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Jamadar Ojha vs.state & Ors.

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Court : Delhi

Decided On : Jun-01-2017

Appellant : Jamadar Ojha

Respondent : State & Ors.

Judgement :

* % + + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 1396/2012 JAMADAR OJHA Decided on:

1. t June, 2017 ..... Appellant Represented by: Ms. Savita Singh, Adv. STATE & ORS. versus Represented by: Ms. Rajni Gupta, APP for State ..... Respondent with ASI Tulli Ram, PS Badarpur. Mr. Bharat Chugh, Adv. (Amicus Curiae) for R-2. CRL.A. 134/2013 RAJINDER TIWARI ..... Appellant Represented by: Mr. Bharat Chugh, Adv. (Amicus Curiae) STATE versus Represented by: Ms. Rajni Gupta, APP for State ..... Respondent with ASI Tulli Ram, PS Badarpur. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. Vide impugned judgment dated 29th August, 2012, Rajinder Tiwari and Sanjay Tiwari were convicted for offences punishable under Sections 498A/304B IPC. Vide order on sentence dated 15th September, 2012 Rajinder Tiwari and Sanjay Tiwari were sentenced to undergo rigorous Crl.A Nos. 1396/2012 & 134/2013 Page 1 of 19 imprisonment for a period of three years and to pay a fine of `10,000/- each for offence punishable under Section 498A IPC and rigorous imprisonment for period of seven years for offence punishable under Section 304B

IPC. In Crl. A. 134/2013, Rajinder Tiwari and Sanjay Tiwari had challenged their conviction and order on sentence. Since Sanjay Tiwari died having committed suicide on 2nd March, 2017, thus, Crl.A. 134/2013 challenging conviction and order on sentence stands abated qua him and survives only qua Rajinder Tiwari.

2. In Crl.A. 1396/2012, the prayers made by Jamadar Ojha, father of the deceased was for setting aside acquittal of Mohini Tiwari, mother in law of the deceased and enhancement of sentence of Rajinder Tiwari and Sanjay Tiwari. Though, in the alternative, charge for offence punishable under Section 302 IPC was framed against the accused, learned Trial Court convicted Sanjay Tiwari and Rajinder Tiwari only for offence punishable under Sections 498A/304B. No leave to appeal was sought either by the State or Jamadar Ojha against acquittal of Rajinder Tiwari and Sanjay Tiwari for offence punishable under Section 302 IPC. Even in respect of challenge to the acquittal of Mohini Tiwari, this Court vide order dated 8th July, 2016 noted that no leave to appeal against acquittal has been sought in Crl.A. 1396/2012 and without seeking leave to appeal, the appeal cannot be entertained against acquittal in terms of the decision of the Supreme Court reported as 2015(15) SCC613Satyapal Singh Vs. State of Madhya Pradesh. Thus, Crl.A. 1396/2012 was confined to enhancement of sentence qua conviction of Rajinder Tiwari and Sanjay Tiwari for offence punishable under Section 304B IPC as for offence punishable under Section 498A IPC, Rajinder Tiwari and Sanjay Tiwari were awarded the maximum sentence i.e. Crl.A Nos. 1396/2012 & 134/2013 Page 2 of 19 imprisonment for a period of three years. As noted above, Sanjay Tiwari died on 2nd March, 2017, thus, Crl.A.1396/2012 is now confined only to the extent of enhancement of sentence of Rajinder Tiwari for offence punishable under Section 304B IPC.

3. Learned Amicus Curiae for the appellant Rajinder Tiwari challenging his conviction for offences punishable under Sections 304B/498A IPC submits that even as per the evidence of the prosecution witnesses it has not been proved that there was any cruelty for demand of dowry. There was no previous complaint alleging demand of dowry or cruelty on that count. Only bald and vague allegations of dowry demand have been made. The marriage between Sanjay Tiwari and the deceased was a low key affair. There is no allegation that either at

