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

+ **CRL.A. 103/2013**

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*Judgment dated 15<sup>th</sup> January, 2016*

CHANDER BHAN

..... Appellant

Through : Mr. Madhav Khurana and Mr. Jaivir Bains, Advocates.

versus

STATE & ORS.

..... Respondent

Through : Ms. Anita Abraham, APP for State with Inspector Narender Kumar, PS – Sonia Vihar.

Mr. Krishan Kumar and Ms. Sunita Arora, Advocates for R-2 to 5.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G. S. SISTANI, J. (ORAL)**

**CRL. M. A. 671/2013**

1. This is an application for condonation of 248 days delay in filing the present appeal.
2. The prayer made in this application is not opposed. Accordingly, the delay is condoned. Application stands disposed of.

**CRL.A. 103/2013**

3. The present appeal under Section 372 of the Code of Criminal Procedure has been filed by the brother of the deceased against the judgment dated 15.02.2012 by which respondent nos. 2 to 5 have been acquitted.

4. Before the case of the prosecution can be noticed, we may note that a charge was framed against the respondent nos. 2, 3 & 4 under Section 498-A of the Indian Penal Code and charge under Section 302 of the Indian Penal Code was framed against respondent no. 5.
5. On 18.11.2009, information was received at Police Station – New Ashok Nagar that a lady named Sonika (deceased) was stabbed by a knife in a quarrel near Pradhan Building, MCD Barat Ghar who had been rushed to the hospital. This information was recorded as DD No. 45A. On receipt of DD No. 45A, ASI Yogender Singh reached LBS Hospital where Sonika was admitted with alleged history of accidental injury by knife. MLC was prepared by Dr. Shalini Gupta. As per the MLC, there was only one injury on the body of Sonika i.e. Linear insiced wound at left breast size 3x.2cms. ASI Yogender Singh recorded the statement of Sonika wherein she stated that her one year old daughter was playing near a stand containing spoons and knives. When she tried to save her from the stand, she slipped on the stand, due to which the knife pierced through her left breast.
6. On 19.11.2009, an information was received at P.S. New Ashok Nagar through wireless operator that “*House No. G-18, Raj Rani Wali Gali, Kundli – Meri Bahan Ko Chaku Mara Hai – 9015623282*”. This information was recorded vide DD No. 19A which was entrusted to ASI Rajender Singh who reached the spot and recorded the compromise agreement signed between the respondent nos. 2, 3 and 4 and the appellant herein and other family members of the deceased. Statement of Chander Bhan was recorded. Chander Bhan stated that he came to meet his sister Sonika at Room No. 33, C – Block near

Barat Ghar where he found minor injury on her chest whereupon he questioned his sister Sonika, she told him that she had exchanged hot words with her Devar Ravi and while grappling she sustained an injury to her chest. Chander Bhan then called 100 number to inform the police. He further told the police that the Husband, Devar and other relatives of his sister apologized for their mistake and ill treatment of Sonika after which they had mutually settled the issue for the sake of Sonika and her daughter's future in the matrimonial home and thus, he did not want police to take any action but in case his sister was harassed in future, action would be taken against them.

7. On the intervening night of 19/20.11.2009, information was received through telephone at Police Station – New Ashok Nagar that Sonika, who had been admitted in Kailash Hospital with stab injury, had expired. The investigation was entrusted to SI Narender Kumar who went to Kailash Hospital. The SDM was informed. Statement of Chokhey Lal, father of the deceased was recorded. Based on his statement, an FIR under Section 498-A/304-B/34 of the Indian Penal Code was registered. Subsequently, section 302 of the Indian Penal Code was added on 21.08.2009.
8. Learned counsel for the appellant submits that the judgment dated 15.02.2012 by virtue of which the respondent nos. 2 to 5 stand acquitted is bad in law, suffers from gross application of mind and the same is liable to be set aside.
9. Learned counsel for the appellant contends that the trial court has failed to consider the testimonies of two independent witnesses being PW-2 and PW-9 besides the testimonies of PWs 1 and 3 who have

testified that the deceased used to tell them her plight with regard to the cruelty which she was facing on account of non-fulfilment of demands of dowry made by respondent nos. 2 to 5. Counsel further contends that the testimonies of the PW-1 father of the deceased and PW-3 brother of the deceased and the testimonies of PW-2 and PW-9 would show that the deceased was being harassed for dowry and thus a case under Section 498-A is made out against respondent nos. 2 to 4. Counsel further submits that the trial court has failed to appreciate that the statement of the deceased cannot be treated as a dying declaration as the same was made in the presence of respondent no. 2 and SI Yogendra Singh and the possibility of coercion cannot be ruled out. It has also been stated in the grounds that the statement could probably have been made with a view to save her matrimonial home as she did not expect to die at the time when the statement was made. Counsel submits that the dying declaration would have little or no value in view of the subsequent compromise agreement wherein it was stated that the deceased fell on the knife after grappling with her *devar*. The compromise agreement is of a later date and a complete reading of the compromise agreement would leave no room for doubt that the deceased was being harassed for demand of dowry.

10. Counsel has also submitted that the trial court has failed to appreciate that there was evidence of dowry having been given at the time of marriage which has been confirmed by PW-1, PW-2, PW-3 & PW-9 and the deceased was continuously being subjected for demands of dowry. Counsel contends that the trial court has failed to take into account the testimony of PW-1 & PW-3 wherein it has categorically

been stated that the deceased was being harassed and the in-laws were demanding a plot and two bigas of land. The respondent no. 2 was regularly threatening the deceased by telling her that she should take double the money her father has spent on the marriage and leave him.

