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

+ **CRL.A.314/2018 and CRL.M.B.439/2018**

Reserved on: 17th August 2018

Decided on: 5th October, 2018

SUHAIB ILYASI

.....Appellant

Through: Ms. Rebecca M. John, Sr. Advocate with Mr. Rajiv Mohan, Mr. Abhimanyu Kampani, Ms. Priyanka Singh, Ms. Rudrani Tyagi and Mr. M.A. Karthik, Advocates.

versus

STATE

....Respondent

Through: Mr. Sanjay Jain, Sr. Advocate with Mr. Kewal Singh Ahuja, APP for State with Ms Siddhi Mittal and Ms Himanshi Yadav, Advocates. Mr. Satender Sharma and Mr. Sachin Tyagi, Advocates for Complainant.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT

Dr. S. Muralidhar, J.:

1. Did the Appellant murder his wife (hereafter 'the deceased') or was it a case of suicide? The learned Additional Sessions Judge, Shahdara District, Karkardooma Courts, Delhi (hereafter 'trial Court') in a judgment dated 16th December 2017, which is under appeal here, held that the Appellant had indeed murdered the deceased. We, however, think not. Our reasons follow.

Charge

2. The first charge against the Appellant in terms of an order dated 29th March 2003 of the trial Court was that soon after his marriage to the deceased Anju alias Bullu on 12th November 1993, subjected her to harassment, mental and physical cruelty on account of demand for dowry and thereby committed an offence punishable under Section 498A of the Indian Penal Code 1860 (IPC). The second charge was that on the intervening night of 10th/11th January 2000, the deceased died at the All India Institute of Medical Sciences ('AIIMS') otherwise than under normal circumstances with stab injuries and within seven years of her marriage to the Appellant and that soon before her death, she was subjected to cruelty and harassment by him and thereby, he had committed an offence punishable under Section 304B IPC.

Additional charge

3. An application was filed before the trial Court by Mrs. Rukma Singh (PW-6), the mother of the deceased, seeking the framing of an additional charge under Sections 302/468/471/201 IPC. This application was dismissed by the trial Court by its order dated 19th February 2011.

4. PW-6 then filed Crl.Rev.P.208/2011 before this Court. By a judgment dated 12th August 2014, after making reference to the decisions in ***Jasvinder Saini v. State (Govt. of NCT of Delhi) (2013) 7 SCC 256*** and ***Rajbir @ Raju v. State of Haryana (2010) 15 SCC 116***, this Court allowed Crl.Rev.P.208/2011 and held that the *prima facie* material collected by the prosecution justified the framing of an additional charge against the

Appellant under Section 302 IPC. A direction was issued to the trial Court to frame an additional charge under Section 302 IPC by following the procedure under Section 217 Cr PC.

5. Pursuant to the above order of this Court, which was affirmed by the Supreme Court by the dismissal of SLP (Crl.) 6502-6503/2014 on 22nd August 2014, the trial Court by its order dated 6th September 2014, framed an additional charge against the Appellant to the effect that on the intervening night of 10th/11th January 2000, at B-13, IFS Apartments, Mayur Vihar Phase-I (hereafter the flat concerned), he murdered the deceased and thereby committed an offence punishable under Section 302 IPC.

Background facts

6. There are both admitted and contested facts. The admitted facts are that when they first met, the Appellant and the deceased were studying at Jamia Millia Islamia in 1993. The deceased has two sisters. Ms. Rashmi Singh (PW-20) staying in Canada was the eldest and Mrs. Reeta Van Eck (PW-18), staying in the U.S.A, the next. Mr. K.P. Singh (PW-5) is the father of the deceased. He and PW-6 stayed in Delhi in an apartment complex not far from where the deceased lived with the Appellant and their daughter. Mr. Prashant Singh (PW-2) is the brother of the deceased.

7. PW-20 states that in January 1993, when she came to India from Canada for the wedding of PW-18, the deceased told her that she was in love with the Appellant and wanted to marry him. On 18th November 1993, the Appellant and the deceased got married in London in a civil marriage which was attended by PW-6, the mother of the deceased. Till 1994, the Appellant

and the deceased lived in London. Thereafter, they shifted to Delhi. Initially, both the Appellant and the deceased lived with the parents of the Appellant at a house known as 'Big City' on Kasturba Gandhi Marg.

8. It must be recalled at this stage that until the framing of the additional charge, the case of the prosecution against the Appellant was with regard to his conduct in light of the charges framed against him for the offences under Sections 498A and 304B IPC. In that context, attempts were made to show that the deceased was being subjected to cruelty and harassment by the Appellant soon after their marriage. In support of this line of argument, the prosecution relied on the version of events that emerged from the testimonies of PWs 18 and 20, the two sisters of the deceased.

9. According to this version, since the Appellant had no money to support the deceased, money was one reason for fights between them. Further, PW-20 claimed that she had sent money to the deceased for various reasons on numerous occasions and that whenever PW-20 used to talk to the deceased on the phone when the deceased was residing in London along with the Appellant, she would tell PW-20 about the financial hardships she was enduring. Further, PW-20 deposed that when PW-18 and her husband David visited London in April 1994, they witnessed the miserable conditions in which the deceased was living.

10. According to the Appellant, however, there was never any financial difficulty. He also claims that no fights took place between him and the deceased. He denied subjecting the deceased to harassment or torture. His version was the flat concerned had been purchased in 1999 in the joint

names of the Appellant and the deceased. Further, he stated that the deceased was an equal shareholder/Director of their business concern, viz. Aaliya Productions. He also denied the claims of PWs 18 and 20 that while in London, he had purchased expensive items including a BMW car and on this account, there were arguments and fights between him and the deceased.

11. According to PWs 18 and 20, the deceased had visited them in Canada and the USA in May-June 1995 and at that time, had discussed the possibility of her divorce from the Appellant. According to them, while in London, the deceased lived with her brother (PW-2). When the Appellant learnt from PW-2 of the intentions of the deceased, he flew to London, convinced the deceased to return to India and not file divorce proceedings.

12. In September 1996, the deceased returned to India and became part of a project called 'Crime Stoppers' which the Appellant had been working on. Initial episodes of 'Crime Stoppers' were anchored by the deceased. The version of PWs 18 and 20 was that when they visited India in December 1996, the deceased told them the situation had not changed but also that she still wanted to give the Appellant a chance to save the marriage. In January 1997, the deceased told PW-20 about her expecting a baby and that during this time, the situation become even more tense because of the financial problems of the Appellant and because of his ties with one Vinod Nayar who had become a producer of 'Crime Stoppers'. This too was denied by the Appellant.

13. On 24th September 1997, a baby girl Aaliya was born to the deceased and the Appellant. According to PW-20, the Appellant paid the nursing

home bills but after the deceased returned home with the baby, all expenses were borne by PWs 5 and 20. The Appellant denied that PWs 5 and 20 had paid for any of the medical expenses.

14. PW-20 further claimed that on New Year's Eve 1997-98, the Appellant came to the house of PW-6 at 1 am in an intoxicated state. He is then stated to have gotten into an intense argument with the deceased and also slapped her. PW-20 states that she was present at the time and along with PW-6 told the Appellant to leave. They threatened to call the police if he did not comply. According to PW-20, she and PW-6 decided that the deceased and her child should stay out of India for a while. Accordingly, on 6th March 1998, PW-6 along with the deceased and her child visited PW-20 in Canada. The expenses for the journey were borne by PW-20.

15. While the Appellant denied the above version, he was unable to recall if the deceased had visited Canada during this time. He, however, admitted as correct that on 6th October 1998, he arrived in Canada and informed PW-20 that he had bought the flat concerned and would like to take the deceased and the child back to India. He admitted that in February 1999, the deceased, the baby and PW-6 came to India and stayed at UNESCO Apartments. He further admitted that the deceased carried out renovations at her parents' UNESCO Apartments residence at his expense but denied that after her parents had left for the USA in June-July 1999, financial problems again arose. He also denied that he, the deceased and their child were staying at the house of PW-6 at that time.

16. During this time, the Appellant started another production in the name of

‘India’s Most Wanted’. He admitted as correct that in her capacity as the Director of the concern, the deceased had asked PW-20 for a friendly loan of 10,000 Canadian Dollars. According to PW-20, two days after they had moved into the flat concerned, PW-5 returned to India. The deceased was unhappy with the move to the flat concerned on account of financial problems and is supposed to have asked PW-20 if she and the child could travel to Canada. PW-20 purportedly asked the deceased to inform her of suitable dates so that PW-20 could send her the tickets. This was denied by the Appellant.

17. According to PWs 18 and 20, along with PW-6, they had called the deceased on 8th January 2000 to wish her for *Eid*. The deceased told them that she was tired because the entire family of the Appellant was visiting to celebrate *Eid*. She stated that she would call PW-20 the following day. The Appellant admitted as correct that on the aforementioned date, PWs 6, 18, and 20 had wished the deceased for *Eid*.

18. According to PW-20, she talked to the deceased on two occasions thereafter. The first occasion was when she spoke to the deceased for 36 minutes on 9th January 2000 when the deceased asked her when she would be sending tickets. PW-20 claims to have informed her that she would be sending tickets to the deceased on the following day by courier and on account of hearing this, the deceased was “very happy”. The Appellant claims not to know of the above developments.

Events immediately preceding the incident

19. In her testimony during the trial, PW-6 stated that on

9th/10th January 2000, when she was with her daughter PW-18 in New Jersey, USA, PW-18 received a phone call from the Appellant who told her that the deceased had taken his revolver and was threatening to kill him. Hearing this, PW-18 told PW-6 to pick up the extension line. PW-6 asked the Appellant what had happened and asked him to call the deceased to the phone. PW-18 stated that she could hear the sounds of the baby crying. The deceased did not come to the phone and the phone was disconnected. Thereafter, when PW-6 called, the Appellant picked up the phone. PW-6 could again hear the baby crying. Again, the deceased did not come on the line and the phone was disconnected.

20. Meanwhile, PW-6 phoned PW-20 in Canada and informed her that the deceased and the Appellant were having a fight and so PW-20 should phone them. PW-6 also phoned her husband PW-5 and asked him to go to the flat concerned and find out what was happening. PW-5 told PW-6 that the deceased had visited him earlier that day and had stayed till 9 pm. PW-5 wondered what could have happened in such a short period. PW-6 stated around 30 to 45 minutes later, PW-5 phoned her from the flat concerned and informed her that nobody was there and that nothing untoward seemed to have occurred.

21. At this juncture it must be noticed that PW-2, the brother of the deceased, was on a train from Bombay to Jammu and the train was to stop at the Old Delhi Railway Station on the intervening night of 10th/11th January 2000. The deceased had gone to the house of PW-5, her father, to pick up warm clothes to hand over to PW-2. At the time of her

visit, PW-5 found the deceased to be in a very happy mood.

22. After the call was received from PW-6, PW-20 called the deceased but the phone was picked up by the Appellant who told her, “*Didi, Bullu ka to dimag kharab ho gaya hai*”. What she claims happened immediately thereafter is vehemently contested by the Appellant. According to PW-20, at this stage, the deceased snatched the phone from the Appellant. She was crying and according to PW-20 she said, “*Didi, take me away or he is going to kill me*”. PW-20 then states that the Appellant snatched the phone from the deceased and told PW-20 that she had interfered in his life and that he would take care of the deceased and then disconnected the phone. Thereafter, according to PW-20, she kept trying to call the deceased but the phone was busy. PW-20 then called PW-6 who was in the USA with PW-18 and told her that she could not contact the deceased and asked her to try the number of the deceased.

Statement of the Appellant under Section 176 Cr PC

23. The critical part of this narration is what exactly transpired at the flat concerned during the relevant time. The prosecution seeks to reconstruct the events that transpired during this time from the statement given by the Appellant (Ex.PW-4/E) during the course of the inquest proceedings under Section 176 Cr PC conducted by the Sub-Divisional Magistrate (‘SDM’), Mr. Ravi Dadhich (PW-4). At this stage, the Court does not propose to discuss the admissibility of such a statement but shall refer to its contents for the sake of completing the narration.

24. The said statement was made to the SDM by the Appellant at around

12:30 pm on 11th January 2000 at UNESCO Apartments. The following details provided by the Appellant to the SDM are relevant to this part of the narration. The Appellant stated, *inter alia*, that there was a fan/acquaintance, viz. Z (anonymised by the Court to respect privacy), who at one point took the Appellant and his infant daughter to a *gurudwara* and had also given him a locket. When the deceased came to know about this, she objected and this resulted in a quarrel. On the insistence of his wife, the Appellant returned the locket to Z. He then stated that Z had sent the locket back to the Appellant soaked in his own blood. When the deceased came to know about this, her dislike for Z only grew. At this time, the Appellant received a phone call from the wife of Z who told him that Z had stopped eating and had also stopped working altogether. Thereafter, he claims to have ceased all contact with Z at the insistence of the deceased.

25. The Appellant stated that a few days before *Eid*, Z sent him a gift comprising four small bottles of whisky which the Appellant brought home. When the deceased asked him as to where he had brought these items, he replied that these were brought from Palika Bazaar. The deceased did not believe him. Ultimately, that gift was returned to Z by the deceased herself. As a result of these events, the relationship between the Appellant and the deceased became strained.

26. According to the Appellant, on 10th January 2000, after completing some work at the Big City residence, he had slept between 4 and 8:30 pm. When he woke up, he was told that the deceased had called and wanted to speak to him. The Appellant tried calling the deceased but his calls remained

unanswered. Eventually, his driver Sunder answered the phone and told the Appellant that he was bringing his daughter to the office on the instructions of the deceased. The Appellant purportedly told the driver not to do so as he would be returning home shortly. He states that he then proceeded along with his staff to East of Kailash in search of suitable properties for his business. At that time, he received a call on his mobile phone from the deceased who purportedly stated that she had told Z that she had lost and he had won. The Appellant states that he asked her why she was saying such things and told her that he would come home and speak to her.

27. When the Appellant returned to his office, he came to know that contrary to his instructions, the driver had brought his daughter to the Big City residence. When the Appellant asked the driver why he had done so, he was told that the deceased had insisted on it. When he came to his office, he was told by the typist that the deceased had called and said that the Appellant's revolver had been left behind at home. He claims that he sensed that matters were becoming very grave and decided to immediately leave for home along with his daughter. He then states that when he reached home, the deceased opened the door. However she immediately left.

28. The Appellant states he had called a barber to trim his hair as there was a shoot for an episode of his television series on the following day. Meanwhile, he claims that the deceased and he had a conversation in their daughter's bedroom about Z. According to the Appellant, the deceased alleged that he was more interested in spending time with Z than with her. He states that their conversation was interrupted when the doorbell rang and

the barber arrived. As the barber was getting ready to trim the Appellant's hair, the deceased came there and stated that she wanted to speak to the Appellant. The Appellant states that he then asked the barber, Fazlu Rehman (PW-36), to come to his office on the next day to trim his hair.

29. The Appellant then went back to their daughter's bedroom and there he saw the holster of his revolver lying empty. He further claims that when he asked the deceased where the revolver was, she revealed that she was holding the same in her hand. He then states that she asked him angrily whether, if anything were to happen to her, the Appellant would take care of their daughter. According to him, even as he was imploring her to hand over the revolver to him, the deceased made a phone call to her sister (PW-18) in the USA on the cordless telephone. He states that as the call was going through, the deceased tossed the handset to him and told him to relay his vow to take care of their daughter to PW-18. He states that he told PW-18 that the deceased was behaving in an unhinged manner and that she was holding a loaded revolver in her hand. PW-18 asked the Appellant to give the telephone to the deceased. The Appellant claims that he did so but the deceased kicked the handset back towards him and refused to speak on the phone. When the Appellant informed PW-18 of the deceased's refusal, PW-18 told him to wait while she called PW-20.

30. The Appellant then states that the deceased repeatedly asked him to promise that he would take care of their child if anything were to happen to her. He states that even though he kept assuring her of the same, she remained unconvinced and became increasingly agitated that the Appellant

was not taking her seriously. He states that in anger, he asked her to shoot him first. He then claims that due to his apprehension that the deceased might turn the revolver on herself, he grabbed her and snatched the revolver from her hand. He states that he unloaded the revolver and threw it under the bed.

31. The Appellant then picked up the bullets and took the child to his room where he purportedly threw the bullets behind the headboard of the bed. He goes on to narrate that the deceased came there and at that point, he answered a phone call from PW-5. He states that he asked PW-5 to come there quickly. After the phone call, the Appellant claims, he was sitting on the bed next to his daughter when the deceased came to the doorway of the room and with a big knife, stabbed herself in the stomach twice. He rushed towards her and grabbed the knife from her. He noticed that a white fluid was flowing from the wounds and not blood. He states that as he was dragging her out of the room, he kept apologising and also exclaimed, “*Ye tumne kya kar liya?*”. He then called the Personal Security Officer (‘PSO’) HC Shatrughan (PW-13) and with his help, the deceased was taken to Virmani Nursing Home, Mayur Vihar Phase-II.

Testimonies of other witnesses

32. Even if one were to disregard the above narration of events as stated by the Appellant to the SDM (PW-4), there is evidence that emerges from the testimonies of other witnesses which helps reconstruct the sequence of events leading up to the death of the deceased. As regards the calls made during the relevant time, we first have the written statement furnished to

PW-4 by PW-18 (Ex.PW-18/A). This was sent by fax to the SDM on 20th January 2000, i.e. within ten days of the incident. It reads thus:

“I received a telephone call approximately 1:10 or 1:15 P.M. U.S. Eastern Standard time this is on estimate of the time to the best of my recollection. I heard my sister Anju’s voice asking “May I speak with Ms. Rashmi Singh”. I replied, “Arre Bullu”. She replied: “Talk to Suhaib (*Suhaib se baat karo*)”. Then I asked Suhaib “What happened? (*Kya baat hai?*)”. Suhaib replied in what sounded to me to be a concerned tone, “She [Anju] is annoyed (*Ye bhaut Pareshan hai*)”. I asked him “What happened? (*Kya baat ho gayi?*)”. He then said “we have gotten into an argument, and look Bullu has taken my revolver, and she is threatening me with suicide. (*hum logo ki ladai ho rahi hai aur dekho Bullu ne meri revolver leli hai suicide karne ki dhamki de rahi hai*)” Then he (Suhaib) said “Call Bullu to America (*Bullu ko America bula lo*)”. Then I got concerned and asked Suhaib to give the phone to Anju. Anju refused to take the phone; even Suhaib insisted. “Bullu talk to Daisy (*Bullu Daisy se baat karo*)”. But Anju did not come on the line. I told Suhaib “I am going to call Dolly, maybe she will take her”.

