

**In the High Court of Judicature for the States of Punjab & Haryana, at
Chandigarh**

CRA-S-1586-SB-2003

Date of Decision : March 18, 2015

Sanjay Jain and another ... Appellants

Versus

State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Sachin Jain, Advocate, for the appellants
Mr. S.K. Bansal, Assistant Advocate General, Haryana, for the
respondent-State.

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1. *Whether Reporters of local papers may be allowed to see the judgment? **Yes/No***
 2. *To be referred to the Reporter or not? **Yes/No***
 3. *Whether the judgment should be reported in the Digest? **Yes/No***
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MAHAVIR S. CHAUHAN, J.

Deceased-Indu Jain's husband, Sanjay Jain, brother in law (Dewar), Sudhir Kumar aka Bhola, mother in law, Suman and unmarried sister in law, Monika were tried for commission of offences punishable under Sections 302 (in the alternative 304-B) of the Indian Penal Code, 1860 (for short, IPC), and 498-A, IPC. While acquitting Sudhir Kumar aka Bhola and Monika, learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana (for short, 'the trial court'), vide judgment/order dated August 06, 2003, convicted and sentenced the appellants, namely Sanjay Jain and Suman, as under:

Convict's Name	Under Section	Sentence (Rigorous Imprisonment)	Fine (Rs.)	In default of Payment of fine (Rigorous Imprisonment)
Sanjay Jain	304-B, IPC	07 years	5000/-	01 Year
	498-A, IPC	01 Year	1000/-	04 Months
Suman	304-B, IPC	03 years	3000/-	01 Year
	498-A, IPC	01 Year	1000/-	04 Months

02. The deceased, who was married to Sanjay Jain in the month of July, 1996, was brought to and admitted in Christian Medical College & Hospital, Ludhiana (for short, CMC) with 70% TBSA flame burns and respiratory burns at 11.00 a.m. on May 22, 2001. Dr. Rahul Tandon (PW5), who attended on her, prepared Injury Report, Exhibit PG. Assistant Sub Inspector Devinder Singh (PW11) (hereinafter referred to as 'the Investigating Officer'), on receipt of information that the deceased was admitted in CMC with burn injuries, reached there, obtained opinion of the doctor, Exhibit PL/1, at 02.25 a.m. on May 23, 2001 that she was fit to make a statement and requested Shri R.K. Beri, Judicial Magistrate, Ludhiana to record her statement. Shri R.K. Beri, Judicial Magistrate (PW14) reached CMC and recorded statement, Exhibit PT/2, of the deceased wherein she revealed that she was married in the year 1996; had been blessed with a son; had brought an amount of Rs. 1,00,000/- to the members of her matrimonial family; on that day also they had asked her to bring money; all of them had given beatings to her and, after taking her downstairs, had poured kerosene on her and had set her ablaze; and that her mother in law had been excessively harassing her. Based on statement, Exhibit PT/2, a formal First Information Report (for short, 'FIR'), Exhibit PM/2, was recorded by Assistant Sub Inspector Gulab Singh. The deceased ultimately left this world at 07.00 a.m. on May 23, 2001 and intimation, Exhibit PH, in this regard was sent to Station House Officer, Police Station, Division No. 03, Ludhiana. Investigating Officer, on being informed of death of the deceased, reached CMC and prepared Inquest Report, Exhibit PN. Dr. R.S. Grewal (PW1) and Dr. Navpreet, on police request, Exhibit PA, conducted post mortem on the dead body of the deceased and, as recorded in post mortem report (for short, PMR), Exhibit PB, found that mouth of the deceased was open; lips were swollen; eyes were closed; there was blister formation on right side of lip; front scalp hair were singed; rigor mortis was present in lower limbs; post mortem staining was present on dependent parts which were not burnt; there were superficial to deep burns all

over the body, except both the legs below knee in front, left leg posteriorly, right leg below mid thigh and partial gluteal region posteriorly, perineal region and both hands; left lung was partially adherent to chest valve and was reddish in colour; on being pressed, mild pus like material oozed out of the left lung; pleurae, larynx, tracheae, right lung, heart, large vessels, membranes of brain, mouth pharynx, oesophagus, liver, spleen and kidneys were congested; right side of heart contained blood on cut section; other organs were unremarkable; and uterus was healthy and empty. In the opinion of the board of doctors cause of death was shock as a result of extensive burns which were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. Investigating Officer prepared site plan of the place of occurrence (Exhibit PQ), recorded statements of witnesses, and effected necessary recoveries.