11. As far as the respondent no.5 is concerned, learned counsel submits that a case under Section 302 of the Indian Penal Code is made out. The testimonies of PW-1 & PW-3 would establish that the deceased had informed her brother and father that Neeraj, cousin of Amit had caught hold of her and respondent no. 5 Ravi had stabbed her. It is contended that the statement of the father stands corroborated by the statement of the brother. PW-3 has also testified on identical lines and additionally PW-3 had testified that when he had gone to the house of his sister Sonika, he had found a butter knife under the shawl of the deceased which was the weapon of offence and thus a case under Section 302 of the Indian Penal Code is made out.
12. Learned APP for State has also argued on identical lines. She submits that the prosecution has been able to establish its case beyond any shadow of doubt. The order of the trial court should be set aside and the respondents no.2 to 4 should be convicted for the offences under Sections 498-A and respondent no.5 should be convicted under Section 302 of the Indian Penal Code respectively.
13. We have heard the learned counsel for the complainant, APP for the State as also counsel for the respondents.
14. Before the rival submissions of the parties can be considered, we deem it appropriate to discuss the testimonies of some of the material witnesses in detail.

15. PW-1, Chokhey Lal is the father of the deceased. He testified that his daughter was married to Amit on 02.07.2007. After marriage, his daughter and Amit were residing at Village Kader Pur. On 01.11.2009, Sonika delivered a baby girl at his house and thereafter started residing with her husband at New Kondli, Delhi at Pradhan building after Holi last year. After 2-4 months of marriage, her in-laws, namely, Braham Chand and Prakash Devi and Amit started harassing his daughter. They used to demand plot and 2 bigha of land. His daughter used to inform him about the demands. His daughter also told him that Amit used to tell her to take double the money which had been spent on the marriage and leave him.
16. PW-1 also testified that he had given a motorcycle, four *tolas* of gold ornament and 30-35 *tolas* of silver ornaments and cash of Rs.25,000/-. On 18.11.2009, Amit called his son Duli Chand and informed him that Ravi, real brother of Amit had met with an accident. His son Chander Bhan lived in Ghaziabad. Duli Chand made a call to Chander Bhan and informed him about this. Accordingly, Chander Bhan visited the house of Sonika at Kondli, but the house was locked. Chander Bhan made a call at the medical store being run by Amit where their servant informed him that Ravi is in LBS Hospital. Chander Bhan reached the LBS Hospital and met there with the accused persons and asked them about Ravi.
17. PW-1 has further deposed that he found Sonika was admitted in the hospital with a stab wound on the left side of her chest. Thereafter, Chander Bhan made a call to him. He along with 8-10 persons of the village came at Kondli, Delhi, the house of the

deceased, where she was present. Chander Bhan was also present. A call was made at number 100. Police reached the spot and informed them that it was a case of murder, but the accused persons explained that Sonika sustained stab wound herself by falling on the stand. They thought that Sonika would become all right, they left them for Ghaziabad to the house of Chander Bhan. At midnight, Amit made a call on the mobile of Chander Bhan and informed him that the condition of Sonika is serious and she is admitted in Kailash Hospital, Delhi. On reaching the Hospital, they learnt that Sonika had died. The SDM recorded his statement and the statement of Chander Bhan. He further testified that he met Sonika in her house after her discharge from LBS Hospital and she had told him that Neeraj (cousin of Amit who is facing trial before JJB) had caught hold of her and that Ravi had stabbed her. This witness was also cross-examined by the APP.

18. In cross-examination, he deposed that Amit was having illicit relationship with his *maami*. On account of this reason, he used to harass Sonika and used to demand dowry. Sonika had also told him that she had made a statement to the police earlier but did not disclose the true facts in order to save her matrimonial life. Actually, she had been caught hold by Ravi and stabbed by Ravi. In the cross-examination carried out by counsel for the respondents, he admitted the document Ex.PW1/DX (compromise agreement) bears his signature at point 'A'. He identified the signatures of Chander Bhan, Duli Chand and Bihari Lal at points 'B', 'C' and 'D' respectively. He also admitted that Amit, Brahm Singh and Prakash Wati had also signed on Ex.PW1/DX1 in his presence at points 'E', 'F' and 'G' and

the policeman who had come at the spot signed the document Ex.PW1/DX1 at point 'H'. He also admitted after execution of Ex.PW1/DX1 they had left the matrimonial house of Amit for Village Sunpura, District Ghaziabad. He also stated during cross-examination that they had told the police that they did not want any police action against the accused in the matter. He admitted that they did not make a call to the police from Kailash Hospital. He admitted that he did not make any complaint against the accused persons regarding harassment and torture of his daughter with police of Distt. Ghaziabad or Bulandshahar or in Delhi prior to the case. He admitted that his daughter had passed 10<sup>th</sup> class in the year 2003 and her husband had got her admitted in class 11<sup>th</sup> in Kisan Inter College, Bulandshahar. He admitted that his son Duli Chand had stayed with accused Amit at his rented premises at Kondli on 16-17<sup>th</sup> November, 2009. He also admitted that on 17.11.2009, he had come to Delhi to the house of Amit and left on the same day for his village in the evening. He admitted that on 18.09.2007, a 366 sq.yd. plot was purchased by Amit in the name of Sonika at Village Kadarapur, District Bulandshahar, U.P. This witness was confronted with the statement of Ex.PW1/A wherein it had not been recorded that the accused used to demand plot of 2 bigha of land from Sonika and she had told him this. During cross-examination, he also stated that he did not know from where the motorcycle was purchased which was given in marriage. Neither he did know the exact amount. He denied the suggestion that the motorcycle of Amit was purchased by him prior to the marriage. He stated that the photographs of the motorcycle was taken at the time of

