

State vs . 1. Govind on 21 February, 2017

IN THE COURT OF SH. SUNIL K. AGGARWAL, ADDL. SESSIONS JUDGE
04, (NORTH-WEST) ROHINI COURTS, DELHI

IN THE MATTER OF :-

Unique ID No. : DLNW01-000046-2009
Sessions Case No. : 92/01
Reg.No. : 52278/16
FIR No. : 485/09
Under Section : 498A/304B/302/201/34 IPC
Police Station : Jahangir Puri

STATE

Vs.

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Complainant:-

Sh. Raju
S/o Sh. Banwari Lal
R/o Village Hari Nagar,
Jaitpur, Badarpur, Delhi.

SC No. 92/01/14

FIR No. 485/09

P.S. Jahangirpuri

State V

Date of receipt of file in Sessions Court:

Date of arguments :

Date of judgment :

J U D G M E N T:-

1.

On 25.08.2009, complainant Raju had received a message from his Phupha, Sh. Kallu at about 5:00 am that his sister Babli, who had been married to accused Govind on 07.05.2009, was murdered by her husband along with his brothers on 21.08.2009 and thereafter the entire family along with the body of Babli has disappeared without trace. Complainant along with his mother Smt. Bhagwan Devi had informed these facts to Mrs. Praveen Chaudhary Dham, Executive Magistrate, Model Town on the same day and that Babli was being harassed and beaten by her in-laws for bringing insufficient dowry, at J-1643, Jahangirpuri, Delhi, where she was living with her in-laws since her marriage. The husband of Babli was stated to have demanded a motorcycle and Rs. 50,000/- from Babli in the recent past which she had conveyed to the complainant. Mrs. Dham had also received a telephonic message in this behalf from PS Jahangirpuri on 25.08.2009 at about 4:10 pm. She had passed an order dated 26.08.2009, Ex. PW 7/A in the matter directing SHO PS Jahangirpuri, Delhi to register an appropriate case and investigate the matter. Pursuant to the said order, SI Ramesh Kumar had recorded the detailed statement of complainant alleging that his sister Babli was being tortured at her matrimonial home by her husband Govind, father-in-law Ram Naresh, mother-in-law Kalawati (since deceased), jeth Jagpal, nandoi Vijay Pal and SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 2 of 25 sister-in-law Leelawati. It was also stated that his phooja Sh. Kalicharan, who was the mediator of marriage, had informed him about Babli having committed suicide by hanging and that her dead body has been disposed off/concealed by her in-laws. It was alleged that Babli has committed suicide on being incessantly harassed and maltreated by her in-laws for bringing insufficient dowry. During the course of investigation, accused Govind and his father Ram Naresh were arrested on 09.09.2009 and a bedsheet, rope, knife, broken wooden door and a rickshaw were recovered at his instance. The crime scene was got inspected and photographed. The crime was committed on 21.08.2009 and dead body of Babli was disposed off by her husband Govind with the help of his family members in Haiderpur Canal. Efforts to locate Babli or her body by flashing All India Messages on Wireless did no yield result. No breakthrough could be made even when the divers searched for the body of victim in Haiderpur Canal. Other accused persons were arrested in due course of investigation, on culmination whereof charge-sheet report was filed in the court on 09.12.2009. After taking cognizance and complying with the provisions of Sec. 207 Cr.PC, the case was committed by Area Metropolitan Magistrate under Sec. 209 Cr.PC.

2. On allocation of the case to Sessions Court on 02.02.2010, charges under Sec. 498A/304B/201/34 IPC were settled against all the accused persons on 27.04.2010. Alternative charge under Sec. 302 IPC was additionally framed against accused Govind. All the accused persons had pleaded not guilty to the charges and claimed to be tried.

SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 3 of 25 Prosecution has examined 22 witnesses in support of the charges. During the course of trial,

accused Kalawati had died on 02.09.2014. On the fact being verified by the concerned Police Station, the present criminal proceedings were held to have abated against her vide order dated 30.10.2014.