Another phone call was made from our phone to the Ilyasi residence at approximately 1:30 P.M. U.S. Eastern Standard Time and Suhaib picked up. Our mother asked to speak with Anju. Suhaib said to Anju, “Bullu is here, talk to her (*Bullu yaha hai baat karo*)”. Anju refused to talk saying, “Don’t want to talk to anyone (*Kisi se baat nahi karni*)”. Our mother said, “Bullu! Bullu! Bullu! Talk to me! (*Bullu! Bullu! Bullu! Baat karo*)”. I picked up another extension of our telephone and listened in. In the background we heard their daughter Aaliya crying a lot and Anju yelling and Suhaib saying, “If you want to shoot, shoot me, at least take care of Aaliya (*Agar goli marni hai toh mujhe maro ya Aaliya ka khyal karo*)”. Anju was saying, “You will take care of Aaliya (*Tum Aaliya ko dekh loge*)”. At that point it sounded as if the phone was [dropped] to the floor and the phone got disconnected.

We kept trying to call again but got a busy signal. Then my mother called my father Dr. K.P. Singh telling him there was a fight going on between Anju and Suhaib and that he should go to Anju's apartment right away. This is all I can recall."

33. In her typed complaint dated 16th March 2000 (Ex.PW-4/TT) which was handed over to the SDM, PW-20 states in para 'u':

"I say that on the fateful day, i.e. 10th January, 2000, when my mother informed me that some serious problem had arisen between Suhaib and Anju, I telephonically contacted Suhaib and Anju and phone was lifted by Suhaib. I clearly heard Anju screaming and crying loudly. I also heard her daughter crying loudly. Suhaib told me that "*Bullu ka dimag kharab ho gaya hai*". It appears that Anju snatched the receiver from Suhaib and screamed "*Didi, take me away*". However, it further appears that Suhaib again snatched the receiver from Anju, told me that he would take care of Anju and I should not interfere and thereafter kept the receiver down whence the telephone got disconnected. I made various attempts to connect the telephone again, but I failed to have a telephonic conversation."

34. Then we have the evidence of the barber Fazlu Rahman (PW-36) who states that he reached the apartment at around 9:10 pm. As for the pertinent moments, he stated:

"One police man was sitting outside house of the accused. I told him that I have come to give hair cut to accused. Policeman went inside and thereafter I was called inside. I along with Amiruddin went inside the house. Accused gave me a cloth bedsheet and I started cutting his hairs. I had just started cutting his hairs, wife of the accused came there and they talked with each other in English and thereafter accused went inside the room. After two minutes accused came outside and told me to go and asked me to come tomorrow in my studio at Noida. Thereafter I along with Amiruddin left his house."

35. Although this witness was declared hostile, in his cross-examination by

the APP, he maintained that “It is correct that when I was preparing for the hair cut, the wife of accused Suhaib came there and told something in English to him which I could not understand. It is correct that thereafter Suhaib told me to leave my house. It is correct that I left the house of accused. It is correct that due to lapse of time I had forgot the above said facts in my examination-in-chief”.

36. The PSO HC Shatrughan (PW-13) reconstructs the events in his examination-in-chief as under:

“On 10.1.00 at 8 pm I reported for duty at KG Marg. Alongwith the accused I left KG Marg at about 9/9.30 p.m in his Honda City car. Another PSO Raj Kumar was with us, he was in civil dress whereas I was in uniform. Accused himself was driving the car. His daughter Kumari Aaliya was also with him. At about 10/10.30 pm we reached at B-13, IFS Apartment, Mayur Vihar. Accused rang the bell and his wife opened the door. He along with his daughter entered into the house. I along with PSO Raj Kumar remained outside the main gate and sat on stools. After 5-10 minutes Smt. Anju Illyasi w/o the accused came outside from the house. She returned back to the house after 5-10 minutes. At about 10/10.30 pm two boys one namely Faqroo came to the house. Faqroo told me that he is the personal barber of the accused and has been called for hair cut. I rang the bell and enquired from the accused. Accused opened the door. I checked their bag and let them in. After 5-7 minutes they came out from the house and went away. They told me that accused has instructed them to come some other day for hair cut.

After 10-15 minutes of that, accused opened the door. I entered the house as I was under the impression that I will be given the beddings. As I entered into the house I found that Smt. Anju Illyasi lying on the floor wearing a blue colour jeans and a blue colour top. I noticed some blood oozing out near her belly

button (*nabhi*). I enquired from the accused and I was told that she had stabbed herself with a kitchen knife. I found an old baniyan (an undergarment worn under the shirt) lying nearby. I tied the baniyan on the wound. I called the second PSO. On the instructions of the accused I along with PSO Rajkumar with the help of accused took Smt. Anju through stairs in the car of accused parked in the apartments. We put Smt. Anju on the back seat of the car. PSO Rajkumar along with daughter of the accused sat on the front seat. I sat on the back seat holding head of Smt. Anju. Accused drove the car. We went to Virmani Nursing Home, Mayur Vihar-Phase-II.”

37. In his cross-examination by the APP, PW-13 further clarified as under:

“It is correct that IO recorded my statement u/s 161 Cr PC in present case on 08.01.2001. It is also correct that my statement was read over to me by IO. It is correct that I had stated to the IO in my statement u/s 161 Cr PC Ex PW13/A that I heard the noise of weeping of Alia. It is correct that I had told the IO in my statement Ex. 13/A that after five minutes P.P. opened the door and called me inside, I saw that Madam was lying on the carpet and her hairs were in loose conditions and she was wearing jeans pant and full sleeves sweater and sweater was on the upper side of the body and I also noticed the wound and blood on her stomach. It is correct that I had told IO in my statement u/s 161 Cr PC that when Madam was being taken to the hospital she was taking turns on both sides and saying “*Mujhe Bacha Lo*”. It is correct that I had told the IO in my statement that in way to hospital her condition deteriorated and her movement was also stopped. I could not disclose these facts in my statement in the examination due to lapse of time.”

38. In his further cross-examination by the defence, PW-13 stated as under:

“When the barber had left the house then the door was opened by the accused. When accused told me that his wife Anju Illyasi had stabbed with the kitchen knife then I asked her as to what she has done. On this she replied that she had committed a mistake. It took us 10 minutes at the most to reach Virmani

Hospital from the house of the accused. We remained in the Virmani Hospital for about 5-7 minutes. Thereafter we left for AIIMS. While on the way to AIIMS Smt. Anju asked accused Suhaib '*Suhaib Mujhe Bacha Lo*'."

39. It must be mentioned at this stage that even in his statement under Section 161 Cr PC, PW-13 maintained that on the way to AIIMS, the deceased kept saying "*Mujhe bacha lo*".

40. When the injured victim was taken to Virmani Nursing Home by the Appellant, accompanied by both PSOs, i.e. HC Shatrughan (PW-13) and Raj Kumar, the victim was first examined by Dr. R.K. Dixit (PW-33) at around 11:30 pm. The Appellant asked for Dr. Virmani but the latter was not there at that point in time. A stretcher was provided to the Appellant to bring in the injured at which time, PW-33 enquired as to what had happened to the deceased. According to PW-33, the Appellant told him that she had eaten something. PW-33 noticed a white colour cloth having two blood spots tied around the abdomen of the deceased. He lifted the cloth and saw two stab wounds. On enquiry, the Appellant told PW-33 that the wounds were inflicted by a sharp object.

41. PW-33 then checked the blood pressure and found that it was not recordable. There was a noticeable pulse. He informed the Appellant that the condition of the patient was serious. The Appellant then asked PW-33 to talk to Dr. Virmani. PW-33 called up Dr. Virmani and explained to him the condition of the patient. Dr. Virmani (PW-7), the Director of Virmani Nursing Home, advised that since the condition of the patient was serious and it was a police case, PW-33 should refer the patient to some big

government hospital. The Appellant then spoke to PW-7 who explained to him that since no proper treatment could be provided at the nursing home, he should take the injured to AIIMS.

42. The deceased was brought to AIIMS where her MLC (Ex.PW-4/C) was prepared noting that she had been brought by her husband on 11th January 2000 with the opening line saying, "Pt. brought dead with stab injury in abdomen ~ 12.26 hours". Dr. Sanjeev Lalwani (PW-25), who had been deputed to depose in the trial on behalf of Dr. N.K. Vyas, spoke to the fact that the pupils of the deceased were fixed dilated, no heart rate was found, no blood pressure was recordable, and that cardio-pulmonary resuscitation was tried and the patient was intubated. Ultimately, the "patient could not be revived" and she was declared dead. The MLC did not reflect the precise time of admission.

43. By this time, Dr. K.P. Singh (PW-5), the father of the deceased, first went to the house of the deceased at the flat concerned at around 11:40-11:45 pm. He opened the door of the house and went inside. He found no one inside and having searched for the revolver he was told his daughter was holding, he could not find it. He did not observe anything else except that the heater was on in the baby's room which he switched off. He called up PW-6 in the USA to get the telephone number of the Appellant's father. However, the father of the Appellant was not at home. The younger brother of the Appellant to whom he spoke immediately rushed to the IFS Apartments. Just five minutes after the arrival of the Appellant's brother, the driver of the Appellant brought Aaliya in a car. PW-5 came to know that the

deceased had been admitted to AIIMS and that they were looking for PW-5. Even as he left IFS Apartments, PW-5 learnt that there was a wireless message that his daughter had expired.

44. Thereafter, PW-5 left Aaliya at the Big City House and rushed to AIIMS. There he found the Appellant weeping. He also found the Appellant's father, brother, and other family members present. The doctor took PW-5 to the place where the dead body of his daughter was lying. He then brought the Appellant to his house at UNESCO Apartments.

Inquest proceedings conducted by the SDM

45. Mr. Ravi Dadhich (PW-4), SDM, was contacted by Inspector Mahesh Kumar (PW-1), who at that time was the Additional Station House Officer ('ASHO') of PS Trilok Puri. PW-4 instructed PW-1 to get the body preserved at the AIIMS mortuary. At around 10 am on 11th January 2000, PW-4 reached the flat concerned along with the police officers and a team from the Forensic Science Laboratory ('FSL'), Delhi and the Central Forensic Sciences Laboratory ('CFSL'), Central Bureau of Investigation ('CBI'), Delhi. The flat was opened and photography and videography of the scene was done in his presence. PW-4 prepared the site inspection report and a brief history (Ex.PW-4/A). The site was handed over to the FSL and the CFSL to collect materials and evidence. A rough site plan was drawn up and a brief history of the place of occurrence was drawn up (Ex.PW-4/B).

46. PW-4 recorded the statement of PW-13. Thereafter, he went to UNESCO Apartments and recorded the statements of the Appellant (Ex.PW-4/E) and PW-5 (Ex.PW-5/A). On the same day, PW-4 passed an

order to the effect that the post-mortem examination of the deceased should be conducted by a Board to be constituted.

47. On 12th January 2000, PW-4 went to AIIMS and inspected the body. He then started the inquest proceedings under Section 176 Cr PC. The body of the deceased was identified by Umer Ilyasi, the younger brother of the Appellant. His statement was recorded. The SDM also recorded the statement of Prashant Singh (PW-2), the brother of the deceased. At 4:25 am, PW-4 recorded the statement of Z (Ex.PW-4/K). Dr. Virmani (PW-7) also gave PW-4 a written statement (Ex.PW-4/L) in his own handwriting.

First post-mortem report

48. The post mortem examination of the deceased was first conducted by a panel of three doctors comprising Dr. R.K. Sharma of AIIMS (PW-22), Dr. Alexander Khakha of Safdarjung Hospital, and Dr. L.C. Gupta of Aruna Asaf Ali Government Hospital (PW-10). It was conducted on 12th January 2000 between 12:15 and 2 pm at the AIIMS mortuary. The SDM had raised specific queries to the panel along with the inquest form as per the Punjab Police Rules, the site inspection report, and statements of the relatives.

49. The aforesaid panel of three doctors submitted a report dated 12th January 2000 (Ex.PW-10/A) which specified the number and nature of injuries found on the body of the deceased. The cause of death was opined to be injury No.1 described therein. The panel's opinion as to whether the injuries were suicidal or homicidal was deferred pending consideration of the following factors:

- “a. Members of the Board desire to visit crime scene to have first hand information.
- b. IO shall indicate whether the deceased was right handed or left handed person.
- c. Photographs of the crime scene taken by the IO.
- d. Medical treatment received at the Nursing Home prior to bringing the deceased to AIIMS.
- e. Facts revealed from the viscera report, report of the vaginal swabs, nail clippings and clothes of the deceased.”

50. Arrangements were made for the panel to visit the site of incident, photographs of the scene were provided. The panel was informed that the deceased was right handed. The viscera report received from the CFSL which revealed that it had tested negative for common poisons was also provided to the panel. The knife seized from the site was seen by the panel.

51. By an order dated 14th January 2000, the SDM (PW-4) put forth the following queries to the panel:

- “1) How deep was the injury No. 1 which has caused the death?
- 2) The location of aorta of the body that it was located posteriorly or anteriorly and how it was cut in transverse or oblique manner?
- 3) The location/distance of aorta from the abdominal wall?
- 4) Whether the injury no. 1 (which has caused the death as per the P.M. report No.39/2000 of AIIMS, dated 12.1.2000) is self inflicted or otherwise?

52. In a subsequent opinion dated 18th January 2000, the panel answered the

aforementioned queries as under:

- “1) The injury no. 1 is 15.5 cms deep from the external injury to the point of injury to the aorta.
- 2) The cut on aorta was obliquely placed on left-antereo-lateral wall.
- 3) The distance of aorta from ant. abdominal was 10 cms and aorta was usually placed.
- 4) Injury no. 1 & 2 are self-inflicted and suicidal in nature.”

53. The post mortem report dated 12th January 2000 along with the subsequent opinion dated 18th January 2000 are hereafter together referred to as the ‘first post mortem report’.

54. The SDM (PW-4) carried on with the inquest proceedings, during the course of which fingerprints of the deceased and the Appellant were taken. Fingerprints (Q1 to Q5) were lifted from the walls and the knife. The CFSL report (Ex.PW-4/PP & 4/QQ) found that none of the chance fingerprints matched those of the Appellant. Meanwhile, chance fingerprints Q2 to Q5 could not be determined to be identical to those of the deceased but chance fingerprint Q1 was opined to be “identical with specimen right little finger impression” of the deceased.

The SDM's Report

55. The SDM's inquest report (Ex.PW-4/YY), records that Mrs. Rukma Singh (PW-6), the mother of the deceased stated on 13th January 2000 that her daughter never faced any trouble in her in-laws' home but was short-tempered. She did not allege any foul play in the death of her daughter. She conveyed to the SDM that she thought that the deceased had committed suicide by stabbing herself with the knife.

56. Raj Kumar (a PSO of the Appellant who was not examined at the trial) made statements consistent with what PW-13, the other PSO of the Appellant, had told the SDM. Fazlu Rehman (PW-36) and Amiruddin made statements on 15th January 2000 about their going to IFS Apartments to trim the Appellant's hair and then being asked to leave within a few minutes. Anil Kumar Yadav, a security guard at IFS Apartments, confirmed that two barbers had arrived at IFS Apartments and that their names had been entered in the register which was later seized by the police.

57. Dr. R.K. Dixit (PW-33), the doctor at Virmani Nursing Home, made statements before the SDM on 11th, 14th and 17th January 2000 regarding the condition of the patient and his conversation with the Appellant. No dying declaration was recorded by him. He stated that he did not report the matter to the local police as, according to him, two PSOs were already accompanying the Appellant. Dr. Harish Virmani (PW-7), the owner of the nursing home, made statements on 11th and 17th January 2000 confirming his telephonic conversation with the Appellant as also his directing PW-33 to ask the Appellant to take the patient to a bigger hospital.

58. The SDM, on 14th January 2000, also recorded the statements of the three doctors who were present at the casualty ward of AIIMS, viz. Dr. Krishan Kumar Munjal, Dr. Subodh, and Dr. Neel Kamal Vyas. What emerged therefrom was that the deceased was sought to be revived but was declared brought dead at 12:26 am on 11th January 2000.

59. The SDM in his report dated 23rd March 2000 also acknowledged

receiving the statement (Ex.PW-18/A) of PW-18, the sister of the deceased, by fax on 20th January 2000. This statement has already been referred to hereinbefore. The statements of the father, mother, and brother of the Appellant were also recorded.

60. The SDM also noted that he received a typed statement (Ex.PW-4/TT) from PW-20, the other sister of the deceased, on 16th March 2000, a part of which has already been referred to hereinbefore. The SDM summarised the contents of that statement thus:

- “ i) The husband of the deceased inflicted extreme mental & physical torture on late Mrs. Anju Ilyasi since marriage (Para b, page 1).
- ii) Anju was being neglected financially and emotionally and Anju was tortured by Suhaib, his mother, his father and his sister-in-law (Rukhsana) in 1994 (Para g, page 3).
- iii) Anju was physically tortured by Suhaib in December, 1994 (Para h, page 3&4).
- iv) Anju was ill treated by her husband (Para 1, page 4).
- v) Suhaib's misbehavior and torture and cruelty in September, 1996 (Para 6, page 5).
- vi) Suhaib stopped all financial help to my sister and was neglecting her on all counts (January, 1997 onwards) (Para n, page 6).
- vii) Suhaib developed relation/affair with X (anonymised), daughter of Y (anonymised) and driven Anju to start thinking about divorce (Para q, page 6).
- viii) On 10th January 2000 Suhaib told to Rashmi Singh on telephone that he would take care of Anju and Rashmi need not interfere (Para u, page 9).
- ix) A letter seen by Prashant and reportedly destroyed by Suhaib & family members and the letter was containing vital facts, which might have proved decisive (Para w, page 9).
- x) Threat to cause harm to my sister's daughter, Aaliya in

my family member's presence on January 23, 2000 (Para x, page 10).

- xi) Allegations that Suhaib acted in a planned and calculated manner with their common object & intention to finish my sister.”

61. The SDM noted that PW-20 raised doubts as to the past conduct of the Appellant towards the deceased. PW-20 had alleged that the torture meted out to the deceased suggested that it could not have been a case of suicide but was in fact a custodial death or murder. The SDM went on to note that PW-20 arrived in India on 14th February 2000 and claimed to have been in a state of extreme depression prior to that date. After seeking some time from the SDM to make a statement, she finally made the statement referred to hereinabove on 16th March 2000. She had also submitted two personal diaries and two letters written by the deceased. This was apart from the first diary recovered by the police from the flat concerned soon after the incident.

