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(223)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of Decision: 12.09.2024

ANIL KUMAR

... Appellant

Versus

HARISH & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vikrant Rana, Advocate
for the appellant.

Ms. Shubhra Singh, AAG, Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 07.12.2023 passed by the Additional Sessions Judge, Faridabad.

2. The FIR of the present case was registered on the complaint of Anil Kumar son of Daya Ram, on the allegations that the marriage of his daughter Khushbu was solemnized with Harish son of Sh. Ramesh in village Neemka on 14.2.2020 and he had given sufficient dowry to her in-laws, including a Brezza car, TV, Fridge, AC and other household articles alongwith gold of around Rs.10 lakhs and cash. Soon after the marriage, in-laws of his daughter started harassing his daughter and demanded a big car. Marriage of his younger daughter was solemnized with Sagar, younger son of

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Ramesh, in the same family. On 2nd November, at around 4.30 p.m., Ramesh called from his mobile no.8700638643 on his mobile no.9811000242 and informed that his daughter had fallen sick. When he reached the matrimonial home of his daughter, the husband of the deceased informed him that his daughter had committed suicide by hanging herself. His younger daughter was unconscious and he was also not allowed to see the dead body of his daughter. He and his family members were agitated that their daughter was cremated without their consent and in a hurried manner. On 3rd November, at around 9.00 PM, his wife and other relatives brought their second daughter back. Thereafter, she narrated the incident to them that on the night of 1st November, at around 11.30 p.m., mother-in-law Anita, father-in-law Ramesh and husband of Khushbu started beating Khushbu mercilessly. She could hear her screams but the door was bolted from inside and she was screaming “bachhao bachhao”. The younger daughter was praying to open the door but after some time she could not hear her sister’s voice anymore. Then they opened the door. Her mother-in-law came out and grabbed her neck and her father-in-law snatched her mobile phone. Harish threatened her. Harish and his father took the dead body of Khushboo to the terrace and hanged it there and threatened Muskan not to tell anyone. Muskan narrated the entire incident to him. A prayer was made for taking action against the accused persons. On this, the present FIR was registered.

During Investigation, statements of the witnesses were recorded under section 161 Cr.P.C. The accused were arrested. Their disclosure

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statements were recorded. Rough site plan was prepared. After completion of investigation, police report under section 173 CrPC was prepared and filed in the Court against accused Harish and Anita.

3. From the police report as well as the accompanying documents, a *prima-facie* case for offences under Sections 498-A, 304-B (in the alternative section 302 IPC) were found to be made out against the accused Harish and he was charge-sheeted accordingly vide order dated 2.3.2022. However, a supplementary challan against accused Anita was filed on 14.6.2022 and after making compliance of Section 207 Cr.P.C, the same was committed the case to the court of Sessions. Accused Anita was charge-sheeted for commission of offences punishable under sections 498A, 304B IPC (in the alternative Section 302 IPC) vide order dated 13.7.2022. The accused persons pleaded not guilty to the charge framed and claimed trial.

4. In order to prove its case, the prosecution examined nine witnesses and thereafter closed its evidence. The brief resume of these witnesses is as under:-

PW-1 Muskan deposed that they were four brothers and sisters. She and her elder sister Khushboo were married on 14.2.2020 to brothers namely Harish and Sagar both sons of Ramesh Kumar, resident of village Neemka, Faridabad. In their marriage, her father had presented sufficient dowry including a Brezza car, cash and house hold articles etc. However, the accused were not happy with the dowry presented in the marriage and were harassing her and her sister for demands related to dowry. Her father-in-law

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Ramesh, mother-in-law Anita and Harish, husband of Khushboo used to torture her due to which she had suffered a miscarriage on two occasions. They used to constantly keep vigils upon her and never provided her proper meals. On the occasion of 'Karvachauth' her father paid Rs.1 lakh in cash and gold worth Rs.2 lakh as the accused constantly used to torture her saying that insufficient dowry had been presented in the marriage. She used to visit her in-laws house occasionally i.e. 3-4 times only. Her father used to tell them that it would take some time for them to adjust in the marriage and used to tell them that over a period of time, things would ill get normal but the behaviour of the accused did not show any change. When for the first time, her mother-in-law Anita slapped her, she complained about the same to her husband Sagar but he told her that he would hear nothing against his mother and that she should do as per the directions of her mother-in-law. Prior to 1.11.2021, the Brezza car had met with an accident while it was driven by Harish. On this her in-laws demanded that her father should present a bigger car to them. Her sister stated that their father was doing a private job and could not afford to purchase a new bigger car and present to her in-laws. On the night of 1.11.2021, her in-laws started fighting with her sister and in the morning, she was directed to stay in her room and keep quite. At about 11.30 p.m. on 1.11.2021, Harish had come home in a drunken condition and on his arrival, all of them started assaulting her sister in the room. Then she requested her husband Sagar to intervene but he refused to do so stating that they should not interfere and that his parents would sort the matter and he left

