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

% *Judgment reserved on: 19th May, 2017*
Judgment delivered on 30 August, 2017

+ **CRL.A. 36/2004**

POONAM SRIVASTAV Appellant

Through : Mr.K.T.S. Tulsi, Sr. Adv. with
Mr.Lalit Sankhla, Mr.Pawan Sankhla,
Mr.Padam Sankhla, Mr.Raj Kamal
and Ms.Pallavi Malhotra, Advs.

Versus

STATE OF DELHI Respondent

Through: Ms.Aashaa Tiwari, APP
Mr.Pawan K. Bahl, Adv. for the
complainant.

+ **CRL.A. 68/2004**

JITENDER SRIVASTAV & ORS Appellants

Through : Mr.K.T.S. Tulsi, Sr. Adv. with
Mr.Lalit Sankhla, Mr.Pawan Sankhla,
Mr.Padam Sankhla, Mr.Raj Kamal
and Ms.Pallavi Malhotra, Advs.

Versus

STATE OF DELHI Respondent

Through : Ms.Aashaa Tiwari, APP
Mr.Pawan K. Bahl, Adv. for the
complainant.

+ **CRL.A. 85/2004**

DEEPAK SRIVASTAV

..... Appellant

Through : Mr.K.T.S. Tulsi, Sr. Adv. with
Mr.Lalit Sankhla, Mr.Pawan Sankhla,
Mr.Padam Sankhla, Mr.Raj Kamal
and Ms.Pallavi Malhotra, Advs.

Versus

STATE OF DELHI

..... Respondent

Through: Ms.Aashaa Tiwari, APP
Mr.Pawan K. Bahl, Adv. for the
complainant.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. Three appeals arise out of a common judgment dated 06.12.2003 and order on sentence dated 10.12.2003 passed by the learned Additional Sessions Judge, Delhi, in Sessions Case No.129/01 arising out of FIR No.337/98, registered under Sections 498-A/304-B/406/34 of the Indian Penal Code (hereinafter referred to as 'IPC') at Police Station Shalimar Bagh. Arguments have been addressed in all the appeals together, the same are being disposed of by a common judgment.
2. Deepak Srivastav, appellant in Crl.A.No.85/2004 is the husband of the deceased; Poonam Srivastav, appellant in Crl.A.No.36/2004 is the sister-in-law (*Jethani*); Jitender Srivastav, brother-in-law (*Jeth*), Rajinder Srivastav, father-in-law, and Veena Srivastav, mother-in-law, are the appellants in Crl.A.No.68/2004. The appellants have been convicted under various provisions of the Act, as detailed in the

tabulation herein below:

S.No.	Name of the appellants	Sections under which convicted	Period of conviction
1.	Deepak Srivastava	304-B IPC 498-A IPC 406 IPC	RI for life under Section 304-B IPC. RI for 03 years with a fine of Rs.2,000/- and in default, RI for 03 months under Section 498-A IPC. RI for 03 years with a fine of Rs.2,000/- and in default, RI for 03 months under Section 406 IPC.
2.	Rajinder Srivastava	304-B IPC 498-A IPC 406 IPC	RI for 10 years under Section 304-B IPC. RI for 03 years with a fine of Rs.2,000/- and in default, RI for 03 months under

			Section 498-A IPC. RI for 03 years with a fine of Rs.2,000/- and in default, RI for 03 months under Section 406 IPC.
3.	Veena Srivastava	304-B IPC 498-A IPC 406 IPC	RI for 10 years under Section 304-B IPC. RI for 03 years with a fine of Rs.2,000/- and in default, RI for 03 months under Section 498-A IPC. RI for 03 years with fine of Rs.2,000/- and in default, RI for 03 months under Section 406 IPC.
4.	Jitender Srivastava	304-B IPC 498-A IPC	RI for 10 years under Section 304-B IPC.

			RI for 03 years with a fine of Rs.2,000/- and in default, RI for 03 months under Section 498-A IPC.
5.	Poonam Srivastava, Sister-in-law	304-B IPC 498-A IPC	RI for 07 years under Section 304-B IPC. RI for 03 years with fine of Rs.2,000/- and in default, RI for 03 months under Section 498-A IPC.

3. Before the rival submissions of learned counsels for the parties can be considered, we deem it appropriate to outline the case of the prosecution which reads as under:

“2. *The brief facts of the case as made out from the record are that deceased was married to accused Deepak Srivastava on 07.12.1996 at 8, Mahila Colony, Delhi-110031 as per hindu rites and customs. In the marriage, she was given a large number of dowry articles including three kilogram of silver jewellery, 40 tola gold jewellery, a Maruti-car, fridge, colour T.V., V.C.R., household furnitures and several other items. Sh.Roop Kishore Srivastava, father of the deceased spent around*

Rs.12,50,000/- (Rs. Twelve lacs fifty thousand only) in the marriage.

- 3. For two months, the deceased remained quite well at her matrimonial house. Thereafter accused Deepak Srivastava, Rajinder Srivastava, Veena Srivastava, Jitender Srivastava, Poonam Srivasatva and Sonia Srivastava started harassing her for bringing a Maruti 800 car in marriage and taunted her that it was a humiliation for them and she ought to have brought 'Maruti Esteem Car' in the marriage. They all started finding fault with other articles brought by her in marriage. They also taunted her that nothing has been given to their relatives by the parents of the deceased.*
- 4. Thereafter father of the deceased gave the accused Rs.10,000/-, Rs.15,000/- and Rs.25,000/- on different dates. On the wedding anniversary of the deceased, her father sent Rs.11,000/-, but accused Rajinder, Jitender and others asked that Rs.51,000/- ought to have been sent. In the marriage of accused Sonia in February 1999, the parents of the deceased sent Rs.15,000/- and one gold ring, but the accused humiliated Sh. Dalip Srivastava brother of deceased stating that they had only one daughter and at least Rs.50,000/- ought to have been sent. The accused would not allow the deceased to speak to her family members nor would they allow her to make a telephone call. The harassment of the deceased continued thereafter. On 23rd of February 1998, accused Rajinder, Deepak and Jitender along with the deceased came to her parental house and demanded Rs. Two lacs for getting a business started for accused Deepak Srivastava. However, Sh. Roop Kishore Srivastava father of the deceased expressed his inability to pay such a huge amount, but asked for sometime to pay the same. Thereafter all the accused persons along with Arti*

returned to her matrimonial house. The demand of Rs. Two lacs continued thereafter.

