

State Nct of Delhi vs.balram

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Court : Delhi

Decided On : May-05-2017

Appellant : State Nct of Delhi

Respondent : Balram

Judgement :

* + % CRL. L.P. 265/2017 STATE NCT OF DELHI IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:

5. h May, 2017

... Petitioner

BALRAM Through: Mr. Rajat Katyal, APP for State along with ASI Raj Kumar.
versus Through: None. Respondent CORAM: HON'BLE MR. JUSTICE
G.S.SISTANI HON'BLE MR. JUSTICE VINOD GOEL VINOD GOEL, J.

(ORAL) Crl.M.A. 7461/2017 (Exemption) 1.

2. Exemption allowed, subject to all just exceptions. The application stands disposed of. Crl.M.A. 7460/2017 (delay) 3. Though there is no justification for condonation of delay, but since we have heard the leave to appeal on merits as well, delay of 190 days in filing the leave to appeal is condoned.

4. The application is disposed of. CRL.L.P. 265/2017 5. The present leave to appeal has been filed by the State under Section 378 of the Code of Criminal

Procedure, 1973 (Cr.P.C.) assailing the judgment and order of acquittal dated 13.07.2016 whereby the respondent has been acquitted from all the charges framed against him. CrI. L.P.265/2017 Page 1 of 22 6. The factual matrix of the prosecution case is that on 12.02.2013, the respondent married Rekha (the deceased) according to Hindu rites and ceremonies. At the time of marriage, parents of deceased Rekha namely Sushila (mother) and Ram Swaroop (father) gave a double bed, television, gold ring, almirah and some utensils. However, the respondent was not satisfied. The respondent and his two sisters namely Guddan and Kiran (both juveniles) used to harass Rekha from time to time. The respondent made a demand of Rs.30,000/- and one cooler from the deceased. However, the parents of the deceased could not fulfil the said demands and the accused along with his sisters started harassing the deceased. On 28.07.2014, Rekha committed suicide in her matrimonial home. Complainant Sushila (mother of the deceased) suspected the respondent and his sisters for the death of Rekha and made a complaint; on the basis of which FIR No.444/2014 PS Ashok Vihar under Sections 498-A/304-B/34 of the Indian Penal Code, 1860 (IPC) was lodged on 30.07.2014.

7. The Court of Additional Sessions Judge framed the charge against the accused under Sections 304-B/498-A/34 IPC to which the accused pleaded not guilty and claimed trial.

8. To bring home the guilt of the respondent, the prosecution examined 24 witnesses including mother of the deceased Smt.Sushila (the complainant) (PW-16), father of the deceased Sh.Ram Swaroop (PW- 14), elder sister of the deceased Smt.Raj Kumari (PW-11), brother in law of deceased Sh.Pappu (PW-8), IO Inspector Sanjeev Kumar (PW- 24), Dr.Ajay Kumar, Sunder Lal Jain Hospital (PW-5), and Dr.R.K. Singh, Specialist (Forensic Medicine), BJRM Hospital (PW-15). CrI. L.P.265/2017 Page 2 of 22 9. Statement of the respondent was recorded by the learned ASJ under Section 313 Cr.P.C and in his defence, the accused person examined one witness, Amit Kumar (DW-1).

10. It is argued by the learned APP for the State that the learned Trial Court has erred in forming an opinion that the prosecution has failed to prove the case

against the respondent beyond reasonable doubt. He submits that the impugned judgment is against the evidence on record and the order of acquittal is illegal, arbitrary and contrary to law. It is argued that the Trial Court failed to appreciate that there were minor contradictions in the testimonies of the prime prosecution witnesses which do not go to the root of the matter and do not warrant acquittal of the respondent.

11. He submits that learned Trial Court has failed to appreciate that PW- 11, PW-14 and PW-16 were consistent in their statements made under Section 161 Cr.P.C and the statements made in court. Mr.Katyal submits that the trial court has failed to consider that the legislature has specifically inserted a presumption in Section 113-B of the Indian Evidence Act, 1872 providing that once it is shown that the woman was subjected to cruelty or harassment soon before her death in relation to demand of dowry, then it is presumed that such person caused the dowry death of the woman.