the time of marriage or prior thereto there was any demand of dowry. The only allegation against Rajinder Tiwari as deposed to by father of the deceased was that some time after the marriage, Tata Sumo Car was demanded so that Sanjay Tiwari could ply the same and earn his livelihood. Further even as per brother of the deceased, the said demand by Rajinder Tiwari was made six-seven months after the marriage. The deceased died after more than 4 years of marriage, thus a demand made four years prior to the date of death cannot be said to be a dowry demand soon before death. Therefore as per the evidence of the prosecution, no demand was made by the appellant soon before the death, thus he cannot be convicted for offence punishable under Section 304B IPC. To raise a presumption under Section 113B of the Evidence Act, the prosecution is required to substantiate the ingredients of the offence by direct and convincing evidence as held by the Supreme Court in the decision reported as (2017) 1 SCC101Baijnath & Ors. Vs. State of Madhya Pradesh and in Crl.A Nos. 1396/2012 & 134/2013 Page 3 of 19 the absence of prima facie evidence being proved by the prosecution, no presumption can be raised and the appellant was not required to rebut the same. Though the SDM claims that he went to the spot and recorded the statement of witnesses, however, this fact is belied by the prosecution witnesses themselves who stated that SDM never came to the spot and they went to his office whereafter he recorded their statements. It is contended that even as per DW-2 and DW-3, the deceased was in her parental home when the incident took place and was brought to the matrimonial home later. Further in his statement under Section 313 Cr.P.C, appellant Rajinder Tiwari stated that he was not present at home at the time of incident and was in his godown which fact has been proved by the testimony of DW-5. Learned Trial Court erroneously brushed aside the statement of defence witnesses. Reliance is placed on the decision of Supreme Court reported as (1981) 2 SCC166Dudh Nath Pandey Vs. State of Uttar Pradesh and of this Court reported as 2009 SCC OnLine Del 2803 Pradeep Saini & Anr. Vs. State to contend that evidence of defence witnesses is also entitled to the same weightage.

4. Learned APP for the State has taken this Court through the testimony of the father and mother of the deceased examined as PW-1 and PW-3 respectively. In her testimony, mother of the deceased stated that whenever her daughter used to

visit their house she complained about the ill treatment meted out to her, by her in-laws including the appellant herein. She also clarified that she did not lodge any complaint against the in-laws of her daughter for the cruelty meted out to her as they wanted to save the marriage between the deceased and her husband. That the deceased suffered continuous ill treatment is fortified from the fact that the deceased was left at Crl.A Nos. 1396/2012 & 134/2013 Page 4 of 19 the parental home and taken back only in January, 2005 i.e. one month prior to the date of incident which took place in the intervening night of 8th and 9th February, 2005. Elder daughter of the deceased was left at the parental home of deceased on 8th February, 2005. Defence of the appellant that the deceased was brought from parental home to matrimonial home as deposed to by DW-2 and DW-3 is falsified by the evidence of father of the deceased who stated that on 7th February, 2005 his daughter was at the house of her in- laws. The plea of alibi of appellant cannot be accepted as DW-5 is an interested witness.

5. Learned counsel for the complainant supporting the contentions of learned APP for the State submits that there has been a continuous course of harassment to the deceased, who died an unnatural death, which was homicidal in nature. She further states that in view of the nature of injuries and the manner in which death of the deceased was caused, it is a fit case where the sentence of appellant Rajinder Tiwari be enhanced to life imprisonment. Reliance is placed on the decisions reported as (1998) 6 SCC460Santosh Rani Jain & Anr. Vs. State of West Bengal and (2006) 10 SCC681Trimukh Maroti Kirkan Vs. State of Maharashtra.

