Pushpender Singh and Others Vs. State and Others

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SooperKanoon Citation : sooperkanoon.com/1178385

Court : Delhi

Decided On : Oct-12-2015

Judge : Sanjiv Khanna &Amp; R.K. Gauba

Appeal No. : CRL.A. Nos. 160, 287, 569 of 2015

Appellant : Pushpender Singh and Others

Respondent : State and Others

Judgement :

R.K. Gauba, J.

1. By judgment dated 25.11.2014 in sessions case no. 83/2009, the learned Additional Sessions Judge (North) found the appellant-Ravinder (Crl.A.287/2015) guilty and convicted him for the offence under Section 302 of Indian Penal Code, 1860 (IPC) for the murder of his wife Meena. By the same judgment, the said appellant-Ravinder along-with four others viz. Pushpender, Phoolwati, Babu Lal and R.Harshinder (appellants in Crl.A.No.160/2015), were held guilty on the charge for the offences punishable under Sections 304-B/498-A/34 IPC, committed against Meena. The said four appellants (Crl.A.No.160/2015) had also stood trial with appellant Ravinder on the charge under Section 302/34 IPC, of which they were acquitted. By order dated 08.01.2015, the learned trial court awarded imprisonment for life with fine of Rs.25,000/- to Ravinder (A-1). Each of the appellants was sentenced to rigorous imprisonment (R.I.) for ten years with

fine of Rs.20,000/- for the offences under Section 304-B/34 IPC and R.I. for three years with fine of Rs.25,000/- each for offence under Section 498-A/34 IPC with further direction that in case of default in payment of fine they would undergo R.I. for six months and three months respectively.

2. The two criminal appeals (Nos. 160/2015 and 287/2015) have been preferred by the convicted persons to assail the aforesaid judgment and order on sentence. The acquittal (of the appellants in criminal appeal No.160/2015) on the charge for the offence under Sections 302/34 IPC has been challenged by Mani Ram (father of the deceased Meena) by independent appeal no.569/2015.

3. Meena, daughter of Mani Ram (PW-3) and Gyanwati (PW-6), got married to appellant-Ravinder (accused No.1) on 20.06.1999. A male child (named Harry ?) took birth out of this wedlock on 26.08.2000. On 27.04.2001, at 0055 hours, First Information Report (FIR) No.129/2001 was registered (vide Ex.PW-9/A), at the instance of Meena, by Police Station Civil Lines (Delhi) for investigation into offence under Section 498-A of Indian Penal Code, 1860 (IPC). Allegations were made in the said FIR by Meena about she having been subjected to cruelty by her husband Ravinder (accused no.1) and his two brothers, namely, Pushpender Singh (accused no.2) and R. Harshinder (accused no.4) during her stay in the matrimonial home described as H.No.252 Old Chandrawal, Civil Lines, Delhi.

4. On conclusion of investigation into the said FIR dated 27.04.2001 (hereinafter referred to as the first FIR ?), report under Section 173 of Code of Criminal Procedure, 1973 (Cr.P.C.) was submitted. It resulted in trial of the Ravinder (accused no. 1), his father Babu Lal (accused no. 4), his mother Phoolwati (accused no.3) and Pushpender (accused no. 2) on the charge for the offence under Section 498-A IPC, in the Court of Metropolitan Magistrate (Mahila Court), Delhi. Meena, when called for evidence (as prosecution witness No.1), in that case, however, refused to confirm the allegations in the FIR and made a statement, on 21.10.2003, expressing that she did not want to proceed with the case any further and that she had no grievance against the said accused persons, adding that the complaint (leading to the FIR) had been made by her out of frustration and anger and that she had been living separately with her husband

and the child happily for the preceding two months. The learned Magistrate drew curtain on the said criminal case and, by her judgment dated 21.10.2003, directed that all the accused persons be discharged ?.

5. On the night intervening 28 and 29.05.2004, Meena, then carrying a pregnancy (of seven months), suffered homicidal death in House No. 38, Pocket-6, Sector-A5, Policy Colony, Narela, which is residential accommodation allotted to her husband (appellant-Ravinder), her dead body having been discovered sometime around 0820 hours on 29.05.2004, lying in a pool of blood on the floor of the room at the ground floor, her throat slit with a sharp edged weapon and her child (son Harry), aged about 3 years sitting nearby with the door ajar. The FIR No.211/04 (Ex.PW-1/A) initially registered for offence under Section 302 IPC, on the basis of rukka (Ex.PW-15/B) sent by SI Ram Chander (PW-15) of Police Station Narela (hereinafter referred as the Police Station ?), was later converted into a case also involving offences punishable under Sections 304-B/498-A/34 IPC, primarily on the basis of statements (Ex.PW-3/C, PW-6/DB and Ex. PW-8/A) made by Mani Ram (PW-3), Shiv Kumar (PW-4) and Gyanwati (PW-6), the father, mother and brother respectively of Meena (hereinafter referred to as the victim or the deceased ?) before Sh. G.P. Singh (PW-8), the then Sub-Divisional Magistrate (SDM) of Narela.

6. On conclusion of investigation into said FIR dated 29.05.2004 (hereinafter referred to as the second FIR ?), report under Section 173 Cr.P.C. was submitted on 07.08.2004, followed by a supplementary charge-sheet. The five appellants stood trial on its basis on the charge for offences under Section 498-A r/w Section 34 IPC and Section 302 r/w Section 34, IPC with alternative charge under Section 304-B r/w Section 34 IPC framed on 08.04.2005, later amended on 14.03.2007. Accused No.1 Ravinder (A-1) is the husband of the deceased. He is the son of accused No.4 Babu Lal (A-4), accused No. 3 Phoolwati (A-3) being his mother. Accused No.2 Pushpender (A-2) and accused No.5 R.Harshinder (A-5) respectively are his elder and younger brother. The trial concluded with judgment dated 25.11.2014, followed by the order on sentence dated 08.01.2015 with the result as mentioned earlier.

7. Ravinder (A-1) was employed during the relevant period as constable in Delhi Police. He was posted in mobile crime team of North District. The House No. 38, Pocket-6, Sector-A5, Police Colony, at Narela, where Meena died, was allotted to A-1 on account of his service with Delhi Police. Constable Rakesh Kant (PW-21), posted in Traffic Police was allottee and occupant of the adjoining quarter number 37.

8. On 29.05.2004, at about 8:20 AM, the local sweeper had come to pick up garbage. As he reached in front of the house of A-1, he raised hue and cry shouting khoon ?. On hearing this, Constable Rakesh Kant (PW-21) came out and found the door of the house of A-1 partly open. When he peeped inside, he found the dead body of Meena lying with blood scattered around her head. He informed the Police Control Room (PCR), at phone number 100, using his own mobile phone (number 9810691495). The information given by PW-21 was logged in PCR at 0823 hours on 29.05.2004 (vide Ex.PW-21/A), by lady Head Constable Shashi Tyagi (PW-20). The information was relayed by PCR to the Police Station and was logged there vide DD No. 6-A (Ex.PW-15/A) by the DD writer on duty at 0830 hours. The matter was entrusted to SI Ram Chander (PW-15) who set out for the place accompanied by Constable Ishwar Singh (PW-19) and Constable Ram Nihor (inadvertently wrongly marked as PW-21 and, therefore, referred to hereinafter as PW-21A).

9. The unimpeachable evidence to such effect led at the trial shows that when PW-15, accompanied by the two constables, reached the place he found a large number of persons gathered around. Upon entering the house, he found the dead body lying in the room of the ground floor with blood spilled in the nearby area. Even a cursory inspection revealed that the deceased had suffered a cut injury on her neck inflicted by a sharp edged weapon. The infant child of the deceased was sitting nearby in a state of shock and non-communicative. According to the rukka (Ex.PW-15/B), sent by SI Ram Chander (PW-15), at 11:15 PM on 29.05.2004 from scene of crime, no eye-witness could be located at the spot. The rukka (Ex.PW-15/B) resulted in registration of FIR (Ex.PW-1/A) by ASI Murti Devi (PW-1), the Duty Officer in the Police Station, at 12:05 PM, with corresponding endorsement on the rukka (Ex.PW-15/B).

10. Inspector Mahipal Singh (PW-24), the SHO of the police station had also arrived in the meanwhile. Amongst the steps taken at the scene where the dead body was found, the scene was arranged to be inspected by the crime team led by SI Rajesh Kumar (PW-12), who was accompanied by Constable Sushil (PW-11), the photographer. The report of the in-charge crime team (Ex.PW-12/A) does not reveal any chance prints having been collected. The photographer Constable Sushil (PW-11) took photographs, by exposing negatives (Ex. PW-11/B-1 to B-8) with the help of which he later developed positive photographs (Ex. PW-11/A-1 to A-8), which confirm the description of the scene as noted in the FIR. It may be mentioned here that the photographs, inter alia, show almirahs to be open, SI Ram Chand (PW-15) added that the articles in the room were lying scattered.

11. The Investigating Officer prepared site plan (Ex. PW-24/A), which was the basis eventually of a more detailed site plan (Ex.PW-16/A) drawn to scale by SI Manohar Lal (PW-16). The Investigating Officer seized sample of blood spilled on the ground floor around the dead body, picked up pieces of blood-stained floor and earth control vide seizure memo (Ex. PW-15/A) besides personal effects of the deceased (Ear rings, Toe-rings, Nose-pin and Chain), Ex. X-10 collectively, taken off the dead body vide seizure memo (Ex. PW-15/G). The inquest papers including the death report (Ex.PW-15/C) and brief facts (Ex.PW-15/B) were prepared and the dead body was removed to mortuary of Babu Jagjeevan Ram Memorial Hospital, Jahangir Puri, Delhi with application (Ex.PW-15/D) for it to be preserved for 72 hours. The then Investigating Officer (PW-15) also moved an application (Ex.PW-15/E) for post-mortem examination of the dead body. Noticeably, this application contains further endorsement that the SDM was not available on 29.05.2004 due to law and order (Nirankari Samagam) duties.

12. The post-mortem examination on the dead body of Meena was conducted by Dr.B.N.Acharya (PW-10) at 1:30 PM on 29.05.2004 in the mortuary of Babu Jagjeevan Ram Memorial Hospital, Jahangir Puri, Delhi. It may be noted that, prior to the autopsy, the dead body had been identified, both at the time of death report (Ex.PW-15/C) and also by separate statements (Ex.PW-3/D and PW-15/F) by Mani Ram (PW-3) and Anand, father and brother respectively of the deceased.

13. The autopsy report (Ex.PW-10/A) proved by Dr.B.N.Acharya (PW-10) has confirmed observation of SI Ram Chander (PW-15) about the deceased having suffered a cut throat incised wound on front and side of the neck. On the left side, the injury showed four tapering ends and on the right side there was indication of three multiple attempts at causing similar injury of the size of 11 cm X 5 cm. The trachea had been cut at two places, on right side to the extent of 5 cmX 3 cm, 8 cm below left ear. The thyroid, cricoid, and trachea rings with both sides of neck muscles and vessels had been cut and bisected. In the opinion of the autopsy doctor, the cut throat injury was ante-mortem in nature and had been inflicted by sharp-edged weapon, death having occurred due to haemorrhagic shock resulting from such injuries, 12-14 hours prior to the autopsy. The autopsy doctor had preserved the blood-stained clothes of the deceased, Salwar, Shirt, Brassier (Ex. PX-1/1 to PX-1/3) along with sample blood, which were taken over by the Investigating Officer formally vide seizure memo (Ex.PW-19/A).

