

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-792-DB-2011

Date of decision: 24.05.2017

Munish Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

H.S. MADAAN, J.

This appeal has been preferred against judgment dated 26.05.2011 passed by the Court of learned Additional Sessions Judge, Karnal vide which he had convicted accused Munish Kumar for an offence under Section 304-B (2) of the Indian Penal Code ("IPC"- for

short) and order of sentence dated 27.05.2011 vide which the said Court had sentenced the accused to undergo imprisonment for life, clarifying that the word “imprisonment for life” must be treated as rigorous imprisonment for the whole of the remaining period of the convict’s natural life.

The accused-convict, who is appellant before this Court prays that the appeal filed by him be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Briefly summed up, the prosecution story is that on 22.03.2010 Inspector Rakam Singh, SHO of Police Station Assandh (hereinafter referred to as the Investigating Officer/I.O.) alongwith other police officials was travelling in an official vehicle and returning to Police Station Assandh after checking law and order situation at village Salwan. When the vehicle carrying the police party was near Salwan Chowk, Assandh, then complainant-Rohit Sharma, aged about 20 years, son of Late Shri Muni Lal, resident of 93/1480 Baldev Nagar, Ambala City accompanied by his maternal uncle Kuldeep Ram got his statement Ex.PC recorded with the Investigating Officer, wherein he stated that his sister Indu was married with accused Munish son of Sahab Dayal resident of ward No.15, Adarash Nagar, Opposite Bus Stand Assandh according to Hindu rites on 31.08.2007. At that time, his parents had given dowry articles beyond their means but that failed to satisfy Munish-husband, Darshana mother-in-law and Sahab Dayal father-in-law of Indu and they

used to harass her for bringing inadequate dowry; that on 25.01.2008 husband and parents-in-law of Indu gave her beatings for that very reason. According to the complainant, on coming to know about that, he along with his eldest sister-Kavita and her husband Navdeep Mehta went to the matrimonial home of Indu at Assandh and talked with her husband and parents-in-law, who admitted their fault. As such, complainant, his sister-Kavita and Kavita's husband Navdeep Mehta returned to their places after pacifying Indu; that on 17.03.2010 Indu made a call from her mobile phone No.92555-10125 on mobile phone of complainant Rohit Sharma bearing No.92544-77296 informing that her husband-Munish had given her beatings for not giving a car in dowry. As such, the complainant went to the matrimonial home of Indu and talked to her. He found that she had suffered injuries below left eye and on her back. The complainant asked from Munish the reason for giving beatings to Indu, to which he replied that the complainant side had promised to give a car but that promise had not been kept till then. The complainant asked Munish that some more time be given to them, to fulfill his demand for car. *Inter alia* in the statement, the complainant stated that he pacified his sister-Indu and returned home; that Indu had a son aged about 1 ½ years. According to the complainant, his father had expired on 01.11.2007; that on 22.03.2010 at about 7:30 p.m. the complainant received a telephonic message that his sister Indu had died due to burns. On receipt of that information, the complainant alongwith his maternal uncle Kishore Kumar, Kuldeep Ram, his mother Sunita Rani and other relatives reached matrimonial home of

Indu at Assandh and observed that dead body of Indu was lying under a Neem tree in a vacant plot adjoining to their house and it was in burnt condition. According to the complainant, his sister-Indu was burnt either after killing her or killed by burning by her husband-Munish, mother-in-law Darshana and father-in-law Sahab Dayal for bringing inadequate dowry. He sought taking of legal action against the culprits.

The statement Ex.PC was signed by Rohit Sharma in English, his signatures were attested by Inspector Rakam Singh and the latter put his endorsement Ex.PC/1 below that statement and sent ruqa to police station through HC Nafe Singh, on the basis of which formal FIR Ex.PC/2 for offences under Sections 304-B/34 IPC was registered at Police Station Assandh by SI Suresh Chander. SI Suresh Chander appended his endorsement Ex.PC/3 to the original ruqa and sent it back to the Investigating Officer alongwith a copy of the FIR.

