

**State Vs. Arvind Singh and ors.**

**State Vs. Arvind Singh and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/1170724](http://sooperkanoon.com/1170724)

**Court :** Delhi

**Decided On :** Jul-17-2013

**Judge :** G. S. Sistani

**Appellant :** State

**Respondent :** Arvind Singh and ors.

**Judgement :**

§~1 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 21/2013  
Judgment delivered on 17th July, 2013 % STATE Through : ..... Petitioner  
Mr.Richa Kapoor, Adv. versus ARVIND SINGH AND ORS. Through .....  
Respondents CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR.  
JUSTICE G.P. MITTAL G.S.SISTANI, J (ORAL) 1. State has filed the present  
leave to appeal under Section 378(1) of the Code of Criminal Procedure against  
the judgment dated 28.8.2012 passed by Additional Sessions Judge, arising out of  
an FIR lodged under Sections 498A/304B/34 IPC. The acquittal of the husband  
and mother-in-law of the deceased by the trial court has led to the filing of the  
present leave to appeal.

2. The case of the prosecution, as noticed by the trial court, is that a woman,  
namely, Padma, died of hanging in her matrimonial home on 4.2.2010. The  
deceased was brought dead to DDU Hospital by her husband, Arvind, respondent  
no.1, in an unusual state. On receipt of DD No.28A, Inspr.Sandeep alongwith SI  
Hari Singh, Ct. Rohtash, Ct. (Driver) Anoop as well as HC (Operator) Anil reached

DDU Hospital where Executive Magistrate, Najafgarh, was already present. The dead body of the deceased was sent for post-mortem. The Executive Magistrate recorded the statement of the mother and brother of the deceased, who were present in the hospital. The mother of the deceased stated that they were informed the night before that their daughter died of stomach ache and they immediately reached Delhi from their native place in Rewari, Haryana. According to Smt. Geeta Devi, mother of the deceased, her daughter was being regularly taunted, harassed and tortured for dowry and her husband, Arvind; father-in-law, Jagrup; mother-in-law, Bimla; and brother-in-law, Ravinder, were responsible for her death. On the basis of the statement made by the mother of the deceased, an FIR under Sections 498A/304B IPC was registered. On the basis of the statement recorded of the witness under Section 161 Cr.P.C. and during the course of investigation it came to be known that the deceased, Padma, was being treated with cruelty since her marriage, she was being beaten regularly by her in-laws for not bringing dowry, her in-laws used to demand a motor-cycle from her and when their demands were not being fulfilled they used to beat the deceased. The deceased had also given birth to a female child on 29.8.2007. Thereafter she completed her B.Ed course from her parental house. The deceased had gone to her matrimonial home on 20.1.2010. A day before her death also the deceased, Padma, had made a telephonic call to her mother and complained to her that her parents-in-law, husband and brother-in-law are demanding a motorcycle.

3. As per the prosecution the post-mortem of the dead body revealed cause of death to be asphyxia caused by constriction of neck by rope like ligature material. The mother-in-law was arrested on 3.3.2010 and the husband, Arvind, was arrested on 19.3.2010.

4. The prosecution has examined seven witnesses to prove the charges framed against the respondents. Four witnesses were examined by the defence.

5. Ms. Kapoor, learned counsel for the State, submits that the order of acquittal dated 28.8.2012 passed by learned trial court is not sustainable in the eyes of law as it is passed on presumptions, conjectures and surmises and is, thus, liable to be set aside. Counsel further submits that the trial court has failed to appreciate

the evidence and has wrongly acquitted the respondents. Counsel next submits that the trial court has erred in ignoring the vital pieces of evidence and has disbelieved the testimonies of PWs-1 to 4 i.e. the mother, brother-in-law, grandfather and paternal aunt (Bua) of the deceased. Counsel further submits that the above witnesses had categorically deposed that after marriage the accused persons used to harass the deceased and were demanding Rs.50,000/- and a motorcycle. Counsel next submits that the testimonies of PW-1 to PW-4 inspire confidence and the same are truthful and trustworthy and accordingly the same should have been relied upon by the Court.

6. We have heard learned counsel for the petitioner and carefully examined the judgment of the trial court. It may be noticed that an alternate charge under Section 302 IPC was also framed in this case against the respondents. Although a faint argument has been made by counsel for the petitioner that the charge under Section 302 IPC stands duly proved yet we find no force in the submission so made by the counsel for the petitioner. In the absence of any evidence to show that the deceased had been killed and in the absence of any medical evidence to show that poisonous substance in the body of the deceased was found and taking into consideration the statement made by the doctor, who conducted the autopsy, Exhibit PW-17/E wherein it has been pointed that it is a case of partial hanging where the legs of the deceased may have rested on the bed as the ligature mark was prominent only on the posterior of the neck and no signs of struggle were seen in the room where dead body was found, all this make it limpid that the deceased had committed suicide by hanging. Hence the charge under Section 302 IPC fails.

