

Ram Parkash @ Bittoo vs.state

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Court : Delhi

Decided On : Dec-21-2018

Appellant : Ram Parkash @ Bittoo

Respondent : State

Advocate for Def. : Ms. Meenakshi Chauhan

Advocate for Pet/Ap. : Mr. Sumer Sethi, Ms. Dolly Sharma

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

1. t November, 2018 Date of decision :

21. t December, 2018 + CRL.A.899/2002 & CRL.M.A.35006/2018 RAM PARKASH @ BITTOO Appellant STATE Through: Mr. Sumer Sethi and Ms. Dolly Sharma, Advocates with Appellant in person. (M:8860292911) versus Respondent Through: Ms. Meenakshi Chauhan, APP with SI Ranbir Singh (M:9899402748) P.S. Nangloi. CORAM: JUSTICE PRATHIBA M. SINGH Prathiba M. Singh, J.

JUDGMENT1 The present appeal has been filed by the Appellant, Ram Parkash @ Bittoo challenging his conviction vide judgment and sentence dated 25th January, 2002 under Section 304B and 498A read with Section 34 of the Indian Penal Code. it is relevant to note that the trial court record, in the present case, is

not available. Repeated attempts were made to reconstruct the record especially as the appeal was of the year 2002. However, the trial court finally submitted a report saying that the record is not traceable in the Tis Hazari Courts. Thus, the only record available is the judgment of the trial court. The appeal is thus being decided merely on the basis of the impugned judgement as no other record is traceable.

2. Ram Parkash was married to Smt. Vandna on 29th June, 1997. The CRL.A.899/2002 Page 1 of 20 incident took place on 4th December, 1998. On 5th December, 1998, she died an unnatural death.

3. The incident, as reported by the first witness who reached the spot i.e. PW-4, Shri Gurmail Singh is that he was running a grocery shop in the vicinity of the house where the accused and the deceased lived. In the morning, between 10 a.m. to 10.30 a.m., while he was present in his shop, he was informed of smoke rising from the house of the accused. He reached the spot and found that the victim, Vandna was in flames and her child was lying on a cot in the outside veranda of the house. At the time he reached the premises, there was no one present in the house. He called the police and then called the father of Smt. Vandna. By the time, the parents reached the house she had been taken to Safdarjung Hospital. The victim gave three statements. The first statement was given at 11.45 a.m. The second statement was given in the afternoon and the third statement was given late in the evening at about 8.10 p.m.

4. The first statement was given to the doctor, PW-14, Dr. H.K. Sharma of K.G. Medical College, Lucknow who was posted as Senior Resident Medical Officer in Safdarjung Hospital. He was the first doctor to examine the victim when she was brought to the hospital in a burnt condition. The MLC prepared by him was marked as Exhibit PW-14/A. In the first statement which she made to the doctor, she informed him that she had poured kerosene oil on herself and set herself on fire. This statement of PW- 14 is captured in paragraph 52 of the impugned judgment and is extracted herein below: - 52. As regards the first dying declaration to PW-14 the same is very cryptic. PW-14, Dr. CRL.A.899/2002 Page 2 of 20 5. that H.K. Sharma merely writes on the MLC EX.PW-14/A the patient poured kerosene oil on

herself and set herself on fire as informed by the patient. However, no attempt is made to know the details of the circumstances thereof. It is also not clear whether PW-14 had ensured that the victim injured was in fit state of mind at that time and capable of telling the truth or even trying to find out as to why she took such a step. In the absence of any explanation of the attending circumstances it is difficult to believe that the victim/injured was in a free state of mind to only come out with the alleged fact of setting herself on fire. In the second statement, the victim spoke to her parents. In this statement, she informed her parents that her mother-in-law had poured kerosene oil on her and had lit the matchstick in the presence of her husband and her brother-in-law. The third statement was given to PW-11, Shri B.S. Jaglan, S.D.M., Punjabi Bagh, in which she informed the SDM that her mother-in-law had poured the kerosene oil on her. On the basis of the last two declarations, the learned trial court came to the conclusion that the presumption of dowry death applies in the present case and hence while exonerating the brother-in-law, the mother-in-law and the husband were convicted vide the impugned judgement.

