

Delhi District Court

The Case Of The Prosecution Is ... vs Unknown on 10 August, 2016

In The Court of Ms. Shefali Barnala Tandon, MM, Mahila Court, NW, Rohini  
Courts, Delhi

State v. Radhey Shyam & Other

FIR No.66/1

U/s 498-A/406/34

PS: Adarsh Nag

JUDGMENT

CIS No. : 535599/2016  
S.No. of the Case : 1331/2 - 16/12/06  
Unique ID No. : 535599/2016

Date of Commission of offence: From 08.12.1990 till 30.10.1994

Name of the Complainant : Smt. Madhu Bala

Name of the accused persons : 1 Radhey Shyam  
2. Ram Niwas  
3. Raj Kumar  
4. Kedar Nath  
5. Niranjana Dass  
(proceedings against accused Niranjana Dass  
were abated vide order dated 06.10.2004)  
6. Phoolwati @ Phooli  
7. Saroj Bala W/o Raj Kumar  
8. Nirmala Devi  
9. Raj Rani @ Roshni  
Village Bhuna, PS Bhuna,  
Distt. Hissar, Haryana.

Offence Complained of : 498-A/406/34 IPC  
Plea of accused persons : Plead not guilty  
Date of order : 10.08.2016  
Final order : Acquittal u/s 406/34 IPC and  
Conviction u/s 498-A/34 IPC  
qua all the accused persons

Brief Reasons For Such Decision:

1. The case of the prosecution is based upon the complaint made by the Madhu Bala wherein the complainant stated that she got married to accused Radhey Shyam on 08.12.1990 as per Hindu rites and ceremonies. It was alleged therein that all accused namely Radhey Shyam (husband), Ram Niwas, Raj Kumar, Kedar Nath @ Kedara (brothers-in-law), Niranjana Dass (father-in-law), Phoolwati @ Phooli (mother-in-law), Nirmala (sister-in-law/nanad) ; Saroj Bala and Raj Rani @ Roshni (sisters-in-law/jethani) in furtherance of their common intention subjected the complainant to cruelty by making unlawful demands of dowry and misappropriated the stridhan articles of the complainant and did not return the same despite her demand and accordingly charge

sheet was filed u/s 498A/406/34 IPC against all the accused persons.

2. After supplying documents to the accused persons, charge for the commission of offence punishable U/s 498A/406/34 IPC was framed against accused all accused persons namely Radhey Shyam, Ram Niwas, Raj Kumar, Kedar Nath @ Kedara, Niranjana Dass, Phoolwati @ Phooli, Nirmala, Saroj Bala and Raj Rani @ Roshni to which all the accused persons pleaded not guilty and claimed trial.

3. In support of its case the prosecution examined 08 witnesses namely PW 1/Mahavir Prasad, PW 2 SI Arvind Kumar Verma, PW 3/Madhu Bala, PW 4 Subhash Chand, PW 5/Chander Kala, PW 6/ Smt. Maam Kaur, PW 7/Ramesh Kumar, PW 8/ Retired SI Radhey Shyam.

Relevant portion of examination of witnesses is reproduced as under : PW 1/Mahavir Prasad, ( known / friend of father of complainant ) deposed that he had attended the marriage of daughter of Pitar Sain namely Madhubala with Radhey Shyam. Dowry was given in the marriage from the side of bride and the atmosphere at the time of marriage was very good. He further deposed that after about 3-4 months father of Madhubala told him that in-laws of Madhu Bala were harassing her for bringing less dowry and used to taunt her. After about a year Madhubala gave birth to a son on which her brother and her mama went to the matrimonial house of Madhubala for giving "Choochak". They were maltreated there for bringing less articles. They demanded colour T.V and V.C.R. The accused persons used to harass the girl for dowry. The girl was left to her parents house by the accused persons and they had not taken her back as her father was not able to fulfill their demands. At Delhi, the brother of girl namely Suresh was residing at that time but later on the other family members of the girl also shifted to Delhi. He failed to memorise the correct name of the brother of the girl due to his old age.

PW 2 SI Arvind Kumar Verma, being Duty Officer, proved copy of FIR No.66/1995 as Ex.PW 2/A (original seen and returned).

PW 3/Madhu Bala (complainant) deposed that she was married with Sh. Radhey Shyam on 08.12.1990 according to Hindu rites and customs. Many articles were given at the time of marriage i.e. Rs.51,000/- cash , T.V, Bed, Sofa Set, Almirah, Dressing Table, Cooler, Ceiling Fan, 8-10 tola gold etc. The list of dowry articles on record is proved as Ex.PW 3/A. She further deposed that after her marriage, her father in law Niranjana Dass, mother in law Fulli Devi, Jeth Ram Niwas, Raj Kumar, devar Kedar Nath, husband Radhey Shyam, jethani Roshni and Saroj, nanad Nirmala were not satisfied with dowry articles and they started harassing her. She was made to work at home as servant and was made to do all household work for all the accused persons. She further deposed that on the occasion of birth of her son, Vipin Kumar, son of her maternal uncle and her real brother Subhash came with 'chuchhak' and gave 4 and 1/2 tolas gold necklace, sewing machine, Onida

T.V and other gold jewellery but the accused persons were not satisfied with those articles and her sister-in-law Nirmala as well as jeth Ram Niwas and Raj Kumar said that they should have given VCR and Colour T.V. The entire family of her husband and her husband himself supported the suggestion of her jeth and sister in law. They insulted by calling "Bhookhe nange". All the accused persons made demand of Rs.1,00,000/- for starting the shop of her husband and on refusal all of them started beating her. It is further alleged that on 05.11.1992, all accused persons came towards her after consulting each other and asked her whether she will fulfill the demand or not. Her jeth Ram Niwas stood at the door to keep watch, her husband and jeth Raj Kumar removed the jewellery worn by her and from her almirah and handed over the same to her mother-in-law and asked to keep it in the name of Darshna, who is her sister-in-law. Then her jeth and husband gave beatings to her then both jethanis and nanad Nirmala gave beatings to her. On 06.11.1992, her husband left her at her brothers's house at Adarsh Nagar and said that if he will not fulfill his demand of Rs.1,50,000/- then he will remarry. She was threatened with dire consequences as accused persons stated to have links with dangerous persons in Punjab and Haryana. It has further been alleged that on 30.10.1994 her father in law, her jeth Ram Niwas and her husband came to her brother's house at Adarsh Nagar in drunken condition and asked as to when her brother will fulfill their demand. When she refused her husband slapped her 3-4 times and said that they will see as to who will not fulfill the demand. When her husband, father in law and jeth were going, she asked them to return her dowry articles on which they replied that her husband will remarry and will not return her dowry articles. Thereafter, she filed a complaint, proved on record as Ex.PW-3/B. She also proved Arrest Memo as Ex.PW-3/C. She further deposed that she handed over marriage card and photocopy of ration card to IO which were seized vide seizure memo Ex.PW-3/D which bears her signature at point A. The marriage card is also proved as Ex.PW-3/E and Ex.PW-3/F. She further deposed that three dowry articles were returned at the Police station by accused persons which were seized by IO vide seizure memo Ex.PW-3/F (inadvertently mentioned as Ex.PW-3/F in judicial file).