marriage. He admitted that Ex.PW1/DX5 pertains to articles given by him in dowry, but it did not contain the photograph of the motorcycle. He stated to the police that after 2-4 months of the marriage, the in-laws of Sonika namely Braham Chand and Prakash Devi and Amit started harassing his daughter Sonika and they used to demand plot and 2 bighas of land from Sonika. Sonika used to tell him all this. He was confronted with the statement Ex.PW1/A wherein it is not so recorded.

19. PW-2, Smt. Vimlesh is one of the neighbours of the parents of deceased Sonika, who has testified that Sonika used to come to her parents house, she used to tell her that her in-laws and her husband used to harass her for dowry. She testified that *panchayat* was called by parents of Sonika and thereafter Sonika was sent to her matrimonial house. She testified that Sonika had given birth to her daughter in her parents house. She was cross-examined by the counsel for the defence . In cross-examination, she stated that she had come to Delhi for the first time. The mother and Duli Chand, brother of Sonika had come with her. Choke Lal, father of Sonika had also met her outside the court. She admitted that on that date she was deposing at the instance of the parents of Sonika. She admitted that she did not remember the date when Sonika delivered her daughter. She denied the suggestion that Sonika delivered her daughter in Delhi and not at her parents house. She testified that she cannot say if Sonika delivered her daughter on 12.12.2008. (The court, during the course of cross-examination, observed that the witness was not aware about the dates.) She denied the suggestion that when Sonika used to

come to her parents house, she used to tell her that her in-laws and husband used to harass her for dowry. She admitted that she cannot tell the date, month and year when Sonika had met her. She denied the suggestion that was deposing falsely.

20. PW-3, Chandra Bhan is brother of deceased Sonika. He testified that on 17.11.2009 in the evening he received a call from his brother Sh. Duli Chand who informed him that brother-in-law(*Devar*) of his sister Sonika had met with an accident. He deposed that for the last 4-5 months Sonika was residing at Village Kondli, near Pradhan building, Samudaya Kendra with her husband. In the evening of 18.11.2009, he went to the house of his sister. There he found the premises locked. At the entrance door he saw a ladies shawl lying on the floor. He thought that it must be of his sister and she had left it there. He picked the shawl to put it on wire tied. The moment he picked the shawl, a buttondar knife having blade of 12 inches came out of it. He thereafter put the shawl on the knife. He thereafter made a call at the mobile phone of his sister, someone picked the phone and asked him to come to the LBS Hospital. He thereafter reached LBS Hospital. There he saw Sonika lying on a bed and was taking deep breathes. All the four accused persons present in Court were correctly identified by him were present in the hospital. Sonika started crying after seeing him. She told him that Neeraj, cousin of Amit(maternal uncle's son) had caught hold her and Ravi, her *Devar* had stabbed her. Sonika further told him that after she was stabbed, her neighbours gathered there and brought her to hospital. She further told him that Neeraj and Ravi had run away from the spot after stabbing her. He saw that

Sonika had suffered injury on the right side of her chest and the wounded portion was bandaged. Amit told him that Ravi had stabbed Sonika and has run away. Exchange of hot words took place between him and the accused persons. He made a call to his brother Duli Chand and informed him about the all the facts.

21. He testified that at about 11:00 a.m. Sonika was brought to the house by the accused persons. At about 2:30 p.m. his family comprising of his father, his brother-in-law Vijay Singh, his brother Duli Chand, his *Foofa* Sher Singh reached the house of Sonika. Sonika also told his family members about the entire incident. Exchange of hot words took place between his family and the accused persons. Some quarrel also took place amongst themselves. Accused told them to do whatever they can do and they had stabbed Sonika. He testified that from there in the evening, he and his other family members returned to Ghaziabad. At about 12:30 midnight, he received a call from Kailash Hospital, Noida informing him that Sonika had died. He testified that Sonika was married to Amit on 02.07.2007. Sonika used to be beaten by Amit and her parents-in-law to fulfill their demands of dowry. She was even beaten with belts and oil was poured over her. He testified that accused also used to demand plot, car and cash from them. Sonika used to tell all this to him. Once Sonika had come to their house in the Village, there Amit had come to take Sonika with him. Sonika was not willing to go back with Amit as he and his family used to misbehave with her due to this reason Amit got angry and started beating her with belts and also kicked her. He and his mother were present in the house at that time. He testified that mother

in-law and father-in-law alongwith *Devar* Ravi used to abuse Sonika. Sonika had told him that on the birthday of her daughter, accused Ravi had caught hold her hand and had misbehaved with her after this she had beaten Ravi with *chappals*. Due to this reason Ravi had stabbed Sonika.