Thereafter the police party accompanied by the complainant went to the place of occurrence. Sh. Madan Lal, DSP Assandh had also reached there, so had the FSL team. After inspection of the spot and dead body, FSL team gave certain directions to the Investigating Officer. The Investigating Officer took photographs Ex.PR/1 to Ex.PR/5 of dead body and place of occurrence with a digital camera. He prepared rough site plan of place of occurrence as Ex.PS. He took into possession articles Ex.MO-1 to MO-8 lying near the dead body vide recovery memo Ex.PQ. He recorded statements of witnesses, carried out inquest proceedings with regard to dead body of Indu preparing report Ex.PT in that respect. He

sent dead body of Indu to CHC Assandh through HC Nafe Singh for the purpose of post-mortem examination conducted thereon. He had handed over an application Ex.PU prepared by him and addressed to Medical Officer, General Hospital, Assandh containing request for conducting post-mortem examination on the dead body of Indu. Then the police party started return journey for the Police Station. On the way at bus stand Assandh the police party came across HC Nafe Singh who handed over copy of post-mortem report of Indu to the Investigating Officer. The police party searched for the accused but they could not be nabbed. On reaching the police station, the Investigating Officer deposited the case property with the MMHC.

On 23.03.2010 accused Munish Kumar, Sahab Dayal and Darshana Devi were arrested in this case. They were taken to Police Station Assandh and put in police lock up.

On 24.03.2010 the complainant and his mother Sunita came to Police Station Assandh alongwith Kishore Kumar to know about progress of the case. In their presence, accused-Munish Kumar was interrogated, during the course of which he suffered a disclosure statement Ex.PE regarding commission of the present crime and concealment of dowry articles including gold ornaments stating that he could get the same recovered from his house. Thereafter accused-Munish, while in police custody led the police party to his house and got the dowry articles recovered from his possession from the specified place, which were seized vide recovery memo Ex.PF. The Investigating Officer recorded

statements of witnesses, on return to the police station, he deposited the case property with MMHC and put accused-Munish in the lock up. On that very day all the three accused were produced before the Illaqa Magistrate. Accused-Munish was remanded to police custody, whereas accused-Sahab Dayal and Darshna Devi were remanded to judicial custody. Accused-Munish was lodged in police lock up.

On 25.03.2010, while being interrogated, accused-Munish had made a statement under Section 27 of the Evidence Act Ex.PG regarding concealment of two gold rings and one gold chain in his house stating that he could get those articles recovered. Subsequently, such accused while in police custody got those jewellery items recovered, which were seized vide memo Ex.PH. Statements of witnesses were recorded. On reaching the police station case property was deposited with MMHC, whereas accused-Munish was put in police lock up.

On 03.04.2010 the Investigating Officer recorded statement of Suraj Bhan EASI, and moved application Ex.PK for supplying call details of the mobile phone mentioned in the application. HC Deepak Kumar accordingly handed over such call details, which were taken into possession vide recovery memo Ex.PN.

On 09.04.2010, complainant-Rohit Sharma had produced photographs of marriage of his sister-Indu, which was seized vide memo Ex.PV, the photographs being Ex.PV/1 and Ex.PV/2. Supplementary statement of complainant was recorded. On 21.04.2010 complainant Rohit Sharma produced VCD (Ex.PW/1) of the marriage of his sister,

which was taken into possession vide recovered memo Ex.PW. Supplementary statement of complainant Rohit Sharma was recorded.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Sub-Divisional Judicial Magistrate, Assandh. Copies of documents relied therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C..

Then finding that offence under Section 304-B IPC is exclusively triable by the Court of Sessions, the Sub-Divisional Judicial Magistrate, Assandh committed the case to the Court of learned Sessions Judge, Karnal vide his order dated 26.05.2010, from where it was entrusted to the Court of learned Additional Sessions Judge, Karnal.

On receipt of the challan, finding a prima facie case, charge for the offence under Section 304-B read with Section 34 IPC was framed against the accused, to which he pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as nine witnesses as per details below:-

PW-1 EHC Virender Singh deposed that on 22.03.2010, while he was posted as Constable at Police Station Assandh, on that day SI Suresh Chander handed over to him three envelopes for delivering the same to Illaqa Magistrate, S.P. Karnal and D.S.P. Assandh, respectively. He accordingly did so without any tampering and delay.

PW-2 EHC Vir Shakti Singh, Draughtsman, Police Lines,

Karnal deposed that on 30.03.2010, while posted as such, he had prepared scaled site plan Ex.PA of the place of occurrence on pointing out of Inspector Rakam Singh, SHO, Police Station Assandh after visiting the spot.

