

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

**1. CRA-D-513-DB-2003
Date of decision:17.03.2017**

Ramesh Chand and others

.....Appellants

Versus

State of Haryana

.....Respondent

2. CRR-1985-2003

Dhanpat Rai

.....Petitioner

Versus

Ramesh Chand and others

.....Respondents

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

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep S. Sandhu, Advocate
for the appellants in **CRA-D-513-DB-2003**.

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

Mr. Saurabh Dalal, Advocate
for the petitioner in **CRR-1985-2003**.

H.S. MADAAN, J.

Vide this judgment we propose to dispose of **CRA-D-513-DB-2003** filed by accused-convict Ramesh Chand (since dead) and others against State of Haryana and **CRR-1985-2003** filed by complainant-Dhanpat Rai against Ramesh Chand and others, all of them aggrieved by impugned judgment dated 06.05.2003 passed by the Court of Additional Sessions Judge, Panipat vide which accused-Ramesh Chand (since dead), Pawan and Kanta (since dead) were convicted for offences under Section 304-B and Section 498-A of the Indian Penal Code ("IPC" for short) and order of sentence dated 07.05.2003 sentencing them to undergo rigorous imprisonment for life for the former offence and to undergo rigorous imprisonment for two years and to pay a fine of ₹2,000/- each for the latter offence and in default of payment of fine to further undergo rigorous imprisonment for three months. All the substantive sentences were ordered to run concurrently.

Appellants-accused prayed that the impugned judgment and order of their conviction and sentence be set-aside by way of acceptance of their appeal **CR-A-D-513-DB-2003** and they be acquitted of the charge framed against them. Whereas by way of filing **CRR-1985-2003**, complainant-Dhanpat Rai prayed that revision petition be accepted and the impugned judgment and order of sentence be modified as regards acquittal of accused-Seema and heavy amount of fine be imposed upon all the four

accused out of which due compensation be awarded to the petitioner.

Briefly stated the prosecution story as it unfolded during the trial is that complainant-Dhanpat Rai submitted a written application Ex.PA dated 12.06.1999 addressed to the SHO, Police Station, Samalkha, in which he had contended that he had four daughters and three sons; that his daughter Sudesh aged about 22 years married with Pawan Kumar son of Ramesh Chand, Mahajan, resident of Samalkha Mandi, on 07.12.1996 according to Hindu rites and ceremonies; that he had given dowry articles at that time and even thereafter, beyond his capacity; that about one year of the marriage, Pawan Kumar (husband), Ramesh Chander (father-in-law), Kanta Devi (mother-in-law) and Seema (sister-in-law) used to harass Sudesh for bringing less dowry; that on two occasions at asking of his daughter Sudesh he (complainant-Dhanpat Rai) alongwith Dharam Pal son of Sant Ram resident of H. No.122 Model Town, Jind Road Kaithal and Anil son of Ram Kumar, Mahajan, resident of Cheeka Mandi met husband and father-in-law of Sudesh and gave them ₹1 lac each for the business purpose. The money was paid firstly on 15.12.1997 and secondly on 22.07.1998, despite that the harassment and beating of Sudesh at the hands of her husband and her in-laws family continued so as to force her to bring more dowry; that about 10 days earlier her daughter came to him at Faridabad and told him that her husband, father-in-law, mother-in-law and sister-in-law used to beat her up and harass her for bringing more dowry and if their demand was not considered then they would kill her.

Inter alia in the complaint it is contended that the complainant

counselled his daughter-Sudesh and sent her back to the matrimonial home. However, on 12.06.1999 at 6:00 p.m. he received a telephonic call from Samalkha at Faridabad by an unknown person that his daughter had been burnt to death by her husband, father-in-law, mother-in-law and sister-in-law, accordingly, they reached Samalkha and found that dead body of Sudesh was lying in the Chowk in a badly burnt condition; that his daughter-Sudesh had been burnt to death by her husband, father-in-law, mother-in-law and sister-in-law for greed of getting more dowry and necessary action be taken against accused persons.

