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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 28.01.2020
Judgment pronounced on: 07.02.2020

+ CRL. L.P. 657/2018

STATE

....Petitioner

Through: Ms. Aashaa Tiwari, APP with Insp.
Gyaneshwat Singh, ATO/Seelampur

Versus

SAMEER ALI & ORS.

.... Respondents

Through: Mr. Surender Chauhan and
Mr. Gaurav Sharma, Advts with
respondents in person

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

1. The present leave petition is instituted on behalf of the State under Section 378(3) of the Code of Criminal Procedure, 1973, (hereinafter referred as “Cr.P.C.”) against the impugned judgment of acquittal dated 17.07.2018 passed by the Court of ASJ / Special Judge (NDPS), North East District, Karkardooma Courts, Delhi, (FIR No. 88/2012, P.S. Seelampur), registered under section 498-A/304-B/34 of the Indian Penal Code, 1860 (hereinafter referred as “IPC”) whereby the respondents were acquitted for the said offences.

2. The brief facts of the case as noted by the learned Trial Court are as under: -

“1. In the intervening night of 09/10.03.2012, an information was received at PS Seelampur which was recorded vide DD No. 33-A. It was informed that one Naaz w/o Sameer was admitted at Hindu Rao Hospital at about 11.40 p.m. Naaz was declared brought dead. The DD was marked to SI Mukesh Kumar. He alongwith Ct. Mahender Singh reached the hospital and collected MLC of Naaz. Relatives of Naaz were not found at the hospital. SI Mukesh alongwith Ct. Mahender Singh reached at the address mentioned in the MLC i.e. H. No. A-46, Gali No.4, Shastri Park, Delhi – 110053. It was found that Naaz was married about three years prior to her death. Therefore, concerned SDM was informed. The SDM reached the spot and recorded statement from one Saleem s/o Aash Mohd. who was brother of the deceased. The SDM handed over the statement to SI Mukesh Kumar for further action. SI Mukesh prepared rukka and got registered the FIR.

2. Saleem had alleged in his statement that Naaz was married to Sameer around three years ago. The middleman Suleman informed him that family of Saleem was not good family. The middleman told him that they would have to arrange non-veg food in the marriage and would have to spend huge money. Saleem alleged that they had given various articles in the marriage and spent around Rs.7 lakhs. He alleged that after 1 – 2 months of marriage, Naaz complained to him that her in-laws were torturing her for not bringing sufficient dowry. Naaz told him that she was beaten also by the in-laws. He stated that Naaz lived separately with Sameer on suggestion of Mahila Aayog but she had joined back the matrimonial house 4 - 5 months prior to her death. However, the in-laws again started torturing her. He alleged that on 10.03.2012 at about 12:45 am after midnight, he received call from cousin of Sameer and he informed him that

condition of Naaz was very bad and she was taken to hospital. They also reached Hindu Rao Hospital where they found that Naaz was having mark of knot on her neck and she was brought dead. He alleged that Sameer, his parents and his two sisters were responsible for death of Naaz.

3. FIR was registered u/s 498-A/304-B/34 IPC. Postmortem was got conducted. Body was handed over to relatives after postmortem. IO collected exhibits from hospital. He also collected mobile phone of the deceased found at the scene of crime. He arrested accused Sameer Ali. Sameer allegedly confessed to the crime. Copy of Nikahnama and list of dowry articles were also collected. Parents of Sameer i.e. Rahat Ali and Farzana were also arrested. Copies of proceedings conducted at CAW Cell, Kirti Nagar were also obtained. It was also found that father of the deceased had arranged Rs. 2 lakhs through loan from one Jagjit Singh by mortgaging his property. Money was ultimately paid to the accused persons. Exhibits were sent to FSL. After completion of investigation, chargesheet was filed u/s 498-A/304-B/34 IPC against Sameer Ali and his parents Rahat Ali and Farzana. No material was found against his sisters.

3. After compliance of Section 207 Cr.P.C, charges for offences u/s 304-B/34 IPC or in the alternative u/s 302/34 IPC and also u/s 498-A/34 IPC were framed against the respondents to which the respondents pleaded not guilty and claimed trial.
4. In order to bring home the guilt of the respondents, the prosecution examined 26 witnesses in all. The statement of the respondents was also recorded under Section 313 of the Code of Criminal Procedure wherein they pleaded their innocence by denying all the incriminating

circumstances and claimed to have been falsely implicated by prosecution. Respondents examined 05 witnesses in their defence.

