

**IN THE COURT OF AKSHDEEP MAHAJAN, ADDITIONAL
CHIEF JUDICIAL MAGISTRATE, AMBALA.
UID No.HR0202**

Computerized Case No.Chi-3626 of 2013.

Criminal Case No.: 37 of 2012 .

CNR NO.HRAM03-002640-2012

Date of Institution: 23.04.2012/16.04.2018

Date of Decision: 01.05.2019

State	Vs.	1.	Ravi Choudhary s/o Late Sh. Ramesh Singh, R/o Village Sinkhara, P.S. Sadar Buland Sahar (UP)
		2.	Shashi Choudhary w/o Late Sh. Ramesh Singh, R/o Village Sinkhara, P.S. Sadar Buland Sahar (UP)

.....Accused

FIR No.108 dated 30.03.2012

Under Section: 323/406/498A/504/506 of IPC

Police Station: Mahesh Nagar

Present: Shri Avtar Saini, APP for the State assisted by Sh. Baldev Singh, counsel for the complainant.
Accused Ravi Choudhary and Shashi Choudhary on bail represented by Sh. B. Malik and Sh. Rajesh Kumar Atri, Advocates.

Judgment:

The above named accused have been sent up to face trial for commission of offence punishable under Sections 323, 406, 498A, 504, 506 of IPC by the police of Police Station Mahesh Nagar.

2) The case of the prosecution in brief is that a complaint under Section 156(3) Cr.P.C. was received from the court of Ilaqua Magistrate Sh. Rajnish Kumar Sharma, Ambala stating therein that the complainant is the legally wedded wife of accused no.1 and accused no.2 is the

mother-in-law of the complainant. The marriage between the complainant and accused no.1 was solemnized on 20.11.2008 at Allahabad. Both the accused are greedy type of persons but the parents of complainant failed to understand this habit of accused persons and from the very beginning when the marriage program was started to be settled, both the accused as well as father of accused no.1 who was alive at that time put two conditions before the parents of complainant, one that there will be two ceremonies regarding the marriage and according to first condition the ring ceremony was to be held at the parental house of the complainant at Mahesh Nagar, Ambala Cantt and all the dowry articles as per their demand were to be given at the time of ring ceremony. According to his demand, the parents of complainant arranged ring ceremony at their house on 04.10.2008 and all the dowry articles mentioned in the list attached with the complaint and other valuable articles alongwith the passbook of Punjab National Bank having amount of approximately ₹6 lacs were entrusted to the accused and the date of marriage was settled as 20.11.2008. According to the second demand, the marriage was to be celebrated at Hotel Milan Palace at the expense of the parents of complainant. Accordingly, the marriage was solemnized between the complainant and accused no.1 at Hotel Milan Palace, Allahabad on 20.11.2008. At the time of Phera Ceremony, the accused as well as maternal uncle of accused no.1 demanded ₹15 lacs from the parents of complainant which disturbed the whole atmosphere of marriage. At the intervention of relatives and friends, the father of complainant gave ₹4

lacs to the accused and requested to complete the Phera Ceremony and further assured that they will try to make arrangement for the rest of money. The complainant spent some days happily in the company of accused persons but after some time the ugly face of both the accused came into existence as they started treating the complainant with utmost cruelty and misbehaved with her by abusing her in filthy language and even abused the parents of complainant in ugly way but the complainant tolerated all that in order to save her matrimonial alliance and also to protect the honour of her father. The accused no.1 is a very greedy person and he started withdrawing the amount by ATM from the passbook of complainant and within a short span he withdrew the major amount from her passbook without the consent of complainant. Whenever the complainant objected, she was severally beaten and humiliated even in the presence of mother-in-law and other relatives. She was turned out of her matrimonial home many a times even in night time and the complainant finding no other way remained in the shelter of landlord in order to save her life from the clutches of accused no.1. Many a times, she was beaten badly by accused no.1 but she never took any step against him just to maintain her matrimonial alliance with him. The accused no.1 pushed the complainant out of her matrimonial home and finding no other shelter, she reached her paternal home where she filed a complaint before the Women Crime Cell, Ambala and later on the matter was compromised between the complainant and accused with the intervention of relatives and the complainant again joined the company of accused no.1. The accused no.1

also filed a petition u/s 9 of Hindu Marriage Act in 2010. The complainant again compromised and excused the above said accused but no fruitful purpose could be served because accused no.1 is an addict of bad habits and a chain smoker, fond of putting cigarette smoke on the mouth of the complainant and also treats the complainant after drinking wine in unnatural way. The complainant made so many complaints to her parents and many a times, the parents of the complainant alongwith relatives tried their best to solve the problem but all in vain. The complainant was never allowed to use the gold jewellery even at the time of festivals and marriage functions on the pretext that the area in which they are living is a sensitive area. Till today, all the dowry articles are in the possession of both the accused and they have mis-appropriated the same. Inspite of all the atrocities and cruelty received by the complainant at the hands of accused persons, she gave birth to one son named Rohan on 26.11.2011. Even at the time of birth of Rohan, the complainant was all alone at the rented house at Mau Bhanjan and in serious condition she was left at the mercy of landlord of the rented house by both the accused as they went to Aligarh, their permanent home. It was the landlord who helped the complainant in her crucial time of giving birth to minor child and the parents of complainant came to help her at the time of birth of child and looked-after her. Both the accused came to the hospital after two days of the birth of child and even after the birth of son, the life of the complainant remained a hell because she was not allowed to give her breast feed to her child and even at night time she had to sleep without

child as accused no.2 used to get the child slept with her. Both the accused were not happy because they failed to get their demand completed of ₹15 lacs. The complainant requested many times not to make such demand as her parents had already spent huge amount at the time of her marriage but on her refusal, she was given beatings and ultimately turned out from the matrimonial home on 10.02.2012 in three wearing clothes alongwith her minor son. The complainant saved her life from the above said accused and left her matrimonial home at night as both the accused threatened her that they will kill the complainant at any time and will get their son remarried and finding no other way, the complainant reached at her parental house on 11.02.2012 and since then she is living with her parents at their mercy.

3) On the basis of above said complaint instant FIR under Sections 323, 406, 498A, 504, 506 IPC was registered in P.S. Mahesh Nagar. Preliminary investigation was conducted by SI Raj Pal. During the course of investigation statements of witnesses were recorded. Accused were arrested. After completion of investigation, challan against the accused under Section 173 Cr.P.C. for the commission of offence under Sections 323, 406, 498A, 504, 506 IPC was prepared and forwarded to the court for trial.

4) Copies of challan were supplied to the accused free of cost as provided under Section 207 Cr.P.C.

5) From the documents appended with the challan, charge was framed against the accused under Sections 323, 406, 498A, 504, 506 IPC

of Indian Penal Code, to which the accused pleaded not guilty and claimed trial.

6) Prosecution during the course of its evidence has examined Gunjan, complainant as PW1. She has placed on record the complaint as Ex.PW1/A, Annexure A - list of dowry articles as Ex.PW1/B, identification memo as Ex.PW1/C, recovery memo of marriage CD as Ex.PW1/D. The marriage CD has been brought on record as Ex.P5. During the course of her cross-examination, documents Ex.D1 copy of petition under Section 9 of Hindu Marriage Act, Ex.D2 copy of application to withdraw the petition, Ex.D3 copy of order, Ex.D4 copy of statement, were tendered. Balbir Singh, father of the complainant appeared as PW2. He has placed on record copy of affidavits dated 15.02.2010 as Ex.PW2/A and Ex.PW2/B, copy of passbook as Ex.PW2/C, recovery memo of wedding photos and card as Ex.PW2/D, recovery memo of dowry articles as Ex.PW2/E. Raj Pal, Retired SI and Investigating Officer appeared as PW3. He has placed on record Endorsement as Ex.PW3/A, FIR as Ex.PW3/B, temporary superdarinama as Ex.PW3/C, confessional statement as Ex.PW3/D, recovery memo as Ex.PW3/E. The marriage card and photographs have been brought on record as Ex.P1 to Ex.P4. HC Kapil appeared as PW4. Smt. Rekha Panwar, mother of the complainant appeared as PW5. ASI Ashok Kumar appeared as PW6. Thereafter, the prosecution evidence was closed by the ld. APP for the State vide separate statement dated 07.09.2014.

7) Statements of the accused under Section 313 Cr.P.C. were

recorded wherein accused denied all the incriminating evidence against them and pleaded false implication. Accused opted to lead evidence in defence and in defence evidence the accused have examined Kripal Singh as DW1, Ram Kishore Yadav, Retired Chief Engineer as DW2, Brijbir Singh as DW3. Accused Ravi Chaudhary has himself stepped into the witness box as DW4. In documentary evidence, the accused have relied upon Ex.D4/1 copy of petition u/s 9 of Hindu Marriage Act, Ex.D4/2 copy of compromise dated 15.04.2010, Ex.D4/3 copy of statement of Gunjan dated 15.04.2010, Ex.D4/4 copy of order sheet, Ex.D4/5 copy of order dated 29.04.2010, Ex.D4/6 copy of prayer sheet, Ex.D4/7 to Ex.D4/9 postal receipts, Ex.D4/10 reply to RTI application, Ex.D4/11 and Ex.D4/12 postal receipts, Ex.D4/13 copy of petition u/s 125 Cr.P.C. filed on 16.02.2012, Ex.D4/14 copy of documents of case under Guardians and Wards Act filed at Mau, Ex.D4/15 copy of order sheet, Ex.D4/16 to Ex.D4/20 copy of orders passed by Mediator, Ex.D4/21 copy of report dated 03.07.2014, Ex.D4/22 Information under RTI Act, Ex.D4/23 & D4/24 postal receipts, Ex.D4/25 copy of application u/s 156(3) Cr.P.C., Ex.D4/26 copy of order dated 03.02.2015, Ex.D4/27 copy of FIR, Ex.D4/28 copy of reply to notice u/s 41(1) Cr.P.C., Ex.D4/29 copy of report u/s 173 Cr.P.C., Ex.D4/30 postal receipt, Mark D4/1 to D4/13 photographs, Mark D4/14 documents of Manali-Shimla trip, Mark D4/15 documents of US Visa processing and copy of tickets, Mark D4/16 Hotel Bill, Mark D4/17 to Mark D4/29 Photographs, Mark D4/30 copy of letter to CAW Cell, Mark D4/31 copy of RTI application, Mark D4/32 postal order, Mark D4/33 Medical treatment papers of Smt. Shashi of

the year 2010 & 2011, Mark D4/34 Electricity bills, Mark D4/35 to D4/110 Medical treatment, bills & OPD receipts of Gunjan of year 2010, Mark D4/111 copy of letter to CAW Cell dated 02.11.2010, Mark D4/112 Booking list, Mark D4/113 to D4/165 Medical record, tests and bills/ receipts of the year 2011, Mark D4/166 to D4/168 photographs, Mark D4/169 Birth particulars, Mark D4/170 to D4/172 GATE-2012 application form, fee receipt, admit card and travel tickets, Mark D4/173 copy of application to SHO Mau, Mark D4/174 copy of summons in petition u/s 125 Cr.P.C., Mark D4/175 Newspaper, Mark D4/176 & D4/177 copy of reports on registered covers, Mark D4/178 reply to request for change of mediator, Mark D4/179 Request letter, Mark D4/180 copy of application for change of mediator, Mark D4/181 report from High Court, Mark D4/182 reply dated 15.11.2013 under RTI Act, Mark D4/183 order dated 20.01.2014 in RTI Appeal, Mark D4/184 copy of order, Mark D4/185 envelope, Mark D4/186 RTI letter of agriculture office, Mark D4/187 Information under RTI, Mark D4/188 Information under RTI regarding salary of Balbir Singh, Mark D4/189 to D4/196 Income Tax Returns, Mark D4/198 to D4/200 copy of RTI application by Gunjan, Mark D4/201 RTI application, Mark D4/202 & 203 reply, Mark D4/204 to D4/210 RTI application dated 19.05.2014 and reply, Mark D4/211 query by PIO, Mark D4/212 Objection by Gunjan, Mark D4/213 RTI application by Ravi, Mark D4/214 & D4/215 Medical Papers, Mark D4/216 copy of letter, Mark D4/217 & 218 RTI Application, Mark D4/219 copy of RTI reply alongwith information, Mark D4/220 Transfer of RTI application, Mark D4/221 copy of order dated 10.09.2015, Mark

D4/222 copy of RTI application dated 04.08.2015, Mark D4/223 counterfoil of postal order, Mark D4/224 Result of CAT held on 21.10.2012, Mark D4/225 employment as Clerk, Mark D4/226 Details of monthly salary/supplied to Gunjan on RTI application, Mark D4/227 & 228 copy of order dated 08.02.2013 by Family Court, Mark D4/229 to D4/233 copy of drafts of making payment, Mark D4/234 copy of order by Family Court, Mark D4/236 CD. Thereafter, the defence evidence was closed by order.

8) I have heard Sh. Avtar Saini, learned APP for the State assisted by Sh. Baldev Singh, learned counsel for the complainant, Sh. B. Malik and Sh. Rajesh Kumar Atri, learned defence counsel and carefully gone through the record of the case. Written arguments filed by the learned counsel for complainant and learned defence counsel have also been examined.

