

(2012) 08 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 117 of 2004

State of Himachal Pradesh

APPELLANT

Vs

Dumnu Ram and Others

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 378

Evidence Act, 1872 — Section 113A, 113B, 32

Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2012) 3 ShimLC 1600

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Vivek Singh Thakur, A.A.G, for the Appellant; Surender Verma, Advocate for the Respondents No. 2 and 3, for the Respondent

Judgement

Deepak Gupta, J.—This appeal by the State is directed against the judgment dated 29.11.2003, delivered by the learned Additional Sessions Judge, Mandi, in Sessions Trial No. 41 of 1998, whereby he acquitted the accused, Dumnu Ram, Tara Devi and Ramesh Kumar, of having committed offences punishable under Sections 304-B and 498-A IPC. At the outset, we may note that accused-Dumnu Ram has expired and the appeal stands disposed of as abated as far as he is concerned.

2. The prosecution story, in brief, is that Tara Devi was married to Ramesh Kumar. The mother of Ramesh Kumar is also one Tara Devi. Accused Dumnu Ram and Tara Devi are the parents of accused Ramesh Kumar, i.e. father-in-law and mother-in-law of deceased Tara Devi. On 03.08.1995, Beli Ram, brother of deceased Tara Devi, got recorded his statement u/s 154 Cr.P.C., Ex. PW-1/A, on the basis of which FIR, Ex. PW-14/ D, was lodged. In this statement, Beli Ram stated that his sister, Tara Devi, was got married to accused, Ramesh Kumar, less than about one year earlier. The wedding was celebrated in a simple manner in a temple and no dowry was given. For about three months, accused, Ramesh Kumar, kept his wife, Tara Devi, in proper manner. Thereafter, accused, Ramesh

Kumar, started troubling his wife, Tara Devi, on account of her not having brought dowry. Whenever Tara Devi used to come home, she used to complain that her husband used to trouble her on this count. In March, 1995, Beli Ram had given some articles of dowry and had taken the same to the house of the accused in village Bharari. Despite this, his sister, Tara Devi, was being troubled and whenever she came home, she would cry and complain that her husband says why she has not brought a colour TV, Godrej almirah etc. Thereafter, he used to beat her up. She used to say that in case, the demands of dowry are not met, then her husband would trouble her so much that she would be forced to consume poison. According to Beli Ram, they used to pacify Tara Devi and send her to her matrimonial home.

3. On 29.07.1995, Tara Devi and accused Ramesh came to Beli Ram's house. Next morning, on 30.07.1995, accused Ramesh went back to his village. The son of the complainant, Beli Ram, was admitted in hospital and when he reached home at about 12.00 noon from the hospital, Tara Devi again started crying. When Beli Ram asked Tara Devi what had happened, Tara Devi told him that her husband and mother-in-law have stated that if within four days, she does not get a colour TV, Godrej almirah and cash, then they will compel her to leave the house. The same evening, accused Ramesh again came to the house of Beli Ram and asked Tara Devi to return to the matrimonial home on 31.07.1995. Beli Ram requested that his sister may be permitted to stay in his house because of the illness of his son and prayed that she may be permitted to stay in his house for another two-three days. On this, accused Ramesh got annoyed, kicked the thali in which meals were served to him and stated that he does not eat such poor quality food. It is alleged that Ramesh also made it clear that his demand for certain items be fulfilled and then left the house. Tara Devi, sister of Beli Ram, left for her matrimonial home the same evening and stated that if she did not go home, then her husband would harass her much more.

4. On 2nd August, 1995, when Beli Ram was in the hospital at BSL Colony to look after his child, he met one lady belonging to village Bharari, i.e. the village of the accused. This lady informed Beli Ram that his sister (deceased Tara Devi) had been beaten the previous evening by accused Ramesh and accused Tara Devi. Thereafter, Beli Ram went to the house of his sister at about 10.45 a.m. in village Bharari. He found his sister sleeping on a cot. When he asked her why she was sleeping, then she answered that the previous night, she had been beaten up by her mother-in-law and her husband. Beli Ram helped her to get out of the bed and tried to bring her out, but she felt giddy. He noticed a bruise on her eye. He then asked accused, Tara Devi, mother-in-law of the deceased, why they were troubling his sister and she replied that some quarrel had taken place between the husband and wife. Beli Ram told his sister that he would take her to hospital, but she refused to go and stated that her husband and mother-in-law would trouble her more even if she went to hospital.