03. On completion of investigation a report in terms of sub-section (2) of Section 173 of the Criminal Procedure Code, 1973 (for short, 'CrPC') was presented before the learned Area Magistrate. Case having been committed to the Court of Session, learned trial court charged the accused under Section 302, IPC, and alternatively, under Section 304-B, IPC, as also under Section 498-A, IPC. Accused pleaded not guilty to the charge and claimed to be tried.

04. Dr. Rahul Tandon (PW5) deposed with regard to admission of Indu Jain in CMC with 70% burn injuries and proved Injury Report, Exhibit PG and intimation slip, Exhibit PH. Dr. Deepak Samson (PW15) deposed to say that vide his opinion, Exhibit PL/1, he had declared Indu Jain fit to make a statement. Shri R.K. Beri, Judicial Magistrate (PW14) proved dying declaration of the deceased, Exhibit PT/2. Dr. R.S. Grewal (PW1), has deposed that on police request, Exhibit PA, he, alongwith Dr. Navpreet, conducted post mortem on the dead body of the deceased and recorded post mortem report, Exhibit PB. Naresh Kumar Jain (PW9), brother of Indu Jain testified that Indu Jain had told him that the accused had been treating her with cruelty for and in connection with demand of dowry and that she was set

afire by appellant Suman after pouring kerosene on her body, after she was caught hold of by appellant Sanjay Jain and accused Sudhir Kumar aka Bholu and accused Monika had brought kerosene and a match box. Tarsem Lal Jain (PW10) deposed that the accused had been treating Indu Jain with cruelty, her father had given an amount of Rs. 1,00,000/- to the accused, and three months prior to her death he had seen the accused beating her. Pawan Kumar Verma (PW2), an officer of Punjab National Bank, revealed that vide cheque No. 757966 an amount of Rs. 50,000/- was withdrawn from savings bank account of Magan Lal Jain (father of Indu Jain) on May 03, 2000. According to C.L. Dhiman (PW3), Manager, State Bank of India, Brahmपुरi, Ludhiana, vide cheque No. 360708 an amount of Rs. 50,000/- was withdrawn from savings bank account of Magan Lal Jain on May 02, 2000. Ashok Kumar (PW7) told the learned trial court that furniture worth Rs. 18400/- was purchased from his shop on July 15, 1996 in Indu Jain's name. Ravinder Jain (PW8) apprised the learned trial court that Magan Lal Jain had got prepared gold jewellery from his shop on June 07, 1996. Assistant Sub Inspector Devinder Singh (PW11), Sub Inspector Balwinder Singh (PW12), Constable Ram Saran (PW13), Head Constable Pritam Singh (PW4), and Head Constable Balbir Singh (PW6) brought on record various aspects of investigation.

05. On close of prosecution evidence, accused were called upon to render an explanation with regard to the incriminating circumstances appearing in the prosecution evidence, as required by Section 313, CrPC. They denied all these circumstances as incorrect and while reiterating plea of their innocence and false implication, came out with a plea that at the time of occurrence appellant Suman alone was present in her room on the upper portion of the house and on hearing cries of Indu Jain had raised an alarm which attracted neighbours to the spot who helped her extinguish the fire; she took Indu Jain to Oswal Cancer Hospital where Naresh Kumar Jain (PW9), brother of the deceased also reached and other accused were not present in the house at the time of the occurrence.

06. Defence also examined Radhey Sham (DW1) to bring on record that on hearing the alarm raised by appellant Suman, he and other residents of the mohalla, had reached the spot and had extinguished the fire and that no one from the parental family of Indu Jain was present there at that time.

07. Learned trial court, on hearing the prosecutor and the defence and on appraisal of evidence, reached a conclusion that the prosecution could not establish involvement of accused Sudhir Kumar aka Bhola and Monika in the occurrence but was able to prove guilt of the appellants beyond reasonable doubt as regards charge under Sections 304-B and 498-A, IPC, and, accordingly, while acquitting accused Sudhir Kumar aka Bhola and Monika of all the charges and appellants of the charge under Section 302, IPC, convicted and sentenced the appellants as hereinbefore stated.

