

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

+ **CRIMINAL APPEAL No. 922/2009**

% **Reserved on: 3rd January, 2013**
Date of Decision: 8th April, 2013

GULSHAN @ MAHENDER SINGH Appellant
Through Mr. Amit Kumar, Advocate.

Versus

STATE ...Respondent
Through Ms. Richa Kapoor, APP for the State.

+ **CRIMINAL APPEAL No. 920/2009**

BHAGWAN SINGH @ CHHOTY LAL Appellant
Through Mr. Amit Kumar, Advocate.

Versus

STATE ...Respondent
Through Ms. Richa Kapoor, APP for the State.

+ **CRIMINAL APPEAL No. 921/2009**

KANTA Appellant
Through Mr. Amit Kumar, Advocate.

Versus

STATE ...Respondent
Through Ms. Richa Kapoor, APP for the State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SANJIV KHANNA, J.:

1. The appellants Gulshan @ Mahender Singh, Bhagwan Singh @ Chote Lal and Kanta, husband, father-in-law and mother-in-law of the deceased Aarti, by the impugned judgment dated 29th September, 2009 have been convicted under Sections 498A/34, 304B/34 and 201/34 of the Indian Penal Code, 1860 (IPC). By order of sentence dated 30th September, 2009, they have been sentenced to life imprisonment under Section 304B/34 IPC and Rigorous Imprisonment for 02 years and fine of Rs.2,000/- each for the offence under Section 201 IPC. In default of payment of fine, they have to undergo Simple Imprisonment of 06 months each. Relying upon, *Smt. Shanti and Anr. Vs. State of Haryana (1991) 1 SCC 371*, no separate order of sentence has been passed for conviction under Sections 498A/34 IPC.

2. Before we advert to the facts, it would be appropriate to reproduce Sections 498A and 304B IPC, which read as under:-

“498A. 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.

304B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs 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 (28 of 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.

3. The essence of offence under Section 498A IPC is cruelty. The expression “cruelty” as defined in the *explanation* does not necessarily mean physical torture and is of a wider amplitude. It means such willful conduct by a person which is likely to drive a woman to commit suicide, cause grave injury or danger her life, limb or health,

which includes both mental and physical health. It also, under Explanation Clause (b), includes in its ambit harassment of a woman with a view to coerce her or any third person to meet any unlawful demand of property or valuable security.

4. 304B IPC was enacted with effect from 19th November, 1986 with a view to combat menace of dowry deaths. Till then it was difficult to secure conviction in cases of dowry deaths for lack of tangible evidence on the cause of the unnatural death. Precise cause of such death within the four walls and precincts of the matrimonial home, even when a result of “cruelty and harassment on account of dowry”, were difficult to prove because of lack of evidence. Ordinarily eye witnesses would not be available. Section 304B comes into operation and the offence committed when a woman dies unnatural death within 7 years of marriage and it can be shown that soon before her death she was subjected to harassment or cruelty by her husband or any relative of her husband in connection with demand of dowry. Under this section, it is not necessary to prove whether the death was a suicide or result of other inexplicable reasons. Unnatural death by itself is sufficient to establish the offence. The expression “deemed to” has been used in the legislation with a view to create a legal fiction. The term “dowry” has been given the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

In order to make the two sections effective, the legislature enacted

Sections 113A and 113B of the Indian Evidence Act, which read:-

“113A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-- For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).]

113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a women 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 304B of the Indian Penal Code (45 of 1860).”

5. The two sections raise presumptions when the conditions stipulated therein are satisfied. The reason for enacting these two sections is that there is often absence of cogent and clear cut evidence

on the question of abetment and under what circumstances the woman has committed suicide or how dowry death has been caused.

6. The aforesaid provisions have to be kept in mind before we refer to the evidence, put before us, in the present case. Section 113A, Evidence Act is not strictly applicable to offence under section 304B IPC but Section 113B Evidence Act, as noticed below, is pertinent to the case. Section 113A is relevant for offences under Section 498A IPC.

7. It is an undisputed position that the deceased Aarti was wife of the appellant Gulshan @ Mahender Singh. They had married three years prior to the date of death of Aarti. There is evidence on record to suggest that Aarti and Gulshan had fallen in love prior to the marriage and their elders ultimately accepted their wishes. After marriage Aarti started residing in her matrimonial home at House No.47, Gali No.5, Punjabi Basti, Anand Parbat, Delhi with her husband and in-laws. Aarti had become mother and 'Chuchak' ceremony was held in the evening/night of 4th September, 2006 at her matrimonial house.

8. Maya Devi, grandmother of Aarti appeared as PW-1 and has deposed that after Chandrawati, mother of Aarti, had expired, Aarti and her sister Pooja had lived with her since their childhood. Aarti had married the appellant Gulshan about three years back. At the time of marriage, PW-1 had given dowry articles as per their capacity.

However, Aarti was unhappy since the beginning of the marriage as the appellants herein and sister-in-law Ruby (juvenile) harassed and tortured her to bring more and more dowry. About six months back, PW-1 had given Rs.11,000/- to the appellant Chote Lal @ Bhagwan Singh. Aarti had given birth to a male child and on the occasion of “Chuchak” ceremony they had given articles as per their capacity to the in-laws of Aarti. On 4th September, 2006, at the time of “Chuchak” ceremony the appellants had quarreled with Aarti on the point of non-fulfillment of demand of gas cylinder and stove. PW-1, her son Sanjay (PW-2), uncle (chacha) of Aarti, Nikhil (PW-11) brother of Aarti had attended the “Chuchak” ceremony. 15 minutes after they had left the matrimonial house, Aarti had come to her house i.e. PW-1’s house, weeping. The appellants Gulshan and Kanta followed her, slapped Aarti and took her back. After about half to one hour, PW-1 heard noise and along with her sons Satish and Sanjay (PW-2) and daughter-in-law Sumitra, they went to the matrimonial house of Aarti, but she was not there. Thereafter, they went to RML Hospital, where Aarti was admitted in burnt condition. There were bandages all over her body except face, hair and fingers. She was unable to speak and was asking for water. She expired in the hospital on 6th September, 2006. PW-1’s statement (Ex.PW1/A) was recorded on 7th September, 2006. She had given Rs.5,000/- to the appellant Gulshan at the time of

delivery of the child. She had handed over a handwritten note/letter (Ex.PW1/B) of Aarti to the police. She identified the said hand written note/letter in the Court. PW-1 had given to the police, list of articles dated 9th December, 2004, Ex.PW1/C. PW-1 admitted that Aarti and Gulshan knew each other before marriage and they had a love marriage, which was initially opposed by her. Before marriage, Aarti used to do household work in 'kothies' and after marriage she started giving tuitions. Father of Aarti had not attended the wedding of Aarti, but had given Rs.75,000/- for her marriage. She categorically stated that the entire family of the appellant Gulshan used to reside in the room on the ground floor constructed in approximately 20 square yards. She has stated that by shortcuts one could reach the house of the appellants from her house, within 10-12 minutes, but if one went by the main road it would take approximately 30 minutes. Aarti had complained to her about her sufferings.

9. Cross-examination of PW-1 clearly suggests that the appellants have accepted that "Chuchak" ceremony was performed on 4th September, 2006 as PW-1 was repeatedly cross-examined about the said ceremony. She has stated that they remained at the matrimonial house of Aarti till 12 midnight and came to know about the fire in the house of the appellants at about 2 A.M., when brother-in-law (Dewar) of Aarti, aged about 10 to 12 years had apprised them about the

incident. They reached the matrimonial house of Aarti, but found that the fire had already been extinguished and all four of them i.e. PW-1, her sons Satish and Sanjay (PW-2) and Sumitra left for the hospital. Deceased, appellant Gulshan and the baby boy were admitted in the hospital. Police personnel recorded her statement and thereafter one person, who was not in uniform, recorded her statement in the police station. Aarti was taken to the hospital by her in-laws. She denied the suggestion that she had not attended “Chuchak” ceremony. She reiterated that she had given the letter (Ex.PW1/B) written by Aarti to the police and stated that she could recognize the said letter as it was handed over to her by Aarti herself, but she did not know the contents thereof. She went on to state in her cross-examination that the letters Ex PW1/B were written by Aarti in her presence. With regard to the list of articles (Ex.PW1/C), she has stated that the same was not written by Aarti. She denied the suggestion that there was no quarrel on 4th September, 2006 and no demand for gas cylinder and stove was made. She denied other suggestions put to her.

10. Similar statement has been made by Sanjay (PW-2), who has deposed that Aarti had told him about harassment and the fact that her husband-Gulshan did not like her. Appellant Kanta also did not like her. PW-2 had deposed that her mother had given Rs.11,000/- to the appellant Chote Lal. After birth of the son, they had arranged for

“Chuchak” ceremony on 4th September, 2006 and the appellants Gulshan and Bhagwan Singh had demanded a gas stove and TV, which could not be provided. On the occasion of “Chuchak” ceremony on 4th September, 2006, his mother PW-1, Sumitra, Nikhil (PW-11) brother of Aarti, uncle Omi and other persons were present in the deceased’s matrimonial house. Appellant Chote Lal did not behave properly and abused them. He questioned why father of Aarti had not come on that day. Maya Devi (PW-1), Sumitra, Nikhil (PW-11) and Komal remained at the matrimonial house of Aarti, but he and uncles of Aarti i.e. Omi and Kale, came back. At about 5 A.M. he came to know about the fire in the matrimonial house of Aarti. He went to the RML Hospital and found that Aarti was crying loudly there. On 6th September, 2006, at about 3-4 P.M., Aarti expired in the hospital. In the cross-examination, PW-2 reiterated that Aarti was being harassed for bringing more dowry by the appellants. The appellants had demanded cylinder and gas stove prior to “Chuchak” ceremony and the appellant Chote Lal got annoyed and abused them as gas cylinder and stove were not given. Appellant Kanta had slapped Aarti as the demand for gas cylinder and stove was not fulfilled. He has deposed that smell of kerosene oil was coming from Aarti when she was admitted to the hospital. However, when they reached the matrimonial house of Aarti, they found that the site had been cleaned. He has

accepted that Aarti and Gulshan knew each other before marriage and they used to write letters to each other before marriage. He identified the said letters as Ex.PW2/D1 to D7. His mother PW-1 had come from “Chuchak” function at about 2-2.15 A.M. at night and at about 5 A.M. they received information about the fire. People in the locality used to operate water motor and store water from 2 to 3.30 A.M., at night. He further deposed that Bishan Singh, father of Aarti had given Rs.75,000/- to her mother (PW-1) at the time of marriage of Aarti. Appellant Gulshan was admitted to RML Hospital and was given treatment. When PW-2 had asked the appellant Gulshan about the incident, he had averred that he was sleeping at the time of fire. The child of Aarti and Gulshan was partly burnt on the head. He has deposed that food in the house of the appellants used to be cooked at times on stove and on other occasions by burning wood. They i.e. the appellants had a kerosene oil lamp in their house, which was used in the absence of electricity. He has denied the suggestion that Aarti had sustained burn injuries while lighting the kerosene lamp with a candle. He has denied several other suggestions given to him.

11. Statement has been made by Puja (PW-3), sister of Aarti, who had not attended the “Chuchak” ceremony, but has stated that Aarti used to complaint about her in-laws, who used to abuse her and instigate her husband to beat her. Aarti’s in-laws use to demand

dowry, though their maternal grandmother had given sufficient dowry at the time of marriage. PW-3 has deposed that her maternal grandmother was aware of the cruel behavior of Aarti's in-laws. In the cross-examination by APP, she has deposed that she had told the police on 7th September, 2006 that her sister Aarti was murmuring that her in-laws had burnt her by pouring kerosene oil, but she voluntarily clarified that she herself thought that her in-laws might have burnt her, but it was wrong to suggest that Aarti had told her that her in-laws burnt her. In the cross-examination by the appellants, she has admitted that Aarti had a love affair with Gulshan before marriage and they used to write letters to each other. She has accepted the position that Gulshan was deeply in love with Aarti. She has deposed that probably Rs.75,000/- was paid by her father to PW-1 some days before marriage towards expenses. Besides this amount, PW-1 had arranged money from other sources. Aarti was doing tuition work before marriage and continued to do the same after marriage.

12. Nikhil (PW-11) has stated that on 4th September, 2006, he along with his maternal uncle Sanjay had gone to the matrimonial house of his sister Aarti. They attended "Kua Pujan" ceremony and stayed there till 12 midnight. At about 8 P.M. father-in-law and mother-in-law of Aarti quarreled with her on the question of gas stove and had stated that her family had not brought adequate number of gifts/articles for

the said occasion. Thereafter, along with PW-1 and PW-2, he came back to the house. Later on, he came to know that Aarti had suffered burn injuries and had been taken to the Lady Harding Hospital. In the cross-examination, PW-11 has stated that he had visited the house of Aarti and Gulshan on 2-3 occasions, after marriage, but had not seen them quarrelling with each other in their house. Aarti had never told him about the quarrel with her husband and in-laws.

13. Bishan Singh, father of Aarti has appeared as PW-4. He has stated that he has four children i.e. three daughters and a son. After death of his wife, his elder daughters Puja and Aarti started living with May Devi (PW-1). PW-4 has stated that his second daughter Aarti was married to Gulshan and he had given Rs.75,000/- prior to the marriage, but he did not attend the marriage. In 2005 on Rakshabandhan, Aarti and Gulshan had visited his house in Gurgaon and had again visited his house on the occasion of marriage of his nephew, in the month of February, 2006. On the two occasions, Aarti had asked for money and clothes for herself. He and his family members were invited by the appellants to the “Chuchak” ceremony, but he had sent his younger brother Om Prakash, nephews Satish and Tarun, daughter Komal and son Nikhil along with clothes, edibles, some gold items i.e. small lockets, some silver items etc. They returned in the night and he was informed by his brother Om Prakash that gifted articles were not liked by the in-

laws of Aarti who had abused them. On 5th September, 2006 in the morning he received a message from PW-1 to reach at RML Hospital immediately as in-laws of Aarti had burnt her by pouring kerosene oil. His statement was recorded by SDM in the hospital. He was cross-examined by the APP and, in the said cross-examination, he has accepted that Pooja had told him that she was informed by Aarti that her in-laws had quarreled with her and burnt her by pouring kerosene oil. In the cross-examination by the appellants, PW-4 has accepted that the marriage between Aarti and Gulshan was organized by PW-1. He was informed about the marriage but was not invited. He was not on visiting terms with PW-1. He had met Aarti in the hospital, but she could not speak or talk about anything. He has accepted that Aarti had never complained to him about the harassment by her husband and in-laws and he had never visited the matrimonial house of Aarti.

14. Sharda (PW-5) and Savitri (PW-6) have stated that in the intervening night between 4 and 5th September, 2006, they heard noise and when they came out in the street they saw Aarti being taken to the hospital by the three appellants. Relatives of Aarti had quarreled with the appellants in their presence.

15. What is clearly discernible from the statements of the said witnesses is the factum that Aarti had suffered burn injuries in the intervening night of 4th and 5th September, 2006. “Chuchak” ceremony

had continued late into the night. Relatives of Aarti had remained in the matrimonial house of Aarti till around 12 midnight. It was a joyous and happy occasion, but was marred with bitterness and complaints as the appellants were not satisfied with the gifts given by Aarti's relatives. There was a demand for gas cylinder and stove. There is hardly any contradiction in the statement made by PW-1, PW-2, PW-3 and PW-11 on this aspect. The contradictions regarding the time etc. in the statement of PW-1 and others is hardly relevant and is a minor discrepancy. PW-3's deposition, that Aarti had come to her house and was followed by the appellants Gulshan and mother-in-law Kanta, who had slapped her, does not merit acceptance as no such allegation was made by PW1's statement ExPW1/A before the SDM (K.K.Sharma PW-13) but this cannot be a ground/reason to disbelieve her statement on salient and main point of harassment for dowry on the occasion of 'chuchak' ceremony. On the said aspect and the demand for gas stove and cylinder is adverted to and stated by all witnesses who had attended the said ceremony. The said fact is mentioned in PW1/A, i.e. the first statement made by PW1 before the SDM.

16. It would be appropriate here to refer to the MLC (Ex.PW7/A) of Aarti which was recorded at 5.30 A.M. on 5th September, 2006. It records that smell of kerosene was coming from the body of the patient. She had 100% black burns. She was brought to the hospital by

her husband Gulshan who claimed that Aarti had suffered flame burns by candle light. The appellants, in their statement under Section 313 Code of Criminal Procedure, 1973 (Cr.P.C.), accept their presence in the house at the time of occurrence and have claimed that Aarti had suffered burn injuries when fire broke out because of candle and diya. This proposition, is also recorded in the MLC (Ex.PW7/A) but is evidently incorrect and wrong. Smell of kerosene was coming from the body of the deceased, when she was admitted to the hospital. This fact has been fortified by witness Sanjay (PW-2), who had seen the deceased in the hospital, after the occurrence. The post mortem report (Ex.PW10/A) records that Aarti had suffered burn injuries on the face, neck, front and back of both upper limbs, front chest, abdomen, front of leg up to ankle, right leg up to ankle, back of left leg up to calf etc. The total area of burn was 80%. She had suffered 3 to 4 degree burns. Cause of death, as opined, was 80% flame burn resulting in shock.

17. We may record that Section 113B of the Evidence Act and the presumption raised there in, is applicable to the present case. The onus has not been discharged.

18. As observed and held above, the “Chuchak” Ceremony was held on 4th September, 2006 in the matrimonial house of Aarti and the function had continued till late night. It is obvious that food had been served and the guests were entertained. Gifts were given by relatives

of Aarti to the appellants. Unfortunately but true, in a conservative family as in the present case, “Chuchak” ceremony is normally celebrated on birth of a son. It is a happy occasion; a cause for felicitation, jubilation and thanks giving. There was hardly any cause or ground to suspect that the normal matrimonial stress/strain was the reason for Aarti to take extreme step of burning herself by pouring kerosene oil. The testimonies of the relatives show that, after the ceremony was over, the guests had gone by midnight. The occurrence had taken place afterwards but within a few hours after the guests including relatives of Aarti had left. In the present case, pre-conditions for raising the presumption under Section 113B of the Evidence Act are fully satisfied. There is sufficient evidence on record that soon before the unnatural death of Aarti, she was subjected to cruelty and harassment by the appellants in connection with the demand of dowry. On the occasion of ‘Chuckak’ ceremony, the appellants had demanded a gas cylinder and stove. The death has taken place immediately after the guests returned home after attending the Chuchak Ceremony. The time of death is within few hours when vociferous and persistent demand for gas stove and cylinder was made.

19. Keeping in view the facts stated above and the testimonies made by the relatives, it is clear to us that offence under Sections 498A and 304B IPC have been made out.

20. Here it would be appropriate to reproduce the contents of the two letters (Ex.PW1/B) written by Aarti.

“Grandmother (Nani), (They) harass me. My sister-law (Nanad) quarrels and beats me. In her influence, my mother-in-law and father-in-law abuse me and Gulshan also gives me beatings. Since my marriage, I am disturbed because they give me beatings. I have given tuitions for 6 months and they had taken even that amount from me and tantalize me for eating anything. They all together curse me. Grandmother (Nani) please come and see how I am living.
Your Aarti is facing harassment.
(They?) take from me and do not give me to eat. (?) All together give me beatings. The name of my sister-in-law is Rubi.(?) who gives me beating. (?) harass me most. Grandmother (Nani) (They) harass your Aarti a lot.”

21. The letters show the anguish, pain and sufferings, which Aarti was going through in her matrimonial house. These letters Ex PW1/B may have been written 2/3 months prior to the death of Aarti and may not be proximate in time viz. date of occurrence but do corroborate the statements of the witnesses PW1, PW2 and PW11 on the demand for gas cylinder and stove made by the appellants on the occasion of `chuchak` ceremony.

22. Learned counsel for the appellant has highlighted that the appellant Gulshan had suffered burn injuries. He has pointed out that baby boy had also suffered burn injuries. Dr. Manoj Gupta (PW-8) has deposed that he had examined the baby boy and the appellant Gulshan

and prepared their MLCs Ex.PW8/A and Ex.PW8/B, respectively. The baby of Aarti had 10% burns, whereas the appellant Gulshan had approximately 5% burns. The burns suffered by Gulshan are minimal and it is possible that these burns may have been suffered when he was trying to protect and save the baby, who had more burns than him.

23. Another contention raised was that the doctors had declared Aarti fit for statement on 5th September, 2006 at 6.35 a.m. but her statement was not recorded. This is correct, but we also have further statement by the doctors that Aarti was not fit for statement at 9.35 a.m. on 5th September, 2006 and again at 9.35 on 6th September, 2006. Aarti may have been declared fit for statement shortly after she was admitted to the hospital i.e. at around 5.30 A.M. on 5th September, 2006. However, it may not have been possible to record her statement immediately. Mr. K.K. Sharma (PW-13), Deputy Director, DDA, who was posted as SDM, Patel Nagar on 5th September, 2006, has deposed that he was informed about the admission of Aarti in RML Hospital with history of burn injuries. He reached the hospital at about 9.30 A.M., after receiving the information, but Aarti was declared unfit to make statement. On 6th September, 2006, he received information that Aarti had expired. Thereafter, he went to the mortuary of DDU Hospital where police officials and relatives of the deceased were present. PW-13 recorded statements of relatives, FIR was registered

and the investigation followed. It is apparent that statement of deceased could not be recorded by the SDM because by the time he was able to reach the hospital, Aarti was declared unfit to give statement. Observations made in paragraph 26 below are also relevant on the said aspect.

24. Yet another contention of the appellants is that PW-5 and PW-6 have not implicated the appellants. They have averred that the three appellants were gentle persons who had never quarreled or harassed the deceased Aarti. Their testimony should be accepted and the statement of the relatives should be disbelieved. We are not inclined to accept the said contention. The neighbours PW-5 and PW-6 may not be aware regarding what has transpired in the matrimonial house of Aarti. They reached the spot, subsequently, and it should be noticed that the time of occurrence was well past midnight.

25. The police witnesses have supported the prosecution case. SI Santosh Pabri (PW-16) has deposed that he was present with the IO Inspector Manoj Kumar when the appellants were interrogated. Appellant Bhagwan Singh, who had made disclosure statement (Ex.PW16/A), had taken them to CNG pump, Military Road from where a container of kerosene oil was recovered vide seizure memo Ex.PW16/E. He has deposed that, when they reached at the spot, they did not find any burnt mattress or blanket. The distance between CNG

Pump and the house of the appellants was almost half to quarter kilometer and it took about 10 minutes to reach at the CNG Pump.

26. SI Gian Chand (PW-20) has deposed that on 5th September, 2006, he was posted at Anand Parbat and, at about 5.45 A.M., copy of DD No.8A (Ex.PW14/A) was assigned to him for taking action in the matter. Accordingly, he along with Constable Lalit went to the RML Hospital and collected MLCs of Aarti, Gulshan and baby boy. He met the doctor and asked about the fitness of Aarti. At that time, the doctors on emergency duty declared Aarti fit to make statement. PW-20 accordingly informed the SDM concerned about the occurrence. SDM came about at 9.30 a.m., but at that time Aarti was declared unfit to make statement. Subsequently, Aarti expired at about 6 P.M. on 6th September, 2006. Statement of PW-20 clarifies the testimony of PW-1, who has stated that she had seen a person without uniform and one policeman in uniform. PW-20 had remained with Aarti for 15-20 minutes and thereafter informed SDM, who also came to the hospital. After the SDM reached at the hospital, he went to the matrimonial house of Aarti, but did not find any burnt mattress or burnt clothing. The place had already been washed. Crime Team was called to the spot but they did not seize anything.

27. Inspector Manoj Sinha (PW-25) has deposed that PW-1 identified the note (Ex.PW1/B) written by the deceased regarding

cruelty and harassment. They had continued to search for the appellants who were absconding. He has deposed that when he reached the house of the appellants, he found that the floor was cleaned and no other exhibits pertaining to the case was found. He has deposed that he had tried to obtain handwriting sample of Aarti, but could not locate any.

28. The last question pertains to the quantum of punishment. Bhagwan Singh and Kanta were released as the sentences awarded to them were suspended vide order dated 29th July, 2010. Earlier during pendency of the proceedings before the trial court, they remained on bail. In the application for suspension of sentence they have stated that they were taking care of minor grandson i.e. son of the deceased Aarti and the appellant Gulshan. Keeping in view of the aforesaid facts, the order of the sentence is partly modified. The appellant Gulshan is sentenced to 14 years of rigorous imprisonment and the appellants Bhagwan Singh and Kanta are sentenced to rigorous imprisonment for a period of 8 years under Section 304B read with Section 34 IPC. In addition, the appellants shall undergo the sentence as awarded for offence under Section 201 IPC i.e. two years rigorous imprisonment and fine of Rs.2,000/- and in default thereof undergo simple imprisonment for six months. The sentences shall run concurrently.

29. The appeals are accordingly disposed of, confirming the conviction of the appellants but modifying the order of sentence as indicated above. The appellants Bhagwan Singh and Kanta will surrender before the trial court, within 15 days, to undergo the remaining sentence.

30. Delhi High Court Legal Services Committee will get in touch with appellants Bhagwan Singh and Kanta, and will ensure that the needs and requirements of the son of the deceased are taken care of.

-sd-
(SANJIV KHANNA)
JUDGE

-sd-
(SIDDHARTH MRIDUL)
JUDGE

APRIL 8th, 2013
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