

\$~R-28A to R-28G (Part-A)

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

% **Reserved on: 20th November, 2015**
Date of Decision : 16th December, 2015

+ **CRL.A. 1023/2012**

HEMANT Appellant

Through: Mr. D K Singh, Adv.

versus

STATE NCT OF DELHI Respondent

Through: Ms. Aashaa Tiwari, APP with
Insp. Alka Azad, CAW Cell,
Nanak Pura and SI Neeraj
Kumar-PS Mandawali

+ **CRL.A. 605/2011**

SONY @ SANGEETA Appellant

Through: Mr. R P Khatana, Mr. Dhiraj
Kochar and Mr. Vipin Kumar
Chaudhary, Adv.

versus

STATE NCT OF DELHI Respondent

Through: Ms. Aashaa Tiwari, APP

+ **CRL.A. 585/2011**

MAYA Appellant

Through: Mr. M L Yadav, Adv.

versus

STATE OF DELHI Respondent

Through: Ms. Aashaa Tiwari, APP

+ **CRL.A. 235/2012**

AJIT Appellant

Through: Mr. Pramod Kumar Dubey and
Mr. Shiv Chopra, Adv.

versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Ms. Aashaa Tiwari, APP

+ **CRL.A. 716/2011**

SMT. KAMLESH Appellant

Through: Mr. D K Singh, Adv.

versus

STATE (N.C.T.) OF DELHI Respondent

Through: Ms. Aashaa Tiwari, APP

+ **CRL.A. 603/2011**

ANITA Appellant

Through: Mr. Pramod Kumar Dubey and
Mr. Shiv Chopra, Adv.

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP

+

CRL.A. 604/2011

DHARAM PAL

..... Appellant

Through: Mr. Pramod Kumar Dubey and
Mr. Shiv Chopra, Advs.

versus

STATE

..... Respondent

Through: Mr. Varun Goswami, APP

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. These seven criminal appeals, alongwith another (criminal appeal no.122/2012) were preferred to assail the judgment dated 29.04.2011 and order dated 30.04.2011, both passed by Additional Sessions Judge, Karkardooma, Delhi in Sessions Case no.34/2008. The criminal appeal no. 122/2012 (preferred by Lalwati wife of Jagbir Singh) stood abated as the said appellant died on 03.01.2015. Since these appeals arise of the same set of facts, circumstances and prosecution, they have been heard together and are being decided through this common judgment.

2. Alka, daughter of Bachan Singh (PW2), was married to the appellant Hemant Singh (criminal appeal no.1023/2012) on 11.12.2005. She gave birth to a male child (named Mayank) in due course. On 28.09.2007, some 7/8 months after the birth of the child, sometime between 11:00 AM-12'o clock noon time, Alka (then aged 24 years) suffered burn-injuries in the matrimonial home i.e. house no.382, Gali no.1, Asha Ram Gali, within the jurisdiction of police station Mandawali. She was brought to Lok Naik hospital, New Delhi ("the hospital") by the husband (appellant Hemant) at 02:00 PM on the same afternoon. The medico legal report ("MLC") (Ex.PW14/A), prepared by the examining medical officer Dr. Babu Lal Rulania (PW14), though indicates that Alka (the victim) had disclosed the history to be burns suffered around 01:30 PM at residence. The MLC (Ex.PW14/A) noted that at the time of being brought in, she was conscious and oriented with her vitals stable. In the assessment of the medical officer (PW14), she had suffered superficial to deep burns involving both arms, forearms, face, upper abdomen, lower abdomen and upper thighs, the extent assessed to be 40 %. She was admitted to burn-ward, detailed examination and opinion of the specialist and for further management. The MLC noted, *inter-alia*, that the body of the victim was not emitting smell of kerosene oil.

3. The information about the victim having been brought with burn injuries to the hospital by her husband (appellant Hemant) was conveyed by HC Raj Pal to the police station Mandwali ("the police

station”) at 02:15 PM on 28.09.2007 and was logged there vide DD no.38-B (Ex.PW17/A). The matter was entrusted for inquiry to ASI Kanta Prasad (PW9) who, accompanied by Ct. Kulwant Singh (PW4), set out for the place of occurrence (matrimonial home). On learning that the fire incident had taken place in the kitchen and the injured had already been shifted to the hospital, he deputed the accompanying constable (PW4) to remain at the spot, and proceeded to the hospital. On the way, he informed Mr. P. K. Jayant (PW1), the Executive Magistrate of the sub-division.

4. The Executive Magistrate (PW1) reached the hospital in the evening and conducted an inquiry by first ascertaining the state of health of the victim. During the proceedings (Ex.PW1/A) recorded by him, the medical officer Dr. Abhimanyu Sharma (PW13) attending on the victim confirmed through a formal certificate, recorded at 05:10 PM, that she was “fit for statement”. This certificate appears on the MLC vide marginal endorsement (vide Ex.PW13/A) as also at the beginning of the formal proceeding (Ex.PW1/A) of the Executive Magistrate.

