

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

RESERVED ON: 02.11.2011
PRONOUNCED ON: 14.11.2011

+ CRL.A. 35/2011

KANTA & ORS Appellants
Through: Mr. J.S. Kuswaha with Mr. Anish Kumar,
Advocates.
versus

STATE Respondent
Through: Mr. M.N. Dudeja, APP for the State

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE PRATIBHA RANI

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

MS. JUSTICE PRATIBHA RANI

%

1. The appellants in this case i.e. the mother-in-law Smt. Kanta; husband Vicky and brother-in-law (Devar) Bunty have challenged their conviction under Section 498-A/302/34 IPC by learned Addl. Sessions Judge, Delhi on 16.12.2010 and also the order on sentence dated 20.12.2010 sentencing them to life imprisonment as well as a fine of Rs. 5,000/- each, in default of which to undergo six months simple imprisonment for the offence punishable under Sec.302 IPC and also sentence of three years rigorous imprisonment and a fine of Rs. 3,000/- each for the offence punishable under Section 498-A IPC with benefit under Section 428 Cr.P.C.

2. Briefly stated the case of the prosecution is that on 4th March, 2004 at about 3 PM, Police Station Mangol Puri was informed about admission of Seema, wife of Vicky in a burnt condition by one Sanju. The said information was recorded by the Police through DD No.38B and ASI Ram Diya was handed over the case for necessary action. He visited the DDU hospital, where the patient was found unfit for statement and was referred to RML Hospital.
3. Since it was a case of burn injuries (the patient had 96% burns) within 7 years of marriage, the SDM Punjabi Bagh was also informed about the admission of Seema in the hospital. He visited the hospital, but found that she was unfit for statement; thereafter so after leaving necessary instructions (i.e. to be informed as and when Seema was declared fit for statement), he left the hospital. The next day, i.e. on 5th March, 2004 on getting information about Seema having been declared fit for statement, he visited the hospital and recorded her statement and made an endorsement thereon, on the basis of which the FIR bearing No.181/2004 under Sections 498-A/307 IPC was registered. After the death of Seema on 11.03.2004, Section 304B IPC was also added in the FIR.
4. During the course of investigation, statements of the parents and other relatives of the deceased-Seema were recorded. They alleged that Seema had given a dying declaration to them, when they visited the Hospital on the night of 4th March, 2004. The place of occurrence was inspected and photographed. The kerosene oil can and burnt clothes of the deceased were also seized from the spot and sent to FSL for examination.
5. After the committal of the case to the Sessions Court, initially charge for the offences punishable under Sections 498-A/304B read with Section 34 IPC was framed against all the Appellants. On 07.07.2004 to which they pleaded not guilty. The material witnesses were examined during the course of trial. On 25.07.2006, alternatively, they were also charged for committing the offence punishable under Section 302/34 IPC, to which again they entered the plea of not guilty. After amendment of the charge, the material prosecution witnesses were recalled for further

examination and later permitted to be cross examined.

6. In order to bring home the Appellants' guilt, the prosecution relied upon the testimonies of 20 witnesses, of these the material witnesses are the parents and relatives of Seema, who deposed about her being harassed repeatedly for not bringing sufficient dowry to her matrimonial home. She was even sent back to her parents' house for non-fulfilling their demands. About two months before the occurrence, it was only at the intervention of Shri Banwari Lal, uncle (Fufa) of the Appellant Vicky (and his assurance that Seema would not be harassed any more) that she was sent back to her matrimonial home. Thereafter, on getting information of Seema receiving burn injuries admitted in the hospital, they (her parents) visited the hospital. When PW-1 and PW-5 i.e. the parents of the deceased-Seema met her in the hospital, she told that her mother-in-law brought kerosene oil cane and gave it to Vicky (husband) and asked Buntty (Devar) to light the fire. After setting her ablaze all three Appellants fled from the spot and she rushed out the house. The fire was extinguished by residents of the locality. She was taken to the hospital in a vehicle by another neighbour namely Sanju. The SDM (PW-11) Shri C. Arvind was also examined to prove the dying declaration recorded by him after she was declared fit to make statement and she stated before him that she was set ablaze by all the three Appellants conjointly.