14. There is no contest to the evidence to above effect concerning the cause of death of Meena as indeed about her dead body having been found in the residential police quarter allotted to Ravinder (A-1) at about 8:20 AM on 29.05.2004. The autopsy report, and the circumstances in which the dead body has been found, leave no room for any debate as to the cause of death. There is no theory floated, not even by a remote suggestion, that the unnatural death of Meena could be suicidal or accidental. Clearly, Meena had been slain by her throat being cut by someone else, the fatal wound having been inflicted with nothing but the intention to bring out her death. In these circumstances, we have no hesitation in upholding the finding recorded by the learned trial court that the death of Meena was homicidal. Having regard to the attendant circumstances as noted and elucidated below and the defence not claiming that the case falls within any of the exceptions to Section 300 IPC, the culpable homicide of Meena amounts to the offence of murder. There is no doubt further as to the fact that the murder had been committed in the official residence allotted to the husband of the deceased woman i.e. Ravinder (A-1).

15. It is the case of the prosecution as well that Ravinder (A-1) was not around when the dead body had been discovered by the neighbour and till such time as

the police had arrived and gone about taking the initial steps leading to registration of the FIR on the basis of rukka (Ex.PW-15/A), sent at 11:15 AM on 29.05.2004.

16. The evidence of SI Ram Chander (PW-15) and Inspector Mahipal Singh (PW-24), has brought out that during the inspection of the scene of crime, amongst other things, it was observed that a calendar (Ex.PX) was hanging on the wall of the ground floor room. It (Ex.PX) was taken off the wall and was seized vide memo (Ex.PW-15/Z). It is actually a sheet of paper with dates of a particular month printed on one side and horoscope for the English calendar year 2003, corresponding to Vikrami Samvat 2059-60, on the reverse. On one side, two sheets of paper both seemingly computer print-outs had been pasted. One sheet, larger in size, was the calendar for year 2004 prepared in computer centre crime of Crime and Railways (unit of Delhi Police) also mentioning the gazetted and restricted holidays. On this sheet, on the left top corner, the name RAVINDER followed by mobile telephone number 9818419048 ?, preceded by a drawing of mobile phone with arrow sign, all written in hand can be noticed. On the sheet pasted on the top, above the calendar, the following legend could be read:

In-Laws: 2791 3334

Self: 9818419048

My Home: 55153285 ?

17. In the above part, the middle portion is written prominently in hand, the rest having been printed in bold apparently with the help of a computer.

18. The evidence on record (particularly that of PW-7 R K Singh of Bharti Airtel) shows, and the defence now does not dispute, that mobile phone number 9818419048 ?, as mentioned twice on Ex.PX (calendar) was in use of Ravinder (A-1). Therefore, it shall hereinafter be referred to as the mobile phone of A-1 ?. The landline phone number 27913334 concededly is the landline number of Mani Ram (PW-3), a resident of Mangol Puri, Delhi (House No. T-888). The said telephone number (27913334) would hereinafter be referred to as the phone number of the parents of the deceased Similarly, the phone number 55153285

was indisputably installed and functional in H.No.252, Old Chandrawal, Civil Lines, Delhi, ordinarily the residence of father of Ravinder (A-1) and rest of the family i.e. of all the appellants other than Ravinder (A-1). It (phone number 55153285) would, thus, be hereinafter referred to as the phone number of Chandrawal house ?.

19. It must be observed here that a perusal of the calendar (Ex.PX) gives the impression that the person who had prepared it and hung it on the wall of the house used as residence of Ravinder (A-1) and his family (including the deceased and the child) intended that Ex. PX would catch the attention of anyone entering the house. It was deliberate and had an objective. The phone number of Chandrawal house was qualified by the expression my home and the house where the other phone (27913334) was functional as that of his in-laws ?. Unmistakably, the calendar (PX) had been prepared by Ravinder (A-1) and put up on the wall by him in his house. Noticeably, he had mentioned his own mobile phone number twice, with such prominence that it could or would not be missed.

20. We note from the PCR form (Ex.PW-20/A), that after the initial telephonic intimation given by PW-21 (the neighbour) had been recorded, additional notings were made in PCR on the basis of further inputs received, inter alia, from local police (particularly PW-15 and PW-24). Aside from reference to the fact of Ravinder (A-1) being a photographer in North District, there is a mention about he (A-1) having been contacted on his mobile phone and it having been learnt that he was in Gwalior at that point of time. Since the witnesses examined by the prosecution have not vouch-safed, fairness demands that the further jottings in this PCR form, be excluded from consideration. We mention the fact about the telephone call made by the Investigating Officer to Ravinder (A-1) and about his assertion of he being in Gwalior at that point of time because that is what is the substance of his plea of alibi, taken in defence, in the trial on the charge for offence under Section 302 IPC.

21. It is undisputed that, at about 6-7:00 PM, Ravinder (A-1) with his mother Phoolwati (A-3) appeared before Inspector Mahipal Singh (PW-24) in the police station and, upon being questioned, both claimed that they had left Delhi on the previous night (28.05.2004) by train called Habibganj Express from Hazrat

Nizamuddin (Delhi) railway station at 9:00 PM for Gwalior. In support of this claim, Ravinder (A-1) produced before Inspector Mahipal Singh (PW-24), two railway tickets (Ex.X1 and Ex.X2) which were taken over formally, vide seizure memo (Ex. PW-15/H) in the presence of SI Ram Chander (PW-15). This precisely is also the substance and import of his own statement as DW-1.

22. The documents (Ex.X1 and X2) are train travel tickets issued for unreserved passengers travelling by superfast railway trains. The first ticket (Ex.X1), bearing printed no. 20666853 was issued on 28.05.2004, at 2105 hours, by Nizamuddin railway station, Delhi for travel of two adult passengers by superfast train to Gwalior via Tughlakabad and Agra Cantt. stations. The other ticket (Ex.X2) was issued on 29.05.2004, at 0928 hours, by Gwalior railway station for return journey to New Delhi of two adult passengers travelling by superfast train via Agra Cantt. and Tughlakabad railway stations.

23. The Investigation Officer, Inspector Mahipal Singh (PW-24), had also informed the parental family of the deceased (contacting them telephonically at the number available on the calendar) from the scene of crime. Mani Ram (PW-3), Shiv Kumar (PW-4) and Gyanwati (PW-6), the father, brother and mother of the deceased respectively had come to the residence of Ravinder (A-1) where the murder had been committed, immediately after the said communication. Inspector Mahipal Singh (PW-24) has stated that the SDM (PW-8) was not available on 29.05.2004 for the statutory inquest proceedings. The SDM (PW-8), on his part, has confirmed his non-availability attributing it to the field duties in which he was then engaged. Be that as it may, the three aforementioned relatives (PW-3, PW-4 and PW-6) of the deceased were presented before the SDM (PW-8) on 01.06.2004.

24. Mr.G.P.Singh, SDM Narela, proved his proceedings (Ex. PW-8/B) of 01.06.2004 constituting his directions to SHO Narela for taking action under appropriate sections of law ?, against the backdrop of statements Ex. PW-3/C of Mani Ram (PW-3), Ex. PW-6/DB of Gyanwati (PW-6) and Ex. PW-8/A of Shiv Kumar (PW-4). These proceedings mainly comprise of the detailed statement of Mani Ram (PW-3), the father of the deceased, the others (mother and brother) having adopted what had been stated by the former.

25. In the statement made by Mani Ram (PW-3), endorsed by the other two relatives of the deceased, it was mentioned that Ravinder (A-1) had started making demands for money from the time of marriage itself. Upon his demands, at the time of tilak ceremony, Mani Ram had given Rs.1 lakh. This was followed by another similar amount being paid after the marriage, upon demand, for the reason that his elder brother (appellant-Pushpender) wished to purchase a Tata Sumo vehicle. Mani Ram stated that the desire of Ravinder (A-1) for dowry was not satisfied and he made further demands for money several times, mostly through Meena. On one occasion, Pushpender had communicated the demand of arranging a house which could not be fulfilled. Mani Ram stated that, in 2001, Meena had been badly beaten by the five appellants as a result of which assault she had suffered a number of injuries but on account of the intervention of Saroj (wife of Pushpender) her life was somehow saved. She was left, in injured state, near the bus stand of S-Block, Mangol Puri from where she was able to reach the house of her sister followed by a report to police post, Majnu ka Teela (which fell within the jurisdiction of Police Station Civil Lines). Mani Ram (PW-3) referred to the FIR registered on the said complaint but could not recall (at the time of his statement before the SDM) as to what action had been taken thereupon. He stated that, in 2003, upon Ravinder (A-1) and his father Babu Lal (A-4) seeking to be forgiven, the matter was compromised. He also stated that Ravinder (A-1) had been living, till then, in the house of his father in Chandrawal. But, upon the police quarter (the one in Narela) being allotted, Meena was sent to live with him there. Mani Ram alleged before the SDM that Ravinder (A-1) had not allowed Meena to meet her parental family for the last ten months even when he had gone to handover woolen clothes for the winter season. He stated that he had learnt from the neighbours that Ravinder (A-1) was in the habit of beating Meena.

26. In the statement (Ex.PW-3/C) before the SDM, Mani Ram (PW-3) mentioned an incident of 26.05.2004. According to him, Meena had phoned up in the evening of 26.05.2004 to convey that her father-in-law (appellant-Babu Lal), Jeth (appellant Pushpender) and Devar (appellant-R.Harshinder) had come to her house and she was feeling danger to her life. As per Mani Ram (PW-3), he had immediately gone with his wife Gyanwati (PW-6), and son (PW-4) Shiv Kumar, to the house of Ravinder (A-1) in Narela and met the said persons from the matrimonial family of

his daughter. He stated that he was told by the said three appellants that he should pay Rs.3 lakh by 12 O clock noon time of 28.05.2004 with threats that in case money was not given they could do anything. According to him, he had expressed inability to give such large sum of money but was told by Babu Lal(A-4) that the money must reach in time. Mani Ram (PW-3) further stated that, on 28.05.2004 he was telephonically asked by Meena at 6:30 AM to come immediately. But, when he told her that he had not been able to arrange the money, the phone was disconnected. He stated that, on 29.05.2004, he learnt about Meena's death from SHO, Narela.

27. The trial court record shows, and the defence does not dispute, that Ravinder (A-1) and Phoolwati (A-3) were arrested by Inspector Mahipal Singh (PW-24), at 5:00 PM and 5:30 PM respectively, on 30.05.2004, in Police Station Narela, after personal search (vide memo Ex. PW-15/M and Ex.PW-15/O respectively). Going by the evidence of PW-24, he had effected the said arrests of the two appellants in the wake of their respective disclosures, referring in this context to two documents (Ex.PW-15/J and Ex. PW-15/K) respectively. Of course, these documents cannot be read being statement of accused to police and, thus, hit by Section 25 of Evidence Act, except to the extent they are shown to have led to discovery of any fact, and allowed by Section 27. It is claimed by the prosecution that pursuant to the disclosure, referred to above, Ravinder (A-1) had led the police to his house in Chandrawal and got recovered, in the presence of SI Ram Chander (PW-15) and Head Constable Mohinder, his clothes viz. Jeans-trousers (Ex.X-5) and shirt (Ex.X-4), a pair of surgical gloves (Ex.X-6) and a razor (ustra) (Ex.X-9), all bearing blood-stains kept concealed beneath the mattress on the double bed in one of the rooms of the house. The Investigating Officer (PW-24) also claimed that he had prepared the sketch (Ex.PW-15/O) of the razor (ustra) before the above-said exhibits were taken over vide seizure memo (Ex.PW-15/P), in the presence of the said witnesses.

