

# **SUPREME COURT OF INDIA**

Vijay Pal Singh

Vs.

State of Uttarakhand

Crl.A.No.37 of 2011

(Kurian Joseph and Abhay Manohar Sapre JJ.)

16.12.2014

## **JUDGMENT**

### **KURIAN, J.:**

The appellants faced trial before the IIIrd Additional Sessions Judge, Nainital, Camp Haldwani in Sessions Trial No. 281 of 1991 for offences punishable under Section 302 read with Section 34 of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC'), Section 304B read with Section 34 of IPC, Section 498A of IPC and Section 201 of IPC. Sessions court acquitted all of them; but in appeal by the State, the High Court convicted them under Section 304B read with Section 34 of IPC, Section 498A of IPC and Section 201 of IPC and sentenced them for seven years rigorous imprisonment, two years rigorous imprisonment with fine of Rs.2,000/- and one year rigorous imprisonment, respectively, for each of them. Hence, this appeal.

It is the prosecution case that the marriage between the second appellant- Narendra Singh-son of the first appellant-Vijay Pal Singh and the deceased Saroj daughter of Ramesh Singh took place on 10.02.1991. PW-1 was informed on 25.05.1991, by the first appellant-Vijay Pal Singh through his son Rakesh Singh that Saroj was found missing from the intervening night of 23/24th May, 1991. This information, PW-1 received around 08.00 a.m. on 25.05.1991 and, thereafter, he lodged a complaint at the Police Station, Jaspur. On the same day, PW-2-Samar Pal Singh, Village Pradhan, lodged a report at Police Station, Dillari stating therein that one Sukhe had informed

him that he had seen a dead body of an unknown woman in burnt condition in the forest area on the side of the road. Thereafter, the case was registered under Section 302 read with Section 201 of IPC. PW-8-Ashok Kumar was entrusted with the investigation. The usual formalities on inquest etc. were undertaken and the body was sent for postmortem examination. PW-10-Dr. S. K. Arora conducted the postmortem on 26.05.1991 at 04.40 p.m. Ramesh Singh-father of the deceased, on 26.05.1991, lodged another petition at Police Station, Dillari alleging that his daughter Saroj, aged about 20- 22 years, had got married on 10.02.1991 and after the marriage, his daughter had gone back to her in-laws' house at Kasampur, Police Station, Jaspur, District Nainital with her husband Narendra Singh two times, and the third time on 19.05.1991, his son-in-law Narendra Singh had come at 12 noon and had taken Saroj along with him at 04.00 p.m. It was alleged that the appellants were continuously making dowry demands for television, fridge and cooler and he had given them an assurance to fulfill the same, if given some time. But due to his weak economic position, he could not fulfill those demands immediately. When the husband came to Ramesh Singh's house to take back his daughter Saroj to her matrimonial home for the second time, he was accompanied by his father Vijay Pal Singh, his younger brother-Rakesh Singh and his brother-in-law-Gyan Chandra and all of them had threatened him with dire consequences if the dowry demands were not fulfilled. They also threatened to cause harm to her in case the dowry demand was not fulfilled. The said incident took place in the presence of the family members of PW-1-Ramesh Singh, people in the neighbourhood and some villagers also. It was further alleged that his son- in-law Narendra Singh went along with his daughter on the assurance that their dowry demands would be fulfilled. On 25.05.1991, at about 08.00 a.m., Rakesh Singh came to his house and told him that Saroj had been missing since the intervening night of 23/24th May, 1991. Ramesh Singh thereafter went to Kasampur and enquired about Saroj but could not get any information about her.

On 26.05.1991, he came to know from the police that they had recovered a partly burnt dead body of an unknown lady from the forest of village Sahaspuri on 25.05.1991 and the same had been sent to Muradabad for postmortem. On receiving such information, Ramesh Singh reached the place of postmortem and, by seeing the dead body and the half burnt clothes, earrings, ring (anguthi), ring (challa) and bangles on the dead body, he identified the dead body as that of his daughter Saroj. After the postmortem, he took the dead body to Supardagi for cremation. Ramesh Singh alleged that his son-in-law Narendra Singh, father of his son-in-law-Vijay Pal

Singh, brother of his son-in-law-Rakesh Singh and brother-in-law of his son-in-law, Gyan Chandra, had committed the murder of his daughter Saroj and had also tried to destroy the dead body by burning the same near village Sahaspuri. It was further alleged that Vijay Pal Singh mislead him by sending the missing information.

