

Before S.S. Saron & S.P. Bangarh, J.J.

ASHOK KUMAR—Appellant

versus

STATE OF HARYANA—Respondent

CRA No. D-729-DB of 2006

February 6, 2013

Indian Penal Code, 1860 - Ss. 302, 304-B, 498-A - Appellant was convicted for commission of offences under Sections 302, 304-B, 498-A and sentenced under Sections 302, 498-A on the basis of dying declaration - Conviction challenged - Contention that there are two dying declaration - Held that both dying declaration are contrary to each other and hence repelled - Appellant to be given benefit of doubt - Appeal partly allowed - Appellant acquitted under Section 302 and conviction under 304 B & 498 A IPC upheld.

Held, that both the dying declarations Ex.PG and Ex.PH are contradictory to each other and, therefore, both have to be repelled. In the first dying declaration Ex.PG, the deceased (Mamta) alleged that she caught fire accidentally. She suffered 100% burns and those could not be suffered due to accidental fire. If, she had caught fire accidentally, she would have made effort to extinguish that and she would have run for safety, after catching fire.

(Para 32)

Further held, that so far as the second dying declaration Ex.PH is concerned, that too cannot be believed. As per the evidence of Dr. Ravinder Chaudhary (DW-1) and Suresh Chand Gupta (DW-2), appellant had 55% disability and therefore, he was not in a position to put Mamta (deceased) on fire. So, second dying declaration Ex.PH also required to be repelled.

(Para 33)

Further held, that the appellant is required to be given benefit of doubt and he has to be acquitted of the charge framed against him under Section 302 IPC.

(Para 38)

Further held, that even in terms of Section 113-B of the Indian Evidence Act, 1872, it shall have to be presumed that the appellant had caused the "dowry death" of Mamta (deceased). Appellant who is the husband of the deceased (Mamta) being the direct beneficiary of dowry must be held to have made the life of the deceased (Mamta) so miserable, that she was compelled to put herself on fire. This incident of fire, wherein, deceased (Mamta) had died would not have occurred, if her life would not have been miserable in the company of the appellant.

u/s
(Para-41)

Further held, that his convictions for the offences under Sections 304-B and 498-A IPC are maintained. The appellant has undergone actual sentence for a period of 7 Years 6 Months 4 Days as on 29.08.2012, as of now, he has undergone about 8 years of imprisonment. He is sentenced to the period supra already undergone by him in jail for the offence under Section 304-B IPC.

u/s
(Para-47)

B.S. Saroha, Advocate, *for the appellant.*

H.S. Sran, Addl. AG, Haryana, *for the respondent.*

Ashwani Bhardwaj, Advocate, *for the complainant.*

S.P. BANGARH, J.

(1) The appellant has assailed the judgment of conviction dated 07.09.2006 and order of sentence dated 08.09.2006, passed by the learned Additional Sessions Judge, Narnaul, in Sessions Case No. 22 of 2004 and Sessions Trial No. 10 of 2005, emanating from FIR No. 154 dated 16.09.2004, under Sections 304-B and 34 of the Indian Penal Code (for short - 'IPC), Police Station Kanina, whereby, he was convicted for commission of offences punishable under Sections 302, 304-B and 498-A IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 5000/- and in default of payment, thereof, to further undergo rigorous imprisonment for six months for commission of offence punishable under Section 302 IPC. He was also sentenced to undergo imprisonment for two years and to pay fine of '2000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months for commission of offence

punishable under Section 498-A IPC. Both the sentences were ordered to run concurrently. However, the learned Court did not impose any sentence upon the appellant for commission of offence punishable under Section 304-B IPC.

(2) The case of the prosecution is that on 14.09.2004, on receipt of letter from CHC, Kanina in respect of burn case of Mamta wife of Ashok Kumar (appellant) alongwith MLR No. SKB/173/04 dated 14.09.2004, Daya Ram ASI of Police Station, Kanina reached PGIMS, Rohtak. After obtaining opinion of the doctor, he moved an application before the learned Chief Judicial Magistrate, Rohtak for recording the statement of Mamta. Sh. Kuldeep Singh, Judicial Magistrate Ist Class, Rohtak visited PGIMS Rohtak and recorded the statement of Mamta, whercin, she did not name anybody as assailant. She stated that while preparing chapattis at about 5.00 p.m. on Monday, her sarce caught fire and sequelly, she received burn injuries. She also stated that on raising alarm, several persons of the locality came on the spot and they took her to the hospital. She stated before the learned Judicial Magistrate Ist Class that it was purely an accident and there was no fault of anyone and this occurrence took place due to her negligence. After obtaining copy of the statement, Daya Ram ASI came tack to the Police Station and recorded rapat No. 37 dated 14.09.2004 in the daily diary register.