3. PW 1 Raju, deposed that Babli was his youngest sister out of six brothers and sisters. She was married to accused Govind on 07.05.2009 and Sh. Kalicharan was the mediator. After about one month of her marriage, Babli had told him about the demands of a motorcycle and Rs. 50,000/- as dowry, of accused Govind and his mother Kalawati, since deceased. She was brought to his house by his younger brother Agnihotri Prasad on the occasion of Rakhi festival when she had confided that all the accused persons were torturing her over non-fulfillment of their said demands. Accused Govind had made identical demands from him by coming over one day prior to Janamasthami and on being expressed inability by the complainant and seeking some time, he had become angry and left the house with Babli. Thereafter as and when the complainant made telephonic call to the house of accused persons, they used to disconnect it and did not allow him to talk to Babli. The Mediator Sh. Kalicharan had telephonically informed him about suicide by Babli and that her body has been disposed off by her husband and other in-laws. On making inquiries in the neighborhood, none claimed to know about the incident and the accused persons were found to have left their house after locking it. He had then gone to the Police Station where his statement SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 4 of 25 Ex. PW 1/A was recorded before the Sub-Divisional Magistrate. On the next date the Police team had gone to the house of accused Govind and inspected the same. A bedsheet with some blood on it was seized by the Police from first floor of their house, after being sealed with 'RK', vide memo Ex. PW 1/B. A piece of electric wire and rope found lying on the floor of room were also separately sealed and seized vide memo Ex. PW 1/C. He had gone to the adjoining Police Station on 29.08.2009 with photograph of Babli but no dead body of her description was found to have been recovered in their jurisdiction. Accused Govind and Ram Naresh were arrested on 09.09.2009 vide memos Ex. PW 1/D and Ex. PW 1/E. Govind had made detailed disclosure statement Ex. PW 1/F to the effect that he had cut the rope with which Babli had hanged, with a kitchen knife and got her down. She was gasping at that time and apprehending that she will implicate all his family members in the case, he had strangulated her by pressing her neck/throat with both hands till she died. Pursuant to his statement he had got recovered rope and kitchen knife and bedsheet from miyani under the staircase, which were seized vide memos Ex. PW 1/G and Ex. PW 1/H. He had also pointed out the broken door of room lying there which was kept in a gunny bag, sealed and seized vide memo Ex. PW 1/J. The rickshaw was taken into possession when it was parked in the corner of gali vide memo Ex. PW 1/K. Govind had pointed out the place in Haiderpur Canal from where the body of deceased Babli was thrown vide memo Ex. PW 1/L. His father accused Ram Naresh has also made statement Ex. PW 1/M and had pointed out the place of carpenter, whom he had called for repairing the door of room, vide memo Ex.

SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 5 of 25 PW 1/N. The room where the offence was committed was identified by him per memo Ex. PW 1/O. The personal search memo of accused Ram Naresh is Ex. PW 1/P. On being shown the seized property in court by opening sealed parcels, the witness, strangely enough, denied that these were the same articles that had been seized by the Police in his presence. On being cross-examined by Ld. Addl. PP, the witness took somersault to the extent of disowning his statement Ex. PW 1/A. In his re-examination, the witness claimed that he had made statement on 20.08.2010 under the influence and pressure of Police.

4. PW 2 Kalicharan, denied being a Mediator in the marriage of accused Govind and Babli. On coming to know that Babli was missing from her matrimonial home, he had tried to search her and even went to the Police Station with her photographs but she could not be found. He identified Babli in photograph Ex. PW 2/A and claimed that Police had obtained his signatures on blank papers. The witness was extensively cross-examined on behalf of the state during which his attention was specifically drawn to various portions of statement Ex. PW 2/B.

5. PW 3 Agnihotri Prasad, stated that marriage of his elder sister Babli was solemnized with accused Govind on 07.05.2009 in which there was no demand for dowry. Govind had informed him over telephone in August, 2009 about Babli having gone to purchase vegetables but did not return. He along with his brother/complainant SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 6 of 25 Raju and mother had then gone to her matrimonial home and was informed of the same reason of her non-availability. He claimed that his sister was living happily. He also contended that police had obtained his signatures on blank papers. During cross-examination by Ld. Addl. PP, the witness disowned material parts of his statement Ex. PW 3/A recorded by the IO under section 161 Cr.PC.