5. *On 29th May 1998, accused Deepak came to her parental house and left her down-stairs asking her to take Rs. Two lacs from her parents. The deceased informed her family members about this demand. In the evening accused Deepak Srivastava came to her parental house and demanded Rs. Two lacs, but the amount was not paid and thereafter accused Deepak Srivastava left the parental house of the deceased leaving her there. The father and brothers of the deceased tried to reason with accused Deepak Srivastava and expressed their inability and also regretted their inability to pay the amount, but to no use. In the evening, they took Arti to her matrimonial house and again tried to assure the accused persons that the amount would be paid, but sought some time. Accused Deepak Srivastava, Rajinder Srivastava, Veena Srivastava, Jitender Srivastava and Poonam Srivastava were adamant and stated that by not paying the amount, they had dug a well for the deceased. They left the deceased at her matrimonial house. On 30.05.1998, Sh.Dalip Srivastava brother of the deceased, made a telephone call at her matrimonial house and he was informed that the deceased was lying unconscious up-stairs. Father of the deceased along with other family members rushed to Shalimar Bagh, matrimonial house of the deceased. Accused Poonam Srivastava and Veena Srivastava were bringing the deceased outside the house. Thereafter, she was removed to hospital by her father and brother in their own car, where she expired on the same day. Thereafter the instant case was registered on the complaint of her father Sh. Roop Kishore Srivastava.”*

4. Further, as per the learned trial court, Dalip Srivastava, brother of the

deceased, had made a telephone call to his deceased sister on the fateful day i.e. on 30.05.1998. The phone call was received by Poonam, sister-in-law of the deceased, and Dalip was informed that his sister was busy doing household work and that he should call back in half an hour. When Dalip again made a phone call to his sister, he was informed by Poonam, the sister-in-law of the deceased, that the deceased was lying unconscious. Subsequently, Dalip reached the matrimonial home of Arti. The deceased was brought out by her sister-in-law and mother-in-law. Upon reaching, Dalip observed that froth was coming out from the mouth of his sister.

5. In the car of Dalip, Arti was removed along with Poonam to Jain Nursing Home where they were informed that Arti was no more but she should still be taken to a hospital. Arti was then removed to LNJP Hospital, where she was declared 'brought dead' at 3.30 p.m.
6. As per the prosecution, Arti had died prior to 1.30 p.m. because on 30.05.1998 when Dalip made the second call to his sister at 1.30 pm, he was informed that his sister was lying in an unconscious state. As per the chemical report, Arti had consumed poison and a tin of baygon spray was lying near her body. To bring home the guilt of the appellants, the prosecution has examined 17 witnesses in all. Statements under Section 313 were recorded wherein all the appellants denied the allegations and stated that they were innocent and have been falsely implicated.
7. Mr. K.T.S. Tulsi, learned senior counsel appearing on behalf of the appellants submits that the appellants have been falsely implicated in this case. There was no harassment to the deceased much less for the demand of dowry. While relying on the cross-examination of two star

witnesses, being the father and the brother of the deceased, PW-1 and PW-2, respectively, learned senior counsel for the appellants submits that both these witnesses admitted that the appellants were well-to-do, they were well-established, they owned shops, separate businesses were being carried out by both the brothers and, thus, there was no occasion for them to have demanded dowry or petty amounts to the tune of Rs.11,000/-, Rs.15,000/- and Rs.50,000/-, as claimed by the prosecution.

8. In support of his argument so raised, Mr. Tulsi has relied upon ***Sanjiv Kumar v. State of Punjab***, reported at (2009) 16 SCC 487, more particularly para 19, which reads as under:

“19. In the first instance, it was submitted that the family of the appellant is relatively more prosperous than the family of the deceased. There is no allegation that any dowry was demanded at the time of marriage. The defence evidence also proves that the marriage ceremony was a simple ceremony where only the chunni ceremony was performed with only eleven or seventeen persons constituting the barat. It was further contended that the family of the appellant has considerable landed property, about 30 bighas of land and they are agriculturists. That apart, the father of the appellant was employed with the Electricity Board at Nabha. The appellant had no reason to demand Rs.10,000 for supporting a shop because he did not intend to start any such shop nor was there any necessity to do so. So far as demand of a fridge is concerned, only three weeks before the occurrence they had purchased a new fridge and therefore, the allegation regarding demand of articles of Rs.10,000 appears to be false. Even before the marriage, the appellant had in his house a black and white TV and therefore, there was really no need for the appellant to demand a TV. In any event, in these circumstances, it does not appear probable that for such petty things the appellant would commit the murder of the deceased.

The learned counsel therefore argued that the prosecution evidence regarding demand of dowry must be rejected outright. There is no evidence to establish that such a complaint was ever made to anyone before the occurrence, nor had the parents of the deceased convened any panchayat making such a grievance, particularly in the background of the fact that the family of the appellant had twice convened panchayat and had even taken the panchayat members to the village of the deceased to complain about her conduct. It was, therefore, submitted that Section 304-B was not attracted to the facts of this case. It may be that the deceased committed suicide after she had a serious quarrel with her husband for her having stayed for the night at the house of Balwant Rai with whom the husband suspected her illicit relationship.

20. We cannot lose sight of the principle that while the prosecution has to prove its case beyond reasonable doubt, the defence of the accused has to be tested on the touchstone of probability. The burden of proof lies on the prosecution in all criminal trials, though the onus may shift to the accused in given circumstances, and if so provided by law. Therefore, the evidence has to be appreciated to find out whether the defence set up by the appellant is probable and true.”

9. Senior counsel further contends that in fact the deceased was suffering from depression on three counts; *firstly*, despite treatment being carried out at Gayatri Nursing Home, she was unable to conceive, *Secondly*, she had an affair prior to her marriage with one, Tarun. A locket with the initials of Arti and Tarun was found, *Thirdly*, Arti's sister was keen that she should marry Sanjay, who was her husband's younger brother, but parents of Arti were not interested. On account of these three factors, Arti remained depressed and consumed poison for which the appellants cannot be blamed but with a view to harass the

entire family the prosecution has roped each and every member including the married sister-in-law (Nand), Sonia, who was subsequently acquitted by this Court vide judgment dated 04.02.2016 rendered in Criminal Appeal No.1/2004 titled as *Sonia v. State*.

10. Mr. Tulsi further submits that the demands sought to be relied upon by the prosecution are not only vague but also general in nature and they lack material particulars. Mr.Tulsi further submits that all the family members have been roped in. The demands are exaggerations and, thus, cannot form the basis of conviction either under Section 498A of the IPC and much less under Section 304B of the IPC. Learned senior counsel contends that as per the testimony of the material witnesses, the father of the deceased had paid a sum of Rs.11,000/- through his son, Dalip, on 07.12.1997 on the eve of the wedding anniversary of the couple and Rs.15,000/- was paid on 01.02.1998. Thus, there is no live link between the demands of dowry, the taunting and Arti's death. Resultantly, Section 304-B of the IPC would not be made out. Senior counsel further contends that the demand, if any, for starting a business would not be covered under the definition of dowry. This demand, according to the prosecution, was raised on 23.02.1998 and continued up to one day prior to the date of the incident i.e. 29.05.1998, when Arti left her parent's house in the morning and was taken back to the matrimonial home but with a threat given by the husband, Deepak, that she was digging a pit for her grave.
11. Mr. Tulsi argued that as far as the allegation with respect to the demand of Rs.2.00 lakhs for opening a shop is concerned, the same would not fall under the definition of dowry. In support of this submission, Mr. Tulsi has relied upon *Rajinder Singh v. State of*

Punjab reported in (2015) 6 SCC 477, more particularly para 11 which reads as under:

"11. This Court has spoken sometimes with divergent voices both on what would fall within "dowry" as defined and what is meant by the expression "soon before her death". In Appasaheb v. State of Maharashtra (2007) 9 SCC 721, this Court construed the definition of dowry strictly, as it forms part of Section 304B which is part of a penal statute. The court held that a demand for money for defraying the expenses of manure made to a young wife who in turn made the same demand to her father would be outside the definition of dowry. This Court said:

"A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the Appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure."