12. Learned counsel argued that the learned Trial Court grossly erred in not appreciating the fact that the material prosecution witnesses PW-8, PW-11, PW-14 and PW-16 consistently deposed that the respondent demanded a cooler and for that money was paid to the deceased. He argued that learned Trial Court erred in forming an opinion that as per the deposition of Smt.Raj Kumari (PW-11) and her husband Sh.Pappu CrI. L.P.265/2017 Page 3 of 22 (PW-8), they were doing the work of whitewashing and they had four children and it is not the case of PW-11 that she used to earn herself hence in that circumstances it is highly improbable that PW-11 had Rs.2000/- to pay to the deceased to purchase the cooler. He also argued that the learned trial court wrongly disbelieved and discarded the categorical deposition of PW-16 and was swayed by the fact that the deceased stayed for 15 months in her parental home out of 17 months of total matrimonial life of the deceased. He submits that it was this reason the accused and his sisters used to harass her for bringing insufficient dowry. Learned APP for State urges that the learned Trial Court failed to appreciate the testimony of PW-16 that deceased soon before her death called PW-16 and told her to send her brother Vijay and requested to return.

13. He submits that the Trial Court grossly erred in holding that it is not the case of prosecution that accused or his family demanded dowry at the time of marriage. He further submits that learned Trial Court wrongly appreciated the evidence and his conclusion is based on surmises and conjecture contrary to facts and evidence.

14. We have heard the learned APP for the State and examined the record.

15. Admittedly, the respondent married the deceased on 12.02.2013; The respondent along with his parents and sisters was living in a rented accommodation in house No.WP-231, Wazir Pur Village, Delhi; and Smt.Rekha committed suicide on 28.07.2014, i.e. within seven years from the date of their marriage.

16. As the present case pertains to the offences envisaged in section 304- B/498-A IPC, we deem it appropriate to extract the provisions for ready reference below: Crl. L.P.265/2017 Page 4 of 22 the purpose of 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 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- (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 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. the woman where 17. For making out an offence of dowry death under Section 304-B, the following ingredients have to be proved by the prosecution: Crl. L.P.265/2017 Page 5 of 22 (a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances; (b) such death must have occurred within seven years of her marriage; (c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and (d) such cruelty or harassment must be in connection with the demand for dowry.

18. Recently, the Honble Supreme Court in *Bajinath and Anr. v. State of Madhya Pradesh*, (2017) 1 SCC101 has observed as under: 25. The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section exposits cruelty as: (i) 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), or the woman, where such (ii) harassment or 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.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression dowry is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression cruelty, as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or Crl. L.P.265/2017 Page 6 of 22 harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the

two offences.

28. presumption as to dowry death in the following terms: Section 113-B of the Act enjoin a statutory 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). 29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite otherwise of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to invoke presumption to statutorily ordained CrI. L.P.265/2017 Page 7 of 22 The inaccessible recesses of life within legislative primature of demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above-referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. the prosecution of the rigour of the proof of the often practically the guarded confines of a matrimonial home and of replenishing the consequential void, by

according a presumption against the person charged, cannot be over- eased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty. relieving The Apex Court in *Rajeev Kumar v. State of Haryana*, (2013) 16 19. SCC640 propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. Reference can also be given to earlier decision of the Apex Court in *K. Prema S. Rao v. Yadla Srinivasa Rao*, (2003) 1 SCC217 to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that soon before her death, the deceased was subjected to cruelty and harassment in connection with the demand for dowry. 20. The crucial question is whether the deceased was subjected to cruelty or harassment by the accused person soon before her death and such cruelty or harassment was in connection with demand for dowry as CrI. L.P.265/2017 Page 8 of 22 required to be proved by the prosecution under section 304-B of IPC. In this regard, we proceed to analyse the testimonies of the prime prosecution witnesses.