During her cross-examination, she deposed that her father was running a small general merchant and glossary shop. Her father was earning Rs.8-10 thousand at that time. She further deposed that the distance between her parents home and matrimonial home at Bhuna is about one or one and a half kilometer. She further deposed that no panchayat was held between her family and that of accused prior to filing of the divorce proceedings by the accused Radhey Shyam. She further deposed that her father has sent one Mahavir Pandit to her matrimonial home prior to filing of divorce proceedings. She admitted that no family members has went to the house of accused persons for compromising the matter except Mahavir Pandit. Vol. There the accused persons put the demand of Rs.1.5 lacs then her matrimonial home can be resettled. She further admitted that she has not stated in her statement u/s 161 Cr.PC dated 24.03.1995 and 12.01.1995 to the police that her father has sent Mahavir Pandit to the house of accused persons. She also admitted that her in-laws and her parents were

residing in the same village since the day she was living separately from her husband. Vol. Her husband had left her at Delhi. She further admitted that she had not lodged any complaint in the village Bhuna, Distt. Hisar, Haryana against the accused persons however they were harassing her. She further deposed that she has made a complaint against accused husband first time on 30.10.1994 at PS Adarsh Nagar when her husband and Ram Niwas and her father in law extended threats to her. She further admitted that the said complaint filed by her against her husband is not in judicial file. Again said, the said complaint was made to DCP concerned. She further admitted that her maternal aunt Smt. Usha was in Delhi Police on the day of alleged incident. She failed to know whether she was posted at PS Ashok Vihar or not on the day of incident. She admitted that her maternal uncle Sh. Bhim Sain was also in Delhi Police but she failed to know whether on the date of alleged incident Sh. Bhim Sain was working in Ashok Vihar police station. She admitted that she has not informed the police by dialling 100 number or to the local police. She further deposed that she has lodged the report because she know that the report should be made to the DCP office.

PW□4 Subhash Chand, brother of complainant deposed that on 08.12.1990, her sister was married to Radhey Shyam and sufficient dowry articles i.e. Rs.51,000/□ cash, 8□10 tolas of gold etc. were given in the marriage. All the accused persons were not satisfied with dowry articles and they harassed her sister for the said reason. They were also insulted by all the accused persons whenever they visited them on function or other occasions. He further deposed that on 02.11.1991 her sister gave birth to a son. On 01.12.1991 he alongwith Vipin, who is son of his maternal uncle, went to the matrimonial home of his sister with chuchak. They took sewing machine, Onida portable TV, 4 and half tolas of gold necklace for his sister and customary gold moon and sun, 21 sarees, sweets and fruits in chuchak. All the accused persons were not satisfied with chuchak articles. Accused persons namely Raj Kumar, Ram Niwas and Nirmala Devi openly said that they were expecting colour TV and VCR on the birth of first male child in their family and they have not brought anything. His sister felt humiliated and started crying. They returned their home after getting insulted in matrimonial home of his sister.

During his cross□examination he admitted that his maternal uncle Sh. Bheem Sen and maternal aunt i.e. Smt. Usha are in Delhi Police. He further deposed that he came to know about the complaint filed by his sister in the end of month of November 1994. He further deposed that he had given the statement to the police that Rs.51,000/□ was given at the time of "tika" ceremony (confronted with portion B to B of statement Ex.PW□4/A where it is not so recorded). He had given the statement to the police that 8□10 tola gold was given to his sister by his parents (confronted with portion C to C of statement Ex.PW□4/A where it is not so recorded). He admitted that the IO had read over the statement to him which he had recorded.

He further deposed that the statement which he has given before the Court that they took sewing machine, Onida portable TV, 4 1/2 tolas of necklace for his sister

and customary gold moon and sun, 21 sarees, sweets and fruits in chuchak. (Confronted with statement Ex.PW□4/A where it is not so recorded).

PW□5 Smt. Chander Kala, mother of complainant deposed that the marriage of her daughter was solemnized with accused Radhey Shyam on 08.12.1990 according to Hindu rites and ceremonies at village Bhuna, District Hisar. She further deposed that she had given sufficient dowry at the time of marriage. They had given Rs.51,000/□ cash at the time of marriage. Two hundred baraaties attended the marriage ceremony of her daughter with accused Radhey Shyam. They had given 10 tolas gold jewellery and five tolas silver jewellery. They had also given furniture i.e. godrej almirah, godrej fridge, two diwan, one cooler, one ceiling fan, one sofa set, one room heater, one dressing table, one mixi, one black and white T.V., sewing machine and clothes including sarees 21 for her daughter and 32 for in□aws of her daughter, pilia for mother in law of her daughter, one suit for husband of her daughter Radhey Shyam, to in□ laws of her daughter.

She further deposed that in□aws of her daughter were not satisfied with dowry given by them at the time of marriage. They used to harass her daughter. They used to behave with her daughter like a servant. She further deposed that after one month after the birth of child, they went to matrimonial home of her daughter to perform chuchak ceremony with har of 4 and 1/2 tolas gold for her daughter and given the same. They had also given 21 sarees for her daughter, 11 sarees for her in□ laws, one pair of silver kara for the child of her daughter some utensils given at the time of chuchak ceremony. The in□aws of her daughter were not satisfied with the articles given at the time of 'chuchak'. The in□aws of her daughter insulted her nephew Vipin and her son Subhash at the time of Chuckak. They returned from matrimonial home of her daughter after being humiliated at the hands of in□aws of her daughter. Her son and nephew narrated that the in□aws of her daughter insulted all member of her family in the presence of her daughter, mother in law and wives of Raju and Ram Niwas.

She further deposed that the in□aws of her daughter started demanding Rs.1.5 lacs from her daughter to open a shop for her husband and told her daughter to bring the said amount from them. Accused Radhey Shyam, Ram Niwas and Raju told her daughter to bring Rs.1.5 lacs and when she showed her inability they all gave beatings to her daughter. Accused Ram Niwas and Raju removed all jewellery from person of her daughter and they also took gold jewellery lying in the almirah. All the jewellery of her daughter was sent to her sister□n□aw Darshna on instructions of her father□n□aw. In the next morning, husband of her daughter left her to their house and stated that since they are not giving him Rs.1.5 lacs he would not take her daughter to her matrimonial home. In answer to leading question, she stated that accused left her daughter at Delhi at her son's house.

