

Ramesh Kumar vs.state of Delhi

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Court : Delhi

Decided On : Oct-27-2016

Appellant : Ramesh Kumar

Respondent : State of Delhi

Advocate for Def. : Mr. Varun Goswami

Advocate for Pet/Ap. : Mr. Sanjay Kumar

Judgement :

\$~ *IN THE HIGH COURT OF DELHI AT NEW DELHI + % CRL.A.No.395/2000
Reserved on :

26. h September, 2016 Date of decision :

27. h October, 2016 RAMESH KUMAR Appellant Through: Mr. Sanjay Kumar, Adv. versus Ms. Rakhi Dubey, Amicus Curiae. STATE OF DELHI Respondent Through: Mr. Varun Goswami, APP. CORAM: HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MR. JUSTICE P.S. TEJI JUDGMENT GITA MITTAL, J.

1. By the instant appeal, the appellant assails the judgment dated 17th May, 2000 whereby he stands convicted for commission of the offences under Sections 304B and 498A of the IPC with which he was charged in SC Case No.25/1999 arising out of FIR No.5

registered by the Police Station Jahangir Puri under Sections 498A/304B/4

of the IPC and the consequential order of sentence dated 23rd May, 2000 whereby he has been sentenced to undergo CrI.A.No.395/2000 Page 1 of 56 rigorous imprisonment for three years for the commission of the offence punishable under Section 498A IPC with fine of `500/- and in default of payment of fine, to undergo simple imprisonment for one month. For commission of the offence under Section 304B IPC, the appellant stands sentenced to imprisonment for life with fine of `1,000/- and in default to undergo simple imprisonment for two months. The sentences had been directed to run concurrently. It was also directed that the appellant would be entitled to the benefit under Section 428 of the Cr.P.C.

2. Telephonic information was received at the Police Station Jahangir Puri at 12:25 am on 22nd October, 1998 from Constable Umar Mohd., who was based in the Lok Narayan Jai Prakash Hospital, that one Smt. Sharda Devi, wife of the appellant - Ramesh Kumar resident of Block A H.No.1262, Jahangir Puri aged about 27 years and her son Himanshu aged about 2 years have been brought to the Lok Nayak Jai Prakash Hospital by Ramesh Kumar - the present appellant (her husband and father of the child) in a burnt condition. This information was logged as DD No.2B on the 22nd of October 1998 itself. This document has not been proved on record of the trial court. Investigation carried out CrI.A.No.395/2000 Page 2 of 56 3. It is necessary to examine the manner in which the inquiry and investigation had proceeded in the present case.

4. DD No.2B was handed over to S.I. Bhoop Singh to conduct further inquiries. S.I. Bhoop Singh has been examined as PW-14 who claimed that he rushed to the spot at 12:30 am and was the first to reach the premises No.A-1262/633, Jahangir Puri along with Constable Raj Kumar (PW-16).

5. S.I. Bhoop Singh (PW-14) states that at the spot, he had found broken bangles, plastic can, burnt pieces of cloth and a matchbox lying there. He further stated that after leaving Constable Raj Kumar to guard the spot, he had proceeded to the JPN Hospital where the injured Sharda and Himanshu had been removed who were declared unfit for statement. The MLCs had been collected by him.

6. Upon return to the spot, PW-14 has claimed that he got the scene of the investigation photographed and effected seizure of the plastic can, broken

bangles, matchbox and ashes of the burnt cloths vide memo Ex.PW1/E.

7. It is in the testimony of PW-14 that when he returned from the hospital to the spot again at about 2:15 am on the 23rd October, 1998, he met the father of the appellant for the first time at the spot. The father of the deceased Madan Singh (PW-1) was also present there.

8. It appears that on the 22nd of October 1998, before noon, Sharda had expired. The information of her death was telephonically conveyed at 12:30 pm from JPN Hospital to PS Jahangir Puri which CrI.A.No.395/2000 Page 3 of 56 was logged as DD No.14A (Ex.PW3/A) and handed over to S.I. Bhoop Singh (PW-14).

9. It is further in the testimony of S.I. Bhoop Singh (PW-14) that he had deposited the case property in the malkhana and contacted the Sub-Divisional Magistrate as the marriage of the victim has taken place about 4 years ago.

10. The investigating officer has also stated that he had informed the police control room at about 7:00 pm or 7:30 pm on the 22nd of October 1998 to intimate the Sub-Divisional Magistrate as he was unable to contact him on the cellular phone, it being a holiday.

11. It is in the evidence of Head Constable Nepal Singh (PW-12) {then MHC(M)} that S.I. Bhoop Singh (PW-14) had deposited one sealed pulanda sealed with the seal of BS in the malkhana on 22nd October 1998. He had also proved that S.I. Bhoop Singh again deposited one sealed pulanda in the malkhana on 24th October, 1998 with the seal of forensic medicine from the Maulana Azad Medical College stated to contain the hair of the deceased and one sample seal of the same initials. On 25th October, 1998, PW-14, the investigating officer also deposited the 18 dowry articles and a sealed pulanda containing articles mentioned as Sr. No.12-15 in the malkhana.

12. Pursuant to the orders of the Metropolitan Magistrate, on 29th October 1998, the dowry articles were handed over to PW-1 the father of the deceased on superdari of `1,00,000/-.

13. On an application (Ex.PW18/D) made by the SDM Sh. Ajay Crl.A.No.395/2000 Page 4 of 56 Kumar Gupta (PW-18), the post-mortem (Ex.PW11/B) was conducted on the dead body of Sharda by Dr. Vinod Chauhan, Department of Forensic Medicine, Maulana Azad Medical College on the 24th of October 1998 at 11:00 am. The doctor had opined the probable time since death of being around two days. He had further noted burn injuries all over the body and detected smell of kerosene from her scalp hair. There was no evidence of any internal injuries. The doctor had opined the cause of death as shock consequent upon around 100% dermo epidermal burn injuries which was ante-mortem and recent in duration caused by flames. The post-mortem was proved through the testimony of Chand Ram, Record Clerk at the Maulana Azad Medical College, who was examined as PW-11. Dr. P.C. Dixit (PW-13) has also identified the writing and signature of Dr. Vinod Chauhan on the post-mortem report (Ex.PW11/B) 14. It appears that the child Himanshu also succumbed to burn injuries suffered by him at about 3:30 am on 28th October, 1998 and died while in the hospital. The information of his death was also sent to the police station Jahangir Puri at 6:00 am which was logged as DD No.9A (Ex.PW17/A).

15. On the request of the police, a post-mortem was conducted on the body of the child by Dr. R.K. Bansal (PW-15) on 28th October, 1998 at 11:30 am who proved the post-mortem report as Ex.PW11/A. Crl.A.No.395/2000 Page 5 of 56 16. It has been noted by the doctor that Himanshus dead body was identified by Shri Babu Lal, his grandfather i.e. the father of the appellant and Shri Raj Kumar (Tau) i.e. the elder brother of the appellant.

17. Dr. R.K. Bansal (PW-15) had also noted the history of the injuries on Himanshus post-mortem report as alleged h/o sustaining burn injuries when a kerosene stove got burnt as told (not legible) along with his mother vide CR No.216777. The cause of death was opined as "septicemia consequent upon burn injuries."

18. On the 23rd of October 1998, SDM Sh. Ajay Kumar Gupta (PW18) recorded statements of Madan Singh (PW-1) (Ex.PW1/A) and Smt. Dharmo Devi (PW-9) (Ex.PW9/A) on 23.10.1998. He recorded an order to the police to register the case

as per provisions of law on Ex.PW1/A itself.

19. On 23rd October, 1998 itself, FIR No.5

was registered by P.S. Jahangir Puri under Sections 498A/304B/4

IPC and Ramesh Kumar (appellant); Asha (daughter of Babu Lal) and Sheela (wife of Babu Lal) resident of property No.A-1262-63, Jahangir Puri, Delhi were arrested.