6. The appeal against the impugned judgment was filed on 21st November, 2002. Vide order dated 15th January, 2004, this Court while noticing that the accused has served almost a 5-year sentence out of the 7- year sentence given to him, had released the accused on bail. The order dated 15th January, 2004 is set out herein below: CRL.A.899/2002 Page 3 of 20 7. age. CRL. M. No.2947/2002 in CRL.A.No.899/2002 to third and Heard. Out of substantive sentence of imprisonment for seven years, the appellant has already spent about five years. Learned counsel for the appellant has drawn my attention to three dying declarations of the deceased to point out that on each occasion she told different versions in regard to the manner in which burn injuries eventually resulting into her death were sustained by her. Referring last dying declaration of the deceased, learned counsel for the appellant contends that even according to her the appellant had taken no part in dousing her with kerosin oil and setting her afire and the role in that regard was restricted to mother-in-law only. Taking note of facts and circumstances and on a prima facie view of the evidence on record and also the fact that hearing on appeal is unlikely in near future, the remaining substantive part of sentence is admitted to bail on executing a personal bond for Rs.20,000/-

with one surety in the like amount to the satisfaction of the learned Trial Court but subject to deposit of the amount of fine. The application is disposed of. This order may be communicated through Jail Superintendent concerned. is suspended and the appellant to the appellant The Appellant has since remarried and has a child who is 12 years of 8. The trial court in the impugned judgment records its observations on the malaise of dowry death in our society. Thereafter, the trial court proceeds to analyse the evidence of various witnesses including the alibi put forth by the accused. The trial court then comes to the conclusion that the CRL.A.899/2002 Page 4 of 20 present is a case which is not a case of suicide but homicide. The trial court gives and lays importance on the third statement made before the S.D.M. and discards the first statement made before the doctor. The trial court then holds that under Section 304B read with Section 498A and the provisions of the Evidence Act, there is a presumption that needs to be drawn, considering the fact that the victim died within a period of two years from the date of marriage.

9. A perusal of the trial court judgment clearly shows that on facts, the trial court has relied on the third dying declaration. Before going into the question as to whether the dying declaration should have been considered and if so which of the statements constitutes the dying declaration, some discussion is required in respect of the depositions of the various witnesses. Apart from the police authorities and the doctors, who testified, the first and the most important witness is PW-4, Shri Gurmail Singh. He was the first person to reach the spot. He ran the grocery shop in the neighbourhood. He reached the premises of the victim and saw her in flames. He specifically states that there was no one else present in the house at that time except the small child. He, in fact, called the police and the parents of the victim. His statement has been paraphrased by the trial court in paragraph 10 as under: - PW-4 Gurmail Singh runs a grocery shop in premises No.RZ-F-298-C, Nihal Vihar. He stated that 9-10 months ago at about 10.00 A.M. or 10.30 A.M. when he was present in his shop that he was informed about the smoke came out of the house of accused persons. He went to their house and found the wife of accused Bittu in flames and her child lying on a cot outside room. He informed the father of the wife of Bittu who came to the spot after about two hours. Before that the police had CRL.A.899/2002 Page 5 of 20 10. taken the wife

of Bittu to the hospital. He, however, could not say as to how she got burnt. In the absence of the actual statement made by PW-4, Shri Gurmail Singh, even the above statement has various facts which are conspicuously absent: - (i) Whether PW-4 saw anyone leaving the house before he reached there?. (ii) Whether PW-4 contacted the mother-in-law and the husband first or the parents of the victim?. (iii) In what position, did he find the victim?. (iv) Was there any commotion created as, if, there were more than one person present i.e. three more persons of the victims in-laws family i.e. the mother-in-law, the brother-in-law and the husband, and if they left after setting the victim on fire, there ought to have been some commotion, screams from the victim etc.,?. (v) Did anyone else see them leaving the house?.

11. Considering the social status of the accused and the victim, the house of the victim appears to be in a densely populated place and it is highly unlikely that if three people ran out of the house after setting the daughter-in-law on fire, there would have been no eye witness seeing them leave the house. Whether PW-4 was cross-examined on this aspect is not clear. It is improbable that all three persons who were accused could have left without any witness seeing them leave. The evidence of PW-1 is also not clear. The trial court simply records that PW-1, the Constable, Rajinder Pershad, went CRL.A.899/2002 Page 6 of 20 to the spot in Nihal Vihar and took the victim to Safdarjung Hospital. Only PW-1, Rajinder Pershad and PW-2, Sajjan Singh, the two constables had visited the premises of the victim to bring her to the hospital. There are no details about who was present when they reached there. PW-3, Sheikh Riaz was a constable who arrested the accused on 14th February, 1999. Thus, there was a gap of almost three months between the incident and the arrest of the accused.

