

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

Date of Decision: 22nd April, 2016

+ **CRL.A. 382/2011**

HARISH KUMAR & ORS.

..... Appellants

Through: Mr.S.S.Gandhi, Sr.Advocate with
Mr.Sunil Upadhyay and Mr.Upkar
Singh Randhawa, Advocates

versus

STATE

..... Respondent

Through: Mr.Hirein Sharma, Additional Public
Prosecutor for the State alongwith
sub-Inspector Jitender Rana from
Police Station Burari, Delhi.

%

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Appellants Harish Kumar (A-1)-husband, Rajni (A-2)-mother-in-law and Sheesh Pal (A-3)-father in law of deceased Vijayata impugns the judgment dated 08.02.2011 and order on sentence dated 15.02.2011 passed by learned Additional Sessions Judge North Delhi in Sessions Case No. 02/10 arising out of FIR No. 254/09 Police Station Burari under Section 498A/304B/34 IPC whereby they were convicted for offence under Section 498A/304B/34 IPC and were sentenced as under:

(i) Harish Kumar– sentenced to undergo rigorous imprisonment for a period of 3 years under Section 498A IPC and to pay a fine of Rs.10,000/- in

default to undergo rigorous imprisonment for six months. He is also sentenced to undergo further rigorous imprisonment for 10 years under Section 304B IPC and pay fine of Rs.25,000 in default to undergo further imprisonment of one year.

(ii) Rajni – sentenced to undergo rigorous imprisonment for a period of 3 years under Section 498A IPC and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months. She is also sentenced to undergo rigorous imprisonment for seven years under Section 304B IPC and pay fine of Rs.10,000/- in default to undergo further imprisonment of one year.

(iii) Sheesh Pal – sentenced to undergo rigorous imprisonment for a period of three years under Section 498A IPC and pay a fine of Rs.5000/- in default to undergo rigorous imprisonment for three months. He is also sentenced to undergo rigorous imprisonment for seven years under Section 304B IPC and pay fine of Rs.10,000/- in default to undergo further imprisonment of six months. Both the sentences were ordered to run concurrently and benefit of Section 428 Cr.P.C. was granted to them.

2. Shorn of unnecessary details, case of prosecution emanates from the fact that on 14.08.2009 DD No. 40A Ex.PW14/A was lodged with police station Burari at 23.15 hours on an information by the PCR operator that the caller of mobile phone No.9999359693 informed that his wife has committed suicide by hanging herself in house No.11A, Gali No.34, A-1 Block, Bengali Colony, Sant Nagar. Investigation was assigned to SI Darsh Pandey (PW14) who reached the aforesaid house alongwith constable Chander Mani (PW16) at first floor where body of a lady was found hanging by the ceiling fan with a *chunni* tied around her neck; the kundi/latch of the

room was found broken from inside the room and the name of the deceased was revealed as Vijayata. She was married with accused Harish on 14.02.2009. Since the death had taken place within seven years of the marriage, as such, the Executive Magistrate Sh. Kuldeep Kishore (PW10), Civil Lines, Delhi was informed who visited the spot, conducted the inquest proceedings and also examined the relatives of the deceased. Mobile crime team was also called to the scene of crime. Inspector Sanjeev Solanki – incharge Mobile Crime Team (PW18) inspected the scene of crime and prepared report Ex.PW18/A. Photographs of the dead body and the room Ex.P1 to P9 were taken. On search of the room, from half open drawer of the dressing table, a suicide note (Ex.PW10/A) written in Hindi was found. The same was seized vide memo Ex.PW14/A. The dead body was sent to mortuary for post-mortem examination. Sh.Kuldeep Kishore, Executive Magistrate (PW10) recorded statement of father of the deceased Sh.Kirpal Singh (PW2) and of mother of the deceased Smt.Kiran (PW9). On the basis of statement of Kirpal Singh, direction was given by the SDM to get an FIR registered. Accordingly, FIR Ex.PW15/B was registered on 15.08.2009. Post-mortem was conducted and as per the post-mortem report, the cause of death was opined to be Asphyxia due to ante mortem hanging. During the course of investigation, the suicide note was sent to FSL, Rohini and Dr. Virender Singh, Sr.Scientific Officer, FSL gave report Ex.PW24/B opining that the suicide note has been written by the deceased Vijayata. After completing investigation, chargesheet was submitted against the present appellants as well as Balram Singh and Neha, brother-in-law and sister-in-law respectively of the deceased.