She further deposed that after two years of the above said incident, Radhey Shyam, Ram Niwas and father in law of her daughter came to Delhi in the rented accommodation at Azad Pur where her daughter was living. They told her daughter that since they have not arranged for Rs.1.5 lacs, they would not allow her to be sent to her matrimonial home. Accused Radhey Shyam told her daughter that he will solemnize second marriage. Her daughter demanded all the dowry articles but accused Radhey Shyam refused to return a single penny. All the accused persons threatened that they would finish them with the help of goons.

During her cross examination, she further deposed that she had told the police that Rs.51,000/ in cash, 10 tolas of gold, five tolas silver, godrej fridge, two divan, one cooler, one ceiling fan, godrej almirah, one sofa set, one room heater, one dressing table, one mixi, one black and white T.V, sewing machine and clothes (confronted with the statement u/s 161 Cr.PC where it is not so recorded).

PW 6 Smt. Maam Kaur, (landlady of brother of the complainant) deposed that Ramesh Kumar was her tenant 17-18 years ago. Husband of Madhu Bala left her at house of her brother and she started residing there. She further deposed that husband, jeth and father in law of Madhu Bala came and asked her about Madhu Bala and Ramesh. She told them that they reside upstairs at fourth floor of the said address. They went upstairs and she remained at the ground floor, they started shouting and started quarreling. She further deposed that she went upstairs and saw that husband of Madhu Bala gave beatings to her. Husband of Madhu Bala demanded Rs.1,50,000/ to which she refused. She further deposed that she demanded her istridhan to which her husband and in-laws denied and they said that they will not accept her. She failed to remember the date of incident as she is illiterate but correctly identified jeth and husband of Madhu Bala present in the Court.

PW 7 Ramesh Kumar (brother of complainant), deposed that since 1990 he was residing as tenant at 55, Guru Nanak Marg, Kewal Park, Azad Pur, Delhi. He further deposed that marriage of his sister was solemnized with accused Radhey Shyam, in accordance with Hindu rites and ceremonies. He further deposed that in her marriage, his parents had spent according to their capacity and they had given adequate dowry articles at the time of her marriage. But the in-laws including nanad Nirmal, jethanis Roshni and Saroj, jeths Ram Niwas and Raj Kumar @ Raju Punjabi, father in law Niranjana Das, mother in law Phuli Devi and devar Kedara of her sister were not satisfied with the dowry articles given to her sister in her marriage. They used to harass her physically and mentally. Whenever he used to visit his sister at her matrimonial home, she used to tell him that her in-laws harass her physically and mentally.

He further deposed that on 01.12.1991, his younger brother and his cousin namely Vipin went to the matrimonial house of his sister alongwith chuchak. Aforesaid in-laws of his sister were not happy with the chuchak taken by his brother. Accused Ram Niwas, Raj Kumar and accused Nirmal said that they

were expecting a colour T.V and VCR in chuchak and they complained that his brothers have not brought the same. His brothers were insulted by the aforesaid accused persons in presence of his sister. Thereafter, accused persons demanded Rs.1,50,000/□ and the same was conveyed to them by his sister. They said that they want to buy a shop for accused Radhey Shyam and accused Kedara and for fulfilling the aforesaid demand, they physically and mentally tortured his sister. When the aforesaid demand was not met, on 06.11.1992, accused Radhey Shyam left his sister at his residence at Delhi and he threatened him that he will re□marry if demand of Rs.1,50,000/□is not fulfilled.

He further deposed that on 30.10.1994, accused Niranjana Dass, Radhey Shyam and Ram Niwas arrived at his residence at Delhi at 55, Guru Nanak Marg, Kewal Park, Delhi. They threatened that either they fulfill their demand of Rs.1,50,000/□ otherwise they will be killed as they have link with dangerous people of Punjab and Haryana. On that day, the aforesaid persons were heavily drunk, on the refusal of his sister to fulfill their demand, accused Radhey Shyam slapped her three to four times. His sister asked them to return her istridhan articles as they were not ready to take her back. But they refused, they said that they will not return even a single article. When he returned after purchasing vegetables, his sister informed him about the aforesaid incident. IO recorded his statement.

During his cross□examination, he deposed that the bills were already handed over to Shri Raj Kumar, brother□n□law of his sister at the time of marriage by his father. He further deposed that he has seen the accused persons leaving his house in a car while returning to his house.

PW□8 Retired/SI Radhey Shyam, IO of the present matter deposed that in the year 1995, he was posted at PS Adarsh Nagar as Sub Inspector. Investigation of the present case was marked to him after registration of FIR. The case file was handed over to him on 20.02.1995. During investigation, he recorded statement of witnesses and arrested the accused persons. After completing the investigation, he prepared the Charge□sheet and filed before the Court. Some of the istridhan articles of complainant were handed over to her in the concerned PS after identification. The said articles were T.V, Fridge and one sewing machine. The documents including card and letters were given to him by the complainant and same was seized vide seizure memo already Ex.PW□3/D.

Afterwards PE was closed.

4. Accused persons were examined U/s. 313 Cr.PC wherein all the incriminating evidence on record alongwith documents were put to them which was generally denied by the accused persons and they stated that the present complaint was filed with malafide intention and as a counter blast to the divorce petition filed by accused Radhey Shyam in the year 1993. They opted to lead evidence in their defence.

DW□1 Raj Rani (one of the accused herself) deposed that after sometime of marriage, complainant Madhu Bala started quarreling with them without any rhyme and reason.

She never did any household work and used to pressurize her husband Radhey Shyam to shift from their village to Delhi but Radhey Shyam refused for the same as he did not want to leave his family. The complainant used to call all of them illiterate and did not want to reside with them in village. She further deposed that no articles were given at the time of 'chuchak' and three articles given at the time of marriage i.e. almirah, T.V. and sewing machine have already been returned to the complainant in the Court. She has further deposed that she and her family members have been falsely implicated in the present matter.

DW□2 Ram Niwas, (another accused himself) deposed on the same lines of DW□1 and in addition stated that the complainant used to go to her parental house off and on. Thereafter compromise took place at Panchayat and Radhey Shyam went to parental house of complainant to take her back. After sometime, again dispute arose and Panchayat was held wherein a quarrel took place. Accused Raj Kumar was injured by maternal uncle of complainant. Complaint was made in PS Bhuna and thereafter complainant in connivance with her family members lodged the present complaint. He further deposed that on 30.10.1994, 'grah pravesh' ceremony of her maternal uncle Gopi Ram was held at Villange Jangli, District Fatehabad and the said ceremony was attended by all his family members in the morning and they returned in the evening. He further deposed that he and his family members have been falsely implicated.