7. After the dying declaration was recorded by the SDM, PW-10 ASI Ram Diya also claims to have recorded Seema's dying declaration and the statement of her parents. The post mortem report revealed the cause of death as *"Septicemia as a result of burn injury which was ante mortem in nature with 96% burn injuries"*.

8. After considering the testimony of the material witnesses, the learned Trial Court concluded that from the testimonies of PW-1 and PW-5 i.e. the parents of the deceased, the demand for dowry and her harassment for not bringing sufficient dowry and the further demand for scooter/motorcycle, stood proved. The impugned judgment believed the four dying declarations by deceased Seema giving details of kerosene oil being brought can by her mother-in-law, the pouring of kerosene oil, on

her by her husband, and her being set on fire by the brother-in-law (Devar) and that she was tortured since the time of her marriage for not bringing sufficient dowry. The three Appellants were convicted for committing the offences punishable under Section 498-A/302/34 IPC.

9. On behalf of the appellants, Mr. J.S.Kushwaha, Advocate has read the statements of all the material witnesses and to bring out the discrepancies appearing therein on the issue of harassment for not bringing sufficient dowry and whether the demand was for scooter or motor cycle. He also contended that no doubt, a young bride had died a unnatural death within two years of her marriage, but at the same time, it has to be looked into that from the statement of the public witness Mr. Sanju (PW-2), it is proved that none of the Appellants were present at home at the time of alleged occurrence. While the Appellant Kanta was away to the market to buy vegetables, the other two Appellants Vicky and Buntty were away from home selling bulbs on respective cycles in different parts of the area. All the Appellants came to know about the alleged occurrence only after they returned home and were informed by the neighbours about Seema being admitted in the hospital. It has been further urged that none of the Appellants tried to abscond; in that they were present in hospital - which was admitted even by PW-1 & PW-5 i.e. the parents of Seema. Their house was sealed and they were arrested by the police from their house. If they were culpable, there was no reason for them to be present in the hospital or at home. It was also submitted that there is a tendency to rope in the entire family in cases of unnatural death which could be for any other reason also and that every such unnatural death is not a dowry death or murder. In support of his contentions, learned counsel for the appellants relied upon the following judgments:-

- (i) *Narender Singh Arora Vs. State (Govt. of NCT Delhi) & Ors. 2010 (4) JCC 2373.*
- (ii) *Hans Raj Sharma & Ors. Vs. State Govt. of NCT of Delhi 2010 (2) JCC 972.*
- (iii) *State Vs. Jitender Garg & Ors. 2008 (1) JCC 76.*

- (iv) *Brij Kishan Vs. State 2009 (4) JCC 2812.*
- (v) *Budh Ram @ Pappu & Ors. Vs. State 2010 (3) JCC 2343.*
- (vi) *Jai Prakash Vs. State 2010 (2) JCC 1169.*
- (vii) *Jitender Kumar Vs. State, NCT of Delhi 2009 (1) JCC 491.*
- (viii) *State Vs. Sushila 2011 (2) JCC 761.*
- (ix) *Tirath Kumar @ Raj Rani & Anr. Vs. State of Haryana 2005 (4) Crimes 174 (SC).*
- (x) *Nalam Veera Stayanandam and Ors. Vs. Public Prosecutor, High Court of A.P., 2004(2) Crimes 279 (SC) Supreme Court of India.*
- (xi) *Samadhan Dhudaka Koli Vs. state of Maharashtra, 2009(1) JCC 399.*
- (xii) *Satish Kumar Vs. State of Punjab 2003 (1) JCC 110.*
- (xiii) *Mehiboobsab Abbasabi Nadaf Vs. State of Karnataka 2007 (3) JCC 2355.*
- (xiv) *Jai Karan Vs. State of NCT Delhi 81 (1999) Delhi Law Times 859 (SC).*
- (xv) *Kanchy Komuramma Vs. State of A.P., 1996 Supreme Court Cases (Crl.) 31*
- (xvi) *Sharda Vs. State of Rajasthan, 2010 (1) Crimes 24 (SC).*
- (xvi) *Brundaband Moharana & Anr. Vs. The State of Orissa, 2010V AD (CRI) (SC) 472.*
- (xvii) *Amol Singh Vs. State of M.P., 2008 (2) JCC 1412*