In view of the above complaint, another FIR was registered on 26.05.1991 at Police Station, Dillari and the investigation was taken over by Mahindra Singh Tyagi, Deputy Superintendent of Police-PW-9. As per his report under Section 173(2) of The Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.PC."), the appellants are guilty of offences punishable under Sections 304B, 498A and 201 of IPC and Section 3 / 4 of the Dowry Prohibition Act, 1961.

Charges of offences punishable under Section 304B read with Section 34 of IPC, Section 302 read with Section 34 of IPC, Section 498A of IPC and Section 201 of IPC were framed against the appellants. The charges were read over and explained to the appellants, who pleaded not guilty and claimed to be tried.

Prosecution, in order to prove its case, examined PW-1-Ramesh Singh, complainant and father of deceased Saroj, PW-2-Samar Pal Singh, Village Pradhan, who lodged FIR report-Exhibit-Ka.4, PW-3-Sukhe, who first saw the dead body lying on the road and thereafter informed the Village Pradhan about the same, PW-4-Vikram Singh, witness of the recovery memo, PW-5-Dr.

Mushahid Hussain and PW-6-Ishwari Prasad Sharma, local  
residents of the village, PW-7-Braham Pal Singh-

husband of the elder sister of the deceased, PW-8-Ashok Kumar Rawat-who initially conducted the investigation of the case, PW-9- Mahindra Singh Tyagi -Deputy Superintendent of Police, Investigating Officer of the case, PW-10-Dr. S.K. Arora-who conducted the postmortem, PW-11-Hemendra Kumar- photographer and PW-12-Samar Pal Singh-witness of inquest report. Thereafter, statements of the appellants/accused were recorded under Section 313 of Cr.PC. The oral and documentary evidence were put to each of them in question form, who denied the allegations made against them. However, no oral or documentary evidence was produced by them in their defence.

The Additional Sessions Judge acquitted all the accused of all the charges mainly on two counts - (i) the dead body was not in an identifiable condition and (ii) there was no evidence of cruelty or harassment for dowry.

The State filed an appeal under Section 378 of Cr.PC before the High Court which was disposed of by the impugned judgment dated 10.06.2010. The High Court, after elaborately and minutely discussing the evidence, came to the following conclusion at paragraph-33, which reads as follows:

"33. From the above said facts and circumstances, the prosecution has established its case beyond reasonable doubt against the respondents under Sections 304-B r/w 34 of I.P.C. and 498-A of IPC. Besides above, it is also necessary to state here that P.W.-10 Dr. S.K. Arora who conducted the post-mortem of the dead body of the deceased found two ante-mortem injuries on the body of the deceased, one on head and other on neck. He also found burn injuries on the body of the deceased which was caused after the death. Ultimately, he opined that the deceased had died due to asphyxia caused by strangulation. Thus, from the above facts, it transpires that the respondents/accused first committed murder of Saroj at their house at Village Kasampur by throttling her neck and thereafter in order to destroy the evidence, they burnt the dead body and planted it on road in the forest of village Sahaspuri at a distance of 35 Kms from Village Kasampur and with intention to mislead the complainant Ramesh Singh, they sent a false missing information of the deceased through respondent/accused Rakesh. Thus, in this way, the respondents/accused have also committed offence punishable under Section 201 IPC."

On the basis of the above conclusion, the following finding was entered: "34. Therefore, in view of the above-said discussion, I am of the considered view that the trial court was not correct and justified in acquitting the respondents for the offence punishable u/Ss 304-B r/w Section 34 IPC, 498-A and 201 of IPC. The prosecution has successfully proved its case against the respondents/accused beyond reasonable doubt under the aforesaid sections and they are accordingly convicted."