(3) On 15.09.2004, at about 7.25 p.m. Daya Ram ASI again received a message from Incharge Police Post PGIMS Rohtak that Mamta intended to change her statement and, therefore, some Magistrate he got deputed. Thereafter, a telephonic message was received from MC Anil Kumar PGIMS, Rohtak at about 8.30 p.m. that Kuldeep Singh, Judicial Magistrate Ist Class, Rohtak again recorded the statement of Mamta. The carbon copy of the said statement, which was recorded on 15.09.2004 by Kuldeep Singh, Judicial Magistrate Ist Class, Rohtak, was obtained by the police. In her second statement on 15.09.2004, following questions were put by the learned Magistrate (supra), which were answered by Mamta as under:-

- Q. What is your name and how old are you?
A. My name is Mamta and age is 20 years.
Q. Whether are you married?

A. Yes I am married.

Q. What is your husband?

A. He is teacher.

Q. Who else resides with you in the matrimonial home?

A. I have got four sister-in-laws, three of them are married and one is unmarried. There are two brothers-in-law and father-in-law and mother-in-law have expired.

Q. Are you literate?

A. I am not.

Q. Whether have you got any child?

A. No. There was one daughter and she has expired.

Q. Now where you are?

A. In the hospital.

Q. What had happened?

A. It was Monday and at about 9 P.M., Ashok her husband sprinkled kerosene oil upon her and thereafter, lit the fire by a stick. Thereafter, Ashok her husband put a gunny bag and then a blanket upon her body. When she raised an alarm, few of the ladies from the neighbouring houses came over there. Ashok told them that she has been burnt at her own and nobody else except Ashok was present at that time.

Q. The statement which you have given today was not given yesterday Why?

A. Due to fear of Ashok. I could not make this statement. Today, I am not afraid of Ashok and I have given this statement without any pressure and influence.

Q. What else you have to say?

A. I will not go to Jharli, but I will go with my brother and sister-inlaw.

(4) On the basis of the statement (supra), formal FIR under Section 307 IPC was registered against the appellant and others. On 19.09.2004, another message was received from PGIMS Rohtak that Mamta had succumbed to her burn injuries. Thereupon, Daya Ram ASI again visited PGIMS Rohtak and conducted inquest report on the corpse of Mamta, that was later on sent to the mortuary for autopsy. Thereafter, an Offence punishable under Section 304-B read with 34 IPC was added. During investigation, Kuldeep Sharma and Manoj sons of Purshotam Lal Sharma resident of H.No. 3199 Jawahar Colony NIT Faridabad made their statements that Mamta was killed on account of demand for dowry by the appellant and others. Appellant was arrested in this case, while his alleged accomplices namely Rajender Singh and Sumin were kept in column No.2 of the report under Section 173 Cr.P.C. Investigating Officer prepared the site plan of the place of occurrence, as also, recorded the statements of witnesses under Section 161 Cr.P.C.

(5) After completion of investigation, Station House Officer of Police Station Kanina instituted police report under Section 173 Code of Criminal Procedure (Cr.P.C.-for short) against the appellant, before the learned Illaqa Magistrate to the effect that it appeared that he has committed offences punishable under Sections 302, 304-B and 498-A IPC.

(6) On presentation of police report, copies of documents, as required under Section 207 Cr.P.C. were furnished to the appellant by the learned Illaqa Magistrate, who later committed the case to the Court of Session, which was entrusted to the learned trial court, where charge under Sections 302, 304-B and 498-A IPC was framed against the appellant, whereto, he pleaded not guilty and claimed trial. Consequently, prosecution evidence was summoned. It may be mentioned here that an application under Section 319 Cr.P.C. was moved by the respondent before the learned trial Court for summoning of alleged accomplices of the appellant, that was dismissed on 07.03.2005.

