

commit suicide. It is significant to note that as per Ex.PJ, it is not even a case of suicide rather of catching fire accidentally.

(14) In view of the above discussion, this appeal succeeds and is accepted, setting aside the impugned judgment/order of sentence. The appellants are hereby acquitted of the charged offence. At the asking of the parties, it is placed on record that as per the marriage registration certificate shown at the bar, the accused-appellant Jagdish has entered into marriage with the sister of the deceased on 13th February, 2005 and they are living happily.

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*R.N.R.*

*Before Harbans Lal, J.*

**GURDEEP SINGH,—Appellant**

*versus*

**STATE OF PUNJAB,—Respondent**

Criminal Appeal No. 276-SB of 1998

29th January, 2009

*Indian Penal Code, 1860—Ss.304-B and 498-A—Indian Evidence Act, 1972—S.113-B—Dowry death—No cogent, convincing and clear evidence against appellant of setting his wife ablaze by pouring kerosene on her—Finding of trial Court that deceased was done to death by appellant not sustainable—Prosecution succeeding in proving that appellant had subjected deceased to cruelty within meaning of clause (a) of Explanation appended to Section 498-A of IPC—Mere fact that demand of scooter does not fall within mischief of dowry or that evidence of witnesses not found convincing for upholding conviction of appellant under Section 304-B of IPC is not sufficient to discredit or discard prosecution case as a whole—Offence altered from S.304-B to S.498-A IPC.*

*Held*, that there is no evidence to the effect that the deceased was harassed for or in connection with the demand of dowry by the

appellant. So, the ingredients of Section 304-B of IPC are not satisfied by the prosecution. The learned trial Court has observed that “their (referring to the co-accused Harbans Singh and Jaswant Kaur) participation in the commission of crime, in fact appears to be doubtful and they are entitled to acquittal by way of abundant caution. However, at the relevant time accused Gurdeep Singh appears to have set his wife ablaze and was liable for the same. However, there is no direct evidence of murder against accused Gurdeep Singh, he is liable in this case under Section 304-B of IPC for causing the death of Paramjit Kaur deceased who died under unnatural circumstances within a period of seven years after her marriage apparently due to demand of dowry made by her husband.” It is inferable from these observations that the learned trial Court in the absence of any lucient evidence has held that the accused Gurdeep Singh appeared to have set his wife ablaze. In the same vein, it has been observed that there is no direct evidence of murder. There being no cogent, convincing and clear evidence, such a finding is uncalled for. The learned trial Court has observed that “however, after his return from abroad, he (referring to the accused Gurdeep Singh) took back his wife to the bridal house but continued to harbour ill-will against her. In these circumstances, there was nothing surprising, in case he set his wife ablaze by pouring kerosene oil on her, apparently due to non-fulfilment of demand for more dowry”. Seemingly, the learned trial Court was bent upon to record that the deceased was done to death by the accused. This finding being unfounded is unsustainable.

(Para 16)

*Further held*, that the prosecution has succeeded in proving that the appellant had subjected the deceased to cruelty within the meaning of clause (a) of Explanation appended to Section 498-A of IPC. The mere fact that the demand of scooter does not fall within the mischief of dowry or that the evidence of the witnesses has not been found convincing for upholding the conviction of the appellant under Section 304-B of IPC, is not sufficient to discredit or discard the prosecution case as a whole.

(Para 19)

A.P.S. Deol, Senior Advocates with Ms. Manpreet Kaur,  
Advocate *for the appellant.*

T.S. Salana, Deputy Advocate General, Punjab.

### JUDGMENT

#### ***HARBANS LAL, J.***

(1) This appeal is directed against the judgment/order of sentence dated 5th March, 1998 passed by the Court of Learned Additional Sessions Judge, Barnala whereby he convicted and sentenced the accused Gurdeep Singh to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 2,000 or in default of payment of the same, to further undergo rigorous imprisonment for three months under Section 304-B of IPC and acquitted his co-accused Harbans Singh and Jaswant Kaur by giving benefit of doubt.