9) Learned APP for the State assisted by ld. Counsel for the complainant while initiating his arguments contends that the present case is a classic example of how a newly wedded bride has been systematically tortured, harassed and inflicted beatings for bringing insufficient dowry while her entire Istridhan and dowry articles which were given at the time of marriage have been appropriated to their own use by the accused. Ld. Counsel submits that the Ring Ceremony of complainant and accused no.1 was held at Mahesh Nagar, Ambala Cantt in the house of father of the complainant on 04.10.2008 wherein accused persons alongwith Sh. Ramesh Singh, father of the accused Ravi and their relatives participated and as per the two conditions which had been put forth by the accused

while finalizing the marriage proposal, all the dowry articles as per list Ex.PW1/B alongwith passbook of bank containing approximately ₹6 lacs was entrusted to the accused and Sh. Ramesh Singh, father of accused Ravi. As per second condition, the marriage was held on 20.11.2008 at Allahabad on the compulsion and demand of the accused at Hotel Milan Palace, Allahabad. However, at the time of Phera Ceremony accused raised the demand of ₹15 lacs. The complainant and her parents were astonished and requested the accused not to spoil the marriage atmosphere but the accused were adamant. The parents of complainant somehow arranged an amount of ₹4 lacs from the relatives who had gathered at the time of marriage and paid the same to the accused and it was only thereafter that the marriage was solemnized. Ld. Counsel submits that on the very next day after marriage, the entire jewellery and other Istridhan of complainant was taken away by the accused on the pretext that the area in which they were living is unsafe and there was apprehension of snatching. The complainant was continuously maltreated and harassed for bringing insufficient dowry and she was even inflicted beatings by the accused Ravi and Shashi while the accused Ravi is a chain smoker and used to throw cigarette smoke on the face of complainant. Ld. Counsel contends that the money which was given by the parents of complainant was withdrawn by the accused through illegal use of ATM without the consent of complainant. Ld. Counsel contends that from the very inception, the accused are shown to be of greedy nature and had been been raising demand of ₹15 lacs from the complainant and her parents.

Ld. Counsel contends that after continuous harassment and maltreatment at the matrimonial house at Allahabad, the complainant was taken by the accused Ravi to the place of his posting at Chennai, however, even there she was subjected to beatings by accused Ravi and subjected to harassment for bringing insufficient dowry and in this regard the MLR of the complainant dated 17.09.2009 at Chennai is on record and clearly goes to show the extent of cruelty to which the complainant was subjected.

10) Further ld. Counsel contends that subsequently the father of accused no.1 expired on 07.10.2009 and prior to his death he had been admitted in AIIMS at Delhi. At that time, the complainant came from Chennai to Delhi to be by the side of her family, however, on 06.10.2009 when the parents of complainant came to inquire about the well being of father of accused no.1, the accused no.1 again raised demand of ₹15 lacs in dowry and inflicted beatings upon the complainant and her parents and the parents of complainant were thrown out of the hospital. Thereafter, the complainant was inflicted beatings by accused on 16.01.2010 and she was thrown out of the matrimonial house and taken to Ambala Cantt on 17.01.2010. The complainant was medically examined at Civil Hospital, Ambala Cantt and in this regard, the MLR dated 17.01.2010 is on record. The matter was complained to the Women Cell, Ambala while accused Ravi filed a petition under Section 9 of Hindu Marriage Act at Aligarh in order to save his skin. Ultimately, the matter was compromised as per statements of the parties on affidavits Ex.PW2/A & Ex.PW2/B and the

complainant joined the company of accused Ravi to save the dignity and honour of her parents.

12) However, ld. Counsel contends that instances of cruelty and harassment at the hands of the accused continued and it was on account of such beatings and maltreatment that she suffered miscarriage in September, 2010. Even thereafter, she was always beaten and was living in hell. Ld. Counsel contends that even in crucial time of delivery when she gave birth to a son on 26.11.2011, the complainant was left alone by the accused. The landlord of the complainant helped her, otherwise there was no one from the side of the accused. The complainant's parents reached the next day on the call given by landlord. It is glaring example of neglect and maltreatment by the accused. Even after birth of son Rohan the complainant was not treated like a family member and was constrained to leave her matrimonial house alongwith her 2½ months child in the night of 10.02.2012 and reached Banaras by train on 10.02.2012 and reached at matrimonial home on 11.02.2012. Then she narrated her tale of woes to her parents and thereafter, the complaint was filed in the court on the basis of which instant FIR was registered. Ld. Counsel contends that in order to prove its case the prosecution has examined complainant Smt. Gunjan as PW1, her parents Balbir Singh as PW2 and Smt. Rekha Panwar as PW5, besides police officials and they have categorically deposed regarding the cruelty which was meted out to the complainant on account of bringing insufficient dowry and misappropriation of her Istridhan and gift articles given by the parents and

relatives of the complainant. Ld. Counsel contends that the recovery of gifts and other articles given by the parents of complainant has not been effected as the articles are not there at Mau and the accused Ravi suffered confessional statement Ex.PW3/D that all the gifts are lying in their house at Bulandshahr which have not been recovered. The father and grandfather of complainant were on good job and landlord and had spent an amount of ₹15 lacs on the marriage of complainant. Apart from this, father of the complainant had withdrawn his GPF and also obtained loan to perform the marriage of his daughter with pomp and show. The accused Shashi had been maltreating and beating the complainant by pulling her hair and beating with shoe on her head. Even after the birth of male child to the complainant, accused Shashi did not stop beating the complainant, rather the accused had conspired to kill the complainant and her son. Had the complainant not left her matrimonial home she might not be able to live as the accused wanted to kill them.

13) As to the contention urged by the accused during the course of their defence, the ld. Counsel contends that the testimony of DW1 Kripal Singh, DW2 Ram Kishore Yadav and DW3 Brijbir Singh has no relevance to the material questions involved in the present case. Ld. Counsel contends that in support of the fact that the accused Shashi had been residing at Aligarh, only certain electricity bills of the house at Aligarh have been placed on record without such documents having been proved on record. Ld. Counsel submits that mere electricity bills are no proof that the accused Shashi had been residing all alone at Aligarh as

alleged. In fact, ld. Counsel contends that the accused Ravi has acted in a pre-planned fashion and made reference to the numerous documents which have been tendered during the course of defence evidence Ex.DW4/1 to Ex.DW4/20 and Mark D4/1 to Mark D4/236 to submit that accused has kept record of even very small particulars and the only inference which is plausible is that the accused had been planning for the court case. Ld. Counsel has then referred to the cross-examination of PW5 Smt. Rekha Panwar wherein suggestion has been put to the witness that the complainant was thrown out of the matrimonial house not in the night of 10.02.2012 but in the night of 12.02.2012. In such circumstances, ld. Counsel submits that the prosecution case against the accused is fully established on record and accused are liable to be convicted for the offence for which they have been charged.

14) On the other hand, ld. Counsel appearing for the accused has initiated his arguments by inviting reference to the complaint Ex.PW1/A on the basis of which instant FIR was registered. Ld. Counsel submits that the allegations of cruelty and harassment are general in nature and no date, month or year has been specified when the alleged instances of cruelty/harassment had taken place. Ld. Counsel submits that such averments in the complaint Ex.PW1/A have to be kept in mind while appreciating the testimony of prosecution witnesses in the court, all of whom have attempted to make material improvements during the course of evidence and their testimony is replete with material discrepancies and inter-se inconsistencies which show clearly that the entire case of the

prosecution is false and concocted and filed only to harass the accused. At the outset, ld. Counsel contends that there is an inordinate delay in filing the present complaint. Ld. Counsel contends that as per the statement of complainant, she was turned out of the matrimonial house on 10.02.2012, however, the complaint Ex.PW1/A on the basis of which instant FIR was registered was presented before the court only on 07.03.2012 and there is no explanation for this inordinate delay in filing the complaint before the court. It is submitted that prompt lodging of the complaint is necessary and in the absence of any explanation for the inordinate delay in filing of the complaint, a serious doubt is cast on the version as mentioned in the complaint. Reliance in this regard has been placed on the judgments in the case of **Sanjay Lata Vs. Amrit Gautam & Anr.**, Criminal Appeal No.702-DBA of 2006 and **State of Andhra Pradesh Vs. M.Madhusudan Rao**, 2008 SLP (Criminal) No.3426 of 2007. Further, he has stated that the complainant did not lodge any FIR in the local Police Station of District Mau (UP) where the incident is alleged to have occurred. In fact, the real maternal uncle of complainant is a Senior Police Officer and the fact that she had already filed a case in CAW Cell, Ambala in 2000 itself is sufficient to show that the complainant was aware as to how the complaint is made to the police. In this manner, by not registering the complaint at the local Police Station of District Mau and then waiting for 25 days before presenting the complaint Ex.PW1/A before the court, a question mark is put on the credibility of the version in the complaint Ex.PW1/A.

15) Ld. Counsel contends that in order to appreciate the evidence brought on record in its proper prospective, it is essential that the manner and circumstances under which marriage was solemnized be first brought on record. Ld. Counsel contends that PW1 Gunjan complainant, PW2 Balbir Singh and PW5 Rekha Panwar categorically admitted in their cross-examination that the marriage was finalized in pursuance to the matrimonial advertisement published by the parents of accused no.1 in the newspaper and there was neither any mediator or relative in the marriage nor there was any past acquaintance between the two families. Further, the PWs have not questioned the fact that the marriage was solemnized with the free will and agreement of parties and there was no question of any pressure having been put by either side to the marriage. Ld. Counsel contends that such caveat regarding the absence of any pressure having been borne on the complainant or her parents is supplemented by unusual story which has been brought by the prosecution witnesses regarding giving and entrustment of dowry articles. It is submitted that the version sought to be put forth is that even before the solemnization of marriage at the time of Ring/Tikka Ceremony on 04.10.2008 at the house of parents of the complainant, all the dowry articles as per list Ex.PW1/B including bank passbook in the name of the complainant containing an amount of approx. ₹ 6 lacs was entrusted to the accused as per their demand. Ld. Counsel has made reference to the cross-examination of PW2 Balbir Singh wherein he states that in their Jat Biradari of Muzaffarnagar area the dowry articles are generally given at the time of marriage function. It

is well known that the Ring/betrothal ceremony is only a step towards culmination of marriage and mere betrothal ceremony does not confer any legal status on the parties nor the same has any legal sanctity. Thus, the version put forth by the prosecution witnesses that even before the marriage function, the entire dowry articles had been entrusted to the accused at the time of betrothal/ring ceremony does not appear probable especially when the other party is free to back out from the relationship even after the performance of ring/tikka ceremony.

16) Ld. Counsel contends that in view of the admitted fact that the marriage was solemnized at Allahabad on 20.11.2008, the complainant has come up with such version since it would not have been feasible on the part of complainant party to show purchase and entrustment of dowry articles at Allahabad. However, while setting forth such version PWs conveniently ignored the fact that the accused had come to attend the ring ceremony only in two cars as stated by DW3 Brijbir Singh and DW4 Ravi Chaudhary, accused and the articles as per list Ex.PW1/B could not possibly be carried by the accused in their cars. Ld. Counsel points out that during the course of cross-examination of DW3 Brijbir Singh, it was suggested to the witness that they had come to attend the ring ceremony on their personal vehicles as also a mini truck, which is not the version of any prosecution witness during the course of evidence and the same does not even find mention in the complaint Ex.PW1/A.

17) Next, Ld. Counsel has made reference to the second condition put by the accused as alleged by the prosecution and the case set-up that

at the time of phera ceremony the accused had raised demand of ₹15 lacs from the parents of the complainant. Ld. Counsel submits at the outset that even such contention is inherently improbable when examined in the light that the marriage had been finalized by way of matrimonial advertisement and the two families were not even acquainted with each other prior to the marriage proposal. Ld. Counsel has drawn the attention to the photographs of the marriage which are on record and submits that a bare perusal of such photographs shows that the entire marriage had been solemnized in a good atmosphere and there is no sign of anxiety/unease on the face of complainant or her parents. Ld. Counsel has also made reference to the statements of witnesses examined at the stage of defence DW1 Kripal Singh, DW2 Ram Kishore Yadav and DW3 Brijbir Singh and the suggestions put to the aforesaid DWs during the course of their cross-examination. Ld. Counsel submits that while all the aforesaid witnesses have deposed that no alleged amount was ever paid by the parents of complainant to the parents of accused at the time of phera ceremony, the suggestion put to DWs is that the father of accused Ramesh Singh had in fact taken the father of complainant Balbir Singh, PW2 to a separate room where the alleged demand was made. It is submitted that PW2 Balbir Singh has stated no such thing while the version in the statement of PW1 Gunjan, PW2 Balbir Singh and PW5 Rekha Panwar is that it was the accused and his maternal uncle who had raised demand of ₹15 lacs. Ld. Counsel contends that in case the demand was raised by the father of accused before the father of complainant in a closed room, the assertions

made in the statements of PWs are clearly rendered false. Further, ld. Counsel submits that a vague statement has been made that the amount of ₹4 lacs was collected by PW2 Balbir Singh from the relatives who had gathered at the time of marriage. However, name of any such relative from whom the amount was taken has not been disclosed nor any such person has been examined by the prosecution in support of its case. In such circumstances, ld. Counsel contends that the contention urged by the prosecution regarding demand of dowry raised at the time of phera ceremony is clearly not established on record.

18) Next, ld. Counsel contends that there is statement made by PW1 Gunjan complainant during the course of her cross-examination that for a few days after marriage she lived happily with the accused and his family members. In this regard, it is pointed out that merely three days after the marriage accused had taken the complainant on a trip to Manali and Shimla for their honeymoon and they had returned only on 02.12.2008. At that time, the accused Ravi was employed in Chennai with a multinational company as Engineer and he had to go to USA in connection with the company work. It is submitted that at the instance of complainant that she wanted to see America, the accused Ravi got prepared all her papers and on 07.02.2009 they left for USA where they stayed for three months and came back only on 08.05.2009. Ld. Counsel has made reference to the photographs on record during US trip to contend that there is no sign of any tension or unease on the face of complainant and the newly wedded couple is seen enjoying life in the

photographs. In this regard, ld. Counsel submits that the entire expenses of complainant in USA are shown to have been borne by the accused. Ld. Counsel has also made reference to the educational qualification and job profile of the accused Ravi, the factum of government employment of his father and submits that the accused had sufficient means with them for comfortable living and they had no requirement of anything from the complainant or her parents. Reference has then been made to the allegation that the accused had withdrawn the amount from the bank account of complainant by unauthorized use of her ATM card. Ld. Counsel contends that it is clear that on 04.10.2008 when the passbook and ATM are alleged to have been entrusted to the accused, the balance in the passbook was only ₹1005/- and entry with respect to the deposit of the amount in the bank account is subsequent thereto. The withdrawal of money from the said account as per copy of passbook Ex.PW2/C was done at first stage on different dates in December, 2008 and January, 2009 when PW1 Gunjan was living with her mother-in-law at Allahabad and accused Ravi was working in Chennai and not living at Allahabad. No money from the said account was withdrawn when the complainant and accused were living in USA for three months and no money was withdrawn even after their return from USA. At the second stage, withdrawal of money from said account was in September, 2009 when the complainant was living with accused Ravi at Chennai. No money withdrawal has been reported after September, 2009 till the filing of this case. Ld. Counsel contends that considering the ATM daily withdrawal

limit of ₹20,000/- or ₹25,000/-, if the accused had been greedy then the entire amount from the account of PW1 could have been withdrawn within one month from marriage. However, entries of passbook Ex.PW2/C reveal that the money was withdrawn on different dates and the same is clear indication that PW1 had withdrawn the amount as per her convenience. Reference has been made to the fact that even after joining as Clerk in UP PWD Department in February, 2010 when the salary of accused Ravi was reduced and became meagre, even at that time no withdrawal was made from the account of PW1.

