

(2013) 09 P&H CK 0217

In the Punjab And Haryana At Chandigarh

Case No : CRA. No. 1514-SB of 2002 and CRR. No. 1526 of 2003

Birbal and Others

APPELLANT

Vs

State of Haryana
 Krishan Kumar Vs Ashok Kumar and
Others

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Dowry Prohibition Act, 1961 — Section 2
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2014) 2 Crimes 341

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Advocate : Salil Bali in Cra. No. 1514-SB of 2002 and Mr. Kewal Singh in CRR. No. 1526 of 2003, for the Appellant; Sagar Deswal, AAG Haryana for the State and Mr. Salil Bali, Advocate for Respondents No. 1 to 4 in CRR No. 1526 of 2003, for the Respondent

Judgement

Mehinder Singh Sullar, J.—As identical questions of law and facts are involved, therefore, I propose to decide CRA No. 1514-SB of 2002 filed by appellants-convicts Birbal & Bhaga (parents-in-law) and their son Ashok Kumar (husband) of the deceased (for brevity "the appellants") and CRR No. 1526 of 2003 filed by petitioner-complainant Krishan Kumar son of Sri Dutt (for short "the complainant"), arising out of the same impugned judgment of conviction & order of sentence of trial Judge, by virtue of this common decision, in order to avoid the repetition. Tersely, the facts & evidence, unfolded during the course of trial, which need a necessary mention for the limited purpose of deciding the core controversy, involved in the instant appeal & revision petition and emanating from the record, as claimed by the prosecution, are that the marriage of appellant Ashok Kumar was solemnized with Sushila (deceased), sister of complainant Krishan Kumar (PW6) on 28.1.1995 according to Hindu rites and ceremonies. After solemnization of the marriage, they resided together and

cohabited as husband & wife and a son was born out of their wedlock.

2. According to the prosecution that on 20.6.1999 on receipt of information, ASI Ram Niwas (PW9) reached General Hospital, Hansi, from where, he came to know that Sushila, wife of appellant Ashok Kumar, was referred to the Medical College & Hospital (in short "PGIMS"), Rohtak. Then, he reached there and sought opinion of the doctor regarding her fitness to make statement. Thereafter, he moved an application (Ex. P17) before Ms. Shalini Nagpal, JMIC for recording the statement of Sushila. The Magistrate reached the hospital and after completing all the legal formalities, recorded her statement (Ex. P19), in which, she had alleged that on the previous morning, she had set herself ablaze after pouring kerosene upon her as none used to treat her properly in the matrimonial home. She further stated that her husband and mother-in-law were not at fault (Theek Hain). Subsequently, Sushila succumbed to her burn injuries on 21.6.1999 at 7 A.M.

3. The case of the prosecution further proceeds that on 21.6.1999 at about 5 a.m., one Ram Niwas came and informed the complainant that his sister had put herself on fire after pouring kerosene on her body. She was admitted in General Hospital, Hansi, from where, she was referred for further treatment to PGIMS, Rohtak. She succumbed to her burn injuries there. Thereafter, he (complainant) went to the hospital and made his statement (Ex. P5) to the police, alleging therein that whenever Sushila visited their house, she told that her mother-in-law used to taunt her that she was from pauper's family and the clothes brought by her at the time of marriage were of inferior quality. He was stated to have spent an amount of Rs. 15,000/- more than his capacity at the time of birth of son of his sister, but the accused were not satisfied. They continued to harass her on account of bringing insufficient dowry as per their status. It was averred that about 20 days prior to the present occurrence, the complainant had gone to her matrimonial home, where appellant Ashok Kumar had demanded an amount of Rs. 50,000/- from him for purchasing a tractor. He was unable to meet that demand on account of paucity of funds. He suspected that the accused have murdered his sister by setting her on fire or she committed suicide by pouring kerosene on her body on account of non-fulfillment of their demand of Rs. 50,000/

4. Leveling a variety of allegations and narrating the sequence of events, in all, according to the complainant that his sister Sushila died an unnatural death by pouring kerosene on her body within a period of five years of her marriage. Soon before her death, she was subjected to cruelty and harassment by the accused in connection with and on account of demand of dowry. Thus, they have committed the offence of dowry death. In the background of these allegations and in the wake of statement (Ex. P5) of the complainant, a criminal case was registered against appellants Ashok Kumar (husband), Bhaga & Birbal (parents-in-law) and Naresh (acquitted accused) brother-in-law (Devar) of the deceased, vide FIR No. 172 dated 21.6.1999 (Ex. P7), on accusation of having committed the offences

punishable under sections 498-A and 304-B IPC by the police of Police Station Narnaund, District Hisar in the manner depicted here-in-above.