On the basis of above finding, the following sentence was passed: "35. Accordingly,

the appeal preferred by the State is allowed. The judgment and order dated 22.7.1995 passed by Third Additional Sessions Judge, Nainital, Camp Haldwani in Sessions Trial No. 281 of 1991, State Vs. Vijay Pal and others, is hereby set aside. The respondents-accused Vijay Pal Singh, Narendra Singh, Rakesh and Gyan Chandra are hereby convicted under Section 304-B IPC r/w Section 34 IPC and each of them are sentenced to seven years' R.I. Each of them is further convicted u/s 498-A and are sentenced to further two years' R.I. with fine of Rs.2,000/- each and in default, the defaulter shall undergo further six months' R.I. They are further convicted u/s 201 IPC and each of them is sentenced to one year's R.I. All the sentences except that of fine shall run concurrently. Let the respondents-accused be taken into custody forthwith in order to serve out the sentence as awarded against each of them. The period already undergone by the respondents-accused during the period of investigation and trial shall be adjusted."

Learned Counsel appearing for the appellants, Mr. P.K. Dey submitted that this Court may not disturb the acquittal granted to the appellants by the trial court merely because a different view is possible. It was contended that the prosecution having miserably failed to establish the ingredients of the offence under Section 304B of IPC, the impugned judgment is liable to be set aside. Mr. Dey, learned Counsel further contended that the trial court having acquitted the appellants, the High Court should not have interfered with the findings entered by the trial court which alone had the opportunity to first appreciate the evidence while recording it. It was further contended that in any case, being an incident of 1991, this Court may not sustain the sentence awarded to the appellants. At any rate, Mr. Dey submitted that there is absolutely no evidence so as to connect the third and the fourth appellants who are the younger brother of the second appellant, husband of the deceased and the brother-in-law, husband of the sister of Narendra Singh. And the last contention of Mr. Dey is that the matter should be remanded to the High Court since the court has not followed the mandatory procedure under Section 235 of Cr.PC, in having been denied an opportunity to the appellants to make submissions on sentence.

Learned Counsel appearing for the respondent-State, Mr. Tanmaya Agarwal, however, contends that the findings of the trial court being absolutely perverse, High Court is fully justified in reversing the finding and reaching a correct conclusion. According to the learned Counsel for the State, all the ingredients of Section 304B have been made out in the present case and the punishments awarded to all the appellants are liable to

the sustained.

The postmortem report shows the following injuries on the body: "i) Lacerated wound 10 cm x 4 cm x skull deep on the occipital region of head underneath occipital, left parietal, temporal bone fractured.

ii) Contusion semi-circular 20 cm x 3 cm on the front of neck underneath blood vessel lacerated and clotted blood present and cornua of hyoid bone both side fractured.

One post-mortem injury was also found on the dead body of the deceased, which reads as under:-

i) P.M burn whole of body including both extremities, abdomen, chest, face and back."

The cause of death, according to the postmortem report is asphyxia caused by strangulation.

It is rather strange that the High Court having entered a finding as extracted by us at paragraph-8 that it is a case of murder committed by the appellants herein, declined to award appropriate punishment under Section 302 of IPC. It is a case where the appellants had faced trial under Section 302 of IPC and, therefore, the High Court could have, awarded an appropriate punishment. The probable reasons why the High Court declined to do so, we shall discuss later.

Since, the victim in the case is a married woman and the death being within seven years of marriage, apparently, the court has gone only on one tangent, to treat the same as a dowry death. No doubt, the death is in unnatural circumstances but if there are definite indications of the death being homicide, the first approach of the prosecution and the court should be to find out as to who caused that murder. Section 304B of IPC is not a substitute for Section 302 of IPC. The genesis of Section 304B of IPC introduced w.e.f. 19.11.1986 as per Act 43 of 1986 relates back to the 91st Report of the Law Commission of India. It is significant to note that the subject was taken up by the Law Commission suo motu. Paragraph-1.3 of the Report reads thus:

"1.3. If, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts

can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. In practice, however, two main impediments arise-

- (i) either the facts do not fully fit into the pigeon-hole of any known offence; or
- (ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult.

The first impediment mentioned above is aptly illustrated by the situation where a woman takes her life with her own hands, though she is driven to it by ill-treatment. This situation may not fit into any existing pigeon-hole in the list of offences recognized by the general criminal law of the country, except where there is definite proof of instigation, encouragement or other conduct that amounts to "abetment" of suicide. Though, according to newspaper reports, there have been judgments of lower courts which seem to construe "abetment" in this context widely, the position is not beyond doubt.

