Jagjit Singh vs State Of Punjab on 26 September, 2018

Equivalent citations: AIR 2018 SUPREME COURT 5719, AIR 2019 SC(CRI) 292, (2018) 4 RECCRIR 568, 2019 (1) SCC (CRI) 347, (2018) 3 UC 1937, (2019) 1 ALD(CRL) 570, (2018) 191 ALLINDCAS 47 (SC), (2019) 1 HINDULR 125, (2018) 3 DMC 325, 2018 (10) SCC 593, 2019 (1) KCCR SN 11 (SC)

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Bench: K.M. Joseph, Navin Sinha, Ranjan Gogoi

REPORTA

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.408 OF 2017

JAGJIT SINGH ...APPELLANT(S

VERSUS

STATE OF PUNJAB ...RESPONDENT(S)

JUDGMENT

K.M. JOSEPH, J.

1. The appeal after granting special leave to appeal is filed by the appellant against the judgment of the High court of Punjab and Haryana affirming the judgment of the trial Court convicting the appellant under Section 304-B IPC but reducing the sentence from 8 years rigorous imprisonment to a period of 7 years under the aforesaid section. The appellant who was tried along with his parents and two brothers was acquitted of the charge under Section 406 of the Indian Penal Code by the 16:49:49 IST Reason:

> trial Court. In view of his conviction under Section 304-B IPC, the trial Court did not find it necessary to record a separate conviction under Section 498-A IPC.

2. We heard Dr. J.P. Dhanda, learned counsel for the appellant and Ms. Jaspreet Gogia, learned counsel for the respondent-State.

3. There is no dispute that the marriage between the appellant and his deceased wife took place on 24 th January, 1998. It is also not in the region of controversy that she died well within seven years of her marriage. It is undisputed that the death of the appellant's wife was unnatural and she died along with her child by way of drowning in a river. In fact, PW8 - ASI in his deposition stated that both the dead bodies were secured together with one chunni. The only question is whether the death is to be attributed to cruelty/harassment on the part of the appellant arising out of demand for dowry as contemplated under Section 304-B of the IPC.

4. Learned counsel for the appellant pointed out that the Court did not consider the evidence given by the appellant and that neither cruelty nor any demand for dowry is made out. It is contended that the appellant's wife apparently took her life along with that of her daughter on account of the fact that she was consistently taunted by PW3 – the sister of the appellant's wife who was married to an industrialist. The appellant was earning a sum of Rs.3000/- per month. However, notwithstanding the same, the appellant had taken care of her by fulfilling the desire of the deceased wife to pursue education and she was, in fact, doing her Post- Graduation at the time of her untimely death. The appellant's father (we note that the appellant along with his two brothers and mother were tried by the trial Court and the trial Court convicted the appellant and his mother under Section 304-B but appellant's mother stood acquitted by the High Court) had in fact financed the education of the deceased wife.

5. Learned counsel for the State pointed out that no reliance is to be placed on the evidence of the DW6 and DW8. They were neighbours. Their evidence supporting the case of the appellant should be perceived as born out of their need to maintain cordial relationship with their neighbours. As to what happened within the four walls of the house, she would question as to how could they depose before the Court. She sought support from the evidence of PW1 and PW3. The evidence would indicate that there is a proximity in a point of time between the acts, as complained of, against the appellant and the untimely death of the deceased.

6. Before we embark on the examination of the case it becomes necessary to remind ourselves of the contours of the jurisdiction of this Court in an appeal which is maintained after grant of special leave under Article 136 of the Constitution of India. Does the Court have the duty as a regular court to consider an appeal or is its jurisdiction circumscribed by the consideration that this Court is dealing with the appeal on the basis of grant of special leave.

