

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

RESERVED ON : 17th JANUARY, 2017
DECIDED ON : 19th APRIL, 2017

+ **CRL.A.1382/2013, CRL.M.B.1608/2016 & 3126/2015 &**
CRL.M.A.No. 1479/2016

JAISHREE Appellant
Through : Mr.K.K.Sud, Sr.Advocate with
Ms.Vaishali Soni, Advocate.

versus

STATE Respondent
Through : Mr.Amit Gupta, APP.

AND
+ **CRL.A.1268/2013**

BALBIR SINGH & ANR. Appellants
Through : Mr.K.K.Sud, Sr.Advocate with
Ms.Vaishali Soni, Advocate.

versus

STATE Respondent
Through : Mr.Amit Gupta, APP.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Crl.A.1382/2013 has been preferred by the appellant – Jaishree (hereinafter referred to ‘A-1’) to challenge the legality and correctness of a judgment dated 17.09.2013 of learned Addl. Sessions Judge in Sessions

Case No. 05/2013 arising out of FIR No.399/2002 PS Prashant Vihar whereby she was held guilty for committing offences punishable under Sections 498A, 376 read with Section 109 IPC and Section 355 IPC. By an order dated 18.09.2013, she was sentenced to undergo RI for three years with fine ₹10,000/- under Section 498A IPC; RI for seven years with fine ₹10,000/- under Sections 376/109 IPC and RI for two years with fine ₹5,000/- under Section 355 IPC. The sentences were to operate concurrently.

2. In Crl.A. 1268/2013, the appellants – Balbir Singh (hereinafter referred to ‘A-2’) and Sandeep (hereinafter referred to ‘A-3’) have challenged their conviction under Sections 498A IPC by the impugned judgment dated 17.09.2013. By an order dated 18.09.2013, they were sentenced to undergo RI for three years with fine ₹10,000/- each.

3. Briefly stated, the prosecution case as projected in the charge-sheet was that A-1 to A-3 along with Sanjeev (Juvenile) (hereinafter referred to ‘A-4’) subjected ‘X’ (assumed name) – A-3’s legally wedded wife with cruelty on account of dowry demands during her stay in the matrimonial home from 09.05.2002 to 30.06.2002. Her dowry articles were not returned on demand. It is also alleged that on 17.05.2002 and subsequent to that on several occasions, in house No.G3/37-38 Sector-11, Rohini, ‘X’ was raped by A-4 on A-1’s instigation.

4. On 05.08.2002 at around 07.00 p.m., ‘X’ went to the Police Station Prashant Vihar and recorded her statement forming basis of FIR (Ex.PW-2/A). In her complaint, she gave detailed account as to how and in what manner, she was physically and mentally tortured and harassed by the appellants and A-4 on account of non-fulfilment of dowry demand of ₹5

lacs. She further disclosed that A-4 committed rape upon her on 17.05.2002 at A-1's instigation. After A-4's departure from the scene, A-1 arrived in the room; took off her clothes and lied upon her. She kissed her mouth and licked her body at various places. It happened on several occasions. She further disclosed that the appellants used to put mice in her salwar, lizard in kurta and ice in her clothes to harass her. On 30.06.2002 finding an opportunity, she escaped the spot and went to her parents' house. She narrated the incident to her parents who in-turn talked with her in-laws. They threatened to kill her family members.

5. The investigation was assigned to PW-16 (SI Vinod Kumar). 'X' was medically examined. The appellants were arrested; dowry articles were recovered. 'X' recorded her 164 Cr.P.C. statement (Ex.PW-12/B). Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellants for commission of offences punishable under Sections 406/498A/506/376/120B/34 IPC. Separate proceedings were initiated against A-4 before Juvenile Justice Board. In order to establish its case, the prosecution examined eighteen witnesses. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. They examined DW-1 (Ramesh) and DW-2 (Balbir Singh) as defence witnesses. CW-1 (Madan Lal Sharma) and CW-2 (Sarika Kapoor) were examined as Court witnesses. The Trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the appellants have preferred the instant appeals.

