
(2014) 10 DEL CK 0108
In the Delhi High Court
Case No : Criminal Appeal 355/2006

Krishan Kumar

APPELLANT

Vs

Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Dowry Prohibition (Amendment) Act, 1986 — Section 3
Evidence Act, 1872 — Section 113(B), 113B
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2014) 10 DEL CK 0108

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Maninder Singh, Sanjay Chaubey, Aekta Vats, Jaskaran Sibia, Jagmeet Randhawa, Serman Rawat, Dinkar Takiar and Prateek Sisodia, Advocate for the Appellant; Ravi Nayak, APP, Advocate for the Respondent

Judgement

Indermeet Kaur, J.—This appeal is directed against the impugned judgment and order of sentence dated 19.4.2006 and 28.4.2006 respectively wherein the two appellants Krishan Kumar @ Setu (husband of the victim) and Omwati @ Budho (elder sister-in-law of the victim) had been convicted under Sections 304B and 498A of the Indian Penal Code, 1860 (IPC) ; each of them had been sentenced to undergo RI for 10 years for their conviction under Section 304B of the IPC and to pay a fine of Rs.10,000/-, in default, to undergo RI for 1 year; for the offence under Section 498A of the IPC each of them had been sentenced to undergo RI for 3 years and to pay a fine of Rs.5000/-, in default, to undergo RI for 6 months. Out of the recovered fine Rs.25,000/- had been directed to be paid to the heirs of the victim.

2. Nominal rolls of the appellants reflect that as on date when they were granted bail appellant Krishan Kumar had suffered incarceration of 3? months and appellant Omwati had suffered incarceration of about 2 years and 2 months.

3. Record discloses that Krishan Kumar had married the deceased Babita @ Bobby on 06.3.1995. They lived at their matrimonial home at F-767, Ganesh Nagar, Shakarpur, Delhi. The victim had died an unnatural death on 30.6.1997. This was after 2 years and 3 months of their marriage. The victim had first been taken to Walia Nursing Home on 29.6.1997 in unconscious condition. She could not be given adequate medical attention in the private nursing home and she was referred to the LNJP Hospital. She was declared dead on 30.6.1997. Cause of death was poisoning because of phosphate sulfite.

4. FIR was registered on the statement of the mother of the victim Vimla Devi (PW-1) . She had given her first statement to the SDM on 01.7.1997 followed by two other supplementary statements, dated 17.7.1997 and 14.10.1997. Her version was that she had got her daughter married according to Hindu rites and had spent lavishly on the marriage; Rs.2,50,000/- had been given in cash besides other dowry articles. For the first 2-3 months of her marriage PW-1 did not hear any complaint from her daughter but thereafter her husband and in-laws started beating her for bringing insufficient dowry. She visited her parental home for the first time 2 to 3 months after her marriage. Thereafter she returned to her matrimonial home but again came to her parental home at which time she was pregnant. She gave birth to a female child on 26.3.1996 while she was at her parental home. Out of 2 years and 3 months of her married life she spent about 1 1/2 years in her parents' home. She returned to her matrimonial home in December, 1996. She succumbed to her death on 30.6.1997. This narration of PW-1 was corroborated by the statement of her son Kuldeep (PW-17) . He had also given three statements before the SDM i.e. on 01.7.1997 17.7.1997 and 14.10.1997. The third close relative of the family was Madan Pal, the maternal uncle of the victim, examined as PW-24. His statement was also recorded by the SDM. He was a resident of Bulandsahar. The SDM Mr.Vinay Kumar was examined as PW-20. He had prepared the inquest report Ex.PW-20/B. Admittedly, the victim had first been removed to the Walia Nursing Home from where she had been shifted to LNJP Hospital. Paras Ram, the driver of the ambulance of Walia Nursing Home (who had shifted the victim to the LNJP Hospital) was examined as PW-19. Another close relation of the victim i.e. her brother-in-law Dinesh Kumar was examined as PW-15. Om Pal (PW-14) and Braham Dev Sharma (PW-16) were also known to the family and had also been examined. The post mortem on the dead body was conducted by Dr.K.Goyal (PW-5) . No external injury was noted upon the body of the victim but the cause of death was not given as the gastric lavage of the victim had been sent for scientific analysis which was examined by Sh.K.Chaudhary, the Technical Officer at the FSL Patna. He was examined as PW-18 and as per his opinion the gastric lavage when examined contained phosphide and basic drugs. On this basis PW-5 Dr.K.Goyal vide his subsequent opinion (Ex.PW-5/B) had opined the cause of death as poisoning due to ingestion of phosphide. Two letters dated 21.4.1995 and 11.6.1995 purported to have been written by the deceased to her mother (Vimla Devi) and to her maternal uncle Madan Pal Singh (PW-24) , along with the admitted specimen

