

Momin Iqbal Vs. State

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Court : Delhi

Decided On : Dec-10-2014

Judge : Sunita Gupta

Appellant : Momin Iqbal

Respondent : State

Advocate for Def. : Mr. M.N. Dudeja

Advocate for Pet/Ap. : Ms. Richa Kapoor, Mr. Anil Soni

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

10. h December, 2014 + CRL.A. 1280/2012 MOMIN IQBAL Through: Appellant Ms. Richa Kapoor and Mr. Anil Soni, Advocates Versus STATE Through: Respondent Mr. M.N. Dudeja, Additional Public Prosecutor for the State with ASI Jai Prakash PS S.P. Badli CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. Appellant Momin Iqbal impugns the judgment dated 19th September, 2012 and order on sentence dated 20th September, 2012 vide which he was convicted under Section 498A/304B IPC and was sentenced to undergo simple

imprisonment for 3 years under Section 498A IPC and fine to the tune of Rs.3 lacs in default to undergo SI for 9 months and for offence under Section 304B IPC he was sentenced to undergo simple imprisonment for 7 years. The fine of Rs.3 lacs was awarded as compensation to the complainant. Both the substantive sentences were to run concurrently. Benefit of Section 428 Cr.P.C. was given to the convict.

2. The prosecution case succinctly stated is as follows:Shabnam (deceased) got married to the appellant Momin Iqbal on 14th February, 2001. Out of the said wedlock, two children were born. After the marriage, Shabnam started living in her matrimonial home in Sector 18, Rohini, Delhi along with her husband, father-in-law Mohd. Iqbal and mother-in-law Akbari. Sajida and Rashid Ali were the sister and husband of sister of Momin Iqbal who used to reside in a house situated at a distance of about 200 yards from the matrimonial home of Shabnam. It is the case of prosecution that a sum of Rs.2 lacs was demanded by Momin Iqbal for starting business of shoes in a showroom on the main road which demand was fulfilled. Thereafter further demand of Rs.2 lacs was made for expanding the business which, however, could not be fulfilled. On 1 st August, 2003, Shabnam was taken to Dr. Ambedkar Hospital with alleged history of consumption of unknown poison. The information was given by the duty constable Ravinder posted at the hospital to SI Sukhbir Singh (PW1) who was posted as duty officer at Police Station SP Badli who recorded DD No.16A at 5:55 p.m. Ex.PW1/A. This DD was entrusted to SI Ravinder who went to the hospital, collected MLC of Shabnam. Thereafter he recorded the statement of Shabnam Ex.PW20/A wherein she did not impute any allegation on anybody rather alleged that due to mental tension, she consumed tablet of sulphas. At 8:35 pm, information was given that Shabnam had died. As such, ADM Sh.S.R. Kataria was called to the hospital who recorded statement of Mohd. Umar, father of deceased and directed for registration of the case. Accordingly, FIR No.359/03 was recorded by HC Ram Rattan Singh. Inquest proceedings Ex.PW11/A were carried out by Sh. S.R. Kataria. Post-mortem was conducted by Dr. Anil and the reportEx.PW7/A was proved by PW7-Dr. K. Goel. The cause of death was opined to be due to asphyxia and cardio genic shock as a result of phosphide poisoning. During the course of investigation, accused Momin Iqbal, Akbari, Rashid Ali and Sajida were arrested and charge sheet was

submitted against them for offence under Section 498A/302/304B/34 IPC.

3. All the accused were charged for the offence for which they were charge sheeted to which they pleaded not guilty and claimed trial.

4. The prosecution adduced its evidence by examining as many as 26 witnesses. The accused denied the case of prosecution and alleged false implication in this case. Three witnesses were examined on their behalf. Vide impugned judgment, the learned Trial Court acquitted accused Akbari, Rashid Ali and Sajida Begum on the ground that prosecution has failed to bring home their guilt beyond reasonable doubt. Momin Iqbal was also acquitted of the charge under Section 302 IPC, however, he was convicted under Section 498A/304B IPC and sentenced as mentioned hereinabove.