62. The SDM stated that he cross-examined PW-20 on the statement made by her. On 22nd March 2000, PW-20 again submitted a detailed statement running into seven pages with 31 pages of enclosures wherein she alleged that the Appellant had committed passport forgery, bank forgery, credit card forgery, and academic qualifications forgery. According to PW-20, this fact was only known to the deceased and that she wanted to “get rid of all this cheating” by leaving the Appellant and going to Canada on 3rd February 2000. According to PW-20, “this was the motive for Suhaib to kill Anju, so that his forgeries could never be made public”.

63. It appears that on 21st March 2000, PW-6, the mother of the deceased,

appeared before the SDM and made a statement which contradicted what she had stated earlier. She now told the SDM that she was wholly in agreement with the statement given by PW-20 on 16th March 2000. According to PW-6, she had earlier given a contradictory statement because she was concerned for the welfare of the child Aaliya who was in the custody of the Appellant of whose behaviour she was aware. When cross-examined by the SDM, PW-6 stated that the deceased was harassed since the day of her marriage by the Appellant and his family. She stated that the deceased did not commit suicide but had been killed as was evident from the past behaviour of the Appellant and his family. According to PW-6, the deceased was also subjected to physical torture.

64. The SDM noted that the post-mortem report clearly indicated that injury Nos. 1 and 2 “were self-inflicted and suicidal in nature”. Further, the various CFSL reports regarding blood groups, fingerprints, viscera, etc. “have also not indicated anything specific to point out that Anju Ilyasi was killed”. However, since both PWs 6 and 20 had made allegations against the Appellant of having harassed, tortured, and ultimately murdered the deceased, the SDM forwarded all the relevant documents to the Deputy Commissioner of Police (East Delhi) (‘DCP East’) for further investigation and necessary legal action as per the relevant provisions of the law.

65. On receipt of the case file from the DCP East on 27th March 2000, ACP Rajiv Ranjan (PW-30), who was posted at the Operations Cell (East District) at the time, made an endorsement on the statement of PW-6 and ordered the registration of a case under Sections 498A/304B/201 IPC. Consequently,

FIR No.94/2000 was registered at PS Trilok Puri and thereafter, the case was marked to SI Rajesh Kumar (PW-19) for investigation.

Investigation

66. PW-19, having received a copy of the FIR, proceeded to the flat concerned but found it locked. Thereafter, the police team reached the office of the DCP East where the statement of PW-20 under Section 161 Cr PC was recorded. The Appellant at that time was living at the Big City House on K.G. Marg. PW-19 along with the SHO and other police staff reached there and brought the Appellant to PS Trilok Puri and interrogated him.

67. The Appellant was arrested in the early hours of 28th March 2000, produced before a Metropolitan Magistrate (MM) and sent to judicial custody. The file was thereafter transferred to PW-30 for further investigation.

Charge sheet

68. The charge sheet was filed only after a considerable period of time on 19th March 2002. It again confirmed that the chance fingerprint lifted from the knife (Q2) did not match the fingerprints of either the Appellant or the deceased. They also did not match the fingerprints of any of the other persons who had visited the flat concerned either shortly before or immediately after the commission of the crime and whose sample fingerprints were taken, viz. PW-5, Ct. Raj Kumar (PSO of the Appellant), PW-13, PW-36, Amiruddin (who accompanied PW-36), and the brothers of the deceased among others.

69. The charge sheet noted the apprehensions expressed by PW-20 that the Appellant was aware that the deceased and her daughter were due to travel to London on 29th January 2000 for which air tickets had been purchased and due to which, the Appellant “anticipated danger from the deceased that she would definitely unearth his illegal deeds”. In the charge sheet, it was stated that the Appellant could not properly explain the presence of blood in the bathroom.

Second post mortem report

70. The charge sheet then referred to a second post mortem report sought by PW-30 from the same panel of doctors which had earlier been constituted in pursuance of the order of the SDM. Two doctors, viz. Dr. R.K. Sharma (PW-22) and Dr. Alexander Khakha, submitted a report dated 12th April 2001 (Ex.PW-22/A) running into six pages. Therein it was noted that the meetings of the board had taken place on 21st March 2001 and 11th April 2001 in the Office Chamber of the Head of the Department of Forensic Medicine & Toxicology, AIIMS.

71. In his cross-examination during the trial, PW-22 stated: “I had invited Dr. L.C. Gupta to participate yet he did not respond/attend nor did he give any reasons for his non-attendance”. The responses of PW-22 and Dr. Khaka in the report dated 12th April 2001 (Ex.PW-22/A) to the seven queries addressed to the panel read as under:

“Question 1:

Whether the theory of homicide can be ruled out in this case with definite wordings on the basis of above facts and circumstances?

Answer:

After consideration of the post-mortem findings, facts and circumstances brought by the I.O. vide above referred letter dated 8th March, 2001, we are of the considered opinion that the theory of homicide is ruled out as the pattern of injuries is self inflicted and suicidal in nature.

Question 2:

Kindly also opine if a more powerful right handed person can inflict downward-backward injuries from the knife(as in this case) on a victim's abdomen by overpowering her from behind in standing position. Kindly opine this with specific consideration of chance prints lifted from the weapon of offence which do not match with finger prints of either the victim or the accused who has deep knowledge about crime & criminals, being the maker of 'India's Most Wanted' a famous crime serial.

Answer:

In the absence of any other injury (marks of struggle on clothes, body & defence cuts etc.) other than stab injuries in abdomen (Injury No.1&2) such possibility as suggested by Question No.2 is not possible.

Question 3:

Which of the two injuries is prior in time?

Answer:

Injury No.2 as mentioned in the Post-mortem report is hesitational cut and is prior to the injury No.1 which was fatal.

Question 4:

Is it possible to inflict a second injury 3.5 cms deep after first injury 15.5 cms deep has been inflicted by the victim herself or conversely?

Answer:

Post-mortem findings in this case have been wrongly misinterpreted by investigating officer. It is further mentioned that injury No.1 has been caused after injury No.2 and it is possible to inflict fatal injury after inflicting hesitational cut (Injury No.2).

Question 5:

In the face of availability of a loaded revolver, is it likely that a knife would be preferred for committing suicide, which is but obviously a far more painful option?

Answer:

The choice of weapon or mode for committing suicide depends on the mental frame work of the person committing suicide at that material time. Suicide is mostly a matter of impulse.

Question 6:

Are there any cases on record, where women victims have used this mode of committing suicide?

Answer:

There are many cases on record where women victims have used this method of committing suicide. Enclosed herewith is a copy of table showing distribution of suicides by means adopted from the published data from National Crime Records Bureau, Ministry of Home Affairs, Govt. of India entitled "Accidental Deaths & Suicides in India 1998".

Question 7:

Please also opine whether the deceased was in phase of menstrual period at the time of death?

Answer:

The deceased was not in the phase of menstrual period as observed during post-mortem examination."

72. Dr. L.C. Gupta (PW-10) did not sign this report but instead submitted his own separate opinion on 30th August 2001 (Ex.PW-10/D) wherein he

answered the above seven queries in the following manner:

“Question No.1: whether the theory of homicide can be ruled out in this case with definite wordings on the basis of above facts and circumstances?”

Answer No.1: A candid opinion as desired by the Investigating officer not possible in response to this question as in any other case of unnatural death, therefore before finalize the expressed opinion in this question, undersigned like to mentioned a detail scientific discussion in this regards as:-

- A) The speed of approach of the knife is particularly important in achieving penetration, in case of stab injury during self infliction as well as homicide;
- B) Suicidal knife wounds favour certain sites of election, which are predominantly the throat, the wrist and front of chest;
- C) Suicidal knife wounds are rare and almost uncommon made in abdomen, some time to the extent of Disemboweling (Forensic pathology, page no-146, 213 & 217, Bernard Knight).
- D) It is some time incorrectly claimed by the prosecution that a deep stab wound must imply extreme force and continuing pushing after penetration, this is not so, and experiment have shown that once penetration occurs, it is difficult or even impossible to prevent deep penetration because of the suddenness of the break through, when the stab wound is inflicted in a stab fashion launched by knife against the skin like dart;
- E) Fortunately Taylor, in his Principle & Practice of Medical Jurisprudence also has contended that once the point of weapon has passed through the skin, it will continuous with little thrust until progress is stopped by the haft or the thrusting force ceases unless it strikes bone

(and the abdominal wall fortunately has no bone) therefore injury no.2 cannot be hesitational cut and difficult to stamp it as self inflicted hesitational cut. [Taylor's Principles and Practice of M.J. page no. 241 & 242];

- F) Further in instant case the injury no.2 (as mentioned in PM report), is of 2.5 x 6 x 3.5 cm, which cannot be concluded other than stab injury since it is not possible by drawing or sawing method, as the width of the injury no.2 is exactly the same as the width of the weapon of offence and depth of the wound is greatest in its diameter, then it is impossible or difficult to hold the knife up to and at depth 3.5 cm. Only after penetration of the skin by a person who having intense mood of suicide, therefore to categorise it as hesitational cut is only an equivocal, inconsistent explanation. [All this based on Extracts from Forensic Pathology, B Knight and Author's experience].
- G) As far as injury no.1 concerned, which has been designated as fatal injury in this case and most probably a resultant to second attempt with help of the weapon of offence, would not possible if this attempt would have restricted in between.

Expressed opinion in response of question no.1:- "That theory of homicide cannot be ruled out in this case with definite wordings". Further in view of new facts emerged and submitted before undersigned it can be said that patterns of injury are not decidedly be said as self inflicted or suicidal.

Question No.2: Kindly also opine if a more powerful right handed person can inflict downward and backward injuries from the knife (as present in this case on a victim's abdomen) by over powering her from behind in standing position. Kindly opine with specific consideration of chance prints lifted from the weapon of offence which do not match with finger prints of

either the victim or the accused who has deep knowledge about & criminals, being the maker of “India’s most wanted” a famous crime serial.

Answer No.2: In the light of the comprehensive description given in response to question no.1, upper three line of the question no.2 are deviation from the axis norm; further relative position of victim and assailant can be explained by more than one way; and rest of the below 5 lines of the questions is/are the matter of serious investigation, explanation and justification.

Question No.3: Which of the two injuries is prior in time?

Answer No.3: No definite opinion can be given in dogmatic term but the probable scientific speculation may reveal that the injury no.2 as mentioned in PM report was inflicted first than the injury no.1 which was fatal in this case.

Question No.4: Is it possible to inflict a second injury 3.5 Cm deep after first injury 15.5 Cm. Deep has been inflicted by the victim herself or conversely?

Answer No.4: The contents of question not in the normal line in the light of the reply given in question no.1.

Question No.5: In the face of availability of a loaded revolver, is it likely that a knife would be preferred for committing suicide, which is but obviously a far more pain full option?.

Answer No.5: As per available most of literature and experience of undersigned. The common sites for committing suicide or inflicting self-stab injuries is not abdomen. The question asked by the I.O. needs hair splitting views and comprehensive investigating analysis by the agencies responsible to decide it.

Question No.6: Are there any cases on record, where women victim have used this mode of combating suicide?

Answer No.6: As such no case/statistics available in these particular regards. The table showing distribution of suicides by means adopted. Annexed by two members of the board does not mentioned any of case where women has committed suicide by stab injury inflicted over abdomen as present/exist in this case which is highly uncommon site for self infliction of stab injury, upon which most of Forensic experts of the world agreed as true.

Question No.7: Please also opine whether the deceased was in phase of menstrual period at time of death?

Answer No.7: Deceased was not in menstrual phase at time of her death.

Final Conclusion: In light of above detail discussion and my considered opinion, in this case homicide cannot be ruled out.”

73. This dissenting opinion of PW-10 has been referred to in the charge sheet. It has also been stated that “during the course of investigation, it has been found that the accused was not having cordial and affectionate relation with the deceased”. It was further noted that this fact had an adverse effect on the mind of the deceased and “acted as a slow poison on her life due to which she has committed suicide”.

74. Further, in making out the specific case of ‘dowry death’ against the Appellant, the following conclusion was recorded in the charge sheet:

“Because the unnatural death of deceased Anju Illyasi within seven years of her marriage and on demanding the dowry by accused from in-laws of deceased Anju Illyasi which they sent the money from Canada to Delhi by Sita Travels to accused Suhaib Illyasi proved that accused used to harass deceased for more dowry and the detail of three diaries written by deceased

Anju Illyasi herself proved that she was so tortured by accused resulting that she committed suicide. Accordingly the case is being *challan* U/S 498A/304B/306 IPC. On believing the statements of witnesses and evidences the accused may kindly be charge and call the witnesses by summon and accused by notice.”

75. In other words, the case was presented by the prosecution before the trial Court as one of suicide, i.e. unnatural death, which occurred within seven years of marriage and was immediately preceded by harassment and torture in connection with a demand for dowry. Thereby, Sections 498A and 304B IPC stood attracted.

76. After the aforementioned charge sheet was filed, charges were framed by an order dated 29th March 2003 whereby the Appellant was charged with having committed offences under Sections 498A and 304B IPC. Central to both these charges was the allegation that the Appellant had subjected the deceased to cruelty and harassment in connection with a demand for dowry shortly prior to her death. It was also noted that she had died in AIIMS “otherwise than under normal circumstances with stab injuries”.

77. The prosecution examined 37 witnesses in all. It soon became apparent that the father and brother of the deceased took a stand different to that taken by her mother and sisters.

Deposition of PW-2

78. Prashant Singh (PW-2), the brother of the deceased while being cross-examined, confirmed that a love marriage had taken place between the deceased and the Appellant and that “they had great love and affection for

each other”. He also affirmed as correct that since it was a love marriage, there was no demand for dowry by the Appellant or any of his family members. He also stated that the deceased was “very intelligent and strong but she was not (*sic*) short tempered”.

79. As regards what happened after the death of the deceased he stated as under:

“It is correct that after the death of my sister Anju, myself, my father and mother made statement before the SDM. It is correct that we all in our statement had stated that there was no foul play and that Anju was not harassed for demand of dowry by the accused. It is correct that my sister Rashmi came from Canada on 16.2.2000 after the death of Anju. It is correct that she wanted the custody of Aaliya daughter of Anju. It is correct that accused had fatherly love and affection with the child and did not part with the custody of his daughter to Rashmi. It is correct that Rashmi was adamant to take the child with her to Canada and when the entire deliberations failed it resulted into the complaints and registration of the FIR against the accused. To my knowledge accused never demanded dowry from any of our family member, i.e. from me, my mother and my sister Rashmi.”

80. When asked about his mother changing her statement at the behest of PW-20 to implicate the Appellant in the death of her daughter even though she had previously given him a clean chit, PW-2 stated that “it was a sense of insecurity which probably resulted in change of statement of my mother on the behest of Rashmi”.

Deposition of PW-5

81. Likewise, Dr. K.P. Singh (PW-5), the father of the deceased, while

affirming his statement before the SDM, stated that his daughter “was intelligent but many a times she used to lose temper and fight with the accused. She was temperamental and in hotheadedness she could do anything”.

82. In his cross-examination, he confirmed that “there was no demand for dowry”. The dispute between PW-20 and the Appellant was also adverted to by this witness and in that regard, he stated:

“It is correct that Rashmi wanted the custody of Alia for taking her to USA for her education and for her bringing up and she is a director of educational institute of her own. Volunteered. Suhaib wanted his daughter to be here with him for some time and send her to USA after sometime. In my view this was the bone of contention as myself and father of Suhaib also wanted to send Alia to USA after sometime for her education and bringing up. This was the reason for the delayed statement made against the accused.”

Deposition of PW-6

83. The mother of the deceased, Mrs. Rukma Singh (PW-6), in her examination-in-chief, left out details which she had purportedly spoken about in her statement to the police. The learned SPP was then permitted to cross-examine her and she gave a series of answers which began with the words “It is correct that...” In other words, the questions put to her in this way would have been impermissible had they been asked during her examination-in-chief. While being cross-examined by the learned defence counsel, she admitted that that she and her daughter PW-20 had litigated against the Appellant on the issue of the custody of Aaliya, the daughter of the deceased and the Appellant. PW-6 also admitted that they were not

successful in that endeavour.

Deposition of PW-18

84. Reeta van Eck (PW-18), an elder sister of the deceased, also supported the case of the prosecution when examined and cross-examined in the trial on 21st December 2009. She was confronted with the fax message sent by her to the SDM (Ex.PW-18/A). She confirmed that both the deceased and the Appellant wanted the marriage to be a simple affair. When asked about her father, her mother, and her brother giving a clean chit to the Appellant in their initial statements to the SDM, she stated that all of them, including her, were in shock and did not know what to say as at that time “nothing was clear”. She further stated that she was still in shock even almost 10 years after the death of her sister. As regards the fraudulent activities allegedly committed by the Appellant, she stated:

“The various frauds and other things which I stated above in my statement against Suhaib Illyasi was disclosed by me to Anju during her visit to me in USA in the year 1996. Again said I am not sure about the year.

Q. Did you yourself lodge any complaint to any authority against Suhaib for the alleged frauds?

Ans. I had not done so.

Q. Did you ask Anju to do so if yes, when?

Ans. I did not ask Anju even about it.

It is correct that I did not disclose about the credit card, passport and other frauds alleged against Suhaib in my statement to police when I arrived in Delhi. Voln. The police had already known about it from the papers collected by them. It is

incorrect to suggest that whatever I have deposed today is at the behest of my mother and sister.”

Deposition of PW-20

85. Rashmi Singh (PW-20), the eldest sister of the deceased, confirmed that she had come to India on 14th February 2000 and “started doing research of my own based on the facts and circumstances I knew”. She confirmed not having written to the SDM until 16th March 2000. Leading questions were put to this witness as well with several statements made by her in the post-lunch session on 4th January 2010 beginning with the words “It is correct that...”

86. PW-20 suggested that the Appellant was having illicit affairs with the family member of a co-producer of his show and another couple. None of the said individuals were examined by the prosecution. While being cross-examined, she was asked why she had kept quiet till 16th March 2000 even though she had arrived from Canada on 14th February 2000. She replied that she was in extreme shock and trauma on account of her sister’s death. She also claimed that she was under sedation by her personal physician but admitted that she did not produce any proof of the same before any authority, including the SDM, and also that she had not brought any such proof to the trial Court.

