

State vs . Rambir Singh Etc. on 21 April, 2011

State Vs. Rambir Singh etc.

IN THE COURT OF SHRI GURVINDER PAL SINGH
ADDL. SESSIONS JUDGE(FTC), SOUTH DISTRICT
SAKET COURTS, NEW DELHI

Session Case No. 37/09
ID No: 02403R058092004

State Vs. :

1. Rambir Singh
S/o Sh. Bhim Singh
2. Smt Santosh
W/o Sh Bhim Singh
3. Pankaj @ Sonu
S/o Sh Bhim Singh
- All R/o F-59 E,
Lado Sarai Village,
New Delhi
4. Smt Sunita @ Bala Rani
W/o Sh Brij Mohan Singh
R/o H. No. 27, Gali No. 1,
Bhudutt Colony, Faridabad,
Haryana

SC No. 37/09

1/59
State Vs. Rambir Sin

FIR No. 535/2004
P.S. Malviya Nagar
U/s 498A/ 304B/406/35 IPC

Date of Institution : 06/08/2004

Date when arguments
were heard : 08/04/2011

Date of Judgment : 21/04/2011

JUDGMENT

BRIEF FACTS:

Adumbrated in brief the prosecution case is as follows:

The marriage of Babita was solemnised with accused Rambir Singh on 25/02/2001 as per Hindu Rites & Ceremonies and she lived thereafter at her matrimonial home at F-59E, Lado Sarai Village, New Delhi till 12/06/2004.

On 12/06/2004 pursuant to receipt of DD No. 16, copy Ex PW14/A, ASI Nawab Khan, PW14 alongwith Ct Ranbir, PW13 reached Gujarmal Modi Hospital, Saket and found Smt Babita admitted there. PW14 moved an application Ex PW14/B to the State Vs. Rambir Singh etc. doctor, upon which the doctor declared Smt Babita unfit for statement. On coming to know that the marriage of Babita took place 3 1/4 years prior to incident, PW14 ASI Nawab Khan immediately informed the SHO, P.S Malviya Nagar. After sometime the doctor declared Smt Babita dead. PW14 again informed the SHO regarding death of Babita and also informed the SDM Sh R.K Meena, PW15. PW15 directed the SHO to preserve the dead body in the mortuary and also to inform the parents of deceased. On 13/06/2004 at about 9 am PW15, SDM reached AIIMS Hospital and found the parents of deceased Babita and other persons present there. PW15 recorded statement Ex PW1/A of Sh Manoj Kumar Tokas, PW1 and Ex PW5/A of Mrs. Sahab Kaur, PW5, the brother and mother of the deceased respectively.

In Ex PW1/A, PW1 Sh Manoj Kumar Tokas narrated that he was resident of Village Ambar Hai, was building material supplier, elder brother of deceased Babita; marriage of Babita took place on 15/02/2001 with accused Rambir Singh as per Hindu Rites; from after the marriage, in laws of Babita used to give her beatings and from 15 days later to marriage, the in laws of Babita sometimes demanded State Vs. Rambir Singh etc. money and again and again demanded maruti car though they had given much jewelery to their sister but yet sister in law of Babita namely Sunni exhorted Babita for bringing jewelery. PW1 further stated in Ex PW1/A that about four and half months earlier they had given Rs 50,000/- for service of their brother in law accused Rambir Singh; on 12/06/04 at about 1.30 pm he received telephone call of Rambir Singh saying Babita is vomiting, upon which PW1 told accused Rambir Singh to take Babita to hospital which the accused Rambir did not do and in half an hour PW1 reached the matrimonial home of deceased Babita, came to know that two minutes earlier of his reaching there, Babita was taken to Modi Hospital though she was unconscious and after two hours Babita expired. PW1 in Ex PW1/A further alleged that on 08/06/04 his sister Babita telephonically told him, " Bhai Inko Car De Do Warna Ye Log Mujhe Maar Dalenge". PW1 alleged in his statement that for not

completing their demand, in laws of Babita had killed her and he laid suspicion saying the in laws of Babita namely Sunni, younger sister in law of Babita; Smt Santosh, mother in law of Babita; Rambir Singh, husband of Babita and Sonu @ Pankaj, brother in law of Babita together killed Babita.

State Vs. Rambir Singh etc. PW15 endorsed the statements of PW1 and PW5 with his forwarding letter Ex PW15/A to the SHO, P.S Malviya Nagar and case FIR No. 535/04, under Sections 498A/304B IPC was registered. Matter was investigated. Charge sheet was filed for offences under Sections 498A/304B/406A/34 IPC.

2. After compliance of Section 207 Cr.P.C, the matter was committed to the court of Sessions.

CHARGE:

3. On 27/05/2006 charge for offences under Sections 498A/35 IPC; 304B/35 IPC against all the accused and for offence under Section 406/35 IPC against accused Rambir Singh and Santosh was framed by my Ld. Predecessor to which accused persons pleaded not guilty and claimed trial.

EVIDENCES:

4. To connect the accused with the offences alleged, the prosecution has examined in all 22 witnesses in this case.

State Vs. Rambir Singh etc. OFFICIAL WITNESSES:

4A(i) PW9 ASI Narender Singh being duty officer has proved his scribed FIR No. 535/04 as Ex PW9/A. 4A(ii) PW12 Inspector Naresh Solanki received investigation on 17/06/2004 and formally arrested accused Sunita @ Bala on 10/07/2004 who was enlarged on anticipatory bail. PW12 also seized the list of dowry articles Exts PW1/C and PW1/D given to deceased Babita by her parents and the original bill of mobile phone make Motorola Ex PW1/B given to him by PW1. PW12 also arrested accused Pankaj @ Sonu on 24/07/2004.

4A(iii) PW14 ASI Nawab Khan accompanied by PW13 Ct Ranbir Singh pursuant to receipt of copy of DD No. 16 had gone to G.M Modi Hospital, Saket where Babita was found admitted and on an application of PW14, Ex PW14/B, Babita was declared unfit for statement by the doctor. PW14 informed the SHO, P.S Malviya Nagar, when he came to know that the marriage took place 3□4 years prior to incident and after sometime when the doctor declared Babita dead, PW14 again informed the SHO regarding death of Babita and State Vs. Rambir Singh etc. also informed local SDM, PW15 Sh R.K Meena. The treating doctor at G.M Modi Hospital had handed over him the clothes and ornaments of the deceased Babita which were seized by PW14 vide memo Ex PW14/C and Ex PW1/G; Saliva (lakha) of deceased after being kept in a sealed pullanda was sealed with the seal of hospital and the pullanda was seized by

PW14 vide seizure memo Ex PW14/D. As per the direction of the SDM, the dead body of deceased was sent to AIIMS to be preserved there for 72 hours.

On 13/06/2004 the inquest proceedings were conducted by PW15, SDM, Sh R.K Meena who reached at AIIMS Hospital and recorded the statement of PW1 and PW5 as Ex PW1/A and PW5/A respectively, where dead body was identified by brother and uncle of deceased vide memos Ex PW1/E and Ex PW6/A respectively. Vide forwarding letter Ex PW15/A, PW15 forwarded the statement of brother and mother of the deceased to the SHO.

After the postmortem the doctor handed over a sealed pullanda containing the viscera of the deceased and one sample seal to PW14 which was seized vide memo Ex PW14/E. After postmortem, as per the direction of SDM, the dead body was handed State Vs. Rambir Singh etc. over to the relatives of the deceased on 13/06/2004. PW14 has also tendered the FSL report of viscera of deceased as Ex PX. 4A(iv) PW16 Inspector Sanjay Bhardwaj collected the FSL result Ex PX and filed supplementary charge sheet.

4A(v) PW17 Inspector Manish Joshi received the case for further investigation and only prepared the charge sheet and submitted to the court on behalf of the SHO.