22. In cross-examination, he testified that on 18.11.2009, he had reached LBS Hospital at about 7:00 a.m. He denied the suggestion that he had reached LBS Hospital at about 12:00 a.m. midnight on the intervening night of 18/19.11.2009. He testified that on 18.11.2009, accused had taken Sonika to the house from LBS Hospital at about 9:30 a.m., while in the hospital in the morning, he did not make any complaint to the police against the accused. He testified that his family had reached at about 2-2:30 p.m. and he made a call at 100 number at about 7:00 p.m. He testified that he had told the police that for the last 4-5 months Sonika was residing at Village Kondli, near Pradhan building, Samudai Kendra with her husband. In the evening of 18.11.2009, he went to the house of his sister, there he found the premises locked. At the entrance door, he saw a ladies shawl lying on the floor, he thought that it must be of his sister and she had kept it there and forgotten to take it. He picked the shawl to put it on wire tied there. The moment he picked the shawl, a buttondar knife with a blade of 12 inches came out of it. He thereafter put the shawl on the knife. He thereafter made a call at the mobile phone of his sister, someone picked the phone and asked him to come in the LBS Hospital. He reached at LBS Hospital, there he saw Sonika lying on a bed and was taking deep breath. The witness was confronted with

statement Ex.PW3/DX1 and Ex.PW3/DX2, wherein it is not so recorded.

23. He testified that he told the police that Sonika started crying after seeing him and she told him that Neeraj, cousin of Amit (maternal uncle's son) had caught hold her Ravi, her *Devar* had stabbed her. Sonike further told him that after she was stabbed, her neighbours gathered there and brought her to hospital. She further told him that Neeraj and Ravi had run away from the spot after stabbing her. He saw that Sonika had suffered injury on right side of her chest and the wounded portion was bandaged. Amit told him that Ravi has stabbed Sonika and had run away, exchange of hot words took place between him and the accused persons. He made a call to his brother Duli Chand and informed him about all the facts. The witness was confronted with statement Ex.PW3/DX1 and Ex.PW3/DX2 wherein it is not so recorded. (It was pointed out by the learned APP that this statement was made by witness in his statement dated 18.12.2009 recorded by IO).
24. He testified that he had told the police that Sonika used to be beaten by Amit and her parents-in-law to fulfill their demands of dowry, she was even beaten with belts and oil was poured over her, accused also used to demand plot, car and cash from them. Sonika used to tell all this to him. Once Sonika had come to their house in the Village, there Amit had come to take Sonika with him, Sonika was not willing to go back with Amit as he and his family used to misbehave with her, due to this reason Amit got angry and started beating her with belts and also kicked her, he and his mother were present in the house at that

time. Mother-in-law and father-in-law along with *Devar* Ravi used to abuse Sonika. Sonika had told him that on the birthday of her daughter accused Ravi had caught hold her hand and had misbehaved with her, after this she had beaten Ravi with *chappals*, due to this reason Ravi had stabbed Sonika. This witness was confronted with statement Ex.PW3/DX1 and Ex.PW3/DX2 wherein it is not so recorded.

25. PW-4, SI Narender Kumar testified that on the night intervening 19/20.11.2009, he was posted as SI, Police Station New Ashok Nagar. On receipt of DD No.3A, he reached Kailash Hospital and collected medical record of treatment of the deceased.
26. PW-5, Dr.Shalini Gupta, Casualty Medical Officer at LBS Hospital, Delhi, has deposed that on 18.11.2009 at 10.20 p.m., the patient, Sonika, was brought by her husband in the hospital with the history of accidental injury by knife. As per PW-5, the patient had suffered following injuries:

*“Linear incised wound at left breast size 3 x .2 cms, red in colour”.*

PW-5 referred the patient to SR Surgery. She admitted that the MLC, Exhibit PW-5/A, is in her hand and bears her signatures at point A.

27. PW-6, Dr.Vinay Kumar Singh, Forensic Medicine, LBS Hospital, Delhi, has testified that on the directions of Executive Magistrate, Sh.P.K. Jayant, he conducted postmortem on the dead body of Sonika w/o Sh.Amit Kumar, aged about 25 years. He has further deposed that on examination he found the following external injuries:

1. Incised wound, stitched with two black silk suture, 2.5 x .3 cms, obliquely present over left side of chest, 118 Cms above heel and 3 cms from midline, 4.2 cms above nipple, margins sharp and regular, upper and acute “stab wound”, directed inwards, downwards and left to right.
2. Abrasion, 1.5 x .2 cms obliquely present over right side of chin, 1.5 cms below lower lip and 2 cms away from midline.
3. Injection marks in both cubital fossae, right and left and dorsum of both hands right and left.”

28. PW-6 has further testified that on internal examination he found following injuries.

1. In chest in continuation to injury No.1 after incising skin, subcutaneous tissue, muscles, from coastal margin, diaphragm, peritoneum and mesentery with hemorrhage along track and about 1 liter of blood in cavity, both lungs pale. In abdomen cavity about 500 ml of blood with clots present. Stomach was empty and walls was pale.

### **CAUSE OF DEATH**

Was due to hemorrhagic shock consecutive upon incised stab wound to the chest. All the injuries were ante mortem in nature and recent in duration. Injury No.1 is sufficient to cause death in ordinary course of nature.

The time since death was 16 to 24 hours.

The clothes and blood in gauze was seized and sealed with the seal of DFMT/LBSH and handed over to IO.

The P/M is Ex.PW6/A which is in my hand and bears my signatures at point A.”

