the police or that they had taken the deceased to the nursing home directly or that the nursing home officials/doctors informed the police.

18. Similarly, PW2 Sunil Kumar, brother of deceased Savita has stated that deceased Savita was his sister. She was married with accused Ashok Kumar on 26.11.2001. All the accused persons used to harass his sister on account of dowry demand in the matrimonial home. They used to pick up quarrel with her. Whenever he used to go to meet his deceased sister, accused Shakuntala used to demand cash from them. His sister used to inform him that accused persons used to give her beatings and used to demand cash from her. He was not allowed to see his sister at the matrimonial home. On one occasion when he met her on the upper floor, she told him that she was not provided with food for the last about five days by the accused. Accused Ashok Kumar used to torture his sister for not bringing car in the marriage. Accused Raj Kumar @ Raju used to demand cash for purchase of articles in his shop. On one occasion, he had gone at the time of birthday of accused Mamta. On that day also, accused persons had picked up quarrel with him. They were also quarrelling with his sister and were complaining for less gifts brought by him. PW2 further stated that he had met his deceased sister about three days prior to the incident as he had gone to deliver 'Prashad' after his return from Vaishno Devi. Some relatives of the accused persons were present at the house at that time. He met his sister in the other room and found that her condition was not good. She told him that accused Mamta and Sanjay had given her beatings. He did not take even tea at the house seeing the condition of his sister. In the afternoon of

25.12.2002, they received telephone from the nursing home from the police and they disclosed that some incident had taken place with his sister and they should reach at Lifeline Nursing Home. He along with his mother reached there. Accused Ashok and Shakuntala were also present at the nursing home. They saw the dead body of his sister lying on the stretcher. There were injury marks on the neck of the deceased. SDM had recorded his statement Ex.PW2/A.

19. In cross-examination of this witness PW2 also, he had made number of improvements. The improvements made by him in his testimony are that on one occasion when he had gone to see his sister, she told him that the accused persons had not provided her food for the last about five days; accused Ashok Kumar used to harass his sister for not giving him car; accused Raj Kumar @ Raju used to demand cash for purchasing articles for his shop; on one occasion he had gone at the time of birthday of accused Mamta, on that day also accused persons had picked up quarrel with him; they were also quarrelling with his sister and were complaining for less gifts brought by him; he had met his deceased sister about three days prior to the incident as he had gone to deliver 'Prashad' after his return from Vaishno Devi; some relatives of accused persons were present at that time; he met his sister in the other room and found that her condition was not good; deceased told him that accused Mamta and Sanjay had given her beatings; he did not take even tea at the house seeing the condition of his sister; during his

visit to the matrimonial home, accused Shakuntala used to demand cash from him; his sister used to inform him that accused persons used to give her beatings and demand cash from her.

20. Similarly, PW4 Smt. Kamlesh, mother of the deceased has stated that deceased Savita was her daughter. She was married with accused Ashok on 26.11.2001. After about one month of the marriage, his daughter informed that all the accused persons were harassing her on account of dowry demands. Her husband had given motorcycle at the time of marriage of the deceased and the said motorcycle was arranged on instalments. Her daughter was kept properly only for one month at the matrimonial home by the accused persons. Thereafter, she received telephone call from deceased Savita who told that she was not being given food by the accused persons and they were not satisfied with the dowry articles given by them at the time of marriage. Accused Mamta used to complaint that her brother Ashok was in Govt. job and no sufficient dowry had been given by them to her brother. Accused persons did not inform them about the death of her daughter. They got information about the death of deceased Savita from the police. Accused persons had taken Savita to a private nursing home. When they reached at the nursing home, they found the dead body of Savita lying on the stretcher. She further stated that accused persons had demanded Rs.1 lac to establish business for brother of accused Ashok. Her husband had given Rs.20,000/- cash and 5 tolas of golden kangan to the accused persons at the time of

marriage anniversary of the deceased. For the last time, deceased had visited them at their house on the occasion of *Bahia Duj*. It was about 1 and half month prior to the incident. The deceased had also complained on that occasion that accused persons used to give her beatings for not bringing sufficient dowry. Accused persons wanted Maruti Car. SDM had recorded her statement Ex.PW4/A.

21. During cross-examination, PW4 Smt. Kamlesh also made several improvements. The improvements made by this witness are that after about one month of the marriage, her daughter informed her on phone that she was not being given food by the accused persons and they were not satisfied with the dowry articles given by them at the time of marriage; accused Mamta used to complain that her brother Ashok was in Govt. job and no sufficient dowry had been given by them to her brother; accused persons had demanded Rs.1,00,000/- to establish business of accused Ashok; her deceased daughter had visited them at their house on the occasion of *Bhaiya Duj* and it was about one and a half month prior to the incident or that she complained that accused persons used to give her beatings for not bringing sufficient dowry.
22. The basic charge against the respondents no.1 to 5 is under Section 498A read with 34 IPC. The testimony of PW1 Kanwar Pal, PW2 Sunil Kumar and PW4 Smt. Kamlesh, as discussed above, shows that various improvements were made in their statements in the Court. Perusal of examination in chief of these witnesses shows

that no specific time, date, month or event has been mentioned with regard to cruelty and harassment made against the deceased Savita on account of dowry and the allegations levelled are general in nature.