5. After completion of the investigation, the police submitted the final police report (challan). Accordingly, the appellants and acquitted accused were charge-sheeted for the commission of indicated offences and the case was slated for evidence of the prosecution by the trial Court.

6. The prosecution, in order to substantiate the charges framed against the appellants & acquitted accused, examined PW6 complainant Krishan Kumar, who has deposed in the following terms:-

I have four sisters, the youngest of them was Smt. Sushila Devi. She was married with Ashok accused in accordance with Hindu rites and ceremonies as on 28.1.95. Birbal accused is the father-in-law and Smt. Bhaga accused is the mother-in-law of my sister. Naresh is the younger brother of the husband of my sister. All these four accused are present in the court. Soon after the marriage my sister Smt. Sushila has joined her husband in her matrimonial home after observing muklawa ceremony. Despite the fact that it was a decent marriage and sufficient dowry was given, my sister was treated with cruelty by the accused on the ground of inadequacy of dowry. They always made a complaint that the dowry articles were of inferior quality.

Whenever Smt. Sushila visited our house, she used to narrate the act and conduct of the accused for causing harassment. She also told that her husband Ashok had been giving beatings too.

After 2 years of marriage Smt. Sushila gave birth to a male child. We spent about 15000/- and gave sufficient gifts matching our financial position, but the accused were still not happy and they continued to cause harassment to Smt. Sushila. Some 15-20 days prior to her death I had been to village Thurana to meet my sister and to know about her well being when she told me that the accused were still harassing her. She also informed me that her husband Ashok has left his job from Delhi and he wanted to start some work in the area of Khanak quarries for which he wanted to purchase a tractor and I was supposed to contribute Rs. 50000/- for that purpose. Ashok accused present in the court has also demanded a sum of Rs. 50000/- from me for the purpose of purchasing a tractor. Upon this I asked Ashok that I would go to my village and consult my father if our family could arrange that much of amount or not. Accordingly, I asked my father about the demand of the money but he showed his inability in this respect. My father has suggested to go to the house of accused while the company of common friends to make the accused understand that it was not possible for our family to make the arrangement of the money in lump sum.

On 21.6.99 Ram Niwas Brahman of village Thurana came to our house and informed that Smt. Sushila has put herself on fire after sprinkling kerosene on her body and that she was admitted in the hospital at Hansi. On receipt of the information myself, my father Shree Dutt, my uncle Ravi Dutt and other family

members came to Hansi but we were informed by the civil hospital authorities that Smt. Sushila has been referred to Post Graduate Institute Rohtak for treatment. When we reached Rohtak, Smt. Sushila had already succumbed to her injuries. My statement was recorded by the police and the same is Ex. P5, which I assigned after admitting the same to be correct. The dead body was subjected to postmortem examination after the proceedings were completed for inquest.

During investigation I have handed over a letter written by Ashok and photo copy of an Bahi entry showing the names of the persons contributing towards the marriage (Noynda). By the word Naeonda I mean conventional contributions and gifts made by the family friends and relatives. I also produced a photograph to the police which was taken at the time of the performance of marriage ceremony. The letter is Ex. P11, photo copy of the Bahi is Ex. P12 and the photograph is Ex. P13. All these three documents were taken into possession as per seizure memo Ex. P14, which was attested by me.

Smt. Sushila has met an unnatural death by burning because she was subjected to harassment and cruelty by all the four accused for dowry.

7. Sequently, PW7 Shree Dutt, father of complainant (PW6) has tried to support the prosecution version. Instead of reproducing his entire statement and in order to avoid repetition suffice it to say that he has attempted to corroborate the statement of PW6 and the initial version contained in his statement (Ex. P5) on all vital counts, as regards the demand of dowry is concerned.

8. Likewise, PW5 Dr. D.N. Bagri has deposed that on 20.6.1999, he medico legally examined Smt. Sushila, by way of MLR (Ex. P9). Since the burns were 100%, so, the patient was referred to PGIMS Rohtak for further treatment. He sent ruqqa (Ex. P10) to In-charge, Police Station City, Hansi for information & necessary action. PW1 Dr. Narender Singh and Dr. Asha Goyal, on police request (Ex. P2) accompanied by inquest report (Ex. P3), have conducted the post mortem examination on the dead body of Sushila on 21.6.1999 at 4.30 P.M., vide post mortem report (Ex. P1). The cause of death in their opinion was due to shock and burns, which were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. PW11 Dr. Anil Sharma proved the bed head ticket (Ex. P29) of the deceased and certificate (Ex. P30) of cause of her death issued by Dr. Vikas Kumar. He identified his signatures on it.