29. PW-10, ASI Rajendra Singh, Main Security Line, Vinay Marg, deposed that on 19.11.2009, he was posted as ASI at Police Station New Ashok Nagar. On that day, he received a DD No.19A(Ex.PW10/A). He reached at House No.G-18, Kondli. He deposed that there, Chanderban, brother of deceased Sonika met him. He recorded the statement of Chanderbhan(Ex.PW1/DX1), which bears his signature at point ‘H’. In cross-examination, he testified that Chanderbhan did not tell him anything except as noted down by him in statement (Ex.PW1/DX1).
30. PW-11, SI Yogendra Singh, P.S. Model Town deposed that on 18.11.2009, he was posted as ASI in P.S. New Ashok Nagar. He deposed that at 9:50 p.m., he received DD entry 45A(Ex.PW11/A). On that basis, he reached at LBS Hospital. Deceased Sonika was admitted there. He collected the MLC of deceased Sonika. In the history, the doctor had mentioned accidental injury by knife. He recorded the statement of deceased Sonika(Ex.PW6/DX1)[dying declaration]which bears his signature at point ‘B’ and thumb impression of deceased at point ‘C’. He deposed that since no offence was disclosed, due to this reason the DD was kept pending.
31. We have heard learned counsel for the appellant, who is the brother of the deceased; counsel for the State; and also counsel appearing on behalf of respondents no.2 to 5. Respondent no.2 is the husband of the deceased Sonika, while respondents no.3 and 4 are father-in-law

and mother-in-law of the deceased. A charge has been framed against the husband, father-in-law and mother-in-law of the deceased under Section 498A/34 of the IPC. Relevant portion of the charge reads as under:

*“That you Amit being husband of the deceased Sonika and you Braham Chand and Prakashwati being parents-in-law of deceased Sonika at the matrimonial home in furtherance of your common intention harassed her and treated her with cruelty after her marriage with a view to coercing her and her parents to fulfil demands of more dowry and thereby committed an offence punishable u/s 498A/34 IPC.”*

32. A charge has separately been framed against respondent no.5 under Section 302 of the IPC.
33. Before the rival submissions of learned counsel for the parties can be considered, we may note that a statement (Exhibit PW-6/DX1) was made by the deceased in presence of SI Yogendra Singh(PW-11), after the incident. A translation of the statement made by the deceased reads as under:

*“Translation of Ex PW 6/DX1, a dying declaration dated 18/11/2009 made by Sonika Gautam W/o Amit Kumar Gautam, forthcoming on the record of the case noted as under:*

*Case (FIR) No.491/2009, dated 20.11.2009 for the commission of an offence punishable under Sections 498A/304B/34 of the Indian Penal Code related to Police Station N.A. Nagar, Delhi.*

*Sonika Gautam W/o Amit Kumar Gautam aged 25 years, R/o House No.D-18, Harijan Basti, Kondli, Delhi made the following statement :*

*“I reside at the aforesaid address on rent alongwith my husband. And I am a house-wife. Today, my daughter aged about one year had been playing where the stand of spoon and knife had been kept. My daughter had been playing with a toy. As soon as I moved to save my daughter from the stand, my foot slipped out of a sudden. As a result of which, I fell on the stand due to which the knife kept in the stand pierced through my chest. One of my neighbour living on rent made the call seeing my injury. Now has inflicted this injury to me. This injury was caused to me due to the sudden slip of my foot.”*

*You have recorded my statement and I heard the same and found it to be correct.”*

RTI of Smt. Sonika

Sd/-Amit Kumar

(In Hindi)

9818362469

Dated: 18.11.2009

Attested by:

Sd/-Illegible

Dated:18.11.2009

34. We may also note that a settlement was arrived at between the family members of the deceased and in-laws of the deceased, which was signed after the incident, but before the demise of Sonika. The English translation of Exhibit PW-1/DX1 reads as under:

*“Translation of Ex PW 1/DX1, a statement dated 19/11/2009 made by Chander Bhan S/o Sh. Chokha Lal, recorded by SI Rajender Singh forthcoming on the record of the case (FIR) No. noted as under:*

*Case (FIR) No.491/2009, dated 20.11.2009 for the commission of an offence punishable under Sections 498A/304B/34 of the Indian Penal Code related to Police Station New Ashok Nagar, Delhi.*

*Chander Bhan S/o Sh. Chokha Lal, Age 24 years, R/o Village Nehru Pur, Khurja, Bulandshehar, U.P. made the following statement:*

*“I reside at the aforesaid address along with my family. Today, in order to meet my sister I reached Room No.33, C Block near Barat Ghar. I found my sister with simple injury inflicted on her chest. I asked my sister the reason behind the injury. She told me that there had occurred squabble and scuffling between her and her younger brother in law (devar) Ravi. During the scuffling she slipped and got injured in her chest. Seeing the injury of my sister, I got angry and called at 100 number. My sister’s younger brother in law Ravi, her husband Amit Kumar and all family members have admitted to their guilt. Now we have compromised among ourselves. Now we don’t want any police or legal proceedings. I heard the statement and found it to be correct. Next time in the future, if the family members, the husband, the mother in-law, the father in-law and the younger brother in-law harass my sister Sonika, legal action may be taken against them.”*

*Boy side:  
Sd/- Amit  
Sd/- Prashwati*

*Girl side:  
Sd/- Chander Bhan  
Sd/- Bihari Lal  
Dated: 19.11.09  
Sd/- Chokhey Lal*

*Attested by:  
Sd/- Rajender Singh  
ASI Rajender Singh,  
P.S. New Ashok Nagar,  
Dated : 19.11.09”*

35. Section 498-A IPC was introduced in the Indian Penal Code by the Criminal Law (Second Amendment) Act, 1983, which came into force w.e.f. 25.12.1983. This Section was introduced with a view to extend protection of the weaker spouse. Section 498A reads as under:

*“S. 498A. 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 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 is on account of failure by her or any person related to her to meet such demand.”*

36. The trial court has acquitted respondents no.2 to 4 for the offence punishable under Section 498A of the IPC after having carefully examined the evidence of the material witnesses, being PW-1 Sh.Chokhey Lal, father of the deceased; PW-3, Chander Bhan, brother of the deceased; PW-9, Smt.Sushila, neighbour of Sh.Chokhey Lal; and PW-2, Smt.Vimlesh, another neighbour of Chokhey Lal.
37. PW-1, Sh.Chokhey Lal, has testified that 2-4 months after the marriage of Sonika, her in-laws and her husband demanded a plot and two bighas of land. He has further testified that his daughter used to tell him that her husband, Amit, used to tell her to take double the money, which had been spent on their marriage, and leave him. PW-1

has also testified with regard to giving a motorcycle, four tolas of gold ornaments, 30-35 tolas of silver ornaments and Rs.25,000/- in cash.

38. In his evidence PW-3, Chander Bhan, brother of the deceased, has testified that Sonika's husband used to beat Sonika to fulfil his and his parents' demands of dowry. She was even beaten with belts and oil was poured over her. The accused also used to demand plot, a car and cash. Sonika was beaten with belts and oil was also poured over her. This witness further goes on to testify that on one occasion his sister, Sonika, had come to his house in the village. When her husband, Amit, came to take her back, she was not willing to go back as her husband's family used to misbehave with her on which her husband got angry and started beating her with belts and also kicked her. PW-3 and his mother were also present in the house at that time. It has further been testified by PW-3 that the mother-in-law and the father-in-law along with devar, Ravi, used to abuse Sonika.
39. We find the evidence of both the star witnesses *i.e.* father of the deceased, Sh.Chokhey Lal, PW-1, and brother of the deceased, Sh.Chander Bhan, PW-3, to be unreliable. There is material contradiction in the testimony of both these witnesses. There is no reference of beating in the testimony of the father of the deceased, while the brother of the deceased has stated that Amit used to beat Sonika with belts, poured oil over her and when she had refused to go back with Amit, Amit in the presence of PW-3 and in the presence of his mother had beaten Sonika with belts and also kicked her. Such an incident, if ever had taken place, would certainly have been mentioned by the father in his testimony.

40. We may also note that the mother of the deceased has not stepped into the witness box. The evidence of father and brother of the deceased do not give any dates as to when any demand of dowry was made by her husband and his family members.
41. During cross-examination, the PW-1, father of the deceased was confronted with his statement Ex.PW1/A wherein it had not been recorded that accused used to demand plot of 2 bigha of land. During cross-examination, he also stated that he did not know from where the motorcycle was purchased. Also, during cross-examination, he had admitted that photograph Ex.PW1/DX5 pertained to articles given in dowry, but it did not contain photograph of motorcycle.
42. The testimonies of other two witnesses, being PW-2 and PW-9, who are the neighbours, are also not trustworthy. PW-2 has testified in her cross-examination that she was deposing at the instance of the parents of Sonika. PW-2 has further testified that when Sonika used to come to her parents, she used to tell her that her in-laws and husband used to harass for dowry and twice Panchayat was called by the parents of Sonika. The testimony of this witness, PW-2, is also vague. No dates, as to when any demand of dowry was made, have been given by PW-2 in her testimony. The trial court has also observed that PW-2 is not aware about any date.
43. In the cross-examination PW-2 goes on to state that it was wrong to suggest that the deceased used to tell her that her in-laws and husband used to harass her for dowry. PW-2 has further testified that she could not tell the date, month and year when she had met Sonika.
44. PW-9, Smt.Sushila, the other neighbours of Sh.Chokhey Lal, has also

testified without giving any reference to the dates. PW-9 has also testified that Panchayat was called in the village but in the evidence of the father and the brother of the deceased there is no reference of any Panchayat ever having been called.

45. The evidence of these four witnesses i.e. PW-1, PW-2, PW-3 and PW-9, are also to be considered in the light of the dying declaration made by the deceased where there is no reference of any demand of dowry having been made or any harassment by her husband or her in-laws. The dying declaration only speaks about the manner in which the knife pierced through the chest of the deceased.
46. Another relevant factor, which is to be noticed, is Exhibit PW-1/DX1, English translation of the statement dated 19.11.2009 made by PW-2, Chander Bhan, according to which PW-2 had asked his sister how she suffered the injury and his sister had told him that it had occurred on account of a squabble and scuffle between her and her younger brother-in-law (devar), Ravi. In Exhibit PW-1/DX-1, a compromise has also been recorded between the parties, wherein no reference of demand of dowry or harassment in relation to demand of dowry has been made either by Chander Bhan or other family members of Sonika. Although, learned counsel for the appellant has laboured hard to draw the attention of the Court to the concluding part of PW-1/DX-1 wherein it has been recorded that in future, if any, member of the family of the husband, the mother-in-law, father-in-law and the younger brother-in-law harassed his sister, legal action would be taken but we are of the view that the document (PW-1/DX-1) does not speak about the harassment with respect to demand of dowry.