The second situation mentioned above finds illustration in those incidents in which, even though the circumstances raise a strong suspicion that the death was not accidental, yet, proof beyond reasonable doubt may not be forthcoming that the case was really one of homicide. Thus, there is need to address oneself to the substantive criminal law as well as to the law of evidence."

In the Statement of Objects and Reasons for the Act 43 of 1986, in the Bill, it is stated as follows:

"The Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act, 1984 to give effect to certain recommendations of the Joint Committee of the Houses of Parliament to examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organizations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. ..."

However, it is generally seen that in cases where a married woman dies within seven years of marriage, otherwise than under normal circumstances, no inquiry is usually conducted to see whether there is evidence, direct or circumstantial, as to whether the offence falls under Section 302 of IPC. Sometimes, Section 302 of IPC is put as an alternate charge. In cases where there is evidence, direct or circumstantial, to show that the offence falls under Section 302 of IPC, the trial court should frame the charge under Section 302 of IPC even if the police has not expressed any opinion in that regard in the report under Section 173(2) of the Cr.PC. Section 304B of IPC can be put as an alternate charge if the trial court so feels. In the course of trial, if the court finds that there is no evidence, direct or circumstantial, and proof beyond reasonable doubt is not available to establish that the same is not homicide, in such a situation, if the ingredients under Section 304B of IPC are available, the trial court should proceed under the said provision. In *Muthu Kutty and another v. State by Inspector of Police, T.N.*[1], this Court addressed the issue and held as follows:

"20. A reading of Section 304-B IPC and Section 113-B, Evidence Act together makes it clear that law authorises a presumption that the husband or [pic]any other relative of the husband has caused the death of a woman if she happens to die in circumstances not normal and that there was evidence to show that she was treated with cruelty or harassed before her death in connection with any demand for dowry. It, therefore, follows that the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the offence of death. For those that are direct participants in the commission of the offence of death there are already provisions incorporated in Sections 300, 302 and 304. The provisions contained in Section 304-B IPC and Section 113-B of the Evidence Act were incorporated on the anvil of the Dowry Prohibition (Amendment) Act, 1984, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death. This conceptual difference was not kept in view by the courts below. But that cannot bring any relief if the conviction is altered to Section 304 Part II. No prejudice is caused to the accused- appellants as they were originally

charged for offence punishable under Section 302 IPC along with Section 304-B IPC."

In a recent decision, this Court in *Jasvinder Saini and others v. State (Government of NCT of Delhi)*[2], observed thus:

"15. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without advertent to the evidence adduced in the case and simply on the basis of the direction issued in *Rajbir* case. The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in *Rajbir* case, but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court."

Though in the instant case the accused were charged by the Sessions Court under Section 302 of IPC, it is seen that the trial court has not made any serious attempt to make an inquiry in that regard. If there is evidence available on homicide in a case of dowry death, it is the duty of the investigating officer to investigate the case under Section 302 of IPC and the prosecution to proceed in that regard and the court to approach the case in that perspective. Merely because the victim is a married woman suffering an unnatural death within seven years of marriage and there is evidence that

she was subjected to cruelty or harassment on account of demand for dowry, the prosecution and the court cannot close its eyes on the culpable homicide and refrain from punishing its author, if there is evidence in that regard, direct or circumstantial.

In the instant case, the prosecution has not made any attempt to explain the ante-mortem injuries which conclusively point to the cause of death as asphyxia caused by strangulation. Yet, no serious attempt, it is disturbing to note, was done to connect the murder to its author(s).

No doubt, nothing prevents this Court from putting the appellants on notice as to why the punishment should not be appropriately enhanced but why we reluctantly decline to do so, we shall explain in the later part of the judgment.

In two of the early decisions of this Court, after the introduction of Section 304B of IPC, the ingredients of the offence and the interplay of Section 304B of IPC with Sections 498A, 302, 306 of IPC have also been discussed. In *State of Punjab v. Iqbal Singh and others*[3], the Court in paragraph-8 stated that:

"8. ... The legislative intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Sections 113-A and 113-B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married women is subjected to cruelty or harassment by her husband or his family members Section 498-A, IPC would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under Section 304-B, IPC. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her

death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, Section 113-B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course if there is proof of the person having intentionally caused her death that would attract Section 302, IPC. Then we have a situation where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306, IPC. In such a case the conduct of the person would tantamount to inciting or [pic]provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide. ..."