It may be mentioned here that on 12.06.1999 on receipt of a telephonic message from some unknown person from Samalkha that wife of Pawan Kumar son of Ramesh Kumar had been burnt and action be taken so that she might not be cremated, a police party headed by SI/SHO-Shamsher Singh (hereinafter referred to as the Investigating Officer/I.O.) had reached house of Ramesh Kumar-accused at Mahavir Street for taking necessary action. There the Investigating Officer came to know that Dhanpat Rai, father of Sudesh-deceased, had been informed telephonically and they were reaching there. When Dhanpat Rai-complainant reached at the spot, he presented application Ex.PA before the Investigating Officer which disclosed commission of offences under Sections 304-B/34/498-A, IPC. Therefore, the Investigating Officer appended his endorsement Ex.PA/1 below such complaint and sent it to Police Station, Samalkha, through C. Randhir Singh for registration of formal FIR, where FIR Ex.PA/2 was recorded under the signatures of ASI Rohtas Singh. ASI Rohtas Singh also made

his endorsement Ex.PA/3 on Ex.PA. The Investigating Officer summoned a photographer to the spot and got the photographs of the dead body clicked from him. He carried out the spot inspection and observed the dead body. He took into possession broken pieces of bangles Ex.P4 from the spot, which were made into a sealed parcel sealed with seal bearing impression 'AK' and said parcel was taken into possession vide recovery memo Ex.PC attested by the witnesses. He further seized from the spot a *CAN* of diesel Ex.P1, one match box Ex.P3, ashes of burnt clothes, one pair of *CHAPPAL* Ex.P2/A&B, those were converted into sealed parcel and were taken into possession vide recovery memo Ex.PC. The Investigating Officer prepared rough site plan of place of occurrence as Ex.PO. He recorded statements of witnesses. He carried out inquest proceedings with regard to unnatural death of Sudesh preparing report Ex.PQ in that regard. Dead body of Sudesh was identified to the Investigating Officer by PWs-Dhanpat Rai and Parmod. The Investigating Officer drafted an application Ex.PQ/1 and deputed HC Hari Ram to get post-mortem examination conducted on dead body of Sudesh.

On 13.06.1999 while the Investigating Officer was present at bus stand of Samalkha, then Baini Parsad produced accused Ramesh, Pawan and Kanta Devi before him. They were arrested in this case. The Investigating Officer recorded statements of witnesses. Thereafter on return to the police station, he deposited the case property with MHC and put accused in the lock up. On the same day, while the

Investigating Officer alongwith other police officials was present at bus stand, Samalkha, in connection with the investigation of the case, HC Hari Ram came across him and produced a sealed parcel containing viscera, another sealed parcel of clothes, besides, envelope having seal of 'FM', sample seal and copy of PMR given to him by the doctor. The sealed parcels were taken into possession vide recovery memo Ex.PR attested by HC Hari Ram. A sealed parcel containing ornaments was also produced before him by HC Hari Ram which was taken into possession alongwith sealed parcel Ex.PR.

Thereafter the investigation of the case was taken up by Inspector Shiv Charan. On 15.06.1999 Inspector Shiv Charan alongwith other police officials had gone to police station City Panipat where Dhanpat Rai-complainant and Shiv Kumar met them. Dhanpat Rai produced an application before him. Inspector Shiv Charan recorded supplementary statement of Dhanpat Rai-complainant as well as statement of Shiv Kumar under Section 161 Cr.P.C.. Accused Ramesh, Pawan and Kanta Devi were in police custody, all the three accused were interrogated, during the course of which, they gave separate disclosure statements which were reduced into writing. Thereafter, accused were produced in the Court and were remanded to police custody. In Court premises, Dhanpat Rai-complainant and Shiv Kumar met the police party and they were associated with the investigation. The police party alongwith some other police officials led by Inspector Shiv Charan along with Dhanpat Rai-complainant,