20. On completion of investigation, on 8th January, 1999 the chargesheet was filed under Sections 498A/304B/4

IPC against all three accused persons namely, Ramesh, Asha (the unmarried sister-in-law of deceased i.e. sister of Ramesh Kumar who was then aged only about

years) and Sheela (mother-in-law of deceased i.e. the Crl.A.No.395/2000 Page 6 of 56 50 years old mother of the appellant).

21. By an order dated 23rd February, 1999, the learned Metropolitan Magistrate committed the proceedings to the Court of Sessions for trial in accordance with law.

22. The learned Additional Sessions Judge framed charges by his order dated 21st April, 1999, against the accused persons under Sections 498A/304B/34 IPC for the death of Smt. Sharda Devi, noting that the death had occurred within seven years of marriage at the residence of the appellant and his co-accused.

23. It appears that thereafter on 16th July, 1999, the complainant Madan Singh (PW-1) - father of the deceased had filed an application for amendment of the charge and to frame charges under Sections

IPC as well against the appellant and his family members on the ground that the death of child Himanshu had also occurred, who was also allegedly burnt to death by the accused persons. It was also alleged therein that on the complainant Madan Singh (PW-1) raising demand for return of the dowry articles subsequently, though some were recovered, but some dowry articles had not been returned/recovered and that they have been misappropriated by the accused persons. This application was opposed on behalf of the accused by a reply dated

23rd July, 1999 clearly stating that they had never demanded any dowry articles from the deceased or her family members and that they had never refused to return the dowry articles. The accused persons denied responsibility for the death of the two CrI.A.No.395/2000 Page 7 of 56 deceased persons.

24. By the order dated 18th August, 1999, the learned Additional Sessions Judge noted that there is no direct or circumstantial evidence regarding the murder of the child by the accused persons. It was further noted in the same order that there is no evidence on record at that stage to show that the accused persons had poured kerosene oil on the deceased as a result of which she and her son Himanshu had died. The order notes that the charge under Section 304B IPC was framed against the accused persons only due to the presumption under Section 113B of the Evidence Act. The prayer for framing charge under Section 302 IPC was rejected by the learned Trial Judge.

25. The learned Sessions Judge also rejected prayer for framing the charge under Section 406 IPC for the reason that the ingredients of Section 406 were not made out on the record.

26. However, it was noted that since the child Himanshu had died in the same incident, that there appeared to be a nexus in the death of Sharda and her son. Consequently by the order dated 18th August, 1999, the charge was amended to incorporate the charge against the appellant that in the process of causing death of Sharda, Himanshu aged two years had also died due to burns. The charge qua the death of Sharda was maintained only under Section 304B of the IPC.

27. All accused persons pleaded not guilty and had claimed trial. In support of its case, prosecution has examined 18 witnesses. The statement of the appellant and his co-accused were recorded under CrI.A.No.395/2000 Page 8 of 56 Section 313 IPC. Thereafter, by the judgment dated 17th May, 2000, the learned Sessions Judge had acquitted mother of the appellant Sheela and his sister Asha of commission of offence with which they were charged and only held the appellant guilty of commission of the offences with which he was charged. Subsequently by the order dated 23rd May 2000, the appellant was sentenced as noted above. Medical evidence and statement of deceased as to cause of her death 28. Our

attention has been drawn by Ms. Rakhi Dubey, learned amicus curiae to the MLC No.216777 which was recorded by Dr. Rajesh Tandon on the 21st of October 1998 when Sharda was brought to the hospital. According to the MLC, Sharda arrived in the hospital on 21st October, 1998 at 10:50 pm. The MLC notes that the patient herself had given the history of sustaining burn injury by bursting of kerosene stove to the examining doctor.

29. We find that there are endorsements thereafter by Dr. T.P. Tashigang on the MLC on the 22nd October, 1998 that at 2:40 am, as well as 9:15 am, the patient was unfit for statement.

30. So far as the son of the appellant, Himanshu, is concerned, he was also admitted to the hospital at the same time and MLC No.216774 was recorded by the same Dr. Rajesh Tandon. As to the history of how the injuries were sustained are concerned, this MLC contains the endorsement to the effect that alleged history of sustaining burn injury by bursting of kerosene stove as told by mother CrI.A.No.395/2000 Page 9 of 56 (another victim CR No.216777). There is an endorsement by Dr. T.P. Tashigang on this MLC as well at 2:45 am and 9:15 am to the effect that the patient was unfit for statement. It thus corroborates the record of the mothers MLC.

31. The victim Shardas MLC records that she had been brought to the hospital by her husband while Himanshus MLC records that he also had been brought by his father. Thus after they sustained burns, the present appellant had therefore, rushed his wife and son for medical treatment.

32. Our attention is drawn by Ms. Rakhi Dubey, learned amicus curiae to the death summary recorded by the doctor on the 22nd of October 1998. The death summary also records the alleged history of getting burnt when the victim was cooking food on k stove.

33. Himanshus death summary recorded on 28th of October 1998 depicts the manner in which the alleged incident under which the child sustained burns which is to the effect that alleged H/o getting burn when the pt. accidentally hit the kerosene lamp which fall on kerosene stove on which his mother was cooking

food. The stove later burst into flame. As per the death summary, the time of incident was noted as 10:00 pm on 21st October, 1998. It has been recorded that Himanshu suffered 35% burns.

34. The statements attributed to the deceased on her MLC, reiterated in Himanshus MLC, have been recorded by an independent Dr. Rajesh Tandon who has no concern with the matter. We also note CrI.A.No.395/2000 Page 10 of 56 that as per MLC, when the patient Sharda was brought to the hospital, she was conscious. Her vital parameters at that time also suggest that she was fit to give the circumstances in which her son and she suffered burns and that history thereon has been recorded by the doctor on her statement. There is no reason to disbelieve this statement given by her to the doctor regarding the cause of her death.

35. The statement attributed to the deceased is vital to the case inasmuch as it is a statement by the victim Sharda with regard to the circumstances in which both, she and her son Himanshu, suffered the burn injuries. The statement is clearly admissible in evidence under Section 32 of the Evidence Act as a dying declaration.

36. The death summary contains the details of the manner in which the events unfolded on the fateful night. Documents filed with chargesheet by prosecution but not formally proved by it - whether can be relied upon by defence 37. The record shows that though certain documents have been filed with the chargesheet, the same have not been proved by the prosecution. It speaks volumes about the manner in which the prosecution has conducted this case inasmuch as these MLCs or the death summary have not been proved on record. No effort has been made to summon either the doctor to court, or if he was not available, any person who could identify his signatures.

38. It cannot be denied that the MLCs and the death summaries of CrI.A.No.395/2000 Page 11 of 56 the deceased persons which were placed on record have an important bearing on the matter. It is perhaps fortuitous that these documents have been filed by the prosecution and have therefore, seen the light of the day.

39. So are the courts and the defence legally prohibited from relying upon these documents?.

40. In (2012) 9 SCC771 V. K. Sasikala vs. State Represented by Superintendent of Police, while dealing with the issue of demand of copies and inspection of documents by appellant-accused not relied on by prosecution but which were a part of police report and in custody of the court at the stage of S. 313 Cr PC questioning, the Supreme Court touched upon the facets of a just, fair and transparent investigation and the right of an accused to have access to all documents relied upon by the prosecution and to rely on the same notwithstanding the fact whether they were exhibited or not. Though concerned with the right of the accused to have access to such documents, the observations of the court on the role of the prosecution are relevant and read thus : 17. However, it is not impossible to visualize a situation whether the Investigating Officer ignores the part of the seized documents which favour the accused and forwards to the Court only those documents which support the prosecution. If such a situation is pointed by the accused and such documents have, in fact, been forwarded to the Court would it not be the duty of the Court to make available such documents to the accused regardless of the CrI.A.No.395/2000 Page 12 of 56 situation where evidently fact whether the same may not have been marked and exhibited by the prosecution?. What would happen in a situation where such documents are not forwarded by the Investigating Officer to the Court is a question that does not arise in the present case. What has arisen before us is a the unmarked and unexhibited documents of the case that are being demanded by the accused had been forwarded to the Court under Section 173 (5) but are not being relied upon by the prosecution. Though the prosecution has tried to cast some cloud on the issue as to whether the unmarked and unexhibited documents are a part of the report under Section 173 Cr.P.C., it is not denied by the prosecution that the said unmarked and unexhibited documents are presently in the custody of the Court.