6. I have heard the learned counsel for the parties and have examined the file minutely. Admitted position is that 'X' was married to A-

3 on 09.05.2002. Soon after marriage, she visited her parents' house on 16.05.2002 along with A-3 and returned to the matrimonial home in the evening. She remained at her matrimonial home till 30.06.2002. The instant FIR was lodged on 05.08.2002. From 30.06.2002 till her death, the victim was at her parents' house.

7. It is also not disputed that A-4 was acquitted of the charge by Juvenile Justice Board by a judgment dated 08.02.2011. It appears that the said acquittal has not been challenged by the State and it has attained finality.

8. It is pertinent to note that the victim 'X' recorded her statement before the Trial Court as PW-1 on 27.01.2005. She again appeared for further examination on 22.10.2005. Her statement could not be recorded completely and further cross-examination was deferred that day. Unfortunately, on the same day, at her parents' house, she committed suicide. Her father PW-4 (Om Pal Malik) lodged FIR No.914/2005 for commission of offences punishable under Sections 304B/306/34 IPC in which the appellants and A-4 were implicated. A charge-sheet was filed against all of them and the case was committed to the Court of Sessions. By an order dated 26.07.2010 in Sessions Case No.12/2010 arising out of FIR No.914/2005 PS Prashant Vihar, the appellants and A-4 were discharged of the said offences. It is informed that the complainant has challenged the said order before this Court. It is further to be noted that A-3 - victim's husband has filed a complaint case under Section 190(1)(a) Criminal Procedure Code against his in-laws for committing X's murder. By an order dated 05.07.2011, cognizance has been taken only against her father Om Pal Malik

(PW-4 herein) for commission of offence punishable under Section 304 IPC and he has been summoned to face trial in the Complaint Case No.90/1/10.

9. Appellants' conviction is primarily based upon the sole testimony of the victim. Needless to say, conviction can be based upon the sole testimony of the prosecutrix provided it lends assurance of her testimony. In case, the Court has reasons not to accept the version of the prosecutrix on its face value, it may look for corroboration. As observed above, before 'X' could be completely examined, she committed suicide and her cross-examination remained incomplete. Apparently, the appellants had no effective opportunity to cross-examine her on all the relevant facts. Under these circumstances, her evidence under Section 33 Evidence Act is to be scrutinised with great care and caution.

10. 'X' was married to A-3 on 09.05.2002. Before solemnization of marriage, there were various prior meetings between the families through mediator Ranveer Singh. PW-4 (Om Pal Malik) had verified the appellants' status. There was no demand of dowry by the appellants before marriage or at the time of marriage. Admittedly, both A-3 and 'X' had visited her parents' house on 09.05.2002 and 16.05.2002. The victim and her family members had no complaint whatsoever against the accused persons. 'X' had no complaint whatsoever regarding any demand of dowry by the accused. From 16.05.2002 to 30.06.2002 'X' remained at her matrimonial home and did not visit her parents' house even once, despite they living nearby at a distance of about 4 kms. Victim's parents also did not visit her during this period. The demand of ₹5 lacs was not made by the accused persons from the victim's parents. It is not the prosecution's case that at the time of victim's visit to her parents on 16.05.2002, she was directed by any of the

accused to bring ₹5 lacs from her parents. It is astonished to note that on return to the matrimonial home on 16.05.2002 in the evening, suddenly, the victim would be physically beaten for not bringing ₹5 lacs when there were no direction / demand to do so. In her complaint (Ex.PW-2/A), the complainant disclosed that when she returned to her in-laws' house in evening on 16.05.2002, her father-in-law asked her to bring ₹5 lacs from her father's house for A-3's business. On that, she expressed her inability as her parents had already spent money in excess beyond their financial capacity. She was given beatings and was directed by A-3 to bring ₹5 lacs. In her Court statement as PW-1 improving her version, she deposed that on 16.05.2002, she was confronted in the evening by her father-in-law whether or not, she had brought ₹5 lacs in cash from her house. It is unclear as to on what date and time demand of ₹5 lacs was made, if so, by whom. Fact remains that at the time of visit to her parents' house on 16.05.2002, 'X' did not apprise them if there was any demand of ₹5 lacs by her father-in-law.

