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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 492/2017

DHANESH

..... Appellant

Through: Mr. Pramod Kumar Dubey,
with Mr. Kushank Sindhu,
Ms. Trishita Prasar and
Mr. Nirvikar Singh, Advocate

versus

THE STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP for State
with Inspector Yuvraj Prasad and
SI Amit Kumar, PS Kalyanpuri

WITH

+ CRL.A. 628/2017

VIKRANT

..... Appellant

Through: Mr. Pramod Kumar Dubey,
with Mr. Kushank Sindhu,
Ms. Trishita Prasar and
Mr. Nirvikar Singh, Advocate

versus

THE STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP for State
with Inspector Yuvraj Prasad and
SI Amit Kumar, PS Kalyanpuri

AND

+ CRL.A. 451/2018

KAILASH CHAND

..... Appellant

Through: Mr. Pankaj Tomar, Advocate

versus

STATE & ANR.

..... Respondents
Through: Ms. Aashaa Tiwari, APP for State
with Inspector Yuvraj Prasad and
SI Amit Kumar, PS Kalyanpuri.

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Date of Decision: 08th July, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J:

1. While CrI. A. 451/2018 has been filed by the appellant-complainant Kailash Chand, father of the deceased Neeta @ Vineeta challenging the judgment dated 18th January, 2017 acquitting all the three accused including Ajit Singh under Sections 498A/304B/34 IPC; CrI. A. 492/2017 and CrI. A. 628/2017 have been filed by the appellants-convicts Dhanesh, W/o. Ajit Singh and Vikrant, S/o. Ajit Singh against the same judgment convicting them under Sections 302/34 IPC as also appellant-convict Vikrant additionally under Section 316 IPC read with Section 27 of Arms Act as well as the order on sentence dated 8th February, 2017.

2. The case of the prosecution is that Mr. Amrish Kumar (PW-3) had called the police control room on 5th February, 2013 and lodged a complaint regarding a quarrel between a husband and wife at 13/2, Kalyanpuri, Delhi. Mr. Amrish Kumar (PW-3) stated in his Section 161 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr. P.C.") statement that the appellant-convict Dhanesh had come down the

stairs screaming and crying followed by her son appellant-convict Vikrant who asked to be taken to the police station as *'he had done whatever he wanted to do'* (English translation). Subsequently, Mr. Amrish Kumar (PW-3) went upstairs with the police and found that appellant-convict Vikrant's wife Neeta @ Vineeta was lying dead and a knife was lying outside the room. The deceased Neeta @ Vineeta, who was nine months pregnant, was found to have been stabbed multiple times with a knife and at the time of the murder, she was pregnant with twins. According to the police, the appellant-convict Vikrant had informed them that the deceased was continuously nagging / taunting him for being unemployed. On 8th May, 2013, the family members of the deceased victim made allegations of demand for dowry and torture against the appellants-convicts Dhanesh and Vikrant as well as Ajit Singh. Charges were framed against all the three accused persons under Sections 498A/304B/120B and 34 IPC. The appellant-convict Vikrant and Ajit Singh were also charged under Sections 302/34 IPC and appellant-convict Vikrant was additionally charged with Section 316 IPC and Section 27 of the Arms Act.

3. The trial Court acquitted all the three accused under Sections 498A/304B/34 IPC, but convicted Vikrant and Dhanesh under Sections 302/34 IPC and additionally Vikrant under Section 316 IPC read with Section 27 of Arms Act. The relevant portion of the trial court judgment dated 18th January, 2017 is reproduced hereinbelow:-

"51. From the testimonies of the family members (PW5, 9 & 15), it does not stand proved on record that accused persons had harassed the deceased on account of demand of dowry soon before her death. As all these witnesses have stated that accused persons had not demanded any dowry prior to marriage; they

had verified their credentials before marriage and no complaint was lodged to any authority regarding any demand of dowry by any of the accused persons till 05.05.2013. PW9, brother of the deceased has even stated that articles in the dowry were given as per customs and traditions. It has also come in evidence of these witnesses that accused persons had already been running the business of Cable TV even prior to marriage of deceased with accused Vikrant and they appeared to be well off.

52. It would be relevant to quote Section 113B of Evidence Act, which reads as under:-

xxxx xxxx xxxx xxxx

54. In the present case, the presumption has been rebutted by cogent and convincing evidence as discussed above. Therefore, when the essential ingredients that deceased was subjected to cruelty or harassment soon before her death for or in connection with demand of dowry has not been proved, question of drawing presumption under Section 113-B of the Evidence Act does not arise. 55. In view of above discussion, I hold that though it has been proved on record that deceased died within 7 years of her marriage, but there is no evidence on record to substantiate that soon before her death she was subjected to cruelty or harassment by the accused for or connection with demand of dowry in view of evidence of family members of the deceased as discussed above. Even there is no evidence of existence of any conspiracy between the accused persons for harassing the deceased for dowry or eliminating her for non-fulfillment of demand of dowry by accused persons. Therefore, prosecution has not been able to prove its case against accused persons under Section 304B/498A/120B/34 IPC. Accordingly, all the accused persons are acquitted for the charges under Section 304-B/498A/120B/34 IPC.

55. In view of above discussion, I hold that though it has been proved on record that deceased Poonam Sharma died within 7 years of her marriage, but there is no evidence

on record to substantiate that soon before her death she was subjected to cruelty or harassment by the accused for or connection with demand of dowry in view of evidence of family members of the deceased as discussed above. Even there is no evidence of existence of any conspiracy between the accused persons for harassing the deceased for dowry or eliminating her for non-fulfillment of demand of dowry by accused persons. Therefore, prosecution has not been able to prove its case against accused persons under Section 304-B/498A/120B/34 IPC. Accordingly, all the accused persons are acquitted for the charges under Section 304-B/498A/120B/34 IPC.....

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65. It has come in the evidence of PW-3 on record that accused Vikrant and his mother Smt. Dhanesh had returned from vegetable market to their house at about 9.00 p.m. It is, therefore, clear that at the time of incident, accused Vikrant and Dhanesh were present in the house.....

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72. It has been contented by Ld. Counsel for the accused persons that sketch of the knife allegedly used by the accused Vikrant is not signed by accused Vikrant, whereas as per Police signatures of accused Vikrant were obtained on memos.

73. I have perused the sketch Ex.PW23/B. It is true that this sketch does not bear signatures of accused Vikrant, nevertheless its seizure memo Ex.PW23/C bears signatures of accused. Sketch and seizure memo of other knife also bear signatures of accused Vikrant and other memos pertaining to accused Vikrant bear his signatures. Hence, omission of signature of accused Vikrant on sketch Ex.PW23/B of the knife hardly makes any difference and is not of much relevance.

74. Secondly variance in the Crime Scene Report and other memos regarding timing of recovery of knife and non-signing thereof by public witnesses is not of such relevance as the blood

on the knife and on Jeans worn by accused Vikrant was of deceased. Hence, recovery of the knife can not be said to be doubtful.

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79. There is no explanation from the side of accused as to how blood of the deceased came on his Jeans. In the absence of any explanation in this regard, coupled with the fact that blood of the deceased was also found present on the knife Ex. P-1 used in the murder and report of FSL Ex.PW25/A and Ex.PW25/B, admission of the contents of the PCR Form and testimony of PW6; presence of the accused Vikrant and Dhanesh at the spot at the relevant time and admission of PW3 in his testimony that he had not seen any stranger entering or coming out from the house of accused on the day of incident, I hold that it was the accused Vikrant Singh who committed murder of his wife Vinita in furtherance to common intention with his mother accused Dhanesh as they were the only persons present in the house with Vinita and after committing murder of Vinita, both the accused persons came out of the house. It has come in evidence of PW3 that no outsider had entered or come out from the house of accused persons on the day of incident at or around the time of incident.

80. However, it may be agitated on behalf of the accused Dhanesh that she has not been charged for offence under Section 302/34 IPC, therefore, she can not be convicted therefor. However, this contention is not be tenable in view of specific provision laid down in Section 221 Cr.P.C., which is reproduced hereinunder:-.....

81. Hence, when there is clear cut evidence on record that accused Vikrant committed murder of Vinita in furtherance to common intention shared with his mother accused Dhanesh, then there is no embargo in convicting Dhanesh for offence under Section 302/34 in view of Section 221(2) Cr.P.C.

82. It has also come in evidence that deceased Vinita was in advanced stage of her pregnancy when she was murdered and thus it stands proved on record that accused Vikrant Singh and accused Dhanesh caused death of twins unborn children.....

83. Accused Smt. Dhanesh allegedly absconded during the course of investigation and failed to appear in response to a proclamation published under Section 82 of the Code of Criminal Procedure.....

84. SI Murtaza Khan has been examined as PW24. But he did not speak a word about execution of process under Section 82 Cr.P.C. against accused Smt. Dhanesh..... Therefore, defence counsel could not put question regarding the authenticity of the report filed by SI Murtaza Khan on the process under Section 82 Cr.P.C., hence, the same has put a dent on the case of the prosecution qua accused Smt. Dhanesh on respect of offence Under Section 174-A IPC. Hence, proceedings conducted against accused Smt. Dhanesh under Section 82 Cr.P.C. stands vitiated. Accordingly, accused Smt. Dhanesh is acquitted of the charge under Section 174A of IPC.

85. There is nothing on record that accused Ajeet Singh was present at the time of murder nor there is any evidence that he shared common intention with accused Vikrant Singh and Smt. Dhanesh. Hence, accused Ajeet Singh is acquitted of all the charges levelled against him.