5. Learned APP for the State *Ms. Aashaa Tiwari* opened her submissions by contending that the impugned judgment dated 17.07.2018 was based on conjectures and surmises; that the view taken by the learned Trial Court is contrary to the facts of the present case and that the prosecution has successfully proved its case against the respondents for the charged offences beyond any reasonable doubt.
6. Learned APP for the State argued that the learned ASJ failed to appreciate that the death of Ms. Naaz occurred in a short span of 3 years from the date of her marriage and that the deceased was subjected to cruelty by the respondents persons soon before her death in connection with demand for dowry, hence, the respondents are liable to be punished for the offence punishable under Section 498A/304B/34 IPC. In support of her contention, learned APP submitted that the father of the victim mortgaged his property in order to fulfill the demands of the respondent of Rs. 2 lakhs and placed reliance on the mortgage agreement (*Ex. PW-4/A*) placed on record.
7. Adding to the said contention, she deposed that the factum of cruelty is evident from the deposition of the prosecution witnesses who have deposed on the lines of the prosecutions' case and is corroborated by the Medical Evidence on record.
8. Learned APP for the State further contended that the evidence on record further reflects that the deceased was subjected to cruelty on

account of demand for dowry on previous occasions also which is evident from the proceedings before the CAW cell (*Ex. PW-3/C*).

9. Negating the contentions of the learned APP for the state, the counsel for the respondents **Mr. Surender Chauhan** argued that the trial court while taking into consideration the material available on record including but not confined to the depositions of the prosecution witnesses, medical evidence etc have passed the well reasoned judgment dated 17.07.2018 and the same does not call for this court's interference.
10. The counsel for the respondents further argued that the complaint which was filed before the CAW cell (*Ex. PW-3/B*) was compromised on 10.03.2011 wherein the deceased unequivocally deposed that she was having no grievance against her husband and it was decided that both the deceased and the respondent Sameer Ali will be living separately from the date of compromise before the investigating officer.
11. Adding to his submissions, the learned counsel for the respondents contended that the testimony of the prosecution witnesses reflects that there was no act of cruelty on the part of the respondents against the deceased and that the incidents narrated by them were all prior in time than the settlement before the CAW cell took place. Moreover, even the medical evidence on record reflects that apart from the ligature mark caused due to hanging, there were no injury marks on the body of the deceased which counters the story of the prosecution as to the deceased being subjected to physical torture in relation to demand for dowry.

12. Concluding his arguments, the learned counsel for the respondents contended that the witnesses brought in defence by the respondents have unequivocally deposed that there were no differences between the deceased and the respondents and they were living a happy life. So far as the contention relating to the mortgage taken by the father of the deceased is concerned, the learned counsel for the respondents contended that the documents relied on by the prosecution which are (*Ex. PW-4/A*) and (*Ex. PW-4/B*) reflect that the said documents are of sale and not mortgage which falsify the claim of the prosecution as to mortgaging one room in order to fulfill the respondents' demand of dowry. In terms of the aforesaid contention, the learned counsel argued that there exists no reason to interfere with the well reasoned judgment of the trial court.
13. We have heard the counsel for both the sides at length and carefully examined the impugned judgment along with the material available on record as well.
14. At the outset we deem it appropriate to refer to the ingredients of the offence under section 304B of the Indian Penal Code. In ***Criminal Appeal No. 724 of 2019*** titled ***Kashmira Devi vs. State of Uttarakhand and Ors.*** decided on **28.01.2020** the Apex Court has reiterated the ingredients of the offence punishable under section 304-B which are as under:

“18. The Appellant is convicted Under Sections 498-A Indian Penal Code and 304B Indian Penal Code - dowry death. For sustaining the conviction Under Section 304B Indian Penal Code, the following essentials must be satisfied:

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

(iv) such cruelty or harassment must be for or in connection with demand for dowry;

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

(Vide Kans Raj v. State of Punjab and Ors. (2000) 5 SCC 207 and Smt. Shanti and Anr. v. State of Haryana (1991) 1 SCC 371). ”

15. The facts of the present case are clear to the extent of principle (i) and (ii) as enumerated above. In the present case, we are confined only to the extent of determining whether the deceased was subjected to cruelty by the respondents soon before her death in connection with the demand of dowry.

16. In order to ascertain whether the deceased was subjected to cruelty soon before her death, we deem it appropriate to refer to the testimonies of the material witnesses. The prosecution has examined 26 witnesses to prove the charges against the respondents, however, we may discuss only the material witnesses at the present stage. PW-1 (Saleem) in his statement before the court has deposed as follows:

“Marriage of my late sister Naaz was performed with Sameer S/o Rahat Ali R/o Shastri Park on 02.04.2009. Fifteen days prior to the marriage date, the middle man

Suleman called me and my brother Alam Khan to his house and he told me that Sameer S/o Rahat Ali and his family is not a good family and you will have to spend lot of money in marriage "MURGE BAKRE KI ROTI KARNI PAREGI AUR SHADI KA BADA INTZAM KARNA PAREGA"

We spent huge amount, more than Rs.7 lakhs in the marriage and gave marriage articles including a motorcycle, double bed, washing machine, refrigerator etc. to the accused persons.

