

Yogesh Kumar and ors. Vs. State

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Court : Delhi

Decided On : Mar-04-2014

Judge : V. K. Jain

Appellant : Yogesh Kumar and ors.

Respondent : State

Advocate for Def. : Ms. Ritu Gauba

Advocate for Pet/Ap. : Mr. O.P. Wadhwa

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

19. 02.2014 Date of Decision:

04. 03.2014 % + Crl. A. No.259 of 2010 YOGESH KUMAR & ORS. Through:
.Appellants Mr. O.P. Wadhwa, Adv. Versus STATE Through: .Respondent Ms.
Ritu Gauba, APP. CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

On 19.4.2006, Police Control Room was informed that a girl had hanged herself in House No.56, Gali No.10, Sitapuri. The information, when conveyed to Police

Station Dabri, was recorded there vide DD No.28A, a copy of which was given to ASI Surender Singh of the said Police Station for investigation. When the police officer reached the aforesaid spot, he found a young girl hanging with a ceiling fan, using her chunni for the purpose. The concerned SDM was called to the spot and he recorded the statement of Ramesh Kumar, who is the father of the deceased and Rajesh Kumar, who is her paternal uncle. Ramesh Kumar told the SDM that his daughter Mamta was married to Yogesh Kumar (appellant before this Court) on 23.4.2004 and there was no demand of dowry in the marriage. When the SDM asked him as to whether his daughter had been subjected to cruelty or any kind of harassment in the house of her in-laws, he alleged that Sheela Devi, mother-in-law of his daughter, Yogita, her married sister-in-law, his son-in-law Yogesh and Vijender Singh, father of Yogesh had started demanding motorcycle and Rs.50,000/- in cash in dowry from him just one week after the marriage and they used to taunt and beat his daughter, besides quarrelling with her and harassing her. He claimed that he gave Rs.5,000/- to his son-in-law, one week after marriage, followed by Rs.20,000/- to his son-in-law and his sister after about two (2) months, when they demanded dowry from him. He also claimed that on 12.4.2006, he had given Rs.30,000/- in cash as well as gold chain and jhumki weighing 15 grams to the parents-in-law of his daughter so that she is not maltreated and is given due respect. However, he did not fulfill their demand for motorcycle, which had resulted in dispute between them. He further alleged that after a child was born to his daughter on 29.3.2005, she lived with him for about five (5) months and was not willing to go to her matrimonial home due to harassment by inlaws over demand of dowry and apprehending maltreatment in the said house, but on account of the intervention of respected members of the society, he had sent her back to the matrimonial home on 1.9.2005, hoping that better sense would prevail with her in-laws and they would improve their behaviour. He also alleged that his daughter Mamta had complained to him with respect to maltreatment by her in-laws, through letters sent by her.

2. The paternal uncle of the deceased told the SDM that since marriage, the in-laws of Mamta used to quarrel with her, besides demanding dowry and harassing her. He also claimed that Mamta used to weep whenever she visited him. He also alleged that though he had tried to meet the in-laws to make them see reason,

there was no improvement in their behaviour and they used to harass Mamta and subject her to cruelty, by beating her on account of demand of dowry. The appellants Yogesh Kumar, Vijender, Sheela Devi and Yogita, who are the husband, father-in-law, mother-in-law and sister-in-law of the deceased were charge-sheeted under Sections 498A and 304B of IPC. Since all of them pleaded not guilty to the charge, as many as fifteen (15) witnesses were examined by the prosecution. witnesses were examined in defence. Two 3. Vide impugned order and judgement all the four appellants were convicted under Sections 498A and 304B of IPC read with Section 34 thereof. They were sentenced to undergo RI for ten (10) years each under Section 304B of IPC and RI for three (3) years each and to pay fine of Rs.5,000/- each or to undergo SI for six (6) months each under Section 498A thereof. Being aggrieved from their conviction and the sentence awarded to them, the appellants are before this Court by way of this appeal.