PW-3 Dr. Shakuntala, Medical Officer, General Hospital, Assandh deposed that on 22.03.2010, she was posted as such and on that day a board of doctors was constituted comprising her and Dr. Gurpreet Singh. They conducted post mortem examination on the dead body of Indu wife of Munish, aged 23 years, resident of Ward No.15, Adarsh Nagar, Assandh. The length of body was 5' 1-1/2". There were ornaments on the body of deceased, as per police papers. Rigor mortis was present all over the body. There was no cloth over the body. The body was lying in a position of abducted shoulder bilateral, flexed at elbow and wrist and inter phalangeal joints (pugilistic attitude). There was 100% deep burns present all over the body; black in colour, subcutaneous fat was visible lower part of the abdomen and medial part of bilateral thigh and bilateral arms. Deep burns were present bilateral sole of foot and bilateral palm of hand. Walls, ribs and cartilage were healthy, pleura healthy and congested, larynx and trachea congested and did not contain any black soot particles, there was fracture hyoid bone and thyroid cartilage, lungs were healthy and congested, left side heart was empty. Peritoneum was healthy and congested froth present in mouth and nostril, tongue protruded, pharynx and esophagus healthy and congested.

The witness stated that in her opinion the cause of death was

due to asphyxia, due to strangulation could be ruled out, which was ante-mortem in nature. She proved copy of the post-mortem report as Ex.PB.

PW-4 Rohit Sharma-complainant supported the prosecution story on material aspects, so did his mother PW-5 Sunita Rani.

PW-6 EASI Suraj Bhan, Police Lines, Karnal deposed that on 22.03.2010, he was posted as MMEASI at Police Station Assandh. He tendered his affidavit Ex.PJ requesting that it be read as part of his statement.

PW-7 HC Deepak Kumar from Cyber Cell, S.P. Office, Karnal testified that on 23.03.2010 Inspector Rakam Singh, SHO Police Station Assandh had moved an application Ex.PK before him for supplying call details of mobile No.92555-10125, 92544-77296 and 98961-23884 for the period from 17.03.2010 to 21.03.2010; that he had supplied him ID of mobile No.92555-10125 in the name of Munish Kumar son of Sahab Dayal resident of Kheri Saraf Ali, Assandh. He stated that ID Ex.PL and CDR Ex.PM had been taken into police possession vide recovery memo Ex.PN on 03.04.2010.

PW-8 ASI Krishan Kumar, who was associated with investigation of this case on 22.03.2010 deposed regarding what had transpired in his presence. He stated that from the place of occurrence where dead body was lying, one partially burnt black colour plastic can of 10 litres containing some liquid Ex.MO-1, one plastic bottle containing 500 ML of some liquid of orange colour Ex.MO-2, one partially burnt plastic chappal Ex.MO-3, one cotton swab Ex.MO-4 having blackening

on it stated to be taken from the wall, soil powder Ex.MO-5 stated to be taken from beneath the dead body, one partially burnt and broken match box Ex.MO-6, one piece of cloth partially burnt having bunch of hair Ex.MO-7, one piece of red cloth partially burnt Ex.MO-8 having bunch of hair were taken into police possession vide recovery memo Ex.PQ preparing separate sealed parcels thereof sealed with the seal having inscription "KK". The seal after use was handed over to PW Kuldeep Rai.

PW-9 Inspector Rakam Singh the Investigating Officer of this case deposed regarding the investigation conducted by him proving various documents.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case.

Further, in addition to pleading false implication accused- Munish Kumar took up a plea that his father Sahab Dayal and mother Darshan Devi used to live permanently in village Kheri Saraf Ali because his father was running a shop in the village and he also owns his ancestral house in the same village; that his mother also resides over there; that on the day of occurrence both the of them were in village Kheri Saraf Ali itself; that he never made any demand of any car etc.; that similarly his father and mother also never made any dowry demand; that on the day of occurrence he was way to Bazar at Assandh on his motor cycle in the

evening; that there he came to know from somebody that smoke was coming out of his house and thereafter he rushed there and on reaching there he found that his wife was lying in a burnt condition in the back courtyard of his house; that he immediately reported the matter to the police; that he also informed his in-laws; that he had sent a message to his parents who were residing in village Kheri Saraf Ali at Assandh; that one Kuldeep Singh maternal uncle of his wife who is ASI in police department contacted the local police and managed to lodge a false case against him and his parents; that Kuldeep aforesaid also managed to obtain a false post-mortem report in connivance with the doctor and the local police and that he had involved his entire family in a false case in connivance with the local police.