5. Feeling dissatisfied, present appeal has been preferred by the appellant.

6. Ms. Richa Kapoor, learned counsel for the appellant assailing the findings of the learned Trial Court referred to the dying declarations made by Shabnam when she was taken to hospital. Initially, when she was admitted in hospital, history given to the doctor was consumption of some unknown substance. Thereafter, her statement was recorded by SI Ravinder Singh in the presence of Dr. Deepti Bhalla wherein she stated that she consumed sulphas tablets due to mental tension. At that time, her husband had gone to Azad Pur Mandi in order to purchase mangoes. Her husband and mother-in-law are not responsible for the same. She did not want any action against them. It was submitted that later on, the prosecution tried to incorporate an oral dying declaration allegedly made to Rashid Ahmad and Wasi Ahmad wherein they implicated all the accused persons by alleging that Shabnam was caught hold by her sister-in-law and her husband and her mother-in-law caught her head and thereafter her husband forcibly put some poisonous substance in her mouth. However, testimony of Rashid Ahmad and Wasi Ahmed has not been believed by the learned Trial Court. Moreover, the prosecution had failed to prove that the deceased was subjected to harassment or cruelty on account of demand of dowry inasmuch as the allegations are confined to the fact that a sum of Rs.2 lacs was demanded for running business of shoes on the main road which demand was fulfilled and thereafter further demand of

Rs.2 lacs was made which could not be fulfilled. By relying upon *Vipin Jaiswal v. State of AP*, AIR 2013 SC1567 and *Appasaheb and Anr. v. State of Maharashtra*, AIR 2007 SC763 it was submitted that even if it is presumed that such a demand was made, it was not really a dowry demand within the meaning of Section 2 of Dowry Prohibition Act, 1961. Further no cogent evidence has come to show that the deceased was subjected to any harassment. Deceased had gone to her parental house and stayed for a period of 15 days. However, different versions are given regarding the reason of her visit to her fathers house inasmuch as her father Mohd. Umar has deposed that due to harassment meted out to his daughter, she had come to stay at his house. However, this stand is contradicted by her brother Mohd. Farman and mother who have deposed that she had visited her parents house on the occasion of birth of son of Mohd. Farman. On the same set of evidence, three of the accused have been acquitted. There is no other evidence to connect the accused with the crime. Statements of all the witnesses are generic in nature. By relying upon *Bhola Ram v. State of Punjab*, AIR 2014 SC241 it was submitted that dowry death will not ipso facto suck the husband with all his relatives into the net of Section 304B of IPC. Since the initial burden is not discharged, therefore, presumption under Section 113B of Evidence Act is not attracted. Prosecution has examined two more witnesses in order to show that the deceased informed them about the harassment meted out to her by the accused persons. Testimony of PW12 & PW13 was not believed by the learned Trial Court. Even PW23 does not inspire confidence. Under the circumstances, it was submitted that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt. As such, he is entitled to be acquitted.

7. Rebutting the submissions of learned counsel for the appellant, it was submitted by Mr.M.N. Dudeja, learned Additional Public Prosecutor for the State that the deceased was taken to hospital by the appellant and the history of consumption of sulphas was also given by him, therefore, no reliance can be placed on the same. Immediately after her death, the matter was reported to ADM, who reached the hospital and recorded the statement of Mohd. Umar wherein he gave a detailed version of harassment meted out to his daughter on account of payment of Rs.2 lacs and further that one day prior to the incident she had informed her father that she be taken back otherwise she would be killed. All these factors establish the

harassment to the deceased on account of dowry. Soon before death is a relative term and no straight jacket formulae can be laid down as to what would constitute a period of soon before the occurrence. It has to be determined upon facts and circumstances of each case. Under Section 113B, the onus was on the accused to rebut the presumption which he failed to rebut. Under the circumstances, the appellant was rightly convicted and the impugned judgment does not call for any interference. The appeal is accordingly liable to be dismissed. Reliance was placed on Kunhiabdulla and Anr. v. State of Kerala, (2004) 4 SCC13 Alamgir Sani v. State of Assam, AIR 2003 SC2108 Dhain Singh & Anr. v. State of Punjab, AIR 2005 SC1450 Lakhan v. State of MP, (2010) 8 SCC514 8. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have carefully perused the record.

9. Before dealing with the factual background of the case, it will be relevant to note the legal provisions incorporated under Section 304B IPC and Section 113B of Indian Evidence Act, 1872 as succinctly dealt with by Honble Supreme Court in Kunhiabdulla (supra) in following manner:

8. Section 304-B Indian Penal Code deals with dowry death which 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.

9. 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 relative of her husband for, or in connection with any demand of dowry. In order to attract the application of Section 304-B Indian Penal Code, the essential ingredients are as follows: (i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances. (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.

10. Section 113-B of the Indian Evidence Act, 1872 (in short "the Evidence Act") is also relevant for the case at hand. Both Section 304B Indian Penal Code and Section 113-B of the Evidence Act were inserted 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 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 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 1008-1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B Indian Penal Code 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 Indian Penal Code).

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.

11. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B Indian Penal Code 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 "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 Indian Penal Code 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 the presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon 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 Indian Penal Code 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 its 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 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.

10. In the background of the legal principles set out above, let us turn to the factual scenario appearing in the case.

11. It is undisputed case of the parties that the marriage of the deceased Shabnam had taken place with accused Momin Iqbal on 14th February, 2001 and the unfortunate incident had taken place on 1st August, 2003 meaning thereby that the death of Shabnam had taken place within seven years of the marriage. It also stands proved that the death of deceased was not caused under normal circumstances. Shabnam was brought to Baba Saheb Ambedkar hospital with alleged history of consumption of unknown substance. PW8-Dr. Deepti Bhalla was working as CMO at the said hospital on that date and prepared her MLC Ex.PW8/A. After the death of Shabnam, postmortem was conducted by Dr.Anil and external examination revealed no mark of external injury, as such, it was opined that it was difficult to give the cause of death till viscera chemical analysis report comes. Viscera was sent to CFSL, Hyderabad and as per report of CFSL, aluminium phosphate was detected in the contents. In view of the CFSL report and post mortem findings, PW7-Dr. K. Goel opined the cause of death due to asphyxia

and cardio genic shock as a result of phosphide poisoning. Under the circumstances, it is also proved that the deceased died otherwise than under normal circumstances.

12. The crucial question for consideration is whether Shabnam was subjected to cruelty or harassment by the appellant or his relatives and whether such cruelty or harassment was in connection with demand of dowry.

13. Two sets of evidence are available on record; (i) in the form of dying declaration of deceased; and (ii) oral testimony of witnesses. Dying Declaration: (i) When the injured was brought to hospital by her husband at that time, history of consumption of unknown poison was given by the attendant. (ii) PW5-Constable Ravinder Singh has introduced another oral dying declaration. According to him, Dr. Deepti Bhalla, CMO was present near Shabnam at the time when she was admitted in the hospital. She enquired from Shabnam in his presence and at that time Shabnam told her that she had consumed poison. (iii) On receipt of DD No.16A-Ex.PW1/A SI Ravinder Singh reached the hospital. Shabnam was declared fit for statement as per the opinion of Dr. Deepti Bhalla. SI Ravinder Singh recorded the statement of Shabnam Ex.PW20/A/Ex.PW8/DA which is to the following effect:

Main pata uprokt par saparivar rehti hoon tatha gharelu kaam kaaj karti hoon meri shaadi Momin Iqbal ke saath 14 farvari 2000 ko Muslim riti riwaz ke anusaar hui thi. Mere do bachhe hein jinme se bada pone do saal ka Basit va Ahiyan 7 mahine ka hai. Aaj main ghar mein dimagi tension mein thi v mera pati Momin aam lene ke liye Azadpur mandi gaya tha tatha dono bachhe ghar par hi tthe. Hamare ghar mein gehoon mein dalne ke liye salphas ki goliyaan rakhi thi jo mene chaar goliyaan kha li. Isme mere pati v meri mammi ki koi galti nahin hai. Mene apne dimagi tension ki vajah se goliyaan khai hai. Main koi kanooni karyawahi nahi chahti hoon.

The statement was bearing thumb impression of Shabnam at point B. There is a noting at Point A signed by Dr. Deepti Bhalla that patient could not sign as her hands were tied. (iv) Another dying declaration set up by the prosecution is allegedly made by Shabnam to her maternal uncle PW12 Rashid Ahmad and

PW13 Wasi Ahmad. Both these witnesses have deposed that on 1st August, 2003 on receipt of telephonic call from their brother-in-law Mohd. Umar from Dadri, they reached Ambedkar Hospital. At that time, Shabnam was alive. She informed them that she was caught hold by her nanad and nandoi from the hands and mother-in-law caught hold of her head. Her husband Momin administered some poisonous substance in her mouth and thereafter forced her to drink water. Thereafter she became perplexed and raised noise. She was removed to hospital by the neighbours.

14. A perusal of the Trial Court judgment reflects that recording of statement by SI Ravinder Singh was challenged on the ground that it does not seem to be recorded by him as the hand writing of this dying declaration is different from the other documents Ex.PW19/A and Ex.PW5/A. However, there was no challenge to the testimony of SI Ravinder Singh that this statement was not recorded by him. As such, this statement of Shabnam was recorded after she was declared fit for statement by the doctor wherein she has not implicated anybody and rather took the plea that due to mental tension, she committed suicide.

15. The oral dying declaration allegedly made by the deceased to her maternal uncles was not believed by the learned Trial Court on various counts:(i) According to PW12- Rashid Ahmad, Shabnam told him that she was removed to hospital by the neighbours whereas as per MLC, she was removed to hospital by her husband Momin Iqbal. If the averment made in the MLC is false then no such neighbour has been examined who could depose that he removed Shabnam to hospital. (ii) According to Rashid Ahmad, he received the phone call from his brother-in-law on 1st August, 2003 at 5:00 pm on his mobile whereas according to Mohd. Umar, he himself has received information at about 5:30 p.m. by neighbour of accused while he was in Dadri. If he himself had received information at 5:30 p.m., how could he make a call to his brother-in-law at 5:00 PM. (iii) PW12-Rashid Ahmad, in cross-examination, deposed that he left Azad Market after receiving information in TSR to reach Sector-18, Rohini. Some public persons were standing outside the house who informed that Shabnam was removed to hospital. Thereafter he rushed to Ambedkar Hospital in TSR and reached there within five minutes. He could not tell the time as to when he reached Rohini and thereafter to Ambedkar Hospital.

According to PW13-Wasi Ahmad, his brother Rashid after receiving the phone call came to his shop at about 6:00 p.m. Thereafter they went to Ambedkar hospital via Rohtak Road. Even this witness could not tell the time when they reached Rohini and thereafter Ambedkar Hospital. (iv) Presence of both these witnesses in the hospital and making of oral dying declaration by Shabnam to them was doubtful as according to PW20-SI Ravinder Singh, he reached the hospital on receipt of DD No.16A and remained in the hospital till 8:00 p.m. During this period, he did not meet either the father or brother or maternal uncles of Shabnam. He met the family members of Shabnam after 9:30 p.m. when he again reached the hospital on receipt of information about her death. This reflects that till 8:00 p.m., PW12-Rashid Ahmad and PW13-Wasi Ahmad did not reach the hospital and therefore, making of any oral dying declaration to them by Shabnam was highly doubtful. (v) Both PW12 & PW13 contradicted each other as according to PW12-Rashid Ahmad, drip was provided to Shabnam. However, Wasi Ahmad did not notice whether any IV drip was provided to Shabnam at that time. If both the witnesses have gone together in the ward and talked to Shabnam, then it is highly improbable that they would have contradicted on this material fact as to whether any drip was provided to Shabnam or not. (vi) The oral dying declaration allegedly made by Shabnam to both these witnesses is falsified by the testimony of PW25-ACP Rajeshwar Prasad Gautam who did not find any external injury on the mouth of Shabnam. Had the poison been administered forcibly in the mouth of Shabnam, there should have been certain marks of forcible act which was neither seen by PW25 nor by doctor nor any external injury was found during examination, as per MLC-Ex.PW8/A or even as per post mortem report-Ex.PW7/A. As such, oral dying declaration allegedly made before Rashid Ahmad and Wasi Ahmad was not relied upon by the learned Trial Court. (vii) Besides the above, Dr. K.Goel has deposed that as the odour and taste of aluminium phosphate is very typical so it cannot be given fraudulently to a healthy adult person.

16. On the other hand, the appellant had examined DW3- Moinuddin who was running a shop in the name of Rehana Boutique nearby the shop of accused Momin Iqbal and was known to accused. He deposed that on 1st August, 2003 at about 5/5:30 PM while he was working at his boutique, one Ramesh who used to do ironing work came and told that wife of accused Momin was serious. As such,

they both reached there with one Asha who was also running a shop in front of the shop of DW3-Moinuddin. Moinuddin found Shabnam lying near the sofa set in the house. On inquiry as to what had happened, she told him that maine junoon main aakar sulphas kha lee hai and then mujhe or mere bacho ko bacha lo. He enquired from her about Momin, on which she informed him that Momin had gone to Sabzi Mandi to purchase mangoes. So, he with the help of Ramesh and Asha removed Shabnam to ground floor. Meanwhile, accused Momin also reached there and removed her to Ambedkar Hospital. He further deposed that even when doctor made inquiry as to what had happened, Shabnam told that maine junoon mei aakar Sulphas kha lee hai. The testimony of this witness was believed by the learned Trial Court by observing that he was cross-examined at length but his testimony was unshaken. In fact, his deposition is corroborated by PW5-Constable Ravinder who was on duty at the hospital and has specifically deposed that on inquiry made by Dr. Preeti Bhalla from Shabnam, she told her that she had consumed poison. By placing reliance on the initial history given at the time of preparation of MLC, subsequent dying declaration made by the deceased to SI Ravinder Singh wherein she did not implicate anybody and the testimony of DW3 Moinuddin, learned Trial Court acquitted all the accused for offence under Section 302 IPC while discarding the oral dying declaration made to Rashid Ahmad and Wasi Ahmad. No fault can be found in this finding of the learned Trial Court and the same has not even been challenged by the prosecution.

17. Further question for consideration is whether the deceased was subjected to cruelty and harassment in connection with dowry demand. In this regard, the prosecution relies upon the testimony of PW3 Mohd. Umar, PW6-Mohd. Farhan, PW12-Rashid Ahmad, PW13-Wasi Ahmad, PW16-Khurshid Ahmad, PW17-Azam Ali, PW23-Vimlesh and PW26-Saida Begum.

18. PW3-Mohd. Umar is father of the deceased. According to him, he got his daughter married to Momin Iqbal on 14.02.2000 (subsequently stated on 14.02.2001). At that time, Momin Iqbal, his father Mohd. Iqbal and mother Mst. Akbari used to live in the same house together. Within one year of the marriage, her father-in-law Mohd. Iqbal left this world. Thereafter Momin Iqbal, his mother Akbari, his sister Sajida Begum and brother-in-law Rashid Ali Khan started

demanding dowry. Momin Iqbal demanded a sum of Rs.2 lacs for starting a business of shoes in a show room on the main road. Prior thereto he used to run the same business in his shop in the street. He fulfilled this demand by paying Rs.2 lacs to Momin Iqbal. In the first week of June 2003, his daughter came to his house and stayed for 14 days. During this period, she narrated him the incidents of harassment at the hands of the accused. His daughter informed him that Momin Iqbal was demanding Rs.2 lacs more. He visited the matrimonial home of his daughter, met all the accused and showed his inability to pay any amount, however, accused persisted to meet this demand. Since he could not sell his land, as such, he could not arrange for this amount as a result whereof all the accused showed their unhappiness with him. As and when he visited the matrimonial home of his daughter, he used to be insulted by all the accused. Accused Momin and Akbari did not like the meals cooked by her daughter. As such, she used to cook her meal separately. Akbari did not even allow his daughter to talk to Momin. On 31st July, 2003, at about 9:30 p.m. he was informed by his daughter on telephone that she should be taken from her matrimonial home otherwise she would be killed. However, he advised her to remain at her matrimonial home and that in case of any fault from her, she should feel sorry. On 1st August, 2003 at 5:30 pm, someone from the neighbourhood of accused informed him telephonically that all the accused were giving beatings to his daughter. As such, he directed his brothers-in-law Rashid Ahmad and Wasi Ahmad to reach the matrimonial home and see as to what was the matter. On the same day, at about 8:00/8:30 p.m., he reached the matrimonial home of his daughter and came to know that she has been removed to Ambedkar Hospital. CrI. A. 1280/2012 informed by his brothers-in-law Rashid Ahmad and Wasi Ahmad that when they reached hospital, his daughter was alive and she informed them that she had been killed by the accused persons by pouring some poisonous substance in her mouth. She also informed them that she was brought to the hospital by the neighbours and that Momin Iqbal reached the hospital later on. By the time he reached the hospital his daughter had already left this world. ADM came to the hospital at about 1:00 a.m. and recorded his statement Ex.PW3/A. In crossexamination, he denied the suggestion that in June, 2003, his daughter had visited his house to celebrate as his son Farhan was blessed with a son after his initial two daughters. As regards

the payment of Rs.2 lacs, he deposed that same was paid from his own savings/borrowing from some relatives.

19. PW6-Mohd. Farman, brother of the deceased has deposed that after the marriage, all the accused started harassing his sister on account of dowry. Demand of Rs.2 lacs was put forth which was met by his father by paying the same to Momin Iqbal in June, 2001 after borrowing some amount from his uncle and others and some amount from harvest money. Thereafter his sister was harassed to a greater extent as a result of which she came to her parental house at Dadri and stayed for about 15 days. All the accused except Akbari came to his parental house and took back his sister to the matrimonial home but even thereafter they ill-treated his sister and even gave her beatings as they put forth fresh demand of Rs.2 lacs which could not be fulfilled by his father. Thereafter, his sister started cooking meals separately as her husband and mother-in-law stopped taking meals cooked by her. In cross-examination, he admitted that his sister Shabnam had visited his house for 15 days at the time of birth of his son.

20. Testimony of PW12-Rashid Ahmad is hearsay as according to him, he was informed by his sister that Shabnam was not settled in her matrimonial home as she was being harassed by her husband and inlaws for demand of dowry. Once Rs.2 lacs was given to Momin Iqbal by Mohd. Umar which was demanded for opening of show room of shoes. He further deposed that once he visited her in-laws along with his brother-in-law Mohd. Umar, at that time, Shabnam informed him that she was being harassed by the accused persons for demand of dowry as same was not fulfilled. Shabnam told him that money given was short to open the showroom of shoes and more money was being demanded.

21. PW13-Wasi Ahmad initially deposed that after the marriage, there was nothing unusual and he did not come to know anything unusual from his sister Saida about Shabnam but at subsequent stage, he deposed that in-laws of Shabnam were demanding money. Accused Momin Iqbal wanted to open a show room. Some money was paid by Mohd. Umar but more money was being demanded and when this demand was not fulfilled then, the incident took place on 1 st August, 2003. This witness was cross-examined by learned Public Prosecutor for the State and

in cross-examination, he deposed that he was informed by his sister that Shabnam used to reside in her parental house for few days due to harassment meted out to her by her husband and his relatives.

22. Shabnam was the niece of PW-16 Khurshid Ahmad. PW17- Azam Ali used to reside in the neighbourhood of Khurshid Ahmad. This witness deposed that when Shabnam used to visit Khurshid Ahmad, she also used to visit his house and used to inform him that she was being harassed by her in-laws. Once she informed him that her husband used to deal in shoes and her in-laws are demanding money for shoes.

23. PW23-Vimlesh used to live in the neighbourhood of PW3 Mohd. Umar. This witness has deposed that once Shabnam came to her dairy to buy milk. At that time she was looking perturbed. On her inquiry, she started weeping and told her that her in-laws were harassing her and used to beat her for dowry and threw her out of the house. She informed her that her husband wanted to divorce her. She asked her to tell this fact to her parents but she told her that she did not make any complaint to her parents because her husband had threatened her to divorce if she made any complaint at her house.

24. PW26-Saida Begum is the mother of deceased. She has also deposed that the accused persons used to harass her daughter for bringing insufficient dowry. A sum of Rs.2 lacs was demanded for opening a show room of shoes which was given. However, further demand of Rs.2 lacs was made as they wanted to make a big showroom. However, this demand could not be fulfilled. On 31st July, 2003, Shabnam telephonically informed her that she be called to her parental house otherwise she would be killed by the accused persons but she made her understand that her matrimonial house was her house and she should live there. On the next day, somebody informed on phone that Shabnam had been killed by giving poison. This witness was cross-examined by learned Public Prosecutor for the State and at that juncture, she gave a different version by deposing that Akbari was under the influence of her daughter who wanted to take money and other articles from her mother and wanted to grab the property belonging to her mother and brother, as such, she used to provoke her mother and brother against

Shabnam and used to abuse her. Under the influence of nanad of Shabnam, her mother-in-law and her husband Momin used to harass her and they were not eating the food prepared by Shabnam. Shabnam used to sleep in a separate room and was not allowed to go outside the house.

25. Testimony of all the witnesses regarding harassment to the deceased on account of dowry is quite vague and general. Even if the statement of father, mother and brother of the deceased is accepted on their face value, the utmost which can be held is that the appellant had asked his wife Shabnam to bring Rs.2 lacs for opening a show room of shoes on the main road which earlier he was running in the street. This demand of Rs.2 lacs, according to the witnesses, was fulfilled. However, further demand of Rs. 2 lacs was made for expanding the same which was not fulfilled.

26. Learned counsel for the appellant strenuously argued that this demand of money for opening a show room cannot be termed as a demand for dowry and for raising this submission, reliance was placed on Vipin Jaiswal(supra) and Appasaheb(supra). In Appasaheb(supra) the accused demanded money from the family of the deceased to meet household expenses and to purchase manure. After referring to Section 2 of the Dowry Prohibition Act and Section 304B IPC, it was observed 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. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular

meaning. (See Union of India v. Garware Nylons Ltd. 1996(87)ELT12(SC) and Chemicals and Fibres of India v. Union of India, 1997(89)ELT633(SC)). 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.

27. This view was reiterated in Vipin Jaiswal(supra) where demand of Rs.50,000/- was made from the family of deceased to purchase a computer and set up his own business. It was held:

In our view, both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a `dowry demand within the meaning of Section 2 of the Dowry Prohibition Act, 1961.

28. In view of the above, the demand, if at all made by the appellant for running a show room of shoes, cannot be termed to be a demand in connection with the marriage and is not a dowry demand within the meaning of Section 2 of the Dowry Prohibition Act 1961.

29. Different versions are forthcoming regarding visit of Shabnam to her parental house in June, 2003. According to Mohd. Umar due to harassment meted out to the deceased, she had visited her parental home and at that time she informed her parents as to how she was being harassed by the accused by demanding more amount, however, her mother Saida and brother Farman have given different versions about her visit by stating that Farman was blessed with a son after two daughters and, therefore, on that occasion, Shabnam had come to her parental house and stayed for about 15 days. Testimony of PW12Rashid Ahmad that once

he along with his brother-in-law Mohd Umar visited the house of in-laws of Shabnam at Rohini and at that time, Shabnam informed him that money given was short to open the show room of shoes and more money was being demanded and she was being harassed by the accused persons on that count does not find corroboration from Mohd. Umar who nowhere deposed that Rashid Ahmad accompanied him to the house of Shabnam at any point of time. In fact, according to Mohd. Umar when his daughter informed about further demand of Rs. 2 lacs, he went to the in-laws house of Shabnam and made them understand that he was not in a position to fulfil their demand. Testimony of PW17 Azam Ali that Shabnam visited his house and informed about the harassment meted out to her by her in-laws by demanding money does not inspire confidence. In fact, according to this witness, Shabnam was niece of Khurshid Ahmad and she used to visit his house and on those occasions, she used to meet him and inform about the harassment to her by her inlaws. Surprisingly, Khurshid Ahmad was examined as PW16. However, testimony of this witness is confined to identification of dead body of Shabnam. This witness has nowhere deposed that Shabnam used to visit his house and then also used to visit Azam Ali. PW23-Vimlesh also tried to set up a case that she used to reside in the neighbourhood of father of the deceased and once Shabnam visited her diary to buy milk, at that time she informed her that she was being beaten and harassed by her in-laws for dowry and that her husband wanted to divorce her. According to this witness, Shabnam did not make any complaint to her parents as her husband threatened her to divorce in case she made any complaint at her house. Testimony of this witness cut across the testimony of father, mother and brother of the deceased as according to them when Shabnam came to stay at their house for 15 days, at that time, she informed them about the harassment to her by the accused persons.

30. Further in order to bring the case within the four corners of 304B IPC it is not only sufficient that the deceased was subjected to cruelty or harassment in connection with any demand of dowry but also that such cruelty or harassment was soon before her death.

31. In this regard PW3 Mohd. Umar and PW26-Saida Begum have deposed that on 31st July, 2003, at about 9:30 p.m. they received a telephonic call from their

daughter asking them to take her away from the matrimonial home otherwise she would be killed by the accused persons. However, they advised her to live in the matrimonial home as it was her house. Although this incident was not believed by the learned Trial Court on the ground that this part of their statement was a material improvement as it did not find mentioned in the complaint made by Mohd. Umar to ADM or statement under Section 161 Cr. P.C. of Saida Begum and testimony of her brother Farhan is conspicuously silent in this regard. Even if it is presumed that such a telephone call was made even then there is nothing to show that on that date the deceased informed that any demand of dowry was being made by any of the accused persons. Furthermore, the stand taken by the parents of the deceased that the telephonic call was received from the neighbourhood that their daughter was being beaten by the accused persons is not fortified by the medical evidence, inasmuch as, in the MLC or in the post mortem report, no external injury was found on the body of the deceased.

32. Under the circumstances, the evidence coming on record falls short of proving beyond reasonable doubt that soon before her death the deceased was subjected to cruelty or harassment on account of demand of dowry.

33. Presumption under Section 113B of Evidence Act can be drawn only when prosecution first establishes the essential ingredients of Section 304B IPC. Since the evidence falls short of proving the essential ingredients of Section 304B IPC question of drawing presumption against the accused under Section 113B does not arise. As such, the learned Trial Court fell in error in concluding that the appellant was guilty of offence under Section 304B IPC when the crucial and necessary ingredients that deceased Shabnam was subjected to cruelty and harassment soon before her death on account of dowry was not proved. Therefore, the findings of learned Trial Court in this regard cannot be sustained and same is accordingly set aside.

34. The appellant was also charged and convicted for offence under Section 498A IPC which reads as under:

498A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects

such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.-For the purpose of this section, cruelty means- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of 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.

35. A bare reading of this Section goes to show that the cruelty meted out to the deceased is not only confined to harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security but the cruelty also means the 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. Although the prosecution has not been able to prove that the deceased was subjected to harassment on account of meeting unlawful demand or any property or valuable security but it has come in the testimony of the witnesses that the deceased was being harassed by the accused so much so even the food cooked by her was not liked by Momin Iqbal and his mother and, as such, she used to cook her meal separately. Furthermore, in her dying declaration Ex.PW20/A made to SI Ravinder Singh although she has exonerated the appellant and his mother but at the same time, she alleged committing suicide by taking 4 tablets of sulphas meant for preservation of wheat due to mental tension. It is to be kept in mind that the marriage had lasted for approximately three years and the deceased was having two small children who were infants. As such, it was highly improbable that she would have taken the extreme step of committing suicide if everything had been normal. Under the circumstances, mental cruelty inflicted upon the deceased stands proved not only from the testimony of the prosecution witnesses but also from the dying declaration of the deceased. As such, the conviction of the appellant under Section 498A IPC is upheld.

36. The result of the foregoing is that the appeal is partly allowed. The impugned judgment dated 19th September, 2012 and order on sentence dated 20th

September, 2012 convicting the appellant under Section 304B IPC and sentencing him to undergo simple imprisonment for 7 years is set aside. However, his conviction and order on sentence under Section 498A IPC is upheld. The appeal stands disposed of. Copy of the judgment along with the Trial Court record be sent back. Appellant be also informed through Superintendent, Jail. (SUNITA GUPTA)
JUDGE DECEMBER10 2014 rs

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