11. Main allegations in the complaint are that on 17.05.2002 when A-3 and A-2 had gone to the factory, 'X' was given beatings by A-1 and A-4. They both dragged her to the bedroom; tied her hands and legs with 'chunnies'. After tying her, A-1 went out closing the door from outside. A-4 raised the volume of the TV and committed rape upon 'X'; it continued for about an hour. After that A-1 came inside the room; she removed her own clothes and laid over her. She started biting her at various parts of the body. After some time, she left and locked the door from outside. 'X' narrated the incident to A-3 in the evening who did not take note of it and informed that A-1 and A-4 had indulged in only in playful activities and the moment she brought ₹5 lacs, the said activities would come to an end. The victim

reiterated in her Court statement that A-1 and A-4 continued to indulge in such activities on several occasions. She further disclosed that finding an opportunity on 30.06.2002, when the appellants had gone outside, she fled the spot and reached her parents' home. She narrated the entire occurrence to her parents. The appellants followed her and arrived within half an hour there; they tendered a written apology to settle the dispute.

12. These serious allegations have, however, been not substantiated or corroborated by any credible, firm and cogent ocular or circumstantial evidence. Number of major discrepancies and inconsistencies have emerged in the statements of the prosecution witnesses making it unsafe to base conviction on the sole incomplete testimony of the prosecutrix even if read under Section 33 of the Evidence Act. Settled position is that evidence of a witness who could not be subjected to cross-examine due to his death is admissible in evidence; though the evidentiary value will depend upon the facts and circumstances of each case. The evidence is admissible but the weight to be attached to such evidence would depend upon the circumstances of each case. The prosecution witnesses have given conflicting and divergent statements; they have made vital improvements in their deposition before the Court. It is pertinent to note that from 16.05.2002 to 30.06.2002, 'X' remained at her matrimonial home and never visited her parents. Her parents did not pay any visit to her in the matrimonial home despite having residence at a short distance at Prashant Vihar. No plausible explanation has been offered as to why during this period, no visit was made by the victim's parents, more so, when they were not allegedly permitted to talk with the victim on telephone. During her stay at the matrimonial home, 'X' never lodged any complaint whatsoever with the police or any other

authority regarding appellants' conduct and behaviour. She did not get herself medically examined for the alleged beatings given to her. She never raised any alarm. The investigating agency did not examine any person from the neighbourhood to ascertain if the victim was treated with cruelty or harassed on account of dowry demands.

13. In the cross-examination, the victim reiterated that she was not permitted to go out of the four walls of her matrimonial home; she used to be confined there. Only on 30.06.2002, when the appellants were away and had forgotten to lock the back-door of the house accidentally, she managed to escape. Even at that time, she did not raise any alarm or reported the matter to the police. It was emphasized that the victim had no access to anyone during her stay at the matrimonial home and she had no contact whatsoever with outsiders to lodge complaint. The truth came out in the cross-examination when the victim was confronted with certain photographs. Initially, she denied if she had left the matrimonial home for any purpose on any day except 09.05.2002 and 16.05.2002. On being shown photograph (Ex.PW-1/DA); she identified A-4's photo taken by A-3 on way to her parents' house. She admitted that photograph (Ex.PW-1/DC) was taken at the matrimonial home on the 'terrace'. She further admitted that photograph (Ex.PW-1/DE) was her photo with A-3. Ex.PW-1/DF was photograph with A-4 and other family members. She expressed ignorance as to where photograph (Ex.PW-1/DG) was taken. She further admitted that photo (Ex.PW-1/DJ) was that of A-4 with her. She avoided to respond if photo (Ex.PW-1/DL) was taken at Pinjore Garden. Admitting that her photograph was with her mother-in-law, she expressed ignorance as to who had taken the photograph and where it was taken. She was evasive to respond as to