(7) At the trial, the prosecution examined Kuldeep Sharma as PW-1, Laxmi Narain as PW-2, Mahesh Kumar HC as PW-3, Udaiveer Singh as PW-4, Kuldeep Singh, JMJC, Rohtak as PW-5, Satbir Singh Constable as PW-6, Devender Singh SI/SHO as PW-7, Dr. Suresh Kumar as PW-8, Dr. Archana Gupta as PW-9, Manoj Sharma as PW-10, Daya Ram ASI as PW-11 and Dr. Deepak Gupta as PW-12 and closed the evidence, later.

(8) After the closure of prosecution evidence, appellant was examined under Section 313 Cr.P.C, wherein, he denied the allegations of the prosecution, pleaded innocence and false implication in this case. He also stated that on 13.09.2004, while Mamta (deceased) was cooking food by sitting on the ground, she accidentally caught fire and was taken to CHC, Mohindergarh by him. He had also informed her parents about this accidental fire. He also stated that he is handicapped from right hand and unable to lift any weight.

(9) Appellant was called upon to enter in defence and he examined Dr. Ravinder Chaudhary as DW-1 and Suresh Chand as DW-2 and closed the defence evidence later.

(10) After hearing both the sides, the learned trial Court vide impugned judgment of conviction and order of sentence, convicted and sentenced the appellant, as described in the first paragraph of this judgment. Aggrieved, thereagainst, the appellant, who was accused before the learned trial Court has come up in this appeal with prayer for acceptance, thereof, and for his acquittal of the charge framed against him for the commission of offences punishable under Sections 302, 304-B and 498-A IPC.

(11) We have heard learned counsel for the appellant, learned Additional Advocate General for the respondent and learned counsel for the complainant and perused the record of the learned trial Court with their assistance.

(12) PW-1 Kuldeep Sharma testified that his sister Mamta was married to Ashok Kumar (appellant) on 28.05.2001 according to Hindu rites and ceremonies and that after a few days of marriage, latter started harassing the former and as and when his sister came to her natal house, she was never taken back by the appellant. He also testified that on every occasion, they had to accompany her to her matrimonial home and on 11.09.2004, his younger brother had gone with Mamta to leave her at her matrimonial home from her parental home. He also testified that when his brother went with Mamta; appellant and his brothers Rajinder and Sunim made a demand of dowry, that was told to him and his parents by his brother. He also testified that on 13.02.2004, they received a telephonic message from Kanina that Mamta had been burnt by the appellant and his

brothers and she had been removed to PGIMS Rohtak. Thereupon, he (PW-1) his father Parshotam Lal reached at PGIMS Rohtak and found Mamta in burnt condition. He, further testified that Mamta told them that she was physically assaulted by the appellant and his brothers and further, told that she was taken to a room by them and kerosene was poured on her and was set on fire. He, further testified that Mamta succumbed to her burn injuries on 19.09.2004.

(13) PW-2 Laxmi Narain also testified that on 20.09.2004, he was posted as SI in Police Station Kanina, on which day, Daya Ram ASI came to the Police Station, after getting conducted autopsy on the corpse of Mamta (deceased) at Rohtak and handed over autopsy report to him. He also testified that Daya Ram ASI had also brought the statements of parents of the deceased (Mamta), that were delivered to him. The offence under Section 307 IPC was deleted and in its place, offence under Section 304-B IPC was added. He also testified that a special report was prepared, that was sent to Illaqa Magistrate and superior officers of the appellant through Satbir Singh Constable. He proved the carbon copy of that report as Ex.PA, which was received by the Illaqa Magistrate.

(14) He also testified that he reached the place of occurrence and arrested Ashok Kumar (appellant) and on 22.09.2004, he recorded the statements under Section 161 Cr.P.C. of the witnesses. He also testified that the father of the deceased (Mamta) produced an invitation card of the marriage Ex.P1, one note book Ex.P2 relating to 'Kanyadan' and those were seized vide memo Ex.PB, that was attested by Purshotam Lal father of the deceased (Mamta).

(15) PW-3 Mahesh Kumar HC also testified that he prepared a scaled site plan Ex.PC on the direction of Daya Ram ASI.