18. In a recent pronouncement in Manu Sharma V. State (NCT of Delhi) to which one of us (Sathasivam, J) was a party, the role of a public prosecutor and his duties of disclosure have received a wide and in-depth consideration of this Court. This Court has held that though the primary duty of a Public Prosecutor is to

ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for a just determination of the truth so that due justice prevails. The fairness of the investigative process so as to maintain the citizens rights under Articles 19 and 21 and also the active role of the court in a criminal trial have been exhaustively dealt with by this Court. Finally, it was held that it is the responsibility of the investigating agency as well as that of the courts to ensure that every investigation is fair and does not erode the freedom of an individual except in accordance with law. It was also held that one of the established facets of a just, fair and Crl.A.No.395/2000 Page 13 of 56 transparent investigation is the right of an accused to ask for all such documents that he may be entitled to under the scheme contemplated by the Code of Criminal Procedure. The said scheme was duly considered by this Court in different paragraphs of the report. (Emphasis by us) 41. In this regard, we may also usefully advert to the observations of the Supreme Court in the pronouncement reported at (2010) 6 SCC1 Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) : xxx xxx xxx 218. ...The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused. xxx xxx xxx 220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Crl.A.No.395/2000 Page 14 of 56 Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides

precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely. 221. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially. (Emphasis by us) 42. In 1992 SCC OnLine MP67:

1993. MPLJ534 Ramdayal vs. Madhya Pradesh while dealing with the question whether unexhibited and unproved documents of the prosecution can be used by the defence, the Court held thus: 3. Can an unproved document of the prosecution be used by the defence?. A view has been taken, with which I concur, that defence like F.I.R. just because the prosecution failed to formally prove it. It is also the view that if the prosecution suggests that its document should not be relied upon because it was a garbled document, it should have given evidence to that effect. In the absence of such evidence by the prosecution, the defence is entitled to use a prosecution document although unexhibited and unproved Crl.A.No.395/2000 Page 15 of 56 (Emphasis by us) 43. In another pronouncement of the Division Bench of this court reported at 1991 JCC550 Raj Bahadur vs. State, it was held thus:

"22. The first dying declaration stated to have been made by the deceased reduced to writing was by doctor in Ram Manohar Lohia Hospital at the time of her admission. We may note that Dr. A. Mittal had prepared the Mlc in respect of Smt. Bimla @ Billo and this doctor has not been examined Prosecution has not proved MLC even by examine and doctor or a record clerk conversant with the writing and signatures of Dr. Mittal. However, for referring to a document of the prosecution it is open to the accused to place reliance upon that document even in the absence of its proper proof. A perusal of this MLC shows that Billo was admitted with alleged history of burns by the stove. It is, thus, clear that the first written declaration made by the deceased to the doctor did not implicate the appellant to

be the person responsible for her burn injuries. We may also note at this stage that Dr. R.P.Singh (PW13 who got her admitted in the hospital has not stated about the making of any declaration, to him on way to the hospital."

(Emphasis by us) 44. Similarly in 2014 SCC Online Del 6931, Ashutosh Verma v. CBI while discussing the right of accused to a fair trial, this Court held: 19. It is settled rule of law that impartial and fair opportunity in a trial are Constitutional as well as human right. It is an undeniable duty of the Court to ensure that nothing causes a threat to such a right. It is the right of an accused to adduce evidence in order to raise defence CrI.A.No.395/2000 Page 16 of 56 failing which it may tantamount to jeopardizing the right to fair trial. Justice can only be ensured if the rules of procedure that have been designed are diligently adhered to. No court shall allow breach of these principles. Furthermore, incompletely adduced evidence would lead to incomplete defence, which may result in incorrect or incomplete answers consequently strengthening the prosecution case against the accused. (Emphasis by us) 45. In civil trials, the documents filed by one party but not formally proved, are deemed as admitted by the party which filed the same and an admission on its part. Such documents, if relied upon by the opposite party, need not be formally proved under Sections 17 to 21 of the Evidence Act. Such documents are, at the behest of the opposite party, so read into evidence. The same principle would thus apply to documents which have been collected by the prosecution during a criminal investigation and have been filed along with the chargesheet, though not formally proved in evidence. It would be considered fairness on the part of the prosecution to place such documents even though they do not support the prosecution theory but support the case of the defence on record. The defence would be entitled to utilize such documents even if the prosecution has not led formal proof thereof.

46. The above medical and documentary evidence in the nature of the MLCs of the deceased persons and the death summaries as well as any other document filed by the prosecution can be relied upon by the CrI.A.No.395/2000 Page 17 of 56 defence as they have to be treated as admitted by it without formal proof thereof. We shall examine the effect of the contents of these documents on the prosecution case a little later in this judgment. Incident disproved by the evidence

led by the prosecution and documents on record 47. There is yet another important aspect of the matter. The rough site plan placed along with chargesheet has not been exhibited on record and appears to be a page out of inner case diary maintained by the investigating officer S.I. Bhoop Singh in the case. The site plan has been captioned as visual site plan.

48. The site plan thus has not been proved on record by the prosecution. However, in view of the position in law, this document having been filed by the prosecution, it was open to the defence to rely upon the same.

49. This document manifests that S.I. Bhoop Singh (PW-14) has prepared the plan of the second floor of the premises No.A-1262/63, Jahangir Puri wherefrom he had recovered five litre plastic can; matchbox and ashes and broken bangles. As per the site plan, the can has been recovered near the bed in the bedroom.

50. The prosecution has also led evidence of Shri Ramesh Kumar (PW-4) - a photographer, who has deposed that he was related to the father of the deceased Shri Madan Singh (PW-1) and that the police CrI.A.No.395/2000 Page 18 of 56 persons along with father of the deceased Madan Singh had come to call him to the spot in the night intervening 21st/22nd October, 1998 and he reached there at 2:00 am. He has proved three photographs taken by him of the alleged spot as Ex.PW4/A, Ex.PW4/B and Ex.PW4/C. It is stated that Madan Singh (PW-1) was present when these photographs were taken. All these photographs are of a bedroom.

51. As per the MLCs as well as the death summary, Sharda has referred to the kerosene stove. Such stove would be expected to be found in the kitchen, and not in the bedroom which has been photographed as if it was the scene of the crime. There is not a single photograph of the kitchen.

52. We have perused the photographs on the request of Ms. Rakhi Dubey, Id. amicus curiae. The photographs show an immaculately maintained bedroom which also includes a pooja area. In the photographs, near the bed, we find an open can lying on the floor of the bedroom with its cap nearby lying on the floor. In the photographs, there is no sign of burning of any of the furniture or any of the

articles. The bed is properly made up. A pair of bathroom slippers in good condition are found near the can. The cloth upholstery on the furniture in the room is also completely intact. Floor length curtains are hanging in the room with not the remotest sign of burning in this tiny room. There is even a pillow perfectly placed on the floor with no sign of burning. Crl.A.No.395/2000 Page 19 of 56 There is no evidence at all of two persons having been burnt in any of the photographs.

53. Dharmo Devi (PW-9) has stated that the deceased Sharda had her son Himanshu in her lap at the time of the incident.

54. Deceased Shardas brother Deepak Kumar (PW-10) has stated that the room where the deceased used to reside with her family members was of small size. The photographs manifest this fact. It cannot be expected that the deceased would not have offered resistance if an attempt to deliberately burn not only her, but also her son was made.

