

\$~23 & 24 (*common order*)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 2nd April, 2019

+ CRL.A. 53/2019

DAYA RAM

..... Appellant

Through: Mr. R.K. Tarun, Advocate with
Mr. K.K. Sharma, Adv. &
Mr. Shubham Prajapati,
Advocates

versus

THE STATE

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP
for the State with SI Roshan
Lal, PS Kotla Mubarakpur.

+ CRL.A. 121/2019

FATEH SINGH & ORS

..... Appellants

Through: Mr. M. Naushad, Advocate

versus

THE STATE (GOVT OF NCT DELHI) & ORS

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP
for the State with SI Roshan
Lal, PS Kotla Mubarakpur.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellants have been held guilty and convicted and sentenced in case arising out of first information report (FIR) No.168/2012 of Police Station Kotla Mubarakpur for offences under Sections 498-A/304-B/34 of Indian Penal Code, 1860 (IPC) by the

court of sessions, by judgment dated 17.12.2018 and order on sentence dated 19.12.2018, passed in Sessions case No.2433/16. By these appeals, they have challenged the said judgment and order on sentence.

2. Rajni, fourth amongst seven siblings, then aged about 24 years, she being daughter of late Shri Ghansi Ram and Lado Devi (PW-4) was married on 03.12.2011 to appellant Fateh Singh (A1), the latter being the son of appellant Puran Lal (A3) and Raj Kumari (also known as Natho Devi) (A4). After marriage, she started living in matrimonial home, *i.e.*, C-343, Shradhanand Gali, Nanakchand Basti, Kotla Mubarakpur, Delhi where her husband (A1), his parents (A3) and (A4) besides other members of the family including Mohit, younger brother of the husband, would also reside. The parental home of Rajni was house No.D-194, Sakurpur J.J. Colony, Delhi-110034, within the jurisdiction of Police Station Subhash Place where her widowed mother (PW-4) along with other children would live. It may be mentioned here that the parental family included elder brother Jagdish Koli (PW-9) and two sisters *viz.* Seema (PW-2) and Kamlesh (PW-3) (one unmarried and other divorcee). The family also included Sangeeta (PW-1), wife of elder brother Jagdish Koli (PW-9). One of the married sisters Premo Devi would live elsewhere in house No.E-360, Prem Nagar, Nangloi, Delhi-110 041, Ram Preet (PW-8) being her husband.

3. On 28.05.2012, Rajni was found hanging by the neck in the matrimonial home. There is evidence brought on record by the

prosecution, as also by the defence, showing the room where Rajni was found in such state, was closed from within, the door required to be broken open. It appears that upon some intimation telephonically received by the brother (PW-9) he along with his wife (PW-1) had reached the matrimonial home - they found the dead body lying on the ground, their arrival apparently being after Rajni had been brought down from the position of hanging. Eventually, Rajni was shifted to All India Institute of Medical Sciences (AIIMS), the medico-legal certificate (MLC) in her respect having been recorded (vide Ex.PW-22/B), there and indicating she to have been brought dead to the casualty at 02:28:33 hours on 29.05.2012.

4. The police was informed about the death vide DD No.45-A (Ex.PW-21/B) at 10:42 p.m. on 25.05.2012, this being preceded by another telephonic information vide DD No.44-A (Ex.PW21/A) at 10:30 p.m. on 28.05.2012. The matter was inquired into by SI Vishal Choudhary (PW-20), who was accompanied by Constable Ankit (PW-12). Amongst the various steps that were taken by PW-20 (the Investigating officer), information was conveyed to Dr. R.K. Aggarwal (PW-10), who was working at the relevant point of time as Sub-Divisional Magistrate (SDM), the dead body having been shifted for the purpose of autopsy to the mortuary of AIIMS. The autopsy was carried out by Dr. Shashank Poonia (PW-21), his report (Ex.PW21/A), read with subsequent opinion (Ex.PW-21/B), and Forensic Science Laboratory (FSL) report (Ex.PW22/A) leaving no room for doubt that the death had occurred due to asphyxia on account of ante-mortem

hanging, the possibility of poisoning having been ruled out on examination of the viscera that had been preserved.