After about 1-2 months of her marriage, her in-laws started harassing her for bringing less dowry. After about 1½ year of the marriage, accused Sameer left my sister Naaz at about house and refused to take her back to her matrimonial house. During this period, the accused Sameer used to demand cash amount of 1 lac and 2 lacs on several occasions. He also used to demand a big car for himself. He sometimes demanded a golden chain from us.

About 8 days prior to her death, my deceased sister told me on phone to take her back to her parental house as she was fed up with the harassment caused to her by the accused persons. I asked her to bear the harassment for sometime and to pray with the God.

On 10.03.2012, at about 11.15 p.m., I received a telephone call from Saleem, who disconnected the telephone immediately. Thereafter, at about 12.45 mid night, I received a telephone call from the cousin of Sameer, who told me that my sister Naaz is serious and she was admitted at Bara Hindu Rao Hospital. I along with my brother and other relatives reached at Bara Hindu Rao Hospital, where doctors told us that she was brought dead to the hospital and they found signs of knot (Fanda) on her neck.

The Local SDM came there and recorded my statement vide memo Ex.PW1/A, which bears my signatures at point A. The SDM also recorded the statements of my father, brother and mother.

In his cross-examination, PW-1 (Saleem) has deposed as follows:

“.... It is correct that my late sister Ms. Naaz had made a complaint to CAW Cell, Kirti Nagar, after 1½ year of her marriage. It is correct that in the reconciliation proceedings before the CAW Cell, my sister had compromised the matter with her husband Sameer Ali and both started living separately. My younger brother Alam Khan used to accompany my late sister to CAW Cell, as I was unable to accompany her.

....It is correct that I have never visited the matrimonial house of my sister, after she filed the complaint in the CAW Cell. It is correct that I have never visited the house of my late sister, after she compromised the matter in the CAW Cell and started living with her husband, separately. Vol. My younger brother Alam Khan used to visit my late sister. I use a mobile phone. I had disclosed my mobile number to the police and I have not changed my mobile number for last about 10 years.

My sister had called me, 8 days prior to her death, through her mobile phone, on my mobile phone. I don't remember her mobile phone number now.

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It is wrong to suggest that even after compromise before CAW Cell, the relation between my sister and accused Sameer were good. The daughter of my deceased sister was born prior to the settlement in CAW Cell, but, I do not remember her date of birth. The said child is residing with the accused.

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.... My deceased sister had not called me on phone on 09/03/2012. I had seen injury marks on her hand and her stomach, besides the injury mark on her neck. She was having several haematomas on her head. It is wrong to suggest that the body of my deceased sister was not having injury marks as stated by me in court today.”

17. Another brother of the deceased, Alam Khan was examined as PW-3 who deposed as under:

“Deceased Naaz was my real sister. She was married to accused Sameer S/o Rahat Ali, accused present in the Court, correctly identified by the witness on 02.03.2009 at Community Centre, Ashok Nagar, Delhi. We had given Istridhan in the marriage as per our status i.e. Motorcycle, Fridge, Cooler, Washing Machine, Ahlmirah, Double Bed and other furniture, utensils, jewellery and other articles. After the marriage, my sister went to the house of accused at Shastri Park, Delhi. Immediately after the marriage, accused Sameer and his father Rahat Ali and mother Farzana, also present in the court today, correctly identified by the witness, started harassing my sister on account of insufficient dowry. Huma and Heena, the sisters of accused Sameer, are not present in the Court also started harassing my sister on account of insufficient dowry. All the accused persons used to demand a car and cash of Rs.10 lacs from my family including my father.

On 26.05.2010, my father had given Rs.2 lacs to accused Sameer and Rahat Ali on their demand, after mortgaging one room of our house, which was mortgaged with one Jagjeet Singh. Thereafter too, accused persons did not change in their behavior and used to give beatings to my sister and used to say Sameer is the only son in the family and we will get a large amount of dowry and a car, if he would married in another family. Huma and Heena also used to give beatings to my sister and used to say that they would get

gold chain, if Sameer would married in another family and they got only silver Pajeb. My sister told me that she was being given beatings by the accused persons, just after one or two days of her marriage. She also told me that the accused persons used to snatch the articles, given to her by us and hand over the same to the elder sister of accused Sameer, namely Samreen. She also told me that the accused used to give her beatings on trivial issues and some times they even step upon her feet, while she was sweeping the floor. She further told me that the accused used to taunt and harass her for insufficient dowry.

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On 09.03.2012, my sister Naaz (deceased) made call to my elder sister, namely Afsari at around 3.30 p.m. and told her that her susuralwala i.e. in-laws accused persons were giving beatings to her. Immediately, my elder sister Afsari informed me, at about 4.00 p.m. and told me to tell someone and to take back Naaz to our house and she also told me to visit Sher Mohd.

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....On 22.11.2010, my sister complaint at women cell. I can identify her hand writing and signatures. The complaint addressed to DCP, Nankpura is Ex. PW3/B, which bears signatures of my sister Naaz at point A, B and C and I also identify her signatures on other documents attached with Ex.PW3/B. The note sheet of proceedings of CAW Cell, Kirti Nagar Ex.PW3/C, which bears my signatures at point A & B and also bears signatures of my sister Naaz at point C, D, E & F. On 27.01.2011, at Women Cell the accused Sameer and his father manhandled with Naaz and said that “tu chahe jha chali ja tujhe jab tak vapas leke nahi jayenge jab tak unki demand puri nahi ho gi”. In this regard, on 30.01.2011, complaint at PS Hari Nagar was made by my sister Naaz, which is Ex.PW3/G, which bears her signatures at point

A. After many dates, on 22/02/2011 settlement arrived and Sameer took my sister Naaz to rented accommodation. For some period Sameer kept my sister Naaz properly and thereafter, he succeed to get closed the complaint Naaz, on 10.03.2011. The accused Sameer did not mend his behavior and he used to raise his illegal demands of dowry form my sister Naaz and because of that my father gave money to the accused on different occasion and when, my father stopped giving money to Sameer, he took my sister Naaz back to the matrimonial house at Shastri Park.

On 09.03.2010, prior to death of my sister Naaz, I had talked with her on phone many times and she told me that Sameer, Rahat Ali, Farzana, Huma and Hina are giving beatings to her with belt and asking her to bring money from her house.

In his cross-examination, PW-3 (Alam Khan) has deposed that:

I know Jagjit Singh. I do not remember as to when and how I met Jagjit Singh for the first time. Vol. It's been almost four years as on date since I know him. I was present when my father took Rs. 2,00,000/- (two lakhs) from Sh. Jagjit Singh. It is correct that my signature does not appear on Ex. PW4/A & Ex. PW4/B. It is incorrect to suggest that my father sold the property to Sh. Jagjit Singh and not mortgage the same.

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.....It is correct that accused persons along with their family members were present at their house at Shastri Park when we reached there. It is correct that none of the accused persons tried to flee from the spot. It is incorrect to suggest that the house was not found bolted from inside or that despite our shouting accused did not open the door. It is wrong to suggest that accused Sameer and Rahat did not come at the balcony of the house or that

they did not say that they had a lot of money or that we cannot do anything against them.

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It is correct that my sister withdrawn the complaint from the CAW Cell as my sister and her husband Sameer amicable settle their dispute. It is correct that my sister, her husband Sameer and their daughter started living separately on rented accommodation. It is correct that they were living happily at the rented accommodation. Vol. they lived happily for sometime. It is correct that in my religion majority of members are non vegetarian and eat Murga-Bakra happily. Vol. it is not so common in the area where I reside. It is wrong to suggest that my father had not spent more than Rs. 7-8 lakhs on the marriage of my sister Naaz. It is wrong to suggest that Sameer did not use to make threatening calls to my sister or that he did not use to say her that he would not take her back unless his demands are fulfilled.

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....It is correct that my sister did not make any complaint from 10.03.2011 to 09.03.2012 to the police against her husband, in laws and other family members. Vol. she used to make complaint to us during the said period. It is correct that we did not report the matter to the police or to the CAW Cell upon receiving the complaints from my sister.

18. PW-5 (Aas Mohammad) in his examination-in-chief has deposed as under:

"I am having five daughters (including deceased) and three sons. My daughter Naaz @ Ruksana (deceased) was married on 2nd April, prior to about three years ago of the death of Naaz with Sameer S/o Rahat Ali R/o Shastri Park, Delhi. The married was performed according to Muslim Rituals and Rites at Shastri Park. In the marriage of my daughter, I have spent money more than to my capacity and I gave dowry i.e. motorcycle,

fridge, cooler, bed, sofa, utensils, jewellery of gold and silver and other items. After the marriage, my daughter was taken by Sameer and his family and all the dowry articles were also taken by her in-laws to the matrimonial home of Naaz. My daughter Naaz visited my house, after about 3 days of her marriage.

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On 08.03.2010, my daughter Naaz gave birth to a girl child in Hindu Rao Hospital and it was a sezarian birth and when doctor demanded blood for Naaz, thereafter, Rahat Ali and Sameer refused to give blood and thereafter, my son Alam Khan gave his blood. After the delivery, the aforesaid accused persons started harassing my daughter Naaz on account of giving birth to a girl child and they used to say to my daughter that they want a boy and not a girl. Thereafter, the accused persons started raising their demand.