6. PW 4 Smt. Dimple, a neighbour of accused persons denied being acquainted with accused Govind or the facts of this case. She also disowned her statement Ex. PW 4/A during cross-examination on behalf of the state.

7. PW 5 Ms. Gudiya and PW 11 Smt. Radha, neighbours of accused persons deposed alike PW 4 and disowned their statement Ex. PW 5/A and Ex. PW 11/A.

8. PW 6 ASI Pradeep Kumar, was the Duty Officer at the Police Station on 27.08.2009 when FIR Ex. PW 6/B was recorded on the basis of rukka received from SI Ramesh Kumar through Ct. Naresh Kumar. He had made endorsement Ex. PW 6/A on the rukka in this behalf.

9. PW 7 Ms. P. S. Dhama, the then Executive Magistrate, Model Town stated that she had received a telephonic message from SHO PS Jahangirpuri on SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 7 of 25

26.08.2009 about mother and brother of Babli having met him with allegations of dowry death. Later on they along with the Mediator had visited her office. She had made inquiries from them and passed order Ex. PW 7/A directing the SHO to register the case and investigate.

10. PW 8 Richhpal, is the son of maternal uncle of Sanjay, who along with his family was living as a tenant on the second floor of house of accused Ram Naresh. On inquiries being made by Police from him about two years prior to recording his statement in court, he had informed that his cousin Sanjay is a tenant in the house of accused Ram Naresh and that he has gone to his native place in Badayun. The witness was extensively cross-examined by Ld. Addl. PP with reference to his previous statement Ex. PW 8/A.

11. PW 9 HC Dharambir, had accompanied IO/Insp. Raj Kumar to the spot where gray colour bedsheet having blood stained from the bed lying in the room, about 4 1/2 meters long electric wire and 2 1/2 meters long rope put on a slab in the room were seized vide separate memos after being sealed with 'RK' in cloth parcels, 28.08.2009. In the same evening he had accompanied SI Ramesh and 2 or 3 other Police officials in private vehicle and had arrested accused Govind and his father from Metro Station Jahangirpuri. Personal search of Govind was conducted vide memo Ex. PW 9/A. Both the accused persons had made disclosure statement. Accused Govind had SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 8 of 25 then laid the Police party to his house and pointed out his room vide memo Ex. PW 9/B and got recovered a bedsheet, rope and one knife from under the stairs. The same were seized. From the roof of his house, he had got recovered broken wooden door, which was also taken into possession. The rickshaw of accused was recovered when it was tied to an electric pole in the gali on which the dead body of Babli was carried by him and his brother Suraj to Haiderpur Canal and thrown in it. Accused Ram Naresh had pointed out the place of work of carpenter in DC Block Jahangirpuri from whom the door was got installed after removing the broken door. He identified the two bedsheets as Ex. P 1 and P 2, electric wire and rope as Ex. P 3 and Ex. P 4, rope and knife as Ex. P 5 and Ex. P 6, broken door as Ex. P 7, rickshaw as Ex. P 8.

12. PW 10 Reena W/o Sh. Sanjay was residing in the house of accused persons with her family as tenant in 2009. She claimed that about 5-6 days prior to Rakhi festival, she had gone to her native place in village Bamanpura due to illness of her mother-in-law, after vacating the house and therefore did not know anything about this case. In cross-examination by Ld. Addl. PP she has disassociated herself from the previous statement.

13. PW 12 Lady Ct. Subita Devi, had witnessed the formal arrest of accused Leelawati and Kalawati vide memos Ex. PW 12/A and Ex. PW 12/B on their surrender in court on 26.10.2009.

14. PW 13 Ct. Naresh Kumar Sharma, had seen the accused Jagpal making disclosure statement Ex.PW 13/A to PW 19/IO Insp. Subhash Chand on 27.10.2009 at the Police Station.

