Phool Singh and anr. Vs. the State

Phool Singh and anr. Vs. the State

SooperKanoon Citation : sooperkanoon.com/848606

Court : Delhi

Decided On : Mar-22-2010

Judge : G.S. Sistani, J.

Acts : Dowry Prohibition Act, 1961 - Section 2; ;Evidence Act - Sections 113(B) and 114; ;Code of Criminal Procedure (CrPC) , 1973 - Sections 161, 313 and 374; ;Indian Penal Code (IPC), 1860 - Sections 30, 304B, 306 and 498A; ;Muslim Personal Law

Appeal No. : Crl.A. Nos. 280 and 333/2001

Appellant : Phool Singh and anr.;smt. Dropti and ors.

Respondent : The State;state (Govt. of Nct of Delhi)

Advocate for Def. : Lovkesh Sawhney, Adv.

Advocate for Pet/Ap. : Rajiv Awasthi, Adv.

Judgement :

G.S. Sistani, J.

1. Two appeals have been filed under Section 374 of the Code of Criminal Procedure, 1973 against the judgment dated 7.4.2001 and order on sentence dated 18.4.2001, passed by the learned Additional Sessions Judge, Delhi. Appeal bearing No. 280/2001 has been filed by the uncle and aunt (MAUSA AND MAUSI)

of the husband of the deceased. They have been convicted and sentenced to Rigorous Imprisonment for a period of two years with a fine of Rs. 5,000/-, for the offence under Section 498-A, IPC. In default of the payment of fine, appellants have been directed to undergo a further Rigorous Imprisonment for a period of three months.

2. Appellants in Appeal bearing No. 333/2001 are the mother-in-law, husband and father-in-law of the deceased, who have been convicted for the offence under Section 304-B, IPC and sentenced to undergo Rigorous Imprisonment for a period of ten (10) years. The appellants have also been convicted under Section 498-A, IPC and sentenced to suffer Rigorous Imprisonment for a period of three years and a fine of Rs. 1000/-. In default of the payment of fine, appellants are to suffer Rigorous Imprisonment for a period of one month.

3. Both the appeals have been heard together and are being disposed of by a common judgment. It may be noticed that as per the report received from the Registry, trial court record has been misplaced. As jointly agreed by counsel for parties, counsel for appellants handed over a compilation comprising of the judgment and copies of the evidence to the Court as well as to counsel for the State. Since the matter was ripe for hearing as agreed by counsel for parties, matter has been heard on the basis of compilation handed over to Court.

4. Brief facts of the case are that Rajbala was married to one Jaiprakash on 17.06.1990. She gave birth to a male child on 18.6.1991. However, within seven years of marriage and barely after one month of giving birth to a son, Rajbala (deceased), died in unnatural circumstances on 19.7.1991. On 18.7.1991 Rajbala sustained more than 80% burn injuries and was admitted to LNJP hospital at 2:20 a.m. on 19.7.1991. She succumbed to her injuries on 19.7.1991 at 7:45 a.m. Ram Singh, S.I. was handed over a copy of D.D. No. 61-B which was recorded at 12:45 a.m. in respect of the burning of a girl at A-18, Hanuman Mandir Park, Moller Band Extension. As Rajbala had been declared unfit to make a statement, her statement could not be recorded by the SDM who had also reached the hospital. After Rajbala succumbed to her injuries, statements of her parents were recorded by the SDM and accordingly a case was registered. The prosecution examined 14

witnesses. Statement of the appellants was recorded under Section 313, Cr.P.C., however, no evidence was led in defence. It would be useful to refer to the evidence of some of the material witnesses in this case.

5. PW-1 (Smt. Shish Kaur, mother of the deceased) has deposed in her examination-in-chief that Raj Bala was her daughter and was married to appellant Jai Prakash on 17.6.1990. On 18.7.1991, her daughter telephoned her and asked PW-1, her husband and their son to come to the house of the in-laws as the appellants were threatening her. On receipt of the said telephone call, PW-1 along with her husband and Bicholia, Ram Swaroop and her son, Harbans went to the house of her daughter. When they reached there, all the appellants as well as her daughters were present there. PW-1 further deposed that the appellants at that time demanded five rings, five chains, five ear rings, five saries and a cash of Rs. 20,000/-. PW-1, deposed that she told them that whatever would be possible would be given. Thereafter they came back and at 4:00 p.m. appellant, Jai Prakash came to their house and threatened them by saying that what they had told to their daughter and that she had died of burning.

6. In her cross-examination by counsel for the appellants, PW-1 deposed that she went to the hospital along with her husband and two sons, namely, Harbans and Raj Kumar. At that time her daughter was admitted in the emergency ward. PW-1 voluntarily deposed that when they reached the hospital, their daughter had already died. Police did not record her statement in the hospital and that her statement was recorded by the SDM. PW-1 further deposed that in her statement recorded by the SDM, she had duly mentioned that Bicholia, Ram Swaroop had also gone with them on receipt of a telephone call received by her from the deceased on 18.7.1991. PW-1 was confronted with her statement, Ex.PW-1/D2, wherein it was not so recorded. PW-1 was further confronted that except the demand for Rs. 20,000/- in cash, no other demand regarding any other articles was mentioned. PW-1 was also confronted that it was not mentioned in her statement Ex.PW-1/D2 that Jai Prakash had come to their house at 4:00 pm. PW-1 deposed in her cross-examination that except on 18.7.1991, she had never gone to the house of the appellant and it was correct that appellant, Phool Singh and Kanta were living separately from the other appellants. As per PW-1 her daughter

had come to their house to meet them for about 8 or 10 times after her marriage or before her death. Further her sons used to go to the matrimonial home of the deceased to meet her once in a month or two, but the appellants never allowed them to meet the deceased. Her daughter Raj Bala never stayed with them and she used to go back on the same day. Except on 18.7.1991, her daughter never telephoned them. PW-1 deposed that it was wrong to suggest that none of the appellants had ever raised any demand and that it was wrong to suggest that the appellants never harassed or tortured her daughter for or in connection with dowry.

7. PW-1, in her cross-examination further deposed that Ram Swaroop was the mediator in the marriage of her daughter and appellant, Jai Prakash and it was correct to suggest that he was on visiting terms with them. It was Ram Swaroop who had proposed the marriage. PW-1, further deposed that her daughter had come to the parental house on the eve of Raksha Bandhan and Bhaiya Dooj. On these occasions, the deceased did not stay with them and on the same day went back to her matrimonial house. PW-1 voluntarily deposed that on both these occasions, appellant, Jai Prakash did not allow her to even take food at the parental house. PW- 1, deposed that neither her daughter nor appellant, Jai Prakash came to the parental house after the discharge of her daughter from the hospital and further that the appellants set her on fire after three days of her discharge from the hospital. However, it was correct that she was not set on fire in her presence. After the death of her daughter, PW-1 had never gone to the house of the appellants, to meet her grand-son. Appellant, Jai Prakash came to the parental house at 3:00 am. in the night and asked 'aap Log Rat Ko Gaye The. Raj Bala Se Milkar Aaye They. Usse Kya Kah Ker Aaye Ho. Veh Jal Kar Mar Gai Hai. PW-1 deposed that it was correct that she had gone to the house of the appellants with her eldest son, husband and mediator, Ram Swaroop. PW-1 further deposed that a telephone was installed in the house of appellant and her daughter used to talk to her on the telephone installed at the residence of her neighbour. Again said that her daughter used to talk to her on telephone with her sons and husband. However, Rajbala never wrote any letter to them till her death. PW-1 also deposed that she had not stated in her statement recorded by the court that when they returned, at about 4:00 p.m. Jai Prakash had come to their house and threatened

them by saying as to what they had told to their daughter and that she had died of burning.