7. Before analysing the evidence in this case, we deem it appropriate to reproduce the observations of the Supreme Court of India made in the case Biswajit Halder alias Babu Halder and Others vs. State of West Bengal (2008) 2 SCC202 wherein the Apex Court had the occasion to elaborate the basic ingredients of Section 304B which reads as under:

10. The basic ingredients to attract the provisions of Section 304B are as follows:  
(1) the death of a woman should be caused by burns or fatal injury or otherwise

than under normal circumstances: (2) such death should have occurred within seven years of her marriage: (3) she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and (4) such cruelty or harassment should be for or in connection with demand of dowry.

11. Alongside insertion of Section 304-B in IPC, the legislature also introduced Section 113-B of the Evidence Act, which lays down when the question as to whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

12. Explanation appended to Section 113-B lays down that:

For the purpose of this Section, dowry death shall have the same meaning as in Section 304-B of Indian Penal Code.

13. If Section 304-B IPC is read together with Section 113B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under dowry death and there shall be a presumption against the husband and the relatives.

8. The trial court has observed that examination-in-chief of PWs-1 to 4 is almost similar to each other wherein it is stated as under:

20. The examination in chief of all the aforesaid witnesses, is almost similar to each other. It has been deposed that the deceased got married to accused Arvind on 10.05.2006. After the marriage, all the accused as also Jagrup (proclaimed offender) started harassing the deceased and caused cruelty to her for demands of dowry in the shape of a motorcycle and cash of Rs.50,000/-. In the month of January, 2007, deceased made a telephonic call to her mother and told her that she would be killed by the accused and she should be taken back to parental

house. Thereafter deceased was brought to her parental house at Village Khol, Haryana on 27.01.2007. On 8.4.2007, the mother of deceased paid a sum of Rs. 25,000/- to accused Arvind as dowry and thereafter he took the deceased back to matrimonial home. After about 10 to 15 days accused Arvind again dropped the deceased at Khol Bus Stand after giving beatings to her. The deceased prepared a complaint to be lodged with the police but on refusal of relatives namely Veena and her husband, the said complaint was not given to the Police. Deceased gave birth to a girl child on 29.08.2007 in Narnaul Govt. Hospital. Deceased completed her B Ed. Course in the year 2007-2008 from Jahanabad, Haryana, upon which Rs. 80,000/- were spent by her. During that period, whenever the deceased visited her matrimonial house, all the accused mentally harassed and tortured her for dowry and sent her back to her parental house. On 20.01.2010, accused Arvind came to her in-laws house and took deceased Padma back along with him on the pretext of marriage of his mother's nephew. At that time, deceased refused to come to her matrimonial house in the fear that her in-laws may eliminate her. However, the matter was settled between the parties and the deceased accompanied the accused. After reaching her in-laws' house, deceased made telephone calls to her mother two or three times saying that she was being tortured and beaten by the accused persons. Deceased used to say that the accused would kill her upon which her mother consoled her by stating that she has already done B.Ed. and M.A. in English and would get a good job, after which the accused would not harass her. On 4.2.2010, at about 7.30 pm, accused made a call to PW-1 saying that the deceased was having some intestine pain and is locking her jaws. Another call was made by accused Arvind at 8.30 pm saying that the deceased has expired. Thereafter, PW-1, PW-2, PW-3, PW-4 along with one Jagdish reached Delhi at 2 am in the night and were told that the deceased had been taken to hospital. They went to hospital and were handed over the dead body of the deceased.

21. PW-1 has further added that she saw injury marks on the body of the deceased and her body had turned blue around her face due to blunt injury and it appears that the deceased has been poisoned. She proved her statement recorded by Executive Magistrate as Ex. PW1/B. In the cross examination, she deposed that the demands of motorcycle and Rs. 50,000/- were raised by all the

accused including the father-in-law of the deceased immediately after the marriage. She admitted that no motorcycle was given by them to the accused. At another place of the cross examination, she stated that she cannot tell the date, month or the year, when the demand of motorcycle and cash of Rs. 50,000/- was raised by the accused. She admitted that the deceased had done a regular B.Ed. Course. She, however, denied that during that period, deceased never visited her matrimonial house. She admitted that deceased was never interested in going to her matrimonial house and join her husband but she was sent back by them to save her matrimonial life. She also admitted that no demands of the dowry were raised by any of the accused at the time of marriage and the marriage ceremony was conducted happily. She also stated that the expenses of the marriage were borne by her parental aunts namely Maya, Veena and Guddo as well as by her grand father, maternal uncles and relatives. She further deposed that the mediator of the marriage was the husband of the bua of the deceased namely Veena and her husband Sh. Karan Singh. She admitted that the daughter of the deceased is under the care and custody of accused now and that they have not acquired the custody of that child. According to her the deceased had in the year 2007, written a complaint in Hindi and signed the same in Hindi in her presence. At the same time she also admitted that deceased used to sign in English. She was confronted with her statement Ex. PW1/B recorded by the Executive Magistrate wherein she had not mentioned about any specific dowry demands made to the deceased or specific harassment of cruelty inflicted upon her.