3. In order to substantiate its case, prosecution examined as many as 24 witnesses. All the incriminating evidence was put to the accused persons while recording their statements under Section 313 Cr.P.C wherein they denied the case of prosecution. All the accused pleaded innocence and alleged false implication in the case. According to them, Vijayata was living happily and was never harassed or taunted or subjected to any cruelty in regard to dowry. It was alleged that accused Harish was earning Rs.4 lacs per annum working in an MNC at Gurgaon whereas Sheesh Pal was also a Government employee. 15-20 days prior to the suicide by deceased, cousin sister of Vijayata who was aged about 18-19 years of age had eloped with a boy due to which she was very upset and frustrated. The family members tried to console her but she started living in loneliness in her room and ultimately committed suicide. Vide impugned judgment dated 08.02.2011 accused Balram and his wife Neha were acquitted of the offence on the ground that their involvement was not established beyond reasonable doubt. However, rest of the accused were convicted and sentenced, as mentioned hereinbefore.

4. Feeling aggrieved, present appeal has been preferred by the convicts.

5. Learned senior advocate for the appellants referred to the suicide note Ex.PW10/A for submitting that there are no allegations of demand of dowry. Learned senior counsel further submits that there are material improvements in the statement of the witnesses. The prosecution case is based on the testimony of the relatives of the deceased who are interested in the success of the case. Moreover, while the statement of parents of the deceased before the SDM was confined to the demand of car and Rs.2 lacs, their testimony was conspicuously silent regarding any demand of money or car prior to the

fera ceremony. Furthermore, the deceased hardly lived with the appellants for a period of one and a half month after her marriage till she took the extreme step of committing suicide. As such, there was no question of committing any cruelty upon her. The suicide note does not raise any finger upon her father-in-law Sheesh Pal. As such, prosecution has failed to bring home the guilt of the appellants beyond shadow of doubt as such, appellants are entitled to be acquitted.

6. Countering the submissions of learned counsel for the appellants, learned Additional Public Prosecutor submits that there is no reason to discard the testimony of the relatives because such like offences are committed within the matrimonial home and it is highly unlikely that any outsider will come to know about it. Moreover, within six months of the marriage the extreme steps of committing suicide was taken by the deceased and she left behind a suicide note wherein she specifically levelled allegations against her husband, mother-in-law and sister-in-law that due to continuous taunts and harassment, she was taking this extreme step. Moreover, even if the allegations of demand of car and Rs.2 lacs prior to the fera ceremony was not mentioned in the FIR that does not cast any doubt on the veracity of the testimony of the witnesses who all have corroborated each other on all material points. Counsel further submits that the impugned judgment does not suffer from any infirmity which warrants any interference as such, appeal deserves to be dismissed.

7. Before dealing with the factual matrix of the case in hand, it will be in fitness of things to have a glance at the relevant legal provisions.

8. Section 304-B IPC deals with dowry death which reads as follows:-

“304B. Dowry Death- (1) Where the death of a woman 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 of dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Explanation- For the purpose of this sub-section, “dowry” shall have 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.”

9. In order to attract application of section 304-B, the essential ingredients are:-

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for, or in connection with, demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman “soon before her death”.

10. Section 113B of the Indian Evidence Act, 1872 reads as follows:-

“113B: Presumption as to dowry death –

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

Explanation- For the purposes of this section “dowry death” shall have the same meaning as in Section 304-B of the Indian Penal code (45 of 1860).”

11. The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 91st Report on ‘Dowry

Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. The 91st Law Commission, recommended for the insertion of new sections in Indian Penal Code, 1860, Indian Evidence Act, 1872 and Criminal Procedure Code, 1973 for tackling the problem of alarming increase in number of cases in which married women die in highly suspicious circumstances. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family; other members of the family are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that the truth may not come out of the chains. There would be no other eye witnesses, except for members of the family.