55. Further, the evidence noted by us establishes that the appellant had rushed his wife and son to the hospital with the neighbour. The prosecution has proved that these photographs were taken on the same night, shortly after the incident.

56. If this bedroom featured in the photos was the situs of the burning of the deceased, the place would have been dishevelled and in a disarray. Certainly some visible tell tale evidence of burning would have remained. But it is not so.

57. As per site plan and photographs also, the can is seen lying near the bed in the bedroom.

58. It may be noted that PW-1 Madan Singh has stated that the plastic can had smell of kerosene oil and some kerosene oil in it. He makes a reference to a cork whereas the photographs show a can which had a screw on cap. No cork is to be seen but a cap is featured. Crl.A.No.395/2000 Page 20 of 56 59. In the photographs there would have been kerosene on the floor and otherwise. Not a drop of liquid is also visible either in the can or on the floor around the can. None of the witnesses has testified with regard to the presence of even a drop of kerosene anywhere in the room which has been photographed or, for that matter,

anywhere else in the entire premises.

60. No kerosene was found on the body of the child Himanshu.

61. Constable Raj Kumar (PW-16) has stated that the subjected premises was located in a thickly populated area.

62. We find that so far as the scene of crime is concerned, it is an admitted position and is in the testimony of father of the deceased Shri Madan Singh (PW-1); mother of the deceased Smt. Dharmo Devi (PW-9) and brother of the deceased Deepak Kumar (PW-10) that the property no.A-1262/63, Jahangir Puri consists of three storeys. On the ground floor, the in-laws of the deceased including her mother-in-law - Sheela; sister-in-law - Asha along with father-in-law - Babu Lal; one other brother and one more sister were residing.

63. Shri Deepak Kumar (PW-10), brother of the deceased has testified that there was a separate kitchen and bathroom adjacent to the bedroom. It is also clearly proved in evidence that the deceased had a kitchen which was separate from the rest of the family.

64. It is proved in evidence that the appellant and his family which consisted of his wife Sharda; son Himanshu and a daughter were living on the first floor of the premises and had an independent kitchen from that of the rest of his family.

65. That the second floor of the premises was tenanted and occupied by other persons on the fateful night stands established on record.

66. PW-1 Madan Singh (father of the deceased) has stated that when he, his wife, brother and other relatives had gone to the residence of the accused, Sheela (mother-in-law of the deceased), many persons from the mohalla including neighbours had gathered there. He further goes on to say that many public persons from the locality were present at the time when the police has seized the articles from the spot at about 11:00 pm.

67. The brother of the deceased Deepak Kumar (PW-10) has admitted in his cross-examination that the appellants mother accused Sheela had informed that the deceased had been taken to some nursing home in Saraswati Vihar. PW-10 further admitted that some neighbours had informed us that the accused Ramesh, Asha and one other person had removed injured persons in a TSR to the hospital. PW-10 has also admitted that the mother of the appellant Sheela was present on the ground floor when this information was received from the neighbours.

68. It is in the testimony of PW-14 that Shri Babu Lal, the father of the appellant was present in the house when he had reached there on the night intervening 21st/22nd October, 1998.

69. As per the site plan, there is presence of people at the spot. CrI.A.No.395/2000 Page 22 of 56 70. Shri Deepak Kumar (PW-10) has also stated that when he had reached at the spot his niece Nisha was with the tenants at the ground floor of the premises where his sister was residing.

71. PW-1 Madan Singh has stated that the police had recorded the statement of one Sardarji who was a tenant of the accused persons in the premises. No such tenant has been examined by the prosecution.

72. A crucial witness, the other person who had accompanied the appellant and his sister Asha in rushing the deceased Sharda and Himanshu to the hospital existed. Yet no effort has been made to ascertain the identity of that other person or ascertaining the cause of the incident. It was left for the defence to examine this other person.

73. There is no explanation at all as to why the investigating officer has not recorded the statement of the father of the accused even though he had met him at the spot. The evidence would show that other relatives of the appellant were also residing in the same premises, yet neither their statements were not recorded nor they were produced in the witness box.

74. PW-9 Smt. Dharmo Devi has tried to give an explanation as to why the police had not recorded the statement of the tenants as the tenants had closed their

doors. The investigating officer S.I. Bhoop Singh (PW-14) does not say so. In his cross-examination, he has admitted that the tenants were residing in the said premises. As to why he did not record their statements, he stated that they had left the spot and that no tenant had met him. These certainly are no explanations for not recording the statement of material public witnesses and ascertaining the circumstances in which the incident had occurred.

75. Constable Raj Kumar (PW-16) has stated that when he reached the spot at about 12:30 am, some public persons were present in the street. He however could not tell the names of the neighbours residing in the neighbourhood. He has denied the suggestion that the police did not visit the spot and that memos were prepared and signed only at the police station. Not a single statement of any neighbour or members of the public has been placed on record. No such witness has been examined.

76. So far as the relatives of the appellant is concerned, it is also in evidence that it consisted of his parents, including co-accused mother Sheela, sisters (one of whom was Asha who was tried as an accused) as well as a brother. Unfortunately, the investigating officer has not made any effort to give details of the other members of the appellants family who were in the building. Their statements have not been recorded.

77. Certainly, the incident did not take place in the manner as alleged by the prosecution. Challenge to the recovery and seizure of the can 78. The prosecution has led the evidence of the investigating officer S.I. Bhoop Singh (PW-14) that on receipt of DD2 in the night Crl.A.No.395/2000 Page 24 of 56 intervening 21st/22nd October, 1998 to the effect that he had proceeded to the spot in the premises No.A-1262/633, Jahangir Puri, and effected seizure of a plastic can along with other articles effected vide seizure memo Ex.PW1/D which is found strewn on the bedroom floor in photographs of scene of crime which were proved on record.

79. The defence has confronted PW-14 S.I. Bhoop Singh with DD no.4A dated 22nd October, 1998 (Ex.PW14/DA) recorded at the P.S. Jahangir Puri which records the seizure of the plastic can etc. noted above and its deposit in the

malkhana.

80. It is also noteworthy that PW-12 has not made any entry with regard to these articles ever having been taken out of malkhana for any purpose thereafter. They were never subjected to any forensic examination or any other further investigation. There is no forensic evidence of any kerosene in the can either.

81. This seizure is however falsified by the testimony of SDM Shri Ajay Kumar Gupta (PW-18) who has claimed that he had inspected the place of the incident later in the night of 22nd October, 1998 and he had seen one kerosene can lying at the spot for it is not the case of the prosecution that the SDM was informed prior to seizures having been effected. It would appear that the can was a plant in an attempt to give credence to the theory framed up in the present case.

82. This is thus an unfortunate case in which two persons lost their lives and the prosecution has completely failed to establish even the bare location where the incident of burning had occurred within the CrI.A.No.395/2000 Page 25 of 56 premises. Previous marriage of the deceased 83. Mr. Sanjay Kumar, Id. counsel for the appellant points out that it is in the testimony of PW-1 that his daughter Sharda (deceased) was earlier married at an age of about 21 years to a person residing in Paharganj and her first husband had burnt himself by pouring kerosene oil over himself. He further stated that various articles including gold ornaments, fridge, furniture, colour T.V. given at the time of her first marriage were taken back by them after the death of her first husband. It has been suggested by PW-1 that Sharda's first husband had set himself afire as he had to take money from some of his friends. It is stated by PW-1 that the first marriage of the deceased had culminated in a divorce in the Panchayat and therefore, suggested that the deceased Sharda had quarrels with her first husband.

84. PW-1 had admitted that the marriage of the deceased with the appellant was negotiated through a matrimonial newspaper and that they had not stated the wedding status of the deceased about her being a widow or anything about her prior marriage in the advertisement.