7. We may profitably advert to the views of the majority expressed in Saravanabhavan and Govindaswamy Vs. State of Madras AIR 1966 SC 1273, which is as under:-

> "7. This is an appeal under Article 136 of the Constitution and we shall first state what this Court will ordinarily consider in such an appeal. It is not to be forgotten that this Court's ordinary appellate jurisdiction in criminal cases is to the extent laid down in Article 134 of the Constitution. Some of the appeals in that article are available as of right and others lie if a special certificate is granted by the High Court. This appeal belongs to neither class. It is not as of right and no special certificate has been granted by the High Court. There is in our jurisdiction no "sacred right of appeal" as

the French Canadian law assumes(See Mayor etc. of Montreal v. Brown, (1876) 2 AC 168 (184). Once a decision is given by the High Court, that is final unless an appeal is allowed by special leave of this Court. No doubt this Court has granted special leave to the appellants but the question is one of the principles which this Court will ordinarily follow in such an appeal. It has been ruled in many cases before that this Court will not reassess the evidence at large, particularly, when it has been concurrently accepted by the High Court and the court or courts below. In other words this Court does not form a fresh opinion as to the innocence or the guilt of the accused. It accepts the appraisal of the evidence in the High Court and the court or courts below. Therefore, before this Court interferes something more must be shown, such as, that there has been in the trial a violation of the principles of natural justice or a deprivation of the rights of the accused or a misreading of vital evidence or an improper reception or rejection of evidence which, if discarded or received, would leave the conviction unsupportable, or that the court or courts have committed an error of law or of the forms of legal process or procedure by which justice itself has failed. We have, in approaching this case, borne these principles in mind. They are the principles for the exercise of jurisdiction in criminal cases, which this Court brings before itself by a grant of special leave." (Emphasis supplied)

8. In Mst. Dalbir Kaur and Others Vs. State of Punjab 1976 (4) SCC 158, the Bench of two learned Judges laid down as follows:-

"3. As to the principles on which special leave is granted by this Court, the same have been clearly and explicitly enunciated in a large number of decisions of this Court. It has been pointed out that the Supreme Court is not an ordinary court of criminal appeal and does not interfere on pure question of fact. It is only in very special cases where the court is satisfied that the High Court has committed an error of law or procedure as a result of which there has been a serious miscarriage of justice that the court would interfere with the concurrent findings of the High Court and the trial Court. It has also been pointed out by this Court more than once that it is not in the province of this Court to reappraise the evidence and to go into the question of credibility of the witnesses examined by the parties, particularly when the courts below have after considering the evidence, given their findings thereon. In other words, the assessment of the evidence by the High Court would be taken by this Court as final, unless it is vitiated by any error of law or procedure, by the principles of natural justice, by errors of record or misreading of evidence, non-consideration of glaring inconsistencies in the evidence which demolish the prosecution case or where the conclusion of the High Court is manifestly perverse and unsupportable and the like. As early as 1950 this Court in Pritam Singh v. State, 1950 SCR 453: AIR 1950 SC 169: 51 Cri LJ 1270, speaking through Fazl Ali, J. (as he then was) observed as follows:

The obvious reply to all these arguments advanced by the learned Counsel for the appellant, is that this Court is not an ordinary court of criminal appeal and will not,

generally speaking, allow facts to be reopened, especially when two courts agree in their conclusion in regard to them and when the conclusions of fact which are challenged are dependent on the credibility of witnesses who have been believed by the trial Court which had the advantage of seeing them and hearing their evidence.

In arguing the appeal, Mr. Sethi proceeded on the assumption that once an appeal had been admitted by special leave, the entire case was at large and the appellant was free to contest all the findings of fact and raise every point which could be raised in the High Court or the trial Court. This assumption is, in our opinion, entirely unwarranted.

The rule laid down by the Privy Council is based on sound principle, and, in our opinion, only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave to appeal is asked for, and it would be illogical to adopt different standards at two different stages of the same case.

On a careful examination of Article 136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only,....

Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.

Analysing this decision, two principles appear to have been clearly laid down by this Court:

"(1) that in appeals by special leave against the concurrent findings of the courts below, this Court would not go into the credibility of the evidence and would interfere only when exceptional and special circumstances exist which result in substantial and grave injustice having been done to the accused; and (2) that even after special leave has been granted the appellant is not free to contest all the findings of fact, but his arguments would be limited only to those points, even at the final hearing, which could be urged at the stage when the special leave to appeal is asked for."

8. Thus the principles governing interference by this Court in a criminal appeal by special leave may be summarised as follows:

"(1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;

(2) that the Court will not normally enter into a reappraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or

> procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on; (3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;
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> (4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;
>
> (5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence.