4A(vi) PW18 SI P.N Verma testified of having arrested accused Santosh and Rambir from their house no. F-59, Lado Sarai, New Delhi on 13/06/2004 vide arrest memos Ex PW13/C and PW13/A respectively and their personal searches were conducted vide memos Ex PW13/D and PW13/B respectively.

4A(vii) PW19 HC Shyam Singh is the Mal Khana Mohrar with whom PW14 deposited the containers sealed containing viscera, larva as well as articles of personal search of deceased and her clothes, in respect of which the relevant entries were made in register no. 19 running into three pages, Ex PW19/A (colly). On 03/04/2006, PW19 handed over the containers of viscera, stomach wash of deceased Babita duly sealed to PW20 Ct Harbir Singh. PW20 Ct State Vs. Rambir Singh etc. Harbir Singh took them to FSL, Rohini vide Road Certificate Ex PW19/B and deposed that the period in which these exhibits remained with him, they were not tampered with. 4A(viii) PW21 Sh Amar Pal Singh is the Sr. Scientific Officer (Chemistry), FSL, Rohini who has proved his report Ex PX with the opinion that after chemical analysis of viscera, it showed positive results of aluminium phosphide in stomach wash, stomach and piece of small intestine while the pieces of liver, spleen, kidney and blood sample of deceased gave positive results for presence of phosphide. MEDICAL WITNESSES:

4B(i) PW22 is the lady Dr. Karuna Prasad, Resident Medical Officer, G.M Modi Hospital, Saket. She testified that on 12/06/2004 she was Resident Medical Officer on emergency duty and patient was brought by her husband that day at about 2.15 pm who was examined vide MLC Ex PW4/A, which was in her hand. PW22 stated

that patient was drowsy, incoherent, peripheres cold and clammy, her pulse rate was 90 per minute, BP 80/60mmhg, respiration normal, chest-bilateral conducted sound plus, CVS□S1 S2 normal, P/A□soft, State Vs. Rambir Singh etc. CNS□drowsy, incoherent, B/L□pupils normal size, normal reaction; alleged history of patient told by the husband was that she had taken some? one packet Celphos on 12.06.04 at about 1.43pm following which she developed vommiting and drowsiness; this episode took place following a discussion with the husband of the lady. PW22 stated that she had mentioned all these facts in MLC Ex. PW4/A, which bears her signature at point A. PW22 further stated that she had given the first aid and given her gastric lavage for stomach wash (cleaning process); the process was completed; the patient was put on I/V fluids, oxygen, suction and her ECG, chest X□ray was done. PW22 stated that after her examination patient was shifted to ICU where she was treated by other doctor.

PW22 stated that later around 4.45 pm she came to know that said patient had expired.

PW22 has also proved the death summary of Babita as Ex PW22/A which was scribed by Dr. Deepa Roy who had left the services of the hospital and her present whereabouts were not known and whose writing and signature were identified by PW22 as PW22 had worked with her.

State Vs. Rambir Singh etc. Before the examination of PW22 Dr Karuna Prasad, PW4 Record Clerk Horam Singh from Gujarmal Modi Hospital, was examined regarding MLC Ex PW4/A before my Ld. Predecessor.

Death Summary Ex PW22/A of deceased Babita finds mention of the case of deceased Babita to be aluminium phosphide poisoning; patient brought to casualty with alleged history of consumption of aluminium phosphide (sulfas) grey colour powder one packed as empty packet (sachet) was brought by her husband; patient herself said, she has consumed grey colour powder (food grain poison); patient was in shock and later the treatment given is mentioned. Finally Babita was declared dead at 4.40 pm on 12/06/2004 as she could not respond to the treatment. 4B(ii) PW11 Dr. Sanjeev Lalwani, Assistant Professor, Department of Forensic Medicine, AIIMS has proved his postmortem report Ex PW11/A. PW11 stated that on 13/06/2004 as Senior Resident, he had conducted the postmortem over the dead body of deceased Babita and on examination found rigor mortis was present all over the body; postmortem staining was present on back and dependent parts except pressure areas; eyes and mouth were closed;

State Vs. Rambir Singh etc. there was no sign of decomposition; faecal stain were seen around anal region; there was no external injury on the body; brain was congested, lungs were congested and oedematous; stomach was containing about 150 ml mucoid mixed brownish liquid; mucosa was congested; uterus was showing

menstrual changes; viscera was preserved for chemical analysis as the deceased was brought with alleged history of consumption of celphos tablets on 12/06/2004 at about 1.43 pm; she was taken to G.M Modi Hospital where she died at 4.40 pm; the time since death was about 16 to 24 hrs; the cause of death in this case was kept pending till report of FSL/CFSL regarding chemical analysis of viscera was made available.

After having seen FSL report Ex PX, PW11 stated that on chemical analysis of viscera, it showed positive results of aluminium phosphide in stomach wash, stomach and piece of small intestine, the liver, spleen, kidney and blood sample of deceased gave positive results for presence of phosphide. In view of the FSL report and finding as mentioned in the postmortem report, PW11 was of the opinion that the cause of death in this case was aluminium phosphide poisoning.

State Vs. Rambir Singh etc. MATERIAL WITNESSES:

The case of the prosecution hinges on the testimonies of material witnesses namely PW1 Sh Manoj Kumar Tokas, the first informant and brother of deceased; PW8 Sh Ajay Kumar and PW10 Sh Manjeet Tokas, other two brothers of deceased; PW5 Smt Sahib Kaur, mother of deceased; PW6 Sh Bhagwan, the maternal uncle of deceased; PW7 Sh Sukhbir Singh, paternal uncle of deceased Babita; PW2 Sh Virender, husband of maternal aunt of deceased (Mausa) as well as PW3 Sh Pahalwan Singh, friend of father of deceased. The appreciation of evidence of these witnesses shall follow later in the course of judgment.

STATEMENT OF ACCUSED:

5. The incriminating evidence in the statement of witnesses was explained to the accused persons when they were examined under Section 313 Cr.P.C. The accused persons pleaded innocence and false implication.

All the accused admitted of the fact of marriage of State Vs. Rambir Singh etc. deceased Babita with Rambir on 25/02/2001 as per Hindu Rites and Ceremonies and sufficient dowry as per the capacity of parents of Babita was given. All accused persons also admitted that in the marriage motor cycle was received by accused Rambir Singh. All accused denied of having harassed, beaten Babita or having demanded any dowry including maruti car, jewelery, mobile phone, cash Rs 50,000/- for the job/service of accused Rambir Singh or plot of 50 square yards in Dwarka, Qutab Vihar Colony from relatives of Babita at the time of Chhuchhak ceremony after birth of boy to Babita. Accused persons also denied of deceased Babita having made telephone call on 08/06/2004 to PW1 asking him, "Bhai Inhe Gaari (maruti car) de de, Nahi to ye mujhe jaan se maar deinge (brother, you give them maruti car, otherwise they would kill me). Accused Rambir Singh denied of the fact of having not taken Babita to hospital in time and stated that he made telephone call to PW1 while he was in TSR with Babita and his mother on the way to hospital, having taken Babita to hospital at the earliest and in time.

DEFENCE EVIDENCE:

6. Five witnesses were examined as DW1 to DW5 in defence State Vs. Rambir Singh etc. evidence.

6(i) DW1 Sh Rai Singh is the real brother of Santosh and maternal uncle of the other accused. He stated that the marriage of his nephew Rambir was solemnized on 25/02/2001 as per Hindu rites and ceremonies; he was not knowing as what happened and how the present incident happened; his nephew Sonu @ Pankaj was staying with him during the summer vacations. DW1 stated that when the incident happened, accused Sonu @ Pankaj was staying with him and his family.