handwriting of the victim had been sent to the FSL, Delhi. They had been examined and Smt. Deepa Verma (PW-27) had opined that the questioned documents i.e. the letters when compared with the specimen handwriting S1 and S2 reflected that they were written in the same handwriting, meaning thereby that the letters dated 21.4.1995 and 11.6.1995 were written by the victim. This was another crucial piece of evidence relied upon by the prosecution. In view of the aforementioned evidence collected, both oral and documentary, the accused persons were convicted and sentenced as noted supra.

5. On behalf of the appellants arguments have been heard in detail. It is pointed out that the testimony of PW-1, PW-17 and PW-24 i.e. the mother, brother and the maternal uncle respectively of the victim are full of contradictions. It is pointed out that there are three supplementary statements recorded of each of these witnesses and there is no explanation as to why the first statement which was given on 01.7.1997 did not contain details of dowry demand; these lacunae were later on filled in by the supplementary statements of these witnesses which were recorded on 17.7.1997 and 14.10.1997. It is pointed out that the first ingredient of a dowry death is a dowry demand but this was not forthcoming in the testimonies of the witnesses; there are general and unspecified allegations. The demand of motorcycle was not reflected till the third supplementary statements of the witnesses were recorded i.e. on 14.10.1997. Why were the witnesses silent in their earlier statements? The statements given by the witnesses were an afterthought. Such witnesses are not credible and their versions cannot be relied upon. It is argued that to make out the ingredient "soon before her death" which is the second essential of a conviction under Section 304B of the IPC it was only in the second supplementary statement (dated 17.7.1997) of these witnesses that it was mentioned that a phone call was exchanged between the victim and her brother (PW-17) on 27.6.1997. It did not find mention in the first statements of the complainant (PW-1) or of her son or her brother which were recorded on 01.7.1997. On no count can the conviction be sustained. It is based only on conjectures and surmises. Attention has been drawn to the letters Ex.P-1 and Ex.P-2 purported to have been written by the victim to her mother and her maternal uncle. It is pointed out that even in these letters the victim has all along stated that her husband Krishan Kumar @ Setu was a demigod and she had no complaint against him or her mother-in-law. Her grievance was against the other persons. In fact the gist of these letters suggest that the victim was happy with her husband in the matrimonial home. The victim had returned to her matrimonial home in December, 1996; the incident had taken place on 29.6.1997 i.e. six months thereafter; there is no incident or allegation that anything untoward happened in this intervening period of six months. Even presuming that there was some demand of a motorcycle at the time of marriage it would be difficult to believe that this demand was so consistent and continued for the next 2? years till the victim was forced to take her own life. The victim was really not interested in living in Delhi. She wanted to stay at Bulandsahar where her parental family resided. This was the pressure she

used to put on her husband and his not agreeing to this unreasonable demand had led her to commit suicide. The appellants have been falsely implicated. Learned counsel for the appellants had placed reliance upon Ramaiah Vs. State of Karnataka, , Babu Vs. State of Kerala, , State Vs. Mahender Singh Dahiya, and 2014 II AD(CRI) (DHC) 81 State Vs. Naresh and Ors. Submission being that in an incident of such a nature, where a hapless woman losses her life, emotions and subjective feelings should not be allowed to cloud the mind of the Court to reach a conclusion which is otherwise not based on the evidence produced in the Court; suspicion cannot take the place of proof. This being a case of circumstantial evidence; all circumstances must point to the guilt of the accused; there must be only a single hypothesis of the guilt of the accused and all other hypotheses must be excluded. This has not been established in the instant case. Appellants are entitled to benefit of doubt and a consequent acquittal.

6. Arguments have been refuted by the State. It is submitted that on no count does the impugned judgment call for any interference. Learned Public Prosecutor has drawn attention of this Court to the statements of the family of the victim recorded under Section 161 Cr.P.C. Submission being that a supplementary statement had to be recorded of the family members as they were in emotional stress at that point of time and that has been explained by them in their subsequent statements which is why all details could not be elicited in the first statement. The letters Ex.P-1 and Ex.P-2 depict the traumatic state of mind of the victim; she had by and large resigned herself to her fate; she tried her best not to make any complaint to her mother but her harassment did not end even when she returned to her matrimonial home in December, 1996 along with her nine month old baby. It is difficult to imagine that a mother of a 1- 2 year old child would leave her newborn to the mercy of the world and take her own life unless and until there were compelling circumstances as was in the instant case. Learned Public Prosecutor has placed reliance upon Sudhakar Singh Vs. State, to support his submissions that all ingredients of Section 304B of the IPC stand fulfilled in this case. The telephonic call exchanged between PW-17 and the victim on 27.6.1997 (which was just three days prior to her death) had reiterated the woes of his sister. On no count does the impugned judgment call for any interference.

7. Arguments have been heard. Record has been perused.

8. The star witnesses of the prosecution are PW-1, PW-17 and PW-14. They are the mother, brother and maternal uncle respectively of the victim. They being the closest relations of the victim knew the nitty-gritties of the married life of the deceased.

9. Testimony of PW-1 discloses that Babita was married to Krishan Kumar on 06.03.1995. This was the second marriage of Krishan Kumar. His first marriage with Neeru, daughter of Narain Singh, had ended in divorce. At the time of the marriage appellant was 40 years of age and Babita was around 24 years. Further deposition of PW-1 is that appellant Omwati @ Bhudo and Amar Singh (sister-in-

law and brother-in-law of the deceased) were living in the same house where Babita and Krishan Kumar were living although on separate floors. All articles of marriage had been given in the dowry including cash of Rs.2.5 lacs. Babita visited her parents' house 3-4 days after the marriage where she stayed for 1- 2 months. She was taken back by Amar Singh and Bhura. She returned in the month of September when her brother Kuldeep (PW-17) had gone to bring her. At that time, Babita was pregnant. She remained in her parents' house for 1- 2 years. Her daughter was born in March, 1996 at her parents' home. The accused persons had come on several occasions to take back Babita but PW-1 did not send her as Babita did not want to go back due to the harassment which was meted out to her. However, with the intervention of the neighbours i.e. Braham Dev Sharma (PW-16) and Om Pal Singh (PW-14) , Babita had been sent back to her matrimonial home in December, 1996. Babita used to write letters to PW-1. Two letters dated 21.04.1995 and 11.06.1995 had been handed over by PW-1 to the Investigating Officer. The first letter (Ex.P-1) dated 21.4.1995 had been written by Babita to her maternal uncle Madan Pal Singh (PW-24) and the second letter dated 11.06.1995 had been addressed by the deceased to her mother (PW-1) . Further deposition of PW-1 is that PW-1 was being harassed with illegal demands of dowry and this has been noted in these two letters. She was harassed for not bringing a motor-cycle. The harassment continued even after December, 1996 when she returned and this was in spite of assurances given by Amar Singh and Bhura. In a further part of her testimony, PW-1 has stated that after the birth of her grandchild, Krishan Kumar had come to house of Lokesh (PW-15-son-in-law) wherein Krishan Kumar had beaten Babita and this was also in the context of Babita not having fulfilled the demand of the motor-cycle. On 27.06.1997, PW-17 had spoken to his sister on telephone wherein he told her that he is coming to pick her. On 30.06.1997, they were informed that Babita was in critical condition; they reached Delhi where they learnt that Babita had died because of poisoning.

10. In her cross-examination, PW-1 admitted that her statement was recorded on three occasions by the police; she was illiterate. They had no telephone in their house but there was a telephone in the house of her brother Madan Pal Singh (PW-24) which was just about three minutes walking distance from her house. She had spoken to Babita on telephone one month prior to her death wherein she had again stated that she was extremely harassed. They had reached Delhi at 03:00 PM on 30.06.1997. On their asking about Babita, nobody answered; they learnt from a neighbour that Babita had died one day earlier. She admitted that her daughter was taken to Rajasthan for treatment as she had received injuries in her ribs; since she did not get any relief, her further treatment was done at Bulandshahar where she stayed in the house of her elder son-in-law (PW-15) . She admitted that initially Babita used to praise her husband but later on she stated that she was being harassed by her husband as well. She admitted she had given statement to the police after consultation with her brother (PW-24) who was facing trial in a murder case.