It is very difficult to lay down a rule of universal application, but the principles mentioned above and those adumbrated in the authorities of this Court cited supra provide sufficient guidelines for this Court to decide criminal appeals by special leave. Thus in a criminal appeal by special leave, this Court at the hearing examines the evidence and the judgment of the High Court with the limited purpose of determining whether or not the High Court has followed the principles enunciated above. Where the Court finds that the High Court has committed no violation of the various principles laid down by this Court and has made a correct approach and has not ignored or overlooked striking features in the evidence which demolish the prosecution case, the findings of fact arrived at by the High Court on an appreciation of the evidence in the circumstances of the case would not be disturbed." (Emphasis supplied)

9. We may also notice the judgment rendered by this Court in Sushil Ansal v. State Through Central Bureau of Investigation 2014 (6) SCC 173. Therein, in the judgment rendered by the T.S. Thakur,J. as His Lordship then was, it is inter alia held in para 55 as follows:

> "55. ....Perversity in the findings, illegality or irregularity in the trial that results in injustice or failure to take into consideration an important piece of evidence are some of the situations in which this Court may reappraise the evidence adduced at the trial but not otherwise...."
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> (Emphasis supplied)

10. We lastly notice a recent judgment of this Court in the case of Mohd. Ali alias Guddu v. State of Uttar Pradesh 2015 (7) SCC 272 wherein the Court inter alia held as follows:

> "17. In Ganga Kumar Srivastava v. State of Bihar, (2005)6 SCC 211 : 2005 SCC (Cri) 1424, the Court after referring to a series of decisions on exercise of the power of this Court under Article 136 of the Constitution, culled out the following principles: (SCC p. 217, para 10) "(i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent

findings of fact save in exceptional circumstances.

(ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has acted perversely or otherwise improperly.

(iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.

(iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.

(v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record." (Emphasis supplied)

11. Learned counsel for the appellant drew our attention to the recent judgment of this Court in the case of Major Singh and Another v. State of Punjab reported in 2015 (5) SCC 201. It was a case of unnatural death. Therein the prosecution witnesses, the complainant-father and brother of the deceased deposed that they saw the accused dragging the deceased towards the room inside the house and that she was trembling and on seeing the witnesses, all the four accused ran away and the deceased breathed her last. The father had spoken about the information he had given to the village panchayat. The Court proceeded inter alia as follows:

"10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance';

(ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death." The Court also proceeded to hold as follows:

> "14. The prosecution has not examined any independent witness or the panchayatdars to prove that there was demand of dowry and that the deceased was subjected to ill- treatment. Ordinarily, offences against married woman are being committed within the four corners of a house and normally direct evidence regarding cruelty or harassment on the woman by her husband or relatives of the husband is not available. But when PW-3 has specifically stated that the demand of dowry by the accused was informed to the panchayatdars and that panchayat was taken to Village Badiala, the alleged ill-treatment or cruelty of Karamjit Kaur by her husband or relatives could have been proved by the examination of the panchayatdars. The fact that the deceased was subjected to harassment or cruelty in connection with demand of dowry is not proved by the prosecution. It is also pertinent to note that both the courts below have acquitted all the accused for the offence punishable under Section 498-A IPC."

12. We noticed that it was a case where the courts had acquitted all the accused for the offence under Section 498-A of the IPC. The Court noted that the case of the prosecution is that there is a demand for scooter and proceeded to hold inter alia as follows:

> "18. Applying these principles to the instant case, we find that there is no evidence as to the demand of dowry or cruelty and that deceased Karamjit Kaur was subjected to dowry harassment "soon before her death". Except the demand of scooter, there is nothing on record to substantiate the allegation of dowry demand. Assuming that there was demand of dowry, in our view, it can only be attributed to the husband Jagsir Singh who in all probability could have demanded the same for his use. In the absence of any evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry "soon before her death" by the appellants, the conviction of the appellants under Section 304-B IPC cannot be sustained. The trial court and the High Court have not analysed the evidence in the light of the essential ingredients of Section 304-B IPC and the conviction of the appellants under Section 304-B IPC is liable to be set aside." (Emphasis supplied)

13. In this connection it is to be noticed that the appellants in the said case was not the husband, but they were the parents-in-law of the deceased.