4. Shri Ramesh Kumar, father of the deceased came in the witness box as PW3 and stated that after 5-7 days of the marriage, the accused persons started harassing his daughter on account of their demand of dowry and after 8-9 days Yogesh took Rs.5,000/- from him. After about 20-25 days of marriage, his daughter sent him letter, through her maternal uncle, disclosing therein that the accused were harassing her on account of demand of Rs.2 lac in cash and a motorcycle. She sent yet another letter after about one month disclosing therein that the accused were asking her to sell her share in the plot and handover an amount of Rs.5 lac to them besides a motorcycle. He claimed that after the said letter the accused - Yogesh and his sister Yogita came to their house and he gave Rs.20,000/- to them. He further stated that whenever the deceased came to their house, she complained that her father-in-law and mother-in-law used to harass her, abuse her and give beatings to her. Though she was unwilling to return to matrimonial home they used to send her back making her understand that with the passage of time everything would be settled. He further stated that on discharge of her daughter from the hospital on 30.3.2005, they brought her to their house and sent her back to the matrimonial home on 1.9.2005, on the intervention of respectables from the society. However, there was no change in the attitude of the accused persons who continued to give beatings to his daughter. He further claimed that on 5.4.2006, the deceased came to their house at about 7 am and

they found that she had been given severe beatings. There were blue marks on her body at that time. She told them that the accused were demanding Rs.5 lac and a motorcycle from them and were harassing her for not bringing the chhuchhak (customary gifts given at the time of birth of a male child) after birth of son. She remained at their house for about 6-7 days. According to the witness on 12.4.2006, he along with his brother Rajesh went to the matrimonial home of the deceased and gave Rs.30,000/- besides a gold chain for the child, a pair of golden and silver chand and suraj, silver ornaments, 11 pair of clothes for the child and other articles to the accused persons who complained as to why he had not brought ornaments for their daughter. An altercation took place on this issue and he asked the accused persons to give some time to meet their demands. They, however, were ready to quarrel on this issue. The witnesses identified Ex.PW3/P1 to P2 as the letters he had received from his daughter.

5. PW7 - Rajesh is the brother of the complainant. He stated that within one week of marriage of Mamta, her in-laws started harassing her for inadequate dowry and demanded a motorcycle besides Rs.5 lac in cash. The father of Mamta gave Rs.5,000/- in cash to the accused Yogesh. He further stated that whenever the deceased visited them she used to tell him and his wife that the accused persons were harassing her and giving her a lot of beatings on account of insufficient dowry. He further stated that after birth of the child of Mamta they brought her to their house and she remained there for about six months. It was only on repeated requests that she was taken by her husband. He claimed that even thereafter the accused persons did not improve and repeatedly harassed Mamta. He also stated that on 5.4.2006 when the deceased came to the house of his brother, she had bruises all over her body and she stated that she had been asked by the accused persons to bring motorcycle besides Rs.5 lac and chuchak. He claimed to have gone to the matrimonial home of the deceased along with his brother and deceased on 12.4.2006 and giving a lot of presents including ornaments and clothes of child besides Rs.30,000/- in cash to the accused persons. According to him, the accused persons were not satisfied with the presents given to them and were demanding motorcycle and cash of Rs.5 lac.

6. PW13 - Smt. Kamla Devi is the mother of the deceased. She stated that after about eight days of marriage, the accused persons started harassing her daughter over dowry and demanding a motorcycle, chain and Rs.50,000/-. She claimed that after about ten days, her husband gave Rs.5,000/- to the accused Yogesh and thereafter he gave Rs.20,000/- to him and his sister Yogita, but the accused persons continued to harass her daughter by beating and harassing her. She further stated that after delivery of a child to Mamta, the accused persons left her alone there and they brought her to their house. Thereafter, the accused persons demanded plot and a sum of Rs.5 lac in cash. A Panchayat was then organized by them to persuade the accused and take the deceased to their place. After much persuasion, the matter was resolved and they sent the deceased along with them. However, after a few days, she was again brought to their house and left there. Thereafter, her husband and his younger brother took the deceased along with chuchak, Rs.30,000/- in cash, a gold chain and clothes for the accused persons, which were handed over to the accused Vijender and his wife. The accused persons, however, were still not satisfied and insisted on their earlier demand of Rs.5 lac and a plot.