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the room. Since her husband had refused to assist, she herself went to the room of her sister which was locked from inside and she could hear the cries of her sister Khushboo. After some time, the cries of her sister stopped and then the room was opened from inside and Harish, Anita and Ramesh came out from the room. Her mother-in-law Anita caught hold of her neck and her father-in-law Ramesh snatched her phone and they both threatened her that she would also meet the fate of her sister and she was told to go and lie down quietly in her room. Thereafter, three of them took her sister to the roof and an attempt to show that it was a case of suicide rather than murder was made. She was also threatened that in case she narrated the incident to anyone, they would also kill her like her sister. Her husband Sagar brought her sister down from the first floor and her mother-in-law Anita applied lipstick and bindi and put ear rings in the earlobes of her sister. She was again threatened that in case she complained to anyone she would also meet the same fate as that of her sister Khushboo. She was not allowed to meet her parents. She was perplexed as to what had happened. On 3.11.2021, her mother Smt. Shashi came to take her to her parental house. She was not allowed to meet her. Her mother was accompanied by their relatives under whose pressure and insistence she was allowed to meet her mother. However, before she left, the accused threatened her that in case she narrated the occurrence to her parental family, she would also be killed like her sister. However, she accompanied her mother and other relatives to her parental village. Since she was scared and under fear, she did not narrate the occurrence to her parental family as

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the accused also threatened her at some point of time she would have to come back in the house and same fate would be met as that of her sister. On the intervening night of 6.11.2021 and 7.11.2021, she disclosed the entire incident to her father as her parents had assured her that they would not send her back to her in-laws house against her wishes. The mobile phones of her deceased sister Khushboo and her phone were still in the possession of accused as both the phones were snatched on 1.11.2021. Her statement was recorded by the police under section 161 Cr.P.C. but whatever she stated to the police was not completely recorded by them. Harish, the husband of her deceased sister also possessed illegal weapons. During her cross-examination, she stated that the mediator for their marriage was one Jaggi. He was distantly related to her from her parental side. Her father-in-law Ramesh was probably working in SSF. Her mother-in-law Anita was a house wife. She was told that her in-laws possessed one killa of land in the village but she was not sure about the same. The Brezza car presented in the marriage had met with an accident on three occasions and on all such occasions it was being driven by Harish. After their marriage on 14.2.2020, she stayed at the house of her in-laws till 19.2.2020. On 22.2.2020, she had come to her in-laws house for the ceremony of 'Mandhajhanki' and returned back to her parental home on 27.2.2020. Her statement under section 161 Cr.P.C. was recorded on 17.11.2021 at police station Sadar Ballabgarh. At that time, she was accompanied by her father, uncle Sunder, grandfather Daya Ram, Sanjay, another grand father Balraj and other relatives namely

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Fire Ram, her bhua Nisha, Baba Hansa and many other relatives whose names she then did not remember. The I.O. of the case had snatched the paper from her and then forcibly got her to sign without letting her read the statement. She had signed her statement after much resistance from the IO. The defence counsel requested the Public Prosecutor to produce on court record any such signed statement of the witness. She and her family did not make any complaint about the same either to the SHO, ACP, DCP or CP Faridabad regarding her grievance about the manner in which the IO had himself recorded her part statement. Since she was pursuing her graduation at Rithoge Govt. College, she used to stay at her parental home and after her marriage, she would have probably spent a period of 10-15 days at the house of her husband in village Neemka. After their marriage, her sister Khushboo had started staying with her husband since March 2020. However, she continued to stay with her parents due to her studies. On 25.3.2020/26.3.2020, her sister was assaulted by the accused for the first time. She had not narrated any such date of the assault upon her sister to the police while making her statement under section 161 Cr.P.C. She admitted that in the statement Ex. PW1/D1 there was no mention of the accused keeping vigil on her sister and not providing her proper meals. She also admitted that in her statement Ex. PW1/D1 there was no mention that on the occasion of Karvachauth, her father presented Rs. 1 lakh in cash and gold worth Rs. 2 lakh due to the constant torture and demand by the accused. She also admitted that in her statement Ex. PW1/D1 there was no mention of her