14. We have already noticed that the essential ingredients of Section 304-B IPC as noticed by this Court in Major Singh & Another vs. State of Punjab (supra). Parliament has inserted Section 113-B in the Evidence Act. In order that the presumption therein has to be applied it must be established that soon before her death, such woman must have been subjected by such person to cruelty or harassment for, or in connection with any demand of dowry. Upon this fact being established, undoubtedly, the court is mandated to assume that the person has indeed caused the dowry death as contemplated in Section 304-B IPC. Therefore, the presumption cannot apply unless it is established that soon before her death, a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry. The words "soon before" her death has also been considered in a large number of cases.

15. We need only to advert to a recent judgment rendered by a Bench consisting of three learned Judges in Rajinder Singh v. State of Punjab reported in 2015(6) SCC 477 only for the purpose of appreciating the words "soon before" occurring in Section 304-B IPC. This is what the Court has to see "24. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304-B would make it clear that the expression is a relative expression. Time-lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B."

16. Having regard to the aforesaid statements of the law, we embark on a consideration of the appeal. The prosecution case as projected through PW1 complainant – Mohinder Singh, the father of the deceased is as follows:- the deceased was married on 24th January, 1998 and he had given dowry beyond his capacity in the marriage. After some time of the marriage, all the five accused started beating the deceased. They started taunting her that she had brought meagre dowry and that her parents had not given a Maruti car in the marriage due to which they had felt belittled in their neighbourhood. The deceased conveyed this fact to the complainant on telephone. The daughter was aged about 1½ years at the time of her death. In December 2000, the deceased accompanied by her sister went to see her parents at Amao Farm, PS Khatima. She informed the complainant that she was being subjected to harassment by her in-laws. She also told him that the accused had threatened her that she could return to her matrimonial home only if she brought a sum of Rs.2 lacs from her parents for the purchase of a Maruti car. The complainant then got prepared a fixed deposit receipt for Rs.30,000/- and handed it over to the deceased. The complainant has also informed at that time to accused Jagjit Singh on phone that he would visit Ludhiana after the sale of the crops and would pay the accused the sum of Rs.2 lacs demanded by them. He also requested him not to harass the deceased. However, even then the accused gave beatings to the deceased and turned her out of their house. The deceased wife then went to the house of Avtar Singh (nephew of the complainant), and he took her to the house of the accused and also paid them Rs.2000/- and requested him to treat the deceased nicely. On February 16, 2001 at about 11:30 a.m. the deceased made a telephone call from the PCO to the complainant that all the five accused were subjecting her to extensive harassment and that she was feeling depressed also informed him that on that date also the accused had given her beatings and turned her and her daughter out of the matrimonial home. She also told him that she was making this telephone call from the PCO. The complainant consoled the deceased and told her that he was coming to Ludhiana and advised her to return to her matrimonial home. It is also stated that his nephew on being contacted told them that the accused and his mother approached the house of Avtar Singh in the evening and enquired about the deceased from him and from his other relations. It is alleged that Avtar Singh told that they had not visited him nor he had any information about them. It is the case of the prosecution that complainant lodged the FIR on 17.02.2001.

17. PW1, father of the deceased inter alia states as follows:

> The marriage between the appellant and his daughter (deceased) took place on 24.1.1998. After a good period of marriage all the accused persons in the home

started beating the deceased for not bringing sufficient dowry.

He states that they also used to taunt his daughter for bringing insufficient dowry. The appellant also demanded a Maruti car. This fact was brought to the notice by his daughter on telephone. A female child was born.

Thereafter, he states that the deceased went to her house, two months before the untimely death took place namely in December 2000. He states that his daughter alongwith PW3(another daughter) came to his farm. He states that his daughter told him all the accused were harassing and demanding Maruti car or Rupees two lacs for purchasing the car. The deceased daughter told him that the accused misbehaved with her and she will not go to her in-laws house as they used to beat her and further (it may be noted that there is no allegation that the accused appellant used to beat her) he deposed that she told him that they would kill her. He states that his brother Ram Singh and daughter PW3 were present. He further states that he send his daughter to her in-laws house after consoling her. Also a FDR for Rs.30,000/- (Rupees Thirty Thousand only) was given to her. He phoned up the accused not to maltreat his daughter and he promised to give Rupees two lacs after selling the crop. He next says that all the accused re-