10. Counsel for the Appellants contended that none of them was at home at the time of the occurrence. It was further submitted that the deceased suffered from the problem of 'bed-wetting' for which she was treated, and due to depression, she might have taken her life and this is not a case of demand of dowry or any harassment on

that count. He argued that except the empty kerosene oil cane, nothing incriminating was recovered from the spot to prove that the Appellants had set Seema on fire. There is also controversy about whether SDM visited the spot on 04.03.2004 and about seizure of the deceased's burnt clothes from the place of occurrence in his presence. Counsel for the Appellants questioned the findings of the Trial Court to the extent it relied upon tutored and manipulated dying declarations to record convictions under Sec.498-A/302 IPC, though they were not even in the vicinity at that time, as was deposed by PW-2 Sanju, who took Seema to the hospital. It was urged that there was no evidence on record to base the conviction of the Appellants for the offences punishable under Sec.498-A/302 IPC and the impugned order is liable to be set aside.

11. On behalf of State, it was submitted that there is not one but four dying declarations and all are consistent so far as the Appellants' role are concerned. While relying on the case law ***Jaishree Anant Khandekar Vs. State of Maharashtra (2009) 11 SCC 647***, it was argued that in view of the consistent statements of the deceased which were made not only before the parents but also before the SDM and the first investigating officer coupled with testimony of PW-1 Sh. Roop Kishore and PW-5 Smt. Angoori Devi (parents of deceased) about the harassment soon before death, the prosecution case that deceased was treated with cruelty for not bringing sufficient dowry, stood proved. Additionally, on failure of her parents to fulfill the demand for a two wheeler i.e. scooter/motorcycle, she was set on fire so that the Appellant Vicky could be remarried to have more dowry.

12. In the present appeal, we are concerned with the Trial Court's finding regarding charges under Sec.302/498-A IPC as well as conviction under Sec.302 IPC on the basis of the dying declarations. The Supreme Court has evolved guidelines that are to be taken into consideration, while deciding if a dying declaration can be relied on, in a given case. They are:

(i) the Court's satisfaction that the statement was made voluntarily and without influence; or possibility of tutoring;

- (ii) that the maker of the declaration was in conscious and fit state of mind;
- (iii) that as far as practicably possible, it must be recorded or taken down in the words of the maker;
- (iv) that the Court is satisfied, from the facts proved and the surrounding circumstances about the veracity of the contents of the dying declaration;
- (v) that dying declaration stand on the same footing as other pieces of evidence, and had to be tested in the light of all available circumstances.

[Ref. Khushai Rai v. State of Bombay AIR 1958 SC 22; State of UP v. Ramesh Sagar Yadav AIR 1985 SC 416; State of Orissa v. Bansidhar Singh 1996 (2) SCC 194].

13. It is equally well settled that a dying declaration is not a deposition in Court, and its credibility cannot be tested through cross examination. Therefore, there cannot be a presumption that the maker of the statement would tell the truth; (*Dadu Lakshmi Reddy v. State of A.P. AIR 1999 SC 3255*). For the same reason, the Court has to consider the statement of all the witnesses supporting it – (*Paparambaka Rosamma v. State of A.P. 1999 (7) SCC 695*).

14. The prosecution case is that Seema while being on fire, rushed out of her house and PW-2 Sanju was standing outside his house at that time. He as well as other residents of the locality doused the flames and she was removed to the hospital in a TSR by PW-2 Sanju. There is statement of PW-2 Sanju to the effect that the deceased did not disclose (to him) about who set her on fire. The MLC Ex.PW7/A of Seema shows that she was brought by PW-2 Sanju to the hospital. The doctor who prepared the MLC wrote that :-

- (1) Alleged history of burn injury.*
- (2) No other detailed history available.*
- (3) Patient conscious, oriented and drowsy’.*

15. It can be seen that the history of the injuries, according to the MLC, there is no mention of Seema being set on fire by the Appellants. There is an application Ex.PW10/A dated 04.03.2004 by PW-10 ASI Ram Diya on which the Doctor

declared Seema to be 'unfit for statement'. Statement of PW-11 Sh. C. Arvind – the SDM also shows that when he visited the hospital at about 5.00 PM on 04.03.2004, Seema was unfit for statement and he instructed the Investigating Officer to inform him on his mobile as and when she was declared fit for statement.