DW□3 Kedar Nath (another accused himself) deposed on the same lines as deposed by DW□1 and in addition stated that complainant wanted to join a job in Delhi which was refused by Radhey Shyam on the ground that he cannot leave his family. Further, the complainant used to go to her parental home off and on and quarrel used to take place between them. Panchayat was called to resolve the issue wherein the complainant and her family members apologized. Peace prevailed in the family for sometime but complainant again started quarreling with his family members. One day maternal uncle of complainant namely Bhim Sen came to their village and quarreled with his family members as well as caused injury in the eyes of Raj Kumar during Panchayat. Police complaint was made at PS Bhuna.

He has further deposed that no dowry was given in the marriage from the complainant side as the father of complainant was running a small shop in village Bhuna and was not in a position to give dowry, but further stated that three articles i.e. almirah, T.V and sewing machine have already been returned to the complainant in Court. He further deposed that he and his family members have been falsely implicated.

DW□4 Suresh Kumar (jija of accused Radhey Shyam), deposed on the same lines of DW□1 and in addition stated that marriage of Radhey Shyam with complainant was a simple one and everything went well for 2□3 months but after that he



received a call from Bhuna regarding dispute between complainant and accused Radhey Shyam and he went to Bhuna 2-3 times. He further deposed that he tried to persuade the complainant that she should live in her matrimonial home at Bhuna, however, she did not listen to him and told him that she would not live with Radhey Shyam in Bhuna and wanted to live in Delhi. Again quarrel took place between complainant and Radhey Shyam and a meeting was held in the month of March/April 1992 in Bhuna Mandi. He stated to be present in the said meeting where the complainant's side apologize and promised not to quarrel with accused persons. Everything went well for 2-3 months but again there was quarrel and a meeting was held in year 1993 wherein some relatives from both the sides including him and maternal uncle of complainant namely Bhim Sen were present. No compromise took place and Bim Sen gave hand blow to Raj Kumar. Father of Radhey Shyam also sustained injuries. A complaint with this respect was made to PS Bhuna. On 30.10.1994, 'grah pravesh' ceremony of maternal uncle of accused persons namely Gopi Ram was held at village Jhandli, District Fatehabad he alongwith all the accused persons went to attend 'grah pravesh' ceremony and he returned to Delhi after attending the said ceremony. He further deposed that Subhash, Ramesh, one lady Maam Kaur and Bhim Sen came to him and apprised him that they have got registered an FIR against accused persons and his name has been cited as a witness in that case. They all tried to allure him to take their side but he refused stating that he will tell the truth. They also offered him Rs.1 lakh to depose against the accused persons.

During his cross-examination, he admitted that he is jija of accused Radhey Shyam and failed to remember date, month or year on which all the four persons namely Subhash, Ramesh, Maam Kaur and Bhim Sen offered Rs.1 lac to depose against accused persons. He also admitted to have made no complaint to police or Court regarding the said allurement. He further admitted that he is surety of one of the accused persons in the present case. He denied to have signed the seizure memo of istridhan articles or that he joined the investigation on which he was confronted with Seizure Memo Ex.PW-3/F and he admitted his signatures on the same.

DW-5 Saroj Bala (another accused himself) deposed on the same lines as deposed by DW-1 and in addition stated that no dowry was given or taken at the time of marriage. Further, she stated that twice panchayat was held and on 27.06.1993 maternal uncle of complainant Bhim Sain caused injury to her husband Raj Kumar and her father-in-law during panchayat. Certified copy of medical of Raj Kumar was filed and exhibited as Ex.DW-5/A. She further deposed that she took care of complainant and used to take her to doctor as and when required. She further deposed that on the date alleged by complainant that they came to Delhi and gave beatings to her, they were attending function at Village Jhandli, Distt. Fatehabad.

During her cross-examination she failed to remember date, time or year when complainant asked Radhey Shyam to shift to Delhi. She failed to know when complainant used to go to her parental house or the date on which Panchayat

was held wherein the complainant apologized. She admitted to have not attended the said panchayat and to see what actually happened in the panchayat. She admitted that the incident was narrated to her by her husband Raj Kumar. She even failed to remember date, time or year and also failed to remember the name of doctor to whom she used to take the complainant for treatment. She even failed to know date, month or year when they went to attend function at Jhandli, Haryana.

DW□6 /Bhushan Kumar deposed that marriage of complainant with accused Radhey Shyam was solemnized in year 1990. After the marriage, there was a quarrel between complainant and accused Radhey Shyam. A panchayat was held in his presence wherein complainant and her family members apologized for their act and complainant started living at her matrimonial home. After two months, again quarrel took place between them but he does not know the reason of the quarrel. Again panchayat was held in his presence where both the sides were present and Bhim Sain caused injury to Raj Kumar. Complaint was made to concerned PS but same was not pursued as there was settlement between parties. Thereafter, he came to know that complainant has made allegations of beating on 30.10.1994 but on the said date all the accused persons were attending 'muhurat' at his mama's residence alongwith him at Village Jhandli Khurd, Haryana. After complaint, istridhan articles i.e. T.V. , sewing machine and fridge were returned to complainant at PS Adarsh Nagar. He also came to Delhi alongwith the accused persons and was cited as a witness in the present matter as he was interrogated by police officials during investigation at PS Adarsh Nagar but later on was deleted.

During his cross□examination, he admitted that he is relative of accused persons being son of their 'mausi' . He also admitted that no quarrel took place in his presence and he came to know of it from others. He failed to remember the date or month when first panchayat was held.

DW□7 Gopi Ram (mama of accused) deposed that he attended marriage of complainant and accused Radhey Shyam. He further deposed that there was no demand of dowry at the time of marriage and whatever was given in the marriage was given voluntarily. After 2□3 months of marriage, there was a dispute and complainant went to her parental house. All this was told to him by his sister. On request, he alongwith his younger sister went to the house of complainant but she did not tell him the reason of her leaving the matrimonial home and only stated that accused Radhey Shyam abuses her. On persuasion, she was taken back to matrimonial home but again after 2□3 months, she left the house. He further deposed that on demand of complainant, accused persons brought the dowry articles in a truck at Tis Hazari Courts and after order of the Court the articles were taken to PS Adarsh Nagar. The three articles i.e. fridge, T.V and sewing machine were handed over to complainant in the said PS in his presence. He further deposed that on 30.10.1994, there was 'muhurat' of his house, accused persons namely Raj Kumar, Niranjana Lal, Ram Niwas, Radhey Shyam, Phoolwati and her two daughters attended the said function and were at his house for the

entire day.

During his cross-examination, he deposed that he does not have any documentary proof or anything to show that 'muhurat' of his house was done on 30.10.1994. He failed to know the day on which the date 30.10.1994 fell.