started giving the beatings and sent away his daughter to the house of his nephew Avtar Singh. Avtar Singh, it is alleged brought this to his notice and gave Rupees two lacs to the accused. PW1 states that the maltreatment, however, continued. Thereafter, he relates about one event that is on 16.2.2001 the deceased daughter phoned him up from a PCO. She informed that all the accused were maltreating and she was very much upset and the accused threw her out from the house and that the accused told her that the accused shall not allow her without Maruti car. In cross examination, PW1 stated that the deceased daughter was preparing for examination B.A. Part-I which she was doing as a private candidate and that she did graduation after the marriage by studying in her matrimonial home. He also states that at the time of her death, she was preparing for the M.A examination. He claims to have made payment of Rs.935/- as the admission fee, which according to the accused-appellant, was paid by his father but he does admit that bank draft of Rs.935/- was got prepared by the father of the appellant. He says that he does not know whether the appellant was working as turner. He says he might be working but he does not know that he is earning Rs.2000/- or Rs.2500/- per month. He admits the photograph of his deceased daughter apparently in connection with the marriage of the 'Devar' of the daughter of Iqbal Singh (father of the appellant). He admits that his other daughter (PW3) is married to a person having his own industry which is being run by his son-in-law, his brother and father. He admits that neither his brother who is lawyer nor the sister's son who appears to be a Superintendent in the BPO Office, Ludhiana made any report to the police station or elsewhere about the harassment. He further states that he did not convene any panchayat in this regard. He has denied the suggestion that he used to tell his deceased daughter to separate

from the parents-in-law. He denies the suggestion (apparently that his daughter took her life) on the basis of the FIR lodged by him.

18. We may also advert to what PW3 has actually said. Sometime after the marriage, the accused started taunting her deceased sister by saying that she brought insufficient dowry and that there is a demand for dowry. She says that this is disclosed about 5 or 6 months after the marriage. Thereafter, she repeatedly told her about the harassment at the hands of the accused on account of dowry. Thereafter, she refers to meeting her parents in December 2000 along with the deceased. She speaks along the same lines as her father. On 16.2.2001, it is alleged that the deceased came to her house and wept bitterly. She told her that in the preceding day, her husband (appellant) has hurled abuses at her father on phone and at that time she was accompanied by her daughter. That all the five (5) accused used to beat her and she told her that when she prevented her husband from abusing her father, the appellant gave her more beating. She specifically says that when the appellant went to take meal, her daughter also started sharing meal with her and then the appellant slapped her. The deceased also told her that when she protested, Balwant Singh (brother of the appellant) also beat her and abused her. It is thereafter she goes to a PCO and makes the call which PW1 has spoken about. She does say that the appellant's mother came to her house to make enquiry about the deceased and she told her that the deceased was under

depression and has gone to make a call at the PCO and she should take her home. The appellant's mother told her that she would herself return home.

19. In her cross examination she does state as follows:

Her husband and father-in-law are running their own industry. More importantly, she says it is correct that the status of the accused was lower than that of her in-

laws. They had represented that they had applied for industrial connection and would start their own industry. She admits that the deceased continued with her studies and was preparing for M.A. Examination at the time of her death so as to become self-reliant. She denies the suggestion made to the effect that it is on account of his financial status that the appellant used to shun the company of her husband. She also states that her uncle, an Advocate was informed about the harassment but he never lodged any complaint or FIR with a view to ensure settlement of the deceased in her matrimonial home. She states that on 16.2.2001, the deceased spent about 5 – 7 minutes with her. She denies the allegation that she also taunted the deceased that the birth of her daughter has further increased the liability and therefore, the deceased committed suicide.

20. No doubt we notice that PW5 is examined to show that he was at the PCO from where the deceased made a call on 16.2.2001 that he just saw but did not hear her talk. She was weeping, the witness deposed. Though there is a definite role for the nephew namely, Av tar Singh, which is referred to in the deposition of both PW1 and PW3, the prosecution has given up the said witness as being won over by the accused.