19) Ld. Counsel has then made reference to the evidence regarding beatings alleged to have been inflicted upon the complainant. In this regard, ld. Counsel submits that the prosecution has placed on record two medical certificates dated 17.01.2010 and 17.09.2009, however, such documents are neither exhibited nor marked and not proved by examining any doctor and only photocopies have been placed on record. As to the medical report dated 17.01.2010, it is submitted that the same is self created document and at the relevant time the complainant Gunjan was living at her parental house at Ambala i.e. from 06.10.2009 till 15.02.2010 which fact has been admitted by the complainant Gunjan PW1 in her statement Ex.DW4/3 before the court at Aligarh in proceedings u/s 9 of the Hindu Marriage Act. Further, Ld. Counsel submits that in the complaint Ex.PW1/A no specific date was mentioned when the complainant is alleged to have been pushed out of the matrimonial house of the accused, which clearly shows that the allegations of beating on

16.01.2010 are all manipulated and concocted as ground to get medical examination of the complainant conducted on 17.01.2010. Ld. Counsel submits that though such medical certificate has not been proved on record as per law, even then bare perusal of the same would show that the injuries are only complaint of pain and no external mark of injury was detailed in such report. As to the certificate dated 17.02.2009, ld. Counsel contends that the same is only a doctor prescription and neither a MLR nor injury report. Ld. Counsel submits that DW4 Ravi has explained that in September, 2009 PW1 Gunjan had informed him that she was having headache and pain and the accused Ravi had asked her to go to that hospital and get herself checked up as it was a Panel Hospital of the company in which accused no.1 was then working. Ld. Counsel has also pointed out that with respect to the alleged beatings on 10.02.2012, no medical examination of the complainant was got conducted from any doctor and no reason for the same is forthcoming. At any rate, ld. Counsel contends that no specific overt act or injury has been attributed to the accused and there is no evidence on record to show that the accused Ravi had performed unnatural sex with the complainant as alleged.

20) Ld. Counsel then made reference to material improvements which have been effected by the complainant Gunjan, PW1 in her testimony before the court. First of all reference has been made to the alleged incident of 06.10.2009 when Sh. Ramesh Singh, father-in-law of the complainant was admitted in AIIMS, Delhi. In this regard, categorical statement made by PW1 Gunjan in her statement is that on 05.10.2009

she was at Chennai when she received information that her father-in-law was unwell and admitted in AIIMS, Delhi. On 06.10.2009, she came from Chennai to Delhi to be with side of her family and when her parents came to inquire about well being of her father-in-law, the accused Ravi raised demand for dowry, gave beatings to her and her parents and her parents were thrown out from the hospital. Ld. Counsel contends that such version has no basis in the complaint Ex.PW1/A on the basis of which instant FIR was registered. PW2 Balbir Singh, father of the complainant has deposed as to the accused Ravi inflicting beatings on the complainant in their presence, however, he has not deposed that the accused Ravi had also inflicted beatings upon him and his wife PW5 Rekha Panwar. PW5 Rekha Panwar has gone to the extent to depose that there was no fight between accused Ravi and complainant Gunjan and it was the accused Shashi, mother of accused Ravi who used to fight for dowry.

21) Ld. Counsel has then made reference to the incident of miscarriage in September, 2010 and the contention of PW1 that the same was due to beatings of the accused. Ld. Counsel submits that even the said incident does not find mention in the complaint Ex.PW1/A, while there is nothing on record to show that miscarriage was on account of beatings as alleged. Rather, PW5 Rekha Panwar has stated that it was on account of tension bearing on the mind of complainant that miscarriage had taken place. At any rate, ld. Counsel contends that there is absolutely nothing on record to connect miscarriage of the child in September, 2010 with the cruelty allegedly inflicted by the accused. Ld. Counsel has then made

reference to the instances made in the complaint Ex.PW1/A as also in the statement of the complainant. In this regard, first reference has been made to the incident of birth of male child on 26.11.2011. Id. Counsel contends that PW2 Balbir Singh has categorically admitted in his cross-examination that the entire expenses of delivery and treatment were borne by the accused Ravi. The material grouse of the complainant is that at the time of delivery, neither of the accused was present and she was got admitted in the hospital by the landlord of house in Mau where they were residing with nobody by her side to take care of her and it was landlord who had made telephone call to her parents and informed them that she had been admitted and lying all alone in the hospital. In this regard, accused Ravi DW4 has contended that as per medical record of the complainant, the expected date of delivery was from 13th to 18th December, 2011 and on 25.11.2011, he had gone to bring his mother from Aligarh. He has even placed on record the travel ticket and the fact that as soon as he received information regarding admission of the complainant in hospital, he at once arranged taxi and alongwith his mother reached the hospital on the next day of the birth of the child. Further, Id. Counsel contends that it is an admitted fact that after the birth of the child, the mother of the complainant had stayed at Mau for 15-20 days and thereafter she had left on her own before the naming ceremony of the child.

22) Thereafter, Id. Counsel has made reference to the alleged incident of beating on 10.02.2012. In this regard, Id. Counsel submits that

it is the case of the accused that he was scheduled to appear in the examination of GATE 2012 on 12.02.2012. Accordingly, he had started from Mau on 10.02.2012 and reached the house of DW2 Ram Kishore Yadav, Retired Chief Engineer, UP PWD and the friend of his father in the morning of 11.02.2012. DW2 Ram Kishore Yadav has categorically deposed that when the accused Ravi was present in the house with him, he had received a telephone call from his mother Shashi informing him that the complainant and her child was missing and the said phone call was made around 10:00 to 11:00 A.M. in the morning. Thereafter, the accused Ravi had tried to contact the complainant on her mobile phone, parents of the complainant at their mobile phone, however, to no avail and ultimately the accused Ravi without giving examination started back for Mau and reached there on 12.02.2012 where the complaint regarding missing of his wife and child was also lodged by him. Ld. Counsel has vehemently argued that the complainant has failed to disclose the train on which she had travelled from Mau to Ambala as alleged. Ld. Counsel contends that it is the version of PWs that Balbir Singh, PW2 had reached at the Railway Station, Ambala Cantt. to bring the complainant home after she had made phone call from the railway station enquiry to her parents. However, the aforesaid PWs have not disclosed the names/particulars of the train in which the complainant Gunjan PW1 and the minor child had travelled which clearly shows that the entire version of the complainant is concocted.

23) As to the testimony of other prosecution witnesses PW2

Balbir Singh and PW5 Rekha Panwar, ld. Counsel contends that even the testimony of the aforesaid witnesses are shown to suffer from material improvements and inconsistencies viz-a-viz the statement of PW1 Gunjan and even the instances mentioned by them have no basis in the complaint Ex.PW1/A. Ld. Counsel points out that it has come in the statement of PW1 at the time of her cross-examination that after miscarriage she had called her father at Mau and when he came, the accused Ravi had thrown him out and raised a demand of ₹15 lacs. However, PW2 Balbir Singh and PW5 Rekha Panwar have made material improvement and stated that both of them had gone to Mau after the news of miscarriage of the complainant and PW5 Rekha Panwar has gone on to the extent to depose that the accused Ravi had inflicted beatings on their persons. Further, PW2 Balbir Singh has made a statement to the effect that no fight between accused and complainant had taken place in his presence, except at AIIMS, Delhi while PW5 Rekha Panwar stated that the accused Ravi and the complainant had never fought with each other and it was only accused Shashi who used to fight with the complainant on account of bringing insufficient dowry. PW5 Rekha Panwar has gone on to depose that the entire expenses of delivery and treatment had been borne by PW2 Balbir Singh and made certain other material improvements over her statement u/s 161 Cr.P.C. to which she was duly confronted but she could not offer any satisfactory explanation. In such circumstances, learned counsel submits that the version of prosecution is clearly not substantiated on record and the testimony of PWs is shown to suffer from material

discrepancies and inter-se inconsistencies. Moreover, the accused is shown to have probalised his defence version and the law is well settled that the testimony of defence witnesses is entitled to as much weight as testimony of prosecution witnesses. Ld. Counsel submits that DWs examined by the accused are witnesses of material facts which show that the entire case of the complainant is false and concocted and the accused has been made to suffer endlessly on account of false case lodged against him.

24) As far as accused Shashi is concerned, ld. Counsel submits that the complainant Gunjan PW1 had stayed with accused Shashi on two occasions, one after marriage for about two months till their departure to USA and secondly, for about 2½ months after the birth of child. Ld. Counsel has also made reference to the medical record of the accused Shashi showing that she was suffering from ailments and no specific instance of cruelty/harassment has been attributed by the complainant to the accused Shashi. Ld. Counsel has also made reference to the testimony of defence witnesses as also electricity bills brought on record to show that the accused Shashi had been residing at Aligarh all alone after the death of her husband while accused no.1 and complainant had been residing at Mau. Ld. Counsel has also referred to the conduct of complainant that at the time of death of her father-in-law she and her family members did not participate in the cremation/last rites and other ceremonies and on the other hand, filed a false complaint against the accused before CAW, Ambala Cell.

25) Ld. Counsel has also referred to the various applications filed by either party under RTI Act and submits that the complainant has done everything in her power to arrest the progress of accused in his personal/ professional life and wrote letters to the educational institutions where accused no.1 had taken admission in MBA Course against such admission and seeking various details/ particulars from the employer of accused Ravi. Ld. Counsel submits that the application under the RTI Act was also filed by accused Ravi and it was revealed from such RTI enquiry that the father of complainant had not shown any expenses towards purchase of dowry articles at the time of marriage of the complainant and in fact Ld. Counsel contends that in the FIR which was got lodged against PW2 and PW5 and their son under the provisions of Dowry Prohibition Act, the aforesaid PWs had submitted a reply that they had never given any dowry to the accused at the time of marriage. Ld. Counsel has vehemently argued that the complainant has not placed on record any bills/receipts qua purchase of material alleged to have been entrusted to the accused and the list Ex.PW1/B is not shown to have been prepared at the time of marriage and does not bear signatures of the accused or any other person from the family of the accused. Ld. Counsel has also made reference to the statement of PW2 wherein he had stated regarding withdrawal of amount from his GPF account for the marriage of the complainant and the factum of his salary being about ₹50,000/- at the time of marriage of the complainant. However, Ld. Counsel contends that it is clear from the information received under the RTI Act Mark DW4/189 and Mark

DW4/190 that the gross salary of PW2 in the year 2008 was only ₹26,000/- and take home salary was only ₹13,000/-, while no amount had been withdrawn from the GPF account by PW2 at the time of marriage. As to the contention that PW2 had expended amount to the tune of ₹15-20 lacs at the time of marriage, ld. Counsel submits that proof of any such expenditure is not forthcoming while from the reply under the RTI Act it has been revealed that PW2 had taken loan from the office to build the house and to purchase a car, while PW2 Balbir Singh has objected to furnishing of Income Tax returns pertaining to the relevant time of marriage of PW1. At the relevant time, the son of PW2 is shown to be studying in B. Tech. in private Engineering College at Mullana and where the expenses were quite high. So much so, ld. Counsel contends that even the marriage card of the complainant was not printed by PW2. Further it has come that at the time of wedding PW2 and his entire family stayed in the house of DW2 Ram Kishore Yadav at Allahabad for 4-5 days.

26) Ld. Counsel for the accused has also pointed out the conduct of the Ambala police in the present case. He submits that the FIR in the present case was lodged only on 30.03.2012, however, statements of the prosecution witnesses were recorded on 01.04.2012 and the police completed all investigation within 5 days and submitted report to the Magistrate on 05.04.2012 to issue arrest warrants of the accused in pursuance to which both the accused were arrested on 10.04.2012 from District Mau (UP). No effort was made by the IO to know the reality by visiting the actual place and the entire investigation was concluded while

sitting at Ambala. No notice was ever given to accused and straightway the police arrested both the accused without following the procedure u/s 41(a) Cr.P.C. As to the alleged recovery vide memo Ex.PW2/E & Ex.PW3/E, it is submitted that such recovery memos are not proved on record and the material which was allegedly recovered was material of the accused themselves and the case property has not even been produced before the court. No effort was undertaken to get the matter inquired from any independent person and whether accused Shashi was residing with PW1 or not. The news of arrest of the accused was also published in the local newspaper with the sole intention to defame the accused. No details of the phone calls and the tower location of the phone of the complainant was sought. Ld. Counsel has also referred to the fact that two different doctors prescription regarding the treatment at Ambala were found at home after PW1 left the matrimonial house and the dates mentioned on those prescriptions were of the period when PW1 was residing in Mau. Reference in this regard has been placed upon Mark D4/214 & Mark D4/215.

27) Ld. Counsel has then made submissions as to the probability and feasibility of the events as deposed by the prosecution witnesses and submits that at the time when the father of accused no.1 was on death bed and at last stage of his life in AIIMS, Delhi from 04.10.2009 till 07.10.2009 the question of accused beating the complainant and her parents or demanding dowry does not arise. It is submitted that AIIMS, Delhi is the best hospital in the country with high security and video

surveillance. Further, it is submitted that the male child was born after a gap of 32 years in the family and the question of accused throwing out 2½ months old child from the house does not arise. Reference has also been made to the document Ex.D4/28 submitted by the police to the court of Id. CJM, Allahabad wherein the PWs have stated that no dowry was ever given by them during, before and after the complainant marriage. Reference has also been made to the final report Ex.D4/29 in this regard. Id. Counsel has also detailed the documents revealing that the accused Shashi was living in Aligarh and not in Mau and has made reference to the medical treatment papers of the accused Shashi during the year 2010 and 2011 Mark D4/33, electricity bill Mark D4/34, bills of taxi Mark D4/161 to 165 and the statements of PWs and DWs regarding visit of Shashi at the time of birth of the child. Id. Counsel has also made reference to the documents showing that the complainant Gunjan, PW1 was always taken care of properly by the accused and in this regard, detailed reference has been made to the medical treatment/photographs on record. It has been submitted that the accused was never in need of dowry and had promising carrier which has been hampered due to failed marriage. Reference in this regard has been made to the documents Mark D4/224 to Mark D4/226. In support of his contentions, Id. Counsel has placed reliance upon judgments in the case of **Daljit Singh & Ors. Vs. Sukhvinder Kaur & Anr., CrI. Misc. No. M-8742 of 2015 decided on 3.10.2016 by Hon'ble Punjab and Haryana High Court, Sanjay Lata Vs. Amrit Gautam, Criminal Appeal No.702-DBA of 2006 decided on**

19.01.2009 by Hon'ble Punjab and Haryana High Court, Arnesh Kumar Vs. State of Bihar, Crl.Appeal No.1277 of 2014 decided on 2.07.2014 by Hon'ble Supreme Court, Sushil Kumar Sharma Vs. Union of India & Ors., Writ Petition (Civil) No.141 of 2005 decided on 19.07.2005 by Hon'ble Supreme Court, Sundar Babu & Ors. Vs. State of Tamil Nadu, Criminal Appeal No.773 of 2003 decided on 19.02.2009, Baijnath & Ors. Vs. State of Madhya Pardesh, Criminal Appeal No.1097 of 2016 decided on 18.11.2016 by Hon'ble Supreme Court, Dr. Rini Johar & Anr. Vs. State of MP & Ors., Writ Petition (Criminal) No.30 of 2015 decided on 3.06.2016 by Hon'ble Supreme Court, Chhotan Sao & Anr. Vs. State of Bihar, Criminal Appeal No.1613 of 2008 decided on 17.12.2013 by Hon'ble Supreme Court, State of Gujarat Vs. Kishanbhai etc., Criminal Appeal No.1485 of 2008 decided on 7.01.2014 by Hon'ble Supreme Court, Neera Singh Vs. State of NCT of Delhi & Ors., Crl.M.C.7262 of 2006 decided on 23.02.2007 by Hon'ble Delhi High Court, Dharm Raj Yadav & Ors. Vs. State of UP & Ors., Writ Petition No.MB 528 of 2005 decided on 10.01.2006 by Hon'ble Allahabad High Court, Sanjay Bhardwaj & Ors. Vs. The State & Anr., Crl.M.C.No.491 of 2009 decided on 27.08.2010 by Hon'ble Delhi High Court, Dilip Singh Vs. State of UP, Civil Appeal No.5239 of 2002 decided on 3.12.2009 by Hon'ble Supreme Court, Subhash Vs. State of Haryana, Criminal Appeal No.184 of 2006 decided on 16.12.2010 by Hon'ble Supreme Court, Dr. Sunil Kumar Sambhudayal Gupta & Ors. Vs. State of Maharashtra,

Criminal Appeal No.891 of 2004 decided on 11.11.2010 by Hon'ble Supreme Court, State of Andhra Pradesh Vs. M. Madhusudan Rao SLP (Criminal) No.3426 of 2007 decided on 24.10.2008 by Hon'ble Supreme Court, Shiv Kumar Vs. Hukam Chand & Anr. (1999) 7 SCC 467, Narayan Singh Vs. Kallaram @ Kalluram Kushwaha and another, Writ Petition No.7860/2014 decided on 19.03.2015 by Hon'ble Madhya Pradesh High Court, Vishal Verma Vs. State of Haryana, Writ Petition No.CRM M-53013 of 2018 decided on 5.02.2019 by Hon'ble Punjab and Haryana High Court.

28) In the end, ld. Counsel has submitted that the entire case of the prosecution is false and concocted and both the accused deserve to be acquitted.

29) According to the prosecution version during the period from 20.11.2008 to 10.02.2012 the accused misappropriated the dowry articles belonging to the complainant Gunjan Panwar, PW1 which were entrusted to them at the time of marriage by dishonestly converting the same for their own use and further the accused are alleged to have subjected the complainant to cruelty by giving her beatings, taunting her and demanding more dowry and further the accused are alleged to have caused simple hurt to the complainant and criminally intimidated the complainant by threatening to kill her and thereby committed the offences punishable under Sections 406, 498A, 323, 506 IPC. In Suresh Kumar v/s State of Haryana 2008(2) RCR(Criminal) 2 our own Hon'ble High Court has held that in order to constitute an offence under Section 498A

IPC, the following essentials are to be completed:

- i) the women must be married;
- ii) she must be subjected to cruelty or harassment;
- iii) such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband;
- iv) the cruelty should be of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health (whether mental or physical);
- v) this harassment of the woman is with a view to coerce her or any person related to her to meet such demand of any property or valuable security or on account of failure by her or any person related to her to meet such demand.

The expression “Cruelty” has been defined for the purpose of Section 498-A of the IPC in two parts. The first part envisages the willful conduct on the part of husband or his relatives towards the woman, which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical). The expression “Willful conduct”, therefore, requires to be understood in conjunction with the other requirement viz., the consequence of such a conduct on the wife. The second part contemplates the harassment of the woman, which harassment shall be with a view to coerce the woman or any person relates to her to meet any unlawful demand for any property or valuable security or is on account of their failure to meet such demand. Therefore, harassment must be accompanied by unlawful demand for property or valuable security. Now, it has to be seen whether the aforesaid ingredients are satisfied in the present case.

30) At the outset, it deserves to be noticed that FIR in the present

case was lodged on the application u/s 156(3) Cr.P.C. Ex.PW1/A, filed by complainant Gunjan PW1, which was sent by the court for investigation and registration of FIR u/s 156(3) Cr.P.C. The application Ex.PW1/A is, thus, a formal document drafted by a lawyer and presented to the court incorporating all the necessary particulars on which the action against the accused was sought. The version in the application Ex.PW1/A is, thus, material and represents the first version in point of time which the complainant had brought forth against the accused with respect to the wrongdoings alleged to have been perpetrated against her. In this regard, the contention urged by learned defence counsel is that the allegations in the complaint Ex.PW1/A with respect to alleged cruelty and harassment on account of dowry, are all general in nature and no specific instance incorporating the date and time when the alleged instances of cruelty took place have been incorporated. Now, the complaint Ex.PW1/A in paras 2 to 4 incorporates plea with respect to the alleged demand of dowry by the accused persons and its part fulfillment on the part of parents of complainant and subsequent paras 5 to 11 incorporate the instances of alleged cruelty and harassment to which the complainant was subjected on account of bringing insufficient dowry. The subsequent paras also incorporate two occasions when the complainant was allegedly ousted from the matrimonial house by the accused. In para 7 of the complaint, reference is made to the first instance alleging that the accused no.1 pushed the complainant out of the matrimonial house and finding no shelter she had reached her parental home where she filed a complaint

before Women Cell, Ambala, however, there is no mention of the day or month when the alleged incident of ouster had taken place. In the preceding para 6 of the complaint Ex.PW1/A wherein general allegations have been leveled regarding the accused subjecting the complainant to cruelty and beatings on account of bringing insufficient dowry, there is reference of two medical certificates dated 17.09.2009 and 17.01.2010. It has been submitted on behalf of complainant that the entire complaint Ex.PW1/A is to be read as one whole and the instances in para 7 of the complaint Ex.PW1/A must necessarily be read in seriatum after para 6 incorporating specific reference to beatings inflicted on the complainant and reference to the medical certificates 17.09.2009 and 17.01.2010. Ld. Counsel for the complainant has, thus, sought to contend that such instance in para 7 of the complaint must be taken as referring to specific instance immediately preceding 17.01.2010. I have considered the aforesaid contention urged by the ld. Counsel. However, even giving full allowance to the principle that the complaint is to be read as a whole, it is clear that para 7 of the complaint Ex.PW1/A does not incorporate specific date or month when the alleged instance of ouster of complainant from the matrimonial house took place. Next, the complaint Ex.PW1/A in para 9 of the complaint makes reference to a specific instance at the time of birth of the child on 26.11.2011 and it has been alleged that at the crucial time of childbirth, the accused had left the complainant at the house all alone and went away. Thereafter, it makes a reference to the goings-on after the birth of the child as instances of further cruelty inflicted on the

complainant. In para 10 of the complaint, there is reference to the second ouster of complainant from the matrimonial home and in this para, specific date is mentioned as 10.02.2012 when the complainant is alleged to have been given beatings and turned out of the matrimonial house in three wearing clothes alongwith minor son. Thus, in the complaint Ex.PW1/A on the basis of which instant FIR was registered, while there are two instances of ouster of the complainant from the matrimonial house after inflicting beatings, the instance of alleged ouster prior to filing of the complaint in Women Cell, Ambala does not incorporate reference to any specific date or time when the beatings had been inflicted, whereas the subsequent instance of ouster and beatings is alleged to have taken place on 10.02.2012. Further, there is reference to the instance of alleged cruelty on or about the time of birth of the child on 26.11.2011 besides incorporating reference of two medical certificates dated 17.09.2009 and 17.01.2010 and plea that after the marriage the accused had withdrawn substantial amount from the bank account of the complainant by using her ATM Card and passbook without her consent as incorporated in para 6 of the complaint. There is also a mention of the dishonest misappropriation of dowry articles by the accused for their own use. In the rest of the complaint Ex.PW1/A, there are only general allegations of cruelty and harassment on account of bringing insufficient dowry and no specific instance with date or month has been alleged. It is in the backdrop of such averments in the complaint Ex.PW1/A, which incorporates the version first in point of time on the part of the complainant against the accused in

circumstances offering the complainant with opportunity to bring forth details of wrongdoings to which she had been subjected, that the evidence brought on record in the present case needs to be examined. For the said purpose, it shall be useful to examine the prosecution evidence in the light of pleas/averments taken in the complaint Ex.PW1/A on the basis of which instant FIR was registered and thereafter, consider such pleas which have come forth during the course of evidence and do not find mention in the complaint Ex.PW1/A.

31) The first plea urged in the complaint Ex.PW1/A and which forms a material aspect of the prosecution case against the accused is concerning the demand of dowry by the accused persons. PW1 Gunjan complainant, PW2 Balbir Singh, father of the complainant and PW5 Rekha Panwar, mother of the complainant clearly admit during the course of their testimony that the marriage of complainant with accused no.1 was arranged in pursuance to the matrimonial advertisement given by the parents of accused no.1 Ravi Chaudhary which was published in the newspaper. All the aforesaid PWs have admitted that prior to the settlement of marriage proposal, the two families were not known or acquainted with each other and there was no common relation/mediator of marriage through whom the marriage proposal was settled. Rather, the marriage proposal is shown to have been settled and the marriage solemnized with free consent of both the families to the marriage and there is no evidence on record to show that any pressure ever came to be exerted by the accused or the father of accused no.1 on the complainant

and her parents for settlement of the marriage proposal or solemnization of marriage. Admittedly, the betrothal/ring ceremony was held on 04.10.2008 at Mahesh Nagar, Ambala Cantt at the house of the father of complainant, whereas the marriage was solemnized on 20.11.2008 at Milan Palace, Allahabad. The version put forth by the prosecution in the complaint Ex.PW1/A is that at the time of settlement of marriage proposal two conditions were put forth by the accused. The first condition was that betrothal/ring ceremony shall be held in parental house of the complainant and all the dowry articles as per their demand must be given at the time of betrothal/ring ceremony. It is alleged that it was in pursuance to such demand that the betrothal/ring ceremony was held at the house of the parents of the complainant on 04.10.2008 and all the dowry articles as per list Ex.PW1/B alongwith passbook of the bank account in the name of the complainant having a sum of nearly ₹6 lacs was entrusted to the accused and father of accused no.1 Sh. Ramesh Singh who was alive at that time. PW1 Gunjan, PW2 Balbir Singh and PW5 Rekha Panwar during the course of their testimony have reiterated the said version. However, as rightly pointed out by the ld. Defence counsel such version appears inherently improbable and does not inspire confidence. PW2 Balbir Singh during the course of his cross-examination admitted that in their Jat Biradari of Muzaffarnagar area, the dowry articles are given in marriage function, though he has stated that in their case the parents of accused had settled that the dowry articles be given at the time of betrothal/ring ceremony. It is common knowledge that while marriage has legal sanctity

and confers legal status on the participating parties, there is no such legal sanctity which is attached to betrothal/ ring ceremony and even after the conduct of such ceremony, any party thereto could well back out from solemnization of marriage. Such common knowledge must necessarily be imputed to the complainant and her parents, bearing in mind that the complainant herself is alleged to be well educated and PW2 Balbir Singh at the relevant time was employed in government service.

32) There is another aspect to be considered. At the relevant time, the accused had been residing at Allahabad and it is case of the prosecution that it was at the insistence of the accused that the marriage ceremony was solemnized at Allahabad. In case, the accused had indeed raised demand of dowry articles and the same was to be appropriated by the accused for their own use as alleged, it was only expected that the demand for dowry articles shall be made at Allahabad where the house of the accused was situated and it is improbable that the accused would seek huge inconvenience of bringing dowry articles from Ambala to Allahabad. It is in this context that the contention of Id. Defence counsel that such story was concocted since the complainant party could not possibly show or prove the purchase of alleged dowry articles from Allahabad at future date when the dispute had arisen between the parties, is to be appreciated. Further, in the case of matrimonial alliance through advertisement published in the newspaper, allegations that the accused had made huge demand of dowry from the complainant does not appear probable. It is appropriate in this context to advert briefly to the social standing of

parties at the relevant time.

33) Accused no.1 Ravi Chaudhary while appearing as defence witness DW4 has stated that he is the only son of his parents. In the year 2008, he was employed as Engineer with multinational company and working at Chennai. He has placed on record documents pertaining to his educational qualifications and achievements as Mark D4/224 and stated that at the relevant time he was having annul package of ₹6 lacs. His father Sh. Ramesh Singh was employed as Engineer in PWD Department and earning handsome salary while the accused family had no significant expenses to bear. It is, thus, clear that the accused had sufficient means of their own at the relevant time and the accused Ravi Chaudhary while appearing as DW4 has clearly stated that they had no requirement of any dowry and therefore, did not raise any such demand. Reference is also apposite at this stage to the means of complainant and her parents. PW5 Smt. Rekha Panwar, mother of the complainant is admittedly a house wife and not earning. PW2 Balbir Singh, father of the complainant was employed in Agriculture Department at the relevant time on Class-3 post. PW2 Balbir Singh has stated that he was promoted to Class-2 post in the Agriculture Department in the year 2012. Although he has stated that at the time of marriage, he was getting a salary of ₹50,000/- per month, no proof of salary of PW2 Balbir Singh at the relevant time has been placed on record. On the other hand, accused has placed on record documents during the stage of defence evidence in the nature of reply/information under the RTI Act furnished by Agriculture Department to the effect that

at the relevant time gross salary of PW2 Balbir Singh was only ₹26,000/- and his take home salary was around ₹13,000/- as referred in Mark D4/189 & D4/190. No doubt, such documents have not been proved on record as per law, the fact remains that it was for the prosecution to establish its case beyond reasonable doubt and to show that the complainant party had the means to make the payment of dowry as alleged by them. In this regard, the accused is shown to have applied to Income Tax Office, Ambala in order to obtain income tax returns of PW2 Balbir Singh for the relevant period. However, he was informed by Income Tax Office, Ambala that PW2 Balbir Singh had objected to supply of such information as per documents Mark D4/220 & D4/221. Further, it has come in the testimony of PW2 Balbir Singh that he had taken loan from the department at the time when he had built his house in the year 1998 and even at the time when he purchased car in the year 2008. Still further, it has come in the testimony of PW2 Balbir Singh that at the relevant time his son Vishwajit was studying in B.Tech. in a private Engineering College at Mullana and his studies involved a substantial expense. Though PW2 Balbir Singh has stated that he had withdrawn the amount from GPF account at the time of marriage of the complainant, the said fact has also not been substantiated on record. Rather, the accused during the course of defence evidence has brought on record documents in the shape of information under the RTI Act Ex.D4/22 alongwith letter Mark D4/182 which clearly goes to show that no amount was withdrawn from the GPF account of PW2 Balbir Singh as alleged by him. In this

regard PW1 Gunjan, complainant has alleged that her father Balbir Singh and grandfather are landlords and they earn substantial income from agriculture and lending money. However, the aforesaid statement made by PW1 Gunjan has remained entirely unsubstantiated and there is no evidence worth the name which has been brought on record to show that PW2 Balbir Singh was possessed of sufficient resources as alleged by him and the source of funds for making purchase of articles as incorporated in list Ex.PW1/B has not been substantiated on record. The same is another material circumstance which casts doubt on the version regarding demand of dowry articles by the accused at Ambala and entrustment of same by the complainant party.

34) There is another aspect of the matter which needs to be stated. The categorical case of the prosecution in the complaint Ex.PW1/A as also in the testimony of PW1 Gunjan, PW2 Balbir Singh and PW5 Rekha Panwar is that passbook of the bank account of complainant having approximately a sum of ₹6 lacs was entrusted to the accused alongwith other dowry articles as per list Ex.PW1/B at the time of betrothal/ring ceremony. However, a bare perusal of the passbook of the account Ex.PW2/C would make it amply clear that on 04.10.2008, there was balance of only ₹1005/- in the said account and the amount is shown to have been credited into the said account subsequently and it was at the time of marriage that the balance in the said account was ₹5,88,915/-. In such circumstances, the question of entrustment of passbook to the accused at the time of betrothal/ring ceremony on 04.10.2008 does not

arise. Another aspect which deserves mention is that the prosecution witnesses have not stated anything as to how the dowry articles mentioned in the list Ex.PW1/B came to be carried by the accused to Allahabad. In his testimony, PW2 Balbir Singh stated during the course of his cross-examination that 25-30 persons from the side of accused had come to attend betrothal/ring ceremony and he is not aware whether such persons had arrived by train since he had not gone to receive them. PW1 Gunjan complainant has stated in her cross-examination which was conducted on 30.03.2015 that in the ring ceremony 15-20 persons had come present from the accused side and they had come on their own vehicles, however, she does not know number of the vehicles. PW5 Rekha Panwar has also stated in her cross-examination that in the betrothal/ring ceremony 30-35 persons from the side of the accused had come in their own vehicles. However, during the course of defence evidence, the accused have examined DW3 Brijbir Singh, maternal uncle of the accused no.1 who had participated in the ring ceremony and in his testimony he has clearly stated that about 10-12 persons from their side had come in the afternoon on two cars and after conduct of the ceremony they had departed on the same cars. To the similar effect is the statement made by the accused Ravi Chaudhary while appearing as DW4. However, during the course of cross-examination of DW3 Brijbir Singh, the categorical suggestion put to the witness was that 25-30 persons from the side of accused had arrived in 5-6 cars and a mini-truck, whereas such is not the case of prosecution either in the complaint Ex.PW1/A or during the course of prosecution

evidence. The same casts material doubt on the prosecution version. In such circumstances, the first plea urged by the prosecution in support of their case that the accused had raised demand for dowry at the time of betrothal/ring ceremony and that the dowry articles as per list Ex.PW1/B had been entrusted by the parents of complainant to the accused and Sh. Ramesh Singh, father of accused no.1 at the time of betrothal/ring ceremony has remained entirely unsubstantiated on record.

35) The next plea urged by the prosecution in the complaint Ex.PW1/A is that at the time of marriage on 20.11.2008 at Milan Palace, Allahabad, the accused had raised a demand of ₹15 lacs at the time of Phera ceremony. However, PW2 Balbir Singh could only arrange ₹4 lacs from all the relatives who had gathered there and handed over the same to the accused. Even the aforesaid contention urged on behalf of prosecution appears improbable. PW1 Gunjan and PW2 Balbir Singh categorically admit in their cross-examination that payment of ₹15 lacs was never settled between parties as part of the marriage proposal. Having already adverted to the circumstances under which the marriage proposal was settled, it is not possible to comprehend that the accused party could bring to bear such pressure on the complainant party as to compel payment of ₹15 lacs at Phera ceremony knowing fully well that the complainant party had come from Ambala and did not have any acquaintance/resources at Allahabad. Moreover, the categoric statement made by PW1 Gunjan, PW2 Balbir Singh and PW5 Rekha Panwar is to the effect that demand of ₹15 lacs in dowry at the time of Phera ceremony was raised by the

accused, the father of accused no.1 Sh. Ramesh Singh and his maternal uncle. During the course of defence evidence, the accused Ravi Chaudhary besides appearing as defence witness as DW4 has examined DW1 Kripal Singh, DW2 Ram Kishore Yadav and DW3 Brijbir Singh, all of whom had participated in the marriage and Phera ceremony and have categorically deposed to the effect that no demand for dowry was ever raised at the relevant time nor any amount was paid by PW2 Balbir Singh to the father of accused no.1 Ramesh Singh. During the course of cross-examination of aforesaid DWs, categoric suggestion put to the witnesses was that immediately preceding the Phera Ceremony father of accused no.1 Sh. Ramesh Singh had taken father of the complainant Sh. Balbir Singh PW2 to a separate room where the demand for dowry was raised. The aforesaid version during the course of cross-examination of defence witnesses is at material variance to the version in the statements of PW1 Gunjan, PW2 Balbir Singh and PW5 Rekha Panwar that the demand of ₹15 lacs was raised not only by Sh. Ramesh Singh, father of accused no.1 but also by the accused and his maternal uncle. Ld. Defence counsel has also invited attention of the court to the photographs at the time of wedding and Phera ceremony to submit that there is no sign of any pressure or unease on the faces of complainant party. Moreover, law is well settled that the testimony of defence witnesses is entitled to as much weight as testimony of prosecution witnesses and in such circumstances, the statements made by DW1 Kripal Singh, DW2 Ram Kishore Yadav and DW3 Brijbir Singh are relevant and materially contradict the prosecution

case that any demand of ₹15 lacs was raised by the accused at the time of Phera ceremony. Moreover, the prosecution has failed to establish as to the source of payment of ₹4 lacs at the time of Phera ceremony. In this regard, statement made by PW1 Gunjan complainant is to the effect that about 20-25 of their relatives had gone to Allahabad to attend the marriage and the sum of ₹4 lacs was collected by PW2 Balbir Singh from all such relatives. To the similar effect is the statement made by PW2 Balbir Singh. However, the names/particulars of such relatives have not been disclosed and they were neither joined with investigation in the present case nor examined as prosecution witnesses. In such circumstances, even the aforesaid plea urged by the prosecution that any demand for dowry was raised by the accused at the time of Phera ceremony or that PW2 Balbir Singh had entrusted the amount of ₹4 lacs to the accused in pursuance to such demand has remained entirely unsubstantiated.

36) At this stage, it deserves to be noticed that on the application of accused Ex.D4/25 a criminal case u/s 3 of Dowry Prohibition Act is shown to have been got registered against PW2 Balbir Singh, PW5 Rekha Panwar and Vishwajit son of PWs. In the aforesaid criminal case, the police is shown to have issued notice u/s 41(a) Cr.P.C. to the PWs and reply to such notice has been brought on record as Ex.D4/28. A bare perusal of such reply makes it amply clear that both PWs had given signed statement to the effect that no dowry had ever been given by them during, before or after their daughter's marriage. The said fact is also

incorporated in the report u/s 173 Cr.P.C. Ex.D4/29 which was presented in the said case. The same casts material doubt on the prosecution case that any demand for dowry was raised by the accused as alleged or that in pursuance to such demand dowry articles had in fact been entrusted by the complainant party to the accused.

37) Next, the allegations of cruelty and harassment for bringing insufficient dowry as incorporated in the complaint Ex.PW1/A may now be examined. In her statement PW1 Gunjan has categorically admitted that immediately after the marriage, she had accompanied accused no.1 to Manali and Shimla for their honeymoon and in this regard, accused during the course of his defence evidence has placed on record the tickets/bills showing the period of trip to Manali and Shimla lasting from 25.11.2008 to 02.12.2008. Thereafter, the complainant is shown to have resided with the parents of accused no.1 at Allahabad while the accused no.1 went to the place of his employment at Chennai. Accused Ravi Chaudhary while appearing as DW1 has stated that the complainant stayed at Allahabad for approximately two months till the last week of January, 2009 and then PW2 Balbir Singh is alleged to have come to Allahabad and taken back the complainant to her parental house. Though the prosecution has denied such version during the course of cross-examination of accused Ravi Chaudhary DW4, PW5 Rekha Panwar, mother of the complainant has come with the plea that PW2 Balbir Singh had indeed visited Allahabad prior to the trip of complainant and accused no.1 abroad and alleged that the accused Ravi Chaudhary had raised the

demand of ₹2 lacs from PW2 Balbir Singh in order to meet his expenses abroad. Ld. Defence counsel has aptly pointed out that such statement made by PW5 Rekha Panwar neither has any basis in the complaint Ex.PW1/A nor the same finds mention in the statement of PW1 Gunjan or PW2 Balbir Singh. Rather, such statement made by PW5 Rekha Panwar is shown to be a material improvement on her part and is clearly not reliable. At any rate, PW1 Gunjan, complainant has admitted that in February, 2009 she had accompanied accused no.1 to USA and they had stayed there for three months i.e. from 07.02.2009 to 08.05.2009 as stated by DW4 Ravi Chaudhary in his statement and brought forth in the documents placed on record during the course of defence evidence. The accused Ravi Chaudhary DW4 has clearly stated that the entire paper work for visit of complainant abroad including her Visa, Air Ticket and the entire expenses abroad were borne by him and in this regard, he has placed on record documents Mark D4/15 to Mark D4/26. Though such documents are not proved on record as per law, PW1 Gunjan has categorically admitted in her cross-examination that her honeymoon period and then trip to USA was all well and there is no specific plea or instance of cruelty/harassment during this period.

38) At this stage, another plea urged by the prosecution in the complaint Ex.PW1/A needs to be adverted to. It has been stated in para 6 of the complaint Ex.PW1/A that the accused no.1 had started withdrawing the amount by ATM from the passbook of the complainant and within a short span he withdrew major amount from her passbook without the

consent of the complainant. Still further, it has been alleged that when the complainant objected, she was beaten and humiliated even in the presence of accused no.2 and other relatives besides being turned out of the matrimonial house several times in the night time. A perusal of the bank passbook Ex.PW2/C makes it amply clear that at first stage the amount was withdrawn from 04.12.2008 to 05.02.2009. In the cross-examination of PW1 Gunjan which was conducted on 30.03.2015, she has categorically stated that after marriage, her ATM and PIN were forcibly taken from her by the accused. To the similar effect is the statement made by PW2 Balbir Singh, who stated in his cross-examination that ATM card was taken by the accused from complainant and the same was not entrusted by him to the accused. The question which naturally arises is that in case ATM and PIN had been forcibly taken from the complainant by the accused as alleged and a substantial amount withdrawn before the trip to USA, then why a complaint in this regard was not made by the complainant to any member of her family especially when the case of the prosecution is that prior to the trip to USA PW2 Balbir Singh had gone to Allahabad to meet the complainant. In her cross-examination which was conducted on 30.03.2015 PW1 Gunjan has sought to contend that she came to know of the withdrawal of said amount only in Chennai. However, such is clearly not the case of the prosecution in the complaint, Ex.PW1/A wherein it was alleged that at the time when the amount was withdrawn from her passbook she had objected to the same but she was subjected to beatings and humiliation by the accused. Moreover, there is

absolutely nothing on record to establish that the amount from the bank account had been withdrawn by the accused. No particulars/details have been brought on record to show the manner and the place from where the amount was got withdrawn and it is the categorical case of accused in his defence while appearing as DW4 that the entire amount had been withdrawn by the complainant herself and at the relevant time when the withdrawals are alleged to have been made, the accused was at Chennai. The withdrawal from the said account at second stage is shown to be in September, 2009. At that time, PW1 Gunjan was residing along with the accused no.1 at Chennai and no complaint in this regard was made after September, 2009 till the filing of the present criminal complaint. Even with respect to such plea, there is no corroborative evidence in the shape of details/manner of withdrawal of the amount and the sole testimony of complainant PW1 Gunjan in this regard is clearly not tenable. Besides, there is much merit in the contention of ld. Defence counsel that considering the ATM withdrawal limit of ₹20,000/- to ₹25,000/- per day, if the accused had indeed intended to withdraw the entire amount from the account of complainant, the same could have been withdrawn within 1-2 months from marriage. However, that is not the case and it is clear from the entries in the passbook Ex.PW2/C that the amount was withdrawn on different dates which is an indicator of the fact that the amount had been withdrawn by PW1 Gunjan herself as per her convenience.

39) The next plea urged by the prosecution in the complaint Ex.PW1/A as incorporated in para 7 involves physical beating and ouster

of the complainant from the matrimonial house. As already noticed in the earlier part of the judgment, para no.7 of the complaint Ex.PW1/A is bereft of the specific date or time when the alleged instance of physical beating and ouster of the complainant from the matrimonial house had taken place. In her testimony Gunjan, PW1 has alleged that such instance had taken place on 16.01.2010 and thereafter both the accused had left her at her parental house and on the next day i.e. 17.01.2010 she had got her medical examination conducted and thereafter filed the complaint before the Women Cell, Ambala. Before examining such plea, reference is apposite to another instance which has been alleged during the course of prosecution evidence. PW1 Gunjan has deposed that on 06.10.2009 her father-in-law Sh. Ramesh Singh was admitted in AIIMS, Delhi and when her parents came to see him, the accused Ravi Chaudhary raised a demand of ₹15 lacs, inflicted beatings upon her and her parents and threw her parents out from the hospital. By way of putting things in perspective, the statement of DW1 Kripal Singh needs to be adverted to. DW1 Kripal Singh has deposed that about 11 months after marriage Sh. Ramesh Singh had come at Aligarh and he at once fell ill and vomited blood. The accused no.2 Shashi Chaudhary who is his niece called him and he saw that the condition of Sh. Ramesh Singh was serious. They took Sh. Ramesh Singh to Medical College, Aligarh Muslim University where he was kept in emergency for 2-3 hours and then referred to AIIMS, Delhi. They at once brought Sh. Ramesh Singh to AIIMS, Delhi and got him admitted there. They remained there at the hospital and after 3-4 days Sh.

Ramesh Singh expired. During the time they stayed at the hospital, the complainant Gunjan came for about one hour and thereafter went to her parental house. Even at the time of last rites of Sh. Ramesh Singh, Gunjan complainant was not present and remained at her parental house. In this regard, the testimony of DW3 Brijbir Singh also needs to be adverted to. He has categorically stated that Sh. Ramesh Singh, father of accused no.1 was got admitted in AIIMS, Delhi on 04.10.2009 and on receiving information, he had reached the hospital on 05.10.2009. On 06.10.2009 in the afternoon the complainant reached the hospital alongwith her parents and they stayed there for about 3-4 hours and then went away. On 07.10.2009 Sh. Ramesh Singh expired during the course of his treatment and they gave information on phone to the complainant Gunjan, PW1. However, neither the complainant nor any member of her family reached AIIMS Hospital or even attended last rites of Sh. Ramesh Singh, and the complainant remained residing at her parental house. DW2 Ram Kishore Yadav has also deposed that on receiving news of demise of Sh. Ramesh Singh on 07.10.2009, he had reached Aligarh, however, at that time Gunjan, complainant was not present and he was informed that she was at her parental house. The accused Ravi Chaudhary while appearing as DW4 has himself explained that he had gone to Delhi in connection with some interview and at that time he came to know regarding serious condition of his father Sh. Ramesh Singh and his admission at AIIMS, Delhi on 04.10.2009. On the same day, he informed the complainant Gunjan and asked her to come to Delhi. The complainant Gunjan, PW1 came to Delhi

on 05.10.2009, however, she first went to the house of her maternal uncle and thereafter reached the hospital and after staying there for some time went back. Again on 06.10.2009 she came alongwith her parents and after staying for few hours and despite request by him that she should stay in the hospital, she left alongwith her parents. Thereafter, on 07.10.2009 despite intimation on phone to her regarding the death of his father Sh. Ramesh Singh, neither the complainant nor any member of her family came to the hospital or even attended last rites of his father Sh. Ramesh Singh. The complainant Gunjan while appearing as PW1 as also PW2 Balbir Singh and PW5 Rekha Panwar have contradicted such factual narration and alleged that the complainant Gunjan had remained with the side of her family at AIIMS from the time she reached at Delhi on 05.10.2009 and all of them had participated and attended last rites of Sh. Ramesh Singh, however there is no evidence/material in the shape of photographs etc. to substantiate such version. PW1 Gunjan has conceded during the course of cross-examination that she had reached Delhi on 05.10.2009 by air, though she has reiterated that she had stayed at the hospital from the time she reached there and stayed with her family members during last rites of her father-in-law and the period subsequent thereto. However, with respect to the specific instance of beating and harassment on account of demand for dowry allegedly on 06.10.2009, it has already been noticed that such instance has no basis in the complaint Ex.PW1/A on the basis of which instant FIR was registered. Moreover, PW2 Balbir Singh and PW5 Rekha Panwar have given discrepant

versions regarding the occurrence. While PW2 Balbir Singh has alleged in his testimony that Sh. Ramesh Singh was got admitted in AIIMS in their presence and further alleged that the accused Ravi Chaudhary had inflicted beatings on the complainant and thrown them out of the hospital while raising the demand of money, PW5 Rekha Panwar has gone to the extent to depose that the accused Ravi Chaudhary had inflicted beatings not only on the complainant but also on them and thrown them out of the hospital. It has been aptly pointed out that AIIMS Hospital is one of the premier health institutes of the country which is well guarded around the clock with security guards and CCTV surveillance. However, no security guard from the hospital was joined with investigation or examined as a prosecution witness nor the CCTV footage has been placed or proved on record. Moreover, it does not appear probable that when the father of accused was on death bed and number of his relatives/acquaintances are shown to have gathered at the hospital, the accused no.1 would raise demand of dowry or inflict beatings on the complainant or her parents. Moreover, as already held in the earlier part of judgment, the testimony of defence witnesses is entitled to as much weight as of the prosecution witnesses and the testimony of DW1 Kripal Singh, DW2 Ram Kishore Yadav and DW3 Brijbir Singh sufficiently probablize the defence version that the complainant Gunjan, PW1 had neither attended when Sh. Ramesh Singh was admitted in AIIMS, Delhi nor participated in last rites and other ceremonies after the death of Sh. Ramesh Singh. At any rate, the instance of alleged beating and raising demand of dowry by the accused

Ravi Chaudhary on 06.10.2009 is clearly not substantiated on record.

40) It deserves to be noticed that in close proximity to the death of Sh. Ramesh Singh on 07.10.2009 and after the conclusion of the last rites/ceremonies of Sh. Ramesh Singh, the complainant is shown to have filed a complaint before Women Cell, Ambala while the accused Ravi Chaudhary is shown to have filed a petition under Section 9 of Hindu Marriage Act in the court at Aligarh. The prosecution witnesses categorically admit that in such complaint before Women Cell, Ambala a compromise was effected between the parties and in this regard copy of the affidavits sworn by the parties dated 15.02.2010, Ex.PW2/A & Ex.PW2/B have been brought on record. The contents of such affidavits Ex.PW2/A & Ex.PW2/B are in general term that the accused Ravi Chaudhary shall keep his wife properly and respect her wishes and the complainant Gunjan, PW1 shall live as per means of the accused Ravi Chaudhary. Further, it is admitted case of the parties that subsequent to the compromise, the complainant Gunjan PW1 had accompanied the accused Ravi Chaudhary to Mau, his place of employment after the death of his father. In this regard, there is the statement of accused Ravi Chaudhary while appearing as DW4 that after the death of his father and after the complainant had filed a complaint against him in Women Cell, he had left his job at Chennai and joined as Clerk in the place of employment of his father at Mau by way of compassionate appointment. In the proceedings u/s 9 of Hindu Marriage Act in the court at Aligarh also, a compromise was effected between the parties, and in this regard the Id.

Defence counsel has placed implicit reliance upon the statements of parties which were got recorded before the court. A copy of the petition u/s 9 of Hindu Marriage Act dated 28.10.2009 has been brought on record as Ex.D4/1 while copy of compromise dated 15.04.2010 in the said case has been brought on record Ex.D4/2. Ld. Defence counsel has also brought on record copy of order sheet Ex.D4/4 in order to show that in such proceedings, the complainant Gunjan had been appearing before the court. Reference has then been made to the statement of complainant Gunjan dated 15.04.2010 Ex.D4/3 which was recorded in the said case. A bare perusal of such statement makes it amply clear that the complainant Gunjan categorically stated before the Court that previously she had dispute with her husband on account of which she had resided at her parental house for 4½ months prior to making of statement and in the meanwhile the accused had filed the petition before the Court. It was on the basis of such statement of Gunjan Ex.D4/3 and the compromise Ex.D4/2 which was effected that the aforesaid petition was disposed of vide order dated 29.04.2010 Ex.D4/5. A copy of the aforesaid statement made by Gunjan dated 15.04.2010 before the competent court at Aligarh as Ex.D4 was confronted to the complainant Gunjan while appearing as PW1. However, she has denied her signatures on the said statement and alleged that she was alone at Aligarh and her husband had got the statement recorded by engaging a lawyer of his choice. A bare perusal of the order sheet Ex.D4/4 belies such contention and clearly shows that the complainant Gunjan had indeed been appearing before the court in said

case while the statement made by parties before the court or the order passed thereon has not been challenged till date in any competent proceedings. There is absolutely nothing on record to raise inference that the statement of Gunjan Ex.D4/3 is either a result of impersonation or the same had been recorded differently than as stated by the complainant. The statement Ex.D4/3 clearly shows that on the date of alleged occurrence i.e. 16.01.2010 when the accused are alleged to have inflicted beatings on the complainant and turned her out of the matrimonial house as alleged in the statement of PW1 Gunjan and other PWs, the complainant Gunjan PW1 was in fact at her parental house at Ambala and the question of inflicting beatings upon the complainant by the accused on the said date at Mau and ousting her from the matrimonial house does not arise. It needs to be stated here that even the medical certificate dated 17.01.2010 has not been proved on record and even such certificate records the nature of injuries being complaint of pain without any external mark of injury. It is in such context that the averments in the complaint Ex.PW1/A regarding non-mention of the date or month when the alleged incident of beating and ouster of complainant from the matrimonial home took place, assumes significance. Clearly, even the aforesaid instance/plea urged on behalf of the prosecution has remained entirely unsubstantiated.

41) A brief reference may also be made to the instance of alleged beating and cruelty purporting to have been inflicted on the complainant at Chennai in September, 2009. PW1 Gunjan complainant in her cross-examination admits that she went to Chennai in September, 2009 and

stayed there for 20 days in a hotel with accused no.1 Ravi Chaudhary. The accused Ravi Chaudhary while appearing as DW4 has explained that at the relevant time while he was employed at Chennai, he was staying with two other persons in a rented accommodation. However, on the insistence of the complainant that she would accompany him to Chennai, he was constrained to take accommodation in a hotel. He has further stated that the birthday of complainant Gunjan PW1 was also celebrated at Chennai and has placed on record photographs in support thereof. Although such photographs have not been proved as per law and PW1 Gunjan, complainant has denied the factum of her birthday celebration at Chennai, the fact remains that no specific date when the alleged incident of beating had taken place has come forth either in the complaint Ex.PW1/A or in the statement of Gunjan, PW1 nor anything has been stated as to the manner in which the alleged beatings were inflicted. For the first time during the course of defence evidence at the stage of cross-examination of accused Ravi Chaudhary DW4, it was suggested to the accused that on account of beatings inflicted by him to the complainant, her head had struck against corner of the bed on account of which she sustained injuries. The accused Ravi Chaudhary DW4 has categorically denied such suggestion and stated that while at Chennai the complainant Gunjan, PW1 had complained of headache and it was on his advise that the complainant had got herself checked up from Apollo Hospital, Chennai which was in the list of empaneled hospitals of the company in which accused no.1 was employed at that time. PW1 Gunjan, complainant

was specifically questioned that she had gone to Chennai for the first time in September, 2009 and she was unaware of the situation of the hospital or other places in the city, to which the complainant has replied that it was the Hotel Manager who had disclosed her regarding the Apollo Hospital. The aforesaid statement has remained entirely unsubstantiated while alleged medical check-up slip dated 17.09.2009 has not been proved on record in accordance with law. Thus, even the allegations of alleged beating and cruelty to the complainant at the hands of accused in Chennai are entirely unsubstantiated on record.

42) As already noticed hereinabove, after the compromise was effected between the parties at Women Cell, Ambala on 15.02.2010, the complainant had accompanied accused no.1 to Mau, where the accused no.1 had secured employment as Clerk in PWD Department by way of compassionate appointment on account of death of his father Sh. Ramesh Singh while in service. The complainant Gunjan PW1 has made general allegations that during the residence at Mau both the accused subjected her to cruelty and inflicted beatings on her on account of bringing insufficient dowry, however, there are no specific allegations or any specific instance of cruelty or demand of dowry which has been disclosed. After the compromise, there was apparent resumption of cohabitation between the complainant and accused no.1 and the first specific instance to which reference has been made by complainant Gunjan, PW1 pertains to September, 2010 when she suffered a miscarriage. In her testimony while appearing as PW1, she has categorically deposed that her

miscarriage was on account of beatings given by the accused. In her cross-examination which was conducted on 02.08.2014 she has elaborated that at the time of miscarriage she had called her father and when he came, he was thrown out by the accused and the demand of ₹15 lacs was raised from him. The aforesaid instance/plea which has been brought forth during the course of prosecution evidence has no basis in the complaint Ex.PW1/A on the basis of which instant FIR was registered. Moreover, the testimony of PW2 Balbir Singh and PW5 Rekha Panwar regarding alleged incident is discrepant in material particulars. PW2 Balbir Singh has stated that after miscarriage he and his wife PW5 Rekha Panwar had both gone to meet the girl, however, they were not allowed to enter inside the house and their stuff was thrown out while raising demand of dowry. They had to spend the night outside and then returned back. PW5 Rekha Panwar has stated that the miscarriage of complainant was not on account of beatings as alleged by PW1 Gunjan, complainant in her testimony, rather the same was on account of tension due to cruelty and harassment to which she was continuously subjected. She has gone on to depose that when they came to know of miscarriage and went to visit the complainant, the accused Ravi Chaudhary inflicted beatings upon them and threw their material outside and they had to spend the night at the Railway Station. Clearly, the testimony of prosecution witnesses regarding the alleged incident is inter-se discrepant in material particulars, the incident does not find mention and has no basis in the complaint Ex.PW1/A on the basis of which instant FIR was registered and the factum of miscarriage on

account of beatings has remained entirely unsubstantiated by production of medical record. PW1 Gunjan, complainant in her cross-examination which was conducted on 02.08.2014 stated that the accused Ravi Chaudhary had never got her treated from anywhere. PW2 Balbir Singh, father of the complainant was questioned in this regard, however, he has clearly stated in his cross-examination that he did not bear any expense on account of treatment and miscarriage of complainant. During the course of defence evidence, accused has placed on record documents Mark D4/35 to D4/110 showing the medical treatment of complainant in the year 2010, including the medical bills and OPD receipts. While the aforesaid documents have not been proved on record in accordance with law, the fact cannot be discounted that there was no complaint on the part of PW1 regarding absence of medical treatment to her at the time of miscarriage and subsequent period. Rather, the contention urged by her is that she was not given treatment by the accused. In case PW2 Balbir Singh, father of the complainant had not provided her medical treatment as admitted by him during the course of his cross-examination, while the complainant Gunjan PW1 herself was not earning at any relevant time, it cannot be argued on the part of prosecution that the medical treatment to the complainant was not provided by the accused. In such circumstances, even the aforesaid instance/plea urged on behalf of the prosecution has remained unsubstantiated.

43) The next specific instance which finds mention in the complaint Ex.PW1/A and which has been brought forth during the course

of prosecution evidence pertains to 26.11.2011 when the male child named Rohan was born to the complainant. In the complaint Ex.PW1/A on the basis of which instant FIR was registered, it was alleged that at the time of birth of child on 26.11.2011 both the accused went to Aligarh leaving her alone and it was landlord who helped the complainant in her crucial time. Further, it was alleged that both the accused came to the hospital after two days of the birth of the child. Even thereafter, the complainant was not allowed to give breast-feed to the child and accused Shashi Chaudhary used to keep the child with her while sleeping. In her testimony while appearing as PW1, the complainant has stated that at the time of birth of child on 26.11.2011, both the accused left her and she was got admitted in the hospital at Mau in a bad condition. Her landlord called her parents by disclosing that there was none by her side and she was alone in the hospital. However, when the parents of complainant came, both the accused raised demand of ₹15 lacs and removed her parents and abused them. PW2 Balbir Singh has stated in this regard that at the time of birth of child intimation was given to them by the landlord of the place where the complainant and accused were staying that she was all alone in the hospital, upon which they had reached Mau. However, both the accused raised demand for dowry on account of which they had to return back. In his cross-examination, PW2 Balbir Singh has stated that they had reached the hospital early on 27.11.2011 i.e. the next day after the birth of child while the accused had reached later. Further, he has stated that his wife Rekha Panwar PW5 had stayed there for 10-15 days at Mau. PW5

Rekha Panwar has similarly deposed that it was the landlord who had informed them that the complainant was all alone in the hospital, upon which they reached the hospital at Mau and the accused reached the hospital later. She has also alleged regarding the demand of dowry raised by the accused and the fact that they were made to return back after spending few days. The accused Ravi Chaudhary while appearing as DW4 has explained that in the year 2011 when the complainant was pregnant, she was given medical treatment as per his resources and the will of complainant in good hospitals and she was even got checked at BHU. In this regard, documents pertaining to the medical treatment of complainant in the year 2011 including her medical tests, medical bills etc. have been brought on record as Mark D4/113 to D4/150. Further he has stated that on 21.11.2011 when the complainant was got checked up from the doctor, her condition was good. As per ultrasound report, the expected date of delivery of the complainant was from 13th to 18th December, 2011. In such circumstances, as per the advice of doctor he went on 25.11.2011 to bring his mother from Mau to Aligarh. On 25.11.2011 when he started the condition of complainant was good. On 26.11.2011 after he reached Aligarh he received a phone call from the complainant that her condition had deteriorated suddenly and she required hospitalization. Thereafter, he requested his Boss and colleagues to hospitalize the complainant by contributing money and also requested his landlord for help. Immediately, he alongwith his mother started from Aligarh to Mau on taxi on 26.11.2011 and reached the hospital at Mau

early morning on 27.11.2011. In this regard, the Toll receipt of the taxi has also been placed on record. In the evening of 27.11.2011, the parents of Gunjan came to the hospital in their presence. Her father Balbir Singh, PW2 stayed in the hospital for about 6-7 days and her mother Rekha Panwar stayed in the house at Mau for about 22-23 days. The day for naming ceremony of the child was fixed, however, two days prior to the ceremony the mother of the complainant left their house. He has gone on to depose that it was first child born in their family in 32 years and the entire atmosphere was happy. He has also placed on record photographs and CD in this regard as Mark D4/236. The aforesaid statement made by the accused Ravi Chaudhary, DW4 has not been rebutted in any material particulars. It has not been shown by the prosecution that expected date of delivery of the child was 26.11.2011 or in close proximity thereof and there is no rebuttal to the statement of accused that expected date of delivery of complainant was from 13th to 18th December, 2011. Although PW2 Balbir Singh and PW5 Rekha Panwar have alleged that the accused had raised demand of dowry ₹5 lacs at the time of birth of child and turned them out of the house on account of non-fulfillment of such demand, PW2 Balbir Singh has categorically admitted in his cross-examination that the entire expenses for the treatment and delivery of the child were borne by the accused Ravi Chaudhary. While in the entire testimony of PW1 Gunjan, PW2 Balbir Singh and PW5 Rekha Panwar there was no mention that any amount was paid by the parents of complainant to the accused Ravi Chaudhary at the time of birth of the

child, however, during the course of cross-examination of accused Ravi Chaudhary, DW4 a suggestion was put to the accused that he had raised the demand of ₹1 lac from the mother of the complainant and the mother of the complainant had entrusted a sum of ₹50,000/- to the accused Ravi Chaudhary. Further, it was suggested to the accused that one day prior to delivery he had gone to Lucknow alongwith his mother which is not even the case set-up in the complaint Ex.PW1/A. Clearly, the entire case of the prosecution is replete with material discrepancies and inconsistencies which cast serious doubt on the prosecution version as also the statements of prosecution witnesses. At any rate, the accused has been able to probablize his defence that the absence of accused alongside the complainant at the time of birth of child was not intentional but on account of unavoidable circumstances as explained by him in his deposition. Thus, the prosecution has miserably failed to establish that at the relevant time any demand of dowry was raised by the accused or that the complainant or her parents were subjected to any beatings or cruelty at the hands of the accused for bringing insufficient dowry.

44) The last specific instance which has been alleged in the complaint Ex.PW1/A and brought forth during the course of prosecution evidence relates to 10.02.2012 and it has been alleged in the complaint Ex.PW1/A that on the said date the accused gave beatings and turned the complainant out of the matrimonial house alongwith minor child. The complainant was forced to leave matrimonial house at night and somehow managed to reach her parental house on 11.02.2012. In her testimony

while appearing as PW1 Gunjan complainant has reiterated the aforesaid version, however, during the course of her cross-examination which was conducted on 02.08.2014, it was suggested to her that the accused Ravi Chaudhary had been preparing for competitive examination at the relevant time and had gone to Allahabad to appear in the examination on 12.02.2012. PW1 Gunjan has not specifically denied the said fact, rather denied knowledge about the same. During the course of defence evidence, the accused Ravi Chaudhary while appearing as DW4 has explained that he had applied for taking the GATE examination to be held on 12.02.2012 for which the application was made in September, 2011 and the complainant Gunjan, PW1 was well aware about the said fact. He has also placed on record the documents Mark D4/170 pertaining to the application form, fee receipt, admit card pertaining to GATE examination 2012. Further, he has alleged that in order to appear in the said exams, he started from Mau to Allahabad on 10.02.2012 and till evening the complainant and their son and his mother were all right at Mau. On 11.02.2012 in the morning he reached Allahabad and went to the house of DW2 Ram Kishore Yadav, a friend of his father. At about 10 to 11 A.M. he received a telephone call from his mother that the complainant Gunjan and their son were not at the house and her phone was also not reachable. He immediately tried to contact the complainant, however, her phone was coming switched off. Thereafter, for the entire day he tried to contact the parents of the complainant, however, they did not receive his phone call nor made any back call. He was constrained to fore-go his examination

and on the same day i.e. 11.02.2012 he started from Allahabad to Mau and reached at Mau on 12.02.2012. Since he was not aware of the whereabouts of complainant and their son, he lodged a report in the Police Station at Mau. It was only 3-4 days later that the Mau police disclosed to him regarding the complainant and their son being at the parental house of complainant at Ambala. In order to substantiate the defence version, the accused has also examined DW2 Ram Kishore Yadav, Retired Chief Engineer, UP PWD and he has also categorically deposed that the accused Ravi Chaudhary had reached his house at Allahabad on 11.02.2012 at about 6 to 7 A.M. in the morning. Further, he has deposed regarding the factum of phone call made by the mother of accused at about 10 to 11 A.M. when she disclosed that the complainant and the minor child were not at home and phone of complainant was not reachable. Materially, PW1 Gunjan was questioned as to the particulars of her journey from Mau to Ambala Cantt, however, she has failed to disclose the train in which she came to Ambala and merely stated that she had reached on the intervening night of 11/12.02.2012 and it was an Express Train. Both PW2 Baldev Singh and PW5 Rekha Panwar have stated in unison that PW2 Baldev Singh had gone to Railway Station to bring the complainant home and regarding this, they have stated that the complainant had made phone call from the Railway Enquiry after she reached at the Railway Station. However, even PW2 Balbir Singh and PW5 Rekha Panwar have also not disclosed the particulars of train in which the complainant had reached at Ambala and the prosecution version that the complainant had

reached Ambala during the intervening night of 11/12.02.2012 has remained unsubstantiated on record. Besides, the story as projected by the prosecution appears inherently improbable. It is sufficiently brought out on record that the accused Ravi had indeed applied to sit in GATE examination 2012 which was scheduled to be held on 12.02.2012. It is the case of the accused that he had been preparing for the said examination and the complainant Gunjan PW1 was well aware of the fact even in September, 2011 that the accused is to sit in the examination on 12.02.2012. No particular aggravating circumstance has been disclosed by the complainant Gunjan PW1 in her testimony which precipitated alleged beating and ouster of the complainant from matrimonial home on 10.02.2012. In case, the intention of accused was indeed to oust her from matrimonial home after inflicting beatings, the same could be done much prior to the commencement of examination or after the examination and it does not appear probable that the accused despite having applied to sit in the examination and despite make preparation for the examination would choose to inflict beatings and oust the complainant from the matrimonial house on 10.02.2012, thereafter reach Allahabad on 11.02.2012 to sit in the examination as is clear from the travelling ticket and the testimony of DW2 Ram Kishore Yadav and then return back on 11.02.2012 without appearing in the examination. As already held in the earlier part of the judgment, the testimony of defence witnesses is entitled to as much weight as the testimony of prosecution witnesses and in such circumstances, the defence of the accused that on 10.02.2012 he had left

Mau for Allahabad and he had received information regarding the complainant and the minor child having left matrimonial home only on 11.02.2012 through telephone call of his mother Shashi is sufficiently probablized on record, whereas, the prosecution has failed to substantiate that the complainant was subjected to beatings on 10.02.2012 and then ousted from the matrimonial house at the night time.

45) It has been noticed in the earlier part of the judgment that at the time of alleged first ouster of complainant from the matrimonial house on the allegations of beating, the complainant is alleged to have got herself medically examined and in this regard medical certificate dated 17.01.2010 was also placed on record. However, at the time of alleged subsequent ouster on 10.02.2012 with the similar allegations of beating, no medical examination of the complainant was got conducted nor there is any reasonable explanation for the same forthcoming on record. Materially, the accused during the course of his defence has placed on record copy of the petition u/s 125 Cr.P.C. Ex.D4/13 filed by the complainant against the accused Ravi Chaudhary. A bare perusal of such petition Ex.D4/13 shows that the same was filed as early as on 16.02.2012 i.e. barely three days after the complainant is alleged to have reached her parental house. It is in such context that the contention of ld. Defence counsel, that the complainant alongwith minor child had left matrimonial house on her own and the entire act was pre-planned to coincide with the absence of accused Ravi from Mau, needs to be appreciated. Further, it needs to be stated that the allegations in the complaint Ex.PW1/A that the

complainant was not allowed to give breast-feed to the newborn child and the accused Shashi Chaudhary used to keep the child with her while sleeping have not been reiterated in the statement of complainant Gunjan, PW1 while the statement made by accused Ravi Chaudhary DW4 that the child had been born in the family after 32 years and it was a joyous and momentous occasion has not been sufficiently rebutted on record. Thus, even the aforesaid instance/plea urged by the prosecution has remained unsubstantiated on record.

46) As to the remainder of allegations concerning the alleged cruelty and harassment to which the complainant was subjected, it has already been noticed in the earlier part of the judgment that such allegations are general in nature without specifying the particular dates or instances alleged to have taken place and having regard to the discussion made in the earlier part of the judgment, the case of the prosecution that the accused had been raising demand of dowry or that the accused had subjected the complainant to cruelty or harassment in connection with demand of dowry has remained entirely unsubstantiated on record. No doubt, it is clear from the evidence brought on record that marriage between the complainant and accused no.1 has failed and complainant Gunjan PW1 has clearly stated during her cross-examination that they cannot live together, however as held by Hon'ble Delhi High Court in the case of **Sanjay Bhardwaj & Ors. Vs. The State & Anr., supra** dowry is not always the reason behind failed marriage. At this stage, it needs to be reiterated that the statements of material prosecution witnesses PW1

Gunjan complainant, PW2 Balbir Singh and PW5 Rekha Panwar are shown to suffer from material discrepancies and inconsistencies which have not been explained on record. Thus, PW1 Gunjan complainant has denied the factum of any medical treatment being provided to her by the accused, whereas it has been sufficiently brought out on record that at the time of miscarriage of the complainant in September, 2010 and subsequent birth of the child in November, 2011 the complainant had indeed been provided adequate medical treatment and expenses for the same had been borne by the accused Ravi Chaudhary. Further, her statement that from 07.10.2009 to 16.01.2010 she remained at Aligarh and never visited Ambala has earlier been held to be unsubstantiated and false. Still further, PW1 Gunjan complainant has gone on to deny her signatures on the statement Ex.D4/3 which was recorded before the competent court at Aligarh without any basis and it has clearly been shown that the compromise in the court at Aligarh was effected and the statement of the parties recorded with their own free will and without any pressure. Similarly, the statements of PW2 Balbir Singh and PW5 Rekha Panwar are shown to suffer from material discrepancies and improvements to which reference has already been made hereinabove and further it needs to be noticed that PW5 Rekha Panwar was confronted during the cross of her cross-examination regarding material improvements made by her in the statement u/s 161 Cr.P.C., however, she could not offer any satisfactory explanation in this regard. In such circumstances, the testimony of aforesaid PWs i.e. PW1 Gunjan, PW2 Balbir Singh and PW5

Rekha Panwar is shown to be unreliable and does not inspire confidence of the court and the prosecution case founded on the statement of aforesaid material prosecution witnesses has clearly remained unsubstantiated. Reliance in this regard may be placed on the judgments in the case of Subhash Vs. State of Haryana, Dr. Sunil Kumar Sambhudayal Gupta & Ors. Vs. State of Maharashtra, Daljit Singh & Ors. Vs. Sukhvinder Kaur & Anr., Sanjay Lata Vs. Amrit Gautam, Bajinath & Ors. Vs. State of Madhya Pardesh, Neera Singh Vs. State of NCT of Delhi & Ors., Dharm Raj Yadav & Ors. Vs. State of UP & Ors., Vishal Verma Vs. State of Haryana, supra.

47) Reference may also be made especially to the allegations of alleged cruelty and harassment leveled by complainant against the accused Shashi Chaudhary. The accused Ravi Chaudhary while appearing as DW4 has categorically deposed that it was really on two occasions that the complainant had resided with accused Shashi Chaudhary i.e. after the marriage for about two months at Allahabad before their departure to USA and subsequently, after the birth of child at Mau when the accused Shashi Chaudhary had stayed there for 2½ months. It has been noticed in the earlier part of the judgment that during the period of initial stay of complainant at the matrimonial house, everything was well and no specific instance of cruelty has been alleged against accused Shashi Chaudhary. The case of the prosecution is that in February, 2010 when the accused no.1 shifted to Mau he had taken his mother Shashi Chaudhary alongwith him and during the entire period of their stay at Mau from

February, 2010 to February, 2012 the accused no.2 Shashi Chaudhary had been residing with them in the rental house at Mau. In order to show that the accused Shashi Chaudhary had not shifted with accused Ravi Chaudhary at Mau and she had been residing at Aligarh, the accused has placed on record the electricity bills of the house at Aligarh from January to November, 2011 Mark D4/34 which clearly shows varying units of consumption consistent with the residence of occupier at the house. Though electricity bills by themselves could not be considered a proof of residence and such bills have not been proved in accordance with law, the accused during the course of his defence evidence has examined DW1 Kripal Singh, DW2 Ram Kishore Yadav and DW3 Brijbir Singh, all of whom have categorically deposed regarding residence of accused no.2 Shashi Chaudhary at Aligarh during the relevant period. DW1 Kripal Singh, DW2 Ram Kishore Yadav and DW3 Brijbir Singh are no doubt the relatives/acquaintances of the accused, however, in the offences involving matrimonial discord as in the present case, it is the testimony of relatives/acquaintances which is material and entitled to due weightage. Thus, DW1 Kripal Singh, who is uncle of accused Shashi Chaudhary has testified as to the factum of his residence being at a distance of 300-400 meters from the residence of accused Shashi Chaudhary at Aligarh and stated that the accused Shashi Chaudhary is residing alone at Aligarh and he had never seen the complainant Gunjan, PW1 residing with accused Shashi Chaudhary at Aligarh. Similarly, DW2 Ram Kishore Yadav has stated that on one occasion in connection with the official work he had to

attend a meeting of National Highway Authority at Delhi. On his way back from Delhi to Aligarh he had gone to the house of accused at Aligarh where accused Shashi Chaudhary met him. Similarly DW3 Brijbir Singh has also categorically stated that his sister Shashi Chaudhary, accused no.2 is residing all alone at Aligarh and the accused Ravi Chaudhary comes to meet his mother once in 2-2½ months. As already noticed hereinabove, no specific instance of cruelty/harassment on the part of accused including accused Shashi Chaudhary during the relevant period has been alleged or brought on record. As to the period subsequent to the birth of child on 26.11.2011, the only specific instance of cruelty/harassment which has been alleged by the prosecution is the alleged incident on 10.02.2012. However, as already held hereinabove such incident alleged by the prosecution has not been substantiated on record. In such circumstances, the allegations of cruelty/harassment leveled against the accused Shashi Chaudhary have remained entirely unsubstantiated. Rather, the accused Shashi Chaudhary is shown to suffer from various medical ailments and in this regard medical treatment record of accused Shashi Chaudhary has been brought on record as Mark D4/33.

48) Consequently and in view of the aforesaid discussion, the prosecution has miserably failed to establish that the accused subjected the complainant to cruelty, for or in connection with any demand for dowry or inflicted beatings on her person or criminally intimidated her. Thus, the ingredients of offence against the accused under Section 498A, 323, 506 IPC are not made out in the present case. So far as the offence

under Section 406 IPC is concerned, it has already been held in the earlier part of the judgment that the prosecution case regarding demand of dowry by accused as also the entrustment of dowry articles by the complainant party has not been substantiated on record. Moreover, the case of the prosecution is that the dowry articles were entrusted to the accused at the time of betrothal/ring ceremony as per their demand and in support thereof a list of dowry articles Annexure-1, Ex.PW1/B has been appended with the complaint Ex.PW1/A. However, such list Ex.PW1/B is not shown to have been prepared at the time of betrothal/marriage ceremony and does not bear the signatures of accused or any member of the family of accused. Rather, the list Ex.PW1/B is clearly shown to have been prepared at the time of filing the complaint Ex.PW1/A and the basis for including articles in the list Ex.PW1/B has not been disclosed. At any rate, the bills/invoices with respect to the purchase of articles as mentioned in the list Ex.PW1/B are not forthcoming. PW1 Gunjan, complainant categorically stated in her cross-examination that she has bills of purchase of dowry articles, however, no such bills have been placed or proved on record. PW3 Retired SI Raj Pal Singh, IO has admitted in his cross-examination that he was neither given nor he has recovered any bill regarding the purchase of dowry articles as mentioned in the list Ex.PW1/B. Thus, the prosecution has not placed on record any sufficient evidence to show that the articles shown in the list were actually given at the time of marriage of complainant with the accused. In the absence of any evidence regarding specific entrustment of each article to the accused

and refusal on the part of the accused to return the same, the prosecution has miserably failed to bring home the guilt of the accused under section 406 IPC. Much reliance has been placed by the prosecution on the recovery memo Ex.PW2/E vide which part of the dowry articles are alleged to have been recovered from the residential house of accused. In his cross-examination PW3 SI Retired Raj Pal Singh, IO admitted that the material in two bags and two suitcases which were taken into possession vide said memo, the same was put by the accused themselves and said bags/suitcases were not found in any sealed condition. Rather, he has stated that in their presence the material was put in the bags and suitcases. The material which was recovered purports to have been identified by PW2 Balbir Singh vide identification memo Ex.PW1/C. The accused Ravi Chaudhary while appearing as DW4 has explained that since no dowry article had been entrusted to them, there was no question of recovery of any dowry article and at the relevant time when Ambala police came to his residence whatever material was stated by Balbir Singh as belonging to the complainant, the same was put in suitcases, bags and the same was seized by the police. Materially, the case property has not been produced before the court nor there is any evidence to show that the material which was seized vide memo Ex.PW2/E was indeed Istridhan of the complainant as alleged. As to the reliance placed on the confessional statement of accused Ravi Chaudhary Ex.PW3/D, IO Retired SI Raj Pal, PW3 and PW6 ASI Ashok Kumar, who was associated with the IO have admitted that the accused Ravi was already in custody at the time of recording the

confessional statement. In such circumstances, the confessional statement Ex.PW3/D having been suffered by the accused Ravi while he was in the custody of police before a police officer, the same is squarely hit by the provisions of Section 25 and 26 of Evidence Act and rendered inadmissible in evidence except to the extent that it leads to the discovery of any new fact which was previously not known to the prosecution. On the basis of such confessional statement Ex.PW3/D, recovery of part of dowry articles purport to have been effected vide memo Ex.PW3/E. However, a bare perusal of recovery memo Ex.PW3/E makes it amply clear that recovery shown therein is of the articles produced by the maternal uncle of accused and no recovery purports to have been effected in pursuance to the confessional statement Ex.PW3/D. In such circumstances, the confessional statement Ex.PW3/D is rendered wholly inadmissible in evidence. Besides, no independent witness was associated while effecting the alleged recovery vide memos Ex.PW2/E and Ex.PW3/E and there is no reasonable explanation forthcoming for non-joining of any independent witness. The same casts grave doubt on the manner in which recovery has been effected in the present case. Moreover, even with respect to such articles alleged to have been taken into possession vide memo Ex.PW3/E, there is no bill/invoice to show the purchase of articles by the parents of complainant as alleged nor it has been established that the same is Istridhan of the complainant. In such circumstances, even the ingredients of offence under Section 406 IPC are not established on record in the present case.

49) Before concluding, reference is apt to the investigation conducted by police in the present case. Learned defence counsel has highlighted the police excesses during the course of his arguments to which reference has been made in the earlier part of the judgment. Much emphasis is on the fact that despite clear mandate of the Hon'ble Apex Court as to the manner in which power of arrest is to be exercised in such cases laid down in the case of **Arnesh Kumar Vs. State of Bihar, supra** the Investigating Officer has proceeded to straightaway arrest the accused without serving any notice to them under Section 41(1) Cr.P.C. However, some allowance has to be given to the police officials considering that the arrest of the accused was effected on 10.04.2012 and judgment in the case of **Arnesh Kumar Vs. State of Bihar, supra** was pronounced only on 02.07.2014. No doubt, the Investigating Officer has been amiss in not joining independent witnesses with investigation and failed to conduct investigation at all places where the complainant and accused resided after marriage, however facts of present case are not such as to justify initiation of any proceedings against the police officials or to grant compensation to the accused for alleged police excesses. Judgments in the case of **Dr. Rini Johar & Anr. Vs. State of MP & Ors., Chhotan Sao & Anr. Vs. State of Bihar, State of Gujarat Vs. Kishanbhai etc., supra** are all distinguishable and have no application to the facts of present case. As to the role of counsel for complainant in assisting the public prosecutor, there could be no doubt regarding the role and responsibility of Public Prosecutor in conduct of prosecution as laid down in the case of

Shiv Kumar Vs. Hukam Chand & Anr., supra and this Court has no occasion to comment adversely on the role of APP in the present case.

49) Consequently and in view of aforesaid discussion, the prosecution has miserably failed to establish the guilt of the accused for the offences under Section 406, 498-A, 323, 506 of IPC beyond reasonable shadow of doubt. Therefore, the accused are hereby acquitted of the charges framed against them. Their bail bonds and surety bonds stand discharged. File be consigned to the record room after due compliance.

PRONOUNCED IN OPEN COURT. (AKSHDEEP MAHAJAN)
DATED: 01.05.2019. ADDL. CHIEF JUDICIAL MAGISTRATE,
AMBALA/UID No.HR0202

Gulshan Kumar

Note:- All the pages of this Judgment have been checked and signed by me.

(AKSHDEEP MAHAJAN)
ADDL. CHIEF JUDICIAL MAGISTRATE,
AMBALA/UID NO.HR0202