5. It is necessary to quote verbatim, the relevant portions of the proceeding recorded by the Executive Magistrate (PW1), of which the statement of the victim in Hindi forms the main part. The same reads as under :-

“प्र. आपका क्या नाम है और आपके पति का क्या नाम है और
आपका क्या पता है और आपकी शादी कहाँ हुई और उसकी डेट क्या है?

उत्तर- मेरा अलका है और मेरे पति का नाम हेमंत है और मेरा पता ३८२ गली न. ०१ मंडावली फाजलपुर, दिल्ली है। मेरी शादी ११.१२.२००५ दिल्ली में हिन्दू रीति रिवाज के अनुसार संपन्न हुई थी और शाहदरा, मानसरोवर पार्क दिल्ली में हुई थी।

प्र. यह हादसा कब और कैसे हुआ विस्तारपुरवारक बताइये। क्या आप किसी को जिम्मेवार मानते हैं?

उत्तर. यह हादसा ११ से १२ बजे के बीच हुआ इस हादसे की जिम्मेवार मैं अपनी सास जिसका नाम लालवती है और ननद का नाम अनीता और जेठ लाला कहते हैं मगर सही नाम मुझे याद नहीं आ रहा है मेरा ननद का आदमी भी था धरम पाल है और इनकी बुआ जिसका नाम माया है। मौसी भी है जो मंडावली में रहती है। और मैंने इसकी १०० पर पुलिस को कॉल मैसेज किया था डेट २७.०९.१७ (लोकल पुलिस) और फिर मैंने अपनी फैमिली वालों को भी बुलाया था और मेरी फैमिली वालों ने सुलह कराया था। एमएलसी न. ९९५६९ एल अं जेपी हॉस्पिटल में बताया है करीब ४० % जली है। चेस्ट फ्रंट एंड बैक साइड। इस जलने में मेरे हस्बैंड हेमंत भी साथ थे बड़ी मुश्किल से मेरे को ये एल इन जेपी हॉस्पिटल लेक्कर आये थे और मेरे को एक बच्चा है जिसकी उम्र सात महीने है। मेरा लड़का मयंक है और मेरे बच्चे को पता नहीं है घर वाले क्या करेंगे मेरे बच्चे को कैसे रखेंगे। अगर मुझे कुछ हो जाता है तो मेरा बच्चा मेरे मां पापा को दिया जाये इन पर मुझे कोई भरोसा नहीं।

प्र. आपकी शादी में कितना और मांग की थी और शादी हमने ठीक किया था

उत्तर. मेरे घरवालों को इन्होंने मेरी शादी में पैसा की मांग की थी और मेरे घरवालों ने नकद ३५००० रुपये दिए थे। और दहेज ज्यादा ना मिलने की वजह से यह सब घर वाले मुझे बहुत तंग करते थे। मैं १२ क्लास दिल्ली से पास हूँ मेरी उम्र २५ वर्ष है। सभी लोग मेरे घरवालों को भी धमकी देते थे अगर तूने बताया तो हम तुम्हे जिन्दा नहीं छोड़ेंगे। मेरे हस्बैंड से तू तू मैं मैं हमेशा होती रहती थी। मेरी छोटी ननद का नाम सोनी है वो हमेशा मुझे गाली देकर बात करती थी और हमेशा ताना देती थी और मेरी सास

भी उल्टा-२ बोलती थी। मुझे मिट्टी का तेल डालकर इन्होंने मुझे जलाया है इनको कानून बड़ी-बड़ी सजा दे। मुझे मेरी सास ताना देती थी की तूने दहेज कम लायी है।

आखिरी में यह कहूँगी की मेरा बेटा मेरे माँ बाप को मेरे कुछ होने के बाद व अभी दे दे जिससे मेरी आत्मा को कुछ सुकून मिल सके। और मुझे खाने को भी नहीं देते थे और मुझसे पूरा काम लेते थे।

मैंने यह बयान सुन लिया है और पढ़ लिया है यह बयान मैंने अपनी होश-आवाश में दिया है।”

6. The above-quoted proceedings attributed as statement of the victim may be translated in English as under :-

“Q. What is your name and what is the name of your husband and what is your address and when you were married and what was the date thereof ?

Ans. My name is Alka and name of my husband is Hemant and my address is 382, Gali no.01, Mandawali, Fazalpur, Delhi. My marriage was performed as per Hindu Rites and Customs on 11.12.2005 in Shahdara Mansarowar Park, Delhi.

Q. Please tell as to when and how this incident occurred ? Please state in detail. Do you hold any one responsible ?

Ans. This incident occurred between 11:00-12 o'clock. For this incident, I hold responsible my mother-in-law whose name is Lalwati and sister-in-law named Anita and Jeth Lala, correct name I am unable to remember. Husband of my sister-in-law Dharam Pal was also there and his bua named Maya. There is mausi also who lives in Mandawali. I had given a call message to police about this on 100 date 27.09.2007 (local police) and then I had also called members of my family and my family had brought about a compromise. MLC No.99569

LNJP hospital mentions that there are approximately 40 % burns. Chest front and back side. My husband Hemant was also involved in this burning. With great difficulty, he brought me to LNJP hospital and I have one child who is aged 7 months. Mayank is my son and I do not know as to what would my family do with my child. How they would keep my child. If something happens to me my child be given to my family and father. I have no faith in them.