15. PW 14 HC Ashok Kumar, had accompanied PW 12 and PW 19 to Rohini Courts on 26.10.2009 where accused Jagpal was arrested vide memos Ex. PW 14/A by the IO with permission of court on his surrender.

16. PW 15 SI Mahesh Chander, had inspected the scene of crime on 28.08.2009 being Incharge of Mobile Crime Team on receipt of information from Control Room and had furnished report Ex. PW 15/A. Since camera of his Team Photographer was out of order, the IO had called a private photographer at the spot. The Fingerprints Proficient was not able to collect any chance print from the spot.

17. PW 16 Sh. Anil Sharma, carrying on photography business in the name and style of Nutan Studio was called by the IO at the spot over telephone. He had taken 14 photographs Ex. PW16/A1 to Ex. PW 16/A14 of the spot from different angles at the instance of IO.

18. PW 17 - IO/Inspector Raj Kumar (now ACP), had been assigned investigation of this case on 27.08.2009, when he was posted as Addl. SHO of PS SCNo.92/01/14 FIR No.485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 10 of 25 Jahangirpuri. He had gone to the spot with complainant, PW 21 SI Ramesh Kumar, PW 9 and other Police staff on 28.08.2009 to the spot and had conducted proceedings there and collected the incriminating material in sealed parcels. He had prepared rough site plan Ex. PW 17/A. Again on 09.09.2009, the police party had arrested the father and son duo accused on the basis of secret information and had recovered further incriminating material and identified vital places on the basis of their disclosure statement and prepared various memos in the process. He had identified the case property.

19. PW 18 Sh. Indresh Kumar Mishra, Sr. Scientific Officer (Biology), Forensic Science Laboratory, Rohini, has proved the biological and serological reports in respect of the exhibits forwarded for examination as Ex. PW 18/A and Ex. PW 18/B.

20. PW 19 Insp. Subhash Chand was marked further investigation of this case on 15.10.2009. He had formally arrested three accused persons on their surrender in court and had prepared memos in this behalf and recorded disclosure statement of accused Jagpal.

21. PW 20 ACP J. K. Sharma, was the SHO at Police Station the relevant date and had made endorsement Ex. PW 20/A below the statement of complainant recorded by PW 21.

22. PW 21 SI Ramesh Kumar (now Inspector), has narrated the version more or less akin to PW 9 and verified the preparation of various memos by him or the IO during the process. He had correctly identified the case property on being shown in court.

23. PW 22 HC Narender, had accompanied PW 19 to Rohini Court when accused Vijay Pal was arrested on surrender in court on 20.01.2010 vide memo Ex. PW 22/A. His personal search was conducted vide memo Ex. PW 22/B and his disclosure statement Ex. PW 22/C was recorded. The evidence of prosecution was closed on 05.07.2016.

24. In their statements separately recorded under Sec. 313 Cr.PC, accused persons claimed to be innocent and falsely implicated in this case. They denied having committed the offence as alleged by Police in this case. Nothing was recovered at their instance. The alleged recovery has been planted by IO on the basis of mere suspicion. No demand was ever made by her inlaws from Babli at any point of time. It was also stated that Kalicharan was not mediator in the marriage. They declined to lead evidence in defence.

25. I have heard Sh. P. K. Samadhiya, Ld. Addl. PP for the State, Sh. Rakesh Patiyal, Advocate, Ld. Defence counsel and carefully perused the file. Faced SCNo. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 12 of 25 with the uphill task of retrieving the prosecution case against severe odds where 7 out of 8 cited public witnesses have turned hostile from the word 'go' and complainant seemed to initially support his complaint yet turned turtle, on being recalled just after three days of deferring his examination on 20.08.2010 on his own request of not feeling well after getting recorded six pages of his examination, Ld. Addl. PP has cited 'Khurji @ Surendra Tiwari V. State of Madhya Pradesh, AIR 1991 SC 1853' to contend that the testimony of hostile witness cannot be totally effaced but the portions finding support from other evidence can be relied upon. According to him PW 1 has not only deposed about the demands raised by accused Govind and his family members for Rs. 50,000/- and a motorcycle through deceased Babli but also directly from him. The deceased had further confided in him that she is being tortured by her husband and in laws due to non-fulfillment of their said demands. The conduct of accused persons in not permitting the deceased to talk to the complainant and his brother over telephone indicated their disgruntled and hostile behaviour. The deceased, all of about 21 years may not have been able to bear such harassment and was therefore led to end her life by hanging in her first floor room of the house of accused Ram Naresh. It has been contended that recovery of dead body is not sine qua non for proceeding with murder case and even proving unnatural death.

