

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. 1272/2014

Judgment reserved on 23.04.2015
Judgment delivered on 12.05.2015

KUBER DUTT SHARMA ...Appellant

Through : Mr. Madhu Mukul Tripathi, Advocate.

Versus

STATE & ORS. ...Respondent

Through : Mr. Feroz Khan Ghazi, APP for the State.
Mr. Dinesh Garg, Advocate for
respondents no. 2 & 3.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

1. Present appeal filed by the appellant under Section 372 read with Section 482 of the Code of Criminal Procedure, is directed against the impugned judgment dated 16.07.2014 passed by the Learned Additional Sessions Judge acquitting the respondents of the charges under Section 498-A/304-B/34 of the Indian Penal Code.
2. Brief facts of the case, as noticed by the learned Trial Court, are as under:

“(1) The case of the prosecution is based on an unfortunate incident of suicide committed by Ms. Savita at her matrimonial House No. 438, Gali No. 8, West Vinod Nagar, Delhi on 04.11.2000. Information of this incident was received in PS : Mandawali vide DD No. 10-A and thereafter, police as well as SDM Preet Vihar and family members of

deceased visited the place of incident. The father of deceased namely Sh. Kuber Dutt Sharma gave statement before SDM alleging that his daughter was married to Dinesh Gautam on 25.11.1993. Before her death, she had gone to her parents' house in Delhi and was taken back by her husband in the night of 02.11.2000. His daughter was harassed by her in-laws on account of dowry demands and demand for money to construct the house at their village as well as on account of birth of a child to her sister-in-law (nanad). The celebration of 'chuchak' ritual was to be conducted in Agra on account of birth of son of sister-in-law of deceased, for which mother-in-law and sister-in-law had made demand of Rs. 2 lacs as gift from the deceased. Accused Kishan (brother-in-law of deceased) had also asked the deceased to attend this function necessarily and had given threats of spoiling of the relationship, if she did not attend the same. The deceased was also harassed in the past by her mother-in-law, brother-in-law (jeth) and others on account of several demands. On the basis of such allegations, present FIR was registered U/s 498-A/304-B IPC.

(2) During inspection of dead body, a suicide note was also recovered from the dead body, which was sent to FSL along with admitted handwriting of the deceased. After completion of the investigation, present charge-sheet was filed for offence U/s 498-A/304-B IPC against accused Vimlesh, Anil Kumar Gautam, Kishan Dutt Gautam, Dinesh Kumar Gautam, Mohan Lal Gautam and Pratibha @ Pinki. During pendency of trial of this case, accused Mohan Lal Gautam expired and the case was abated against him.

(3) Charges were framed against accused Vimlesh, Dinesh Kumar Gautam, Kishan Dutt Gautam, Anil Kumar Gautam and Pratibha @ Pinki for offence U/s 498-A/304-B/34 IPC on 13.07.2004, to which they pleaded not guilty and claimed trial."

3. In order to prove its case and to bring home the guilt of the respondents, the prosecution examined 32 witnesses in all.
4. After completion of prosecution evidence, statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure wherein they denied the prosecution evidence and claimed that they have been falsely implicated in this case. In defence, the respondents examined two witnesses in their support.
5. Mr. Madhu Mukul Tripathi, learned counsel for the appellant while advancing his arguments contended that the impugned judgment of acquittal is contrary to the material available on record and the same is based upon surmises and conjectures and has resulted in miscarriage of justice and thus it is liable to be set aside and the respondents be held guilty for offences punishable under Sections 498-A/304-B/34 of the Indian Penal Code.
6. The learned counsel for the appellant further contended that the learned trial court erred in holding that none of the allegations make out a case of demand of dowry and of cruelty even though the demand of money and consequent cruelty for the purpose of construction of house as well as 'chuchak' has been proved by the testimony of PW2, PW6 and PW26 and thus an offence under Section 498-A of Indian Penal Code is made out.
7. Counsel for the appellant next contended that the learned trial court also failed to notice that suicide note was recovered from the dead body of the deceased from which it is clear that the failure to fulfil the demands of the respondents resulted in torture of the deceased and compelled her to commit suicide on 04.11.2000.