7. PW10 - Manoj Kumar stated that after two months of her marriage when he went to the matrimonial house of Mamta to deliver some clothes given by her father, she gave him a letter which he handed over to her father. PW11 - Shri Vir Pal is the maternal uncle of the deceased. He stated that after 20-25 days of marriage of Mamta, he visited the house of her in-laws and at that time she gave him a letter which he handed over to her father.

8. In their statement under section 313 Cr.P.C., all the appellants denied the allegations against them and claimed to be innocent.

9. DW1 - Suraj Bhan Garg stated that on 20.2.2005, the uncle of the deceased came to the house of the accused person at the instance of the deceased who at that time stated that her father wanted to take her back to his house so as to keep Yogesh as gharjawai. According to him, this was resisted by the deceased, who wanted to stay with her in-laws. According to him on 30.3.2005, the accused Bijender informed him that the parents of the deceased were insisting to take her

to their house. He thereupon went to DDU Hospital and tried to make them understand, but they did not agree and took her with them. He further stated that in June, 2005, a meeting took place in the house of Rajesh in Sagarpur and in that meeting father of the deceased acknowledged receipt of financial assistance amounting to Rs.8500/- from the accused persons and returning the said amount. He also stated that the house of accused Bijender is a two-storied house in which Yogesh along with his family were residing on the ground floor whereas Bijender and his family were residing on the first floor. DW2 HC Shiv Kumar proves the copy of DD No.64 on 22.5.2005, Ex.DW2/A.

10. In order to prove the charge under Section 304B of IPC, the prosecution is required to prove that (a) the victim died within seven years of marriage; (b) she was subjected to cruelty or harassment soon before her death; (c) such cruelty and harassment was for dowry. The expression soon before her death has not been defined in the Indian Penal Code and, therefore the Court is required to analyze the facts and circumstances leading to the death of the victim and then decide whether there was any proximate connection between the demand of dowry or the act of cruelty or harassment and the death of the victim. In *Kamesh Panjiyar vs. State of Bihar* (2005) 2 SCC388 the Apex Court, considering the expression dowry inter alia observed as under:

14. The word dowry in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasion related to dowry. One is before the marriage, second is at the time of marriage and the third at any time after the marriage. The third occasion may appear to be unending period. But the crucial words are in connection with the marriage of the said parties.

In *Bachni Devi vs. State of Haryana* 2011 (4) SCC427 Apex Court inter alia held that if a demand for property or valuable security, directly or indirectly, has a nexus with marriage, such demand would constitute demand for dowry, the cause or reasons for such demand being immaterial. In *Hans Raj Sharma & Others vs. State Govt. of NCT of Delhi* Crl.A. Nos. 339-41 of 2005, decided on 02.03.2010, this Court, inter alia, observed as under:

If at any time before or at the time of or even during marriage, the parents of a woman or any other person related or connected to her agree to give some cash, valuable security or property to her husband or in-laws after marriage, that also would be covered within the definition of dowry as the agreement or promise in such a case would be attributable to the marriage or proposed marriage and if there is demand for any cash property, valuable security etc. which is promised, but not given, it would constitute demand for dowry. If the husband of the girl or any other person related or connected to him, demands something from the girl or her parents or any other person related to or connected with her, saying that the article being demanded by them was expected to be given or ought to have been given in marriage, that also, to my mind, would constitute demand of dowry because even though such an article may not have been agreed or promised to be given by the girl or her family members, it might have been in the contemplation of the boy and/or his family members, on account of the expectation that such an article would be given at the time of marriage. Therefore, such demand would be considered to be a demand in connection with the marriage though made after the marriage has been solemnized. Even demand of articles such as T.V., fridge, jewellery, clothes, furniture, etc. which usually are given or expected in marriages in our country, would, considering the objective sought to be achieved by incorporating Section 304-B in Indian Penal Code and enacting Dowry Prohibition Act, 1961 fall within the purview of Section 304-B of IPC. In fact, in *Pawan Kr. & Ors. Vs. State of Haryana* AIR 1998 SC958 the Honble Supreme Court has specifically held demand of T.V., Fridge, etc. though not agreed to be given or promised or even demanded prior to or at the time of marriage, to be a demand for dowry for the purpose of Section 304-B of IPC. If cash or some property, etc. is demanded by the boy or his family members, after marriage, saying that they were expecting such cash, property, etc. to be given in marriage, and the girl, or her parents or any other person related or connected to her promise to fulfil such a demand, that also may fall within the purview of dowry, as the promise though made after marriage, would nevertheless be referable to the marriage, having been made with a view to preserve the marriage. But, if the demand is made after marriage and it is in respect of a property or valuable security, which was not demanded, was not expected to be given and also was not in contemplation at any

time up to solemnization of marriage, demand of such cash, property or valuable security, etc. cannot be said to be in connection with the marriage and, therefore, would not constitute demand of dowry .. The use of the expression in connection with the marriage of the said parties leaves no room for the interpretation that any and everything demanded after marriage, without anything more, would constitute demand of dowry. Such an interpretation would render the expression in connection with the marriage of the said parties totally redundant and, therefore, cannot be said to have been intended by the Legislature. It is settled proposition of law that penal statutes need to be strictly construed and even if two views in the matter are reasonably possible, the interpretation, which would favour the accused, needs to be given by the Courts. No doubt, Section 304-B of IPC is a social legislation aimed at preventing dowry deaths which is a social evil that needs to be eradicated at any cost. It is also difficult to deny that in our society there are demands other than those covered under the definition of dowry are made after the marriage and such demands do result in subjecting the girl to cruelty and/or harassment if she or her parents or relative are unable to fulfil the demand. Such a demand, if followed by cruelty or harassment would constitute offence punishable under Section 498-A of IPC. But, it is difficult to accept that the demands which are not at all referable to the marriage, would also constitute dowry demand punishable under Section 304-B of IPC in case the woman is subjected to cruelty or harassment for or in connection with such a demand. The remedy, to my mind, lies in the Legislature stepping in and making even such demands subject matter of offence punishable under Section 304-B of IPC. In *Satvir Singh vs. State of Punjab and Anr.* 2001(4) Crimes 45, the Apex Court, inter alia, observed as under:- 11. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304B should be any property or valuable security given or agreed to be given in connection with the marriage.

The first question which arises for consideration in this case is as to whether the prosecution has been able to prove or not that the letters Ex.P-1 and P-2 were written by deceased Mamta. The case of the prosecution, as set out in the

chargesheet, is that one of the aforesaid letters was handed over by the deceased to her maternal uncle Vir Pal, whereas the other letter was handed over to one Manoj Kumar, who has been examined as PW-10. However, in his statement to the SDM, the complainant Ramesh Kumar did not say that the aforesaid letters were delivered by his daughter to PW-10 Manoj Kumar and PW-11 Vir Pal, though he did refer to the letters written by the deceased. The aforesaid letters were seized by the Investigating Officer on 22.05.2006, as would be evident from the Seizure Memo Ex.PW-3/A. The said letters were thus handed over to the Investigating Officer more than one month after the death of the deceased. There is no explanation from the prosecution as to why the aforesaid letters were not handed over to the Investigating Officer, soon after his statement was recorded by the SDM. This is not the case of the prosecution that the receipt of the aforesaid letters was not known to the complainant at the time his statement was recorded by the SDM. It has come in the deposition of the Investigating Officer that in about 1 month, after the death of Mamta, the complainant met him a number of times. It is strange that despite meeting the Investigating Officer number of times, the father of the deceased did not bother to hand over the said letters to him. This creates doubt with respect to the authenticity of the said letters.

12. When the complainant came in the witness box, he, inter alia, stated that both the above-referred letters were handed over by the deceased to her maternal uncle Vir Pal. However, when Vir Pal came in the witness-box, he stated that only one letter was handed over to him. The prosecution examined another witness PW-10 Manoj Kumar who claimed that one of the letter was handed over to him by the deceased for being delivered to her father. Thus, there is contradiction in the deposition of the complainant on one hand and the aforesaid witnesses on the other hand as to whom the aforesaid letters were handed over by the deceased.