6(ii) DW2 is accused Rambir Singh himself who testified under Section 315 Cr.P.C stating his marriage was solemnized on 25/02/2001 as per Hindu rites and ceremonies with Babita, now deceased, but no demand whatsoever was made by him or by his side from the parents of Babita; DW2 stated that his son Jatin was born on 10.02.02; they hosted a function on this occasion but nothing was demanded from his in-laws while he never demanded a car or land or cash or any other thing from his in-laws (family); his son was student in 3rd class and he took care of his son after the death of his wife. As State Vs. Rambir Singh etc. per DW2, he got a job as a Junior Assistant, fire services, Airport Authority of India for which he had to undergo 16 week training in Calcutta for this job where he had gone alone in February and came back to Delhi on 05.06.04 after completion of his training while he never visited Delhi in between. DW2 further stated that after completion of training he was given posting in Kangada in Himachal Pradesh where he had to join this posting within 20 days from his return. DW2 placed on record a recruitment letter issued by Airport Authority of India as Ex. DW2/A. DW2 stated that his wife was unhappy; used to share her feelings with him and often complained as to why DW2 did not take her along with him in the training period. DW2 further stated his father was also paralyzed, his son was about 2 years old and his wife was finding it difficult to cope up with the pressure of bringing up the child and looking after his ill father. DW2 stated that when he was joining the training period, his wife insisted to accompany him but DW2 explained his difficulty that it is not possible for her to join DW2 as during the training period he was staying in a hostel belonging to Airport Authority of India but on his new posting to Kangada after the training period his wife insisted that she would State Vs. Rambir Singh etc. join him in Kangada if she can not accompany him then DW2 will have to leave the job. DW2 tried to explain her that he will go settle down first and then will call her after arranging a room but due to all this, his wife deceased Babita was annoyed and was in anger on the aspect of his going alone for the job without taking her. Also DW2 stated that their financial condition was good; whenever there was any need, DW2 used to give money as loan to PW1 Manoj, brother of his deceased wife for work of property which money was used to be returned to him but after a considerable period. DW2 deposed of having got opened saving bank account no. 13214 in Central Bank of India, Mehrauli of his wife Babita where DW2 used to deposit the cash and placed on record the saving bank pass book of said account as Ex. DW2/B. DW2 stated that his wife, deceased Babita, was housewife and not a working lady; as on the date of occurrence, the credit balance in the saving bank account of deceased was more than Rs. 50,000/- and even on the day of his examination the credit balance stands.

Regarding sequence of occurrence on the day of incident, DW2 stated that on 12.06.04 at about 1.45pm, he was sitting on Sofa State Vs. Rambir Singh etc. outside the room after having his lunch

and was with his son. DW2 stated that he had lunch with his wife, deceased. DW2 stated that he was residing at 1st floor; his parents were residing on the ground floor; his wife was in anger and tension on the aspect of job transfer of DW2 and was asking him to take her along to the place of his posting. DW2 explained to her that initially he will go then later he will call her, upon which his wife Babita, now deceased, told, "tum akele jaoge to akele hi rahoge". DW2 stated that he understood that she was saying it casually and after sometime, Babita, took child from him, went in the room and came out after sometime and there after Babita vommitted. DW2 stated that he immediately went and brought TSR and took Babita to hospital namely Modi Hospital where she was admitted in the casualty and given treatment. DW2 stated that on the way to hospital in TSR, he made call from his mobile phone to PW1 Manoj, brother of Babita and informed him who alongwith his relatives came after 45 minutes or 1 hour to hospital. After sometime Babita was declared dead upon which PW1 and his relatives gave beatings to DW2. Police officials arrested DW2 and his mother there. DW2 stated that he and his mother had taken Babita to Hospital. DW2 stated State Vs. Rambir Singh etc. that his wife Babita used to become angry on petty matters. On way to hospital in TSR even Babita apologized to DW2 saying all happened in anger and if possible then she may be pardoned. 6(iii) DW3 accused Smt Sunita also entered into the witness box and testified under Section 315 Cr.P.C. DW3 stated of accused Rambir having got married on 25/02/2001 while she was married in the year 1994 and she had a daughter of age 13 year who was born in the year 1998; her matrimonial house was at Ballabh Garh, Haryana and considerable time took for commuting between her house and her parental house. DW3 stated that she had cordial relationship with deceased Babita and she used to visit her parental house on long vacations of her child and occasions. DW3 also stated that she had no problems with deceased Babita and she never demanded any dowry or article from Babita or from her parents and brother. DW3 stated that her daughter was studying in class 1st in C.R. Model, High School, Ballabgarh.

6(iv) Sh K.S Tiwari, Special Assistant, Central Bank of India, has proved on record as Ex DW4/A (colly), the duly attested statement of account no. 1125141807 (old number 13214) of Mrs. State Vs. Rambir Singh etc. Babita at Mehrauli Branch of Central Bank of India alongwith copies of specimen signature card, account opening form with annexures. 6(v) DW5 Smt Sheela Devi testified of accused Rambir being her brother in law (devar) in relation saying her mother in law and mother of Rambir were sisters while her native parental village was Amrahi. DW5 stated that she had acted as mediator for marriage of Rambir with Babita and she had attended the marriage function and later the chuchak ceremony function. DW5 stated that family of the Babita, now deceased, gave articles in marriage as per their wishes but no demand was made from the side of Rambir or his family. DW5 also stated that when she was married, no plot was given as that was not the custom.

ARGUMENTS:

7. I have heard the arguments of Ld. Addl. PP for the State, Ld. Counsel for the accused and the accused and have perused the record including the evidence and given my thoughts to the rival contentions put forth.

State Vs. Rambir Singh etc.

8. Ld. Addl. PP for the State had argued that Smt Babita had died in abnormal circumstances within seven years of her marriage and the material witnesses by their testimonies have proved on record that Smt Babita was subjected to cruelty and harassment by the accused persons who were her husband and the relatives of her husband in connection with demands for dowry by demanding for car, plot, mobile phone and cash. It was also argued that even four days prior to her death i.e on 08/06/2004 the deceased made a telephone call to her brother PW1 saying " Bhai Inko Car De Do Warna Ye Log Mujhe Maar Dalenge". Pursuant to that even the other brother of deceased namely PW8 Sh Ajay Kumar went to the matrimonial home of the deceased on 09/06/2004 pleading with the in-laws of her sister not to harass Babita, upon which even the in-laws of Babita said that if the side of deceased did not give car even now then they will have to repent through out the life. Ld. Addl. PP argued that accordingly since the demand and the harassment continued soon before the death there was direct nexus and proximity of the cause of death with the cruelty meted out to deceased and the demands of dowry soon before the death of deceased by husband State Vs. Rambir Singh etc. and his relatives.

Also was argued by Ld. Addl. PP for State that in their statement under Section 313 Cr.P.C, accused had failed to explain the incriminating circumstances and the husband accused Rambir Singh failed to elicit the talks inter se him and his deceased wife leading her to take poisonous substance; committing suicide in the abnormal circumstances, making it a case for the invocation of the presumption under Section 113 B of Evidence Act. Ld. Addl. PP further argued that even PW22 Dr. Karuna Prasad in her version gave the vivid and detailed statement of the treatment advanced to deceased and the previous history told to her by accompanying husband saying the taking the pills followed discussion of the husband accused with the deceased.

Also was argued by Ld. Addl. PP for State that it was the accused Rambir to elicit of the talks transpired between him and the deceased resulting in the consumption of the poisonous substance by deceased and for his non explanation under Section 313 Cr.P.C an adverse inference may be drawn against the accused.

State Vs. Rambir Singh etc.

9. Ld. Defence Counsel argued that deceased was unhappy as her husband accused Rambir did not take her alongwith him in his training period outstation, felt difficult to cope with the pressure of bringing up the minor child and looking after the paralyzed and ill father of accused Rambir, insisted to join the company of accused Rambir during his training period outstation as well as on his posting outstation and did not hear the plea of the accused Rambir for going first outstation at his posting, settle down there and then call her after arranging the accommodation.

Ld. Defence Counsel further argued that because of that deceased became annoyed and was in anger on the aspect of accused Rambir going alone for the job without taking his wife, deceased Babita.