8. The learned counsel for the appellant submitted that the learned trial court failed to appreciate the evidence produced by the prosecution witnesses which was corroborated by the suicide note as well as the depositions made by the family members of the deceased who clearly deposed that the deceased was tortured by the respondents. Therefore, presumption as to dowry death under Section 113 (b) of Indian Evidence Act i.e. burden of proving the dowry death of the deceased is on the respondents.
9. The learned counsel for the appellant also raised the contention that the respondents were guilty of abetting the suicide by the deceased under Section 306 of the Indian Penal Code in the facts and circumstances of the case.
10. On the other hand, Mr. Dinesh Garg, learned counsel for the respondents no. 2 & 3 supported the decision of the learned trial court and argued that the deceased after marriage never lived with her in-laws as she was residing with her husband at places of his posting and therefore no occasion was available to her in-laws to make demand for dowry or to cause cruelty or harassment on the deceased. In support of this submission the learned counsel for the respondents relied upon the case of ***Amar Singh Vs. State of Rajasthan, 2010 (4) Criminal Court Cases 234 (SC)***, wherein it has been held that :

“23..... A prosecution witness who merely uses the word “harassed” or “tortured” and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498-A and 304B IPC.”

11. Counsel further submits that the deceased committed suicide after about 7 years of marriage and during these 7 years, neither the deceased nor her parents lodged any complaint against the respondents. Counsel also pointed out that the suicide note Ex.PW2/C which was recovered from the dead body of the deceased in the presence of SDM, was examined by the FSL and found to be written by the deceased but did not contain any allegations against the respondents nor held them responsible for the death of the deceased which clearly proves the innocence of the respondents.
12. The learned counsel for the respondents further argued that respondent no. 4 Kishan Dutt and respondent no. 6 Pratibha (sister-in-law of the deceased) lived in Agra and never lived with the deceased. The only allegation against respondent no. 4 and respondent no. 6 is that they had invited the deceased at 'chuchak ceremony' of their son at Agra and the statement of respondent no. 4 Kishan Dutt on phone that if the deceased would not attend the function, then their relations would come to an end which does not make out a case of dowry death under Section 304B of the Indian Penal Code and cruelty under Section 498-A of the Indian Penal Code against them.
13. It is also argued by the counsel for the respondents that PW5 Manjula, the daughter of the deceased in her testimony deposed that none of the respondents demanded dowry from her mother (deceased) and they had good relations with the deceased which proves that the allegations raised by the appellant against the respondents are false.

14. Counsel for the respondents further submitted that respondent no. 5 Anil (brother-in-law of the deceased) was employed with the Air-Force and he was posted at different places so he never lived with the deceased and her husband hence no case of cruelty and dowry death can be established against him.
15. Counsel for the respondents further contended that the deceased never lodged any complaint against any respondent in her lifetime rather she stated in her suicide note that after her death her husband should not be blamed. Hence on an examination of the evidence, which has come on record, the impugned judgment is justified in law.
16. We have heard the learned counsel for the parties and considered their rival submissions and perused the impugned judgment as well as the material available on record.
17. Returning to the evidence adduced during trial, we notice that Savita, the deceased was married with respondent no. 3 on 25.11.1993 and committed suicide on 04.11.2000 and died within 7 years of her marriage to respondent No. 3. The respondents were thus charged with allegation that they subjected the deceased with cruelty for not bringing sufficient dowry and thus they committed an offence under Section 498A/34 of Indian Penal Code and under Section 304-B/34 of Indian Penal Code.
18. While Section 498-A, of Indian Penal Code deals with cruelty subjected on a woman by her husband or a relative; Section 304-B of Indian Penal Code along with Section 113-B of the Indian

Evidence Act deals with dowry death and presumption as to dowry death. Section 498-A of Indian Penal Code reads as under:

498-A. 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.

Section 304-B, 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 purposes 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.

Section 113-B of the Indian Evidence Act reads as under:

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

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

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

“Section 2 of Dowry Prohibition Act defines dowry as under:

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.

Explanation II.- The expression 'valuable security' has the same meaning as in Section 30 of the Indian Penal Code."

20. The term 'Dowry' has also been explained by the Hon'ble Supreme Court in the case of ***S. Goptal Reddy Vs. Sate of Andhra Pradesh, AIR 1996 SC 2184*** wherein it was held that "Property or valuable security so as to constitute dowry within the meaning of the Act must, therefore, be given or demanded as consideration for marriage." Therefore, the term 'consideration' assumes importance because if any article is not given as a consideration for marriage, then it would not be covered with definition of dowry. The term 'dowry' was dealt with by Hon'ble Supreme Court in another case of ***Appasaheb & Anr. Vs. State of Maharashtra, 2007 (1) Crimes 110 (SC)***, wherein it was held as under:

"9. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning.