(2) Succinctly put, the facts of the prosecution case are that Gurbachan Singh father of Paramjit Kaur deceased made statement before the police in the terms that his daughter Paramjit Kaur was married to accused Gurdeep Singh *alias* Gareebu of Village Jodhpur about three and a half years back. The accused Jaswant Kuar is the mother and the accused Harbans Singh is the brother of accused Gurdeep Singh. He had given necessary dowry according to his means and status at the time of marriage, but these accused were dissatisfied therewith. They wanted Paramjit Kaur to bring a scooter from her parents. The accused were saying that they had been humiliated in the eyes of their friends and relations by not giving a scooter by her parents at the time of her marriage. A few days after the marriage, Gurdeep Singh left for Behrin from where, he sent a threatening letter to the complainant Gurbachan Singh asking him to bring back Paramjit Kaur from the bridal house. On this, he brought her to his house in Village Mehal Kalan. About one and a half month before the occurrence, the accused Gurdeep Singh returned from the afore-mentioned country. With the intervention of various relatives of the parties and other respectables of Village Mehal Kalan and Jodhpur the accused Gurdeep Singh took her back to the matrimonial home about 20 days prior to the occurrence. On 10th January, 1997, Gurbachan Singh (*sic.*) accompanied by his

brother-in-law Sukhdev Singh went to Village Jodhpur to see her and her in-laws. On that day, when they both reached there, the deceased was found sitting near the hearth. At that time, the accused Gurdeep Singh, Harbans Singh and Jaswant Kaur were also present in the house. They were taunting her for not bringing a scooter from her parents besides remarking that her father was in fact a Pauper. Gurbachan Singh and Sukhdev Singh PWs intervened and told the accused that he (Gurbachan Singh) had already given necessary dowry beyond his means and could not afford to give any scooter. All the accused were pacified. Paramjit Kaur told her father that she was being maltreated by her mother-in-law Jaswant Kaur, brother-in-law Harbans Singh and her husband Gurdeep Singh accused since the day she returned to their house and that she was fed up with her life. Having consoled her, they went to the house of Jal Kaur sister of Gurbachan Singh, Jal Kaur was married to Gurdeep Singh, of village Jodhpur. Gurbachan Singh as well as Sukhdev Singh stayed in Jal Kaur's house for the night. On the next morning around 8.30 a.m., they went to the house of Paramjit Kaur's in-law to see her. They found her dead due to burn injuries. On the basis of statement, the case was registered against all the three aforementioned accused. The autopsy was performed on her dead body. All the burn injuries were found to be ante moterm in nature. SI Surinder Pal Singh inspected the spot, prepared the rough site plan showing the place of occurrence, recovered some earth smelling of kerosene oil, some ashes from near the dead body, a tin containing kerosene oil, some half burnt clothes of the deceased lying near the dead body. On 12th January, 1997, all the three accused were arrested. After completion of investigation, the charge-sheet was laid in the Court of learned Illaqa Magistrate.

(3) On commitment, all the three accused were charged under Section 304-B of IPC to which they did not plead guilty and claimed trial. To bring home guilt against the accused, the prosecution examined Dr. Ashok Kumar Bansal PW1, Gurbachan Singh complainant PW2, Sukhdev Singh PW3, Dev Raj Draftsman PW4, MHC Ajit Singh PW5, Constable Gurbachan Singh PW6, Constable Amarjit Singh PW7, SI Surinder Pal Singh Investigator PW8 and closed its evidence by tendering passport Ex.P.5 of accused Gurdeep Singh, letters Ex.P.6 to Ex.P.9

written by him, wedding card Ex.P.10 of Paramjit Kaur deceased with accused Gurdeep Singh and the report of the Forensic Science Laboratory Ex.PT.

