

**Vinod Kumar Arora Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/1140741](http://sooperkanoon.com/1140741)

**Court :** Delhi

**Decided On :** May-16-2014

**Judge :** Veena Birbal

**Appellant :** Vinod Kumar Arora

**Respondent :** State

**Advocate for Def. :** Mr. Pawan Sharma

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: May 16th, 2014 % + CRL.A. 304/2000 VINOD KUMAR ARORA ..... Appellant Through : Mr.K.B.Andley, Sr.Adv. with Mr.M.L.Yadav, Adv. versus STATE ..... Respondent Through: Mr. Pawan Sharma, Standing Counsel(Crl.) for State. CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

1. By way of this appeal, appellant Vinod Kumar, husband of deceased Rajbala @ Rajni has challenged the judgment dated 13.5.2000 and order of sentence dated 16.5.2000 passed by the Id.Additional Sessions Judge, Delhi whereby he has been convicted for the offence punishable u/s 304B/498A IPC and has been sentenced to undergo RI for seven years u/s 304B IPC and to further undergo RI for one year and a fine of Rs.5000/- and in default to further undergo RI for three months u/s 498A IPC. It has further been ordered that both the sentences shall run concurrently.

2. Briefly the facts relevant for the disposal of the present appeals are that: On 8.5.1991, Avinash Chand Gauba, PW-7, uncle (mausa) of deceased had lodged a report vide DD No.3A Ex.PW2/A at Police Station Bara Hindu Rao alleging therein that Smt.Rajni daughter of Shri Ami Chand Gauba, PW1, i.e. husband of his wife's sister (Saddu), who was married to Vinod Kumar i.e., the present appellant about a year ago was admitted in RML Hospital where she had died. He had alleged that appellant and his family members had been harassing her for bringing insufficient dowry.

3. A copy of the aforesaid report Ex.PW2/A was given to SI Phool Singh, PW-14 who along with Constable Gaje Singh, PW-10 and Constable Pardeep Kumar, PW-13 reached RML Hospital. There he obtained MLC Ex.PW12A of deceased Rajbala @ Rajni. Mamta Arora, PW-4, sister of deceased had also met him in the hospital. In the meanwhile, Insp. Tulsi Ram, SHO PW16 also reached the hospital. The necessary papers were handed over to him. He also informed SDM Shri H.C. Gaur PW15 of Kotwali who also reached the hospital and recorded statement Ex.PW1/A and Ex.PW15B of father of the deceased i.e., Ami Chand Gauba, PW-1. In the aforesaid statement, Ami Chand Gauba, PW-1 has alleged that his daughter got married to Vinod on 25.5.1990. After marriage, appellant Vinod, his mother Dayawati, sister Usha and his mother-in-law i.e., Mahinder Kumar Arora started harassing his daughter. Everyday they used to beat her. He gave Rs.5000/- thrice after marriage. They used to harass her for dowry. Appellant Vinod and his family members did not inform him about the ailment of his daughter. On 7.5.1991, his son-in-law Kamal Arora informed him about her ailment. Then he came to Delhi and by that time, his daughter had died. About one week before the incident, the `Gaddi of his son-in-law i.e., appellant had come to Haldwani and appellant had demanded a gas cylinder and regulator through his driver. Ami Chand Gauba, PW-1 has further alleged that about one and half month earlier deceased was beaten by her husband i.e., the appellant and her mother in law Dayawati and sister in law Usha and for that reason he had taken his daughter to Haldwani where his daughter told him that her husband, mother in law and sister in law used to beat her for bringing insufficient dowry. He has also alleged that appellant had demanded a scooter from him. However, he could not provide the scooter but had given Rs.5000/- on three different occasions to his son-in-law.

He suspected that his daughter was killed by torturing her mentally and physically and when her condition deteriorated, information was not given to him.

4. The SDM PW15 had put his endorsement Ex.PW15/C on the statement of Ami Chand Gaba, PW-1 and ordered for registration of the case u/s 304B/498A IPC against the appellant Vinod Kumar, his mother Dayawati, sister Usha and sisters husband Mahinder Kumar Arora. Inspector Tulsi Ram PW16 also made his endorsement Ex.PW16/A and got registered FIR no.106/91 under Section 304B/498A Ex.2/B against the appellant and aforesaid co-accused persons. Thereafter inquest proceedings were got conducted. The dead body was sent to mortuary for post-mortem through SI Phool Singh, PW-14, Ct. Gaje Singh, PW-10 and Ct.Pradeep Kumar, PW-13.