12. To deal with the situation, the Indian Penal Code, 1860; Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 were amended by Criminal Law (Amendment) Act, 1983. The changes made by the amendment were:

- i. Cruelty to a woman by her husband or any relative of her husband made punishable;
- ii. "Wilful conduct" of the husband or any relative of the husband as is likely to drive the woman to commit suicide or cause grave physical or mental injury to her;

iii. “harassment” of a woman by her husband or by any relative of her husband with a view to coercing her or any of her relatives to meet any unlawful demand for property would be punishable as cruelty;

iv. the offence to be cognizable, if information relating to the commission of the offence is given to the office-in-charge of a police-station by victim of the offence or a relative of the victim of the offence or in the absence of any such relative, by any public servant authorized in this behalf by the State Government;

v. No Court to take cognizance of the offence except upon a police report or a complaint made by the victim of the offence or by her father, mother, brother, sister or by her father’s or mother’s brother or sister or with the leave of the Court by any other person related to her by blood, marriage or adoption.

13. Substantive section 498A IPC and presumptive section 113B of the Indian Evidence Act, 1872 include in their amplitude past events of cruelty. Period of operation of section 113B of the Evidence Act is seven years, presumption arises where a woman committed suicide within a period of seven years from the date of marriage. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical to the woman is required to be established in order to bring home the application of Section 498A IPC. ‘Cruelty’ has been defined in the *Explanation* of Section 498A as under:

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.

14. It is to be noted that sections 304B and 498A cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to sec.498-A gives the meaning of cruelty. In sec. 304-B there is no such explanation about the meaning of “cruelty”. But having regard to the common background to these offences, it has to be taken that the meaning of “cruelty” or “harassment” is the same as prescribed in the explanation to sec.498-A under which cruelty by itself amounts to an offence.

15. The term ‘dowry’ in sec.304B has the same meaning as in sec.2 of the Dowry Prohibition Act, 1961. The amended definition makes it clear that even if the demand is long after the marriage, the same could constitute dowry, if other requirements of the section are satisfied.

16. Adverting to the case in hand, it is undisputed case of the parties that death of Vijayata has taken place within seven years of her marriage as she got married to Harish on 14.02.2009 and died on 14.08.2009.

17. It is also not in dispute that death of Vijayata has occurred “otherwise than under normal circumstances” as she committed suicide by hanging. As per postmortem report Ex.C-1 cause of death was asphyxia due to ante mortem hanging. Suicide committed by a woman comes within the purview of Section 304B as held by Hon’ble Supreme Court in *Smt.Shanta and Anr. vs. State of Haryana* 1991 CrI.L.J. 1713, *Hansraj vs. State of Punjab* 2000 CrI.L.J 2993 and *Satvir Singh & Ors. Vs. State of Punjab* 2000 CrI.L.J 4625.

18. It is now to be seen whether Vijayata was subjected to cruelty or harassment by applicants and whether the same was in connection with demand of dowry. In order to substantiate this ingredient, number of witnesses were examined by prosecution viz. PW-1 Ashok Kumar, cousin of the deceased, PW-2 Kirpal Singh, father, PW-3 Reshma a relative and friend of the deceased, PW-4 Giri Raj, brother-in-law of Kirpal Singh and mausa (maternal uncle) of deceased, PW-5 Rajesh Devi, the aunt, PW-6 Sri Niwas, the brother-in-law, PW-7 Lekh Raj, cousin brother, PW-9 Smt. Kiran mother, PW-11 Desh Raj, the uncle PW-12 Jitender brother of the deceased.

19. Initial statement Ex.PW2/A made by Sh.Kirpal Singh (PW-2), father of the deceased to Sh Kuldeep Kishore, Executive Magistrate, Civil Lines, Delhi (PW-10) became bedrock of investigation. In this statement Sh.Kirpal Singh (PW-2) unfolded that he got his daughter married to Harish on 14.02.2009 according to Hindu rites. He had given furniture, gold jewellery, Alto car, refrigerator, TV, cooler etc. in the marriage. After marriage, his son-in-law 3-4 times demanded Rs.2 lacs and car. Immediately after marriage, he started quarrelling and beating his daughter. His sister Neha and her husband also quarrelled with Vijayata. His parents, sister and

brother-in-law used to instigate Harish for demand of dowry. On 14.08.2009, Sheesh Pal, father of Harish informed him telephonically at about 11/11.30 pm that Vijayata has committed suicide. He informed the police. On the same day at about 6.30 pm he had a talk with his daughter but she was weeping. Thereafter, he telephoned Sheesh Pal but he disconnected the same. When he again called him then mother-in-law of his daughter picked up the phone and when he enquired as to why his daughter was weeping then she threatened him not to interfere in their family affairs. His niece also tried to make her mother-in-law understand but she disconnected the telephone. Thereafter, at 11/11.30 pm he received the message that Vijayata has hanged herself. He alleged that husband, mother-in-law, father-in-law, sister-in-law and her husband were responsible for the death of his daughter as they used to harass her. On the same day statement of Kiran, wife of Kirpal Singh was also recorded and she had also stated about demand of Rs.2 lacs and a Swift Car and harassment to her on account of the same.