Shiv Kumar and three accused aforesaid in custody left for Samalkha to effect recovery of articles in pursuance of their disclosure statements. However, on the way accused resiled from their statements. They were again interrogated near Malik Petrol Pump, G.T. Road. First of all accused-Ramesh Kumar was interrogated who suffered a disclosure statement Ex.PB to the effect that he had kept concealed dowry articles in a room of the house, which were kept in a *DEWAN* & box and he could get the same recovered. Thereafter, accused-Pawan Kumar suffered disclosure statement Ex.PE. All such statements were attested by PW-Dhanpat Rai and Shiv Kumar and signed by the respective accused. Then all the three accused while in police custody in pursuance of the disclosure statement made by them got recovered the dowry articles which were taken into possession vide recovery memo Ex.PE, PE/1 attested by PWs-Dhanpat Rai and Shiv Kumar. The Investigating Officer prepared rough site plans of place of recoveries Ex.PD/2, Ex.PE/2 and Ex.PF/2. He recorded statements of witnesses. On return to the police station, he deposited the case property with MHC of Police Station, Samalkha and put the accused in lock up. The investigation of the case was again marked to SI-Shamsher Singh. He recorded statements of various witnesses.

After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Panipat.

When the challan against the accused-Ramesh Chand, Pawan

and Kanta was filed in the Court of Judicial Magistrate Ist Class, Panipat, copies of documents relied therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter, finding that offence under Section 304-B IPC is exclusively triable by the Court of Sessions, the Judicial Magistrate Ist Class, Panipat committed the case to the Court of Additional Sessions Judge (I), Panipat vide order dated 04.08.1999. It was entrusted to the Court of Additional Sessions Judge, Panipat.

On finding a prima facie case, charge for the offences under Sections 304-B, 498-A read with Section 34 IPC was framed against the accused. Accused pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

Statement of complainant-Dhanpat Rai was recorded, thereafter, the prosecution moved an application under Section 319 Cr.P.C., which was allowed by the trial Court vide order dated 01.03.2000. Accused-Seema was ordered to be summoned as an additional accused to face trial alongwith accused Ramesh Chand, Pawan and Kanta. She put in appearance, amended charge-sheet for offences under Section 498-A and Section 304-B read with Section 34 was framed against all the four accused, to which they pleaded not guilty and claimed trial and case was again fixed for evidence of prosecution.

During the course of evidence of prosecution, it examined as many as nine (09) witnesses as per details below:-

PW-1 Dhanpat Rai-complainant deposed as per the prosecution version.

PW-2 C. Om Parkash a formal witness tendered in evidence his affidavit Ex.PG.

PW-3 Dr. S.K. Dhatarwal, Reader, Department of Forensic Medicines, PGIMS, Rohtak deposed that on 13.06.1999, while posted as such he conducted post-mortem on dead body of Sudesh daughter of Dhanpat Rai, wife of Pawan Kumar, aged about 22 years, female resident of Samalkha. The information had been received by the police about the death on 12.06.1999 at 7.50 p.m.. The witness stated that he had carried out the autopsy on 13.06.1999 at 1:00 p.m. and his observations were as follows:-

The tongue was protruding and blood stained froth was present in nose and nostrils. Body was cooled to room temperature. Rigor mortis had appeared fully but had not started disappearing. There was 1st, 2nd, 3rd and 4th degree burns (at places) involving head, face, neck, trunk area of upper and lower limbs with the line of redness, evidence of vital reaction and blister contained serous fluid. There was approximately 75% area was involved with shining of hairs, eye brows and eye lashes. There was no evidence of any other injury. Skull, vertebrae, thorax, pleurae, heart, abdominal wall and peritoneum and organs of generation were healthy. Brain was congested. Spinal cord was not

opened. Sooty particles were present in larynx trachea. Lungs were markedly congested. Froth was present in the mouth and pharynx, stomach was hyperemic, congested haemorrhagic and contained about 300 ml brown coloured fluid. Small intestines contained digested food and gases. Large intestine contained faecal matter and gases. Liver, spleen and kidneys were congested. The aforesaid parts were preserved and were sent for chemical analysis. The bladder was empty.