26. Ld. Defence counsel on the other hand contended that PW 1 Raju did not support the prosecution in material particulars when he did not identify the case property SCNo. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 13 of 25 allegedly recovered in his presence from the house/vicinity thereof, he was subjected to cross-examination on behalf of the state wherein he disowned his complaint Ex. PW 1/A in vital aspects. The witness was also re-examined by Ld. Addl. PP in which he further

strangulated the prosecution story. There can be no element of manipulation by the accused persons as at that time they were in judicial custody and therefore could not have approached him. PW 2, Kalicharan, PW 3 Agnihotri Prasad, phupha and brother of complainant and deceased respectively have demolished the case of prosecution and supported the defence. Both of them along with complainant had made endeavour to search for missing Babli about which they were informed in the evening of 21.08.2009. The brothers along with accused Govind had even gone to the Police Station for lodging her missing report but were asked to search for her on their own for some more time. Neither the accused persons nor the family of complainant was in a position to take cudgels with Police nor were they so educated or well off to take any professional help to guard against consequences. PW 4 Smt. Dimple, PW 5 Smt. Gudiya, PW 8 Richhpal, PW 10 Ms. Reena and PW 11 Ms. Radha have proved to be blank and did not provide any foothold to the prosecution. Sh. Patiyal has also pointed out glaring discrepancies in the investigation conducted by Police on 28.08.2009 and 09.09.2009 by referring to the statements of PW 9 HC Dharambir, PW 17 IO/Insp. Raj Kumar and PW 21 SI Ramesh Kumar. He has thus urged this court to hold that the prosecution has utterly failed to prove the charges against the accused persons.

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27. By this time, more than seven years have passed to the mysterious disappearance of Babli and the parties to this case do not claim to have heard about her during this period and would naturally have heard of her, if she were alive. This observation has been made to justify the terminology 'deceased' for Babli in these presents.

28. Apart from self incriminating disclosure statement Ex. PW 1/F of accused Govind there is absolutely no evidence of strangulation of Babli. Even his father and co-accused Ram Naresh, who had entered into the room where she is stated to have hanged herself, almost immediately thereafter did not corroborate in his statement Ex. PW 1/M.

29. The purported extra judicial confession of accused Ram Naresh contained in complaint Ex. PW 1/A had not been propagated by the complainant/PW 1 in his examination in-chief. The alleged statement not being contemporaneous with the criminal act, cannot be used as a piece of Res Gestae under section 6 of The Indian Evidence Act. On being cross-examined on behalf of the state, the witness specifically refuted that accused Ram Naresh, on being asked, had accepted that Babli had committed suicide on being compelled by them due to non-fulfillment of their demands for dowry. In fact, PW 1 has not even raised suspicion on the accused persons of having driven his sister to unnatural death. None of the neighbours, PW 4 Smt. Dimpal, PW 5 Smt. Gudiya and PW 11 Smt. Radha had seen the accused persons quarreling with SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 15 of 25 Babli. In fact, they denied being acquainted with the family of accused persons at all. PW 10 Smt. Reena although identified the accused persons as she along with her family used to live on second floor the same house as tenant but claimed to have vacated the

said premises 4□5 days prior to Rakhi festival in the year 2009, for going to her native village Bamanpura in Distt. Badayun, UP for attending to her ailing mother. Her brother□n□ law PW□8 Richhpal, residing as a tenant in the house of accused Vijay Pal, also identified the accused persons but denied knowledge about this case. He claimed that Police has just asked him the whereabouts of his cousin Sanjay and were informed that Sanjay has gone to his native place. All these witnesses have alleged that Police had obtained their signatures of blank papers on false pretext by assuring that they will not be called anywhere. Even the complainant/PW□1 confirms that he had inquired from the neighbours of accused persons about the incident but they had pleaded ignorance about his sister.