It was further argued by Ld. Defence Counsel that even the accused Rambir had opened the saving bank account in the name of his wife during her life time where he deposited cash periodically and the statement of account showed there being sufficient credit balance there because of which he

stated that there was no occasion for making any demands on the part of the accused persons for any State Vs. Rambir Singh etc. money or car since already there was enough money in the saving account of deceased.

It was also argued that pursuant to the death of the deceased, her relatives have concocted the version of demand of money, car and mobile phone who in the course of their testimonies made inconsistent and inter se contradictory statements with each other saying about holding of Panchayat but unable to say when and where these Panchayat were so held and for how many number of times.

It was also argued that even bald allegations have been levelled by the witnesses lacking any basis and in the evidence, there is nothing proved on record qua any entrustment of articles of Istri Dhan/dowry at the time of marriage, the demand of such articles for return and the consequent refusal by any or all of the accused. Also it was argued by Ld. Defence Counsel that matrimonial home of the deceased was 4/5 Kms away from the Modi Hospital and immediately after the accused Rambir Singh came to know of the fact of the deceased consuming pills, he went to fetch TSR as no car could go inside near the house of accused persons from the main road and in State Vs. Rambir Singh etc. the TSR accused Rambir Singh with his mother Santosh had taken the deceased to Modi Hospital in right earnest; had the intention of the accused persons been of causing of the death of the deceased, then there was no occasion for them to have informed the relatives of deceased Babita on telephone and to immediately take her to hospital. Ld. Defence Counsel further argued that immediately after the death of the deceased Babita, accused Rambir Singh and his mother Santosh were unlawfully detained in whole night in the police station by the police officials while their arrest were shown on the next day. Ld. Defence Counsel argued that before the SDM the brother Sh Manoj Kumar Tokas, PW1 and Mrs. Sahab Kaur, PW5, mother of deceased never stated as to which accused had demanded what nor any fact was told about holding of Panchayat. Ld. Defence Counsel further argued that PW8 Sh Ajay Kumar did not give any statement to either the SDM or the senior police official at the earliest but gave statement to the police after about a month which raises doubt and is full of the improvements.

Ld. Defence Counsel argued that regarding the version of occurrence on 08/06/2004 and 09/06/2004, the versions of the State Vs. Rambir Singh etc. relatives of the deceased Babita are concocted to bring into existence the alleged demand of dowry soon before the death while the deceased was placed happily in her matrimonial home and only on the refusal of the accused to take her alongwith him at the place of his posting, outstation, committed the act of suicide and the accused deserve acquittal.

Ld. Defence Counsel has relied upon following precedents:

1. Durga Prasad & Anr. vs. State of M.P, 2010 (3) JCC 1852,
2. Arvind Singh vs. State of Bihar, 2001 II AD (Cr.) SC 77,
3. Naraini Devi vs. State, 1992 JCC 284,

4. Sham Lal vs. State of Haryana, 1997 Cri.L.J. 1927,
5. Hazarilal vs. State of M.P, Appeal (Crl.) 585 of 2001, decided on 20/06/2007 by the Apex Court,
6. Satvir Singh & Ors. vs. State of Punjab & Anr., 2001 III AD (Cr.) SC 393,
7. Kans Raj vs. State of Punjab & Ors., 2000 II AD (Cr.) SC 481.

State Vs. Rambir Singh etc. APPRECIATION OF EVIDENCE:

10. PW10 Sh Manjeet Tokas, brother of deceased, in the course of his testimony stated that the mother in law of deceased namely Santosh had taken all the gold ornaments of deceased and kept the same in her custody after the marriage. Regarding the said fact PW10 was confronted and contradicted with his previous statement Ex PW10/DA where it was not so recorded. Excepting aforesaid fact, there is nothing in the entire prosecution evidence qua entrustment of any Istri dhan/dowry articles of deceased to any or all accused. There is no whisper even in the evidence of prosecution that any or all accused had any dominion over the Istri dhan/dowry articles of deceased or they having converted the same to their own use or disposed them off without any express or implied consent of the deceased or for such reasons there had been any demand from deceased or any of her relatives and pursuant thereof any refusal on part of any or all the accused. In accordance thereof the evidence on record lacks material and substance for the accused Rambir and Santosh having dishonestly misappropriated the Istri dhan articles of deceased or even any such articles having been entrusted to them and State Vs. Rambir Singh etc. offence under Section 406 IPC read with Section 35 IPC against accused Rambir and Santosh stands not proved.

11. The material witnesses PWs 1,5,8 and 10 all have testified that the marriage of Babita was solemnized with accused Rambir Singh on 25/02/2001 according to Hindu Customs and Rites. On 12/06/2004 accused Rambir took Babita to G.M Modi Hospital in the afternoon time where accused Rambir told PW22 Dr. Karuna Prasad that Babita had taken some? one packet Celphos on 12/06/2004 at about 1.43 pm following which she developed vomitting and drowsiness and this episode took place following a discussion with accused Rambir with Babita. Said facts were mentioned by PW22 in MLC of Babita, Ex PW4/A and PW22 in accordance thereof testified in court. Even accused Rambir in the course of his statement under Section 313 Cr.P.C admitted said facts. In the course of said afternoon later after 4 pm, Babita expired in ICU of G.M Modi Hospital, her death summery Ex PW22/A was prepared by Dr. Deepa Roy which was proved by PW22. Undisputedly, Babita expired on 12/06/2004 i.e within seven years of her marriage with State Vs. Rambir Singh etc. accused Rambir.

12. Much stress was laid upon by the Ld. Defence Counsel that in the statement Ex PW1/A and Ex PW5/A given by PW1 and PW5 respectively to SDM PW15, there is lack of mention of the vivid details of alleged dowry demands, harassment meted out to Babita pursuant to marriage, soon before her death which could consequently result in creating an environment for consumption of poisonous substance by Babita.

13. In the case of State of Uttar Pradesh vs. Krishna Master & Others, (2010) 12 SCC 324, it was held by the Apex Court that the FIR need not be an encyclopaedia of all the facts and circumstances on which the prosecution relies. The main purpose of FIR is to enable a police officer to satisfy himself as to whether commission of cognizable offence (s) 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 details of the prosecution case in the FIR. FIR is never treated State Vs. Rambir Singh etc. as a substantive piece of evidence and has a limited use i.e it can be used for corroborating or contradicting the maker of it. Law requires FIR to contain the basic prosecution case and not minute details. The law developed on the subject is that even if an accused is not named in the FIR he can be held guilty if prosecution leads reliable and satisfactory evidence which proves his participation in crime.

14. I advert to the statement Ex PW1/A given by PW1 to the SDM on the morning of 13/06/2004 which finds mention inter alia of the fact that pursuant to marriage of Babita with accused Rambir on 25/02/2001 the in laws of Babita were giving beatings to her; from 15 days later to marriage, the in laws of Babita sometimes demanded money and again and again demanded maruti car, despite the fact that Babita was given many jewelery articles. Even there is mention of fact that on 08/06/2004 PW1 had received a telephone call of Babita in which she told PW1 that, " Bhai Inko Car De Do Warna Ye Log Mujhe Maar Dalenge".

State Vs. Rambir Singh etc.

15. In Ex PW5/A, the mother of deceased stated to PW15 SDM inter alia that from after the marriage Babita was being beaten by her in laws who even used to make dowry demands and demands of Maruti car despite the fact that Babita was given many jewelery articles.

16. PW8 testified that after 10/15 days of marriage of his sister when he went to the house of Babita then all the accused persons stated that, " Amrahi walo ne to hame motorcycle de kar hame tarka diya, ham soch rahe the ki Amrahi wale car denge". PW8 also testified that in the year 2004 accused Rambir and Santosh demanded Rs 50,000/□for arranging a job for accused Rambir in Airport Authority of India and they had also threatened that if said amount is not given, then Babita would be divorced, upon which Rs 50,000/□were given to in laws of Babita. PW8 also stated that accused Rambir also made a demand of mobile phone which was fulfilled. PW8 stated that accused used to harass his sister on petty matters and also used to beat her.