5. In the initial intimation (while DD No.45-A), suspicion had been raised by the parental family, particularly brother Jagdish Koli (PW-9) that Rajni had been intentionally done to death, so as to render it a case of murder. Statements (Ex.PW9/F and Ex.PW1/D1 respectively) to this effect were made by him (PW-9) and his wife (PW-1) before the SDM on 29.05.2012. It may be added here that during the inquest proceedings on 29.05.2012, the SDM had also examined Ram Preet (PW8), his statement (Ex.PW8/B), however, being non-committal inasmuch as he only pointed out some injury marks on the neck of Rajni, he being not clear as to how she may have died.

6. Be that as it may, the investigation could not bring out any evidence to support the allegations of it being a case of culpable homicide, the autopsy report (particularly the final opinion given by the autopsy doctor), and the circumstances in which the dead body had been discovered, as reflected, *inter alia*, by the evidence of at least two neighbours – Nihal Devi (PW-6) and Kamlesh (PW-11) – leaving no room for doubt that Rajni had committed suicide by hanging herself by the neck, it leading to asphyxia.

7. While the inquiry was pending before the SDM, Lado Devi (PW-4) mother of Rajni (hereinafter, the deceased) made a complaint to various authorities on 18.06.2012, the addressees including, amongst others, the Commissioner of Police, the Deputy

Commissioner of Police of the area and the Station House Officer (SHO) of the police station. In the said complaint, she reiterated her suspicion that her daughter had been killed narrating in that context certain events which showed that Rajni had been subjected to cruelty for dowry in the matrimonial home by the husband and some of the relatives. Against the said backdrop, on 06.08.2012, the SDM issued a directive (Ex.PW10/G) to the SHO of Police Station Kotla Mubarakpur calling him upon to *“take necessary action as per law in the matter of Rajni”* referring in this context to DD No.45-A, dated 28.05.2012. In the entire proceedings, as indeed in the statement of the SDM (PW-10), there is no clarity as to what had prompted the SDM to *“recommend”* the registration of the FIR against the backdrop of the statements which had been recorded by him after examining Jagdish Kohli (PW-9), Sangeeta (PW-1) and Ram Preet (PW-8).

8. Be that as it may, upon receipt of the aforementioned directions of the SDM, and in express compliance thereof, the investigating officer (PW-20) to whom the said order had been made over by the SHO, recorded an endorsement (Ex.PW-20/A) in continuation of the statement (Ex.PW9/F) of Jagdish Koli (PW-9) seeking from the duty officer registration of first information report (FIR) for offences under sections 498A/304-B and 34 IPC, and pursuant to the said endorsement, the duty officer ASI Raj Kumar (PW-16) registered the FIR (Ex.PW16/A) at 10:30 p.m. on 06.08.2012, more than two months after the event of unnatural death.

9. During the course of the investigation by SI Vishal Choudhary (PW-20) amongst others steps, he recorded the statements of Jagdish Koli (PW-9), his wife Sangeeta (PW1), his mother Lado Devi (PW-4), his sister Seema (PW-2) and Kamlesh (PW-3), besides those of other relevant witnesses. Based primarily on the said evidence, and some confirmation from the call detail records (CDR) of at least three mobile telephone numbers which had statedly been in use of the individuals involved, a report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was submitted on 23.11.2012 in the Court of Metropolitan Magistrate (MM) seeking trial for offences under Sections 498-A/304-B/201/34 IPC.

10. Upon cognizance being taken by the concerned Metropolitan Magistrate, it leading to issuance of process, four persons came to be put on trial they including Fateh Singh (A1), Daya Ram (A2), Puran Lal (A3) and Rajkumari @ Natho Devi (A4), the charges framed against them on 07.11.2013 being primarily for offences under Sections 498-A and Section 304-B IPC read with Section 34 IPC. The trial court also framed an alternative charge under Section 302 read with Section 34 IPC.