5. Thereafter, Beli Ram went to the house of the Up-pradhan to complain to him

about the maltreatment meted out by the accused to his sister. He told him the entire story. The Up-pradhan told Beli Ram that they would gather some other villagers and then talk about the matter. Beli Ram returned to the house of his sister and found that she was not there. When he asked about her whereabouts, he came to know that his sister has been taken to hospital. He also went to the hospital and found that she was under treatment of a doctor. Unfortunately, about VA hours later, his sister expired in the hospital. He alleged that his sister had committed suicide because she had been troubled by her in-laws and her husband for bringing less dowry.

6. On the basis of this statement, FIR, Ex. PW-14/D, was registered u/s 304-B of the Indian Penal Code. The body of the deceased, Tara Devi, was sent for post mortem and as per the post mortem report, she had died due to pulmonary edema and shock. The viscera of the deceased was sent to the forensic laboratory and as per the report of the forensic laboratory, traces of Aluminium Phosphide poison were found in the viscera of the deceased. However, no poison was found on the clothes which were sent alongwith the viscera. Thereafter, it was opined that the deceased had died due to Aluminium Phosphide poisoning leading to pulmonary edema ,circulatory collapse, shock and death.

7. Other investigation was carried out and after completion of the investigation, accused Dumnu Ram was charged with having committed an offence punishable u/s 498-A IPC, whereas accused Tara Devi and Ramesh Kumar were charged for offences punishable u/s 498-A as well as Section 304-B IPC.

8. The learned trial Court came to the conclusion that since the demand for dowry by the accused from the deceased was conceded by the complainant much before her demise and because accused were making efforts for saving the life of the deceased while she was admitted in hospital coupled with the fact that at the time of inquest, the complainant had not leveled any allegation against the accused and had filed the complaint only on the next date, the delay in lodging the report was fatal to the prosecution.

9. Aggrieved by the said judgment, the State has filed this appeal. We have heard Mr. Vivek Singh Thakur, learned Additional Advocate General, for the State and Mr. Surender Verma, learned Counsel for accused Tara Devi and Ramesh Kumar.

10. At the outset, we may note that the statement of the complainant u/s 154 Cr.P.C. was recorded on 03.08.1995 and this is one of the main factors which weighed with the learned trial Court in acquitting the accused. According to the learned trial Court, since Beli Ram, complainant, had not complained to the police on 02.08.1995, the possibility of the FIR being lodged after due deliberations cannot be ruled out.

11. It is true that if FIR is lodged after unexplained delay, then the Court may, in certain circumstances, doubt the version given in the FIR. However, if the allegations made in the FIR are fully supported by the witnesses, who appear in

person, and there is nothing to discredit the testimony of the witnesses, then the mere fact that the FIR has been lodged late is not sufficient to acquit the accused. If the FIR is recorded after great delay, then the Court may scrutinize the evidence of the prosecution witnesses with greater care and caution.