5. During investigation, the statement of witnesses were recorded. The present appellant and the aforesaid co-accused persons were arrested vide memos Ex.PW16/B, Ex.PW15/C, etc. The co-accused Mahinder was on anticipatory bail. He was also formally arrested during the course of investigation. The viscera, sample seal and envelope were seized during investigation vide memo Ex.PW2/C. The viscera was sent to CFSL and report Ex.PA was collected. After completion of investigation, a report u/s 173 Cr.P.C was prepared and was filed before the Id.M.M. who committed the case to the Session Court. Before the Id.Addl. Session Judge, charge u/s 304B/498A IPC was framed against the appellant and other co-accused persons. During trial, mother of the appellant died and proceedings stood abated against her.

6. To bring home the guilt, the prosecution had examined 16 witnesses i.e.,Ami Chand Gauba, PW-1, father of the deceased, Ms.Mamta Arora, PW-4, sister of the deceased, Mr.Avinash Chand Gauba, PW-7, Uncle (Mausa) of deceased, Dr.L.T.Ramnai, PW3 who had conducted the postmortem of the deceased, Dr. Govind Ram PW5, Dr.P.K.Sharma, PW-6, private doctors who had treated the deceased prior to her admission in RML Hospital and Mr.H.C.Gaur, SDM, PW-15. The other witnesses examined were the police officials.

7. The incriminating evidence was put to appellant and other co-accused persons in their statement u/s 313 Cr.P.C. They had denied the same and stated that they

were innocent persons and were falsely implicated. However, no evidence was led in defence.

8. After hearing learned counsel for the parties, the Id.trial court relying upon the testimony of father of the deceased i.e., Ami Chand, PW-1 has held that the deceased Raj Bala @ Rajni was harassed and subjected to cruelty and harassment on account of dowry demands by her husband i.e., appellant. Further relying on cause of death as given by Dr.L.T.Ramani, PW-3 vide post-mortem report Ex.PW3A after considering viscera report Ex.PA, held that deceased died of unnatural death and the same was within 7 years of marriage. Accordingly, appellant was held guilty for the offence under section 498A/304B IPC while sister-in-law and brother-in-law of the deceased were acquitted for the aforesaid offences.

9. Aggrieved with the aforesaid judgment of conviction and order on sentence, present appeal has been filed.

10. Learned counsel for the appellant has contended that evidence on record does not establish that deceased Raj Bala @ Rajni had an unnatural death. It is contended that the finding of the learned trial court in this regard is perverse. It is contended that respondent had died on 8.5.1991 in RML hospital. The evidence on record establishes that prior to death she was being treated for gastroenteritis by Dr. Govind Ram PW-5 on 29.4.1991 and 30.4.1991 and thereafter she was treated by Dr. P.K. Sharma PW6 and as per the evidence of said doctor, deceased was brought to his clinic on 1.5.1991. The said doctor found her anaemic having urinary tract infection. The evidence of the aforesaid doctor shows that again deceased was taken to him on 6.5.1991 with history of loose motions and vomiting and on examining her the deceased was found dehydrated. Accordingly, Dr. P.K. Sharma PW6 had referred her to RML Hospital for investigations and treatment. Thereafter, Mamta Arora PW4 sister of deceased got her admitted in aforesaid hospital vide MLC Ex.PW12A.

11. It is contended that during the investigation Police had made inquiries from Dr.P.K.Sharma, PW-6 who issued a certificate Ex.PW6/A about treatment given to deceased. It is stated contended that as per evidence on record deceased had

gone to her sisters house on 4th or 5th May. 1991 and was getting treatment from the aforesaid doctor and had died of ailment i.e., natural death. It is contended that even the MLC Ex.PW12/A of deceased does not support the case of the prosecution. The same shows that the deceased was admitted in the RML hospital by her sister, Mamta Arora, PW-4 with the complaint of vomiting and loose motions. She was admitted and treated in the said hospital for gastroenteritis. It is contended that there are two CFSL reports i.e., Ex.PA and Ex.PB about examination of viscera of the deceased. The report dated 5.8.1991 Ex.PA is from CFSL, Lodhi Colony. As per said report, no conclusive opinion could be drawn about the exact nature of poison detected on examination of Ex.1, 2 and 3. Relying on report Ex.PA Dr. L.T. Ramani PW3 had given the opinion that death due to poisoning is a strong possibility and recommended that to ascertain the nature of poison, the remnants of the viscera be sent for reexamination to some other forensic science laboratory. Thereafter, the second report Ex.PB was obtained from Chemical Examiner to Govt.Punjab, Patiala. As per the said report Ex.PB dated 13.1.1992, no poison was detected in the contents of Ex.I and IV.