PW-4 Udaiveer Singh ASI testified that on 15.09.2004 while he was posted as Incharge Police Post PGIMS, Rohtak, received one medical ruqa 'Mark A' from the latter institution about the changing of the previous statement by Mamta (deceased) and, thereupon, he went to Ward No.6 of PGIMS Rohtak and moved an application Ex.PD before the doctor to know, as to whether the injured was fit to make statement or not, thereon, doctor opined that the patient was fit to make a statement. He further

testified that he appeared before Duty Magistrate, Rohtak and narrated the facts before him, as also, presented the application Ex.PD bearing his endorsement, thereon, Ex.PD/1. He further testified that later, JMIC (supra) came to Ward No. 6 of PGIMS Rohtak and recorded the statement of Mamta (deceased) and he obtained the copy of that statement, which was recorded in the daily diary register. He also brought the original daily diary register and proved the copy of the report Ex.PE. He further testified that he also made a telephonic call to MHC Police Station Kanina and gave intimation of this matter.

(16) PW-5 Sh. Kuldeep Singh, JMIC, Rohtak also testified that on 14.09.2004, he was working as Duty Magistrate at Rohtak and he obtained the opinion of the doctor Ex.PF/1, on an application Ex.PF and, thereafter, he recorded the statement of Mamta (deceased) and he proved carbon copy of that statement as Ex.PG. He testified that the statement was read over to Mamta (deceased) and she affixed her thumb impression after accepting its contents to be correct and he appended one certificate Ex.PG/1 below that statement in his hand. He also testified that the statement was recorded by him in his own hand. He also testified that on 15.09.2004, ruqa Mark A was shown to him by a police official and he went to PGIMS Rohtak and obtained the opinion of the doctor vide his ruqa Ex.PD/2, as to whether patient was fit to make a statement or not, whereon, doctor gave opinion Ex.PD/3 and later, he recorded the statement under Section 164 Cr.P.C. Ex.PH of Mamta (deceased), which was read over and explained to latter, who after accepting the same to be correct, affixed her thumb impression below it. He also testified that he also appended one certificate Ex.PH/1 on the statement of Mamta (deceased).

(17) PW-6 Satbir Singh Constable tendered in evidence, his affidavit Ex. PJ.

(18) PW-7 Devender Singh SI/SHO testified that on 24.10.2004, he was posted as SI/SHO Police Station Kanina, on which day, he had recorded the statement of Satbir Singh Constable under Section 161 Cr.P.C. and on 03.11.2004, he had recorded the statement of Mahesh Kumar HC under Section 161 Cr.P.C. and he settled the report under Section 173 Cr.P.C. on 04.11.2004.

(19) PW-8 Dr. Suresh Kumar, Medical Officer, CHC Kanina testified that on 14.09.2004, he medico-legally examined Mamta (deceased) wife of Ashok (appellant), 20 years old female resident of village Jharli and found 100 % superficial to deep burns on her person. He also testified that the patient was referred to PGIMS Rohtak for further management. He also testified that the nature of injury was dangerous to life and all burns were fresh. He also proved the copy of the medico-legal report Ex.PK prepared by him. He testified that he had not treated the patient, but had given only first aid. He also brought the original medico-legal report. He also testified that he had also sent information (ruqa) to Police Station Kanina Ex.PL, that was signed by him.

(20) PW-9 Dr. Archana Gupta, Medical Officer, Civil Dispensary Shivaji Colony, Rohtak testified that on 20.09.2004, she was posed as Medical Officer and on that day, she conducted the autopsy on the corpse of Mamta (deceased), 20 years old female, that was brought by the police and she was admitted in Ward No. 6/1 in PGIMS Rohtak. Death had occurred at 9.00 a.m. on 19.09.2004 and autopsy on the corpse of Mamta (deceased) was conducted on 20.09.2004 at 11.30 a.m. As per information, furnished by the police, it was burn case. She also testified that burns were present all over the body except hands and dorsum of right foot and ventral aspect of both feet and front of face including nose, eyes and forehead. Face was swollen. Rigor mortis were present. Scalp, skull and vertebrae were healthy, membrane was congested. In her opinion, death was due to burns and its complications which were ante mortem in nature and probable time that elapsed between death and postmortem was 4 to 36 hours. She further testified that she handed over to the police, corpse of Mamta (deceased) after autopsy, copy of the autopsy report, police papers No. 1 to 14 duly signed by her. She also testified that Ex.PN is the correct carbon copy of the autopsy report. She also proved the inquest report Ex.PN. She also testified that she conducted the autopsy on the corpse of Mamta (deceased), on the application Ex.PO produced before her by the police.

(21) PW-10 Manoj Sharma also corroborated the testimony of Kuldeep Sharma (PW-1) and testified likewise.

(22) PW-11 Daya Ram ASI testified that on 14.09.2004, while he was posted as ASI at Police Station Kanina, received a ruqa from CHC Kanina and, thereafter, he went there and enquired from the doctor about

the patient, who told him that the patient had already been referred to PGIMS Rohtak and, thereafter, on the same day, he went to PGIMS Rohtak and there, he moved an application Ex.PF for seeking an opinion about the fitness of the injured for making a statement and the doctor opined that the patient was fit for making statement. He further testified that on the same day, he again sought an opinion of the doctor about the fitness of the patient to make a statement, on the asking of Sh. Kuldeep Singh, JMIC, Rohtak and the doctor opined that the patient was fit to make statement vide opinion Ex.PF/1.

(23) He further testified that on 14.09.2004, Sh. Kuldeep Singh, JMIC, Rohtak recorded the statement of Mamta (deceased) Ex.PG and, thereafter, made endorsement Ex.PN, that was recorded by him in the daily diary register in Police Station Kanina as Ex.PM. He, further testified that on the receipt of statement Ex.PI of Mamta (deceased), FIR Ex.PP was recorded and endorsement Ex.PP/1 was made by him. He testified that on 16.09.2004, he went to the place of occurrence and prepared the rough site plan Ex.PQ in the presence of Bhola Ram and on 19.09.2004, he received an intimation about the death of Mamta (deceased) and he went to the PGIMS Rohtak and took ruqa Ex.PR from the police post Rohtak and, thereafter, he went to the Ward of PGIMS Rohtak, where corpse of Mamta (deceased) was lying.

(24) He further testified that he prepared the inquest report Ex.PN on the corpse of Mamta (deceased), as also, recorded the statements of Kuldeep and Manoj under Section 161 Cr.P.C and added offence under Section 304-B read with Section 34 IPC in this case and, thereafter, the corpse was brought to the mortuary and on the next day, he got conducted autopsy, thereon, and later, the corpse of Mamta (deceased) was handed over to Manoj and Kuldeep brothers of the deceased (Mamta).

(25) PW-12 Dr. Deepak Kumar Gupta also testified that on 14.09.2004, he was incharge of Ward No. 6 of PGIMS Rohtak and on that day, police submitted an application Ex.PF to him for seeking opinion about the fitness of injured to make her statement and he opined vide opinion Ex.PF/2 that the patient was fit to make statement and on the same day on the arrival of Sh. Kuldeep Singh, JMIC, Rohtak, the application was again put before him for seeking opinion for making statement by her and

on the said application, he, vide opinion Ex.PF, declared the patient fit to make statement and, thereupon, JMIC (ibid) recorded the statement Ex.PG in his presence. He also gave his opinion Ex.PG/3 to the effect that the patient remained fit to make statement.

(26) He further testified that on 15.09.2004, police again submitted an application for seeking opinion about the fitness of the injured for making statement and he opined vide Ex.PD/4 that patient was fit for making statement at that moment; thereafter, JMIC, Rohtak had arrived in the hospital and police again put the application before him for seeking an opinion about the fitness of the injured to make statement and he opined vide opinion Ex.PD/3 that patient was fit to make statement and, thereupon, Sh. Kuldeep Singh, JMIC recorded the statement of Mamta (deceased) Ex.PII in his presence. He also remained present during recording of the statement and she remained fit to make statement and his opinion in this regard is Ex.PII/2. He also proved ruqa Ex.PR bearing his signatures, which was sent by him on 19.09.2004 to the police post Rohtak about death of Mamta (deceased).

(27) DW-1 Dr. Ravinder Chaudhary testified that Medical Board comprising of Civil Surgeon, Rohtak, SMO, Government Hospital, Rohtak and Orthopedic Surgeon, Government Hospital, Rohtak issued handicapped certificate copy Ex.DC to Ashok (appellant). He testified that there was 55% physical disability on account of deformities on his right forearm, right wrist and hand. He further testified that the person is not able to carry out any work or lift weight with right hand.

(28) DW-2 Suresh Chand Gupta brought the original record regarding physical disability certificate that was issued to Ashok Kumar (appellant). He testified that the said entry was carried out by Parveen Kumar Clerk. He also testified that Ex.DD is the correct photocopy of the original record.