11. Kuldeep Singh (PW-17) was the brother of the victim. He deposed that his sister was married to appellant Krishan Kumar on 06.03.1995. Vidai ceremony had taken place and at that time itself, Krishan Kumar and his elder brother had started demanding a Bullet motor-cycle; they were informed that after arranging the money, the motor-cycle would be given to them. His sister returned to her parents' house after three days and on the way, she disclosed to her brother that appellant Bhura and her two daughters were harassing her for gold ornaments and Krishan Kumar and his brother were demanding a motor-cycle. They used to tell her that she has come from a "neech khandan" (low family) . He further deposed that his sister used to remain hungry continuously, sometimes for 3-4 days. His sister had told him that Bhura used to catch hold of her hair and used to turn her out of the house at midnight by stating that she should not return to the house unless she brought the gold ornaments and motor-cycle. He admitted that the two letters i.e. Ex.P-1 and Ex.P-2 were written by his sister. His sister stayed in her parents' house for 1- 2 years. They visited his elder brother-in-law's house at Bulandshahar during this period; she disclosed to PW-17 that she had been beaten by her husband Krishan Kumar who had come to visit her; in his absence, Krishan Kumar had given beatings to his sister and deceased had told him about this. She had been treated at Parihar Nursing Home. Panchayat was called in the village and the accused persons had given assurances that Babita will not be maltreated and on their assurance, Babita was sent back to her matrimonial home in December, 1996. On 27.06.1997, he made a call to his sister to find out her well being, when he was informed that the accused persons were harassing her and they could kill her at any time. On 30.06.1997, PW-16 (Braham Dev Sharma) informed them that the condition of Babita was critical. When they reached Delhi on 30.06.1997, they learnt that Babita had died. In his cross-examination, PW-17 admitted that he had given three statements to the police. His first statement was dated 01.07.1997, the second statement was given on 17.07.1997 and the third statement which he had given to the Investigating Officer was dated 14.10.1997. The witness was confronted with these earlier statements wherein he admitted that there is no mention of demand of motor-cycle by the accused persons; there was also no mention that Babita was kept hungry for several days and she was not given food. There was also no mention that Bhura used to catch hold of her hair and used to turn her out of the house at midnight by stating that she should not return to the house unless she brought the gold ornaments and motor-cycle. He was also confronted with that part of his version wherein he had stated that when Babita accompanied him for the first time to the village, she had disclosed to him that all the accused persons used to harass her for motor-cycle and gold ornaments. He admitted that in his first statement he had also not disclosed that he had made a call to his sister on 27.06.1997 asking her about her well-being.

12. Madanpal Singh, the maternal uncle of the victim (PW-24) was also a resident of Bulandshahar where PW-1 and PW-17 were living. He deposed that Babita had come to live with her parents on 2-3 occasions; she stayed there for

almost 1- 2 years. Krishan Kumar and his brother Amar Singh had come to his house and requested him to send Babita with them and on their assurance, Babita returned to her matrimonial home in December, 1996. He admitted Ex.P-1 was a letter written by Babita to him. In another part of his examination, he admitted that quarrels used to take place between the accused and the deceased on the issue of their living separately. PW-17 had been cross-examined by the learned public prosecutor. He denied the suggestion that demand of motor-cycle had been disclosed to him by Babita. In his cross- examination by the learned defence counsel, he admitted that he learnt about the death of Babita when they reached Delhi which was around 08:00 am on 30.06.1997.

13. Apart from these oral versions, the documentary evidence i.e. the two letters purported to have been written by the deceased to her maternal uncle and to her mother (Ex.P-1 and Ex.P-2) were admittedly in her handwriting as had been opined by the senior scientific expert. These letters have been perused. Letter dated 21.04.1995 (Ex.P-1) was addressed to PW-24. In this letter, the victim had disclosed that her jeth and jethani namely Om Prakash and Bhura used to harass her; she had no grievance against her husband Setu (appellant Krishan Kumar) ; she had also no grievance against her mother-in-law; her grievances were all focused upon her brother-in-law and sister-in-law. It had further been disclosed that sometimes because of this harassment, the victim used to weep for the entire night; she had no money as the accused persons did not give her any. One part of the letter also discloses that a bullet (referring to a motor-cycle) had been given to her brother-in-law. She did not wish to live in Delhi; if she lived there, her husband Setu would not be allowed to join her; she wanted to be separated otherwise she would commit suicide. The second letter dated 11.06.1995 was addressed to her mother. This letter appears to have been written at a happier moment. While addressing this letter to her mother she stated that the injury suffered by her in the accident had not healed completely but was likely to heal soon. She disclosed that her husband Setu was a nice man and so also her mother-in-law (mummy) who was a simple lady. Her husband was going on a tour; her weight had increased; she requested her mother to ask her brother (Kuldeep) to arrange for the gold items for herself otherwise she would be taunted; God had given her courage.