Accused-Sahab Dayal further took up a plea that he alongwith his wife Darshan Devi used to live permanently in village Kheri Saraf Ali because he was running a shop in the village and also owns ancestral house in the same village; that both of them live permanently in the village; that on the day of occurrence both of them were in village Kheri Saraf Ali itself; that they never made any demand of any car etc.; that on the day of occurrence they were present at village Kheri Saraf Ali; that they came to know about the occurrence from their son through telephone in the village and thereafter they rushed to Assandh alongwith Darlabh Singh the then Sarpanch of village Kheri Saraf Ali and on reaching there they found that wife of his son was lying in a burnt condition in the back courtyard of her house; that his son immediately

reported the matter to the police and his in-laws; that one Kuldeep Singh, maternal uncle of his daughter-in-law who is ASI in police department contacted the local police and managed to lodge a false case against them; that aforesaid Kuldeep Singh also managed to obtain a false post-mortem report in connivance with doctor and the local police; that he had involved the entire family in a false case in connivance with the local police and that they have a separate ration card in village Kheri Saraf Ali and had also other documentary proof in order to prove that they had been permanently residing in the village itself.

Accused-Darshna Devi adopted the plea as taken by accused Sahab Dayal.

During defence evidence accused examined as many as five witnesses as per details below:-

DW-1 Dr. Neera Garg, private practitioner, Neera Nursing Home, 8, Jarnaily Colony, Karnal had brought the summoned record stating that as per her register one Indu resident of Assandh had come to her clinic for Copper T check up and on examination Copper T thread was not seen so, she advised her to get an ultra sound done to know whether the Copper T was inside the uterus or not; that as per her advise the ultrasound was done and it showed the Copper T was inside the uterus; This witness proved the ultra sound report of Indu as Ex.D8, ultrasound film Ex.D9 adding that the Copper T was removed on the same day. She further added that on 07.03.2010 Indu was examined and prescribed medicines and test as per the prescription slip Ex.D10. Again on

19.03.2010, Indu came to her clinic for follow up treatment, prescription slip being Ex.D11. The witness stated that the entries of the patient are also mentioned in the OPD register on 07.03.2010 and 19.03.2010, which she had brought with her to the Court on that day.

DW-2 Dharambir, Registration Clerk, SDM Office, Assandh had brought the summoned record stating that in terms of that record Sahab Dayal son of Gurdas Mal resident of Village Kheri Saraf Ali had applied for driving licence and accordingly, the driving licence was issued to him vide entry No.5982 dated 04.12.2000 on completion of necessary formalities. He proved copy of driving licence Ex.D12.

DW-3 Satyawar, Reader to Tehsildar, Assandh had brought the summoned record stating that in terms of that record Sahab Dayal son of Gurdas Mal resident of village Kheri Saraf Ali had applied for income certificate which was issued to him on 27.10.2009 vide entry No.59 dated 27.10.2009. He proved the original certificate bearing signatures of Teshildar as Ex.D13 adding that such certificate had been issued after verification of the antecedent through Patwari of that area.

DW-4 Pritpal Singh, Inspector, Legal Metrology, Karnal-II had brought the summoned record adding that on 27.11.2010, he had inspected shop of M/s Sahab Dayal Kirayana village Store Kheri Saraf Ali and had checked the weights and issued certificate Ex.D14 and weights were found as per the requirement of law.

DW-5 Darlabh Singh, Ex-Sarpanch village Kheri Saraf Ali, District Karnal stated that he is native of village Kheri Saraf Ali and he

knows accused-Sahab Dayal and Darshana Devi, who had shifted from Amritsar to his village in the year 1992 after the riots in the year 1984; that they are having residential house in the village and Sahab Dayal is also running a shop from part of his house. The witness stated that, he was elected as Sarpanch of village Kheri Saraf Ali in the year 2005-2006 and during that period Panchayat used to collect house tax from the inhabitants of the village. However, Government had abolished the house tax in the year 2007 onwards. The witness had brought the house tax register of his village and name of Sahab Dayal-accused was mentioned at Sr. No.340 in the said register regarding collection of house tax. He proved copy of that register as Ex.D15. Going further this witness stated that he knows accused-Munish Kumar, who was married with deceased in the year 2007; that Munish Kumar was residing separately with his wife at Assandh; that since 1994 Sahab Dayal had never resided at Assandh and he is running his shop independently in the village; that on 21.03.2010, while he was present at village on that day he came to know from accused-Sahab Dayal that wife of Munish Kumar had committed suicide by burning herself. Thereafter, he alongwith Sahab Dayal went to the house of accused-Munish Kumar at Assandh and found that dead body of wife of accused-Munish Kumar was lying in the house, as such, he alongwith Sahab Dayal and his wife went to Police Station Assandh.