8. PW-2, Raj Kumar, brother of the deceased deposed that Raj Bala was married to appellant, Jai Prakash on 17.6.1990. On 18/19th July, 1991 police came to their house at about 3:00 a.m and informed their father that Raj Bala had been burnt by appellant, Jai Prakash. 6-7 photographs and a list of dowry articles were handed over to the police which were taken into possession by the police vide memo Ex.PW-2/1. PW-2 identified his signatures.

9. PW-2 was cross-examined by counsel for the appellants wherein he stated that his statement was recorded by the I.O. on 20.10.1991 and in that statement he had stated that on 18th/19th July, 1991 police came to their house at 3:00 am and informed his father that Raj Bala had been burnt by appellant Jai Prakash. He was confronted with statement Ex. PW-2/DA wherein it was not so recorded. As per PW-2 Ram Swaroop was the mediator in the marriage. PW-2 was on visiting terms with the in-laws of the deceased Raj Bala. Till her death, PW-2 visited the matrimonial home of Raj Bala on three or four occasions and his father went to the matrimonial home on three-four occasions. Apart from this, he had also gone to her matrimonial home on the occasion of Diwali, Bhaidooj, Raksha Bhandhan and Holy. Till her death, Raj Bala came to the parental house on 20/22 occasions. He denied the suggestion that the articles taken into police possession vide memo Ex.PW2/3 belonged to the appellants.

10. PW-3, Sh. Harbans Singh deposed in his examination-in-chief that on 18.07.1991, at 2.00 p.m. he received a telephone message from his sister, Raj Bala, that she was being harassed by her in-laws and they should immediately come to her matrimonial home. Therefore, PW-3 along with his father, mother and mediator Ram Swaroop and two/three other family members reached the house of appellants at Badarpur, New Delhi. There Jai Prakash, father of Jai Prakash, Phool Singh, Dropadi and Kanta were present. As per PW-3, they asked them that they had not given sufficient dowry in the marriage of Raj Bala and now a son had been born to the couple about 20 days back, therefore, they should give Rs. 20,000/-, in cash, 15/20 fine sarees, 5/6 gold chains, 5 gold rings, one gold earring

and other articles on this occasion. They told the appellants that they would make the decision after going back to their house and asked the appellants to send Raj Bala with them, but they refused. PW-3, further deposed that as soon as they reached back to their house, Jai Prakash also came there and informed that Raj Bala had set herself on fire and was admitted to JPN Hospital. They went to the hospital and saw that Raj Bala had been badly burnt and was breathing her last. She died after some time. PW-3 identified the dead body in the mortuary at the hospital.

11. PW-3 was cross-examined by counsel for the appellants, wherein he deposed that Raj Kumar was his real brother and was present in the house when he (PW-3) received the telephone message from Raj Bala. However, Raj Kumar did not go with them to the house of the appellants. The House of mediator, Ram Swaroop, was at a distance of 15/20 steps from their house and they were in continuous touch with him. PW-3 deposed that Jai Prakash was running a readymade garment's shop. He volunteered to say that whenever appellant, Jai Prakash, did not have goods in his shop, he used to come to them to demand money. PW-3 deposed that he never informed either the police or the Magistrate that he had received the telephone message from deceased, Raj Bala, in the night intervening 18/19.07.1991. PW-3 voluntarily deposed that SI Ram Singh had made enquiries from him at the time of handing over the dead body of Raj Bala and that PW-3 had informed him that he had received telephone message from Raj Bala at about 2.00 p.m. and thereafter they had gone to her in-laws house. He had also informed him that the appellants had demanded Rs. 20,000/-, in cash, and jewellery, but did not give the details of the jewellery. Subsequently, SI Ram Singh, informed that he had reduced the substance of PW-3's statement in writing, however, the same was not read over to him by SI Ram Singh. PW-3 further deposed that till the death of Raj Bala they had not given any shagun on the occasion of the birth of his son to the couple. When he received a telephone message from his sister that she was being tortured by her in-laws, PW-3 did not report the matter to the police as he wanted to settle the matter amicably. He denied the suggestion that 2/3 days prior to the incident, his mother had gone to the house of the appellants and he further denied the suggestion that his mother had been instigating his sister to arrange for a separate house. He also denied that appellants never demanded Rs. 20,000/-, in

cash, and also jewellery artices.

12. PW-4, Sh. Hardwari Lal, deposed that telephone No. XXX was installed in his house. About 6/7 years ago, at about 9.45/10.00 a.m., Raj Bala telephone him and requested him to call her father Sh. Kedar Nath. PW-4 called Sh. Kedar Nath to his house and who had a chat with his daughter on the telephone. As per PW-4, he did not ask anything from Sh. Kedar Nath and on the next day, he came to know that Raj Bala had died and she had been burnt.

13. PW-5, Sh. Ram Swaroop, has deposed that he performed the role of mediator in the marriage of Raj Bala with Jai Prakash. After the marriage, Sh. Kedar Nath never contacted him and also did not tell anything to him. At this stage, learned APP for the State requested to cross-examine the witness, as he was resiling from his statement recorded under Section 161, Cr.P.C.

14. In the cross-examination by learned APP, PW-5 deposed that it was wrong to suggest that his statement was recorded by the police or that in the statement he had stated that on 18.07.1991, Sh. Kedar Nath had come to his house and informed that a telephonic message had been received from Raj Bala that her life was in danger and that on hearing this news he along with Kedar Nath and other relatives went to the house of the in-laws of Raj Bala. PW-5 denied having made any statement to the police.

15. In the cross-examination by counsel for the appellants, PW-5 deposed that Raj Bala was happy with her in-laws and he had never received any complaint from her parents against the appellants.

16. PW-7, Ram Gopal, deposed in his cross-examination in chief that Kedar Nath, father of Raj Bala, was his neighbour. About 6-7 years ago, it was in winter season and he along with Kedar Nath had gone to the Police Station Badarpur. Kedar Nath showed some photographs of the marriage of Raj Bala to the police. Police recovered the dowry articles from the house at Molarband. PW-7 denied the suggestion in his cross-examination that nothing was recovered from the house of the appellants in his presence.

17. PW-8, Kedar Nath (father of the deceased) deposed that appellant Jai Prakash was his son-in-law and had married his daughter, Raj Bala, on 17.06.1990. On 18.07.1991, at about 10-10.15a.m. his daughter, Raj Bala, telephoned at the residence of their neighbour, Hardwari Lal, who thereafter called PW-8. PW-8 was informed by his daughter that her husband and parents-in-law were beating her and therefore they should immediately come to her matrimonial house. The deceased also informed that there was a danger to her life from her husband and parents-in-law and perhaps she might be killed on that very day. At about 2.30 p.m., PW-8 along with his son, Harbans Singh, his wife and mediator Ram Swaroop proceeded towards the house of the appellants and reached there at about 5.30 p.m. due to traffic jam. All the five appellants were sitting there. As per PW-8, the appellants asked them that since a son had been born to Raj Bala what would be given on this occasion. The appellants further asked to give sarees, chains, rings and Rs. 20,000, in cash, in chuchak ceremony. PW-8 and others informed the appellants that they would think about it at their house.