47. The court cannot lose track of the fact that this compromise was signed by respondents no.2 to 4 i.e. Chander Bhan; brother, Bihari Lal; and the father, Chokhey Lal. In case, there was any demand of dowry in the past, certainly the family members of the deceased would have made some reference and to the contrary there is not even a whisper.
48. There is yet another aspect of the matter which shows the ensuring good relationship between the two families. In his cross-examination PW-1 has admitted that he had sent invitation cards (Exhibit PW-1/DX2, and Exhibit PW-2/DX2) of the marriage of his son, Duli Chand, to Brahm Chand and his family. Duli Chand had even stayed at the rented house of Amit in Kondli on 16/17.11.2009. On 17.11.2009 the father of the deceased had also come to Delhi at the house of Amit for the full day. It has also been admitted by PW-1 that on 16.11.2009 he along with Chander Bhan, Duli Chand, sister-in-law of Shakuntala and maternal uncle of Amit had gone to Chandni Chowk for purchase of clothes for marriage of Duli Chand, which would show that the relationship between them was congenial.
49. It is settled law that equal weightage must be given to defence witnesses. In the case of *State of Haryana v. Ram Singh*, (2002) 2 SCC 426, it was held as under:
- “20....Incidentally be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one - the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. Rejection of the defence case on the basis of

the evidence tendered by defence witness has been effected rather casually by the High Court.....”

50. Similar view has been expressed by the Apex Court in a recent judgment in the case of *Jumni and Others v. State of Haryana*, 2014(3) Scale 588, whereby it was held that the plea of *alibi* should be held at an equal footing to the evidence provided by the prosecution. In para 27 of the judgment, it was held as under:

“27. On the standard of proof, it was held in *Mohinder Singh v. State*, 1950 SCR 821 that the standard of proof required in regard to a plea of *alibi* must be the same as the standard applied to the prosecution evidence and in both cases it should be a reasonable standard. *Dudh Nath Pandey* goes a step further and seeks to bury the ghost of disbelief that shadows *alibi* witnesses, in the following words:

“Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses.”

51. DW-1, Swaran Singh, has testified that he was known to the accused persons being their neighbours. He had attended the marriage of Amit and Sonika. Sonika had stayed in her matrimonial home and was admitted in Vidya Niketan School in Class XI and during that period he had not heard any quarrel between Sonika and her in-laws. Sonika had not made any complaint and no Panchayat had ever been held in the village.
52. There is yet another important factor *i.e.* in the cross-examination PW-1 has admitted that on 18.9.2007 a 366 sq. yards plot was

purchased by Amit in the name of Sonika, deceased, at Village Kadarapur, District Bulandshahar, Uttar Pradesh. PW-1 had volunteered to state that he had paid Rs.50,000/- but the balance amount was paid by Amit. If the family members were inimical to the deceased or their relationship was strained or there was lack of trust, in all probability, the husband of the deceased, Amit, would not have purchased a plot in the name of Sonika (since deceased). It may also be noted that PW-1 has also admitted in his cross-examination that after marriage, his daughter who was class X<sup>th</sup> pass was admitted to Class XI in Kisan Inter College at Bulandashahar. The above factors would show that there was a healthy relationship between the husband, his family and the deceased. In our view, the Trial Court has rightly acquitted respondents no.2 to 4 of the offence under Section 498-A IPC.

53. As regards, respondent no.5, Ravi, the charge has been framed under Section 302 of IPC. Learned counsel for the appellant has laboured hard to canvas his argument that the compromise, Exhibit PW-1/DX1, would show that the deceased had informed her brother that there had been a squabble and scuffling between her and the younger brother-in-law, Ravi and thus Ravi was responsible for the death of Sonika.
54. A reading of this compromise agreement (Exhibit PW-1/DX-1), on which heavy reliance has been placed by learned counsel for the appellant, would show that it is not the case of the prosecution that Ravi stabbed the deceased. As per Ex.PW1/DX1, “during scuffle Sonika slipped and got injured in her chest.”
55. Evidence of PW-1 would show that when PW-1 and PW-3, Chander

Bhan, reached the house of the deceased at Kondli, Chander Bhan had made a call at No.100 and thereafter assuming that Sonika would be alright, PW-1 father of the deceased went to Ghaziabad to the house of Chander Bhan. If according to the prosecution and the appellant, Ravi was responsible for the stabbing, no settlement would have been signed.

56. In the examination-in-Chief, PW-1 has testified that when he had met his daughter in her house after her discharge from LBS Hospital she had told him that Neeraj, cousin of Amit, who is facing trial before JJB, had caught hold of her and Ravi stabbed her. Reference of Neeraj has not been made in the statement/settlement nor Neeraj was made an accused. In case such a statement was made by the deceased to her father, it would have certainly been reflected in the settlement exhibit PW-1/DX1 wherein a scuffle has been mentioned with Ravi but it has not been stated that Ravi stabbed Sonika nor it has been stated that Neeraj, cousin of Amit had caught hold of her. Thus, making the statement of PW-1 to be unreliable, more particularly in the light of two statements and the dying declaration of the deceased where there is no reference to Neeraj and no reference that Ravi stabbed her.
57. The only common factor between the two statements *i.e.* first statement [dying declaration] made before SI Yogendra Singh and the oral statement made to the brother is that she slipped and got injured in the chest. In case the deceased had informed her father and brother that she had been stabbed by her devar, Ravi, the father and brother would not have left their injured daughter in the house of Amit where the assailant was present. No father or brother would have trusted or

left their daughter/sister in the house of an assailant, who had stabbed their daughter/sister with a knife.