12. It is further contended that even the first CFSL report Ex.PA dated 5.8.1991 is also not conclusive and suggests only a possibility of poison and the doctor (PW-3) has only given a possibility of cause of death as poisoning and no confirmed opinion about cause of death is there. It is contended that deceased was suffering from gastroenteritis. The main cause for gastroenteritis itself is food poisoning. It is contended that gastroenteritis results from a bacterial endotoxin i.e. toxin present inside a bacterial cell and released when it disintegrates. In these circumstances, it cannot be said that deceased died of unnatural death. Further, it is not the case of the prosecution that some kind of poison was administered to her or she herself had consumed poison. It is further contended that the real sister of the deceased, namely, Mamta Arora, PW-4 has not supported the case of the prosecution about the alleged demands of dowry or having treated the deceased with cruelty. Even the uncle (mausa) of the deceased i.e. Avinash Chand, PW-7 has also not supported the case of prosecution in any manner. It is further contended that even the evidence of her father PW-1 does not establish that the appellant had raised any dowry demands on her or had tortured her for or in connection with dowry demand. It is further contended that on the same set of evidence the learned ASJ

has acquitted two coaccused persons i.e., sister-in-law and brother-in-law of deceased whereas appellant has been convicted. It is contended that the prosecution has failed to prove that the death of the deceased was unnatural. It is contended that prosecution has also failed to prove that deceased was harassed for and in connection with demand of dowry, as such presumption cannot be drawn that it is a dowry death. It is contended that on the basis of evidence on record accused deserves to be acquitted.

13. On the other hand, learned APP has submitted that the CFSL report Ex.PA clearly establishes that the poison was detected. It is contended that Dr.L.T.Ramani, PW-3 who had conducted the post-mortem vide report Ex.PW3A after considering the CFSL report Ex.PA opined that death due to poison was a possibility. It is contended that even if as per report Ex.PA no conclusive opinion about the exact nature of poison is given. However, the same does not mean that no poison was detected in the exhibits sent for analysis. Under these circumstances, it has been rightly held by the Id.ASJ that death of deceased was unnatural. It is contended that in the facts and circumstances of the case, no reliance can be placed on second report Ex.PB. It is further contended that the evidence of father of the deceased clearly establishes that deceased was subjected to harassment due to non fulfilment of demands of dowry. CrI.A.304/2000 It is contended that the findings of the Page 7 of 20 Id.ASJ that the deceased was subjected to harassment due to non fulfilment of dowry demands is based on evidence of Ami Chand, PW-1, father of the deceased. No perversity is seen in the said finding and it also stands established that death was within 7 years of marriage, as such, presumption has been rightly drawn under section 113B of the Evidence Act that appellant has committed dowry death. It is submitted that findings given by Id.ASJ are based on evidence on record and appeal is liable to be dismissed.

14. I have heard Mr.K.B.Andley, learned senior counsel for the appellant and Mr.Pawan Sharma, Standing Counsel (Criminal) and perused the material on record.

15. In *Kansraj vs. State of Punjab*:(2000)5SCC2007 the ingredients of an offence under Section 304B of the Indian Penal Code were held to be as follows:

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.

16. As per MLC, Ex.PW12A on record, the deceased had died on 8.5.1991 at R.M.L.Hospital. The evidence on record shows that prior to her death, deceased was not well and was taken for treatment to Dr.Govind Ram Maglani, PW-5 as well as Dr.P.K.Sharma, PW-6.

17. Dr.Govind Ram, PW-5 has deposed that he is running a clinic at premises no.9925, Nawab Ganj since 19 years. The deceased was his patient and had been coming to him for treatment. He has also deposed that she had come to his clinic on 29.4.1991 and 30.4.1991 and complained of nausea and restlessness and he diagnosed her of having gastritis(acidity) and treated her for the same. Thereafter, she did not visit his clinic.