18. At about 3 a.m., appellant Jai Prakash came to their house and asked as to what they had told to Raj Bala. Jai Prakash also informed that he and his family members had sprinkled kerosene oil on Raj Bala and set her on fire. In the meanwhile police also came the house of PW-8, alongwith appellant Sohan Lal. PW-8 further deposed that they went to JPN Hospital along with the Police and saw that Raj Bala was unable to speak as she was in a critical state and after sometime she died. The SDM recorded the statement of PW-8 vide Memo Ex.PW-8/1. PW-8 identified the dead body of his daughter in the hospital and handed over some photographs Ex.P/1. He also stated that police recovered some dowry articles from the house of appellant, Jai Prakash and his parents.

19. PW-8, in his cross-examination by counsel for the appellants, deposed that Ram Swaroop acted as a mediator in the marriage. PW-8 deposed that Ram Swaroop was his neighbour and knew him since a long time. Ram Swaroop had brought the proposal for the marriage of appellant Jai Prakash with Raj Bala. PW-8 further deposed that he did not make any enquiry about the character or antecedents of the appellants from their neighbours. He admitted as correct that his daughter Raj Bala stayed at the house of the appellants after her marriage, for

about 13 months. During this period she came to the parental house twice or thrice. After the marriage PW-8 did not have any chat with Ram Swaroop and after the marriage of Raj Bala and till her death, Ram Swaroop never went to the house of the appellants with PW-8. PW-8 further deposed that it was correct that before or at the time of marriage, appellants did not make any demand for dowry. Thereafter he stated that at the time of marriage, appellant Phool Singh demanded a two-wheeler scooter and a cash of Rs. 12,000/- or Rs. 13,000/-. As per PW-8 he had given all these things to Phool Singh. However, he did not give the purchase receipt of the scooter to the police. He voluntarily deposed that it was given by PW-8 to appellant Phool Singh. As per PW-8 in his statement recorded by the police, he had informed them that a two-wheeler scooter had been given by him to Phool Singh at the time of marriage. PW-8 was confronted with statement Ex-PW-8/D-1 where it was not so recorded. PW-8 deposed that he went to the house of appellants once or twice and that his wife never went to the house of the appellants, till her death. His younger son visited the house of the appellants on the occasion of festivals so as to give customary items to the appellants. The other two sons never went to their house till the death of Raj Bala.

20. In the cross-examination by counsel for the appellants, PW-8 deposed that he did not have a telephone connection at his house and a telephone was installed at the house of his neighbour, Hardwari Lal. There were four houses between his house and the house of Hardwari Lal. When the message regarding burning of his daughter was received on telephone at about 3:30 AM, PW-8 was present in his house. PW-8 thereafter stated that he came to know about the burning of his daughter from police officials for the first time who had come to his house in a jeep at about 3:30 AM. On 18.07.1991, Raj Bala had contacted him on telephone of Hardwari Lal, at about 10:00 AM in the morning. Except this call, PW-8 deposed to have never received any telephone call from his daughter nor his daughter ever wrote any letter to him. PW-8 deposed that it was correct that a male child was born to his daughter Raj Bala one month prior to the incident. As per the custom prevailing in their society, the in-laws of his daughter had to come to the parental house of Raj Bala to inform about the birth of male child and also to inform about their demand on this occasion. However, none of the family members or the appellants came to the parental house to inform about the birth of a child. At the

time of delivery of child, PW-8 and his wife were present in the hospital.

21. PW-8 was confronted with his statement, Ex-PW-8/A-1 wherein the time was not mentioned. Further PW-8 stated to not remember whether in his statement recorded by the Court on 26.08.1997, it was stated by him that his daughter Raj Bala had informed him that her husband and her parents-in-law were beating her. PW-8 deposed that he did not state this fact to the police or to the SDM because his daughter never told any such fact to him on telephone. In his statement recorded by the police and the SDM, PW-8 deposed that his daughter had informed him that her life was in danger from her husband and parents-in-law and perhaps she might be killed on that very day. PW-8 was confronted with the statement Ex-PW-8/D-1 and PW-8/1 where it was recorded that the deceased had informed the witness that her life was in danger. As per PW-8 he had also stated before the SDM and the police that Harbans Singh & Ram Swaroop had also gone to the house of the appellants along with him and his wife and that they had reached at about 5:30 PM due to traffic jam. PW-8 was yet again confronted with his statements Ex-PW-8/D-1 and PW-8/1 where it was only recorded that PW-8 had gone along with his wife to the house of the appellants. PW-8 was also confronted that in his statement it was not recorded about any demand of sarees, chains, rings or the demand of Rs. 20,000/- in cash in chuchak ceremony. PW-8 lastly denied the suggestions that his daughter had died when she was cooking meals or that his daughter had accidentally caught fire while she was lighting the stove. PW-8 was also confronted that it was not mentioned in his statements that about 3:00 AM appellant Jai Parkash had come to their house and that he had stated as to what had been said to Raj Bala and that he and his family members had sprinkled kerosene oil over Raj Bala and set her on fire.

22. PW-13, SI Ram Singh, deposed that on 18-19.7.1991 he was posted as ASI at police station Badarpur. At about 12.15 a.m. he received a copy of DD No. 61-B thereafter he along with Constable Ved Prakash went to house No. A-18, Gali No. 8, Molarband Extn. He came to know that Smt. Rajbala had been burnt and taken by her parents-in-law and husband to an unknown hospital in a three wheeler scooter. He went to Safdarjung hospital where he came to know that there was no bed in the hospital and the injured had been sent to RML Hospital. At RML

hospital Rajbala was found admitted in the burns ward. He collected her MLC as per which she had sustained 80% burns. He moved an application for permission to record her statement Ex.PW-13/1, however, the Doctor on duty declared her unfit for statement.

23. Counsel for the appellants has submitted that the judgment and order on conviction is contrary to the evidence on record and is in violation of the settled principles of law. It is contended that the learned trial court has failed to place reliance on the statement made by Rajbala, at the time of admission in the hospital wherein she stated that she received accidental burns. Counsel also contends that the material witnesses i.e. PW-1 (mother of deceased), PW-8 (father of deceased) and PW-3 (brother of deceased) have made various material improvements during their examination in court, which would destroy and falsify the case of the prosecution. It is also contended that there are material contradictions in the evidence of PW-1, PW-3 and PW-8 and different versions have been given by them with regard to receiving of phone call from the deceased prior to her death. According to PW-1 (mother of deceased) the phone call was received by her. PW-8 (father of deceased) has stated that the phone call was received by him while PW-3 has stated that the phone call was received by him. Counsel for appellants submits that the deceased had never complained of any demand of dowry, cruelty or harassment at the hands of the appellants at any point of time prior to her death and stated that she was living happily in her matrimonial home. Even as per own showing of the parents of the deceased a demand of Rs. 20,000/- was made soon after the birth of a male child and for the CHUK CHUK ceremony. Counsel for the appellants contends that mere asking of Rs. 20,000/- for CHUK CHUK ceremony does not come within the ambit of dowry demand as defined under Section 2 of the Dowry Prohibition Act, and thus there cannot be any conviction under Section 498-A and 304-B IPC. In support of this submission counsel for appellants has relied upon Satvir Singh v. State of Punjab reported at : (2001) 8 SCC 633 : AIR 2001 SC 2828.