13. The most important circumstance which creates a serious doubt with respect to the aforesaid letters having been handed over by the deceased to PW-10 and/or PW-11 is that the deceased as well as parents, both being resident of Delhi and residing within a distance of about 1 kilometres, as admitted by PW7, in the normal course of human conduct, instead of handing over letters of this nature to the maternal uncle or to someone who was not even related to her, the deceased

would just have visited her parents and shared her plight with them. Alternatively, she would have made a telephone call to her parents, complaining against the alleged cruelty and/or harassment. This is not the case of the prosecution that the deceased was not allowed by her inlaws to come out of the matrimonial home. In fact, according to PW-7 Rajesh Kumar, uncle of the deceased, after marriage, Mamta visited 2-3 times and earlier somebody from her in-laws house used to take her though subsequently nobody used to come for the said purpose. None of the witnesses has stated that Mamta had complained to him/her that she was not allowed to come out of the house to visit her parents or even to make a telephone call to them. I, therefore, feel that it would be rather unnatural for the deceased to send letters of this nature through persons, one of whom was not even related to her, when she could easily have visited the house of her parents or could have called up either her parents or any of her relatives to share her misery with them.

14. As far as PW-10 Manoj Kumar is concerned, he was not residing near the matrimonial home of the deceased, he being a resident of West Sagar Pur, where the father of the deceased was residing. Therefore, in the normal course of human conduct, there would be no reason for the father of the deceased to send her clothes through Manoj Kumar instead of going there himself or sending a member of his family or a relative for the purpose. Moreover, the authenticity of the documents which the Investigating Officer collected from the father of the deceased and sent to the handwriting expert for comparison of the letters Ex.P-1 and P-2 with the writings on the said documents Ex.P-3 and P-4, was not verified by the Investigating Officer during the course of investigation. Ex.P-3 is an identity card purporting to be issued by Directorate of Employment to the deceased on 05.02.1999. It purports to be signed by the Employment Officer on the aforesaid date. The Investigating Officer did not bother to visit the Employment Exchange to verify from the officer posted as Employment Officer there on 05.02.1999 that the aforesaid document bears his signature. Even during the course of trial, no witness from the Employment Exchange was produced by the prosecution to prove the authenticity of the aforesaid identity card. It has come in evidence that Mamta was educated up to 12 th standard though it is not known in which year she has passed the 12 th standard examination. However, his qualification in the document is recorded as X Pass. Similarly in the second document Ex.P-4 which

is the format of an application form purporting to have been submitted by Mamta on 08.07.2002, her qualification has been noted as 10th standard. Moreover, I fail to understand how the application form would be in the house of the candidate since it is required to be submitted to the prospective employer. Moreover, the aforesaid document Ex.P-4 does not have any photograph of Mamta affixed on it though there is a space earmarked for affixing the photograph of the candidate on it. I can understand a copy of the application form having been kept by the deceased, but, the original application form is likely to be in the custody of the prospective employer and not in the custody of the employment seeker. For the aforesaid reasons, it would not be safe to rely upon the letters Ex.P-1 and P-2 for the purpose of conviction of the appellants.

15. The following, as per the evidence produced by the prosecution, in nutshell, are the allegations of cruelty and/or harassment to the deceased: a. there was demand of dowry and harassment of the deceased 5-7 days after marriage, though the precise demand, alleged to have been made at that time, has not been specified by the complainant. However, his brother Rajesh has claimed that there was demand of Rs 2,00,000/- and a motorcycle. The mother of the deceased, on the other hand claimed that the demand was for motorcycle, chain and Rs 50,000/-. However, it has come in evidence that a sum of Rs 5,000/- was paid by the complainant to the appellant Yogesh after about 8-9 days of marriage, followed by payment of Rs 20,000/- to him and his sister appellant Yogita about 2025 days thereafter; b. whenever deceased came to the house of her parents, she used to complain against her father-in-law and mother-in-law and was unwilling to return to the matrimonial home; c. on 05.04.2006, the deceased visited the house of her parents and at that time the marks of beating were found on her body. She complained that the accused were demanding Rs 5 lakhs and a motorcycle from them. She also alleged that she was being harassed for not bringing chuchak on the birth of her son; d. on 12.04.2006, the father and the uncle of the deceased went to her matrimonial home along with Rs 30,000/- which they paid to the accused persons, one gold chain for the child, some golden and silver ornaments for the child, clothes of the children and some other articles, but the appellants complained that they had not brought ornaments for the deceased. The uncle of the deceased Shri Rajesh Kumar, on the other hand, stated that at that time the

accused persons were demanding motorcycle and cash amounting to Rs 5 lakhs; e. the mother of the deceased stated that the accused persons wanted Rs 5 lakhs in cash besides a plot.