22. PW-2 in his cross examination has deposed that his father expired in the year 2000 and thereafter, their source of income was only the pension of their grand father. He did not know if their financial status was conveyed to the accused persons before the marriage of the deceased. He further deposed that his sister used to tell about the dowry demands and incidents of cruelty to her mother only and his mother had in turn apprised him about the same. He denied the suggestion that the deceased was having an affair with a boy prior to her marriage and wanted to marry that boy but since that boy was not of their caste, they forcibly married the deceased with accused Arvind against her wishes and for that reason deceased was not interested to continue the marriage with accused Arvind.

23. PW-3 in his cross examination has stated that he retired from the post of Subedar in Indian Army in the year 1973. According to him, at the time of death of his son Uttam Singh (father of the deceased), his grand children were students. His daughter-in-law Geeta was a house wife. The source of income of the family was only agricultural land. He owned quarter to two acres of agricultural land. He also deposed that he was apprised by his daughter in law Geeta about the dowry demands made to the deceased by her in-laws and the harassment meted out to her. He further stated that they had informed the accused about their low financial status at the time of marriage of the deceased. He admitted that the accused were financially much sound than their family and despite knowing about their financial status, the accused agreed for the marriage. He admitted that none of the accused raised any demand at the time of engagement or at the time of marriage. The deceased had never told him that she did not want to go to her matrimonial house.

25. PW-4 in his cross examination has admitted that there was no source of income in the parental house of the deceased and they used to get financial aid from the relatives living nearby. At the time of marriage, the demand of accused persons was that they wanted an educated girl and there was no demand of dowry at that time and the accused were aware about the financial status of the family of the deceased. She also admitted that Veena and Karan Singh were the mediators of the marriage of the deceased with accused Arvind.

9. On careful examination of the evidence of PW-1 to 4 would show that there was no demand of dowry made by the respondents to the deceased soon before her death. The prosecution has failed to establish that the deceased was subjected to cruelty or harassment for and in connection with any demand for dowry which resulted in her death. The evidence further reveals that there was no demand made to the deceased by any of the respondents between the years 2008 to 2010, which is also evident from the fact that the deceased was staying at her parental home continuously since the year 2007 up to 20.01.2010. PW-1 has testified that when the deceased went to her matrimonial house on 20.01.2010 she had called her up 2 - 3 times informing her the torture and beatings given to her by the accused. The statement so made is general in nature and vague. Neither any reasons have been given as to why she was beaten or tortured. Moreover it

seems that this statement was made as an afterthought, as PW-1 did not say so in her first statement, Ex.PW-1/B, which was recorded by the Executive Magistrate. The statement of PW-1 with regard to injury marks on the dead body of the deceased is negated by the death report, Ex.PW-8/L and the MLC, Ex.PW-6/A, which did not mention about any injury found on the dead body of the deceased. The suspicion raised by PW-1 that some poison has been administered to the deceased is negated by the viscera report, which shows that no poison at all could be detected in the viscera of the deceased.

10. The trial court has noticed the evidence of DW-4, paternal uncle of the deceased, Karan Singh, who was the mediator of the marriage. He has deposed that the accused had agreed for a dowry-less marriage and no demand for dowry was made at the time of marriage. He was a regular visitor to the house of the respondents and also the parental house of the deceased. The deceased also visited his house but never complained to him about any dowry demand or any harassment meted out to her, nor such a complaint was ever made to his wife. DW-4 has also testified that deceased wanted to do a job, but she could not do so as she had failed in her exams 2 - 3 times and used to remain under some sort of depression after failing in her exams. In the absence thereof it cannot be said that there was any live link between the demand of dowry and the death of the deceased. It is settled law that when an accused is acquitted of a criminal charge, a right vests in him and further the presumption of innocence of the accused is further strengthened by the fact of acquittal. We are satisfied that the prosecution has not been able to prove its case beyond reasonable doubt, there is no perversity in the appreciation of evidence, neither there are any compelling and substantial reasons for interference in the judgment of the trial court. Accordingly, the leave to appeal is dismissed. CRL.M.A. 588-89/2013.

11. In view of the order passed in the leave to appeal, present application also stands dismissed. G.S.SISTANI, J G.P. MITTAL, J JULY msr 17th, 2013

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**