08. I have heard learned counsel for the parties besides perusing the records.

09. Learned counsel for the appellants has argued with great vehemence that Dying Declaration, Exhibit PT/2, cannot be relied upon because it has been recorded without getting certification from the doctor certifying Indu Jain fit to make a statement and it being not in consonance with another Dying Declaration statedly made by Indu Jain before Naresh Kumar Jain (PW9) while still another Dying Declaration statedly made by Indu Jain before Dr. Rahul Tandon (PW5) and yet another made before the Investigating Officer, have been withheld from the Court; presence of Naresh Kumar Jain (PW9) at the spot of occurrence is highly doubtful; there is no evidence to prove demand of dowry by the appellants and/or harassment/ treatment of Indu Jain with cruelty for or in connection with demand of dowry soon before her death; presence of appellant Sanjay Jain at the time of the occurrence and involvement of appellant Suman in the occurrence have remained unproved; and the prosecution, for inexplicable reasons, has kept Magan Lal Jain, father of Indu Jain, away from the witness stand.

10. Learned State counsel, however, has defended the impugned

judgment/order.

11. At the very outset it may be pointed out that appellants' acquittal under Section 302, IPC, has not been challenged by the prosecution. Therefore, this Court need not dilate on this aspect of the matter. Thus, sustainability of appellants' conviction and sentence under Sections 304-B and 498-A, IPC, alone needs to be gone into.

12. Section 304-B, IPC, defines and makes punishable a "Dowry Death". It reads as under:

"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 purposes 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."

13. The provision has application when 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(s) of her husband for, or in connection with any demand for dowry.

14. Section 113-B of the Indian Evidence Act, 1872 ('Evidence Act', for short) is also relevant for disposal of the case at hand. Both Section 304-B, IPC, and Section 113-B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act (43 of 1986) with a view to combat the increasing menace of dowry deaths. Section 113-B, Evidence Act, reads as follows :-

"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 has 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, 1860."*

15. Term "Cruelty" has not been defined in Section 304-B, IPC, but by an "Explanation" added to Section 498-A, IPC, it has been defined as under:

"Explanation.- For the purposes 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."

16. Expression "Cruelty" postulates such a treatment as would cause a reasonable apprehension in the mind of the wife that her living in the matrimonial home will be harmful and injurious to her life. Therefore, to decide the question of cruelty, the relative factors are the matrimonial relationship between the husband and the wife, their cultural and temperamental status in life, state of their health and their interaction with each other and members of family of the husband in daily life which dominates the aspect of cruelty. The word "harassment" has not been defined in Section 498-A, IPC, but dictionary meaning of the word, "harassment" is to subject someone to continuous vexatious attack, questions, demands or other unpleasantness.

17. Section 2 of the Dowry Prohibition Act, 1961 defining the term "Dowry" reads as under:

"2. Definition of 'dowry'.-

In this Act, "dowry" means any property or valuable security

given or agreed to be given either directly or indirectly.

(a) By one party to a marriage to the other party to the marriage, or (b) By the parent of either party to a marriage or by any other person, , to either party to the marriage or to any other person,

at or before or any time after the marriage] ²[in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.—*The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).”*

18. The word ‘Dowry’ means any property or valuable security given or agreed to be given by the parents or relatives of the bride to the groom and/or his parents and/or guardian before or at the time of, or at any time after, the marriage for or in connection with the marriage. It is a demand for property or valuable security having an inextricable nexus with the marriage, i.e., it is a consideration from the side of the bride’s parents or relatives to the groom and/or his parents and/or guardian for the agreement to wed the bride-to-be. Any property given by parents or relatives of the bride to the groom and/or his parents and/or guardian need not be in consideration of the marriage. It can even be in connection with the marriage and still would constitute dowry. Definition of dowry is wide enough to include all sorts of properties, valuable securities, etc., given or agreed to be given directly or indirectly. Dowry, thus, means, any property given or agreed to be given by the parents or relatives of the bride to the groom and/or his parents and/or guardian and is not restricted to agreement or demand for payment of dowry before and at the marriage but also includes demands made subsequent to marriage.

19. In ***Kans Raj v. State of Punjab***, (2000) 5 SCC 207: IV (2000)SLT 162:II (2000) CCR 156 (SC), Hon’ble Supreme Court, after examining the concept of “dowry death”, held as under:

"15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to the cruelty or harassment by the husband

soon before her death. 'Soon before' is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term 'soon before' is not synonymous with the term 'immediately before' and is opposite of the expression 'soon after' as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become state enough.

*16. No presumption under Section 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman. The reliance placed by the learned counsel for the respondents on **Sham Lal v. State of Haryana** is of no help to them, as in that case the evidence was brought on record to show that attempt had been made to patch up between the two sides for which a panchayat was held in which it was resolved that the deceased would go back to the nuptial home pursuant to which she was taken by the husband to his house. Such a panchayat was shown to have been held about 10 to 15 days prior to the occurrence of the case. There was nothing on record to show that the deceased was either treated with cruelty or harassed with the demand of dowry during the period between her having taken to the nuptial home and her tragic end. Such is not the position in the instant case as the continuous harassment to the deceased is never shown to have settled or resolved.”*

20. It, thus, comes out that where death of a woman is caused by 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 of dowry such death shall be punishable under Section 304-B, IPC. To put it straight, to seek conviction of an accused for the offence of dowry death, the prosecution is obliged to prove that (a) the death of the woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances; (b) such death should have occurred within seven years of her marriage; (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband; (d) such cruelty or harassment should be for or in connection with the demand of dowry; and (e) to such cruelty or harassment the deceased should have been subjected soon before her death. Once these ingredients are satisfied the Court shall presume that such person had caused the dowry death.

21. There is no dispute that Indu Jain was married to appellant Sanjay Jain in the month of July, 1996. As recorded in Exhibit PH, she died at 07.00 a.m. on May 23, 2001, i.e. within seven years of her marriage, and as stated in PMR, Exhibit PB, and deposed by Dr. R.S. Grewal (PW1), cause of her death was shock as a result of extensive burns which were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. It is also not in dispute that appellant Sanjay Jain is Indu Jain's husband and appellant Suman is Sanjay Jain's mother. Thus, it only remains to be seen if the evidence available on record is sufficient to sustain finding of the learned trial court that soon before her death, Indu Jain was subjected to cruelty or harassment by the appellants for or in connection with demand of dowry.

22. As per prosecution story, Indu Jain suffered four dying declarations-first before her brother Naresh Kumar Jain (PW9), second before Assistant Sub

Inspector Davinder Singh (PW11), third before Dr. Rahul Tandon (PW5) in the form of history of the occurrence sated to be recorded by him the Bed Head Ticket, and fourth before Shri R.K. Beri, Judicial Magistrate (PW14). Though Dr. Rahul Tandon (PW5) claims that he had recorded history of the occurrence in the bed head ticket and according to Assistant Sub Inspector Davinder Singh (PW11), the investigating officer, he had recorded statement of Indu Jain under Section 161, CrPC, but neither the history recorded in the bed head ticket nor the statement of Indu Jain recorded by the investigating officer, has been proved on record. No reasons are coming forth for withholding these very material documents from the Court.

23. Naresh Kumar Jain (PW9), brother of Indu Jain claims that after two months of her marriage, accused started demanding money from, and started beating, the deceased. At 09.00 p.m. on May 22, 2001 he went to house of the deceased and saw that she was badly burnt and disclosed before him that appellant Suman was stressing her to bring more money from her parents but she told appellant Suman that she had already brought and given to them an amount of Rs. 1,00,000/- and her parents were unable to give anything more. Thereupon all the four accused started quarrelling with her; her mother in law said that she (the deceased) be finished and she would remarry her son; Sanjay Jain and Sudhir Kumar aka Bhola caught hold of her arms; Monika, as instructed by her mother, brought a container of kerosene; and Suman poured kerosene over her body and set her ablaze. He also states that one year prior to the occurrence his father had given an amount of Rs. 1,00,000/- to the accused as demanded by them. He also claims that he took the deceased to Oswal Cancer Hospital.

Statement of this witness, however, cannot be relied upon because he has made an improvement over his statement recorded under Section 161, CrPC, as regards shifting of the deceased to Oswal Cancer Hospital; has admitted that neither the deceased nor he told the doctor as to who had set the deceased afire

(which is highly improbable and runs contrary to the statement of Dr. Rahul Tandon (PW5) who claims that deceased had revealed before his history of the occurrence); though accompanied by his two brothers-Suresh Kumar and Anil Kumar, he did not inform the police himself nor sent any of his two brothers to inform the police; though claims that when he reached the spot all the four accused were present in the house but is not shown to have asked anyone of them about the occurrence or to make efforts to get them apprehended; has not been able to tell what clothes the deceased was wearing when he reached the spot; states that when he reached there at the spot the deceased was sitting on her feet-which is quite unbelievable in view of extensive burns received by her; and contradicts his own statement that he was accompanied by his two brothers-Suresh Kumar and Anil Kumar on the fateful day by stating that he had gone to CMC alone and had called his two brothers there. Record of Oswal Cancer Hospital has not been proved to support statement of this witness that he took the deceased to that hospital. Though he claims to have remained by the side of the deceased till 07.30-08.00 a.m. on May 23, 2001 but, surprisingly, he did not meet the Investigating Officer and did not see any Magistrate or Judge till then whereas according to Dr. Deepak Samson (PW15), he certified fitness of the deceased to make a statement at 02.25 a.m. (vide Exhibit PL/1) and the Investigating Officer then recorded statement, Mark B, of the deceased and recording thereof lasted half an hour (or say it was complete by 02.55 a.m.) and according to Shri R.K. Beri, Judicial Magistrate (PW14) he recorded statement, Exhibit PT/2, of the deceased at 03.15 a.m. Purpose of visit of this witness to the house of the deceased at 09.00 p.m. on May 22, 2001, has remained undisclosed. No one from the locality of the deceased has come forward to corroborate what has been stated by this witness who happens to be brother of the deceased. His statement to the effect that the deceased had told him that two accused had caught her from her arms, one accused had brought kerosene and the fourth had set her ablaze has been disbelieved by the learned trial court. The

prosecution has chosen not to challenge that finding. In the statement statedly made before him, the deceased is not shown to have levelled any specific allegation as regards demand of dowry against any of the accused. It has come in the deposition of Dr. R.S. Grewal (PW1) that he did not notice smell of kerosene from the dead body of the deceased. These circumstances render presence of Naresh Kumar Jain (PW9) at the spot of occurrence and in the CMC, highly doubtful.

24. Why father of the deceased, namely Magan Lal Jain, who performed her marriage and is said to have given an amount of Rs. 1,00,000/- to the accused has been kept away from the witness stand, is another riddle that has been left unanswered by the prosecution.

25. Shri R.K. Beri, Judicial Magistrate (PW14) reached CMC and recorded statement of Indu Jain, Exhibit PT/2, wherein she is shown to have revealed that she was married in the year 1996; had been blessed with a son; had brought an amount of Rs. 1,00,000/- to the members of her matrimonial family; on that day also they had asked her to bring money; all of them had given beatings to her and, after taking her downstairs, had poured kerosene on her and had set her ablaze; and that her mother in law had been excessively harassing her. This statement is shown to have been recorded between 03.00 a.m. and 03.15 a.m. on May 23, 2001 without obtaining a certificate from the doctor about fitness of the deceased to make a statement (even though such a certificate was necessary in view of extensive burns received by the deceased). The learned Magistrate has stated that no doctor was available in the CMC when he visited that hospital and the attending Staff Nurse had refused to give such a certificate. While the Staff Nurse has neither been identified nor examined as witness, statement of the learned Magistrate that no doctor was available runs contrary to statement of Dr. Deepak Samson (PW15) that he was on duty at 02.45 a.m. on that day and remained on duty for 24 hours; had declared the deceased fit to make a statement vide his

certificate, Exhibit PL/1 at 02.25 a.m.; a doctor remains on duty round the clock in the emergency ward; and in case of need a specialist doctor can be called. Even Shri R.K. Beri, Judicial Magistrate (PW14) has not been able to deny a suggestion of the defence that a doctor is always on duty in emergency ward. Not only this, the statement, Exhibit PT/2, does not disclose date and time of the occurrence; does not attribute any specific role to either of the accused either in the occurrence or in the demand of dowry or her harassment; even against appellant Suman it makes a general allegation saying that she had been harassing the deceased; and it runs contrary to the statement statedly made by the deceased before Naresh Kumar Jain (PW9) in so far as it does not state that hands of the deceased were caught by Sanjay Jain and Sudhir Kumar aka Bhola, Monika had brought kerosene and appellant Suman had poured kerosene over her body and had set her ablaze. Even Shri R.K. Beri, Judicial Magistrate (PW14) did not enquire from the deceased about date, time and manner of occurrence, as also the person(s) responsible for putting her afire.