In *Smt. Shanti and another v. State of Haryana*[4], which is seen referred to in many of the subsequent decisions, this Court stated the law on the point as follows:

"4. ... A careful analysis of Section 304-B shows that this section has the following essentials:

(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;

[pic](2) Such death should have occurred within seven years of her marriage;

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

(4) Such cruelty or harassment should be for or in connection with demand for dowry.

Section 113-B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, then the court shall presume that such person has committed the dowry death. The meaning of "cruelty" for the purposes of these sections has to be gathered from the language as found in Section 498- A and as per that section "cruelty" means "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or

danger to life etc. or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand". As per the definition of "dowry" any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of "dowry". ..."

Unto the latest decision available on this point, in *Baljinder Kaur v. State of Punjab*[5], except for the required thrust with respect to the factual situation available in each case, the law has been consistent as to the requirements for constituting the offence under Section 304B of IPC. Back to the facts of the instant case, the main evidence in this case is of PW-1-Ramesh Singh, father of the victim, PWs- 5 and 6 - who are the residents of the village and PW-7- husband of the elder sister of the deceased, apart from the medical evidence.

According to PW-1, he had brought his daughter from her in-laws' house. She had told him about the demand from her in-laws' for the dowry. The deceased had gone to the in-laws' twice only and the third time when the son-in-law had come to take his daughter, he was accompanied by his father-Vijay Pal Singh, younger brother-Rakesh Singh and brother-in-law-Gyan Chandra and they had threatened him with dire consequences in case their demand for television, fridge and cooler was not met. PWs- 5 and 6 are witnesses of the same. PW-5-Dr. Mushahid Hussain is a registered medical practitioner serving in the village for more than two decades. According to him, the relatives of the husband of the deceased Saroj and her father-in-law and other relations used to demand more dowry. He had once used his good office to sort out the dispute. It has also come out from his evidence that once a Panchayat was called on the issue and even in the Panchayat, in the presence of PW-5 himself, the husband and his father and others made demand for dowry. PW-6 is the Gram Pradhan of the Gram Sabha, Alampur. He has also given evidence to the effect that there were demands for more dowry from the in-laws' of deceased Saroj. He has also given evidence regarding the Panchayat held to sort out the matter and, in his presence also, the in-laws' of deceased Saroj were requesting for more dowry. The other evidence is of PW-7- husband of the elder sister of the deceased. Only PW-1 and PW-7, the father and husband of the elder sister of the deceased, respectively, have given evidence to the effect that all the appellants had made the demand for more dowry and had posed threat of consequences, if the demands were not met.

The death is within four months of the marriage. There is ample evidence, which we have discussed above, to show that there had been demands for dowry. Then, the only ingredient to be established is as to whether soon prior to the death of deceased Saroj, whether she had been subjected to cruelty or harassment on account of or in connection with demand for dowry.

Mr. Dey contends that even assuming that there is evidence on demand for dowry, there is absolutely no evidence to show that any demand was made to the deceased Saroj. This contention is difficult to digest. Demand for dowry so as to come under the purview of Section 304B or Section 498A need not be to the married woman. The demand can as well be to the father, mother, brother, etc., of the married woman. Any demand to them is as good as a demand to the married woman since she is the one to suffer in case the demands are not met, as has happened in the instant case.

Yet another serious contention raised by Mr. Dey is that in any case, there is no evidence of cruelty or harassment meted out to the deceased on account or in relation to the demand for dowry. Cruelty or harassment need not always be demonstrated in the form of physical violence. The fact that a married woman had to go out of her in-laws' house and that the in-laws' had made demand for dowry as a pre-condition for taking her back and that even a Panchayat was held at the local level to sort out the issue, are sufficient indicators of cruelty or harassment, mental, if not, physical. Thus, all the ingredients of Section 304B of IPC have been established in the instant case.