6. Process of law was set into motion on 9th February, 2005 around 4:00 P.M., when Ct. Parveen along with SI Amar Singh went to F-117, Harsh Vihar, Hari Nagar, Badarpur where a dead body of a lady was found lying in the courtyard of the house. SI Amar Singh got the dead body photographed and informed the SHO and concerned SDM about the occurrence. He handed over the dead body to Ct. Praveen with the direction to take it to the mortuary, AIIMS Hospital for getting it preserved. Investigation of the case was entrusted to Insp. M.S. Poonia who was posted as Addl. SHO at PS Crl.A Nos. 1396/2012 & 134/2013 Page 5 of 19 Badarpur. R.K. Meena (SDM Kalkaji) recorded the statement of Jamadar Ojha,

father of the deceased (Ex. PW-1/A) and Ajay, brother of the deceased (Ex. PW-4/B). On the statement of Jamadar Ojha, FIR No.96/2005 was registered under Sections 498A/304B/34 IPC at PS Badarpur (Ex.PW-2/A). Jamadar Ojha handed over three photographs of marriage of deceased with Sanjay Tiwari which were seized vide seizure memo Ex. PW-9/A. Rajinder Tiwari and Sanjay Tiwari were arrested vide arrest memos Ex. PW-9/A-1 and Ex. PW-9/B respectively. After the post mortem of the body was conducted, viscera and blood sample of the deceased were handed over to SI Amar Singh vide memo Ex. PW-11/A. On 10th February, 2005, disclosure statements of Sanjay Tiwari and Rajinder Tiwari were recorded vide memos Ex. PW-9/C and Ex. PW-9/D respectively.

7. PW-1 Jamadar Ojha stated that on 25th February 2001, the deceased was married to Sanjay Tiwari as per Hindu Customs and rites. It was an arranged marriage and they had spent `3.5 lacs on the marriage. After the marriage, Rajinder Tiwari, father-in-law of deceased, demanded `1.5 lacs for purchasing Tata Sumo but he refused to pay. Rajinder Tiwari threatened him and stated agar tum mujhe paisa nahi doge toh tumhari ladki ko chudwa dunga. In October 2004, second daughter of the deceased was born after which Mohini and Archana (sisters-in-law of the deceased) refused to take the deceased back and dropped her at her parental home. In January 2005, Sanjay Tiwari took the deceased to his house. On 8th February, 2005, Sanjay Tiwari left his elder daughter Manvi at his house. On 9th February, 2005 at about 5.30-5.45 A.M., he received a call from the daughter of Rajinder Tiwari informing him that the deceased had fallen from the roof. He along with his wife Kushalwati and son Omkar reached the house of accused Crl.A Nos. 1396/2012 & 134/2013 Page 6 of 19 persons and found the body of the deceased on the staircase. He asked Sanjay Tiwari why he had not taken the deceased to the hospital when she had fallen from the roof. Thereafter, Sanjay Tiwari called a TSR and they took the deceased to Safdarjung Hospital. Sanjay Tiwari stopped them at the gate of Safdurjang Hospital and took the deceased inside the hospital. After some time, he brought back the deceased at the gate and informed that the doctor had declared deceased brought dead. The dead body of the deceased was brought back to the house of the accused persons. He suspected that the deceased was killed as they had noticed some marks on the neck of the deceased. In his cross-examination he denied the

suggestion that the deceased used to visit the house of the accused persons before marriage or Sanjay Tiwari used to visit their house. He also stated that during the Sagai ceremony in 2001, cash amount of `21,000/- was handed over to Rajinder Tiwari. His daughter used to tell him that the entire family of Sanjay Tiwari used to torture the deceased when he could not pay the money. Deceased also stated that the accused persons used to torture her by giving beatings, abusing and sometimes not providing her food.

8. PW-3 Smt. Kushalwati, mother of the deceased corroborated the statement of Jamadar Ojha. She further stated that the deceased used to complain that Rajinder Tiwari taunted her under the influence of liquor stating that the deceaseds parents had not given sufficient dowry in the marriage. The deceased had told her that Sanjay Tiwari was demanding four- wheeler vehicle (Van) for plying in school. Deceased had told her that her sisters-in-law used to beat and abuse her. The deceased used to mostly remain at their house, almost 20 days in a month. In her cross-examination, she stated that at the time of engagement, Rajinder Tiwari had demanded Crl.A Nos. 1396/2012 & 134/2013 Page 7 of 19 cash. At the time of Tika at the accused persons house, they had given Rs. 51,000/- to them. She denied the suggestion that before the marriage, the deceased was operated for an ailment in the neck. She denied the suggestion that after they came to the matrimonial house of the deceased from the hospital, Jamadar Ojha insisted that Rajinder Tiwari should transfer their property at the native place and in Delhi or pay `5 lacs for the daughters of deceased or deposit the same in the bank in name of the daughters of the deceased, otherwise he would make a complaint against them.

9. PW-7 Ajay Kumar, brother of the deceased corroborated the statements made by Jamadar Ojha and Kushalwati.

10. PW-5 Dr. Sudipta Ranjan Singh, Senior Resident, Department of Forensic Medicine, AIIMS stated that she was deputed to depose on behalf of Dr. M.G. Jayan, who had conducted the post-mortem on the body of the deceased, since he had left the hospital. She stated that she was conversant with the handwriting of Dr. M.G. Jayan. The post mortem report Ex. PW- 5/A was prepared by Dr. M.G.

Jayan. As per the report, the cause of death was asphyxia due to manual strangulation (throttling) of neck which was sufficient to cause death in ordinary course of nature. Time since death was about one day. As per the post mortem report, following ante mortem injuries were observed: i. Reddish brown coloured abrasion, crescentic shaped with concavity downwards over lower portion of left ear lobe in the anterior aspect of size 1.5 X1cm. ii. Reddish brown coloured abrasion, irregular shape place in submendibular region of size 1.7 X15 cm, measuring 2 cm from the midline and 1.5 cm from the lower jaw order. Crl.A Nos. 1396/2012 & 134/2013 Page 8 of 19 iii. Reddish brown coloured abrasion irregular shape in right submendibular region placed 1 cm obliquely downwards (lateral & interior) to the 2nd wound of size 2 X15 cm. iv. Reddish brown coloured abrasion, oval shape placed on right side of neck measuring 7 cm from the right mastoid and 5 cm from midline at the level of thyroid of size 2.5 X15 cm. v. Reddish brown coloured abrasion placed on left side of upper part of neck 2 cm interior and medial to the left mastoid of size 1.5 X1cm. vi. Abrasion, reddish brown coloured over right side of pelvic area in the lateral aspect of waist region of size 1.5 cm X1cm. vii. Reddish brown coloured abrasion of size 1.5 cm X1cm in the right lower back placed 2 cm horizontally from midline.

11. Rajinder Tiwari in his statement under Section 313 Cr.P.C. stated there were no strangulation marks on the neck of deceased. Around 5:30- 5:45 A.M. on 9th February, 2005, deceased alongwith Sanjay Tiwari and her parents came to his house. He was sleeping in his godown nearby. His younger daughter Dimple came to him and told him that the deceased was unwell, those people had come and asked him also to come. When he went there, TSR had come and deceased, her mother, Sanjay Tiwari and Raj Kumar, friend of Sanjay Tiwari, were seated in the TSR and they went away. He sat in his house. He did not know what happened thereafter.

12. DW-1 Smt. Shakuntala Devi, resident of the house opposite that of the accused persons, stated that on 9th February, 2005 at about 5.30 A.M., a lady (whose name she did not remember) was brought by her father, mother and Sanjay Tiwari. She went to fetch milk and when she returned, she saw public Crl.A Nos. 1396/2012 & 134/2013 Page 9 of 19 gathered. She did not know what

happened thereafter. In her cross- examination, she stated that Rajinder Tiwari had told her to give evidence and had told her what she had to depose.

13. DW-2 Shivaji Singh, former tenant of Rajinder Tiwari, stated that on 9th February, 2005 at about 5.30-6 A.M., father of the deceased and Sanjay Tiwari brought the deceased from her parental house. The deceased was unwell. Doctor came to the house and said that the condition of deceased was serious and she should be taken to the hospital. In the evening, he was informed that the deceased had died.

14. DW-3 Sanjeev Sharma stated that he was the husband of sister of Rajinder Tiwari. On 9th February, 2005, Dimple (sister of Sanjay Tiwari) came to call him at around 5:45-6:00 A.M. The deceased was with Mohini (mother of Sanjay Tiwari) who was making the deceased drink water. Dr. Ajay was checking the pulse of the deceased. The deceased was taken to the hospital in a TSR. At about 9:00-9:30 A.M., the accused persons along with the deceased and her family came and after half an hour police came and took the accused persons and the dead body away.

15. DW-4 Rajender Yadav stated that around 5:30-5:45 A.M. when he was in front of the house of Rajinder Tiwari, Sanjay Tiwari was coming holding a fair complexioned lady. When he enquired as to what had happened to her, Sanjay told him that she was ill. He did not know what happened thereafter.

16. DW-5 Bhagwan Singh stated he was plying rickshaw to transport goods of Rajinder Tiwari for the last 15-20 years and he used to stay in the godown of Rajinder Tiwari. He further stated that on the day of incident, Rajinder Tiwari was in his godown. He had taken the goods in the rickshaw Crl.A Nos. 1396/2012 & 134/2013 Page 10 of 19 to Surya Colony, Haryana at around 8:00 A.M.

17. Essential ingredients for the prosecution to prove for an offence punishable under Section 304B IPC are (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of her marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband; (iv) such cruelty or harassment must be

for, or in connection with, demand for dowry.

18. From the evidence of the prosecution witnesses it is proved beyond reasonable doubt that the deceased got married to Sanjay Tiwari on 25th February, 2001 and died on 9th February, 2005. Thus the period of marriage between the deceased and Sanjay Tiwari was less than 7 years. Further from the evidence of Dr. Sudipta Ranjan Singh who exhibited the postmortem report Ex.PW5/A it is evident that cause of death of the deceased was asphyxia due to manual strangulation of neck which was sufficient to cause death in ordinary course of nature. Thus, the deceased died an unnatural death.

19. Though the case of the defence witnesses as deposed to by DW-2 and DW-3 is that the father of the deceased and Sanjay Tiwari brought the deceased from her parental home to the matrimonial home in the morning of 9th February, 2005 however the fact remains that these two witnesses live in the neighbourhood of the appellant and have deposed, on the basis of the facts seen by them in the early morning of 9th February, 2005 from their residence. They could have only deposed seeing the deceased in the company of Sanjay Tiwari and her parents at or near the matrimonial home Crl.A Nos. 1396/2012 & 134/2013 Page 11 of 19 and not that the deceased was brought from the parental home to matrimonial home. Further in cross examination, father of the deceased clarified that when the alleged incident took place, the deceased was at her matrimonial home and when they reached the matrimonial home on receipt of the information from the daughter of the appellant, they found their daughter lying on the staircase whereafter they along with Sanjay Tiwari took her to the hospital in auto rickshaw. From the evidence of the prosecution witnesses which is not contradicted by cogent evidence of defence, it has been proved that unnatural death of the deceased occurred in her matrimonial home.

20. The two ingredients of Section 304B IPC having been satisfied, this Court is now required to advert to the remaining two ingredients i.e. whether the deceased was subjected to harassment for demand of dowry and soon before the death. This Court in the decision reported as MANU/DE/3997/2010 Riyazuddin Vs. State Govt. of NCT of Delhi following the decision in Kans Raj Vs. State of Punjab &

Ors. held that soon before is a relative term and in a case of continuous course of harassment, one solitary incident immediately preceding the death is not required to be proved. It was held:-

"I find no merit in the contention of the learned counsel for 6. the Appellant that the prosecution has not been able to prove that soon before death the deceased was subjected to cruelty in relation to demand of dowry. Soon before is a relative term to be considered under specific circumstances of each case. The prosecution is required to prove that there is a proximate and live link between the effect of cruelty based on dowry demand and the consequential death. In a case of persistent demand and repeated harassment on that count, the proximate and live link can be said to be proved by the prosecution. In every case the Crl.A Nos. 1396/2012 & 134/2013 Page 12 of 19 same is not required to be proved by proving a solitary incident immediately prior to the incident. In Kans Raj vs. State of Punjab and others (2000) 5 SCC207it was held: 15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straightjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long before the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances sowing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be soon before death if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before the alleged such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and