16. As far as the appellant Yogita is concerned, admittedly, she was already married when deceased Mamta got married to the appellant Yogesh. After marriage, she was not residing with her parents. Therefore, it is somewhat unlikely that she would have demanded the dowry from the parents of her sister-in-law and would have accompanied her brother Yogesh to the house of her parents to collect a sum of Rs 20,000/- from them. She had nothing to gain from the cash or articles of dowry or the articles alleged to have been given by the parents of Mamta to her in-laws. Therefore, there would be no good reason for her to intervene in a matter of this nature and harass her sister-in-law. Though it has come in evidence that the deceased used to be beaten and when she visited the house of her parents on 05.04.2006, injury marks were noticed on her body, it is unlikely that the appellant Yogita would have beaten her sister-in-law. Ordinarily, in matrimonial dispute the woman is subjected to physical violence only by her husband and the married sister-in-law would not join her brother in giving beatings to his wife.

17. In *Surinder Kaur and Anr vs. State of Haryana* 2004 (2) RCR (Criminal) 140, there were allegations against the sisters-in-law of the deceased that they along with their brother used to harass the deceased for not bringing the dowry and Maruti car and in the process used to beat her. The Honble Supreme Court found rather difficult to believe that the young girls would go to the extent of beating the deceased. The sisters-in-law who were convicted by the Trial Court and whose conviction were upheld by the High Court were acquitted by the Apex Court. The appellant Yogita, therefore, deserves to be given benefit of doubt.

18. It is an admitted case that the house in which the deceased died was a two storey house and she was found dead on the ground floor. According to DW-1, Shri Suraj Bhan Garg, the appellant Yogesh with his family was residing on the ground floor, whereas his parents were residing on the first floor. There is no evidence on record which would show that the parents in-law of the deceased were residing on the same floor along with her and her husband. I, therefore, see

no reason to disbelieve the deposition of DW-1 Shri Suraj Bhan in this regard and consequently accept the contention of the appellants that the deceased used to reside on the ground floor with her husband, whereas her parents-in-law were residing at the first floor. When the father of the complainant came in the witness-box, he attributed the demand of dowry and harassment of the deceased to all the appellants, meaning thereby husband, mother-in-law, father-in-law as well as married sister-in-law. No specific act of harassment was attributed by him either to the mother-in-law or father-in-law of the deceased. When the mother and uncle of the deceased came in the witness-box, neither of them imputed any particular demand or harassment of the deceased either to her mother-in-law or to her father-in-law. It has come in evidence that when the deceased came to the house of her parents on 05.04.2006, as noted earlier, injury marks were found on her body. There is no evidence that any particular injury was attributed by the deceased to her father-in-law or mother-in-law. According to them, she claimed to have been beaten by all the accused persons. In the deposition of the witnesses, there is a specific reference to the demand of motorcycle. In his statement to the SDM, the father of the deceased stated that when he went to the matrimonial home of the deceased on 12.04.2006, the grievance of the accused persons was that motorcycle which they had demanded had not been given. He further stated that the aforesaid demand was the bone of contention between them and the accused persons. The motorcycle, if given would have been used by the husband and not by the mother-in-law or father-in-law of the deceased. Therefore, in the normal course of human conduct, the demand for the vehicle would have emanated from the husband and not from the parents-in-law of the deceased.

19. It has come in evidence that there was demand of cash though the figure has varied from Rs 5,000/- to Rs. 5,00,000/-. This is not the case of the prosecution that the aforesaid money had it been paid would have been used by the parents-in-law of the deceased. It would only be appropriate to note here that according to the complainant, the amount of Rs 20,000/- was paid by him to the husband and sister-in-law of the deceased. He does not claim to have paid the said amount either to her father-in-law or to her mother-in-law. As noted earlier, none of the witnesses told the Court as to in what manner the mother-in-law and father-in-law of the deceased used to harass her. They made bald allegations of demand of

dowry and harassment against all the appellants, without telling the Court as to what exactly was their individual role in the matter. In these circumstances, I am of the considered view that the benefit of doubt needs to be extended to the appellants Vijender Singh and Sheela Devi parents-in-law of the deceased.