9. Now coming to the evidence of police officials, PW2 C. Subhash Chand had prepared the scaled site plan (Ex. P4) of the spot at the instance of ASI Ram Niwas with its correct marginal notes. PW3 HC Sher Singh, on receipt of statement (Ex. P5) of complainant with the endorsement (Ex. P6) of ASI Ram Niwas, has recorded the formal FIR (Ex. P7) on 21.6.1999. PW4 C. Mohinder Singh delivered the special reports to the higher authorities and tendered into evidence his affidavit (Ex. P8) to complete the chain of link evidence. PW8 SHO Jagbir Singh has prepared the final police report u/s. 173 Cr.P.C. after completion

of the investigation. PW10 Balwan Singh, Record Keeper, PGIMS, Rohtak produced the original bed head ticket of Sushila (deceased).

10. The last to note is the testimony of PW9 ASI Ram Niwas, who is the main Investigating Officer. He has deposed that in pursuance of receipt of wireless message on 20.6.1999, he went to Civil Hospital, Hansi and obtained ruqqa (Ex. P10) to the effect that Sushila wife of Ashok was brought to the hospital, but on account of extensive burn injuries on her person, she was referred to PGIMS Rohtak. Accordingly, he went to Rohtak and moved an application (Ex. P15) and the doctor declared the deceased fit to make statement, by means of endorsement (Ex. P16). He also moved an application (Ex. P17) before the Magistrate for recording her statement/dying declaration. Consequently, Smt. Shalini Nagpal, JMIC went to PGIMS Rohtak, obtained the opinion (Ex. P18) of the doctor and recorded the statement (Ex. P19) of the deceased. She issued certificate (Ex. P20). Subsequently, Sushila breathed her last at 7 A.M. on 21.6.1999. He further maintained that on request (Ex. P22), he obtained the copy of statement of deceased. Thereafter, he has recorded the statement (Ex. P5) of the complainant at 2.30 P.M., made his endorsement (Ex. P6) and sent it to the police station for registration of a criminal case. Then, he completed the inquest proceedings (Ex. P3) and moved an application (Ex. P2) for post mortem examination on her dead body. After postmortem examination, the dead body was handed over to Deep Chand and Dhan Singh, as per receipt (Ex. P23). He has further deposed that on 22.6.1999, he went to village Thurana, inspected and prepared the site plan (Ex. P24) of the place of occurrence with its correct marginal notes. He has taken into possession one small tin (container) (Ex. P26), small bottle (Ex. P27) used as kerosene lamp, ash (Ex. P28), letter (Ex. P11), copy of Bahi (Ex. P12) and marriage photograph (Ex. P13), vide recovery memos (Ex. P25 and Ex. P14) respectively. These articles were deposited with the MHC. He has recorded the statements of witnesses and arrested the accused on 24.6.1999. He has also testified his entire investigation.

11. After the close of the prosecution evidence, the statements of the appellants and acquitted accused were recorded. The entire incriminating material/evidence was put to enable them to explain any circumstance appearing against them therein, as contemplated u/s 313 Cr.P.C. However, appellant-husband Ashok Kumar has denied the prosecution evidence in its entirety and pleaded false implication in the following manner:-

I am innocent. Deceased was a chronic patient of Hichkia. We got her treated in many hospital but she could not get any relief. We never harassed her nor demanded anything from her. We use to keep her very properly and with love and affection. Even deceased did not level any allegation against us. After death, the family members of the deceased had falsely implicated us in this case.

12. Similarly, the other appellants and acquitted accused have also adopted the same line of defence. They, in order to prove their defence, have examined DW1 Shalini Nagpal, CJM, who has proved her orders (Ex. D2 & Ex. D3) and opinion

(Ex. P18) of the doctor. She directed all the relatives or police officials to go out of the ward and recorded the statement (Ex. P19) of Sushila. It was read over and explained to her and she put her thumb impression on it in token of its correctness. She obtained the certificate of the doctor to the effect that the patient remained fit and conscious during statement. She passed order (Ex. P20) in that regard. ASI Ram Niwas moved an application (Ex. P22) for getting copy of statement of Sushila, which was allowed by her.