85. Though we have noted these submissions made to prejudice the court against the relatives of the deceased, however, so far as the present case is concerned, nothing turns on them. Whether any demands or harassment for dowry?.
Crl.A.No.395/2000 Page 26 of 56 86. The appellant was charged with having subjected his wife Sharda to cruelty for not bringing adequate dowry and therefore committing an offence under Section 498A of the IPC. So far as the second charge under Section 304B is concerned, it was alleged that shortly before her death, Sharda was subjected to cruelty or harassment in connection with demand of dowry and charge with having caused her dowry death and the offence punishable under Section 304B of the IPC.

87. The prosecution has also levelled the allegations of harassment and demand of dowry from the deceased by the appellant, his mother - Sheela and sister - Asha.

88. For this reason, the trial court had framed charges against the appellant for commission of the offence under Section 498A of the IPC. While the appellants mother and sister stand acquitted of all charges on the same evidence, the trial court has held the appellant guilty for commission of the offences under Section 498A.

89. It is contended by Mr. Sanjay Kumar, Id. counsel for the appellant as well as Ms. Rakhi Dubey, Id. amicus curiae that there is no credible evidence to support the allegations that the deceased was subjected to cruelty or harassment by her husband, let alone for or in connection of dowry and the appellant deserves to be acquitted, both for the charges under Section 498A as well as 304B and the impugned judgment finding him guilty deserves to be set aside and quashed.

90. It is submitted that the prosecution evidence suffers from Crl.A.No.395/2000 Page 27 of 56 material contradictions and that in the witness box, the witnesses have made gross improvements and embellishments to the statements made by them during investigation.

91. Before examining the rival contentions in the present case, it would be relevant to extract the relevant statutory provisions i.e. Sections 304B and 498A of the IPC

with which the appellant was charged as well as Section 113B of the Indian Evidence Act which is relevant. We extract the same hereunder : 304B. 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. 498A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.-For the purpose of this section, cruelty means- CrI.A.No.395/2000 Page 28 of 56 (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. (Emphasis by us) 92. So far as Section 113B of the Evidence Act is concerned, the same reads thus : 113B. 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 304B, of the Indian Penal Code, (45 of 1860). (Emphasis supplied) 93. There is no controversy in the present case that the unnatural death of the deceased Sharda on 22nd October, 1998 had occurred within seven years of her marriage dated 3rd November, 1998 with the appellant.

This is the first essential ingredient of Section 304B of the IPC that the death of the deceased should have been caused by burns or bodily injury or occurred otherwise than under normal circumstances within seven years of the marriage. The other CrI.A.No.395/2000 Page 29 of 56 necessary ingredient is that the deceased, soon before her death, must have been 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. It is, therefore, necessary to examine as to whether the deceased was subjected to cruelty or harassment of dowry soon before her death to invite the presumption under Section 113B of the Evidence Act.

94. In view thereof, it becomes necessary to examine what evidence was led by the prosecution with regard to demand for dowry, cruelty and harassment on the part of the appellant. We therefore, now examine the challenge by the appellants to his conviction under Section 498A IPC.

95. PW-1 Madan Singh has explained that his family was a potter family that they roasted potatoes and sugar beet and sold the same which was their only source of livelihood. He claimed that he earned only `250/- or `300/- daily.

96. In the court testimony, Shri Madan Singh, father of the deceased appearing as PW-1 has claimed that at the time of marriage on 3rd November, 1995, they had given gold ornaments including a golden ring and chain; furniture, clothes and utensils to the accused persons. His wife Smt. Dharmo Devi appearing as PW-9 has added a fridge, T.V., almirah to the items given.

97. So far as demands after marriage are concerned, there is a CrI.A.No.395/2000 Page 30 of 56 material contradiction with regard to the dates on which the demands first emanated. The father of the deceased Madan Singh (PW-1) had stated that the accused persons started harassing Sharda for not bringing adequate dowry after about 2 or 3 months of the marriage. As against this, his wife Smt. Dharmo Devi (PW-9) does not give any definite date but imputes demands and harassment after days for the first time after her marriage.

98. Shri Deepak Kumar, brother of the deceased (PW-10) has stated that after marriage, she was also being given beatings by the appellant and harassed by her mother-in-law and sister-in-law on account of dowry. It appears that Deepak Kumar had not stated so in the statement given by him to the police (Ex.PW10/DA). In his cross- examination, PW-10 stated that he had informed the police that the accused had started harassing his deceased sister after about three days of her marriage. No such statement also was found recorded in Ex.PW10/DA and the evidence to this effect is clearly an embellishment unworthy of belief.

99. So far as the nature of demands is concerned, Shri Madan Singh, the deceased Shardas father (PW-1) has stated that the accused persons used to demand dowry articles which included cash, T.V., VCR and ornaments. He had attributed a demand for `50,000/- from his daughter to enable the appellant to establish his separate business. Only a bald statement has been made by him with regard to these demands without giving any specific dates or particulars as to why CrI.A.No.395/2000 Page 31 of 56 these demands were made and from whom. This witness was also confronted with his previous and the first statement in point of time which was the statement given to the SDM wherein no such demands had been referred to by him or noted by the SDM.

100. On this aspect, Shardas mother Smt. Dharmo Devi (PW-9) refers to beatings by the accused person for bringing more dowry. A general allegation is made to the effect that her daughter used to complain with regard to such beatings. So far as the demand for cash is concerned, PW-9 has stated that the accused persons used to ask her daughter to bring cash sometimes Rs.5,000/- or sometimes Rs.10,000/- to enable the accused Ramesh to carry on some business. Apart from these general non-specific demands, it was further stated by PW-9 that about months prior to the incident, the appellant had demanded `50,000/- to establish business of fattaballi. These demands are also devoid of any specific particulars in terms of dates and the person from whom such demand was made.

101. As against this, PW-9, makes a general statement that they had given cash to the deceased many times without attributing any specific payments having been made on any particular dates to the appellant or any of his family members. She

claims to have given cash of `40,000/`48,000 to the deceased in small instalments.

102. It is noteworthy that neither the father of the deceased (PW-1) nor her brother (PW-10) make any such allegations. A material CrI.A.No.395/2000 Page 32 of 56 contradiction so far as these demands are concerned, is to be found in the quantum of the payments claimed to have been made by the parents of the deceased in compliance of the demand. As per Shri Madan Singh (PW-1), they had given cash to the accused persons after the marriage amounting to `40,000/- in all. He has claimed that sometimes an amount of `2,000/- and sometimes `3,000/- were given to the deceased for giving to the accused persons.

103. PW-1 was confronted with the statement (PW1/A) given by him on 23rd of October 1998 which was recorded by the SDM in which he referred to his daughter Sharda having often told him that the appellant used to consume alcohol and beat her and also demand money. He had stated that Sharda used to visit her paternal home after about 8-10 days and say that she had been thrown out of her home and that sometimes a scooter; sometimes a VCR; sometimes cash; sometimes gold chain, ring etc. were being demanded from her parents. In this statement, Shri Madan Singh (PW-1) claimed that as per his capacity, he had paid `30,000/- and Rs.40,000/- to Shardas in-laws but they were still not satisfied and were demanding a gold chain. Madan Singh (PW-1) referred to an incident (about two months prior to the date of the statement on 23rd October, 1998) when he alleged that the appellant had sent Sharda to their house and demanded `50,000/- to set up fatteballi business. On this occasion, they had explained to his daughter that they could not give so much money and that the appellant kept harassing her for this money. CrI.A.No.395/2000 Page 33 of 56 104. So far as Smt. Dharmo Devi, his wife (PW-9) is concerned, in her statement (Ex.PW9/A) recorded by the SDM Shri Ajay Kumar Gupta on 23rd October, 1998, she had then stated that few months after the marriage, the appellant had started harassing her for dowry and he used to beat her and demand money. As per PW-9 whenever Sharda would come to their house, she would say that her in-laws demanded a scooter, VCR, cash and gold chain etc. She also referred to the demand for `50,000/- about two months prior thereto. No specific date or time of the demands has been attributed in the statements made on 23rd October, 1998, which are even more general than

those made in court.