58. It may also be noticed that in the cross-examination, PW-1 has testified as under:

*“I did not make any call to the police not did I tell the Police that Sonika told me that Neeraj (cousin of Amit who is facing trial before JJB) had caught hold her and Ravi had stabbed her. We did not go to the PS for making any complaint. It is correct that we had not taken Sonika with us and left her with the accused persons. It is correct that no medical aid was provided by us to Sonika. It is wrong to suggest that we had no complaint against the accused, due to this reason we left Sonika with the accused persons.”*

59. PW-3, Chander Bhan, has also testified that when he, his father, brother-in-law Vijay Singh, Duli Chand and his foofa, Sher Singh, reached the house of Sonika, she told the family about the entire incident. Hot words were exchanged and accused persons had told them that they had stabbed Sonika and they can do whatever they want. This witness has further testified that thereafter, in the evening, he along with other family members returned to Ghazibad.
60. Even this statement of PW-3, brother of the deceased, does not repose confidence as in case his sister had narrated the incident that she had been stabbed by Ravi and if the in-laws had told the entire family of Sonika that they had stabbed Sonika and they can do whatever they want, would PW-3 and other family members have left Sonika in the house of the accused. The logical answer would be ‘No’, unless there was trust, unless the family of the deceased was satisfied with the

explanation of in-laws of Sonika and more particularly the fact that Sonika was alive at that point of time and she did not complain to her family regarding demand of dowry or the fact that Neeraj caught hold of her when Ravi stabbed her.

61. It may also be noticed that no evidence has been collected by the Investigating Officer with regard to the fact that Ravi was present in the house at the time of the incident.
62. PW-3, Chander Bhan, has also testified that when he reached the house of his sister, he had seen a 12 inch button knife having blood but no such knife was recovered by the Police. There was no reference with regard to such knife in the statement, Exhibit PW-1/DX1, given to the Police. No efforts were made by the prosecution to seize the clothes of Ravi.
63. In the present case, we may notice that the deceased had made a statement Ex.PW6/DX1 in the presence of SI Yogendra Singh. No doubt, at the time of making the statement her husband was also present. The learned counsel for the appellant has argued that the statement Ex.PW6/DX1 being the dying declaration cannot be relied upon because it was made in the presence of a police officer. This submission of the learned counsel for the appellant is without any force. We find no force in the argument of learned counsel for the appellant that this statement is not admissible in evidence. As it has been held that a dying declaration recorded before a police officer is admissible and can be relied upon for conviction. It would be useful to reproduce para 7 of *Ramawati Devi v. State of Bihar*, AIR 1983 SC 164:

“7. In our opinion neither of these two decisions relied on by the appellant is of any assistance in the facts and circumstances of this case. These decisions do not lay down, as they cannot possibly lay down, that a dying declaration which is not made before a Magistrate, cannot be used in evidence. A statement, written or oral, made by a person who is dead as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question, becomes admissible under Section 32 of the Evidence Act. Such statement made by the deceased is commonly termed as dying declaration. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case.”

64. A dying declaration does not require corroboration if it inspires confidence and if it is free from tutoring. A dying declaration is not required to be made in specific form.
65. The law relating to dying declaration is settled in ***Umakant v. State of Chattisgarh***, reported at (2014) 7 SCC 405, wherein it has been held as under:

*“18. The philosophy of law which signifies the importance of a dying declaration is based on the maxim "nemo moriturus prasumitur mennre", which means, "no one at the time of death is presumed to lie and he will not meet his maker with a lie in his mouth". Though a dying declaration is not recorded in the Court in the presence of accused nor it is put to strict proof of cross-examination by the accused, still it is admitted in evidence against the general rule that hearsay evidence is not admissible in evidence. The dying*

*declaration does not even require any corroboration as long as it inspires confidence in the mind of the Court and that it is free from any form of tutoring. At the same time, dying declaration has to be judged and appreciated in the light of surrounding circumstances. The whole point in giving lot of credence and importance to the piece of dying declaration, deviating from the rule of evidence is that such declaration is made by the victim when he/she is on the verge of death.*

*20. The legal position about the admissibility of a dying declaration is settled by this Court in several judgments. This Court in **Atbir v. Government of NCT of Delhi** - 2010 (9) SCC 1, taking into consideration the earlier judgments of this Court in **Paniben v. State of Gujarat** - 1992 (2) SCC 474 and another judgment of this Court in **Panneerselvam v. State of Tamilnadu** - 2008 (17) SCC 190 has given certain guidelines while considering a dying declaration:*

- 1. Dying declaration can be the sole basis of conviction if it inspires full confidence of the Court.*
- 2. The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*
- 3. Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*
- 4. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborative. The rule requiring corroboration is merely a rule of prudence.*

5. *Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.*
6. *A dying declaration which suffers from infirmities, such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.*
7. *Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.*
8. *Even if it is a brief statement, it is not to be discarded.*
9. *When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*
10. *If after careful scrutiny the Court is satisfied that it is free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.”*

66. In ***Laxman v. State of Maharashtra***, reported at AIR 2002 SC 2973, it has been held as under:

*“3..... The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting or a product of imagination. The court also must*

*further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant.*

*..... In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind.”*

67. For the reasons detailed above, we are of the view that the dying declaration has rightly been relied upon by the Trial Court. The dying declaration is reliable and trustworthy.
68. We are, thus, of the opinion that there is no infirmity in the impugned judgment passed by the learned Trial Court. The present appeal is without any merit and the same is liable to be dismissed. Resultantly, the appeal stands dismissed. Bail bonds be cancelled.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**JANUARY 15, 2016** sc/pst/msr