12. Interestingly, Head Constable, Davinder Singh, PW-13 who was at the place of occurrence to secure the place also did not make any statement as to whether the mother-in-law and the husband came home after the incident had occurred and if so, what was their reaction and behaviour.

13. Thus, there are several gaps in the evidence as can be deduced from the trial court judgment. The accused led the evidence of the truck owner - DW-2, Satinder

Singh and the conductor - DW-1, Amit. He also led the evidence of the helper in the truck - DW-3, Ashok Kumar. All three witnesses said that on the date of the incident, the accused was driving truck No.DIG-5819 which had transported a printing machine from Delhi to Bombay on 3rd December, 1998. The trial court does not give any reasons for discarding the evidence of DW-1 and DW-3. In fact, their evidence is not even mentioned in the discussion by the trial court. The extract of their evidence is set out below: - 25. DW-1 Amit stated that he was with accused Ram Parkash alias Bittu as conductor of Truck No.DIG-5819 which took a printing machine to Bombay on 3.12.1998. He also stated that they had taken diesel from petrol pump and/at Udaipur by-pass they had also paid fee vide from Delhi CRL.A.899/2002 Page 7 of 20 slip Ex.DB.

26. DW-2 Satinder Singh is owner of the truck No.DIG-5819. He stated that he runs transport businesses the name of Rajdhani Bombay Career and accused had taken the truck from Delhi to Bombay. He stated returned slips/papers Ex.DW-2/B to PW-2/D received during the course of journey. accused in that had 27. DW-3 Ashok Kumar stated that receipt Ex.DW-2/DC is issued for their petrol at Bombay on 3.12.1998. 14. Finally coming to the statements and the dying declarations, the victim made three statements. The first statement was at 11.45 a.m. i.e. within a period of one hour from the incident being reported. She clearly stated to the doctor, Dr. H.K. Sharma, PW-14 that she poured kerosene oil on herself and set herself on fire. The only reason given by the trial court for discarding this statement is that the doctor did not make any attempt to know the details or the circumstances. Further the actual statement of the doctor is not available. What is available on record is only the prcis of his statement as recorded in paragraph 52.

15. Admittedly, the mother of the victim made a statement that she along with her husband reached the hospital around noon. Thus, the second statement of the victim was made after her parents had reached there. The final statement was made almost 10 hours after the incident i.e. at about 8.00 p.m. Admittedly, the victim passed away on 5th December, 1998 at 5.20 p.m. As per the post-mortem report, the victim had suffered 90% burn injuries. The most important fact, however, remains the complete contradiction CRL.A.899/2002 Page 8 of 20 between the first statement and the other two statements. In State of Delhi v. Ratni

Devi (Criminal Leave Petition No.740/2014, decided on May 25, 2015), a learned Division Bench of this Court had upheld the exoneration of the accused on the ground that there were contradictory dying declarations. Paragraph 25 of the said judgment is set out below: - 25. Applying the aforesaid principles of law to the facts of the present case, we are of the view that there are contradictions in the dying declarations made by the deceased Ritu. First dying declaration made by her to SI Narender Samota must be believed as her true dying declaration because in the light of the facts and circumstances of the present case it appears to be voluntary, truthful and consistent which has been made without tutoring and in a fit state of mind. Further, SI Narender Samota has no motive to falsely depose that deceased Ritu disclosed this fact to him. Here, it is pertinent to mention that deceased was brought to the hospital by none-else but her husband and it is apparent from the MLC Ex. PW6/B wherein the time mentioned is 6.13 AM and the alleged incident took place around 6.00 AM in the morning. This by itself is suggestive of the fact that the respondent made sincere efforts to save the life of his wife. Hence, it cannot be ruled out that the second dying declaration appears to be improved, tutored and prompted. When there are contradictory statements and considering the fact that the trial court gives no reference to this issue whatsoever, the evidence adduced by the accused that there was a possibility that he was not present in Delhi on the date of the incident shows that this was not a case which could have been purely based on a dying declaration. There ought to have been some corroborative evidence. CRL.A.899/2002 Page 9 of 20 16. The evidence led by the prosecution has gaping holes: - (i) There is not a single witness who was produced, who contradicted the evidence adduced by the Accused through DW-1 to 3. (ii) There is not a single witness who was produced who saw the accused in Delhi on 4th December, 1998. (iii) There is not a single witness who was produced who saw the accused leaving the house just before PW-4 reached the victims house. (iv) It was not established that there was any commotion created when the accused was burnt. There was no evidence to show that the accused had either screamed for help or had any injury marks on her body. If she was burnt by her in-laws and her husband, there ought to have been evidence of a struggle which is completely absent. (v) It was only when smoke was detected that PW-4 reached the spot. There was no voice heard prior to the noticing of the smoke from the

residence.