20. Kirpal Singh was examined as PW-2 wherein he reiterated about the marriage of his daughter Vijayata with accused Harish on 14.02.2009. He further deposed that at the time of engagement ceremony performed on 08.02.2009 Alto Car, gold jewellery besides other articles were given. However, the gifts were not appreciated by the accused persons and demand of Rs.2 lacs in cash and Maruti Swift car or SX4 instead of Alto car was made. The *Sagai* ceremony however was performed but on the day of marriage, just before the 'feras' the demand was reiterated by the accused persons as such, a meeting was held in a room which was attended by him, his sons and other relatives wherein he requested the accused persons to

complete the fera ceremony and also assured to look into their demands. Thereafter, fera ceremony was performed and Vijayata was sent to her in-laws house. He further deposed that on 16.02.2009 when his daughter came to his house from her in-laws house alongwith his sons Dal Chand and Jitender she informed him that she was being harassed by the accused persons for their demands of Rs.2 lacs in cash and Swift Maruti Car. Thereafter also, when she came to his house after 10-15 days, she informed that she was continuously being harassed and pressurized to bring Rs.2 lacs and Swift Maruti Car. On 18.04.2009 she informed him on telephone that she has been beaten by the accused persons due to non-fulfillment of their demands. He tried to pacify her and when he tried to talk to accused Harish, he reiterated the said demand. Later in the evening of 18.04.2009 accused Harish and Balram alongwith his daughter came to his house and threw away the key of the Alto. Besides leaving the Alto Car they also left Vijayata with him. On 19.04.2009 he alongwith some of the relatives and neighbours went to the house of the accused persons and requested them not to harass his daughter but he was told that it was their personal affair and he should not interfere in the same. However, the demand of Rs.2 lacs and Maruti Swift Car was reiterated. On 20.04.2009 he took his daughter to LNJP hospital for her treatment as she was beaten on 18.04.2009. In between his daughter was left at his house wherein she reiterated her pathetic tale. On 14.08.2009 he talked to his daughter but she was weeping and told him that the accused were continuously harassing her since morning but he pacified his daughter and told her that he would come on the next day and talk to the accused persons and she need not worry. Thereafter he tried to talk to accused Sheesh Pal and Harish but they disconnected the phone.

He again called the accused persons on their telephone which was picked up by Rajni. He enquired as to why Vijayata was weeping on which she told him not to interfere in the family matter. He tried to pacify her also. In the meantime, his niece Ms.Rajni took the receiver from him and talked to accused Rajni but she told her also that it was their family matter and disconnected the phone. At about 11.30 pm on 14.08.2009 accused Sheesh Pal called him on telephone and informed that Vijayata has committed suicide and they had informed the police about the same. Thereupon he alongwith his sons with other relatives reached the house of the accused persons where police was already present. After the arrival of SDM his statement Ex.PW2/A and that of his wife were recorded.

21. To the same effect is the testimony of PW1 Ashok Kumar, PW7 Lekh Raj, PW11 Jitender and PW9 Kiran. All these witnesses have deposed regarding the meeting which took place before the fera ceremony wherein demand of Rs.2 lacs and Maruti Swift Car was made. They also deposed regarding harassment caused to the deceased. PW3 Reshma PW4 Giri Raj, PW5 Rajesh Devi, PW6 Sri Niwas, PW7 lekh Raj, PW11 Desh Raj, PW12 Jitender also unfolded the pathetic tale of the deceased due to non-fulfillment of demands of dowry.