(29) Learned counsel for the appellant contended that there are two dying declarations of Mamta (deceased) Ex.PG and Ex.PII. He also contended that in dying declaration Ex.PG, Mamta (deceased) did not allege any demand of dowry and stated that she had caught fire, while cooking food. He also contended that in second dying declaration Ex.PII, that was recorded on 15.09.2004 by Sh. Kuldeep Singh, JMIC, Rohtak, she alleged that the appellant poured kerosene on her and set her ablaze. He also

contended that when this dying declaration was recorded, her father Purshotam Lal and brothers were present in the hospital and were sitting by the side of her bed. So, he contended that later dying declaration Ex.PH requires rejection and the first has to be relied upon, wherein, it has been stated by the deceased (Mamta) that she caught fire accidentally, while she was preparing food and no one had put her on fire.

(30) On the other hand, the learned Additional Advocate General, Haryana for the respondent and learned counsel for the complainant contended that the first dying declaration Ex.PG was rightly ignored by the learned trial Court, who rightly placed reliance upon the second dying declaration Ex.PH, wherein, deceased levelled allegations against the appellant and his accomplices for putting her on fire by sprinkling kerosene oil.

(31) We have given our thoughtful consideration to the contentions raised by the learned counsel for the appellant, learned Additional Advocate General, Haryana for the respondent and learned counsel for the complainant and we are of the view that both the dying declarations Ex.PG and Ex.PH are contradictory to each other and, therefore, both have to be repelled. In the first dying declaration Ex.PG, the deceased (Mamta) alleged that she caught fire accidentally. She suffered 100% burns and those could not be suffered due to accidental fire. If, she had caught fire accidentally, she would have made effort to extinguish that and she would have run for safety, after catching fire.

(32) So far as the second dying declaration Ex.PH is concerned, that too cannot be believed. As per the evidence of Dr. Ravinder Chaudhary (DW-1) and Suresh Chand Gupta (DW-2), appellant had 55% disability and therefore, he was not in a position to put Mamta (deceased) on fire. So, second dying declaration Ex.PH also requires to be repelled.

(33) The learned trial Court, thus, wrongly placed reliance upon second dying declaration Ex.PH without realising that when once, Mamta (deceased) had stated in her first dying declaration Ex.PG that she caught fire accidentally while she was preparing meal in the kitchen then how her second dying declaration Ex.PH could be believed, wherein, she alleged that the appellant and his accomplices put her on fire.

(34) Even, at the time, when the second dying declaration Ex.PH was recorded, her father Purshotam Lal and brothers were present and possibly they tutored her to suffer second dying declaration Ex.PH. Even, Sh. Kuldeep Singh, JMIC, Rohtak (PW-5) admitted that he cannot say, as to whether on 14.09.2004, when he went to PGIMS, Rohtak for recording the statement of Mamta (deceased), any of her relatives was present near her bed or not. He also testified that he had put a question to Mamta (deceased) as to why, she wanted to change her previous statement. He further testified that he does not remember specifically that he asked the attendants of Mamta (deceased) to go out of the ward at the time of recording her statement or not. Similar, was his reply in respect of statement of Mamta (deceased) recorded on 15.09.2004. He also testified that he cannot say whether Mamta (deceased) was tutored by her father and brothers for making her statement, obviously on 15.09.2004.

(35) So, in these circumstances, possibility cannot be ruled out that on 15.09.2004, brothers and father of the deceased (Mamta) tutored her to suffer second dying declaration Ex.PH indicting, therein, the appellant and his accomplices as her assailants. Thus, dying declaration Ex.PH being doubtful is required to be repelled in view of the first dying declaration Ex.PG which too cannot be believed. As already held, if the fire would have been accidental, then the deceased (Mamta) would not have suffered 100% burns. She was not suffering from any mental disorder because of which, she put her on fire. It has come in the evidence of Kuldeep Sharma (PW-1) and Manoj Sharma (PW-10) that she was harassed by the appellant who made a demand of dowry from her. Both (PW-1 and PW-10) were subjected to searching cross-examination by the learned counsel for the appellant before the learned trial Court, but the long cross-examination failed to elicit anything worth the name which could possibly cause any dent in their testimony.