He opined that the cause of death was due to ante-mortem burns. However, viscera was preserved for chemical analysis. The duration since death and post-mortem was between 24 to 36 hours. He handed over followings to the police:-

- 1. Dead body.*
- 2. Clothes with three seals.*
- 3. Ornaments with two seals.*
- 4. Copy of post-mortem report.*
- 5. Police papers seven in numbers duly signed.*
- 6. Viscera in a packet seal with ten seals.*
- 7. An envelope with five seals containing forwarding memo, copy of post-mortem report and copy of police papers.*
- 8. Three samples of seals.*

He proved carbon copy of post-mortem report Ex.PH and

inquest report Ex.PH/1 duly initialled by him. The dead body was referred to Forensic Department, PGIMS Rohtak for post-mortem examination by the Medical Officers of General Hospital, Panipat.

He also proved FSL and Assistant Chemical Examiner-cum-Deputy Director's reports as Ex.PJ and Ex.PJ/1, respectively. As per the Assistant Chemical Examiner's report, no common poison was detected in viscera, therefore, the cause of death in his opinion was due to burns which were ante-mortem in nature.

PW-4, ASI Rohtash Singh, deposed that on 12.06.1999 while he was posted as ASI at Police Station, Samalkha, on that day on receipt of Ex.PA, bearing the endorsement of SI-Shamsher Singh Ex.PA/1, he had recorded the formal FIR Ex.PA/2 correctly and had made endorsement Ex.PA/3 on the ruqa and then got special report dispatched to the Illaqa Magistrate.

PW-5, C. Rajesh Kumar, Draughtsman stated that on 15.07.1999, he had gone to the spot and prepared scaled site plan of the spot using the scale 1" = 8' on being pointed out by complainant-Dhanpat Rai.

PW-6, Anil Kumar, a brother-in-law (sister's husband) of deceased-Sudesh supported the prosecution story on material aspects. So did PW-7, Ram Gopal, a brother of the deceased.

PW-8, SI-Shamsher Singh the Investigating Officer of this case deposed regarding the investigation conducted by him proving various documents.

PW-9, Shiv Charan (since promoted as DSP), who had carried out investigation in this case partly testified regarding his role.

With that the prosecution evidence stood 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.

Accused-Seema took the plea that she is innocent and she and her co-accused never harassed her sister-in-law (Bhabhi) Sudesh on account of demand of dowry or on any other ground; they never demanded any dowry from her; the allegation of the payment of ₹2 lacs made by the complainant against them as having been given on 15.12.1997 and 22.07.1998 was also false; they neither demanded the said amount nor received it; her sister-in-law Sudesh was living happily with them; later on she had been suffering from the disease of 'Recurrent Pregnancy Loss' and suffered missed abortions three times which took place at Sunita Nursing Home at Samalkha, Ahuja Hospital, Panipat and lastly in Akiriti Nursing Home at Faridabad. Due to the said abortions and long sufferings of this disease she was under great depression and had been under regular treatment. She had suffered missed abortion lastly on 21.05.1999 in Akiriti Nursing Home, Faridabad and she remained in Faridabad from 21.05.1999 upto 05.06.1999 and received treatment there.

This accused further stated that she was living at Assandh with her elder sister Anita for the last about six months prior to the death of Sudesh. On 12.06.1999 her brother Pawan and father Ramesh were present at their Kiryana Shop and her mother was not present at the house. Sudesh, her sister-in-law/Bhabhi alone was present at the house. They had installed a diesel generator in the upper storey of their house. In their absence, Sudesh committed suicide due to mental depression on account of her disease. After receipt of information, her brother Pawan, father Ramesh Kumar and mother Kanta reached there, where they found Sudesh in burnt condition in the staircase of the house. Her family members brought her in courtyard with a view to take her to the hospital but she was already dead. Her father made a telephonic call to Sh. Dhanpat Rai at Faridabad informing about the death of Sudesh and also informed the local police. After reaching at their house, the complainant-Dhanpat Rai and his relative gave beating to her mother Kanta and thereafter with due deliberations and consultations, made a false case against her mother, father and brother Pawan. On the day of occurrence i.e. 12.06.1999 she was not present at her house. She has been falsely implicated in this case alongwith her relatives. She was still un-married and a graduate.