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mother-in-law Anita slapping her or complaining to her husband Sagar about the same or his refusal to interfere on the ground that he would hear nothing against his mother. She admitted that in her statement under section 161 Cr.P.C. there was no mention of any accident of the Brezza car driven by Harish or that her in-laws demanded that her father should presented a bigger car to them. She also admitted that in her statement under section 161 Cr.P.C. there was no mention of any occurrence of beating of her sister having taken place on the morning of 1.11.2021 or of Harish having come home in a drunken condition or that on his arrival they all started assaulting her sister in the room. She also admitted that in her statement under section 161 Cr.P.C. there was no mention of her requesting her husband Sagar to save her sister and his refusal to come to the assistance of her sister. She also admitted that in her statement under section 161 Cr.P.C. there was no mention of her sister being taken inside the room, or it being locked from inside or of her being assault inside the room by accused Harish, Ramesh and Anita. She also admitted that in her statement under section 161 Cr.P.C. there was no mention of her mother-in-law catching hold of her neck and her father-in-law Ramesh snatched her mobile phone or threatening that in case she did not go to the room, she would also meet the same fate. She admitted that in her statement under section 161 Cr.P.C. there was no mention that the three of them had taken up her sister to the roof in an attempt to show that it was a case of suicide rather than murder. She admitted that in her statement under section 161 Cr.P.C. there was no mention of her mother-in-law applying

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lipstic, bindi and ear-rings in the earlobes or that she was threatened that in case she would complained to anyone, she meet to the same fate of her sister Khushboo. She admitted that in her statement under section 161 Cr.P.C. there was no mention that having returned back to her parental home on 3.11.2021, she remained scared and under fear and for the first time she narrated the occurrence to her family on the intervening night of 6/7.11.2021. She had not stated to the police in her statement under section 161 Cr.P.C. Ex. PW1/D1 that on coming home on 3.11.2021, she had narrated the entire occurrence to her parents on the same day (confronted with portion A to A1 of Ex. PW1/D1 where it was so mentioned and rather it was mentioned that after coming home on 3.11.2021, she had narrated the entire happening to her parents on the same day). She admitted that the last rites of her sister were performed on 2.11.2021 in village Neemka. She did not know as to which member of her parental family had participated in the last rites of her sister on 2.11.2021. Volunteered she was not allowed to meet any of her family members. She denied the suggestion that her sister was under going treatment since 15.5.2021 firstly at Arogya Panchakarma Centre, Kavi Nagar Ghaziabad under Doctor J.S.Dabbas for complaints relating to headache, poor appetite, mood swings, constipation, sudden calmness. She denied the suggestion that her sister Khushboo had suffered two abortions because of the above mentioned issues and not because of any harassment, torture or any maltreatment at the hands of accused. Volunteered her sister did not have any such medical issues and she was perfectly healthy. She admitted that her

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sister Khushboo was dressed up like a bride prior to her cremation. She volunteered to state that this was done by her mother-in-law on the intervening night of 01.11.2021 and 02.11.2021, after bringing the body of her sister down from the roof. She denied the suggestion that her sister was dressed up as a bride prior to her cremation by her mother any other female family or that she had assisted them in doing so on the morning of 02.11.2021 after the arrival of her family members. She denied the suggestion that the accused did not harass her or her sister for demands related to dowry or any other reason. She denied the suggestion that she and her sister were treated with utmost respect, love and affection by the accused. She denied the suggestion that her sister was depressed because of her inability to conceive and her repeated miscarriages/abortions due to her ill health. She denied the suggestion that accused provided her medical treatment spread over a period of time and at various hospital/nursing homes for her medical issues. She denied the suggestion that because of the depressed state of mind of her sister due to her medical issues, she committed suicide on the roof of the house. She denied the suggestion that the accused had not murdered her sister nor abetted or instigated her suicide in any way.