Q. What was the demand in your marriage and the marriage was well arranged by us.

Ans. They had demanded money from my family in the marriage and my family had given cash of Rs.35,000/-. And the members of my family used to harass me for not getting sufficient dowry. I am 12th class passed from Delhi. My age is 25 years. All members of my family used to threaten that if I tell, they would not leave me alive. I and my husband would frequently argue with each other. My younger sister-in-law is Soni. She would always talk to me with abuses and would always taunt and my mother-in-law would always speak improperly. They have set me on fire by pouring kerosene oil. The law must give them severe punishment. My mother-in-law always taunted me that I have brought insufficient dowry.

In the end, I would say that my son be given to my mother and father, if something happens to me and now only so that my soul gets some peace. And I was not given food and I was made to work fully.

I have heard this statement and read it. I have given this statement in fully conscious state”.

7. Having recorded the above statement (Ex.PW1/A) of the victim at about 05:10 PM, the SDM (PW10) forwarded a copy to the SHO

P.S. Mandawali for information and necessary action “as per law”. On the same date, at about 07:10 PM, the SHO made an endorsement directing a case to be registered for investigation into offences punishable under Sections 498-A, 307/34 IPC of Indian Penal Code, 1860 (“IPC”) and for the investigation to be handed over to Inspector Alka Azad (PW17), the Additional SHO of the police station. The FIR (Ex.PW6/A) was registered by SI Phool Singh (PW6), duty officer. Though this may be too insignificant and inconsequential a detail, it may be mentioned that FIR (Ex.PW6/A) and the endorsement (Ex.PW6/B) on the *rukka* show the case was registered at 1905 hours, even though the direction to such effect by the SHO was recorded at 1910 hours. It appears formalities on paper were completed later leading to this discrepancy.

8. Alka (the victim) died due to burn injuries at 11:20 PM on 05.10.2007 in the hospital. The event came to the notice of the police station on 0020 hours on 06.10.2007 upon the information being conveyed by duty Constable Devender to the police station where it was logged vide DD no.5A (Ex.PW17/C). The case was thereafter converted into one involving the offences punishable under Sections 304-B/498-A/34 IPC. Aside from conducting the inquest proceedings and arranging for post-mortem examination of the dead body, the investigating officer (PW17) proceeded to complete the investigation in which course she had examined, amongst others, Bachan Singh

(PW2) and Satender Kumar Singh (PW3), father and brother respectively, of the deceased.

9. On 19.12.2007, report under Section 173 of the Code of the Criminal Procedure, 1973 ("Cr.P.C") was submitted in the court of Metropolitan Magistrate. This report, *inter-alia*, referred to DD no.20A (Ex.PW7/A) recorded in the police station at 1418 hours of 27.09.2007 and inquiry made there into by HC Ramesh Chand (PW7) resulting in report vide DD no.70-B recorded at 2010 hours on 27.09.2007. We shall refer to this part of the background in detail later. For the present, it be noted that out of eight persons mentioned by the victim in her statement (Ex.PW1/A) to the Executive Magistrate (PW1), four were shown in column no.2 as those against whom the investigating police officer (PW17) had not been able to find sufficient evidence, they being appellant Dharam Pal (in Crl. A. 604/2011), appellant Anita (in Crl. A.603/2011), appellant Kamlesh (in Crl. A. 716/2011) and appellant Maya (in Crl. A.585/2011). The chargesheet, however, pressed for prosecution of the other four viz. appellant Hemant Singh (husband), appellant (*Jeth*) Ajit (in Crl. A.235/2012), mother-in-law Lalwati (since deceased) and appellant (*Nanad*) Soni (in Crl. A.605/2011), on the ground that sufficient evidence had come up about their involvement in offences punishable under Sections 498-A/304-B/34 IPC.

10. The Metropolitan Magistrate by her order dated 04.02.2008 found sufficient material available to proceed and thus summoned all the eight persons mentioned above, as accused.

11. Though investigating police had sought trial only for offences punishable under Sections 304-B/498-A/34 IPC, not pressing charge for the offence of murder punishable under Section 302 IPC, *inter-alia*, stating that clear evidence was available that mother-in-law Lalwati and unmarried sister-in-law Soni were not even present at the scene at the time of the occurrence, the Additional Sessions Judge by order dated 01.08.2008 held that sufficient grounds were available to put all the eight persons on trial on the charge for the offence punishable under Section 302/34 IPC and/or in the alternative on the charge for the offence punishable under Section 304-B/34 IPC. Additionally, charge was also framed for the offence punishable under Section 498-A/34 IPC.

12. The evidence of the prosecution to the effect that victim Alka (the deceased) was married to the first appellant Hemant Singh on 11.12.2005 and died on 05.10.2007, as a result of burn injuries suffered in the matrimonial home on 28.09.2007 is not disputed. The facts relating to the marriage, and birth of the child out of the wedlock, have been proved by Bachan Singh (PW2) and Satender Kumar Singh (PW3). The facts relating to burn injuries suffered before noon time on 28.09.2007 and the death occurring as a consequence thereof at 11:20 PM on 05.10.2007 stand established through the testimonies of Dr.