The pleas taken by other accused were also on the similar lines denying that they had demanded any dowry from the deceased or any amount had been given by her parents to them, rather stating that Sudesh was living happily, though later on she (Sudesh) suffered from

Recurrent Pregnancy Loss and missed-abortions and in that way she (Sudesh) was under great depression. She (Sudesh) had committed suicide while she was alone at home due to mental depression.

During their defence evidence the accused examined four (04) witnesses as detailed below:-

DW-1, Dr. Archna Gupta, Archna Ultra Sound Centre, Panipat stated that on 11.08.1997 she had performed ultra sound on patient Sudesh. The witness further stated that again on 21.08.1997 she had performed ultra sound of the above patient submitting her report Ex.DD; that as per her report it was case of missed abortion.

DW-2, Dr. Reeta Ghosh, Double Helix Recurrent Pregnancy Loss Programme, Clinical Cytogenetics and Reproductive Immunology Centre, B-41, First floor, Model Town, Delhi, deposed that on 21.05.1999, Dr. Sangeeta Chopra had referred Sudesh's tissues for the analysis, who had in fact referred a portion of tissues for genetic analysis of aborted foetus vide reference slip Ex.DE; that she had performed chromosomal analysis on the basis of the tissues sent by the doctor and submitted her report Ex.DF dated 21.05.1999, in terms of which the foetus had an abnormal pytogenic profile with trisomy of chromosome number sixteen. The witness stated that information Ex. DG was sent by them on the address given by the patient / attendant through courier; that again patient and her husband Pawan Bansal were sent by Dr. Sangeeta Chopra for Karyotyping of parents vide her reference slip Ex.DH and on 05.06.1999, she had done the Karyotyping

of Sudesh Bansal in her laboratory and her report in that regard being Ex.DJ. She proved the report regarding the test performed upon Pawan Bansal as Ex.DK etc.

DW-3, Dr. Sangeeta Chopra, Aakriti Nursing Home and Deep Medical Centre, Faridabad stated that on 21.05.1999 Mrs. Sudesh was referred to her; that it was a case of missed abortion, though the ultra sound was performed at their clinic and report in that regard Ex.DO was given on the basis of film Ex.DO/1; that it was a case of missed abortions earlier also. The witness stated that after examination she had lifted the product of conception i.e. D&E. She proved her report Ex.DE adding that she had referred the tissues to Dr. Rita Ghosh for chromosome analysis and after receipt of report Ex.DF from her, she again referred patient and her husband for Keryotyping.

DW-4, Dr. Shashi Sehgal, Navjeevan Hospital, Sonapat stated that she is running Navjeevan Hospital at Sonapat, Dr. Ramesh Sehgal is her husband. On 22.03.1999 she had examined Sudesh vide OPD slip Ex.DP; that she was found to be pregnant as confirmed by urine test. On 22.03.1999 the ultra sound of the patient was performed by D. N. Puchhpal. In the report Ex.DQ there was doubt of pregnancy. On 03.04.1999 Sudesh as per the ultra sound report was found carrying pregnancy. She proved report Ex.DR and OPD slip Ex.DR/1 adding that on 19.05.1999 Sudesh came to her clinic and she was examined there. The witness proved OPD slip Ex.DS stating that she doubted it to be a case of missed abortion and then she referred her for ultra sound

and the report of the ultra sound dated 19.05.1999 confirmed it to be a case of missed abortion. She proved report Ex.PT and ultra sound films Ex.DT/1 and Ex.DT/2.

The accused tendered in evidence, attested photocopy of Degree of Arts of Seema Bansal Ex.DX.

With that the defence evidence of the accused stood concluded.

After hearing the arguments, learned trial Court convicted and sentenced accused-Ramesh Chand, Pawan and Kanta for offences under Sections 304-B, 498-A read with Section 34 IPC and vide order dated 07.05.2003 sentenced them as detailed above, whereas their co-accused Seema was acquitted of the charge as mentioned above.