where the photographs were taken. She admitted that photograph (Ex.PW-1/DN) was taken in a park. She was not aware if it was Pinjore. During her cross-examination, the witness felt nervousness and expressed need to meet her mother. She further admitted that photograph (Ex.PW-1/DP) was taken in a car driven by A-3. She was unaware as to whom the car belonged. She volunteered to add that the photograph was taken when they had gone to A-3's native village in a temple. She disclosed that young girl on whose shoulder, she had placed her hands was A-3's relative. Declining that photograph (Ex.PW-DQ) was taken at Pinjore Garden gate, she disclosed that it was taken at somebody's house without revealing as to where the said house was. She disclosed that between 10.05.2002 to 16.05.2002, they had visited temple, park and some other places. She did not recall whether photograph (Ex.PW-DQ) was taken at Geeta Mausi's house at Chandigarh. Apparently, the witness has declined to give specific answers regarding her visits to Pinjore, Chandigarh, etc. Photographs on record show 'X' to be in happy mood clad in decent dresses. It falsifies her initial claim that she was not permitted to venture outside her matrimonial home during her stay there.

14. In the cross-examination, she denied her visit to Haridwar on 24.06.2002 along with A-3 and her parents in car No.DL 9 CE 2992 and her stay in room Nos.332-333 at Maharaja Bhawan, Haridwar. PW-4 (Om Pal Malik), her father, admitted his visit to Haridwar on 24.06.2002. He volunteered to add that his daughter Akansha, son Nishant and his wife were with him that time. He denied if the complainant and her husband A-3 had also accompanied them to Haridwar. Document (Ex.PW-1/DR) speaks contrary to it. He admits his signatures on it at point 'A'. He further admits that the address and the information mentioned therein was given by him to

the author. He had travelled to Haridwar in a Maruti Zen allegedly given in dowry to A-3. He admitted that this vehicle was handed over to him in the third week of June, 2002 by A-3 at his residence and it remained with him till 28.06.2002. Thereafter, A-3 came and took the vehicle along with him. Apparently, relations with A-3 were cordial and there was no complaint whatsoever regarding his conduct and behaviour till June, 2002. As per PW-4's testimony relations with the accused persons were cordial in between 09.05.2002 to 30.06.2002.

15. When confronted with photographs (Ex.PW-1/DG to PW-1/DP) PW-4 (Om Pal Malik) admitted that these were the photographs of his daughter along with A-3, A-4, A-1 and other unknown persons. He was unable to admit or deny if all the photographs were taken in June, 2002 and related to the visits to Pinjore Garden, Sukhna Lake and Rock Garden in Chandigarh.

16. Reliance has been heavily placed upon a document dated 30.06.2002 (Ex.CW-1/A) in which A-1 and A-4 allegedly made confessional statement for commission of rape upon the victim. It is, however, a mystery as to how and under what circumstances, this document came into existence. In the complaint forming basis of the FIR (Ex.PW-2/A), 'X' did not reveal if any such document was ever executed. In 164 Cr.P.C. statement (Ex.PW-12/B) recorded on 08.08.2002, there was no whisper of any such document to have come into existence any time. The vital document confessional in nature, was never handed over to the Investigating Agency any time. No reliance was placed on this crucial piece of evidence in the charge-sheet and none of the individuals named therein were cited as witnesses. PW-16 (SI Vinod Kumar), the Investigating Officer, did not claim if any such document

was brought to his notice by the victim or her family members. 'X' in her examination-in-chief as PW-1 for the first time disclosed that on 30.06.2002, after her escape to her parents' house, her mother-in-law (A-1), brother-in-law (A-4) and husband (A-3) came following her there. When confronted by her parents as to why they had ill-treated their daughter, they admitted that they had done so and promised not to repeat in future. They gave an undertaking (mark 'A').