With that the defence evidence of accused got concluded.

After hearing arguments, learned trial Court convicted and sentenced accused-appellant-Munish Kumar as mentioned above, whereas

accused-Sahab Dayal and Darshana Devi were acquitted of the charge framed against them.

Accused/convict-Munish Kumar felt aggrieved by the impugned judgment of conviction and order of sentence and as such he has approached this Court and filed the present appeal.

We have heard learned counsel for the appellant/accused-convict and learned Assistant Advocate General, Haryana, besides, going through the record.

In the instant case accused-Munish Kumar has been convicted for an offence under Section 304-B IPC, which deals with dowry death. For ready reference the provision is reproduced as under:-

“(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.”

A perusal of the provision goes to show that the necessary ingredients of this offence are:-

- (a) death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- (b) death of that woman should have occurred within seven years of her marriage;
- (c) the deceased married woman was subjected to cruelty or harassment by her husband or any relative of her husband;
- (d) such cruelty or harassment must be for, or in connection with, demand for dowry; and
- (e) such cruelty or harassment of the deceased married woman should have been soon before her death.

Section 113-B of the Indian Evidence Act, 1872 relates to presumption as to dowry death: - It provides that *when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.*

As per *explanation to this section*:- For the purposes of this section, “dowry death” shall have the same meaning as in section 304-B, of the Indian Penal Code.

Coming to the present case, this fact is not in dispute that deceased was legally wedded wife of accused-Munish Kumar, their marriage having taken place according to the Hindu rites on 31.08.2007. Rohit Sharma-complainant, a brother of the deceased had categorically stated so while appearing as PW-4, so had PW-5 Sunita Rani mother of the deceased. They have not been challenged in that regard in their cross-examinations. This is also not much in dispute and is rather established on the file that Indu had died an unnatural death in the matrimonial home on 21.03.2010, which comes out to be within less than three years of the marriage. From testimony of PW-3 Dr. Shakuntla, Medical Officer, General Hospital Assandh, who was member of board of doctors constituted to perform post-mortem examination on dead body of Indu, it comes out that Indu had suffered 100% deep burns all over her body and she had been strangled resulting in asphyxia which was ante mortem in nature. The detailed position is given in the post-mortem report Ex.PB.

Thus it comes out that Indu, legally wedded wife of Munish Kumar-accused had died in the matrimonial home within 7 years of her marriage and her death was caused by burns / bodily injury, rather she had died otherwise than under normal circumstances.

Next coming to the question as to whether she was subjected to cruelty or harassment by her husband or relatives of her husband. Complainant-Rohit Sharma, who happens to be brother of deceased-Indu, in his statement made to the police, which formed basis for registration of the FIR, has categorically stated that at the time of marriage between Indu

and accused-Munish, his parents had given dowry beyond their means but Indu's husband and her parents-in-law were not satisfied with the dowry given by them; they used to harass and beat her up for bringing inadequate dowry. He has given instances in that regard in his statement stating that on 25.01.2008, the accused had given beatings to Indu for bringing inadequate dowry. On coming to know about that he alongwith his eldest sister-Kavita and Kavita's husband Navdeep Mehta had gone to matrimonial home of Indu at Assandh and talked to Indu's husband and parents-in-law, who admitted their fault and they returned after pacifying Indu. He had further mentioned that on 17.03.2010, his sister-Indu told him on mobile No.92544-77296 calling from her mobile No.92555-10125 that her husband-Munish had given her beatings for not bringing car in dowry. On receiving that information, he went to matrimonial home of Indu, talked to her and observed that injuries were there on her left eye and on her back. Then he asked her husband, the accused, the reason for giving beatings to which he replied that the complainant side had promised to give car but same had not been given. Then he told him that some more time be given and his such demand would be fulfilled. Thereafter, he returned after pacifying his sister-Indu. Further on 22.03.2010 they received a telephonic message that Indu had died due to burn injuries. Complainant-Rohit Sharma getting his statement recorded as PW-4 and his mother appearing as PW-5 have categorically deposed in that regard. Their such contentions are fortified by the call details proved by PW-7 Deepak Kumar from Cyber Cell, S.P. Office, Karnal. Such call