12. The complainant, Beli Ram, appeared in Court as PW-1. His version is almost identical to what was stated in his statement u/s 154 Cr.P.C. He stated that in March/April, 1995, during the period of Navratras, he and his family members arranged some dowry articles, i.e. some utensils, furniture, bedding, and these articles were taken to the matrimonial home of the deceased in a tractor and he alongwith Amar Singh and Medh Ram, driver of the tractor, went to the village and handed over the articles in the house of his sister. According to him, they could not meet the demand of the accused persons for colour TV and Godrej almirah. He also talked about the occurrence of July, 1995 when the accused and Tara Devi came to his house and accused, Ramesh, refused to take any food. His version is that on the next date, he went to the hospital to look after his son. He met the accused Ramesh outside the hospital and told him that over a passage of time, he would try to arrange for the remaining dowry articles. He further states that on 2nd August, 1995, when he was in the hospital to look after his son, a lady from the village of the accused, probably Hima, told him that his sister had been beaten by her husband, accused Ramesh and mother-in-law, accused Tara Devi, the previous night. He rushed to the village of the accused persons and found that his sister was lying in a room, which was bolted from outside. He opened the bolt and went inside. He noticed an injury on the eye of his sister. Deceased Tara Devi informed her brother, Beli Ram, that she had been beaten by her husband Ramesh and mother-in-law, Tara. According to him, when he questioned accused Tara Devi as to why they had beaten his sister, she started quarreling with him and thereafter, he went to the Up-pradhan to inform him about the beatings given to his sister. When he returned to the house of his sister, he found that she was not there. He was told that she had been taken to hospital. He went to the hospital immediately and when he reached Sundernagar at about 2.00-2.30 p.m., his sister was unconscious and died after some time.

13. He was cross-examined at length. He admitted that when the marriage was performed, no dowry was demanded, but according to him, it was agreed that this matter would be settled later on. He also admits that accused, Dumnu and Tara Devi, left for Manipur soon after the marriage and, in fact, Dumnu did not return to Sundernagar till the death of the deceased. He denied the suggestion that his sister never complained about any maltreatment or demand of dowry. He also denied the suggestion that his sister was already suffering from some mental ailment. The suggestion put to him was that the deceased mistakenly consumed the poison, thereafter she informed her mother-in-law and was then taken to hospital immediately.

14. Hima Devi was examined as PW-3. Though, she has turned hostile and has not supported the prosecution version completely, she admits that she hails from

the same village as of the accused, who are her neighbours. According to her, on the ill fated day, deceased, Tara Devi, met her at the water tap in the village during the morning hours. The deceased told Hima Devi to give a message to her brother that he (Beli Ram) should meet her. At this stage, this witness was declared hostile and cross-examined by the learned Public Prosecutor.

15. It will be important to note that one of the observation made by the learned trial Court is as under:

Court observation: The witness appears to be adamant to deny the facts even before the same are put to the witness by the Ld. P.P.

Though, this witness has denied the suggestion that she was making a false statement in Court, she has stated that she definitely gave a message to Beli Ram, the brother of the deceased, during day time.

16. The question which arises is why would the sister ask Hima Devi to give a message to her brother. She would ask somebody to give a message only because she herself could not give the message directly. Admittedly, she had gone to the house of her brother a couple of days earlier and therefore, the message had to be in connection with some problem which had cropped up thereafter.

17. The next important witness is PW-4, Dodi Devi. She is also a resident of village Bharari to which accused belong. According to her, Beli Ram, the brother of the deceased Tara Devi, had come to her shop and told her that he was going to the Pradhan of the area, but did not say anything further. She was declared hostile and then cross-examined by the learned Public Prosecutor. In cross-examination, she stated as follows:

It is correct that brother of deceased was seen by me in my village. I asked him, where he was going. He told me that he is going to call Pradhan to apprise him the factum of his sister being beaten by the accused persons.

18. Thus, this witness, though she was declared hostile, has, in no uncertain terms, admitted that Beli Ram had told her that he was going to call the Pradhan to apprise him of the fact that his sister (deceased Tara Devi) was being beaten by the accused persons. In cross-examination by the defence, she denied the suggestion that she was making a false statement and nothing was told to her by Beli Ram about beatings given to her sister, but then went on to add that Beli Ram was talking to another lady, who was sitting in her shop and she did not have a talk with Beli Ram. This statement also does not appear to be correct. But a reading of the statement of Dodi Devi leaves no manner of doubt that in her presence, before Tara Devi had committed suicide, Beli Ram was telling the people that the accused persons had been beating his sister.

19. The other important witness in this regard is PW-16, Tek Singh. This witness states that sometime in the year 1995, Beli Ram came to his house during day time and complained that his sister, who is married in village Bharari, is being

beaten by her in-laws. He also asked the witness to accompany him to the house of the in-laws of the deceased. Since this witness was busy, he advised Beli Ram that he would come after one week and the matter would be placed before the Panchayat and other elders of the community, so that the matter could be amicably settled. When the witness returned to the village after a week, he came to know that the sister of Beli Ram had expired.