DW-8 Zile Singh deposed that he is residing in the same village of Gopi Ram and on 30.10.1994 he attended the muhurat function at the house of Gopi Ram which was also attended by Ram Kumar, Raju @ Raj Kumar, Radhey Shyam and Phuli @ Phoolwati.

During his cross-examination, he deposed that he cannot tell the name of month in which the abovesaid muhurat took place. He failed to know the date on which Diwali was in the year 1994. He admitted that he is illiterate and do not know the names of days and months.

DW-9 Tarsen Jain, brother in law of accused Raj Kumar deposed on the lines of DW-1 and DW-2 and in addition he deposed that the present false case was registered by the complainant in Delhi at PS Adarsh Nagar against her in-laws at the behest and influence of Bhim Sain. He further deposed that five years ago he was allured by Bhim Sain and two brothers of complainant to give false statement which he protested and declined. He further stated to have gone to the house of complainant and requested her brother namely Subhash to settle the dispute but they flatly refused and insulted him. The accused persons had gone to attend muhurat of house of maternal uncle of Radhey Shyam and on that day a false incident of beating was reported to police by complainant. He was present at the muhurat as his real sister is married to accused Raj Kumar.

During his cross-examination, he admitted to have joined the investigation and signed the seizure memo as a witness. He failed to remember whether police recorded his statement u/s 161 Cr.PC and on confrontation admitted the same as Ex.P1. He admitted to have made no complaint qua the allurement given by family members of complainant. He also failed to know the address of house of complainant where he went for compromise talks but remembers the location only.

DW-10 /Nirmala (accused herself) deposed on the same lines as deposed by DW-1.

During her cross-examination, she failed to remember any date, time or year on which complainant told accused Radhey Shyam to shift to Delhi. She even failed to remember date, time or year of quarrel between complainant and Radhey Shyam.

DW-11 /Radhey Shyam (accused himself) deposed that he was married to complainant on 08.12.1990 at Village Bhuna. The marriage was solemnized without any dowry. They both lived happily for 3-4 months. Thereafter, complainant started

quarreling with him to shift to Delhi. She used to say that she was educated and he was illiterate and used to quarrel on daily basis. On 02.11.1991, a son was born out of the said wedlock. She lived happily for 4 months after birth of their son but thereafter went to her parental home with her brother. He went to take her back but she refused. Thereafter, a panchayat was held in April, 1992 where parents of complainant apologized and send her back. After two months, she again started quarreling. He further deposed that on 06.11.1992, complainant left the matrimonial home after the quarrel. She took one bag, one suitcase alongwith jewellery of about 16 tolas with her. They went thrice to her parental home to take her back but she did not come. Thereafter, again panchayat was held on 27.06.1993 where family members of both sides were present and his brother Raj Kumar sustained injuries in his eyes. They went to police station but police did not listen to them and got the matter compromised. They again went to take the complainant back to their house but all in vain. Thereafter he filed a divorce case against the complainant in Hissar Court. Thereafter, the maternal uncle of complainant Bhim Sain got this FIR registered on 30.10.1994 in PS Adarsh Nagar. On 30.10.1994, there was 'grah pravesh' ceremony of his maternal uncle at Jhandli Khurd. Hence entire case is false. He further deposed that he was arrested in present matter and was sent to one day police custody wherein ASI Radhey Shyam got his signatures on 20 blank papers, which was told by him to the Court.

During his cross examination, he admitted that he did not make any averment in his divorce petition that complainant wanted to settle in Delhi and asked him to settle in Delhi with her. He further admitted that he filed the said petition for dissolution of marriage on the ground of cruelty which was dismissed with cost by Ld. ASJ and made observation that fault for matrimonial discord in the said case appears to be clearly of the petitioner i.e. present accused Radhey Shyam and he cannot be allowed to take benefit of his own wrong. He further admitted to have not filed any appeal against dismissal of the said petition. He further admitted that maintenance for a amount of Rs.3,000/- per month was fixed by Ld. Family Court and arrears of the same are still outstanding and he has not paid the same for more than 3 years.

DW 12/Raj Kumar (accused himself) deposed that father of complainant used to purchase goods of Rs.5,000/- to 7,000/- from his shop and used to give the purchase money for the same to him. Father of complainant talked to him regarding complainant's marriage with his younger brother Radhey Shyam. Thereafter, marriage of complainant was solemnized with his younger brother. No dowry article was given at the time of marriage. He further deposed that only 11 members of his family were present at the time of marriage and brought the girl to their house. After 4-5 months after marriage, quarrel used to take place between complainant and his younger brother. Thereafter a son was born to the complainant and thereafter, after 4-5 months, she went to her parental house. In 1992, a panchayat was held in Aggarwal Dharam Shala in Bhuna. Complainant side apologized and thereafter complainant came to their house. After 5 or 7 months, again quarrel started and complainant left the matrimonial home

in rickshaw with her articles. He further deposed that he was having shop on the main road and brother of complainant namely Subhash and father of complainant slapped Radhey Shyam on the main road and took the complainant to their house. Again panchayat was held in 1993. He further deposed that during proceedings in panchayat, injury was caused to him and his father and beatings were given to Radhey Shyam. Thereafter he went to PS but no action was taken by police therefore, he went to Fatehabad court and engaged a lawyer to file a complaint but his Advocate refused to file a case against another advocate i.e. Madan Lal (one of the maternal uncle of complainant) as he was one of the persons present in the panchayat proceedings. Thereafter, he filed a divorce case in the present case exhibited as Ex.DW□2/D□A. Then the present case was registered in PS Adarash Nagar. He further deposed that on 30.10.1994, he alongwith other family members went to village Jhangli to attend grah pravesh ceremony of house of Gopi Ram where other relatives were also present. Thereafter, pursuant to Court orders istridhan articles were returned to the complainant out of fear of the Court order.

Thereafter DE was closed.

6. Final arguments heard on behalf of Ld. APP for State and Ld. Counsel for the accused. Written submissions filed on behalf of accused persons as well as Ld. APP for the State. Numerous judgments also filed by prosecution as under:  
 (1) State Of West Bengal vs Orilal Jaiswal & Another AIR 1994 SC 1418  
 (2) State Of U.P vs Krishna Master & Ors (SC) (3) Mahavir Singh vs State Of Haryana (SC)  
 (4) Bhagloo Lodh & Anr vs State Of U.P (SC) (5) Bharwada Bhoginbhai Hirjibhai vs State Of Gujarat 1983 AIR 753, 1983 SCR (3) 280 (6) Pawan Kumar & Ors vs State Of Haryana (SC)  
 (7) Vishnu Dutt Sharma vs Daya Sapra (8) State Of U.P vs Anil Singh (SC)  
 (9) Prithu @ Priti Chand & Anr vs State Of H.P (SC)  
 (10) Undavali Narayana Rao vs State Of A.P (SC)  
 (11) In Girdhar Shankar Tawade v. State of Maharashtra, AIR 2002 SC 2078  
 (12) Anjan Ganguly & Ors. □ vs State Of West Bengal (Calcutta High Court )  
 (13) State v. B.C. Upreti etc.