live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough. 21. Once the prosecution proves that the deceased faced continuous Crl.A Nos. 1396/2012 & 134/2013 Page 13 of 19 harassment, the Court is mandated to draw a presumption under Section 113B of the Indian Evidence Act which the accused has to rebut. Supreme Court in the decision reported as (2011) 11 SCC359Bansi Lal Vs. State of Haryana held- 18. In such a fact situation, the provisions of Section 113-B of the Evidence Act, 1872 providing for presumption that the accused is responsible for dowry death, have to be pressed in service. The said provisions read as under: to dowry death.-When 113-B. Presumption as 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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death. (emphasis supplied) 19. It may be mentioned herein that the legislature in its wisdom has used the word shall thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry. Crl.A Nos. 1396/2012 & 134/2013 Page 14 of 19 20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the

dowry death. It may also be pertinent to mention herein that the expression soon before her death has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death. (Vide T. Aruntperunjothi v. State [(2006) 9 SCC467: (2006) 2 SCC (Cri) 5

AIR 2006 SC2475 ; Devi Lal v. State of Rajasthan [(2007) 14 SCC176: (2009) 1 SCC (Cri) 7

AIR 2008 SC332 ; State of Rajasthan v. Jaggu Ram [(2008) 12 SCC51: (2009) 1 SCC (Cri) 3

AIR 2008 SC982 , SCC p. 56, para 13; Anand Kumar v. State of M.P. [(2009) 3 SCC799: (2009) 2 SCC (Cri)

AIR 2009 SC2155 and Undavalli Narayana Rao v. State of A.P. [(2009) 14 SCC588: (2010) 1 SCC (Cri) 14

AIR 2010 SC3708) 22. Mother of the deceased who appeared as PW-3 in the witness box deposed that whenever her daughter used to visit their house she used to complain that her husband, father-in-law and mother-in-law used to harass her. She used to complain that her father in law i.e. the appellant herein used to taunt her under the influence of liquor that they had not given sufficient in the marriage. Further father and brother of the deceased spoke about a specific incident against the appellant Rajinder Tiwari in respect of demand of 1.5 lakhs for purchase of Tata Sumo Car which they refused to pay. It is also deposed to by the witness Jamadar Ojha that the appellant threatened that in case he did not pay the amount, he would get his daughter divorced from her husband and the words used were agar tum mujhe paisa nahi doge toh tumari ladki ko chudwa dunga. In the course of examination it has been further revealed that the deceased was tortured, beaten, abused and often not Crl.A Nos. 1396/2012 & 134/2013 Page 15 of 19 provided food. After the deceased gave birth to the second daughter, her in- laws left the deceased at her parental home and brought her to the matrimonial home in January, 2005. Further on 8th February, 2005, the elder daughter of the deceased

was left at the parental home of the deceased and on the intervening night of 8th and 9th February, 2005 she was manually strangulated. Despite extensive cross-examination of the prosecution witnesses it has not been elicited that the deceased was not meted out by cruelty during her stay in the matrimonial home.

23. Defence of the appellant is that he was not present at home at the time of incident. He has taken this plea in his statement under Section 313 Cr.P.C. and DW-5 has also deposed in this regard. Even the prosecution witnesses have not stated that when they reached the matrimonial home of the deceased, Rajinder Tiwari was present except for the statement of brother of deceased who stated that Rajinder Tiwari also accompanied them in the auto rickshaw. It is not the case of the appellant that he was not residing at the matrimonial home. His defence is that he was at his godown at night which was nearby the house. Neither the appellant nor DW-5 have given the time when the appellant reached and left the godown. The time since death as per the postmortem report is one day from 11.15 am on the 10th February, 2005. However, the parents of the deceased were informed at 5.00 am on 9th February, 2005. Thus, the incident took place anytime in the intervening night of 8th and 9th February, 2005. From a cumulative reading of the prosecution and defence evidence, it cannot be held that the whole night, appellant was not in his house.