18. Dr.P.K.Sharma, PW-6 has deposed that deceased Rajni had come to her clinic for treatment on 1.5.1991 for investigation, x-ray, blood and urine test. He has deposed that as per laboratory tests, deceased was anaemic and was having urinary tract infection. Again on 6.5.1991, deceased was brought to his clinic with history of loose motions and vomiting. On examination, he found her condition deteriorating so he referred her to RML Hospital for treatment. He has further deposed that during investigation, police had inquired from him and he had issued a certificate Ex.PW6A. He has also deposed having handed over photocopy of x-ray mark A, copy of blood report mark B, urine report mark C and other reports of the deceased to the police.

19. In cross-examination, Dr.P.K.Sharma, PW-6 has deposed that Raj Bala @ Rajni had come to his clinic for treatment even on 30.4.1991 and he had examined her and had asked her to undergo certain tests. He has also deposed that he had issued signatures. certificate Ex.PW6A which bears his He has further deposed that even on 2nd and 5th May, 1991, deceased had visited his clinic. He has deposed that she had come to her clinic on 30.4.1991 with her husband. However, he was unable to recall as to who had accompanied her on subsequent visits.

20. The certificate Ex.PW6A shows that on 6.5.1991, when deceased was taken to Dr.P.K.Sharma, PW-6, she was in dehydrated state and in view of her condition, she was referred to R.M.L.Hospital Casualty.

21. The MLC Ex.12/A of the deceased which is proved on record by Mr.Jai Chand, PW-12, record Clerk from RML Hospital shows that deceased was admitted on 6.5.1991 at 3.25 pm in the aforesaid hospital by her sister Mamta Arora, PW-4 in the emergency ward with the complaints of vomiting and loose motion. The deceased was treated for gastroenteritis. As per MLC Ex.PW12A, on 7.5.1991, her condition deteriorated for which required curative measures were taken and on 8.5.1991, patient died despite all resuscitation measures adopted. As per oral examination of the deceased as recorded in the MLC Ex.PW12A, the concerned doctor had recorded that dehydration was present. The record clerk has deposed that MLC Ex.PW12A was in the handwriting of Dr R.M.Tomar whom he had seen signing and writing.

22. The postmortem was conducted on 9.5.1991 at 10 am vide report Ex.PW3A. The said report is prepared by Dr.L.T.Ramani, PW-3 who has stated that opinion regarding cause of death would be given after receipt of analysts report.

23. The viscera of the deceased seized during investigation was sent to CFSL, CGO Complex, Lodhi Road New Delhi for analysis. The parcel sent to CFSL, CGO Complex, New Delhi for analysis contained the following exhibits:

(a)One wide-mouth bottle containing stomach, intestine with contents, Exhibit.  
(b)One wide-mouth bottle containing liver,spleen & kidney Exhbt. (c)One phial/bottle containing 10 ml blood, Exhibit. (d)One phial/bottle containing Sodium

Chloride solution used as preservative-Exhibit.

24. The CFSL report Ex.PA reads as under:

No conclusive opinion could be drawn about the exact nature of poison detected on examination of exhibits 1, 2 and 3.

25. On the basis of aforesaid report of CFSL Ex.PA, Dr.L.T.Ramani, PW-3 has given opinion about cause of death vide report Ex.PW3B which is as under:

In view of the analysts report (Implying that exhibits 1, 2 & 3 did give positive test for some poison), I am of the opinion that death due to poisoning is a strong possibility. However, to ascertain the nature of poison, the remnants of the viscera may be sent for re-examination/analysis to other Forensic Science Laboratory.

26. Thereafter the remnants of exhibits were again sent for re- examination to Chemical Examiner to Govt.Punjab, Patiala:

I.A sealed jar said to contain liver. II.A sealed jar said to contain viscera. III.A sealed bottle said to contain Blood. IV.A sealed bottle said to contain salt.

27. The result of analysis of aforesaid exhibit vide report Ex.PB reads as under:

No poison was detected in the contents of exhibits No.I and No.IV. Exhibits No.II and III were only empty jar and a bottle.

28. After obtaining the aforesaid report i.e., Ex.PB, the opinion of Dr.Ramani was not taken.

29. The evidence on record shows that prior to admission of deceased in the RML Hospital, she was suffering from gastroenteritis. Even in RML Hospital, she was treated for gastroenteritis.