16. Seema was declared "fit" for making a statement for the first time on 05.03.2004 at 11.35 AM and then at 12.40 PM. In these circumstances, when Seema was unfit to make any statement till 11.35 AM on 05.03.2004, she could not have made any statement to her parents or relations. It is also worth mentioning here that PW-1 Roop Kishore – father of the deceased stated that he was informed by Seema 04.03.2004 in the hospital that her mother-in-law Kanta brought the kerosene oil can and handed over the same to her husband Vicky who poured kerosene oil on Seema and her 'devar' Buntty set her on fire, on the other hand PW-5 Smt. Angoori Devi – mother of the deceased testified that on 10.03.2004, Seema told her how the incident took place. When deceased Seema was unfit for statement, neither she could narrate the incident to her father on the night of 04.03.2004 nor to her mother on 10.03.2004. This is apart from the fact that the statement of PW-5 Smt. Angoori Devi regarding making of dying declaration on 10.03.2004 is in contradiction to the statement of PW-1 in this regard as in view of unfit condition of Seema till forenoon of 05.03.2004 she could not have made any such statement. Even otherwise, had there been any such dying declaration by Seema before her father/parents, the immediate action/reaction would have been to inform the Investigating Officer/SDM and get the FIR registered which could have been done by the deceased's parents on the basis of complaints of dowry and harassment or her being set on fire for non-fulfillment of dowry demands. The circumstance that their statement to this effect was recorded by PW-10 ASI Ram Diya for the first time after the statement of Seema was recorded by the SDM, itself shows that there was no such statement given by Seema to her parents.

17. Now the dying declaration recorded by the SDM has to be considered. The SDM recorded the dying declaration in English making an endorsement that he had put the questions to deceased in Hindi and they were replied by her in Hindi, further, and that he knew Hindi and could speak it fluently. If the dying declaration Ex.PW11/A recorded by PW-11 Sh. C. Arvind – the SDM is considered, the language used there is such that a person making the statement would not use such words. The question put is :

'Q. What happened yesterday?'

A. Three persons namely Mr. Vicky – my husband, Mr. bunt (Devar/brother-in-law) and my mother-in-law (Saas) Mrs. Kanta poured kerosene over me yesterday i.e. 04.03.2004 at around 12 noon and lit fire.'

18. While referring to the husband, mother-in-law and brother-in-law normally referred to as 'Pati', 'Saas' and 'Devar' mentioning their names but using words 'three persons' for them lead to the inference that such words would not have been used by Seema while making a statement. Not only that, while according to PW-1 Sh. Roop Kishore and PW-5 Smt. Angoori Devi, Seema made detailed statements assigning specific roles to all the three Appellants, yet before the SDM she has just made a statement attributing all with equal criminal responsibility, and not specifying the role played by each one..

19. This is not the only reason to disbelieve the dying declaration Ex.PW11/A, like the statement of PW-10 ASI Ram Diya also goes to the root of the matter. He was present near the room when the SDM recorded the dying declaration, accompanied his officer and after registration of the case, reported to SI Lalit Kumar. His further statement is that according to directions of SI Lalit Kumar, he visited the hospital again and recorded the statement of Seema and her parents. This statement dated 05.03.2004 under Sec.161 CrPC (of Seema) was placed on file but not exhibited. This statement was recorded without getting her declared 'fit for statement' by the doctor at that time or pointing out the necessity of again recording

the statement. The statement appears to be clearly at the behest of the deceased's parents, whose statements were also recorded simultaneously in the hospital, by ASI Ram Diya and all three statements are almost identical. No reliance could have been placed on this unexhibited statement under Sec. 161 Cr.P.C, of Seema which seems to have been recorded just to fill up the lacuna, if any, in the statement Ex.PW11/A recorded by the SDM.

20. There is no doubt that even in cases of multiple dying declaration, conviction can be based if they are consistent in material particulars as held in ***Jaishree Anant Khandekar (Supra)*** relied upon by the State. But here, as discussed previously, none of the dying declarations satisfy the tests and relying on these dying declarations, conviction could not have been based by Id. Trial Court for the offence punishable under Sec.302 IPC.