PW-2 Anil Kumar is the complainant of this case. He deposed that he had three daughters and one son. His daughter Khushboo was married with Harish on 14.2.2020. During this marriage, he had presented sufficient dowry articles viz, AC, fridge, gold worth of Rs. 10 lakh etc. After getting the marriage, the member of her in laws family used to torture her by demanding

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a bigger car in dowry. His younger daughter Muskan was also married on the same day to Sagar, the younger brother of Harish. On 2.11.2021 in the morning, he received a call from mobile number 8700638643. He told him that his daughter Khushboo had suddenly fallen sick and on this intimation, he reached there, Ramesh told him that his daughter had committed suicide by hanging herself. He tried to meet his younger daughter but they told that she was unconscious. He tried to see the dead body of his daughter but they did not let him do so and because of this, he was very disturbed. They performed the last rites of his daughter in a hurry. On 03.11.2021, his wife accompanied by some relatives went there and with great difficulty she managed to bring her younger daughter Muskan back to their house and reached home at about 9.00 pm. They made inquiries from their daughter but she did not tell anything else and remained disturbed. On the night of 6.11.2021, his daughter told him that since the morning of 01.11.2021, there was a fight going in the house. At about 11.00 p.m., when his elder daughter was in a room and his younger daughter was in her room, she heard some sound of fight coming from the room of his elder daughter. The room of his elder daughter was bolted from inside and his younger daughter tried to open the door but remained unsuccessful. After some time, the sounds of the fight stopped and thereafter, the room of the door was opened. Anita mother-in-law of his daughter caught hold of the neck of his younger daughter and Ramesh the father-in-law of his daughters snatched the phone of his daughter Muskan. Harish gave a threat to her that she would also meet the same fate as

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that of her elder sister, in case she complained to anyone. Thereafter, they took the dead body of his elder daughter to the roof where they hanged her. After some time, Sagar the husband of Muskan brought the dead body of Khushboo back to the ground floor. Thereafter, Anita dressed up his daughter Khushboo by putting ear rings, lipstick and bindi etc. on her. Harish, his mother Anita and his father Ramesh had murdered his daughter. When these facts were disclosed to him by his daughter on 6.11.2021, the next morning i.e. on 7.11.2021, he went to the police station and presented application Ex. P2 which bore his signature at point A. Eight photos (Ex.P4 colly), one marriage card (Ex.P6) and certificate under section 65B Indian Evidence Act were handed over to police by him and same were taken into possession vide Ex. P3 which bore his signature. During his cross-examination, he stated that mediator in the marriage was Jagdish, resident of village Mujeri. At the time of marriage, Harish was a law graduate but he was not doing anything. Sagar his younger son-in-law, was studying. Ramesh the father of Harish and Sagar was in a Govt. Job. He did not make much inquiries prior to the marriage but they probably had about 1.5 acre of land in the village. The accused had started harassing his daughter around the month of March, 2020. He did not convene any panchayat in this context but he called Ramesh, his father and both his son-in laws to his house and told them that he had performed the marriage of both her daughter to the best of his ability and he did not have anything else to give. He denied the suggestion that his daughter was having multiple medical issues. Volunteered she had no medical problem. She

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denied the suggestion that the accused had never harassed her daughter or demanded a bigger car in the form of dowry. He denied the suggestion that there was never any complaint from his daughter Khushboo regarding any harassment or maltreatment at the hands of the accused. On 2.11.2021, he had received a call from Ramesh at about 4.30/4.35 am. He alongwith his cousin brother Dinesh reached the house of accused at about 7.00 am. The dead body of his daughter was lying on a cot in her bed room. Volunteered he did not see the body. After some time, his father Daya Ram, uncle Fire Ram, brothers Surender, Sunil, Sonu and Sanjay, his wife, his mother, his aunt and his tai ji also reached in the village also but he did not remember at what time they had reached as he was very perplexed and disturbed because of the happening. Since his younger daughter was also married in the same house and therefore, keeping her future in mind they kept quite. He had tried to see the dead body of his daughter but was prevented from doing so and had they permitted him to do so he would have seen the dead body of his daughter and would have realized the truth and made a complaint to the police. The photographs Ex. P4 (colly) were snapped by a relative (Sanjay) who was other than his cousin Sanjay. These photographs were probably taken by him when the dead body of his daughter was in the house. He however, at that time did not tell him anything relating to his daughter Khushboo or what was visible in these photographs. On 6.11.2021, the said Sanjay sent these photographs through Whatsapp to his cousin Sanjay and then his cousin Sanjay gave these photographs on 7.11.2021 when they had come to make