Incidentally, we shall also refer to one contention regarding the identification of the body. According to the learned Counsel, which has been the version of the trial court as well, the deceased was not identified as Saroj, the wife of the second appellant-Narendra Singh. It appears, there has been slight confusion in the mind of the trial court with regard to recognition and identification. PW-2 and PW-3 first saw the body and reported that the dead body was of an unknown person and, the people who went to see the body, could not recognize as to who the person was. It has to be seen that PWs-2 and 3 were not from the village of the deceased. Therefore, one cannot normally expect them to recognize the deceased person. That does not mean that the face of the dead body was in such a shape that it had lost its shape. A bare look at Exhibits-4 and 5- photographs would show that to the people who knew the deceased, they could easily recognize who the person was. Had the face been completely burnt

or otherwise lost its whole shape, it would not have been possible for anybody to identify it, let alone recognize the person. In the instant case, PWs-2 and 3 identified the face as that of a woman and PW-1-father has recognized her to be his daughter. At the time of cremation, it has come in evidence that others also recognized the deceased as Saroj, daughter of PW-1 and wife of second appellants-Narendra Singh.

Learned Counsel appearing for the appellants strongly canvassed for the position that in an appeal against acquittal, there are some inbuilt restrictions before the appellate court and the mere possibility of a different view is not enough to interfere with the acquittal. We have no quarrel with the well-settled proposition. The author of this judgment is the author of the judgment in *Basappa v. State of Karnataka*[6] wherein a detailed survey has been conducted with regard to the scope of interference of the appellate court in an appeal against the judgment of acquittal. After referring to following decisions in *K. Prakashan v. P.K. Surenderan*[7], *T. Subramanian v. State of Tamil Nadu*[8], *Bhim Singh v. State of Haryana*[9], *Kallu alias Masih and others v. State of Madhya Pradesh*[10], *Ramesh Babulal Doshi v. State of Gujarat*[11], *Ganpat v. State of Haryana and others*[12], *State of Punjab v. Karnail Singh*[13], *Chandrappa and others v. State of Karnataka*[14], which have dealt with the issue, this Court held that unless the judgment of acquittal is based on no material or is perverse or the view taken by the court is wholly unreasonable or is not a plausible view or there is non-consideration of any evidence or there is palpable misreading of evidence, the appellate court will not be justified in interfering with the order of acquittal. While endorsing and reaffirming those principles, we are of the considered view that on the facts of the present case, there has been a palpable misreading of evidence by the trial court. As we have already discussed herein above, the conclusions drawn by the trial court is apparently against the weight of evidence and thus perverse, and it is so perverse that no reasonable man could reach conclusions.

Now, the question as to why the High Court, having entered a conclusion that it is a case of murder at the hands of the appellants, yet chose to convict them only under Section 304B of IPC. As we have already indicated, it could have been a case for the High Court or for that matter this Court for issuing notice for enhancement of punishment to those against whom there is evidence to connect them with the murder. The incident being of 1991, the prosecution having not chosen to link all the circumstances in a chain with no missing links to reach the irresistible and conclusive finding on involvement of the accused, the High Court would have thought it more

prudent to convict the accused only under Section 304B of IPC. No doubt, in such a case, the High Court should not have entered a categorical finding on murder since once the court enters such a finding, the punishment can only be under Section 302 of IPC. Having regard to the circumstances which we have referred to above, we are of the view that though this case could have been dealt with under Section 302 of IPC, at this distance of time and in view of the lack of evidence on the chain of circumstances, it will not be proper for this Court to proceed under Section 302 of IPC for enhancement of punishment. There are no such problems as far as the presumption under Section 113B of the Indian Evidence Act, 1872 is concerned. Once the ingredients of Section 304B of IPC are established, the presumption is that the death has been caused by the husband or his relatives, who caused the cruelty or harassment. That presumption can safely be drawn in the instant case, as we have already discussed above, as all the ingredients under Section 304B of IPC have been proved beyond doubt in the present case particularly since there is no direct evidence on the part of the appellants to rebut the same.