30. The apparent cause of death as is stated in `Death Report Ex.PW15A is gastroenteritis. It is further stated in the aforesaid report that cause of death to be ascertained in post-mortem.

31. Relying on the report of CFSL Ex.PA, Dr.L.T.Ramani, PW-3 has only opined that death due to poison was a strong possibility. However, no conclusive opinion about cause of death was given by Dr.L.T.Ramani, PW-3.

32. As per CFSL report Ex.PA no conclusive opinion could be drawn about the exact nature of poison detected on examination of Exhibts 1, 2 and 3. Whereas as per second report Ex.PB, no poison was detected on Article I and II. The contents of Exhibit II tested in CFSL Delhi and contents of Exhibit I tested by the Chemical Examiner to Govt.Punjab, Patiala contain one common item i.e., liver. One report says `poisonis detected while the other report says `no poison is detected. Both the reports are contradictory.

33. The treatment given to the deceased prior to her death shows that she was suffering from gastroenteritis.

34. The dictionary meaning of gastroenteritis as is given in Mosbys Medical, Nursing & allied Heath Dictionary (Fourth Edition) is as under:

Inflammation of the stomach and intestines accompanying numerous GI disorders. Symptoms are anorexia, nausea, vomiting, abdominal discomfort, and diarrhoea. The condition may be attributed to bacterial enterotoxins, bacterial or viral invasion, chemical toxins, or miscellaneous conditions, such as lactose intolerance. The onset may be slow, but more often it is abrupt and violent, with rapid loss of fluids and electrolytes from persistent vomiting and diarrhoea. Hypokalemia and hyponatremia, acidosis, or alkalosis may develop. Treatment is supportive, employing bed rest, sedation, intravenous replacement of electrolytes, and antispasmodic medication to control vomiting and diarrhoea. With a precise diagnosis, medication and treatment can be specific and curative, such as an antitoxin that might be prescribed for gastroenteritis resulting from a bacterial endotoxin.

35. The characteristics of gastroenteritis and its causes are seen in Medical Microbiology: A guide to microbial infections: Pathogenesis, immunity, laboratory investigation and control by David Greenwood, Mike Barer, Richard Slack and Will Irving. Chapter 24, Salmonella, Food poisoning, enteric fever reads as under:

Acute gastroenteritis is characterized by vomiting, abdominal pain, fever and diarrhoea. It can be caused by ingestion of a wide variety of bacteria or their products, several viruses and a number of vegetable toxins and unorganic chemicals. The term bacterial food poisoning is conveniently restricted to cases and epidemics of acute gastroenteritis that are caused by the ingestion of food contaminated by bacteria or their toxins.

36. As noted above, the main cause of gastroenteritis itself is due to bacterial food poisoning. Even as per prosecution case, the deceased was treated for gastroenteritis from Dr.Govind Ram, PW-5 and Mr.P.K.Sharma, PW-6 prior to her death. In R.M.L.Hospital, she was treated for gastroenteritis. In these circumstances, even if some poison is detected as per CFSL report Ex.PA, without its exact nature being detected as is stated in the aforesaid report that could be attributed to gastroenteritis. In these circumstances, it cannot be said that the deceased had died of unnatural death.

37. Further, the MLC Ex.PW12/A shows that deceased was admitted in RML Hospital by her sister Mamta Arora, PW-4 on 6.5.1991 at 3.25 p.m. with the alleged history of vomiting and loose motion. It is alleged in MLC Ex.PW12/A that an application was given by Mamta Arora, PW-4 on 8.5.1991 at 10.30 a.m. to Medical Superintendent in hospital that her sister was given poison by her in laws. However, no such application has been produced nor same was put to Mamta Arora, PW-4 nor the said witness has stated anything in this regard in the evidence before the court. The said witness has not supported the case of the prosecution in any manner. She was real sister of deceased and was turned hostile and was cross-examined at length. However, she did not depose anything which could be of any help to the prosecution. Even uncle of the deceased i.e. Sh. Avinash Chand Gauba PW7 has also not supported the case of prosecution.

38. One of the essential ingredients of Section 304B IPC i.e., the deceased died unnatural death, has not been proved in the present case. Learned ASJ has not rightly analysed the evidence about the cause of death. Accordingly, the same stands set aside.