14. The medical evidence i.e. the post-mortem of the victim (Ex.PW-1/A) disclosed no external injury upon her person. Her gastric lavage had been sent for a scientific analysis and the subsequent report of Dr. K. Goyal (Ex.PW-5/B) had opined cause of death to be phosphide poisoning.

15. The incident had occurred at 01:30 PM. This was on 29.06.1997. In the course of investigation, it was revealed that on 29.06.1997, the victim was first taken to Walia Nursing Home at Laxmi Nagar. She was brought there in an unconscious condition. She was not responding; her pulse also could not be recorded. She was referred to the LNJP Hospital. She was shifted from Walia Nursing Home to LNJP hospital in an ambulance and the driver of the ambulance

has been examined as PW-19. He has testified to the said effect. The victim had died on the way. Her post-mortem as noted supra had noted no injuries.

16. The site inspection of the spot (Ex.PW-20/A) conducted by the SDM (PW-20) i.e. the premises where the incident had occurred i.e. at the bedroom of the first floor of the matrimonial home (F-769, Ganesh Nagar, Shakarpur, Delhi) revealed that information about the death of the victim had been reported in the local police station at 02:00 am on 30.06.1997. The death having occurred within less than seven years of marriage, the SDM had also been summoned. In his initial report, he had recorded that Babita's body was lying in the front room of the house, on the floor. She was wearing a pink salwar and kurta. There was no injury or any bruise; the victim was of medium height; her body had been found in the bath-room but she had been taken to a nearby nursing home. Nothing abnormal was noted.

17. The first Investigating Officer of this case was SI Kali Ram (PW-22) and thereafter the investigation was transferred to Inspector Sukh Ram Dahiya (PW-26) . He had arrested the accused persons and obtained the subsequent opinion on the cause of death of the victim.

18. In the statement of the accused persons recorded under Section 313 of the Cr.PC, both the accused persons had stated that they had been falsely implicated in the present case. Amar Singh and appellant Bhura were living separately. Deceased Babita did not want to live in Delhi. She was pressurizing her husband to live in Bulandshahar which was not possible for him. Appellant Krishan Kumar was a loving husband and was affectionate towards Babita, who was his second wife. No evidence was led in defence.

19. The evidence as accumulated, both oral and documentary, discloses that as per PW-17 right from the inception Babita was harassed. This had been disclosed by Babita to PW-17 when he had taken her back to their home on 09.4.1995; she had disclosed that her harassment for not bringing a motor cycle was consistent. On the other hand, PW-1's version is that Babita was happy in her matrimonial home for the first three months. It was only when she came to their house around Sawan (July and August, 1995) that the deceased had disclosed to her that she was being harassed by the accused persons. These versions of PW-1 and P-17 who were the closest relations of the deceased being her mother and brother are both conflicting; whereas PW-1 has stated that for the first three months of her marriage the victim was happy and in fact she used to sing praises of her husband Krishan Kumar and it was only around July and August, 1995 that she disclosed about her woes; PW-17 on the other hand stated that it was in April, 1995 itself that his sister disclosed that she had been harassed by her in-laws for demand of a motor cycle. These oral versions of PW-1 and PW-17 in this context are also in contrast with the documentary evidence i.e. two letters dated 21.4.1995 and 11.6.1995 written by the victim to her maternal uncle and to her mother. The letter dated 21.4.1995 states that the victim was harassed by her brother-in-law and sister-in-law i.e. Om Prakash and Bhura; her husband Setu

was nice; she was happy with her mother-in-law; in case anything happened to her, her mother and husband were not responsible; she had no money; she did not wish to live in Delhi. The second letter written by the victim to her mother was of the month of June 1995. This letter also speaks kindly of her husband Setu and her mother-in-law. This letter in fact is worded on a happier note; the deceased had disclosed that her weight had increased; she had asked for the gold articles to be arranged for her otherwise she would be taunted; this letter is conspicuously silent on the demand of a motor cycle. The mention of the gold item was also for the victim herself. It was not a demand by her husband or any of his other relatives.