22. As regards the submission of learned senior counsel for the petitioner that the factum of holding a meeting before the fera ceremony wherein demand of Rs.2 lacs and Maruti Swift Car does not find mention in the initial statement of Kirpal Singh on which FIR was registered and this is a substantial improvement in the testimony of the witness, same is devoid of merit. The FIR need not be an encyclopedia of all the facts and circumstances on which the prosecution relies. The main purpose of the FIR

is to enable a police officer to satisfy himself as to whether commission of cognizable offences is indicated so that further investigation can be undertaken by him. The purpose of the FIR is to set the criminal law in motion and it is not customary to mention every minute detail of the prosecution case in the FIR. FIR is never treated as a substantive piece of evidence and has a limited use, i.e., it can be used for corroborating or contradicting the maker of it. Law requires FIR to contain basic prosecution case and not minute details. The FIR is not the last words in the prosecution case and in some cases detailed FIR could be a ground for suspicion. What is relevant to find out is whether the FIR was lodged promptly and whether it is actuated by malafides as held in *State of U.P. vs. Krishna Masts & Ors.* 2010 CrI.L.J. 3889, *State of U.P. vs. Naresh & Ors.* 2011 CrI.L.J. 2162, *V.K. Mishra & Ors. Vs. State of Uttaranchal & Ors.* 2015 CrI.L.J. 4021.

23. Moreover, it is to be kept in mind that the broad facts were stated in the FIR. The unnatural death has taken place on the night of 14th August. Immediately after the arrival of SDM statement of parents of the deceased were recorded wherein the father of the deceased had given a detailed account of the articles given in the marriage, dissatisfaction expressed by the accused persons over the same, demand of Rs.2 lacs cash and car and thereafter ill treatment of the deceased for non-fulfillment of those demands. The FIR also went on narrating that on the fateful day also, he had a talk with his daughter at about 6.30 pm when she was weeping and thereafter when he tried to talk to the father-in-law of the deceased, he disconnected the phone and mother-in-law asked him not to interfere in their family affairs. The Court has to be mindful of the fact that helpless and grieving parents had lost their daughter within six months of the marriage and in such

a stressful condition they could hardly be expected to be lucid and capable of recalling each and every detail of the demands of dowry made on her. **V.K.Mishra & Ors.** (supra) was also a case under Section 498A/304B IPC wherein the unfortunate death has taken place within six weeks of the marriage in unnatural circumstances and substantially similar plea was taken that details of payment of money and dowry harassment were not given.

24. Repelling the contention, it was observed by Hon'ble Supreme Court:

“FIR is not meant to be an encyclopaedia nor is it expected to contain all the details of the prosecution case. It may be sufficient if the broad facts of the prosecution case are stated in the FIR. FIR was lodged within few hours after the tragic event. PW-1 had lost his young daughter just married before six weeks in unnatural circumstances. Death of a daughter within few days of the marriage, the effect on the mind of the father PW-1 cannot be measured by any yardstick. While lodging the report, PW-1 must have been in great shock and mentally disturbed. Because of the death of his young daughter being grief stricken, it may not have occurred to PW-1 to narrate all the details of payment of money and the dowry harassment meted out to his daughter. Unless there are indications of fabrication, prosecution version cannot be doubted merely on the ground that FIR does not contain the details.”

25. In view of the same, since the entire details were given by the father of the deceased in the initial complaint made by him to the Executive Magistrate except for few details which have been narrated in his deposition before the Court, it cannot be said that the testimony of the witnesses suffers from such improvement that the same cast doubt on their veracity.

26. The next limb of the argument is that most of the prosecution witnesses examined by the prosecution are close relatives of the deceased. However, relationship itself is not a factor to affect credibility of a witness.

27. This aspect of the matter was considered by Hon'ble Supreme Court in **Lehna vs. State of Haryana** 2002 (3) SCC 76 **Vajresh Venkatray**

Anvekar vs. State of Karnataka (2013) 3 SCC 462 followed by this Court in **Vineet Suri vs. State 2014** VIII AD (Delhi) Vol.I dealing with the contention regarding interestedness of the witnesses for furthering prosecution case version, it was observed as under:-

5.....Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

6. In **Dalip Singh and Ors. v. The State of Punjab** MANU/SC/0031/1953: [1954]1SCR145, it has been laid down as under:

“A witness is normally to be considered independent unless he or she brings from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last person to screen the real culprit and falsely implicate an innocent person. It is true, when feeling run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge alongwith the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

7. The above decision has since been followed in **Guli Chand and Ors. v. State of Rajasthan** MANU/SC/0107/1973 : 1974CriLJ331, in which **Vadivelu Thevar v. The State of Madras** MANU/SC/0039/1957 : 1957CriLJ1000 was also relied upon.

8. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in **Dalip Singh's** case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose J., it was observed:-

“We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the

foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – ‘Rameshwar v. State of Rajasthan’ MANU/SC/0036/1951 : 1952CriLJ547. We find however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel”.

9. Again in *Masalti v. The State of Uttar Pradesh* MANU/SC/0074/1964: [1964]8SCR133, this Court observed:-

“But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

10. To the same effect is the decision in *State of Punjab v. Jagir Singh, Baljit Singh and Karam Singh* : 1973CriLJ1589.

28. This is particularly so in the cases of dowry deaths because in such like cases ordinarily only near relations can know as to what is demanded and what is given or not given and such matters do not come to the knowledge of neighbours or outsiders. This is precisely for the reason that when a woman is subjected to ill-treatment within the four walls of matrimonial home, ill-treatment is witnessed only by the perpetrators of the crime. They would certainly not depose about it. Even the parents of the deceased or close relations may not come to know about the harassment unless they are informed by the deceased or demand is directly made from them. Further, the parents of the deceased and deceased are not interested in breaking the matrimonial home. In our society efforts are made till last to try that the marriage is not broken. Moreover, it is common knowledge that

independent witnesses like servants or neighbours do not want to get involved. It is true that chances of exaggeration by the interested witnesses cannot be ruled out. Witnesses are prone to exaggeration. It is for the trained judicial mind to find out the truth. If the exaggeration is of such nature as to make the witness wholly unreliable, the Court would obviously not rely on him. If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because he is interested witness he cannot be disbelieved because of some exaggeration, if his/her evidence is otherwise reliable. Moreover, neighbours are slippery witnesses. Witnesses have a tendency to stay away from courts. This is more so with neighbours. In dowry death cases who else will, therefore, depose about the misery of the deceased bride except her parents or relatives? (Vide ***Prakash Chander vs. State*** 1995 CrL.L.J. 368, ***Surinder Singh vs. State of Haryana*** 2014 CrL.L.J. 561. ***Vajresh Venkatray Anvekar vs. State of Karnataka*** (2013) 3 SCC 462, ***Vineet Singh vs. State*** 2014 VII AD (Delhi) 23). Substantially similar view was taken in ***Vishwanath Aggarwal vs. Sarla Vishwanath Aggarwal*** (2012) 7SCC 288 where it was held that in a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. The family members and sometimes the relatives, friends and neighbours are the most natural witness. The veracity of the testimony is to be tested on objective parameters and not to be thrown overboard on the ground that the witnesses are related to either of the spouse. The view was reiterated recently in ***Bhanuben & Ors. Vs. State of Gujarat*** 2015 XI AD (SC) 35.

29. Testing on the anvil of the aforesaid judgments, this Court does not find any reason to disbelieve testimony of the prosecution witnesses even if they are close relations of the deceased. Despite searching cross examination

they stood the test of the same and nothing material could be elicited to discard their evidence. A perusal of the testimony of the witnesses reveal that except for some exaggeration that can be easily identified, the witnesses were consistent and had fairly withstood the test of cross examination. The appending circumstances when correlated with the testimony of the aforesaid witnesses clearly brings all the fact that the version of the deceased as disclosed to her parents, brothers and close relatives cannot be discarded merely on the ground of close relationship.

30. Moreover, before taking the extreme step of committing suicide, the deceased had left behind a suicide note Ex.PW10/A which has been proved to be in her handwriting wherein she disclosed her pathetic tale by narrating as under:-

“MEIN APNI SAAS SE BAHUT TANG AA CHUKI HU. HARISH BHI MUJHE BAHUT PARESHAN KARTA HE. IN DONO KI WAJAH SE MUJHE YE KADAM UTHANA PAD RAHA HE, YE DONO HAMESHA MUJHE BURA BANATE REHTE HE. MERI SAAS OR NANAD DONO MAA BETI MUJHE KEHTI HAI TU HI OR CHALI JA MERI SAAS MUJHE HAMESHA YAH TANE MARTI REHTI HE. MEIN AB BAHUT TANG AA CHUKI HU, APNE SASURAL WALO SE AB MUJHSE IN LOGO KE TANE NAHI SAHE JATE ISLIYE MEIN YE KADAM UTHANE JA RAHI HU.