13. Sequelly, DW2 Dr. Rajesh Kumar medico legally examined appellant Birbal on 24.6.1999 at about 2.05 P.M. and found the following injuries on his person, vide MLR (Ex. D4) and diagram (Ex. D5) showing the seats of injuries:-

1. Right hand was burnt and both sides dorsal and ventral aspect but palm of the right hand was spared. Multiple blisters present on the dorsal aspect of the fingers and thumb with a large bullae on the back of palm. Colour of skin was cherry colour. Serous discharge present oozing from the burnt fingers. The patient was referred to General Hospital, Hisar for surgeon opinion.

2. Little finger, ring finger and middle finger and thumb of left hand burnt on both sides dorsal and ventral aspects. Blisters present on the dorsal aspect of the burnt fingers and thumb. Whole of palm of left hand and whole of index finger were safe. Colour of burnt part cherry red. Serous discharged oozing from the burnt parts. Referred for opinion and management to General Surgeon, Hisar.

3. Left side of face was burnt superficially. Upper layer of skin peeled off from the burnt part of face. No blister, no discharge.

4. Skin over the left knee joint burnt. Upper layer of skin peeled off. No Blister, no discharge.

5. Multiple small vesicle present on the anterior ventral aspect of left foot.

14. He (DW2) maintained that the result of injuries No. 1 and 2 was reserved. Rest of the injuries were simple. Probable duration of injuries was within 2 to 7 days. He has also proved the copy of application (Ex. D6) moved by the police. This is the total oral as well as documentary evidence brought on record by the parties.

15. Taking into consideration the entire evidence brought on record by the prosecution, accused Naresh Kumar (brother-in-law) of the deceased, was acquitted from all the charges, whereas the appellants were acquitted of the charge u/s. 304-B IPC. At the same time, they were convicted & sentenced to undergo rigorous imprisonment (for short "RI") for a period of three years, to pay a fine of Rs. 5000/- each and in default thereof, to further undergo RI for a period of six months each, for having committed an offence punishable u/s. 498-A IPC, by virtue of impugned judgment of conviction dated 18.9.2002 & order of sentence dated 20.9.2002 by the trial Court of Addl. Sessions Judge.

16. Aggrieved thereby, the appellants have preferred the instant appeal (CRA No.

1514-SB of 2002) to challenge the impugned judgment of conviction & order of sentence of trial Court. Although the State of Haryana did not file any appeal against their acquittal u/s. 304-B IPC and against the acquittal of accused Naresh Kumar, but the petitioner-complainant has filed the revision petition (CRR No. 1526 of 2003) to assail the acquittal of all the accused u/s. 304-B IPC. That is how I am seized of the matter.

17. Assailing the impugned judgment of conviction and order of sentence, the learned counsel has contended with some amount of vehemence that the deceased had completely exonerated the appellants in the initial version contained in her dying declaration (Ex. P19) and nullified the subsequent story introduced by the complainant (PW6). The argument is that on the one hand, after disbelieving the story of demand of dowry, the trial Court has acquitted the appellants for the commission of an offence punishable u/s. 304-B IPC and on the other hand convicted them u/s. 498-A IPC on the same set of evidence. The argument further proceeds that neither any specific role or overt-act nor any instances of cruelty and demand are attributed to the parents-in-law, but the trial Court committed a legal mistake even to convict them.

18. Hailing the prosecution evidence, on the contrary, the learned State counsel assisted by learned counsel for complainant, has vehemently urged that although there was sufficient evidence on record, but the trial Judge erred in acquitting the appellants u/s. 304-B IPC. In this manner, both the counsel pray for acceptance of their respective appeal and revision petition.

19. After hearing the learned counsel for the parties, going through the evidence on record with their valuable help and after deep consideration over the entire matter, to my mind, the present appeal deserves to be accepted in this context.

20. As indicated here-in-above, the appellants and acquitted accused were charge sheeted for the commission of offences punishable u/s. 304-B and 498-A IPC. Section 304-B IPC postulates that "Where the 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 relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death."

21. Therefore, a conjoint and meaningful reading of these provisions, as also so held by Hon"ble Supreme Court in cases Shiva Karam Payaswami Tewari Vs. State of Maharashtra, and Kanti Lal Vs. State of Rajasthan, , would reveal that the prosecution is legally required to prove the following essential ingredients before invoking the provisions of sections 304-B and 498-A IPC:-

(i) The death of wife should be caused by burns or bodily injury or otherwise than under normal circumstances;

- (ii) Such death should have been occurred within seven years of the marriage;
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry soon before her death.
- (v) Such cruelty and harassment was made soon before her death.