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

21. A careful analysis of the above-referred definitions would show that dowry would include that property or valuable security which is actually given or which is agreed to be given, in relation to the marriage of person in question. The property or valuable security may be given or may be agreed to be given before marriage or at the time of marriage or at any time after the marriage, so long as it is connected with the marriage. But, there has to be a link between the property given or agreed to be given at the time of marriage.
22. The question which arises for consideration is whether soon before her death, the deceased was subjected to cruelty or harassment by her husband or by her in-laws (respondents herein) for or in connection with any demand for dowry.
23. To answer the aforesaid queries, it would be useful to peruse the testimony of Kuber Dutt, father of deceased who appeared as PW2 in the witness box and deposed that :

“After the marriage immediately again said that at the time of the marriage the mother-in-law of my daughter made a demand of Rs. 2,00,000/-. At that

time I had given Rs. 50,000/- to the in-laws of my daughter and thereafter I gave them the balance of Rs. 1,50,000/- in instalments. About 11 months after the marriage of my daughter was blessed with a female child. On the birth of the female child the in-laws started quarrelling with my daughter that as to why she gave birth to a female child and had she given the birth to a male child, they would have got 'Choochak' from me. However, I had given them 'Choochak' and spent Rs. 25,000/-.

The marriage of 'Nand' of my daughter took place at Delhi. I had attended her marriage. Her name was Pratibha. I had spent around Rs. 25,000/- on the goods given to Pratibha. On that occasion my daughter was slapped by her mother-in-law while she was sitting in a vehicle and she demanded more money.

The in-laws of my daughter were constructing a house in their village and they again started demanding money for the construction of their house at their village. When the Nand of my daughter was blessed with a child at Agra, my daughter went to Agra, they also demanded 'Choochak' for her. Pratibha demanded 'Choochak' to the tune of Rs. 2,00,000/- from my daughter.

My daughter told me that she had been beaten by Anil Jeth and the mother-in-law on Diwali festigal and Dhanteras festival. They also pressurised her to bring Rs. 2,00,000/- otherwise she would be killed. Anil had threatened to kill by hanging her with her head towards the earth.

On 2nd November, 2000 my son-in-law Dinesh came to our house and took away my daughter on the plea that he had to go to the house of his sister for giving 'Choochak'. On 4th November, 2000 I was informed that my daughter had died. I gave statement to S.D.M. Sh. S. M. Haider. My statement is Ex.PW2/A and it bears my signatures."

24. Beena, mother of the deceased appeared in the witness box as PW6 and deposed on the same lines as her husband Kuber Dutt (PW2), father of the deceased about the demand of dowry by the respondents. In her testimony she deposed that :

“Savita told us that she was not allowed to by accused to perform Laxmi Pujan. She also told me that her brother-in-law Anil and her husband had given her beatings. She also told about Anil who had gone to Pune where my daughter was residing. He had insulted her there by unveiling her face. He also compelled my daughter to fulfil their demand of dowry.”

However, in the cross-examination, PW6, mother of the deceased clearly stated that there was no demand of cash and gifts by the respondents on the occasion of marriage of respondent no. 6 Pratibha but PW6 had given the gifts and cash voluntarily.

25. Manjula, daughter of the deceased was examined as PW5 who in her testimony deposed that :

“None other accused never quarrelled with my mother. None of them demanded any dowry from my mother before me. They had good relations with my mother.”

26. From the perusal of the testimonies of PW2 (father of the deceased) and PW6 (mother of the deceased), we may note that the respondents used to demand money from the deceased on different occasions. Further testimony of both these witnesses are supported by the depositions made by the other witnesses examined by the prosecution i.e. PW8 Mridula (wife of the brother of the deceased), PW17 Usha (neighbour of the father of the deceased), PW18

Bhuvnesh Kumar, (brother of the deceased), PW19 Manisha (aunt of the deceased) and PW26 Satyam Sinha (tenant of respondents) where they alleged that money was demanded from the deceased for different purposes by the respondents. However, from the testimony of PW5, daughter of the deceased, it may be noted that respondents had good relations with the deceased and there was no demand of any dowry by the respondents.

27. It is well settled that section 304-B of Indian Penal Code is attracted only if it is proved that the woman who dies in unnatural circumstances has been subjected to cruelty or harassment by her husband or any relative of her husband and such cruelty and harassment has been meted out to her in connection with demand of dowry and the cruelty and harassment has been meted out to the woman soon before her death. The period which can come within the term "soon before" cannot be put within the four corners of time frame and it is left to the Court for its determination depending upon the facts and circumstances of each case. In the case of *Ashok Kumar Vs. State of Haryana 2010 (12) SCC 350*, it was held that :

"22. The cruelty and harassment by the husband or any relative could be directly relatable to or in connection with, any demand for dowry. The expression "demand for dowry" will have to be construed ejusdem generis to the word immediately preceding this expression. Similarly, "in connection with the marriage" is an expression which has to be given a wider connotation. It is of some significance that these expressions should be given appropriate meaning to avoid undue harassment or advantage to either of the parties. These are penal provisions but

ultimately these are the social legislations, intended to control offences relating to the society as a whole. Dowry is something which existed in our country for a considerable time and the legislature in its wisdom considered it appropriate to enact the law relating to dowry prohibition so as to ensure that any party to the marriage is not harassed or treated with cruelty for satisfaction of demands in consideration and for subsistence of the marriage.