20. This also clearly shows that prior to the death of deceased Tara Devi, Beli Ram had complained to Tek Singh, who was the Up-pradhan of Gram Panchayat, about the maltreatment being meted out to his sister. Therefore, it cannot be said that this story was concocted after the death of the sister.

21. Coming to the medical evidence, it would be pertinent to refer to the statement of PW-13, Dr. Rafia Bano, who conducted the post mortem on the body of deceased Tara Devi. She noticed the following injuries on the person of deceased Tara Devi:

Wounds, bruises, position, size and nature:

1. One contusion on the left lower eye lid obliquely placed sized 2.5 c.m. x 1 c.m. Colour bluish brown. Antemortem.

This injury on the left lower eye lid is totally in consonance with the statement of Beli Ram. Though, according to this witness, deceased died due to Aluminium Phosphide poisoning, she has clearly stated that the injury on the eye was an ante mortem injury.

22. At this stage, it would also be pertinent to refer to Ex.PW-13/ B and Ex. PW-13/D. Ex. PW-13/B is an intimation sent to the Incharge, Police Station Sundernagar by the doctor informing him that some girl has been brought to the hospital with history of poisoning and this is for his information and necessary action. The first intimation, Ex.PW-13/B, is by Dr. Indira Kaushal. Thereafter, an application, Ex.PW-13/C, was moved by the police to record the statement of the deceased, but Dr. Indira Kaushal opined that Tara Devi was not in a fit state to make a statement and after the death of the deceased, Dr. A.K. Mishra sent letter, Ex. PW-13/D, to the police station.

23. With regard to the demand of dowry, in addition to statement of Beli Ram referred to above, reference may be made to the statement of PW-5, Satya Devi, who has stated that two-three days prior to her death, deceased Tara Devi had met her in villager Chattar and had informed this lady that her in-laws were troubling her and demanding dowry.

24. PW-6, Prem Lal, states that on 30th July, 1995, Tara Devi met him and told him that her in-laws were demanding dowry. In cross-examination, he admits that Tara Devi is his cousin. PW-7, Sanjay Kumar, is a co-villager of the complainant party. According to him, in March, 1995, he had accompanied PW-1, Beli Ram, to the house of accused persons with dowry articles, which were carried in the tractor being driven by Medh Ram. He admits that he is a co-

villager of the complainant and is on good terms with the family.

25. PW-10, Medh Ram Thakur, is the owner and driver of the tractor and according to him, in April, 1995, he had carried dowry articles of Tara Devi to her in laws house in village Bharari and that time, Sanju and some other persons had accompanied them. In cross-examination, he stated that the articles were sent by the complainant of his own.

26. PW-12 is another Tara Devi and according to her, the deceased had come to her parental house and one day while she was going to bring grass, she met the deceased. She inquired about her well being and then deceased Tara Devi informed her that her in-laws were ill-treating her on account of dowry.

27. Coming to the evidence of the official witnesses. PW-14, ASI Suram Singh, states that a letter, Ex. PW-13/B was received in the police station from the Civil Hospital, Sundernagar, on the basis of which Rapat No. 17, Ex. PW-14/A, was entered. Thereafter, PW-14, alongwith Constable Roop Singh went to the hospital and moved an application, Ex. PW-13/C, for recording the statement of Tara Devi, but Dr. Indira Kaushal declared the patient unfit to give a statement. At 4.00 p.m., the patient died and then he prepared the inquest papers in respect of the deceased, which are Ex. PW-14/B. He also got the post mortem conducted on the body of the deceased. According to him, later in the evening, he handed over the investigation of the case to SI, Amba Dutt, PW-17. Next day, FIR was registered on the basis of the statement, Ex. PW-1/A. In cross-examination, he states that accused Ramesh and Tara Devi were present in the hospital and were attending upon the deceased properly. He also admits that on that day, no complaint was lodged by the parents or brother of the deceased regarding maltreatment or demand of dowry by the accused persons. He also stated that the deceased was not having any injury mark on her person and there was no injury on her face or her forehead. He did not record the statement of Dr. Indira Kaushal.