28. The prosecution case further shows that at the time of visit to the Chandrawal house, with Ravinder (A-1) and Phoolwati (A-3) already arrested and in the custody of the Investigating Officer, Pushpender (A-2) was also found present there. According to the evidence of the Investigating Officer, in the wake of

disclosures made by the earlier two arrestees, Pushpender (A-2) was also interrogated whereupon he gave a disclosure (Ex.PW-15/S) which was recorded by Inspector Mahipal Singh (PW-24) in the presence of SI Ram Chander (PW-15). On this basis, Pushpender (A-2) was arrested at 8:00 PM on 30.05.2004 from Chandrawal house, after personal search (Ex.PW-15/R). It is stated that pursuant to the disclosure made by Pushpender (A-2), and at his instance, his blood stained clothes including one shirt (Ex.X-7) and jeans-trousers (Ex. X-8) were recovered from the place of their concealment inside the box of the double bed in the Chandrawal house, and taken over vide seizure memo (Ex. PW-15/T), attested by SI Ram Chander (PW-15) and Head Constable Mohinder. The disclosure statement attributed to Pushpender (A-2) also cannot be read except as permitted by Section 27 of Evidence Act. Though Pushpender (A-2) also statedly got recovered Car make Maruti bearing registration number DNB-5118 vide seizure memo (Ex.PW-15/U), there is no admissible evidence showing its connection with the crime.

29. The evidence led by the prosecution shows that Babu Lal (A-4) and R.Harshinder (A-5) were arrested (at 4.45 PM and 5.30 PM respectively) on 05.08.2004 from the Chandrawal House vide arrest memos (Ex.PW-17/A and Ex.PW-17/B respectively) after personal search vide memos (Ex.PW-17/C and Ex.PW-17/D respectively) in the presence of SI R K Mann (PW-17) and Constable Kuldeep Singh. The prosecution also claimed that both Babu Lal (A-4) and R.Harshinder (A-5), upon interrogation, made disclosures which were reduced into writing (Ex.PW-17/E and Ex.PW-17/F respectively), both said documents having been attested by the aforementioned police officials including SI R K Man (PW-17). However, since no fact is shown to have been discovered pursuant to the said disclosures, the statements attributed to the two accused are inadmissible and bound to be kept out of consideration.

30. The report under Section 173 Cr.P.C. submitted on conclusion of the investigation had alleged that Ravinder (A-1) feeling agitated over the fact that he along with members of his family had to remain in custody in the earlier criminal case initiated by the deceased (the one involving charge under Section 498A IPC) had conspired with his mother-Phoolwati (A-3) and brother-Pushpender (A-2) to

kill her. The Maruti car was purchased by Ravinder (A-1) to give effect to the said criminal conspiracy. It was alleged that Ravinder (A-1) and Pushpender (A-2) had visited the residential police quarter in Narela late in the night of 28.05.2004 where Ravinder (A-1), aided and assisted by Pushpender (A-2), had killed Meena by physically overpowering her and cutting her neck with the razor (ustra) (Ex.X-9). It was alleged that at that point of time Ravinder (A-1) was using the mobile phone no.9899798669 of Saroj wife of Pushpender (A-2) while Pushpender (A-2) was using mobile phone no.9899167335. The charge-sheet presented by the prosecution claimed that the call detail records of the mobile phone of Saroj and Pushpender (A-2) showed both to be functional and in use in the area of Narela around the time of the killing. It was also alleged that Ravinder (A-1), with the desire of showing the murder having been committed by a robber had disturbed the household goods and carried away the portable television lying there at the time of moving out. The television was allegedly sold to someone for consideration.

31. The case for prosecution unfolded at the trial shows that the allegations noted in the preceding para were founded more on surmises or conjectures than concrete evidence. There cannot, of course, be a direct evidence of conspiracy. There is no witness available who may have seen any of the appellants at or near the scene of murder about the time it was committed. The child of deceased was apparently not competent to testify. The evidence about use of mobile phones of Saroj or Pushpender (A-2) or Ravinder (A-1) is inadmissible as not proved in terms of Section 65-B of Evidence Act. There is no evidence about theft of television or its disposal.

32. In support of the plea of alibi, Ravinder (A-1) appeared as witness in his own defence (DW7). In addition, he examined Jaswant (DW4), brother of Saroj wife of Pushpender (A-2), resident of Gwalior. At the trial, Pushpender (A-2) also set up the plea of alibi, his claim being that he was under medical observation in a hospital throughout the night intervening 28th and 29th May 2004. Relying upon a certificate (Ex.DW1/A) issued in this regard by Dr. Vinay Kumar (DW1), Senior Medical Officer of the said hospital, Pushpender (A-2) also examined, in his defence, himself (DW6) besides Saroj (DW2) and Jeevan (DW3).

33. By the impugned judgment, learned trial court rejected evidence concerning the plea of alibi of both, Ravinder (A-1) and Pushpender (A-2). It was, however, also held that the prosecution had not adduced sufficient evidence to show participation in the commission of the offence of murder of Meena on the part of Pushpender (A-2), Phoolwati (A-3), Babu Lal (A-4) and R. Harshinder (A-5). They were, thus, acquitted of the said charge. The circumstantial evidence was believed to return finding of guilty on the charge of murder (of Meena) against Ravinder (A-1). The trial court also held that the evidence respecting ill-treatment of Meena on account of demands for dowry, valuable gifts etc. in the matrimonial home immediately preceding her unnatural death and participation of all five appellants in the acts of commission and omission in such regard was worthy of reliance. On this basis, they were held guilty on the charge under Sections 304-B IPC and 498-A IPC read with Section 34 IPC.

34. On careful appraisal of the evidence on record, we are in agreement with the views of the trial court, in so far as the same concern findings adverse to the case of the prosecution on the charge under Section 302/34 IPC resulting in acquittal of Phoolwati (A-3), Babu Lal (A-4) and R. Harshinder (A-5). There is not a shred of evidence indicating their involvement in the culpable homicide committed in Narela. Mere oral evidence about cruelty or harassment of Meena, or threats extended on 26.05.2004, cannot lead to inference that they were party to criminal conspiracy to commit murder. Noticeably, Phoolwati (A-3) was not even present, in the meeting of 26.05.2004. There is no evidence showing the presence of any of the said three appellants in the vicinity of the Narela house around the time of murder.

35. The appellants stood trial on charge for offences punishable under Section 498-A IPC read with Section 34 IPC and under Section 302 IPC read with Section 34 IPC with alternative charge for offence under Section 304-B read with Section 34 IPC. When the trial commenced, the formal charge under Section 498-A IPC mentioned cruelty and harassment meted out to the deceased (Meena) during the period 20.06.1999 (date of marriage) to 29.05.2004 (date of death). Midway the recording of evidence, on 02.01.2007, an application under Section 216 Cr.P.C was moved by Pushpender (A-2), also invoking Section 300 Cr.P.C. and Article 20

of the Constitution of India, seeking amendment of the said charge referring, in this context, to the judgment dated 21.10.2003 passed by Ms. Savita Rao, Metropolitan Magistrate, in the earlier criminal case for offence U/s 498-A IPC. The application was pressed on the grounds that since the accused persons had been tried and acquitted in respect of the cruelty meted out to Meena for the period 20.06.1999 till the date of her statement made before the Court viz. 21.10.2003, they could not be retried on the same allegations also because the complainant (Meena) by her statement (quoted in para 4 above) had condoned the acts of cruelty. The charge was amended as prayed, by order dated 14.03.2007, for reason stated thus :

...irrespective of the facts and circumstances in which complainant Meena might have chosen not to proceed further with her said case and also chose to make a statement that she has no longer any grievance against any of the accused persons, all the alleged acts of cruelty committed by the accused persons, thus, stood condoned by complainant Meena. Certainly, whether the initiation of the said proceedings or the subsequent act of condonation of the alleged acts of cruelty of the accused persons will have any bearing in the present proceedings or not is a matter to be adjudicated upon at the time of final judgment in the present matter. I also do not intend to enter into any analysis of the matter as to whether such conduct will be relevant under any of the provisions of Indian Evidence Act or not, for the same will also be looked into and adjudicated upon at the time of final judgment ?.

36. Thus, charge for offence under Section 498-A IPC read with Section 34 IPC was amended on 14.03.2007 restricting it the cruelty and harassment alleged from 21.10.2003 to 29.05.2004.

37. The correctness of the order dated 14.03.2007 was not challenged and thus, it attained finality. Therefore, the consideration of the prosecution case on charge under Section 498-A/34 IPC will have to be restricted to the period 21.10.2003 to 29.05.2004. We, however, must clarify at this very stage that the above order cannot have any bearing on the evidence concerning the charge U/s 304-B/34 IPC for the reason that the cruelty and harassment for or connected to dowry

demands, if meted out to Meena even after the closure of the first case under Section 498-A IPC would be in continuation of the cruelty and harassment during the period anterior to the said case. We would make further comment on this in light of case law noted later in this judgment.

38. Mani Ram (PW3), Shiv Kumar (PW4) and Gyanwati (PW6) (father, brother and mother respectively of the deceased) have deposed affirming the prosecution case about the cruelty and harassment to which Meena was subjected, in the matrimonial home, by the appellants, in connection with their demands for dowry or valuable gifts. We proceed to take note of this part of the prosecution evidence at this stage.

39. PW-3 testified that Meena was married to Ravinder (A-1) on 20.06.1999. Soon after the proposal has been confirmed, there had been a demand of Rs.one lakh to be given in cash. The amount was paid to Ravinder (A-1) at the tilak ceremony. He deposed that after 5/6 months of the marriage Ravinder (A-1) had again demanded Rs. one lakh to be paid since his brother Pushpender (A-2) was to purchase a Tata Sumo. PW-3 stated that he had paid another sum of Rs. one lakh pursuant to the said demand and that Meena used to be sent back for bringing more money whenever such demands were made in the later period. He deposed that Pushpender (A-2) had also demanded a house to be arranged but his said demand could not be fulfilled. He referred to 26.08.2000 as the date on which Meena had delivered the child (son Harry) in St. Stephens Hospital and the demand of Rs. four lakh with one motorcycle made in that context by Ravinder (A-1) and Babu Lal (A-4). He stated that he had not been able to fulfil the said desire whereupon Ravinder (A-1) refused to allow Meena to meet him (PW-3) or her mother (PW-6) till the money was paid. He proved letter (Ex.PW-3/A) along with envelope (Ex.PW-3/B) bearing postal seal dated 05.09.2000 wherein the said letter was put in postal transit to PW-3 at his residential address, which had been addressed by Meena to him narrating the situation faced by her in the matrimonial home.

40. The letter (Ex.PW-3/A) (in Hindi) is a communication sent by Meena to her father (PW-3) informing him about the demand of motorcycle and Rs. one lakh for

purchase of a house, as raised by Ravinder (A-1), his parents (A-3 and A-4) and elder brother-in-law (A-2) and his wife. It also mentioned that she was beaten with lashes by the husband and his brothers (A-2 and A-5) and told that she would not be allowed to meet her parents and if she were to do so, she would be killed. She mentioned her hospitalisation since 26.08.2000 (the date of birth of the child) and the demand of her in-laws that the entire expenditure would have to be borne by her parents (PW-3 and PW-6). The letter also states that she had been asked to call for Rs. four lakhs advising her father that he should not come to meet her as her parents-in-law and wife of the brother-in-law were threatening that they would get her poisoned by the doctor. PW-3 testified that, on 19.09.2000, upon telephonic message he along with his wife (PW-6) had gone to Chandrawal House and brought Meena back.