details Ex.PM point out that there had been frequent conversations between the deceased and her brother Rohit Sharma from their respective mobile phones, inasmuch as on 17.03.2010 itself three calls were made from mobile phone No.92555-10125 at mobile phone No.9254477296 of the duration of 554, 138, 182 seconds which were of quite long duration. Then on 18.03.2010 a call had been received for 315 seconds, on 20.03.2010 a call was made for 400 seconds for unusually long time, which goes to corroborate the version of the prosecution that deceased had been informing her brother regarding her miserable condition at hands of her husband. Since parents-in-law of deceased have been acquitted by the trial Court and the State has not filed any appeal challenging their acquittal, as such, only criminal liability of husband of deceased is to be analyzed and determined since qua parents-in-law of deceased, the chapter stands closed.

Learned counsel for the appellant has contended that since no certificate under Section 65-B (4) of the Indian Evidence Act, 1872 has been appended, hence the call details are inadmissible in evidence. In support of his such argument he has referred to authorities ***Anvar P.V. vs. P.K. Basheer and others, AIR 2015 SC 180*** and ***Harpal Singh @ Chhota vs. State of Punjab, 2016(4) RCR (Criminal) 936*** by Hon'ble Supreme Court. However, we find that call details in this case were generated by PW-7 HC Deepak Kumar from Cyber Cell, S.P. Office, Karnal and while appearing as witness for prosecution he deposed on oath in that regard. He has not been challenged seriously in that respect by the defence and

only question which was put to him and to which he replied was that from the record he could not tell as to what voice conversions had taken place. Furthermore, the primary evidence in this case is available in the form of statement of complainant, who had stated that his deceased sister used to speak to him on mobile phone, which fact is corroborated from records of the call details, no objection was taken when statement of HC Deepak Kumar (PW-7) was recorded and the call details were exhibited. As already observed PW-7 HC Deepak Kumar has not been challenged as regards the authenticity of the information generated and supplied by him. However even if the call details are not taken into consideration even then that does not affect the prosecution case adversely.

Learned counsel for the appellant had further argued that mobile phone No.92555-10125 had been registered in the name of accused-Munish and it cannot be presumed that the deceased used to have its custody and she would use the same. However, learned Assistant Advocate General, Haryana has countered the contention stating that from the evidence brought on file in the form of statement of complainant-Rohit Sharma (PW-4) and his mother PW-5 Sunita Rani, it comes out that this mobile phone No.92555-10125 was being used by deceased. Merely because the connection was not in name of deceased, does not mean that she could not have possibly used this mobile phone. As deposed by PW-4 Rohit Sharma and PW-5 Sunita Rani, on 17.03.2010, Indu had sent a message from her mobile No.92555-10125 on mobile No.92544-77296 to the effect that she was being given beatings by her husband.

After hearing the rival contentions, we find that it stands established on record that mobile phone No.92555-10125 though in the name of accused-Munish, was also being used by his wife, the deceased. There are frequent instances when connection is taken in the name of head of the family or some elderly person, which is then used by some other members of the family also. Therefore, this argument of learned counsel for the appellant does not cut much ice.

As regards contention of learned counsel for the appellant that the complainant side has been financially weak and not in a position to give costly dowry items to their daughter and no such dowry was given or accepted at the time of engagement or marriage between deceased and accused. With regard to his above contention he has referred to testimony of PW-4 Rohit Sharma, who admitted in his cross-examination that his father was ill at the time of marriage of his sister with Munish-accused and prior to that his father was undergoing treatment by a doctor at Ambala running Sanjeevani Hospital since his liver was completely damaged. He had further admitted it as correct that at the time of marriage of his sister-Indu his father was only bread earner and at that time he was student of 10+2 class; that his father was drawing salary of ₹12/13 thousand per month; that his father was retired compulsorily by the department due to his illness one year prior to the marriage of his sister-Indu. He had further admitted that they were managing the expenses for the treatment of his father from his maternal uncle and other close relations and that at the time of engagement both the families were fully

aware of the financial position of each other. The witness admitted that at the time of engagement, there was no demand of any dowry from the accused side and even at the time of marriage there was no demand and accused party was fully satisfied and happy with the dowry articles which they had given to them. He referred to similar types of admissions made by PW-5 Sunita Rani in her cross-examination while coming up with an argument that there could not possibly be any occasion to demand dowry at a later stage and the case of the prosecution in that respect appears to be highly improbable.