87. PW-20 went on to claim that her father and brother had been totally influenced by the Appellant. As regards the dispute between her and the Appellant with respect to the custody of the child Aaliya, PW-20 stated the she “was not interested in taking Aaliya to Canada because as per the

Canadian Child Law, a child cannot travel to any foreign country without a written authorisation of one of the parents”. When confronted on the matter of the illicit relationships of the Appellant as alleged by her, she admitted that she did not have any proof to substantiate those scandalous claims even though she maintained that they were true.

Deposition of PW-30

88. The IO ACP Rajeev Ranjan (PW-30) was first examined in the trial on 12th May 2010 and was recalled for further examination thereafter on 13th May 2010 and 4th August 2010. He stated that on the night of 10th January 2000, the Appellant had left Virmani Nursing Home for AIIMS at 11:40 pm and had reached AIIMS at 12:26 am. He further deposed that a test drive was conducted using the same car and under similar weather and traffic conditions and speed and it was found that the journey only took 20 minutes whereas the Appellant took 46 minutes. He further claimed to have analysed the personal diary maintained by the deceased which purportedly reflected her anguish and frustration as well as her wanting to leave her husband and be free rather than stay as his slave. His examination continued on 4th August 2010. His cross-examination commenced on that date. Thereafter, he was further cross-examined a year later on 20th August 2011, 5th November 2011, and 27th February 2016.

Constitution of the five member medical board

89. It appears that PW-30, while still deposing in the trial, wrote to the Government of NCT of Delhi on 30th September 2011 seeking the constitution of a medical board of five doctors. This request was acceded to

by the Department of Health and Family Welfare (DHFV) which, by order F.342/MB-77/2011/H&FW/2815-21 dated 21st May 2012, constituted a medical board comprising five doctors, the Chairman of which was Dr. Anil Aggrawal (PW-37).

90. The constitution of this five-member medical panel was challenged by the Appellant in W.P. (Crl.) 25/2013 which came to be disposed of by a learned Single Judge of this Court by an order dated 12th August 2014. The learned Single Judge noted that PW-30 had sent a letter requesting its constitution on 30th September 2011 to reconsider the split opinion given by the earlier medical board. This request was reiterated in subsequent letters dated 31st October 2011 and 1st November 2011. Thereafter, the aforementioned order of the DHFW was passed. Pursuant thereto the Home Department, by a letter dated 7th August 2012, constituted a medical board comprising Dr. Anil Aggrawal (PW-37), Dr. Sunil, Dr. Sone Lal, Dr. Vijay Dhankar, and Dr. Akash Jhanjee.

Order of the Single Judge

91. In the proceedings before the learned Single Judge, it was contended by the Appellant that in view of the judgment of the Supreme Court in ***Vinay Tyagi v. Irshad Ali (2013) 5 SCC 762***, no investigating agency is empowered to conduct fresh or *de novo* investigation under Section 173 Cr PC unless directed by a higher court for which reasons have to be given. It was further contended that the constitution of a medical panel at the instance of PW-30, the IO and a witness in the case, suffered from illegality. On the other hand, it was contended by the Respondents therein that in view

of the judgment of the Supreme Court in *State of Andhra Pradesh v. A.S. Peter (2008) 2 SCC 383*, further investigation can be carried out after filing of the charge sheet and this is a statutory right of the police which cannot be curtailed.

92. The learned Single Judge noted that the Appellant had filed complaints against three of the doctors who were part of the newly formed medical panel due to their attempts to extort money from him. It was then opined that the powers of the police to conduct fresh reinvestigation under Section 173 Cr PC are unfettered in light of the decision in *A.S. Peter (supra)*. It was further noted that the decision in *Vinay Tyagi (supra)*, which was relied upon by the Appellant in those proceedings, was delivered on 13th December 2012 whereas the order of the Department of Health and Family Welfare was made prior in time. In dismissing the petition as being without merit, the learned Single Judge held that the “opinion of the newly constituted Medical Board would in fact assist the Court in coming to a conclusion as to whether the death of the victim was suicidal or homicidal”. It was further noted that this opinion would be of particular relevance considering the split opinion given by the earlier panel.

93. By the same order, the learned Single Judge also dealt with CrI.Rev.P.208/2011 (filed by PW-6) which challenged the order of the trial Court dated 19th February 2011 whereby the application put forth by the complainant for framing of additional charges against the Appellant under Sections 302/468/471/201 IPC was rejected.

94. In tracing the history of the matter, the learned Single Judge noted that

the prosecution, not being satisfied with the charges framed by the trial Court's order dated 29th March 2003, had filed an application dated 17th July 2003 seeking framing of an additional charge under Section 302 IPC. This application came to be dismissed by the trial Court's order dated 3rd February 2004 wherein it was noted that the material adverted to in seeking framing of an additional charge was already available at the time when the original charge was framed and would not constitute fresh material found against the accused. Thereafter, the complainant (PW-6) filed an application dated 12th July 2005 seeking fresh investigation into the matter under Section 173(8) Cr PC. This application came to be dismissed by the trial Court on 4th August 2005. This was challenged by way of filing W.P. (Crl.) 3020/2006 which was disposed of on 20th December 2006 with this Court noting that with the charge sheet already having been filed, a direction for further investigation may, if at all, be given only by the concerned court which is seized of the whole matter. Another application seeking further investigation was filed on 15th January 2007 which came to be dismissed on 8th August 2007 as the learned Sessions Judge was of the view that since the order dated 4th August 2005 had attained finality having not been challenged, they could not sit in appeal over an order passed by a co-ordinate bench.

95. Thereafter, on 19th February 2011, the trial Court dismissed the complainant's application dated 19th August 2010 under Section 216 Cr PC for framing of additional charges. In support of this application, it was stated that in view of the statements made by PWs 6, 18, and 20 and the subsequent medical opinion of Dr. L.C. Gupta (PW-10) which has been

referred to hereinbefore, a clear case of murder was made out which called for framing of additional charges under Sections 302/468/471/201 IPC. It was claimed by the complainant that the original charge under Section 304B IPC was an attempt to subvert the ends of justice as there was no material before the trial Court of any demand for dowry. It was further submitted that an attempt had been made to camouflage the real controversy as this was a glaring case of murder.

96. In this regard, on behalf of the Appellant, it was submitted that an earlier application seeking framing of an additional charge under Section 302 IPC had been dismissed on 3rd February 2004 and that order had attained finality. Further, it was pointed out that PW-6 had, on two separate occasions, made applications for fresh reinvestigation into the matter and both these applications came to be dismissed by orders of the trial Court dated 4th August 2005 (upheld by the High Court) and 8th August 2007 (attained finality) respectively. Reliance was placed on the decision in ***Jasvinder Saini v. State (Govt. Of NCT of Delhi) (2013) 7 SCC 256*** which, it was submitted, clarified the *ratio decidendi* laid down in ***Rajbir v. State of Haryana (2010) 15 SCC 116***. It was submitted that an alternate charge under Section 302 IPC cannot be framed as a matter of routine and unless and until there is sufficient material for doing so, such a charge cannot be framed.

97. The learned Single Judge, in analysing Section 216 Cr PC, noted that a new charge may be added or altered if there is material before the Court to justify such an action. It was also noted that the decision in ***Jasvinder Saini***

(*supra*) - wherein the Supreme Court was considering the converse situation of an additional charge under Section 304B IPC being framed in a case where the offence under Section 302 IPC was not made out - “does not impose any rigors upon the Courts to add additional charge if there is material justifying it”. Reference was also made to the Supreme Court’s observation in ***Jasvinder Saini*** (*supra*) that “the ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients”.

98. The learned Single Judge went on to note that the first unanimous opinion of the original three-member panel of doctors was given at a time when they did not have the “report of vaginal swab, nail clippings, and clothes worn by the deceased”. Further, it was noted that the case was based on circumstantial evidence and at the time of framing of charge, only a *prima facie* view of the matter had to be taken into account. Thus, holding that “*prima facie* material collected by the prosecution justifies the framing of additional charge under Section 302 IPC”, the learned Single Judge directed the trial Court to frame an additional charge under Section 302 IPC by following the procedure under Section 217 Cr PC.

Trial Court frames additional charge

99. Pursuant to the order of the learned Single Judge of this Court, the trial Court, without waiting for the opinion of the five-member medical board, framed an additional charge against the Appellant by its order dated 6th September 2014. The said charge reads as under:

“That on the night intervening 10/11.01.2000 at B-13, IFS apartments, Mayur Vihar Phase-I, Delhi within the jurisdiction

of PS Trilok Puri, you committed the murder of your wife Anju Illyashi and thereby you committed an offence punishable under Section 302 IPC and within the cognizance of this Court.”

Opinion of the five member medical board

100. The medical board comprising five doctors only submitted its opinion one month thereafter, on 9th October 2014, wherein it observed as under:

“The board members deliberated through all the documents made available to the board by the police authorities in the said case and noted the following points:-

1. There is presence of two stab wounds on the abdomen as per the post mortem report. (Multiple stab wounds are in favour of homicide).
2. Depth of the fatal injury was 15.5 cm which is very unlikely in case of suicidal injury.
3. As per the photographic printouts of deceased's post mortem submitted by the I.O., two more injuries are evident on the body of the deceased which have not been mentioned in the original post mortem report prepared.
4. Neither post mortem report nor photograph printouts made available, depict path/track taken by the two stab wounds on the abdomen region.
5. There is no scientific finding mentioned in the post mortem report which can be considered to be the basis of the conclusion, as to which injury is inflicted first and which injury is inflicted later on.
6. There are no cuts on the clothes of the deceased as per the documents made available.
7. There are no finger prints detected on the recovered

weapon of offence per the documents made available.

8. Absence of hesitation cuts/tentative cuts around the fatal injury or elsewhere.
9. Stab injury infliction over the abdomen region is highly uncommon site for self infliction.

Opinion of the Board:-

The board is of the unanimous opinion that the preponderance of evidence submitted in this case points towards commission of homicide.”

101. At this stage, it is pertinent to note that the five-member panel did not have the benefit of the video recording of the first post mortem examination. Dr. Anil Aggrawal (PW-37) was first examined in the trial on 27th February 2015. His cross-examination on behalf of the Appellant also commenced on that date and thereafter continued on 21st September 2015 and 28th September 2015. When asked during cross-examination whether the five-member medical board had seen: (i) the order of the SDM constituting the three-member panel and putting forth queries (Ex.PW-4/F); (ii) the first post mortem report (Ex.PW-10/A); (iii) the order of the SDM issued in response to the clarifications sought by the three member panel (Ex.PW-4/V); (iv) the MLC (Ex.PW-4/C); (v) the subsequent opinion of the panel in response to queries raised by the SDM in Ex.PW-4/V determining the death to be suicidal (Ex.PW-4/JJ); and (vi) the two differing opinions of the three-member panel (Ex.PW-10/D and Ex.PW-22/A), PW-37 was only able to confirm that the medical board had seen the post mortem report (Ex.PW-10/A) and was unable to recall seeing any of the other aforementioned documents.

102. PW-37 was further cross-examined on the specific matter of the photographs and videography pertinent to the case including the post mortem examination and the scene of the crime. PW-37 admitted that as per the minutes of the meeting of the medical board on 12th December 2012, it was recorded that the photographs and video recordings sought by the board in the previous meeting on 11th October 2012 were not submitted. It was further noted that the “photographs/video clips of the case are extremely relevant” and it was requested that “the above mentioned documents may be made available to the board for arriving at a conclusion in this case”. PW-37 further admitted that the aforesaid minutes were marked to PW-30 and the SHO of PS Pandav Nagar (the PS investigating the matter).

103. PW-37 also admitted the contents of the minutes of the meeting held on 9th January 2013 wherein it was noted that the board did not proceed further in the case as there was an order of this Court to “stop the proceedings of the case”. He then stated that between 9th January 2013 and 9th October 2014 - when the final opinion of the board was submitted - “no steps were taken by the board” or PW-37 as Chairman. In response to a specific query in that regard, he stated that “it is incorrect to suggest that after 12.12.12 the photographs were never produced before the board or that the same were not seen by the board”. However, when asked whether he had any file noting or document showing the receipt of the photographs of the victim, PW-37 answered in the negative.

104. Four PWs, viz. SDM Ravi Dadhich (PW-4), SI Ramesh Malik (PW-14), Dr. S.K. Chadha (PW-21A), and ACP Rajeev Ranjan (PW-30),

were recalled at the instance of the Appellant for further cross-examination. The prosecution, on the other hand, opted not to recall any witnesses for further examination.

Statement of the Appellant under Section 313 Cr PC

105. Initially, the Appellant's statement under Section 313 Cr PC was recorded on five dates between 2nd December 2011 and 28th April 2012 with 195 questions being asked. Thereafter, in light of the additional charge framed by the order of the trial Court dated 6th September 2014, an additional statement was recorded on 27th August 2016 comprising six questions. Parts of this statement with respect to the events that transpired at the flat concerned on the fateful night have already been referred to hereinbefore.

106. The Appellant denied as incorrect the statement of PW-20 that the deceased had snatched the phone from him and cried to PW-20 that “*Didi take me away or he is going to kill me*” (Question No.28). He, however, admitted as correct that after snatching the phone from the deceased, he told PW-20 that she had interfered in his life and that he would take care of the deceased and then disconnected the call (Question No.29). As regards the allegations raised by PW-20 following her arrival in India (Question No.36), he stated, “PW-20 being litigant in nature and fond of Agatha Christie detective novels. All these allegations are pure figment of her imagination”. Further, when asked about the allegation that on 23rd February 2000, in the presence of PW-2, PW-20 asked about the future of the child Aaliya causing him to become furious and shout as well as threaten to cause harm to the

child (Question No.56), the Appellant responded:

“It is correct that PW20 was negotiating the custody of baby Alia and on 23.02.00 there was heated arguments between me and PW20 as I refused to part with the custody of Alia to be taken with her to Canada at her tender age.”

107. When asked about the telephonic conversation he had with PW-18 on the night of 10th January 2000 (Question No.60), the Appellant admitted that he had spoken with her on the phone. However, he denied the other statements made by her to the effect that he had told PW-18 that the deceased was trying to kill herself and that he had said that if she wants to kill anybody, it should be him. He also denied PW-18's claim that the Appellant had told her that the deceased had asked him to take care of their daughter. Question No.77 and the response thereto are also of particular importance and read as under:

“Q77. It has come in evidence against you that in February 1999, PW6 and Anju returned back to India Z used to give threatening calls to Anju threatening that he would get her killed and some calls were attended by PW6 also. In this regard a complaint was made to PS Mandawali and Anju had made a complaint to Crime Branch in this regard. At times you used to reside in the house of PW6 and used to harass Anju. What you have to say?

A. It is correct that one stalker and obsessed fan of mine called Z used to harass me and my wife and my mother in law Rukma Singh by stalking and making obsessive phone calls. It is correct that I had made a complaint in police in this regard. It is not correct that I used to reside at the house of PW6 and harass Anju.”

108. In response to being asked about the call made by him to PW-6, who was in the USA with PW-18, informing them that the deceased had taken his

revolver and was threatening to kill him (Question No.78), the Appellant stated that “it is correct that I made a call to PW-6 and PW-18 informing them that my wife was holding my licensed revolver and was behaving in a very aggressive manner, threatening to kill me, Aaliya, and herself”. He also clarified in response to Question No.79 that the deceased did not wish to speak to PW-6, PW-20, or PW-18 “in her fit of anger at that time” although she had spoken to PW-18 some minutes earlier.

109. The Appellant admitted as correct that he along with his two PSOs rushed to the Virmani Nursing Home for immediate first aid to be provided to his injured wife (Question No.105). He also admitted as correct that on the advice of the doctor (PW-33), they rushed the deceased to AIIMS for urgent medical help.

110. As regards the two passports alleged to have been obtained by him using false information and for which a case had been registered at PS Tilak Marg (Question No.120), he stated that “it is correct that a false case has been registered against me by my sister in law (Rashmi Singh) to put pressure on me to handover the custody of my daughter Aaliya”.

111. Question No.122 pertained to the purported attempt made by the Appellant to conceal evidence from the crime scene and the question and response in that regard read as under:

“Q122. It has come in evidence against you that during the examination of scene of crime blood of Anju was found on the bed which showed that deceased was on the bed at that time when she sustained injuries which was found to be contrary to the claim made by you in your statement before SDM. Blood

sample of Anju were lifted from the bathroom sink and drain which showed that attempt was made to wash evidence. What you have to say?

A. It is incorrect as when I rushed Anju to hospital the house door was left open and unlocked. Reportedly more than 50 police, CFSL officials, special branch officials, media persons, some of my relatives visited the site. They would be in better position to explain the above.”

112. As regards presence of blood in the bathroom, the following query and response is illuminating:

“Q123. It has come in evidence against you that during your interrogation you stated that deceased was having menses and blood in the room on bed could be menses blood. However, report of autopsy Surgeon made it clear that Anju was not in the menstrual phase. What you have to say?

A. When IO asked me to explain the presence of blood in bathroom at the time of making the statement I was unaware that more than 50 people had visited my unlocked flat including the bathroom and I presumed may be my wife was having menstrual cycle and that could be the reason of blood in the bathroom.”

113. In response to Question No.128 posed to him with regard to the personal diaries maintained by the deceased with last entry dated 1st December 1999, the Appellant denied that relations between them were not cordial or that the deceased was in a great deal of anguish and frustration. In response to the question that the deceased had been brought to AIIMS in an unconscious condition by the Appellant and was declared ‘brought dead’ (Question No.157), the Appellant stated that “Anju was very much alive when we took her to the hospital AIIMS”.

114. When asked why this case had been filed against him (Question No.191), the Appellant answered:

“The instant case has been filed against me in order to put pressure on me to gain custody of my daughter Aaliya Illyasi who was two and half years old at that time and my sister in law Rashmi Singh loved her sister deceased Anju Illyasi and therefore was in extreme love with her daughter Baby Aaliya Illyasi. My sister in law Rashmi Singh is single and runs a Montessori school in Canada and she wanted to take Aaliya to Canada against my will. There were arguments, negotiations to gain the custody of Aaliya and I remember after two weeks her arrival from Canada to India, I had the heated arguments with Rashmi Singh and that day she swore to take Aaliya away by hook and crook. My father in law Dr. K.P. Singh and brother in law Prashant were against Rashmi Singh to take Aaliya to Canada. They tried their best to persuade Rashmi Singh not to force me to handover the permanent custody of Aaliya to Rashmi Singh. My father in law and brother in law had been with me and they have come to this court to inform this court of the correct facts as to why this false case has been filed against me.”