On 26.05.2010, I mortgaged one room of my house with Jadish Singh S/o Charan Jeet Singh R/o 1/26, Subhash Nagar, Delhi for Rs.2,00,000/- because the in-laws of Naaz used to torture and harass her for not bringing sufficient dowry. Thereafter, I gave the said Rs.2,00,000/- to Sameer and Rahat Ali. The documents regarding the mortgage were handed over to police by Jagjeet Singh. The photostate copy of the mortgage agreement is marked as Ex.PW4/A, which bears my signatures at point A, respectively and photostate copy of receipt is Ex.PW4/B, which bears my signatures at point A and B.

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I gave Rs.2 lacs to Rahat Ali and Sameer on the same day, when I executed the agreement and received amount from Sh. Jagjeet Singh. After about 10-15 days, my daughter Naaz was given beatings by her in-laws and accused Sameer, Huma and Hina and Farzana had left Naaz near to my house and went away. Thereafter, on the next day, the accused Sameer told me to keep Naaz at my house. Naaz thereafter, made a complaint at Women

Commission. Accused Sameer, thereafter, compromised with Naaz. After that, Naaz and her daughter started residing with Sameer at separate accommodation at Shastri Park.”

19. PW-6 (Shahnawaz) was examined before the court who has deposed that:

“...In order to meet the demands of Sameer and his parents, my father had mortgaged our house No. WZ-668, Tihar Village with Jagjeet Singh for Rs. 2 lakhs and thereafter, my father gave Rs. 2 lakhs to accused Sameer. After about 10-15 days of giving money Rs. 2 lakhs, my sister was turned out from her matrimonial house and she was left near to our house by Sameer, Uma, Heena and Farzana. Regarding the harassment and cruelty made by the accused persons to Naaz, she made a complaint at Kirti Nagar, CAW Cell.

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Around 10 or 15 days before the death of my sister a phone call was made by Naaz to my brother Saleem and she told that she used to be beaten by Sameer and Rahat Ali with belt and her mother-in-law and sister-in-laws joined them in giving beatings to her and they could kill her because of dowry demands. My brother made to understand her that everything would be settled in couple of days. On 09.03.2012, I and my parents were present at Gand Nagla near Garh Baksh near Garh Mukteshwar, UP and in the evening at about 5.00 or 6.00 p.m., a phone was received by me from my brother Alam Khan, wherein, he told me that Naaz is being beaten by her in-laws.”

20. The mother of the deceased, Zamila was examined as PW-7 who deposed that:

“I am having 8 children including deceased Naaz. My daughter Naaz was married on 02.04.2009, with Sameer

Ali S/o Sh. Rahat Ali, according to Muslim rites and ceremonies. We had spent a sum of about Rs. 7-8 lakhs in her marriage. We had given the articles like Motorcycle, TV, Fridge, Cooler, Alhirah, Washing Machine, Double Bed, Sofa, Brass and Cooper Utensils and other articles for her use, in her marriage. After her marriage, she started living at her matrimonial house at Shastri Park, with the accused persons.

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On 26.05.2010, we let out our house at Tihar Village on lease and took a loan on it and paid a cash amount of Rs. 2 lakhs to Rahat Ali and Sameer Ali, to meet their demands. Thereafter, they treated Naaz better, for some time, but, thereafter, they again started treating her with cruelty.

After about 1½ year of her marriage, Naaz gave birth a daughter at Hindu Rao Hospital and thereafter, the accused persons again treated her with cruelty and said that they were expecting a boy child form her. On objecting the taunts of the accused persons, she was again given beatings by the accused persons.

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Thereafter, my daughter lodged and written complaint at PS Hari Nagar, when, she was receiving repeated threatening calls from the accused persons. My daughter also lodged a report at Crime against women cell and in the said proceedings, the matter was got compromised, with the help of the police officials and the accused Sameer Ali agreed to reside separately from her family members, with my daughter Naaz, in a tenanted accommodation. Accused Sameer Ali also got her complaint settled at Crime Against Women Cell. Thereafter, he again started giving beatings to my daughter Naaz and started demanding money from her. Thereafter, I paid cash amount of Rs. 5000/- on one occasion and a cash amount of Rs.7000/- on another occasions. After about 2-3 months, he again shifted to his parental house. Thereafter, all the accused persons again

started giving beatings to my daughter Naaz on the demands of bringing dowry. When, my daughter used to clean the floor, accused Farzana used to her give beatings on her hands with her feet. My daughter also used to tell me that accused Heena and Huma also used to taunt her and they also used to incite accused Farzana to commit cruelties on my daughter Naaz.