State Vs. Rambir Singh etc.

17. True that in recording the statement of PW8 by the officers of investigation agency there is a delay. Death of Babita took place on 12/06/2004 while the statement of PW8 in the investigation was recorded in July, 2004. It was argued by Ld. Defence Counsel that though it was stated by PW5, mother of deceased, that when she was enquired by SDM on 13/06/2004 PW8 was present who was also inter alia enquired by the SDM. PW8 in the course of his testimony stated that at the time of incident he was working as a driver of the car of private company and in the course of his official duty he was away to Himachal Pradesh and had reached Delhi on the next day of occurrence directly

on the cremation ground and did not meet the police and SDM and later had gone back to Himachal Pradesh on 14th or 15th June, 2004 by bus in the morning, did not visit the police station nor was enquired by the police or SDM before he left the Delhi and had gone back to Himachal Pradesh since he had left the owner of his company in Himachal Pradesh. PW8 explained further that he again came to Delhi in the night before the tehravi of his sister and thereafter remained in Delhi and no police official had visited his house in his presence nor was called by police or any other State Vs. Rambir Singh etc. authority for any enquiry or for investigation in the month of June, 2004.

18. PW15 Sh R.K Meena, the then SDM, in his testimony stated that he had recorded the statements Ex PW1/A and Ex PW5/A of the brother and mother of deceased respectively. PW15 was not put any question in the course of examination by the Ld. Defence Counsel for the accused as to whether he enquired or recorded any statement of PW8 Sh Ajay Kumar, brother of deceased. The discrepancy in the testimony of PW5, the mother of the deceased can be attributed to an unequal dual between a rustic and a seasoned counsel equipped with legal acumen and arising out of normal error of observations, retention and reproduction of facts due to lapse of time, due to mental disposition such as shock and horror occasioned to PW5, the mother whose daughter died under abnormal circumstances.

19. PW8 further testified that the accused Sunita used to instigate accused Rambir and Santosh against Babita on petty State Vs. Rambir Singh etc. matters when ever she used to come at Lado Sarai where she used to stay for 4-5 days in her visit. PW8 also testified that the accused persons used to harass Babita on petty matters and used to beat her sister. On coming to know of telephone call made by Babita to PW1, PW8 had gone to matrimonial home of Babita on 09/06/2004. PW8 stated that at that place he pleaded with the in laws of Babita not to harass Babita, upon which in laws of Babita said that if they do not give a car even now, then they will have to repent throughout the life. After making said request PW8 had returned and as he was driver in a company, he had gone to Himachal Pradesh with the owner of his company. PW10, the other brother of deceased, inter alia testified that accused Pankaj used to beat Babita and even forcibly took money from her.

20. PW1 Sh Manoj Kumar Tokas inter alia testified that he had visited the house of PW3 Pahalwan Singh in the month of January, 2004 and asked him for Rs 50,000/- to meet the demand of accused Rambir Singh and Santosh who pressurized them for said money for job/service of accused Rambir. PW3 Sh Pahalwan Singh State Vs. Rambir Singh etc. stated that he could only arrange Rs 25,000/- which he gave to PW1 who in turn arranged other Rs 25,000/- within the family and paid Rs 50,000/- to accused Santosh in the presence of accused Rambir.

21. PW1 stated that in between 1.15 to 1.30 pm accused Rambir made a telephone call to him informing him that Babita was was vomitting. PW1 advised him to take her to the best nearest hospital immediately and informed him that he will also reach. On reaching Lado Sarai at the home of accused Rambir within 30 minutes PW1 came to know that just two minutes before his reaching, Babita was taken to hospital.

22. PW11 Dr. Sanjeev Lalwani conducted the postmortem on the body of deceased has proved his report Ex PW11/A and had opined the cause of death of Babita was aluminium phosphide poisoning

which poisoning was confirmed by the viscera report of FSL, Ex PX. Death of Babita by consuming poisonous tablets of aluminium phosphide is an admitted fact by both the parties.

State Vs. Rambir Singh etc.

23. The version of the defence was that deceased was unhappy as her husband accused Rambir did not take her along with him in his training period outstation, felt difficult to cope with the pressure of bringing up the child and looking after the paralyzed and ill father of accused Rambir, insisted to join the company of accused Rambir during his training period outstation as well as on his posting outstation and did not hear the plea of the accused Rambir for going first outstation at his posting, settle down there and then call her after arranging the accommodation. Also is the case of defence that because of all this deceased became annoyed and was in anger on the aspect of accused Rambir going alone for the job without taking his wife deceased Babita and then she committed suicide by taking poisonous tablets. Also is the defence that to save deceased, she was immediately rushed to G.M Modi Hospital by accused Rambir who on the way informed PW1 on telephone.

24. DW2 accused Rambir in the course of his testimony under Section 315 Cr.P.C has placed on record Ex DW2/A, the recruitment letter issued by Airport Authority of India bearing dated State Vs. Rambir Singh etc. 02/07/2004 sent by speed post, envelope enclosed bearing the pasted receipt of speed post bearing date 05/07/2004, as the date of its dispatch. In accordance thereof, the said letter must have reached to accused Rambir later to 05/07/2004 and not before 05/07/2004. Said letter finds mention of the standard terms and condition of appointment of Rambir at Kangra, Himachal Pradesh having been earlier sent but these have not been placed on record to elicit the date nor are proved as to when it was dispatched and received by accused Rambir. Ex DW2/A also finds mention of accused Rambir having time to report for duty on or before 15/07/2004 failing which it was to be presumed that he was not interested in such appointment as Junior Assistant with Airport Authority of India with the place of posting at Kangra, Himachal Pradesh. The deceased Babita died on 12/06/2006. The defence of the accused has been made vivid and clear in the preceding paragraphs. Accused Rambir has failed to place on record and prove any document for he having been required to join his posting in Kangra in Himachal Pradesh within 20 days from 05/06/2004 i.e his date of return after completion of his training, as was so deposed by accused Rambir as DW2. Instead the State Vs. Rambir Singh etc. document, Ex DW2/A brought on record proves of the same being dispatched on 05/07/2004 embodying the joining date for duties to be 15/07/2004. Accused Rambir in the course of his statement under Section 313 Cr.P.C kept mum as to what discussion took place between him and deceased Babita resulting in consuming Celphos tablets by the deceased in the afternoon of 12/06/2004 though accused Rambir admitted of having told PW22 Dr. Karuna Prasad at G.M Modi Hospital that this episode took place following discussion of accused Rambir with deceased Babita, as was testified by PW22 in court.

25. On 15/02/2011 when accused Rambir was examined under Section 313 Cr.P.C he pleaded innocence and false implication but when he later entered into the witness box and was examined under Section 315 Cr.P.C as DW2 on 05/03/2011, he became wiser, came up with the version of the defence elicited herein above in the preceding paragraphs, but withheld and has not placed on record any document communicating his place of posting at Kangra, Himachal Pradesh by the