Abhimanyu Sharma (PW13), Dr. Babu Lal Rulania (PW14) and the post-mortem examination report (Ex.PW10/A) given by autopsy doctor, Dr. Vijay Dhankar (PW10).

13. There can be no dispute as to the fact that Alka suffered an unnatural death due to burns, within two years of her marriage, in her matrimonial home. Though, in her 'dying declaration' (Ex.PW1/A) to the Executive Magistrate (PW1) on 28.09.2007, Alka had stated that she had been intentionally set afire by the husband and relatives, investigating police officer (PW17) did not believe this, to be true. As mentioned above, she did not seek prosecution on the charge of murder under Section 302 IPC. The chargesheet submitted in the court contained no evidence except for reference to the 'dying declaration', indicating it to be a case of culpable homicide. Though charge was framed by the trial court for the offence under Section 302 IPC, the trial court found it to have remained unsubstantiated. Its observations and conclusion vis-a-vis this charge are summarized in para 82 of the impugned judgment which reads as under :-

“The prosecution has failed to connect the accused persons with the commission of murder of deceased Alka. No eye witness to the incident has been produced by the prosecution to show that deceased Alka was burnt by accused persons on the day of incident. The prosecution has also failed to establish the presence of any of the accused at the spot on the day of incident. In the charge-sheet itself, it is case of prosecution that no accused was present at the spot. Even the prosecution has failed to establish the circumstances on record to complete the

chain of events to show the accused persons committed the murder of deceased. The prosecution has failed to establish that accused persons murdered the deceased Alka by pouring kerosene oil on her on the day of incident as their presence at the spot at the time of incident has not been established convincingly. Therefore, in my considered opinion, accused persons are liable to be acquitted for the commission of murder of deceased under Section 302/34 IPC. ”

14. The State did not challenge the above result of the trial of the appellants on the charge of murder under Section 302/34 IPC. Even otherwise, there is no good reason shown for us to reach a different conclusion on this subject. Thus, the acquittal of the appellants for offence under Section 302/34 IPC has attained finality.

15. The trial court found the evidence of the prosecution, in general, and of Bachan Singh (PW2) and Satender Kumar (PW3), in particular, worthy of reliance. Believing their word, and accepting the dying declaration (Ex.PW1/A) made to the Executive Magistrate (PW1), it was convinced as to the involvement of appellants (and of mother-in-law) (since deceased) in treating the victim with cruelty on account of insufficient dowry “soon before” her unnatural death in the matrimonial home and, thus, invoked the presumption of Section 113-B of the Indian Evidence Act, 1872 (“the Evidence Act”) and found them guilty, on the charge for offences punishable under Sections 304-B read with Section 34 IPC and 498-A read with Section 34 IPC. By the impugned order, the first appellant (husband Hemant Singh) was sentenced to imprisonment for life with fine of Rs.10,000/- for the

offence under Section 304-B/34 IPC. The other appellants, convicted for the same offence, were awarded rigorous imprisonment for ten years with fine of Rs.10,000/- each. All the convicted persons were additionally awarded rigorous imprisonment for two years with fine of Rs.5,000/- each, on the charge for the offence under Section 498-A/34 IPC.

16. The Evidence Act declares through Section 101 that one who desires the Court to give judgment as to any legal right or liability depending on the existence of facts which he asserts must prove that those facts exist. The law places the burden of proof on the person who would fail if no evidence were given on either side. In criminal trials, the prime burden of proving the existence of facts (from which complicity of the accused is to be shown) is that of the prosecution. Section 59 of the Evidence Act states that all facts (except the contents of documents or electronic records) may be proved by oral evidence. This is subject to the qualifying norm in Section 60 stipulating that oral evidence must, in all cases whatever, be direct. The rules of evidence, thus, do not ordinarily permit hearsay. There are, however, exceptions to this general rule, evidence in the nature of “dying declaration” being one of such exceptions, as provided, and to the extent allowed, by Section 32(1).

17. Dying declaration is predicated on the principle that the sense of impending death has the same effect on a person’s mind as that of a conscientious and a virtuous man on oath [*nemo moriturus*

praesumitur mentire]. When a person reaches a point of death and every hope is gone, it is believed that motive to speak falsehood is silenced and the mind is induced by powerful consideration to speak the truth. The aforesaid principle can, however, not be treated as a universal rule that all dying declarations state the truth and nothing but the truth. It is no doubt true that dying declarations can be acted upon even without corroboration but before it is accepted, the court has to be satisfied that the dying declaration is true and voluntary. This requires a careful and detailed scrutiny of the dying declaration to rule out possibility of tutoring, prompting or imagination. When dying declaration is suspicious, it should not be acted upon without corroborative evidence. It is in this context that in *P.V. Radhakrishna Vs. State of Karnataka* 2003 (6) SCC 443, the Supreme Court observed that dying declaration like any other piece of evidence has to be tested with great care and caution as the author is not subjected to cross-examination and when the court on careful scrutiny is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consisting, it can be made the basis for conviction, even if there is no corroboration.