28. PW-17, Amba Dutt, states that on 03.08.1995, he went to the hospital at Sundernagar to conduct inquest proceedings in respect of deceased Tara Devi. In the hospital, PW-1, Beli Ram, got recorded statement, Ex, PW-1/ A and on the basis of this, FIR was recorded. A suggestion was put to this witness that the deceased was brought to the hospital in a truck and the deceased fell down from the truck and sustained some injuries.

29. We may note the principles relating to the powers of the Appellate Court while dealing with an appeal against acquittal which have been enumerated by the Apex Court in Chandrappa and Others Vs. State of Karnataka, The Apex Court held as follows:

15. Bare reading of Section 378 of the present Code (Appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the Legislature on the powers of the appellate Court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to

reappreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

16. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court.

30. Thereafter the Apex Court culled out the following principles:

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

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

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

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

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

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

31. Keeping in mind the aforesaid principles, we have considered the case in hand. We are aware that we are dealing with an appeal against acquittal. We have, therefore, dealt in detail with the evidence, both oral and documentary, in

detail.

32. If we carefully analyze the aforesaid judgment, the following facts stand clearly proved that on 2nd August, 1995, when Beli Ram, brother of the deceased, went to attend to his child at the hospital, he met Hima Devi, W-3, who told him that his sister had called him. Beli Ram went to the house of the accused persons and found his sister sleeping. She had an injury on the eye. His version is that he confronted the mother-in-law, Tara Devi. His version is corroborated by the statements of PW-4, Dodi Devi and PW-16, Tek Singh. It is obvious, when the statements of these witnesses are read together, that prior to the deceased Tara Devi committing suicide, her brother, Beli Ram, had made complaint about the fact that his sister was being ill treated by the accused. Even though Dodi Devi has turned hostile, she has clearly supported the prosecution in this regard. Similarly, the statement of PW-16, Tek Singh, also supports the prosecution version.

33. This leaves no manner of doubt that the deceased had been beaten up by somebody in the house of the in-laws. Admittedly, Dumnu Ram, father-in-law of the deceased, was not there at that time and only Tara Devi, mother-in-law and Ramesh Kumar, husband of the deceased, were present.

34. The medical evidence also supports the version of Beli Ram since PW-13, Dr. Rafia Bano, has clearly stated that she had found one contusion on the left lower eye lid and this was an ante mortem injury. Though, it has been urged that there was no injury, suggestion, which has been made to the Investigating Officer, is that the deceased was brought to the hospital in a truck and the deceased fell down from the truck and sustained some injuries. This clearly indicates that the defence admits that there were some ante mortem injuries on the deceased. The story of the deceased suffering injuries when she fell down is totally implausible and cannot be believed.

35. No person has a right to physically assault any other human being. Beating of wife by her in laws is cruelty within the meaning of Section 498-A IPC. The death, in this case, has taken place within one year of the marriage and, therefore, the presumption u/s 113-A of the Indian Evidence Act, 1872, will arise in the present case, which reads as follows:

113-A. Presumption as to abetment of suicide by a married woman.--

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.--For the purpose of this Section, "cruelty" shall have the same

meaning as in Section 498-A of the Indian Penal Code.

36. A bare perusal of Section 113-A shows that if a woman commits suicide within seven years of her marriage and it is proved that her husband or any relative of her husband had subjected her to cruelty, the Court may raise a presumption, having regard to all other circumstances, that such suicide has been abetted by the husband or by such relative of the husband.

37. In the present case, deceased Tara Devi sent a message through PW-3, Hima Devi, to call her brother. When the brother reached her house, he found her in a very weak state and he also found injuries on her person. She complained to him that she had been beaten. As stated above, the version of the brother of the deceased is totally supported in this regard by the other evidence on record. Therefore, this is a case where Section 113-A will come into play.