VIJAYTA”

31. Although, it is true as submitted by learned senior counsel for the appellant that the suicide note does not talk about any demand of dowry but the suicide note has to be read in conjunction with the testimony of the prosecution witnesses. The suicide note specifically mention that she was absolutely fed up with her mother-in-law, her husband also harassed her, because of them she was compelled to take this extreme step. She levelled allegations against her sister-in-law as well and went on stating that now she is unable to bear any more taunts and, therefore, she is taking this step.

Sister-in-law has been acquitted by the Sessions Court. The State has not appealed against that order. Therefore, it is not necessary to go into that aspect. True, there are no allegations against father-in-law in this suicide note but there is voluminous evidence in the shape of ocular testimony of number of witnesses who have also deposed against him. Therefore, from mere absence of his name in the suicide note, he does not get any benefit. Moreover, being head of the family he was not expected to be a silent spectator to the commission of atrocities upon her daughter-in-law who must have left her parental home with sweet dreams to lead a happy matrimonial life but alas! there is a world of difference between a “daughter” and “daughter-like”. As goes the proverbial saying a “daughter in law remains a daughter in law and can never become a ‘daughter’ particularly to those whose lust for dowry is never unending. Barely six months had passed when the extreme step of committing suicide was taken by the deceased. The suicide note (Ex.PW10/A) when examined in the light of testimony of the witnesses which unfolds the demand of dowry made by the accused on the deceased apart from the physical beatings extended to her establishes the harassment caused to the deceased in connection with dowry.

32. It also stands proved that “soon before her death”, the deceased was subjected to harassment on account of dowry. It has come in the statement of Kirpal Singh that on the fateful day, he had a telephonic talk with his daughter at about 6.30 pm at that time she was weeping and informed him that the accused persons were continuously harassing her since morning and told her that her father had not fulfilled the demand of Rs.2 lacs and Swift car, however, he pacified his daughter and told her that he would come on the next day and talk to the accused persons with regard to the same and she

need not worry. Thereafter, he also tried to talk to her father in law but he disconnected the phone whereas her mother-in-law asked him not to interfere him in their family affairs. On the same day, at night the deceased committed suicide. Under the circumstances, it was rightly concluded by learned Trial Court that the prosecution had succeeded in establishing that within seven years of marriage the deceased met with an unnatural death and soon before her death, she was subjected to cruelty and harassment on account of dowry.

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

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

34. Having established the essential ingredients of Section 304B IPC, a presumption under Section 113B of the Evidence Act arose against the accused persons that it was not a dowry death. Although this presumption is rebuttable but the onus shifted upon the accused persons to rebut the said presumption by producing evidence in this regard. They examined two witnesses DW1 Bhanu Prakash and DW7 Sri Ram in support of their

defence. Both these witnesses have confirmed that at the time of marriage various articles including Alto car was given however they expressed their ignorance as to whether there was any harassment to the deceased on account of dowry. As stated above, such like incidents occurs within the four walls of the matrimonial home and, therefore, the ill treatment is witnessed only by the perpetrator of the crime or at the most the parents or relatives. The outsiders hardly come to know about the harassment cruelty meted out to the women. Moreover, neighbours have a tendency to stay away from courts. Therefore, even if the defence witnesses do not speak about the ill treatment meted out to the deceased that does not mean that there was no harassment to the deceased on account of non-fulfillment of the demand. That being so, possibility of these facts coming to the knowledge of neighbours very remote.

35. Moreover, different stands have been taken by the accused person at different stages of the proceedings. It was suggested to PW-1, PW-9, PW-11 and PW-12 that Rs.20 lacs was claimed by the family of the deceased to depose in their favour while bald suggestion was given to PW-2 that the deceased was not happy and wanted to marry in other caste which was not acceptable to her parents. To PW-9, mother of the deceased it was suggested that the deceased used to take anti-pregnancy pills and had an abortion done without the consent of her husband. In their statements under Section 313 Cr.P.C, it was alleged that the cousin sister of the deceased had committed suicide few days earlier to this incident which made her depressed. Under the circumstances, in view of different pleas were taken by the accused persons at different stages of the proceedings, they failed to rebut the presumption which arose against them under Section 113B of the Indian

Evidence Act. The entire evidence was meticulously examined by the learned Additional Sessions Judge while convicting the appellants under Section 498A/304B/34 IPC. The same does not call for any interference.