During course of oral arguments, Ld. APP for the State as well as Ld. Defence Counsel brought into notice of the Court that PW□3/Madhu Bala was recalled for cross□examination on 01.03.2012 and on the same day, her cross□examination was conducted but her cross□examination was inadvertently recorded under the head of PW□5/Smt. Chander Kala instead of Madhu Balal though signatures of Madhu Bala are there on the cross□examination. The same has been rectified in the order sheet dated 25.06.2012.

Further, Ld. APP for the State submitted that in the examination of PW□3 dated 14.02.2008, inadvertently demand of Rs.one lakh has been written by hand whereas it was Rs.1,50,000/□ (one lakh fifty thousand) which has been mentioned categorically everywhere else. So this being only a clerical error, should not be considered as a major contradiction.

7. Heard. Entire record has been carefully perused.

In order to bring home the guilt of the accused for commission of offence U/s. 498A IPC, the prosecution was required to prove: a. That the complainant was subjected to cruelty or harassment; b. That the cruelty or harassment was caused by her husband or his relatives; c. That cruelty was (a) with a view to drive her to commit suicide; or (b) to cause grave injury or danger to her life, limb or health, either mental or physical; d. That harassment of the complainant was (a) with a view to coerce her or any person related to her to meet unlawful demand of any property or valuable security; or

(b) On account of failure of the complainant or her relation to meet such unlawful demand.

I would be dealing with testimony of each witness one by one as under: PW 3/complainant Madhu Bala has clearly and specifically deposed that after her marriage she was harassed, taunted and treated with cruelty by all the accused persons on account of dowry demand despite the fact that sufficient dowry was given at the time of her marriage. She has given specific dates for the alleged cruelty and harassment i.e.

Firstly, on chuchak ceremony despite customary sagan and other articles brought by her brother Subhash and cousin Vipin the accused persons demanded colour T.V and VCR. It has been specifically stated that accused Nirmala, Ram Niwas and Raj Kumar demanded colour T.V and VCR and all other accused persons agreed and joined the aforesaid accused persons. They also insulted complainant and her brothers by calling them "bhookhe nange" (the version /incident is well corroborated by PW 4 Subhash/brother of complainant, PW 5 Chander Kala/mother of complainant and PW 1/Mahavir Prasad).

Secondly, the accused persons demanded Rs.1,00,000/ for starting the shop of her husband Radhey Shyam and on refusal all the accused persons started beating her.

Thirdly, on 05.11.1992, all the accused persons after connivance approached her as to whether she will fulfill their demand or not and after removing her jewellery gave beatings to her. All the accused persons have been specifically named by the complainant qua the beatings given to her.

Fourthly, on 06.11.1992 her husband left her at her brother's house at Adarsh Nagar, Delhi with threatening that if she will not fulfill his demand of Rs.1.5 lacs then he will remarry. He also threatened her with dire consequences on the said date (this version is well corroborated by testimony of PW 4/Subhash (brother of complainant), PW 5/Chander Kala (mother of complainant), PW 6/Maam Kaur (landlady of brother of complainant) and PW 7/Ramesh Kumar (brother of complainant).

Lastly, on 30.10.1994, accused Ram Niwas, Niranjan Dass and Radhey Shyam came to house of her brother, where she was residing, in drunken condition and asked her when her brother will fulfill their demand. On refusal, her husband accused Radhey Shyam slapped her 3-4 times and threatened her that if she does not get their demand fulfilled, he will remarry. They also refused to return her dowry articles, despite demand.

Cross-examination of the complainant has been a roving inquiry about financial status of her father, distance between her matrimonial home and parental home, panchayat proceedings and complaint to DCP instead of calling 100 number. But despite lengthy cross-examination, defence was not able to demolish the stand of PW-3/Complainant. There has been minor contradictions which are not fatal to prosecution. Further, only fact of complainant's uncle and aunt being in Delhi Police cannot lead to an inference that a false case has been registered against the accused persons. Further more, admittedly the muhurat ceremony was in morning and accused stated to have returned in the evening and as per version of PW-6 the incident of 30.10.1994 was in the late evening. For the same, reliance is placed upon judgment filed by prosecution in State Of U.P vs Krishna Master & Ors (SC) wherein it is held that "before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ....Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case albeit foolishly.....The first and firm impression which one

gathers on reading the testimony of this witness is that he is a rustic witness. A rustic witness, who is subjected to fatiguing, taxing and tiring cross-examination for days together, is bound to get confused and make some inconsistent statements. Some discrepancies are bound to take place if a witness is cross-examined at length for days together. Therefore, the discrepancies noticed in the evidence of a rustic witness who is subjected to grueling cross-examination should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused who have perpetrated heinous crime. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole....It is also experienced that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform." .....this Court notices that the FIR need not be an encyclopedia of all the facts and circumstances on which the prosecution relies. The main purpose of the FIR is to enable a police officer to satisfy himself as to whether commission of cognizable offences is indicated so that further investigation can be undertaken by him. The purpose of the FIR is to set the criminal law in motion and it is not customary to mention every minute detail of the prosecution case in the FIR. FIR is never treated as a substantive piece of evidence and has a limited use, therefore law would not expect him to mention minutest details either in his FIR or statement under Section 161".

Reliance is also placed on judgment in case titled as Pawan Kumar & Ors vs State Of Haryana (SC) wherein it is held that " we find, in the present case, on account of not satisfying the demand of the aforesaid goods, right from the next day, she was repeatedly taunted, maltreated and mentally tortured by calling her ugly etc. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for any bride".

Now coming to PW-4 /Subhash (brother of complainant) he has been an eye witness to the incident dated 01.12.1991 when he stated to have gone to the matrimonial house of the complainant, alongwith his cousin Vipin, with customary gifts and other articles on chuchak ceremony but was rebuked, insulted, humiliated and abused by all the accused persons. He has well corroborated the version of complainant by specifically deposing on the same lines of the complainant that accused Nirmala, Raj Kumar and Ram Niwas



taunted them for not bringing colour T.V and VCR and the remaining accused persons joined them and demanded the said articles. There has been certain confrontations during his cross-examination but the law is very clear that FIR and statement recorded u/s 161 Cr.PC cannot be made encyclopedia and its not necessary to get everything recorded therein.