38. In *Shamnsaheb M. Multtani v. State of Karnataka*, (2001) 2 SCC 577 the Apex Court held as follows:

29. At this stage, we may note the difference in the legal position between the said offence and Section 306 IPC which was merely an offence of abetment of suicide earlier. The Section remained in the statute book without any practical use till 1983. But by the introduction of Section 113-A in the Evidence Act the said offence u/s 306 IPC has acquired wider dimensions and has become a serious marriage-related offence. Section 113-A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the Court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the Court may presume the fact, it is discretionary on the part of the Court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the Court to act on the presumption the accused can persuade the Court against drawing a presumption adverse to him.

30. But the peculiar situation in respect of an offence u/s 304-B IPC, as discernible from the distinction pointed out above in respect of the offence u/s 306 IPC is this: Under the former the Court has a statutory compulsion, merely on the establishment of two factual positions enumerated above, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the Court is bound to act on it.

39. The Apex Court in *Kans Raj Vs. State of Punjab and Others*, , held as follows:

7. The offence of "dowry death" was incorporated in the Indian Penal Code and corresponding amendment made in the Evidence Act by way of insertion of Section 113-B vide Act 43 of 1986. In fact the Dowry Prohibition Act, 1961 being Act 28 of 1961 was enacted on 20.5.1961 with an object to prohibit giving or taking dowry. The insertion of Section 304-B of the Indian Penal Code and

Section 113-B in the Evidence Act besides other circumstances was also referable to the 91st Report dated 10.8.1983 of the Law Commission. In the Statement of Objects and Reasons to Act 28 of 1961 it was stated:

The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does enure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence, the present Bill.

8...

9. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable u/s 304-B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) to such cruelty or harassment the deceased should have been subjected soon before her death.

10. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused u/s 113-B of the Evidence Act. It has to be kept in mind that presumption u/s 113-B is a presumption of law. We do not agree with the submission made by Mr. Lalit, learned Senior Counsel for the accused that the statement made by the deceased to her relations before her death were not admissible in evidence on account of the intervening period between the date of making the statement and her death.

11. Section 32 of the Evidence Act is admittedly an exception to the general rule of exclusion to the hearsay evidence and the statements of a person, written or verbal, of relevant facts, after his death are admissible in evidence if they refer

to the cause of his death or to any circumstances of the transaction which resulted in his death. To attract the provisions of Section 32, for the purposes of admissibility of the statement of a deceased the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured without any amount of delay or expense or he is incapable of giving evidence and that such statement had been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Act. Section 32 does not require that the statement sought to be admitted in evidence should have been made in imminent expectation of death. The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction.

40. There is also evidence on record/ which has been discussed above, which clearly indicate that deceased was being harassed for bringing less dowry. In this regard, reference may be made not only to the statement of the brother, Beli Ram, but also to the statements of PW-5, Satya Devi; PW-6, Prem Lal and PW-7, Sanjay Kumar. The fact that some dowry items were taken is also proved from the statement of PW-7, Sanjay Kumar and PW-10, Medh Ram Thakur. There is sufficient material on record, in this case, to show that the deceased was being treated with cruelty and harassed for having not brought sufficient dowry.

41. It has been urged that in this case evidence on record shows that when the marriage was celebrated, no dowry was demanded or given. This may be true, but the fact is that after the marriage took place, some demands of dowry were raised. In the present case, not only demands of dowry were raised, but the deceased, Tara Devi, was beaten by her husband and his mother and it is more than obvious that this was what compelled her to commit suicide.

42. The evidence on record clearly proves that though the mother-in-law was harassing the deceased and treating her with cruelty for bringing less dowry, beatings were being given by the husband. The beating on the night intervening 1st and 2nd August, 1995, was the last straw on the camel's back, which compelled the deceased to commit suicide. Therefore, accused Ramesh Kumar is also guilty of having committed an offence punishable u/s 306 IPC. In view of the above discussion, we convict both the accused persons, Tara Devi and Ramesh Kumar, for having committed offence punishable u/s 498A IPC and accused Ramesh Kumar is also convicted for having committed an offence punishable u/s 306 IPC. The bail bonds of the accused persons are cancelled and they be produced before this Court on 26th September, 2012, for being heard on the quantum of sentence.