22. At the same time, the distinction between the required volume and appreciation of relevant evidence brought on record by the prosecution in dowry death case against the main accused & husband on the one hand and his relatives on the other hand, was considered by Hon"ble Apex Court in a celebrated judgment in case Kans Raj Vs. State of Punjab and Others, which was subsequently followed in a line of judgments, wherein it was ruled that for the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases, where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry death. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused.

23. Again the same very view was reiterated by Hon"ble Supreme Court in case Preeti Gupta and Another Vs. State of Jharkhand and Another,

24. Above being the legal position & evidence on record, now the sole controversy, which invites an immediate attention of this Court and arises for determination in this appeal is, as to whether all the essential ingredients of the pointed offences are complete or not?

25. Having regard to the rival contentions of learned counsel for the parties, to me, the answer must obviously be in the negative, as the prosecution has miserably failed to prove the essential ingredients of the offences in question and the appellants deserve to be acquitted for the reasons mentioned here-in-below.

26. What cannot possibly be disputed here is that the marriage of appellant Ashok Kumar was solemnized with Sushila on 28.1.1995. She died an unnatural death on 21.6.1999, indisputably within a period of five years of her marriage. Hence, the initial two indicated premises of offence punishable u/s. 304-B IPC stand established on record. Having so held, now it has to be seen as to whether the prosecution has brought on record the sufficient and reliable evidence to prove the 3rd and 4th pointed ingredients i.e. soon before the death of deceased

and she was subjected to cruelty in connection with and on account of demand of dowry and by whom or not?

27. At the very outset, the initial version contained in dying declaration (Ex. P19) of the deceased is to the effect that on the previous morning, she had set herself ablaze after pouring kerosene upon her as in her house none used to treat her properly. She has also mentioned that her husband and mother-in-law were not at fault (Theek Hain). Possibly, no fault could possibly be traced in the dying declaration as it was duly recorded by the JMIC after following the due legal procedure and obtaining the fitness certificate from the doctor. The Magistrate had directed all the police officials and her relatives to go out of the ward and then made her (Sushila) to understand the consequences of recording of such statement. Thereafter, the dying declaration was recorded as per the established legal procedure. Subsequently, she succumbed to her burn injuries on 21.6.1999.

28. As is evident from the record that thereafter the complainant (PW6), brother of the deceased, made his statement (Ex. P5) on the same day, wherein, he has given entirely a different version and maintained that whenever Sushila visited their house, she told that her mother-in-law used to taunt her that she was from pauper's family and the clothes brought by her at the time of marriage were of inferior quality. He spent Rs. 15000/- as per his capacity at the time of birth of her son. The appellants were not satisfied. They harassed, taunted and demanded the amount of Rs. 50,000/-. According to him, about 20 days ago, he had gone to the matrimonial home of the deceased and at that time, appellant Ashok Kumar (husband) demanded the amount of Rs. 50,000/- from him as he wanted to leave the private job at Delhi and purchase a tractor to ply the same on hire for stone mines. The complainant was unable to meet their demand. He has now where stated that any specific demand was made by the appellants soon before her death. The crux of his (PW6) initial version is that appellant Bhaga (mother-in-law) used to harass on the ground that the clothes brought by her at the time of marriage were of inferior quality. The accused were not satisfied and used to taunt her. The complainant gave Rs. 15000/- at the time of birth of male child of the deceased, but her husband demanded Rs. 50,000/- from him (not from his wife) for purchasing a tractor. Assuming for the sake of argument that if the amount in question was demanded by the appellant-husband from the complainant, even then, to my mind, it will not attract the penal provisions of section 304-B IPC. Indisputably, there is not an iota of evidence on record, much less cogent, even to suggest remotely that the deceased was harassed in any manner or treated with cruelty by the appellants in connection with and on account of specific demand of dowry soon before her death.