18. In the case of oral evidence, the law expects the Court to separate, to use a cliché, grain from the chaff or, to put it simply, truth from the falsehood. Thus, it is permissible for the ocular testimony of a witness to be partially rejected to the extent it suffers from embellishments even while it is partially accepted, and acted upon, to

the extent it is reliable or finds corroboration from other material of unimpeachable character. In the case of dying declaration, however, the courts generally demand absolute guarantee of the accuracy and the truth of the statement before it is accepted; this, given the fact that the maker of dying declaration is not available for the credibility or veracity of the statement attributed to him to be tested through the tool of cross-examination. It being an exception to the general exclusionary rule of hearsay, it may become unsafe to make an attempt at disengaging or unravelling the truth. When such exercise is besmirched or discombobulated, it is well nigh impossible for the credibility or truthfulness of the assertion made in the dying declaration to be judged with certainty.

19. For various factors and reasons, we are not satisfied with the veracity of the evidence concerning the dying declaration (Ex.PW-1/A) in the case at hand. The author's version about the incident and how she got burnt is perceptibly wrong and incorrect. She has attributed a pro-active role to the so called perpetrators, seven in number, by describing that they had poured kerosene oil, though as per the evidence adduced and accepted by the police and the trial court, they were not present at the time of occurrence. The manner in which questions put were answered and different persons - even those belonging to the extended family – were named creates further doubt. Alka did mention and refers to the telephone call to the police, a day earlier on 27th September, 2007, and how the family members had

intervened and brought about a compromise. We perceive that Alka felt let down that the compromise induced by the family members was not adhered to and, therefore, was constrained to take the extreme step. This possibly reflects the reason why in her perception the *Nanad* (Anita) and her husband (Dharmesh), *Bua* (Maya) and *Jeth* (Lala) were responsible for what had happened. She named the husband (Hemant) and stated that he was involved in the burning, though she accepted that he had brought her to the hospital. She did not name her other *Nanad* (Soni) in answer to the third question, but went on to point finger at her in response to the fourth question alleging that she used to abuse and taunt her.

20. The Executive Magistrate was expected to elicit information from the victim with a view to find out her version (as to the circumstances in which she had received the burn injuries), for, in the event of she succumbing (despite medical treatment) it to be preserved and made available as valuable evidence for the case to be taken to logical end. The victim had indeed suffered 40% burn injuries and had been brought to the hospital for treatment. There was, however, no occasion for her to know or ascertain such minute facts as the MLC number against which she had been admitted for treatment. It is strange that, in the answer to the second question, reference came to be made not only to the extent of her burn injuries but also to the particulars of the MLC that had been recorded. Clearly, such facts could not have come from her mouth. Apparently, the Executive

Magistrate (PW-1) had added facts from his knowledge projecting it, for the record, to be the statement of the victim. We have quoted the third question and the response thereto and have to observe that the question itself, as framed and recorded, raises apprehension as to the manner in which the executive Magistrate PW-1 had gone about recording the statement. The formulation of the said query, almost putting words in the mouth of the victim, is questionable and unsupportable and leaves us with a sense of disquiet. Thus, we have hesitation, and express our inability as such, in relying upon the dying declaration (Ex.PW-1/A). This aspect has been elucidated and examined below.

21. The FIR had been registered on 28.09.2007 at 05:10 PM on the basis of the statement (Ex.PW1/A) made by the victim from the hospital bed to the Executive Magistrate (PW1). During the investigation, on the same date, PW17 (investigating officer) had recorded the statement (Ex.PW2/DA) of Bachan Singh (PW2), the father of the victim under Section 161 Cr.P.C. The Executive Magistrate (PW1) had continued with inquest proceedings after the victim had passed away on the night of 05.10.2007. In these proceedings, he recorded the statement (Ex.PW1/B) of Bachan Singh (PW2). The court testimony of Bachan Singh (PW2), to the extent it is relevant in the context of allegations of cruelty and harassment for dowry, needs to be quoted verbatim, as under :-

“xxx

After the marriage my daughter started living with the accused at the matrimonial home at Mandawali. I gave articles worth Rs.3 lacs in the marriage which included silver and gold ornaments. List of articles was not given to the police. All the household articles were given such as T.V, fridge, furniture, etc. After marriage my daughter was not treated well by the accused persons. She used to be harassed by the accused persons. They used to taunt that sufficient dowry articles were not given. My daughter used to be harassed on account of demand of dowry. Whenever my daughter complained about her harassment, I told her that by the passage of time everything would settle in the time and by these assurance I used to sent her to her matrimonial home. Accused Lal wati, Soni, Ajeet Singh, Hemant, Kamlesh and Maya used to harass my daughter. Accused Dharampal and Anita also used to harass my on account of dowry as and when they used to visit her matrimonial home. Accused used to tell that in case money not given to them they would not keep her in the matrimonial home. They told that they had go get married Soni and in case dowry is given they would get her married. When dowry was not given my daughter was abused and was not even provided food by the accused persons. Accused persons told my daughter that since her father was a lawyer, he had lot of money and he should pay. On 27.09.07 accused persons Lalwati, Hemant, Ajit, Soni, Anita, Dharampal, Maya and Kamlesh gave beatings to my daughter Alka by taunting her that why she was not bringing cash. On coming to know this fact, I alongwith my son Satinder, Son in laws Asha Ram and Prem Chand and my cousin Dharam Singh went to the matrimonial home of my daughter. My daughter had