17. Further, in order to constitute dowry death, the following essential conditions need to be fulfilled as held in Hira Lal Vs. State (Govt of NCT), Delhi (2003) 8 SCC80- 8. Section 304-B IPC deals with dowry death reads as follows:

"304-B Dowry Death- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called dowry death, and such husband or relative shall be deemed to have caused her death. Explanation - For the purpose of this sub-section, dowry shall have 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 to imprisonment for life. The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304 IPC, the essential ingredients are as follows:-

"(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance. (ii) Such a death should have occurred within seven years of her marriage. (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband. (iv) Such cruelty or harassment should be for or in connection with demand of dowry. (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:-

"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)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on Dowry Deaths and Law Reforms. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been soon before her death subjected to cruelty or harassment for or in connection with the demand of dowry. Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials: (1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC). (2) The woman was subjected to cruelty or harassment by her husband or his relatives. (3) Such cruelty or harassment was for, or in connection with any demand for dowry. (4) Such cruelty or harassment was soon before her death.

9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the death

occurring otherwise than in normal circumstances. The expression soon before is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by CRL.A.899/2002 Page 13 of 20 prosecution. Soon before is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence to dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression soon before her death used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression soon before is not defined. A reference to expression soon before used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term soon before is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression soon before would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. Thus, it is not only essential to show that the victim was subjected to cruelty or harassment by her husband or his relatives, but further that such cruelty or harassment was for or in connection with any demand for dowry and also CRL.A.899/2002 Page 14 of 20 that the same occurred soon before her death. Emphasis is laid on the fact that the cruelty has to be `soon before, as stipulated in Section 113-B of the Evidence Act. There must be a `live link between the cruelty and the incident. If the cruelty is remote in time and is stale at the time

of the incident, it would be of no consequence. This view is also reiterated in *Monju Roy and Ors. Vs. State of West Bengal* 2015(5) SCALE288 wherein the Supreme Court observed as under - 10. Moreover, ingredient of offence under Section 304B is not mere demand of dowry but cruelty or harassment for or in connection with demand of dowry.

18. If the evidence in the present case is analysed, keeping these tests in mind, the only witness who has testified as to the cruelty meted out to the victim is the mother - PW-7, whose statement has been captured by the Trial Court in paragraph 13 as under: 13. PW-7 Smt. Rama Rani is the mother of the deceased. She stated that her daughter Vandna was married with accd. Parkash on 29.6.1997 and dowry was given as per their status. Her daughter started living with her husband in Nihal Vihar after her marriage alongwith his family namely brother -in-law Vicky and mother-in-law Sita Devi. For the first two months she did not receive any complaint of harassment from her daughter. After that her daughter used to come and complain that the accused persons used to treat her cruelly and beat her by making demand for money. Many times she prevailed over her daughter and persuaded her to live with her husband and relatives. She further stated that her daughter came to live with her when she was carrying five months old pregnancy. Her daughter gave birth to a child after four months when she stayed with them. CRL.A.899/2002 Page 15 of 20 They sent message to her inlaws. The accused persons took back her daughter and the child to their house. At that time cash and clothes were also given to the accused persons. After some time her daughter, along with the child were ousted from the house. She alongwith her husband had gone and requested the accused persons to keep her. They were not interested in lodging report and wanted to properly settle her. She further stated that on 4.12.1998 at about 9.00 A.M. they received telephone call from a neighbour of the accused persons namely Gurmail Singh that their daughter had been burnt. She alongwith her husband had gone to the house of the accused persons in Nihal Vihar where she found the child weeping on the cot. At that time none else was present. The burnt body of her daughter had been removed to Safdarjang Hospital. She had also talked to her daughter who told her that the accused persons harassed her and poured kerosene oil on her and burnt her. Later on she died in the hospital. She stated that her statement Ex.PW-7/A was