115. After additional evidence was recorded, his additional statement under Section 313 Cr PC was recorded on 27th August 2016. As regards the five-member board having given its opinion as to the cause of death, the Appellant's response was as under:

“The setting of the Board is a matter of record, however, the said Board was constituted after the eleven years of the case when the case was fixed for final arguments, the complainant seeing and realizing that no case of 498-A or 304-B IPG is made out against me and there was no evidence whatsoever, therefore, the complainant by misusing the judicial and legal process initiated to form a Board of Doctors to give another opinion after so many years of the incident. It was done to put

pressure on me so that I can give the custody of the child to the complainant and her mother. The earlier false case and charge against me by the complainant of Dowry Demand was demolished by the evidence on record before this Hon'ble Court by the Ex.PW6/DC (collectively) and also Ex.PW6/DB, in view of which the complainant with the help of prosecution established the said Board which gave the total false report.”

116. When the findings of the five-member board, which have been referred to hereinbefore, were put to the Appellant (Question No.196), he questioned the integrity of the Chairman (PW-37) of the five-member board stating that his integrity “in terms of deposing dishonestly before this Hon’ble Court has come very clearly in his cross-examination”. In making his final remarks, he stated that the present case was a malicious prosecution pursued against him by way of misusing the provisions of the law.

Judgment of the trial Court

117. The trial Court delivered a 125 page judgment on 16th December 2017. The case was first examined in respect of the charges under Sections 498A and 304B IPC. In that regard, the trial Court came to the following conclusions:

- (i) There was no specific allegation against the Appellant with regard to the demand for dowry purportedly made by him. The allegations were vague and general in nature. With regard to the acrimony between the deceased and the accused, it was found that those were issues unrelated to dowry. In fact, there was no incriminating evidence available relating to the alleged demand for dowry and cruelty committed on the deceased for not fulfilling such demand.
- (ii) Although PW-6 and PW-20 claimed that the deceased had been

harassed for the demand for dowry, it was an admitted fact that no complaint was given to any authority. On the other hand, PW-2 in his cross-examination admitted that the accused and the deceased had great love and affection for each other and that there was no demand for dowry by the Appellant or any of his family members.

- (iii) The father of the deceased, Dr. K.P. Singh (PW-5), also confirmed that there was no demand of dowry. He went on to state that his wife (PW-6) had no grievance or complaint against the Appellant and that her statement to the SDM spoke of her opinion about the Appellant.
- (iv) It was noted that the deceased was in continuous touch with her parents and sisters. The trial Court opined that had there been any kind of harassment on account of demand for dowry, she would have disclosed the same to them. However, no such complaint was made by her or by her parents and other family members. There was no clear allegation of any specific demand for dowry against the Appellant.
- (v) It was further noted that in her initial statement, PW-6 did not make any allegation against the Appellant with regard to demand for dowry. PW-20 also did not come forward immediately after the death to depose anything alleging a demand for dowry made by the Appellant. It was held that therefore, her delayed statement could not be given much importance. The trial Court opined that “the improvements made in the case and the contradictions coming out in the statements of witnesses are vital and cannot be brushed aside easily”.
- (vi) On the question whether on account of demand for dowry, the deceased was harassed by the Appellant, it was concluded that “none

of the PWs has mentioned any specific incident when on account of non-fulfilling of demand of dowry deceased was given beatings or subjected to cruelty, thereby making the entire story of prosecution doubtful”. Further, it was noted that the “evidence of PW-6 and PW-20 has not been corroborated by PW-2 and PW-5 rather they contradicted their versions by admitting that there was no demand of dowry ever made by the accused”. Thus, it was concluded that the prosecution had failed to prove any demand for dowry or any harassment or cruelty meted out to the deceased on that account.

- (vii) On the question whether, immediately prior to her death, the deceased was subjected to cruelty in respect of demand for dowry, it was noticed that such complaint was made for the first time to the SDM by PW-20 on 16th March 2000 around three months after the incident. The trial Court noted that there was also the admission made by the PWs that PW-20 “wanted to have the custody of daughter of accused and since it was not agreeable to accused, she levelled allegations regarding demand of dowry and cruelty committed to deceased. There is no cogent evidence that deceased was subjected to cruelty or harassment on account of demand of dowry, till her death”.
- (viii) Even the SDM (PW-4) admitted during cross-examination that during the inquest proceedings conducted by him, he could not get any material suggesting that the deceased had been subjected to cruelty shortly prior to her death with regard to demand for dowry.
- (ix) It was, therefore, concluded that the prosecution was unable to bring on record anything substantial against the Appellant to prove the allegations under Sections 498A and 304B IPC. Further, it was

concluded that since the initial burden of proving the ingredients of Section 304B IPC had not been discharged by the prosecution, the presumption under Section 113B Indian Evidence Act (IEA) did not stand attracted. Therefore, the trial Court found that the prosecution had failed to prove the charges under Sections 498A and 304B IPC and consequently, the Appellant was acquitted of those charges.

118. As regards the charge under Section 302 IPC, it was noted that although the initial burden to prove its case beyond reasonable doubt was on the prosecution, since the entire incident happened in his presence, the Appellant too bore the burden of explaining “certain circumstances which are within his special knowledge”. Proceeding to consider the relevant circumstances, the trial Court observed as under:

- (i) It was concluded that the absence of fingerprints on the knife would not benefit the Appellant to the extent that he would not be entitled to an order of acquittal on that ground. Dismissing the ‘two knives’ theory posited by the learned defence counsel, the trial Court observed that

“knife which was recovered from the spot was taken by finger print division; same was taken for opinion of autopsy doctor as per documents mentioned and deposited with the same finger print branch, from where it was sent to Biology Division. Identity of knife was never disputed by Ld. Defence Counsel when the experts appeared in witness box”.

Therefore, it was concluded that there was no doubt that Ex.P1 was the weapon of offence and that the ‘two knives’ theory was without substance.

- (ii) Coming next to the question of the deceased's mental state at the time of the incident, the trial Court noted that the letters written by the deceased way back in 1990 before her marriage with the Appellant revealed mixed emotions of "love and fights which are usual in the life of ordinary loving couples". It could not be said that before her death, the relations between the deceased and the Appellant "became extremely strained and went to the extent point of no return". It was concluded that "the totality of evidences on record do not suggest that deceased in all probabilities would have committed suicide".
- (iii) As regards the divergent views of the panels of medical experts constituted in the present case, the trial Court noted that "this is a strange case where we have opinion of two medical boards given at different points of time which are clearly conflicting each other". It was observed that although the opinions of the two medical boards could not be considered conclusive, "the same can be taken into consideration if the other evidences on record fully excludes one theory and establishes the cause of death either as suicidal or homicidal". After considering the submissions of the learned defence counsel and referring to decisions of the Supreme Court as regards the evidentiary value of medical opinions, the trial Court concluded that:
- "since there is conflicting opinion of two medical boards regarding the death being suicidal or homicidal and none could be relied upon to form a definite opinion without there being any incriminating evidence, I shall proceed further to see if there is other material on record, which is sufficient to establish the additional charge under Section 302 IPC as framed against the accused".

119. At this stage, the trial Court considered the presumption in law under Section 106 IEA making reference to decisions of the Supreme Court and concluded that where an offence is purportedly committed within the privacy of a house, it becomes incumbent on the inmates of the house to give a cogent explanation as to how the crime was committed. It then proceeded to list the following incriminating circumstances which “stares at the face” of the Appellant:

- (i) When the deceased visited PW-5 around one to two hours prior to her death, he did not notice anything abnormal in her attitude. He also did not find her to be unhappy.
- (ii) PW-18 stated that on 10th January 2000, she received a telephone call from the deceased asking for PW-20. Then the Appellant came on the line informing PW-18 that the deceased was holding his revolver in her hand and was threatening to kill herself. However, the phone was disconnected before she could talk to the deceased. PW-6 who was with PW-18 at that time called the deceased but she did not come to the phone. Thereafter, PW-20 was asked to call the deceased and when she did so, the Appellant picked up the phone and said, “*Didi Bulu ka dimag kharab ho gaya hai*”. Thereupon, as stated by PW-20, the deceased snatched the phone from the Appellant and said, “*Didi take me away or he is going to kill me*”. In his statement under Section 313 Cr PC, in response to Question No.29, the Appellant admitted as correct that he had snatched the phone from the deceased and told PW-20 that she had interfered in their life and that he would take care of the deceased and then disconnected the phone.

- (iii) If in terms of his statement to the SDM (PW-4), the Appellant had thrown the revolver under the bed after unloading it, the question remains as to how it could have been recovered from an open shelf as mentioned in the brief history of the case prepared by PW-4. This fact created a doubt as to the plea of the Appellant that the deceased wanted to kill herself with the revolver which he snatched from her and threw under the bed.
- (iv) The Appellant did not inform PW-5, who was in Delhi at the time, about the deceased trying to commit suicide with the revolver but instead made a call to PW-6 and PW-18 knowing that it would have been impossible for them to reach the spot.
- (v) If the Appellant had snatched the revolver from the hands of the deceased, he could well have snatched the knife brought by her from the kitchen. Why he did not stop her from stabbing herself - if not the first time, at least the second - was a question to be answered by the Appellant. However, no explanation has been offered by him in that regard. The Appellant did not inform the police about the incident at any point of time. He made no efforts to stop the flowing of blood and it was the PSO who tied the *banyaana* (vest) around the wound.
- (vi) The Appellant misled Dr. Dixit (PW-33) at the Virmani Nursing Home by stating that the deceased had consumed 'something'. His response to Question No.7 in his statement under Section 313 Cr PC that he presumed that the deceased had taken sleeping pills was a false statement even to his own knowledge. When again asked by PW-33, he said "*koi nukleelee cheez lag gayi hai*" whereas he knew what had happened to her. This prevented her from getting timely treatment that

could have saved her life.

- (vii) It had come in prosecution evidence that in similar traffic conditions, the journey between Virmani Nursing Home and AIIMS was found to take only 20 minutes whereas the Appellant took 46 minutes to make the same journey on the fated night. Further, the two barbers (PW-36 and his companion Amiruddin) did not notice any scuffle or loud arguments and even the PSOs did not hear any commotion from within the house. Thus, it was opined that the version of the Appellant that an altercation took place between him and the deceased during which calls were made to the mother and sister of the deceased “does not inspire confidence”.
- (viii) In terms of the Appellant’s statement to the SDM, there was no occasion for the blood of the deceased to be found on the bed. Bloodstains were lifted from the bathroom tiles and the *jaali* of the drain in the bathroom. Human blood of group ‘A’ was found to be that of the deceased and this was shown present in the bathroom and on the bed. During post mortem examination, it was found that the deceased was not in her menstrual phase. The explanation offered by the Appellant as to the presence of blood in the sink and drains in the washroom did not inspire confidence since he kept changing his version time and again to suit his claim.
- (ix) Further, it was opined that the statement of the deceased to the PSO (PW-13) saying “*mujhe bacha lo*” showed that she wanted to survive and thus rules out the possibility of her having committed suicide. No explanation regarding the death of the deceased was offered by the Appellant although it was within his exclusive knowledge.

- (x) The trial Court finally noted its observation that “there exists adequate material on record to prove that the relations between the two were strained and that the conduct of the accused towards his wife was not cordial. The evidence on record also suggests that the accused was at pinnacle of his career and had earned immense reputation/success from his show ‘India’s Most Wanted’ and his wife deceased Anju, who knew about all the forgeries & wrong acts, i.e. possessing two passports, using fake degree for job (Mark 30/Y), committing credit card fraud, etc. could have let public know about these facts, which could very easily ruin his hard earned success, since she had made up her mind to leave the accused and settle down in Canada, as such, the circumstances so appeared would have impelled the accused to go to any extent”.

120. Having made the aforementioned observations as regards the incriminating circumstances against the Appellant, the trial Court proceeded to convict the Appellant of the offence punishable under Section 302 IPC. The trial court by the consequent order dated 20th December 2017 sentenced him to imprisonment for life along with payment of fine of Rs. 2 lakhs and in default of payment of fine, to undergo further simple imprisonment for six months. The trial Court also awarded a sum of Rs. 10 lakhs as compensation to the parents of the deceased under Section 357(3) of the Code of Criminal Procedure 1973 (Cr PC) in default of payment of which, the Appellant was to undergo further simple imprisonment for six months.

The present appeal

121. In these proceedings, the Appellant has stated in his affidavit on oath in the memorandum of appeal that while he has deposited the entire fine amount, he has not deposited the compensation amount of Rs.10 lakhs as, according to him, that sum was awarded without jurisdiction.

122. The present appeal was admitted on 15th March 2018. On that date, learned counsel Mr. Satender Sharma appeared on behalf of the complainants (PW-6 and PW-20). He was permitted to assist the learned APP at the time of final arguments.

123. On 3rd April 2018, the Court observed in its order that it proposes to hear the appeal itself at an early date without granting suspension of sentence. On 26th April 2018, interim bail for a period of four weeks was granted to the Appellant subject to certain conditions which were duly complied with. Adjournments were sought for the appointment of a Special Standing Counsel on behalf of the State.

124. This Court has heard the submissions of Ms. Rebecca John, learned Senior Counsel and Mr. Rajiv Mohan, learned counsel on behalf of the Appellant. This Court has also heard the submissions of Mr. Sanjay Jain learned Senior Counsel and Mr. Kewal Singh Ahuja, learned APP on behalf of the State. Mr. Satender Sharma, learned counsel, advanced arguments on behalf of PW-6.

Trial Court proceedings consequent to framing of additional charge

125. Before commencing the discussion on the submissions made by the parties, one broad observation that requires to be made is that till the learned

Single Judge of this Court passed the order dated 12th August 2014 directing the framing of an additional charge against the Appellant for the offence punishable under Section 302 IPC, the case of the prosecution proceeded on the basis that it was required to prove its case against the Appellant beyond reasonable doubt for the offences punishable under Sections 498A and 304B IPC.

126. In other words, the entire effort of the prosecution was to prove, through the witnesses and the materials on record, that after her marriage with the Appellant on 18th November 1993 and in any event shortly prior to her death, the deceased was subjected to harassment by the Appellant on account of demand for dowry and was subjected to cruelty by him. For the purposes of the charge under Section 304B IPC, it was not necessary for the prosecution to prove that the death was homicidal. It was sufficient for it to prove that the death was “otherwise than under normal circumstances”.

127. This explains why, when the charge was originally framed by the trial Court on 29th March 2003, the wording of the charge specific to Section 304B IPC was: “Secondly, that during the intervening night of 10th/11th January 2000, your wife Anju Ilyasi died in AIIMS otherwise than under normal circumstances with stab injuries”. No reference was made to the place of death being the flat concerned where both the Appellant and the deceased resided together along with their daughter.

128. The said charge goes on to refer to the deceased being subjected to cruelty and harassment in connection with demand for dowry at their house

i.e. the flat concerned. In other words, the charge was not that she died otherwise than under normal circumstances at that place. At this stage, the prosecution was proceeding on the basis that it was not a case of murder. This was presumably because at that stage there was no conclusive medical evidence to support the theory that the death of the deceased was homicidal.

129. This is also evident from the charge sheet dated 19th March 2002 filed by the SHO of PS Trilok Puri which referred to the opinions given by the three-member medical panel. The first was the report dated 12th January 2000 together with the subsequent unanimous opinion dated 18th January 2000 as to the nature of death. The charge sheet also referred to the second opinion dated 12th April 2001 of Dr. R.K. Sharma (PW-22) and Dr. Alexander Khakha and the dissenting opinion dated 30th August 2001 of Dr. L.C. Gupta (PW-10). These opinions, with the exception of the opinion of PW-10 dated 30th August 2001, ruled out the possibility of homicidal death.

130. The charge sheet concluded that the Appellant did not have a “cordial and affectionate” relationship with the deceased which acted as a slow poison on her life due to which, “she has committed suicide”. Reference was then made to the “unnatural death” of the deceased within seven years of her marriage to the Appellant as well as to the fact that the family members of the deceased had sent money to the Appellant which “proved that accused used to harass the deceased for more dowry”. The charge sheet also mentioned the personal diaries maintained by the deceased which “proved that she was tortured by accused” resulting in her committing suicide.

131. After the learned Single Judge of this Court issued directions to the trial Court to frame an additional charge, on the same evidence, under Section 302 IPC, the trial Court framed an additional charge on 6th September 2014 to the effect that on the intervening night of 10th/11th January 2000, at the flat concerned, the Appellant committed the murder of the deceased. Thus, the prosecution was now required to categorically prove that the death was homicidal and that the murder took place at the aforementioned place.

132. The prosecution did not seek to re-examine any of the PWs. It is the Appellant who sought to cross-examine for the second time six of the PWs, two of whom were later dropped. Significantly, the trial Court, on 6th September 2014, i.e. the date on which additional charge was framed with the consent of the Appellant and his counsel and to which he pled 'not guilty', noted that "since the Prosecutor has to decide which witnesses he wants to recall, re-summon, or re-examine after the framing of additional charge, the report of Chief Prosecutor be awaited for 15.09.2014".

133. Thereafter, on 15th September 2014, the learned APP stated that "she does not want to re-examine any witness already examined by the prosecution after the framing of additional charge". The trial Court nevertheless decided to wait for the opinion of the five-member medical board that had been constituted. The matter was adjourned to 18th October 2014, on which date, the trial Court noted that in terms of the report of the five-member medical board, "the preponderance of evidence points towards the commission of suicide". Clearly, this was an inadvertent

error. The crucial words in the above order should have read as “commission of homicide” instead of “commission of suicide”.

134. At that stage, the learned APP made a request that he be permitted to summon Dr. Anil Aggrawal (PW-37), the Chairman of the medical board. No objection was raised by the learned defence counsel to this request. Thereafter, the examination and cross-examination of PW-37 was conducted and eventually concluded on 28th September 2015. On that date itself, the statement of the learned APP that he did not want to lead further evidence was recorded. The learned defence counsel prayed for an adjournment “for furnishing the list of witnesses which he intends to cross-examine after framing of additional charges”. The matter was then adjourned to 15th October 2015.

135. The order passed by the trial Court on 15th October 2015 reveals that the counsel for the Appellant had filed an application under Section 217 read with 311 Cr PC for recall of six witnesses for further cross-examination, viz. PWs 4, 5, 12, 14, 21, and 30. The Appellant also requested that Dr. N.K. Vyas, the author of the MLC (Ex.PW-4/C) be summoned. This application was allowed. However, as far as Dr. Vyas was concerned, he had since left the services of the hospital and Dr. Sanjeev Lalwani (PW-25) was deputed to attend the trial Court on his behalf. Liberty was granted to the Appellant to seek recall of PW-25.