Recording of statement, Exhibit PT/2, between 03.00 a.m. and 03.15 a.m. on May 23, 2001 seems to be doubtful. Exhibit PL/1 is certificate written by Dr. Deepak Samson (PW15) at 02.25 a.m. declaring Indu Jain fit to make a statement, on application, Exhibit PL, made by the Investigating Officer. According to him, he remained present throughout recording of statement of the deceased by the Investigating Officer and it took half an hour (say till 02.55 a.m.) to complete recording of the statement of the deceased by the Investigating Officer. He also states that he did not see any Magistrate or Judge there (during that period). According to Assistant Sub Inspector Davinder Singh (PW11) he approached Shri R.K. Beri, Judicial Magistrate (PW14) after obtaining certificate of fitness (Exhibit PL/1) of the deceased to make a statement and the latter reached the CMC at about 03.30 a.m. and finished recording of statement of the deceased by 04.00 a.m. Shri R.K. Beri, Judicial Magistrate (PW14), however, claims that

application, Exhibit PT, was moved by the Investigating Officer before him at 02.50 a.m.; he met Indu Jain at 03.00 a.m. and stayed by her side for 10-15 minutes (say till 03.10 or 03.15 a.m.). Exhibit PT/1 is the request made by the Magistrate to Senior Medical Officer/Incharge, CMC, to certify fitness of the deceased to make a statement. It is shown to have been written at 03.00 a.m. On the statement, Exhibit PT/2, time of its recording is recorded as 03.15 a.m. Naresh Kumar Jain (PW9) claims to have remained there by the side of the deceased till 07.30-08.00 a.m. on May 23, 2001. He does not talk of arrival of any Magistrate there in his presence and has very emphatically stated that he did not see any Magistrate or Judge there in the hospital.

26. Prosecution has also failed to explain who extinguished the fire and how and who made the deceased to put on her clothes because it has come in the evidence of Naresh Kumar Jain (PW9) that when he reached the spot fire had already been extinguished and when Shri R.K. Beri, Judicial Magistrate (PW14) went to record statement, Exhibit PT/2, the deceased was wearing clothes.

27. Even prior to recording of statement, Exhibit PT/2, as stated by Dr. Deepak Samson (PW15) the Investigating Officer had recorded statement of the deceased in his presence after she was declared fit to make such a statement by him at 02.25 a.m. vide his certificate, Exhibit PL/1. Investigating Officer (PW11) also claims to have recorded statement of the deceased. That statement, as hereinbefore stated, has not been made part of the record.

28. Tarsem Lal Jain (PW10) has stated that he had participated in the marriage of Indu Jain with appellant Sanjay Jain; Magan Lal Jain, father of Indu Jain had given sufficient dowry; after 03-04 months he learnt that accused were demanding money from Indu Jain and were beating and maltreating her; he even got a compromise effected between the two sides on a few occasions; about three months prior to the occurrence he went to house of the deceased and found that all the accused were beating her; and that Magan Lal Jain, father of the deceased gave

an amount of Rs. 1,00,000/- to the accused. This witness, however, cannot be believed because he has failed to give details of the dowry statedly given by father of the deceased; has not been able to say as to who demanded the dowry; has not disclosed the source of his information regarding stated ill treatment of the deceased at the hands of the accused; the story of his visit to deceased's house three months prior to the occurrence does not find a mention in the deposition of Naresh Kumar Jain (PW9), brother of the deceased; and this witness has not been able to tell date, month or year of his stated visit to deceased's house. Magan Lal Jain, father of the deceased has not come forward to support him that he gave dowry and an amount of Rs. 1,00,000/- to the accused, this witness admits that amount of Rs. 1,00,000/- was not given to the accused in his presence.

29. Pawan Kumar (PW2) and C.L. Dhiman (PW3) talk of withdrawal of money from savings bank accounts of Magan Lal Jain. Ashok Kumar (PW7) claims to have sold furniture for the deceased. Ravinder Kumar (PW8) states that he prepared jewellery for the marriage of the deceased. However, none of these witnesses has stated that the money/furniture/jewellery were either demanded by, or given to, the accused.

30. From what has been said and discussed in the foregoing paragraphs it comes out that the prosecution though has been able to prove that the deceased died of burns, or say otherwise than under normal circumstances within seven years of her marriage but has failed to prove that soon before her death she was subjected to cruelty or harassment by her husband and/or relative(s) of her husband for or in connection with demand of dowry. Therefore, conviction and sentence of the appellants under Sections 498-A and 304-B, IPC, cannot be sustained.

31. As a consequence, the appeal succeeds and is accepted. Impugned judgment and order dated August 06, 2003 are set aside and the appellants are acquitted of the offences of which they have been charged and convicted.

32. Bail bonds of the appellants are discharged.

33. Amount of fine, if already deposited by the appellants, shall be refunded to them as per procedure known to law.

[Mahavir S. Chauhan]
Judge

March 18, 2015
adhikari