24. Counsel for appellants has also placed reliance on Narayanamurthy v. State of Karnataka and Anr. : JT 2008 6 SC 466 and submitted that even otherwise a case of single solitary demand would not fall within the ambit of Section 498-A IPC.

Counsel for appellants contends that the unfortunate incident was an accidental burn, and even as per the MLC recorded by the Doctor immediately after admission of the deceased in the hospital, wherein the deceased has categorically stated that 'Sari caught fire while she was lighting stove, cries caught other family members attention, who all were according to patient sleeping on the terrace'. In support of this submission counsel for appellants has relied upon Gopal v. State of Rajasthan : 2009 (2) Scale 704.

25. Counsel for appellants also contends that the death summary prepared by the doctor, categorically shows that no other injury was present on her body, thereby ruling out any possibility of involvement of her in-laws in the incident. He further contends that the absence of any injury on her body would show that in case there was any involvement of the in-laws there would have been some resistance on the part of the deceased which would have resulted in injuries on the body of the deceased as well as some marks on the person of the in-laws, which are completely absent.

26. Counsel for appellants next contends that the MLC has been proved by the investigating officer, who has categorically stated in his statement that he received MLC of the deceased from Dr. Pawan Ratwal. The deceased had given her version in the MLC as per the doctor.

27. In addition to the above submissions, counsel for the appellants submits that no case is made out against the appellants in Appeal No. 280/2001. The MAUSA and MAUSI were not residing in the same premises which fact stands duly established during cross-examination of PW-1 (mother of the deceased) wherein she has stated that they were residing separately. Counsel further contends that only a generalized statement has been made against the appellants that 'the accused persons had made a demand', which is vague. It does not show as to which of the five persons made a demand. Counsel contends that there is a tendency of persons to implicate as many family members as possible and the present case is yet another such example where the parents of the deceased have falsely implicated the appellants. Counsel further contends that MAUSA and MAUSI in any case would not have benefited from any demand which was alleged

to have been made by the other appellants. In support of this submission counsel for appellants has relied upon Kans Raj v. State of Punjab reported at : (2000) 5 SCC 207 and reliance is also placed on Narayanamurthy v. State of Karnataka and Anr. : JT 2008 6 SC 466.

28. Counsel has labored hard to urge before this Court that there is no evidence on record to show that either at the time of marriage any demand was made by the appellants or that on any date prior to the date of incident there was any incident of demand of dowry, ill-treatment or cruelty on the deceased. In fact PW-5, Ram Swaroop, who was instrumental in arranging the marriage between the deceased and her husband has categorically stated in his evidence that no complaint was made by the father of the deceased to him and the deceased and her husband were residing together happily. It is also contended that a male child was born on 18.6.1991 which was a cause for celebrations and Rajbala died within one month thereafter. During the period of one month Rajbala remained in hospital for 20 days and there is no allegation against in-laws that they did not look after her or did not pay for her medical expenses which fact would show that the deceased was not being mal-treated by her in-laws.

29. Learned Counsel for the appellants submits that the father of the deceased has stated in his cross-examination that his wife had never visited the house of her daughter after marriage till the date of her death whereas mother of the deceased, PW-1, has stated that she visited the house on 18.07.1991 when a demand was made. Counsel further submits that in any case any demand, if at all made, would not be for the benefit of these appellants and they have been falsely roped into the matter. Counsel next submits that in the entire judgment of the trial court only reference to the present appellants is in Para 46, which reads as under:

46. PW 1 and PW 8 have stated that at the time of demand of Rs. 20,000/- accused Kanta and Phool Singh were also there. They had also demanded the amount. Accused Phool Singh is admittedly the Mausa of accused Jaiparkash. Accused Kanta is Mausi of accused Jaiparkash. They also used to reside at A-18, Molarband. However, they were not near the deceased as explained by them. They could not have taken the extreme step. There is no allegation that earlier

also accused Kanta and Phool Singh had demanded dowry.

30. Learned Counsel for the appellants submits that the judgment rendered by the trial court is completely silent with respect to the role ascribed to the appellants herein or any demand made by them. Reading of para 46 of the judgment would show that the trial court has come to the conclusion that PW-1 and PW-8 had stated that at the time of demand of Rs. 20,000/-, Kanta and Phool Singh (appellants) were also present and they also demanded the amount.

31. Learned Additional Sessions Judge further goes to observe that earlier there were no allegations that they had made any demand of dowry. Despite these observations, appellants herein although acquitted under the charge of 304-B IPC have been convicted under Section 498-A of the IPC.

32. Learned APP for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. It is also contended that the contradictions sought to be pointed out by counsel for the appellants do not go to the root of the matter and have no material bearing. It is contended that the mother, father and brother of the deceased (PW-1, PW-3 and PW-8) have fully supported the case of the prosecution and all the accused persons have been named as those who demanded the dowry. He also submits that on 18.7.1991 a telephone call was received from Rajbala (deceased), whereby she requested her father, mother and brother to come to her matrimonial home as the accused persons were threatening her. He submits that the factum of telephone call stands duly proved by the evidence of PW- 4 and minor discrepancy with regard as to who attended the telephone call would not materially affect the case of the prosecution as it is only pursuant to the telephone call that the mother, father and brother of the deceased visited her matrimonial home which fact stands duly established and has not been denied.

33. Learned APP submits that admittedly, there is no doubt that in the statement recorded under Section 161 Cr.P.C. the father of the deceased has stated that a demand of Rs. 20,000/- was made whereas in the statement made in court material improvement has been made and five rings, five chains, five ear rings, five saries have been added. As per the prosecution the parents and brother of the

deceased reached the matrimonial home of their daughter and they informed her in-laws that they would do for them whatever possible they could do. Learned APP for State also contends that on the same night Rajbala died due to burn injuries in unnatural circumstances. He also contends that assuming without admitting the fact that demand made at the birth of the child would not fall in the definition of dowry he submitted that in view of the acts of the appellants and the cruelty inflicted upon the deceased by them, the case would fully covered under Section 306, IPC. It is contended that reading of the statement of the brother of the deceased would show that even at the time of marriage dowry was given including scooter, which would show that the demand for dowry was a continuous demand from the date of marriage till the date of the incident. 34. I have heard counsel for the parties and carefully scrutinized the evidence on record. The submissions of learned Counsel for the appellants can be summarized as under:

. Demand (even if it is assumed to have been made) of Rs. 20,000/- cannot be said to be a demand for dowry. (chuchuk ceremony)

. There are contradictions in the evidence of material witnesses PW-1, PW-3 and PW-8.

. Trial court has failed to appreciate the MLC wherein Raj Bala has herself stated that she received accidental burns.

. Mausa And Mausi are not residing in the same premises as that of the deceased and any demand, would not be for the benefit of these appellants.

. Even the judgment passed by the trial court is silent with respect to the role played by Mausa And Mausi.

35. The submissions of learned Counsel for the State can be summarized as under:

. The case has been proved beyond any shadow of doubt.

. PW-1, PW-3 and PW-8 have fully supported the case of the prosecution and minor contradictions do not go to the root of the matter.

. The factum of telephone call stands duly proved and minor discrepancy with regard as to who attended the telephone call would not materially affect the case.