(4) When examined under Section 313 Cr.P.C., all the accused denied the incriminating circumstances appearing in the prosecution evidence and pleaded false implication. They came up with the plea that they had cordial relations with Paramjit Kaur deceased. The accused Gurdeep Singh further put forth that at the time of his marriage with Paramjit Kaur, he had been working as mason in Behrin and had come to village Jodhpur for about two months. After his marriage, he had been sending letters to her from Behrin. She too, had been writing letters to him full of love and affection. She had also been sending him greetings on the eve of new year. At the relevant time, he had come to India on the eve of Diwali in the year 1996 with return ticket and his seat was also booked for Behrin for 15th February, 1997. On the day of occurrence i.e. 11th January, 1997, he had to go Jagraon for collecting his ticket and passport for going back to Behrin. The deceased was not consenting to his return to Behrin and had been persuading him not to go back to Behrin. When he refused to agree to her request, she became angry and committed suicide. He was not at all at fault nor was he in any way responsible for her suicide. Similarly, other accused, namely, Harbans Singh and Jaswant Kaur are also not liable for the suicide committed by her. They had informed Sukhdev Singh PW about her death and the latter, subsequently informed Gurbachan Singh about the same. At the time of commission of suicide by her, they all the three accused raised hue and cry, whereupon Darshan Singh son of Babu Singh and other neighbours came to the spot and tried to extinguish the fire on the dead body. At the time, the accused also tried to remove her to the hospital, but she succumbed to the burn injuries at the spot. They had informed the police about her death on 11th January, 1997 at about 8.00 a.m. They all three were arrested by the police from the spot on the same day, when they were crying by the side of the dead body. He has (Gurdeep Singh accused) also placed on record various letters Mark A, Mark B, Mark C, Mark D, Mark E and Mark F purporting to have been written by his wife Paramjit Kaur deceased to him, while he was residing abroad in Behrin. In their defence, they

examined Darshan Singh DW1, Paramjit Kaur DW2, Mohd. Sadip Clerk of the office of DTO, Sangrur DW3, Sukhwinder Singh DW4 and Dr. Atul Kumar Singla Handwriting Expert DW5.

(5) After hearing the learned Additional Public Prosecutor for the State, the learned defence counsel and examining the evidence on record, the learned trial Court convicted and sentenced Gurdeep Singh accused as noticed earlier and acquitted his co-accused. Feeling aggrieved with his conviction/sentence, he has preferred this appeal.

(6) I have heard the learned counsel for the parties, besides perusing the record with due care and circumspection.

(7) Mr. A.P.S. Deol, Senior Advocate valiantly urged that the learned trial Court has disbelieved the prosecution story regarding the participation of the co-accused Harbans Singh as well as Jaswant Kaur in causing the death of Paramjit Kaur with a positive finding returned in the impugned judgment. In view of these findings, it is difficult to hold Gurdeep Singh accused guilty under Section 304-B of IPC, when admittedly he left for Behrin after 11 days of the marriage and returned back to India in November, 1996, i.e., about one and half months prior to this occurrence. In the absence of any evidence that the deceased was subjected to cruelty or harassment in connection with any demand of dowry soon before her death, the conviction under Section 304-B of IPC is unsustainable since one of the most essential ingredient to prove the case of dowry death is absolutely missing. The learned trial Court has observed that Paramjit Kaur deceased was not subjected to any maltreatment by the in-laws during her stay in their house in the absence of her husband Gurdeep Singh accused. The allegation that the accused used to taunt Paramjit Kaur for not bringing a scooter appears to have been introduced falsely. Moreso, the accused already owned a scooter. Gurdeep Singh-appellant had no reason to demand a scooter, as he was to fly back to Behrin on 15th February, 1997. The letters Ex.P.6 to Ex.P.9 relied upon by the learned trial Court do not even vaguely suggest that any demand of dowry was raised by the appellant in those letters. No positive finding has been recorded that these letters did suggest any demand of dowry. It has been observed by the learned

trial Court that the letters suggest that Gurdeep Singh was not happy with his wife and he wrote a letter to his father-in-law that he was at liberty to take back his articles from the house of his parents. Thus, the mere fact that the appellant was not happy with his wife does not suggest that it was necessarily for demand of scooter. The tenor and texture of the letters suggest that the deceased was insisting upon the appellant Gurdeep Singh to come back to India, though he expressed his inability on account of his contract in the foreign country. Indeed, it is this frustration, which has led the deceased to commit suicide, since the appellant after visiting India for a month was to return to Behrin and had in fact got booked his flight for 15th Febraury, 1997 (wrongly typed as 15th Febraury, 1996) as proved by Sukhwinder Singh DW4 a travel agent. Furthermore, the learned trial Court has admitted that the letters Mark A to Mark F are in the hand of Paramjit Kaur deceased. These letters bring out the frustration of Paramjit Kaur living alone without her husband and her insistence upon him to return back to India. Thus, it would be going too far to believe on the basis of the above-mentioned letters that the deceased was subjected to cruelty in connection with demand of scooter, when the accused was living abroad. The learned trial Court has partly relied upon the evidence of Gurbachan Singh as well as Sukhdev Singh PWs who are highly interested in the success of the case. Their evidence has been acted upon in relation to the allegation of demand of scooter by the appellant without appreciating that a person living abroad who has come on a short visit to India and who also owns a scooter, will not be foolish enough to raise a demand of scooter. Thus, there is no evidence to draw presumption against the appellant of causing the dowry death of his wife and whatever presumption could be drawn stands rebutted by the defence evidence.

(8) To tide over these submissions, Mr. T.S. Salana, Deputy Advocate General, Punjab on behalf of the State maintained that on appraisal of the prosecution evidence, no holes can be picked in the findings returned by the learned trial Court in convicting the appellant under Section 304-B of IPC.

(9) I have seriously cogitated upon these rival contentions.

(10) PW2 Gurbachan Singh has stated in the following terms :—

“Paramjit Kaur was my daughter, who was married to Gurdeep Singh accused present in court about 3½ years ago. I had given sufficient dowry to Paramjit Kaur as per my capacity. I alongwith my brother-in-law Sukhdev Singh went to meet Paramjit Kaur at V. Jodhpur. My daughter Paramjit Kaur was sitting before hearth and Gurdeep Singh, Harbans Singh brother-in-law, Jaswant Kaur mother-in-law were taunting her for not bringing scooter in dowry and they had been insulted. I requested the accused not to press demand for scooter as I had already given sufficient dowry beyond my capacity. The accused had started taunting my daughter for bringing less dowry immediately after the marriage. Gurdeep Singh my son-in-law had gone to Behrin after 10/12 days of the marriage. From there he wrote a threatening letter asking me to bring back my daughter. I accordingly brought my daughter to my village. Gurdeep Singh returned from Behrin after 3 years. The matter was patched up with the intervention of village panchayat Mehal Kalan and Jodhpur and Gurdeep Singh took my daughter to his house. Then I and Sukhdev Singh about 9 months back had gone to the house of the accused to enquire about the well being of my daughter. After meeting my daughter we went to the house of Gurdev Singh. Next morning at about 8.30 A.M., we again came back to the house of the accused. There we found my daughter lying burnt and dead.” PW3 Sukhdev Singh has stated in the following terms :—

“Gurbachan Singh PW is my brother-in-law from the loser side. About 8/9 months back, Gurbachan Singh had come to meet me at Barnala. Then, I alongwith Gurbachan Singh went to Jodhpur to meet Paramjit Kaur, daughter of Gurbachan Singh. Paramjit Kaur and all the accused were sitting near the hearth in their house at Jodhpur. They were cutting remarks that Paramjit Kaur belonged to a pauper family and she had not brought scooter in the dowry.



Paramjit Kaur told us that she was being maltreated by the accused, since the day, she had come. Gurbachan Singh consoled her daughter saying that we would solve the matter on the following day and then I and Gurbachan Singh went to the house of Gurdev Singh and spent the night there. Next day we again came to the house of accused at about 7:30 or 8:00 A.M. and on reaching we saw that Paramjit Kaur was lying dead with burn injuries.

(11) The question which arises for consideration is as to whether on the above-mentioned evidence a case under Section 304-B of the Indian Penal Code can be said to have been made out.

Section 304-B of the Indian Penal code reads as under :—

*“304-B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.*

*Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.*

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

(12) A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

(13) Section 113-B of the Indian Evidence Act reads as under :—

*“113-B-Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.*

*Explanation.—For the purposes of this Section, “dowry death”, shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”*

(14) From a conjoint reading of Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act, it will be apparent that a presumption arising thereunder will operate, if the prosecution is able to establish the circumstances as set out in Section 304-B of the Indian Penal.

(15) The ingredients of the aforementioned provisions are :

- (1) That the death of the woman was caused by any burns or bodily injury or in some circumstances which is not normal;
- (2) Such death occurs within 7 years from the date of her marriage;
- (3) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband;
- (4) such cruelty or harassment should be for or in connection with demand of dowry; and
- (5) is established that such cruelty and harassment was made soon before her death.