At the very outset, it may be mentioned here that on 24.1.2017 when the appeal was taken up for final hearing, learned counsel for the appellants informed the Court that two of the appellants, namely, Ramesh Chand and Kanta had died. He placed on record death certificate in respect of appellant Ramesh Chand. Learned State counsel sought an adjournment to obtain verification of the factum of death of Ramesh Chand and Kanta appellants. On 23.2.2017, learned State counsel produced the verification report prepared by ASI Rajpal, Police Station Samalkha, wherein it stood mentioned that the factum of death of Ramesh Chand and Kanta appellants had been duly verified.

Learned counsel for the appellants has stated that the near relatives of the two deceased appellants have not contacted him with a view to pursuing the appeal on their behalf. Accordingly, the appeal filed

on their behalf may be disposed of as having abated.

After going through the record and hearing arguments advanced, by learned counsel for the appellant/accused-convicts and Assistant Advocate General, Haryana, we are of the considered view that there is no illegality or infirmity as regards the judgment of conviction against accused Pawan Kumar as regards offences under Sections 304-B and 498-A, IPC.

Coming to offence under Section 304-B, IPC, dealing with dowry death, for ready reference, the section is reproduced as under:-

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.

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.

In this case, marriage between Pawan Kumar and Sudesh had admittedly taken place on 07.12.1996. In that way Pawan Kumar happened to be husband of deceased-Sudesh. Deceased-Sudesh had died in the matrimonial home suffering burns and it was a case of unnatural death. She had died on 12.06.1999, i.e. within 3 years of her

marriage. The next question, which arises is whether she was subjected to cruelty or harassment by her husband or any relative of husband in connection with demand of dowry, in that regard the prosecution has examined PW-1, Dhanpat Rai-complainant who happened to be father of deceased-Sudesh, who categorically stated that after marriage accused-Ramesh, father-in-law; Kanta, mother-in-law and Pawan, husband of Sudesh used to torture his daughter-Sudesh for want of sufficient dowry. Though he had named Seema, sister-in-law of deceased also but he has been disbelieved to that extent and rightly so by the trial Court. The witness has stated that after one year of marriage, he had given amount of ₹2 lacs to accused Ramesh Chand and Pawan Kumar on 15.12.1997 and 22.07.1998, respectively. He had clarified the matter by stating that he had given amount of ₹1 lac to each accused in the presence of Dharam Pal son of Sant Ram and Anil son of Ram Kumar. However, despite being given abovesaid amounts, behaviour of the abovesaid accused remained the same and they kept demanding more dowry and used to beat her for that reason. He further stated that before her death his daughter-Sudesh had come to his house at Faridabad about 10 days prior to the occurrence. She was perplexed and nervous at that time and she told him that accused used to beat and harass her for bringing more dowry and also used to taunt her. She further told him that if their greed for more dowry is not fulfilled there is apprehension that they might have killed her; however after persuasion he sent his daughter back to the matrimonial home and on 12.06.1999 at about 6:00

p.m., he received a telephonic message from some unknown person that accused had killed his daughter by setting her on fire. On receipt of that information, they had gone to Samalkha and found her daughter-Sudesh lying dead on account of burns in the courtyard of the matrimonial home. In his examination-in-chief, he had further stated that in the marriage he had given jewellery 28/29 tolas of gold to his daughter, besides, giving silver jewellery weighing 600-700 grams, amount of ₹75,000/- for purchase of furniture and ₹1,00,000/- for purchase of utensils and clothes, besides, giving cash amount of ₹1,00,000/- at the time of engagement. He further deposed regarding accused getting recovered dowry articles in pursuance of disclosure statement made by them which had been taken into possession.

PW-6, Anil Kumar, another son-in-law of complainant-Dhanpat Rai and brother-in-law of deceased-Sudesh and PW-7 Ram Gopal, son of complainant and brother of deceased-Sudesh, supported complainant on these aspects.