Airport Authority of India, received prior to receipt of State Vs. Rambir Singh etc. Ex DW2/A. The material prosecution witnesses feigned ignorance of any such place of posting of accused Rambir at Kangra, Himachal Pradesh or he being required to report at such place of posting in the month of June, 2004. Talks between the husband and wife are the privileged communication, but yet when the husband faces the charge under Sections 304B and 498A IPC and the incriminating circumstances including that of the consumption of the Celphos tablets by deceased Babita pursuant to discussion with accused Rambir, husband, becomes admitted fact, accused Rambir owed a duty to render a reasonable and plausible explanation as to what transpired immediately before the consumption of Celphos tablets by deceased Babita. Reliance placed upon the case of Ashok Kumar vs State of Haryana 2010 Cr.L.J 4402; Joseph vs State of Kerala, AIR 2000 SC 1608; Sahdevan vs State, 2003 Cr.L.J 424. Instead accused did not clarify the incriminating circumstances inculcating him on the first possible opportunity but later entered upon defence under Section 315 Cr.P.C bringing on record Ex DW2/A, recruitment letter received more than three weeks later to the death of deceased, with holding any document of his place of posting at Kangra, State Vs. Rambir Singh etc. Himachal Pradesh and his requiring to join there in the month of June, 2004. For non production of any document requiring the accused to join the place of alleged posting at Kangra, Himachal Pradesh in June, 2004, there is no option but to cast adverse inference against the accused on this count. There is no cogent evidence on record that before her death deceased was in knowledge of posting of accused outstation at Kangra and the requirement of accused joining duties there in month of June, 2004. The version of defence regarding cause of deceased taking extreme step of consuming poisonous substance accordingly does not hold water

26. Ld. Defence Counsel pointed to various discrepancies emanating from the testimonies of material witnesses which are as follows. The names of accused persons were not specifically stated by PW1 in statement Ex PW1/A where it was mentioned as Sasural wale. PW1 did not state to SDM that they had been befooled by just giving motor cycle. PW1 had not stated the word presurized or demanded in his statement before the SDM regarding the payment of Rs. 50,000/- in January, 2004 for the job/service of Rambir. PW1 State Vs. Rambir Singh etc. had not stated names of accused Rambir and Santosh regarding payment of Rs 50,000/- in his statement before SDM or that he had paid Rs 50,000/- to accused Santosh in presence of accused Rambir. PW1 had not stated before SDM that Rs 25,000/- were arranged by him within the family and Rs 25,000/- were collected from Sh Pahalwan Singh, PW3. PW1 had not told to SDM that all the accused persons had asked for car or that he had given motorola phone to accused Rambir on his demand of dowry. PW1 admitted that he did not state before SDM that the accused persons had asked 50 square yard plot in Qutab Vihar, Dwarka and that the son's of Rambir's Mausi were married in their village who were given two plots on their demand; also that after birth of boy to his sister, accused told that he should also give one plot to them as their villagers had given two plots to Rambir's Mausi's sons; or that 2-3 times after the birth of son to his sister and before death of his sister to resolve the matter. All aforesaid facts were testified in court by PW1 in course of his evidence. PW1 stated that the demand of plot was made by the accused persons when function was organized after the birth of child of deceased and the said demand of plot was not made in the State Vs. Rambir Singh etc. presence of Biradari and that he was called in a room by accused Rambir where his mother and sister were present to which demand PW1 kept mum and had not responded in any manner presuming things will be alright later on. PW5 deposed of fact of having told the SDM that accused Rambir used to ask

for money from Babita and PW1 had arranged Rs 50,000/□for accused Rambir, which was not stated in previous statement Ex PW5/A . PW5 deposed that she told the SDM that when ever her daughter Babita used to visit her parental house, she told to PW5 that she was beaten and harassed by her husband and her in laws on account of dowry which facts were not mentioned in Ex PW5/A. PW6 deposed of having told to police that Babita and Manoj informed him regarding daily quarrels, which was not mentioned in the statement Ex PW6/DA to police. PW6 deposed of having told the name of the accused persons but it was not mentioned in his previous statement Ex PW6/DA. PW6 deposed he had stated to the police that accused used to beat Babita, which was not mentioned in previous statement Ex PW6/DA.

27. PW10 Sh Manjeet deposed of dowry articles viz motor State Vs. Rambir Singh etc. cycle, TV, Fridge, gold ornaments etc. were given to the accused persons in the marriage, which was not mentioned in his previous statement Ex PW10/DA. PW10 deposed that the accused persons used to beat Babita and demand cash and car from her in dowry, which was not mentioned in his previous statement Ex PW10/DA. PW10 deposed of having told to the police that accused Sunita used to frequently come to the house of accused persons and also used to beat Babita for demand of dowry of car and cash and also used to taunt in respect of her appearance, which was not mentioned in his previous statement Ex PW10/DA. PW10 deposed that at the time of birth of son to Babita, accused persons demanded a plot of land from her in front of PW10 and others when they were present at the house of accused persons, which was not mentioned in his previous statement Ex PW10/DA.

28. PW8 was privately employed as a driver while other material PWs namely PW1, building material supplier by occupation, his mother PW5 and PW10 are the rustic villagers. Much hype cannot be created for the inconsistencies in their testimonies as the State Vs. Rambir Singh etc. evidence is to be appreciated as a whole and when the rustic/rural villagers are subjected to grueling cross examination for several days, some inconsistencies or discrepancies may occur in their statements as such witnesses are not expected to have exact sense of time or remember every minute detail of the occurrence in the matrimonial life of the deceased and the accused husband Rambir as well as of the incident/occurrence and say with precision, the entire chain of events after a long lapse of time and may be unable to fully recapitulate and narrate entire chain of events witnessed by them as a video tape is displayed on the mental screen. Reliance placed upon the case of State of UP vs Krishna Master and Others, (2010) 12 SCC 324.

29. In case Uday Chakraborty & Ors vs. State of West Bengal, 2010 Cri.L.J 3862, Hon'ble Supreme Court held that the father of the girl who lodged complaint, can hardly be blamed for not lodging an elaborate and specific complaint at that time, as it was a tragic moment for him being the period immediately after the death of his daughter; that time being of pain and agony for him and State Vs. Rambir Singh etc. the accused cannot take any advantage of this submission or fact, as the subsequent statements of different witnesses have fairly established on record that she was tortured and harassed for satisfying the demand of dowry.

30. When read as a whole, the testimonies of the material witnesses are found to be consistent qua demands of dowry relating to cash, maruti car and plot of 50 square yards, mobile phone having erupted from husband Rambir and his relatives, arrayed accused, with effect from 15 days of the

marriage of accused Rambir with deceased Babita on 25/02/2001 during the span of less then three years and four months of their marriage.

31. Harassment of Babita for dowry with effect from 15 days of her marriage at the hands of the accused persons continued unabated and on 08/06/04 she made a call to PW1 on telephone saying to her elder brother PW1 in the back drop of her father having predeceased, "Bhai Inko Gaari (Car) De De Nahi To Ye Log Mujhe Jaan se Maar Deinge". Next day i.e on 09/06/04, PW8 visited the State Vs. Rambir Singh etc. matrimonial home of Babita, even pleaded with the in laws of Babita i.e accused persons not to harass Babita but he was told that if they do not give a car even now, then they will have to repent throughout the life. What follows is a discussion ensuing between the deceased and the accused Rambir on the afternoon of 12/06/2004 immediately after which the deceased having her minor child in her lap goes inside the room, consumed pills of Celphos and succumbed few hours later in the hospital taking her own life in such abnormal circumstances in the back drop of persistent harassment and demand of dowry at the hands of her husband and in laws namely mother in law Santosh, sister in law Sunita and brother in law Sonu @ Pankaj.

32. It was argued by Ld. Addl. PP for the State that the relatives of Babita had not levelled any allegations against the father of Rambir and another sister of Rambir which indicates that these material witnesses did not act out of malice, anger or to wreck vengeance. The pronouncement in the case of Satya Narain Tiwari & Anr. vs. State of UP, 2011 Cr.L.J 445 was relied upon with regard to such contention.

State Vs. Rambir Singh etc.

33. Ld. Defence Counsel countered in his arguments stating that father of accused was suffering from paralysis, in case of any allegation having been levelled, the case of the prosecution would have fallen flat on the ground. Even the defence counsel argued that the other sister of accused Rambir, who is not accused in this case, was not with the visiting terms with the family of accused Rambir. There is no evidence on record which would substantiate or prove that such other married sister of accused Rambir was not on visiting terms with the family of accused Rambir. Be that as it may, fact remains that the father and the other sister of accused Rambir were not arrayed as accused persons by any or all the material witnesses and were spared of any kind of accusations.