. MLC is not admissible in evidence.

36. In the present case appellants, Phool Singh (Mausa) and Kanta Devi (Mausi) have been convicted under Section 498-A, IPC and appellants, Jai Prakash (husband of the deceased); Dropdi (mother-in-law of the deceased); and Sohan Lal (father-in-law of the deceased) have been convicted by the trial Court under Section 498-A as well Section 304-B, IPC. While Section 498-A, IPC deals with cruelty subjected on a woman by her husband or a relative; Section 304-B IPC along with 113-B, Evidence Act deals with dowry death and presumption as to dowry death. Section 498-A of the IPC reads as under:

498-A. 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 the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 304-B, 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 purposes of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

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

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

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

Furthermore the term 'dowry' has been defined in Section 2 of the Dowry Prohibition Act, 1961 as under:

Definition of 'dowry'.- In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.- The expression 'valuable security' has the same meaning as in Section 30 of the Indian Penal Code.

37. The essential ingredients of the offence under Section 304-B, IPC are (i) 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 marriage; (iii) soon before the death, the victim was subjected to cruelty or harassment by her husband or relative of her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under Section 113(B) of the Evidence Act. In the case of Hira Lal v. State (Govt. of NCT), Delhi reported at : (2003) 8 SCC 80, it was held that:

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. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of '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. The 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 the prosecution. 'Soon before' is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under 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 the 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 or has received the goods knowing them to be stolen, unless he can account for their 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 death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

38. In the present case, marriage between appellant Jaiprakash and Rajbala took place on 17.06.1990 and within one year of their marriage a male child was born on 18.6.1991. However, barely after one month of giving birth to a son, Rajbala was admitted in LNJP hospital at 2:20 a.m. on 19.7.1991, with more than 80% burn injuries. Subsequently, she succumbed to her injuries on 19.7.1991 at 7:45 a.m. These facts clearly show that the death of Rajbala took place within seven (7) years of her marriage and under unnatural circumstances. The next question which arises for consideration is whether soon before her death, the deceased Rajbala was subjected to cruelty or harassment by her husband or by her in-laws (appellants herein) for or in connection with any demand for dowry. It is only when the prosecution is able to prove without any shadow of doubt that soon before the occurrence, cruelty or harassment was meted out to the deceased, in relation to demand of dowry, that a presumption of dowry death would arise under Section 113-B of the Evidence Act. Learned Counsel for the appellants has contended that the prosecution has failed to prove any demand for dowry by the appellants and/or any harassment meted out to the deceased 'for or in connection with dowry'. Learned Counsel has further submitted that in order to prove its case, prosecution has relied upon the evidence of mother; father; and brother of the deceased who are interested witnesses and as such their evidence cannot be relied upon. Counsel has submitted that even otherwise, there are material discrepancies as well as improvements in the evidence led by prosecution witnesses which go to the root of the matter, thus the evidence of the prosecution witness are unreliable and that the trial Court has failed to appreciate the evidence in the right

perspective. It is also settled law that merely because a witness is an interested witness his evidence is not to be disregarded provided the court is convinced that the evidence is truthful and reliable.

39. It would be relevant herein to reproduce the words of the Apex Court in the case of Ramanand Yadav v. Prabhu Nath Jha reported at : (2003) 12 SCC 606:.if the relatives or interested witnesses are examined, the court has a duty to analyse the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence was biased.... If the materials show that there is a partisan approach, as indicated above, the court has to analyse the evidence with care and caution.

40. Similar opinion was expressed by the Supreme Court in the case of State of Haryana v. Ram Singh reported at : (2002) 2 SCC 426:

Admittedly all the supposed eyewitnesses are relations of the deceased. As such they fall within a category of interested witnesses. It is not that the evidence ought to be discredited by reason of the witness being simply an interested witness but in that event the court will be rather strict in its scrutiny as to the acceptability of such an evidence.

41. It is settled position of law that Courts must be cautious and careful while weighing the evidence of witnesses who are partisan or interested. The principle laid down by the Apex Court are to be applied to the facts of this case as the prosecution has heavily relied upon the evidence of close family relations of the deceased. In the present case, PW-1 (Smt. Shish Kaur, mother of the deceased); PW-3 (Sh. Harbans Singh, brother of the deceased) and PW-8 (Kedar Nath, father of the deceased) are the star prosecution witnesses. I have carefully gone through the evidence of all prosecution witnesses including the evidence of PW-1; PW-3; and PW-8. With regard to the demand of dowry and harassment suffered by the deceased at the hands of the appellants, PW-1 (Smt. Shish Kaur, mother of the deceased) has deposed in her examination-in-chief that Raj Bala was her daughter and was married to appellant Jai Prakash on 17.6.1990. On 18.7.1991, her daughter had telephoned her and asked her to come to the matrimonial home with her father and brother, as the accused persons i.e. appellants were

threatening her. As per PW-1, on receipt of the said telephone call, PW-1 along with her husband (PW-8); son Harbans (PW-3); and Bicholia Ram Swaroop (PW-5) went to the house of her daughter, where all the appellants as well as her daughter was present. PW-1 deposed that the appellants at that time demanded five rings, five chains, five earrings, five sarees and a cash of Rs. 20,000/. According to PW-1, at the house of appellants, PW-1 and others had informed the appellants that whatever would be possible would be given and thereafter they returned to the parental house. At the same time, I find that with regard to the demand of dowry, PW-3 (Sh. Harbans Singh, brother of the deceased) has deposed that the appellants had demanded Rs. 20,000/- in cash as well as 15/20 fine sarees, 5/6 gold chains, 5 gold rings, one gold earring and other articles on the ground that sufficient dowry was not given at the time of marriage and now on the occasion of the birth of a male child, the said articles should be given. As per PW-8 (Kedar Nath, father of the deceased), the appellants had demanded sarees, chains, rings and Rs. 20,000/- in cash in 'chuchak' ceremony. In my considered opinion, discrepancies in the evidence of prosecution witnesses with regard to the number of sarees/rings/chains demanded do not go the root of the matter. However, a careful analysis of the evidence of prosecution witnesses would reveal that PW-1 (mother of the deceased) was confronted (in the cross-examination) with her statement, Ex.PW-1/D2 wherein except for the demand of Rs. 20,000/- in cash, no other demand regarding any other articles was mentioned. Even PW-8 (Kedarnath, father of the deceased) was confronted with his statement, Ex. PW-8/1 where no such demand for sarees/rings/chains had been mentioned. I find that the learned trial Court has also categorically observed that PW-8 (father of the deceased) had not stated to the SDM in his statement, Ex. PW-8/1 that a demand of saree, chains, and rings had been made by the appellants. I find that many a time, prosecution witnesses, in their zest to nail the appellants on all fronts, make exaggerations at the time of recording of their statements before the court, this case is no exception. With respect to the allegations levelled by prosecution witnesses that jewellery and articles were demanded by the appellants, learned trial Court has observed that the same was 'an exaggeration which such type of witnesses are bound to make'. In my considered opinion, on the basis of the material on record, it cannot be said that any jewellery or articles were demanded