21. Our view in this regard is fortified from the fact that immediately after the occurrence, the deceased failed to reveal either the names of the Appellants or their roles to PW-2 Sanju, who was an independent witness and resident of the locality. After seeing the young bride burning with his eyes, PW-2 Sanju could not have any sympathy for the appellants. He had no reason to conceal any fact had he been informed by the deceased as to who set her on fire. It is relevant to mention here that he is not a hostile witness and his presence at the time of occurrence is corroborated by the MLC Ex.PW7/A where his name appears in the Column 'Brought By'. Even the history given by the deceased to the doctor does not mention that she was set on fire by her husband and in-laws. Her not disclosing their names to the doctor despite being conscious and oriented shows that it was not a case of setting on fire by the appellants.

22. Failure of deceased Seema to refer the name of all accused before PW-2 Sanju who first saw Seema in flames and removed her to hospital and thereafter before the doctor who prepared the MLC, is fatal to the prosecution case of. The mere fact that the SDM recorded the statement in the afternoon of 05.03.2004 i.e. after the parents

of Seema had already met her, the scope of her being tutored before her statement was recorded by the SDM cannot be ruled out. This is confirmed by the fact that had there been any dying declaration before the parents, about how she suffered burn injuries, the FIR could have been recorded in the night of 04.03.2004 itself and even the dying declaration of Seema would have been recorded by the SDM during night. Her 'unfit for statement' condition till forenoon i.e. 11.35 AM on 05.03.2004, inconsistencies in the dying declaration about the role attributed to each accused before PW-1 Sh. Roop Kishore, PW-5 Smt. Angoori Devi (parents) and PW-10 ASI Ram Diya which was omitted before the SDM as well as the language used before SDM persuade this Court to disbelieve the dying declarations.

23. On an application of the standard indicated above i.e. the dying declaration should '*inspire full confidence of the Court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination....*' this court is of the opinion that the prosecution story about the dying declaration – both vis-à-vis its making, as well as the truth of its contents, cannot be believed, having regard to the overall circumstances in this case.

24. This view is further confirmed from the statement of PW-20 Dr. Manoj Kumar and the death summary Ex.PW20/A. As per the death summary Ex.PW20/A, Seema was admitted in the hospital as alleged case of Burn 96% '**Suicidal**'. Thus, even according to hospital records, it was a case of Seema committing suicide by setting herself; that was the reason why name of the Appellants was neither mentioned either before PW-2 Sanju or the other residents who doused the flames, nor before the doctor who prepared the MLC. Thus, Appellants could not have been convicted under Sec.302/34 IPC on the basis of four dying declarations.

25. The above findings are not dispositive of the matter as the Appellants were also charged for committing the offence punishable under Sec.304-B IPC. They were convicted for the offence punishable under Sec.498-A IPC. There is enough material

on record in the form of testimonies of PW-1 Sh. Roop Kishore and PW-5 Smt. Angoori Devi regarding the cruelty meted out to Seema for not bringing sufficient dowry and the further demand for a two-wheeler. The testimonies of the parents of the deceased are to be examined to ascertain whether they are sufficient to bring home the guilt for the offence punishable under Sec.304-B IPC.

26. As pointed out in *Arun Garg Vs. State of Punjab and Anr. 2004 (8) SCC 251*, the ingredients necessary for the application of Section 304-B IPC are :

- (i) *That the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances;*
- (ii) *Such death occurs within seven years of her marriage;*
- (iii) *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.*

27. Insofar as the first ingredient is concerned, the postmortem report Ex.PW16/A reveals that the cause of death of Smt. Seema is 'septicemia as a result of burn'. Thus, the first ingredient that the death of Smt. Sema occurred otherwise than under normal circumstances stands established.

28. So far as second ingredient is concerned, it emerges from a reading of the statement of PW-1 Sh. Roop Kishore and PW-5 Smt. Angoori Devi that the deceased married Vicky about two years before her death. It was proved by the prosecution and not disputed by the Appellants that the deceased met her tragic end on 11.03.2004 and she got married to appellant Vicky just two years before that. So the second ingredient also stands satisfied.

29. The third ingredient i.e. soon before her death, the deceased was subjected to cruelty or harassment by the Appellants for or in connection with dowry, remains to be seen. The Appellants in this case are mother-in-law (Kanta), husband (Vicky) and brother-in-law (Devar) Bunty.