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the complaint to the police station. Volunteered he had got these photographs developed on 7.11.2021. After that he gave the complaint Ex. P2. Volunteered at the time of moving the application Ex. P2, he had shown these photographs to the police officers on his phone. He had got these photographs developed from Shyam Photo Studio, Bhatia Colony, Ballabgarh at about 12/1.00 p.m. noon. The injuries to his daughter were visible to him when he had seen these photographs on 6.11.2021. His daughter had on various occasion made complaints to him against the accused but he did not remember the dates. The last rites of his daughter were conducted in the village of the accused. He personally did not get to see the dead body of his daughter. The last rites of his daughter were done at about 8/8.30 am in the village. There were about 8/10 people in their side and there were many people from the family of the accused and their co-villagers. He had requested that he be permitted to see his daughter but he was surrounded by the co-villagers of the accused who did not permit him to do so. He denied the suggestion that his daughter Muskan was fully conscious when they had reached in the village of the accused and she fully participated in the ritual such as bathing the dead body, putting the bridal get up on his daughter and was not unconscious and as claimed by him. He further stated that on 3.11.2021, his daughter Muskan was brought to their village by his wife and other relatives at about 9/10.00 p.m. He denied the suggestion that the allegations levelled in Ex. P2 were absolutely false and concocted. He denied the suggestion that the accused had never harassed either his daughter nor

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had threatened his daughter Muskan in any manner. He denied the suggestion that his daughter was neither murdered by the accused nor they abetted or instigated her suicide in any manner.

PW-3 HC Gajesh Kumar deposed that on 8.11.2021, he was posted as HC at PS Sadar Balalgarh. On that day, accused Harish was arrested vide memo Ex. P7. Personal search was conducted vide memo Ex. P8. During interrogation, accused suffered his disclosure statement vide memo Ex. P9. In pursuance of disclosure, statement accused demarcated the place of occurrence vide memo Ex. P10. During his cross- examination, he stated that no recovery was effected in pursuance of the disclosure statement Ex. P9. Accused was arrested at about 6.30 p.m. from the place mentioned in the arrest memo. They had reached the place of occurrence at about 7.00 p.m. where demarcation was done by the accused. He denied the suggestion that the accused neither made any disclosure statement nor got demarcated any place of occurrence as claimed by him.

PW-4 ASI Sharwan Kumar, Draftsman deposed that on 14.12.2021, he had visited the spot and prepared scaled site plan Ex. P11 on the direction and demarcation of SI Veer Sain.

PW-5 SI Veer Sain is the Investigating Officer of this case. He deposed that on 7.11.2021, he received a complaint Ex. P2 in the police station on which, he registered formal FIR Ex. PW5/A and made endorsement Ex. PW5/B which bore his signature at point A. He prepared rough site plan of the place of occurrence vide memo Ex. PW5/C. Five

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photographs, one marriage card and certificate under section 65B Indian Evidence Act were taken into police possession vide memo Ex. P3. On 8.11.2021, accused Harish was formally arrested vide memo Ex. P7. His personal search was conducted vide memo Ex. P8. Upon interrogation accused suffered his disclosure statement Ex. P9. In pursuance of his disclosure statement, accused demarcated the place of occurrence vide memo Ex. P10. On 11.4.2022 accused Anita was formally arrested vide memo Ex. PW5/D. Her personal search was conducted vide memo Ex. PW5/E. Upon interrogation the accused suffered her disclosure statement Ex. PW5/F. In pursuance of his disclosure statement, accused demarcated the place of occurrence vide memo Ex. PW5/G. After completion of investigation, challan of the case under section 173 Cr.P.C. was prepared by Inspt./SHO Rambir Singh and Naveen Kumar and he identified their signatures as he had worked with them. During his cross-examination, he stated that the over writings at point B and C of complaint Ex. P2 were done by the complainant. He admitted that at point B the original date was mentioned in the typed format was 4.11.2021 and the figure 07 was mentioned in hand by cutting the typed figure 04. The place of occurrence had been inspected on 7.11.2021 itself and the demarcation was done by the accused on 8.11.2021 after his arrest. During his investigation, it had been revealed that when the deceased was cremated in the village of the accused, the family members of the deceased were present and cremation took place in their presence and with their consent. He did not know why any complaint was not made by the

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complainant on the same day and nor had they made any telephonic call to the police about the occurrence. None of the co-villagers of the accused had made any complaint against the accused.