by the appellants. Learned Counsel for the State has contended that no doubt there were improvements in the version of prosecution witnesses with regard to the demand of jewellery/articles, however, PW-8 (father of the deceased) in his statement, Ex. PW-8/1 as well as in his deposition before the Court has clearly stated that there was a demand of Rs. 20,000/- in cash, by the appellants in terms of dowry. Counsel has further submitted that even at the time of marriage, a scooter was demanded by appellant, Phool singh and given to him. I have carefully scrutinised the evidence of prosecution witnesses on this count also. In so far as the demand of scooter is concerned, I find that the same is not made out in view of the fact that PW-8 (father of the deceased) has categorically deposed in his cross-examination that it was correct that before or at the time of marriage, appellants did not make any demand for dowry. Although PW-8 improved his statement and again said that at the time of marriage, appellant Phool Singh had demanded a two-wheeler scooter and a cash of Rs. 12,000/- or Rs. 13,000/-, however, PW-8 did not produce the purchase receipt of the scooter to the police. PW-8 was also confronted with his statement, Ex.PW-8/1, wherein it was not so recorded. Thus I find that this portion of the evidence of PW-8 is unreliable and what emerges is that there was no demand of dowry at the time of marriage or at any time thereafter. Further, with regard to the demand of Rs. 20,000/- alleged to have been made by the appellants at the time of birth of a son, it would be worthwhile herein to refer to the decision rendered by the Apex Court in the case of Satvir Singh v. State of Punjab reported at : (2001) 8 SCC 633. The Apex Court observed that:

21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is 'at any time' after the marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of 'dowry'. Hence the dowry mentioned in Section

304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

42. It would be also relevant to refer to the case of Appasaheb and Anr. v. State of Maharashtra reported at : AIR 2007 SC 763 wherein it was held as under:

In view of the aforesaid definition of the word 'dowry' any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India.... A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for 'dowry' as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.

43. Further in the case of Narayanamurthy v. State of Karnataka and Anr. reported at : AIR 2008 SC 2377, it has been held as under:

28. It is proved on record that deceased B.V.D. Mani, father of deceased Jagadeshwari, gifted a silver Panchapatre and silver plate to A-1 at the time of performing customary thread changing ceremony in connection with birth of girl child and such ceremony is prevalent in their society. Such gifts are not enveloped within the ambit of 'dowry'....

44. Similar view has been expressed by the Supreme Court in the case of Kamesh Panjiyar @ Kamlesh Panjiyar v. State of Bihar reported at : AIR 2005 SC 785 : (2005) 2 SCC 388.

45. In view of the decision rendered by the Supreme Court in the case of Satvir Singh (supra); Appasaheb (supra); Narayanamurthy (supra); and Kamesh Panjiyar (supra) and applying the settled position of law to the facts and circumstances of this case, I find that prosecution witness Kedar Nath (PW-8, father of the deceased) has stated in his deposition before the court that 'all the five accused persons were sitting there. They asked us that as a son had been born to my daughter, what would us give to them on this occasion. They asked us to give...in chuchak ceremony.' The learned trial Court has also explained this ceremony in the judgment passed by him and observed that, 'Here I would like to clarify that in Hindus, the parents of the girl give gifts etc. to the daughter and her-in-laws, in case the daughter is blessed with a son. This giving of the gifts at that time is described as 'chhuchak' in the Northern India'. The learned trial Court while observing that PW-8 had made an exaggeration in his statement before the Court with regard to the demand of jewellery/articles, went on to give a finding that since the demand of Rs. 20,000/- had been mentioned by PW-8 in his statement before the SDM, the same was a demand for dowry. I find that the learned trial court has committed a manifest error herein inasmuch as, it failed to appreciate the fact that it was none other than PW-8's (father of the deceased) own version that the sum of Rs. 20,000/- was to be given in 'chuchak' ceremony. As already stated above, the term 'dowry' mentioned in Section 304-B, IPC implies any property or valuable security which is given or agreed to be given either directly or indirectly at or before or any time after the marriage and 'in connection with the marriage of the said parties'. The giving or taking of property or valuable security must have some connection with the marriage of the parties. There can be many other instances for payment of money or giving of property. For example, some customary payments in connection with the birth of a child or other ceremonies as are prevalent in different societies, such payments are not enveloped within the ambit of 'dowry' as per various judgment of the Supreme Court. In my considered opinion, admittedly, Rs. 20,000/- was to be given in terms of the customary giving at the time of birth of a child and not 'in connection with the marriage of the parties'. Infact, PW-8 (father of the deceased) has further deposed in his cross-examination that it was correct that a male child was born to his daughter, Raj Bala one month prior to the incident and that as per the custom prevailing in their society, the in-laws of his

daughter had to come to the parental house of Raj Bala to inform about the birth of male child and also to inform about their demand on this occasion. However, none of the family members or the appellants came to the parental house. The deposition of PW-8 is specific that although there was a custom, no person from the in-laws of Rajbala came to make any demand. Thus, it is not established beyond reasonable doubt that any dowry in terms of Rs. 20,000/- was demanded in connection with marriage. There is no merit in the contention of learned Counsel for the State that the said demand of Rs. 20,000/- was a demand of dowry under Section 304-B of the Indian Penal Code read with Section 2 of the Dowry Prohibition Act.

46. Learned Counsel for the appellants has further submitted that no case is made out against the appellants even under Section 498-A, IPC leave alone Section 304-B, IPC inasmuch as, not even a single incident with regard to any cruelty or harassment meted out to the deceased by the appellants 'for or in connection with dowry', or even otherwise, has been alleged need alone establish against the appellants. Contrary to this, learned Counsel for the State has submitted that on 18.7.1991, Rajbala (deceased) had made a telephone call wherein she had requested her parents and brother to visit her matrimonial home and had further categorically stated that the appellants were threatening her. Counsel for the State has contended that since it was only pursuant to the telephone call that the mother, father and brother of the deceased visited her matrimonial home, the same goes to show that the deceased was being subjected to harassment by the appellants. I have carefully scrutinised the material on record on this aspect also. It is settled position of law that Section 498-A, IPC creates a distinct and separate offence as against Section 304-B, IPC. In Section 498-A, IPC 'cruelty' has been defined in the Explanation to the said section, through two limbs. The first limb of Section 498-A defines 'cruelty' in Clause (a) of the Explanation as any willful conduct which is of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical). The second limb i.e. Clause (b) of the Explanation to Section 498-A, provides that 'cruelty' shall also include harassment with regard to demand of dowry. Gopal v. State of Rajasthan : 2009 (2) Scale 704. Applying the settled position of law to the facts of this case, I find that there is no evidence on record to

suggest that the conduct of the appellants was of such a nature which may have driven Rajbala to commit suicide or to cause grave injury or danger to her life, limb or health. No doubt learned Counsel for the State has pointed out that PW-4, Sh. Hardwari Lal has deposed that about 6/7 years ago, at about 9:45/10:00 a.m., Raj Bala had telephoned at his house and requested him to call her father (PW-8, Sh. Kedar Nath) and PW-8 has deposed that Rajbala had informed that her life was in danger. In my considered opinion, the evidence led by PW-4 only established that a telephone call had been made by Rajbala, but does not establish the factum of any harassment meted out to the deceased (Rajbala) by the appellants. This is more so when not even a single incident with regard to any cruelty or harassment meted out 'for or in connection with dowry', or even otherwise, to the deceased by the appellants, has been mentioned in the statement/evidence of any of the witnesses. Rajbala had visited her parental house many times before her death, however neither are there any allegations that Rajbala had ever complained of any harassment or ill-treatment at the hands of the appellant, nor do the surrounding circumstances show that any harassment was ever inflicted upon the deceased. The fact that Rajbala visited her parental house number of times would establish that she had no restrictions on visiting her parents and in case she was being harassed, she would have in all probability mentioned the same to her parents, brother or at least her mother. Even otherwise, evidence of PW-8 that Rajbala had informed him that her life was in danger, cannot be relied upon, inasmuch as, a bare perusal of the evidence of PW-8 (father of the deceased) would show that the evidence led by PW-8 is wrought with contradictions. Initially PW-8 deposed that the appellants were not only beating Rajbala but that Rajbala had also informed him that there was a danger to her life and that she might be killed on that very day. However, during cross-examination PW-8 was confronted with his statement recorded before the SDM wherein it was not recorded that Rajbala had been subjected to any beatings. Even otherwise, in the cross-examination dated 24.10.1997, PW-8 deposed to not remember whether in his statement recorded by the Court on 26.08.1997, it was stated by him that his daughter Rajbala had informed him over the telephone that her husband and her parents-in-law were beating her. PW-8 deposed that he did not state this fact to the police or to the SDM because his daughter never did tell any such fact to him on telephone. PW-8

deposed that in his statement recorded by the police and the SDM, he had stated that his daughter had informed him that her life was in danger from her husband and parents-in-law and perhaps she might be killed on that very day. PW-8 was however confronted with the statement Ex-PW-8/D-1 and PW-8/1 where it was only recorded that the deceased had informed the witness that her life was in danger. Furthermore, all the three star prosecution witnesses- PW-1; PW-3; and PW-8 claim to have received the said telephone call on 18.07.1991 (i.e. one day before the death) from the deceased herself, thus creating a doubt in the mind of the Court as regards their truthfulness and reliability. Be that as it may, conviction of the appellants cannot certainly be based on a telephone call, when the surrounding circumstances point in the opposite direction. As per PW-1 (mother of the deceased), Raj Bala (deceased) had come to the parental house to meet them for about 8 or 10 times after her marriage or before her death. However, it is not the case of the prosecution that Rajbala had ever complained of any ill-treatment meted out to her by the appellants or that she was ever subjected to any harassment or any demand for dowry had been made. Although PW-1 had subsequently deposed that when her sons used to go to the matrimonial home of the deceased to meet her once in a month or two, the appellants never allowed them to meet the deceased. However, I find the same to have been unreliable as during cross-examination by counsel for the appellants, PW-2 (Raj Kumar, brother of the deceased) has himself deposed that he was on visiting terms with the in-laws of Raj Bala and till her death he had visited her matrimonial home twice or thrice and that his father (PW-8) had gone to the matrimonial home of Raj Bala on three or four occasions. Apart from this, he had also gone to her matrimonial home on the occasion of Diwali, Bhaiyadooj, Rakshabandhan and Holi. As per PW-2, till her death, Raj Bala had come to her parental house on 20-22 occasions. In my considered opinion, had Rajbala been ill-treated by the appellants, she would have surely mentioned about the same to her parents, brother or any other family member during the several times she visited her parental house or in case Rajbala was being ill-treated she would have noticed the same during her visits to her matrimonial home. However, there is not even a stray allegation that the appellants teased or harassed the deceased. There is no past history in the form of any complaint/police report. In fact, PW-8 (father of the deceased) has further

deposed in his cross-examination that it was correct that a male child was born to his daughter, Rajbala one month prior to the incident and as per PW-8, at the time of delivery of child, PW-8 and his wife were present in the hospital. The deposition of PW-8 not only shows that they were in constant touch with their daughter (Rajbala), but also that her husband and in laws had not imposed any such restriction on Rajbala meeting her family at any time after her marriage. There are no allegations that the in-laws of Rajbala did not take proper care of the deceased while she was admitted in the hospital. Further PW-5 (Bicholia, Ram Swaroop) has also not supported the case of the prosecution and has in his cross-examination by counsel for the appellants stated that Raj Bala was happy with her in-laws and he had never received any complaint from her parents against the appellants. In my opinion, in the absence of any evidence on record against the appellants that cruelty or harassment was meted out to the deceased by the appellants 'for or in connection with dowry', or even otherwise, the case of the prosecution cannot stand.

47. Merely because kerosene oil was found on the scalp of Rajbala, the same by itself cannot be the sole ground to arrive at a finding that the appellants had poured kerosene on her. The fact of presence of kerosene oil is to be read not in isolation but along with surrounding circumstances inasmuch as, in the absence of any injury on her body would show that had the appellants poured kerosene on the deceased, there would have been some resistance on the part of the deceased which would have resulted in injuries on the body of the deceased which otherwise are completely absent in the present case.

48. I further find merit in the contention of counsel for the appellants that there is also a contradiction with regard as to who all went to the house of the appellants on 18.07.1991. While PW-1 (mother of the deceased) as well as PW-8 (father of the deceased) have deposed in their examination-in-chief that on receipt of the said telephone call, PW-1 alongwith PW-8 (Kedarnath, father of the deceased); PW-5 (Ram Swaroop, Bicholia); and PW-3 (Harbans, brother of the deceased) went to the matrimonial house of her daughter. However I find that PW-1 was confronted with her statement, Ex.PW-1/D2, wherein it was not recorded that Bicholia, Ram Swaroop had also gone with them. Further I find that both PW-3 as

well as PW-8 have disputed the presence of PW-1 at the matrimonial house of Rajbala inasmuch as, PW-3 deposed in his cross-examination that it was wrong to suggest that 2/3 days prior to the incident, his mother had also gone to the house of the appellants. In the same vein, PW-8 has deposed in his cross-examination that he went to the house of appellants once or twice and that his wife (i.e. PW-1) never went to the house of the appellants, till the death of Rajbala. In view of the same, the fact that PW-1 visited the matrimonial house of Rajbala on 18.07.1991 cannot be said to have been established beyond reasonable doubt and thus her statement with regard to the demand of dowry also cannot be said to be reliable. Further, contrary to his statement in the examination-in-chief, that Ram Swaroop had also accompanied him to the matrimonial house of Rajbala, PW-8 deposed in his cross-examination that although Ram Swaroop had acted as a mediator in the marriage and that Ram Swaroop was his neighbour, however, PW-8 did not have any talk with Ram Swaroop till the death of Raj Bala and Ram Swaroop never went to the house of appellants with him. Even otherwise also, Ram Swaroop (PW-5) has denied visiting the matrimonial home of the deceased. PW-8 was also confronted with his statements Ex-PW-8/D-1 and PW-8/1 where it was only recorded that PW-8 had gone along with his wife to the house of the appellants. Thus there is serious anomaly with regard as to who went to the house of the appellants and before whom demand if any was made by the appellants.