34. Death of Babita by consuming tablets containing aluminium phosphide poison is proved on record to have taken place and caused by circumstances otherwise than under normal circumstances within seven years of her marriage.

State Vs. Rambir Singh etc.

35. The ordeal of harassment of Babita and demand of maruti car, cash, mobile phone and plot of 50 square yards by the accused persons with effect from 15 days of her marriage till the date of her death have been proved on record by the aforesaid material witnesses. The discussion ensued between accused/husband Rambir and deceased in the afternoon of 12/06/2004 resulting in her taking her minor child in her lap, going inside the room, consuming pills of Celphos and coming out

of the room later. Before such episode, on 08/06/2004 i.e four days prior to the death of deceased, the deceased makes telephone call to her elder brother PW1 in the back drop of her predeceased father asking him " Bhai Inko Gaari (Maruti car) De De, Nahi To Ye Mujhe Maar Deinge". On the next day i.e 09/06/2004 PW8 goes to the house of accused persons, pleads with them not to harass Babita but is told by the accused persons if they do not give a car even now, then they will have to repent throughout the life.

36. In the case of Ashok Kumar vs. State of Haryana, 2010 CrL.J 4402, Hon'ble Supreme Court held that expression "soon State Vs. Rambir Singh etc. before her death" cannot be given a restricted or a narrower meaning. Such expression must be understood in their plain language and with reference to their meaning in common parlance. The concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases.

37. In the case at hand, when read as a whole, the effect of the prosecution evidence on record is that there existed a proximate and live link between the fact of cruelty meted out by deceased based upon the dowry demands and her death as a consequence of suicide by consuming tablets containing aluminium phosphide poison, the deceased being unable to bear any such further harassment of dowry demands. Such incidents of cruelty disturbed the mental equilibrium of deceased Babita and she consumed poisonous substance to end her life of miseries.

38. In the case of Durga Prasad (supra), the marriage of the appellant husband was performed with the deceased as part of community marriage being celebrated on account of poverty of State Vs. Rambir Singh etc. couples who could not otherwise meet the expenses of marriage. Therein, was no cogent evidence to show that the cruelty or harassment was meted out to the victim which was in connection with the demand of dowry and was soon before her death resulting in the victim committing suicide. It is not so in present case.

39. In the case of Arvind Singh (supra), the dying declaration of the victim was not effected before any doctor or any independent witness but to the mother who arrived at the place only in the morning and the death of the victim took place due to severe burn injuries after only half hour of such statement and the veracity of said statement was considered doubtful as in that case there was non examination by doctor as to the fitness of the maker of the dying declaration. Facts of present case are at complete variance from facts of relied precedent.

40. In the case of Naraini Devi (supra), there was considerable delay of three days in lodging the first information report for which there was no reasonable explanation, as the brothers State Vs. Rambir Singh etc. and mother of deceased present immediately after the death did not mention of deceased having died because of torture, harassment or ill treatment and the evidence gave impression of the entire theory of dowry was an after thought. It is not so in the present case.

41. In the case of Shyam Lal (supra) pursuant to the dispute between the parties regarding dowry, the dispute was resolved and the wife was taken back to nuptial home after Panchayat and there was no evidence that she was treated with cruelty or harassment with demand for dowry in the period between her taking back to matrimonial home and her tragic end. Facts of said case are

distinguishable to facts of present case.

42. In the case of Hazari Lal (supra) there was no cogent evidence to establish the demand of dowry or that the deceased was being harassed and subjected to cruelty but infact the appellant husband was financing the father of deceased victim while there was no material to substantiate the conclusion that the deceased committed suicide due to harassment and cruelty. Though in present State Vs. Rambir Singh etc. case, it is defence of accused Rambir that he used to give money as loan to PW1, brother of deceased but excepting this bald averment, no cogent evidence to that effect has been brought on record nor proved.

43. In the case of Satvir Singh (supra), a young mother of two kids, who was a double graduate, ran into the rail in front of running train to end her life as well as her misery once and for all, but the destiny converted her into a veritable vegetable and she lost her left hand from shoulder joint, got her spinal cord ruptured and she turned into a paraplegic but victim did not actually die and there was dearth of evidence to show that she was subjected to cruelty or harassment connected with the demand of dowry, soon before she attempted to commit suicide. Conviction of the appellant under Section 498 A IPC was confirmed while the conviction and sentence passed under Section 116 IPC was set aside.

44. In the case of Kans Raj (supra) it was inter alia held that in view of the legal position the statements of deceased made to State Vs. Rambir Singh etc. her parents, brothers and other acquaintances, before her death, were admissible in evidence under Section 32 of Evidence Act. Also was held that in case where accusations were made against in laws or other relatives of the husband then the overt acts attributed to such relatives of the husband are required to be proved, beyond reasonable doubt. Also was held that the test of proximity cannot be too literally construed and no straight jacket formula can be devised and the distance of time would depend and vary with the circumstances of each case and where the death is logical culmination of the continuous drama long in process, the statement regarding each step directly connected with the end of the drama would be admissible as it would be read as an organic whole and not torn from the context; if the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be soon before the death if any other intervening circumstances showing the non existence of such treatment is not brought on record. The proximate and live link between the effect of cruelty based on dowry demands and the consequential death is required to be proved by the prosecution.

State Vs. Rambir Singh etc.

45. Relied precedents are of no help to the defence. PWs 2,6 and 7 testified of having participated in Panchayats organized at house of accused more than once after the marriage of deceased with accused Rambir due to dowry demands of car, plot etc. made by accused persons but of course, these material witnesses fumbled, could not give the exact date, month or season when the alleged panchayats were held and regarding the number of panchayats as to two or three, testified at variance. Yet, fact remains, there is no material on record that the dowry demands of cash and car which started with effect from 15 days of marriage of deceased with the accused/husband made by the accused persons during the continuation of the marriage were ever left or discontinued by the

accused persons at any point of time or the dispute qua demands of dowry stood resolved. Four days prior to death, the deceased communicated to her elder brother PW1 on telephone asking to to give the car or else she will be killed by the accused persons and on visit of her other brother, PW8 next day, when PW8 pleads with the accused persons to not to harass the deceased sister qua demands of car, his plea falls on deaf ears. The variation in the testimony of material witnesses State Vs. Rambir Singh etc. regarding the manner and nature of demand at the time of Chuchak ceremony can also be termed to be a product of natural variation arising out of the errors of retention and reproduction of the facts after lapse of time in the back drop of the witness being rustic villagers and would in itself cannot be made ground to discard their testimonies in toto. Mere opening of a saving account in the name of deceased by husband accused and keeping a credit balance therein of around Rs 50,000/□ would in itself will not be sufficient to draw a presumption that neither accused had any occasion to demand dowry nor they were greedy.

Inability of the brothers and mother of deceased to take care of the minor son of deceased later to death of deceased would not make their testimonies unworthy of credence. In terms of law laid in Surinder Kumar vs State (Delhi Administration), 2010 Cri.L.J (NOC) 53 (DEL.) merely because deceased and her relatives choose not to make any complaint regarding dowry demand or ill treatment given to her by accused, such fact cannot be a ground to discard their testimonies.

State Vs. Rambir Singh etc.

46. DW5 who acted as mediator for marriage of deceased with accused Rambir made vivid and clear that she was not knowing what talks took place in between family of husband/accused Rambir and the family of Balwan Singh, father of deceased, in her absence. DW5 was also not knowing as to on how many occasions before or after the marriage of accused Rambir, the family members of Rambir and Rambir himself had gone to the house of said Balwan Singh. Though DW5 stated that when she was married, no plot was given as that was not the custom but fact remains that the material prosecution witnesses including PW1 testified that two plots were given to Rambir's Mausi's son on their demand. How many were the sons of the mausi's of Rambir and how many were the mausis of the accused Rambir, has neither come in the prosecution evidence nor in the defence evidence. Accordingly testimony of DW5 is also of no help to the defence.