29. Meaning thereby, there should be a perceptible nexus between her death and the dowry related harassment or cruelty soon before her death, which is miserably missing in this case. Preceding on these premises, the presumption arising u/s 113-B of the Indian Evidence Act, 1872 (hereinafter to be referred as "the Act") could not legally be invoked against the appellants in the absence of

specific evidence of harassment and cruelty for demand of dowry soon before her death and in the absence of pointed essential ingredients of section 304-B IPC, which are totally lacking in the instant case. The Hon'ble Apex Court has examined the similar matter in detail in case Appasaheb and Another Vs. State of Maharashtra, wherein, it was held as under (para 9):-

Two essential ingredients of Section 304-B IPC, apart from others, are (i) death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to subsection (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

Section 2 of Dowry Prohibition Act reads as under:-

2. Definition of "dowry" - In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statutes that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India and others Vs. Garware Nylons Ltd. etc., and Chemical and Fibres of India Ltd. Vs. Union of India and others, . A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of

Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.

30. Therefore, to me, in the absence of evidence of harassment and cruelty in connection with and on account of demand of dowry soon before her death and for mere demand of indicated amount, the appellants cannot legally be convicted and the trial Court has rightly acquitted them u/s. 304-B IPC.

31. Now advertent to the 2nd question, as to whether the prosecution has been able to prove its case against the appellants as regards the offence punishable u/s. 498-A IPC is concerned. This section envisages that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished therein.

The "cruelty" has been defined to mean that any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

32. As depicted earlier, the initial version contained in the dying declaration (Ex. P19) of the deceased recorded by the Magistrate after completing all the legal formalities is to the effect that "on the previous morning, she had set herself ablaze after pouring kerosene upon her as in her house, none used to treat her properly. She has also mentioned that her husband and mother-in-law were not at fault (Theek Hain)." In other words, neither the deceased has described that she was ever treated with cruelty or the appellants demanded any dowry articles in the initial version recorded by the Magistrate. She did not raise any accusing finger towards them in this relevant connection.

33. This is not the end of the matter. Even in subsequent 2nd version contained in the statement (Ex. P5), which formed the basis of FIR (Ex. P7), the complainant has vaguely in a very casual and general manner, stated that Sushila had told them that her mother-in-law used to taunt her for bringing the clothes of inferior quality at the time of marriage. Then, he deposed that he had spent an amount of Rs. 15000/- at the time of birth of her son. The appellants were not satisfied and they harassed, taunted her and demanded Rs. 50,000/- from the complainant. Although he tried to considerably improve his version, relating to cruelty and demand of dowry in the Court, but he was promptly caught there & then and was duly confronted with his initial statement, wherein he has not so stated. It is also so vaguely deposed by PW7 Shree Dutt, father of complainant & deceased. Above-all, their statements were contradicted by the deceased herself in the dying declaration (Ex. P19) in the manner described herein-above.

34. Not only that, although there is no cogent evidence on record that how,

when, by whom and in what manner, the appellants had harassed the deceased, but still, assuming for the sake of argument that her mother-in-law taunted her for bringing the clothes of inferior quality at the time of marriage, even then, these are the casual unintentional wears and tears of family affairs, prevalent in our society. Every such so-called harassment simpliciter does not amount to cruelty. Moreover, the 2nd positive version of the complainant is that appellant Ashok Kumar (husband) had demanded an amount of Rs. 50,000/- from him (not from the deceased) for purchasing a tractor. The mere demand by him from the complainant would not constitute the legally required cruelty against the deceased within the meaning of section 498-A IPC. Hence, no implicit reliance can be placed on the self serving, contradictory statements and interested evidence of PW6 and PW7 in this direction. This being the position of evidence on record, the trial Court would not have come to the conclusion that the deceased was subjected to such harassment, particularly when the same very evidence was completely disbelieved by it while acquitting the appellants from the commission of an offence punishable u/s. 304-B IPC. The trial Court recorded the contradictory findings in this relevant behalf. Thus, to my mind, although the trial Court has rightly acquitted the appellants for having committed an offence punishable u/s. 304-B IPC, on the contrary, it slipped into a deep legal error to convict them u/s. 498-A IPC. Therefore, the impugned judgment of conviction & order of sentence are liable to be set aside and the appellants are entitled to the benefit of doubt, which entails their acquittal u/s. 498-A IPC as well, in the obtaining circumstances of the case.

35. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties. In the light of aforesaid reasons, the instant appeal is accepted. Consequently, the impugned judgment of conviction & order of sentence are hereby set aside. Having extended the benefit of doubt, the appellants are acquitted of the offence punishable u/s. 498-A IPC as well. At the same time, in pursuance thereof, the revision petition filed by the petitioner-complainant deserves to be and is hereby dismissed as such.

Needless to mention that the necessary compliance and procedural consequences would naturally follow.