49. There are further contradictions in the evidence of prosecution witnesses inasmuch as, according to PW-1, at the house of the appellants, they had informed the appellants that whatever would be possible would be given and thereafter they returned to the parental house. However, as per PW-1, at about 4:00 p.m., appellant, Jai Prakash (husband of the deceased) came to their house and threatened PW-1 and others as to what they had said to their daughter and that she had died of burning. However, in her cross-examination PW-1 was confronted with her statement, Ex.PW-1/D2 wherein it was not mentioned that Jai Prakash had come to their house at 4:00 p.m. Further, in her cross-examination on 21.5.1997, PW-1 deposed that appellant, Jai Prakash came to the parental house at 3:00 am. in the night and asked, 'Aap Log Rat Ko Gaye The. Raj bala se milkar aaye they. Usse kya kah ker aaye ho. Veh Jal Kar Mar Gai Hai.' Subsequently, PW-1 deposed that she had not stated in her earlier statement recorded by the

court that after they returned to the parental house, at about 4:00 p.m., appellant, Jai Prakash had come and threatened by saying as to 'what they had said to the daughter and that she had died of burning'. Apparently, PW-1 did not stand by her own statement before the court. At the same time, I find that PW-3 (Harbans Singh, brother of the deceased) deposed in his examination-in-chief that after they returned to their house, appellant, Jai Prakash also came there and informed that Raj Bala had set herself on fire and was admitted to JPN Hospital. Thereafter, as per PW-3, they all went to the hospital only to find that Raj Bala was breathing her last. Thus I find that while as per PW-1 appellant, Jai Prakash had informed that Raj Bala had already died of burning; as per PW-3 appellant, Jai Prakash had informed that Raj Bala had set herself on fire and was admitted to JPN Hospital. Contrary, to the deposition of PW-1 and PW-3, I find that PW-8 has deposed in his examination-in-chief that PW-8 along with other family members reached the matrimonial home of Raj Bala at 5:00 p.m. on 18.7.1991 as there was a huge traffic jam. Thus when as per PW-8, they had not even reached the matrimonial house of Raj Bala by 5:00 p.m., PW-1 and PW-3 have deposed that by that time they had even returned back to the matrimonial home. Thus the version of prosecution witnesses contains inconsistencies and contradictions at every stage of the evidence.

50. Careful reading of the statements of all the close family relations would show that even when they visited their daughter there was no argument between her in-laws and her parents. None of the witness has deposed that the atmosphere was tense or charged up or that they were threatened.

51. In my considered opinion, there is no evidence on record as to enable me to arrive at a conclusive finding that the appellants have committed an act which would be brought under Clause (a) or (b) to the Explanation to Section 498-A, IPC or Section 304-B, IPC. Apart from the single solitary incident of the demand of Rs. 20,000/-, (which as already stated above was not a demand for dowry), no other evidence has been led against the appellants that any demand was made either before the marriage; at the time of marriage; or even after the marriage of Rajbala. Accordingly, no case is made out against the appellants (Smt. Dropadi; Sh. Sohan Lal; and Sh. Jai Prakash) in Crl. Appeal No. 333/2001 under Section 304-B, IPC

as well as under Section 498-A, IPC as well as Phool Singh and Kanta Devi in Appeal [Crl. Appeal No. 280/2001].

52. In the case of appellants, Phool Singh and Kanta Devi (appellants in Crl. A. No. 280/2001), I find merit in the contention of learned Counsel for the appellants that these two appellants were not even residing in the same house where the deceased and appellant, Jai Prakash were residing and as such they had no role to play in the married life of the couple. In fact PW-1 has categorically stated in her cross-examination that it was correct that appellant, Phool Singh and Kanta were living separately from the other appellants. In a case bearing similar facts and circumstances namely Prem Singh v. State of Haryana reported at : (1998) 8 SCC 70, the Apex Court gave benefit of doubt to an accused and observed that, 'when A-2 was residing separately from her son and when there was no positive evidence on the record to show that either A-2 was instigating A-1 to demand additional amount of dowry/money or for that purpose telling him to cause ill-treatment or harassment to Sumitra, it would be unsafe to hold A-2 responsible for an offence punishable under Section 304-B IPC. Moreover, such an additional payment of money was to benefit A-1 alone and not A-2 because there was no evidence on record to suggest that A-1 was helping A-2 either by giving some money and/or other benefits. If this be so, in our opinion, the High Court was not justified in convicting Shanti (A-2) for the offence under Section 304-B IPC. It is for this precise reason, we give benefit of doubt to A-2 and acquit her of the charge under Section 304-B IPC.'

53. In the case of Kans Raj v. State of Punjab and Ors. reported at : AIR 2000 SC 2324 it has been laid by the Apex Court that:

A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.

54. It would be apt to mention that in the entire judgment passed by the trial court, the only reference to appellants Phool Singh and Kanta Devi is in Para 46, and the judgment is completely silent with respect to the role played by the appellants in the entire case. Paragraph 46 reads as under:

46. PW 1 and PW 8 have stated that at the time of demand of Rs. 20,000/- accused Kanta and Phool Singh were also there. They had also demanded the amount. Accused Phool Singh is admittedly the Mausa of accused Jaiparkash. Accused Kanta is Mausi of accused Jaiparkash. They also used to reside at A-18, Molarband. However, they were not near the deceased as explained by them. They could not have taken the extreme step. There is no allegation that earlier also accused Kanta and Phool Singh had demanded dowry.

55. A bare reading of para 46 of the judgment would show that the trial court has come to the conclusion that since these two appellants were also present at the time of demand of Rs. 20,000/- and as such they are also to be made liable for. As already observed in the aforegoing paragraphs that the demand of Rs. 20,000/- was not a demand in connection with marriage and as such did not fall within the purview of the definition of dowry. Even otherwise, it is very surprising to note that the trial Court related these two appellants Phool Singh and Kanta Devi to the demand of Rs. 20,000/- and thereafter exonerated them under Section 304-B, IPC and convicted them under Section 498-A, IPC. They have not even been related to any incident of harassment which is an essential to bring a case within the ambit of Section 498-A, IPC, leave alone allege any specific incident with regard to them. Thus I find that no case is made out against the appellants Sh. Phool Singh; Smt. Kanta Devi (Crl. A. No. 280/2001) under Section 498-A, IPC.

56. As a final court of facts, the High Court is entitled to re-appraise the evidence and arrive at its own independent conclusion as to the guilt or innocence of the accused. This Court must thus be satisfied that the case of the prosecution is substantially true and that the guilt of the appellant has been established beyond reasonable doubt. It is only when the prosecution has proved its case beyond reasonable doubt that conviction cannot be disturbed in appeal. It will be useful to reproduce the observations of the Hon'ble Supreme Court in the case of Kali Ram

v. State of Himachal Pradesh : AIR 1973 SC 2773 which are as follows:

Another Golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations.

Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record. Indeed, the courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, however is more apparent than real.

It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled

out altogether.

57. In my considered opinion, the trial court has committed a manifest error and there is nothing on record to suggest that any dowry was demanded from Rajbala by the appellants or that she was ever subjected to harassment in connection with the demand of dowry, or even otherwise. Having given a careful consideration to the above-stated submissions made by the learned Counsel for the parties and in the backdrop of the evidence discussed hereinabove and tested in the light of the principles of law, I am of the firm view that the evaluation of the findings recorded by the trial Court suffer from an improper appreciation of the evidence on record. For the reasons stated above, CrL. A. No. 280/2001 is allowed and I find that no case is made out against appellants, Phool Singh and Kanta Devi under Section 498-A, IPC. Accordingly the judgment and order on sentence passed against them by the trial Court is set aside. Further, CrL. A. No. 333/2001 is also allowed and I find that no case is made out against appellants Smt. Dropadi; Sh. Sohan Lal; and Sh. Jai Prakash under Section 304-B, IPC as well as Section 498-A, IPC. Bail bonds be cancelled.

58. Appeals are allowed accordingly.