20. Another relevant fact is that the incident had occurred on 29.06.1997 when the victim had been removed (unconscious) to Walia Nursing Home; she had died in the early morning hours of 30.06.1997 i.e. at about 02:00 am. The victim's family i.e. her mother, brother and maternal uncle reached Delhi at about 08:00 am on 30.06.1997. This has been disclosed in the version of PW-24. The victim was already dead by that time. However, admittedly no complaint was made to any person i.e. either to the Police or to the SDM up to 01.07.1997 when their statements were recorded by the SDM. These statements of these three PWs recorded by the SDM (Ex.PW-1/A, Ex.PW-17/A and Ex.PW-20/A) have been perused. The allegations of harassment of the victim are general allegations leveled against Krishan Kumar, Bhura and Om Prakash and their two daughters Sudha and Geeta. Sudha and Geeta have since been discharged. None of these statements disclose that the victim was being harassed for a motor-cycle which is the main bone of contention today. The entire argument and the theory of demand of dowry as set up by the prosecution is in fact based on this motor-cycle. If this was such a persistent demand being made upon the victim and it was a primary cause of harassment, it would have been most natural for the victim's family to have disclosed this in their first statement to the SDM. However, this did not appear, not only in their first statement dated 01.07.1997, but even in their second supplementary statement recorded on 17.07.1997. Even then, there was no mention of demand of motor-cycle. The demand of motor-cycle first emanated in the statements of PW-1 and PW-17 on 24.10.1997. This was after a gap of almost more than 3- 4 months and as rightly pointed out by the learned counsel for the appellant, it creates a suspicion in the mind of the Court that this was an afterthought. This was to fill up the gap of bringing the case within the ambit of "dowry demand".

21. Another relevant fact which this Court notes is that the phone call which was purportedly exchanged between the victim and her brother Kuldeep (PW-17) on 27.06.1997 was also not mentioned by any of the aforementioned witnesses in their statement recorded before the SDM on 01.07.1997. The brother (PW-17) , for the first time, only on 17.07.1997 disclosed that he had made a phone call to his sister on 27.06.1997 wherein she disclosed that she was being harassed. This was an important fact. The version of the prosecution is largely based on this phone call on 27.06.1997 to bring the case within the ambit of "soon before

death". Otherwise, admittedly the victim had returned to her matrimonial home in December, 1996 and no other incident of harassment or cruelty had been leveled. Versions of PW-1 and PW-17 on this point are also contrary. PW-1 stated that her son had told her about this conversation of 27.06.1997 that Babita had disclosed to him that she had not been given food for the last five days and was being harassed, much after the incident. PW-17, on the other hand, deposed that on that day itself i.e. on 27.06.1997 itself he had informed his mother about his conversation with Babita but his mother had advised him to wait for 3-4 days. This part of the deposition of PW-17 being in contrast with the testimony of PW-1, a doubt is cast as to whether at all, a call was exchanged between PW-17 and the deceased on 27.06.1997?

22. Learned public prosecutor has argued that the victim had suffered injuries because of the beatings given by Krishan Kumar to the victim at Bulandshahar when he had gone to visit his wife at the house of PW-15. PW-17 in this context stated that these beatings were given by Krishan Kumar in his absence but she had been treated in Parihar Nursing Home for about 30 days. PW-15 deposed that on 18.08.1995, Babita had come to his house; her husband Krishan Kumar also reached there; there was an argument; on inquiry they found Babita sitting with both hands on her ribs and she was weeping; she stated that she had been assaulted at her ribs by Krishan Kumar. She was treated at the Government hospital. Testimony of PW-15 that she was being treated at Government hospital is deviant from the version of PW-17 who has stated that his sister had been treated at Parihar Nursing Home which is a private hospital. PW-1 on the other hand deposed that her daughter had been taken to Rajasthan, Ganga Nagar for her treatment because of an injury in her ribs and later on she was treated at Bulandshahar; she had not spoken of any beating given to her by her husband. The letter dated 11.06.1995 however shatters these oral versions. In this letter Babita had categorically stated that she had suffered an accident; her injuries had not healed completely. This version having come from the victim herself makes it clear that this was not a case of beating. It was an accident.

23. Section 304B of the IPC presupposes the following essential ingredients which have prima-facie to be established by the prosecution before the presumption under Section 113B of the Evidence Act can be attracted. They are :-

- (i) The incident of death has occurred within seven years of marriage;
- (ii) It was an abnormal death, whether homicide or suicide, may not be relevant;
- (iii) There have been dowry demands within the definition of "dowry" as contained in Section 3 of the Dowry Prohibition Act, 1986;
- (iv) These dowry demands must have been made "soon before death" and what is "soon before death" has to be examined in the light of the facts and circumstances of each case.

24. In the instant case, parameters (i) and (ii) stand established. The prosecution has, however, failed to even prima-facie show that there was a

dowry demand. Dowry no doubt, includes gifts which have to be given not only at the time of marriage and but even after the marriage provided that they are in connection with the marriage itself. PW-1 and PW-17 have harped on the demand of a motor-cycle which demand had been made upon the victim right from the beginning of the marriage yet it is surprising that in their statement given before the SDM, no such demand was mentioned. The incident is dated 30.06.1997. Neither in the statements of 01.07.1995 nor thereafter in their second statement of 17.07.1995, did they disclose this demand. This demand was first disclosed before the Investigating Officer only on i.e. 14.10.1997 after a gap of 3- 4 months. This is by and large the only dowry demand. The gold articles purported to have been demanded by the appellants were for the victim herself. The deceased in her letter dated 11.6.1995 (written to her mother) wanted the gold ornaments for herself; else she would be taunted. There is no evidence to show that these gold ornaments were for the accused or for any of his family members. The third parameter i.e. of a "dowry demand" has not been established.

25. The fourth parameter i.e. "soon before death" is also not established. The phone call purported to have been exchanged between the victim and her brother has not been proved. There are conflicting versions as to when this call was made and when it was disclosed by PW-17 to PW-1. This piece of evidence not being trustworthy cannot be relied upon.

26. In the absence of a prima facie case being established by the prosecution, the presumption contained in Section 113(B) of the Evidence Act would not be attracted.

27. Another aspect of the matter which deserves to be noted is the MLC and the post-mortem of the victim (Ex.PW-5/A) . Admittedly, no external injury on the body of the deceased had been noted. It was a case of poisoning. The statement of the accused recorded under Section 313 of the Cr.PC that the victim wanted to leave Delhi and wanted to live in Bulandshahar is a fact which cannot be ignored as it had come in the version of PW-24 himself that the victim and her husband used to often quarrel on the issue that they wanted to live separately.

28. It is also a part of the record that this was the second marriage of the appellant Krishan Kumar. The fact that he was divorced from his first wife was well known to the mother of the deceased; although initially in her deposition she had tried to conceal this fact, in a later part of her version she admitted that she knew that he was married. The submission of the learned counsel for the appellant that the parties had a simple marriage and in fact no dowry was exchanged, which is why no dowry list had also been given by the parents of the victim is another circumstance which cannot be ignored.

29. The Courts have time and again deprecated the practice of general and vague allegations of dowry demands and beatings given to the deceased without detailing specific instances. As has been rightly pointed out by the learned

counsel for the appellant, for a heinous offence under Section 304B of the IPC; the initial onus is on the prosecution; it would shift upon the accused only after the initial burden has been discharged which has not been done in the present case. An unfortunate life has been lost but before the accused can be nailed for the offence, the prosecution must prima-facie establish its case; only then can the presumption of Section 113(B) of the Evidence Act be attracted. There is no explanation as to why the family of the victim did not disclose the two most urgent circumstances i.e. demand of a motor-cycle and the telephone call of 27.06.1995 in their initial statements before the SDM. The version on the demand of motor-cycle emanated for the first time 3- 4 months after the date of the incident i.e. on 14.10.1995. It has to be an afterthought. The telephone conversation of 27.06.1995 also emanated for the first time only on 17.07.1995. This was also to fill in the lacuna for the necessary ingredient of "soon before death".

30. In these circumstances, this Court grants benefit of doubt to the accused persons. Appeal is allowed. Accused persons are acquitted. Bail bonds cancelled. Surety discharged.