30. From a survey of the testimony of PW-1 Sh. Roop Kishore and PW-5 Smt.

Angoori Devi, the prosecution has been able to prove that immediately after the marriage, Seema was harassed for not bringing sufficient dowry and she was taunted with words like 'Iske Parivar Wale Nange Hein, Yeh Kuch Nahin Layi'. PW-1 Sh. Roop Kishore deposed that after 4-6 months of Seema's marriage, the Appellants demanded a scooter/motorcycle in dowry but he could not arrange for it. Thereafter the Appellants dropped Seema at her father's house; he was residing separately at some distance from her house and they told her father that Seema should be taken to the parents' house and they would not keep her in the matrimonial home. It has been deposed by them that the in-laws' intention was to get Vicky married second time for more dowry and that they were insisting for a scooter/motorcycle, an unfulfilled demand. PW-1 Sh. Roop Kishore also stated that Sh. Banwari Lal, Uncle (Fufa) of the Appellant Vicky went to his house and on his assurance that Seema would not be harassed again, she was sent back to her matrimonial house.

31. Irrespective of the fact that the dying declarations have been disbelieved, the testimony of PW-1 Sh. Roop Kishore and PW-5 Smt. Angoori Devi – the parents of the deceased, is sufficient to prove that immediately after the marriage as well as soon before her death, Seema was subjected to cruelty and harassment by the Appellants in connection with their demands or dowry. No doubt PW-1 Sh. Roop Kishore and PW-5 Smt. Angoori Devi – the parents of the deceased can be termed as interested witnesses interested in conviction of the Appellants as they lost their young daughter within two years of her marriage. It has been repeatedly held by the Courts that when a close relative or interested witness deposes during the trial, the Court has to be alive of the fact that he would be anxious to ensure that justice is done and real culprit is brought to book. There may be a certain element of exaggeration or embellishment in his statement but at best this alerts this Court to be on guard while scrutinizing such evidence. In this case, no exaggerated versions was given (of the dowry given in the marriage or the demands made by the appellants after the marriage). In view of the status of the deceased's parents and that of the appellants, the statement of PW-1 Sh. Roop Kishore and PW-5 Smt. Angoori Devi about the demand of two-wheeler after

the marriage or the harassment for not bringing sufficient dowry can be believed.

32. The contention of counsel for the Appellants that Seema committed suicide because she was suffering from the bed-wetting, has to be rejected. Had it been such a big issue, the marriage would not have subsisted for two years and she would have been sent to her parents' house on this count only, immediately on coming to know about her ailment, having regard to the circumstances of the case, and the nature of demands of dowry made by the Appellants.

33. After carefully considering the testimony of parents of the deceased, this Court finds that even the third ingredient (under Section 304-B IPC) stands satisfied. Since prosecution has been able to prove all the ingredients of Section 304-B IPC against all the Appellants, this Court has to presume that they caused dowry death. This is the result of the presumption under Sec.113-B of the Evidence Act (to the effect that when any one subjects a deceased wife to cruelty before her death shall presumed to have caused the dowry death if it is shown that soon before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. This is the presumption incorporated in Section 304-B IPC too. It can therefore be concluded that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied.

34. In view of above discussion, we are of the considered view that prosecution has been able to prove that the deceased Seema was treated with cruelty by the appellants who happened to be the mother-in-law, her husband and her brother-in-law (devar) in her matrimonial home and that she suffered burn injuries and died there otherwise than in normal circumstances.

35. Accordingly, the order of Ld. Trial Court convicting the three appellants under Sec.302 IPC is set aside and all the three appellants are acquitted of the charge under Sec.302 IPC. However, they are held guilty and convicted for having committed the offence punishable under Sec.304-B IPC and sentenced to undergo

rigorous imprisonment for seven years.

36. The appellants had been convicted by Trial court and sentenced to undergo rigorous imprisonment for three years and also to pay a fine of Rs.3,000/- each for the offence punishable under Sec.498-A IPC and in default of payment of fine, they shall undergo simple imprisonment for three months, which is maintained.

37. Both the sentences shall run concurrently. The period already undergone by the appellants during investigation/trial of this case shall be set off under Section 428 CrPC.

38. The Appeal stands partly allowed in the above terms. Registry is directed to send back the trial Court record alongwith copy of the order.

PRATIBHA RANI, J

S. RAVINDRA BHAT, J

NOVEMBER 14, 2011
dc/st