23. The Court cannot ignore one of the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution of India as well as has a presumption of innocence in his favour. In other words, the rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Where other ingredients of Section 304-B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under Section 304-B of the Code.

24. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of Section 304-B were

not satisfied, rebut the same. While referring to raising of presumption under Section 304-B of the Code, this Court, in Kaliyaperumal v. State of T.N. (2004) 9 SCC 157, stated the following ingredients which should be satisfied: (SCC p. 162, para 4)

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).

(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.

25. In the light of the above essential ingredients, for constituting an offence under Section 304-B of the Code, the Court has to attach specific significance to the time of alleged cruelty and harassment to which the victim was subjected to and the time of her death, as well as whether the alleged demand of dowry was in connection with the marriage. Once these ingredients are satisfied, it would be called the "dowry death" and then, by deemed fiction of law, the husband or the relatives would be deemed to have committed that offence."

28. The Hon'ble Court in **Ashok Kumar** (*supra*) also considered the meaning of "soon before death" and held that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. In other words "there should be a reasonable, if not direct nexus between her death and the dowry related cruelty or harassment inflicted upon".

29. In *Appasaheb & Anr. Vs. State of Maharashtra (supra)* it was held that the giving or taking of the property or valuable security must have some connection with the marriage of the parties. However, a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand of dowry, as the word is normally understood. However, in *Bachni Devi and Anr. Vs. State of Haryana (2011) 4 SCC 427* while distinguishing *Appasaheb case*, the Hon'ble Supreme Court has held that if demand for property or valuable security directly or indirectly has a nexus with the marriage, such demand would constitute demand for dowry.
30. In another case of *Phool Singh and Anr. Vs. The State (2010) ILR 3 Delhi 700*, it has been held that :

“It would be worthwhile herein to refer to the decision rendered by the Apex Court in the case of Satvir Singh v. State of Punjab reported at (2001) 8 SCC 633 wherein the Apex Court observed that:

21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is 'at any time' after the marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in

different societies. Such payments are not enveloped within the ambit of 'dowry'. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.”

31. In the present case, the suicide note left by the deceased was proved as Ex.PW2/C which was found by the SDM immediately after the death of the deceased in the presence of PW2 Kuber Dutt Sharma, father of the deceased who disputed the handwriting of the deceased in the recovered suicide note Ex.PW2/C. Therefore the suicide note Ex.PW2/C was sent to FSL for comparison of the handwriting of the deceased along with admitted handwriting of the deceased and the FSL report Ex.PW30/DA was received according to which the suicide note was written by the deceased. There was one more letter Ex.PW2/DA written by the deceased to her parents earlier. From the suicide note Ex.PW2/C and the letter Ex.PW2/DA written by the deceased to her parents, it is proved that there was no demand of dowry by the respondents and these two documents do not support the case of the appellant. The deceased wrote in the suicide note Ex.PW2/C that :

“Main Savita Gautam apni maut ki zimmedaar khud hun. Shayad mujhse anjane me kuch galati ho gayi ho mujhe to kuch pata nahi hai. Mere sasur ne mere haath ka paani bhi nahi piya. Main apne zameer ke saath jeena chahti thi ek naukrani ki tarah nahi. Mere marne ke baad mera jo kuch bhi hai wo sab meri beti ke naam kar dein. Meri maut ke baad mere pati ko kuch

nahi kaha jaaye. Meri beti ko mere marne ke baad hostel me daal diya jaaye.”

32. The contents of the suicide note Ex.PW2/C as referred to above, make it abundantly clear that the deceased was not subjected to any cruelty and had there been any harassment of the deceased on account of the dowry demand, certainly it would have found mention in the suicide note Ex.PW2/C.
33. With regard to the contention raised by the counsel for the appellant that Section 306 of Indian Penal Code is applicable to the facts of the present case, we may first discuss Section 306 of the Indian Penal Code which deals with abetment of suicide and reads as follows:

306. Abetment of suicide.--If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

34. The legal position as regards Sections 306 of the Indian Penal Code is well settled in the case of ***Randhir Singh v. State of Punjab (2004) 13 SCC 129***, wherein it was held by the Apex Court that :