11. The prosecution led evidence by examining twenty-five witnesses, they including Sangeeta (PW-1), sister-in-law of Rajni (deceased); Seema (PW-2), younger sister of the deceased; Kamlesh (PW-3), elder sister of the deceased; Lado Devi (PW-4), mother of the deceased; Constable Jagdish (PW-5), who had gone to the house of the accused and arrested him vide memo (Ex PW-5/A); Nihal Devi (PW-

6), neighbour of the deceased; Constable Rajeev Kumar (PW-7), who had gone to the mortuary of AIIMS for the post mortem examination on the dead body of the deceased; Rampreet (PW-8), sister-in-law of the deceased; Jagdish Koli (PW-9), brother of the deceased; Dr. R.K. Aggarwal (PW-10), Superintendent of Department Training and Technical Education; Kamlesh (PW-11), neighbour of the deceased; Constable Ankit (PW-12), who had taken the dead body to the mortuary of AIIMS and seized certain articles; Israr Babu (PW-13), Alternate Nodal Officer of Vodafone Mobile Services; Constable Satyapal Sharma (PW-14), who had collected sealed envelope along with the sample seal and taken the same to FSL, Rohini; Inspector Naresh Kumar (PW-15), who had inspected the spot and prepared report in such regard (Ex.P/W-15/A); ASI Raj Kumar (PW-16), who had registered the FIR No.168/12; Head Constable Kapil (PW-17), who had gone to the place of incident and taken the photographs; Sarvesh Kumar (PW-18), Nodal Officer of Idea Cellular Ltd.; Constable Kavita (PW-19), who recorded the statement of some of the witnesses; SI Vishal Choudhary (PW-20), the investigating officer (IO); Dr. Shashank Pooniya (PW-21), Ex-senior resident of AIIMS Hospital, who had conducted the post-mortem examination on the dead body of the deceased; Retired S.I. Balbir Singh (also examined as PW-21 and so referred to as PW-21-A) duty officer at Police Station Kotla Mubarakpur; Dr. Lingaraj Sahoo (PW-22), Senior Scientific Officer, Chemistry, FSL; Dr. Yogesh Kumar Meena (also examined as PW-22 and so referred to as PW22-A), Senior resident (surgery), AIIMS, who proved MLC No.54514 of deceased Rajni; and

Surender Kumar (PW-23), Nodal Officer at Bharti Airtel Ltd., who proved call details record of A1 (Fateh Singh).

12. The evidence led by the prosecution was put to the accused persons (now appellants before this court). While admitting the evidence about the marriage of Rajni with Fateh Singh (A-1) on 03.12.2011, and her unnatural death in the matrimonial home on 28.05.2012, the evidence showing cruelty having been meted out to her in the matrimonial home, particularly, on account of dowry was denied and disputed.

13. It may be mentioned here that Daya Ram (A-2) is cousin brother of Raj Kumari (A-4) and, therefore, is treated by Fateh Singh (A-1) as maternal uncle (*mama*) and consequently, he has been referred to as *mama-sasur* in relation to the deceased Rajni. Certain role in the context of alleged cruelty for dowry is attributed to him by some of witnesses.

14. After the statements under Section 313 Cr.PC. had been recorded, the accused persons were called upon to adduce evidence in defence. Geeta (DW1), a relative of the appellants was examined primarily to bring on record the circumstances in which the fact of Rajni having committed suicide was discovered. Daya Ram (A-2) entered the witness box (as DW2), also supporting the word of DW1 in above regard, he claiming to have been present at the scene on account of a social visit.

15. The learned Additional Session Judge considered the evidence brought on record and, by his judgment dated 17.12.2018, concluded that the alternative charge under Section 302 read with Section 34 IPC had not been brought home, his findings indicating acceptance of the theory that Rajni had committed suicide. The trial court accepted the evidence of prosecution witnesses, particularly Jagdish Koli (PW-9), Sangeeta (PW-1), Seema (PW-2), Kamlesh (PW-3) and Lado Devi (PW-4) as to cruelty for dowry having been meted out to Rajni in the matrimonial home, soon before her death and in unnatural circumstances. On these conclusions, the appellants were held guilty and convicted on the charge for offences under Sections 498A/304-B read with Section 34 IPC.