> 21. Having adverted to the evidence which is the basis for imputing the charge against the appellant, we may now examine what is the defence evidence. DW5 is the father-in-law of the appellant's brother (Sarabjit Singh). Be it noted that Sarabjit Singh was also an accused in the trial. He says that after 6 years of marriage, his daughter and son-in-law separated from the parents. He states that his daughter always remained happy in the house of her husband. He states that PW3 is married into an affluent family. PW3 used to tell that she has been married in a poor family. The deceased had told her that she would get higher education and bring herself to the level of PW3. Upon a daughter being born, again PW3 reminded her of the fact that she is married in a poor family and asked her to get rid of the appellant. This is how the deceased started remaining under depression. He says that the accused never demanded dowry from the deceased-wife of the appellant. In cross examination he would say that he used to visit the house of the appellant after about a fortnight.
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> 22. DW6 is a neighbour. His house is just opposite the house of the Iqbal-appellant's father. He has stated that family of the accused is a nice family. He never heard or saw the accused harassing the deceased with the demand of dowry. He denies the allegation that being neighbour he tried to depose in favour of the accused.

He says Sarabjit Singh is also a joint resident with the present accused.

23. Finally, DW8 is examined. He says that he knows the family of the accused Iqbal (appellant's father) very well. He states that the deceased-wife of the appellant used to visit his house and used to address as Mausaji. His house is opposite to the house of the accused. He says that the deceased never complained to him against the accused. He says that PW1 used to visit his house sometimes and that PW3 is married at a distance of 4th streets from his house. The family of PW3 is well off whereas the family of the accused is an average family. The deceased intended to open a private school in the house after completing her study. He deposed that once in his presence PW3 told the deceased that while she was married in an affluent family, the deceased was married in a poor family. He states that PW1 visited the matrimonial home of the deceased once or twice after the marriage but thereafter he never visited their house. PW3 is alleged to have taken the deceased away from the matrimonial home on the morning of the day by telling her that father had come to visit his sister in village Rampur. He states that the deceased absolutely had no problem while staying with the accused. In cross examination he would depose that the deceased used to meet him sometime. He is not able to remember the date of marriage of the deceased. He did not attend the marriage either from this side of the deceased or from the side of the complainant. He also did not attend the marriage of PW3 from either side (In this regard PW3 is the elder sister of the deceased). He deposed that PW1 did not visit the house of the appellant as they were poor.

24. A reading of Section 304-B of the IPC along with Section 113-B of the Evidence Act would establish that once the prosecution shows that soon before the death of the wife, she has been subjected to cruelty or harassment for or in connection with any demand for dowry, the court shall presume that such person caused the dowry death within the meaning of Section 304-B IPC. The

words 'shall presume' in Section 113-B of the Evidence Act, while it mandates that the Court is duty bound to proceed on the basis that the person has caused the dowry death, the presumption is rebuttable and it is open to the relative to prove that the ingredients of Section 304-B IPC are not satisfied. See in this regard, the following statement of law contained in the case of G.V. Siddaramesh v. State of Karnataka 2010 (3) SCC 152:

> "26. Section 113-B of the Evidence Act raises a presumption against the accused and reads:
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> "113-B. Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.
>
> Explanation. - For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)." A reading of Section 113-B of the Evidence Act shows that there must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of a woman. It is then up to the appellant to discharge this presumption."

25. We may also notice the statement of law contained in the decision of this Court in the case of Ashok Kumar v. State of Haryana reported in 2010 (12)SCC 350 which reads as under:

> "24. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of Section 304-B were not satisfied, rebut the same. While referring to raising of presumption under Section 304-B of the Code, this Court, in Kaliyaperumal v. State of T.N.;(2004) 9 SCC 157: 2004 SCC (Cri) 1417, stated the following ingredients which should be satisfied: (SCC p. 162, para 4) "(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).
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> (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
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> (3) Such cruelty or harassment was for, or in connection with any demand for dowry.
>
> (4) Such cruelty or harassment was soon before her death."

26. In the perspective of aforesaid state of the law, two issues would arise. Whether there is material within the meaning of Section 113-B of the Evidence Act for the Court to have come to the conclusion that soon before the death, the deceased was treated with cruelty or harassed for or in connection with demand for dowry. In this regard we have noticed that there is a material in the form of testimony of PW1 and PW3. The marriage between the accused-appellant and the deceased took place on 24.1.1998 and it survived only for a little over three (3) years. It is on 16.2.2001 that the deceased goes to the house of PW3, her elder sister, spent 5 to 7 minutes, according to the said witness, complained of cruelty or harassment by the accused and her own daughter was with her. On the same day, she goes to the PCO, phones her father PW1 and tells him about the harassment. PW4 the person working at the PCO has also stated that she was weeping and the she made a call. PW1 has spoken about the contents of the telephonic conversation namely, all the accused were maltreating and taunting her and that she was very much upset and the accused had thrown her out from their house with the daughter and that she will not be allowed to come back without a Maruti car or Rupees two lakhs. If he is to be believed (In fact, two courts have), this would amount to cruelty/harassment in connection with demand for dowry. Therefore, the law enjoins under Section 113-B of the Evidence Act drawing of the presumption that the accused has committed the dowry death.