About 10-15 days prior to her death, accused Sameer Ali had visited our house with my daughter Naaz and their daughter. Even at that time, accused Sameer Ali quarreled with us and started hurling abuses on us and my daughter. My daughter refused to go back to her matrimonial house with accused Sameer Ali. She also told me that accused Rahat Ali, Farzana and Sameer shall kill her, for their demands of dowry. Accused Sameer Ali forcibly took her back to her matrimonial house.

In her cross-examination PW-7 (Zamila) deposed that:

It is wrong to suggest that our house at Tihar Village was sold by my husband and not given on lease. It is further wrong to suggest that my husband paid Rs. 2 lakh to Rahat Ali and Sameer Ali to meet their demands. It is correct that my grand daughter namely Mahira is still residing with the unmarried sisters-in-law of my deceased daughter."

21. PW-19 (Afsari) the sister of the deceased has deposed as follows:

"I am house wife. Deceased Naaz was my younger sister who was married with accused Sameer S/o Rahat Ali R/o A-46, Gali No. 4, Shastri Park, Delhi on 02.04.2009 according to Muslim Rites and Customs. My parents had spent about Rs. 7,00,000/- in the marriage of my deceased sister Naaz. In the marriage, refrigerator, cooler, double bed and motorcycle and jewellery articles of gold & silver and other articles like brass utensils, clothes etc. were given in the marriage. Rahat Ali had asked to provide "Murga Bakre Ki Roti" and to make

lavish arrangements “Bade Intezam”. We provided “Murga Bakre Ki Roti” and made lavish arrangements “Bade Intezam” in the marriage.

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On this, my father had given Rs. 2,00,000/- after mortgaging one room to Mr. Jagjeet Singh. Farzana, Huma, Heena, Sameer and Rahat Ali used to give beatings to my sister with belt for the issue of bringing more dowry. My sister was blessed with a daughter namely Mahi. Even after birth of Mahi, they continued harassing my sister that she had given birth to a female child and they wanted a male child. When Mahi was six months old, Sameer and his all three sisters beaten my sister and left her at my parental house. When Naaz was staying in our parental house, Sameer and his family members used to threaten her that they will not take her back till their demands were met. They also used to threaten that they would kill my sister Naaz and her daughter Mahi.

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Then, my sister made a complaint against them in Crime Against Women Cell (CAW Cell) at PS Kirti Nagar on 22.11.2010. However, matter was mutually settled in CAW Cell and my sister and Sameer Ali had started residing separately in a rented accommodation. Even then, Sameer used to pressurize my sister for bringing money from her parents and my sister used to take money i.e. sometimes Rs.5,000/-, sometimes Rs.6,000/-, sometimes Rs.10,000/- from my father or mother for giving to Sameer Ali. They stayed in the rented accommodation for 3-4 months and during that time, Sameer Ali used to demand money from my parents through my sister. Thereafter, Sameer Ali wanted to take my sister to his parental house.

In her cross-examination PW-19 (Afsari) has deposed that:

It is correct that the dispute between my sister and her husband Sameer was settled on 10.03.2011 before the CAW Cell. It is correct that my sister stayed in rented house along with her husband and daughter separately for 5-6 months and not for 3-4 months. (Vol. I did not remember the exact period and I stated 3-4 months on the basis of guess. It is correct that when I talked or met my sister during the time she was staying separately, she had not discussed anything regarding her father in law, mother in law and her sisters in law. It is correct that during that time, my sister Naaz made no complaint against her father in law, mother in law and her sisters in law.

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It is incorrect to suggest that my father had not given Rs. 2,00,000/- ”

22. From the perusal of the testimonies of the prosecution witnesses, it is evident:

- That the deceased was subjected to cruelty for dowry after her marriage and a complaint (**Ex. PW-3/B**) against the respondents was filed by the deceased with the CAW cell after about 1 ½ years of her marriage. However, it is evident from the testimonies of the material witnesses as well as the record of the CAW cell (**Ex. PW-3/C**) that the same was settled before the CAW cell on 10.03.2011 with the condition that the deceased will live separately with the respondent Sameer along with her daughter;
- That after the said settlement before the CAW cell, the deceased along with her husband lived in a separate

accommodation for some time, however, shifted back with the rest of the respondents after 2-3 months which is evident from the testimony of PW-7 (Zamila) wherein she has deposed that “After about 2-3 months, he again shifted to his parental house.”;

- That though the prosecution witnesses have deposed that the deceased was subjected to cruelty by the respondents even after the settlement dated 10.03.2011 took place before the CAW cell, however, there is nothing on record to show that the deceased or any of her relatives made a complaint to the police or to the CAW cell. Moreover, the record is also clear that the deceased had condoned the act of cruelty and started living together with the respondents;
- That there is no documentary evidence on record to prove the alleged phone call made by the deceased to PW-1 (Saleem) eight days prior to the alleged incident;
- That the reliance on the documents (**Ex. PW-4/A**) to prove that the father of the deceased mortgaged a room to one Jagjit Singh in order to fulfill the demand of Rs. 2,00,000/- as dowry does not hold good as the document on the face of it reflects that the same is a sale agreement and not a mortgage agreement. Moreover, there is nothing on record to prove that the said amount was transferred to any of the respondents.