23. The Hon'ble Apex Court has laid down the consistent law to establish the offence under Section 498A IPC in **2013 STPL 198 SC Vipin Jaiswal Vs. State of A.P. Rep. by Pub. Prosecutor**. It was held that the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. It was observed from the evidence of the prosecution witnesses and in particular PW1 and PW4 that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased. The onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A IPC. Relevant portions from the judgment read as under :

“In any case, to hold an accused guilty of both the offences under Sections 304B and 498A, IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we find that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased.....

In our considered opinion, the evidence of DW1 (the appellant) and Ext.D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry. In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A IPC. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, IPC has been made out by the prosecution.”

24. As per the ratio of the law settled down by Hon’ble Apex Court in **Vipin Jaiswal’s** case (supra), in the absence of specific allegations like date, time and incident i.e. too by witnesses PW1, PW2 and PW4 who were not found reliable and trustworthy, particularly when the residence of the petitioner i.e. parental house of the deceased Savita and residence of the respondents no.1 to 5 (in-laws of the deceased) was at a distance of about one kilometre and situated in the same vicinity, the prosecution had failed to establish beyond reasonable doubt that the deceased was meted with cruelty and harassment by the respondents no.1 to 5 for or in connection

with demand of dowry.

25. The plea has been taken by the respondents no.1 to 5 that the deceased Savita and respondent No.2 Ashok Kumar were having love affair and deceased had been taking treatment from Dispensary of Delhi Jal Board, as stated by DW2 Dr. Asha Arora, Chief Medical Officer, Gynae., Delhi Jal Board, whereas the prosecution witnesses have shown its ignorance about it.
26. From the evidence mentioned above and the law laid down by Hon'ble Apex Court in case of **Vipin Jaiswal** (supra), the allegations levelled against the respondents no.1 to 5 are general in nature and the evidence led does not inspire the confidence of the Court to hold the guilt of the respondents no.1 to 5 under Section 498A read with Section 34 IPC.
27. Apart from charge under Section 498A read with 34 IPC, the respondents no.1 to 5 were also charged under Section 304B read with 34 IPC for causing dowry death of the deceased Savita.
28. The Hon'ble Apex Court in its judgment in case of **Kamesh Panjiyar** (supra) referred by the counsel for the petitioner, has categorically mentioned the ingredients for the application of Section 304B IPC which are as under:

- (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 been 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.*

29. As death of the deceased Savita is concerned, according to post mortem report Ex.PW14/A prepared by PW14 Dr. Sarvesh Tandon, the cause of death was kept pending and viscera of the deceased was preserved. The doctor opined that the post mortem findings were consistent with the ligature pressure upon the neck by soft ligature material and were also having nail marks. All the injuries on the person of deceased were opined to be ante mortem in nature. After examining the FSL report, final cause of death was opined by doctor as ligature hanging. However, the report and opinion of the doctor proves that the death of the deceased Savita was not under normal circumstances and was due to the bodily injuries which fulfil the first ingredient for the commission of offence under Section 304B IPC.

30. The second ingredient that death of the deceased had taken place within seven years of her marriage with the respondent no.2 is established from the evidence, as marriage had taken place on 26.11.2001 and death took place on 25.12.2002 i.e. very next year.

31. The next and the most important ingredients required to be proved from the evidence are that the deceased was subjected to cruelty and harassment on account of demand of dowry by her husband or any relative of her husband. The prosecution has produced PW1, PW2 and PW4 to prove these ingredients. PW1 happened to be father of the deceased, PW2 happened to be brother of the deceased and PW4 happened to be mother of the deceased. The detailed discussion to this effect has already been made in the foregoing paragraphs while discussing the charge for offence under Section 498A IPC. In other words, it is necessary to establish the offence of Section 498A IPC to prove the charges under Section 304B IPC. Discussion made above shows that the prosecution has failed to lead sufficient evidence to prove the guilt of the respondents no.1 to 5 under Section 498A IPC, which tantamount to not proving the commission of offence under Section 304B IPC.
32. The last ingredient is based upon the commission of offence under Section 498A IPC and while committing the offence under Section 498A IPC, if it connects with the death, then it would be offence punishable under Section 304B IPC. The prosecution/petitioner has miserably failed to establish beyond reasonable doubt that any cruelty or harassment was meted out to the deceased by the respondents no.1 to 5, what to say soon before death. The testimony of above mentioned prosecution witnesses to the effect that motorcycle was given at the time of marriage and sum of Rs.20,000/- was paid along with 5 tola gold on the marriage

anniversary *per se* does not establish the cruelty and harassment towards the deceased. Evidently, the death of the deceased had taken place on 25.12.2002 i.e. within one year and one month of marriage. The prosecution has failed to establish that after the marriage anniversary of the deceased, there were circumstances of harassment or cruelty, took place on account of demand of dowry which could connect with the death of the deceased. There cannot be any reason for not having the knowledge of such cruelty, particularly when the deceased Savita was residing within the same vicinity at a distance of one kilometre and the respondent no.2 happened to be government employee and used to reside out of the house during the day time.

33. The argument advanced by the learned Senior counsel for the petitioner is that Section 113B of the Indian Evidence Act leads to the presumption of the guilt of the respondents no.1 to 5. Section 113B of the Indian Evidence Act reads as under :

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

34. The proposition has already been dealt with by Hon’ble Apex Court in case of ***Kamesh Panjiyar*** (supra). The presumption under

Section 113B of the Evidence Act can be drawn only where the ingredients of Section 304B IPC are fulfilled. The prosecution has failed to establish the necessary ingredient of dowry death i.e. cruelty or harassment meted out to the deceased by respondents no.1 to 5 what to say soon before death. As mentioned above, the prosecution has failed to prove the chain of necessary ingredients to raise the presumption under Section 113B of the Indian Evidence Act.

35. **On the other hand**, the learned counsel for the respondents no.1 to 5 has submitted that the respondent no.2 Ashok Kumar and the deceased entered into love marriage after great efforts and thereafter, after the death of the deceased Savita, it was respondent no.2 who was basically the sufferer. Deceased was suffering from gynaecological problem and did not have any issue, as stated by DW2 Dr. Asha Arora. He vehemently argued that there was no demand of dowry or harassment or cruelty on account of dowry and no such complaint to any person or authority had ever been made or stated to be made by the parents of the deceased. He further argued that the respondent no.2 has further suffered the agony of arrest, trial and remained behind the bars for a period of about 3 years during the pendency of trial. Similarly, the respondents no.1, 3 and 4 also remained behind the bar for about one and a half years and now, the present revision petition is pending for the last about 9 years.

36. He has referred to judgments reported in case of **2007 LE (Del) 457 Bhagwant Singh vs. Sardar Manmohan Singh; (2004) 13 SCC 374 Hydru vs. State of Kerala; (2004) 7 SCC 665 Ram Briksh Singh and Others vs. Ambika Yadav and Another; AIR (38) 1951 SC 196 D. Stephens vs. Nosibolla; AIR 2002 SC 2229 Jagannath Choudhary and others vs. Ramayan Singh and another** to press the contention that revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. It cannot interfere with an order of acquittal unless it is an exceptional case of procedural irregularity or overlooking of material evidence or misreading of the same, which is manifest and, which results in a flagrant miscarriage of justice.
37. The contention made by the learned counsel for the respondents no.1 to 5 found substance on the basis of the law laid down and material available on trial court file.
38. This Court has gone through the judgment passed by the learned trial court. The learned trial court has given reasoned judgment for acquittal of the respondents no.1 to 5 by evaluating the evidence led by the prosecution.
39. From no stretch of imagination, from the evidence led by the prosecution, the present case could be culminated into conviction of the respondents no.1 to 5 under Section 498A read with 34 IPC as well as 304B read with 34 IPC. The judgements relied upon by the petitioner are of no assistance in view of the discussion made

above. This Court does not find any procedural irregularity, overlooking of material evidence, misreading of the same or miscarriage of justice. There is no jurisdictional error in the judgment passed by the learned trial court. Neither there is any failure to exercise the jurisdiction or exceeding of jurisdiction by the learned trial court while passing the judgment. Thus, keeping in view the judgments referred in case of ***Bhagwant Singh*** (supra); ***Hydru*** (supra); ***Ram Briksh Singh*** (supra); ***D. Stephens*** (supra) and ***Jagannath Choudhary*** (supra), the judgment passed by the learned trial court cannot be termed as not sustainable.

40. *I am of the considered opinion that to establish the offence under Section 304B IPC of dowry death, the presumption under Section 113B of the Evidence Act cannot be raised against an accused until independently the offence under Section 498A IPC is proved by leading evidence to the specific allegation with regard to time and date of such demand and cruelty and furthermore establishing the proximity live link between the effect of cruelty based on dowry demand (offence under section 498A IPC) and the death of the victim.*
41. The present revision petition has been filed by the petitioner against the judgment dated 19.11.2005 of learned trial court for set asiding the same and holding the respondents no.1 to 5 guilty for the commission of offences under Section 498A/304B read with 34 IPC. The discussion made above in the light of evidence/material

led by the prosecution, does not warrant any interference in the conclusion drawn by the learned trial court.

42. Thus, the judgment dated 19.11.2005 cannot be said to be not sustainable in the eyes of the law and the present revision petition deserves to be dismissed.
43. Consequently, the present revision petition is dismissed as devoid of merit.

P.S.TEJI, J.

January 29th, 2015
dd