Yet with all that, we have to address a further question as to the involvement of the younger brother of husband-Rakesh Singh and brother-in-law of husband-Gyan Chandra. Though, under Section 304B of IPC, a presumption has to be drawn against those relatives who have harassed the deceased in connection with the demand for dowry, there must be evidence, which is not rebutted to connect the husband and each relative in that regard. Rebuttal can be made even without direct evidence (See *Kundan Lal Rallaram v. The Custodian, Evacuee Property Bombay*[15] followed in *M. Narsinga Rao v. State of Andhra Pradesh*[16]).

In *Alamgir Sani v. State of Assam*[17], one of the issues that came up for consideration before this Court on acquittal under Section 302 of IPC is whether on account of acquittal under Section 302 of IPC, the accused could claim acquittal under Section 304B of IPC. It was clarified by this Court that the acquittal under Section 302 of IPC will not lead to automatic acquittal under Section 304B of IPC. Even if an accused is acquitted under Section 302 of IPC, if there is evidence available so as to satisfy the ingredients of Section 304B of IPC, the accused can still be convicted under Section 304B of IPC, in case there is no rebuttal of presumption on the death as caused by the accused. To quote:

"15. We also see no substance in the submission that merely because the

appellant had been acquitted under Section 302 IPC the presumption under Section 113-B of the Evidence Act stands automatically rebutted. The death having taken place within seven years of the marriage and there being sufficient evidence of demand of dowry, the presumption under Section 113-B of the Evidence Act gets invoked. There is no evidence in rebuttal."

Though PW-1-father of the deceased and PW-7- husband of the elder sister of the deceased have stated that Rakesh Singh and Gyan Chandra were also with Vijay Pal Singh and Narendra Singh-husband of the deceased when they visited his house and demanded dowry and posed a threat, but it has come in the evidence of PW-5 and PW-6 that in the family of in-laws' of the deceased Saroj, they did not recognize any person other than the father-in-law-Vijay Pal Singh and husband-Narendra Singh. Not only that it has come out in evidence of PW-1 himself that younger brother-Rakesh Singh had been studying elsewhere and that the brother-in-law Gyan Chandra was from a different village. Since the independent witnesses PWs-5 and 6 have recognized only the father-in-law and husband of the deceased, we are of the view that it will not be safe to conclude the offence under Sections 304B of IPC, 498A of IPC or 201 of IPC as proved against Rakesh Singh and Gyan Chandra. Therefore, the conviction and sentence as against third accused/appellant-Rakesh Singh and fourth accused/appellant-Gyan Chandra are set aside.

Now, the last question as to whether the case should be remitted back to the High Court for the purpose of Section 235 of Cr.PC, we are of the view that in the present case, it is not necessary. The conviction is under Section 304B IPC. The mandatory minimum punishment is seven years. Of course, there is no such minimum punishment under Section 498A of IPC or Section 201 of IPC. Since the sentence in respect of offence under Section 498A of IPC for two years rigorous imprisonment and one year under Section 201 of IPC are to run concurrently, no prejudice whatsoever is caused to the two appellants. Therefore, this is not a fit case for following the procedure under Section 235 of Cr.PC by this Court or for remand in that regard to the High Court.

The conviction and sentence against the third and fourth accused/appellants, Rakesh Singh and Gyan Chandra, respectively, are set aside. The conviction and sentence as against first and second appellants, Vijay Pal Singh and Narendra Singh, respectively, under Section 304B of IPC read with Section 34 of IPC, Section 498A of IPC and

Section 201 of IPC are upheld. Their bail bonds are cancelled. They shall immediately surrender/they shall be taken to custody, to serve the remaining sentence. The appeal is thus partly allowed as above.

[1] (2005) 9 SCC 113 [2] (2013) 7 SCC 256 [3] (1991) 3 SCC 1 [4] (1991) 1 SCC 371 [5] (2014) 13 SCALE 96 [6] (2014) 5 SCC 154 [7] (2008) 1 SCC 258 [8] (2006) 1 SCC 401 [9] (2002) 10 SCC 461 [10] (2006) 10 SCC 313 [11] (1996) 9 SCC 225 [12] (2010) 12 SCC 59 [13] (2003) 11 SCC 271 [14] (2007) 4 SCC 415 [15] AIR 1961 SC 1316 [16] (2001) 1 SCC 691 [17] (2002) 10 SCC 277