17. The Trial Court noted “.....the said writing has been introduced for the first time and does not form part of the challan. Learned counsel for the accused has stated that the copy of the said writing had never been provided to him which fact learned APP concedes and now has handed over the copy to the counsel for the accused. Learned counsel for the accused has objected that since the document has not been filed after seeking permission, the same cannot be taken on record. The objection is not sustainable as the document has been introduced during the deposition and only its effect can be seen at the time of final arguments.”

18. No plausible explanation has been offered by the victim as to why this document was not furnished to the Investigating Agency during investigation. It has not been explained as to why this vital document was suppressed and the accused persons were taken by surprise at the time of victim's examination. PW-4 (Om Pal Malik), in examination-in-chief deposed that on 30.06.2002, A-1 and her sons had tendered apology in writing at his residence.

19. Conflicting and divergent versions have emerged on record regarding the execution of the document in question. PW-1, the victim, in her Court statement did not elaborate as to in whose handwriting this

document was executed; who were the individuals present at the spot that time. In the cross-examination, she claimed that this fact was disclosed by her to the learned Metropolitan Magistrate in her 164 Cr.P.C. statement. She was confronted with her statement (Ex.PW-1/L) where there was no mention of it. Contrary to that, it was recorded that her father had gone to the house of the accused persons.

20. PW-4 (Om Pal Malik) – victim's father informed that on 30.06.2002, when they were having lunch along with family friend Sarika Kapoor, the victim arrived. On entering the house, she started weeping; neighbours collected on hearing her cries. The victim narrated the occurrence. He further deposed that on that day, A-1 along with her sons arrived at his residence within half an hour and executed the 'writing' after tendering apology. He further claimed that this document was handed over to the Investigating Officer by him. PW-1, on the contrary, claimed that she had attempted to handover the document to the Investigating Officer but he advised her to produce it in the Court at the time of her examination. The witness was confronted with statement (Ex.PW-4/X) where these facts did not exist. In the cross-examination, he introduced another version that the apology letter written by the accused persons was also produced by him twice between 05.08.2002 to 08.08.2002 before the Investigating Officer but he did not seize it.

21. PW-6 (Kusum), victim's mother, has given a different account of the incident dated 30.06.2002. She deposed that on that day i.e. 30.06.2002 when the victim came at her residence, she was very much upset and disturbed. She narrated the incident to her. She told those facts to her husband who in-turn talked to the accused persons. The accused persons

asked her husband to finish the matter or else they would be killed. She did not claim if the accused persons had arrived at their residence or had executed any apology letter in writing. She also did not talk about the presence of any individual in whose presence the said document was executed. In the cross-examination, she disclosed that the victim had reached her residence in the 'noon' and she had apprised her husband about the incident as disclosed to her by the victim in the 'evening'. She did not disclose as to at what time the accused persons had arrived at the spot.

22. CW-1 (Madan Lal Sharma) and CW-2 (Sarika Kapoor) were examined as Court witnesses. CW-1 (Madan Lal Sharma) resident of D-158, Prashant Vihar identified his signatures at point 'A' on Ex.CW-1/A. He clarified that this document was signed by him at PW-4 (Om Pal Malik)'s house on 30.06.2002 after going through its contents. In the cross-examination by learned APP, he disclosed that the victim was not present in the house when he had put his signatures over it. In the cross-examination by defence, he admitted that the accused A-1 to A-4 were not known to him; he had never met them before. He further admitted that Ex.CW-1/A was not written in front of him. He further admitted that it was signed by him on the asking of PW-4 (Om Pal Malik). He was fair to admit that signatures at point B, C, D & E were already in existence on the document CW-1/A when he had put his signatures at point 'A'. Similar is the testimony of CW-2 (Sarika Kapoor). She admitted that Ex.CW-1/A was signed by her at point 'E' in the house of PW-4 (Om Pal Malik) on 30.06.2002. Signatures at point B, C & D were already in existence that time. In the cross-examination, she also admitted that the accused persons were not acquainted with her and she had not met them. She further admitted that Ex.CW-1/A

was not written in her presence and she put signatures over it on the asking of PW-4 (Om Pal Malik).