(16) As is borne out from the evidence referred to hereinbefore, the prosecution has sought to establish that the appellant along with others had been exerting pressure upon the deceased to fetch scooter from her parents. The learned trial Court indeed recorded conviction on the basis of the letter Ex.P.7. It is in the cross-examination of Gurbachan Singh PW2 that accused Gurdeep Singh had made a demand

regarding scooter in letter Ex.P.7. A suggestion has been put to him that there is no demand of dowry/scooter in Ex.P.7. As emanates from Gurbachan Singh's above referred evidence, he had requested the accused not to press the demand for scooter. On reading the letter Ex.P.7, it is not revealed that the demand of scooter was put forth by the appellant. For a little while, if such demand is assumed to be there, the same does not fall within the ambit of dowry. As per Gurbachan Singh's evidence, the matter was patched up. It implies that the alleged previous acts were condoned. It is in his further evidence that he along with Sukhdev Singh about nine months back had gone to the house of the accused to enquire about the well being of his daughter. After meeting his daughter, they stayed for night in the house of Jal Kaur. Next morning at about 8:30 a.m., they again came back at the house of the accused, where they found her dead with burn injuries. He has nowhere stated that on the day before the occurrence when they visited the house of the accused, the latter had repeated their demand of scooter or due to failure of meeting of this demand, the deceased was beaten up or harassed or ill-treated in any other manner soon before the occurrence. Thus, to say the least of it, there is no evidence to the effect that the deceased was harassed for or in connection with the demand of dowry by the appellant. So, the aforementioned ingredients of Section 304-B of IPC are not satisfied by the prosecution. The learned trial Court has observed that "their (referring to the co-accused Harbans Singh and Jaswant Kaur) participation in the commission of crime, in fact appears to be doubtful and they are entitled to acquittal by way of abundant caution. However, as stated above, at the relevant time accused Gurdeep Singh appears to have set his wife ablaze and was liable for the same. However, there is no direct evidence of murder against accused Gurdeep Singh, he is liable in this cause under Section 304-B of IPC for causing the death of Paramjit Kaur deceased who died under unnatural circumstances within a period of seven years after her marriage apparently due to demand of dowry made by her husband." It is inferable from these observations that the learned trial Court in the absence of any luculent evidence has held that the accused Gurdeep Singh appeared to have set his wife ablaze. In the same vein, it has been observed that there is no direct evidence of murder. There being no cogent, convincing

and clear evidence, such a finding is uncalled for. The learned trial Court has observed that “however, after his return from abroad, he (referring to the accused Gurdeep Singh) took back his wife to the bridal house but continued to harbour ill-will against her. In these circumstances, there was nothing surprising, in case he set his wife ablaze by pouring kerosene oil on her, apparently due to non-fulfilment of demand for more dowry.” Seemingly, the learned trial Court was bent upon to record that the deceased was done to death by the accused. This finding being unfounded is unsustainable.

(17) Now it is to be noticed as to whether any other offence is made out on the given evidence. It does not stand to the logic that the appellant who was to fly back within a few days would coerce his wife to bring scooter from her parents. It is own case of the prosecution that the passport Ex.P.5 of the accused Gurdeep Singh was also taken into possession by the police. As per the evidence of Sukhwinder Singh DW4 on 15th February, 1997, the appellant Gurdeep Singh was to fly back. If it was so, where would have been the need of scooter by him. It is in the cross-examination of Gurbachan Singh (sic.) that “I do not know that Harbans Singh referring to the co-accused) owns a scooter or that the number of his scooter is PW10-D/6038.” Palpably, he has not denied this fact in categoric terms. Mohd. Sadiq DW3 Clerk D.T.O. Office, Sangrur has deposed from the official record that Scooter No. PB10-D-6038 was originally the ownership of Paramjit Singh and it was transferred in the name of Harbans Singh son of Darbara Singh resident of Jodhpur, Tehsil Barnala on 1st July, 1996 (referring to the co-accused). Ostensibly, he owned scooter long before this occurrence. That being so, the scooter was not required by any member of the family.

(18) As testified by Dr. Ashok Kumar Bansal, PW1, “the cause of death in this case, in my opinion, is due to shock and suffocation due to burns, which was sufficient to cause death in the ordinary course of nature.” It is in his cross-examination that the liquor in the stomach was semi-digested. The presence of liquor in the stomach tends to show that the deceased had consumed liquor. May be that to muster might to commit suicide, she would have consumed it. Thus, it seems

to be a case of suicide. Section 498-A of IPC reads in the following terms :

**“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—**Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

*Explanation.—*For the purpose of this section, “cruelty” means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]”