already give a call at no. 100 to the police and the police had already taken accused Hemant with them in the Police Station. Other accused persons were present in the house. Accused Hemant also returned from the Police Station at about 8 p.m. I told accused persons not to harass and beat my daughter. Accused persons assured that they would treat my daughter well in future. Thereafter we returned home at about 11 p.m.

“xxx

All the accused persons were demanding to give articles in Chuchak since my daughter had given birth to a son. I had shown my inability in this regard and thereafter all the accused persons had started torturing her on this count. I was in the hospital, where my daughter had told me that she was ablazed by pouring kerosene oil by the accused persons present in the court today xxx”

22. Before we proceed further, we may also note as to what Satender Kumar (PW3) had to say on the subject. His testimony, to the extent relevant here, is as under :-

“xxx

In the marriage 4-5 lacs were spent and all household articles were entrusted to the accused persons during the marriage for their use. After the marriage for 10-15 days she remained happily and thereafter all the accused persons had started ill-treating her for demanding more dowry. Lalwati mother of the accused Hemant used to abuse her. She used to harass her by saying that my sister was not getting up early nor she used to prepare meals. Lalwati accused had also demanded more money as less was given in the marriage. Accused Soni and Ajit also used to demand more money from my sister Alka as

my father had retired and he had received enough money from his retirement. My sister Alka used to tell all these things as and when she used to come our home or on telephone”.

23. The deceased in her statement (Ex.PW1/A) to the Executive Magistrate (PW-1) was pointedly questioned about the demand from her in-laws at the time of the marriage. All that she would state in this context was that cash in the sum of ₹35,000 had been given. Yet, her father (PW-2) claimed that he had given dowry articles worth ₹ 3 lakhs, including silver or gold ornaments, in addition to various household goods such as fridge, TV and furniture. The brother (PW-3) talked of expenditure in the range of ₹4 to 5 lakhs. These claims and versions are contradictory. Bachan Singh (PW-2) spoke about demands of valuable gifts in the ceremonies connected to the birth of the child which is not even remotely mentioned by his son (PW-3). Both PW-2 and PW-3 deposed about harassment in connection with dowry in general terms. They would indict the eight persons who were brought to trial as the perpetrators of such cruelty or harassment, without clarifying as to how such relatives as were not even living under the same roof (i.e. married sister-in-law, Anita; her husband, Dharampal; *Mausi* Kamlesh and *Bua* Maya) could or would have participated in the acts of harassment or physical assault by others living in the matrimonial home.

24. Seen against the light of what the deceased had to say from the death bed, PW-2 and PW-3 have apparently made an attempt to

indulge in exaggeration. Noticeably, in the dying statement (Ex.PW-1/A), the deceased had attributed to appellant Soni (*Nanad*) abusive behaviour. There was no allegation made about she having also made demands for dowry. The taunts connected to the dissatisfaction with the dowry given were attributed only to the mother-in-law, Lalwati. Yet, PW-3 accused the appellant Soni also to be one of those who had demanded money from the victim. PW-2, in fact, went to the extent of stating that all these appellants, including Soni, had given beatings to deceased on 27.09.2007 in connection with their grievance that she had not brought money from her parental family. As we would see in due course, the incident of 27.9.2007 had not involved any beating of the deceased in the matrimonial home.

25. The dying declaration (Ex.PW-1/A) was not a truthful account of the events of 28.09.2007 inasmuch as the investigation clearly showed that the victim had indulged in self-immolation. She had, thus, made an attempt to falsely implicate the appellants for complicity in her burn injuries. The allegations made by her that the appellants had poured kerosene on her and set her on fire being a fiction intentionally created, shows her word in this regard in poor light. Since her father (PW-2) and brother (PW-3) had borrowed this version from her and would continue to harp on the same theory even during the trial, it adversely affects their credibility as well.

26. On the aspect of narration of events of 27th September, 2007, the testimony of Bachan Singh (PW-2) is not wholly correct.