True that PW-4 and PW-5 had stated that at the time of engagement ceremony and marriage ceremony between Indu and accused-Munish no demand of dowry was raised and the accused side was satisfied with whatever was given at that time. But then strange is human psychology and it is very difficult to understand the same. The element of greed may creep in mind of a person all of sudden and without any ostensible or apparent reason. A perfectly gentle person may succumb to the temptation of getting easy money by arm twisting his in-laws and no justifiable reason for such transformation can be given. Though from the admission made by PW-4 and PW-5 in their cross-examinations it seems that initially there was no demand of dowry by the accused from his in-laws, but after the marriage his raising such demands directly and through his wife Indu and harassing & maltreating Indu for not getting those demands fulfilled stands proved on the record. Indu, a young married woman having an infant child would not have ended her life herself, rather

it is not a case of suicide but a case of homicide. From the evidence brought on file by the prosecution, especially the medical evidence and other facts and circumstances it comes out that Indu was strangulated and was then burnt, which was done in a very cruel and gruesome manner. It is also established on file that soon before her death she was subjected to cruelty and harassment by her husband-Munish (accused) in connection with demand of dowry. Presumption under Section 113-B of the Indian Evidence Act is also there and it is a clear cut case of dowry death.

Learned counsel for the appellant has referred to various authorities in support of his contention that there was no demand of dowry by the accused from his in-laws either directly or through his wife deceased-Indu, as such, no offence under Section 304-B IPC is made out and it was rather a case of suicide, which are as under:-

- i. *Asha and another vs. State of Uttarakhand, 2013(4) RCR (Criminal) 1024 (SC).*
- ii. *Meka Ramaswamy vs. Dasari Mohan, 1998(1) R.C.R. (Criminal) 581 (SC).*
- iii. *Hem Chand vs. State of Haryana, 1994(3) R.C.R. (Criminal) 625 (SC).*
- iv. *Paramjit Singh and another vs. State of Punjab, 2002(3) R.C.R. (Criminal) 830 (P&H) (DB).*

However, we find that facts and circumstances of those cases were quite different. Here all the necessary ingredients of offence under Section 304-B IPC including harassing of deceased at the hands of her

husband the accused, in connection with demand of dowry soon before unnatural death of deceased stands adequately established on record. Therefore, these authorities are not of much help to the case of accused/appellant-convict.

One more argument put forward by learned counsel for the appellant was that opinion regarding death given by the doctor, who had performed post-mortem examination is not definite.

We have gone through statement of PW-3 Dr. Shakuntla, who in her cross-examination stated that she is working as Medical Officer for last about 1 $\frac{3}{4}$ years, whereas Dr. Gurpreet Singh other member of the Board of doctors is working as Medical Officer for last one year. Those doctors were relatively inexperienced and for that reason they might have carried out certain cuttings in post-mortem report, but those are not much material. This doctor had stated that in her opinion cause of death was only due to asphyxia, then adding that possibility due to strangulation cannot be ruled out, which was ante-mortem in nature. Lack of clarity on her part seems to be due to inexperience but that does not make much difference since the fact is established that Indu had died an unnatural death in her matrimonial home and even otherwise under Section 106 of the Indian Evidence Act, accused-Munish being husband of deceased was expected to have special means of knowledge regarding her death but he remained mum in that regard. There is nothing to show that some other person used to reside with them who might have committed the crime. It is certainly not a case of any intruder coming to the house and causing

death of the deceased. Photographs of the dead body and the place of incident also corroborate the prosecution case.

In view of the detailed discussion above, the prosecution has successfully proved its case against the accused beyond a shadow of reasonable doubt. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction is upheld.

As regards the sentence part, the appellant has been sentenced to undergo life imprisonment clarifying that word “imprisonment for life” must be treated as rigorous imprisonment for the whole of the remaining period of the convict’s natural life. However, keeping in view the facts and circumstances of the case, we find that the sentence be imposed as imprisonment for life but without any rider that it is to last for remaining period of convict’s natural life.

With such modification in the sentence part the appeal stands dismissed.

Necessary directions be issued to the quarter concerned.

24.05.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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|----|------------------------------|------------|
| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |