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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 26th July, 2019

Judgment pronounced on: 20 November, 2019

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CRL.A. 549/2013

SALEK RAM

..... Appellant

Through: Mr. K.P. Mavi and Mr. B.P. Mishra,
Advocates

versus

STATE GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Ms. Radhika Kolluru, APP for the
State along with SI Arvind Kumar
and Inspector Vipin Sharma, SHO,
P.S. New Usmanpur.
Mr. Ramesh Gupta, Sr. Advocate
with Mr. Bharat Sharma, Advocate
with R-2 to R-7

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J.

1. This is an appeal under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') against the judgment dated 22.12.2012 passed by the learned Trial Court in Sessions Case No. 92/2012, arising out of FIR No.113/2002, Police Station New Usmanpur, filed by the brother of the deceased by virtue of which the respondents No.2 to 7 herein stand acquitted for the offence punishable under Sections 304-B/498-A/406/302/201/34 of the Indian Penal Code (hereinafter referred to as 'IPC').

2. Before the rival submissions of the learned counsel for the parties can be considered, we deem it appropriate to notice the case of the prosecution, which is reproduced as under:

“2. As per the prosecution, the deceased Poonam was married to accused Pramod S/o Rakam Singh as per Hindu Rites and ceremonies on 16.02.2002 in which expenses of about 8 to 10 Lakhs were incurred and handsome dowry articles were given by the side of the girl but on 21.02.2002 when Salek Ram (the brother of deceased Poonam) alongwith his cousin Jagbir Singh and Inder Singh came to the matrimonial house of Poonam (the deceased), they were insulted by the accused persons while raising demand of Rs. Five Lakhs cash, one Honda City Car and one Kilo gold and they brought the deceased Poonam to her parental house. However on 16.03.2002, deceased Poonam was sent to her matrimonial house but on 18.03.2002 she rang that she was being beaten by the accused persons while reiterating their earlier dowry demand on which she was again brought back to her parental house on 20.03.2002. At that time, the accused persons had asked the brother of deceased to fulfil their demands, otherwise her sister would continue to be harassed and she would continue to be harassed and she would also be defamed. Then on 03.05.2002, the accused Pramod telephonically informed Salek Ram that the mother of accused Pramod (co-accused Rajo) was seriously ill. Then on 04.05.2002 at 7.00 a.m. again accused Pramod gave a phone call to Salek Ram that his mother was seriously ill and he was coming to take Poonam back on the same day and at 9.00 a.m., he came to the house of Salek Ram and took the deceased Poonam from her parental house at about 10.00 a.m. on the false plea of illness of his mother but at about 3.30 to 4.00 p.m., a telephonic information was received at complainant house that “Tumahari Behan Poonam Ko Mar Diya Hai”. Meanwhile at about 1.21 p.m., an information vide DD No.25B was recorded at PS New Usmanpur that one person was apprehended near Wazirabad Road, Puntun Pul while burring a lady in a “pit”. On receipt of said DD, IO SI Shiv Nath (since retired) alongwith Ct. Ved Pal reached at Village Gadi Maindu Yamuna Khader Forest near Puntun Pul, where they met Beat Ct. Anil Mishra, IO SI Rajesh Sehrawat, Ct. Anil, Ct. Mohd. Nazim and Ct. Ram Pal of Traffic Police. Three forest officers namely Satbir S/o Jaipal, Satbir S/o Kishan Lal & Satpal were also found present there. Traffic

Police officials produced one person (whose name was subsequently disclosed as Pramod) before SI Shiv Nath and they also informed that the injured was already taken to Trauma Centre, Civil Line by PCR Van. Then while leaving Ct. Anil Mishra at the spot to preserve the place of incident and accused Pramod, SI Shiv Nath alongwith Ct. Ved Pal went to Trauma Centre, Civil Lines, where the MLC of injured lady (aged about 19-20 years) was collected and she was declared brought dead by the doctors. No eye witness was found at Trauma Centre. Then he left Ct. Ved Pal at Trauma Centre to look after the dead body and himself came back to the spot where the statement of Satbir S/o Jaipal was recorded wherein he made allegations that the accused Pramod had committed the murder of said lady and buried her in the pit. The signature of said Satbir was obtained at point A. Then while making the endorsement on the said statement, IO prepared rukka, got the instant FIR registered at PS New Usmanpur while sending the rukka through Ct. Anil there. The site plan was prepared at the instance of complainant Satbir S/o Jaipal. Crime Team Officials and photographer were summoned at the spot. Photographer took the photographs at the spot from different angles but no finger prints could be lifted by the Crime Team Officials. At the spot, one spade (Fabra), one chunni, one pair of sandal, one handkerchief and one belt were found. They were seized and taken into police possession vide seizure memos upon which the signatures of accused Pramod were also obtained alongwith police officials. The accused Pramod was interrogated and he made confession about the incident. He was arrested and his personal search was conducted. Before personal search, formal search of accused was conducted in which one pair of golden colour tops, one gold chain, one lady wrist watch make Sonata were recovered from right side pocket of pant of accused. One sociology book and cash amount of Rs.47/- were also recovered from the accused. The detailed disclosure statement was also recorded wherein he disclosed that all the said articles belonged to his wife Poonam i.e. deceased lady. At the instance of accused Pramod one two wheeler scooter bearing registration no.DL7S Q 7634 was recovered from Puntun Pul Road near Tin Shed. The said articles including scooter were also seized.”

3. Since the death of Poonam occurred within seven years of her marriage, the then SDM P.C. Jain (PW23) was informed about the occurrence. The Investigating Officer alongwith the respondent Pramod Kumar seized articles and reached the Police Station where the respondent Pramod Kumar was confined in lock up and all the seized articles were deposited in the *Malkhana*. On 05.05.2002, SDM recorded the statement of Salek Ram (PW1). The Investigating Officer alongwith Insp. Anil Kumar and Salek Ram went to GTB Hospital where inquest documents were prepared by the SDM and upon his direction; the post-mortem was conducted. Thereafter, the respondents Manoj, Rakam Singh and Vijay were arrested on 13.05.2002, 19.05.2002 and 21.06.2002 respectively.
4. On 16.02.2004, a charge under Sections 302/201 of IPC plus an alternate charge under Section 304-B of IPC alongwith Sections 498-A/406/34 of IPC was framed by the learned Trial Court against respondent No.2/Pramod Kumar. The charge under Sections 304-B/498-A/406/34 of IPC was framed against the other respondents Manoj Kumar, Rakam Singh, Rajo Devi, Vijay Singh and Seema Devi. All the respondents pleaded not guilty and claimed to be tried. The prosecution examined 27 witnesses to prove their case. No evidence was led by the respondents in their defence. The statements of all the respondents were recorded under Section 313 of Cr.P.C. whereby they pleaded innocence and claimed to have been falsely implicated in the present case by the parents of deceased Poonam. It is noteworthy to mention that respondent Pramod Kumar did not dispute his arrest which is evident from his statement under Section 313 of Cr.P.C. more particularly, questions No. 17 and 39 put to him which read as under:

“Q.17 It is in evidence against you that PW2 further stated that belt, handkerchief, one pair of sandal and one phawara were taken into possession by police vide seizure memo Ex.PW2/B bearing his signature at point A. You were arrested, interrogated and your Disclosure Statement was recorded by the police. What have you to say?”

Ans. Factum of arrest is not denied but rest is wrong.

Q.39 It is in evidence against you that PW10 further stated that you were arrested vide arrest memo Ex.PW2/C and your personal search was also conducted vide memo Ex.PW2/D and during interrogation you made the Disclosure Statement Ex.PW2/E. What have you to say?”

Ans. I was apprehended by the police; however, I did not make the Disclosure Statement Ex.PW2/E.”

5. Mr. Mavi, learned counsel for the appellant submits that the judgment of the Trial Court is erroneous, bad in law and the Trial Court has ignored the settled legal position in respect of offence committed under Section 304-B of IPC. It is contended that the manner in which the evidence has been considered by the Trial Court is patently illegal and the judgment has led to grave miscarriage of justice. It is submitted that the impugned judgment is manifestly unjust and unreasonable. Mr. Mavi contends that the Trial Court has ignored the testimonies of PW1, PW2, PW3, PW6, PW9, PW10, PW24 and PW25 and rejected their evidence on the ground that their testimonies contain discrepancies. Counsel contends that the Trial Court has failed to consider that the discrepancies, if any, are minor and irrelevant and do not go to the root of the matter.
6. Mr. Mavi has strongly urged before this Court that it is immaterial that PW9 supported the case of the prosecution in his examination-in-chief and subsequently became a hostile witness. He further submits that

likewise, the case of the prosecution would remain unaffected by the testimonies of PW2, PW3 and PW4 who did not support the case of the prosecution, when the guilt of respondent No.2/Pramod Kumar has been established beyond reasonable doubt through the evidence of PWs 1, 6, 9, 10, 18, 24 & 25 and in view of DD No. 25B, the post-mortem report as well as the fact that respondent No.2 was arrested at the spot while he was burying his wife.

7. Mr. Mavi contends that the case of the prosecution also stands duly established by the circumstantial evidence which unerringly points towards the guilt of respondent Pramod Kuamr. It is also the contention of the learned counsel for the appellant that the Trial Court has committed a grave error in not appreciating the testimony of public witnesses being PW2 and PW3. It is contended that the Trial Court has developed an imaginary conflict in the statements of the above mentioned public witnesses and Police witnesses i.e. PWs 2, 3, 10, 12, 25 and 24 while, in fact, there is no conflict in their respective testimonies. The respondent Pramod Kumar has failed to give any explanation as to what he was doing in the jungle with the body of his wife. The evidence of PW18 Lady HC Shashi Bala shows that on the day of occurrence, she received information from wireless operator of a person being apprehended who was trying to bury dead body of a woman.
8. Mr. Mavi has laboured hard to contend that the Trial Court has placed reliance on a stray statement from the testimonies of PW1 Salek Ram and PW9 Jagbir Singh for the purposes of rejecting their testimonies. Counsel contends that in case the statements of PW1 and PW9 are examined as a whole, it would leave no room for doubt that the accused persons were continuously harassing Poonam and demanding

dowry and also gave merciless beatings to her. It is contended that post the marriage, which was held on 16.02.2002, the accused persons made a demand on 21.02.2002 of Rs.5 lakhs in cash, one Honda City car and one kilogram of gold. Poonam had made a phone call on 18.03.2002 and informed PW1 that she was being beaten by the family members on account of the demands not having been fulfilled. The mediator was also informed on 19.03.2002 and she was murdered on 04.05.2002, as the family members of Poonam could not fulfil the dowry demands.

9. Counsel submits that the findings of the Trial Court that there was no allegation of specific role of demand against each of the accused, cannot be sustained in view of the statement of PW1. It is submitted that the Trial Court has committed a grave error in acquitting all the accused persons under Sections 498-A/406/304-B/34 IPC. It is contended that soon after the marriage, the harassment and demand of dowry had started. The in-laws of Poonam were unhappy with the articles and money given in dowry, as they claimed that same were below their expectation. The Trial Court has not examined the testimonies of PW1 and PW9.
10. It is contended that a case under Section 304-B IPC would be squarely made out. Mr. Mavi contends that the Trial Court has failed to apply the law in its right perspective and has committed an error in acquitting the accused under Section 304-B IPC on the ground that the deceased was not subjected to cruelty/harassment soon before her death. Mr. Mavi has contended that the expression '*soon before her death*' has not been defined in the IPC, neither in the Evidence Act and the expression '*soon before her death*' would depend upon the facts and circumstances of each case. In the present case, Poonam

was murdered within 78 days of marriage. While relying on the statement of PW1, Mr. Mavi contends that there was a constant demand of dowry till 20.03.2002 and thereafter, the deceased was forced to go to her parental house on several dates. On 04.05.2002, Poonam was brought back to her matrimonial home on the ground that respondent No.7 was seriously ill and on the same day, she was buried in a pit by the respondent No.2 where he was caught red-handed and arrested at the spot. Based on the provisions of Section 304-B IPC, counsel contends that the burden would lie on respondents No.2 to 7 to explain the unnatural death of Poonam, but the Trial Court has not followed the provisions of law and shifted the burden on the prosecution. The details for demand of dowry have been extracted in the testimony of PW1 who has remained firm during the cross-examination. He is a truthful and reliable witness. The finding returned by the Trial Court that there was no demand of any kind in between 18.03.2002 till the date prior to death of Poonam who was living at her parental home w.e.f. 18.03.2002, cannot be sustained.

11. Mr. Mavi has also strongly urged before this Court that the conclusion drawn by the Trial Court is absurd having rejected the evidence of PW10 SI Rajinder Sehrawat, PW12 HC Anil and PW25 Ram Pal on the ground that they were on traffic duty on the day of the incident and they did not inform their superior about their absence from the duty when they were supposed to remain at the spot till late night. The finding returned by the Trial Court that if a woman was recovered from a pit at 1.00 p.m. she could not have been transferred to the hospital within 40 minutes is absurd. The Trial Court completely lost track of the fact that the persons had rescued a woman who was buried alive and was unconscious when she was removed from the pit and all

efforts were made to save her life. It is contended that the judgment of the Trial Court has resulted in grave miscarriage of justice. The Trial Court has ignored the settled proposition of law and has failed to analyse the testimonies of PW1, PW9 and the public witnesses as a whole and thus, the order of the Trial Court is patently illegal, unreasonable and absurd.

12. Ms. Radhika Kolluru, learned counsel appearing on behalf of the State adopts the same argument as raised by the counsel for the complainant Salek Ram.
13. *Per contra*, Mr. Ramesh Gupta, learned senior counsel appearing on behalf of the respondents No. 2 to 7 submits that there is no infirmity in the judgment passed by the learned Trial Court. Having regard to the evidence on record, the Trial Court has correctly analysed the evidence and acquitted the respondents from all the charges. Counsel submits that the eye witness account of PW2 Satbir Singh son of Jaipal, PW3 Satbir son of Kishan Pal and PW4 Satpal is not reliable and trustworthy as they did not support the case of prosecution in their cross-examination and turned hostile.
14. Learned senior counsel for the respondents submits that the testimonies of the brothers, PW1 Salek Ram and PW9 Jagbir Singh (real and cousin brothers), are neither trustworthy nor reliable. The testimonies are full of improvements and contradictions, thus, it would be highly unsafe to convict the respondents under Section 304-B/498-A of IPC. Mr. Gupta further submits that the respondents have been falsely implicated in the instant case. There was no harassment of the deceased Poonam much less for the demand of dowry. While relying on the cross-examination of PW9, being the cousin brother of the deceased Poonam, learned senior counsel submits that PW9 had

admitted that there was no demand made by the respondents in his presence. PW9 also stated that deceased Poonam was brought back happily to her parental home.

15. Mr. Gupta further submits that the demand sought to be relied upon by the prosecution is not only vague but also general in nature and it lacks material particulars. There is not even a single complaint filed by the family members of Poonam in support of the allegations made by them. He further submits that all the family members have been roped in. The demands are exaggerations and, thus, cannot form the basis of conviction either under Section 498A of IPC and much less under Section 304B of IPC.
16. It was also submitted by the learned counsel for the respondents that the information with regard to the death of his sister Poonam was received by PW1 on 04.05.2002 at about 3.30/4.00 PM and he reached the Police Station at about 6/6.30 PM and 7.00 PM; however, the instant case was registered on 05.05.2002. The counsel submits that there has been gross unexplained delay in registering the FIR, thus, giving ample opportunity to the family members of Poonam to cook up exaggerated general allegations without assigning any specific role to any family member. There is no evidence attributing any specific demand or specific role assigned to the respondents.
17. In rejoinder, it was contended by Mr. Mavi, learned counsel for the appellant that it is wrong to say that there was no complaint made by the family members before PW23 (the then SDM) on the day of occurrence as it has been recorded in the testimony of PW23 that he had directed Police officials to produce the relatives of the deceased on the next day i.e. 05.05.2002 for recording of their statement. With regard to non-filing of any complaint by the family members of the

deceased, the counsel submits that it has also come in evidence of PW9 Jagbir Singh that PW1 Salek Ram had asked PW9 to file a case against the in-laws of the deceased with regard to the demand of dowry but he dissuaded him not to file the same and assured that he would try to resolve the matter. It was contended that in the instant case *rukka* was sent within 3 hours of the incident and nobody could have put pressure on PW2 Satbir Singh. In this background, it was contended that there was no motive to falsely implicate all the respondents herein and leave the real culprits scot free.

18. We have heard learned counsels for the parties, considered their rival submissions, perused the impugned judgment rendered by the learned Trial Court and also given our thoughtful consideration to the matter. The case of the prosecution as summarised by the learned Trial Court reads as under:

“i) The deceased Poonam was married to accused Pramod on 16.02.2002 as per Hindu Rites & Customs.

ii) In the marriage handsome dowry was given by the parents of deceased to the accused Pramod and his family members.

iii) The accused persons were not happy on the pretext that the marriage was not performed according to their status and they were harassing the victim and raising dowry demands to the tune of Rs. Five Lakhs in cash and a Honda City Car.

iii) The brother of deceased Poonam brought her to parental home on 20.03.2002.

iv) On 04.05.2002, the accused Pramod came to the parental house of Poonam and took her with him on the false plea that his mother was ill.

v) On the same day, a telephonic message received at the house of complainant that the Poonam (the deceased) has been killed.

vi) *On the same day, the accused Pramod was apprehended while burying the body of deceased Poonam in a pit.”*

19. Before we deal with the rival submissions of the counsel for the parties, we deem it appropriate to discuss the law on hostile witnesses as we may note that some of the prosecution witnesses have turned hostile in their cross-examination and the learned Public Prosecutor has failed in discharging his duty as he avoided putting any question to the prosecution witnesses, when law permits him for re-examination.
20. The law on it is well settled that such portion of the evidence of a hostile witness can be relied upon which is trustworthy and not as if the entire evidence of such a witness is to be negated completely. In the case of *Selvaraj vs. State* reported at (2015) 2 SCC 662, whereby the material witnesses though supported the case of prosecution in their examination-in-chief, however, they turned hostile in their cross-examination. The Apex Court observed that in cases where the witnesses take a somersault in their cross-examination, their testimony requires to be scrutinised with great caution. The relevant para 19 reads as under:

“19. It is settled principle of law that benefit of reasonable doubt is required to be given to the accused only if the reasonable doubt emerges out from the evidence on record. Merely for the reason that the witnesses have turned hostile in their cross-examination, the testimony in examination-in-chief cannot be outright discarded provided the same (statement in examination-in-chief supporting prosecution) is corroborated from the other evidence on record. In other words, if the court finds from the two different statements made by the same accused, only one of the two is believable, and what has been stated in the cross-examination is false, even if the witnesses have turned hostile, the conviction can be recorded believing the testimony given by such witnesses in the examination-in-

chief. However, such evidence is required to be examined with great caution.”

(Emphasis Supplied)

21. Section 138 of the Indian Evidence Act reads as under:

“138. Order of examinations: Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination need not be confined to the facts to which the witness testified on his examination-in-chief. Direction of re-examination: The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

22. We may profit with the view taken by the High Court of Gujarat in the case of ***Laliya Bhadiyabhai Nayka vs. State of Gujarat*** reported at ***2012 SCC Online Guj5091***, wherein the Public Prosecutor who conducted prosecution had not discharged his responsibility as he did not put any question to the prosecution witnesses who had turned hostile. The relevant para 18 to 21 read as under:

“18. We are of the view that after having realized that both the witnesses-PW. 2 and PW. 7 have very cleverly introduced statements in the cross-examination practically contradicting in-effect what is stated in the examination-in-chief, the Public Prosecutor ought to have re-examined both the witnesses on material aspects. Such omission on the part of the Public Prosecutor may lead to a very serious miscarriage of justice. No crime could be allowed to go unpunished. To a certain extent we also hold the trial Court responsible. It is a settled law that it is the duty of a Presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. The trial Judge is invested by Section 165 of the Evidence Act with the right to put questions to witnesses. At this stage it would also be profitable to quote the following observations made by the Supreme Court in the

case of Ram Chander v. State of Haryana, (1981) 3 SCC 191 : AIR 1981 SC 1036.

“2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:—

“Every Criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right to put given to a Judge is so wide that he may ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the Court to send for the policediaries in a case and use them to aid it in the trial. The record of the proceeding of the perused by the Sections Judge to further aid him in the trial”. (Sessions Judge, Nellore v. Intna Ramana Reddy, ILR (1972) Andh Pra 683).

3. With such wide powers the Court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the Counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses. The danger inherent in a judge adopting a much too stern an attitude towards witnesses has been explained by Lord Justice Birkett:—

“People accustomed to the procedure of the Court are likely to be over-awed or frightened, or confused or distressed when under the ordeal of prolonged questioning from the presiding judge. Moreover, when the questioning takes on a sarcastic or ironic tone as it is apt to do, or when it takes on a hostile note as is sometimes almost inevitable, the danger is not only that witnesses will be unable to present the evidence as they may wish, but the parties may begin to think, quite wrongly it may be, that the judge is not holding the scales of justice quite eventually”. Extracted by Lord Denning in Jones v. National Coal Board. ((1957) 2 All ER 155)

19. In Jones v. National Coal Board Lord Justice Denning observed:

“The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the Advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the Advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of the Judge and assumes the role of an Advocate; and the change does not become him well.

We may go further than Lord Denning and say that it is the duty of a judge to discover the truth and for that purpose he may “ask any questions, in any form, at any time, of any witness or of the parties, about any fact, relevant or irrelevant” (Sec. 165, Evidence Act). But this he must do, without unduly trespassing upon the functions of the public prosecutor and the defence Counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The Court the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous encourage the timid, conspire with the young, flatter the old.”

20. It is no doubt true that Section 225 of the Criminal Procedure Code specifically speaks for the trial to be conducted by the prosecutor, but if the Court finds that the public prosecutor is not properly discharging the duty to be performed by him, nothing prevents the Court from exercising its power to ensure that proper evidence is placed before the Court and no mischief is played by the prosecutor which may frustrate the basic principles that the real offender must be punished and the innocent person must be acquitted....

21. It appears that in accepting the evidence of the eye witnesses PW2 Nitaben and PW7 Sadiyabhai against the accused appellant, the learned Sessions Judge has been guided by the consideration that the maxim 'falsus in uno, falsus in omnibus' is not applicable and that an evidence of an eye witness who has made an untrue statement in some respect can be accepted as regards rest of what he states and that there is no valid ground for discarding the statement of the two eye witnesses PW2 and PW7 that the accused inflicted injuries on the chest region of the deceased. In our opinion, the learned Sessions Judge was right in accepting the evidence of PW2 Nitaben and PW7 Sadiyabhai as the basis of the accused appellant's conviction. The maxim quoted above is not applicable to India where codified rules of evidence exist and it is open to a Court to accept a part of the evidence of an eye witness while rejecting the rest of it. This principle on which the Court so acts is not that though a witness has deliberately made some false statement, he may yet be considered to be a truthful witness as regards some other statements. The Court, however, acts on the principle that certain statements of such a witness being corroborated by the probabilities of the case and other reliable evidence appear to be true and should, therefore, be accepted. A Court may again consider a part of the evidence of a witness to be not free from doubts and may think it unsafe to rely on it. But, the rejection of such a statement of a witness does not necessarily destroy the value of his other statements."

(Emphasis Supplied)

23. In the case of *State vs Sanjeev Nanda* reported at (2012) 8 SCC 450, the Hon'ble Supreme Court had discussed the plight of witnesses turning hostile in the criminal matters and also discussed the possible reasons for the same. The relevant para 99-101 read as under:

“99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system.

100. This Court in State of U.P. v. Ramesh Prasad Misra (1996) 10 SCC 360 held that it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In K. Anbazhagan v. Supt. of Police (2004) 3 SCC 767, this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, it may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.

101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1 and in Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374 had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation.

Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked."

(Emphasis Supplied)

24. The first question which arises for our consideration is as to whether the Trial Court after considering all the material evidence on record rightly acquitted all the respondents for the offences punishable under Sections 304-B/498-A/406/34 of IPC?
25. To decide this issue, it would be necessary to discuss the testimonies of some of the material witnesses in detail.
26. PW1 Salek Ram (brother of the deceased) testified in his examination-in-chief that the marriage between the respondent Pramod Kumar and his younger sister Poonam was solemnised on 16.02.2002. He further testified that the marriage was performed according to Hindu rites and customs. A maruti 800-car, a T.V. of make LG, a washing Machine of make Whirlpool, one refrigerator, sofa-set, Godrej Almirah, one double-bed, one box of Godrej, 50 tolas of gold, one and a half kg of silver, 69 clothes for the family, Rs. 1,71,000/-, Rs.21,000/- in cash for lagan, Rs.51,000/- cash on roka and Rs.11,000/- in cash in chitthi, 50 pair of clothes, one dinner set, 151 utensils and other necessary articles were given in the marriage. One gold chain and one gold ring were also given to the husband of the deceased (Pramod Kumar). On the eve of Dashyari (the custom of bringing the newly wedded bride from her in-laws house to the parental house) i.e. on 21.02.2002, PW1 alongwith Jagbir Singh (PW9) and Inder (both were sons of his

uncles) had gone to the in-laws of Poonam. PW1 met with Rajo (mother-in-law of Poonam), Rakam Singh (father-in-law of Poonam), Manoj (*jeth*), Seema (*jethani*) and Minto (*devar*) and all of them complained that the marriage had not been performed as per their status and had made a demand of rupees five lakhs in cash, one Honda City car and one kg of gold. After the demand was made, PW1 along with other persons had called Vijay Singh (uncle of Pramod Kumar) whereupon he also joined all the accused persons by saying that they had to fulfil the demand so made by the aforementioned accused persons. As a result of this, they brought his sister to their house in the evening. On reaching the house, his sister cried and told that she was being harassed by her mother-in-law, father-in-law, *jeth-jethani*, *devar* and husband for not fulfilling the demand and if the said demand was not fulfilled, she would be continued to be harassed in the same way. On 16.03.2002, Pramod Kumar alongwith his father Rakam Singh and *jeth* came to his house and took his sister Poonam to their house. On 18.03.2002, his sister Poonam gave a phone call to PW1 and complained while crying that she was being beaten by all the members of her in-laws family and was told that unless a demand of Rs.five lakhs, a Honda city car and one kg gold was fulfilled, they would continuously beat her and she would be dragged from their house. On 19.03.2002, PW1 met the mediator of the marriage namely Baleshwar in this regard and narrated the entire incident to him. Baleshwar talked to the accused persons and told PW1 that the accused persons wanted their demand to be fulfilled. On 20.03.2002, PW1 went to the house of his sister at Gamari Village where he called all the members of her in-laws family namely Rajo, Rakam Singh, Seema, Manoj and Pramod Kumar and he told them that he had married his sister as per

his capacity and asked the reason for the harassment given to her. On hearing this, they replied that either PW1 must fulfill their demand or they would defame his sister in such a manner that they no longer would be able to show their face within the community. The accused persons again reiterated that until the demand of a Honda City car, five lakh rupees and 1 kg gold would get fulfilled, they would continue the harassment. After this, PW1 brought his sister back to their home. On 03.05.2002, PW1 received a phone call from the respondent Pramod Kumar that his mother was seriously ill. On 04.05.2002 at 7.00 AM, PW1 again received a phone call from Pramod Kumar that his mother was seriously ill and he was coming to bring Poonam back and should keep her ready. Thereafter, Pramod Kumar came at about 9 AM and after having breakfast, he left his house at about 10 AM along with Poonam. Thereafter, at about 3.30 or 4.00 P.M. they received a phone call informing '*Tumhari Behan Poonam Ko Mar Diya Hai*'. PW1 claimed that Pramod Kumar, Rakam Singh, Rajo, Manoj, Seema, Minto and Vijay Singh (uncle of Pramod Kumar) were responsible for the murder of his sister as they had demanded dowry and since such demand could not be fulfilled, his sister had been killed by them. The statement of PW1 was recorded by then SDM Seelampur on 05.05.2002 which was proved by him as Ex. PW1/A. Police had also recorded the statement of PW1 wherein he disclosed the entire incident as deposed in Court.

27. In his cross-examination, PW1 stated that the marriage of his sister was solemnised with great pomp and show and both the parties had completed all the rituals with happiness. At the time of marriage, there was no complaint from either side. It was further stated that his sister was studying at the time of marriage and was in B.A. final year. The

sister of PW1 used to go to Badal Pur to take her exams. PW1 admitted that the centre of her examination was at Mir Bhoj Degree College. The distance between the village of PW1 and Mir Bhoj Degree College was about 7 k.m. The sister of PW1 used to go to take her examination alongwith other girls but PW1 did not know the name of those girls or their fathers or the village from which they hailed. PW1 denied the suggestion that he was not having any interactive terms with his family including his sister. The distance between his village to Badal Pur is 15 minutes motorable distance. PW1 stated that at the time of the incident, he was residing at house No.1/10408, Mohan Park, Navin Shadara, Delhi. PW1 denied that they gave Rs. 11,000/- with the *lagan chithi* (Ex.PW1/DBX). However, it was voluntarily stated that they gave Rs. 21,000/- in cash alongwith *lagan chithi*. PW1 admitted that at the time of marriage of his sister, the list of dowry articles was prepared. The list of dowry articles was shown to PW1 in the Trial Court but it was not identified by him for the reason that the said list was photocopy of the original. PW1 further stated that he brought her sister to parental house and the reason of the same was not her examination but harassment given to her by her in-laws. PW1 further denied that the deceased was not taken by him on 20.03.2002 but she was brought to his place by Rakam Singh for her examination of B.A. Final year which was fixed for 21.03.2002. PW1 stated that on the fateful day, he reached the police station at about 6.00-6.30 and 7.00 PM and before he could reach, the other family members had already reached police station. The family members did not complain against the in-laws of his sister for any demand of dowry, harassment and torturing till he reached the police station. On 04.05.2002, PW1 did not lodge any complaint against the in-laws of

his sister. However, it was lodged by him on 05.05.2002 and the reason of the same was voluntarily explained by PW1 as he was being told that the SHO of the area had gone on round in the area. PW1 further denied that SI Shiv Nath Tyagi (PW26) asked for his statement and he refused the same as they did not have any grievance against the in-laws of his sister. In the later part of his cross-examination, PW1 stated that he did not remember as to whether he had told to the police in his statement about the fact that on 19.03.2004, PW1 met the mediator Baleshwar who talked to the accused persons and told PW1 that the demand of the respondents was persistent. However, on confrontation the said fact was not found mentioned in his statement Ex.PW1/A and Ex.PW1/DLX which were recorded under Section 161 and 164 of Cr.P.C. PW1 further stated that his statement was recorded by then SDM of the area, however, the statement of his brother/parents was not recorded. PW1 denied that on 18.03.2002, his sister Poonam did not make a phone call and she did not cry for being beaten by the entire members of her in-laws. PW1 further denied the suggestion that Poonam had not complained on telephone that unless the demand of Rs. five lakhs in cash, a Honda city car and one kilogram of Gold would be met, she would be beaten and would be thrown out of her matrimonial house.

28. PW9 Jagbir Singh (cousin of the deceased) deposed in his examination-in-chief that the marriage between Poonam (deceased) and the respondent Pramod Kumar was solemnised on 16.02.2002. In her marriage, they had given a Maruti-800 car, Rs.1,71,000/- in cash, 50 *tolas* of gold, T.V., refrigerator, washing machine and other household articles. They spent about 8-10 lakhs on her marriage. On 21.02.2002, PW9 alongwith his cousins Salek Ram (PW1/complainant

herein) and Inder had gone to the house of the in-laws of his sister for taking her back to their house. It was further deposed by PW9 that Rakam Singh (father-in-law), Manoj (*Jeth*), Rajo (mother-in-law), Seema (*Jethani*), Mintu (*dever*), Pramod Kumar (husband of the deceased Poonam) demanded dowry from them. All the aforementioned accused persons (the respondents herein) complained that they had not performed marriage as per their wishes. After the demand was made by the respondents, PW9 and PW1 called Vijay Singh (uncle of Pramod Kumar) who also told them that they had to fulfill their demand. On hearing this, they brought Poonam back to their house. Poonam told her father that she was not treated well at the house of her in-laws and was being tortured by her in laws as mentioned above. On 16.03.2002, Rakam Singh, Manoj and Pramod Kumar came to their village for taking Poonam and they had sent Poonam with them. On 18.03.2002, Salek Ram (PW1) came to him and told that the in-laws of Poonam were beating her as she had not brought the demanded articles. Salek Ram also informed PW9 that Poonam had called him and informed about the harassment and the demand so made. On 20.03.2002, Salek Ram brought back Poonam from her in-laws house. Salek Ram asked PW9 to file a case against her in-laws with regard to the dowry demand made by the in-laws of Poonam but PW9 advised him not to file the case against them as he would try to talk to them. PW9 made a call to Rakam Singh and asked him as to why they had not told about their demands prior to the marriage of Poonam. On 03.05.2002, which was again clarified by PW9 that on 04.05.2002, Poonam received a telephone call of her husband while she was going to her college whereby he called her near Patwari Bagh (Ghaziabad) for strolling and also told her that his

mother was ill and hospitalised and they had to go to see his mother. However, Poonam had not gone to the Patwari Bagh. The respondent Pramod Kumar then came to the parental home of Poonam. The parents of Poonam sent her with Pramod Kumar and Pramod Kumar told them that he would drop her back to the house in the evening after meeting his mother. Thereafter, Poonam did not return back to their house. Whenever PW9 talked on telephone with the in-laws of Poonam, as on some occasions, he had also received telephone calls from her in-laws; they used to ask him to fulfil the demand. It was further deposed by PW9 that in the intervening night of 04.05.2002 and 05.05.2002 at about 12 night, when PW9 came back to his house, he came to know that Poonam had been murdered. PW9 had identified the dead body of Poonam in the mortuary of GTB Hospital. PW9 further deposed that Poonam used to make complaint against her father-in-law, mother-in-law Lajoo, Manoj (*jeth*), Seema (*jethani*), Minto (*devar*) and Vijay Pal.

29. In his cross-examination, PW9 stated that there was no demand from the accused persons before the marriage or at the time of marriage or even at the time of *vidai* of Poonam. PW9 admitted that he was present at all the three occasions. PW9 alongwith two other persons went to the house of the in-laws of Poonam after five days of her marriage. PW9 had admitted that Poonam was brought back happily. The respondent Rakam Singh demanded Rs.5 lakhs in cash, a Honda City car and one kilogram of gold which was disclosed by Poonam after reaching her parental home. PW9 again stated that he did not remember as to when the demand so made by the respondent Rakam Singh was disclosed to him by Poonam. PW9 further stated that he had no knowledge as to whether there were any differences between

both the parties till the second arrival of the deceased Poonam at her in-laws house. PW9 came to know about the differences between the parties after 2-3 days of second arrival of Poonam at her matrimonial home. All the above said facts were disclosed to him by his cousin brother Salek Ram (PW1). PW9 did not call for any *panchayat* or made any complaint to any authority including police. However, it was voluntarily explained by PW9 that he talked with the respondent Rakam Singh. PW9 did not know as to whether the respondent Vijay Singh was residing separately from the respondent Rakam Singh or not. PW9 also stated that they did not make any complaint to any police station in Delhi or Uttar Pradesh about the harassment and torture to Poonam. Poonam remained at her parental home for the period between 18.03.2002 to one day prior to her death which might be 3/4 day of May, 2002. A telephone call was received by Salek Ram (PW1) prior to one day of his taking her back to the matrimonial home. PW9 stated that on 22.02.2002, he alongwith Salek Ram, Govind Singh and Inder met Poonam at the house of Govind Singh. Thereafter, PW9 met the deceased Poonam 5-6 times before her death. The deceased Poonam had made complaints against her in-laws on 22.02.2002 and thereafter. However, there was no report/complaint was made to the police by them.

30. Coming first to the acquittal of the respondents under Section 304-B of IPC, the Trial Court while acquitting the respondents under Section 304-B made the following observations, the relevant para 14 reads as under:

“14. In the case in hand although it is not in dispute that the death of deceased Poonam took place within the period of 7 years from her marriage with accused Pramod. Further it is also not in dispute that her death was an unnatural death which was caused by the injury sustained by her on the back

portion of her head but the third essential requirement that "soon before her death" she was subjected to cruelty or harassment by the accused persons for or in connection with any demand for dowry is not established in the present set of circumstances. PW-9 Jagbir has clearly stated in his deposition that on 21.02.2002 there was no demand of any kind and with effect from 18.03.2002 till a day prior to her death, Poonam was living at her parental house. Further, it has come on record from his testimony that Poonam lived at her parental home on account of her examination w.e.f. 18.03.2002. Even PW-1 Salek Ram has conceded in his cross-examination that Poonam was brought back happily. Further PW-9 has deposed that in his presence that there was no demand from accused side either before marriage or at the time of Vidai and he was present on all the three occasions. He also stated that they did not make any complaint at any police station at Delhi or U.P. regarding harassment of torture on account of dowry against the in laws of Poonam. The corollary of aforesaid finding is that accused persons cannot be convicted U/s 304B IPC too."

31. The Hon'ble Supreme Court in the case of ***Kans Raj v State of Punjab***, reported at (2000) 5 SCC 207 has laid down the following ingredients which need to be proved against the accused persons before they can be convicted under Section 304-B of IPC:

- a. The death of a woman must be caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- b. Such death should have occurred within 7 years of her marriage;
- c. The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- d. Such cruelty or harassment should be for or in connection with the demand of dowry; and
- e. To such cruelty or harassment the deceased should have been subjected soon before her death.

32. To convict a person under Section 304-B of IPC, the most essential aspect which needs to be proved is that the cruelty or harassment for

bringing insufficient dowry must be ‘soon before her death’. Now the question which arises for consideration is as to what period may be considered as soon before her death.

33. The Hon’ble Supreme Court in **Satvir Singh v. State of Punjab**, reported at (2001) 8 SCC 633 while discussing the scope of the expression ‘soon before her death’ held as under:

“22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened “soon before her death”. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words “soon before her death” is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept “soon before her death.”

(Emphasis supplied)

34. The Hon’ble Supreme Court in **Kaliyaperumal v. State of T.N.** reported at (2004) 9 SCC 157 while dealing with the expression ‘soon before her death’ held as under:

“5. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to

show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term “soon before” is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental

equilibrium of the woman concerned, it would be of no consequence.”

(Emphasis Supplied)

35. In the case of *Sher Singh vs. State of Haryana* reported at (2015) 3 SCC 724, the Hon'ble Supreme Court held that the use of word “shown” instead of “proved” in Section 304-B of IPC indicates that the onus cast on the prosecution would stand satisfied on the anvil of a mere preponderance of probability. In other words, “shown” will have to be read up to mean “proved” but only to the extent of preponderance of probability. It was further held that the word “deemed” used in the Section 304-B of IPC is to be read down to require an accused to prove his innocence, but beyond reasonable doubt. The “deemed” culpability of the accused leaving no room for the accused to prove innocence was, accordingly, read down to a strong “presumption” of his culpability. The accused is required to rebut this presumption by proving his innocence. The same view was reiterated in the case of *Ramakant Mishra v. State of U.P.* reported at (2015) 8 SCC 299.
36. It is a settled principle of law that in the cases where the prosecution show that ‘soon before her death’ the deceased was subjected to cruelty or harassment by the husband or in-laws in connection with demand for dowry, the presumption under Section 113-B of the Evidence Act would be attracted and the Court shall presume that such person who had subjected the woman to cruelty or harassment in connection with any demand for dowry shall be presumed to have caused the dowry death. Thereafter, the burden is on the accused persons to rebut the said presumption which arises in such cases.

37. Now we proceed to analyse whether 'soon before her death' there was a demand for dowry by the respondents which had a live and proximate link to her death. A careful analysis of the testimonies on record would show that the deceased was married to the respondent No.2/Pramod Kumar on 16.02.2002. PW1 brother of the deceased has testified that on 21.02.2002 i.e. soon after the marriage, he and PW9 had gone to the in-laws of the deceased and all i.e. mother-in-law, father-in-law, brother-in-law (*jeth*), sister-in-law (*jethani*) and Minto (*devar*) had complained that the marriage had not been performed as per their status and a demand was made. This evidence does not repose confidence for the reason that it is extremely general in nature and it seems that the attempt of the witnesses was to rope each and every member of the family and incidentally, nothing has been attributed to the husband. Further, as per the testimony of PW1, on the same day in the evening, he brought his sister home and she had complained that she was being harassed by mother-in-law, father-in-law, *Jeth*, *Jethani*, *Devar* and husband for not fulfilling the demand. On 16.03.2002, husband, his father, his brother came to the house of the deceased and took her back. Again on 18.03.2002, the deceased had complained to PW1 on telephone that she was being beaten by all the members of her in-laws family. Again, she was brought back to the parental home on 20.03.2002 where she stayed upto 03.05.2002. There is nothing on record to show that between March and May, 2002 that either there was no interaction between the parties or any situation which should have led to the death of the deceased. It is also the case of the prosecution that on 03.05.2002, PW1 received a phone call from her husband/Pramod Kumar that her mother was seriously ill and on the next morning, he came and took the deceased with him.

The sequence of events as they unfold would show that there was no interaction between the parties between March and May, 2002 and the deceased agreed to go alone with the husband and her family members agreed to send her on receipt of one phone call. Thus, in our view, the live link between the sequence of phone calls in the months of February and March, 2002 has snapped and therefore, the Trial Court has rightly acquitted the respondents under Section 304-B of IPC. Accordingly, we find that there is no infirmity in the acquittal recorded by the Trial Court against all the respondents under Section 304-B of IPC.

38. Coming next to the acquittal of all the respondents under Section 498-A and Section 406 of IPC, the following observations were made by the Trial Court which read as under:

“To establish its case U/s 406 & 498A IPC, the prosecution has produced PW-1 Salek Ram and PW-9 Jagbir (the brother and cousin of deceased respectively) but unfortunately the case of the prosecution does not stand proved at all for the reasons firstly that it is not specifically stated that any particular articles were entrusted to which of the accused persons on being demanded. Further no deposition has come on record, which attributes any specific demand or specific role assigned to the accused persons nor any particular word of demand uttered by accused persons. From the careful scrutiny of the testimonies of PW-1 and PW-9, it does not establish that the deceased was subjected to the cruelty of grave nature and continuously or persistently or at least in close proximity of time of lodging of complaint. Admittedly, there was no complaint lodged against the accused persons prior to the date of incident. It is strange that despite having reached in evening of 04.05.2002, no statement was got recorded by PW-1 and his relatives to the IO in respect of dowry harassment and dowry demand. Even otherwise no complaint prior to death has ever been lodged to any authority by the complainant his relatives and deceased also cast doubt on the veracity of allegations levelled by complainant and his relatives against the accused persons.

From the mere perusal of the testimony of PW-1 Salek Ram and PW-9 Jagbir Singh, it is abundant clear that no specific role have been attributed to any of the accused in specific in respect of alleged demand. Further their testimonies do not inspire confidence as PW-1 Salek Ram resides at 1/10408, Mohan Park, Naveen Shahdara, Delhi, whereas the parents of the said witness resides at Village Chheja, District Ghaziabad, U.P. and Poonam neither resided at Delhi nor studying in Delhi, rather, she studied from the village and was a student at the time of marriage. In his deposition, PW-1 Salek Ram has conceded that at the time of marriage there was no complaint from any side. His sister Poonam was studying at the time of marriage in B.A. final and was studying from college Village Badal Pur. PW-9 Jagbir although in his examination-in-chief, has deposed that he and PW-1 Salek Ram had gone to bring back Poonam on 21.02.2002 and in their presence, the demand of Honda City car, Rs.Five Lakhs and one kg gold was made by the accused persons but in cross-examination he also deposed that in his presence there was no demand from accused side either before the marriage or at the time of marriage or even at the time of vidai of Poonam. He claimed that he remained present at all aforesaid three occasions. He confirmed that Poonam was brought back happily. He has no knowledge whether there were any differences between both the parties till the second arrival of deceased Poonam in her in laws house. He came to know about the differences after two three days of second arrival of Poonam at her matrimonial home. The said fact was told to him by cousin brother Salek Ram in Mohan Park, Shahdara. He further deposed that they did not make any complaint to any police station in Delhi or U.P. about harassment and torture given to her. Poonam resided at her parental home since 18.03.2002 to one day prior to her death. It might be 3rd or 4th day of May, 2002.

Further the testimony of PW-1 Salek Ram categorically mentioning therein date on which he was complained or demanded dowry stands disproved from the deposition of PW-9 Jagbir, who has clearly mentioned that on 21.02.2002 there was no demand of any kind and with effect from 18.03.2002 till a day prior to death Poonam was living at her parental house. Further from the evidence of PW-9 Jagbir, it has come on

record that Poonam lived at her parental home on account of her examination w.e.f. 18.03.2002. Moreover, the conduct of PW-1 Salek Ram seems highly unnatural as despite of the fact that the information regarding the death of Poonam was received on 04.05.2002 at about 3.3-4.00 pm and he was very well present in village and he reached at police station at about 6/6.30 pm and 7 pm but neither he nor his other family members, who had reached in the police station prior to him made any complaint against the in laws of his deceased sister regarding demand of dowry, harassment/torture on 04.05.2002, rather, he lodged the complaint/report on 05.05.2002. PW-26 SI Shivnath has also clearly deposed that "he had informed family members of Poonam on the same day i.e. 04.05.2002 regarding the occurrence but family members of Poonam namely Tilak Ram, Gobind Singh, Jagbir and other relatives reached at PS Usmanpur on 05.05.2002 at about 9 am."

39. The Hon'ble Supreme Court in the case of ***Girdhar Shankar Tawade v. State of Maharashtra***, reported at (2002) 5 SCC 177, while laying down the essential ingredients to be fulfilled before convicting a person under Section 498-A of IPC, it was held as under:

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same

would also embrace the attributes of “cruelty” in terms of Section 498-A.”

(Emphasis Supplied)

40. In the case of ***Bansi Lal v State of Haryana*** reported at (2011) 11 SCC 359, the Hon’ble Supreme Court laid down the scope of the word ‘cruelty’ as used in the Section 498-A of IPC and held as under:

“17. While considering the case under Section 498-A, (Sic Section 304-B) cruelty has to be proved during the close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide....”

41. The undisputed facts of the present case are that the marriage between the deceased Poonam and the respondent Pramod Kumar was solemnized on 16.02.2002 and the deceased had died within 78 days of her marriage. Applying the law laid down in the aforesaid judgments to the facts and circumstances of the present case, we find that there were no specific instances of cruelty suffered by the deceased at the hands of her in-laws which were continuous and there was no live link between the demand so made by them and the death of Poonam. The evidence of PW1 is contradictory to the evidence of PW9 and there is no clarity as to whether deceased Poonam was subjected to physical abuse on various occasions and a demand was made to the family members of the deceased by all the respondents. In our view, the Trial Court has rightly applied the principles enunciated in the aforementioned judgments to the facts of the present case and analysed the evidence in correct perspective. Thus, we find that there is no infirmity in the acquittal recorded by the Trial Court under Section 498-A and Section 406 of IPC.

42. The next question which arises for our consideration is as to whether the Trial Court has rightly acquitted respondent Pramod Kumar under Section 302 read with Section 201 of IPC which was the main charge framed against him.
43. In this regard, the following observations were made by the Trial Court while acquitting him. The relevant part reads as under:

“Although PW-2 Satbir S/o Jaipal initially had supported the story of prosecution during his examination-in-chief while deposing on the line of prosecution but during cross-examination of the said witness, the alleged incriminating testimony against the accused persons stood shattered as he was made to depose the facts as mentioned in his examination-in-chief under threat and pressure as the same is evident from the cross-examination of the said witness, who had during his cross-examination has categorically stated that neither any dead body was recovered in his presence nor he is the eye witnesses of the spot. PW-2 deposed that:-

“I was compelled and pressurized to make any statement according to IO whatever he had already written in Ex.PW2/A as he had threatened me that I will lose my job. Whatever tutored by the IO, I deposed before the Court under the pressure of the I.O. The seized articles were identified by me at the instance of the IO as the IO had already tutored me that no other articles of any other case will be shown except this case. Whatever shown to me I had to reply in positive so at his instance I identified the same.”

It is pertinent to mention here that the said witness was not re-examined by Ld. Addl. PP, therefore, the entire examination-in-chief of the said witness stands nullified from his cross-examination.

Further PW-3 Satbir S/o Kishan Lal (an another independent eye witness) has at all not supported the story of prosecution and the said was declared hostile and the entire incriminating evidence was put by Ld. APP to the said witness during cross-examination but nothing incriminating could be milch out from

his deposition, rather, the said witness has deposed in favour of accused Pramod, thereby establishing his innocence. Similarly, PW-4 Satpal S/o Nathu Lal, the third independent public witness of the spot, has also not supported the story of prosecution and the witness was also declared hostile and the entire incriminating evidence put by the said witness in the favour of the suspect during his cross-examination by Ld. APP was denied by the said witness, thereby he also established the innocence of the accused.”

44. From above, it is evident that the Trial Court disbelieved the evidence of PW2, PW3 and PW4 for the reasons extracted hereinabove. In the facts of the given case, we are of the view that the Public Prosecutor has failed to discharge his duty diligently and did not re-examine the witnesses as per the mandate of Section 138 of the Indian Evidence Act. Undoubtedly, the very purpose of re-examination of the witness is to explain the facts which have been stated in cross-examination.
45. It is the case of the prosecution against respondent Pramod Kumar that in the early morning of 04.05.2002, the respondent Pramod Kumar came to the house of the complainant Salek Ram to pick the deceased to enable her to look after his mother. Thereafter, it was respondent Pramod Kumar who was apprehended while burying her in the pit. The failure to give any explanation on the part of the respondent Pramod Kumar points towards his guilt. It is further the case of the prosecution that the respondent Pramod Kumar had killed his wife Poonam and thereafter while disposing off her body, he was caught red handed by the three gardeners of the Forest Department i.e. PW2, 3 and 4.
46. In this backdrop, it would be necessary to discuss evidence of PW2, PW3 and PW4.

47. The prime independent witness of the prosecution is PW2 Satbir Singh son of Jaipal Singh, who was working as a labourer in the Forest Department. He has testified in his examination-in-chief that on 04.05.2002 at around 4.30 PM, he was on duty in the forest area of Garhi Mandu, Yamuna Khadar. PW2 had seen the respondent Pramod Kumar burying the dead body of a lady in the pit. On inquiry, the dead body was found to be of the wife of the respondent Pramod. The respondent Pramod Kumar was identified by PW2 in Court. PW2 called the police officials i.e. Traffic police officials from Wazirabad circle, who in turn informed the PCR and the local police. PCR reached the spot and took the dead body to the hospital. At that time, Satpal (PW4) and Satbir son of Kishan Lal (PW3), were also on duty and accompanied him. Police reached the spot and his statement (Ex.PW2/A) was recorded by the police. One belt, a handkerchief, one pair of sandal and a spade were taken into possession by the police vide seizure memo, Ex.PW2/B. The respondent Pramod Kumar was interrogated and arrested. PW2 claimed that he had apprehended the respondent Pramod Kumar while he was burying a dead body. He had not seen respondent Pramod Kumar before the present incident. Satpal (PW4) was sent to call the police. The respondent Pramod Kumar was handed over to the police. Police had seized a two wheeler scooter, one book, one chain and ear tops. One ladies wrist watch of make Sonata which was of yellow colour was also recovered from the respondent Pramod Kumar. It was admitted by PW2 that the respondent Pramod Kumar had brought Poonam on his scooter which was seized by the Police officials. The said scooter was identified by PW2 in Court. The respondent Pramod Kumar was identified by PW2

in Court as the person who was apprehended by him while respondent Pramod Kumar was burying the dead body.

48. In his cross-examination, PW2 stated that on 04.05.2002, he was working as a gardener. The security guards were also posted in the forest area. On the same day, PW2 and other two persons alongwith few guards were taken to the Police Station. It is important to mention that PW2 had turned hostile and did not support the case of prosecution. PW2 stated that he did not see any place where any human dead body was recovered. PW2 denied that the statement Ex.PW2/A was given by him to the police. The Investigating Officer had recorded the same on his own. It was stated by PW2 that he was not aware as to the contents of all memos which bear his signatures and it was voluntarily explained that the Police had obtained his signatures on some papers in the police station. PW2 stated that on 02.08.2006, his statement (Ex.PW2/DA) was also recorded in the Juvenile Justice Board, Kinsgsway camp, Delhi whereby PW2 had denied the facts mentioned in his statement Ex.PW2/A, as per which, on 04.05.2002 at about 12.45 PM, he was present alongwith Satbir son of Kishan Lal (PW3) and Sat Pal (PW4) was at his duty in Forest Area, Garhi Mando and on reaching the eastern side of the Forest area, they saw one person putting mud with a spade in one pit or that on suspicion they went near him and started inquiring him. We have found that PW2 took a somersault in his cross-examination and had deposed contrary to his examination-in-chief and did not support the case of prosecution.
49. Another independent witness, PW3 Satbir son of Kishan Lal testified in his examination-in-chief that on 04.05.2002, he was posted as a Gardener in the Forest Department Garhi Mando, Shahdara. On

04.05.2002 at about 4.30 PM, he alongwith Satbir son of Jai Pal Singh (PW2) and Satpal (PW4) who used to work with him in the Forest Department, were coming to their office from field after finishing their work. On the way near Pantoon Pul, a police jeep met and stopped them and asked as to whether any murder had taken place or not and when they replied in negative telling that they had no knowledge, they were taken to police station New Usmanpur by police officials, where they were kept for 3-4 hours and then after noting down their particulars (i.e. names and addresses) they were set free. PW3 claimed that he had not seen anything. It was further deposed by PW3 that he had neither seen any person digging pit nor any dead body of a woman in that pit. They had not apprehended any public person near the pit. PW3 claimed that they had not called any police official in the forest area.

50. In his cross-examination, PW3 Satbir stated that Satbir son of Jai Pal (PW2) and Satpal (PW4) were with him on duty on that day. They remained in custody of the police till the release of PW3. It was further stated by PW3 that PW2 did not leave them on that day. Their duty was for gardening only and there were forest guards for the security of the forest. Some guards were also taken to the Police Station on that day. All of them were compelled to be the witness of the occurrence by the police. PW3 refused as he had not seen any occurrence. PW2 had agreed to make his statement according to the police officials under their influence. The statement of PW3 was proved by him as Ex.PW3/DA1 which was recorded in the juvenile court. On 02.08.06 PW2, Satpal (PW4) went to the Juvenile court and gave their statement in the Court. On that day, the Investigating Officer Shiv Nath Tyagi was with them. On that day, all of them were

compelled to make their statement according to the Investigating Officer. However, PW3 did not agree to it and made his true and voluntary statement to the Court. Reading of the evidence of PW3 shows that on 04.05.02, he was on duty and admits the presence of Satbir son of Jaipal Singh (PW2) and Satpal (PW4), the entire day.

51. PW4 Satpal in his examination-in-chief testified that on the 4th day in the year 2002, he did not remember the month, he alongwith Satbir son of Jaipal (PW2) and another Satbir son of Kishan Lal (PW3) were on duty at the Garhi Mandu Forest Department. It was further testified by PW4 that at about 4:30 pm, they were going to their office after finishing their duty when 2-3 police officials came from the side of Pontun Pul and asked them as to whether any murder had been committed. They brought them to the Police Station and interrogated them. It was told by them that no murder had been committed in their presence and that they did not know about any murder. The Police officials kept them in the Police Station upto 10:30 PM and noted down their addresses. Thereafter, PW4 returned to his house. As PW4 did not support the case of prosecution, learned APP for the State cross-examined him whereby PW4 admitted that on 04.05.2002, he was on duty with his colleagues. He denied that on that day at about 12:15 pm, he alongwith PW2 and PW3 were present near Tin Shed of Forest Department or that in the meantime a boy whose name they came to know as Pramod Kumar came there alongwith a girl on two wheeler scooter from Wazirabad road side or that the respondent Pramod Kumar had parked his scooter near Pontun Pul tin shed or that the boy and girl had gone towards Garhi Mandu village while talking but they did not notice them. PW4 deposed that he did not narrate the facts to the police. However, he was confronted with his statement to

the police (Ex.PW4/A) wherein it was so recorded. PW4 denied that at about 12:45 pm when they had gone to the eastern side of Pontun Pul, they found that a person was filling a pit with earth or that on suspicion, they had gone there and found that the respondent Pramod Kumar had come with a girl on scooter, who was filling the pit or that he had also noticed leg of a woman in the pit or that when he asked the respondent Pramod Kumar, he tried to run away or that PW4 had apprehended him. PW4 deposed that he did not state these facts to the police. However, PW4 was confronted with his statement (Ex.PW4/A) wherein it was so recorded.

52. Besides the above public witnesses, the other formal witnesses including PW10 SI Rajinder Sehrawat, who was posted as Zonal Officer in Traffic Circle, Seelampur testified in his examination-in-chief that on 04.05.2002 at about 1.00 PM, when he was present at Wazirabad road, near Yamuna Bridge alongwith Const. Mohd. Nazim, Const. Anil Kumar (PW6) and Const. Ram Pal (PW25), one employee of Forest Department namely Satpal (PW4) came to him and told that they had caught one person who was present in the forest area and was in the process of burying one lady '*ek aadmi ko pakad rakha hai jo gaddeh mein phawre se mitti dal kar ek aurat ko daba raha hai*'. Thereafter, PW10 alongwith his staff reached the spot. Satpal (PW4) led them up to the pit. PW10 found the employees of the Forest Department were removing the earth from the pit. They removed an unconscious woman aged about 19/20 years from the pit. PW10 informed the PCR officials who had removed the woman to the Trauma Centre. The woman was declared as brought dead. The respondent Pramod Kumar was apprehended by Forest employees and was handed over to the SHO of the area. The articles including chain,

pair of ear tops, a ladies wrist watch of make Sonata, one book of Social Studies were seized from the possession of the respondent Pramod Kumar. SI Shiv Nath (PW26) recorded the statement of Satbir and on the basis of his statement, the instant case was registered. One spade, one handkerchief, one brown colour belt, one pair sandal and one *dupatta* lying near the pit were seized and taken into possession. The respondent Pramod Kumar was arrested and his disclosure statement was recorded. PW10 duly identified the respondent Pramod Kumar in Court.

53. The criminal machinery was set into motion vide DD No. 25B (Ex.PW18/A) which was recorded on 04.05.2002 at PS New Usmanpur. On the fateful day, at 1.21 PM, PW18 Lady HC Shashi Bala received an information from wireless operator that one person had been apprehended at Wazirabad road near Pontun Pul, Delhi who was trying to bury dead body of a woman after burying a pit. The said DD was marked to SI Shiv Nath Tyagi (PW26) for further proceeding.
54. PW24 ASI Nepal Singh deposed that on 04.05.2002, he was posted on PCR vehicle Baker 43 and at about 01.20 pm, they were present at Sonia Vihar Pushta where on receipt of a call from PCR Control Room, they reached at Yamuna Khader near Pontun Pul, where one traffic police Zonal Officer, one traffic constable and two officials from forest department were present. They took one lady aged about 20-21 years old in an unconscious condition in a PCR vehicle and PW24 immediately took her to Trauma Centre, Matcalfe Road, where she was declared as brought dead by the doctor.
55. PW6 Const. Anil Kumar testified that on 04.05.2002 at about 1.30 PM, while he was on patrolling, PW6 found three labourers from Forest Department alongwith one Zonal Officer and three constables,

who had apprehended the respondent Pramod Kumar, who was duly identified by him in Court. PCR Van had removed the dead body of the girl to Trauma Centre. Thereafter, SI Shivnath Tyagi (PW26) reached the spot, and from there PW26 went to the Trauma Centre and PW6 stayed at the spot. PW26 came back at the spot and handed over the *rukka* to him at about 3.45 pm for registration of the FIR and after registration of the FIR, PW6 came back at the spot at about 5.15 pm, and handed over copy of the FIR and *rukka* in original to the Investigating Officer. PW6 also identified the scooter bearing No.DL7SQA 7635 on which the respondent Pramod Kumar had brought the girl at the spot. The said scooter was taken into possession vide seizure memo Ex.PW6/A.

56. PW25 Const. Ram Pal testified that on 04.05.2002, he was posted in the Traffic, Seelampur Circle. On the fateful day, he was posted at Wazirabad Bridge point alongwith SI Rajender Sehrawat (PW10), Const. Mohd. Nazim and Const. Anil Kumar (PW6) of Traffic. At about 12.30-12.45 PM, one person whose name he later came to know as Satpal (PW4), an official of Forest Department came to them and informed them that one person was burying one another person at Yamuna Khadar. PW25 alongwith PW10, PW6 and Const. Mohd. Nazim reached the spot and saw that two persons namely Satbir son of Kishan Lal (PW3) and Satbir Singh son of Jaipal Singh (PW2) were found holding one person (the respondent Pramod Kumar) and they saw the legs of one person in the pit. After removing the soil, they found dead body of one lady aged about 19-20 years old. The information was flashed by SI Rajender Sehrawat (PW10). The PCR reached the spot after 10-15 minutes. Const. Mohd. Nazim and PW10 took the body of the lady in the PCR vehicle and moved it to Trauma

Centre. One spade, one belt, one handkerchief, one *dupatta* and one pair of sandals were found lying near the spot. The local Police reached the spot after some time. PW25 duly identified the respondent Pramod Kumar in Court.

57. PW12 HC Anil Kumar deposed on the similar lines as deposed by PW25. On 04.05.2002, he was posted alongwith SI Rajender Sehrawat (PW10), Const. Mohd. Nazim and Const. Ram Pal (PW25) in Traffic Circle, Seelampur. At about 1.00 PM, an employee of Forest Department, whose name he came to know as Satpal (PW4) came to meet him and informed that a boy was found burying a woman in a pit. On reaching the spot, he apprehended the respondent Pramod Kumar. The PCR van took the woman to the hospital. SI Sehrawat (PW10) also reached the spot. One spade, one pair of ladies sandals, one *dupatta*, one handkerchief, and one belt were found lying at the spot. At about 01.30 PM or so, local police reached the spot.
58. PW26 SI (Retd.) Shiv Nath testified in his examination-in-chief that on 04.05.2002 at about 1:21 PM, he was posted as SI at Police Station, New Usmanpur. He received a DD No.25-B which was proved as Ex. PW18/A with regard to the apprehension of one person near Wazirabad Road, Pontun Pul, who was found burying a lady in a pit. On receipt of said DD, PW26 alongwith HC Ved Pal (PW20) reached at Village Gadi Mandu, Yamuna Khadar Forest, Near Pontun Pul, where PW26 met Const. Anil Kumar (PW6), SI Rajender Sehrawat (PW10), HC Anil (PW12), Const. Mohd. Nazim, Const. Ram Pal (PW25) and forest officials namely Satbir Singh (PW2) and Satbir (PW3). On reaching the spot, the traffic police officials produced one person namely Pramod Kumar (the respondent herein) before him and they informed that the injured lady was already taken to the Trauma

Centre by PCR van. Thereafter, PW26 alongwith HC Ved Pal left for Trauma Centre and left Const. Anil there to preserve the spot. On reaching the Trauma Centre, PW26 collected the MLC of the injured lady, who was declared as brought dead. Thereafter, PW26 returned to the spot after leaving HC Ved Pal at the Trauma Centre. The statement of Satbir Singh (PW2) was recorded by PW26 which was proved as Ex. PW2/A whereby it was stated by PW2 that the respondent Pramod Kumar had committed the murder of above said lady and was trying to bury her in the pit. PW26 made an endorsement on the *rukka* which was proved as Ex.PW26/A and the same was sent to PS New Usmanpur for the registration of FIR through Const. Anil. The site plan (Ex. PW26/B) was prepared at the instance of PW2. The crime team also reached the spot but no finger prints were found there. At the spot, PW26 found one spade, one *chunni*, one pair of sandals, one handkerchief and one belt. In the meanwhile, Const. Anil (PW26) reached the spot and handed over the copy of FIR and *rukka* in original to him for further investigation. PW26 interrogated the respondent Pramod Kumar whereby he confessed about the incident. The respondent Pramod Kumar was arrested by him vide arrest memo Ex.PW2/C and his personal search was conducted by him vide memo Ex.PW2/D. PW26 further deposed that after conducting personal search of the respondent Pramod Kumar, one pair of golden colour tops, one chain golden in colour and one ladies wrist watch of make sonata were recovered from the right pocket of the pant and one book of sociology from his back was recovered. The respondent Pramod Kumar had disclosed to him that all the aforementioned articles belonged to the deceased. Besides aforementioned articles, Rupees 47/- were also found from the possession of the respondent Pramod

Kumar. PW26 also deposed that the respondent Pramod Kumar was interrogated by him and his disclosure statement Ex. PW2/C was recorded. At the instance of the respondent Pramod Kumar, one two wheeler scooter bearing No. DL7SQ7635 was also recovered from Pontun road, near Tin shed and it was seized by him vide memo Ex. PW6/A.

59. PW23 P.C. Jain (the then SDM of the area) deposed that on 04.05.2002, he received an information from the Police Station New Usmanpur, Delhi about the death of a lady namely Poonam. The relatives of the deceased were brought before him on 05.05.2002 for recording of their statements. On 05.05.2002, one Salek Ram (PW1) was brought before him and his statement was recorded, which was proved as Ex. PW1/A. Thereafter, PW23 went to the GTB Hospital and completed the Inquest Proceedings of the deceased Poonam. The post-mortem of the deceased Poonam was conducted at his request. After the post mortem examination, the dead body of Poonam was handed over to SI Shiv Nath (PW26) for necessary action.
60. Undoubtedly, it is a settled principle of law that the statement of a police officer can be relied upon and can form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record. The presumption that every person acts honestly applies as much in favour of a police official as any other person. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence requires a careful scrutiny of their evidence. But, if the court is convinced that what was stated by a police witness has a ring of truth, conviction can be based on such evidence.

61. After reading the evidence of formal witnesses being PW10 SI Rajinder Sehrawat, PW6 Const. Anil, PW12 HC Anil and PW26 SI (Retd.) Shiv Nath, we are of the considered view that the Trial Court misdirected itself by disbelieving their evidence on the ground that they were not able to identify the informer Satbir Singh (PW2) and Satpal (PW4) in the group photograph which was shown to them after a period of 5-6 years of the incident. It may be noted that PW6 and PW10 had expressly deposed that they could identify Satpal (PW4) and Satbir Singh (PW2) if they were produced in Court, but the Trial Court did not consider the same. It is relevant to mention that PW2 Satbir was produced in Court after 5 years of the incident and he supported the case of the prosecution in his examination-in-chief which was recorded on 01.01.2007. The cross-examination of PW2 was allowed to drag and after 10 months i.e. on 06.10.2007, after PW2 had retired and he was won over by the respondents.
62. The presence of the respondent Pramod Kumar at the spot cannot be doubted and stands fully established in view of the testimonies of PW2 Satbir Singh, PW3 Satbir, and PW4 Satpal alongwith the testimonies of the formal witnesses including PW10 SI Rajinder Sehrawat, PW6 Const. Anil Kumar, PW13 Insp. Anil Kumar, PW24 ASI Nepal Singh, PW25 Const. Ram Pal and PW26 SI (Retd.) Shiv Nath. The reading of their testimonies show that the respondent Pramod Kumar was caught at the spot while he was digging a pit and trying to bury Poonam. The deceased Poonam was taken to the hospital by the PCR officials however, she was declared as brought dead.

Medical Evidence:

63. PW14 Dr. Satender Kumar, CMO, Sushruta Trauma Centre testified that on 04.05.2002, he was posted as a Medical Officer in the aforementioned Centre, where ASI Nepal Singh (PW24) of PCR brought one unknown female aged 20 years old for medical examination. He conducted her medical examination vide MLC No. 29277 which was proved by him as Ex.PW14/A. PW14 deposed that the said patient was in unconscious state and PCR official told him that some person had buried the patient in sand. After local examination, PW14 found one lacerated wound size approximately 10 cm x 8 cm on right occipito parieto temporal region of skull and the patient was declared as brought dead. In his cross-examination, PW14 stated that only one injury was noticed by him that could have been possible if a person fell down upon a hard object or surface. PW14 could not opine with regard to the weapon used in the infliction of the injury to the patient.
64. PW15 Dr. S.K. Verma conducted post-mortem examination of the deceased on 05.05.2002. His detailed report was proved as Ex.PW15/A wherein the following ante-mortem injuries were found on the body of the deceased:
- “i) Reddish contusions three in numbers of size 0.5 cm in diameter present over under surface of lower lip in the middle below the incisor teeth and two cm Posterior to the lip line.*
 - ii) A small reddish contusions 0.6 cm in diameter present on right side front of neck, 1 cm to the right of mid line and 2.5 cm above the medial end of right clavicle. Another contusion with similar features was placed 4 cm below and right of the above mentioned contusion.*
 - iii) A scalp deep lacerated wound with irregular and ragged margins of size 10 x 6 cm placed 10 cm above right mastoid and 15 cm from right orbital margin in parietal region of skull with a depressed comminuted (undisplaced) fracture of size 4*

x 3.5 cm. Blood was present around the wound and on the back of neck and chest. Scalp hairs shaven around and over the wounds.”

65. PW15 opined that the cause of death of Poonam was shock due to head injury which was caused by the blunt force impact and was sufficient to cause death in the ordinary course of nature. Time since death was opined as one day prior to the autopsy of Poonam.
66. It is evident from the post-mortem report of the deceased Poonam that she sustained a scalp deep lacerated wound of size 10 x 6 cm in the parietal region of skull. It was opined by PW15 that the cause of death was shock due to head injury which was caused by the blunt force impact and was sufficient to cause death in the ordinary course of nature. Poonam was in lawful custody of her husband (respondent Pramod Kumar) and had gone to her matrimonial home on the fateful day. By a deeming fiction in law, the onus shifts on to the respondent Pramod Kumar to prove as to how the deceased had died. The respondent Pramod Kumar did not care to explain as to how the death of his wife had occurred when she was picked by him on the same day of the incident from her parental home. Mere denial cannot be treated to be the discharge of onus. Onus has to be discharged by leading proper and cogent evidence. In the given circumstances of the instant case, we expect from the respondent Pramod Kumar to explain as to how and why his wife had died, as well as his conduct subsequent to the death of the deceased Poonam shows that he was found burying the dead body of Poonam in the Forest area of *Garhi Mandu*. The explanation rendered by all the respondents in their statement under Section 313 of Cr.P.C. is not convincing. All the respondents had made similar statement. Thus, the respondent Pramod Kumar had

failed to discharge the onus to rebut the presumption arising out of Section 113-B of the Indian Evidence Act.

67. As far as the delay in registration of FIR is concerned, the counsel for the respondents submits that there has been gross unexplained delay in the registration of FIR, thus, giving ample opportunity to the family members of Poonam to cook up the exaggerated general allegations. From the evidence on record, it has emerged that the information with regard to the death of Poonam was received by PW1 on 04.05.2002 at about 3.30/4.00 PM and *rukka* was sent within 3 hours of the incident but FIR was registered on 05.05.2002. We are of the view that FIR being lodged on the day next after the incident i.e. 05.05.2002 did not constitute inordinate delay categorising the FIR as an afterthought or as contrived. As the complainant along with the family members were shocked by the loss of Poonam, which could be a reason for the delay in registration of the present case.
68. In the case of ***Ramesh Harijan vs. State of U.P.*** reported at (2012) 5 SCC 777, it was held by the Hon'ble Supreme Court that it is only in exceptional cases where there are compelling circumstances and the judgment in appeal found to be perverse, the appellate Court can interfere with the order of the acquittal. The relevant para 20 reads as under:

“20. The law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal.

“20. ... The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the

other view is possible should be avoided, unless there are good reasons for interference.”

(Emphasis Supplied)

69. Similar observations were made by the Apex Court in the case of ***Girja Prasad vs. State of M.P.*** reported at (2007) 7 SCC 625, the relevant para 28 reads as under:

“28. Regarding setting aside acquittal by the High Court, the learned counsel for the appellant relied upon Kunju Mohd. v. State of Kerala (2004) 9 SCC 193, Kashiram v. State of M.P. (2002) 1 SCC 71 and Meena v. State of Maharashtra (2000) 5 SCC 21. In our opinion, the law is well settled. An appeal against acquittal is also an appeal under the Code and an appellate court has every power to reappreciate, review and reconsider the evidence as a whole before it. It is, no doubt, true that there is presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the trial court. But that is not the end of the matter. It is for the appellate court to keep in view the relevant principles of law, to reappreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principles of criminal jurisprudence.”

(Emphasis Supplied)

70. In the light of the view taken in the case of ***Laliya Bhadiyabhai Nayka’s*** case (*supra*), wherein the Public Prosecutor ought to re-examine the prosecution witnesses on the material aspects when they turned hostile and similarly, in the instant case, the Public Prosecutor did not re-examine the prosecution witnesses, when they took a complete somersault in their cross-examination, we are of the view that such omission on the part of the Public Prosecutor only amounts to lapse on his part and does not affect the case of the prosecution, when corroborated with other evidence available on record. In view of the settled principles laid down by the Apex Court extracted

hereinabove, we rely upon the evidence of PW2 Satbir Singh, PW3 Satbir and PW4 Satpal as due to their prompt assistance the case would not have seen the light of the day and set the criminal machinery into motion. The Trial Court has erred in acquitting the respondent Pramod Kumar on the ground that the material witnesses had turned hostile and did not support the case of prosecution. We are of the view that their evidence remains admissible in the trial and there is no legal bar to base a conviction upon their testimonies which is also corroborated by other reliable evidence. We are unable to accept the view taken by the Trial Court. The prosecution has proved its case beyond reasonable doubt against respondent Pramod Kumar. Thus, respondent Pramod Kumar stands convicted for the offence punishable under Sections 302 read with 201 of IPC for the reasons discussed above and the acquittal recorded by the Trial Court against him is set aside.

71. Accordingly, the appeal filed by the complainant Salek Ram against respondent Pramod Kumar is allowed while the appeal filed against all other respondents stand dismissed. The respondent Pramod Kumar would be heard on sentence on 26.11.2019, when Pramod Kumar shall be produced, if arrested, in the Court, otherwise convict Pramod Kumar shall remain present in Court.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

NOVEMBER 20, 2019

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