“12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. v. Orilal Jaiswal this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

16. In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the

person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

35. In this background, it is to be assessed whether any cruelty had been meted out to the deceased by the respondents which induced her to end her life. From the testimony of PW2 (father of the deceased) it emerges that the deceased told him about beatings given to her by the respondent no. 5 Anil and respondent no. 2 Vimlesh on Diwali and also about the threats extended to her that she would be killed if she fails to bring Rs. 2 lacs. It is strange that if the deceased told her father about this, how could he remain silent and did not take any action against the respondents.
36. From the evidence on record we also find that PW2, father of the deceased referred to a phone call made by respondent no. 4 Kishan Dutt and his wife respondent no. 6 Pratibha to the deceased asking her to attend the function of ‘Chuchak Ceremony’ of their son and should she not attend the function, their relationship would come to an end. In our opinion, the prosecution witnesses depicted the invite as a threat to the deceased of facing dire consequences in case she failed to attend the function. The allegations against respondent no. 4 Kishan Dutt and respondent no. 6 Pratibha are devoid of any merit as they neither relate to demand of dowry nor any kind of harassment.

37. It stands established that the deceased resided with her husband at different places of his posting i.e. Allahabad, Pune and Purnia before coming to Delhi as he was serving Indian Air Force and after coming to Delhi the deceased lived in Vinod Nagar and her in-laws were living separately and her brother-in-law Anil was also serving Air Force so he was also posted at different places of posting. So there is no question of demand of dowry from the deceased by the respondents or any cruelty or harassment on the deceased. The respondent no. 4 Kishan Dutt and respondent no. 6 Pratibha were residing at Agra. The allegation of any dowry demand by them from the deceased has not come forth on the material on record.
38. From the preceding discussion and taking into consideration the cases cited above, it is clear that the term 'dowry' mentioned in Section 304B of the Indian Penal Code implies any property or valuable security which is given or agreed to be given either directly or indirectly at or before or any time after the marriage and 'in connection with the marriage of the said parties'. The giving or taking of property or valuable security must have some connection with the marriage of the parties. There can be many other instances for payment of money or giving of property. For example, some customary payments in connection with the birth of a child or other ceremonies as are prevalent in different societies, such payments are not enveloped within the ambit of 'dowry' as per various judgments of the Hon'ble Supreme Court. It is proved that demand for money by the respondents on the occasion of chuchak ceremony of the son of

respondents Kishan Dutt and Pratibha from the deceased does not come within the ambit of dowry as the dowry mentioned in Section 304B of Indian Penal Code should be any property or valuable security given or agreed to be given in connection with the marriage.

39. In our considered opinion, there is nothing on record to suggest that any dowry was demanded from the deceased by the respondents or that she was subjected to harassment in connection with the demand of dowry or even otherwise. On close reading of the testimonies of PW2, father of the deceased and PW6, mother of the deceased we are of the view that the depositions made by them do not specifically point towards the demand for dowry or any cruelty and harassment on the deceased extended by the respondents. In the case of *State Vs. Suraj Mehto & Ors. 2011 (3) C. C. Cases (HC) 432*, it has been held that :

“More importantly, the prosecution has to be specific as to what kind of harassment it was, mental or physical; what was the act of cruelty in a given case has to be proved. In the present case no such specific act was alleged or proved.”

40. Keeping in consideration the law discussed above and a perusal of the evidence on record does not show any act of harassment in relation to the demand of dowry soon before the death on behalf of the respondents. Further the contents of the suicide note Ex.PW2/C do not mention any cruelty or harassment meted out by the respondents on the deceased with regard to dowry.
41. The legal position is very clear that High Court possess wide powers and can re-appreciate the evidence while hearing an appeal

against an order of acquittal. In the case of **V. N. Ratheesh Vs. State of Kerala 2006 CrL. L. J. 3634**, it has been held that :

*“There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not (See **Bhagwan Singh and Ors. Vs. State of Madhya Pradesh 2002 (2) Supreme Court 567**).”*

42. On an application of law discussed above, we are of the view that no cogent evidence is produced on record which points towards the guilt of the respondents and we are of the opinion that the finding and the conclusion of the learned trial court are based on correct and proper appreciation of evidence.
43. From the above discussions, we are of the firm view that the evaluation of the findings recorded by the learned trial court do not

suffer from any infirmity and that no case is made out against the respondents under Section 498-A as well as Section 304-B/34 Indian Penal Code. Accordingly the judgment dated 16.07.2014 passed by the learned trial court is not perverse and does not lack legality. Hence, the appeal stands dismissed.

44. Trial Court Record be sent back to the concerned court.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MAY 12, 2015

SC