

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

Judgment reserved on: 26.05.2015

% **Judgment delivered on: 11.08.2015**

+ **Crl.A. 627/2010**

STATE Appellant
Through: Mr. Rajat Katyal, APP.

versus

VISHESH CHAUDHARY & ORS. Respondent
Through: Mr. B.T. Singh, Advocate.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. This appeal is directed against the judgment dated 16.05.2008, in SC No. 29/06, arising out of F.I.R. No. 126/05, under Section 498A/306/34 of Indian Penal Code, 1860 ('IPC') passed by learned Additional Sessions Judge, Delhi, acquitting the respondents of the said offence.

2. The case of the prosecution, as taken note of in the impugned judgment, is that one Dr. Subhash Arora of Shalimar Bagh, New Delhi married his daughter Kajal with accused No.1 Vishesh Chaudhary on 21.11.1997 as per Hindu rites and ceremonies. After marriage, Kajal shifted to her matrimonial home in Shalimar Bagh itself, along with her father-in-law Bharat Bhushan (Accused No.4), mother-in-law Nirmal Chaudhary

(Accused No.5) and two younger brothers-in-law namely Parichay (Accused No.3) and Amit (Accused No.2). After a few months, Kajal and her husband (accused no. 1) shifted to United States of America (USA) for a period of about three years. Two children were born to the couple while staying in USA. In 2001, Kajal and her husband returned to India, and in July 2004, they shifted to a separate house in Sector-15, Rohini, Delhi. The matrimonial life of Kajal during this period was not smooth, and on many occasions the matter had to be sorted out by the parents of Kajal with the accused no.1. The accused persons were allegedly not happy with the dowry given at the time of marriage or on other occasions, such as birth of the two children, or festivals. On 12.01.2005, Kajal was brought to her parental home where she stayed till 15.01.2005. Accused No.1, Vishesh Chaudhary took her back with an assurance that she will not be harassed any more.

3. On 31.01.2005, the parents of deceased received telephonic information that their daughter has committed suicide by hanging herself. Accordingly, the matter was reported to the police. On the basis of statement of complainant/Dr. Subhash Arora, father of deceased, a case for offence under section 498A/306/34 IPC was registered at PS Prashant Vihar vide FIR no. 126/05 (Ex. PW-3/A) dated 09.02.2005. ASI Jai Bagwan (PW-8) was the investigating officer. After carrying out the inquest proceedings, the postmortem examination was conducted upon the dead body of the deceased/Kajal. Accused No.1 Vishesh Chaudhary was arrested in this case, but other accused persons obtained anticipatory bail orders and were only formally arrested. A writing on a piece of paper allegedly in the hand of deceased Kajal was also recovered from near the body. However, no

admitted piece of handwriting or signatures of deceased could be made available to the IO, so the handwriting on the note could not be compared to the handwriting of the deceased.

4. Upon completion of investigation, charge-sheet was filed against all accused persons under Section 498A/306/34 IPC. Charges were framed against the accused for offences punishable under Sections 498A/306/34 IPC. All the accused pleaded 'not guilty' and claimed trial.

5. The prosecution examined eight witnesses in support of its case. They were: PW-1, Dr. Subhash Arora (father of the deceased); PW-2, Varun Arora (brother of the deceased); PW-3, HC Joginder (Duty Officer); PW4, HC Sajjan Kumar (Photographer); PW-5, Ct. Suraj Vir Tomar (DD Writer); PW-6, Dr. Anil Sandil; PW-7, Insp. Subhash Chand; PW-8, ASI Jai Bagwan (Investigating Officer).

6. Respondents/accused led their evidence in defence and examined six witnesses. They were: DW-1, Vishesh Chaudhary; DW-2, Bharti Chaudhary (wife of Accused Parichay Chaudhary); DW-3, Kamal Kishore (photographer); DW-4, Dr. MM Mendiratta, Professor Neurology, GB Pant Hospital, Delhi; DW-5, Sudeep Yadav, Ahlmad of the court and DW-6, Raman Shangari, colleague of accused Vishesh Chaudhary.

7. The learned ASJ on an analysis of the evidence came to the conclusion that the prosecution had failed to establish that the accused persons, in any manner, subjected Kajal/deceased to cruelty, or harassment, or instigated or abetted the commission of suicide, beyond the shadow of doubt.

8. Mr. Katyal, Ld. APP for the State submits that PW-1 complainant/Dr. Subhash Arora, father of the deceased in his examination-in-chief has emphasized the fact that the deceased Kajal was harassed during the subsistence of her marriage with accused No.1 Vishesh Chaudhary. As per PW-1, soon after 10-15 days of her marriage, all accused started harassing her – both mentally and physically, and used to beat the deceased for bringing less dowry in her marriage. Further, deceased was taken to USA against her will, and PW-1 was threatened by the parents of accused No.1 Vishesh Chaudhary that in case deceased did not go to USA, the parents of the Accused No.1 would get her divorced from their son. PW-1 also deposed that after the return from USA, for two continuous years, the accused persons did not allow deceased to meet her parents and family members. She was not even allowed to meet them on festivals or other occasions, even though they were residing very near to her matrimonial house. On many occasions, the matter had been sorted out by PW-1 on the request of the deceased, in the hope that things would improve. Mr. Katyal submits that Varun Arora, brother of the deceased (PW-2) has corroborated the statements of PW-1.

9. Mr. Katyal further submits that dowry was demanded by the accused, and to substantiate this argument, he submits that the accused Vishesh Chaudhary (DW-1) in his examination as on 17.09.2007 has admitted that one two wheeler scooter was given in dowry at the time of marriage. Further, even in his cross-examination, he admits that he got a scooter in marriage from his in-laws and the same was sold off in about 8 months.

10. Mr. Katyal has finally submitted that the father of the deceased, Dr. Subhash Arora (PW-1) in his examination-in-chief gave specific instances when his deceased Kajal was harassed. Mr. Katyal submits that one such instance took place on the birth of her second child, Vansh on 08.12.2000, when the parents and family members of the deceased went to the matrimonial house of the deceased with Rs.11,000/-, sweets and clothes for family members, but the said gifts were not accepted by the family members of the accused no.1, as they were unhappy. PW 1 further stated that when accused No.1 and the deceased shifted to a new accommodation in Rohini, PW-1 gave them a refrigerator of 175 Lt., a double bed, bed sheets and utensils etc. All these articles were demanded by the accused persons.

11. Mr. Katyal points to another instance of harassment of the deceased. PW-1 deposed that on the day of incidence i.e. 31.01.2005, the deceased made a telephone call to her mother and brother in the morning, and informed them that accused no.1 Vishesh Chaudhary was harassing her and beating her, and that she could not live any more. On the same day, at 10:30 pm, Amit Chaudhary (Accused No.2) informed deceased's parents that she had committed suicide by hanging herself.

12. Mr. Katyal submits that as per DD No.54 dated 31.01.05 (Ex. PW-8/D) registered at Sector 16 PS Prashant Vihar, it is recorded that Accused No.1, Vishesh Chaudhary has stated that he and his wife (deceased) used to have frequent arguments, and the issue for the arguments was their parents.

13. Mr. Katyal submits that from the examination-in-chief of the father of the deceased (PW-1), and from his statement to the police (Ex.PW 1/B), it is

clear that allegations of harassment of, and cruelty to deceased Kajal were levelled against the accused persons on 01.02.05 i.e. the day after the death of deceased. He submits that the Trial Court erred in holding that harassment allegations were raised for the first time on 09.02.2005. It held as follows:

*“I am thus not entering into an analysis of the matter as to whether the FIR in the present case was registered on the very first information received in the police station or not. **However, the point to be noticed is that all such allegations of harassment and cruelty to Kajal were primarily levelled by Dr. Subhash Arora for the first time on 9-2-2005.**”*

(Emphasis supplied)

14. Mr. Katyal, Ld. APP, further submits that as per the crime team report (Ex. PW 7/A) dated 01.02.2005, the case is recorded as that of ‘partial hanging’. However, as per the death report dated 01.02.05 (Ex. PW 8/A), the death of the deceased was caused due to hanging by putting a loop around the neck. Finally, as per the postmortem report (Ex. PW-8/J) the death was caused due to asphyxia as a result of hanging. He submits that the cause of death is not explicitly visible.

15. Mr. Katyal submits that PW-1 stated in his examination-in-chief, that when he talked to his daughter on telephone on 30.01.2005, she complained that her in-laws – including her husband, were continuously harassing her and they would always say to her “MAR JA, MARTI KYO NAHI JA KAR”.

16. Mr. Katyal submits that the whole evidence should have been examined by the Ld. ASJ to see whether offence under Section 498A (a) &

(b) IPC has been made out. He submits that the approach of the Ld. ASJ is perverse or erroneous.

17. Mr. Katyal, Ld. APP has placed reliance on several decisions in support his submissions, which shall be referred to during the course of discussion:

- a) *Randhir Singh Vs. State of Punjab*, 2004 (13) SCC 129;
- b) *Sahebrao Vs. State of Maharashtra*, AIR 2006 SC 2002;
- c) *Sannaia Subba Rao Vs. State of Andhra Pradesh*, 2008 (17) SCC 225;
- d) *Sidhartha Vashisht Vs. State (NCT of Delhi)*, 2010 (6) SCC 1;
- e) *Undavalli Narayana Rao Vs. State of Andhra Pradesh*, 2009 (14) SCC 588;
- f) *Pawan Kumar Vs. State of Haryana*, AIR 1998 SC 958;
- g) *Trimukh Maroti Kirkan Vs. State of Maharashtra*, 2007 CrL. L.J. 20;
- h) *Brij Lal Vs. State of Punjab*, AIR 1989 SC 1661;
- i) *Sharad Birdhichand Sarda Vs. State of Maharashtra*, 1984 (4) SCC 116.

18. On the other hand, Ld. Counsel for respondents submits that the relation of Vishesh Chaudhary, Accused No.1 and deceased Kajal was very

affectionate, including when they were in USA. This is evident from the fact that during this period, the couple was blessed with two children Trisha (daughter) was born on 7th of May, 1999 and Vansh (son) was born on 8th of December, 2000. Both of them were happy in their married life.

19. Further, he submits that at the time of marriage of the accused no. 1 with the deceased, all the co-accused and DW-2 Bharti Chaudhary lived together in a joint family. Shortly thereafter, they left for USA. The accused and the deceased continued to live in a joint family even after return of the couple from the USA. It was only due to the excessive interference and instigation of the complainant (PW-1) and his family, that accused no. 1, deceased and their children shifted to a separate accommodation at G-4/60, Sector 15, Rohini.

20. Ld. Counsel submits that the testimony of accused no.1, Vishesh Chaudhary (DW-1) in his examination-in-chief dated 17.09.2007 – that the interference of his in-laws (parents of the deceased) had increased after the return of the couple from USA on 21.07.2001, and they instigated the deceased to separate from the joint family and live independently, which resulted in the couple separating from the joint family on 01.06.2004, remained unchallenged.

21. Ld. Counsel further submits that the complainant (PW-1) admits he made the first statement to the Police on 31.01.2005 (Ex. PW-1/B), and his subsequent statement was recorded on 09.02.2005 (Ex. PW-1/A). Thus, the FIR was registered, not on the 'first information' received by the Police. The FIR (Ex. PW-3A) was registered on 09.02.2005. He submits that post mortem of deceased was conducted on 01.02.2005, whereas the FIR (Ex.

PW-3/A) was registered on 09.02.2005. The reason for the delay in registering of the FIR has not been explained by the prosecution. The only explanation furnished by the investigating officer, ASI Jai Bhagwan PW-8 was that he was orally directed by the SHO and the ACP concerned to keep the matter pending and, thus, no case was registered. However, there is no corroborative evidence led to substantiate the statement of PW-8.

22. Ld. Counsel submits that the statement of complainant (PW-1) contains major contradictions, which renders his testimony unreliable. He is not a credible witness. He submits that in his examination-in-chief, PW-1 stated *“on the birth of child, namely, Trisha who was born on 07.01.1999, we went to accused persons at Shalimar Bagh address and we took Rs. 5100/- cash, dry fruit and sweets and clothes for family members”*. Whereas, in his statement dated 09.02.2005 (Exhibit PW-1/A), he stated that on the birth of first child, 30 tolas gold, Rs. 51,000/- cash and clothes were demanded, but Rs. 21,000/- cash and 10 tolas gold was given. It is argued that the statement of PW-1 is self contradictory, and he made false accusations to support the allegations of dowry demand.