39. Learned senior counsel for the appellant has further contended that reading the evidence of Ami Chand, PW-1 the same does not establish that the demands of dowry were raised upon the deceased and that she was tortured and harassed for and in connection with demands of dowry. It is contended that relying on the evidence of Ami Chand PW1 and that of Mamta PW4, Avinash Chand Gauba PW7, the other co-accused in this case were acquitted of the charge u/s 498A IPC. It is contended that on the same set of evidence, present appellant could not have been convicted. It is contended that Ami Chand, PW-1 has made improvements in his evidence and it is not a reliable witness.

40. On the other hand, learned APP has argued to the contrary.

41. Evidence in this regard has been gone through. The star witness to prove the said allegations is the father of the deceased Ami Chand, PW-1. The said witness has deposed that his daughter i.e., deceased got married to appellant on 25.5.1990. He had spent about Rs.1,25,000/- in the said marriage. He has deposed about the details of dowry articles given by him at the time of marriage. He has further deposed that no furniture was taken by the appellant and his family members as they had stated that there was no place in their house to keep the same. His further deposition is that after about 10-12 days of marriage, he along with his wife had visited the matrimonial home of his deceased daughter and asked the appellant and his other family members if they wanted furniture. They replied that they did not require furniture. However, they had stated that if he had desire to give the same, he could give cash in place of furniture. Accordingly, he gave Rs.7,500/- which was put in a fixed deposit receipt in the joint name of his deceased daughter and her mother-in-law.

42. His further deposition is that after about one month of marriage, when he had come to take the deceased to Haldwani, she had told him she was being harassed in the matrimonial home. She also told him that her in laws had told her that they were expecting a car in the marriage and her father had not given anything in the marriage. Hearing that, he called appellant and the other 3 co-accused persons i.e. mother-in-law, sister-in-law and brother-inlaw of the deceased and told them that he had given them to the best of his capacity. However, his daughter told him

to give more to them so that she could live peacefully. So he agreed to give Rs.20,000/- in cash in four instalments of Rs.5,000/- each. Thereafter, he took his daughter to Haldwani. After 5-7 days, appellant had visited there and he gave cash of Rs.5,000/- to him.

43. He has further deposed that after about 1 month, he came to Delhi and gave Rs.5,000/- to Vinod and his mother. He again came to Delhi after 15 days when his daughter told him that she was being harassed by appellant and the three co-accused persons. She also told him that co-accused Mahinder i.e., brother-in-law usually visited the house in a drunken state and used to tell appellant and the other co-accused persons to beat the deceased and that only after beating only her father would give more money and then they all used to beat her demanding balance amount of Rs.10,000/-. After about 2 months, he again came and gave third instalment of Rs.5,000/-. He had again come to the house of his daughter and daughter told him that they were again beating her for not giving Rs.5,000/- and she also told him that they used to bolt her inside the room and all of them used to give beatings to her.

44. Ami Chand, PW-1 has further deposed that after about passing of 10- 11 months of marriage, he again took his daughter to Haldwani where accused had come and apologized for his behaviour and demanded for remaining amount of Rs.5,000/-. However, he told him that he was not in a position to arrange and assured that he would give him after 15-20 days and he sent his daughter with Vinod.

45. On 7.5.1991, he came to know that his daughter was in a serious condition and he was immediately called at Delhi. He deposed having made statement Ex.PW1/A to the SDM. He has deposed that with the efforts of Police the dowry articles have been recovered from the house of the appellant which he has taken vide memo Ex.PW1/B. The ornaments were also seized which he has received vide memo Ex.PW1/C.

46. In cross-examination, he has deposed that at the time of marriage of the deceased with appellant he was having a four-wheeler tempo. However, he was not having any scooter before marriage and he had taken it after marriage. In

cross-examination, he has also admitted that Rs.7,500/- which he had given to the appellant for purchase of furniture was converted into FDR in the name of his deceased daughter and mother-in-law and her mother-in-law had surrendered her right on the same day in favour of the deceased. Further, as per his deposition no furniture was demanded by the appellant or his family members. Rather, he had given of his own Rs.7,500/- which the appellant and his family members had converted into FDR in the name of daughter only and photocopy was given to her father also. Further, as per his evidence there is no demand of dowry at the time of marriage and the father Ami Chand PW1 of his own had given dowry to his daughter. It is not his case that at the time of marriage there was some demand.