PW6 Surender Singh deposed that on 14.2.2020, his niece namely Khushboo and Muskan were married with Harish and Sagar according to Hindu Rite and ceremonies. His brother Anil spent Rs.35 lakhs in the marriage of his daughters namely Khushboo and Muskan but the in laws of Khushboo and Muskan were not happy with the dowry and were demanding a big car. On 11.2.2021, his niece Khushboo was killed by her in laws by strangulation and they threatened his niece Muskan that if she told about the incident they would kill her. On 2.11.2021, funeral of Khushboo was done. On 3.11.2021, parents of Muskan brought her back to their home and she told her parents that Harish, Sagar, Ramesh and Anita had killed her sister. During his cross-examination, he stated that mediator in the marriage was one Jaggi who was a common relative of both the parties. At the time of the marriage of Muskan and Kushboo, Muskan was studying and was living in her parental village. The last rites on the dead body of Khushboo were conducted in the village of the accused and funeral pyre was lit by her husband Harish. His father, brother Anil and other relatives of their family had participated in the last rites of Khushboo. He denied the suggestion that Khushboo was never harassed by the accused for any reason nor any demand were ever raised against her. He denied the suggestion that Khushboo was undergoing medical treatment while living in the house of the accused.

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PW7 Constable Sukhdev deposed that on 7.11.2021, MHC PS Sadar Ballabgarh handed over him special report for onwards transmission to the Illaqa Magistrate/Higher Officer. The same was submitted by him and as long as it remained with him, neither he nor anyone else was allowed to tamper with it.

PW-8 Shyam Photographer deposed that on 5.11.2021, one Anil Kumar son of Daya Ram, resident of village Kherla Distt. Gurgaon came to his shop and handed over a Samsung mobile phone. He extracted five photographs from the mobile phone Ex. PW8/A to Ex. PW8/D which bore his signature and the stamp of his photo studio and also gave enlarge photograph Ex. P5. He also issued certificate under section 65B of Indian Evidence Act Ex. PW8/E which bore his signature. During his cross-examination, he stated that photographs were not taken in his presence. He had only extracted the photographs and given a print of the same.

PW-9 Lady Constable Rinki deposed that on 11.4.2022 Anita was formally arrested vide memo Ex. PW5/E. Her personal search was conducted vide memo Ex. PW5/E. Upon interrogation, accused suffered her disclosure statement Ex. PW5/F. In pursuance of her disclosure statement, accused demarcated the place of occurrence vide memo Ex. PW5/G. During her cross-examination, she stated that accused was arrested from the T-point of Hanuman Mandir, Tigaon Road, Faridabad at about 11.00 am. The disclosure statement was recorded at the spot. She admitted that no recovery was effected in pursuance of disclosure statement Ex. PW5/F. The place of

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occurrence was already known to IO and site plan was already present on the case file.

5. The entire incriminating evidence of the prosecution was put to the accused Harish and Anita when they were examined under section 313 Cr.P.C, wherein they denied all the allegations of the prosecution and pleaded their false implication.

6. The accused persons chose to lead evidence in their defence, but they did not lead any evidence in their defence and finally closed the same on 07.12.2023.

7. Based on the evidence led, the accused/respondents No.1 and 2 were acquitted by the Court of Additional Sessions Judge, Faridabad vide judgment dated 07.12.2023.

8. It is the aforementioned judgment of acquittal which is under challenge in the present appeal.

9. The learned counsel for the appellant/complainant contends that the marriage was solemnized on 14.02.2020 and the deceased died in the intervening night of 01/02.11.2021 i.e. within two years of the marriage. The presumption arose against the accused that it was a case of a dowry death. The said presumption had not been rebutted. Yet, the Trial Court did not consider this aspect of the matter and acquitted the accused. The sister of the deceased namely, Muskan has appeared as PW1 and had supported the prosecution version. However, certain minor contradictions were given undue importance leading to the acquittal of the accused. An independent

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witness PW6-Surender Singh had stated that Rs.35,00,000/- had been spent on the marriage but the daughters of the appellant/complainant was still being harassed on account of dowry. This evidence had not been considered in its proper perspective. The Trial Court had not considered the conduct of the one of the accused who was a proclaimed offender. Minor discrepancies had not been given undue importance. He, therefore, contends that the judgment of acquittal of the accused/respondents no.1 and 2 be set aside.