30. On PW 2 Kalicharan and PW 3 Agnihotri Prasad turning hostile, there is no corroboration to the half hearted statement of complainant Raju, who has just deposed that his sister Babli had informed him of demand of accused and his mother for Rs. 50,000/□and a motorcycle, after about one month of marriage and again when she was brought to her maternal home by PW 3 on the occasion of Rakhi festival (05.08.2009). On the second occasion, she had supplemented it by saying that her in□laws were mentally torturing her. Accused Govind is claimed to have himself made the SCNo. 92/01/14 FIR No.485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 16 of 25 very same demands to PW 1, one day prior to Janmashtami (i.e. on 13.08.2009) and on being expressed inability by the complainant, he had left with his wife Babli in a huff. It has been alleged that thereafter the accused persons did not permit Babli to talk to the complainant or his family members.

31. The marriage of Babli had taken place on 07.05.2009 and raising of such alleged demands within three months appear to be unnatural unless the in□aws of Babli had been assured that the demanded items will be provided in short time, which does not appear to be the case. No call details or even the phone numbers of parties have been collected to show the frequency and duration of calls between the two sides to assess that relations between the parties had really become strained after the refusal of complainant on 13.08.2009. It would be exaggerated to assume that just because Babli was not allowed to talk to the complainant and his family members whenever they made a call at her house, she was harassed or treated with cruelty. The complainant apparently did not ask his sister as to how she was being mentally tortured and therefore could not elaborate that aspect. Since Babli was married to accused Govind only about three and half months prior to the alleged date of incident even if, it is taken that subjecting her to cruelty or harassment by her husband and in□aws was 'soon before her death', the gravity of her treatment at matrimonial home and that too in connection with demand for dowry need to be convincingly established. It has been held in 'Savitri Devi V. Ramesh Chand, 2003(3) RCR (Criminal) 823' that there is a growing tendency to SCNo. 92/01/14 FIR No.485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 17 of 25 come out with inflated and exaggerated allegations roping in each and every relation of the husband and if one of them happens to be of higher standing or of vulnerable status, he or she becomes an easy prey for better bargaining and blackmailing. Customary gifts brought by wife were refused by the accused. One of the accused even remarked that more

dowry would have been received if marriage was performed in another family. It was held that such utterances hurt the feelings but do not amount to cruelty u/s.498A IPC. Prosecution against the accused persons except the husband was thus quashed.

32. In 'Rani V. State of NCT of Delhi, 2011 (1) JCC 668', it was held that every suicide after marriage cannot be presumed to be a suicide due to dowry demand. The tendency of the court should not be that since a young bride has died after marriage, now somebody must be held culprit and the noose must be made to fit some neck. Going further, it was observed that in order to convict a person for abetment of suicide, apart from proving suicide, it has to be proved that the accused was instrumental in commission of suicide.

33. In Sanju V. State of Madhya Pradesh, 2002 (2) JCC 847 (SC), it was stated that the words uttered in a quarrel or in a spur of moment cannot be taken to be uttered with mens^{rea}. Where the deceased had enough time in between to think over and reflect, it cannot be said that the abusive language had driven the deceased to SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 18 of 25 commit suicide as the suicide is not proximate to the abusive language.

34. In Surender Kaur V. State of Haryana, 2004 (2) RCR (Criminal) 140 (SC), where the entire family was involved in a case of dowry death. There were allegations against husband that he and his sisters demanded car and gave beatings to the deceased. While the husband was convicted, it was not believed that young girls aged between 16[–]18 years would go to the extent of beating, without corroborating evidence. Where the complainant did not give particulars of time and date of harassment meted out by the accused, he was acquitted.