136. On 17th December 2015, PWs 4 and 14 were cross-examined on recall. However, the counsel for the Appellant in the trial Court dropped his request

for further cross-examining PWs 12 and 15 who were also present. He also stated that he did not wish to cross-examine PW-25. The cross-examination of PW-30 concluded on 27th February 2016. On that date, the counsel for the Appellant stated that he did not wish to cross-examine PW-5 who had earlier been recalled. The only PW remaining to be cross-examined was Dr. S.K. Chadha (PW-21A). He was summoned for 19th March 2016. His cross-examination began on that date and ultimately concluded on 14th May 2016. The further recording of the statement of the Appellant was concluded on 27th August 2016.

137. The submission by Mr. Rajeev Mohan, learned counsel for the Appellant is that the trial Court failed to follow the procedure under Sections 216 and 217 Cr PC in letter and spirit. Relying on the decision in ***R. Rachaiah v. Home Secretary, Bangalore (2016) 12 SCC 172***, it was submitted that since the alteration of the charge to one under Section 302 IPC was obviously prejudicial to the accused, there necessarily had to be a *de novo* trial since from that stage the trial proceeded as if “the altered or added charge is the original charge”. It is submitted that this has caused grave prejudice to the Appellant.

138. Mr. Sanjay Jain, learned Senior counsel for the prosecution distinguished the decision in ***Rachaiah*** (*supra*) by pointing out that in that case, the charges were initially framed under Sections 306/365/34 IPC and thereafter, an alternative charge under Section 302/34 IPC was framed. Therefore, both charges could obviously not stand together. The trial Court

there had not granted an adjournment in terms of Section 216 (4) Cr PC and barring one police witness, it had not examined any new witness under Section 217 Cr PC. It is submitted that it was in those particular circumstances that the trial was held to be vitiated. However, since in the present case the additional charge framed by the trial Court was only on the directions issued by the High Court which were subsequently upheld by the Supreme Court, it could not be said that any prejudice was caused to the Appellant if the trial were to continue as if the additional charge was the original charge. It was, therefore, not necessary to examine the witnesses again as if in a *de novo* trial.

139. Furthermore, it is pointed out by Mr. Jain that no such plea was taken by the Appellant at any time before the trial Court. In support of the proposition that no new evidence needs to be brought on record before framing an additional charge, Mr. Jain referred to the decision in ***Anant Prakash Sinha v. State of Haryana (2016) 6 SCC 105***.

140. The above submissions have been considered. Mr. Jain is right that the additional charge under Section 302 IPC was framed by the trial Court only pursuant to the order dated 12th August 2014 of the learned Single Judge of this Court in CrI.Rev.P.208/2011. Thereby, the trial Court was directed to follow the procedure under Section 217 Cr PC, which reads thus:

“217. Recall of witnesses when charge altered.—Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed—

- (a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have

been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

- (b) also to call any further witness whom the Court may think to be material.”

141. The submission of the Appellant is based on Section 216 (4) Cr PC which states that if the additional charge is such that proceeding immediately with the trial is likely to prejudice the accused or the prosecutor, “the Court may either direct a new trial or adjourn the trial for such period as may be necessary”. Thus, there is discretion vested with the trial Court as to whether it should direct either a new trial or adjourn the trial for such period as it may deem necessary.

142. It appears to this Court that by asking the trial Court to adhere to the procedure under Section 217 Cr PC, the learned Single Judge, being conscious of the fact that the matter pertained to an incident which took place in January 2000, confined the proceedings before the trial Court to those envisaged under Section 217 Cr PC and as a consequence, curtailed the discretion conferred upon the trial Court under Section 216 (4) Cr PC. Therefore, any grievance that the Appellant might have had in this regard could have only been raised in his challenge to the order of the learned Single Judge before the Supreme Court. That challenge came to be negated by the Supreme Court’s order dated 22nd August 2014 dismissing the Appellant’s SLP (Crl.) 6502-6503/2014. Thereafter, the trial Court was bound to following the procedure under Section 217 Cr PC. From its orders extracted hereinabove, it is plain that the trial Court has in fact done so.

143. It was not incumbent upon the trial Court in the present case, having framed an additional charge, to resort to the procedure envisaged under Section 216 (4) Cr PC, notwithstanding that framing of the additional charge was prejudicial to the Appellant. Pertinently, the discretion conferred upon the trial Court thereunder leaves it open to the trial Court to adjourn the trial for such period as it may deem necessary. Therefore, it is not that whenever an additional charge is framed, which may be prejudicial to the accused, the trial Court must mandatorily direct a *de novo* trial.

144. The prosecution is right that the decision in ***Rachaiah*** (*supra*) is distinguishable on facts. In the present case, the order passed by the learned Single Judge directing the trial Court to frame an additional charge under Section 302 IPC was categorical and left it with no option but to follow the procedure under Section 217 Cr PC.

145. The Appellant was permitted to recall some of the PWs and the Appellant himself dropped his request for cross-examining two of the six PWs who had earlier been recalled by him. Adequate opportunity was, therefore, given to the Appellant for the recall and re-examination of witnesses.

146. The net result of the above discussion is that the Court rejects the plea of the Appellant that the trial Court erred in not directing a *de novo* trial in terms of Section 216 (4) Cr PC after the additional charge was framed pursuant to the order dated 12th August 2014 of the learned Single Judge.

147. The prosecution did not choose to recall any of the PWs after the additional charge was framed. The prosecution, as will be seen presently, thereby took a risk in seeking to prove the additional charge framed against the Appellant, on the basis of the evidence already collected.

No challenge to Appellant's acquittal under Sections 498A and 304B IPC

148. It is pertinent to note, at this stage, that there is no challenge by the prosecution or the complainant to the acquittal of the Appellant for the offences under Sections 498A and 304B IPC. Therefore, there is no challenge to the following definite findings of the trial Court:

- (i) There were improvements and contradictions in the statements of PWs 6 and 20 which could not be brushed aside. (Para 61)
- (ii) None of the PWs mention any specific instance of the deceased being given beatings or subjected to cruelty on account of non-fulfilment of demand for dowry. This made the entire story of the prosecution doubtful.
- (iii) The prosecution had failed to prove any demand for dowry or harassment or cruelty meted out to the deceased on that account. This finding was recorded after the trial Court discussed the testimonies of PWs 6, 18, and 20 on one hand, and PWs 2 and 5 on the other.
- (iv) Until the arrival of PW-20 in India, no grievance was expressed against the accused and “everything developed after that”. Further, there were admissions by the PWs 2 and 5 that PW-20 wanted to gain custody of the daughter of the Appellant and since this was not agreeable to him, “she levelled allegations regarding demand of dowry and cruelty committed to the deceased”.

149. What is, therefore, undeniable is that in its discussion of the evidence which culminated in concluding in para 69 of its judgment that the prosecution had failed to prove the charges against the Appellant under Sections 498A and 304B IPC, the trial Court had, in fact, disbelieved the testimonies of PWs 6, 18, and 20, all of whom sought to make out the case of the Appellant having subjected the deceased to harassment and cruelty in connection with a demand for dowry not only after the marriage but also shortly prior to her death which occurred before the completion of seven years of marriage. Furthermore, this finding of the trial Court which resulted in the acquittal of the Appellant of the offences under Sections 498A and 304B IPC has not been challenged by the State or the complainant.

Nature of death whether homicidal

150. With the additional charge under Section 302 IPC having been framed, it was incumbent upon the prosecution to prove beyond reasonable doubt that the death of the deceased was indeed homicidal. Considering that the case was based on circumstantial evidence, this constituted the central link in the chain.

151. In considering this issue, the trial Court, having examined the conflicting opinions of the two medical boards constituted in this case at different points in time, concluded in para 90 of its judgment that neither could be relied upon to form a definite opinion as to the nature of the death without there being any incriminating evidence. Therefore, the finding of the trial Court that the guilt of the Appellant for commission of the offence punishable under Section 302 IPC had been proved beyond reasonable doubt

is based on evidence other than the medical opinions submitted by the two medical boards.

152. Although the aforementioned finding of the trial Court has not been challenged by the prosecution or the complainant, the prosecution places extensive reliance on the medical opinion submitted by the five-member board to urge that the said medical opinion proves that the death was homicidal. In the absence of any challenge to the trial Court's finding in that regard, it would not normally be open to the prosecution or the complainant to argue to the contrary. Nevertheless, since the issue is central to this case, this Court proposes to discuss it in some detail.

153. It may be recalled that medical opinions as to the death were rendered at three different points in time in the present case. While the SDM was still seized of the inquest proceedings under Section 176 Cr PC, the first unanimous opinion of the three-member medical board pursuant to the post mortem examination conducted on 11th January 2000 was made available by way of the report submitted on 12th January 2000 and a subsequent opinion as to the nature of death on 18th January 2000. When the post mortem examination was conducted on 11th January 2000, photographs and videos were taken. To recapitulate, the unanimous report was rendered by three members of the board, viz. Dr. R.K. Sharma (PW-22), Dr. L.C. Gupta (PW-10), and Dr. Alexander Khaka (not examined as he expired during the pendency of the trial) after visiting the scene of crime on 14th January 2000, studying all 24 photographs of the scene submitted to them by the IO, taking into consideration that the deceased was right handed, studying the record of

treatment given to the deceased at Virmani Nursing Home prior to her being brought to AIIMS, studying the viscera report dated 18th January 2000 which gave a negative result for common poisons, and considering the facts mentioned in the photocopy of the case diary submitted by the IO.

154. At that stage, what was not submitted to the three-member board was the report of “vaginal swabs, nail clippings, and clothes of the deceased”. However, nothing turned on the non-availability of the report of vaginal swab as the FSL report found no signs of any semen thereon. There was no report on the nail clippings either which would have in any way pointed to the culpability of the Appellant for having committed the murder of the deceased. On the nail clippings themselves (n1 and n2), no foreign material of biological interest could be found. The clothes of the deceased, i.e. g1 (wet jeans pant having numerous dark brown stains), g2 (wet cut dirty full-sleeved cream coloured t-shirt having numerous dark brown stains), g3 (wet cut full-sleeved sweater having numerous brown stains), g4 (wet black colour brassiere), g5 (wet black slacks having some white fungal growth), g6 (wet white ladies’ underwear having numerous dark brown stains and faint brown stains in the lower middle region), tested positive for traces of human blood. This, in itself, is not surprising considering the deceased had two stab wounds on her abdomen, one of which the three-member board had opined to be fatal.

155. The initial report (Ex.PW-10/A) of the three-member medical board had the replies to the queries raised by the SDM in his order dated 11th January 2000 (Ex.PW-4/F) regarding number and nature of injuries, the

cause of death, and the board's opinion as to the nature of death. It was stated that there were two ante mortem injuries (injury Nos.1 and 2) which were fresh in duration before the death and caused by a sharp edged weapon. There was a third ante mortem injury (injury No.3) which was also caused by a sharp edged weapon but the duration of which was more than 48 hours before the time of death. The cause of death was observed to be "haemorrhagic shock caused as a result of ante-mortem injury no.1 which is caused by sharp edged weapon and sufficient to cause death in the ordinary course of nature". The board reserved its opinion as to whether the death was in fact homicidal or suicidal pending certain clarifications being provided by the SDM, forensic reports being received, and a visit to the crime scene as requested by them. Thereafter, by its report dated 18th January 2000 (Ex.PW-4/JJ), the board submitted its final unanimous opinion to the effect that injury Nos.1 and 2 were "self-inflicted and suicidal in nature".

156. Almost 14 months later, a letter dated 8th March 2001 was written by PW-30 to the same three-member board raising seven queries pertinent to the death of the deceased. Two of the members of the board, i.e. Dr. Sharma (PW-22) and Dr. Khakha, submitted a joint opinion dated 12th April 2001 (Ex.PW-22/A) reiterating that the "theory of homicide is ruled out as the pattern of injury is self inflicted and suicidal in nature". In response to Question No.3 as to which of injury Nos.1 and 2 was prior in time, they stated that injury No.2 was the initial "hesitational cut" and was prior to injury No.1 which was opined to be fatal. It is pertinent to note that this was the first time any sort of medical opinion was offered by the board as to

which injury was the ‘hesitational cut’ and which was fatal.

157. The next question posed to the board was whether injury No.2 (3.5 cm deep) could have been inflicted after injury No.1 (15.5 cm deep). The response was to the effect that the IO had misinterpreted the post mortem findings. It was further clarified that injury No.1 was caused after injury No.2 and that it was possible to inflict a fatal injury after the initial hesitational cut.

158. It appears to this Court that the IO was anticipating these responses when he asked seemingly leading questions such as whether a knife would be the preferred method for committing suicide when there was a loaded revolver available and with the knife being more painful. The two doctors answered that suicide was mostly a matter of impulse and the choice of weapon was dependent on the mental framework of the person committing suicide. They also pointed out that there are many cases on record “where women victims have used this method of committing suicide”. They also clearly stated that the deceased was not in the phase of menstrual period thus reiterating what was observed during the post mortem examination.

159. Dr. Gupta (PW-10) submitted a dissenting opinion dated 30th August 2001 (Ex.PW-10/D) which was by no means categorical. In fact it was vague. Even in his dissent, however, PW-10 concurred with the other two doctors in responding to Question No.3. He stated that “probable scientific speculation may reveal that the injury No.2 as mentioned in PM report was inflicted first then the injury No.1 which was fatal in this case”. As for his opinion on the nature of death, his refrain was that “homicide

cannot be ruled out”. Thus, he expressed no categorical opinion that it was in fact a case of homicide and not suicide.

160. Due to the uncertain opinion of PW-10, at the time of filing the charge sheet, the prosecution did not proceed on the basis of the death being homicidal despite noting his opinion that homicide cannot be ruled out. Therefore, the overwhelming medical opinion at that stage was that the death was suicidal and not homicidal.

161. The Court has been taken through the cross-examination of Dr. Sharma (PW-22) wherefrom it emerges that PW-10 did not participate in the deliberations of the board on the queries posed by PW-30. PW-22 stated that although PW-10 was invited to attend, “he did not respond/attend nor did he give any reasons for his non-attendance”. PW-10, in his cross-examination, stated that he did not send his opinion to the other two members of the board and they did not send their joint opinion to him. Notably, he did not dispute that the first time around, he did sign on the post mortem report along with the other two doctors and that it was, therefore, a unanimous report. PW-10 added that his final opinion was submitted to PW-30 pursuant to the latter’s letter dated 1st May 2001 enclosing the report signed by the other two doctors.

162. The constitution of the subsequent five-member board by the order dated 21st May 2012 of the DHFW, was upheld by the learned Single Judge of this Court by the order dated 12th August 2014 which was in turn affirmed by the Supreme Court. While the Court does not wish to re-examine the circumstances under which the second medical board was constituted, it

would be pertinent to note the following admitted facts concerning the functioning of the board as set out in the written note of submissions made by the prosecution:

- “a. In the board meeting dated 11.10.2012 (p.743 Vol-IV; Part of Mark PW37/D-15), the board asked for legible copies of all the material documents, especially, the autopsy report and opinion of the doctors of earlier board. The said letter was received at PS Pandav Nagar on 12.10.2012.
- b. Vide letter dated 5.11.2012 (p.736 Vol. IV) copies of FSL report, copies of evidence of doctors, copy of subsequent opinion on weapon of offence and copy of sketch of weapon was send to the Board (p. 736 Vol-IV).
- c. Next meeting of the board was held on 12.12.2012, whereby they examined the weapon of offence and thereafter only asked for copies of still photographs and videography of the postmortem. (p.738 Vol. IV).
- d. On 13.12.2012 SI Manish Bhatti moved an application, thereby requesting to supply the photographs/videograph of the scene of crime (p. 23640 of LCR).
- e. Vide order dated 13.12.2012, the Ld. Trial Court permitted SI Manish Bhatti to take the photographs of scene of crime and autopsy report. However, the SPP made the submission that there is no videography of scene of crime. (p.428 of LCR).
- f. In the meeting dated 09.01.2013, the SHO informed the Board that Hon’ble High Court has stayed the proceedings of the case and requested the Board not to proceed further. (p.745 Vol. IV).
- g. Stay on the proceedings got vacated on 12.08/2014, when the Hon’ble High Court dismissed the petition filed by the convict. Vide order dated 22.08.2014, the Hon’ble Apex Court also dismissed the SLP filed by the convict. Thereafter, on 09.10.2014 the Board gave its final opinion.”

163. It is beyond contention that this five-member board gave its report on

9th October 2014 – more than fourteen years after the date of the incident – without examining the body or the crime scene. It is interesting to note that in his cross-examination, Dr. Sarvesh Tandon (PW-26), who identified the signatures of Dr. Khakha who was since deceased, stated as under:

“Without seeing the injured/deceased, her clothes that she was wearing at the time of alleged incident, without inspection of the spot, without seeing the offence of weapons, it is not possible for me to give any opinion in this matter. I do not have any personal knowledge about this case.”

164. Another noteworthy aspect is that although the five-member board asked for the photographs and videograph of the earlier post mortem, that was not made available to them before the final opinion was rendered. Dr. Anil Agarwal (PW-37), Chairman of the board, confirmed that the minutes dated 12th December 2012 noted a request made to the IO for providing the photographs. He admitted that he did not have any file, noting, or documents “showing the receipt of the photographs of the victim”. He claimed to have seen the earlier opinion of the three member board which was unanimous as well as the opinion of two members of the board given on 12th April 2001. He also admitted that injury No.3 noted in the post mortem report “is possible while cutting the vegetables”.

165. Specific answers were elicited from him as to which of the documents relevant to the post mortem examination and the earlier medical opinions had been considered by the five-member board. He stated that the board had considered the post mortem report dated 12th April 2000 (Ex.PW-10/A) and noted the direction of the injury Nos.1 and 2 mentioned therein. He also states that he remembered seeing the joint opinion of PW-22 and Dr.

Khakha (Ex.PW-22/A) as it was in his file. He states that the board had noted the answer to Question No.3 therein regarding the opinion of the two concurring doctors as to which of the injuries was prior in time. He further admitted to seeing the crime scene report dated 17th January 2000 wherein *inter alia* it was stated that the knife having fingerprints was taken by the CFSL.