10. The learned counsel for the State while supporting the case of the appellant/complainant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, judgment of acquittal was liable to be set aside.

11. We have heard the learned counsel for the parties and gone through the record.

12. The first question which arises is as to whether the present case was one of murder or suicide. As per the allegations of the prosecution levelled in complaint-statement Ex.P2, submitted by PW2 Anil Kumar, father of victim Khushboo, which culminated into FIR Ex.PW/A, marriage of Khushboo was solemnized on 14.2.2020 with accused Harish. Accused Harish and Anita used to quarrel with Khushboo and used to demand more dowry in the shape of a big car. On 2.11.2021, he received a call from mobile no.8700638643 that Khushboo had fallen sick and on this information he reached there. Ramesh stated that his daughter had committed suicide by hanging herself. Admittedly, Muskan was married with brother of Harish.

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Her testimony is very material in the present case. She stated that prior to 1.11.2021, the Brezza car had met with an accident while it was being driven by Harish. On this, her in-laws demanded a bigger car and during the night they started fighting with her sister and in the morning, she was directed to stay in her room and keep quiet. At about 11.30 p.m. on 1.11.2021, Harish had come home in a drunken condition and on his arrival, all of them started assaulting her sister in the room. Then she requested her husband Sagar to intervene and save her sister from the assault but he refused to do so stating that they should not interfere and that his parents would sort the matter and he left the room. Since her husband had refused to assist, she went to the room of her sister which was locked from inside and she could hear the cries of her sister Khushboo. After some time, the cries of her sister stopped coming and then the room was opened from inside and Harish, Anita and Ramesh came out from the room. Her mother-in-law Anita caught hold of her neck and her father-in-law Ramesh snatched her phone and they both threatened her that she would also meet the fate of her sister and she was told to keep mum. Thereafter, all of them took her sister to the roof and an attempt to show that it was a case of suicide rather than murder. She was also threatened that in case she disclosed the incident to anyone, they would also kill her like her sister. Her husband Harish brought her sister down from the first floor and her mother-in-law Anita applied lipstick, bindi put ear rings in the earlobes of her sister. However, during her cross-examination, she stated that since she was pursuing her graduation she used to stay at her parental

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home and after her marriage she would have probably spent a period of 15-20 days at the house of her husband in village Neemka She further deposed that on 25.3.2020/26.3.2020 her sister was assaulted by the accused for the first time but she had not narrated any such date of assault upon her sister to the police while making statement under Section 161 Cr.P.C. She had stated to the police that because of torture being inflicted upon her sister, she had suffered miscarriage on two occasions. However, she admitted that in her statement under Section 161 Cr.P.C. Ex.PW1/D1 there was no mention of her sister having suffered two abortions due to harassment and torture inflicted upon her by the accused. She admitted that in her statement Ex. PW1/D1 there was no mention that on the occasion of Karvachauth, her father had given Rs.1 lakh in cash and gold worth Rs.2 lakh due to the constant torture and demand by the accused. She admitted that in her statement under section 161 Cr.P.C. there was no mention of any occurrence of beating of her sister having taken place on the morning of 1.11.2021 or of Harish having coming home in a drunken condition and that on his arrival they all started assaulting her sister in the room. She admitted that in her statement under section 161 Cr.P.C. there was no mention of her requesting her husband Sagar to save her sister and his refusal to come to the assistance of her sister. She admitted that there was no mention in her statement under Section 161 Cr.P.C. that her sister being taken inside the room, it being locked from inside or of her being assaulted inside the room by accused Harish, Ramesh and Anita. She admitted that in her statement under section 161 Cr.P.C. there was no

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mention that the three of them took her sister to the roof in an attempt to show that it was a case of suicide rather than murder. She admitted that in her statement under section 161 Cr.P.C. there was no mention of her mother-in-law applying lipstick, bindi and ear rings in the earlobes or that she was threatened that in case she complained to anyone she would meet the same fate of her sister Khushboo. She admitted that in her statement under section 161 Cr.P.C. there was no mention that having returned back to her parental home on 3.11.2021, she remained scared and under fear and for the first time she narrated the occurrence to her family on the intervening night of 6/7.11.2021. She had not stated to the police in her statement under section 161 Cr.P.C. Ex. PW1/D1 that on coming home on 3.11.2021, she had narrated the entire occurrence to her parents on the same day. She admitted that the last rites of her sister were performed on 2.11.2021 in village Neemka. She did not know as to which member of her parental family had participated in the last rites of her sister on 2.11.2021.