47. It is also understandable that in view of his relation as maternal uncle, DW1 would be interested in acquittal of his nephew Sonu @ Pankaj and in regard to his version that in the summer State Vs. Rambir Singh etc. vacations said accused Sonu @ Pankaj was staying with DW1, there is no corroboration to testimony of DW1 and even to that effect it had not been the case of defence in the course of cross examination of the material prosecution witnesses. All the more, there exist allegations of harassment and beatings inter alia by accused Sonu @ Pankaj upon the person of the deceased in connection with the demand of dowry. Within 15 days of marriage of deceased with accused Rambir, the greed of accused persons surfaced by way of demands of dowry including cash and car on the part of the accused persons from the deceased which continued till the deceased survived. In the set of elicited facts and circumstances, there is no option but to raise the presumption envisaged under Section 113 B of the Indian Evidence Act since the deceased died otherwise than in normal circumstances within seven years of her marriage, was subjected to cruelty

and harassment by the accused persons, her husband and relatives of husband and such cruelty and harassment was in connection with demand of dowry which persisted and meted out to the deceased soon before her death. The accused persons joined each other in acts of harassment of deceased, subjecting her to beatings, cruelty State Vs. Rambir Singh etc. and demands of dowry and caused the dowry death.

48. The accused failed to rebut the said presumption by any cogent evidence or to prove that the deceased had committed suicide in anger and tension on the aspect of her husband accused Rambir going alone to his place of posting outstation not taking her along, in the backdrop of the fact of accused not bringing on record any document requiring the accused Rambir by his alleged employer to have asked him to join the services at outstation posting within 20 days of his return to Delhi on 05/06/2004.

49. In view of aforesaid discussions, I am of the considered opinion that though the prosecution has been unsuccessful in proving its case against the accused Rambir Singh and Santosh for offence under Section 406 IPC read with Section 35 IPC but prosecution has been successful in proving its case, beyond reasonable doubt, against all the accused persons for offences punishable under Sections 498A IPC read with Section 35 IPC and 304B IPC read with Section 35 IPC. Accordingly the accused Rambir and Santosh are acquitted for State Vs. Rambir Singh etc. the offence under Section 406 IPC read with Section 35 IPC. All accused persons are convicted for the offences under Section 304B IPC read with Section 35 IPC and 498A IPC read with Section 35 IPC. Let they be heard on the point of sentence.

Announced in the open court
on dated 21.04.2011

(GURVINDER PAL SINGH)
ASJ (FTC)/SD/ NEW DELHI.

State Vs. Rambir Singh etc.

IN THE COURT OF SHRI GURVINDER PAL SINGH
ADDL. SESSIONS JUDGE(FTC), SOUTH DISTRICT
SAKET COURTS, NEW DELHI

ID No: 02403R058092004

State Vs. : 1. Rambir Singh
S/o Sh. Bhim Singh

2. Smt Santosh
W/o Sh Bhim Singh

3. Pankaj @ Sonu
S/o Sh Bhim Singh

All R/o F-59 E,
Lado Sarai Village,
New Delhi

4. Smt Sunita @ Bala Rani
W/o Sh Brij Mohan Singh
R/o H. No. 27, Gali No. 1,
Bhudutt Colony, Faridabad,
Haryana

State Vs. Rambir Sin

P.S. Malviya Nagar
U/s 498A/ 304B/35 IPC

ORDER ON SENTENCE:

Present: Sh. A.T. Ansari, Ld. Addl. PP for the State.

All convicts in person in judicial custody.

Sh Amit Khanna, Ld. Counsel for all the convicts.

2. I have heard submissions of the Ld. Addl. PP, convicts and Ld. Counsel for convicts and have perused the record.

3. Convicts have been held guilty for offences punishable under Sections 304B IPC read with Section 35 IPC and 498A IPC read with Section 35 IPC for committing the dowry death of Babita and during the period of marriage of Babita with Rambir from 25/02/2001 till 12/06/2004 subjected her to cruelty and harassment to meet the unlawful demand of dowry, driving her to commit suicide.

4. Convict Rambir Singh, husband of deceased Babita, is State Vs. Rambir Singh etc. stated to be of age 30 years, not previous convict and required to take care of minor son of age 9 years at present and paralytical father. Convict Rambir Singh was arrested on 13/06/2004, sent to judicial custody on 14/06/2004 and was enlarged on bail on 21/08/2007.

5. Convict Smt Santosh, mother-in-law of deceased Babita, is stated to be of age 64-65 years, not previous convict, who is stated to be required to take care of her paralytical husband. Convict Santosh was arrested on 13/06/2004, sent to judicial custody on 14/06/2004 and was enlarged on bail on 30/05/2006.

6. Convict Pankaj @ Sonu, brother-in-law of deceased Babita, is stated to be of age twenty five and half years, not previous convict and lenient view is prayed for him. Convict Pankaj @ Sonu was arrested on 24/07/2004, sent to judicial custody on 25/07/2004 and was enlarged on bail on 26/07/2004.

7. Convict Sunita @ Bala Rani is the sister-in-law of deceased Babita, stated to be of age 36 years having minor daughter State Vs. Rambir Singh etc. 13 years of age and husband to be looked after and lenient view is prayed for. Convict Sunita @ Bala Rani had been arrested on 10/07/2004 and that day enlarged on bail.

It is also submitted at present convict Sunita @ Bala Rani, her husband and her daughter are the three members of their family while her father-in-law and mother-in-law are previously expired and her brother-in-laws with their respective families are living separately.

8. Ld. Counsel for the convicts submitted that there was no mark of violence found on the body of the deceased and the convict Rambir had taken the deceased to the hospital immediately and lenient view may be taken for the convicts.

9. Ld. Addl. PP has prayed for awarding of the maximum permissible sentence, submitted that the offence of dowry death committed by the convicts was the offence against social fabric of society and such like offence against woman do not call for a lenient view.

State Vs. Rambir Singh etc.

10. Deceased died otherwise than in normal circumstances within seven years of her marriage, was subjected to cruelty and harassment by the accused persons, her husband and relatives of husband and such cruelty and harassment was in connection with demand of dowry which persisted and meted out to the deceased soon before her death. The accused persons joined each other in acts of harassment of deceased, subjecting her to beatings, cruelty and demands of dowry including the cash and car and caused the dowry death.

11. Cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides are continuing unabated. The growing cult of violence and exploitation of the young brides, keeps on sending shock waves to the civilized society. There is constant erosion of the basic human values of tolerance and the spirit of "live and let live".

12. In the case of Kundula Bala Subrahmanyam vs. State State Vs. Rambir Singh etc. of A.P , 1993 CrL.L.J 1635, the Apex Court held that "Laws are not enough to combat the evil. A wider social movement of educating women of their rights, to conquer the menace, is needed more particularly

in rural areas where women are still largely uneducated and less aware of their rights and fall an easy prey to their exploitation. The role of courts, under the circumstances assumes greater importance and it is expected that the Courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunas in the evidences as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The Courts are expected to be sensitive in cases involving crime against women."

13. All the convicts are sentenced as follows:

(1) the convicts are sentenced to rigorous imprisonment of seven years for offence under Section 304 B IPC read with Section 35 IPC and (2) the convicts are also sentenced to rigorous imprisonment of two years and fine of Rs 5,000/□each in default simple imprisonment for six months, under Section 498A IPC read with Section 35 IPC, which sentences shall meet the end of justice.

State Vs. Rambir Singh etc.

14. Sentences of rigorous imprisonment shall run concurrently and of simple imprisonment shall run consecutively. Benefit of Section 428 Cr.P.C. be given.

15. Committal warrants be prepared. Copy of the judgment and order on sentence be supplied to all the convicts free of cost immediately.

File be consigned to the record room.

Announced in the open court
on dated 23.04.2011

(GURVINDER PAL SINGH)
ASJ (FTC)/SD/ NEW DELHI.