105. Ms. Rakhi Dubey, Id. amicus curiae would submit that even with regard to the alleged last episode of the demand, there is material contradiction between the relatives of the deceased and that the same must be disbelieved. So far as a demand shortly before the incident is concerned, the father of the deceased Shri Madan Singh (PW-1) has stated that two or three days prior to the Diwali festival of 1998, his son Deepak had gone to deliver sweets to the residence of the appellant. He has alleged that the appellant told his son to give a gold chain weighing 2 tola, colour T.V. or VCP otherwise they would kill Sharda and marry another lady who was carrying his child in her womb. In his cross-examination, he changed this statement to say that Deepak had visited the house of the accused persons 4 or 5 days prior to Diwali. Crl.A.No.395/2000 Page 34 of 56 106. As against this, PW-9 had stated that her son Deepak had gone on the Diwali festival day itself to meet her deceased daughter when he found her weeping. When her son enquired from her, she stated that the appellant had demanded one colour T.V., gold chain of 2 tola on bhai dooj or else he would kill her.

107. On this aspect, PW-10 Deepak Kumar has alleged that on the afternoon of the Diwali festival in October, 1998, he had gone to see his sister who had started weeping when serving tea. On enquiring, she had conveyed that the appellant had demanded a colour T.V. and a gold chain of 2 tola and had threatened to kill her in case they fail to give these articles.

108. We find that in Ex.PW1/A which is the statement given by Madan Singh (PW-1) to the SDM on 23rd October, 1998, he had alleged that when his son had gone to his daughters house to give Diwali gifts, his daughter told him that the appellant had beaten her and said that on Diwali, he wanted a chain of 2 tola as well as a colour T.V. and that if these articles were not given than she would be murdered before bhai dooj and he would contract marriage with another girl who was carrying his child. In her statement to the SDM on 23rd October, 1998, Dharmo Devi (PW-9) is alleged to have made an identical statement. Thus there is contradiction between the statements of the father on the one hand and her mother and brother on the other hand not only with regard to the date on which

Deepak Kumar visited the house but Crl.A.No.395/2000 Page 35 of 56 also with regard to the nature of the demand and when they had to be met.

109. The evidence on record would show that the deceased was blessed with two children, firstly a son and then a daughter from her marriage with the appellant. As is common place, there is no allegation at all that any demand was made by the appellant or his family members on any festival or on the birth of these children or on any other occasion. The family members of the deceased who appeared as PW-9 and PW-10 have not even mentioned any demands on the occasions or dates of birth of the children.

110. The parents as well as the brother of the deceased are categorical that they have never made any complaint of dowry demands or demand of any property on the part of the appellant or his family members.

111. Tenants who were admittedly residing in the same property as the appellant and the deceased or the neighbours have not made any such complaint or allegation.

112. The prosecution has conspicuously also kept the father and other relatives of the appellant who were residing in the same premises out of the investigation as well as the prosecution.

113. We find from the record for the first time, allegations with regard to dowry demands were made by the parents of the deceased against the appellant in the statement recorded by the SDM. Crl.A.No.395/2000 Page 36 of 56 114. PW-1 has stated that they had not demanded return of any dowry articles. Thus the question for non-compliance nor return by the appellant and his family members would not arise as there was no opportunity for the same.

115. It is to be noted that the parents and brother of the deceased have attempted to attribute identical allegations against all the accused persons that they used to harass the deceased Sharda for bringing more dowry. However, as noted above, there are contradictions in the statements made by them during investigation and in court. There are inter se contradictions with regard to the date and nature of

admissions.

116. The trial court has completely disbelieved the above allegations to the extent that they relate to Sheela and Asha (mother and sister of the appellant). In paras 19 to 21 the prosecution evidence has been discussed at length, especially, the statement of the close relatives of the deceased, namely, her father - Madan Singh (PW-1), mother - Dharmo Devi (PW-9) and brother Deepak (PW-10). The trial court has concluded that the allegations are vague, uncertain, general and non-specific and the roles of the two ladies have not been narrated.

117. The testimony of the witnesses has also been disbelieved for the reason that there is no independent public witness examined by the prosecution to substantiate the case of harassment and that Sheela and Asha were residing on the ground floor while the deceased was residing on the first floor of the premises with her family and that they CrI.A.No.395/2000 Page 37 of 56 had separate kitchen; that they sometimes prepared food together. The learned trial court has concluded that the demand of dowry articles as alleged against Sheela and Asha does not appeal to mind.

118. We have discussed at length the evidence led by the prosecution on the aspect of dowry demands. It has been noted by us as well that the allegations that Ramesh Kumar are also general, non-specific and contradictory. Furthermore, the witnesses have contradicted each other especially, with regard to the occasion and date of the demand. There is no evidence of any complaint having been lodged by them. There are material improvements in the court testimony. On the contrary, the evidence on record would show that in their years of marriage, the deceased and her husband, the present appellant were living a normal married life as a nuclear family and from their marriage had been blessed with two children, one having been born barely about six months prior to the unfortunate incident. Whether the conviction of the appellant for commission of the offence under Section 304B is sustainable 119. Let us now examine the evidence on record to bring home the charge framed against the appellant under Section 304B of having caused a dowry death of his wife. Section 304B comes into play when the death of a woman is caused by any burns or bodily injury or occurs otherwise than under

normal circumstances within seven years of a marriage and it is shown that soon before her death, she was CrI.A.No.395/2000 Page 38 of 56 subjected to cruelty or harassment by her husband or his relatives, for, or in connection with any demand for dowry and her husband or relatives shall be deemed to have caused her death.

120. It is at this stage essential also to note the provisions of Section 113B of the Evidence Act which mandates, that in a case where the question is whether the person has committed 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 of dowry, the court shall presume that such person had caused the dowry death.

121. In view of the above discussion, we have found that there is no credible evidence that soon before her death, the deceased was subjected to cruelty or harassed by her husband or any relative of her husband for or in connection with any demand for dowry.

122. For this reason, it has been held that the prosecution has failed to establish its case under Section 498A of the IPC. Thus though his mother and sister were charged along with the appellant, on identical allegations and the same evidence, they stand acquitted of the charges. Neither the State nor the complainant have assailed their acquittals.

123. In view of the above discussion, the finding of the learned trial judge that the appellant was guilty of subjecting his wife Sharda to cruelty or harassment with a view to coercing her or her relatives to meet any unlawful demand for property or on account of their failure CrI.A.No.395/2000 Page 39 of 56 to meet such demand is not sustainable on the evidence on record. As such, the charge to this effect must fail.

124. The prosecution has, consequently, failed to prove that the death of deceased Sharda was a dowry death or establish the culpability of the appellant for the same.

125. We have also found above the first statement made by the deceased to the doctor on her MLC No.216777 which completely exonerates the appellant and establishes the circumstances in which she suffered the burns. Such statement made to the doctor is admissible under Section 32 of the Evidence Act.

126. Therefore, so far as the offence under Section 304B i.e. the dowry death is concerned, the only circumstance established on record is that the deceased Sharda has died on account of septicaemia resulting from the burns suffered by her within seven years of her marriage. The other requirements of Section 304B have not been established.

127. It is also to be noted that despite the death of the child forming part of the charge framed against the appellant, the prosecution has led no evidence at all of the circumstances in which the infant suffered the burn injuries.

128. It is trite that on the evidence before the court, if two views are possible, the one favourable to the accused must be taken.

129. We therefore, hold that the learned trial court has erred in arriving at the conclusion that the appellant has subjected the deceased Crl.A.No.395/2000 Page 40 of 56 Sharda to cruelty for not bringing adequate dowry shortly before her death as a result from burns. As a result, the statutory presumption under Section 113B of the Indian Evidence Act also could not be drawn against the appellant.