16. By order dated 19.12.2018, the trial court awarded simple imprisonment for three years with fine of Rs.50,000/- each for offence under Section 498-A read with section 34 IPC, and simple imprisonment for ten years for offence under Section 304-B read with Section 34 IPC. It was directed that both the sentences would run concurrently, the benefit of set off under Section 428 Cr.P.C. having been accorded.

17. The arguments on the appeals have been heard at length and the record has been perused with assistance from both sides.

18. The charge under Section 302 read with section 34 of IPC had not been pressed by the investigating agency. It was framed by the trial court as an alternative charge. The said charge could not be proved, as is shown by the finding returned by the trial court. The

State has not challenged the judgment of the trial court to that extent by any appeal or petition. The findings to that extent have attained finality and, thus, the accusations to such effect will have to be kept aside; all the more so because on the basis of available evidence, such charge cannot succeed, it being clear from the evidence on both sides that the room where Rajni was found hanging by the neck, she apparently having died before her body was shifted to AIIMS, was closed from inside, there being no credence to the suspicion that she may have been killed, the injury mark on the neck to which some reference was made by the members of parental family being the mark caused by the ligature, as is substantiated by photographs of the dead body which were brought on record. Thus, the other evidence requires to be re-appreciated, while accepting the conclusion of the trial court that Rajni had indeed committed suicide.

19. The marriage of Rajni with Fateh Singh (A-1) had taken place on 03.12.2011. It is indeed shocking that she was constrained to commit suicide in the matrimonial home on 28.05.2012. But, it is the reasons that may have impelled her to commit suicide which would be crucial. In these circumstances, the court has to examine, particularly on account of charge under Section 304-B IPC, to find out as to whether there is any evidence available to show that soon before her death she had been subjected by the husband or members of the matrimonial family, to cruelty or harassment for or in connection with any demand for dowry. The trial court has answered the said query in the affirmative and on the basis of such conclusion has applied the

presumption under Section 113-B of the Indian Evidence Act, 1872 to hold the appellants guilty of the charge under Section 304-B IPC, the accusations relevant to the charge under Section 498-A IPC being inherent in the gravamen of the charge for the former offence.

20. From the above perspective, the case hangs in balance on the testimonies of Jagdish Koli (PW-9), Sangeeta (PW-1), Seema (PW-2), Kamlesh (PW-3), Lado Devi (PW-4) and Ram Preet (PW-8). The evidence of the said witnesses has been subjected to acute scrutiny by this court. It will be appropriate to deal with them seriatim.

21. It is clear from the evidence that her father having died earlier, the mother (PW-4) being a widowed illiterate lady, the responsibility of settling Rajni in marriage had fallen upon her brother Jagdish Koli (PW-9). He is on record to state that it is he who had arranged the marriage with great pomp and show, having spent sufficient amount of money. Undoubtedly, the mother (PW-4) would have also chipped in for finances, she obviously having been party to the arrangements throughout.

22. The evidence of the above mentioned witnesses of the parental family of the deceased clearly demonstrates that they hail from Rajasthan where the widowed mother of the deceased had certain landed property for sale of which she appeared to have been away around the time when the unfortunate event took place. Be that as it may, they appear to be a close-knit family, who would be thick with each other, assisting and supporting those in distress. One of the sisters who were living with Jagdish Koli (PW-9) under the same roof

include Kamlesh (PW-3), who is stated to be a divorcee. There is evidence brought on record showing a telephonic contact made by the deceased on 26.05.2012 with her sisters (PW-2) and (PW-3) who, pursuant to her entreaties, had met her in a temple on 27.05.2012. Noticeably, PW-2 and PW-3 would speak about said meeting though also confirming that Rajni had been accompanied at that point of time by her husband Fateh Singh (A-1).