23. Ld. Counsel submits that PW-7 Inspector Subhash Chand was in charge of the crime team. A handwritten document (Ex. PW-7/B) was found at the spot. PW-7 confirms the same in his cross-examination. He further submits that PW-8, ASI Jai Bhagwan, in his examination-in-chief stated that *“I did not make any inquiry about the education of the deceased from the parents or from the accused persons during the course of the investigation. I did not make any efforts to verify about the admitted handwriting of deceased from any bank, from any educational institution during the course*

of investigation. I investigated the case on the lines of murder as per the allegations made by the father & brother of the deceased". He submits that the complainant and his family members did not provide to the prosecution any admitted handwriting of the deceased for comparison with the handwriting on the hand written document (Ex PW-7/B) found by the police from the stop. The prosecution also did not lead any evidence in this regard. Thus, it was not established that the handwritten note (Ex. PW-7/B) was not that written by the deceased.

24. Ld. Counsel finally submits that Bharti Chaudhary (DW-2) stated in her examination "*Kajal conveyed to me that her father was repeatedly pressing her for a separate home of her own. Vishesh, Kajal and children shifted but they occasionally used to visit us and were leading a happy life*". She further stated that "*I know that Kajal was treated by doctors at G.B.Panth Hospital. She had started having fits after she shifted from our house to establish an independent home alongwith Vishesh and her children.*" Dr. M.M. Mehendiratta, Professor Neurology of G.B. Pant Hospital and Raman Shangari (DW-6) has corroborated the statement of DW-2. He submits that, perhaps health of deceased deteriorated, as accused no. 1 refused attend a function in the family of PW-1 on 30/31.01.2005.

25. I have heard the Mr. Katyal, and Ld. Counsel for the respondent, perused the judgment and the evidence on record; and considered the rival submissions of the parties.

26. The scope of interference with a judgment of acquittal has been considered by the Supreme Court in several decisions including in *Sannaia*

Subba Rao (supra); *Sidhartha Vashisht* (supra) and *Ghurey Lal v. State of Uttar Pradesh*, (2008) 10 SCC 450. The Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. The said power of the Appellate Court does not get curtailed by use of expression such as “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusion”, “glaring mistakes” etc. Instances of “very substantial” and “compelling reasons” would be where the Trial Court’s conclusion with regard to the facts is palpably wrong; the Trial Court’s decision was based on an erroneous view of law; the Trial Court’s judgment is likely to result in “grave miscarriage of justice”; the entire approach of the Trial Court in dealing with the evidence was patently illegal; the Trial Court’s judgment is manifestly unjust and unreasonable, and; the Trial Court has ignored the evidence or misread the material evidence, or has ignored material documents like dying declaration/report of ballistic expert etc. At the same time, the Appellate Court has to bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. If two reasonable conclusions are possible, on the basis of evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court. It is on the basis of the aforesaid principles that the impugned judgment has to be tested.

27. Section 498A IPC deals with the situation where a woman is subjected to ‘cruelty’ by the husband or his relatives. “Cruelty” is defined in the explanation to the said section to mean:

“a) any willful 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”.

28. Section 498A IPC has been analysed in several decisions by the courts. In ***Smt. Neera Singh Vs. The State (Govt. of NCT of Delhi)***, I (2007) DMC 542, this Court has culled out the following requirements of the said provision:

“Cruelty as defined in Section 498A of the IPC must meet the following requirements:

- 1. There should be harassment of the woman.*
- 2. Harassment should be with a view to coercing her or any person related to her to meet the unlawful demand of a property or valuables security.*
- 3. The harassment may be even where on account of failure by woman or any person related to her to meet any such demand earlier made.”*

29. In ***Ramesh Kumar v. State (Govt. of NCT of Delhi)***, 2014 (207) DLT 438, this Court observed:

*“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.**”*

[Emphasis supplied]

30. In the present case, PW-1 in his different statements has only made general allegations of demand of dowry against the accused persons. PW-1 gave his first statement at police post Sector-16, Rohini in the night intervening 31.01.2005 and 01.02.2005 (Ex. PW-1/B). In this compliant, he, *inter alia*, alleged that on account of less dowry being given in the marriage, within about 10-15 days of the marriage, the deceased was being abused, taunted, beaten and mentally tortured, by the accused including the accused nos. 2 and 3. They started troubling the deceased, and even beat her up. He also alleged that after two months of the marriage, accused no.1 and his parents raised a demand for 20 tolas gold and when the deceased refused, accused no.1 and the other accused beat her up. He stated that when PW-1 learnt of the same, he did whatever he could within his means. He further alleged that after visiting and staying in USA for three years, when the deceased, accused no.1 and their children came back, once again the deceased was beaten up and continuously taunted for bringing less dowry.