Even otherwise Section 113-B of the Indian Evidence Act which deals with *presumption as to dowry death*, 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 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*. Therefore, considering evidence adduced by the prosecution discussed above and drawing presumption under Section 113-

B of the Indian Evidence Act, it comes to be a case of dowry death since all the necessary ingredients of the offence are proved on the file. It is a case of unnatural death of a married women in the matrimonial home by burning within 7 years of the marriage. It comes out to be a case of suicide since there is no evidence on the record to prove that it was a homicidal death or that the accused had caused her death by putting diesel on her and setting her ablaze. Therefore, offence under Section 304-B, IPC, against accused-Pawan Kumar stood proved conclusively and affirmatively. Similar is the position as regards offence under Section 498-A, IPC against him since it is established on the record that Pawan Kumar, being husband of Sudesh-deceased subjected her to cruelty with a view to cause her death, her paternal family to meet unlawful demand for more dowry and deceased being mal-treated on account of failure by her / her parental family to meet such demand.

However, as far as accused-Seema having been acquitted by the trial Court we find that trial Court was justified in doing so. In para No.19 of the impugned judgment, such aspect has been discussed in detail observing that as per version of accused, six months prior to the death of Sudesh, she was living at Assandh with her sister Anita, which fact was admitted by PW-8, SI Shamsheer Singh, Investigating Officer and as stated by him that Superintendent of Police, Panipat, had deputed Prem Singh-Inspector to enquire into the matter since accused-Seema was found to be innocent, as such, she was not challaned by the police.

Though she was summoned to face trial alongwith her co-

accused on an application under Section 319 Cr.P.C. moved by the prosecution but then no cogent and convincing evidence could be led by the prosecution to connect her with the incident keeping in view the fact that she being an unmarried young educated girl would not have benefited directly by any dowry demand, there were little prospects of her having committed any offence or participated in the incident in question. Therefore, there is no ground to set aside the impugned judgment as far as acquittal of accused-Seema is concerned. Similarly no ground is there to enhance the fine and to pay any compensation to the complainant. Thus revision (***CRR-1985-2003***) filed by the complainant-Dhanpat Rai is without any merit.

Though the trial Court was justified in convicting accused-Pawan Kumar for offences under Sections 304-B and 498-A IPC yet we are of the view that sentence of life imprisonment awarded to him for the offence under Section 304-B IPC is unwarranted. In the judgment of the Hon'ble Supreme Court in Hem Chand Vs. State of Haryana, 1994(3) RCR (Criminal) 625, which was also a case of dowry death i.e. unnatural death of bride in matrimonial home, it was observed that Section 304-B of the Indian Penal Code only raises presumption and lays down minimum sentence of seven years which may be extended to imprisonment for life. It was held that awarding extreme punishment of life imprisonment should be in rare cases and not in every case. We find that though it is unfortunate that a newly married women Sudesh had lost her life but it is not found to be a rare case calling for extreme punishment since from the evidence adduced in defence by the accused, it comes out that she had

suffered repeated abortions which might have affected her mentality adversely to some extent. Her unfortunate decision to end her own life seemed to have been propped up by her harassment at the hands of her husband in connection with demand of dowry to a major extent but her frequent abortions might have left an adverse impact on her. Under the circumstances, we find that it would be proper and appropriate if the sentence of imprisonment for life under Section 304-B IPC qua Pawan Kumar-appellant is reduced to imprisonment for a period of ten years.

Resultantly, the appeal of Ramesh Chand and Kanta appellants is disposed of as having been abated. The conviction of Pawan Kumar-appellant under Sections 304-B and 498-A IPC is upheld. His sentence of imprisonment for life for the offence under Section 304-B IPC is reduced to rigorous imprisonment for ten years. His sentence of imprisonment and fine, alongwith its default clause, for the offence under Section 498-A IPC is maintained. Both the substantive sentences of imprisonment shall run concurrently. The appeal filed by Pawan Kumar-appellant is disposed of, accordingly. At the same time, the revision filed by complainant Dhanpat Rai is devoid of any merit and, accordingly, dismissed.

Necessary intimation be sent to the quarter concerned.

17.03.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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