23. The prosecution evidence brought out through mouthpiece of Jagdish Koli (PW-9) and Sangeeta (PW-1) reveals that on 28.05.2012, the deceased had called the latter on her phone at about 3-4 p.m. informing her about ill treatment at the hands of the mother-in-law (A-4). It is stated that Rajni sounded to be in distress and wanted the parental family to assist her or else she would be constrained to leave the matrimonial home. The evidence shows that PW-1 had tried to soothe her with some assurances and then informed her husband (PW-9). After some time, at about 4-5 p.m., Fateh Singh (A-1) had called Sangeeta (PW-1) on her mobile phone telling her that Rajni was in serious condition and was being shifted to Safdarjung hospital. It is stated that after some time, A-1 again rang up to inform PW-9 that Rajni had died. It is against this backdrop that PW-9 accompanied by his wife PW-1, and followed by his brother-in-law (PW-8), had reached the matrimonial home of Rajni finding her dead body lying there with the injury mark on the neck, which had given reason to their suspicion that she had been killed.

24. When the aforementioned three witnesses were examined by the SDM on 29.05.2012, there was no allegation of any history of ill treatment to Rajni on account of demands of dowry. Though Rampreet (PW-8) was totally silent on this issue, his statement (Ex.PW-8/B) not even indicating any questioning on this score, he nonetheless expressly stated that Rajni was living after marriage with her husband happily, (“शादी के बाद रजनी अपने पति फ़तेह सिंह के साथ खुशी से रह रही थी”). Jagdish Koli (PW-9) and Sangeeta (PW-1), in contrast, by their respective statements (Ex.PW-9/F and Ex.PW-1/D1) before SDM had totally ruled out any harassment on account of dowry demands. PW-9 stated that neither Fateh Singh (A-1) nor any members of his family had ever made any demand of dowry from him or any members of his family (“मेरे दामाद फ़तेह सिंह तथा उसके परिवार वालों ने मुझसे तथा मेरे परिवार के किसी भी सदस्य से कभी दहेज़ की कोई मांग नहीं की”), similar statement being made by PW-1, (“मेरे नन्दोई फ़तेह सिंह तथा उसके परिवार वालों ने हमसे कभी कोई दहेज़ की मांग नहीं की”).

25. In their respective statements before the SDM, PW-9 and PW-1, however, spoke about there having been two or three other occasions wherein Rajni (the deceased) had had quarrels with her husband (A-1). PW-9 informed the SDM, and PW-1 confirmed her husband in such regard, that upon information being given about the quarrels by his sister (the deceased), he had gone to meet her in the matrimonial home

but she was unable to say anything to him. (“लेकिन जब मैं उसके पास जाता था तो वह कुछ कह नहीं पाती थी”).

26. PW-9 and PW-1 narrated the sequence of events of 28.05.2012, wherein the first telephonic call had come from the deceased on the mobile phone of PW-1 at about 3/4 p.m. wherein she had informed that A-1 was harassing her by taunts (“उसकी सास (नत्थो देवी) उसे ताने मार रही है”) and that she was threatening to leave the matrimonial home. This was followed by the telephonic call at about 4/5 p.m. from A-1, initially indicating that Rajni was unwell but later confirming she to have died. It is obvious that though the suicidal death by hanging had come to the notice to the matrimonial family, they were unable to communicate immediately with the parental family. It may be mentioned here itself, that in the said three statements before the SDM, there was no reference made to telephonic or other contact between Rajni and the parental family on the preceding two dates, particularly the telephonic call to PW-2 on 26.05.2012, pursuant to which Rajni, on one hand, and PW-2 and PW-3, on the other had met each other in a temple on 27.05.2012.

27. As mentioned above, the inquiry remained pending with the SDM till 06.08.2012 without any meaningful action. In the three statements before the SDM, there was no allegation of any harassment of the deceased woman for dowry. Though it was indicated that the parental family had suspicion about the death being homicidal, there was no confirmation inasmuch as the autopsy opinion was still

awaited. As also noticed earlier, the suspicion about the death being homicidal was unfounded, the accusations in that regard having eventually failed.