He stated that the accused threatened PW-1 that if further jewellery and cash were not given by him, his daughter, i.e. the deceased would be killed by throttling her or by burning her. He stated that out of fear, he would fulfill their demands.

31. His next compliant, on the basis of which the FIR (Ex. PW-3/A) was registered, was made on 09.02.2005. In this complaint, PW-1, for the first time, stated that the scooter given by him at the time of marriage to the accused was sold by the accused and asked him to give them a new car. The alleged demand of a new car, was not earlier stated. Similarly, the alleged demand made on the birth of a child for 30 tolas of gold, clothes for all relatives and Rs.51,000/- in cash was not stated in the complaint made on 01.02.2005. He also did not state that he gave 10 tolas of gold and Rs.21,000/- cash along with clothes at the time of birth of the child. It is not even clear as to on birth of which child the alleged gifts were demanded, or given. He alleged for the first time that the deceased would not get food and was beaten up on account of the demand of the accused not being met. There is no mention of the alleged talk between the deceased and his son and wife on the morning of 31.01.2005 (wherein the accused allegedly complained about her being harassed and beaten by them, and the deceased stated that she would not be able to live for long). Similarly, there is no mention of PW-1 trying to contact the accused at about 9:30 p.m. The story narrated in the complaint dated 01.02.2005 (Ex. PW-1/B) is quite different from that narrated in the complaint Ex. PW-1/A. Ex.PW1/A is a significant improvement over Ex.PW1/B. In Ex. PW-1/B, the complainant stated that on 31.01.2005, he had asked accused no.1 to come over for some function,

but the accused no.1 not only refused to come, but also did not permit the deceased to go for the function.

32. In his examination-in-chief, PW-1 made further improvements in his version. He states that on 31.01.2005, his wife and son spoke to accused no.1 and inquired the reason for the quarrel between the deceased and accused no.1. On this, accused no.1 allegedly informed that the deceased keeps threatening the accused that she would be killed by the accused persons, or that she would kill herself because of harassment and beating by the accused persons. He makes a further improvement by stating that *“the harassment given to her by the accused persons present in the court today was to compel her to bring a car, gold articles and other articles which were to be given at the time of birth of her son Vansh”*. He makes further improvement by stating that in August 2004, when the accused and deceased shifted to their new accommodation, on the demand being made by the accused persons, he gave several articles like refrigerator, a double bed, bed sheets, utensils etc. No allegation of any such demand made either in Ex. PW-1/B, or in Ex. PW-1/A.

33. Pertinently, PW-1 in his cross-examination stated that he spoke to his daughter lastly on 30.01.2005 on telephone, when she complained of harassment by the accused, and that they taunted her by saying “MAR JA, MARTI KYO NAHI JA KAR”. No such allegation was made by PW-1 either in Ex PW-1/B or even in Ex PW-1/A. PW-2 Varun Arora, the brother of the deceased also sought to make improvements, by claiming that his family had given Rs.1 lakh to Bharat Bhushan (accused no.4) when they shifted their residence.

34. These improvements made by PW-1 and PW-2 discredit these witnesses, and their testimonies with regard to the allegations of dowry demand cannot be accepted per se. It would also be seen that the said testimonies with regard to dowry demand are not specific enough, and there are variations with regard to their particulars. Also, there is no corroborative evidence with regard to the dowry demands, apart from the statements of PW-1 and PW-2, which have been challenged in their cross-examination.

35. Mere receipt of gifts at the time of marriage from the parents of the bride cannot be assumed to be on account of demand for dowry. It is customary that the bride, the groom, and the in-laws of the bride being given gifts at the time of the marriage by the family of the bride. Gifts are customarily exchanged on both sides on the occasion of marriage. Such gifts may be given voluntarily, out of love and affection and happily. There is no basis to assume that whenever such gifts are given, they are so given as a result of a demand for dowry. Demand of dowry by itself, even otherwise, does not constitute an offence under Section 498A IPC. It is the subjecting of the bride/wife to harassment, i.e. physical or mental torture to compel her to bring dowry or to punish her for not bringing dowry that tantamounts to cruelty, which is punishable under the law. In the present case, apart from making bald allegations that the deceased was subjected to physical and mental harassment soon after the marriage till the time of her death for bringing less dowry or for not getting more dowry, there is no evidence led by the prosecution to substantiate either the demand of dowry or the subjecting of the deceased to physical or mental harassment leading to cruelty, which can be stated to have driven the deceased to take her own life.

