

**IN THE COURT OF MS. SUNENA SHARMA, ADDITIONAL
SESSIONS JUDGE-03 (SOUTH), SAKET COURTS, NEW DELHI**

SC No.7227/16
Unique ID No.02403R0045102011

FIR No.236/10
PS : Fatehpur Beri
U/s: 498A/304B/34 IPC

State

Vs.

1. Bachraj
2. Lekhraj
both sons of Late Sh. Sher Singh,
R/o F-61, Harswarup Colony,
Fatehpur Beri, New Delhi
3. Smt.Ratan w/o Late Sh. Sher Singh (PO) Accused

*Date of Committal : 04.02.2011
Final arguments concluded on :27.07.2018
Judgment pronounced on :27.07.2018*

J U D G M E N T

1. In this case, accused Bachraj and Lekhraj faced trial for the charges of offence punishable u/s 498A/304B/34 IPC on the allegations that they subjected deceased Neetu, who was married to accused Bachraj on 25.06.2004 and committed suicide by hanging in her matrimonial home on 11.11.2010, to cruelty and harassment in furtherance of their demand of dowry. Against accused Smt. Ratan, though the charge sheet was filed for the same offences but, she was charge sheeted as a proclaimed offender.

Brief facts of the case as per charge sheet

2. Briefly stated the facts of the case as emanating from the charge sheet are that on 11.11.2010, DD no.13A was received at PS Fatehpur Beri pursuant to which SI Karanvir Singh reached the spot at F-61, Harswaroop Colony where deceased Smt. Neetu w/o Bachraj was found lying dead. Upon inquiry, it was revealed that deceased had committed suicide by hanging herself. Crime team was called at the spot and the crime scene was photographed. The piece of cloth/chunni which was found hanging on the ceiling fan, was seized by the police. The crime team inspected the place of crime. Dead body of deceased was sent to mortuary and the statement of deceased's mother Smt. Usha Devi and her two sisters namely Meenu and Anju were recorded before SDM. The postmortem on the dead body was conducted and after postmortem, dead body was handed over to the family of deceased. The viscera was preserved by autopsy surgeon and was taken into police possession. On the basis of PM report of the deceased, SDM gave directions to the IO for proceeding as per law.

2.1 In her statement Ex. PW4/C, recorded before SDM, Smt. Usha, the mother of deceased narrated the facts to the effect that she was a housewife and she got married her two daughters namely Neetu and Meenu with accused Bachraj and Lekhraj on 25.06.2004, according to Hindu Rites and ceremony at Fatehpur Beri and in their marriage, she gave sufficient dowry including 21 tolas gold, 1 kg silver jewellery, Rs.71000/- cash, one Alto car, furniture and other household articles to the best of her ability. Her daughters were kept well in their matrimonial house for about one year, however, after one year when her younger daughter namely Anju got admission in BDS,

the in laws of her above two daughters started ill treating them (Neetu and Meenu) by saying that complainant had spent money on her younger daughter for her admission in BDS therefore, she should also compensate them (in laws) by paying money. At one occasion, when her daughters were assaulted, a police complaint was also made and as a consequence, the in laws of their daughters came to their house and extended threat of life to complainant's son. Even at the time of '*chuchak*' (*gifts given by parents at the time of birth of a child to a daughter*) of her daughters, complainant had given sufficient articles as per her capacity but the in laws of her daughters still raised demand for an Alto car, gold chain and gold rings. Though, complainant gave said jewellery to them but she did not give any car. However, in lieu of car, she gave Rs.10 lacs which she had withdrawn from some committee. On one occasion, when complainant, her father and brother visited deceased's matrimonial home at Fatehpur Beri, they all were assaulted by Pradeep, Rajji, Sahi Ram, Lekhraj, Bachraj, Dholi, Rattan and the sister in laws of her daughters and their clothes were also torn. But, due to the intervention of family members, said persons apologized for their conduct and therefore, no police proceedings were initiated. Second time, the action was not taken because of the assurance given by MLA Bhram Singh who assured them that in future, her daughters would not be subjected to any beatings or ill treatment. In laws of her daughters also did not allow them to talk to the complainant and when complainant gave a mobile phone to her daughters, the same was returned back at complainant's brother's house by accused Lekhraj. In laws of her daughters always used to sit in front of her daughters whenever they used to talk to them so as to ensure that they do not make any complaint to her parents.

2.2 On 15.09.2010, deceased visited her parental house at the *Kuan Pujan* ceremony of her nephew and thereafter, complainant never talked to her daughter either on telephone or face to face. On 11.10.2010, at 7:30 complainant's son received a phone call from Fatehpur Beri and he was informed that his sister Neetu i.e. deceased was serious. Complainant's son then informed complainant's younger daughter Anju, who then, called accused Bachraj on telephone to know about Neetu but she was told that Neetu had died. Accordingly, Anju informed complainant and thereafter, complainant alongwith her brothers, sister in laws (Bhabhi) visited deceased's matrimonial house at Fatehpur Beri where she found dead body of her daughter Neetu and near the dead body, her another daughter Meenu was also found present, Smt. Ratan and her two sons were however, not present there. Complainant suspected that her daughter had been killed by her mother in law, husband, brother in law and she requested the police to take action against them.

2.3 On aforementioned statement of deceased's mother, IO prepared the rukka Ex. PW17/A and got the present FIR registered. Further investigation of the case was handed over to SHO who recorded the statement of the witnesses. On account of the engagement of the SHO in another work, further investigation of the case was handed over to SI Karamvir Singh. During investigation, said IO arrested accused Bachraj. After arrest of said accused, the investigation was handed over to Inspector V.K.Singh who recorded statement of complainant and her two daughters namely Meenu and Anju u/s 161 Cr.P.C., got the site plan of the place of incident prepared, arrested accused Lekhraj, seized documents like marriage

card, photographs of the marriage and sent the exhibits to FSL. IO also got prepared the scaled site plan of the place of occurrence. Since accused Smt. Rattan was deliberately evading her arrest, proceedings u/s 82/83 Cr.P.C. were initiated against her. The sister in laws of the deceased Geeta and Babita, who were living in their separate houses at Haryana, were also joined in the investigation. However, against them, no incriminating material was found. The alleged persons namely Sahi Ram, Dholi, Pradeep, Rajdeep were also interrogated as they were related to the mother in law of the deceased but, nothing got revealed even against them for showing their involvement in the commission of offence therefore, the names of said persons were kept in column no.12 of the charge sheet while the name of accused Lekhraj and Bachraj was kept in column no.11.

3. After completing the investigation, IO filed the charge sheet in respect of accused Bachraj and Lekhraj on 19.01.2011 before the court of Ld. MM and Ld. MM took the cognizance and proceeded only against accused Bachraj and Lekhraj. Later on, supplementary P.O. charge sheet in respect of accused Smt. Rattan also came to be filed before concerned area MM on 28.07.2011 and it was also committed to the court of sessions on 09.08.2011.

4. On 03.11.2011, charges for offences punishable u/s 498A/304B/34 IPC were framed against both the accused persons to which they pleaded not guilty and claimed trial.

Prosecution Evidence

5. In order to prove its case, prosecution has examined 19 witnesses namely PW1 Sh. Tejpal, PW2 Dr. Shashank Pooniya, PW3

Sant Ram, PW4 Ms. Juhi Mukherjee, PW5 HC Hari Om, PW6 Sh. Sukhram, PW7 Smt. Usha, PW8 HC Ram Niwas, PW9 HC Mahavir, PW10 SI Mahesh Kumar, PW11 Ct. Sunil, PW12 Smt. Meenu, PW13 Anju Mavi, PW14 Sh. Jagat Singh, PW15 SI Karamvir Singh, PW16 ASI Ashok, PW17 Inspector Virender Jain, PW18 HC Karam Chand and PW19 Inspector Ajay Kumar Singh. The said witnesses have been categorized under following heads:-

A) Public witnesses

1. PW1 Tejpal (neighbour of accused)
2. PW3 Sant Ram (neighbour/relative of accused)
3. PW6 Sukhram (brother of deceased's father in law)
4. PW7 Smt. Usha (mother of deceased)
5. PW12 Smt. Meenu (deceased's married sister)
6. PW13 Ms. Anju (deceased's unmarried sister)
7. PW14 Jagat Singh (relative of accused)

B) Medical Evidence/Autopsy Surgeon

1. PW2 Dr. Shashank Poonia, Junior Resident

C) Witness to inquest proceedings

1. PW4/Ms. Juhi Mukherjee, the SDM

D) Formal police witnesses

1. PW5 HC Hari Om
2. PW8 HC Ram Niwas
3. PW9 HC Mahavir
4. PW10 SI Mahesh Kumar
5. PW11 Ct. Sunil
6. PW16 ASI Ashok
7. PW17 Inspector Virender Jain
8. PW18 HC Karam Chand

E) Investigating Officers

1. PW15 SI Karamvir Singh
2. PW19 Inspector Ajay Kumar

Public Witnesses

6. PW1/Tej Pal was living in the neighbourhood of accused. He in his examination in chief deposed that he did not remember the date however, the incident was about one year old. He was coming back from his farm to village. At about 5:30 pm, he saw Sant Ram and Jagat Singh running towards their house and he also reached there and saw that dead body of Neetu was being brought by Sant Ram and Jagat Singh and they took the dead body to the hospital. PW1 also followed them and they reached Mission Hospital in Chandan-Hola, where deceased was declared as dead. Thereafter, he returned to his house and did not go to the house of Neetu. PW1 could not tell as to whom the deceased was married. PW1 further deposed that police had met him only once at his house.

6.1 As PW1 turned hostile, he was cross examined by Ld. Addl. PP with the permission of the court. In his cross-examination, upon being confronted with his statement Ex. PW1/A from point A to A, PW1e stated that he did not tell the police that at the house, he had seen Lekhraj and his wife Meenu. He however, admitted that from said house which belonged to Lekhraj and Bachraj, the dead body of Neetu was brought and he knew the accused Lekhraj and Bachraj (correctly identified) being resident of his village. PW1 deposed further that he had informed the police that Sahi Ram and his wife Dhauli had gone to Faridabad. He admitted that house of Sahi Ram and his wife Dhauli was just opposite to the house of Bachraj and Lekhraj and that Pradeep and Raji were sons of Sahi Ram. Further that, relations between family of Sahi Ram and Bachraj were quite normal and there was no dispute. He also admitted that Geeta and Babita were the sisters of accused Bachraj and Lekhraj and both said

sisters used to visit accused's family occasionally. He deposed further that there was no quarrel between accused, Geeta and Babita. He further admitted Sahi Ram was the real uncle and Dhauli was the real aunt of accused.

7. PW3/Sant Ram has deposed that he was a driver in DTC. He did not remember the date of incident, however when he returned from his duty at about 5pm at his house at Fatehpur Beri, Lekhraj and his wife called him and asked him to hurriedly come as his bhabhi had done something. He then reached at the first floor of the house where he found that wife of Bachraj had hanged herself with the ceiling fan by a chunni; they opened the gate by breaking it; Lekhraj and his wife helped him; there was a small stool which was on the bed in the room where feet of deceased were touching, wife of Bachraj was pulled down and at that time her body was still hot. They made her lay on the bed and a doctor from locality was called who declared her dead. Then police reached there. He further deposed that no relatives from any side had come there. He further testified that he and his family including his brother Sahi Ram and his family had no connection with the family of accused persons. Further that, they were living separately from the accused persons for the last about 50 years. Further that, Ratan who was the mother (wrongly written as wife) of accused persons was not present at that time at the spot. Since their families had no relation with the family of accused persons so there was no occasion for them to know about the family affairs of accused persons.

7.1 PW3 was cross examined by Ld. Addl. PP with the permission of court because he also turned hostile from his earlier

statement. During his cross examination by Ld. Addl. PP, he deposed that police had made inquiries from him and his statement was recorded. However he denied that he had not stated to police that mother of accused persons had returned to her house after they came from the hospital.

8. PW6/Sukhram has deposed that he was working as a tutor in the area of Harswaroop Colony and Lekhraj and Bachraj were the sons of his elder brother Late Shri Sher Singh and they were residing in Harswaroop Colony. Both these brothers were married to two sisters Neetu and Meenu and they were residing together in the house of accused persons at Harswaroop colony. After marriage, Bachraj had started living on the first floor of said house. PW6 further deposed that in the month of October 2010, he had received a telephonic call and was informed that wife of Bachraj namely Neetu was taken to hospital as she had hanged herself in the house. PW6 also reached said hospital situated in Chandan Hula, however he did not remember the name of said hospital. After some medical aid, doctor declared Neetu dead. Neetu was brought at the home of accused persons and PW6 informed the police as well as the parents of deceased. Police made inquiries from him and he narrated the incident to the police.

9. PW7/ Smt. Usha is a material witness as she is the complainant and the mother of deceased. In her examination in chief, she has deposed that she had two daughters namely Meenu and Neetu and both of them were married on 25.06.2005 with accused Lekhraj and Bachraj. In the marriage she had given an Alto car, Rs.71000/- in cash, one kilogram silver jewelery and 21 tollas of gold jewelery and furniture including TV, fridge, gas cylinder, washing

machine and other household articles were given separately to both her daughters. Both the daughters were married in one function. For one year, her daughters were kept nicely by the accused persons. During first year both her daughters resided mostly with her as they were studying but they used to live for short periods in the house of accused persons.

9.1 PW7 further deposed that she had called the father of accused Bachraj to discuss about the admission of Anju in BDS as she had got admission in BDS course. Thereafter, both the accused and their mother started harassing her daughters and asked for cash as they insisted that since she (PW7) was spending money on study of Anju so she should also compensate them by giving equivalent money. Thereafter, they started beating her daughters. Once accused Lekh Raj had bolted her daughter in the kitchen and put the gas stove on. She further deposed that once Bachraj's son Mannat was playing with mud and her daughter Neetu had given him a wash but he again played with mud and at that time the mother in law of Neetu put Neetu in a drum filled with water.

9.2 PW7 has further deposed that she had given Rs.5 lacs each in cash to both the accused persons in lieu of her spending money on the BDS course of Anju but, she did not give them another Alto car despite their demand. She has further deposed that on birth of children born to her daughters, she had given them some jewelery articles.

9.3 PW7 has further deposed that after two and a half years of marriage a telephone call was made by Bachraaj and she alongwith

her father, brother, nephew went to the house of accused persons in a hired car but accused persons asked the driver to go away from there. She further deposed that they however, met all the family members of accused persons including Smt. Dauli, mousi of accused persons inside the house; accused persons started fighting with them and asked them to take her daughters away, however she did not agree to that. Her elder daughter wanted to come with them but accused persons caught hold of her and did not allow her to accompany them. She further deposed that her clothes were also torn by the accused persons and they were assaulted by accused Lekhraj and his associates and then she called police. She further stated that in the meanwhile villagers also came at the spot and matter was pacified, though the accused never realized their mistake. Thereafter, they returned to their house.

9.4 PW7 has further deposed that after about 6 months, accused persons bolted her daughter Neetu in a room and in that regard, Neetu had also made a police call. As per PW7, they also went to the police station, where they found Neetu and Meenu present there. With the intervention of Brahm Singh Tanwar, matter got compromised and they did not pursue the matter further and her daughter accompanied the accused persons. After three days, accused left her daughters at her house and they stayed with her for about 6-7 months. Thereafter, with the intervention of villager, PW7 sent her daughters with the accused persons. About two years ago (from the date of her testimony), PW7 had last met her daughter Neetu on *Kuan Pujan* ceremony of her nephew at Faridabad where her daughter told her that she did not want to live with the accused persons but PW7 sent her back saying that she would soon take her to

her house. Thereafter, PW7 did not have any interaction with her daughter.

9.5 PW7 further says that on 11.10.2010, an information was received by her son Pankaj on phone from Bachraj that Neetu had expired. Then Pankaj called her another daughter Anju, who in turn spoke to Bachraj on telephone and she was informed that Neetu had died. PW7 then made a phone call at the house of accused Bachraj, the call was picked by some old person who informed that Neetu was serious. Thereafter, PW7 alongwith Ravinder, Yogender, her sister in laws Bimelsh and Savita reached at the house of accused persons at Fatehpur Beri and found dead body of her daughter Neetu lying in the house. Meenu, the other daughter of PW7 was also present there. Accused persons and their family members including their other relatives namely Dhauli, her husband and Pradeep were however, not present in the house, some other women of the village were though present there. PW7 tried to contact Shri Brahm Singh Tanwar, MLA but he did not come. Police was called by the accused person and dead body of her daughter was taken to hospital for postmortem. Thereafter, PW7 was produced before a lady SDM, who recorded her statement Ex.PW4/C. PW7 further deposed that her daughter was killed by accused persons due to demand of money. Further that, she had also given her statement to the police. She further deposed that she had given marriage card of her daughters to the police which was seized by the police vide seizure memo Ex.PW8/A. The marriage card and four photographs Ex.PW8/A1 and Ex.PW8/B1 to B4 were seized by the police vide seizure memo Ex.PW8/B.

10. PW12/Smt. Meenu deposed that she was a Teacher. On

25.06.2004, she and her elder sister-Neetu, got married with two brothers namely Lekhraj and Bachraj, respectively. In their marriage, her mother had given one Alto Car, Rs. 71,000/- cash, and 21 *tolas gold* and 1 kg silver. They all lived together in the same house at Fatehpur Beri. The behaviour of their in-laws was good for the first one year after marriage. PW12 further deposed that in the year 2005, for the purpose of admission of her unmarried younger sister Anju in BDS course, her father in law was called to her parental house. Her father in law stated that he had no objection, if Anju was admitted in BDS course. However, her mother-in-law objected to her admission, on the ground that if her parents could spend a huge amount on Anju's admission, then they should also give equivalent amount to them (accused).

10.1 PW12 further testified that on 19.06.2009, both of them (i.e. PW12 and deceased) were given beatings by Lekhraj, Bachraj, their Mause-Mausi, her mother-in-law, Pradeep (Devar) and Rajji (Jeth) and in that regard, they made a telephone call at PS-Fatehpur Beri. Her in-laws called the local MLA Brahm Singh Tanwar and at his intervention, the matter got compromised. The MLA gave assurance that they (Neetu and Meenu) were like his own daughters and he requested her parents to send them to their in-laws' house on his guarantee. They were treated nicely for nine months, but thereafter, again, they were given beatings by them. PW12 further testified that on 04.05.2010, in the evening after preparing dinner at about 7/8.00 PM, when she went to her room on first floor, both the accused persons namely Bachraj and Lekhraj with her mother-in-law gave severe beatings to her sister Neetu. Her head was even drowned in a water drum by Bachraj and his mother Ratan. When she (PW12)

came to the ground floor, she saw that Bachraj, Ratan, and his Mausi-Dhauri were sitting on her sister Neetu. After seeing that conduct, PW12 screamed and upon listening her voice, Sukh Ram and Sant Ram, brothers of her father-in-law came rushing to their house and they pushed aside Bachraj, Ratan and Dhauri, from Neetu. They even told Bachraj, Ratan and Dhauri that they should not quarrel with Neetu in this manner. After giving proper counseling, Sukh Ram, Sant Ram and other villagers went to their homes. However, that night Bachraj locked her sister Neetu in a room. Due to this, she again telephoned the police, police came and they broke open the lock, took her and Neetu with their children to police station. From the police station, their parents were also informed and they also reached there with other family members. Once again, a compromise was entered into and they (PW12 and deceased) again went back to their in-laws' house.

10.2 Further that, for the next 3-4 months, they lived peacefully. Thereafter, her sister Neetu, who earlier used to live on the ground floor, shifted to first floor and PW12 shifted to ground floor from the first floor. PW12 further deposed that on 11.10.2010, at about 12.00 noon, she noticed that Neetu had not come down on the ground floor even once since morning, though by that time, she used to usually get down many a times. Bachraj was also on leave on that day. At 2:00 PM, PW12 dozed off to sleep. She got up at about 4.00 PM and started watching TV in her room. Her mother-in-law came to her room and asked her to prepare tea for all the family members, including Bachraj, Lekhraj, Ratan, Dhauri, Sahi Ram, Rajji and Pradeep. PW12 prepared the tea and went to the hall. After serving them with tea, she came back to her room with tea for herself. At about 5.00 PM,

she heard cries of Neetu. When she was about to come out of her room, Pradeep and Rajji pushed her inside the room and told her that if she would raise any noise, she would also be killed. PW12 was locked in her room and then they went away. After sometime, Bachraj came and after opening the lock of her room, he ran away. She went to the room of deceased on first floor and found her room locked from inside. As the room had two gates one from the front side and one from the back side, PW12 went to the back side door, but that too was locked from inside. As there was a window near that door, PW12 peeped inside the room from that window, to her utter shock, her sister Neetu was hanging from her neck with the ceiling fan.

10.3 PW12 further deposed that after seeing her sister Neetu hanging with the ceiling fan, she raised hue and cry. On listening her screams, Sukh Ram (PW6), Sant Ram (PW3) and other villagers came there. The bolt of the room was opened by putting a hand through window. Her sister Neetu was brought down from the ceiling fan. She was tried to be revived by Sukh Ram, Sant Ram and villagers by rubbing her palms and feet. Thereafter, deceased was taken by them to Mission Hospital. After ½ hour, Neetu was brought back to the house and she was taken back to her room on first floor. PW12 was not allowed to go near to her sister, despite her requests. Police came there. Dead body of her sister was brought to the ground floor by them. PW12 further deposed that she was not aware that by that time her sister had already died. Thereafter, Bachraj called her in another room on the ground floor and told her that her sister had already expired and his life as well as the life of his children, was in her (PW12's) hands. He also told her that even his govt. job was in her hands and only if he continued to be in job, he would be able to rear

his children. PW12 further testified that thereafter, she came back where her sister was lying. Her family members had also arrived. Bachraj, Lekhraj and Ratan had absconded from there after leaving her with sons of deceased and her own son. After the dead body of Neetu was taken away, PW12 also went to her parental house with her mother. Next day, her statement Ex. Pw4/D was recorded by the SDM in her Office at Hauz Khas.

11. PW13/Anju Mavi is the unmarried sister of deceased. As per her version, on 11.10.2010, at about 7.30 PM, she received a telephone call of Chacha of Bachraj informing that her sister was ill and he called them at their house. She told said fact to her mother and thereafter, she alongwith her mother, her Mausi, her brother and her mama went to the house of accused at Fatehpur Beri where they found the dead body of her sister-Neetu lying in the front room of their house. No family members of Bachraj were present with Neetu at that time. Further that, the marriage of her sister Neetu and Meenu was solemnized with Bachraj and Lekhraj respectively.

11.1 As PW13 turned hostile, she was cross examined by Ld. Addl. PP for State after taking permission of the court. In her cross-examination, she deposed that on 12.10.2010, her statement was recorded by the SDM, Hauz Khas. But, when her said statement EX.PW4/E was read over to her, she categorically denied the contents of the same. She however, admitted that in 2010, she was a student of BDS.

11.2 On being confronted with her statement EX.PW4/E, from

portion A to A PW13 denied the suggestion that she had stated in her statement to the SDM, that after about one year of marriage of her sister Neetu, the in-laws of her sister Neetu started harassing her for demand of dowry; or that Neetu used to be beaten up by her husband, her mother-in-law and her another mother-in-law (Mausi Saas). She further denied that due to her admission in BDS, the in-laws of her sisters, started harassing them more as they used to say that her parents had spent Rs. 10 - 12 Lakhs on study of PW12 and therefore, they used to demand more money from them. She further denied the suggestion that her sister was also harassed by her sister-in-law (Nanad) as they also used to beat her or that the dowry articles given to her sisters in the marriage were given to their sister in law or that her sister Neetu was also not allowed to talk to them on telephone or that whenever she used to meet her sister, her sister used to tell that she was being harassed by her in-laws.

11.3 PW13 further denied the suggestion that she had stated in her statement to the SDM that in the year 2009, her sisters told them that they were being harassed continuously by their in-laws, or that when her mother, Naanaji and Maamaji went to the matrimonial home of her sisters, they were also beaten up by her sisters' in-laws or that their clothes were also torn. She further denied the suggestion that in May, 2010, her sisters were again harassed or in that regard, they had also made a police complaint or that on the assurance of MLA Brahm Singh, said complaint was taken back.

11.4 PW13 denied the suggestion that on 15th September, she had met her sisters at their house or that on 11.10.2010, at about

7.00 PM, she had received a phone call from her younger brother, who told that he was telephonically informed by her sisters' Chachya Sasur that her sister was seriously ill or that when she (PW13) called her Jija Bachraj, he told that her sister had expired. She further denied the suggestion that she had stated in her statement to the SDM that she suspected the hand of the in-laws of her sisters as well as accused Bachraj and Lekhraj and others in the death of her sister. PW13 further denied the suggestion that she was deposing falsely for the sake of her sister Meenu, who was still living with accused-Lekhraj. She further denied to have stated to the police what she had already stated before the SDM on 12.11.2010.

12. PW-14/Jagat Singh has deposed that on 11.10.2010, at about 5.30 PM, he was going towards Fatehpur Colony from Fatehpur Village. When he reached in front of the house of Bachraj, he heard some noise. Sant Ram (Uncle of Bachraj) met him there, and he told him that wife of Bachraj had committed suicide. At that time, wife of Lekhraj was also present there. The door of the room of deceased was knocked by Sant Ram, Lekhraj' wife, Teja and also by him with others. Somehow, the door was unbolted from the inside and they saw that Bachraj's wife had committed suicide with the help of chunni as she was hanging with the ceiling fan. She was brought down after opening the knot of chunni, and thereafter, she was taken to Mission Hospital in Fatehpur Beri, where, she was declared 'brought dead' by the Doctor. From there, dead body was brought back home. Further that, uncle of Lekhraj informed police at 100 number.

Medical Evidence/Autopsy Surgeon

13. PW2/Dr. Shashank Poonia deposed that on 12.10.2010, he was posted as JR, Forensic Medicine, AIIMS, New Delhi. On that day, he conducted postmortem on the dead body of Neetu, a female aged 26 years, brought by police with history of found hanged on 11.10.2010. As per his version, on examination of ligature mark, a brown colour parchmented mark was found present in front of neck. The mark was not appreciable on the left side and back of the neck. It was running upward and backward. Width of ligature mark varied between 2/5 cm and 3.5 cm. It was 7 cm below chin, 10 cm above suprasternal notch, 6 cm from left mastoid and 9 cm from right mastoid. Another separate spherical parchmented mark was present just below the left angle of mandible. It was 3 cm x 2 cm in size. On dissection, subcutaneous tissue was white, glistening and hard to touch. No extravasation of blood. Neck musculature was intact. Thyrohyoid complex intact. Circumference of neck was 32 cm. Time since death was about one day.

13.1 As per his opinion, the cause of death was asphyxia due to antemortem hanging. However, viscera was preserved to rule out any intoxication. PW2 proved his report in this regard as Ex. PW2/A.

Witness To Inquest Proceedings

14. PW4/Ms. Juhi Mukherjee is the SDM who has deposed that on 11.10.2010, she had received an information from PS regarding suicide of a lady by hanging, but since it was late night, therefore, she went to hospital on 12.10.2010 and she met there the police officials who briefed her about the facts and circumstances. She made request for postmortem examination of lady Neetu wife of Bachraj vide her

application Ex.PW4/A; form 25.35 Ex.PW4/A was filled up at her instance. She then visited the place of incident which was F-61, Harswarup Colony, 1st floor, Fatehpur Beri, New Delhi and directed the police officials to bring the parent and relatives of the deceased in her office for their statement. At about 2.30 pm police officials produced before her three witnesses Smt. Usha Devi, Meenu and Anju who were called one by one in her office and she got recorded their statements through her assistant. Statement of Usha was Ex.PW4/C, bearing endorsement of PW4 at portion X and signature of Usha Devi at point Y. Statement of Meenu was Ex.PW4/D bearing endorsement made by PW4 at portion X1,X2, X3 and signature of Meenu at point Y1,Y2 and Y3. Statement of Anju was Ex.PW4/E with endorsement of PW4 at portion X and signature of Anju at point Y. She recorded their statements after due satisfaction regarding their voluntariness. The allegations of dowry demand and cruelty were made by the witnesses. She has further deposed that the postmortem report was received on 18.10.2010 and after perusal of the same, she forwarded the postmortem report and statements to the police vide her letter Ex.PW4/F.

Formal Police Witness

15. PW5/HC Hari Om is the duty officer who has deposed that on 11.10.2010 at about 7.35 pm, he had received an information from control room South District which was recorded vide DD No.30A and said information was regarding a lady who committed suicide at F-61, Harswaroop Colony, House of Sher Singh. PW5 proved the copy of DD No.30A as Ex.PW5/A and said DD was given to SI Karamvir for necessary action.

16. PW8/HC Ram Niwas is a formal witness who recorded present FIR Ex. PW8/A on 18.10.2010 at 8:05 pm on the basis of tehrir brought by Insp. Virender Jain, upon which he made the endorsement Ex. PW8/B.

17. PW9/HC Mahavir is the witness in whose presence accused Bachraj was arrested by IO in the police station on 22.10.2010 vide arrest memo Ex.PW9/A and his personal search Ex.PW9/B was also conducted. On 15.11.2010, PW9 again joined the investigation at the time of arrest of accused Lekhraj from his house vide arrest memo Ex.PW9/C. As per PW9, personal search of said accused was conducted vide memo Ex.PW9/D, in his presence.

18. PW10/SI Mahesh Kumar is the draftsman, who had visited the place of incident i.e. F-61, Harswaroop Colony, Fatehpur Beri on 31.12.2010 with Insp. AK Singh and at the instance of IO, he took rough notes and measurement and prepared a scaled site plan on 06.01.2011. As per PW10, the rough notes were destroyed after preparation of scaled site plan Ex.PW10/A.

19. PW11/Ct. Sunil deposes that on 25.11.2010, he was posted at PS-Fatehpur Beri and on that day, at the instance of IO, he had obtained one viscera box duly sealed with the seal of 'Department of Forensic Medicine, AIIMS', alongwith the sample seal of the hospital from MHC (M), and the same was deposited at FSL, Rohini vide RC No. 123/21. Further that, he also returned back copy of RC and receipts to the MHC (M) and the pullanda remained intact till the same was in his possession.

20. PW-16/ASI Ashok has deposed only regarding execution of process issued u/s 82 Cr.P.C. against accused Smt. Rattan who was declared P.O. vide order dated 12.07.2011. As said accused is still absconding, testimony of said witness is not relevant at this stage. Hence, not discussed.

21. PW-17/Insp. Virender Jain is a formal witness as he only had made endorsement Ex. PW17/A, on the request of SDM, Hauz Khas for registration of case u/s 498-A/304-B/34 IPC. As per his deposition, after registration of case, investigation was handed over to Insp. A. K. Singh. PW17 also recorded statement of SI Karamvir u/s 161 Cr. PC.

22. PW-18/HC Karam Chand is the PCR personnel, who visited the spot after receipt of PCR call. As per his version, on 11.10.2010, at 19:28:20 hours, while he was posted at C.P.C.R. (PHQs) and was on duty from 8:00 PM to 8:00 AM, a call was received from mobile No. 9313234456 from one Sukhram, who informed that one lady had committed suicide at house of Sher Singh bearing No. 61, near Shiv Mandir, Harswaroop Colony, Fatehpur Beri. The said information was recorded by Ct. Mohan Dass and he forwarded the same at 19:29:52 hours for the purpose of console vide CRD No.11Oct01140780, and the same was again forwarded at 19:31:33 hours to PCR 'Eagle 63'. The said PCR form is EX.PW18/A.

Investigating Officers

23. PW-15/SI Karamvir Singh has deposed that on 11.10.2010, at about 7.35 PM, on receipt of DD No. 30-A EX.PW5/A, regarding suicide committed by a lady at House No. F-61, near Shiv Mandir,

Harshroop Colony, Fatehpur Beri, New Delhi, he alongwith Ct. Mohit had reached at the place of incident, where they found a dead body of one lady Neetu was lying on the floor of the said house. PW15 made local inquiries. Crime Team was also called at the spot and spot was inspected and got photographed. In the room, where Neetu had committed suicide, a chunni was hanging with the ceiling fan, the same was removed and kept in a polythene, which was converted into pullanda and sealed with the seal of 'LS' and was seized vide seizure memo EX.PW15/A. Thereafter, through Ct. Mohit dead body of the deceased was sent to AIIMS Mortuary with a request letter Ex.PW15/B to preserve the dead body.

23.1 PW15 further deposed that on the next day i.e. 12.10.2010, he had taken mother and two sisters of deceased to the Office of SDM, Mehrauli, for the purpose of recording their statements. SDM recorded their statements and thereafter, on behalf of SDM, postmortem of deceased-Neetu was got conducted. Before postmortem, PW15 also recorded identification statement of Sanjay Mawi and Charat Ram as EX.PW15/C and EX.PW15/D respectively. After postmortem, dead body of the deceased was handed over to the relatives vide delivery memo EX.PW15/E, bearing his signatures at point A.

23.2 PW15 further deposed that on 14.10.2010, he collected viscera from AIIMS Mortuary, which was duly sealed with the seal of the hospital, alongwith sample seal and the same was seized vide seizure memo EX.PW15/F, bearing his signatures at point A, and the same was deposited in the Maalkhana. On 22.10.2010, accused Bachraj (correctly identified in the court) came in the PS and he was

arrested by PW15 because on that day, IO was not present in the PS. The arrest memo of accused Bachraj is EX.PW9/A and his personal search was conducted vide memo EX.PW5/B, both bearing his (PW15) signatures at point B respectively. On the same day, accused Bachraj was produced before concerned court. After his medical examination, he was sent to Judicial Custody. PW15 also recorded the statement of HC Mahavir u/s 161 Cr.PC. PW15 correctly identified the chunni seized from the spot as EX.PW15/P-1.

24. PW19/Insp. Ajay Kumar Singh has deposed that on 30.10.2010, while he was posted at PS Fatehpur Beri as Inspector, further investigation of present case was handed over to him. On 09.11.2010, deceased's mother Usha Devi and sister Anju came to PS Fatehpur Beri and produced one marriage card Ex.PW8/A-1 and he seized the same vide seizure memo Ex.PW8/A. On 10.11.2010, he alongwith SI Karamveer reached at the spot i.e. F-61, Harswaroop Colony, Fatehpur Beri, where he prepared site plan of the spot Ex.PW19/A at the instance of SI Karamveer. On 15.11.2010, he alongwith HC Mahavir again went to abovesaid place of incident where accused Lekhraj was interrogated and arrested vide arrest memo Ex.PW9/C and his disclosure statement was also recorded as Ex.PW9/D. After medical examination, Lekhraj was produced before the concerned court and from there he was sent to Judicial Custody. He further deposed that on 18.11.2010, he had received PCR Form, photographs of the spot and scene of crime report Ex.PW19/B. On 25.11.2010, he sent exhibits to FSL through Ct. Sunil and also recorded statements of Ct. Sunil and MHCM Ct. Karam Chand.

24.1 Further that, on 29.11.2010, Usha Devi, mother of

deceased again came to PS and produced 4 photographs Ex. PW8/B1 to B4 of the marriage of deceased Neetu with accused Bachraj and he seized the same vide seizure memo Ex.P8/B. On 31.12.2010, he called SI Mahesh Chand, Draftsman to the PS and from there he was taken to the place of incident for the purpose of scaled site plan. Later on SI Mahesh Chand Draftsman handed over him scaled site plan. After completing the investigation, PW19 filed the charge sheet in the court.

Statement u/s 313 Cr.P.C.

25. After completion of evidence, statements u/s 313 Cr.P.C. of both the accused persons were separately recorded wherein all the incriminating evidence which had come on record during trial was put to them but, the same was denied by them as wrong and incorrect. They pleaded their innocence by stating that no dowry articles were either demanded by them or given by the deceased's family and whatever gift articles were given by deceased's mother were purely out of love and affection and for the use of deceased. They further stated that they had never harassed the deceased nor subjected her to any kind of mental or physical cruelty. Accused Bachraj stated that he was told by his mother in law Smt. Usha and his brother's wife Meenu that they alongwith Anju had made statements before SDM out of anger as they were in a disturbed state of mind. All of them (family members of deceased) also stated that deceased had committed suicide but it was not due to any dowry demand and they admitted that they were wrong earlier. Accused Bachraj further stated that deceased's family members admitted it themselves that they had levelled false allegations against him and his brother, out of anger on hearing the news of suicide by Neetu.

25.1 Accused Lekhraj in his statement u/s 313 Cr.P.C. came up with plea that at the relevant time, he was not at home and he was not aware what had happened. When he reached back home after finishing his duty, he came to know about said incident. He also stated that he and his wife Meenu i.e. deceased sister were living together as a happy family. His brother co-accused Bachraj was also residing in the same house with his children. Accused persons also examined one witness Sh. Suresh Chand as DW1 in their defence.

Defence Evidence

26. DW1/Shri Suresh Chand has deposed that deceased's father was his friend and he also knew the family of accused because accused Smt.Ratan (PO) was from his village. DW1 had attended the marriage of the deceased with accused Bachraj at New Aggarwal Dharamshala, Faridabad, Haryana and the deceased's sister Meenu was also married on the same date at the same place with accused Lekhraj. As per DW1, no dowry was given in the marriage of either the deceased or her sister Meenu and only the gifts were given in the marriage by relatives from both the sides. DW1 further deposed that even after marriage, he used to occasionally visit both the house of deceased and that of accused persons as well. Further that, at one time, DW1 was informed by the deceased's mother that deceased used to crib that she had been married to an illiterate boy. The mother of deceased however never made any other complaint against the accused persons. Further that, on his visits to the house of accused persons, DW1 had met Neetu and Meenu on couple of occasions and all seemed to be well in their family.

26.1 DW1 further deposed that after registration of present case, he had once met deceased's mother and in said meeting, she stated that she made a mistake by giving the complaint against the accused persons and it was due to misunderstanding. She (deceased's mother) also stated that she wanted to withdraw her complaint against the accused persons. As per DW1, Meenu is presently residing with her husband Lekhraj and both families are living happily. Further that, there was absolutely no ill will amongst the family of the accused and the family of deceased. Further that accused Bachraj was blessed with two sons and accused Lekhraj had one son and all of them were living together in same house at Fatehpur Beri.

27. Prosecution witnesses as well defence witness were duly cross-examined by Ld. defence counsel and Ld. Prosecutor respectively and relevant part of their cross-examination shall be discussed in later part of this judgment.

28. I have given my thoughtful consideration to the rival contentions raised from both the sides and also carefully perused the entire record.

Defence arguments

29. Ld. Defence Counsel Sh. Manish Makhija has vehemently argued that prosecution has miserably failed to prove the charges against any of the accused as the deceased's mother and her two sisters were the most material witnesses of the prosecution case but none of said witnesses supported the prosecution case in as much as

that though deceased's mother Usha Devi and deceased's sister Meenu have supported the prosecution case in their examination in chief but, in their cross-examination they completely disowned the allegations raised by them in their examination in chief and came up with a contrary version by saying that no demand of dowry was ever raised from the deceased by any of the accused persons nor the accused ever subjected the deceased to any cruelty in furtherance of any demand of dowry.

29.1 Ld. Defence counsel further argued that since the deceased was a graduate whereas, her husband Lekhraj was not even matriculate, the deceased never found him as a compatible match for her and she always used to complain in this regard in her matrimonial home as well as to her mother and the quarrels between the couple used to occur on account of temperamental difference and compatibility issues. It is further argued that deceased had committed suicide out of her anguish and frustration and accused persons never had any role to play in her death. It is further argued that complainant's two daughters i.e. Neetu (deceased) and Meenu (PW12) were married in the same house while deceased was blessed with two sons, Meenu was having one son and since, due to sudden death of deceased, her whole family from the parental side was under shock and despair therefore, they held the accused responsible for the death of deceased and got them falsely implicated in a case of dowry death despite the fact that no demand of dowry was ever raised by the accused nor the deceased was ever subjected to any harassment or cruelty on that account.

29.2 It is further argued that there is no iota of evidence to

prove the essential ingredients of demand of dowry or cruelty in furtherance thereof soon before death for establishing the charges of Section 304B IPC. It is further stated that even the other independent witnesses examined by the prosecution namely Tejpal, Sukhram, Santram and Jagat did not support the case of prosecution and as such, the whole case of the prosecution has remained unestablished for lack of any evidence.

29.3 It is further argued that presumption of Section 113 B IPC is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry that too when she was subjected to such cruelty and harassment soon before her death that is to say there should be reasonable contiguity of death whereas prosecution has failed to bring forth any cogent or reliable evidence to prove either the demand of dowry or cruelty in furtherance thereof on the part of the accused persons.

29.4 It is further argued that the material witnesses of the prosecution case i.e. deceased's mother and sister Meenu could not withstand the test of cross examination and they disowned all the allegations raised by them in their examination in chief. Counsel further argued that even the examination in chief of PW2 and PW12 is not in consonance with each other as there are various discrepancies and contradictions in their version and their version also do not draw any support from any independent witnesses to establish the prosecution case.

Arguments of Ld. Addl. Public Prosecutor

30. Per contra, Ld. Addl. PP rebutted the arguments by

submitting that admittedly, the deceased had died otherwise than under normal circumstances within 7 years of her marriage with accused Bachraj. It is further argued that the case was registered on the statement of deceased's mother Smt. Usha Devi who in her examination in chief recorded on 26.04.2012, 27.04.2012 duly supported the prosecution case by giving coherent and consistent version which was well in consonance with her statement given before the SDM and it is only at the time of her cross-examination which was recorded after a gap of more than 10 months, she deviated from her previous stand just for the sake of her daughter Meenu and her grand children i.e. the two sons of deceased and one son of her daughter Meenu because the families entered into a settlement after which, deceased's sister Meenu with her son and the sons of the deceased started living in the matrimonial home with the accused.

30.1 It is argued that the above circumstances, make it apparently clear that witness Smt. Usha Devi has purposely taken U-turn in her cross-examination to re-settle her another daughter Meenu and her grand children from her daughter Meenu and from the deceased. It is further argued that for the same reason, even deceased's sister Meenu, who was examined as PW12, also retracted from her previous stand and gave statement in favour of the accused. It is further argued that in view of the judgment in **Khujji @ Surendra Tiwari vs. State of M.P., 1991 AIR 1853, 1991 SCR (3) 1** of Hon'ble Apex Court, the hostile version of said two witnesses during their cross-examination is liable to be discarded as they purposely did not support the prosecution case which is apparently clear from the circumstances mentioned above. It is further argued that beside the testimonies of said two witnesses, there is other

ample evidence to prove the allegations in the form of DD no.13A & 19B dated 19.05.2010 to prove that deceased was subjected to cruelty and harassment soon before her death.

Court's discussion

31. Before embarking upon the evidence adduced on record, I deem it appropriate to reproduce the relevant provisions of law for the sake of ready reference. As noted above, the accused were charged for the offences punishable u/s 304B/498A/34 IPC.

32. Section 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 willful 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 death (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.

304B. 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 2 of Dowry Prohibition Act defines dowry 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.”

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).

33. Cruelty is defined under two clauses of Explanation to

Section 498A. Clause (a) talks about willful conduct of such nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. As per clause (b), it also includes harassment of woman in furtherance of any unlawful demand for any property or valuable security or on account of failure of such woman or any person related to her to meet such demand.

34. **Amar Singh vs. State of Rajasthan 2010 (9) SCC 64,**
Hon'ble Apex court observed as under:-

“29... what is punishable u/s 498A or Section 304B IPC is the act of cruelty or harassment by the husband or the relative of the husband of the woman. It will be also clear from Section 113B of Indian Evidence Act that only when it is shown that soon before her death, a woman has been subjected by any person to cruelty or harassment for, or in connection with, any demand of dowry, the court shall presume that such person caused death within the meaning of section 304 B IPC. The act of subjecting a woman to cruelty or harassment for, or in connection with any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death.”

35. The first ingredient of Section 304B IPC i.e. the death of a woman had occurred otherwise than under normal circumstance within 7 years of her marriage is answered in affirmative because it is not in dispute that firstly, the death of deceased was within 7 years of marriage and secondly, the same was otherwise than under normal circumstances. The questions that now fall for consideration are 1) whether the deceased was subjected to harassment or cruelty at the instance of her husband or any relative of her husband; 2) if answer to the first question appears to be in affirmative, whether that harassment or cruelty was in connection with the demand of dowry; 3) whether such cruelty or harassment if so, was subjected to the

deceased soon before her death.

36. The entire case of the prosecution rests upon the testimony of deceased's mother and her two sisters, one of whom was living with the deceased in the matrimonial home as she was married to Lekhraj, the brother of deceased's husband. The FIR was lodged on the statement of deceased's mother Usha Devi i.e. PW7 recorded before SDM on 12.10.2010 and same is available on record as Ex. PW4/C. On the same day, SDM also recorded statement of two sisters of the deceased namely Meenu(PW4) and Anju(PW13) which are available on record as Ex. PW4/D and PW4/E respectively.

37. As per the contents of Ex. PW4/C, the statement of PW7 Smt. Usha Devi, her daughters namely Neetu and Meenu were married to Bachraj and Lekhraj both s/o Sher Singh on 25.06.2004 and in their marriage, she had given dowry to the best of her capacity, but just after one year of marriage, their in laws started ill treating them because her youngest daughter Anju got admitted in BDS and the accused started complaining that if the complainant could spend money on the studies of her younger daughter Anju, she (complainant) should also spend same amount on her other daughters. At one occasion, when her daughters were assaulted, the matter was also reported to the police after which the accused persons visited the police station to threaten the complainant's son to kill him. At the occasion of birth of sons of her two daughters, their in laws again demanded Alto car, gold chain and rings pursuant to which, complainant although gave jewellery but did not give Alto car and in lieu of car, she gave Rs.10 lacs in cash by raising funds from some committee. Again on one occasion, when complainant, her

father and brother visited deceased's matrimonial house, they all were assaulted by the accused persons as well as their other relatives namely Sahi Ram, Dhauli, Rattan and sisters in law of deceased but, with the intervention of family members, the matter got resolved because the accused persons apologized for their conduct. Second time, the police complaint was withdrawn on the assurance given by the MLA Bharam Singh. On 15.05.2010, complainant had a talk with her daughter Neetu when she visited her house at the occasion of Kuan Pujan ceremony of complainant's nephew but, thereafter, the complainant never had any occasion to talk to the deceased. On 11.10.2010, she got an information regarding her daughter having committed suicide and immediately thereafter, she visited deceased's matrimonial home at Fatehpur Beri where she found her daughter Meenu and the dead body of her daughter Neetu whereas, deceased's mother in law and deceased's husband Bachraj and brother in law Lekhraj were not present in the house.

38. During trial, complainant was examined as PW7 by the prosecution wherein she has deposed more or less on the same lines as recorded in her statement before SDM. As per her deposition, her daughters were kept nicely for about one year after their marriage but thereafter, all the three accused persons started harassing them and also started demanding cash because PW7 had spent on her unmarried daughter Anju for her BDS course, likewise they wanted PW7 to give equivalent sum of money to her married daughters as well. Therefore, they started beating her daughters. On one occasion, accused Lekhraj had bolted her daughter in the kitchen and put the gas stove on. On another occasion, mother in law of the deceased had put Neetu in a drum filled with water. As per her version, she had

given Rs.5 lacs each to both the accused persons to fulfill their demands in lieu of her spending money on BDS course of her daughter Anju. She further deposed that after 2 ½ years of marriage, a telephonic call was made by Bachraj pursuant to which, she alongwith her father, brother and nephew had visited the house of accused but the accused started fighting with them and asked them to take their daughters away but, she did not agree for the same. PW7 further deposed that her elder daughter wanted to come with them but, the accused persons did not allow her to accompany them.

39. Here, it is pertinent to note that the second version of the complainant to the effect that the accused did not allow her elder daughter to accompany them is contrary to her first version where she stated that accused asked them to take their daughters away. On the one hand, her first version indicate that accused did not want her daughters to stay there but, in the next breathe, she stated that accused did not allow her elder daughter to accompany them.

40. PW7 in her examination says that the accused persons assaulted her as well as her brother, father and nephew and also torn her clothes and subsequent thereto, police was also called, but due to intervention of villagers, the matter was pacified. However, prosecution failed to examine any other independent person from the village to corroborate said version of the complainant regarding the aforementioned incident of assault. PW1 Tejpal, PW3 Sant Ram, PW6 Sukhram, who were living in the same vicinity of deceased's matrimonial home, have not uttered a word regarding any such incident. PCR record of any such call allegedly made in this regard, has also not been placed on record. Furthermore, it is nowhere the

complainant's case that she was called by the accused at their home in connection with any demand of dowry or to the effect that they were assaulted in furtherance of any such demand.

41. PW7 has also mentioned one more incident when deceased was bolted in a room by the accused persons and as per her version, said incident had occurred after six months of the aforementioned incident. PW7 has deposed that her daughter Neetu i.e. the deceased had made a police call and pursuant thereto, they (PW7 and her relatives) had also visited the police station where they found Neetu and Meenu present but, the matter was not pursued further because with the intervention of Bharam Singh Tanwar, her daughters were taken by the accused persons. However, just after three days, accused persons again left her daughters at her house and thereafter, her daughters stayed with her for 6-7 months. After 6-7 months, on the intervention of villagers, PW7 again sent back her daughters with the accused persons. PW7 further deposed that she had last met her deceased daughter two years ago (from the date of her examination) at the Kuan Pujan Ceremony of her nephew at Faridabad where her daughter told her that she did not want to live with the accused persons but, PW7 sent her back by assuring her that she would take her soon to her house. PW7 proved her statement made to the SDM as Ex. PW4/C by identifying her signature at point A. She deposed that her daughter had been killed by the accused persons due to demand of money. She also proved on record the marriage card of her daughters as well as the photographs of their marriage as Ex. PW8/A1 and Ex. PW8/B1 to B4. She also identified her signatures on the seizure memo of said card and photographs as Ex. PW8/A and PW8/B.

42. The examination in chief of complainant got concluded on 27.04.2012 whereas, she was cross examined on two subsequent dates i.e. on 20.02.2013 and 26.03.2013. In her cross-examination, she admitted the suggestion that after hearing the news of death of her daughter, she got disturbed. She further admitted the suggestion that at the time of marriage of deceased, she had given gifts and Rs. 71,000/- though, there was no demand of any kind from any of the accused persons. She further admitted the suggestion that she had given her statement to SDM in a disturbed state of mind as she had a feeling of anger towards accused persons. She further admitted that before giving said statement to SDM, she had consulted to her other two daughters. She further admitted the suggestion that after receiving the information regarding death of her daughter when she reached the house of the accused, she found both accused Bachraj and Lekhraj present in the house. She further admitted the suggestion that neither accused Bachraj, Lekhraj nor any of his family members ever demanded any dowry article from her and whatever she had given to her daughters as gifts was out of her own will.

43. In response to a suggestion, she further admitted that her daughter Neetu was more educated than Bachraj and that Bachraj was an illiterate and was working as a labourer in a Government company. She further admitted that she never made any complaint of any kind against any of the accused persons. She further admitted the suggestion that her daughter was temperamental and used to get angry on trivial issues. She further admitted the suggestion that her daughter committed suicide and it was not done due to any dowry demand. She also admitted the suggestion that her earlier statements recorded before the SDM, police as well as before the court were out

of anger.

44. As is evident from above, PW7 demolished the whole case of the prosecution in her cross-examination because she disowned her earlier version by deposing in favour of the accused. Therefore, Ld. Addl. PP re-examined her with the permission of the court but, even in her re-examination, she stuck to her stand by reiterating that she had given sum of Rs.5 lacs each in cash to both the accused persons out of her love and affection and it was not on account of dowry. She denied the suggestion that she was deposing falsely or she had been won over by the accused persons or that she was suppressing the truth because her younger daughter Meenu was married to accused Lekhraj.

45. Before adverting to the testimony of other very material witness of the prosecution case namely Smt. Meenu, who has been examined as PW12, I may mention that her (PW12) deposition was recorded before the court on 13.05.2013 i.e. after the examination of her mother which got concluded on 26.03.2013.

46. PW12/Meenu, also supported the prosecution case in her examination in chief by deposing more or less in consonance with her earlier statement made before the SDM but, she also retracted from her earlier statement in her cross-examination. As per her examination in chief, she and deceased were given beatings by the accused persons and their other relatives namely Pradeep, Rajji and her mother in law's sister Dhauli and her husband Sahi Ram on 19.06.2009 and in that regard, they made a telephonic call to PS Fatehpur Beri and thereafter, her in laws called local MLA Bharam

Singh with whose intervention the matter got compromised and on his guarantee, they again joined their matrimonial home. However, they were treated nicely only for nine months but thereafter, they were again given beatings.

47. Here, it is pertinent to note that version of complainant/PW7 and her daughter Meenu/PW12 are at total variance with regard to above alleged incident of beatings, which got compromised due to intervention of MLA Bharam Singh. As per version of PW7, after the matter was compromised, her daughters went to their matrimonial home but, on very next day, they were left at their parental home by accused and thereafter, they stayed with her mother for about six months. Whereas, as per testimony of PW12, after above incident, they were kept nicely for nine months and she nowhere disclosed that they were again left at their parental home on next date or that thereafter, they stayed at parental home for six months as alleged by her mother. Furthermore, as per PW12, the incident of beatings took place on 19.06.2010 whereas, in the charge sheet, IO had filed on record DD no.13A with regard to an information of beatings given to the sister of the caller by her in laws in her matrimonial home by confining her in a room. The said DD is of 19.05.2010 whereas, as per PW12, the incident was of 19.06.2010. Moreover, the prosecution failed to prove said DD on record as no witness in this regard has been examined by the prosecution nor any such record was called from the concerned PS for exhibiting said document. Same is also the position in respect of another DD no.19B of the same date.

48. As per PW12, on 04.05.2010, in the evening at 7-8 pm,

when PW12 went to her room on the first floor after preparing dinner, both the accused Bachraj and Lekhraj with her mother in law gave severe beatings to her sister Neetu. Her head was also drowned in water tank by Bachraj and his mother Rattan and when PW12 came down on the ground floor, she saw Bachraj, Rattan and his Mausi Dhauli sitting on her sister Neetu upon seeing this, PW12 raised alarm and after hearing the same, Sukhram and Santram, the brothers of her father in law rushed inside and pushed Bachraj, Rattan and Dhauli from Neetu and they even asked Bachraj, Rattan and Dhauli not to quarrel with Neetu in any manner and after giving them proper counseling, they went to their homes.

49. The version of PW12 even with regard to above incident of assault on deceased by the accused persons, does not muster any support from the version of PW6 Sukhram or PW3 Santram as they both turned hostile in their examination in chief before the court and did not support the prosecution case even in their cross-examination by Ld. Addl. PP where they stated that both the brothers Bachraj and Lekhraj were residing together with their families and the relations were cordial. It is further stated by PW6 Sukhram that both the accused used to live with their wives in peace and harmony. In the entire examination and cross-examination, he did not utter a word to support the version of PW12 regarding above incident. Even Ld. Addl. did not give any suggestion to the effect that he (PW6) had ever witnessed any such incident as alleged by PW12. The version of PW-12 did not draw any support even from the version of another witness PW-3 Shri Santram because even said witness did not utter a word regarding the aforementioned incident of assault on the deceased after which he allegedly came to the rescue of deceased.

50. I have also carefully perused the statement Ex. PW12/D made by PW12 before SDM. Even in said statement, she had not mentioned any such incident of 04.05.2010 of physical assault committed against her sister i.e. deceased Neetu when Sukhram and Santram, the brothers of her father in law allegedly intervened to rescue her deceased sister.

51. PW-12 in her examination has further deposed that on the same very night when the deceased was given beatings by the accused persons and their other family members, deceased was again locked inside the room by her husband Bachraj and the police was again called. She further deposed that the police had broke open the lock of the room and took the deceased as well as PW-12 with their children to the police station and since their parents were also informed regarding the incident, they had also reached the police station and once again the matter got compromised and the deceased and PW-12 went back to their in-law's house. She further deposed that thereafter they lived peacefully for 3-4 months and in the meanwhile her sister Neetu i.e. the deceased who was living on the ground floor of the house, was shifted to first floor while PW-12 shifted to the ground floor from the first floor. Further, as per version of PW12, on 11.10.2010, at about 12:00 noon she noticed that her sister had not come to the ground floor even once since morning and her husband Bachraj was also on leave on that day. At 2:00 PM, PW-12 went to sleep and when she got up at 4:00 PM, her mother-in-law asked her to prepare tea for the family members including Bachraj, Lekhraj, Ratan, Dhauli, Sahiram, Rajji and Pradeep. After preparing tea, she served the tea to them in the hall and came back to her

room. At about 5:00 PM, she heard the cries of her sister Neetu and when she tried to come out of the room, she was pushed inside by Pradeep and Rajji, who also threatened her not to make any noise. After locking PW-12 in the room, Pradeep and Rajji went away. After sometime Bachraj came and opened the lock of her room and ran away. Thereafter, PW-12 went to the room of her deceased sister at the first floor and found the room locked from inside. On peeping through the window of the room, she saw her sister Neetu hanging from the ceiling fan and thereafter she made hue and cry.

52. Surprisingly, in examination in chief, the deceased's sister Manju, who was one of the most material witness of the prosecution case as she was living with the deceased in the same matrimonial home, although came up with categoric allegations against all the accused persons especially with regard to deceased being subjected to physical cruelty at the hands of accused but, she took a U turn when she was cross-examined by the defence counsel. It is also pertinent to note that examination in chief as well as part cross-examination of PW12 was recorded on 13.05.2013 and she was recalled for her further cross-examination just after three days i.e. on 16.05.2013.

53. In her cross-examination recorded on 13.05.2013, PW12 deposed that her marriage and the marriage of her deceased sister had taken place with their consent and they both were happy with their marriage. She further deposed that their marriage was solemnized in the same Mandap and half expenditure got saved because of the joint marriage and both families were happy with the saving of her mother's expenditure. She further deposed that there

was no demand of any kind from the accused persons or their other family members. She further testified that after their marriage she and her deceased sister had a joint kitchen which they were managing very well. She further deposed that she and her deceased sister used to go to meet her mother though she denied that accused persons were extending any financial help to her mother. She further testified in her cross-examination that her statement was recorded by the SDM after the statement of her mother. She admitted the suggestion given to her by the defence counsel that before SDM, she had leveled allegations against the accused out of anger, anguish and sorrow whereas, actually everything was fine. She further admitted the suggestion that even in her examination in chief she narrated the same facts which she mentioned in her statement made before the SDM. She further admitted the suggestion that whatever was given at the time of her marriage and the marriage of her deceased sister was given in the nature of gifts and the same was given by her mother with her own free will and volition and there was never any demand of any kind either at the time of marriage or even thereafter. She further admitted the suggestion that before making statement to the police or to the SDM, she had consulted her family members including her mother. She also admitted the suggestion that her sister was happy with Bachraj and was leading a happy marital life. She further admitted that accused Bachraj was illiterate and because of that reason their used to be some altercation between the deceased and her husband Bachraj.

54. Since PW-12 totally resiled from her previous version given in her examination in chief, learned Additional PP re-examined her also but even in her cross-examination, she deposed that her version

given before the Court on 13.05.2013 was out of anger and whatever she had stated in her cross-examination on 16.05.2013 was correct. She denied the suggestion that in cross-examination, she had deposed in favour of the accused because she was still living with the accused Lekhraj or that she had entered into a compromise with the accused persons or that she was deposing falsely to save her family.

55. PW-13 is another important witness of the prosecution case as she is the younger sister of the deceased. However, perusal of her deposition shows that she also turned hostile and did not support the prosecution case. She categorically denied the contents of her statement Ex.PW-4/E recorded before the SDM, despite being specifically confronted to her statement by learned Additional PP, who cross-examined her after declaring her hostile. She categorically denied to have stated anything against the accused persons relating to any demand of dowry or harassment of her deceased sister at the hands of accused in furtherance of any such demand. She categorically denied to have stated before the SDM that her sister was used to be harassed by her husband or other in-laws or that the deceased was not allowed to talk to them (parental family). She also categorically denied to have stated about the incident of assault on her mother when her mother, maternal grandfather and maternal uncle on their visit to the matrimonial home of the deceased.

56. Though, Ld. Addl. PP has relied upon the judgment of Hon'ble Supreme court in **Khuji @ Surendra Tiwari (supra)** to contend that version of even hostile witnesses can be relied upon in case there is long gap in their examination and cross-examination and when, the reason of such hostile version is quite apparent to the

court.

57. But in my considered view, the fact situation in said case is not akin to case in hand because in said case, Hon'ble Apex court held the subsequent attempt by the witness to create a doubt on the prosecution case by giving contrary version in the cross-examination recorded after gap of one month as inconsequential because there was intrinsic material in the evidence to otherwise establish the prosecution case.

58. Cross examination of PW12 was partly recorded on the very same date i.e. on 13.05.2013 and it was concluded on 16.05.2013. Despite that, PW12, who was living in the same house with the deceased, disowned her earlier version. There is a gap of just three days when she was again cross examined before court. In view of said circumstances, the above judgment is of no help to the prosecution as same is distinguishable on facts. In view of the fact that all the family members of deceased resiled from their previous statements made before the SDM, I do not find any need to refer to the testimony of other prosecution witnesses because their testimonies are nothing but in the nature of corroborative or link evidence. Both the most material witnesses of prosecution case i.e. PW7 and PW12 have demolished the prosecution case completely in their cross-examination by resiling from their previous versions. As noted above, their testimonies even in their examination in chief, are not in consonance with each other nor the same even otherwise, draw any support from the testimony of other independent witnesses examined by the prosecution.

59. Having regard to above facts and circumstances, the prosecution has miserably failed to prove the allegations of demand of dowry or cruelty in furtherance thereof against any of the accused persons. Since the charges of Sections 498A IPC could not be established on record, there is no question of establishing charges of Section 304 B IPC.

60. In view of above discussion, both accused persons are acquitted of all the offences punishable u/s 498A/304B/34 IPC. Their earlier bail bonds and surety bonds stand cancelled and discharged. File be consigned to record room with liberty to the prosecution to get the case revived as and when accused Smt. Ratan is apprehended/arrested.

**Announced in open Court
on 27.07.2018**

**(Sunena Sharma)
Additional Sessions Judge-03, (South)
Saket Courts, New Delhi**