13. PW2 Anil Kumar has also stated that he had no doubt on the accused and he had believed the version given by Ramesh that his daughter Khushboo had committed suicide. He also stated that last rites of his daughter were performed in the village of the accused at about 8/8:30 AM. There were 8-10 people in their side and there were many people from the family of the accused and their co-villagers. He stated that the occurrence dated 1.11.2021 was not witnessed by him but was told by her daughter Muskan. However, PW1 Muskan has stated in her cross-examination that she

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had not stated the incident of 1.11.2021 to the police while making her statement under Section 161 Cr.P.C.

14. Perusal of the evidence reveals that there is contradiction in the statement of PW1 Muskan and PW2 Anil Kumar in respect of the incident dated 1.11.2021 as alleged by PW1. PW1 Muskan has stated that she told about the incident to her father whereas PW2 Anil Kumar stated that on 2.11.2021 he had received a call from Ramesh at about 4:30/4:35 AM. PW2 Anil Kumar stated that accused had started harassing his daughter in the month of March 2020 however, he did not convene any panchayat in this context but he called Ramesh, his father and both his son-in-laws to his house and told them that he had performed marriage of both his daughter to the best of his ability and do not having anything else to give. No complaint was ever made to the police regarding torture and harassment given to his daughter in this regard prior to the alleged incident. The sister and father of the victim were contradicted with their statements recorded by police at various places. No postmortem on the dead body of deceased Khushboo was got conducted to ascertain the cause of death. It is also clear that accused never tried to flee away from the spot till the arrival of police.

15. In view of the evidence available on the record, it seems that Khushboo committed suicide by hanging herself inside in her matrimonial home. Thus, it can not be held that it is a case of homicidal death/ murder.

16. The second question which is required to be answered is as to whether the deceased was harassed and treated with cruelty soon before her

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death as envisaged under Section 304B IPC and Section 113A of the Indian Evidence Act.

17. Ex.P2 complaint given by PW2 Anil Kumar is the foundation of the instant case. In his entire statement he has not levelled any specific allegation regarding demand of dowry. He simply stated that accused persons used to harass his daughter on the demand of a bigger car. His younger daughter Muskan was also married to the brother of accused Harish. It is relevant to point out here that if any demand was raised by the accused and if the victim informed about it to her father, then some Panchayat would have been convened but not so. The reason for delay in lodging the FIR has not been explained either by PW1 Muskan or PW2 Anil Kumar. No postmortem of the dead body was got conducted which also creates doubt on the prosecution story. It is settled law that statements of witnesses under section 161 Cr.P.C can be used only for the purpose of contradictions, and evidence given in the Court under oath is admissible in evidence which evidence does not support the prosecution story in the present case. There is no other convincing and satisfactory evidence on record to prove that the accused were in any way responsible for the death of the deceased. The investigation carried out in this case even if is taken on its face value would not advance the case of the prosecution. The investigation has not relied on the statement of any neighbour to prove the allegations of cruelty and ill-treatment made against the accused. The sister of the deceased who was married to the brother of accused in the same house was the best witness to depose about



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the harassment and ill-treatment allegedly inflicted by the accused or fixing any responsibility on his part causing her death but she had given contradictory statements at every stage of the case. As per PW2 Anil Kumar, he along with other family members had attended the last rites of his daughter at her matrimonial home and he had not raised any finger upon the accused in regard to death of his daughter. He himself admitted that Ramesh told him that his daughter had committed suicide. Thus, apparently, the prosecution has failed to prove on the record that the victim Khushboo was subjected to cruelty soon before her death as envisaged under Section 304-B and Section 113-B of the Indian Penal Code. Therefore, the prosecution has failed to prove the essential ingredients of Section 498-A, 302 and 304- B of the Indian Penal Code.

18. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in **Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the



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accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

19. In view of the aforementioned discussion and keeping in view the law laid down in **Kallu @ Masih & Ors.** Case (supra), we find no reason to interfere with the well reasoned judgment of acquittal passed by the Court of Additional Sessions Judge, Faridabad. Therefore, the appeal stands dismissed.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

12.09.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No