86. However, in view of above discussion, both the accused Vikrant Singh and Smt. Dhanesh are held guilty under Section 302/34 IPC; accused Vikrant Singh is also held guilty for offence under Section 316 IPC and under Section 27 Arms Act and they are convicted thereunder.”

4. The relevant portion of the order on sentence is reproduced hereinbelow:-

“(1) Convict Vikrant Singh is sentenced to imprisonment for life and a fine of Rs.10,000/- is also imposed on him for offence under Section 302/34IPC. In default of payment of fine, convict

shall further undergo SI for 2 months.

(2) Convict Vikrant Singh is sentenced to rigorous imprisonment for 6 years and a fine of Rs.10,000/- is also imposed on him for offence under Section 316 IPC. In default of payment of fine, convict shall further undergo SI for 2 months.

(3) Convict Vikrant Singh is sentenced to rigorous imprisonment for 3 years and a fine of Rs.5,000/- is also imposed on him for offence under Section 27 Arms Act. In default of payment of fine, convict shall further undergo SI for 1 month.

(4) Convict Smt. Dhanesh is sentenced to imprisonment for life and a fine of Rs.10,000/- is also imposed on him for offence under Section 302/34 IPC. In default of payment of fine, convict shall further undergo SI for 2 months.

6. All the sentences awarded to the convict Vikrant Singh shall run concurrently. Benefit of Section 428 Cr.P.C. is extended to both the convicts.....”

5. At the outset Mr. Pramod Kumar Dubey, learned counsel for appellants-convicts Dhanesh and Vikrant submits that the appellant-convict Dhanesh' conviction under Section 302 IPC was contrary to the principles of criminal jurisprudence as no substantive charge under Section 302 IPC had ever been framed against her. He further submits that in the absence of a charge under Section 302 IPC, the trial court could not have proceeded to convict appellant-Dhanesh under the said Section. In support of his submission, he relied upon the judgment of the Apex Court in ***Sohan Lal Alias Sohan Singh and Others Vs. State of Punjab, (2003) 11 SCC 534*** wherein it has been held as under:-

“7.Neither a charge under Section 302 IPC nor under Section 109 IPC, was levelled against him in the charge-sheet. In

the absence of a charge being framed against the accused Sohan Lal under Section 302 or 109 IPC, it would certainly cause prejudice to him, if he is convicted under either of these offences at the end of the trial. In our view, it was not permissible for the trial court to convict the first accused Sohan Lal for the offence under Section 302 read with Section 109 IPC. His conviction under Section 302 read with Section 109 IPC is, therefore, illegal and is liable to be set aside. The High Court erred in upholding the conviction of Sohan Lal @ Sohan Singh under Section 302 read with Section 109 IPC and dismissing his appeal.”

6. Learned counsel for the appellants-convicts – Dhanesh and Vikrant states that the presence of both the convicts at the scene of crime had not been established. He points out that the ‘star witness’ Mr. Amrish Kumar (PW-3) to whom the appellant-convict Vikrant had allegedly made an extra-judicial confession, had turned hostile. He states that Amrish Kumar (PW-3) had even denied, during his statement under oath, calling the police from the mobile of the appellant-convict Vikrant. In support of his contentions, he relies upon the testimony of Amrish Kumar (PW-3) and Sub-Inspector Sandeep Kumar (PW-23). The relevant portion of the testimonies of PW-3 and PW-23 relied upon by learned counsel for appellants-convicts are reproduced hereinbelow:-

A) Testimony of PW-3

“.....On 05.05.13, I was present in my shop and at about 9.00 pm, accused Vikrant alongwith his mother Smt. Dhanesh returned from vegetable market to their house i.e. adjacent to my house bearing H.No.13/2, Kalyan Puri. Accused Vikrant is present in the Court (correctly identified). I know accused Ajeet, present in the Court (correctly identified), who is father of accused Vikrant. Accused Vikrant and his mother went inside their house and after about 2-3 minutes, Smt. Dhanesh followed by accused Vikrant came out of their house while shouting. I

immediately came out of my shop. Meanwhile, Smt. Dhanesh fell down and became unconscious. Accused Vikrant also came there and told that someone has murdered his wife Neeta and asked me to inform the police. It is not possible for me every time to see about the people coming and going inside house no.13/2, Kalyan Puri.”

B) Testimony of PW-23

“.....The adjoining houses to the house of accused persons were not checked so as to see the accessibility of moving from one house to another house. Those houses were not checked to search out any other evidence.”

7. Learned counsel for the appellants-convicts points out that neither the FIR nor *rukka* prepared at the instance of Amrish Kumar (PW-3) mentions that the convicts had returned home from the vegetable market. Consequently, he contends that the Trial Court had erred in concluding that the appellants-convicts were present at the scene of the crime.

8. Learned counsel for the appellants-convicts submits that Section 157 of Cr.P.C had not been complied with inasmuch as Constable Sunder Pal (PW-19) had admitted that though he had pushed the copy of the FIR beneath the gate of house of learned Metropolitan Magistrate, yet he had not handed over the same personally to the learned Metropolitan Magistrate.

9. Learned counsel for the appellants-convicts points out that the recovery of jeans allegedly of accused-Vikrant was doubtful inasmuch as there was contradictory evidence with regard to the place of its recovery. He states that the alleged seizure memo dated 06th May, 2013 of the jeans (Ex.PW23/K) indicates that it was seized at ‘*Jai Mauka*’ or place of

occurrence or scene of crime i.e. house of the appellants-convicts. He points out that Sub-inspector Sandeep Kumar (PW-23), Sub-Inspector Murtaza Khan (PW-24) and Investigating Officer Arvind Kumar (PW-29) have stated in their testimonies that appellant-convict Vikrant had taken the Police party to the first floor of his house and got recovered the second knife from the almirah. He further states that the said three witnesses had stated that appellant-convict Vikrant's jeans had blood spots and the same was removed and kept in a *pulanda* and seized vide memo Ex.PW23/K indicating thereby that the jeans was perhaps seized at the house itself.

10. He however states that SI Sandeep Kumar (PW-23) in a complete summersault in his cross-examination stated that the jeans of the appellant-convict Vikrant had been taken into possession at the Police Station and he had been given clothes to wear arranged from his house through his father Ajit Singh.

11. Learned counsel for the appellants-convicts points out that the Medico-legal certificate of Vikrant mentioned the jeans under the head of articles sealed indicating thereby that the jeans had been retrieved at the hospital on 06th May, 2013 at 3.15 A.M.

12. According to learned counsel for the appellants-convicts the alleged jeans could not have been recovered from three different places i.e. house of the appellants-convicts, the police station and the hospital where the MLC of appellant-convict Vikrant had been carried out!

13. Learned counsel for the appellants-convicts contends that the recovery of the alleged murder weapon i.e. knife was doubtful. He points out that the sketch of the knife did not bear the signature of the appellant-

convict Vikrant. English translation of the relevant portion of the sketch of the knife prepared by the police is reproduced hereinbelow:-

“Translation of Exhibit PW23/B. A sketch of the knife prepared by Inspector/SHO Arvind Kumar, PS Kalyanpuri, Delhi; forthcoming on the record of Case (FIR) No.298/13 dated 05.05.13 for the commission of an offence punishable under Section 302 IPC, relating to Police Station Kalyanpuri, Delhi.

SKETCH OF THE KNIFE

(Kindly see original)

xxxx xxxx xxxx xxxx

- I. *Total length of knife: 33 cm
Length of handle: 13 cm
Length of blade: 20 cm
Width of blade: 4.5 cm*
- II. *The blade is made of a metal like steel. Three bolts are fixed on handle. The handle is covered with black colour bandage.*
- III. *The words “DREAMLINE STAINLESS STEEL” are written on the blade of knife.*
- IV. *Blood stains are found on the blade of knife.*

*Sd/-Vikrant
(In English)*

Witnessed by:

1. *Sd/-(In English)
SI Sandeep Kumar*
2. *Sd/- (In English)
SI Murtaza Khan*

*Sd/- illegible
Inspector Arvind Kumar
PS Kalyanpuri,
Dated 06.05.13.”*

14. He states that it was strange that eight out of the ten photographs taken by the Mobile Crime Team had been 'washed out' due to 'technical defects'. He laid emphasis on the fact that the Crime Team had failed to lift chance prints from the knife.

15. He points out that the appellant-convict Vikrant had in his statement recorded under Section 313 Cr.P.C. denied the fact that he had pointed out to the police the place where the knife was lying or that the knife had been taken into possession at his instance. In the alternative, he submits that even if the knife had been recovered at the instance of the appellant-convict Vikrant, no reliance could be placed on the said recovery as the Police already knew about the existence of the knife at the spot from where it was seized.

16. Learned counsel for the appellants-convicts lastly submits that it is trite law that where there are serious infirmities in the prosecution version, then the benefit of doubt has to go to the accused. In support of his submission, he relies upon the judgment of the Supreme Court in ***Ghurey Lal Vs. State of U.P., (2008) 10 SCC 450.***

17. Per contra, Ms. Aashaa Tiwari, learned APP states that the police had received the first information with regard to the murder in question by way of a telephone call made from the mobile of appellant-convict Vikrant. In support of her contention, she relies upon the Police Control Room (for short "PCR") form dated 05th May, 2013 as well as DD No.44-A dated 05th May, 2013 recorded with police station Kalyanpuri, Delhi. In the aforesaid DD, the informer's mobile number had been mentioned as 9911447780. The DD No.44-A dated 05th May, 2013 recorded by police station Kalyanpuri is reproduced hereinbelow:-

“DD No.44-A, Dated 5-5-13, P.S. Kalyanpuri, Delhi.