20. As far as the appellant Yogesh is concerned, the evidence produced by the prosecution clearly shows that he had demanded motorcycle and had also taken Rs 20,000/- in cash from his father-in-law. Even at the time the complainant went to his house along with the ornaments and clothes for the child, the grievance was on account of his failure to give motorcycle to the husband of the deceased. It has come in the deposition of the father and uncle of the deceased that injury marks were found on her body when she came to the house of her father, I am excluding the aforesaid part of the evidence from consideration since neither the complainant referred to it in his statement to the SDM nor did the mother of the deceased claimed to have seen injury marks on her body. It is not known on which parts of the body of the deceased, injury marks were noticed by her father and uncle. In case the marks were on the exposed portion of her body, they could have noticed them, but, the marks on the covered portion of the body would have been shown by the deceased only to her mother and not to her father and uncle.

21. Ex.DW-2/A is the copy of the report lodged by the appellant Yogesh, husband of the deceased, in the police station. A perusal of the aforesaid DD entry would show that on the aforesaid date, the appellant Yogesh had gone to the police station and lodged a report. It has come in the deposition of DW-2 Head Constable Shiv Kumar that the complaint was with respect to quarrel between Yogesh and his wife. He also stated that for investigation, he visited the house of Yogesh and Yogesh stated that compromise talks between him and his wife were going on. The aforesaid authentic document, coupled with the deposition of DW-2, clearly shows that the disputes were only between the husband and wife. Nowhere did DW-2 claim that when he went for inquiring into the complaint, the deceased complained to him against her parents-in-law. The report lodged by the appellant Yogesh Kumar leaves no doubt that the relations between him and his wife were far from cordial. In fact, the relations between them must have been quite strained else he would not have gone to the extent of making a complaint to the police

against his wife. The report lodged by the appellant Yogesh with the police when viewed in the light of the evidence produced by the prosecution and other facts and circumstances of the case, as discussed hereinbefore, leave no reasonable doubt that he had subjected the deceased to cruelty and harassment in connection with demand of cash and motorcycle for him. It has come in evidence that the relations between the appellant Yogesh and his wife never improved and her harassment continued till the time she died, barring the period during which she remained with her husband, after birth of her child. Therefore, the prosecution has been able to prove that deceased Mamta was subjected to cruelty and/or harassment in connection with demand for dowry by Yogesh. The Court, therefore, is required to presume, as provided in Section 113B of Evidence Act that the appellant Yogesh had caused her dowry death. No evidence has been led by the appellant Yogesh which would prove that Mamta died on account of reasons other than the cruelty and/or harassment to which she was subjected by him in connection with the demand of dowry.

22. In *Pathan Hussain Basha vs. State of A.P.* (2012) 8 SCC594 the Honble Supreme Court, noticing that the ingredients of Section 304B read with Section 498A thereof were completely satisfied, observed that by a deeming fiction in law, the onus shifts on to the accused as to how the deceased died and it is for him to show that the death of the deceased did not result from any cruelty or demand of dowry by the accused persons. It was also observed that mere denial cannot be treated to the discharge of onus, which can be done only by leading proper and cogent reasons. It was further observed that it was expected of the accused to explain as to how and why his wife died and maintaining silence cannot be equated to the discharge of onus.

23. For the reasons stated hereinabove, appellants Yogita, sister-in-law, Vijender Singh, father-in-law and Sheela Devi, mother-in-law of the deceased are acquitted, whereas the conviction of the appellant Yogesh under Section 498A and 304B of IPC is maintained. However, in the facts and circumstances of the case, including the continued incarceration of the appellant Yogesh, the substantive sentence awarded to him under Section 304B of IPC is reduced from 10 years to 7 years. The other sentence awarded to the appellant Yogesh, however, remains

unaltered. The appeal stands disposed of accordingly. One copy of this order be sent to the Jail Superintendent for information and necessary action. The LCR be sent back along with the copy of this judgment. MARCH04 2014 bnesh/BG CrI. A. No.259 of 2010

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