Undoubtedly, the deceased had made a call (on phone No.100) to the police on the said date. This had resulted in DD No. 20A (Ex.PW-7/A) being recorded in the police station at 2.18 p.m. As stated by Bachan Singh (PW-2), the police had made an inquiry into the said report at a stage when the parental side had also converged on the scene, again at the instance of the deceased. The formal inquiry on behalf of the police station was made by Head Constable Ramesh Chand (PW-7). His testimony reveals that even though in the telephonic call resulting in DD No. 20 A (Ex.PW-7/A) being recorded, harassment by the in-laws (*“sasural wale pareshan kar rahe hain”*) was alleged, at the time of local inquiry by him, the deceased had told the police official (PW-7) that her husband (appellant Hemant) would remain at home, not earn anything and never provide money (to the wife) even for purposes of milk for the child. PW-7 is on record to state that when he had questioned the victim in the presence of her sister and other relatives, she had told him that no quarrel or beating had taken place. The parties had entered into a compromise and so the matter was closed by PW-7, advising the victim to approach CAW cell or the local police in case of any further complaint.

27. During the cross-examination of PW-2 it was brought out by the defence that appellant Hemant (the husband) was earlier employed on temporary basis in a hospital. At the time of the marriage being settled, the parental side had been assured that he (Hemant) would get a permanent job in place of his father “on compassionate grounds”. He

was not sure as to whether the appellant had actually secured a permanent employment. The defence did not make attempt to discredit the prosecution evidence on the subject or adduce any evidence to affirm that the allegations of he (appellant Hemant) being a person with wayward ways with no regular income, one who was showing neglect to his wife and child, are not correct.

28. Seen against the above light, the evidence of PW-7 must be believed to the extent he deposed about the grievance of the victim being essentially against the husband (appellant Hemant) mainly concerning his unemployed status and the neglect shown towards her and the child rendering them in miserable state of wants for basic needs for survival. From this, it naturally follows that the evidence of PW-2 about the incident of 27.9.2007 involving beatings given to the victim cannot be accepted as the correct account.

29. The trial court found the evidence adduced by the prosecution to have convincingly established that the deceased had been subjected to cruelty and harassment by the appellants “for bringing less dowry” and in order to pressurize her “to bring more money and articles”. Whilst holding the charge for offence under Section 498A/34 IPC to have been proved, the case for the prosecution for the offence of dowry death punishable under Section 304 B IPC was also held brought home on the basis of presumption under Section 113-B of the Evidence Act. The rule of presumption in the statutory provision reads as under:-

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman 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 (45 of 1860).]

30. Having regard to the observations made earlier, we are not satisfied with the evidence indicating cruelty or harassment meted out to the victim to be “for, or in connection with, any demand for dowry”. The fact that the family members of Hemant had intervened and pacified the matter on 27th September, 2007 and Bachan Singh (PW-2) and Satender Kumar Singh (PW-3), and others who had come with them, were satisfied would contra-indicate the claim that money or dowry was demanded. In these circumstances, we are unable to uphold the view taken by the trial court for invoking the presumption under Section 113-B of Evidence Act or holding the charge of dowry death under Section 304 B IPC to have been proved.

31. We must, however, note here that the offence under Section 498 A IPC is not necessarily connected to harassment of a married woman to coerce her or her relatives to meet unlawful demands for property, dowry etc. The offence of cruelty to the married woman is defined in

Section 498A IPC to cover and include other wilful conduct unconnected with the dowry demands.

32. Before proceeding further, we may extract the provision contained in Section 498A IPC which reads thus:-

“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.”

33. A bare reading of the above provision would show that “cruelty” of the nature covered by explanation (b) is relatable to the presumption clause under Section 113-B of the Evidence Act leading to conviction for the offence under Section 304 B IPC. Failure of the prosecution to prove such cruelty as is covered by the restricted meaning of the expression given in explanation (b) to Section 498 A IPC does not

mean the charge under Section 498A IPC should also fail. If the prosecution is able to show from the evidence that the accused had subjected the victim to “cruelty” within the mischief of explanation (a), the said charge can still be held proved. Further, even if the charge of dowry death (under Section 304 B IPC) is not established, in a case where the married woman has died on account of suicide committed against backdrop of cruelty by his husband or his relatives, it can still be examined if the husband or his relatives have been guilty of abetment of suicide, which itself is an offence punishable under Section 306 IPC.

34. The word “abetment” is defined in Section 107 IPC as under:-

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First — Instigates any person to do that thing; or

Secondly —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act”.

35. For present context, it is pertinent to take note of another rule of presumption as contained in Section 113-A of the Evidence Act which provides thus:-

“113-A. 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)”.

36. If the rules of presumption contained in Section 113-B and 113-A of the Evidence Act were to be compared, it would be noticed that the former is intended to cover cruelty of the nature described in explanation (b) whilst the latter takes care of cruelty of the nature specified in explanation (a) of Section 498 A IPC. It is essential in both for the victim to be a woman who must have suffered unnatural

death within a period of seven years from the date of her marriage, the death being preceded by cruelty of the specified nature. It is pre-requisite of Section 113-A of Evidence Act that the death must have occurred on account of suicide.