D.O.

Information received through PCR call and report

Time: 21.16 hrs.

At this time it is entered that E-50 operator has informed through W/set that a quarrel was in progress between husband and wife at 13 block Kalyanpuri and the same information was received through phone nO.9911447780 from Constable Manoj 2273/PCR. On receipt of the information from PCR, a report to that effect was entered into the roznamcha and HC/Charandass No.58/E was apprised in the said regard through telephone and the same was also conveyed to M-34 and beat staff scribed by HC/Do. It is further submitted that SI Sandeep Kumar was also apprised about the said call.

Scribed by : HC/Do

Note: it is true copy of the original

Sd/-illegible

HC Yatvir singh

DO No.314/E

P.S. Kalyanpuri,

Delhi.

Verified

Sd/- illegible

SHO/K Puri

Attested

Sd/- illegible

ACP—Sic-- ”

18. Learned APP also draws this Court’s attention to the *rukka* which was subsequently converted into a First Information Report (FIR). She

points out that the *rukka* was based on the statement of Mr. Amrish Kumar (PW-3), neighbour of the appellant-convict Vikrant to whom the appellant-convict Vikrant had made an extra-judicial confession. The said *rukka* is reproduced hereinbelow:-

“Statement of Amrish Kumar S/o R.P. Tyagi, R/o 13/3, Kalyanpuri, Delhi, Age-43 Years, Mob. 9810719525.

I reside at the aforesaid address along with my family members and run an Electronics Shop at the Ground Floor. Today on 05.05.13, at about 9.10 PM when I was present at my shop, Smt. Dhanesh W/o Ajit Singh R/o House No.13/2 Kalyan Puri, Delhi, came downstairs from her house while weeping and crying and her elder son namely Vikrant S/o. Ajit Singh also followed her. Vikrant was wearing a jeans pants and was not wearing any other clothes on the upper side. While coming down Vikrant immediately told to take him to the Police Station as he has done whatever he wanted to do. I tried to inform to the Police at No.100 through my Mobile No.9810719529 but it could not be contacted. In the meanwhile, Vikrant kept on crying to call the Police whereupon, I asked him to call the Police at No.100 from his mobile. Vikrant contacted the Police at No.100 and handed over the telephone to me. I, accordingly informed the Police at No.100 that a quarrel was in progress between husband and wife at Kalyanpuri and the Police may be sent there. I kept on standing with Vikrant till the arrival of the Police. The Police took Vikrant into their possession. Thereafter, I went upstairs along with the Police and found that Neeta W/o Vikrant was lying over the bed in an unconscious state in the room of the second floor of the house. A knife was also lying outside the room. After making enquiries, you (the Police) recorded my statement. I have heard the same which is correct.

*Sd/- illegible
05.08.13*

Attested
Sd/- Arvind Kumar
(In English)
Insp. Arvind Kumar
PS Kalyanpuri,
Delhi”

(Police Proceedings)

To

The Duty Officer
PS Kalyanpuri
Delhi.

Sir,

It is submitted that today at about 9.25 PM, I the Inspector, was present at the Police Station when I received information through wireless that a murder has been committed at House No.13/2, Kalyanpuri. On receipt of the information I, the Inspector, along with Ct. Driver Vinod, No.859/E and Operator Constable Nemi Chand, No.1879/E reached the spot through government vehicle No.DL 1CJ 3645. In the meantime, ACP Kalyanpuri also came present at the spot. SI Sandeep and SI Murtaza and beat staff were also present over there. A blood stained knife was lying on the left side near the stairs of the second floor of House No.13/2 Kalyanpuri, Delhi and in the room of the right side, a female namely Neeta @ Vineeta W/o Vikrant Aged 20 years R/o. 13/2 Kalyanpuri, Delhi was lying in an unconscious state over the bed. The stab injuries were found present on the abdomen and neck of Neeta @ Vineeta and bed sheet and a blanket were found blood stained near the bed. The blood stains were also present over the wall and floor of the room. The crime team was duly apprised to come over the spot in the said connection. On making an enquiry, it came to be known that Neeta @ Vineeta was pregnant. I, the Inspector, took the photographs at the spot from a personal camera and sent Neeta @ Vineeta to LBS Hospital through PCR Van under the surveillance of SI Sandeep. The PCR Van had returned to the spot after leaving Vikrant S/o Ajit Singh the accused R/o 13/2, Kalyanpuri, Delhi at the Police Station. The spot was

duly preserved. In the meantime, I/C Crime Team, SI Kaushal Gangulyu No.D-1385, along with Photographer Ct. Vikas No.1026/E came present over the spot who inspected the scene of crime. As per the directions of me, the Inspector, the spot was duly photographed. In the meantime, SI Sandeep came at the spot and produced to me the MLC No.63627 in respect of Vineeta wife of Vikrant aged 22 years R/o 13/2, Kalyanpuri, Delhi whereon the doctor has declared 'brought dead'. I, the Inspector, got recorded the statement of sh. Amrish Kumar S/o R C Tyagi R/o 13/3, Kalyan Puri, Delhi, who was present at the spot. The contents of the statement, the circumstances prevailing over there and the perusal of the MLC discloses the commission of an offence punishable U/s 302 of the IPC. The aforesaid writing is being sent to the Police Station through Ct. Nemi hand N.1879/E for the purpose of registration of a case (FIR). Please intimate the number of a case (FIR) after the registration of the same. The Senior Officers may be informed through special Messenger. I, the Inspector, along with the accompanying staff, am busy at the spot with the investigation.

Date & time of occurrence: 05.05.2013 at about 9 PM

Scene of occurrence : 2nd Floor, 13/2 Kalyanpuri, Delhi.

Date & Time of dispatch of writing: 05.05.2013 at 11.40 PM

Sd/- Arvind Kumar
(In English)

SHO PS Kalyanpuri,

05.05.2013 (Inspector Arvind Kumar)

No.D/2750

PIS 16890132

DD No.47A at 2350 Hrs. dt. 5.5.13

FIR no.298/13 U/s 302 IPC

PS K Puri

Sd/- (Illegible)

HC Yatvir Singh No.314/E

HC/DO PIS No.28891749

PS Kalyanpuri Delhi

Dated 5.5.13."

19. Learned APP contends that the appellant-convict Vikrant had also disclosed certain material facts to Constable driver Mohd. Sabir (PW-8) and ASI Subhash Chand (PW-10) who were part of the PCR team and the first policemen to reach the scene of the crime. The relevant portion of the said testimonies are reproduced hereinbelow:-

A) Statement of Constable driver Mohd. Sabir (PW-8):-

“...On that day at about 9.15 p.m., a call was received on wireless set regarding quarrel at H.No.13/2, Kalyan Puri, Delhi. Thereafter, we reached at the spot where we found gathering of public persons and one body Vikrant S/o Ajeet Singh was also present and he was caught hold by the public persons. Incharge, PCR ASI Subhash Chand made inquiry from that boy Vikrant, present in court and correctly identified as to what had happened on which accused Vikrant replied that he had committed murder of his wife with knife (Objected to). Hands and jeans pant of Vikrant were stained with blood. Meanwhile, we took the Vikrant from the public persons and got him sit in the PCR van and brought him to Police Station Kalyan Puri and handed over him to the custody of duty officer. We again returned back to the spot where ACP, SHO Police Station Kalyan Puri along with other staff were found present there. Thereafter, we reached II floor of premises No.13/2 Kalyan Puri and we brought down dead body of Neeta @ Vinita in bed sheet and took the same in PCR and took it to LBS Hospital....”

B. Statement of ASI Subhash Chand (PW-10) :-

“...On that day at about 9.15 p.m., I received call from control room regarding quarrel at H.No.13/2 Kalyan PUri. I along with my staff reached there within 3 minutes where I found huge public gathering and produced a boy who told his name Vikrant and public persons told that that boy Vikrant had murdered his wife. That boy was wearing baniyan and jeans pant. His hands and jeans pant were having blood stains. Public persons were aggressive against that boy, therefore, I got that boy sit in PCR

and I took him to Police Station Kalyan Puri and handed over the accused to duty officer. I again returned back to the spot with my staff and ACP and SHO were found a woman lying on bed in pool of blood and was having injuries on her neck and stomach. Thereafter, that woman namely Vinita was wrapped in bedsheet and was removed in PCR to the emergency of LBS Hospital.....

It is correct that I stated in my statement to the police that accused Vikrant stated before us that he had committed murder of his wife with knife. It is correct that I had stated in my statement that at the time of murder, deceased Vinita was pregnant and had twins....”

20. Learned APP submits that though the aforesaid admissions are not admissible as confession, yet the same are relevant facts which are admissible under Section 8 of the Indian Evidence Act, 1872 (for short “Evidence Act”). In support of her submission, she relies upon the judgment of the Apex Court in *Aghnoo Nagesia Vs. State of Bihar, AIR 1966 SC 119 (paras 10 to 17)* and the judgment of a Division Bench of this Court in *Chandrakant Jha Vs. State, MANU/DE/0183/2016 (paras 44 to 46)*.