41. Mani Ram (PW-3) testified that, on 22.09.2000, Ravinder (A-1) had lodged a complaint at the police post Majnu Ka Tila accusing Meena of having committed theft of Rs. 80,000/- and jewellery but, on enquiry, no evidence against Meena could be found. On 28.09.2000, Meena filed a complaint in CAW cell Nanakpura while Ravinder (A-1) filed a case in the court of Additional District Judge for taking Meena back with him (assumably a petition for restitution of conjugal rights). The matter was compromised on 01.12.2000 and Meena returned to the matrimonial home.

42. PW-3 further deposed that, in 2001, the five appellants had given beatings to Meena and she was left at S-Block Bus Stand of Mangolpuri by Ravinder (A-1). She was brought back to the parental home in injured condition and taken to police post Majnu Ka Tila. Eventually, FIR in this regard was filed but, after registration of the said case, Ravinder (A-1) filed a case for divorce in the court of Additional District Judge. The cases resulted in compromise in the year 2003 as Ravinder (A-1) and his father Babu Lal (A-4) had tendered apologies seeking amicable settlement to save the government service of Ravinder (A-1). By this time, the police quarter (the house in Narela) had been allotted to Ravinder (A-1) and Meena was sent to live with her husband there. PW-3 stated that Ravinder (A-1) would not allow him or his family to meet Meena at Narela when he had gone with woollen clothes for the winter season.

43. PW-3 also testified that, on 26.05.2004, Meena had telephonically informed him that the five appellants had gathered at the Narela House and she apprehended danger to her life. He stated that he with his son (PW-4), and wife (PW-6), had gone to Narela where the appellants made a demand of Rs.three lakhs asking the amount to be delivered by noon time on 28.05.2004, the dead line fixed by Babu Lal (A-4). He has stated that, on 28.05.2004, Meena had made a telephone call in the morning asking him to come immediately but when he told her that he had not been able to arrange the money, the phone was disconnected. He spoke about the information relating to murder received from the SHO PS Narela on 29.05.2004 and about his statement (Ex.PW-3/C) before the SDM.

44. PW-3 also referred to photographs (Mark A-1 to A-4) of Meena which were handed over by him during investigation. These photographs do not bear any specific date. It is not disputed that the pictures depict the injury marks suffered by Meena. It is not clarified on record as to on what particular date, where or when these injuries were suffered by Meena.

45. Gyanwati (PW-6) and Shiv Kumar (PW-4), the mother and brother respectively of the deceased, have also given evidence corroborating the word of Mani Ram (PW-3) with regard to the manner in which Meena had been maltreated in the matrimonial home by the appellants. PW-4 clarified that the FIR registered on the basis of compliant made at the police post Majnu Ka Tila was the one involving offence under Section 498A IPC which eventually resulted in compromise in 2003. He added that Babu Lal (A-4) had extended implied threats in the meeting of 26.05.2004 at Narela by telling his father (PW-3) that hum kuch bhi kar sakte hain (we can do anything).

46. We have gone through the statements of the above mentioned witnesses carefully and find no reason to disbelieve their word. Their evidence is consistent in all material particulars. The incident of 2001 when Meena had been left in injured state at Mangolpuri bus stand by Ravinder (A-1) is corroborated by Savitri (PW-5), sister of Mani Ram (PW-3). There is nothing in the cross-examination of all these witnesses as could result in their word being doubted. The letter (Ex.PW-3/A) sent by Meena by post in envelop (Ex.PW-3/B) dispatched on 05.09.2000 is

contemporary to the events which form the core of the cruelty and harassment to which she was subjected in the matrimonial home. The appellants have not been able to discredit these witnesses, also with regard to the earlier complaints of Meena including the one resulting in registration of FIR under Section 498A IPC which resulted in judgment dated 21.10.2003 of the Metropolitan Magistrate, a copy whereof has been submitted on record by the defence itself.

47. There are no discrepancies in the evidence of the parents and brother of the deceased. The certified copies of the proceedings relating to the first FIR (under Section 498-A IPC) submitted on record by the defence lend a ring of truth to the chronology of events (since marriage) narrated by them. We find the said witnesses wholly reliable. Their evidence proves that Meena was subjected to cruelty and harassment by the appellants in connection with their demands for dowry and valuable gifts which conduct continued after closure of the first case and even till the last day of her life.

48. In our judgment, the prosecution has proved the recovery of razor (Ex.X-9), surgical gloves (Ex.X-6) and blood-stained clothes (Ex.X-4 and Ex.X-5) of Ravinder (A-1) at his instance from the Chandrawal house, pursuant to disclosure (Ex.PW15/J) on 30.05.2004. We also find the evidence about recovery of blood-stained clothes (Ex.X-7 and Ex.X-8) from Chandrawal house at the instance of Pushpender (A-2) again pursuant to his disclosure (Ex.PW15/S). The deposition of Inspector Mahipal Singh (PW24) and SI Ram Chander (PW15) in such regard are consistent with the prosecution case. There are no contradictions appearing in their respective statements as to the circumstances or the manner in which both the said appellants were arrested and interrogated leading to the visit to the Chandrawal house where recoveries were affected. The argument that the recoveries ought not be believed since independent public witnesses were not joined, must be rejected in the overall facts and circumstances, wherein the investigating officer has explained during cross-examination that though he had made efforts in that direction, no public person was willing to join or cooperate.

49. Various exhibits collected during the investigation were sent to Forensic Science Laboratory (FSL), Rohini, for examination. Ms. Shashi Bala (PW25)

Senior Scientific Officer has proved FSL reports (Ex.PW25/A and Ex.PW25/B). There reports prove that the blood group of the deceased was O ?, as detected from the clothes taken off the dead body by the autopsy doctor during post-mortem examination. The razor (Ex.X-9) and the clothes (Ex.X-4 and Ex.X-5) of Ravinder (A-1) were found bearing blood-stains of human origin of group O ?. The clothes (Ex.X-7 and Ex.X-8) recovered at the instance of Pushpender (A-2) were also found carrying blood-stains of human origin. Though the blood grouping of the stains on the trousers could not be confirmed by the serologist, blood-stains on the shirt were same, group O ?, as that of the deceased.

50. On appraisal of the evidence adduced, we find that the prosecution has succeeded in bringing home the following facts and circumstances:-

(i) Ravinder (A-1) had been employed as constable in Delhi Police, his family including his father Babu Lal (A-4), mother Phoolwati (A-3), elder brother Pushpender (A-2) and younger brother R.Harshinder (A-5), living in the House No. 252, Old Chandrawal, Civil Lines, Delhi. He was married to Meena on 20.06.1999. Meena gave birth to male child named Harry on 26.08.2000;

(ii) At the time of Tilak ceremony, upon demand, Ravinder (A-1) was paid by Mani Ram (PW-3), father of Meena, an amount of Rs. 1 lakh followed by another similar payment, again of Rs.1 lakh, 5/6 months after the marriage, as demanded by Ravinder (A-1) to facilitate purchase of a Tata Sumo by Pushpender (A-2);

(iii) Pushpender (A-2) had demanded of Mani Ram (A-3) to arrange a house to be purchased but the said demand could not be fulfilled;

(iv) When Meena was admitted in St. Stephens hospital, w.e.f. 26.08.2000, in connection with the delivery of the child, she was asked to convey to her parents the demand of the matrimonial family (the appellants) for Rs.4 lakh to be made available coupled with threats that in case the demand was not fulfilled, she would be brought to harm by poisoning. She communicated this demand, also narrating the physical assaults and harassment, to which she was being subjected to by the matrimonial family, through letter (Ex.PW-3/A) sent by post on 05.09.2000 to her father Mani Ram (PW-3);

(v) Meena was brought back by her parents (PW-3 and PW-6) to the parental house on 19.09.2000, immediately where-after Ravinder (A-1) lodged a complaint with police post Majnu ka Tila on 22.09.2000 accusing Meena for having committed theft of cash and jewellery from his house. The said complaint did not see any meaningful action. The dispute was, however, settled. Meena who had since filed a complaint with CAW Cell, Nanak Pura on 28.09.2000 and Ravinder (A-1) who had filed for restitution of conjugal rights withdrew the petitions upon compromise recorded on 01.12.2000;

(vi) On or about 24.04.2001, Meena was assaulted, and given beatings, by the appellants and left in helpless state at Mangol Puri bus stand by Ravinder (A-1) and was brought back to the parental family in an injured condition and taken to police post Majnu ka Tila of police station Civil Lines where FIR No. 129/2001 was registered on her complaint for the offence under Section 498-A IPC;

(vii) On conclusion of investigation into FIR No. 129/2001, a charge-sheet was laid in the court of Metropolitan Magistrate, which led to Ravinder (A-1), Puspender (A-2), Phoolwati (A-3) and Babu Lal (A-4) being put to trial on the charge for the offence under Section 498-A IPC. But, upon Ravinder (A-1) and his father Babu Lal (A-4) expressing apologies and pointing out that this criminal charge might adversely affect the career of Ravinder (A-1) in Delhi Police, the matter resulted in settlement. In this view, Meena, appearing as witness in the said trial, expressed before the Metropolitan Magistrate, her wish not to proceed with the case any further also adding that she was living happily with the child and husband separately for about two months and there was no grievance, the complaint having been filed out of frustration and anger ?. The proceeding arising out of the criminal case were closed by the Metropolitan Magistrate by order dated 21.10.2003;

(viii) Ravinder (A-1), in the meantime, had been allotted H. No. 38, Pocket-6, Sector-A/5, Police Colony, Narela as official residential accommodation and Meena with her child Harry had shifted from her parental home to live with the husband Ravinder (A-1) in the said house at Narela from about two months prior to the order dated 21.10.2003 in the earlier criminal case under Section 498-A IPC;

(ix) In the wake of telephonic call of Meena on 26.05.2004, her parents (PW-3 and PW-6), and her brother Shiv Kumar (PW-4), reached the Narela house, where they were met by Ravinder (A- 1), Babu Lal (A-4), Pushpender (A-2) and R.Harshinder (A-5). In the course of this meeting, Mani Ram (PW-3) was asked to pay Rs.3 lakh to Babu Lal (A-4) by 12 O clock of 28.05.2004, with implied threats that if money was not given anything could happen.

(x) Meena made a telephonic call to her father Mani Ram (PW-3) on 28.05.2004 at 6:30 AM asking him to come immediately but upon he telling her that he had not been able to arrange the money, the phone was disconnected.

(xi) On 29.05.2004, at about 8:20 AM, the dead body of Meena then carrying a pregnancy of about seven months, was found lying in a pool of blood on the ground floor of the room of the house at Narela her throat slit with a sharp edged weapon, her son Harry aged about 3 years sitting nearby in a state of shock and was non-communicative.

(xii) The post-mortem examination conducted on 29.5.2004 revealed, vide Ex.PW-10/A, that it was a case of murder, death having occurred due to haemorrhagic shock resulting from the cut throat injury inflicted on the previous night;

(xiii) Upon the police arriving at the scene, where murder had been committed, Ravinder (A-1) was not found present. No eye-witness could be located. During investigation of scene of crime, it was noticed that a calendar (Ex.PX) hanging on the wall had two sheets of paper with computer printing pasted over it prominently displaying, inter alia, the mobile telephone number of Ravinder (A-1) and the landline phone numbers of Chandrawal House as also of the residence of the parental family of the deceased;

(xiv) Upon Ravinder (A-1) being called on his mobile phone, he stated that he with his mother Phoolwati (A-3) was in Gwalior at that point of time and upon being told about the unnatural death of his wife Meena, he assured that he would immediately return to Delhi.