23. Having perused the testimonies of the material witnesses, we deem it appropriate to refer to the medical evidence on record. Dr. M.K. Panigrahi examined the deceased and prepared the post-mortem report

(Ex. PW-4/A) and was put to stand as PW-4. In his statement before the court, he has deposed as under:

“On 10.03.2012, I was posted as CMO, Forensic Medicines at Hindu Rao Hospital, Delhi. On that day, at about 1.20 p.m. I had conducted postmortem examination on the dead body of deceased Naaz @ Rukhsana W/o Sameer vide PM Report No. HRH/23/12.

On External Examination: There was a ligature mark in the form of superficial pressure abrasion, brownish black in colour and measuring about 27 cm long and varying width with maximum width of 4 cm present on the anterior aspect of the neck over and above the thyroid cartilage of neck. On the left side, it runs upwards and backwards and is placed about 2 cm below the left angle of the mandible and 5 cm below the left mastoid process to end on the lateral aspect of left side neck. On the right side, the ligature mark runs upwards and backwards to be placed at 4 cm below the right angle of the mandible and 8 cm below the right mastoid process and ends on the right lateral aspect of the back of the neck. The ligature mark was discontinued on the back of the neck, which measures about 11 cm long. No other visible recent external injuries detected on the body of the deceased.

On Internal Examination: All the organs were found intact and congested. Trachea was found intact with mucosa congested. Both the lungs were found intact, oedematous and congested the meninges and the brain were found intact and congested. Viscera and clothes of the deceased were preserved, sealed with the seal of FMHRH and alongwith the sample seal handed over to IO.

In my opinion, the cause of death of the deceased in this case could be possible due to asphyxia. The ligature mark i.e. the external injury No. 1 of the PM report was antemortem in nature and could have been

caused by constriction of the neck by a ligature material around the neck. The time since death, at the time of postmortem examination was about 14 to 17 hours approximately.

xxxx xxxx xxxx xxxx
I have seen Chemical Analysis of Viscera report no. FSL2012/C-2714 dated 16.05.2013 on the judicial record. After going through the Viscera report as per which no common poison was detected in the Viscera of the deceased, I am of the opinion that death of the deceased in this case was due to asphyxia consequent to antemortem hanging.

In his cross-examination PW-4 (Dr. M.K. Panigrahi) has deposed that:

I do not know as to who brought the deceased to the Casualty of the hospital. There was no other visible external injury present on the body except the ligature mark. No definite opinion can be given regarding the exact nature of ligature material. The death of the deceased was caused due to asphyxia consequent to hanging.

24. From the perusal of the testimony of PW-4 (Dr. M.K. Panigrahi) it is evident that the cause of death of the deceased was asphyxia consequent to antemortem hanging. Moreover, the testimony of PW-4 (Dr. M.K. Panigrahi) further makes it clear that there were no other visible external injury present on the body except the ligature mark. In addition to the aforesaid, the factum of physical assault on the person of the deceased is further ruled out from the testimonies of the defence witnesses. DW-1 (Praveen Sharma), the neighbor of the respondents has deposed that:

“Accused persons are my neighbour since long, I know them for the last 35 years. Accused Sameer was married with deceased Naaz on 02.04.2009. I had also attended

the said marriage. The behaviour of accused Sameer as well as his family members towards Naaz was good and cordial. Even both the families i.e. family of accused and family of Naaz were also on good terms. I did not notice any quarrel or dispute between Naaz and accused persons.

I had also attended celebration of birth of daughter to Naaz and Sameer. I say that family of Sameer was happy due to birth of the girl child. The family members of Naaz had not attended the said function.

On 09/10.03.2012 at about 10:30/11:00 pm, I was present at my home. I came to know that Naaz had committed suicide. Prior to her death, I did not notice any quarrel or fight between Naaz and accused Sameer or any of his family members. One day prior to death of Naaz, I had visited house of accused persons as accused Rahat Ali had come from hospital on that day. Naaz had even offered me tea. I did not sense any dispute between Naaz and accused persons. Even Naaz never complained to me about any ill-treatment by the accused persons. The accused persons are family of good-natured people and are well behaved in the society.