21. Sushila (PW-16) testified that on 12.02.2013, marriage of her daughter was solemnised with the respondent in Guhani, District Hamir Pur, Madhya Pradesh, and she spent Rs.3 lacs in the marriage. She had given gold ear rings, silver hathposh, silver perposh, utensils amounting to Rs.12,000/-, double bed, godrej almirah, colour T.V. 22, etc. Bills relating to the some of the items were also given to her daughter at the time of marriage which are Ex.P1 to Ex.P4. Before the marriage, her daughter did course of stitching and after the marriage her daughter resided with her in Delhi for about 15 months. Her daughter intended to continue her beautician training. In the month of February, 2014, she went to her matrimonial home at Ashok Vihar, Delhi and after one month on the occasion of Navratri she came to her house along with her sisters in law namely Guddan, Kiran, Chandni and Roshni. After some time she went away from her house to her matrimonial home and at that time, she was happy. After one month, she again

came to her house and she found her upset and tense and on being asked she told her that her husband has been demanding Rs.30,000/-. She stayed in her house for one month. The respondent came to take the deceased and she advised the respondent not to harass her daughter and he took the daughter with him.

22. PW-16 further testified that

days prior to the festival of Raksha Bandhan, the deceased talked to his brother Vijay asking him to take her back from the matrimonial home and second day on receiving the call from the deceased, she sent her children namely Arti and Ravi to bring deceased Rekha back to her house. They also found the deceased upset and that the deceased told them to send her brother Vijay to bring her back from her matrimonial home. PW-16 further stated that she talked to her daughter Rekha on telephone and told her that her brother will come to take her back from matrimonial home.

23. Sushila (PW-16) stated that one day prior to the death of her daughter, the deceased went to the house of Raj Kumari (PW-11) and at that time the deceased was very hungry as she had not taken meal for the last three days. The deceased told Raj Kumari that she was upset as her husband/respondent told her Tere Maa Baap Ne Shadi mein Kuch Nahi Diya/your mother-father have not given anything in marriage. This was conveyed to her by Raj Kumari (PW-11).

24. PW-16 further testified that on Monday, the sister in law of the deceased Guddan made a telephonic call to her elder son in law Pappu (PW-8) informing him that deceased had committed suicide by hanging herself. PW-8 conveyed her this information. She stated that her daughter committed suicide as the respondent used to harass her on pretext of demand of Rs.30,000/- from her. Since the witness did not support the case of the prosecution therefore she was cross-examined by the Additional Public Prosecutor wherein she has admitted all the suggestions given by him that the respondent and his sisters were demanding Rs.30,000/- and a cooler from the deceased during her stay at Guhani, District Hamir Pur, Madhya Pradesh. She also admitted that one week prior to the date of incident, the deceased told her telephonically that the respondent and his sisters were harassing her for Rs.30,000/-. Crl. L.P.265/2017 Page 10 of 22 25. In her

cross-examination, PW-16 admitted that the marriage of deceased Rekha with the respondent was finalized in the year 2009. She stated that the proposal was cancelled by them. She further admitted that the deceased asked them to marry her with the respondent after three years and then volunteered to say that they used to talk on phone as her daughter was in a love affair with respondent and they were not ready to marry the deceased with the respondent. She also admitted that her statement was recorded by the Police in the Ashok Vihar Police Station after two days of the death of her daughter. She stated that her elder daughter Raj Kumari (PW-11) did not talk to her on telephone on the date of the incident or one or two days prior to the date of incident.

26. Sh. Ram Swaroop (PW-14) testified that his daughter Rekha was married to respondent on 12.02.2013 as per Hindu rites and ceremonies and he gave all dowry articles like bed, sofa, almirah, colour TV, one gold ring and spent Rs.3 lacs in the marriage. He did not give any cash in the marriage. After marriage, his daughter lived in matrimonial home for three months. He stated that his daughter used to complain him about the bad behaviour of the respondent and his two sisters on telephone. He further testified that respondent demanded Rs.30,000/- for purchasing a bike/motorcycle and Rs.2000/- for purchasing cooler from daughter and this fact was told by the deceased to her mother (PW-16). He stated that his daughter managed to bring Rs.2000/- from his elder daughter Raj Kumari who is residing at Wazir Pur Industrial Area with her family and thereafter the cooler was purchased. He stated that Kiran and Guddan, sisters of the accused, used to torture his daughter for not doing household work CrI. L.P.265/2017 Page 11 of 22 properly and for bringing insufficient dowry. He stated that his daughter was subjected to cruelty for demand of dowry by the respondent and his two sisters. The deceased had gone to the house of his elder daughter Smt.Raj Kumari (PW-11) two days prior to the incident and next day she died by hanging. He stated that neither the respondent nor his family members informed them about the death of his daughter despite having his mobile number with them.