47. The deposition of Ami Chand, PW-1 that after about a month of marriage when he visited his daughter she told him that the appellant and his family members were expecting a car and to fulfil that demand, he agreed to give Rs.20,000/- in four instalments of Rs.5,000/- each has also been considered. The same is at variance from his statement Ex.PW1/A to SDM wherein he has alleged that Vinod had demanded a scooter from him and when he could not arrange a scooter he gave Rs.5,000/- on three different occasions.

48. It may also be noticed that the statement of Ami Chand PW1 is recorded by SDM, PW-15 in two parts i.e., Ex.PW1A and Ex.PW15B through SI Phool Singh PW14. The same is also signed at two places by Ami Chand, PW-1. There is no explanation as to why the same was recorded in two parts when as per prosecution case, the same is recorded at the same time. In the first part i.e., Ex.PW1A, the only demand alleged is that about one week before the death of deceased, the `Gaadi of appellant had come to Haldwani and through driver he had demanded a gas cylinder and a regulator. In the other part of statement to S.D.M. PW-15 i.e., Ex.PW15B, he has given a different version and alleged that about 1 month earlier he had brought his daughter to Haldwani where she had told him that appellant and her in laws had beaten her up with relation to monetary demands. He has further stated that his son-in-law had demanded a scooter from him. As he could not give scooter, he had given Rs.5,000/- on three different occasions. There is no reference of demand of car in the statement to SDM.

49. The father of deceased i.e., PW-1 has made three different statements about the alleged demands of dowry. In the evidence in court he is stating that the demand was for a car whereas in statement before the SDM i.e., Ex.PW15B, he has stated that appellant had demanded a scooter. In statement Ex.PW1A, before S.D.M., he has stated that one week before death of deceased, `Gaddi of appellant had come to Haldwani and there driver of appellant had demanded gas cylinder and a regulator. In evidence, he has stated that at the instance of co-accused Mahinder, the appellant and the co-accused persons used to beat her and Mahinder used to come in the drunken state and instigate them to demand money. He has not made any such statement to the SDM. He is making different statements at different stages. In these circumstances, it will not be appropriate to rely on his evidence. Further, the witness is not speaking the truth also. He has deposed in court that deceased was not in visiting terms with her sister Mamta PW4 whereas as per evidence of Mamta, PW-4 deceased used to visit her. Further, as per evidence on record, it is Mamta who had got the deceased admitted in RML Hospital.

50. In statement u/s 313 Cr.P.C, appellant and other family members have denied having raised any such demand of dowry and having received the said amount.

51. The Id.ASJ has given undue weightage to the testimony of Ami Chand, PW-1. Reading his evidence in totality, it is not established that the dowry demands were raised upon the deceased and that she was subjected to cruelty or harassment for and in connection with demand of dowry.

52. The sister of deceased Mamta Arora, PW-4 has not supported the case of the prosecution in any manner. As per her deposition, no demand of dowry was ever raised by the appellant and his other family members. She has only stated that her father was not happy with the marriage. She was unable to give any reason as to why his father was not happy. She has also deposed that her sister has never made any complaint about demand of dowry or beatings given to her by the appellant and other accused persons. examined and was confronted with her statement Ex.PW4A alleged to have been made to the police. However, she has denied having made any such statement to the police. She has further stated in

her cross-examination that whatever was requested by appellant and his other family members, same were given by her father and no demand of dowry was raised upon the deceased or his father. She has further deposed that deceased had come to her house on 4.5.1991 for staying with her. While staying there, her condition deteriorated. Earlier before the incident, she was not keeping good health.

53. The uncle of deceased namely Avinash Chand, PW-7 has deposed that deceased was his wife's daughter. He has deposed that he does not know how deceased was treated in her in-laws house. He has deposed that complaint was made to the police by the other relatives and he was presented as a complainant. He was read over the same as Ex.PW2A. However, he denied having made any such statement to the police. He has deposed that he had lodged the said report at the instance of relatives of deceased and not of his own. In view of the above, allegations of demand of dowry are not proved.

54. In view of the above, the findings of the Id.ASJ convicting the appellant u/s 498A/304B IPC are perverse and not sustainable. Consequently, appeal is allowed and the judgment dated 13.5.2000 and order of sentence dated 16.5.2000 are hereby set aside and the appellant stands acquitted. VEENA BIRBAL, J  
May 16, 2014 ssb/kks

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