35. In Hansraj Sharma V. State, (Govt. of NCT of Delhi), 175 (2010) DLT 446, it was laid that one solitary instance of asking deceased to bring Rs.50,000/- from her parents on a fateful day, even if true, will not constitute dowry demand or cruelty or harassment punishable u/s 498A IPC. It was for the prosecution to prove that the young woman had committed suicide on account of cruelty or harassment meted out to her by the appellants in connection with the demand of dowry.

36. It was held in Shyam Lal V. State of Haryana, 1997 (3) Recent CR 85 (SC), where there was no evidence that the wife was harassed during the last 10[–]15 days before her death, it cannot be said that she was treated with cruelty soon before her death and as such, presumption under section 113 B will not apply.

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37. In Pyare Lal V. State of NCT of Delhi, 174 (2010) DLT 614, it was observed that the presence of bruise marks on the body of deceased do raise suspicion of some foul play but suspicion is not a substitute for proof. There is a long distance

between 'may be' and 'must be' which prosecution was required to establish. It was held that prosecution has failed to prove beyond doubt that appellant demanded dowry or subjected the deceased to cruelty.

38. In the peculiar case in hand we do not have an iota of evidence as to how and when Babli was subjected to cruelty on non-fulfillment of demands for dowry by the accused persons or any of them. The judgment in 'Surender Kumar @ Khujji' is not squarely applicable to the facts in hand as PW 1 Raju did not take somersault because of the machination of accused persons as all the four male accused persons were in judicial custody at that time since the day of their arrest in this case. He may have so done either on hearing his inner voice after making discrete personal inquiries in the locality where matrimonial home of Babli was situated. The family of complainant may also have taken some sort of decision about this case as his relatives PW 2 and PW 3 examined a few weeks after him did not support the prosecution at all.

39. While it is projected that accused Govind had thrown the dead body of Babli in Haiderpur Canal at about 1:30 am on 21/22.08.2009 by loading it in rickshaw, with his brother Suraj Pal and suggestion to this effect was given to PW 2 in cross-SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 20 of 25 examination on behalf of the state. PW 3 however was suggested that PW 2 Kalicharan had told him about body of Babli having been secretly cremated. No evidence was collected during investigation from the cremation ground situated in the vicinity, to rule out such a probability. It appears that except following the laid down procedure in cases of missing persons/bodies, in a lackadaisical manner, of flashing an All India Message with photo of Babli and giving of 'hue and cry' notice just amounted to lip service. No extra efforts were made by investigating officer as the situation demanded. Even if, it was rainy season and the body of Babli had been thrown in full flowing Haiderpur Canal, had sincere efforts been made, it could have been recovered at the Barrage. The IO did not even collect the data of bodies, if any, found at the barrage from Canal Authorities. The police rather had directed the complainant himself to make inquiries from the nearby Police Stations about recovery of any missing person or body by taking her photograph.

40. The accused persons do not appear to be so educated, skilled, calculative or cunning as to meticulously dispose off a dead body leaving absolutely no trace behind and at such a place that nobody could ever retrieve it. Had they been so maneuvering and shrewed, they would not have left the pieces of rope etc. at the spot which the Police has easily found lying.

41. It has been alleged that the accused persons had fled away after the SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 21 of 25 incident by locking their house. Had this been the case, the IO needed to explain as to from where he could procure the keys of house of accused persons on 28.08.2009 after registration of FIR on 27.08.2009 as there is no indication of door of said house being broken by

him for collecting evidence during investigation nor of getting it opened through a duplicate key. The IO also needed to question the accused persons about their destination, which should have been verified and relevant witnesses cited. The three material witnesses PW 9, PW 17 and PW 21 have made varying statements in material particulars when they were together in investigation on 28.08.2009 and again on 09.09.2009.