(xv) During investigation, pursuant to the disclosure made by Ravinder (A-1), a pair of surgical gloves (Ex.X6), a razor (Ex.X9) along-with his clothes including trousers (Ex.X5) and shirt (Ex.X4), all bearing blood-stains were recovered at his instance on 30.05.2004 from beneath the mattresses on the double bed in one of the rooms of the Chandrawal House;

(xvi) During investigation, pursuant to the disclosure made by Pushpender (A-2), his blood-stained clothes including shirt (Ex.X7) and trousers (Ex.X8) were recovered at his instance on 30.05.2004 from beneath the box of the double bed in the Chandrawal House; and,

(xvii) The FSL reports confirm that the razor (Ex.X9), clothes (Ex. X4 and X5) of Ravinder (A-1) and the shirt (Ex.X7) of Pushpender (A-2) were carrying blood-stains of human origin of group O ?, same as that of the deceased, while trousers (Ex.X8) of Pushpender (A-2) also bore blood-stains of human origin, though the group couldnot be ascertained.

51. The case involves pleas of alibi, of absence from the place of occurrence. Such plea postulates the physical impossibility of the presence of the accused at the time of the offence by reason of his presence at another place. A plea of such nature can succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed. It is not envisaged as an exception but is only a rule of evidence (recognised in Section 11 of the Evidence Act) that facts which are inconsistent with the fact in issue are relevant.

52. In Binay Kumar Singh V. State of Bihar (1997) 1 SCC 283, the law on the subject of alibi was explained as under :

The Latin word alibi means elsewhere'and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that hewould have participated in the crime. It is basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the

scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. (emphasis supplied)

53. The learned trial court did not find the plea of alibi of Ravinder (A-1) believable. On scrutiny of the evidence led in such record, we agree with the trial court. We may elaborate our reasons hereinafter.

54. Ravinder (A-1), appearing as DW-7, testified that on account of indoor hospital treatment for tuberculosis meningitis with which he had suffered during 23.04.2004 to 08.05.2004, the vision in his left eye had been affected and he had developed weakness. He claimed that he had continued to be treated by IHBAS (Institute of Human Behaviour and Allied Sciences) for headache. But since he was not getting relief, he had been advised by the family to get spiritual (ruhani) treatment ?. He stated that on 28.05.2004 he had taken a TSR with the help of Meena and had gone to Hazrat Nizamuddin Railway Station, having picked up the mother (A-3) on the way from the Chandrawal House to board Habibganj Express Train for Gwalior. He testified that he with his mother had reached Gwalior at about 4.30/5 AM (apparently the next morning) at the house of in-laws of his brother Pushpender (referring to DW-4) where he had met the grandmother-in-law of

Pushpender (A-2), who was on death bed. He also stated that he had visited the house of his bua (sister of the father) Parvati at about 7.30/8 AM to visit Dandamaar Baba ?, who provides spiritual treatment. It was in Gwalior when he received the call on his mobile phone from Police Station Narela at about 9 AM about the casualty in his house whereupon he returned to Delhi by train, leaving Gwalior at about 10 AM and reaching Nizamuddin railway station at about 2.30 PM. He deposed that from the railway station he had taken TSR and reached Narela police station from where he and his mother (A-3) were taken to Alipur police station. He stated that at the police station, the Investigating Officer had threatened and given beatings to him, to compel him to confess his involvement in the offence, demanding Rs.2.5 lakhs to avoid the case. He claimed that he and his mother, upon expressing inability to pay, were confined in separate rooms and illegally detained from 29.05.2004 to 31.05.2004 when produced in court. He stated that he had recovered his vision in 2005 when he had visited the Narela flat during custody parole ?, whereupon he found the household articles scattered and most of the valuable articles missing. He had given complaints to the Court, to the Commissioner of Police and to the Lieutenant Governor and proved copy (Ex.DW-7/A) of the complaint made to the Lieutenant Governor. He claimed that he had been falsely implicated.

55. During cross-examination, when Ravinder (A-1) was questioned about the record of hospital treatment during 23.04.2004 to 08.05.2004, he produced photocopies (mark DW-7/B) but admitted that the same is not legible. He also conceded that the said documents do not establish the identity of the patient in whose respect they had been prepared. He would not remember as to how much expenditure had been incurred in the said indoor treatment, claiming that the expenses had been reimbursed. No documents about the reimbursement were brought forth. He conceded that the documents produced do not include any bill for purchase of medicine(s) or reference to CGHS from where medicines may have been procured. He also conceded that the railway tickets (Ex.X-1 and X-2) which he had handed over to the investigating officer in the afternoon of 29.05.2004 were of general compartment, though he would deny that for this reason the journey to Gwalior could not be verified.

56. Ravinder (A-1) proved several documents, collectively referred to as Ex.DW-7/C claiming that he had lodged a complaint under Section 156(3) Cr.P.C. before the Chief Metropolitan Magistrate. The documents (pages 667-678 of the compilation), in fact, purport to show that the appellant had been granted custody parole to visit the Narela house for specified hours during 14-16 February, 2005, on his application, by the Additional Sessions Judge, by order dated 10.02.2005 and that, after the said visits, he had submitted an application addressed to the same court informing that a number of valuable items (including jewellery articles and cash) were missing from his house. He had also addressed a petition to the Chief Metropolitan Magistrate, Tis Hazari which bears the date 16.11.2005 seeking FIR to be registered for the offence of robbery and murder of his wife in his house on the night intervening 28th and 29th May, 2004. The documents indicate that during the said proceedings Ravinder (A-1) was represented by a counsel engaged for the purpose.

57. The investigation officer (PW24) upon being questioned in above regard stated that Narela house was inspected by him thoroughly in the presence of Ravinder (A-1) and, thereafter, the house was properly checked and the key deposited in the malkhana. It was suggested to him by the defence itself that Ravinder (A-1) had obtained the keys to enter the house at the time of custody parole. Noticeably, nothing suggests forced entry into the house. No allegations of theft or robbery were made by Ravinder (A-1) before he was arrested on 30.05.2004. The allegations to this effect came to be levelled much later. There is no proof of articles alleged to be stolen which had been actually kept in the house so as they could possibly have been burgled.

58. It is, however, also clear that the above said complaints were not pressed for any further action. Upon being questioned, the learned counsel for Ravinder (A-1) fairly conceded that the matter was abandoned and did not result in any formal directions, enquiry or probe. Therefore, this material does not further the cause of defence.

59. Jaswant (DW-4), brother of Saroj, wife of Pushpender (A-2), was examined to corroborate the word of Ravinder (A-1) about the visit of the latter and Phoolwati

(A-3) to Gwalior on 29.05.2004. DW-4 is resident of Gwalior and stated that Ravinder (A-1) and Phoolwati (A-3) had come to his house at about 4.30/5 AM on 29.05.2004 for meeting his grandmother, who was aged 75-80 years and was on death bed, as also for treatment of Ravinder (A-1). He added that his grandmother had expired on 06.06.2004. He also stated that both the said appellants had gone to visit the house of bua (sister of the father) of Ravinder (A-1) also in Gwalior at 7.30 AM.

60. Strangely, DW-4 described Ravinder (A-1) as his jija (husband of the sister). That is not how he is related to Ravinder (A-1). He, however, sought to explain that since his sister was married to Pushpender (A-2), he would address Ravinder (A-1) also as jija. This is rather unusual. According to him Ravinder (A-1) was moving around with a stick and one of his eyes had some problem. Yet, as per his version, the prime purpose of visit to his house in Gwalior was to meet his grandmother, who was on death bed. Though he would also claim that Ravinder (A-1) had come for his treatment, he conceded that no doctor was visited by Ravinder (A-1) in Gwalior. Obviously, he had not accompanied Ravinder (A-1) or his mother Phoolwati (A-3) to any place in Gwalior including that of bua of Ravinder (A-1). He, therefore, is in no position to confirm if Ravinder (A-1) had actually visited the house of bua or not. No one from the family of bua has been produced to confirm such visit. There is nothing on record to confirm the word of Ravinder (DW-7) as to his visit to Gwalior for what he describes as spiritual treatment.

61. The claim about the travel to Gwalior by train leaving Nizamuddin railway station on the night of 28.05.2004 has been kept very vague. Noticeably, Ravinder (as DW-7) does not even mention the time at which the train had left Nizamuddin railway station for Gwalior. He only mentions he had left the Chandrawal house for Nizamuddin railway station to board Habibganj Express Train. An Express train moving at night reaching the intended destination (Gwalior) in the early morning hours would ordinarily justify reservation of seats, specially when mother of A-1 was also to travel. The railway tickets (Ex.X-1 and X-2) are tickets meant for use by unreserved passengers. They do not bear any endorsement of any railway official confirming the actual travel there-against, not the least by any specific

railway train.

62. As noticed earlier, the dead body had been discovered in the Narela house some time around 8.20 AM on 29.05.2004. It was subjected to post-mortem examination by PW-10 commencing at 1.30 PM on 29.05.2004. According to the autopsy doctor, the death had occurred 12 to 14 hours prior to the autopsy. This would mean the death may have occurred around 11-11.30 PM or thereabouts on the previous night (i.e. 28.05.2004). The time of death, in these circumstances, cannot be measured with precision. Allowance for some margin as to the exact time of death will have to be factored in. With the time of departure by railway train from Nizamuddin railway station having been kept non-specific, it cannot be claimed that Ravinder (A-1) could not have been physically present at Narela house at the time of killing. In these circumstances, Ravinder (A-1) has failed to prove his travel, in the company of his mother (A-3), from Hazrat Nizamuddin railway station to Gwalior at such hour of the day as would render his involvement in the murder of Meena at Narela impossible.

63. In above view of the matter, we are not impressed with the plea of alibi or robbery. The evidence adduced is not convincing. Facts noticed above are to the contrary. Ravinder (A-1) has failed to discharge his onus on the score and, thus, cannot dislodge the inference that may be drawn from the facts and circumstances proved by prosecution unmistakeably showing not only his presence but also active participation in the crime of murder. It is a case of deliberate and concerted murder of Meena, surreptitiously planned and executed. Meena was the target and robbery was not the motive. However, nebulous conduct and nefariousness stand exposed for telltale gaps show the contrivance and subterfuge. The sham has collapsed, and this additionally confirms and endorses the involvement of A-3 and A-2.

64. We must observe here that the manner in which the calendar was placed prominently and conspicuously declaring to the visitor to the house the phone numbers including that of Ravinder (A-1), it seems to be a planned invitation for contact on the mobile phone so that the foundation for plea of alibi could be laid. Further, the handing over of the railway tickets to the Investigating Officer, in first

meeting itself, even when no one had yet accused Ravinder (A-1) of complicity smacks of design to create and lay foundation of the plea of alibi at the threshold and, thus, out of place.

65. The learned trial court has also disbelieved the plea of alibi raised by Pushpender (A-2) and, in our judgment, again rightly so. We set out the deficiencies in the defence evidence on this score in the paragraphs that follow.

66. Pushpender (A-2) has appeared as witness (DW6) in his own defence. His version is that on 28.05.2004, at about 03:45/04:00 PM, he along his wife Saroj (DW2) had gone to the house of Jeevan (DW3), maternal uncle of Saroj (DW2) and a resident of Jehangirpuri, for purpose of assistance as special educators to help out Anjali (daughter of DW3) who is mentally challenged. He claimed that he with his wife Saroj (DW2) had accompanied Jeevan (DW3) in a three wheeler scooter (TSR) to the house of the maternal grandfather (nana) of Anjali but, on the way, he (A-2) had started vomitting and had to be taken to S.G.M Hospital Mangolpuri, where he was medically examined and kept under observation in the casualty, to be discharged only around 08:00/08:30 AM of next morning (29.05.2004). These, broadly, are the facts narrated by DW2 and DW3 seeking to support the statement of DW6 (A-2).

67. What was most crucial, however, was proof of detention in the hospital overnight. It is, in this context, that the plea of Pushpender (A-2) miserably fails. He has examined Dr. Vinay Kumar (DW1) to prove certificate (Ex.DW1/A) dated 14.10.2005. The certificate purports to have been issued by DW1 with reference to OPD registration no.E-57703 dated 28.05.2004. It vaguely refers to the ailment suffered as ACE and states that Pushpender (A-2) was under observation in the casualty from 07:00 PM to 06:00 AM.

68. DW1 had not examined or treated Pushpender (A-2). In his examination-in-chief, he did not refer to any particular record on the basis of which he had issued the certificate (Ex.DW1/A). During the cross-examination, when questions were raised, he referred to records (Ex.DW1/B and Ex.DW1/C) only to concede that the identity of the person, in whose respect, he had issued certificate on 14.10.2005 could not be established there-from. He was unable to vouchsafe the OPD ticket

dated 28.05.2004 as he was not familiar with the signature of the person who may have prepared the said document. He was not even working in the said hospital during the relevant period since he joined it only in June, 2005. We find the OPD ticket (Ex.DW1/C), which is not proved even otherwise by any witness is wholly unreliable. The document has been apparently written by a person who cannot be a trained medical officer. The expressions Consious ?, AFEBRIELE ?, DEHYDRETION++ ?, NO FOCAUL NEROLOGICAL DEFICIT used in it are poor imitation of a medical prescription and, thus, expose the fabrication.

69. We, thus, have no hesitation in rejecting the plea of alibi raised by Pushpender (A-2) as unbelievable.

70. The charge for the offence under Section 302 read with Section 34 IPC was based on circumstantial evidence. It is well settled that in a case of such nature, it is the burden of the prosecution to prove beyond reasonable doubts each circumstance from which the conclusion of guilt is to be drawn. The circumstance, thus proved, must form a chain complete and conclusive in itself and be supportive of, and consistent only with, the hypothesis of the guilt of the accused, not leaving any reasonable ground for inference of his innocence, indicating that in all human probability the acts constituting the crime must have been ?, as against may have been ?, committed by the accused and no one else. It is not necessary that each fact or circumstance in itself must be decisive. It is the cumulative effect of the facts proved from which sufficiency of the material adduced for proving the culpability has to be judged.

71. We have already observed earlier that there is no evidence adduced indicative of participation in any acts of commission or omission resulting in murder of Meena on the part of Phoolwati (A-3), Babu Lal (A-4) and Harshinder (A-5). But, the case against Ravinder (A-1) and Pushpender (A-2) stands on a different footing.

72. The facts and circumstances which have been established through cogent evidence by the prosecution, as noted above, cumulatively form a chain so complete as to conclusively point towards the culpability of Ravinder (A-1) and Pushpender (A-2) in the offence of murder of Meena. The motive to kill Meena on

their part is writ large on the factual matrix of the case. The demands for valuable gifts and dowry had been raised even before the marriage was performed. The demands had continued after the marriage and Meena was subjected to assaults in such connection on several occasions. It is against the backdrop of harassment and cruelty meted out to her, including in the form of physical beatings, that she was constrained eventually to leave the matrimonial home and initiate action under the criminal law in the form of FIR No.129/01. On the basis of evidence collected in the said case the appellants (excluding Harshinder) were put to trial on the charge for offence under Section 498A IPC. It is true that Meena abandoned the complaint by stating before the Metropolitan Magistrate in the said case that it had been filed out of frustration and anger. Her statement to this effect led to closure of the proceedings by discharging the persons arraigned. But then, it is also clear that the said result was on account of statement made by the complainant (deceased Meena) telling the Court, inter alia, that she was disinclined to proceed the case further justifying it with the assertion that she was now (for the preceding two months) living happily with the husband and the child. Mani Ram (PW-3) father of the deceased has explained - and given the events that followed, he must be believed in his word in such regard - that the complainant (Meena) had made the said statement on being persuaded by the husband Ravinder (A-1) and his father Babu Lal (A-4) to settle the matter amicably so that his career in Delhi Police could be saved. The merits of the averments in the first case were not effectively tried or adjudicated upon. The discharge order cannot be used to claim that earlier events stand effaced [Ravinder Kaur vs. Anil Kumar (2015) 8 SCC 286].

73. It will be naive to treat the episodes of harassment or cruelty for dowry meted out to Meena prior to 21.10.2003 as having been condoned only because of such result of the earlier case under Section 498A IPC. Having regard to the events that followed, culminating eventually in the homicidal death of Meena in the Narela home, where she had settled, ironically, again happily (as told to the Magistrate) just after seven months of such deposition in the Court (virtually withdrawing the first criminal case lodged by her), the further incidents of harassment connected to demands for money from her parental family with implied threats of harm coming her way in case of default, so proximate to her unnatural death (mere two days),

are demonstrative of continuity and provide justification for the past events of cruelty also to be taken into account to find the guilty intent. Indeed the past reveals and discloses the motive.

74. On consideration of the events in the chronology they occurred, it is clear that Ravinder (A-1) and other appellants, all members of the immediate family, had not been able to overcome the illicit desire to extract monetary gains from the parental family of Meena and continued to subject her to physical assaults, harassment and cruelty. It naturally follows that the settlement pursuant to which Meena had made a statement in the course of proceedings in the earlier case under Section 498A IPC, thereby abandoning the process, had been brought about to ensnare her once again. Given the fact that they had been arrested and hauled before the criminal court on the charge of cruelty, Ravinder (A-1) and members of his family had reasons to be peeved with her. The incident of 26.05.2004 wherein all male members of the matrimonial family converged at the Narela home to demand, under duress, payment of more money, provides the proximity and live link indicating the motive for the acts of commission/omission resulting in homicidal death of Meena.

75. The murder weapon, ustra (Ex.X-9) was recovered from the possession of Ravinder (A-1). The FSL report showing blood stains of the victim on its blade clinches the case of the prosecution about its use. The fact that the shirt and trousers (Ex.X-4 and X-5) of Ravinder (A-1) and the shirt (Ex.X-7) of Pushpender (A-2) were also found carrying blood stains of Meena leaves no room for debate as to their respective complicity in the fatal attack on her person.

76. The allegations of robbery made by Ravinder (A-1) more than eight months after the occurrence were clearly in the nature of an after-thought meant to confound the issue. It is true that failure of the plea of alibi does not necessarily lead to success of the prosecution case which has to be independently proved beyond reasonable doubt [Shaikh Sattar V. State of Maharashtra (2010) 8 SCC 430]. The false plea of alibi set up by Ravinder (A-1) and Pushpender (A-2), however, adds to the incriminating circumstances, clinching as they are, unerringly pointing towards their participation, and, consistent only with the hypothesis of

their complicity in the murder of Meena,.

77. For the foregoing reasons, we hold that the learned trial court has correctly appreciated the evidence to return findings of guilty on the charge for offence under Section 302/34 IPC against Ravinder (A-1). The said finding thus must be upheld. We find that the trial court fell into error by observing that the presence of Pushpender (A-2) at the place of murder of Meena had not been proved. The view taken to such effect is perverse in the face of evidence about recovery of his clothes, bearing blood stains of Meena. There is no escaping the conclusion that he was also present at the scene when Meena was fatally attacked. Thus, the finding recorded by the learned trial court as above cannot be sustained. Instead, it has to be concluded that Pushpender (A-2) was also present with Ravinder (A-1) at the time Meena was killed. His presence at the scene with Ravinder (A-1) cannot be but with the intention of aiding and abetting. It naturally follows that both would have shared the intention of bringing about the death of Meena. The challenge to the acquittal of Pushpender (A-2) on the charge for the offence under Section 302/34 IPC must resultantly succeed.

78. Though Phoolwati (A-3), Babu Lal (A-4) and R. Harshinder (A-5) stand acquitted on the charge for the offence under Section 302/34 IPC, they along with Ravinder (A-1) and Pushpender (A-2) have been convicted by the trial court on the charge for offences under Section 304B read with Section 34 IPC and under Section 498A read with Section 34 IPC. The trial court had framed the charge under Section 304B IPC against all the appellants as alternative to the charge under Section 302 read with Section 34 IPC. In the submission of the learned counsel for the appellants the conviction on the charge for offence under Section 304B IPC was improper in the face of charge under Section 302 IPC having been held brought home. The argument is that one of the accused having been found responsible for culpable homicide, it should follow that the offence under Section 304B could not have been committed, given the distinguishing features of the two penal clauses. In support of these submissions, reliance is placed on Sunil Bajaj V. State of MP, AIR 2001 SC 3020 and Shamnasaheb M. Multtani V. State of Karnataka, 2001 SCC (Crl.) 358. It was also submitted that the instances of harassment of the deceased in the past cannot be used for supporting the case for

presumption under Section 113-B of Evidence Act.

79. On first blush, the arguments to above effect seem attractive but on careful scrutiny we find them wholly unmerited. We elaborate our reasons hereinbelow.

80. The offence of culpable homicide is defined in Section 299 IPC, and stands committed, if death of a person is caused by another by doing of an act with intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with knowledge that he is likely by such act to cause death. It may amount to murder, if the conditions spelt out in Section 300 IPC are satisfied, or may fall in the category of culpable homicide not amounting to murder, if any of the exceptions are attracted. The offence of dowry death as defined, and made punishable, by Section 304-B IPC, in contrast, depends on deeming provision. This offence was incorporated in the Indian Penal Code with corresponding provision of Section 113-B inserted in the Evidence Act by Act no.43 of 1986 (w.e.f. 19.11.1986), pursuant to the 91st Report of the Law Commission of India, paragraph 1.3 whereof needs to be noted in extenso. It reads as under :-

1.3. If, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. In practice, however, two main impediments arise-

(i) either the facts do not fully fit into the pigeon-hole of any known offence; or

(ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult.

The first impediment mentioned above is aptly illustrated by the situation where a woman takes her life with her own hands, though she is driven to it by ill-treatment. This situation may not fit into any existing pigeon-hole in the list of offences recognized by the general criminal law of the country, except where there is definite proof of instigation, encouragement or other conduct that amounts to abetment of suicide. Though, according to newspaper reports, there have been

judgments of lower courts which seem to construe abetment in this context widely, the position is not beyond doubt.

The second situation mentioned above finds illustration in those incidents in which, even though the circumstances raise a strong suspicion that the death was not accidental, yet, proof beyond reasonable doubt may not be forthcoming that the case was really one of homicide. Thus, there is need to address oneself to the substantive criminal law as well as to the law of evidence. (emphasis supplied)

81. This is also how the objects and reasons were explained in the Bill leading to the amendment.

82. Section 304-B IPC reads as under :- 304-B. Dowry death. ”(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called dowry death ?, and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purpose of this sub-section, dowry shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

83. Section 113-B of the Indian Evidence Act reads as under :-

113-B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has 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.

Explanation.-For the purposes of this section, dowry death shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).]