36. PW-1 and PW-2 were confronted with several photographs of accused no.1, the deceased, the children and other family members (Ex PW-1/DC 1 to 23), which on a bare perusal show that there was harmony and bonding between the deceased and the accused No. 1, and between the deceased and the other accused. Some of these photographs are of the period when the deceased and the accused were in the USA, while some other are of a later period after their return to India. It is seen from the photographs that the accused no.1, the deceased and the children went on holidays and pilgrimage together even after their return from the USA. Ex. DW-3/B1-37 are a set of photographs of a birthday function held on 07.05.2003, which also show that the deceased in a happy state of mind while celebrating the birthday of her daughter in the presence of, not only the other accused, but their relatives, as, also the complainant PW-1.

37. Several letters sent by the complainant PW1, his wife, and his family members to accused no.1 and the deceased, during the period December 1998-February 1999, and when they were away to USA have also been lead in evidence as Ex. PW-1/DD2. These letters do not in any way reflect any acrimony or stress on any account whatsoever, either between the deceased and accused no.1, or between the deceased and the other accused. These communications show that the complainant and his wife, and the deceased's brother were happy for the deceased and accused no.1, and also demonstrate the expected show of love and affection for their daughter and son-in-law. There is no whisper to suggest that any of the accused made any demand for dowry.

38. The aforesaid evidence belies the testimony of PW-1 and PW-2 that the deceased was continuously harassed by the accused for bringing less dowry, or for not bringing more dowry. Pertinently, for most part of their married life, the accused no.1 and the deceased stayed away from the other accused. After about six months of marriage, they left for USA and lived there for about three years – where they begot two children. Even after coming back from the USA in July 2001, after living in the joint family with accused no.2 to 5, the deceased and accused no.1 and his children shifted to another close-by accommodation sometime in March 2003. The deceased passed away after over 20 months of separation of the accused No. 1 and the deceased from the joint family on 31.01.2005.

39. The defence witness DW-4 Dr. M.M. Mehendiratta, Professor Neurology, G.B. Pant Hospital, deposed that the deceased was suffering from migraine. It has also come in evidence that on 31.01.2005, there was a function at the place of PW-1 for which he invited the accused no.1 and the deceased. However, accused no.1 expressed his inability to attend the function. On the same day, there was quarrel between the accused no.1 and the deceased. Later, in the night, the deceased was found hanging at her home.

40. The refusal of accused no.1 to attend the function could not be said to be such a grave act or omission on his part, as to lead any normal person to take the extreme step of taking one's own life. The possibility of the deceased suffering from depression on account of migraine or other unrelated causes cannot be ruled, which may have lead her to take the extreme step of committing suicide. Ex. PW-7/A shows that the house was

bolted from inside, and the police had to break open the jali of the door to enter the house of the deceased/accused no.1. It is also material that the handwritten note (Ex. PW-7/B), wherein it is recorded that “*mere badan se koi kapade nahi utarega mera sare gehna khushi ka hai*” has not been shown to have been planted. The prosecution has not established that the said handwritten note is not in the handwriting of the deceased. The fact that it was found at the site of the incident shows that it is probable that the note was written by the deceased herself. The contents of the handwritten note also suggest they were written by the deceased.

41. PW1 claimed that the deceased was allegedly beaten up prior to her committing suicide. He claimed that the deceased spoke to her mother and brother on the morning of 31.01.2005 (day of the incident), and informed them that accused no. 1 was harassing and beating her up. If the deceased was beaten up on the morning of her death, the same would have been reflected in the postmortem report (Ex. PW-8/J). However, as per the postmortem report (Ex. PW-8/J) there were no external injuries on the body of the deceased, apart from the ligature mark on the neck of the deceased. As the postmortem report does not reflect the same, it creates a shadow of doubt on the allegations made by the prosecution witnesses.