PW 9 and PW 21 stated that there were two small rooms, kitchen and bathroom on the first floor of the property and thereby made the site plan Ex. PW 17/A prepared by the IO doubtful. PW 9 claimed that the house of accused Ram Naresh had been pointed out by a public person. PW 21 contended that they had reached the house themselves on the basis of address available with them. IO/PW 17 contended that it was identified by PW 1 Raju. PW 17 & PW 21 denied that any public person/neighbour had entered into the house with them except of course the complainant but PW 9 stated that public person had gone inside the room on the first floor with PW 17 and PW 21. The three witnesses are also divergent about having visited the second floor of the property on that day and the presence of tenant in said portion. It is strange that despite remaining at the spot for about three hours, the police personnel could only seize red colour wire, rope and bedsheet on 28.08.2009, which were all before their eyes in the room of Babli. Why the articles kept in miyani adjacent to the staircase were not searched on that day, SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 22 of 25 find no logical explanation. The second bedsheet and other part of rope allegedly got recovered from the said miyani purportedly at the instance of accused Govind on 09.09.2009 does not inspire confidence. The senior police officials could not have spent so much of time in investigating a small room from where they could hardly collect any clinching evidence. It is an irony that PW 7 Ms. Paraveen Singh Dhama, Executive Magistrate did not even think it fit to visit the spot once for self assessment. The casual manner in which this case has been taken up since beginning is clear from the fact that the complainant along with his mother had reported the matter to PW 7 on 25.08.2009. Instead of recording their statements, she passed an order on 26.08.2009 the basis of their verbal complaint, for registration of case by the concerned SHO. The FIR was registered in pursuance of said order on 27.08.2009 and the investigation commenced on 28.08.2009. Ironically the Police team including the IO did not inspect the beam in the room with which the deceased had reportedly tied the rope for hanging herself, to gauze whether the dust that normally gets accumulated at inaccessible places in the houses over period of time, was removed by the use of such rope. The incident having taken place in August 2009, it must have been quite humid but the pieces of rope Ex. P 4 and Ex. P 6 recovered from the spot were not sent for testing the presence of human sweat on them.

42. The arrest of accused Govind and Ram Naresh on 09.09.2009 is also quite dramatic. According to PW 9 he, PW 17 and PW 21 were in Police uniform on that day SC No. 92/01/14 FIR No. 485/09 P.S. Jahangirpuri State Vs. Govind & Ors. Page No. 23 of 25 but the two constables accompanying them were in civil dress. PW 21 SI Ramesh Kumar deposed diametrically opposite to him. PW 17 on his part claimed that all the Policemen were in uniform. The three witnesses also claimed that complainant/PW 1 had joined them to identify the accused persons about whom secret information had

been received but the complainant denied this fact. No efforts were subsequently made to search the carpenter, who was employed by accused Ram Naresh for changing the door of first floor room of his house. Even the photographs of the new/repaired door have not been taken. No attempt has been made to show that the broken pieces of wood in Ex. P□ 7, on being spread would make a door.

43. No legal evidence connecting the accused persons with the invoked offences could be brought on record by the prosecution. PW 1, PW 2 and PW 3 have spoken about Babli suffering from some disease since her childhood due to which she used to forget way back to her home on some occasions and therefore had to be searched for. No medical documents for the treatment allegedly administered to him for said disease although have been proved yet the cohesive statements of three witnesses closely related to Babli, cannot be shirked. These witnesses also claimed that accused Govind had informed them about Babli having not returned from the market after purchasing vegetables and that they had searched for her on 21.08.2009 but she remained untraceable.

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44. In view of the wavering statement of complainant/PW 1, total denial of the prosecution case by other seven public witnesses, discrepant testimonies of material police witnesses in the background of incompetent and lackadaisical investigation, a half baked case was put up in the court. Not only the public witnesses but also the material police witnesses have apparently aimed to mar the prosecution case. By referring to the judgments Rajagopal V State, 2003 (4) Crimes 136 and Lakhinandan V State of Assam, 2007 Cri. L.J. 3905 cited by Sh. Patiyal it is concluded that the prosecution has failed to substantiate the charges against accused persons, who are therefore acquitted.

File be consigned to Record Room.

Announced in the open court on 21st February, 2017 (Sunil K. Aggarwal)

Addl. Sessions Judge □04 (North □West) Rohini Courts, Delhi

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