84. The conjoint effect of the provisions contained in Section 304-B IPC and Section 113-B Evidence Act is that if the prosecution seeks conviction of a person for the offence of dowry death, it is obliged to adduce proof as to the following facts :-

(a) The death :

(i) is of a married woman;

(ii) has occurred within the seven years of marriage of the victim;

(iii) is caused by burns or bodily injury, or has occurred otherwise than under normal circumstances; and

(b) Cruelty or harassment was meted out to the victim:

(i) by her husband or any of his relatives;

(ii) for or in connection with any demand for dowry; and

(iii) soon before her death.

85. The Evidence Act had been amended earlier by Act 46 of 1983 whereby Section 113-A had been inserted to permit presumption to be raised as to abetment of suicide by a married woman, in case the husband or any of his relative were to be brought to trial on the charge of Section 306 IPC (abetment of suicide). The said clause of presumption (Section 113-A of the Indian Evidence Act) gave a discretion to the Court stating that it may presume the culpability on the part of the husband or by his relative, if the pre-requisites specified in the clause were shown to exist. In contrast, in the case of dowry death, the law uses the expression shall presume ?. Section 4 of the Indian Evidence Act, inter-alia, states that:

Shall presume ?-Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

86. Thus, if the circumstances summarized above are shown to exist, the Court has no option but to presume that the accused had caused the dowry death, unless the accused disproves it. The court is under a statutory compulsion to presume. Upon the presumption clause getting kicked in, the onus shifts on to the accused and it is open to him to discharge it either by eliciting material through cross-examination of witnesses for prosecution or by adducing evidence in his defence or by both.

87. Section 304B IPC uses the expression other than normal circumstances ?and stipulates that it should be shown that soon before death, the victim was subjected to cruelty or harassment by her husband or any relative for or in connection with the demand of dowry. We have already noticed the essential ingredients of Section 304-B IPC after referring to the purpose and object for enacting the said provision and that Section 113-B of the Evidence Act effectuates and promotes the said objective. The offences under Section 304B and 302 /304 IPC are distinct and separate offences, each having their own ingredients, attributes and elements. In a given case, the ingredients of both sections could be satisfied. In such cases, the perpetrator would be guilty under both Sections 302/304 IPC and 304-B IPC. Necessarily, these cases would be those where soon before commission of the offence of culpable homicide, the victim was subjected to cruelty and harassment by the perpetrator, being the husband or his relative, for or in connection with dowry. Inevitably, and as a sequestrate, it should follow that homicidal death would satisfy the requirement/condition of unnatural death under Section 304B IPC. Consequently, the perpetrator who has committed the offence either himself or vicariously under Section 34, 120-B IPC or by way of abetment, and soon before the said act of culpable homicide had subjected the married victim to cruelty or harassment for or in connection with any demand of dowry, would be liable and convicted for offence under Section 302/304 IPC as well as Section 304B IPC. Thus, conviction under two sections is permissible.

88. But there could be cases, as one in hand, where some of the accused are not guilty of an offence under Section 302/304 of IPC for they were not participants or vicariously liable for the offence of culpable homicide. Such persons could be prosecuted and convicted for the offence under Section 304B IPC, if the ingredients of the said offence are established and proved against them as also the one who committed the acts constituting culpable homicide. The expressions death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances and soon before her death she was subjected to cruelty or harassment by her husband for, or in connection with, any demand for dowry have a link and the connection should be live and proximate to establish the offence under Section 304-B IPC. Conversely, it follows that where a married woman who has been subjected to cruelty or harassment on account of dowry is killed or suffers an unnatural death within seven years of marriage under circumstances or causes unrelated to such cruelty or harassment for and in connection with the demand of dowry, the case would not fall within the four corners of section 304-B IPC. For example, where a married woman suffers an unnatural death in a dacoity, robbery or other similar circumstances, offence under Section 304B IPC is not committed, even when the deceased had been subjected to cruelty or harassment in connection with or for any demand of dowry by husband or relatives, for there is absence or lack of live link and proximate connection between the unnatural death and dowry demand.

89. The above elucidation demonstrates that death under abnormal circumstances would be covered by section 304B IPC only when relatable to or having connection with any demand of dowry by the husband or any relative soon before the death and not otherwise. The offence defined in Section 304B IPC is attracted when the death of a woman within seven years of marriage is due to burns or bodily injury or otherwise under normal circumstances and is connected or has contiguity with the demand for dowry and not in cases where there is no connection or link (i.e. causal connect) between the said demand of dowry and the unnatural death. The said legal position exposits the impact and implication of enacting the presumption under Section 113B of the Evidence Act. Where there exists such a connect and live link, the presumption under Section 113-B Evidence Act would have to be dislodged or disproved by the accused.

90. In Shamnsaheb M.Multtani (supra), the husband with his brother and father had stood trial on the charge of murder but upon material witnesses turning hostile they were acquitted by the trial court. The High Court, in appeal, though observing at one stage of its judgment that the case fell within the ambit of culpable homicide not amounting to murder (Section 304 IPC), proceeded to convict the husband on the charge for offences under Section 498-A IPC and Section 304-B IPC. In appeal, the prime questions raised were about permissibility of conviction under Section 304-B IPC being recorded without the said offence being specifically put in the charge. The issue necessarily had to be addressed in the light of the provisions contained in Section 221 (Where it is doubtful what offence has been committed ?) and Section 222 (When offence proved included in offence charged ?) as indeed Section 464 (Effect of omission to frame, or absence of, or error, in charge ?) of Cr.P.C. The Supreme Court observed that the conviction under Section 304-B IPC without formal charge being framed would lead to failure of justice and, thus, not be saved under Section 464 Cr.P.C., on account of denial of opportunity to rebut the presumption under Section 113-B of the Evidence Act and also being violative of the cardinal principle of natural justice that no one is to be condemned without being heard (audi alteram partem). The Court repelled the argument that the the offence of dowry death (Section 304-B IPC) is minor offence vis-a-vis the offence of murder (Section 302 IPC) so as to attract Section 222 Cr.P.C.

91. It is against the above backdrop that the Supreme Court, while comparing Section 302 IPC with Section 304-B IPC, and highlighting the need for care in framing proper charge, made following observations which are of relevance to the discussion at hand :-

31. Now take the case of an accused who was called upon to defend only a charge under Section 302 IPC. The burden of proof never shifts onto him... If that be so, when an accused has no notice of the offence under Section 304-B IPC, as he was defending a charge under Section 302 IPC alone, would it not lead to a grave miscarriage of justice when he is alternatively convicted under Section 304-B IPC and sentenced to the serious punishment prescribed there-under, which mandates a minimum sentence of imprisonment for seven years.

32. The serious consequence which may ensue to the accused in such a situation can be limned through an illustration: If a bride was murdered within seven years of her marriage and there was evidence to show that either on the previous day or a couple of days earlier she was subjected to harassment by her husband with demand for dowry, such husband would be guilty of the offence on the language of Section 304-B IPC read with Section 113-B of the Evidence Act. But if the murder of his wife was actually committed either by a dacoit or by a militant in a terrorist act the husband can lead evidence to show that he had no hand in her death at all. If he succeeds in discharging the burden of proof he is not liable to be convicted under Section 304-B IPC. But if the husband is charged only under Section 302 IPC he has no burden to prove that his wife was murdered like that as he can have his traditional defence that the prosecution has failed to prove the charge of murder against him and claim an order of acquittal.

33. The above illustration would amplify the gravity of the consequence befalling an accused if he was only asked to defend a charge under Section 302 IPC and was alternatively convicted under Section 304-B IPC without any notice to him, because he is deprived of the opportunity to disprove the burden cast on him by law ?. (emphasis supplied)

92. In Kans Raj v. State of Punjab, AIR 2000 SC 2324, the Supreme Court held that the expression otherwise than under normal circumstances means the death to have occurred not in usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury ?.

93. The expression otherwise than under normal circumstances as appearing in the definition clause of Section 304-B IPC casts the net wide. Noticeably, the provision does not deal with the issue as to whether the death was homicidal or otherwise. It proceeds only on two possibilities, one of the death being due to natural causes or the other of the death being unnatural. If the death is due to natural causes, Section 304-B IPC cannot be invoked. If the death is due to burns or bodily injury, it cannot but be unnatural death. Unnatural death may be homicidal, suicidal or accidental. The cases of accidental deaths must necessarily be excluded from the purview for the simple reason, they would generally have no

connection with the cruelty or harassment of the kind required. Similarly, in case, the evidence shows the death to be a case of culpable homicide committed neither by the husband nor by any of his relative, but by a third person having no connection whatsoever with the cruelty or harassment of the deceased woman for or in connection with any demand for dowry, a case for the offence of dowry death would not arise as it would stand covered by the more serious offence of culpable homicide.

94. The expression soon before was considered by the Supreme Court in the case of Kans Raj (supra) and it was observed, thus:-

Soon before is a relative term which is required to be considered under specific circumstances of each case and no straight-jacket formula can be laid down by fixing any time limit. This expression is pregnant with the idea of proximity test. The term soon before is not synonymous with the term immediately before and is opposite of the expression soon after as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstance showing the non existence of such treatment is not brought on record, before the alleged such treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough ?.

(emphasis supplied)

95. In the case of Kans Raj (supra), the defence had also argued that the deceased woman in that case had gone back to the nuptial home on account of amicable settlement of the matrimonial disputes and there being no evidence of cruelty or harassment thereafter till the date of her death, the evidence about cruelty or harassment earlier meted out, could not be used, as it would not qualify for purpose of the requirement of it to be soon before her death. Rejecting these contentions for the reason the evidence in that case indicated continuous harassment to the deceased showing the dispute not to have settled or resolved ?, the Court ruled thus, :-

No presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty, and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman ... ?.

(emphasis supplied)

96. In Hira Lal v. State (Govt. of NCT), Delhi, 2003 (8) SCC 80, it was observed thus :

The expression 'soon before' is very relevant where S. 113-B of the Evidence Act and S. 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under S. 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive S. 304-B IPC and S. 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not

defined. A reference to expression 'soon before' used in S. 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession.'The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence ?. (emphasis supplied)

97. Pertinently, in Hira Lal (supra) it was also held that :-

...Section 498-A IPC and S. 113-B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of S. 113-B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage ... ?. (emphasis supplied)

98. In the case reported as Muthu Kutty and another v. State by Inspector of Police, T. N. , (2005) 9 SCC 113, the issues arising out of overlap of the provisions, inter-alia, Section 302 IPC and 304 IPC were addressed as under :-

A reading of Section 304-B IPC and Section 113-B, Evidence Act together makes it clear that law authorises a presumption that the husband or any other relative of the husband has caused the death of a woman if she happens to die in circumstances not normal and that there was evidence to show that she was treated with cruelty or harassed before her death in connection with any demand for dowry. It, therefore, follows that the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the offence of death. For those that are direct participants in the commission of the offence of death there are already provisions incorporated in Sections 300, 302 and 304. The provisions contained in Section 304-B IPC and Section 113-B of the Evidence Act

were incorporated on the anvil of the Dowry Prohibition (Amendment) Act, 1984, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death... ?. (emphasis supplied)

99. Taking note of the observations of the Supreme Court in case reported as Rajbir v. State of Haryana, (2010) 15 SCC 116, a trial court in an ongoing trial on the charge for offences, inter-alia, under Section 498-A and 304-B IPC, had added the charge under Section 302 IPC in alternative to the charge under Section 304-B IPC already framed. The challenge to the order adding the alternative charge under Section 302 IPC was repelled by the High Court on the reasoning that the autopsy report had indicated the possibility that the death could be homicidal ?. The Supreme Court, in appeal, by judgment reported as Jasvinder Saini and others v. State (Government of NCT of Delhi), (2013) 7 SCC 256, held the orders to above effect untenable and, in that context made certain observations relevant to the present discussion. The same may be extracted as under :

It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients... ?. (emphasis supplied)

100. In Vijay Pal Singh v. State of Uttarakhand AIR 2015 SC 684, a misleading information had been given at the instance of the husband to the father of the victim about she having gone missing. Her partly burnt dead body was discovered on the next day. The husband and his relatives were tried on the charge for offences under Sections 302/304-B/498-A and Section 201 read with Section 34 IPC but were acquitted. In appeal, the High Court, though concluding that it was a case of murder, convicted them for offences punishable under Sections 304-B/498-A/201 IPC read with Section 34 IPC. The evidence showed harassment and cruelty meted out to the deceased woman soon before the death. It was held that the slight confusion in the mind of the trial court with regard to the identification of the dead body was not correct as the evidence, particularly of the father of the victim, clearly established the death of the woman. Holding that the case could have been dealt with under Section 302 IPC, but finding it not proper and reluctantly declining to do so for reasons of distance of time and in view of lack of evidence on the chain of circumstances ?, the Supreme Court upheld the conviction of the husband and father-in-law on the charge of Section 304-B IPC and, in the course of discussion, observed thus :-

...No doubt, the death is in unnatural circumstances but if there are definite indications of the death being homicide, the first approach of the prosecution and the court should be to find out as to who caused that murder. Section 304-B of IPC is not a substitute for Section 302 IPC... ?.