130. We therefore, find that the appellants conviction for commission of the offence under Sections 498A IPC as well as Section 304B IPC is not sustainable. Plausible defence 131. Smt. Dharmo Devi (PW-9) and Shri Deepak Kumar (PW-10) have stated that the appellant was working as a mason. He would thus have been earning daily wages. There would have been every possibility of the family using a kerosene stove for cooking food.

132. It was also the defence of the appellant that on the fateful night, the deceased had got irritated and angered with him because he had returned late and had requested her to cook food. The statement by the deceased that the accident with the kerosene stove resulted in the fire is very plausible. It is in fact supported by

the statement of the deceased. The trial court has completely overlooked the same. Biased and defective investigation 133. The appellant has strongly challenged the investigation in the present case pointing out that the I.O. has moved with a preconceived CrI.A.No.395/2000 Page 41 of 56 notion and not conducted fair and unbiased investigation. It is submitted that independent evidence which would have established the truth, though available at the spot, has not been produced by the prosecution.

134. The above discussion has established that the investigating agency has failed to even establish the scene of occurrence. Despite the evidence on record with regard to the stove in the statement of the deceased, the same has not been investigated.

135. The evidence on record establishes the presence of not only the family members and relatives of the appellant but also of tenants and neighbours in close proximity. The incident occurred in the night in a densely populated area. Not a single member of the public has been examined in support of the prosecution which lends support to the defence contention that valuable evidence in support of the defence has been deliberately kept back by the police.

136. The investigating officer did not get any forensic examination done of the allegedly recovered objects including even can or of the sample of hair of the deceased Sharda in order to confirm the presence of kerosene oil. An obvious and critical input which was essential to have been undertaken. No effort was made to lift fingerprints from the can.

137. In the case in hand, Sharda - wife of the appellant; daughter-in-law of the co-accused Sheela and sister-in-law of Asha unfortunately expired. In the same incident of burning, a 2 year old son - CrI.A.No.395/2000 Page 42 of 56 Himanshu of the appellant had succumbed to the critical injuries suffered by him. Without being left to grieve his loss, the appellant Ramesh Kumar along with his mother, Sheela and sister, Asha were arrested by the police on 23rd October, 1998 in FIR No.5

registered under Sections 498A/304B/4
IPC.

138. It is difficult to believe that any person would burn his two year old son, that too, for admittedly no motive or reason.

139. The record reflects bail applications by the accused persons including the bail application dated 5th March, 1999 moved on behalf of co-accused Sheela and Asha was rejected on 11th March, 1999.

140. Another bail application dated 20th August, 1999 was moved on behalf of the co-accused Asha which was rejected by an order dated 11th October, 1999. However, it seems that they secured bail ultimately after incarceration of over two years.

141. So far as the appellant Ramesh Kumar is concerned, as per the nominal rolls received, he remained incarcerated for 3 years 3 months 21 days as on 18th February, 2002. By the order dated 25th April, 2001 of this court, the sentence imposed upon him was suspended by this court for seven days on account of wedding of his sister on 26th April, 2001. Thereafter the sentence was suspended by the order dated 23rd October, 2002.

142. What is completely overlooked is the important evidence that the appellant Ramesh Kumar and deceased Sharda were also blessed with a daughter who was a toddler of six months when the unfortunate Crl.A.No.395/2000 Page 43 of 56 incident happened. As a result of the incident, she lost her mother and brother. At the same time, her father, her grandmother and aunt were thrown in jail and so taken away from her. Thus after the death of the mother, this young infant would have been completely without any caregiver. We do not know how she would have fared in those many years when the family members, who would have given care and support at the most critical time of her life, were lodged in jail. As per the averments in the bail applications on record, there would have been no responsible person to look after the child.

143. This case speaks volumes of the injustice which may result to any citizen on account of the silence of neighbours and bystanders who would have been the critical evidence and may have unfolded manner of incident but because of diffidence to volunteer knowledge and information, remained silent. This would not

be only one case in which three persons of the same family have remained incarcerated despite losing their loved ones including an infant child in an unfortunate incident. The period of incarceration would have left indelible scars on the minds and lives of the persons who suffered them.

144. Moved by the fervent pleas during argument on behalf of the applicant, while reserving judgment in the present appeal on 26th September, 2016, we had noted as follows : Crl.A.No.395/2000 Page 44 of 56 7. Whatever be the outcome of the case, as a result of faulty investigation, society suffers. Either innocent persons get punished or serious crimes go undetected.

8. On consideration of such faulty investigation, in the pronouncement of the Supreme Court reported at (2012) 13 SCC213 Sahabuddin & Anr. v. State of Assam, so far as investigating officer is concerned, the court in para 33 has directed the Director General of Police, State of Assam and the Director General of Health Services, State of Assam to take disciplinary action against the Sub-Inspector, whether in service or had since retired. It was further directed that if the investigating officer was not in service then action was to be taken for deduction/stoppage of his pension in accordance with the service rules. It was also directed that the plea of limitation, if any, under the relevant rules would not operate as the departmental inquiry would be conducted in furtherance of the order of this court. Similar action was directed to be taken against the medical officer concerned. In a recent pronouncement reported at (2014) 5 SCC9 108, State of Gujarat v. Kishanbhai & Ors., the Supreme Court has taken even more serious view of the matter. So far as incarceration, indictment and prosecution are concerned, the impact thereof is best stated in the words of the Supreme Court in paras 19 and 20 of the judgment which read thus: the consequences of wrongful time there is an acquittal, 19. Every the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the respondent- accused innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the the committed lapses by Crl.A.No.395/2000 Page 45 of 56 his suffering prosecuted, investigating/prosecuting teams. If he has escaped, despite

being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long-drawn litigation, spanning over a decade or more. The expenses incurred by an accused in his defence can dry up all his financial resources - ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

20. Numerous petitions are filed before this Court praying for anticipatory bail (under Section 438 of the Code of Criminal Procedure) at the behest of persons apprehending arrest, or for bail (under Section 439 of the Code of Criminal Procedure) at the behest of persons already under detention. In a large number of such petitions, the main contention is of false implication. Likewise, many petitions seeking quashing of criminal proceeding (filed under Section 482 of the Code of Criminal Procedure) come up for hearing day after day, wherein also, the main fraudulent entanglement/involvement. In matters where prayers for anticipatory bail or for bail made under Sections 438 and 439 are denied, or where a quashing petition filed under Section 482 of the Code of Criminal Procedure is declined, the person contention It is of Crl.A.No.395/2000 Page 46 of 56 to concerned may have suffer periods of incarceration for different lengths of time. They suffer captivity and confinement most of the times (at least where they are accused of serious offences), till the culmination of their trial. In case of their conviction, they would continue in confinement during the appellate stages also, and in matters which reach the Supreme Court, till the disposal of their appeals by this Court. By the time they are acquitted at the appellate stage, they may have undergone long years of custody. When acquitted by this Court, they may have suffered imprisonment of 10 years, or more. When they are acquitted (by the trial or the appellate court), no one returns to them what was wrongfully taken away from them. The system responsible for the administration of justice is responsible for having deprived them of their lives, equivalent to the period of their detention. It is not untrue, that for all the wrong reasons, innocent persons are subjected the

ignominy of criminal prosecution and to suffer shame and humiliation. Just like it is the bounden duty of a court to serve the cause of justice to the victim, so also, it is the bounden duty of a court to ensure that an innocent person is not subjected to the rigours of criminal prosecution. to suffer (Emphasis by us) 10. The court further issued the directions with regard to the procedure which the investigating agency must adopt in a criminal case which read thus : 21. The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct that on the completion of the Crl.A.No.395/2000 Page 47 of 56 that investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured the evidence gathered during investigation is truly and faithfully utilised, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigours of criminal prosecution. By following the above procedure, in most criminal prosecutions, the agencies concerned will be able to successfully establish the guilt of the accused. (Emphasis by us) 11. The court did not stop at issuing directions as to the manner in which collected by the investigating agency should be examined but even examined the impact of an acquittal on the justice delivery system. Imperative directions were issued by the court with regard to an order of acquittal in para 22 to 24 of the judgment which read as follows : 22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that the cause of served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home justice is Crl.A.No.395/2000 Page 48 of 56 training programmes for for programmes officials. The Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments

should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher senior training investigating/prosecuting above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence sensitive matters