28. The events, however, took a turn in the wake of the complaint dated 18.06.2012 made by PW-4 (Lado Devi) to the various authorities, such complaint reaching, as per the endorsement, the SHO of the police station only on 26.06.2012. The complaint dated 18.06.2012 runs into four type written pages. It has not been introduced in the evidence formally by the prosecution nor was it used by the defence for any purposes at the trial. Be that as it may, the same available (at pages 743-749) on the trial court record has been perused. The prime thrust of the allegations therein was to bring the suspicion about murder to the notice of the police authorities to seek action under the law. Nonetheless, accusations were also made about harassment for dowry. It is against this backdrop, that after registration of the FIR on 06.8.2012, the investigating officer (PW-20) started recording statements under Section 161 Cr.P.C. He recorded the statement of first informant Jagdish Koli (PW-9) vide Ex.PW-9/DA and that of his wife Sangeeta (PW-1) vide (Ex.PW-1/D2) both on 28.08.2012.

29. In the above said statements under Section 161 Cr.P.C., the witnesses made marked improvements over their version of 29.05.2012 before the SDM. They would now accuse the husband and other members of the family including parents, and *mama-sasur*, of having subjected Rajni to harassment on account of dowry demand,

the demand particularly being about a motor cycle, Daya Ram (A-2) being the person who had instigated others in such regard. The IO had also recorded the supplementary statement of Jagdish Koli (PW-9) on 07.08.2012 (Ex.PW-9/DB) about certain steps in investigation. Around the same period, statements under Section 161 Cr.P.C. of PW-2 (Seema), PW-3 (Kamlesh) and PW-4 (Lado Devi) were recorded, such statements making out eventually a case of dowry death.

30. Sangeeta (PW-1) and Jagdish Koli (PW-9) spoke about A-2 (Daya Ram) having raised a quarrel (on the date of marriage itself) over non fulfillment of the demand of motorcycle and dowry, the appellants having been pacified at that point of time with assurances that such demand would be fulfilled in due course. Similar statements were made by PW-2, PW-3 and PW-4. There was reference made to the events of marriage having been subjected to videography. Reference was also made to a DVD of such video footage being made available. The investigating officer (PW-20), on his part, during cross-examination, however, confirmed that the DVD footage of the marriage had been seen by him and it did not depict any scene of such quarrel or dispute at the time of marriage. Though, witnesses of the family of the deceased would speak about such quarrel having been raised in loud voices, it having been witnessed by a large number of persons who were attending the marriage, aside from the immediate members of the family, there is no corroboration from any independent quarter, and this includes PW-6 (Nihal Devi) and PW-11

(Kamlesh), who have been neighbours to the appellants in the same locality.

31. During the course of trial, Sangeeta (PW-1) and Jagdish (PW-9) were confronted with their respective statements before the SDM. It is difficult to accept the allegation from their mouthpiece that the appellants had subjected Rajni to any harassment on account of illicit demands for dowry, inclusive of expectation of a motorcycle, particularly against the backdrop of their first version before the SDM given at the earliest opportune moment on 29.05.2012.

32. Thus, the evidence of PW-1 (Sangeeta) and PW-9 (Jagdish Koli) to the extent it relates to the allegations of harassment of Rajni for illicit demands of dowry will have to be kept aside. The only circumstances which can be picked up safely from such evidence are the history of quarrels between Rajni, on one hand, and her husband A1 (Fateh Singh), on the other, atleast on two or three occasions in the past, each time the brother (PW-9) having gone to assist the sister (the deceased), but she not confiding in him the background facts. The telephonic call that was made by the deceased to PW-1 in the afternoon of 28.05.2012, a few hours before she committed suicide, does indicate that she was perturbed because the mother-in-law (A4) was subjecting her to taunts. But, there is nothing in the evidence to reveal as to what was the root cause of the said verbal issue with the mother-in-law. There is nothing indicated that the taunts were of such nature as would instigate a person of mature age to proceed to commit suicide.