However, it is generally seen that in cases where a married woman dies within seven years of marriage, otherwise than under normal circumstances, no inquiry is usually conducted to see whether there is evidence, direct or circumstantial, as to whether the offence falls under Section 302 of IPC. Sometimes, Section 302 of IPC is put as an alternate charge. In cases where there is evidence, direct or circumstantial, to show that the offence falls under Section 302 of IPC, the trial Court should frame the charge Under Section 302 of IPC even if the police has not expressed any opinion in that regard in the report Under Section 173(2) of the Cr.P.C. Section 304-B of IPC can be put as an alternate charge if the trial court so feels. In the course of trial, if the court finds that there is no evidence, direct or circumstantial, and proof beyond reasonable doubt is not available to establish

that the same is not homicide, in such a situation, if the ingredients Under Section 304-B of IPC are available, the trial court should proceed under the said provision... ?. (emphasis supplied)

101. Before we summarize, we may refer to the case of Prakash Chander v. State, ILR (1994) II Delhi 303, a judgment rendered by a division bench of this court in a similarly placed case. On circumstantial evidence, the appellant husband had been found guilty on the charge under Section 302 IPC for murder of his wife. His mother had been held guilty under Section 498-A IPC. The death had occurred on account of burn injuries. The evidence showed that the deceased woman had been subjected to cruelty and harassment for dowry. Having returned the finding of guilty on the charge under Section 302 IPC, the trial court had proceeded to cancel the charge under Section 304-B IPC on the ground that it did not survive ?. In appeal, the division bench of this court found the evidence on the charge of murder to be deficient. Holding that the trial court had fallen in manifest error by directing the cancellation of charge under Section 304-B IPC and finding all the ingredients for the charge of dowry death to have been proved, the conviction of the husband was modified to one under Section 304-B IPC with observations, relevant for present purposes, to the following effect :-

...Section 302 and 304-B IPC are not mutually exclusive. If in a case material on record suggest commission of offence under Section 302 IPC and also commission of offence under Section 304-B IPC, the proper course would be to frame charges under both these sections and if the case is established then accused can be convicted under both the section(sic. Sections) but no separate sentence need be awarded under Section 304-B, in view of substantive sentence being awarded for the higher offence under Section 302 IPC ?. (emphasis supplied)

102. Broad principles emerging from above noted case law, to the extent germane to the issues raised before us, may be culled out as under:-

(i) The death of a married woman within seven years of the marriage, otherwise than under normal circumstances must result in a serious attempt on the part of the investigating agency, and the court, to inquire if it is a case of culpable

homicide ;

(ii) If the evidence shows the husband or any of his relatives to be the actual or direct participant in the commission of the acts resulting in the death, the trial must proceed on the charge of culpable homicide;

(iii) If the evidence is forthcoming to show that the unnatural death of the married woman within seven years of her marriage was preceded soon before her death by she being subjected to cruelty or harassment for or in connection with demand for dowry by the husband or any of his relatives, the charge of dowry death is to be invoked as an alternative charge ?, or even as a single or main charge against others not implicated by reason of abetment, conspiracy etc.

(iv) The offence of dowry death is neither a substitute, nor minor offence ?, nor included in the offence of culpable homicide ?;

(v) To bring home the charge of culpable homicide ?, the prosecution must prove the accused to have intentionally committed the act causing death or causing bodily injury resulting in death. In contrast, to bring home the charge of dowry death ?, direct nexus on the part of the accused with the act(s) causing death, or resulting in bodily injury causing death, need not be shown. The prosecution needs to prove only the fact of death being otherwise than under normal circumstances (to put it simply, it being an unnatural death), coupled with the fact that the deceased (necessarily a married woman) had been subjected to cruelty or harassment for or in connection with the demands for dowry by the husband, or any of his relatives, the death having occurred within seven years of the marriage. Upon such proof, the Court is bound to presume that the husband, or the relative, who is party to the cruelty or harassment of the specified nature is responsible for the dowry death ?;

(vi) For the charge of dowry death ?, the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the acts leading to the death;

(vii) To bring home a charge of dowry death, there must be proximity or a live link between the cruelty and harassment based on dowry demands and the consequential death leading to inference that said conduct was indulged in soon before the death;

(viii) The past events of cruelty or harassment, they not having become stale, continue to be relevant for raising the presumption, if the evidence shows continuity of the incriminating conduct proximate enough in terms of time to the unnatural death, even if interspersed by tentative efforts at resolution or compromise ;

(ix) A case of unnatural death of the married woman would not amount to dowry death ?, if it is shown to have occurred on account of an accident or as a result of acts of commission or omission on the part of a third person, i.e. a person other than the husband or any of his relatives, or for reasons not connected with demands for dowry ; and,

(x) The accused against whom presumption is raised may dispel its effect by showing that he had no hand at all, in the death, and he may do so either by showing that the death was accidental or brought about by another person unconnected with the cruelty or harassment relating to the demands for dowry.

103. Thus, we hold that though the offence of dowry death (Section 304-B IPC) is not a substitute for offence of culpable homicide (Section 299 IPC) both are not mutually exclusive and may co-exist. Death in the case of culpable homicide is also an unnatural death brought about otherwise than under normal circumstances. Thus, in our opinion, if the evidence proves that the married woman had been subjected to culpable homicide by the perpetrator (say the husband) within seven years of her marriage for, or in connection with the demands for dowry on which account the husband and his relatives had treated her with cruelty or harassment soon before the occurrence, they can be convicted for the two separate offences, the husband on the charge of culpable homicide (Sections 302 or 304 IPC as may apply in the case) and the relatives on the charge of dowry death (under Section 304-B IPC). The conviction of the husband on the charge of culpable homicide in such circumstances would not absolve the

relatives of their culpability in dowry death as motive of both was common. To put it slightly differently, if the evidence shows that the husband has committed the offence of culpable homicide (Section 302 or 304 IPC, as may apply) for or in connection with demands for dowry within seven years of the marriage soon before the death while his relative were party to the cruelty or harassment meted out to the deceased woman for or in connection with the demand of dowry, all of them (including the husband) would also be accountable for the dowry death and, thus, be liable to be convicted under Section 304-B IPC. However, those convicted under Section 302 or 304 IPC, need not be sentenced separately under Section 304-B IPC.

104. As noted earlier, the charge for the offence under Section 304-B read with Section 34 IPC was framed as an alternative charge. The main or substantial charge was under Section 302 read with Section 34 IPC. In this view, Ravinder (A-1) and Pushpender (A-2) having been found guilty and liable to be convicted on the main charge for the offence under Section 302 read with Section 34, IPC, it was not permissible for them to be convicted or sentenced on the alternative charge (noticeably, not an additional charge ?) for the offence under Section 304-B read with Section 34 IPC. The impugned judgment, thus, is liable to be partly set aside to such extent qua Ravinder (A-1) and Pushpender (A-2).

105. In Sunil Bajaj (supra), the deceased married woman had committed suicide after setting herself afire with kerosene oil. The husband had been convicted on the charge for the offence under Section 304-B IPC. The prosecution had relied upon, inter-alia, a letter addressed by the deceased woman to her father setting out her grievances which had absolutely nothing to indicate demand of dowry. The oral evidence, in contrast, spoke of instances of demand of dowry and harassment of the victim in that context. The Supreme Court observed that vague and inconsistent statements of interested witnesses could not be acted upon and that proper analysis, evaluation and scrutiny of the evidence showed that there was no harassment soon before the death. Thus, the conviction was set aside. Clearly, the facts at hand are distinguishable. There is proof adduced about cruelty and harassment of the deceased in connection with dowry demands soon before her unnatural death. Thus, the case of Sunil Bajaj (supra) is of no assistance to the

defence.

106. Applying the principles on the subject summarized as above, the finding of guilty and conviction recorded by the trial Court against Phoolwati (A-3), Babu Lal (A-4) and R. Harshinder (A-5) on the alternative charge under Section 304-B read with Section 34 IPC are, thus, proper. All the ingredients requisite for bringing home the said charge have been established. The unnatural death of Meena within seven years of her marriage was preceded by cruelty and harassment for and in connection with the demands for dowry on the part of these three appellants, sharing common intention with Ravinder (A-1) and Pushpender (A-2), such conduct having continued throughout her married life, right till the very end. Since the prosecution has proved that the motive behind such cruelty and harassment had impelled Ravinder (A-1) and Pushpender (A-2) to continue the acts of commission leading to the homicidal death of Meena, there is no incongruity in conviction of the said three appellants for the offence of dowry death. We, thus, uphold the impugned judgment to that extent.

107. The facts and circumstances proved, as noted in earlier paragraphs, substantiate the allegations of cruelty after the decision in the case arising out of the first FIR and thereby bring home the charge under Section 498-A IPC against all the five appellants. The appeals of the convicted persons assailing the result of the trial to such effect, thus, must fail.

108. In the result, the impugned judgment and order on sentence are partly modified. Ravinder (A-1) and Pushpender (A-2) are held guilty and convicted on the charge for the offence under Section 302 read with Section 34 IPC, that being the main charge. Consequently, the conviction of Ravinder (A-1) and Pushpender (A-2) on the alternative charge for the offence under Section 304-B read with Section 34 IPC and the order on sentence thereagainst are set aside. The sentence awarded by the trial Court against Ravinder (A-1) for the offence under Section 302 IPC is maintained. Pushpender (A-2) is also sentenced to undergo life imprisonment with fine of Rs. 25,000/- for the offence under Section 302 read with Section 34 IPC. In case of default in payment of fine, he shall undergo further rigorous imprisonment for three months. The conviction of Phoolwati (A-3), Babu

Lal (A-4) and R. Harshinder (A-5) for the offence under Section 304-B read with Section 34 IPC and conviction of all the five appellants on the charge for the offence under Section 498-A read with Section 34 IPC, as indeed the sentences awarded there-against, are maintained.

109. The appeals are disposed of in above terms. The convicted appellants be informed by serving a copy of this judgment on each of them through Superintendant Jail.