also recorded by the S.D.M. Statement of her husband Ex.PW-7/B was also recorded. Her husband died on 31.12.1999. She had identified the dead body of her daughter and also signed the inquest report Ex.PW-7/C. to Safdarjang Hospital. They went 19. From the testimony of the mother, the following facts emerge: a. That the victim, immediately after marriage was happy for an initial period of two months. b. Thereafter demands for money for made and she was beaten; c. The victim went to her parents house when she was five months pregnant; d. The child was born in the parents house and thereafter she CRL.A.899/2002 Page 16 of 20 went back to the in laws house; e. There was an incident when she was ousted but upon persuasion, she stayed back in the in-laws house; There are several gaps in the evidence of the mother. At the time of her death, the exact age of the child is not clear. The time gap between the birth of the child and the death of the victim is also not clear from the record. Whether immediately before the death, was any cruelty meted to the victim is not clear. The victim has spent a substantial portion of her married life in her in-laws house and not in the parental house. The conviction is based only on the testimony of the mother - PW7 20. This Court is conscious of the fact that there is a presumption of dowry death under Section 498A and 304B if; a) Death takes place within seven years of marriage; b) Death is unnatural; c) The death is coupled with cruelty or harassment by the husband or any member of the husbands family in connection with a demand for dowry. d) there has to be cruelty which can be closely connected with the death.

21. In the present case, the death was unnatural and it took place within seven years of marriage. However, apart from the paraphrasing of the statement of the mother of the victim, there is no evidence to establish cruelty having been meted out by the accused i.e. the husband. Even if the onus on the prosecution is to show instead of to prove that she was subjected to cruelty, the threshold for convicting for `dowry death has not CRL.A.899/2002 Page 17 of 20 been crossed. The cruelty has to be wilful conduct so as to drive the women to commit suicide or harassment or coercion to meet an unlawful demand. The fact that the victim and the child were in the in-laws house at the time of the event and at best even the statement of the victims mother only show that out of 18 months after marriage, it was only when the child was to be born that she had gone to her mothers house,

would not by itself establish dowry death. Further, the first dying declaration is completely changed after the parents met the victim in hospital. The stark contradiction leaves doubts on which of the declarations is true - the first in point of time or the one given before the SDM. There is diversity of opinion on this issue. Since the actual statements are not available, the court, has to judge the evidence on the basis of the record available. The Court is of the opinion that simply on the record which is available, the conviction of the accused under Section 304B IPC, cannot be upheld. In Kamlesh Kumar v. State 2014(1)AD(Delhi)63 and Mohammad Adil v. State 2014(3) JCC1857 learned Single Judges of this Court had held, in cases where the trial court record could not be traced, that the benefit of doubt would have to be given to the accused.

22. Insofar as the conviction under Section 498A is concerned, there is no doubt from the mothers testimony that all was not well in the marriage and for a long period of five months during the eighteen months of marriage, the victim stayed with her parents. The mother PW-7, has also stated that there was physical violence and demands for dowry. Thus, the factum of cruelty is established though the said cruelty may not have an immediate connection with her death. There is no reason to disbelieve PW-7 on this count. In Hira Lal (supra), the Supreme Court has observed that while there CRL.A.899/2002 Page 18 of 20 could be difficulty in sustaining convictions under Section 304B IPC, if there is evidence then conviction under Section 306 r/w Section 498A can even be sustained. A similar view has been taken by the Bombay High Court in John Vasant Khandagale Vs. The State of Maharashtra, 2011 CriLJ2708 wherein the High Court observed as under: 14. Even though death of Tai @ Urenica was not a natural death, and was homicidal, unless it could be established that death had occurred on account of or in connection with the demand of dowry or her harassment or torture was for demand of dowry. It could not be treated as dowry death. Merely because a woman dies unnatural death within seven years after marriage, it cannot be said to be dowry death unless the death can be related to demand of dowry. To clarify this position, a few illustrations may be given. Assuming that there was some demand and on that count the wife was ill-treated, however, if the death occurs in a motor accident or in an accidental fire in the house or during a dacoity in the house or if the woman is attacked, raped and then murdered by some person unconnected

with the family of husband, such death may be unnatural, but such death being not connected with the demand of dowry cannot be treated as dowry death. To establish that it was a dowry death, it must be established that death was connected with ill-treatment or harassment on account of or in connection with demand of money. 23. Thus, while there is sufficient ground to set aside the conviction under Section 304B, the conviction to the extent of Section 498A is upheld. The accused has already served a period of over five years and the sentence has already been undergone.

24. The appeal is thus partially allowed setting aside the conviction under CRL.A.899/2002 Page 19 of 20 Section 304(B). All pending applications are also disposed of. The Surety is discharged. DECEMBER21 2018 Rekha/Rahul JUDGE PRATHIBA M. SINGH CRL.A.899/2002 Page 20 of 20

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