33. Thus, the case of the prosecution has to be tested from the viewpoint of the evidence of PW-2 (Seema), PW-3 (Kamlesh) and PW-4 (Lado Devi).

34. PW-4, as observed earlier, is an aged widowed lady. She spoke about visits of the deceased to her house, after marriage, she having confided in her that she was not allowed any food and that the appellants would abuse her, she feeling surrounded and haunted, also having been threatened to be killed. None of the earlier witnesses would speak on these lines. Since Jagdish Koli (PW-9) is the elder brother who had arranged the marriage, it is difficult to imagine against the conservative family background from which the parties come, that he would not be privy to such grievances of Rajni. Noticeably, in his statement before the SDM, he had informed on 29.05.2012 that he was not aware of any cause of grouse felt by Rajni. He also did not mention about any visits of Rajni to the parental home during the said period.

35. PW-2 and PW-3 spoke about the telephonic call of 26.05.2012 leading to a meeting by them with Rajni in a temple in Hari Nagar in the morning hours of 27.05.2012. As mentioned earlier, both the said witnesses confirmed that A-1 (Fateh Singh) had also accompanied Rajni at that point of time though they would refer to their conversation as one in confidence in the privacy of toilets. As per PW-2, during the said meeting, Rajni had disclosed that A-1, A-4 and sisters-in-law (who were not prosecuted) would beat her up demanding dowry as they were not satisfied with the dowry articles.

He stated that Rajni appeared weak and perturbed. She had statedly told that she was having some injury on her back which had been inflicted by A-1 and A-4. PW-3 while deposing about the said meeting with Rajni on 27.05.2012 instead spoke about harassment not only by the husband and mother-in-law but also by *mama-sasur* and both sisters, adding the name of Mohit, the younger brother of the husband, the last attributable to some theft of cash from her *almirah*, Mohit having rebuked her for having locked the *almirah*.

36. The evidence of PW-2 and PW-3 about exchange of words with Rajni in the temple in the morning of 27.05.2012 is not on the same lines. Both spoke differently, though A-1 (Fateh Singh) and A-4 (Raj Kumari) would remain common factors. The reference in their statements to physical beating having resulted in some injury on the back of Rajni is not supported by any other evidence. The learned Additional Public Prosecutor conceded that neither the MLC nor the autopsy report would confirm this aspect. The theory of dispute involving Mohit concerning theft of cash from the *almirah* of Rajni indicates that possibility of grouses other than those arising out of dowry harassment being the root cause cannot be ruled out.

37. In the above mentioned facts and circumstances, the evidence of PW-2, PW-3 and PW-4 about harassment meted out to the deceased in the matrimonial home is also not found to be credible. Mystery remains as to why Rajni felt constrained to commit suicide within less than six months of her marriage. Some clue in this regard possibly lies in the revelations made by Jagdish Koli (PW-9) that Rajni was not

keeping well and she had been under treatment. The investigation unfortunately did not dig out any material as to what kind of ailment Rajni was suffering from and as to whether it could or would have any connection with the possible reasons for her to commit suicide.

38. Be that as it may, from the above facts and circumstances, this court finds it difficult to uphold the impugned judgment. Sufficient evidence has not come up to invoke presumption under Section 113-B of Indian Evidence Act or, for that matter presumption under Section 113-A of Indian Evidence Act, 1872. In the result, the impugned judgment and order on sentence are set aside. All the appellants are acquitted.

39. Appellant Fateh Singh continues to be in custody, while other appellants were enlarged by order dated 25.02.2019 on bail pending hearing on appeal. Appellant Fateh Singh shall be released from custody forthwith. Bail bonds and surety bonds of the other appellants stand discharged.

40. Trial court record be sent back forthwith.

41. Both the appeals stand disposed of in above terms.

R.K.GAUBA, J.

APRIL 02, 2019

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