21. Learned APP for State further states that from the evidence on record there was no doubt that the appellant-convict Vikrant’s jeans had been seized and sealed at the police station. She states that it was only thereafter that the appellant-convict Vikrant was taken to Lal Bahadur Shastri Hospital.

22. She emphasises that though the MLC of appellant-convict Vikrant had been produced by the defence during the trial, yet the Doctor who had prepared the MLC had not been produced as a witness. Consequently, she states that the prosecution had no occasion to ask the author of the Medico

Legal Certificate of appellant-convict Vikrant as to how the jeans had been mentioned under the head of articles 'Sealed'.

23. Learned APP emphasises that the Inspector Arvind Kumar PW-29, had denied receiving any sealed parcel from the hospital containing the jeans of the appellant-convict Vikrant or that the jeans seized vide memo Ex.PW23/K had been planted upon the appellant-convict Vikrant.

24. She lastly submits that delay, if any, in compliance with the requirement under Section 157 Cr. P.C. does not vitiate the trial or lead to the conclusion that the investigation was tainted. In support of her submission, she relies upon the following judgments:-

A) ***Pala Singh and Another Vs. State of Punjab, AIR 1972 SC 2679*** wherein it has been held as under:-

"7. Shri Kohli strongly criticised the fact that the occurrence report contemplated by Section 157 CrPC was sent to the Magistrate concerned very late. Indeed, this challenge, like the argument of interpolation and belated despatch of the inquest report, was developed for the purpose of showing that the investigation was not just, fair and forthright and, therefore, the prosecution case must be looked at with great suspicion. This argument is also unacceptable. No doubt, the report reached the Magistrate at about 6 p.m. Section 157 CrPC requires such report to be sent forthwith by the police officer concerned to a Magistrate empowered to take cognizance of such offence. This is really designed to keep the Magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under Section 159. But when we find in this case that the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to our notice, then, however improper or objectionable the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the

investigation was tainted and the prosecution insupportable. It is not the appellant's case that they have been prejudiced by this delay.”

B) **Rajender @ Kallu Vs. State, 2017 (1) JCC 12** wherein it has been held as under:-

“14. We note that so far as communication of the first information report to the Magistrate is concerned, Section 157 of the Cr.P.C. draws no exception. The compliance is mandatory. There can thus be no reservation on account of confidentiality and privacy concerns in such communication.

15. Given the electronic mode of communication which is now available with the police as well as the Delhi judiciary, we see no reason as to why the investigating agency should not resort to utilization of e-transmission of the report to the concerned jurisdictional magistrates with sufficient to ensure timely compliance of Section 157 of Cr.P.C. This would effectively obviate all objections which are taken by the accused persons as well as convicts based on delay in compliance thereof. Most importantly, it would save valuable time and effort on the part of the investigating agency whose services are already stretched beyond capacity and limits. This compliance is mandatory at a stage when the police may be required to undertake critical investigation say recording of victim and eyewitness accounts, effecting searches and seizures, tracking accused persons.”

25. Mr. Pankaj Tomar, learned counsel for appellant-complainant Kailash Chand submits that the trial court had erred in acquitting all the three accused including Ajit Singh under Sections 498A/120B and 34 IPC. He submits that the conclusion of the trial court was contrary to the evidence on record. In support of his contention, he relies upon the testimonies of appellant-complainant Kailash Chand (PW-5) and Bhupender (PW-9), brother of the deceased. The relevant portions of the aforesaid testimonies relied upon by Mr. Pankaj Tomar are reproduced

herewith :-

A) Testimony of Kailash Chand (PW-5)

“In dowry, I had given one I-10 Car, one AC, LCD, wooden furniture, other household articles etc. I had spent Rs. 40 lacs in the marriage of my both the daughters Neeta and Kaushal.

Just after 15-20 days of marriage of my daughters, accused Vikrant, his brother Dinesh, mother Dhanesh and father Ajeet started demanding dowry in cash. They had demanded Rs. 2 lacs and then 3 lacs and I met their demands. Since I was having agricultural land and same was acquired by Greater Noida Authority, I received compensation in huge amount. Accused Vikrant and his family members came to know about this fact and then, accused Vikrant demanded Rs. 10 lacs as dowry.

Accused persons used to subject my daughter Neeta to mental and physical cruelty in connection with dowry and as they used to demand dowry in cash. My daughter Neeta used to tell me whenever I visited her matrimonial house. Even I tell this fact to my near relatives and friends and thereafter, we held meeting with accused and his family members on the issue of harassment for dowry to Neeta but the accused persons did not restrained themselves from subjecting my daughter Neeta from cruelty. I did not take action due to social circumstances and family reputation....”

B) Testimony of Bhupender (PW-9)

“.....My parents spent Rs. 40 lacs on the marriage of my two sisters namely Neeta and Kaushal. The above articles were handed over to accused Ajeet, present in the Court (correctly identified) (objected to being question out of previous statements) and thereafter, both my sisters joined their matrimonial home at Kalyan Puri with their respective husbands. After about 5-6 months, the accused persons started raising demand of dowry. Accused persons demanded Rs. 2 lacs for purchasing I2- Car. Accused persons used to demand dowry. Accused persons again demanded Rs. 3 lacs for starting

business of Cable. Our land was acquired by the government. Accused persons again demanded Rs. 10 lacs in cash. Accused persons used to give beating to my sister.....

xxxx xxxx xxxx xxxx

.....The money of rupees two lacs was withdrawn by my father from Oriental bank.....”

26. However, Mr. Pankaj Tomar candidly admitted that Section 304B IPC was not attracted to the present case as there was no allegation of cruelty or harassment by any of the accused soon before the death of the deceased Neeta @ Vineeta.

27. In response, learned counsel for the three accused submits that the Trial Court after appreciating the entire evidence had rightly concluded that the presumption under Section 113B of the Evidence Act stood rebutted by cogent and convincing evidence. He emphasises that the Trial Court had held that the accused persons had not demanded any dowry prior to the marriage and no complaint had been lodged with any authority regarding any demand for dowry by any of the accused persons till 05th May, 2013 – the date of the incident.

28. Learned counsel for the appellants-convicts also submits that Section 8 of the Evidence Act had no application to the present case as no fact had been discovered by the police in pursuance to any statement made by the accused. He emphasises that the Supreme Court in *Aghnoo Nagesia Vs. State of Bihar* (supra) has held that a confession made to a police officer under any circumstances is not admissible in evidence against the accused.

COURT'S REASONING

THE FIRST INFORMATION WITH REGARD TO THE MURDER INCIDENT WAS PROVIDED BY THE APPELLANT-CONVICT VIKRANT HIMSELF.

29. Having heard learned counsel for the parties and having perused the paper book, this Court finds that the first information with regard to the incident was received by the Delhi Police Control Room on 05th May, 2013 at 21.10.05 hours by way of a telephone call made from the mobile bearing No.9911447780. The said information had been recorded in a PCR form dated 05th May, 2013, which has been proved by the Constable Manoj Kumari (PW-6). The said PCR form is reproduced hereinbelow:-

*“DELHI POLICE CONTROL ROOM
Form-I*

<i>DELHI POLICE (PART I)</i>	<i>PART-II STAFF</i>	<i>FILLED IN BY WIRELESS</i>	
<i>Date <u>05-May-2013 21:10:05</u> <u>Dispatch 05-May- 2013 21:11:42</u> R.D.D. No.<u>05May131580400 Extn No.158</u></i>			
<i><u>Informant's (a) Name VIKRANT (Male)</u></i>	<i>Van Selected Time</i>	<i>Msg transmitted to Van No.</i>	<i>At</i>
<i>i) <u>Phone No.9911774680</u> ii) <u>Address 02 Block 13 KALYANPURI DELHI</u></i>	<i><u>Time When Van reached spot</u></i>	<i>Van Report Time</i>	<i>Van Free Time</i>
<i>Status Comments</i>			
<i>Contact Name</i>	<i><u>05-May- 2013</u></i>	<i>ROM-77</i>	<i>05-May- 2013</i>

Complaint <u>QUARREL</u>	<p>21:13:49 21:13:50 05-May- 05-May- 05-May- 2013 2013 2013 21:24:55 21:24:55 21:49:12</p>
Accident Info. <u>HUSBAND WIFE ME ORL.</u>	<p>DCR No. Received <u>154</u> Report Received from VAN 05/05/2013 21:24:56 PCO 5MIN 05/5/2013 <u>21:27:20 YAHA EK LADIES</u> <u>KA MURDER GO GAYA HAI LP KO</u> <u>BHIJWAYE Ft2 FOR SHO ACP</u> REMIND R=69 DIRECTED 05/05/2013 <u>21:29:17 YAHA KAFI GATHERING</u> <u>HO GAYI HAI JISNE APNI BIWI KA</u> <u>MURDER KIYA HAI USE THANE LE</u> <u>JA RAHE HAI</u> P2 FOR SHO ACP SAHAB KE NOTICE ME LAYE 05/05/2013 21:39:02 R-77 SHO ACP SAHAB MAUKE PAR DETAIL KE LIYA WAIT 05/05/2018 <u>21:49:09</u> VIKARANT S/O AJIT AGE 22 YRS R/O 13/2K/PURI <u>NE APNI BIWI KA NAM VINITA KA</u> <u>CHAKU SE GALA KAT KER</u> <u>MURDER KER DIYA HAI JO MAUKA</u> <u>PAR DEAD PADI HAI</u> VIKARANT LP KE HAWELE KIYA HAI JINKI SHADI KO 1 YRS HUA HAI <u>CHAKU BHI</u> <u>MAUKA PAR PADA HAI 05/05/2013</u> <u>21:50:19</u> JO ACP SAHAB NA BATAYA HAI KI VINITA 9 MONTH KI PREGNANT HAI JISE HOSP LE JA RAHE HAI 05/05/2013 21:56:22 R=77 MURDER KI VAJAH KA ABHI NAHI PATA CHALA HAI CHAKU CHURI TYPE 8/9 INCH LAMBA THA 05/05/2013 22:17:23 VINITA KO VA USKE STMOACH KE DONO BACHHO KO DEAD DECLARE KAR DIYA HAI LPG HOSP ME 05/05/2013 22:28:08</p>