42. The respondent argued that the investigation carried out by the investigation officer, ASI Jai Bhagwan (PW-8) was negligent and had infirmities. He contended that PW-8 did not properly investigate whether the handwritten note (Ex. PW-7/B), recovered from the spot of the incident, was written by the deceased, or not. Further, he also contends that there was a substantial delay of 9 days in registration of the FIR. The deceased died on

31.01.2005, and the Police was informed the same evening. The complainant (PW-1) wrote a detailed compliant on the intervening night of 31.01/01.02.2005. However, the FIR was registered after recording of the second complaint dated 09.02.2005 (Ex. PW-1/A). PW-8, ASI Jai Bhagwan stated that the matter was kept pending on oral directions of the senior officials and, thus, the FIR (Ex. PW-3/A) was not registered on 01.02.2005 even after the complaint was given by the complainant on intervening night of 31.01.2005/01.02.2005. The explanation provided by PW-8 for the said delay is not a reasonable or acceptable one, and no other explanation has been provided by the Police officials. The unexplained delay in registering of the FIR (Ex. PW-3/A) creates a serious doubt, and the non-examination of the handwritten note (Ex. PW-7/B) is fatal to the case of the prosecution. The Police should have thoroughly investigated the leads in the case, but have failed to do so. Thus, these infirmities in the investigation process along with the uncorroborated evidence raises serious doubts in the case of prosecution.

43. Mr. Katyal relied upon **Brij Lal** (supra) to submit that the present case meets the requirements of Section 107 IPC, which deals with, '*Abetment of a thing.*' Mr. Katyal contended that accused no.1/husband and his family members (co-accused) instigated the deceased to commit suicide and, thus, are liable to be punished under Section 107 IPC. On perusal of evidence on record, in my view, the prosecution has failed to establish the deceased was instigated by the accused to commit suicide.

44. In **Randhir Singh** (supra), the Supreme Court observed that no Indian woman would disclose her family discords to her friends and relatives.

Thus, non-disclosure about the dowry demand to friends and family does not establish its absence. The Supreme Court held that if dowry demand is established with cogent and reliable evidence, mere non-disclosure before various persons of the said harassment would be of no consequence. However, in the present case, the prosecution has failed to lead any cogent and reliable evidence of demand of dowry, much less of harassment of the deceased by the accused. Thus, ***Randhir Singh*** (supra) is of no avail to the case of prosecution.

45. Reliance placed on ***Sahebrao*** (supra) and ***Pawan Kumar*** (supra) does not appear to be of any avail to the appellant, because the prosecution has not been able to establish the factual premise to invoke the principles laid down in these decisions.

46. Similarly, in ***Sharad Birdhichand Sarda*** (supra), the Supreme Court made an analysis of the causes, circumstances, the moods and emotions which may drive a person to commit suicide. In the present case, the prosecution has not produced any evidence on record to establish, or even create a doubt in the mind of the Court, that the deceased suffered from depression due to the deliberate conduct, acts and omissions in the relationship between the husband and wife, or due to the demands of dowry. The observations made by the Supreme Court in ***Sharad Birdhichand Sarda*** (supra), therefore, do not assist the appellant. In ***Trimukh*** (supra), the Supreme Court held that when incriminating evidence is put to the accused, and when he does not offer an explanation, or offers an explanation which is untrue, then it forms a part of the chain of circumstances. In the present case, accused No. 1 offered a reasonable explanation for all the allegations made

against him. It does not seem that these explanations are improbable untrue, or an excuse.

47. In the present case, the PW-1 has levelled general allegations of harassment against the accused. The prosecution has not substantiated any of these dowry demands or harassment with the help of any incriminating evidence. The specific details of any particular instance of harassment, or cruelty are missing. For the offence to come within the ambit of Section 498A IPC, harassment has to be with the definite object, namely, to coerce the woman or any person related to her to meet any unlawful demand of property, or valuable security. Neither the demand of dowry has been established by the prosecution, nor has it been established that there was culpable harassment, *per se*. Thus, the un-natural death of the deceased cannot be held to be a consequence of the demand and consequent harassment.

48. In the light of the aforesaid discussion, I find no infirmity with the impugned judgment of the Trial Court acquitting the accused persons. Accordingly, the impugned judgment is upheld. There is no merit in this appeal. The same is, accordingly, dismissed.

(VIPIN SANGHI)
JUDGE

AUGUST 11, 2015