27. In his cross-examination, PW-14 stated that he was working as a guard with a salary of Rs.7000/- per month and his wife was working as a maid and earning Rs.6000/- per month. His daughter Rekha/deceased used to do stitching work at

home and also used to visit beauty parlour where she was working as a beautician. He stated that the respondent used to visit their house frequently. He further stated that his daughter and respondent were happy and there was no issue of dowry till six or seven months time and during this period his daughter and the respondent used to talk on telephone happily. He also stated that when his daughter Rekha was taken to her matrimonial home in Delhi by respondent and his family there was no demand of dowry by them. He admitted that the document (Ex.P-4) does not bear the name of the shopkeeper or the customer or the signature of the shopkeeper. He stated that his statement was recorded by the Police officials after a day or two from the date of the incident. He stated that his daughter was happy when she used to visit on all occasions. She never told them about her matrimonial life. She never told about any demand by the respondent or his family and whenever her daughter used to talk to him she used to say Mummy Se Baat Kara Do/Let me talk to mother and nothing else. CrI. L.P.265/2017 Page 12 of 22 28. This witness was also cross-examined by the learned Additional Public Prosecutor and in his cross-examination he stated that he deposed so as he could not understand the question put to him by the learned defence counsel.

29. Smt.Raj Kumari (PW-11), the elder sister of the deceased, testified that her father gave dowry articles in her marriage with the respondent as per his capacity. After the marriage, her sister went to her matrimonial home at village Gohani, Madhya Pradesh, where she remained for about days and thereafter she came back at Wazir Pur Village, Ashok Vihar, Delhi, and remained in matrimonial home for three months. She stated that whenever deceased came to her house, she never came alone and her sister in law used to accompany her. Her sister was never left alone for a single moment with her and she could not say anything about her plight. She further testified that one day prior to the date of incident, the deceased visited her house with her sister in law. The deceased was very hungry and she got samosas for her sister and she found her very sad by her facial appearance. She stated that the respondent and his two sisters Sapna and Kiran used to torture her sister by commenting that she used to give more attention towards her (PW-11) and not towards respondent and his family members. Her sister used to be tortured and harassed for not bringing sufficient dowry and for not doing household work.

30. This examination in chief of PW-11 was recorded on 24.02.2015 and on that day her further examination in chief was deferred by the learned ASJ on the request of learned Additional Public Prosecutor.

31. In her further examination in chief of PW-11 recorded by the learned ASJ on 24.02.2015, it has nowhere come that the deceased at any CrI. L.P.265/2017 Page 13 of 22 point of time conveyed to her elder sister i.e. PW-11 that the respondent was demanding Rs.30,000/- or Rs.2000/- for purchase of cooler or that she was being harassed by the respondent or his sisters. However, on the next date when her further testimony was recorded by the learned ASJ on 25.02.2015, she improved her statement and testified that one day prior to the date of incident, her sister Rekha came to her house and her face appeared to be in weeping condition and on being asked she told her that her husband demanded Rs.30,000/-. She again stated that whenever deceased came to her house her sister in law Kiran and Guddan accompanied her and due to their presence she could not tell her all the grievances.

32. PW-11 further stated that on Monday she attended the phone call of Roshni (again said does not remember the name) sister in law of her deceased sister Rekha communicating to her that Rekha had committed suicide by hanging herself. She immediately reached Wazir Pur Village where Rekha was residing with her in laws. She found a police official present there and informed her that the deceased had been taken to Sunder Lal Jain Hospital. She testified that she along with Roshni, sister in law of her sister, reached Sunder Lal Jain Hospital where her father in law and sister in law namely Guddan were present there. She testified that her sister committed suicide as her husband and sisters in law Guddan and Kiran used to harass her on account of demand of dowry as they asked her to bring Rs.30,000/- and a desert cooler from time to time. She stated that when the respondent and his sisters Guddan and Kiran demanded cooler and money from her sister Rekha, she asked her sister to accompany her husband to purchase the cooler and accordingly, they CrI. L.P.265/2017 Page 14 of 22 purchased the cooler and provided the same to the respondent. But she could not tell that who had paid the money for purchasing the cooler.