Reliance is placed on judgment in Krishna Master & Ors (Supra) and Prithu @ Priti Chand & Anr vs State Of H.P (SC) where in it is held that "it was observed that undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the prosecution witnesses. A witness cannot be accepted to possess a photographic memory and to recall the deals of an incident verbatim. Ordinarily, it so happens that a witness is overtaken by events. A witness could not have been anticipated the occurrence which very often has an element of surprise. The mental faculties cannot, therefore, be expected to be attuned to absorb all the details. Thus, minor discrepancies were bound to occur in the statement of witnesses".

Now coming to PW-5/Chander Kala (mother of complainant) has also well corroborated the version of PW-3 and PW-4 and she cannot be said to be only a hearsay witness, being a natural witness, in the present set of circumstances. There have been improvements in her version but the same are not fatal to the prosecution's case.

In matrimonial discord, the first person expected to be confided is naturally a mother. Hence, her testimony cannot be thrown away considering her a non-material witness.

Reliance is placed upon State Of West Bengal vs Orilal Jaiswal & Another AIR 1994 SC 1418 wherein The Hon'ble Apex Court held that "..... We think that for a newly married woman, her misfortune in the house of in-laws was not expected to be made public and confiding to the mothers was only natural. ....The abuse and insult hurled on the daughter-in-law usually are not expected to be made public so that the neighbours may have occasions to criticise the improper conduct of the accused and hold them with disrespect and contempt. ....We have indicated that ordinarily it is not expected that physical torture or the abuses hurled on the wife by the husband and the mother-in-law should be made in such a way as to be noticed by the tenants living in the adjoining portions of the house.....In the instant case, the evidence about physical and mental torture of the deceased has come from the mother, elder brother and other close relations. Such depositions by close relations, who may be interested in the prosecution of the accused, need not be discarded simply on the score of the absence of corroboration by independent witness. Whether the evidence of interested witness is worthy of credence is to be judged in the special facts of the case. In our view, the acts of cruelty by the accused were expected to be known by the very close relations like mother, brother, sister, etc. ....The bridal presents brought by her were branded as goods of inferior quality and she was asked to take the said articles back to her parental home. Such acts, to say the least, were very unkind and newly married woman is bound

to suffer a great mental pain and humiliation. It is only unfortunate that the accused No.1, the husband, instead of giving her solace against the humiliation and abuses hurled by the mother-in-law, either kept silent or expressed his inability to give good counselling to the mother and to protest against act of mental torture and humiliation. On the contrary, he also treated the wife with cruelty by telling her to take the bridal gifts back to her parental home and also by physically assaulting her. Such acts, in our view, were quite likely to destroy the normal frame of mind of the deceased and to drive her to frustration and mental agony and to end her life by committing suicide.

Further Lord Denning in *Eater v. Bater* (1950) 2 All ER 458 at p.459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter.

Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law".

PW 6/Maam Kaur (landlady of brother of complainant) has been an eye witness to the incident dated 30.10.1994 and has specifically deposed that accused persons namely Radhey Shyam, Niranjana and Ram Niwas came to her house and inquired about complainant and her brother. Then the accused persons went upstairs and after hearing shouts she went upstairs to the house of her tenant i.e. brother of complainant where she saw that husband of Madhu Bala gave beatings to her and demanded Rs.1.50 lacs to which she refused. She correctly identified the accused persons in Court but failed to remember the exact date of incident being illiterate. This witness is an independent witness not being the family member of complainant, hence inspires confidence of this Court.

PW 7 /Ramesh (brother of complainant) also well corroborated the version of PW 3/complainant and other PWs. He has been a witness of res gestae to the incident of 30.10.1994 as he stated to have seen the accused persons leaving his house in a car while he was returning and complainant told her about the incident immediately after his return.

PW 2 and PW 8 are formal witnesses being Duty Officer and Investigating Officer respectively and PW 1 is a hearsay witness but he has corroborated the version of other PWs.

Now coming to the Defence Witnesses.

First time plea of alibi was taken by the accused persons for the incident dated 30.10.1994 in their Defence Evidence. The same was neither taken during cross

examination of PWs nor in their statement recorded u/s 313 Cr.PC. Hence, reliance is placed upon judgment in case titled as Mahavir Singh vs State Of Haryana (SC) wherein it is held that " ..it is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (Vide: Atluri Brahmanandam (D), Thr. LRs. v. Anne Sai Bapuji, AIR 2011 SC 545; and Laxmibai (dead) Thr. L.Rs. & Anr. v. Bhagwantbuva (dead) Thr. L.Rs.& Ors., AIR 2013 SC 1204)" and Bhagloo Lodh & Anr vs State Of U.P (SC) wherein it is held that " in the statement under Section 313 of Code of Criminal Procedure, 1973, the appellants had not taken the defence that they could not be present at the place of occurrence as at the time of occurrence they were working in their paddy field. Thus, in view of the above, the deposition of the two witnesses examined in their defence becomes meaningless".

Further, every DW has his version of the story and has added embroidery to his testimony as under : DW1/Raj Rani (accused herself) introduced the defence that complainant wanted to shift to Delhi and pressurized her husband Radhey Shyam for the same, hence this false case.

DW2/Ram Niwas (accused himself) deposed on the same lines and added that complainant used to go to her parental house off and on and for the same panchayat was held twice. He also took the defence/plea of alibi on 30.10.1994 for the first time and stated that he alongwith his family members attended the grah pravesh ceremony of his maternal uncle Gopi Ram at village Jhangli, Distt. Fatehabad on the said date in the morning and returned in the evening.

DW3/Kedar Nath (accused himself) deposed on the same lines but added that complainant wanted to join a job in Delhi and only on this ground there were quarrels between accused Radhey Shyam and complainant. He also added embroidery to the testimony by introducing a new fact that when panchayat was held to resolve the issue complainant and her family members apologized. He further deposed that no dowry article was given at the time of marriage but further stated that during pendency of case at Tis Hazari, three articles i.e almirah, T.V and sewing machine were returned to the complainant.

DW4/ Suresh Kumar (jija of accused Radhey Shyam, who was earlier prosecution witness) deposed on same lines but added that pursuant to quarrel between complainant and Radhey Shyam, meeting was held in March/April 1992 in Bhuna, Mandi (whereas DW2/Raj Kumar deposed that in 1992, panchayat was held in Aggawal DharamShala in Bhuna).Further, he denied to have signed the seizure memo of istridhan articles or to join the investigation but when confronted he admitted his signatures on the seizure memo Ex.PW3/F. He also admitted to be one of surety of accused persons in the present case and failed to remember date, month or year on which all four persons namely Subhash, Ramesh, Maam Kaur and Bhim Sain offered

him Rs.1 lakh to depose against accused persons. He also admitted to have made no complaint to police/Court regarding the said allurement. Hence, this witness lacks credence.