(36) It may be mentioned here that the testimony of Kuldeep Sharma (PW-1) has been reproduced in the earlier parts of this judgment and similar, is the testimony of Manoj Sharma (PW-10). They were not present at the time of occurrence. Dying declarations Ex.PG and Ex.PH have already been repelled. There is no evidence on the record that the appellant put the deceased (Mamta) on fire and as a result, whereof, she received burns and succumbed, thereto.

(37) So, the charge under Section 302 IPC against the appellant is not proved. The learned trial Court wrongly convicted and sentenced the appellant for commission of offence punishable under Section 302 IPC. The appellant is required to be given benefit of doubt and he has to be acquitted of the charge framed against him under Section 302 IPC.

(38) There is no gainsaying about the marriage of the deceased (Mamta) with the appellant on 28.05.2001. As already held, it has come in the testimonies of Kuldeep Sharma (PW-1) and Manoj Sharma (PW-10) that the appellant started harassing the deceased (Mamta), after the marriage and as and when, Mamta (deceased) used to come to her natal house, appellant never came to bring her back to her matrimonial home. It has also come in the testimonies of Kuldeep Sharma (PW-1) and Manoj Sharma (PW-10) that the appellant and his brothers made a demand of dowry. That being so, the deceased (Mamta) was compelled to bring dowry. She was subjected to cruelty and harassment after her marriage and soon before her death, which was unnatural as a result of burns.

(39) The death of the deceased (Mamta) had occurred by burns. It was unnatural death, which occurred otherwise than under normal circumstances within 7 years of her marriage. It has been proved through the testimonies of Kuldeep Sharma (PW-1) and Manoj Sharma (PW-10) that soon before her death, she was subjected to cruelty and harassment by her husband (appellant, herein) in connection with demand for dowry, therefore, the death of Mamta (deceased) shall be called "dowry death" and the appellant being her husband shall be deemed to have caused her death. If the deceased (Mamta) was given good treatment, by the appellant, her unnatural death could be averted.

(40) Even, in term of Section 113-B of the Indian Evidence Act, 1872, it shall have to be presumed that the appellant had caused the "dowry death" of Mamta (deceased). Appellant who is the husband of the deceased (Mamta) being the direct beneficiary of dowry must be held to have made the life of the deceased (Mamta) so miserable, that she was compelled to put herself on fire. This incident of fire, wherein, deceased (Mamta) had died would not have occurred, if her life would not have been miserable in the company of the appellant.

(41) Judgments relied upon by the learned counsel for the appellant titled as *Madan Lal* versus *State of Rajasthan (1)*; *State of Punjab* versus *Parveen Kumar (2)* and *Joginder Singh* versus *State of Haryana (3)*, rendered by this Court, have been perused, but these are not applicable to the facts and circumstances of the case, therefore, benefit of doubt cannot be accorded to the appellant on the basis, thereof.

(42) The learned trial Court, thus, rightly held the appellant guilty of commission of offence punishable under Section 304-B IPC.

(43) The learned trial Court also rightly convicted and sentenced the appellant for commission of offence punishable under Section 498-A IPC, in view of dowry death of the deceased (Mamta) having been caused by the appellant.

(44) Resultantly, the appeal is partly allowed; impugned judgment of conviction and order of sentence are set aside partly and the appellant is acquitted of the charge framed against him for commission of offence punishable under Section 302 IPC. However, his convictions for the offences under Sections 304-B and 498-A IPC are maintained.

(45) The learned trial Court did not impose any sentence upon the appellant for commission of offence punishable under Section 304-B IPC, in view of sentencing him for commission of offence punishable under Section 302 IPC, that has set aside.

(46) As per custody certificate, the appellant has undergone actual sentence for a period of 07 years 06 months and 04 days as on 29.08.2012, as of now, he has undergone about 08 years of imprisonment. He is sentenced to the period supra already undergone by him in jail for the offence under Section 304-B IPC. His sentence of rigorous imprisonment for two years for the offence under Section 498-A IPC; besides, pay of fine of Rs.2000/- and in default, thereof, to further undergo rigorous imprisonment for two months as awarded by the learned trial Court is maintained. Both the sentences shall, however, run concurrently. The appellant be set at liberty, if he is not wanted in any other case.

A. Jain

- (1) 2004 (2) HLR 126
- (2) 2005 (1) RCR (CrI.) 146
- (3) 2005 (3) RCR (CrI.) 135