	<i>DR- LBS NE DEAD DECLARE KIYA HAI FROM B=77</i>	
<i>Shift B</i>	<i>Recorded</i>	<i>By-</i>
	<i>WCT/MANOJ</i>	<i>Challan Closed Time 05-May-2013</i>
	<i>KUMARI/2270NW281</i>	<i>22:34:51</i>
	<i>02120</i>	<i>Transmitted by HC Rajiv Tyagi/1293-C728901522</i>

Police Station KALYANPURI DD No. _____ Informed Time 05-May-

2013 21:49:00

Name & rank of P.S. Official at spot SI SANDEEP Belt

No. _____

The Officers Informa: (1) _____ (2)

(3) _____

(4) _____

(emphasis supplied)

30. Mr.Israr Babu (PW-30), the nodal officer, produced the Vodafone Customer's application form of Mobile No.9911774480 which proves that the mobile number mentioned in the aforesaid PCR form and DD No.44-A belongs to appellant-convict Vikrant. The relevant portion of the statement of the Nodal Officer Mr. Israr Babu (PW-30) is reproduced hereinbelow:-

“.....Today I have brought the summons record that Customer Application Form (CAF) of mobile no.9911774480. As per record, the same is registered in the name of Vikrant Singh. Photocopy of the CAF alongwith Election ID Card is Ex.PW30/A (OSR).....”

(emphasis supplied)

31. In any event, as the PCR form itself mentions the informant's name as Vikrant and his mobile number, this Court is of the view that the first

information with regard to the murder incident was provided by the appellant-convict Vikrant himself. The aforesaid conclusion is in conformity, to this extent, with the statement made by Amrish Kumar (PW-3) under Section 161 Cr.P.C.

FURTHER, THE POST-MORTEM REPORT OF THE DECEASED SHOWS THAT SHE HAD SUFFERED AS MANY AS SIXTEEN INJURIES AND THE SAID INJURIES WERE SUFFICIENT TO CAUSE DEATH IN THE ORDINARY COURSE OF NATURE, WHICH LEADS TO THE CONCLUSION THAT THERE WAS CLEAR INTENT TO KILL THE DECEASED AS WELL AS THE UNBORN CHILDREN WHOM THE DECEASED WAS CARRYING IN HER WOMB.

32. The post-mortem report of the deceased Neeta @ Vineeta shows that she had suffered as many as sixteen injuries and the said injuries were sufficient to cause death in the ordinary course of nature. The post-mortem report of the deceased is reproduced hereinbelow:-

**“GOVT. OF NCT OF DELHI
LAL BAHADUR SHASTRI HOSPITAL, KHICHRIPUR, DELHI-91
DEPARTMENT OF FORENSIC MEDICINE**

POST MORTEM EXAMINATION REPORT

**POST MORTEM NO. 182/13 CONDUCTED BY DR. VINAY KR.
SINGH**

DATED: 6/5/13

TIME: 1.15 PM

I. Case Particulars:

FIR/DD No.298/13 Dated 5/5/13 P.S. Kalyan Puri

Name: Neeta @ Vineet, W/o Vikrant, R/o 13/2, Kalyan Puri, Delhi.

Probable Age 20 yrs, Sex: Female Height 161 cm. Weight - Kg.

II. Investigating Officer: SDM P.K. Dabas, Mayur Vihar, P/S Kalyan Puri.

III. Identified by/Identification Marks:

- 1. Bhupender.*
- 2. Kailash Chand.*

IV. HOSPITAL RECORDS:

Date & Time of Receipt of Inquest papers 6/5/13, 12.45 PM

Date & Time of Death/Spot Death/Brought Dead 10.05 PM, 5/5/13

Casualty/C.R. No. 70990, 6362/13

Arrival of Body at Mortuary and time 5/5/13, 10.40 PM

V. BRIEF HISTORY AS PER I/O:

Alleged H/o assault at home been brought dead at emergency L.B.S. Hospital

VI. EXTERNAL GENERAL APPEARANCE:

Built: Average

Condition of eye: Semi open

Natural orifices: NO discharge seen.

Others:

VII. POST-MORTEM CHANGES

Hypostasis: Present

Rigor Mortis: Present

Decomposition Changes: Nil.

VIII. TIME SINCE DEATH: 14-20 HRS.

IX. EXTERNAL EXAMINATION (Injuries etc.)

- 1. Incised wound, 9x1.2 cm x 2.5 cm deep, obliqually placed over front of neck 5 cm below chin margin sharp and regular.*
- 2. Stab wound, 3x1.6 cm x 3.5 cm deep, over left side of neck 10 cm below left ear, margin sharp and regular and lower and acute, 136 cm above heel.*
- 3. Stab wound, 3.6x1.3 cm x 1.7 cm deep, medium and parallel to*

injury no.2, margin sharp and regular lower and acute 137 cm above the heel on left side of neck, oblique.

4. *Stab wound, 3.5 x 1.5 cm cavity deep over left hypocondrium, margin sharp and regular, lower and acute, 1.5 cm above heel, oblique.*
5. *Stab wound, 4x1 cm cavity deep, margin sharp and regular, lower and acute, 94 cm above heel in left ilice fossa.*
6. *Stab wound, 4.2 x 1.7 cm cavity deep over left side 2 cm to umblicus and 97.5 cm above heel, margin sharp and regular, lower and acute, umblical cord protruding out.*
7. Multiple nail marks over right side and front of neck of size .3 x .5 cm, 1.1x3 cm in area of 4x3.2 cm,.
8. Multiple bruise mark, 1x1 cm to 2x1 cm over left side of neck in area of 9x8 cm.
9. Multiple abrasions around left eye size 3x3 cm.
10. Lacerated wound 1x.4 cm over lower lid of right eye.
11. Lacerated wound 3.5x1 cm over front of chin.
12. Stab wound, 2.5 x 1 cm x 3 cm over right breast 2.5 cm below right nipple, 116 cm above heel, margin sharp and regular, lower and acute.
13. Stab wound 4x1.5 cm x 7 cm deep over left breast, 133 cm above heel margin sharp and regular, oblique, lower and acute.
14. Stab wound 3.8 x 1.8 cm, cavity deep 127 cm above heel, margins sharp and regular, oblique, lower and acute over left breast.
15. Stab wound, 4 x .8 cm, cavity deep, 127 cm above heel, margin sharp and regular, lower and acute, oblique, over left breast.
16. Stab wound 4.5 cm x 1.2 cm cavity deep 126 cm above heel, margin sharp and regular, oblique, lower and acute over left breast.

INTERNAL EXAMINATION

Uterus, twins two female foetus. Left side, weight 1600 gms, length 42 cms. One stab wound was found over right side of back near 6th cervical spine, 10x2.5 cm x 1.5 cm, margin sharp and regular.

2. Stab wound over right parietal region of scalp, 3.5 x 1 cm, cranial cavity deep, margins sharp and regular.
3. Right foot little finger incised, 1.1 cm, margin sharp and regular.

Right side foetus 2200 gms, body length 46 cm. No mark of any injury.”

(emphasis supplied)

33. Dr. Vinay Kumar Singh (PW-26), Specialist, Forensic Medicine, Lal Bahadur Shastri Hospital, Delhi, in his evidence has confirmed that injuries No.1, 2, 3, 4, 5 and 6 individually and collectively were sufficient to cause death in ordinary course of nature, which leads to the conclusion that there was clear intent to kill the deceased as well as the unborn children whom the deceased was carrying in her womb.

THE WEAPON OF OFFENCE IN THE PRESENT MURDER CASE IS THE KNIFE THAT WAS SEIZED BY THE POLICE FROM THE SCENE OF THE CRIME. WHILE IT IS TRUE THAT THE SKETCH OF THE KNIFE DOES NOT BEAR THE SIGNATURE OF APPELLANT-CONVICT VIKRANT, YET THE SEIZURE MEMO OF THE KNIFE BEING EX.PW-23/C BEARS THE SIGNATURE OF APPELLANT-CONVICT VIKRANT. CONSEQUENTLY, FAILURE TO OBTAIN SIGNATURE OF APPELLANT-CONVICT VIKRANT ON THE SKETCH OF THE KNIFE EX.PW-23/B IS OF NO RELEVANCE.