DW□5/Saroj Bala (accused herself) is a hearsay witness to the panchayat proceedings and also failed to remember date, month or year when complainant asked accused Radhey Shyam to shift to Delhi.

DW□6/Bhushan Kumar (earlier PW) fails to know the reason of quarrel between accused and complainant as he was never present at that time and admittedly came to know of it from others. He also admitted to have cited as prosecution witness in the present matter and was interrogated by police official during investigation but later on deleted.

DW□7/Gopi Ram deposed that no dowry was demanded and whatever was given in marriage was voluntarily given. He also failed to know the reason of dispute and deposed that all accused persons were at his house attending muhurat ceremony on 30.10.1994 but failed to produce any documentary proof in order to prove the muhurat ceremony on 30.10.1994.

DW□8/Zile Singh is only witness to muhurat ceremony but failed to tell name of month in which aforesaid muhurat took place though he stated the date. Hence, he appears to be a tutored witness.

DW□9/Tarsen Jain (earlier PW) admitted to have joined the investigation and signed the seizure memo but failed to remember whether police recorded his statement u/s 161 Cr.PC and on confrontation admitted the same as Ex.P1. He admitted to have made no complaint qua allurement given by family members of complainant. He lacks credence being prosecution witness earlier.

DW□10/Nirmala (accused herself) also failed to remember date, month of year on which complainant told accused Radhey Shyam to shift to Delhi.

DW□11/Radhey Shyam (husband of complainant) deposed on the same lines but introduced a new fact during his examination by deposing that on 06.11.1992, complainant left the matrimonial home after quarrel and she took one bag, one suitcase alongwith jewellery of about 16 tolas with her. He went to take the complainant back to his house but all in vain, therefore, he filed a divorce case against her in Hissar Court. As a counter blast, maternal uncle of complainant Bhim Sain got this case registered on 30.10.1994 in PS Adarsh Nagar though he was not present at the spot and was attending grah pravesh ceremony of his maternal uncle at Jhandli Khurd. He admitted to have made no averment in his divorce petition that complainant wanted to settle in Delhi with him though this is the prime defence he has taken in the present matter. Further, he admitted that the said petition filed by him for dissolution of marriage, on ground of cruelty was dismissed with cost and observation that fault for matrimonial discord in the said case appears to be clearly of accused Radhey

Shyam and he cannot be allowed to take benefit of his own wrong, copy of the same is part of record. He also admitted to have filed no appeal against the said dismissal.

DW 12/Raj Kumar (accused himself) added more embroidery to the defence by stating that complainant left the matrimonial home in rickshaw with her articles and brother of complainant namely Subhash and her father slapped Radhey Shyam on the main road and took the complainant to their house (though the same has not been deposed by accused/husband Radhey Shyam himself). He also added that during panchayat proceedings in year 1993, injury was caused to him, his father and beatings were given to Radhey Shyam (though no other DW has mentioned the fact of beatings given to Radhey Shyam including Radhey Shyam himself). This witness also went to the extent of deposing that no action was taken by police despite the fact that he sustained injuries in panchayat proceedings and he went to Fatehabad Court and engaged a lawyer but his lawyer refused to file a case against another lawyer i.e Madan Lal being relative of complainant present in panchayat (though other DWs have deposed that after complaint, the matter was settled in PS Bhuna). Hence, this witness also lacks credence.

With this background, it is apparent that sham defence has been created by the accused persons as to reason of complainant leaving the matrimonial home and plea of alibi which was not taken at appropriate stage. Therefore, despite large number of defence witnesses they do not inspire confidence of the Court but there is a running thread in the prosecution story vis a vis all prosecution witnesses without major contradictions/improvements. There is ring of truth in the version of prosecution witnesses. Reliance is placed by this Court on judgment titled as *Bharwada Bhoginbhai Hirjibhai vs State Of Gujarat* 1983 AIR 753, 1983 SCR (3) 280 wherein it is held that "...over much importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen .....

(2) The powers of observation differ from person to person. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder .....

(3) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person .....

(4) Ordinarily a witness cannot be expected to recall accurately ..... (5) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts .....

Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important "probabilities□factor" echoes in favour of the version narrated by the witnesses".

Reliance has also been placed on judgment tiled as State Of U.P vs Anil Singh (SC) wherein it has been held that " invariably the witnesses add embroidery to the prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if there is a ring of truth in the main. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform".

Reliance has also been placed on judgment tiled as Undavali Narayana Rao vs State Of A.P (SC) wherein it has been held that "For the purpose of clause

(b) the essential ingredients are as under:

"(I) The harassment of a married woman(II) With a view to coercing her or any person related to her to meet the unlawful demand of dowry or for any property or valuable security or on account of her failure or failure of any person related to her to meet such a demand. Therefore, it is evident that the charge under Section 498A can be brought home if the essential ingredients either in clause (a) or (b) or both are found duly established".

Reliance has also been placed on judgment tiled as Girdhar Shankar Tawade v. State of Maharashtra, AIR 2002 SC 2078 wherein it has been held that " "cruelty" has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another. In explanation "b", there is absence of physical injury but it includes coercive harassment for demand of dowry etc. therefore the aforesaid provisions deal with patent and latent acts of the husband or his family members. But both are equally serious in terms of the provisions of the statute".

8. Now coming to commission of offence punishable u/s 406/34 IPC. To constitute offence U/s. 406 IPC there must be clear and specific allegation that accused was entrusted with some property or domain over it or domain over it, by the complainant, that the accused has dishonestly misappropriated or converted the same to its own use or that accused refused to return back the articles when the same were demanded by the complainant. Reliance is placed by this Court in judgment titled as Ms. Anu Gill V State and another 2001 V AD (Delhi)<sup>411</sup>. In the present matter no specific entrustment of dowry articles to any of accused persons has been proved, hence

question of its demand or refusal does not arise. Further, no bills of the aforesaid articles have been proved on record.

9. Under the aforesaid discussion it can safely be concluded that the prosecution has successfully proved the case against all the accused persons beyond reasonable doubt u/s 498A/34 IPC but failed to bring home the guilt of all the accused persons u/s 406/34 IPC as doubts have been casted qua the entrustment and misappropriation. Accordingly, all the accused persons namely Radhey Shyam, Ram Niwas, Raj Kumar, Kedar Nath, Phoolwati @ Phooli, Saroj Bala, Nirmala Devi and Raj Rani are convicted u/s 498A/34 IPC and are acquitted of the charge u/s 406/34 IPC. Announced and dictated in the open Court today i.e. on 10th August, 2016

(Shefali Barnala Tandon) MM, Mahila Court, North West Rohini Courts, Delhi  
All pages are duly signed.