37. Upon arguments being raised for the conviction to be converted from one under Section 304 B IPC into one under Section 306 IPC, the learned counsel for the appellants pointed out that no charge for the latter offence was framed. This objection, however, needs only to be noted and rejected for the reason the law permits, per Section 222(2) Cr.P.C. for an accused acquitted of the offence of a higher degree to be convicted for lesser offence, without a formal charge being framed, though, of course, depending on actual evidence on record. [*K Prema S. Rao & Anr. Vs. Yadla Srinivasa Rao & Ors.*, (2003) 1 SCC 217]

38. The prosecution has been successful in bringing home the facts that the victim having become a mother within one year of her marriage was feeling harassed in the matrimonial home. Her grievances were essentially directed against the conduct of the husband. She was constrained to commit suicide by self-immolation much before completion of second year of her marriage. There is nothing to show that the deceased was a person hyper-sensitive to ordinary petulance, discord or differences arising out of day-to-day life. It is not a matter of routine that a young mother, nursing an infant of 7/8 months' age, would suddenly for no reason decide to take her own life. She had made an attempt to lodge protest and seek recourse

to police intervention just one day before committing suicide. Though the DD entry which was lodged on 27.9.2007 generally noted her grievance about harassment in the matrimonial home, during enquiry it came out that she was in deeply disturbed state of mind on account of conduct of the husband (appellant Hemant). The fact that after the relatives (on both sides), perhaps with addition of some counsel from the police official, had attempted to bring about rapprochement on that day (27.9.2007), she felt gagged and constrained to bring an end to her misery by committing suicide. This is indicative of she having reached a point of no return, having faced extreme circumstances of cruel treatment.

39. Thus, we have no hesitation in concluding that though cruelty or harassment by the husband (appellant Hemant) was not for, or in connection with, demands for dowry, his wife (the victim) committed suicide due to his wilful conduct of such nature as had gravely affected her mental wellbeing in the matrimonial home, constituting cruelty within the meaning of clause (a) of the explanation appended to Section 498A IPC. [*Thanu Ram vs. State of MP (2010) 10 SCC 353*]

40. In the facts and circumstances, reliance by the defence on *Harjit Singh v. State of Punjab (2006) 1 SCC 463*; *Amalendu Pal @ Jhantu v. State of West Bengal (2010) 1 SCC 707* and *M. Mohan v. State AIR 2011 SC 1238* is misplaced as the factual matrix in the case at hand is distinguishable. In *Harjit Singh*, there was no proof of suicide being the cause of death. In *Amalendu Pal @ Jhantu*, the prosecution had

not adduced any evidence of instigation or provocation. In *M. Mohan*, the proximate link between the cause of grouse and suicide was missing.

41. For the foregoing reasons, we find that the prosecution has proved that the husband (appellant Hemant) had subjected his wife (the deceased) to cruelty within the meaning of the expression defined in explanation (a) appended to Section 498A IPC. Since it is proved that the victim had committed suicide within a period of seven years from the date of her marriage with appellant Hemant, the death being preceded by his conduct subjecting her to cruelty, there is a case made out for presumption to be raised under Section 113-A of the Evidence Act about the husband (appellant Hemant) having abetted the commission of suicide by her, which constitutes offence punishable under Section 306 IPC.

42. In the result, the conviction of the appellant Hemant for offence punishable under Section 498A IPC, and order on sentence there against as awarded by the trial court, is upheld. The conviction under Section 304 B IPC recorded by the trial court is modified to the lesser charge for the offence under Section 306 IPC. In the facts and circumstances, while we set aside the punishment awarded for the offence under Section 304 B IPC, we sentence the appellant Hemant to rigorous imprisonment for eight years with fine of ₹10,000/- for offence under Section 306 IPC. In case of default in payment of fine, he shall undergo further simple imprisonment for three months. Both

the substantive sentences run concurrently and he shall be entitled to set off for the period of detention during investigation, trial and pendency of appeal under Section 428 IPC.

43. The appeal of Hemant stands disposed of in the above terms.

44. It is, however, clear from the facts and circumstances brought home that the charge for the offence under Section 498 A IPC levelled against the relatives of the husband cannot be held to be proved. It is well-settled that cruelty within the meaning of Section 498A IPC must be persistent, grave and unbearable and must have been inflicted with an intention to force the woman to end her life or to cause grave injury or danger to her mental or physical well-being. They had participated in the mediation and compromise talks.[See *Randhir Singh & Anr. Vs. State of Punjab (2004) 13 SCC 129*]

45. The mother-in-law (Lalwati) has since died and the case against her has abated. The allegations made by Bachan Singh (PW-2) and Satender Kumar Singh (PW-3) about the victim having been set afire by the appellants have been found to be untrue. The allegations of harassment for dowry are also not convincing. The case set up by Bachan Singh (PW-2) about physical assault indulged in by the appellants on 27.9.2007 is not substantiated.

46. The appeals of said convicted appellants namely Sony @ Sangeeta, Maya, Ajit, Kamlesh, Anita and Dharampal are allowed. Their conviction and sentences are set aside. They stand acquitted of

all charges. They were released on bail by various orders pending hearing on their appeals. The bail bonds furnished by them are discharged.

47. Appellant Hemant be informed about the result of his appeal by a copy of this judgment to be supplied to him through Superintendent jail.

**R. K. GAUBA
(JUDGE)**

**SANJIV KHANNA
(JUDGE)**

DECEMBER 16, 2015
ss/nk