27. Undoubtedly, the presumption is rebuttable at the hands of the accused by adducing evidence and discharging the reverse burden. Whether any such evidence in discharge with reverse burden has been successfully adduced and whether it has been considered, is the next question. The judgment of the trial Court would show that there is indeed a reference to the contents of the deposition of PW5, PW6 and PW8.

28. Power under Article 136 seemingly, transcends all limitations in regard to matters save where it is expressly excluded. However, by way of self imposed intrusions into such power, as also by way of deference to the scheme of the Constitution, the principles we have alluded to stand culled out. Apposite to the facts of this appeal, the following principles must inform us:

> 1. Credibility of witnesses as commended to Courts below is not ordinarily reappraised.
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> 2. Is there misreading of evidence?
>
> 3. Is there any non-consideration of glaring inconsistency in the evidence which demolishes the prosecution's case?
>
> 4. Are the findings inconsistent with the evidence?
>
> 5. Have the courts overlooked striking features in the evidence or is their failure to consider important piece of evidence?
>
> 6. Whether the evidence adduced by the prosecution fall short of the test of reliability and acceptability and it is therefore unsafe to act upon it?

29. The marriage took place on 24.1.1998. According to PW3 about 6 months after the marriage, demands were raised for dowry. Either a Maruti car or Rs.2 lakhs was the demand. There was physical cruelty according to PW1 father, and PW3 sister. In December, 2000 the deceased, meet both PW1 along with PW3 and complained about threats and beatings. The death took place in February, 2001.

30. The Troubling features - There is evidence, which establishes that the father of the appellant contributed to the continued higher education of the deceased. Is that compatible with treating his daughter-in-law with cruelty. The father-in-law stands acquitted by the trial Court. The mother-in-law even according to PW3 met her on 16.2.2001 and enquired about her daughter-in-law. PW3 told her that her sister was depressed and asked her to take her home. PW3 states that the deceased told her that on the night previous to 16.2.2001, the appellant had hurled abuse on her father and when she prevented the appellant from abusing her father, she was beaten even more. If this be true, indeed, it is cruelty near, in point of time and bearing a link proximate to the time of her death immediately thereafter. (The doctor has conducted post mortem on 28.2.2001. He has opined that the probable time which elapsed between death and post- mortem was about 12 days). This mean that the tragic death took place on the 16th or 17th of February, 2001. But PW1 does not depose a word about the telephone call made on the eve of 16.2.2001. There is evidence of PW3 that in their estimation the status of the appellant was lower and that they had represented that they had applied for an industrial connection and would start their own industry. That apart, Avtar Singh, the nephew of PW1, who is referred to by PW1, as having direct knowledge of certain aspects is not examined.

31. The trial Court has carefully discussed the two versions canvassed. The questions which we posed as troubling, most of them, was present in its mind. The High Court has also referred to the defence evidence including DW6 and DW8.

32. The trial Court, however, finds solace in rejecting the defence version on the score that it cannot be squared with the deceased visiting the home of PW3 on 16-02-2001, and it takes the view that she would have been the last person for her to visit. It is also found that the deceased did not go on being called by PW3. The trial Court had the advantage of watching the demeanor of the witnesses. We cannot hold that the view taken by the trial Court as affirmed by the High Court is not warranted as such by the materials on record. We cannot possibly hold that the view taken by the courts is manifestly perverse or that it is based on no evidence. Even if we are persuaded to take a different view as canvassed by the appellant we would not be justified in interfering. See the observations in Mst. Dalbir Kaur's case (supra).

33. The upshot of the above discussion is that we are not persuaded to interfere. The appeal shall stand dismissed.

……J. (Ranjan Gogoi) ……J. (Navin Sinha) .....J. (K.M. Joseph) New Delhi;

September 26, 2018