CrI.A.No.395/2000 Page 49 of 56 permanently responsibilities, when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the from official concerned may be withdrawn investigative or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure

of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months. judgment shall be 24. A copy of transmitted by the Registry of this Court, to the Home Secretaries of all State Governments and Union Territories, within one week. All the Home the instant Crl.A.No.395/2000 Page 50 of 56 Secretaries concerned, shall ensure compliance with the directions recorded above. The records of consideration, the above direction, shall be maintained. (Emphasis by us) in compliance with that a copy of 12. It is evident from the above that the Home Department of every State was mandatorily directed to place a procedural mechanism whereby all orders of acquittal would be examined and failure of the prosecution in every case would be identified. The court had issued time bound directions for the creation of a Standing Committee in terms of para 22 of the judgment. The judgment of the Supreme Court had been passed on 7th of January 2014. As of now, almost two years and nine months have since passed which was more than sufficient period for such a Standing Committee to have been constituted. The creation of such a Committee would have rendered efficiency in the prosecution of criminal cases. judgment stand 13. We find transmitted in terms of para 24 of the said judgment to the Home Secretaries of all State Governments and Union Territories who were directed to ensure compliance with the directions. These directions would have been complied with by the Government of NCT of Delhi. In addition, the Supreme Court had mandated the 14. formulation of a training programme with six months of the judgment which was implemented and after implementation thereof, if any lapses are committed, the persons handling investigations/prosecutions would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

15. The court had also mandated in para 23 above that in case of an acquittal, investigating/prosecuting official(s) concerned responsible for such acquittal must the to be the Crl.A.No.395/2000 Page 51 of 56 necessarily be identified and a finding needed to be recorded in each case as to whether the lapse was innocent or blameworthy.

16. The court had also directed that each erring officer must suffer the consequences of his lapses by appropriate departmental action.

17. These directions certainly bind the respondents before us and compliance brooks no delay in the larger interest of investigation into criminal offences . We may note that it is purely on account of lack of transparency and accountability that is resulting in inefficiency, callous and irresponsible investigations leading to not only protraction in trials but unfortunate incarceration of innocents and long delays in the adjudication in criminal justice system or guilty persons going scot free.

18. We therefore, call Secretary, Ministry of Home Affairs, Government of India; Secretary, Home, Government of NCT of CRL.A. Delhi as well as the Commissioner of Police, Delhi; to place the report regarding the procedural mechanism put in place in terms of para 22; the training programme and its implementation with regard to the Delhi Police in terms of para 22 and the list of officials against whom action stands taken in terms of para 23 of the judgment in State of Gujarat v. Kishanbhai & Ors. before this court within three weeks from today.

19. Copy of this order be sent to the Secretary, Ministry of Home Affairs, Government of India; Secretary, Home, Government of NCT of Delhi and the Commissioner of police, Delhi. The above aspects shall be considered on receipt of the reports. Crl.A.No.395/2000 Page 52 of 56 145. There is another important aspect with regard to denial of complaints made to the police by telephone, which deserves to be considered. In this regard, in an order dated 18th October, 2016 passed in Cont.(Crl.) Case No.6/2016 Abdul Mabood & Anr. v. PS Tanwar we had directed as follows : 6. However, the above narration sets out a very difficult situation wherein a telephonic complaint by a citizen has either not been entertained or proof of the complaint having been made is not available. This situation can be avoided only if all calls made to Police Station are recorded and the records thereof are maintained. Learned senior counsel for the respondent and the petitioner submit that this would lend transparency and credibility to police action and would go in long way ensuring that the process of law is duly and strictly followed. The same would also obviate allegations of undue influence or

improper action which are made against police officials undertaking field duties and investigations. We are also informed that such practice is prevalent in several parts of the world and goes a long way in ensuring that due process of law is followed.

7. Pending further hearing and further directions in the contempt proceedings, we call for a report from the SHO of the Police Station with regard to the complaint made by the petitioner on 18th November 2015. Let a copy of this order also be sent to the Commissioner of Police to examine the feasibility of recording all calls made or received to or from the Police Station. A report in this behalf be filed before this court within four weeks from today. (Emphasis by us) Crl.A.No.395/2000 Page 53 of 56 146. Certain further aspects which would lend much efficiency to investigations have been brought to our notice. We set down hereafter these aspects which deserve to be considered by the authorities to ensure efficiency, expediency and accuracy in investigations as well as in procedural aspects of trials : (i) (ii) (iii) The biggest problem in trials is the attributed unreliability of statements of witnesses recorded under Section 161 of Cr.P.C. When the witnesses are later confronted with their statements recorded by the police, the witnesses claim either that they had disclosed the materials which do not find mention in Section 161 Cr.P.C. statement or that they had never stated the pointed out aspects. As a result objections of improvements in testimony over the statements under Section 161 Cr.P.C. are sustained by courts. Similarly the investigating agencies face allegations that disclosures are compelled and extorted. While witnesses go hostile, courts often accept the complaints of extorted disclosures against the investigating agencies on behalf of the defence. In order to obviate this, urgent steps need to be explored with regard to the interrogation rooms. (iv) Some countries have interrogation rooms with video recordings. Information is available that in Hong Kong, interrogation rooms are triangular in shape. One complete wall has been fitted with a mirror; the second side of the triangle has the door to the room while on the third wall, the video recording camera the interrogation is conducted in private, but it is under strict scrutiny and is recorded contemporaneously which would prevent any allegation of compulsion and force and would As such while is fitted. Crl.A.No.395/2000 Page 54 of 56 (v) obviate any allegation of padding or tampering. Adequate number of

such interrogation rooms have to be provided. Scientific evidence is being subjected to contamination and destruction. This could be avoided by providing Mobile Forensic Vans so that blood samples, fingerprints etc. could be taken and examined at the place of the incident itself. (vi) Given the advancements in technology and science, there can be increased dependence on such tools and evidence which would reduce the period of indictment and also induce objectivity into the prosecution evidence. (vii) Given available technology, there is no reason why the chargesheet as well as accompanying records are not filed in digital format by the use of internet with a centralized filing system in the courts. (viii) The court, the investigating agency and jail can maintain an electronic linkage for this purpose with the prisons. After filing in electronic format and its marking to a court, the same can be conveyed over the internet to the central prisons which would download the same and hand over hard copies as well as digital formats to the accused person. The prisons should have facilities for downloading the electronic material. Result 147. In view of the above, the judgment dated 17th May, 2000 whereby the appellant has been convicted in SC No.

arising out of FIR No.5

registered by police station Jahangirpuri is hereby set aside and quashed. As a result, the consequential order on sentence dated 23rd May, 2000 would also stand set aside. Crl.A.No.395/2000 Page 55 of 56 148. The bail bonds and surety bonds submitted by and on behalf of the appellant therefore, shall stand discharged.

149. In view of paras 145 and 146 above, let a copy of this judgment be sent to the Commissioner of Police, Delhi; Secretary (Home), Govt. of NCT Delhi; Home Secretary, Union Govt. of India; and the Director General of Prisons (Central Jail), Tihar through its Superintendent to enable them to examine the issues flagged.

150. We have been very ably assisted by Ms. Rakhi Dubey, learned amicus curiae and Mr. Varun Goswami, learned APP for the State who have incisively scrutinized the entire record and made submissions enabling us to pen this judgment. The appeal is allowed in the above terms. GITA MITTAL, J OCTOBER27 2016 aj P.S.TEJI, J Crl.A.No.395/2000 Page 56 of 56