166. In light of the above answers, it is inexplicable that the report of the five-member board makes certain glaring factual errors. The first is its noting that “neither post mortem report nor photographic printouts made available depict path/track taken by two stab wounds on the abdomen”. Secondly, it is also mentioned that “there is no scientific finding mentioned in the post mortem report which can be considered to be the basis of the conclusion as to which injury is inflicted first and which injury is inflicted later on”. In its seventh observation, the board states that there were “no fingerprints detected on the recovered weapon of offence as per the documents made available” when in fact the crime scene report referred to hereinabove clearly mentions that the fingerprints lifted from the knife had been seized by the CFSL. Its next conclusion – that there were no hesitational or tentative cuts around the fatal injury or elsewhere – flew in the face of what was concluded by the two concurring doctors of the earlier board. Even the third member PW-10 did not disagree that there were two cuts.

167. The report of the five-member board contains no specific reasons for the conclusion that the preponderance of evidence in this case points

towards “commission of homicide.” The numerous factual errors in the opinion reflect non-application of mind to the relevant materials on the record. A conclusion based on faulty analysis, erroneous or absent facts and with no cogent reasons does not inspire confidence.

168. Further, rather notably, the sixth observation mentioned in the final report of this five-member board was that there were no cuts on the clothes of the deceased. PW-37 was confronted with literature (Mark PW-37/D1&D2) extracted from the 23rd Edition of *Modi’s Medical Jurisprudence & Toxicology* which is an analysis of the difference between suicidal, homicidal, and accidental wounds. There is a separate discussion on “Hesitation (tentative) Cuts” and it is noted that in the case of suicidal or self-inflicted wounds, hesitatorial cuts are usually present. Further, it is noted that clothes are not usually found damaged in such cases. Specifically, it is opined that “wounds found on a part of the body ordinarily covered by clothes without corresponding cuts or rents on them are suicidal, as a person who commits suicide exposes his body by opening his clothes and then inflicts wounds”.

169. More pertinently, it appears that PW-37 himself has authored books wherein he has opined that in cases of suicide being committed with a knife, one indication is about the clothes not being cut (Mark PW-37/D5). He states therein that the clothes are not damaged as they are usually removed. He specifically opines therein that stabs to the abdomen would be made by lifting the clothes to visualize the area. It is plain, therefore, that PW-37 too did not entertain a view different from that taken in *Modi’s Medical*

Jurisprudence & Toxicology.

170. Then we have the 5th Edition of the text book on *Forensic Medicine and Toxicology* by Dr. Krishan Vij wherein, under the section titled 'Accident, Suicide, or Homicide', he observes as under:

"Suicidal injuries are commonly situated over front of body on easily accessible sites, especially over throat, pericardium abdomen or wrists and rarely found on unusual locations as cannot easily be reached by the victim.

A couple of characteristic features of suicidal stabbing include the following: Firstly, presence of 'tentative wounds' that are superficial and unlikely to penetrate beyond muscular layer. The finding of tentative wounds (hesitation cuts) is a useful observation in helping differentiate suicide from homicide. Indeed, 'Hesitation marks' can be considered the 'trade marks' of suicide. The name is derived from the fact that cutting/stabbing oneself is painful and the would be suicide frequently makes several half-hearted, superficial cuts/stabs before he/she gathers sufficient courage to unleash the sufficiently forceful stroke, which is able to cause fatal damage. Another basis for hesitation marks may be the subject's ignorance as to how tough and resistant the tissues are and how much force is needed to produce the fatal injury with the weapon at hand. Secondly, suicides almost always inflict wounds over the uncovered parts of the body. Thus, wounds over the parts of the body that ordinarily remain covered by clothing, without corresponding cuts/rents upon them, are indicative of suicide. This observation is again a potentially useful factor in differentiating suicide from homicide because a homicidally inclined assailant does not ordinarily take time or trouble to expose the site of injury."

171. Reference is made in the written submissions of the prosecution to the statistics pertaining to the suicides committed by self-inflicted injury and those committed by women. These do not in any manner add to the understanding on how the five member medical board proceeded in the matter. The mere fact that the opinion of the earlier medical board was rendered without taking note of the vaginal swab report and nail clippings and clothes of the victim is also of no consequence at all as has been noted hereinbefore. Even according to the five-member board, there were no visible cuts on the clothes of the deceased. Although it is contended that there is no reason to doubt the opinion rendered by the five member board, this Court finds that it inspires no confidence for the reasons explained hereinabove.

172. Therefore, in view of the evidence of the medical professionals that has been discussed in detail above, and in light of the medical literature placed on record, it is not possible for this Court to accept the plea of the prosecution that the medical evidence in this case unmistakably and conclusively proves that the death was homicidal.

Forensic evidence

173. With the medical evidence not being able to conclusively prove the nature of death to be homicidal, the prosecution has sought to rely extensively on forensic evidence. It is a matter of record that 20 sealed packets were sent to the CFSL containing, among others, samples of bloodstains found on the bed sheets, clothes, threads having brown stains lifted from the bathroom tiles, and threads having brown stains lifted from

the bathroom drain. No doubt all of these showed the presence of human blood but this in itself does not advance the case of the prosecution.

174. The prosecution has not been able to explain the chance fingerprints lifted from the crime scene. Dr. G.D. Gupta (PW-17), the Principal Scientific Officer of CFSL at the relevant time, visited the scene of the crime. He noticed chance print Mark Q1 on the bedroom wall but no stains on or near it or near the electric switchboard. The other witness, Dr. S.K. Chadha (PW-21A), stated that chance prints Q2 to Q5 were lifted from the knife. He received from the SDM 10 specific digit fingerprints/palm slips for comparison with the chance prints. In his report dated 24th January 2000 (Ex.PW-4/QQ), it is stated that no matches could be established with the specimen fingerprints of the Appellant. The contents of the report of PW-21A are as under:

“Result of Examination

- I. The chance print marked as Q.1 is identical with specimen right little finger impression of Smt. Anju Ilyasi marked here as RLS.9 on the slip marked as S.9 (Matching ridge characteristics have been found in their relative positions in questioned and specimen prints. This forms the basis of the opinion that these prints are identical. Eight of them have been marked with projected red lines & along with their detailed description is placed at Annexure 1;
- II. The chance print marked as Q.2 and Q.5 are different from specimen prints of Suhabi Ilyasi marked here as S.1 to S.7. (Ridge characteristics present in the questioned fingerprints are not similarly present in their relative positions in the specimen fingerprints. This form the basis of the opinion that these prints are different);

- III. a) The chance prints marked as Q.2 is different from specimen prints of Anju Ilyasi marked here as S.8 to S.13. (Ridge characteristics present in the questioned fingerprints are not similarly present in their relative positions in the specimen fingerprints. This forms the basis of the opinion that these prints are different);
- b) Specimen left thumb impressions of Smt. Anju Ilyasi does not contain sufficient number of clear ridge characteristics in the relevant area for comparison with chance print marked as Q.5;
- IV. Chance prints marked as Q.3 and Q.4 does not contain sufficient number of clear ridge characteristics for comparison.”

175. With there being no matches of the chance prints lifted from the scene of crime with any of the specimen prints of the Appellant, the Court fails to appreciate how the forensic reports can help the case of the prosecution to establish that the death was homicidal.

Section 106 IEA and shifting the burden of proof

176. The entire case of the prosecution is built on first showing that the death was homicidal and then placing the burden upon the accused in terms of Section 106 IEA to explain how the death occurred. Mr. Jain submitted that even without showing that the death was homicidal, resort can be had to Section 106 IEA. He urged that Section 106 IEA is a *sui generis* provision. He relied upon the decisions in *Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681*; *State of Rajasthan v. Thakur Singh (2014) 12 SCC 211*; and *Ravirala Laxmaiah v. State of Andhra Pradesh (2013) 9 SCC 283*.

177. This Court finds that the above submission is counter-indicated in the following categorical exposition of the law in para 22 of the decision in *Trimukh Maroti Kirkan* (*supra*):

“22. Where an accused is alleged to have committed the murder of his wife **and the prosecution succeeds in leading evidence to show that shortly before the commission of crime** they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of Himachal Pradesh* 1972 CriLJ 1317, it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* 1992 CriLJ 1545, the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* 1992 CriLJ 3693, the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that

both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of Tamil Nadu v. Rajendran* 1999 CriLJ 4552, the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.” (emphasis supplied)

178. Therefore, the *sine qua non* for invoking Section 106 IEA is for the prosecution to show that a crime has been committed and that shortly before the “commission of crime”, the accused and the victim were seen together. In each of the cases referred to in the above passage, the prosecution had succeeded in showing that the death was homicidal.

179. In *Ravirala Laxmaiah* (*supra*), the High Court had given a definite finding that the death was homicidal as a result of the medical evidence of one Dr. K. Padmawati and this was concurred with by the Supreme Court. Likewise, in *Thakur Singh* (*supra*), which has been extensively referred to by learned Senior Counsel Mr. Jain, the positive finding was that the victim died an unnatural death in the room occupied by her and the accused therein. There were facts “pertaining to the crime” which were known only to the accused therein. Importantly, in para 9 of the judgment of the Supreme

Court, one of the basic facts brought on record was deposed to by Dr. Khemchand Saini that the deceased had some injuries on her person “but the cause of her death was asphyxia and strangulation”. There was further finding by the trial Court that there was nothing to suggest that any other person had entered Thakur Singh’s room and “there was no possibility of anybody else having caused Dhapu Kunwar’s death by strangulation”. Further, it was noted that the accused therein gave absolutely no explanation in his statement under Section 313 Cr PC as to how his wife had died of asphyxiation inside their room.

180. Therefore, the prosecution having to first establish the ‘commission of crime’ is a *sine qua non* for the application of Section 106 IEA. In the instant case, without the prosecution proving that the death was homicidal, the question of invoking Section 106 IEA did not arise. The case of the Appellant is that the deceased stabbed herself with a kitchen knife. He has sought to offer an explanation as to what transpired at the relevant time. On this he has remained consistent throughout his examination under Section 313 Cr PC. Further, the medical evidence supports his plea.

181. This Court, therefore, disagrees with the approach of the trial Court in the present case that there was a burden on the Appellant under Section 106 IEA to give an explanation for the death of his wife. The net result is that one of the key links in the chain of circumstances, i.e. that the death was homicidal, has not been proved by the prosecution. What has come through both in the medical and forensic evidence is only that the death resulted from stab injuries caused by the kitchen knife which was found in the house.

Statements made before the SDM not admissible in evidence

182. In discussing the evidence, the trial Court commenced with examining the statements made by the Appellant to the SDM (PW-4) under Section 176 Cr PC. However, it is the settled legal position that those statements do not constitute evidence. They could not have been relied upon to establish the Appellant's guilt. In this context, the following observations of this Court in ***Mahipal v. State of Delhi 225 (2015) DLT 242***, are relevant:

“22. The object and purpose of inquest proceedings is merely to ascertain as to whether a person has died under unnatural circumstances, or if it was an unnatural death and, if so, as to what was the cause of death. Inquest report cannot be treated as primary or substantive evidence. The opinion given in such report cannot be termed as final adjudication of the matter for the simple reason the questions regarding details as to how the deceased was assaulted or as to who had assaulted him or under what circumstances the assault took place are beyond the scope of the inquest proceedings [*Madhu @ Madhuranatha & Another v. State of Karnataka, (2014) 12 SCC 419 and Baldeo and another v. State of U.P., 2004 Crl. L.J. 2686*].

23. The inquest report, inter alia, also referred to the statements of the various witnesses examined by the SDM in the course of his enquiry, such witnesses including the relatives or neighbours of the victim, some of whom have been examined at the trial by the prosecution leading to the impugned judgement. The sum and substance of the version of the said witnesses before the SDM, however, cannot be relied upon by the prosecution. They are not substantive evidence for purposes of the criminal trial. Such statements, of course, were in the nature of previous statements of the corresponding prosecution witnesses. They could be used for contradicting or discrediting the witnesses during cross-examination in the proceedings before the trial Court. The defence made no such effort during the trial. Without formal record of their respective depositions

being brought before the trial Court and without the witnesses being confronted with their previous statements before the SDM, the summary of what they may have said before the SDM during inquest proceedings cannot be read against the appellants. Thus, we exclude from consideration the material on the basis of which the SDM had concluded the inquest proceedings. For similar reasons, the conclusions reached, or the impressions gathered, by the SDM on such material must also be kept out of purview. After all, the purpose of the inquest proceedings was to find the cause of death and not probe as to who were the persons responsible.”

183. In *Suresh Rai v. State of Bihar (2000) 4 SCC 84*, the Supreme Court observed:

“Learned counsel for the appellants, Mr. U.R. Lalit, contended that the presence of three eye- witnesses, namely, Sheo Deo Rai (P.W.10), Shatrughan Rai (P.W.16) and Ram Narain Rai (P.W.17), at the spot, is doubtful for the reason also that though two of them, namely, Shatrughan Rai (P.W.16) and Ram Narain Rai (P.W.17), are the witnesses of inquest, they did not state the names of the assailants while describing the cause of death in the Inquest Report. This argument cannot be accepted. Under Section 174 read with Section 178 of the Code of Criminal Procedure, Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries as also the possible cause of death. In *Podda Narayana vs. State of A.P.*, AIR 1975 SC 1252, it was held by this Court that the identity of the accused is outside the scope of Inquest Report prepared under Section 174 Cr.P.C. In *George vs. State of Kerala*, (1998) 4 SCC 605, it has been held that the Investigating Officer is not obliged to investigate, at the stage of inquest, or to ascertain as to who were the assailants. This Court has consistently held that Inquest Report cannot be treated as substantive evidence but may be utilised for contradicting the witness of inquest. (See: *Rameshwar Dayal vs. State of U.P.*, AIR 1978 SC 1558; *Khujji @ Surendra Tiwari vs. State of M.P.*, AIR 1991 SC 1853 and

Kuldip Singh vs. State of Punjab, 1992 Crl.L.J. 3592”

184. Thus, the statement of a person during the inquest proceedings who subsequently becomes an accused has to be kept out of the reckoning while discussing the evidence. When the Appellant’s statement was recorded by the SDM on 11th January 2000, he was not yet an accused. The legal position in this regard is explained in *Mahabir Mandal v. State of Bihar (1972) 1 SCC 748* as under:

“46. Coming to the case of Kasim, we find that there is no reliable evidence as may show that Kasim was present at the house of Mahabir on the night of occurrence and took part in the disposal of the dead body of Indira. Reliance was placed by the prosecution upon the statements alleged to have been made by Kasim and Mahadeo accused at the police station in the presence of Baijnath PW after Baijnath had lodged report at the police station. Such statements are legally not admissible in evidence and cannot be used as substantive evidence. According to section 162 of the Code of Criminal Procedure, no statement made by any person to a police officer in the course of an investigation shall be signed by the person making it or used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. The only exception to the above rule is mentioned in the proviso to that section. According to the Proviso, when any witness is called for the prosecution in the enquiry or trial, any part of his statement, if duly proved, may be used by the accused and with the permission of the court by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act and when any part of such treatment is so used, any part thereof may also be used in the re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. The above rule is, however, not applicable to statements falling within the provisions of clause 1 of section 32 of the Indian Evidence Act or to affect the provisions of section 27 of that

Act. It is also well established that the bar of inadmissibility operates not only on statements of witnesses but also on those of the accused [see *Narayan Swami v. Emperor*, (1939) P.C. 47]. Lord Atkin, in that case, while dealing with section 162 of the, Code of Criminal Procedure, observed:

"Then follows the Section in question which is drawn in the same general way relating to "any person." That the words in their ordinary meaning would include any person though he may thereafter be accused seems plain. Investigation into crime often includes the examination of a number of persons none of whom or all of whom may be suspected at the time. The first words of the Section prohibiting the statement if recorded from being signed must apply to all the statements made at the time and must therefore apply to a statement made by a person possibly not then even suspected but eventually accused."

Reference may also be made to Section 26 of the Indian Evidence Act, according to which no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved against such person. There is nothing in the present case to show that the statements which were made by Kasim and Mahadeo accused on September 18, 1963 at the police station in the presence of Baijnath resulted in the discovery of any incriminating material as may make them admissible under Section 27 of the Indian Evidence Act. As such, the aforesaid statements must be excluded from consideration."

185. The prosecution's repeated attempts to read the statement of the Appellant made to the SDM at the stage of inquest proceedings (referred to in paras 23 to 31 above) and attempt to glean therefrom an admission on his part is, therefore, legally impermissible.

Whether charge of murder proved beyond reasonable doubt

186. The prosecution began by seeking to prove the charges against the Appellant for cruelty and dowry death. It failed in that attempt. The legal presumptions that may have been available to the prosecution as regards the offences under Sections 498 A and 304 B IPC were, therefore, not available to it in seeking to prove the case against the Appellant for the offence punishable under Section 302 IPC. Unlike Section 304B IPC which shifts the onus upon the accused if the basic ingredients of that offence are proved by the prosecution, in a case involving the offence punishable under Section 302 IPC, the onus continues to remain with the prosecution to prove its case beyond reasonable doubt. In ***Tapas Kumar Ghosh v. State of West Bengal (2011) 15 SCC 354***, it was observed in para 4 as under:

“4. The question raised before us is that having framed an alternative charge under Section 302 of the Indian Penal Code, the Appellant could not have been held to be guilty of an offence under Section 304B IPC inasmuch as the essential ingredients of both the offences are distinct and different. The onus in the case of Section 304B IPC shifts to the accused, unlike under Section 302 IPC where the onus continues to be on the prosecution and it is expected to prove the case beyond any reasonable doubt.”

187. In the present case, after the additional charge was framed by the trial Court in 2014, the prosecution had the option under Section 217 Cr PC to recall the PWs. Having foregone such opportunity, it risked proving the charge under Section 302 IPC against the Appellant on the basis of the same evidence. The prosecution is unlikely to succeed if it seeks to prove a new case on the basis of the same evidence. In ***Bhagirath v. State of Madhya***

Pradesh (1976) 1 SCC 20, it was observed as under:

“14. It appears to us that the approach of the courts below in reconstructing a story different from the one responded by the prosecution and then convicting the appellant on that basis was clearly erroneous. It was never the prosecution case that there was a fight or pitched battle between two parties. According to the prosecution, the occurrence was only a one-sided affair that P.W. Kashiram was forcibly pulled out and taken from his house by three accused to a distance of 80 feet, and there assaulted. In the F.I.R., Devisingh made no mention whatever of the injuries received by the accused side. At the trial also, the prosecution witnesses brazenly refused to concede that the appellant or his companion Manohar had received any injury at the time occurrence. Contrary to what these prosecution witnesses had stated, the courts have come to the conclusion that these injuries, three of which were incised wounds, were received by the accused side, in the course of a free fight at the hands of the complainant party.”