23. Apparently, document (Ex.CW-1/A) was not executed by the accused persons in the presence of CW-1 (Madan Lal Sharma) and CW-2 (Sarika Kapoor) and their signatures over it were obtained later on. PW-4 (Om Pal Malik) has not clarified as to when their signatures were procured and if so, why. It contradicts his version that the document was executed in the presence of CW-1 (Madan Lal Sharma) and CW-2 (Sarika Kapoor). Even after execution of the document (Ex.CW-1/A), the victim was not sent to the matrimonial home and she continued to stay at her parents' house till her death. It is unbelievable that the accused persons after coming to know the victim's escape from the matrimonial home in their absence would dare to approach the victim's parents. It is unclear as to when the accused persons returned to the matrimonial home and from where they got inkling that the victim had gone to her parents' house. It is highly difficult to believe that PW-4 (Om Pal Malik) after coming to know that the victim was ravished / defiled by A-1 and A-4 would maintain complete silence and not lodge any FIR / complaint against the perpetrators of the crime. Admittedly, no complaint whatsoever was lodged either by the prosecutrix or by her father PW-4 (Om Pal Malik) on 30.06.2002. This abnormal and unacceptable conduct creates serious doubt about the genuineness and authenticity of the document (Ex.CW-1/A). The accused persons had no occasion to confess commission of rape upon the prosecutrix. Possibility of the accused persons putting signatures on blank paper with the hope to get the matter settled as claimed cannot be ruled out. Otherwise there were no compelling reasons to conceal the existence of this document during

investigation. It is not clear as to who is the scribe of the document. Since the authenticity and genuineness of document (Ex.CW-1/A) is surrounded by suspicion circumstances, no implicit reliance can be placed upon it.

24. Inordinate delay in lodging the FIR has remained unexplained. During her stay at the matrimonial home for short duration, the complainant never lodged any complaint with any authority. On 30.06.2002 when she escaped the spot, she did not raise hue and cry and allegedly went to her parents' house on her own. After hearing her ordeal, her parents did not move the police machinery and remained mum. When the accused persons allegedly arrived at their house after half an hour as claimed and CW-1/A was executed by them, again, the complainant or her parents did not put the police machinery into motion. The victim continued to stay with her parents till 05.08.2002 when all of a sudden, she went to the Police Station to lodge complaint against the accused persons implicating all of them. Relevant to note is that victim's father working as Assistant Engineer with MCD was acquainted with the system. Despite it, he did not lodge complaint / FIR promptly or within a reasonable time.

25. The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of

consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

26. In the case of ‘*Mehraj Singh (L/Nk.) vs. State of U.P.*’, 1994 (5) SCC 188, the Supreme Court has held :

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story.....”

27. At no stage the prosecutrix got herself medically examined to infer if she was treated with violence or rape was committed upon her or any resistance was ever offered at the time of crime. If the victim is unwilling to yield to sexual intercourse, she is expected to receive injuries on her person. No visible injuries whatsoever were ever noticed on her body. PW-4 (Om Pal Malik), in the cross-examination, disclosed that the victim was medically

treated and counselled. He was, however, evasive to inform as to from where medical treatment was taken; who was the concerned doctor and what was the dates of visits to him. No medical documents were made available to the Investigating agency during investigation. PW-6 (Kusum) did not reveal if the victim was ever medically treated. In the cross-examination, she came up with the plea that the victim was got medically treated but she was unable to disclose the name of the doctor or the hospital. She herself did not go with the victim to any doctor or hospital. In the cross-examination, she further disclosed that once the victim had visited Japanese Park with the accused persons and they were called there. She elaborated that she herself did not go but her husband had gone there. PW-4 (Om Pal Malik) is silent about his visit to Japanese Park.