33. In her cross-examination, she stated that her sister Rekha went to her matrimonial home at village Guhani, Madhya Pradesh, soon after their marriage where they remained for 10 days and thereafter her brothers brought Rekha back at the parental home at Chhattarpur, Madhya Pradesh, where she stayed for about 15-20 days. Subsequently, their parents brought the deceased to Meera Bagh, Paschim Vihar, Delhi, where she lived about 15 months. She further stated that her sister wanted to do the course of beautician as per understanding with her in laws and for that reason she remained with her parents for 15 months. During this period, the deceased did not visit her place and she used to visit her parents house occasionally on festivals and at that time Rekha was happy. She further testified that Rekha used to talk to her on telephone when she was in her matrimonial home. She stated that Rekha had her own mobile phone but she could not tell the mobile number of the deceased. She stated that her sister told her that she was not given money by the respondent or his family members for her day-to-day expenses and they used to tell her to bring money from her parents. She stated that her statement was recorded after two or three days of the death of her sister in the Police Station.

34. Pappu (PW-8) (husband of PW-11) testified that after sometime of marriage, the deceased used to remain upset as whenever she demanded money from respondent or her in laws for her expenses, she was not provided with anything. The respondent used to demand money from the deceased. At one point of time the deceased came to CrI. L.P.265/2017 Page 15 of 22 his wife who gave Rs.2000/- for purchasing a cooler and the respondent used to ask Rekha to bring money from her parents. Her two sisters in law namely Kiran and Guddan also used to harass her for bringing insufficient dowry and not doing household work properly. He stated that the respondent demanded Rs.30,000/- from the deceased Rekha who asked her parents to fulfil the demand of the respondent. Ten days prior to Raksha Bandan, the deceased came to his house and informed them that the respondent and two sisters-in- law had asked her parents to bring money. The deceased then went to her matrimonial home and next day, she committed suicide.

35. In his cross-examination he stated that he did not tell the police that he paid Rs.2000/- to Rekha for purchasing a cooler. He stated that before the police in his statement Ex.PW-8/DA under Section 161 Cr.P.C. that one day prior to the incident Rekha visited his house for demand of money but when he was confronted with the statement Ex.PW- 8/DA it was not found so recorded. He stated that he received the information about the death of the deceased from his brother in law and when he was confronted with the statement Ex.PW-8/DA recorded under Section 161 Cr.P.C., it was not found so recorded.

36. From the deposition of PW-16, it comes out that the deceased had a love affair with the respondent and they were opposed to their marriage and marriage proposal could not be materialized in the year 2009. They (PW-14 and PW-16) could not dissuade their daughter from marrying the accused which was solemnized on 12.02.2013.

37. It is not reflected in the testimony of PW-14 and PW-16 that at the time of marriage, the respondent or his family members demanded any dowry. It is deposed by PW-14 that he did not give any cash in the CrI. L.P.265/2017 Page 16 of 22 marriage. In his statement recorded by the I.O. during investigation PW-14 and PW-16 did not say that they had given articles in the marriage or spent Rs.3 lacs. So, both these witnesses have made material improvements which make their testimony and hence, are unworthy of reliance.

38. Even otherwise, PW-14 was earning Rs.7000/- per month as Guard and PW-16 was earning Rs.2000/3000/- per month as maid. They had six children. They were residing in rented accommodation. PW-16 stated that they could not fulfil the demand of Rs.2000/- for cooler as they were poor. So, it is highly improbable that they had spent Rs.3 lacs in the marriage. Even the bills (Ex.P-1 to Ex.P-4) are only estimate and there was no name of shop, customer or signatures. Prosecution could not prove that PW-14 and PW-16 had spent Rs.3 lacs or gave dowry articles in the marriage.