(19) Of course, the letters Mark A to Mark H spell out that the deceased had a lot of love and affection for the appellant, who has also admitted this fact, but in the letter Ex.P.7 sent by the appellant Gurdeep Singh to his father-in-law Gurbachan Singh PW, the former told the latter that he would not return to India for another ten years and that his wife be settled at the house of somebody else. In the letter Ex.P.6 sent by him to his parents, he told them that he was not even prepared to see the face of his wife. He also wrote letters Ex.P.8 and Ex.P.9 containing various objectionable things against his wife and her parents, which reflect that the appellant in fact did not respond to the sentiments of the deceased. The appellant was to fly more than one month of the day of occurrence. So, the deceased could not be expected to pick up quarrel on the issue of return of the appellant to Behrin, a month before his flight. Something had occurred in between the appellant and his wife on the night intervening 31st October, 1997 and 1st November, 1997

which brought about the situation to such a boil that she was forced to take her life. Such a situation can be within the exclusive knowledge of the appellant. May be that he had reiterated the above-referred contents of letter. From the contents of the letters and other evidence on the record, it can be gathered that the wilful conduct of the appellant was of such a nature as was likely to derive the deceased Paramjit Kaur to commit suicide and she did so. On careful delving into the contents of the above referred letters as well as the evidence of Gurbachan Singh PW2, Sukhdev Singh PW3, I am convinced that the prosecution has succeeded in proving that the appellant had subjected the deceased to cruelty within the meaning of clause (a) of Explanation appended to Section 498-A of IPC. The mere fact that the demand of scooter does not fall within the mischief of dowry or that the evidence of the aforesaid witnesses has not been found convincing for upholding the conviction of the appellant under Section 304-B of IPC, is not sufficient to discredit or discard the prosecution case as a whole.

(20) In view of the observations rendered by the Apex Court in re : **Dinesh Seth versus State of N.C.T. of Delhi (1)**, ingredient of cruelty is common in Sections 304-B and 498-A of IPC and if the offence under Section 304-B of IPC is not established rather the offence punishable under Section 498-A of IPC is made out on the given prosecution evidence though there was not specific charge under Section 498-A of IPC the appellant can be convicted and sentenced under Section 498-A of IPC. The contents of the above discussed letters indeed amount to extreme of humiliation and mental torture of the deceased. If the husband addresses to his wife that her father is a Pauper in writing or says that she be settled in somebody else's house or that he does not want to see her face, such remarks cause mental torture. Even in **Satpal versus State of Haryana (2)**, the Apex Court has held that "even though the prosecution evidence was not sufficient to establish charge under Section 304-B or 306 of IPC, conviction under Section 498-A of IPC can be upheld."

(21) As a sequel of the aboe discussion, the offence is altered to Section 498-A of IPC. The maximum sentence prescribed for this

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(1) 2008 (4) R.C.R. (Criminal) 81

(2) 1998 (5) S.C.C. 687

offence is three years and fine. The appellant has already undergone imprisonment for two years, five months and eight days. As such, he is sentenced to the already undergone imprisonment. However, he is also sentenced to pay a fine Rs. 10,000 and in default of the same, to further undergo rigorous imprisonment for six months. He shall deposit this amount of fine within two months from today, in the trial Court failing which, he will undergo rigorous imprisonment for one year. In the event of failure to deposit this fine, the learned Chief Judicial Magistrate, Barnala shall take necessary steps to send the appellant to the prison for serving the imprisonment in default of payment of fine. The Registry is directed to transmit a copy of this judgment to learned Chief Judicial Magistrate, Barnala for necessary action.

(22) Disposed of accordingly.

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**R.N.R.**

*Before Rakesh Kumar Jain, J.*

**STATE OF HARYANA AND OTHERS,—Appellants**

*versus*

**SMT. AMRAWATI,—Respondent**

R.S.A. 3088 of 2003

23rd January, 2008

*Code of Civil Procedure, 1908—Medical Termination of Pregnancy Act, 1971—Failure of sterilization operation after five years—Birth of a male child—Claim for compensation—Both Courts below failing to record finding of negligence on part of Doctor at time of operation—Medical science also recognizing failure rate of 0.3% to 0.7% of sterilization operation—In absence of finding of negligence appellants cannot be held liable for compensation—Appeal allowed, judgments and decrees of both Courts below set aside.*

*Held*, that the trial Court has committed an error in discarding the statement of Dr. G.S. Buttar as self-serving statement although while