12. Learned senior counsel for the appellants submits that merely because according to the prosecution witnesses, Arti was taunted for bringing insufficient dowry or bringing sub-standard items or bringing a Maruti-800 car instead of a Maruti Esteem Car, the same would not be covered under Section 304-B of the IPC.
13. Additionally, learned senior counsel for the appellants submits that the testimonies of the brother and the father, PW-1 and PW-2, are neither trustworthy nor reliable. The testimonies are full of improvements and contradictions, thus, it would be highly unsafe to convict the

appellants under Section 304-B of the IPC. Learned senior counsel has also relied upon the testimony of PW-1 wherein he admitted that it was customary to provide gifts, which they gave to them at the marriage of the sister-in-law of the deceased. It is further submitted that PW-1, PW-2 and PW-3 have testified that there were external injuries on the body of the deceased which in fact is not supported by the scientific evidence and the same is also not borne out either from the death report, as per which there were no external injuries, nor on the basis of the post-mortem report and thus, no weightage can be given to such witnesses. Senior counsel also submits that although the deceased reached the hospital by 3.30 pm, there has been gross unexplained delay in registering the FIR, which was registered at 11.30 p.m., thus, giving ample opportunity to the family members of Arti to cook up exaggerated general allegations without assigning any specific role to any family member.

14. Mr. Tulsi further contends that the testimonies of the star witnesses would show that the same are full of exaggerations and embellishments. It has further been contended by Mr. Tulsi that provisions of Sections 498A and 304-B of the IPC were primarily enacted to prevent the menace of dowry. It is further submitted by Mr. Tulsi that Courts have frequently noticed that complaints are not *bonafide*, they are filed with oblique motives and unscrupulous persons invoke these provisions to wreck personal vendetta and unleash harassment by frivolous complaints. Reliance is placed by Mr. Tulsi on *Sushil Kumar Sharma v. Union of India And Others*, reported at (2005) 6 SCC 281, more particularly para 19 which reads as under:

“19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre- conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent

person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

15. In support of his argument that the statements of the witnesses are inconsistent; they are full of improvements and embellishments and thus, it would be highly unsafe to convict the appellants based on such statements. Learned senior counsel appearing on behalf of the appellants has placed reliance on the observations made in ***Preeti Gupta And Another v. State of Jharkhand And Another***, reported at (2010) 7 SCC 667, more particularly para 59, which reads as under:

“59. It is a clear-cut case of gross abuse of the dowry laws. We find it difficult to sustain the conviction of the appellants on the aforesaid counts based upon the inconsistent, embellished and improved statements of the witnesses, which materially contradict their respective statements recorded earlier. The High Court did not dislodge the reasons given by the trial court for acquittal. The High Court did not make any reference to the deposition of Dr. Daulatram Nekumal Gurubani (PW 10) in the cross-examination and dealt with the case very casually, adopting a very superficial approach to the whole matter and brushed aside the allegation of an illicit relationship for which there had been documentary evidence on record without recording any cogent reasons for the same. The High Court did not make any attempt to appreciate the evidence with accuracy and reversed the findings of the trial court which were based on the evidence on record and for which detailed reasons had been assigned.”

16. On the contrary, Ms. Aashaa Tiwari, learned Additional Public

Prosecutor for the State and Mr. Bahl, learned counsel for the complainant submit that the testimonies of the star witnesses are of sterling quality; contradictions, if any, are only minor; there are no improvements; and even otherwise, it has been repeatedly held by the Hon'ble Supreme Court that an FIR is not an encyclopaedia where all the particulars are to be furnished. Learned counsels contend that from the statement made to the SDM on 30.05.1998 at 11.10 p.m. on the basis of which *Rukka* was sent, the statements of the father stand duly corroborated by the statements of the brother of the deceased. Reliance is placed by Ms. Tiwari on ***V.K. Mishra and Another v. State of Uttarakhand and Another***, reported at (2015) 9 SCC 588, more particularly para 13, which reads as under:

“13. 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. Complaint was lodged within few hours after the tragic event. PW-1 has 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-PW1 cannot be measured by any yardstick. While lodging the report, PW-1 must have been in great shock and mentally disturbed. Because of 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.”

17. Learned counsel for the State and the complainant further submit that no leniency can be shown to the appellants on the ground of their age.

In support of this contention, reliance is placed on para 42 of **V.K. Mishra and Another** (supra). Para 42 reads as under:

*“42. For the offence under Section 304B IPC, the punishment is imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. Section 304B IPC thus prescribes statutory minimum of seven years. In **Kulwant Singh & Ors. vs. State of Punjab** (2013) 4 SCC 177, while dealing with dowry death Sections 304B and 498A IPC in which death was caused by poisoning within seven years of marriage conviction was affirmed. In the said case, the father-in-law was about eighty years and his legs had been amputated because of severe diabetes and mother-in-law was seventy eight years of age and the Supreme Court held impermissibility of reduction of sentence on the ground of sympathy below the statutory minimum.”*

18. Learned counsel for the State and the complainant further submit that the evidence placed on record would show the poor conduct of the appellants. It is contended that Dalip, brother of the deceased, had made a telephone call to his sister on the fateful day at around 1.30 p.m. in the afternoon, when the appellant Poonam had informed him that his sister, Arti, was busy in some work and when Dalip called subsequently he was informed that Arti is lying unconscious. No effort was made by the mother-in-law and sister-in-law who were present in the house to remove Arti to the hospital or provide first aid to her and in fact they waited for Dalip, brother of Arti, to come and take Arti to a hospital in his car. There are no justifiable reasons for this conduct.
19. Learned counsel for the State and the complainant further submit that merely because the appellants are well-to-do, it does not necessarily mean that they were not demanding dowry. The demands have been

consistent and since their demands were not fulfilled Arti was sent back to her parents house and when she was taken back to her matrimonial home by her brother and father, the appellant Deepak had stated that she had dug a pit for herself. It is further submitted that the attitude and conduct of the mother-in-law and sister-in-law were very strange as when Arti was being removed to the hospital by her brother in his car, all the jewellery of Arti was being removed by her mother-in-law and sister-in-law, which speaks volumes of their lust for dowry. It is further contended that as far as the submissions made by the learned senior counsel for the appellants are concerned that Arti was depressed due to her inability to conceive or that she had a premarital affair with one Tarun and also that she was not allowed to marry one, Sanjay, are baseless. Such submissions cannot be entertained in the absence of any iota of evidence. Furthermore, in case Arti was taking any treatment in Gayatri Hospital as she was unable to conceive, records from the said nursing home could have been produced/filed to substantiate this baseless allegations. There is no evidence, whatsoever, to show that she was in a state of depression.

20. Mr. Bahl, learned counsel for the complainant, in response to the submission made by the learned senior counsel for the appellants that the demand of Rs. 2 lakh for opening a shop would not come under the definition of dowry has relied upon para 20 of **Rajinder Singh's** case (supra), wherein the Hon'ble Supreme Court held as under:

*“20. Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfil the object sought to be achieved by parliament, we feel that the judgment in **Appasaheb's** case followed by the judgment of **Vipin Jaiswal** do not state the law correctly. We, therefore,*

declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. Coming now to the other important ingredient of Section 304B-what exactly is meant by “soon before her death?”

21. At this stage, Mr.Tulsi has submitted that the Court should consider that all the appellants except the appellant Deepak (husband of the deceased) can only be convicted under Section 498-A of the IPC and that their sentence should be modified to the period already undergone i.e. four years by the father-in-law, who is 68 years of age; two years and six months by the mother-in-law, who is 65 years of age; four years and nine months by the brother-in-law and one and a half years by the sister-in-law.
22. We have heard learned counsel for the parties, considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the trial court.
23. Section 498-A of the IPC was introduced in the year 1983 with a purpose to extend protection to the weaker spouse and Section 304-B of the IPC was introduced in the year 1986 to curb the menace of dowry deaths.
24. Before we deal with the rival submissions of the counsel for the parties, we deem it appropriate to refer to the testimonies of some of the material witnesses in detail.
25. PW-1 Dalip Kumar Srivastav (brother of the deceased Arti) has testified that the marriage between Deepak and his sister, Arti, was

solemnised on 07.12.1996. PW-1 has further testified that the marriage was performed according to Hindu rites and customs and with great pomp and show. A car, gold, silver, a colour TV, a fridge, utensils, furniture for the entire house, etc. were given in the marriage. After two months of marriage, when Arti visited her parental house, she told them that all the appellants used to tell her that by giving a Maruti-800 car in the marriage they had insulted them and instead a Maruti Esteem car should have been given in the marriage. All the appellants had also complained to Arti that the clothes, which were given in the marriage, were of inferior quality. Arti was also taunted on the above accounts and derogatory words were used for his family.

26. PW-1 Dalip has further testified that he had visited the house of the appellants to talk to the father-in-law and mother-in-law of her deceased sister and explained that they had given to the best of their abilities in the marriage and in case any folly was committed by them, it would be rectified. PW-1 was told by the mother-in-law and father-in-law of his deceased sister that since they had not given anything to their relatives, they should pay Rs.50,000/-. PW-1 returned after seeking time to arrange for the amount. PW-1 visited the house of his sister and on one occasion gave Rs.10,000/, on the second occasion he gave Rs.25,000/- and on the third occasion he gave Rs.15,000/- to them. PW-1 has further deposed that Arti visited her parent's house only five or six times as her in-laws did not allow her to visit them. They could talk to Arti over the telephone only in the absence of her in-laws and in case her in-laws came to know they used to beat her. PW-1 was also not allowed to meet his sister for more than five minutes in case he visited her house. PW-1 has further stated that on

07.12.1997, on the wedding anniversary of Arti he gave Rs. 11,000/- to her parents-in-law. On seeing the amount, her father-in-law threw the cash amount on the face of PW-1 exclaiming if he was a *kangla* and further stated that at least Rs. 51,000/- should have been given. On 01.02.1998, PW-1 visited the house of the appellants in connection with the marriage of their daughter Sonia and gave Rs. 15,000/- in cash, a gold ring, a saree and sweets to the appellants. PW-1 was abused and told that they had only one daughter and at least Rs.50,000/- should have been given to them. On 23.02.1998 Rajinder (father-in-law), Jitender (brother-in-law) and Deepak (husband) along with Arti came to the house of PW-1. Arti told him that her father-in-law wanted to start some work for Deepak and for that they required Rs.2.00 lakhs. PW-1 then told Rajinder, father-in-law, that at that time he was not in a position to pay the said amount but he would arrange for it. The accused persons told him that they require money within a month failing which they should keep Arti at his place, there was no scarcity of girls for them and they would get Rs.10.00 lakhs after remarrying their son. On their return, Arti was harassed. It has further been deposed by PW-1 that previously they used to beat Arti but thereafter she was not even served food and nobody used to talk to her.

27. PW-1 has also testified that on receipt of a telephone call for demand of money by the in-laws of her sister, he again went to their house and sought further time. On 29.5.1998, Deepak along with Arti came to the parental home in the morning; he did not come inside the house and left Arti saying that he would come back in the evening. He also stated that he wanted a reply by the evening with regard to Rs.2.00

lakhs. Arti further informed him that Deepak had told her that if she did not get Rs.2.00 lakhs, she need not come home. In the evening, when Deepak came home and as the money was not given to him, he abused Dalip and asked him to keep his sister at his house. Deepak left without Arti. Dalip then took his sister to the residence of her in-laws at Shalimar Bagh, where except Sonia all the appellants were present in the house. Rajinder, father-in-law then asked him if he had brought the money. PW-1 had informed that due to sluggish business, he was not able to arrange the money. On this Deepak said that Arti was digging a well for herself. PW-1 had left Arti at her matrimonial home. The next day, between 8.00 a.m. and 9.00 a.m., PW-1 telephoned his sister, Arti, who told him that after she was left in her matrimonial home, she was beaten by the appellants, she was not given food and nobody talked to her. She then put off the phone. PW-1 called her up again at lunch. The phone was picked up by Poonam, sister-in-law, who informed him that Arti was working and he should call after sometime. PW-1 subsequently made a phone call to Arti, the accused Poonam picked up the phone and told him that his sister was lying unconscious in the room and he should come and take her. PW-1, his brother and his mother reached Shalimar Bagh, where Veena, Rajinder and Poonam, were standing outside their house. PW-1 was told that Arti was inside the house. PW-1 asked them as to why they had not taken Arti to the hospital, to which they replied that they were waiting for him as they did not have any vehicle. Arti was put in the rear seat of the car by Veena and Poonam. Froth was coming out of Arti's mouth and her clothes were torn. While Arti was in the car, Poonam removed golden ear tops of Arti while Veena removed golden

mangalsutra and golden chain from the neck of Arti. Arti was taken to Jain Nursing Home, where they were informed that she had died and they were advised that Arti should be taken to LNJP Hospital. At LNJP Hospital, Doctors declared Arti brought dead.

28. PW-1 has further testified that thereafter they reached the Police Station, where the SDM recorded the statement of his father. His statement was also recorded, being PW-1/A. During cross-examination, PW-1 admitted that Poonam and Veena accompanied him to Jain Nursing Home in his car, carrying his sister. PW-1 has stated that his family was not immediately informed about the incident; rather they came to know about it when he himself called Arti. PW-1 has further stated that Poonam did not ask him to come immediately. In the first phone call, PW-1 was told that Arti was doing household job and in his second phone call made after half an hour, Poonam told him that Arti was lying unconscious and he should come and pick her.
29. PW-1 has further clarified during cross-examination that he had not stated to the SDM that Rs.11,000/- was paid to the father-in-law but he had recorded that it was given to the family members (*ghar walon ko*). PW-1 further stated during cross-examination that in his first statement before the SDM, he had stated that father-in-law of Arti wanted to start some work for Deepak and for that they were in need of Rs.2.00 lakhs.
30. PW-1 has denied the suggestion with regard to the proposal of marriage of one Sanjay Kumar for Arti. PW-1 also denied that any locket in which it was engraved "Tarun-L-Dimple" was ever found. PW-1 also termed it as incorrect that Arti was married to Deepak

against her wishes. PW-1 also denied that Arti was being treated at Gayatri Nursing Home as she was unable to conceive a child or that Arti was unhappy because her marriage was performed with Deepak against her wishes or because she could not conceive. PW-1 admitted that at the time of his sister's marriage, the appellants had good business, they were financially sound and they had two shops one in Model Town and another in Kingsway Camp. During cross-examination, PW-1 has also stated that there were customary gifts that were offered by them to the in-laws of Arti at the time of marriage of Sonia.

31. PW-2 Roop Kishore Srivastava (father of the deceased) has also testified that at the time of marriage of his daughter, the appellants had made a demand for a car. PW-2 had given 40 tolas of gold, 3.5 kg of silver, one Maruti car and other household articles like sofa set, dinning set, TV, utensils, Geyser, Refrigerator, etc., as mentioned in the list, Exhibit PW-2/A. PW-2 has further testified that after two months of marriage of Arti, the appellants started saying that they were insulted by giving a Maruti car and they should have been given an Esteem car. They also told him that the household articles which were given to them were of inferior quality and thus, they were not given to their relatives due to which they had to bear the insult. PW-2 has further testified that all this was narrated to him by his daughter, Arti, when she came to his house. PW-2 has further deposed that thereafter he firstly sent Rs.10,000/- then Rs.15,000/- secondly and Rs.25,000/- thirdly, through his son, in order to distribute the money amongst the relatives of the appellants. Thereafter, PW-2, through his son, Dalip, sent Rs.11,000/- and sweets to the appellants on the

wedding anniversary of his daughter. After Dalip returned from the matrimonial house of Arti, Dalip told PW-2 that he was insulted and the appellants said that they should have given at least Rs.51,000/-. Thereafter in the marriage of Sonia PW-2 gave Rs.15,000/-, one golden ring, one saree, sweets, etc. After return from the marriage, Dalip informed PW-2 that the appellants threw money on his face and said that at least Rs.50,000/- should be given to Sonia as they have only one daughter. PW-2 has further deposed that his daughter was not treated properly by her in-laws, she was abused and beaten by the appellants. After the marriage of Sonia, the appellants (Rajinder, Jitender, Deepak) and Arti came to the house of PW-2 in the evening and told PW-2 that, as already told to Arti, PW-2 should arrange Rs.2.00 lakhs as the appellant Deepak wanted to start his own work. PW-2 told them that at that time he was in a very tight position and the moment he would be able to arrange the money as demanded by them, he would hand it over to them. Even after that, the appellants demanded Rs.2.00 lakhs on several occasions. PW-2 informed the appellants that he was not in a position to give the money, as demanded by the appellants, as he was in a very financially difficult position. Thereafter, the appellants told PW-2 to arrange for the aforestated money within one month, failing which he could keep his daughter at his home.

32. PW-2 has further testified that on 29.05.1998 Deepak came to the house of PW-2 along with Arti and left Arti outside his house. Deepak was asked by Dalip to come inside but Deepak replied that he would return in the evening and also told Arti that he wanted reply in the evening. In the evening Deepak came and asked about Rs.2.00 lakhs.

PW-2 has further testified that after Deepak left Arti outside his house, he enquired from Arti as to what was the matter. Arti replied that it was the same issue of giving Rs.2.00 lakhs to the appellants, failing which they would not keep her. In the evening, Deepak came to the house of PW-2. PW-2 told him that Rs.2.00 lakhs could not be arranged. Deepak left for his house leaving Arti in the house of PW-2. Since Arti was weeping and insisted that she should be sent to her matrimonial home in the night itself, they took her to her matrimonial house where they found all the appellants except Sonia. PW-2 implored the appellants for some more time for making arrangement of the money. The appellants said that they were digging a well for Arti. PW-2 has also testified that he even begged that if any mistake had been committed by them, it should be excused. Thereafter they left Arti in her in-laws house.

33. It has further been testified by PW-2 that on 30.05.1998 at about 1/1.30 p.m., his son, Dalip, had told him that Arti was lying unconscious in her in-laws house, as informed by her elder sister (Jethani). PW-2 and all his family members went to the house of in-laws of Arti at Shalimar Bagh and when they reached there they were not allowed to enter in the house and his daughter was brought out of the house by sister-in-law (Jethani), Poonam, and mother-in-law, Veena. They noted that froth was coming out from the mouth of Arti and her shirt was torn. Arti was taken in his car. The appellants told them that they do not have any arrangement of vehicle (car). At that time, they enquired from the appellants as to what had happened to Arti, to which they did not reply. As they started proceeding towards the nursing home, the appellants, Veena and Poonam, took out

mangalsutra, gold chain, and gold rings from the body of Arti. PW-2 asked them as to why they are removing these articles from the body of her daughter, to which they replied that let them be removed. Arti was taken to Jain Nursing Home. On examination by the Doctor in the nursing home, Arti was declared dead, however, the doctor asked them to take Arti to a Government Hospital. Thereafter, they took Arti to LNJP Hospital where Doctors, upon examination, declared Arti brought dead. Thereafter, they were asked by the Police officer of PS Shalimar Bagh to come to the Police Station. The SDM recorded his statement, which is Exhibit PW-2/A, and which bears his signatures at point 'A'. Thereafter the appellants Veena, Rajinder and Deepak were arrested by the Police. PW-2 has also testified that he is confident that the appellants had poisoned his daughter to death.

34. During cross-examination, PW-2 has stated that at the time of choosing the appellant Deepak, as an alliance for his daughter, he considered every aspect regarding status and suitability for his daughter and for his family. Deepak had a settled business. Before the marriage of his daughter, he enquired and found that the family of the bridegroom was financially well-off and they were earning handsomely. PW-2 denied the suggestion that his daughter Arti was inclined to marry Sanjay, brother-in-law of his elder daughter. He also denied the suggestion that a boy called Tarun Grover used to live in their neighbourhood. He also denied the suggestion that Tarun Grover used to study with his daughter as his daughter had studied in a girls school. He also denied that his daughter was inclined towards Tarun Grover and further denied with respect to a locket having been inscribed 'Tarun-L-Dimple'. He denied about any treatment was

received by his daughter from Dr. Sailesh Goel, in connection with fertilization of his daughter or that she was being treated at Gayatri Nursing Home. He also denied that as Arti did not have any child, she had started becoming depressed. In his cross-examination, PW-2 has further stated that Deepak and Jitender had two shops, one in the Model Town and the other in Kingsway Camp. Both the shops were in existence prior to the marriage and the appellants had good business.

35. PW-3 Smt. Yashoda (mother of the deceased) deposed on the similar lines as deposed by PW-1 Sh. Dalip Kumar Srivastava and PW-2 Sh. Roop Kishore Srivastava.
36. The criminal machinery was set into motion vide DD No. 25A (Ex.PW-13/A) which was recorded on 30.05.1998 at PS Shalimar Bagh. On the fateful day, PW-13 Const. Babu was posted as Duty Constable in LNJP Hospital who informed PS Shalimar Bagh. The said information was proved by him as Ex.PW-13/A. An FIR was registered by PW-7 HC Dharam Singh on 30.05.1998 and was proved by him as Ex.PW-7/A.
37. PW-17 SI Mahavir Prasad was the Investigating Officer in the present case who testified that on 30.05.1998, he was posted at Police Station Shalimar Bagh and on receipt of DD No. 25A; he along with Constable Bodhan Lal reached LNJP Hospital. As the deceased was declared 'brought dead', the dead body was sent to the mortuary; from there he returned to the spot and collected the articles lying near the spot. He found a tin containing baygon spray and a towel of white colour and a vest of *Sando* inside the room. The vest and towel was giving a foul smell of baygon spray. All these articles were sealed vide memo Ex.PW-14/A and sent for examination. PW-17 also

informed the SDM and the SHO who had also reached there. At the Police Station, SDM recorded the statement of PW-2 Roop Kishore Srivastava (father of the deceased) and based on his statement, the present case was registered. PW-17 further deposed that on the intervening night of 30/31.05.1998, he arrested appellants Deepak, Rajender and Veena. Subsequently, on 21.10.1998, PW-17 arrested appellant Jitender and on 27.10.1998 he arrested appellant Poonam.

38. With regard to the medical evidence, PW-6 Dr. Sushil Meena prepared the MLC of the deceased which is Ex.PW-6/B and deposed that on 30.05.1998, he was posted as Junior Resident, in LNJP Hospital, Casualty Department. At about 3:20 p.m., the deceased Arti Srivastava wife of Deepak Srivastava was brought by her brother and *jethani*. PW-6 further deposed that when he examined the patient, he found that she had no pulse, no heart sound, no respiration, her pupils were constricted and she did not react to light. White froth was coming out of her mouth and her nose. She was declared 'brought dead' at 4:05 p.m.
39. PW-9 Dr. Yoginder Bansal who conducted post-mortem examination of the deceased on 31.05.1998. His detailed report is Ex.PW-9/A. PW-9 deposed in his testimony as under:

"EXTERNAL INJURIES:/EXAMINATION:

There were no external injuries.

INTERNAL EXAMINATION

1. Stomach: full of brownish fluid with kerosene like smell was present. Walls were congested. All other abdominal organs were also congested.

Opinion:

Internal viscera was preserved and sealed to be sent for chemical examination to confirm the presence of poison. PM report in original, eight inquest papers, duly initialled by me. Dead body, a sealed viscera box and sample seal of the Deptt. was handed over to the IO. My detailed post-mortem examination report is Ex.PW9/A bears my signature and seal of my office and is correct. I have seen the viscera report sent by CFSL No. CFSL/EE/98(DEL-699, signed by A.K. Majee, dated 25.1.99 and according to my opinion death in this case was due to carbamate insecticidal poison.”

40. As is evincible from the post-mortem report of the deceased that the cause of death was due to carbamate insecticidal poison.
41. The first question which arises for consideration of this Court is as to whether the evidence available on record is sufficient to bring home the guilt of the appellants under Section 498A and Section 406 of IPC or not?
42. In this regard, learned counsel appearing for the appellants submitted that the conviction of the appellants is not contested before this Court for the offence committed under Section 498A, subject to the condition that the sentence of all the appellants, except the husband of the deceased, be modified to the period already undergone.
43. Cruelty as defined in Section 498A of IPC must meet the following requirements:
 - i) There should be harassment of the woman;
 - ii) Harassment should be with a view to coercing her or any person related to her to meet the unlawful demand of property or valuable security;
 - iii) The harassment may be even where on account of failure by the

woman or any person related to her to meet any such demand earlier made.

44. In this regard, it would be necessary to analyse the evidence available on record. As per the testimony of PW-1 Dalip Kumar Srivastava, all the appellants used to taunt his sister that by giving a Maruti-800 car in the marriage, they have been insulted and a Maruti Esteem car ought to have been given. The deceased was also taunted that instead of Philips T.V., a Sony T.V. should have been given. Moreover, she was taunted for bringing inferior quality clothes. It has come in evidence that to stop the taunting of the appellants, PW-1 gave Rs. 50,000/- which was paid in three installments of Rs. 10,000/-, Rs. 25,000/- and Rs. 15,000/- to the parents of the appellant Deepak Srivastava. The law in this regard is well settled that taunting made by the parents-in-law or the relatives of the deceased with regard to the inferior goods brought in the dowry does not amount to demand of dowry.
45. Another Division Bench of this Court, of which one of us (G. S. Sistani, J.) was also a member, in the case of *Sonia vs. State of Delhi* **MANU/DE/2064/2016**, while acquitting the appellant Sonia (one of the co-accused whose Criminal Appeal No. 1/2004 was decided on 04.02.2016) under Section 498A of IPC held that the name of the appellant Sonia did not find mention in the alleged demands of dowry made by the in-laws of the deceased. The allegations against the appellant Sonia were found to be weak, vague and general in nature.
46. We may profit from the view taken in the case of *Bimla Gupta and Ors. vs. State of Delhi* reported at **MANU/DE/8245/2007** whereby the charges framed against the accused persons by the Trial Court under

Section 498A, 304B read with Section 34 of IPC were set aside due to insufficient evidence against them including the evidence of taunting by her in-laws. Relevant para 20 reads as under:

“20. The evidence relied upon is the statement that Geeta was taunted, by her in-laws after marriage. As far as the Petitioners are concerned, it is alleged that they asked the deceased to arrange for a further amount, to help her brother-in-law's business. This is no doubt some evidence; it may even be said to raise suspicion. However, in my opinion, this material, by itself cannot constitute grave suspicion, warranting charges. I am Therefore of the opinion that there is insufficient evidence, to conclude that the petitioners, prima facie, were involved in commission of the offence punishable under Section 498-A IPC.”

(Emphasis Supplied)

(Also see **Smt. Neera Singh vs. The State (Govt. of NCT of Delhi) and Ors.** reported at **138 (2007) DLT 152**, (Paragraph 1, 2, 6 and 7)

47. In the light of the aforesaid dicta, we are of the considered view that mere taunting will not bring the offence of Section 498A of IPC, unless it is brought out that it was intended to compel the deceased to take the extreme step of taking her life.
48. We may note that the learned Trial Court was influenced by the fact that the deceased was not taken to the hospital by her in-laws and when the first call was made by Dalip Srivastava (brother of the deceased), he was being informed that his sister was busy doing some household work. Additionally, the deceased was only removed to the hospital by the brother of the deceased after he reached her matrimonial home. The Trial Court further noted that the greed of the in-laws of the deceased is evident from the fact that all the jewellery

items were removed by her mother-in-law while removing her to the hospital.

49. Adverting to the facts and circumstances of the case, we are of the considered view that the prosecution has established its case against all the appellants beyond reasonable doubt to the effect that deceased was harassed or meted with cruelty for or in connection with the demand for dowry. Thus, we conclude by convicting all the appellants Poonam Srivastava, Jitender Srivastava, Veena Srivastava, Deepak Srivastava and Rajinder Srivastava for the offence punishable under Section 498A of IPC.
50. Coming to the conviction of all the appellants under Section 304B of IPC, we shall consider the role played by the appellants Poonam Srivastav, Jitender Srivastava and Veena Srivastava on one side and the case of Rajinder Srivastava, Deepak Srivastava under separate heads.

Role of the appellants Poonam Srivastav, Jitender Srivastava and Veena Srivastava for the offence punishable under Section 304B of IPC:

51. The next question which comes for consideration before this Court is as to whether the deceased was subjected to cruelty or harassment for or in connection with any demand for dowry by the appellants to attract Section 304B of IPC?
52. In the case of *Kans Raj v State of Punjab*, reported at (2000) 5 SCC 207, the Hon'ble Supreme Court laid down the following ingredients which need to be proven against the accused persons before they can be convicted under this Section:

- a. The death of a woman must be caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
 - b. Such death should have occurred within 7 years of her marriage;
 - c. The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
 - d. Such cruelty or harassment should be for or in connection with the demand of dowry; and
 - e. To such cruelty or harassment the deceased should have been subjected soon before her death.
53. To attract conviction under Section 304-B of the IPC, the most essential aspect which needs to be proved is that the cruelty or harassment for bringing insufficient dowry must be soon before her death. Now the question which arises for consideration is as to what period may be considered as 'soon before her death'.
54. In the case of **Kaliyaperumal v. State of T.N.** reported at (2004) 9 SCC 157, the Hon'ble Supreme Court while dealing with the expression 'soon before her death' held as under:

"5. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would

constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

(Emphasis Supplied)

55. As far as the role and evidence against the appellants Poonam Srivastav, Jitender Srivastava and Veena Srivastava for the offence punishable under Section 304B of IPC is concerned, it may be noted that there are no specific allegations against the appellants in the evidence discussed aforementioned with regard to the demand for dowry which can show that soon before her death there was a demand for dowry from the deceased by the appellants Poonam Srivastav, Jitender Srivastava and Veena Srivastava which had a live link and proximate link to her death and none of the witnesses have alleged any

role to the appellants Poonam Srivastav, Jitender Srivastava and Veena Srivastava. Even otherwise, the amount which was given in installments of 10,000/-, 15,000/- and 25,000/- was handed over to the parents of the appellant Deepak Srivastava.

56. In the case of ***Amar Singh vs. State of Rajasthan*** reported at (2010) 9 SCC 64, the Apex Court while modifying the sentence of the appellant under Section 304B of the IPC sentenced him for a period of ten years and also maintained the acquittal recorded by the High Court of Rajasthan in favour of the mother of the appellant (Gordhani) and younger brother of the appellant (Jagdish) of the appellant. Relevant para 29, 31 and 32 read as under:

“29. We are unable to accept this submission of Dr. Singhvi. The evidence of PW 2, PW 4 and PW 5 shows that Jagdish and Gordhani played a role in the demand of dowry of a scooter or Rs. 25,000 for Amar Singh, but demand of dowry by itself is not an offence under Section 498-A or Section 304-B IPC. What is punishable under Section 498-A or Section 304-B IPC is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113-B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any 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 within the meaning of Section 304-B IPC. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death.

....

31. The evidence of PW 5 (brother of the deceased) is that whenever the deceased used to come home she used to complain that her in-laws have been teasing her and they were demanding a scooter or Rs. 25,000 for a shop and that when the deceased

came home one month prior to her death, she complained that her mother-in-law and all other in-laws used to torture her and taunt her that she did not bring anything, but PW 5 has not described the exact conduct of the mother-in-law and other in-laws on account of which the deceased felt tortured and taunted. On the other hand, the evidence of PW 4 is clear that Amar Singh used to taunt her that she has come from a hungry house. Thus, there was evidence in the case of Amar Singh about his exact conduct which caused harassment to the deceased but there was no such evidence in the case of Jagdish and Gordhani.

32. A prosecution witness who merely uses the word “harassed” or “tortured” and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the court in cases under Sections 498-A and 304-B IPC. For this reason, the High Court has taken a view that the charges against Jagdish and Gordhani have not been established beyond reasonable doubt and that their case is distinguishable from that of Amar Singh and that Jagdish and Gordhani appear to have been implicated because they were members of Amar Singh's family.”

(Emphasis Supplied)

57. In the case of **Kans Raj v. State of Punjab** reported at (2000) 5 SCC 207, the Hon'ble Supreme Court cautioned that in cases where accusations of dowry deaths are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. In the aforesaid case, the Apex Court further observed that a tendency has developed for roping in all relations of the in-laws of the deceased in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.

58. It was noticed by the Hon'ble Supreme Court in the case of ***Sushil Kumar Sharma vs. Union of India and Ors.*** reported at (2005) 6 SCC 281, that undoubtedly the object of the provision is prevention of dowry menance. However, now many instances have been noticed where the complaints are not bonafide and had been filed with oblique motive. Relevant para 8 of the judgment reads as under:

“19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of “wolf” is made too often as a prank, assistance and protection may not be available when the actual “wolf” appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for

any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.”

(Emphasis Supplied)

59. In the case of **Karan Singh & Another vs. State of Haryana** reported at **(2014) 5 SCC 738**, the Hon’ble Supreme Court while modifying the conviction of the appellants from Section 304B to under Section 306 of the IPC observed that the only evidence against the appellants was to the ill treatment and harassment which was not related to any specific demand for dowry. Relevant para 19, 21 to 23 read as under:

“19. Even the statement given by Sunita does not disclose any specific demand for dowry except that there is bald statement that she and Manju were taunted for bringing insufficient dowry. The tenor of her testimony suggests that she and Manju were being generally harassed and ill-treated by Karan Singh and Mukhtiari. The ill-treatment and harassment does not appear to be related to any specific demand for dowry.

....

21. Neither Ram Kishan nor Vidya Devi nor Sunita has given any indication of any specific demand for dowry. Under these circumstances, it is difficult for us to conclude that the

provisions of Section 304-B IPC would be attracted. It has been held times without number that:

“9. To establish the offence of dowry death under Section 304-B IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death.” [More recently in *Indrajit Sureshprasad Bind v. State of Gujarat*, (2013) 14 SCC 678, p. 681, para 9: (2014) 4 SCC (Cri) 337]

As such the ill-treatment and subsequent death of Manju would not fall within the meaning of a dowry death under Section 304-B IPC.

22. But, there is no doubt that Manju and Sunita were subjected to ill-treatment and harassment from time to time by Karan Singh and Mukhtiari though it was not relatable to any demand for dowry. The evidence on record shows that they were turned out from the matrimonial home on more than one occasion. They were even turned out from the matrimonial home within about ten days after Manju gave birth to a baby boy. Ram Kishan had spoken about this to Satbir and Sukhbir but in spite of this, the attitude of Karan Singh and Mukhtiari did not change. As mentioned above, no allegation has been made against Satbir and Sukhbir. Again, a few days before Manju's death, Sunita was subjected to beating and turned out of the matrimonial home. Although, Manju did not accompany her sister, she paid the price for staying back in Village Raiya.

23. From the facts of the case it is quite clear to us that although there may be no evidence of Manju having been compelled by Karan Singh and Mukhtiari to consume poison, they had created a situation over a sufficiently long period of time whereby she was left with no option but to take her life. It is quite unlikely that a young lady, particularly one having a year old child, would take her life unless she had some mental health issues (which is not the case) or was compelled by circumstances to do so. An offence of abetment of suicide punishable under Section 306 IPC is much broader in scope than an offence punishable under Section 304-B IPC.

[Bhupendra v. State of M.P., (2014) 2 SCC 106]. In this case an offence punishable under Section 306 IPC is clearly made out against Karan Singh and Mukhtiari.”

(Emphasis Supplied)

60. In view of the facts and circumstance of the present case, we find that there are no specific incidents mentioned in the testimonies of the witnesses to show that at different points of time the appellants Poonam Srivastav, Jitender Srivastava and Veena Srivastava had tortured or demanded dowry from the deceased and her parents soon before her death. Applying law to the facts and circumstances of the present case, we are of the considered view that the allegations against the appellants Poonam Srivastava, Jitender Srivastava and Veena Srivastava are vague and general in nature.
61. Undoubtedly, it is a cardinal principle of criminal jurisprudence that the guilt of the accused is to be established beyond any reasonable doubt. There lies a duty on the Courts to find the truth in the prosecution story against the accused and to consider the case of prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted. A similar view was taken in **Sarwan Singh Rattan Singh v. State of Punjab**: AIR 1957 SC 637; **Anil W. Singh v. State of Bihar**, (2003) 9 SCC 67; **Reddy Sampath W. v. State of A.P.**, (2005) 7 SCC 603 and **Ramreddy Rajesh Khanna Reddy v. State of A.P.**, (2006) 10 SCC 172.
62. Having regard to the evidence available on record, the prosecution has failed to bring home the guilt of the appellants Poonam Srivastava, Jitender Srivastava and Veena Srivastava beyond reasonable doubt for the offence punishable under Section 304B of the IPC and can only be

convicted under Section 498A of the IPC. We are, therefore, of the opinion that in view of the material on record, the Trial Court has rightly convicted the appellants Poonam Srivastav, Jitender Srivastava and Veena Srivastava under Section 498A of the IPC. However, the conviction of the appellants Poonam Srivastav, Jitender Srivastava and Veena Srivastava under Section 304B is erroneous and thus set aside.

Role of the appellants Deepak Srivastava and Rajinder Srivastava for the offence punishable under Section 304B of the IPC:

63. It has emerged from the evidence that a demand of Rupees 2 lakhs was made by the appellant Rajender for the purpose of business of the appellant Deepak Srivastava. The said demand was made on two occasions i.e. 23.02.1998 and 29.05.1998. The relevant part of the examination-in-chief of PW1 Dalip Kumar Srivastava (brother of the deceased) reads as under:

“On 23.02.1998 accd. Rajinder, Jitender and Deepak alongwith my sister came to our house when my sister told me that her father in law wanted to start some work for Deepak and for that they were in need of Rs.2 lacs. On hearing this, I told to accd. Rajinder the father in law of my sister that at that time I was not in a position to pay the said amount and then some time be given to me and whatever I could arrange I will give. On hearing my reply, the accd. persons told me that they required money within a month failing which we should keep our sister at our place (Home). They also told that there was no scarcity of girls for them and that they would get Rs. 10 lacs after remarrying his son. Thereafter, they all left away place. My sister also accompanied them.

.....

On 29.05.1998 Deepak alongwith my sister came to our house in the morning and on my insisting to go in our house he did not go in and leaving my sister beneath our house saying that he would come back in the evening and he further commented that he wanted reply by evening to whatever he stated to my sister. I asked from my sister what the matter was. She replied that it was the same matter of Rs. 2 lac. and he further said that Deepak asked her if he did not get Rs. 2 lac she need not to come to him. I asked my sister no matter when Deepak would come in the evening, I will talk to him. In the evening, accd. Deepak came on my refusing not giving money to him he abused me and asked me to keep my sister at my house and said come to our house if I had Rs. 2 lac. and he went leaving my sister at our house. After leaving Deepak in my sister started weeping asking that she was to go to our house (in laws). I said to her that I will leave you to your house and then taking her I reached to Shalimar Bagh. The house of my sister (in laws). At that time except accd. Sonia all the accd. were present in their house (Arti's in-laws house). Rajinder said if I had brought the money? I said to him that ahead a sluggish business at that time and I had already told you that I would arrange for the money. As far as the money is arranged I will give to you. On this, Deepak said that Arti was digging well for herself. And after making many employments I came leaving my sister in their house (Arti's in laws)."

64. To rebut the above evidence, learned counsel for the appellants has relied upon the cross-examination of PW1 Dalip Kumar Srivastava whereby he stated as *'It is correct that at the time of my sister's marriage, the accused party had a good business and they are financially sound. It is correct that they had two shops, one in Model Town and the other in Kingsway Camp. It is correct that both the shops were in existence before the marriage of my sister and they were nicely established.'*
65. In the case of **Rajinder Singh vs. State of Punjab** reported at (2015) 6

SCC 477, a three-Judge bench of the Hon'ble Supreme Court noted down as to what would fall within the term "dowry". Relevant para 20 reads as under:

“20. Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfill the object sought to be achieved by Parliament, we feel that the judgment in Appasaheb case (2007) 9 SCC721 followed by the judgment of Vipin Jaiswal (2013) 3 SCC 684 do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.”

(Emphasis Supplied)

66. The examination-in-chief of PW1, which has been extracted hereinabove, would fairly show that soon before the death of deceased Aarti on 23.02.1998, the appellant Rajinder (father-in-law), Jitender (brother-in-law) and Deepak (husband) had come to the house of PW1 (brother of the deceased) and a demand of Rs.2 lakh was made. PW1 had then informed the father-in-law that he was not in a position to pay the said amount and sought time to make arrangement. Further reading of the evidence show that such was the intensity of the demand that PW1 was informed that if the money was not paid within one month, Aarti should be kept back at her parental home. While threatening PW1 that there was no scarcity of girls and they would be able to get Rs.10 lakh after remarrying their son, they left the house of

PW1. In continuation of the demand, again on 29.05.1998, the deceased and her husband came to the house of PW1 and left Aarti to the parental home and sought a reply by the evening. His sister had informed him that her husband had told her that if she did not get Rs.2 lakh, she need not go home with him. When the appellant Deepak came in the evening and on PW1's refusal to part with the money, he abused PW1 and told him to keep his sister. A careful analysis of the testimony of PW1, which in our view is truthful and reliable and corroborated by the fact that the demands were made even in the past and in fact, succumbing to the demand, Rs.50,000/- were paid in three installments, we are of the view that the learned Trial Court had rightly convicted the appellant Rajinder and Deepak under Section 304-B of IPC. As far as the appellant Jitender is concerned, we find that an attempt has been made to rope-in all the family members under Section 304-B IPC. Although the appellant Jitender has also been named but keeping in view the cross-examination of PW9, which we have extracted in para 64 above, we find this part of the testimony of PW1 to be unreliable.

67. Taking into consideration the law discussed in foregoing para, and for the reasons mentioned above, Criminal Appeal No. 85 of 2004 preferred by Deepak Srivastava is dismissed. Criminal Appeal No. 36 of 2004 filed by Poonam Srivastava is partly allowed and her conviction under Section 498A of IPC is maintained and is sentenced to the period already undergone by her which as per nominal roll is about 10 months. Criminal Appeal 68 of 2004 includes three appellants out of which the conviction and the sentence of the appellant Rajender Srivastava is maintained under Sections 304B,

498A and 406 of the IPC as held by the Trial Court. The conviction of the appellants Jitender Srivastava and Veena Srivastava under Section 498A of the IPC is maintained and are sentenced to the period already undergone by them i.e. 4 years 2 months 10 days and 2 years 25 days (respectively). In our view, the period already undergone by the appellants Poonam Srivastav, Jitender Srivastava and Veena Srivastava (as under-trial and after conviction) would meet the ends of justice. The fine imposed upon the appellants and the default sentence awarded to them shall remain unaltered.

68. The record shows that the appellants Deepak Srivastava and Rajinder Srivastava are on bail, they both shall serve the sentence as imposed by the learned Trial Court and surrender before the Central Jail, Tihar within three weeks from today. Both shall be taken into custody to serve out the remaining sentence.
69. The appeals are disposed of in the aforestated terms.
70. The copy of this judgment be sent to the Superintendent Jail.
71. Trial Court record be sent back.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 30, 2017

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