In his cross-examination DW-1 (Praveen Sharma) has deposed that:

Naaz had lived separately from her in-laws with her husband for about 5-6 months. It was 7-8 months prior to her death. The house of the accused persons is big one. It is wrong to suggest that Naaz started living separately because of ill-treatment and torture by her in-laws/accused persons. (Vol. in fact Naaz herself wanted to live separately but after separation, she used to come for whole day to the matrimonial house). House of accused persons is adjacent to mine. I used to visit house of accused persons at least every month. (Vol. There was no fixed schedule). Naaz had also visited my house once or twice. I had heard that Naaz had filed a complaint against the accused persons with Women Commission. I

am not aware if the Women Commission gave any directions to the accused persons. It is wrong to suggest that Naaz was being tortured for bringing more dowry or that she used to be beaten in this regard. It is wrong to suggest that being neighbour of the accused, I am giving evidence falsely in their favour. It is wrong to suggest that I am deposing falsely.”

25. The testimony of DW-1 (Praveen Sharma) finds corroboration from the testimonies of the other defence witnesses who have all deposed on the lines of DW-1 (Praveen Sharma).

- DW-2 (Shahbuddin) has deposed that One day prior to 09.03.2012, I had visited the house of accused persons. The atmosphere in the house was cordial. Naaz had even offered me tea and snacks. I did not notice any dispute between Naaz and accused persons. Even Naaz never complained to me about any ill-treatment by the accused persons.
- DW-3 (Mohd. Farukh) has deposed that I was not having any interaction with Naaz however, she used to interact with my wife and children in my house. Naaz never complained to my wife about any ill-treatment or torture by accused Sameer. Naaz was having a daughter with her and she used to visit my house along with her.
- DW-5 (Begum Anisa) has deposed as I had regular interaction with Naaz (since deceased) as the window of my house and the window of house of Naaz were facing each other and there was a distance of about 8 feet between the windows. We used to talk regularly while standing on the window and also deceased

Naaz used to visit my house on several occasions. During my meeting with Naaz she had never made any complaint against her husband and any of her in-laws. Naaz was having very cordial relation with her husband and in-laws.

26. Hence, the medical evidence on record when read along with testimony of the defence witnesses reflects that there was no quarrel between the respondent Sameer Ali with the deceased and the deceased was not subjected to any kind of physical assault soon before her death.

CONCLUSION

27. What constitutes “**soon before death**” for the offence punishable under section 304B of the IPC has been elaborately dealt in ***Criminal Leave Petition No. 474/2015*** titled ***State vs. Sandeep Kumar and Ors.*** decided on **27.01.2016** wherein one of us (*Sangita Dhingra Sehgal, J.*) was a member. The relevant portion has been reproduced hereunder:

“9. In Raman Kumar Vs. State of Punjab (2009) 16 SCC 35, Hon'ble Supreme Court observed:

"13. The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows:

- (i) The death of a woman should be caused burns or bodily injury or otherwise than under a normal circumstance.*

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

14. xxxxxxxxxxxx

15. xxxxxxxxxxxxAs per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of a woman, (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC.) '

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand of dowry.

(4) Such cruelty or harassment was soon before her death.

16. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present, with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession

of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

10. In *Amar Singh v. State of Rajasthan* (2010) 9 SCC 64, Hon'ble Supreme Court observed:

"29...What is punishable Under Section 498-A or Section 304-B Indian Penal Code is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113-B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death within the meaning of Section 304-B Indian Penal Code. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death."

28. Applying the aforesaid principles to the present case, the findings are twofold. Firstly, the act of cruelty on the part of the respondents for which the complaint was registered before the CAW cell *cannot be said to have a proximate link* with the death of the deceased as it has come on record that the deceased was living happily with the respondents and there is nothing to the contrary on record. Secondly, the medical evidence negates the existence of any act of cruelty *immediately before the death* of the deceased wherein it has come that there were no injuries apparent on the person of the deceased.
29. Hence, in terms of the above discussion, there is nothing on record to prove that the deceased was subjected to cruelty in order to fulfill the demand for dowry by the *respondents soon before her death*. Consequently, the presumption of section 113B of the Indian Evidence Act cannot be raised against the respondents in the present case.
30. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. Further, the power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused. The Apex Court while dealing with the powers of an appellate court in an appeal against acquittal, in ***Sampat Babso Kale and Ors. vs. The State of Maharashtra*** reported in ***AIR 2019 SC 1852*** held as under: -

“7. With regard to the powers of an appellate court in an appeal against acquittal, the law is well established that the presumption of innocence which is attached to every Accused person gets strengthened when such an Accused

is acquitted by the trial court and the High Court should not lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanour of witnesses. This Court in the case of Chandrappa and Ors. v. State of Karnataka (2007) 4 SCC 415, laid down the following principles:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of

innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the Accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

31. For the abovementioned reasons, this Court does not find any reason to interfere with the impugned judgment.
32. Accordingly, the present leave petition, being bereft of merit, is dismissed.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

FEBRUARY 07, 2020
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