36. Coming to the quantum of sentence, it is to be kept in mind that it is a crime against women which has to be dealt with sternly.

37. In **Guru Basavaraj**, 2012 (8) SCC 734, Hon'ble Apex Court expressed its concern on imposing of adequate sentence in respect of commission of offences regard being had to the nature of the offence and demand of the conscience of the society. Reference was made to **State of Karnataka vs. Krishna.**, 1987 SCC (Cri) 198: (1987) 1 SCC 538, where it was held:-

“Considerations of undue sympathy in such cases will not only lead to miscarriage of justice but will also undermine the confidence of the public in the efficacy of the criminal judicial system.”

38. In **Sevaka Perumal vs. State of Tamil Nadu**, 1991 SCC (Cri) 724: (1991) 3 SCC 471, it was emphasised that undue sympathy resulting in imposition of inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law.

39. In **Alister Anthony Pareira vs. State of Maharashtra**, (2012) 2 SCC 648: (2012) 1 SCC (Cri) 953, it was held that sentencing is an important task in relation to criminal justice dispensation system.

“84.....One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”

It has been further opined that:

“85. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

40. Recently, Hon’ble Apex Court in ***Rattiram vs. State of M.P.***, (2012) 4 SCC 516 though in a different context, has stated that:

“.....The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries.....it is the duty of the court to see that the victim’s right is protected.

There can hardly be any cavil that there has to be a proportion between the crime and the punishment. It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social Crl. A.223.2003 Page 38 of 40 order. The cry of the collective for justice which includes adequate punishment cannot be lightly ignored. In ***Siriya vs. State of M.P.*** (2008) 3 SCC (Cri) 422 : (2008) 8 SCC 72, it has been held as follows:

“13. 7.....Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of order” should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that “State of criminal law continues to be-as it should be- a decisive reflection of social consciousness of society”. Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence bases on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be.”

41. ***Asha Bai & Anr vs. State of Maharashtra***, (2013) 1 SCC (Cri) 943 was also a case u/s 302/34 & 498-A/34 IPC. Mother-in-law and sister-in-law were convicted. It was held that in spite of stringent legislature to curb crimes against women, cases related to bride burning, cruelty, sexual harassment, rape, abetment to suicide by married women etc. have

increased. Deterrent punishment can effectively deal with the problem. In crime against women, committed by other woman, leniency in sentence is unwarranted.

42. As regards appellants Sheesh Pal and Rajni, father-in-law and mother-in-law of deceased, learned Additional Sessions Judge has already taken a lenient view by imposing minimum sentence of seven years under Section 304B and three years under Section 498A IPC, same does not call for interference. Moreover, as held in *Narender Champaklal Trivedi vs. State of Gujarat* (2012 7 SCC 80 and *State of Madhya Pradesh vs. Ayub Khan* (2012) 8 SCC 676 when a minimum sentence is prescribed, no court can impose lesser punishment.

43. As regards Harish is concerned, he being the husband of the deceased owed a moral as well as legal responsibility towards his wife. The young bride must have left her parental house with dreams in her eyes which however could not be fulfilled and were shattered on the day of marriage itself when demand of Rs.2 lacs and swift car was made which continued till she was compelled to take the extreme step of committing suicide within six months of the marriage. That being so, even for him the sentence does not warrant any interference. Appeal is accordingly dismissed.

44. As per the nominal roll dated 21.12.2013 the sentence of appellants Sheesh Pal and Rajni was suspended and they were released on bail on 02.12.2011 and 21.12.2013 respectively, as such, they are directed to surrender before the learned Trial Court on or before 02.05.2016 to serve the remaining part of their sentence, failing which necessary steps be taken by learned Trial Court to get them arrested and to serve remainder part of their sentence.

Intimation be sent to Superintendent Jail.

Trial court record be sent back alongwith copy of judgment for information and compliance.

(SUNITA GUPTA)
JUDGE

APRIL 22, 2016
mb