28. No independent witness from the neighbourhood was associated in investigation to ascertain as to what was the conduct and behaviour of the accused persons towards the victim. Nothing has emerged if the victim used to remain confined in the house during her stay at the matrimonial home and was not permitted to have any interaction with neighbours. The matrimonial home was admittedly located in a crowded residential locality. The victim's parents lived at a short distance. During her short stay from 16.05.2002 to 30.06.2002 in the matrimonial home, none of her family member visited her. This conduct seems unnatural and unreasonable. No Call Detail Record has been placed on record of any individual. The victim was quick to approach the police on 05.08.2002. On 06.08.2002 she along with the Investigating Officer reached the matrimonial home to effect arrest of the accused persons. On 08.08.2002, she along with police went at A-3's house; got the lock opened by a key maker and

recovered various articles seized vide seizure memo (Ex.PW-1/J) in the presence of PW-Surya Kant and PW-Devender Gupta. In the cross-examination, the Investigating Officer disclosed that on the intervening night of 05/06.08.2002, he reached the residence of the accused persons at around 03.00 a.m.; and arrested them at 04.10 a.m. or 05.00 a.m. He was aware that one of the accused persons was lady. He did not take any permission from the concerned department to conduct raid and arrest the accused persons during night. He added that the complainant party had insisted him to take action and since he was apprehending the accused persons to escape, he conducted raid at night on oral directions of the SHO. It shows the high-handedness of the Investigating Officer who not only conducted raid but also arrested accused persons including a woman during night. Presence of PW-13 (Devender Gupta) and PW-15 (Surya Kant Sharma) at the spot is highly suspicious. Both of them were known to PW-4 (Om Pal Malik). The Investigating Officer admitted that the victim did not have the list of Stridhan on 06.08.2002. He did not enquire as to why the list was not made available prior to 05.08.2002. PW-1 the victim and PW-4 (Om Pal Malik) who had the audacity to raid at night were not expected to remain mute spectators and not lodge any complaint with the police for 35 days after coming to know about X's plight on 30.06.2002.

29. PW-1 in the cross-examination disclosed to have attended first year at college before marriage and thereafter to have pursued her studies as ex-student at Dayal Singh College. She denied to have disclosed to the learned Metropolitan Magistrate to have done graduation. When confronted with her statement (Ex.PW-1/L), it was found that she had described herself

as 'graduate'. Apparently, the victim had not presented true facts regarding her qualification in her 164 Cr.P.C. statement.

30. Nothing has come on record to show if any time any 'panchayat' was organised before lodging the FIR in question or the matter was brought to the notice of the mediator Ranvir Singh. The investigating agency did not join him in investigation; he was not cited as a witness. Allegations regarding demand of dowry are vague and uncertain. Nothing has surfaced as to when any specific dowry demand was raised by any of the accused. No such demand was made from the victim's parents. 'X' never disclosed them during her visits if there was any specific demand of any individual. No evidence is on record to show if any dowry articles were declined to be returned on demand by the accused persons. The prosecution witnesses have given conflicting statements and have improved their version in their depositions before the Court which did not find mention in their previous statements recorded during investigation. In the complaint lodged belatedly on 05.08.2002, serious allegations have been levelled against A-1 aged about 50 years; she was projected to be a lady of immoral character who could indulge in indecent sexual assault to gratify her lust / passion and that too to the knowledge of juvenile son. The prosecution did not examine any independent witness from the neighbourhood to find out as to what kind of lady A-1 was. PW-4 (Om Pal Malik) had verified the status of the accused persons before solemnization of marriage and he did not find anything objectionable that time. The allegations without any foundation on the face of it seem false and motivated. Implicit reliance cannot be placed on the incomplete testimony of the victim. Victim's parents claimed that on 30.06.2002 and thereafter, the victim was got medically treated at private

hospitals. It is not expected that the doctors after coming to know sexual assault upon the victim would not put the police machinery into motion.

31. Since the prosecution case suffers from serious infirmities, contradictions and discrepancies, I am of the view that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. The appellants deserve benefit of doubt. The appeals are allowed. Conviction and sentence recorded by the Trial Court are set aside.

32. A-1 shall be released forthwith if not required to be detained in any other case. Bail bonds and surety bonds of A-2 & A-3 stand discharged.

33. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

APRIL 19, 2017 / tr