24. Thus, it is required to be considered whether the non-presence of appellant Rajinder Tiwari at the matrimonial home even for a brief period Crl.A Nos. 1396/2012 & 134/2013 Page 16 of 19 when the parents of the deceased reached absolves him for offence punishable under Section 304B IPC. As noted above, the appellant Rajinder Tiwari and other co-accused including Sanjay Tiwari had not been convicted for offence punishable under Section 3
IPC and in the absence of any leave to appeal filed by the State or the complainant, this Court in the present appeals cannot consider appellants conviction for offence punishable under Section 302 IPC. There is no definite evidence on record that when the deceased that manually strangulated, the appellant was not at home. Even otherwise unnatural death an ingredient of offence punishable under Section 304B IPC contemplates any kind of death other than under normal circumstances including suicide and homicide. The four

ingredients of offence punishable under Section 304B IPC having been proved by the prosecution based on the continuous cruelty and harassment caused to the deceased, conviction of appellant Rajinder Tiwari for offences punishable under Sections 304B/498A IPC is upheld.

25. As noted above, appellant Rajinder Tiwari has been awarded maximum sentence for offence punishable under Section 498A being three years rigorous imprisonment however for offence punishable under Section 304B IPC, he has been awarded rigorous imprisonment of seven years which is the minimum sentence prescribed.

26. The legal position on the scope of interference in an appeal for enhancement of sentence is well settled. Only if the sentence awarded by the trial court is grossly inadequate or unconscionably lenient or flea bite, the High Court would interfere in exercise of its jurisdiction under Section 378 Cr.P.C and enhance the sentence. Supreme Court in the decision reported as AIR 1955 SC778Bed Raj Vs. State of UP held- Crl.A Nos. 1396/2012 & 134/2013 Page 17 of 19 (4) Now, though no limitation has been placed on the High Courts power to enhance it is nevertheless a judicial act and, like all judicial acts involving an exercise of discretion, must be exercised along well-known judicial lines. The only question before us is whether those lines have been observed in the present case. see for example, the observations (15). A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment; in Dalip Singh v. State of Punjab [1954 SCR145at 156]. and Nar Singh v. State of Uttar Pradesh [(1955) 1 SCR238at 241]. . In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate. In our opinion, these principles have not been observed. It is impossible to hold in the circumstances described that the Sessions Judge did not impose a substantial sentence, and no adequate reason has been assigned by the learned High Court Judges for considering the sentence manifestly inadequate. In the circumstances, bearing all the considerations of this case in

mind, we are of opinion that the appeal (which is limited to the question of sentence) should be allowed and that the sentence imposed by the High Court should be set aside and that of the Sessions Court restored. Ordered accordingly. 27. It is trite law that awarding minimum sentence prescribed for an offence cannot be held to be a shockingly or unconscionably lenient sentence unless the facts of the case on the basis of which conviction is based show a very dastardly manner of commission of offence. Further, Supreme Court has time and again upheld orders on sentence of imprisonment for a period of seven years awarded for offence punishable under Section 304B IPC. Crl.A Nos. 1396/2012 & 134/2013 Page 18 of 19 (See Satbir Singh & Ors. Vs. State of Haryana (2005) 12 SCC72 Uday Chakraborty & Ors. Vs. State of West Bengal (2010) 7 SCC518 Bachni Devi & Anr. Vs. State of Haryana (2011) 4 SCC427and Vijay Pal Singh & Ors. Vs. State of Uttarakhand (2014) 15 SCC163.

28. Considering the evidence on record proved by the prosecution and the same having not been rebutted by the defence, this Court finds no illegality in the impugned judgment of conviction. As discussed above, sentence of rigorous imprisonment for a period of seven years cannot be said to be unconscionably lenient or flea bite. Thus, there is no ground to interfere in the impugned order of sentence as well.

29. Consequently, both the appeals are dismissed. Appellant Rajinder Tiwari will undergo the remaining sentence. Appellant Rajinder Tiwari whose sentence was suspended for a period of eight weeks vide order dated 11th April, 2017 shall surrender to custody on completion of the interim bail to undergo the remaining sentence.

30. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

31. Trial Court record be returned. JUNE01 2017 v mittal (MUKTA GUPTA) JUDGE Crl.A Nos. 1396/2012 & 134/2013 Page 19 of 19

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