39. The marriage was solemnized in February 2013. PW-16 deposed that in February 2014, the deceased went to her matrimonial home and in Navratras (i.e. April 2014), she came to house of PW-16 with her four sisters-in-law Guddan,

Kiran, Chandni and Roshni. After some stay, she returned to matrimonial home. She was happy at that time. PW- 16 claimed that after one month, i.e. May 2014, she was upset and tense as the respondent was asking her for Rs.30,000/-. PW-16 expressed her inability to pay being poor. The deceased stayed for one month and when the respondent came to take her, she advised the respondent not to harass the deceased and she sent her daughter with the respondent. However, PW-14 in his deposition on 24.02.2015 did not state that his daughter conveyed demand of Rs.30,000/- for motorcycle and Rs.2000/- for cooler. It was conveyed by deceased to CrI. L.P.265/2017 Page 17 of 22 PW-16. So deposition of PW-14 is hearsay. There were only general allegations of dowry against the respondent and his juvenile sisters. Rather PW-14 stated in his cross examination that respondent used to visit them frequently. The deceased and respondent attended the marriage of niece of PW-14. He admitted that whenever he called respondent, he used to come. The deceased and respondent used to talk happily over the phone. There was no demand of dowry when his daughter was taken to matrimonial home in Delhi. She was happy and she used to come to house of PW-14 and PW-16 on festivals and all occasions. She admitted that she never told PW-14 about any demand of dowry from the respondent or his family. She also admitted that she never complained to him about any problem from her in laws or husband. Had there been any demand by the respondent or his sisters, the deceased would have told her father PW-14.

40. PW-11 in her testimony deposed that her matrimonial home was near to the matrimonial home of the deceased and she used to visit her house. During the said visit, the deceased was always accompanied with her sisters-in-law. One day prior to the incident, the deceased visited her along with her sisters in law and told her that accused demanded Rs.30,000/-. At the same time, PW-11 stated that the deceased was never left alone to tell her plight. If that was so, then, how could the deceased tell about the said demand to her that too in presence of her sisters-in-law. Therefore, the testimony of PW-11 to this effect is not reliable.

41. PW-8 stated that the deceased used to come to their home every 15 or 20 days whereas PW-11 stated that she visited them only 2 or 3 times during her stay of 2-3 months in matrimonial home. CrI. L.P.265/2017 Page 18 of 22 42. PW-11

stated that the deceased stayed at parental home for 15 months as there was understanding that deceased wanted to do beautician course and so it cannot be said that she remained with parents due to harassment. Even during this stay PW-14 stated that they were always happy and there was no demand for dowry.

43. It has come in the deposition of PW-16 that after the marriage the deceased stayed in her parental home and village. It has also come in her deposition that in February 2014 the deceased went to her matrimonial home and came back after one month i.e. in March, 2014 and left for matrimonial home and she found her to be happy thereafter. The deceased again came to her parental house in April, 2014 and found her upset and on asking, the deceased stated that the respondent had demanded Rs.30,000/-. But it has come in the deposition of PW-14, who is the father of the deceased, that it was not conveyed to him. According to PW-16 the demand of Rs.30,000/- was allegedly made for the first time in April, 2014 but it is surprising how the mother of the deceased (PW-16) sent her back with the respondent.

44. It has come in the testimony of PW-11 that one day prior to the incident, the deceased came to her house with her two sisters in law and her sister was never left alone even for a single moment and therefore, the question of conveying to PW-11 that the respondent had demanded Rs.30,000/- from her is highly improbable. Further it has come in the testimony of PW-14 that the deceased had visited his elder daughter two days prior to the incident and whereas PW-11 has stated that the deceased had visited her one day prior to the incident in question and therefore, the testimony of the prosecution witnesses are CrI. L.P.265/2017 Page 19 of 22 contrary to each other and are not believable. This makes the alleged visit of the deceased to the house of the PW-11 prior to the incident in question doubtful.