34. Admittedly, a knife was discovered at the scene of the crime. While it is true that the sketch of the knife does not bear the signature of appellant-convict Vikrant, yet the seizure memo of the knife being Ex.PW-23/C bears the signature of appellant-convict Vikrant. The English translation of the seizure memo being Ex.PW-23/C is reproduced hereinbelow:-

*“Case (FIR) no.298/13 dated 05.05.2013, U/s 302 IPC,
Police Station Kalyan Puri*

Ex.P-7

Ex.PW23/C

Pointing out memo of Scene of Crime and Seizure Memo of knife used in murder of Neeta @ Vineeta

In the presence of the witnesses mentioned hereinafter, alleged Vikrant S/o Ajit R/o 13/2, Kalyanpuri, Delhi, while leading and going upstairs towards 13/2, K. Puri, Delhi, pointed towards a blood stained knife lying on the floor in the left side at the end of stairs of 2nd Floor and disclosed that this was the very knife with which he had murdered his wife Neeta @ Vineeta and the alleged Vikrant also pointed towards a bed lying in the room on the 2nd floor. The mattresses and sheets of the same were stained with blood and the walls and other articles were also stained with blood. While pointing towards the aforesaid articles, he disclosed that this was the very room where he had committed the murder of his wife Neeta @ Vineeta by way of stabbing her. The knife so recovered, after pointing out, having dry blood stains was kept on a white paper and a sketch thereof was prepared. On measurement, the total length of the knife and its blade was found to be 33 cms. and 20 cms. respectively. Whereas the breadth of its blade and handle was found to be 4.5 cms. and 13 cms. respectively. The knife is made of steel like metal and its handle is covered with plastic. The words 'DREAMLINE STAINLESS STEEL' were written on the blade. The knife so recovered has been converted into a parcel with the help of a white cloth, sealed with the seal 'AK' and taken into police possession.

The memo regarding seizure of blood stained knife has been prepared.”

Sd/-Vikrant
(In English)

Witnesses:
Sd/-Sandeep
(In English)

SI Sandeep Kumar

*Sd/- Murtaza
(In English)
SI Murtaza Khan*

*Sd/- Arvind Kumar
(In English)
Insp. Arvind Kumar
SHO/Kalyanpuri,
Date 06.05.13”*

(emphasis supplied)

35. Consequently, failure to obtain signature of appellant-convict Vikrant on the sketch of the knife Ex.PW-23/B is of no relevance.

36. Dr. Vinay Kumar Singh in his evidence has stated that in his opinion all injuries except injuries No. 7, 8, 9, 10 and 11 mentioned in the post-mortem report were caused by the seized knife. Consequently, the weapon of offence in the present murder case is the aforesaid knife that was seized by the police from the scene of the crime.

THIS COURT IS OF THE VIEW THAT THERE IS NO DOUBT WITH REGARD TO THE RECOVERY OF BLOOD STAINED JEANS OF THE APPELLANT-CONVICT VIKRANT FROM THE POLICE STATION AND THE BLOOD ON THE JEANS WAS OF THE DECEASED NEETA @ VINEETA.

37. From the evidence on record, it is also apparent that the witnesses who had met the appellant-convict immediately after the incident had found him wearing jeans stained with blood.

38. While Amrish Kumar (PW-3) has stated that “*It is correct that when accused Vikrant came out of his house, he was wearing jeans only*”, ASI Subhash Chand (PW-10), part of the PCR team who was amongst the first to reach the scene of crime, has deposed that accused-Vikrant was wearing a jeans and a vest and “*His hands and jeans pant were having blood stains*”. Even the Constable driver of the PCR Van (PW-8) has deposed, “*Hands and jeans pant of Vikrant were stained with blood*”.

39. The jeans in question was seized vide seizure memo Ex.PW23/K. The English translation of the said seizure memo bearing the signature of appellant-convict Vikrant is reproduced hereinbelow:-

“Case (FIR) No.298/13 dated 05.05.2013, U/s 302 IPC, Police Station Kalyan Puri, District East.

Ex.P-5

Ex.PW23/K

Seizure Memo Regarding Blood Stained Jeans Pants

In the presence of the witnesses mentioned hereinafter, a blood stained, blue colored jeans pants worn by accused Vikrant S/o Ajit Singh, R/o 13/2, Kalyanpuri, Delhi, aged 21 years was (lifted) from the place of occurrence (falling under the jurisdiction of) P.S. Kalyanpuri, Delhi. Accused Vikrant disclosed that the blood lying on the said pants was of his wife Neeta @ Vineeta which had stuck on his jeans pants while murdering his wife Neeta @Vineeta. The words ‘GRIP JNS’ are written on the back strip of the jeans and the words, ‘DNM CULTURE’ are written on the button of the jeans. **The jeans pants was placed on a white coloured cloth and the same was converted into a parcel which was sealed with the seal of AK and was taken into police possession as a piece of evidence by means of this memo.**

The seizure memo regarding blood stained jeans pants got prepared.

Sd/- Vikrant
(In English)
Vikrant

Witnesses:
Sd/- Sandeep
(In English)
SI Sandeep Kumar

Sd/- Murtaza
(In English)
SI Murtaza Khan

Sd/- Arvind Kumar
(In English)
Insp. Arvind Kumar
SHO/Kalyanpuri,
Date 06.05.13”

(emphasis supplied)

40. Further, the testimonies of Sub-Inspector Sandeep Kumar PW23, Sub-Inspector Murtaza Khan PW24, Inspector Arvind Kumar PW29 and Mr. Indresh Kumar Mishra, Senior Scientific Officer (Bio) FSL, Rohini, PW25 confirm beyond doubt that the blood stained jeans of appellant-convict Vikrant was seized at the concerned police station. The relevant portions of the testimonies of the above officials are reproduced hereinbelow:-

A. SI Sandeep Kumar, PW23

“It was noticed that jeans pant worn by accused was having stained. The same was got removed from the person of accused and was taken into possession by adopting same sealing process. Seizure memo is Ex. PW23/A which bears my signature at point A. Thereafter accused was taken to LBS hospital.....jeans of accused was taken into possession in the police station....”

(emphasis supplied)

B. SI Murtaza Khan, PW24

“The jeans which the accused was wearing at that time was having blood stains and thereafter it was got removed from the body of accused and sealed in cloth parcel with the seal of AK and parcel was taken into possession vide memo Ex.PW23/K which bears my signature at point B.....I had noticed that his jeans was having blood spots. While removing the accused Vikrant from police station to the spot, I did not seize his jeans being evidence in this case. Vol.-it was not required as he was in police custody and there was no apprehension of his absconding and after his arrest, the jeans was seized by the IO. It is incorrect to suggest that accused Vikrant has nothing to do with jeans Ex.P-5.”

(emphasis supplied)

C. Insp. Arvind Kumar, PW29

“The jeans of accused was having blood spots. The jeans pant of accused Vikrant was got removed from his body and was kept in a pulanda duly sealed with the seal of AK and seized vide memo no.Ex.PW23/K. I took the accused to LBS hospital.....It is correct that as per MLC Ex.PW29/DA, one jean pant having blood stains is shown sealed at point A. I did not receive any sealed parcel from the hospital containing jean pant of accused Vikrant. It is incorrect to suggest that said sealed parcel was received by me or that it was withheld by me from the Court or that the jean pant seized vide memo Ex.OV23/K was plant upon accused Vikrant.....The word “Jaye Mauka” means the “place of occurrence”. It is correct that PS Kalyan Puri was not the place of occurrence. It is incorrect to suggest that jeans Ex-5 was planted upon the accused in this case or that seizure memo of jeans Ex.PW23/K was fabricated by me subsequently.”

(emphasis supplied)

D. Shri Indresh Kumar Mishra, Sr. Scientific Officer, PW25

“Parcel No.8 was sealed with the seal of AK and was marked as Ex.8. On opening the same one jean pant having brown stains described as jeans of accused Vikrant Singh was found.”

(emphasis supplied)

41. The Forensic Science Laboratory where the jeans of the appellant-convict Vikrant had been forwarded for examination has confirmed that the DNA profile of blood on the jeans was similar with the DNA profile generated from the blood of the deceased Neeta @ Vineeta. The relevant portion of the said FSL report is reproduced hereinbelow:-

“FORM No.FSL/DELHI/FM/03/23/24.12.2007

Forensic Science Laboratory

*Govt. of NCT of Delhi
Sector 14, Rohini, Delhi-110085.
Tel:011-27555811, Fax: 011-27555890*

Accredited by the National Accreditation Board for Resting and Calibration Laboratories (NABL)

REPORT No.FSL-2013/B-4159 BIO NO.533/14 Dated 23.06.15

- | |
|---|
| <ol style="list-style-type: none"><i>1. Please quote the Report (Opinion) No.& Date in future correspondence & Summons.</i><i>2. This report is Perse admissible u/s 293 Cr.P.C.</i> |
|---|

*To,
The SHO,
P.S. Kalyan Puri,
Delhi.*

Your letter No.961/SHO/Kalyan Puri Dated: 21.05.13 regarding 09(Nine) parcel in connection with the case FIR No.298/13 Dated:05.05.13 u/s: 302 IPC P.S., Kalyan Puri duly received in this office on 21.05.13.

xxxx

xxxx

xxxx

xxxx

DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

xxxx

xxxx

xxxx

xxxx

Exhibit '1': One knife having light brown stains.

xxxx

xxxx

xxxx

xxxx

Exhibit '2a': One blanket having brown stains.

xxxx

xxxx

xxxx

xxxx

Exhibit '6': Brown gauze cloth piece described as blood in gauze of deceased.

xxxx

xxxx

xxxx

xxxx

Exhibit '8': One jeans pants having brown stains described as jeans of accused Vikrant Singh.

xxxx

xxxx

xxxx

xxxx

CONCLUSION

DNA profile (STR analysis) performed on the source of exhibits '1', '2a', '6' & '8' were sufficient to conclude that the DNA profile generated from the source of exhibit '6' (i.e. blood in gauze of deceased) is similar with the DNA profile generated from the source of exhibit '1' (knife) '2a' i.e. blanket) & '9' (i.e. jeans of accused)."

(emphasis supplied)

42. Consequently, this Court is of the view that there is no doubt with regard to the recovery of blood stained jeans of the appellant-convict Vikrant from the police station and the blood on the jeans was of the deceased Neeta @ Vineeta.

THE APPELLANT-CONVICT VIKRANT HAD ALSO ADMITTEDLY SUFFERED INJURIES ON THE DATE OF THE INCIDENT I.E. 05TH MAY, 2013. THE AFORESAID INJURIES HAVE NOT BEEN EXPLAINED BY THE APPELLANT-CONVICT VIKRANT.

43. The appellant-convict Vikrant had also admittedly suffered injuries on the date of the incident i.e. 05th May, 2013. The relevant portion of the MLC of appellant-convict Vikrant is reproduced hereinbelow:-

GOVT. OF N.C.T. OF DELHI			
LAL BAHADUR SHASTRI HOSPITAL, KHICHTRIPUR, DELHI-91			
MLC No.6378/13 CR NO.71006/13			
<i>Name <u>Vikrant Singh</u> Father's Name/Husband Name <u>Ajeet Singh</u> Age <u>21 yrs.</u> Sex <u>M</u> Religion - <u> </u> Occupation - <u> </u> Residential Address <u>13/2, Kalyanpuri, Delhi</u> Brought By <u>SI Sandeep</u> Date of examination <u>6/5/13</u></i>			
xxx	xxx	xxx	<i>Particulars of Injuries or Symptoms, in case of poisoning. Informant <u>self</u></i>
			xxx xxx xxx
			xxx xxx xxx
xxx	xxx	xxx	xxx xxx xxx
			xxx xxx xxx
xxx	xxx	xxx	<i>L/E-</i> (1) Abrasion on right Forearm Posterior Aspect (2) Abrasion on (Rt.) hand index finger.
			xxx xxx xxx

xxx xxx xxx	xxx xxx xxx
	xxx xxx xxx
	Name of Injuries <u>Simple Fresh</u>
	xxx xxx xxx
Date	of20.....
Investigating Medical Officer	

(emphasis supplied)

44. The aforesaid injuries have not been explained by the appellant-convict Vikrant.

THIS COURT CONFIRMS THE FACTUAL FINDING OF THE TRIAL COURT THAT, "IT IS, THEREFORE, CLEAR THAT AT THE TIME OF INCIDENT, ACCUSED VIKRANT AND DHANESH WERE PRESENT IN THE HOUSE. SINCE THE DECEASED NEETA @ VINEETA HAD BEEN FOUND MURDERED UNDER UNNATURAL AND SUSPICIOUS CIRCUMSTANCES, THE APPELLANT-CONVICT VIKRANT WHO WAS PRESENT AT THE SCENE OF CRIME HAD TO OFFER AN EXPLANATION AS TO WHAT TRANSPIRED. CONSEQUENTLY, THIS COURT IS OF THE VIEW THAT SECTION 106 OF THE INDIAN EVIDENCE ACT, 1872 IS ATTRACTED TO THE PRESENT CASE AND THE APPELLANT-CONVICT VIKRANT HAS FAILED TO DISCHARGE THE BURDEN OF PROVING THE FACT ESPECIALLY WITHIN HIS KNOWLEDGE.

45. Despite turning hostile, Amrish Kumar (PW-3) has admitted that he had not seen any stranger entering or coming out from the house of the accused on the date of the incident. Though in cross-examination, he stated that it is not possible for him every time to see people coming or

going outside the house of the accused, yet this Court is of the opinion that the said witness is categorical to the extent that on the date of the incident, he had not seen any stranger entering or exiting the house of the accused. The relevant portion of the testimony of Amrish Kumar (PW-3) is *“It is correct that I had not seen any stranger entering or coming out from the house of accused on the day of incident”*. Consequently, this Court confirms the factual finding of the trial Court that, *“It is, therefore, clear that at the time of incident, accused Vikrant and Dhanesh were present in the house.”*

46. In the opinion of this Court, since the deceased Neeta @ Vineeta had been found murdered under unnatural and suspicious circumstances, the appellant-convict Vikrant who was present at the scene of crime had to offer an explanation as to what transpired. The said fact being in the special knowledge of the appellant-convict Vikrant was required under Section 106 of the Evidence Act to be explained by him. The appellant-convict Vikrant in his statement under Section 313 Cr.P.C. has just denied the allegations. Consequently, this Court is of the view that Section 106 of the Evidence Act is attracted to the present case. Section 106 of the Evidence Act, reads as under:-

“106. Burden of proving fact especially within knowledge.—
when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

47. It is settled law that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section applies to cases where the prosecution has succeeded in proving facts from which a reasonable

inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. Section 106 of the Evidence Act has been interpreted and analysed by the Apex Court as well as by the Division Bench of this Court in a catena of cases. Some of the relevant judgments are reproduced hereinbelow:-

A) In *State of W.B. vs. Mir Mohammad Omar & Ors.*, (2000) 8 SCC 382, the Supreme Court has observed as under:-

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may

be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody.

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37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

(emphasis supplied)

B) In *Ram Gulam Chaudhary & Ors. vs. State of Bihar, (2001) 8 SCC 311*, the Supreme Court has held as under:-

“24. Even otherwise, in our view, **this is a case where Section 106 of the Evidence Act would apply. Krishnanand**

Chaudhary was brutally assaulted and then a chhura-blow was given on the chest. Thus chhura-blow was given after Bijoy Chaudhary had said “he is still alive and should be killed”. The appellants then carried away the body. What happened thereafter to Krishnanand Chaudhary is especially within the knowledge of the appellants. The appellants have given no explanation as to what they did after they took away the body. Krishnanand Chaudhary has not been seen since alive. In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference. We, therefore, see no substance in this submission of Mr Mishra.”

(emphasis supplied)

C) In *Trimukh Maroti Kiran Vs. State of Maharashtra*, (2006) 10 SCC 681 the Supreme Court has held as under:-

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no

innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties.
(See *Stirland v. Director of Public Prosecutions* [1944 AC 315: (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135]. **The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act** which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime

they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.....”

(emphasis supplied)

48. A Division Bench of this Court in *Tulsi Ram vs. State, 2017 SCC OnLine Del 7343* has held as under:-

“44. It has been proved by the prosecution that the deceased was found dead in the dwelling house where she was residing with the appellant and was also last seen together with him. It becomes incumbent on him to offer a plausible explanation for the death of his wife.”

(emphasis supplied)

49. No evidence of forcible entry or theft or third party presence has been led by the appellant-convict. Consequently, this Court is of the view that the appellant-convict Vikrant has failed to discharge the burden of proving the fact especially within his knowledge.

IT IS SETTLED LAW THAT DELAY IN SENDING THE REPORT UNDER SECTION 157 CR.P.C. CANNOT LEAD TO A CONCLUSION THAT THE TRIAL IS VITIATED OR THE ACCUSED IS ENTITLED TO ACQUITTAL

50. Further, from the evidence on record it is apparent that copy of the FIR had been delivered at the residence of learned Metropolitan Magistrate and senior police officer in the early hours of 06th May, 2013. In any event, it is settled law that delay in sending the report under Section 157 Cr.P.C. cannot lead to a conclusion that the trial is vitiated or

the accused is entitled to acquittal on this ground [See: *Jafel Biswas & Ors. Vs. State of West Bengal, 2018 (11) SCALE 341*].

51. The compliance with Section 157 Cr.P.C. is relevant where the date and time of lodging of the FIR is questioned—which is not the case in the present matter. Consequently, the reliance of learned counsel for the appellant-convict upon Section 157 Cr.P.C. is misplaced.

52. This Court is further of the opinion that Section 8 of the Evidence Act is not attracted to the present case as any statement made to a police officer under any circumstance is not admissible in evidence against the accused. It covers confession/statements made when he was free and not in police custody, as also a confession made before any investigation has commenced.

AS THE APPELLANT-CONVICT VIKRANT WHO WAS PRESENT AT THE SCENE OF THE CRIME HAS NOT OFFERED ANY EXPLANATION AND THE BLOOD STAINS ON HIS JEANS HAVE MATCHED THE DNA PROFILE GENERATED FROM THE BLOOD OF THE DECEASED NEETA @ VINEETA AND HE HAS NOT EXPLAINED THE ABRASIONS THAT HE HAD SUFFERED ON THE DATE OF THE INCIDENT, THIS COURT IS OF THE OPINION THAT THE APPELLANT-CONVICT VIKRANT IS GUILTY OF MURDER OF NOT ONLY THE DECEASED NEETA @ VINEETA BUT ALSO OF THE UNBORN TWINS THAT SHE WAS CARRYING IN HER WOMB.

53. Consequently, as the appellant-convict Vikrant who was present at the scene of the crime (along with the deceased) has not offered any explanation and the blood stains on his jeans have matched the DNA profile generated from the blood of the deceased Neeta @ Vineeta and he has not explained the abrasions that he had suffered on the date of the incident, this Court is of the opinion that the appellant-convict Vikrant is

guilty of murder of not only the deceased Neeta @ Vineeta but also of the unborn twins that she was carrying in her womb.

HOWEVER, AS NO CHARGE WAS FRAMED AGAINST THE APPELLANT-CONVICT DHANESH FOR THE SUBSTANTIVE OFFENCE UNDER SECTION 302 IPC, THE TRIAL COURT COULD NOT HAVE PROCEEDED TO CONVICT HER FOR THE SAID OFFENCE. ACCORDINGLY, APPELLANT-CONVICT DHANESH IS ACQUITTED OF THE OFFENCE UNDER SECTION 302 IPC.

54. However, this Court is of the view that as no charge was framed against the appellant-convict Dhanesh for the substantive offence under Section 302 IPC, the Trial Court could not have proceeded to convict her for the said offence.

55. Section 222 Cr.P.C. gives discretion to the Court to convict the accused “*of the minor offence, though he was not charged with it*”. The test of minor offence is not merely that the prescribed punishment is less than the major offence. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence.

56. The Supreme Court has held that the composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC. In any event, Section 302 IPC cannot be regarded as a minor offence in comparison to Section 304-B IPC. The relevant portion of the judgment of the Supreme Court in *Shamnsaheb M. Multtani Vs. State of Karnataka, (2001) 2 SCC 577* is reproduced hereinbelow:-

“14. Sections 221 and 222 of the Code are the two provisions dealing with the power of a criminal court to convict the accused of an offence which is not included in the charge. The primary condition for application of section 221 of the Code is that the court should have felt doubt, at the time of framing the charge, as to which of the several acts (which may be proved) will constitute the offence on account of the nature of the acts or series of acts alleged against the accused. In such a case the section permits to convict the accused of the offence of which he is shown to have committed though he was not charged with it. But in the nature of the acts alleged by the prosecution in this case there was absolutely no scope for any doubt regarding the offence under Section 302 IPC, at least at the time of framing the charge.

15. Section 222(1) of the Code deals with a case when a person is charged with an offence consisting of several particulars. The Section permits the court to convict the accused “of the minor offence, though he was not charged with it”.

“222.(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.”

16. **What is meant by a minor offence for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence.**

17. **The composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-à-vis the latter.....”**

(emphasis supplied)

57. Accordingly, appellant-convict Dhanesh is acquitted of the offence under Section 302 IPC.

THERE IS A RING OF TRUTH TO THE TESTIMONIES OF KAILASH CHAND (PW-5), SMT. SHEELA (PW-15) AND BHUPENDER (PW-9) AND THEY HAVE BEEN PARTIALLY CORROBORATED BY MR. AMIT MALHOTRA, (PW-11), SALES MANAGER WITH NIMBUS MOTORS PVT. LTD. (HYUNDAI) INASMUCH AS HE DEPOSED THAT ONE I-10 ERA MODEL HYUNDAI CAR OF WHITE COLOUR HAD BEEN BOOKED IN THE NAME OF AJIT SINGH, FATHER OF THE ACCUSED-CONVICT VIKRANT BY BHUPENDER (PW-9), BROTHER OF THE DECEASED FOR WHICH THE INITIAL AMOUNT OF RS.90,000/- HAD BEEN PAID BY BHUPENDER (PW-9). CONSEQUENTLY, ALL THREE ACCUSED PERSONS NAMELY, DHANESH, VIKRANT AND AJIT SINGH ARE HELD GUILTY OF OFFENCE UNDER SECTION 498A/34 IPC.

58. On a plain reading of Section 498A IPC, it is apparent that cruelty can be of different types. Explanation (a) defines 'cruelty' as a wilful conduct of such a nature which is likely to drive a victim/woman to commit suicide or to cause grave injury or danger to her health, life or limb (whether mental or physical). The other explanation of 'cruelty' in Clause (b) is attracted when a women is harassed with a view to coerce her or any of her relatives to meet any unlawful demand for any property or valuable security or is on account of her failure to meet such demand.

59. In the present case, Kailash Chand (PW-5), father of the deceased, Smt. Sheela (PW-15), mother of the deceased and Bhupender (PW-9), brother of the deceased have levelled serious allegations of cruelty and harassment against the appellants-convicts and Ajit Singh.

60. This Court is of the view that there is a ring of truth to the testimonies of Kailash Chand (PW-5), Smt. Sheela (PW-15) and

Bhupender (PW-9) as they have candidly admitted that till the date of marriage, none of the accused had made any demand for dowry. If Kailash Chand (PW-5), Smt. Sheela (PW-15) and Bhupender (PW-9) intended to falsely implicate all the accused, they would have made allegations of demand for dowry against them for the period even prior to the date of marriage.

61. Further, the aforesaid testimonies have been partially corroborated by Mr. Amit Malhotra, (PW-11), Sales Manager with Nimbus Motors Pvt. Ltd. (Hyundai) inasmuch as he deposed that one I-10 Era Model Hyundai car of white colour had been booked in the name of Ajit Singh, father of the accused-convict Vikrant by Bhupender (PW-9), brother of the deceased for which the initial amount of Rs.90,000/- had been paid by Bhupender (PW-9). The relevant portion of the testimony of Mr. Amit Malhotra, (PW-11) is reproduced hereinbelow:-

*“I am working as Sales Manager with Nimbus Motors Pvt. Ltd. (Hyundai) at A-109, Sector-5, Noida, UP since October 2011. I have brought the case file of I-10 Car Chesis No. MALAM51BLCM085088 and Engine No. G4HGBM424773. I have also brought the office copy of order booking from bearing no. 2160 in respect of **one I-10 Era model car of white colour which was booked in the name of one Ajit by Bhupender on 19.01.12.** I had handed over the copy of this receipt to the IO vide seizure memo Ex. PW11/A which bears my signatures at point A and copy of the form is Ex. PW11/B (Original seen and returned). As per report, name of the contact person is Kailash Chand and his mobile no. 9310428116 and **initial payment/booking payment of Rs.90,000/- cash was made by Bhupender.**”*

(emphasis supplied)

62. As the offence of cruelty is normally committed within the four corners of a house and not talked about in the open till the '*tipping point*' is reached, this Court is of the view that the testimonies of Kailash Chand (PW-5), Smt. Sheela (PW-15) and Bhupender (PW-9) stand sufficiently corroborated.

63. The finding of the trial court that the presumption under Section 113B of the Evidence Act had been rebutted by cogent and convincing evidence is incorrect inasmuch as no defence evidence had been led by the accused, in particular with regard to the I-10 Hyundai car.

64. This Court is further of the opinion that the nature and extent of injuries suffered by the deceased Neeta @ Vineeta cannot be attributed to '*sudden gush of blood*'.

65. Consequently, all three accused persons namely, Dhanesh, Vikrant and Ajit Singh are held guilty of offence under Section 498A/34 IPC.

COURT'S DIRECTION

66. Before parting with this case, we must state that the scene of crime had not been properly captured by the police inasmuch as there is no public witness to prove as to what transpired immediately after the incident of murder. Contemporaneous wireless log indicate that a large public gathering had assembled at the scene of crime and they were so incensed by the murder of a recently married lady who was nine month's pregnant that they wanted to physically harm the appellant-convict Vikrant and wanted to *ghearao* the police station. The relevant extract of the wireless log is reproduced hereinbelow:-

“XXXX XXXX XXXX XXXX

<u>R77</u>	<u>R1</u>	<u><i>A call regarding quarrel at r/o 13/2, Kalyanpuri got recorded</i></u>
<i>R1</i>	<i>R77</i>	<i>The call was recorded</i>
<i>R1</i>	<i>R77</i>	<i>RCD & search</i>
<u>R1</u>	<u>R77</u>	<u><i>To be recorded. Vikrant S/o Ajit singh R/o 13/2, Kalyanpuri has murdered his wife who is present at the spot and I am taking him to PS Kalyanpuri. The dead body is lying at the spot. A lot of people have assembled here who are very angry.</i></u>
<u>R1</u>	<u>R77</u>	<u><i>To be noted. The people are assembling here and they are ghearing the police station.....”</i></u>

(emphasis supplied)

67. However, in the present case, the only public witness Mr. Amrish Kumar (PW-3) has resiled from his statement to the police.

68. Since the PCR vans are normally the first responders and reach the scene of crime within few minutes of the call having been made or information being received of any crime, this Court directs the Commissioner of Police, Delhi Police that all PCR vans be equipped, within a reasonable time, with either a mobile phone or an i-pad or any other appropriate audio and visual equipment so that they can record the contemporaneous scene of crime and tender the same in Court as legal evidence. For this purpose, appropriate training should also be imparted to the police personnel.

CONCLUSION

69. In view of the aforesaid findings, while the CrI. A. 628/2017 filed by appellant-convict Vikrant is dismissed and his order on sentence is

upheld, the Crl.A.492/2017 filed by appellant-convict Dhanesh and Crl.A. 451/2018 filed by appellant-complainant Kailash Chand are partly allowed inasmuch as the conviction and sentence of Dhanesh under Section 302 IPC is set aside but Dhanesh, Vikrant and Ajit Singh are convicted under Section 498A/34 IPC. Dhanesh, Vikrant and Ajit Singh are sentenced to three years simple imprisonment with a fine of Rupees Ten Thousand each. Since Dhanesh and Ajit Singh have already undergone imprisonment for over three years, they are deemed to have undergone the sentence provided they deposit the fine within a period of six weeks. Copy of judgment be sent to appellant-convict Vikrant through Jail Superintendent. Copy of judgment be given dasti to Dhanesh and Ajit Singh.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JULY 08, 2019

KA/js/rn