Evidence of PW-13

188. The trial Court has commented adversely on the conduct of the Appellant during and after the incident; that he did not prevent the deceased from stabbing herself in the first place; that he made no effort to stop the victim from bleeding, to provide her with first aid, to immediately call for help. These inferences of the trial Court appear to be based on surmises and conjectures and not on evidence.

189. The evidence of the PSO (PW-13) who first entered the scene soon after the stabbing had taken place, is relevant in this regard. His evidence, if read carefully, makes it clear that the Appellant opened the door, called him in and asked him to help him with lifting the deceased. PW-13 stated in his examination in chief that the deceased told him that she had made a mistake.

This contradicted the prosecution theory that the Appellant had murdered his wife. It was consistent with the deceased having stabbed herself. PW-13 was not declared hostile by the prosecution. He was also not recalled by the prosecution to explain the above statement of his. Even if the statement of PW-13 in his further cross-examination by the Appellant that the deceased was asking the Appellant to save her life is kept out of the reckoning, the deceased saying that she had committed a mistake supported the theory of suicide. It was urged by Mr. Jain that this statement should be interpreted as the deceased saying that she had made a mistake in marrying the Appellant and not that she had made a mistake in stabbing herself. If the evidence of PW-13 is read as a whole there is no scope for such an interpretation. What comes across is that the deceased regretted her impulsive reaction in stabbing herself.

190. PW-13 was the first person on the scene soon after the deceased was found in an injured condition. He did not seem to think it unnatural that the deceased was in the first instance taken to the Virmani Nursing Home. PW-13 is clear that the deceased was alive while she was taken from the Virmani Nursing Home to AIIMS. There does not seem to be an unusual delay in any of these steps. There is nothing in the evidence of PW-13 which suggests that the Appellant deliberately delayed seeking medical assistance for the deceased. PW13 and the Appellant were with the deceased throughout. PW-13 it will be recalled is with the Delhi Police. There was no suggestion by the prosecution that he was helping the Appellant escape guilt.

Conduct of the Appellant

191. Furthermore, soon after the death of his wife, the Appellant was found uncontrollably weeping by PW-5. The testimonies of PWs 2 and 5 suggest to this Court that the Appellant and the deceased were deeply in love with each other. It must be recalled that the testimonies of PWs 2 and 5 have not been disbelieved by the trial Court. In fact, that evidence was believed and the testimonies of PWs 6, 18, and 20 were disbelieved when the trial Court concluded that the charges against the Appellant under Sections 498A and 304B IPC were not proved by the prosecution.

192. The prosecution's reliance on the decision in ***Ramesh Harijan v. State of U.P. (2012) 5 SCC 777*** to contend that the Court should only take note of that part of the statement of PW-13 which was probable and reliable misses the point. That decision pertains to a situation where a portion of the witness's statement pointing to the guilt of the accused was found to be an embellishment. Nevertheless, the Court relied on the remainder of the evidence of that witness to return a finding of guilt. In the present case, however, there are no such embellishments pointing to the guilt of the Appellant. Even the initial statement of PW-13 supports the case of the Appellant rather than the prosecution.

193. The testimony of Dr. R.K. Dixit (PW-33) is relied upon in an attempt to demonstrate that the Appellant misled him by hiding the true facts about the deceased having stabbed herself. The Court again does not read much into these statements only for the reason that from Virmani Nursing Home itself a call was made by the Appellant to Dr. Virmani who advised him to take

the deceased to AIIMS which the Appellant in fact did. There appears to be no deliberate attempt by the Appellant to somehow delay the treatment of the deceased.

194. The events of 10th January 2000, when carefully analyzed, bear out the defence version of what transpired. Indeed, from the initial statement of PW-18 herself, it appears that the deceased was reluctant to talk to PW-18 and there was a quarrel between her and the Appellant which was getting out of hand. The fact that she was threatening to kill herself with the revolver comes through in the statement of PW-18 herself.

195. The trial Court appears to have ventured into making surmises and conjectures forgetting that it had, earlier in its judgment, discarded the testimonies of PWs 6, 18, and 20 in acquitting the Appellant of the offences under Sections 498A and 304B IPC. In concluding that “the totality of evidence on record does not suggest that the deceased in all probability would have committed suicide”, the trial Court appears to have lost sight of the fact that the case of the prosecution regarding the Appellant having committed murder does not get automatically proved simply because the evidence does not appear to suggest that the deceased had committed suicide. The commission of murder by the Appellant had to be proved by the prosecution through positive evidence.

196. Through suggestions to the PWs themselves, it has been sought to be established by the prosecution that the deceased was upset with the close relationship between Z and the Appellant. This has come through in the Appellant’s answers in the questions put to him under Section 313 Cr PC.

Clearly the deceased was upset with him in this regard. The trial Court seems to take note of the fact that PW-5 states that the deceased seemed happy and in good spirits when she visited him in the evening of 10th January 2000. However, the question here is not whether she was happy in the company of her father but rather whether she was upset in the company of the Appellant due to her disapproval of his relationship with Z. That a person would behave differently in the company of different people is not unnatural or inexplicable. So it is not necessary that because she was happy in the company of her own family members and friends that would automatically mean that she would be equally happy in the company of her own husband. A number of factors might contribute to a person committing suicide. Further, an irreconcilable problem that a person may have with one person may not necessarily manifest itself before other people. Therefore, merely because the deceased was found to be in good spirits around two hours prior to the incident would not rule out the possibility of her committing suicide by stabbing herself as a result of her quarrel with the Appellant which has been spoken to by PW-18. The precise circumstances that led to the said decision of the deceased might be difficult to explain but surmises and conjectures cannot substitute proof.

197. The trial Court has relied on the prior and subsequent conduct of the Appellant in finding him guilty. As for his conduct during the incident, this Court is of the opinion that it would be too much to expect him to have stopped her from stabbing herself suddenly. In fact, it should be recalled that he did in fact prevent her from turning the revolver on herself. Even after the act, the deceased seems to have stated that she committed a mistake. The

said statement of the deceased has been interpreted by the trial Court as her lamenting the fact that she had “married the accused and had to face consequence in the form that the accused stabbed her”. This constitutes a stretching of evidence to the point of incredulity with no such suggestion coming from the side of the prosecution.

198. The other alleged conduct of the Appellant prior to the incident, i.e. obtaining an illegal passport and a fake university degree, do not seem to be issues over which the deceased and the Appellant had a quarrel. It was, however, urged on behalf of the prosecution that the motive for the crime stood established by way of the evidence showing that the Appellant’s name did not feature in the records of Jamia Milia Islamia for the period during which he is supposed to have earned a degree in M.A.(Social Work) and further, that he had two passports. However, merely these facts are of little consequence to the prosecution case unless it is shown that they were the cause for the rift between the deceased and the Appellant. This does not emerge from the evidence led by the prosecution. The quarrel was projected as a result of the closeness between the Appellant and Z, which in any event was unable to be established by the prosecution by credible evidence.

PW-20 an unreliable witness

199. In any case, the above-stated suggestions only seem to have emerged from the testimony of PW-20, a witness disbelieved by the trial Court itself as unreliable and untruthful. In fact, the repeated and heavy reliance placed upon her testimony by the complainant in the written submissions is of little use with no challenge being laid to the above conclusion of the trial Court

that she was an unreliable witness.

200. On the evidence of PW-20, the most serious and material improvement made by her was in adding to the words allegedly spoken over the phone by the deceased to her on 10th January 2000. It will be recalled that according to PW-20 she called the deceased but the phone was picked up by the Appellant who told her, “*Didi, Bullu ka to dimag kharab ho gaya hai*”. According to PW-20, at this stage, the deceased snatched the phone from the Appellant and said, “*Didi, take me away or he is going to kill me*”. These additional words “or he is going to kill me” were not mentioned by PW-20 when she sent in her typed statement to the SDM. This emerges in her cross-examination on 8th January 2010 as under:

“Q. I put it to you that in your typed complaint and the cross examination done by SDM during inquest you simply mentioned about Anju saying “*Didi take me away*” and not the words “or he is going to kill me.”

A. It is correct.”

201. The trial court appears to have completely missed this important and material improvement by PW-20 which makes her an unreliable witness. It also makes her an untruthful witness because her typed statement to the SDM was given on 16th March 2000, a month after her arrival in India. There was sufficient time for her to have been able to recall what was spoken on the phone on 10th January 2000. PW-20 also made reckless allegations about the illicit affairs of the Appellant. This is evident from the following answer given by her in her cross-examination:

“Q. I put it to you that you have made scandalous and libellous

statement on oath In your deposition before this Court attributing illicit relations between (Y) first and later on with X, her (Y's) daughter ?

A. I did not imply an illicit relationship between Y and the accused. But its true statement with regards to X and the accused.

Q. Did you provide any proof of illicit relationship between X and accused either to SDM, police or any other authority. Can you provide any proof regarding this relationship to this Court?

A. I did not provide any proof to any authority, SDM or police. No, I cannot provide any proof even today to this Court.”

202. What also emerged in the cross-examination of PW-20 is her being engaged in other litigation with the Appellant over the custody of his daughter. This emerged in the following exchange during the cross-examination of PW-20:

“Q. Are you aware that the accused filed a habeas corpus petition in the High Court of Delhi to frustrate your efforts to take his daughter Aaliya away forcibly?

A. Yes I am aware.

I am aware that Aaliya was restored to the accused and till date she is with the accused. It is correct that my mother had filed a petition seeking custody of Aaliya in a Guardian and Ward Court, Delhi.

Q. Is it fact that you and your mother failed to get the custody of daughter Aaliya at every fora including the Hon'ble Supreme Court of India?

A. The Supreme Court sent the case to the concerned Court.

The case is subjudice before the Court of Sh. Vidhya Prakash.”

203. PW-20, being a sister of the deceased, was not only a related witness but also an interested witness. Although such witness need not on that score be disbelieved, the settled legal position is that the testimony of such witness has to be carefully scrutinised by the trial Court. In ***Ram Bharosey v. State of U.P. AIR 1954 SC 704***, the Supreme Court explained that a close relative of the deceased does not automatically become an interested witness. It was stated that “an interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the court only with that intention and not to further the cause of justice.” The evidence of an interested witness cannot be thrown overboard, but has to be examined carefully before acceptance.

204. In ***Raju Balachandran v. State of Tamil Nadu (2012) 12 SCC 701*** after reviewing the case law till then, the Supreme Court explained the legal position thus:

“33. For the time being, we are concerned with four categories of witnesses – a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the

evidence of a third party disinterested and unrelated witness. This is all that is expected and required.”

205. In the present case, PW-20 was obviously an interested witness. She was plainly interested in securing the conviction of the Appellant. It is on her statement that the case came to be registered and investigated. Her testimony as an interested witness does not satisfy the test of truthfulness and reliability on the parameters set by the law as explained by the Supreme Court. The trial Court, therefore, erred in relying on her testimony to return a finding of guilt of the Appellant.

Test of circumstantial evidence

206. The law relating to circumstantial evidence, as explained in ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116***, requires the following standard to be met by the prosecution:

“151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law. However, where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

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159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as

additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.
- (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in *Shankarlal's case* (*supra*) where this Court observed thus:

‘Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused.’

207. It was further explained in *Sharad Birdhichand Sarda* (*supra*) that where, from the evidence, two conclusions are possible the one favouring the accused must be preferred. In the present case the medical evidence does not conclusively prove that it is a case of homicide. Thus an important link in the chain of circumstances has not been proved by the prosecution. The further links in the chain as delineated by the trial Court have in fact not been proved. The forensic evidence does not link the accused to the killing of the deceased in the manner suggested by the prosecution. The motive for the crime too has not been established.

Summary of conclusions

208. To summarise the conclusions of this Court:

(i) The trial Court held that the testimonies of PWs 6, 18, and 20, to the effect that the Appellant had subjected the deceased to harassment and cruelty in connection with a demand for dowry not only after the marriage but also shortly prior to her death, were not believable. The said finding which resulted in the acquittal of the Appellant of the offences under Sections 498A and 304B IPC has not been challenged by the State or the complainant.

(ii) The report of the five-member medical board contains no specific reasons for the conclusion that the preponderance of evidence in this case points towards “commission of homicide.” The numerous factual errors in the opinion reflect non-application of mind to the relevant materials on the record. A conclusion based on faulty analysis, erroneous or absent facts and with no cogent reasons does not inspire confidence.

(iii) In view of the evidence of the medical professionals who comprised the first medical board and in light of the medical literature, this Court rejects the plea of the prosecution that the medical evidence unmistakably and conclusively proves that the death was homicidal.

(iv) With there being no matches of the chance prints lifted from the scene of crime with any of the specimen prints of the Appellant, the forensic evidence too fails to establish that the death was homicidal.

(v) Without the prosecution first proving the ‘commission of crime’ the question of shifting the burden to the Appellant under Section 106 IEA to explain how the death occurred, does not arise.

(vi) One of the key links in the chain of circumstances, i.e. that the death was homicidal, has not been proved by the prosecution. What has come through both in the medical and forensic evidence is only that the death resulted from stab injuries caused by the kitchen knife which was found in the house.

(vii) The prosecution's repeated attempts to read the statement of the Appellant made to the SDM at the stage of inquest proceedings under Section 176 Cr PC and attempt to glean therefrom an admission on his part is legally impermissible.

(viii) The evidence of the Appellant's PSO (PW-13) who first entered the scene soon after the stabbing had taken place makes it clear that the Appellant opened the door, called him in and asked him to help him with lifting the deceased. The unchallenged testimony of PW-13 that the deceased told him that she committed a mistake contradicts the prosecution theory that the Appellant murdered his wife. Even if the statement of PW-13 in his further cross-examination by the Appellant that the deceased was asking the Appellant to save her life is kept out of the reckoning, the deceased saying that she had committed a mistake supported the theory of suicide. What comes across is that the deceased regretted her impulsive reaction in stabbing herself.

(ix) Further PW-13 makes it clear that the deceased was alive while she was taken from the Virmani Nursing Home to AIIMS. There is nothing in his evidence which suggests that the Appellant deliberately delayed seeking

medical assistance for the deceased. PW13 and the Appellant were with the deceased throughout. PW-13 is with the Delhi Police and there was no suggestion by the prosecution that he was helping the Appellant escape guilt.

(x) As far as the post-incident conduct of the Appellant is concerned, PW-5 (the father of the deceased) found him uncontrollably weeping at the AIIMS. The testimonies of the brother (PW-2) and father of the deceased show that the Appellant and the deceased were deeply in love with each other. The testimonies of PWs 2 and 5 have not been disbelieved by the trial Court. On the other hand the testimonies of PWs 6, 18, and 20 were disbelieved by it when it concluded that the charges against the Appellant under Sections 498A and 304B IPC were not proved by the prosecution.

(xi) Merely because the deceased was found to be in good spirits around two hours prior to the incident would not rule out the possibility of her committing suicide by stabbing herself as a result of her quarrel with the Appellant which has been spoken to by PW-18. The precise circumstances that led to the said decision of the deceased might be difficult to explain but surmises and conjectures cannot substitute proof.

(xii) The allegations that the Appellant obtained an illegal passport and a fake university degree were not in any event issues over which the deceased and the Appellant had a quarrel. The quarrel was projected as a result of the closeness between the Appellant and Z, which in any event was unable to be established by the prosecution by credible evidence.

(xiii) It appears that PW-20 may have had an interest in securing the conviction of the Appellant. It is on her statement that the case came to be registered and investigated. Her testimony as an interested witness does not satisfy the test of truthfulness and reliability on the parameters set by the law as explained by the Supreme Court.

The gap between ‘may be true’ and ‘must be true’

209. The trial Court in this case based its conclusion not on unimpeachable evidence that pointed to the guilt of the Appellant, but on suspicion. It was observed by the Supreme Court in *Datar Singh v. State of Punjab (1975) 4 SCC 272*:

“3. It is often difficult for Courts of law to arrive at the real truth in criminal cases. The judicial process can only operate on the firm foundations of actual and credible evidence on record. Mere suspicion or suspicious circumstances cannot relieve the prosecution of its primary duty of proving its case against an accused person beyond reasonable doubt. Courts of justice cannot be swayed by sentiment or prejudice against a person accused of the very reprehensible crime, of patricide. They cannot even act on some conviction that an accused person has committed a crime unless his offence is proved by satisfactory evidence of it on record. If the pieces of evidence on which the prosecution closes to rest its case are so brittle that they crumble when subjected to close and critical examination so that the whole super-structure built on such insecure foundations collapses, proof of some incriminating circumstances, which might have given support to merely defective evidence cannot avert a failure of the prosecution case.

4. Suspicion, however, grave, cannot be a satisfactory basis for convicting an accused person.”

210. In ***Gagan Kanojia v. State of Punjab (2006) 13 SCC 516***, the Supreme Court made the following observations when considering a case based on circumstantial evidence:

“Indisputably, charges can be proved on the basis of the circumstantial evidence, when direct evidence is not available. It is well settled that in a case based on a circumstantial evidence, the prosecution must prove that within all human probabilities, the act must have been done by the accused. It is, however, necessary for the courts to remember that there is a long gap between 'may be true' and 'must be true'. Prosecution case is required to be covered by leading cogent, believable and credible evidence. Whereas the court must raise a presumption that the accused is innocent and in the event two views are possible, one indicating to his guilt of the accused and the other to his innocence, the defence available to the accused should be accepted, but at the same time, the court must not reject the evidence of the prosecution, proceeding on the basis that they are false, not trustworthy, unreliable and made on flimsy grounds or only on the basis of surmises and conjectures. The prosecution case, thus, must be judged in its entirety having regard to the totality of the circumstances. The approach of the court should be an integrated one and not truncated or isolated. The court should use the yardstick of probability and appreciate the intrinsic value of the evidence brought on records and analyze and assess the same objectively.”

211. This was reiterated in ***Jose @ Pappachan v. The Sub-Inspector of Police, Koyilandy (2016) 10 SCC 519*** in the following words:

“53. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of “may be true” but has to essentially elevate it to the grade of “must be true”. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a

situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touch stone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted.”

Conclusion

212. For all of the aforementioned reasons, the Court holds that the prosecution has failed to prove the guilt of the Appellant for the offence under Section 302 IPC.

213. The appeal is allowed. The impugned judgment and the order on sentence of the trial Court are set aside. The application is disposed of.

214. The Appellant will be released forthwith unless wanted in some other case. The Appellant will fulfil the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest.

215. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 5, 2018

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