45. Regarding the purchase of cooler, PW-16 deposed that PW-11 arranged the cooler and gave it to the respondent but PW-11 could not tell the date when it was done. On the other hand, PW-14 testified that the deceased managed Rs.2000/- from PW-11 and then purchased the cooler. PW-11 could not tell as to who paid the amount for purchase of the cooler. PW-8 deposed that deceased came to his

wife (PW-11) who gave her Rs.2000/- to buy a cooler. Therefore, the testimony of the prosecution witnesses regarding the demand of Rs.2000/- for cooler is contradictory and unworthy to believe.

46. In her statement initially recorded by the learned ASJ on 24.02.2015, Raj Kumari (PW-11) has not stated that the deceased conveyed to her that the respondent and his sisters were demanding Rs.30,000/- or Rs.2000/- for cooler. Generally, it is the defence who used to get the matter adjourned and deferred if witness is not supportive. Even Section 309 Cr.P.C. mandates that witness should be examined on the same days as far as possible. But in this case to influence the witness it is the Public Prosecutor who got the case adjourned as PW-11 was not supporting. On the next day i.e. 25.02.2015 in her further statement she has made all improvements and testified that her sister told her that the respondent had demanded Rs.30,000/- from her. When she had stated that both sisters in law of the deceased were not leaving the deceased alone even for a single moment with her, conveying this information was highly improbable and therefore, the CrI. L.P.265/2017 Page 20 of 22 testimony of PW-14 and PW-16 is rightly found to be hearsay by the learned Trial Court.

47. PW-11 has admitted that she attended the call of Guddan, sister of the respondent, who informed her about the death of the deceased by hanging which was conveyed to the parents of the deceased on the date of the incident, but the IO had recorded the statements of PW-14 and PW16 on 30.07.2014, i.e. two days after the incident and in those statements they have not stated anything against the respondent and his sisters. The statement of PW-11 was recorded even on 06.08.2014, i.e. after 9 days of the incident. If the deceased had visited PW-11 one day prior to the date of incident and conveyed to her the demand of Rs.30,000/- she would not have remained silent from 28.07.2014 till her statement was recorded and she had not taken any prompt action against the respondent. Even the first statements of PW-14 and PW16 recorded under Section 161 Cr.P.C. are silent about the demand of Rs.30,000/- and the cooler allegedly made by the respondent and his sisters. Therefore, the prosecution has not proved its case against the respondent and his sisters that the deceased was ever treated by them with cruelty within the meaning of Section 498-A IPC.

48. It has been held by a Division Bench of this Court in Kanwar Pal v. Shakuntala and Ors., 2015 IV AD (Delhi) 450, that to establish the offence under Section 304-B IPC of dowry death, the presumption under Section 113B of Evidence Act cannot be raised against an accused until independently the offence under Section 498A IPC is proved by leading evidence to the specific allegation with regard to time and date of such demand and cruelty and further establishing the Crl. L.P.265/2017 Page 21 of 22 proximity live link between the effect of cruelty based on dowry demand and the death of the victim. Therefore, the prosecution has failed to prove that the respondent along with his juvenile sisters have ever treated the deceased with cruelty within the Section 498-A IPC and therefore, the presumption under Section 113-B IPC of dowry death cannot be raised against the respondent.

49. Even otherwise, it is settled law that the appellate court may only interfere in an appeal against acquittal when there are substantial and compelling reason to do so [See Sheo Swarup v. King Emperor, AIR 1934 PC227(2); M.G. Agarwal v. State of Maharashtra, AIR 1963 SC2000(paragraph 16 and 17); Tota Singh and Anr. v. State of Punjab, AIR 1987 SC108 (1987) 2 SCC529(paragraph 6); State of Rajasthan v. Raja Ram, (2003) 8 SCC180(paragraph 7); and Chandrappa v. State of Karnataka, (2007) 4 SCC415(paragraph 42)].

50. Therefore, the findings recorded by the learned Trial Court do not warrant any interference. The learned Trial Court has rightly acquitted the respondent from the charges 498-A/304-B IPC.

51. Thus, the leave to appeal is dismissed being without any merit. VINOD GOEL, J.

G. S. SISTANI, J.

MAY5 2017 // /jitender Crl. L.P.265/2017 Page 22 of 22

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