

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-1502-DB-2015 (O&M)

Reserved on: 23.09.2022

Date of decision:04.11.2022

Jai Karan and another

...Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. Abhishek Vashishta, Advocate,
for appellant No.1.

Mr. Madan Sandhu, Advocate,
for appellant No.2.

Mr. Anmol Malik, AAG, Haryana.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction dated 25.09.2015 and order of sentence dated 29.09.2015 passed by the Court of learned Additional Sessions Judge, Sonapat, whereby the appellants have been held guilty and convicted for the offences punishable under Sections 302 read with Section 34 IPC and were sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months each.

Brief facts of the case are that the FIR in the instant case was got registered by PW-6 Muni Ram, by alleging that he was an agriculturist. The marriage of his sister Seema was solemnized on 11.11.2008 as per Hindu rites and ceremonies with appellant No.1-Jai Karan, son of Ram Singh resident of village Khewra, District Sonapat (Haryana). In the

marriage, his parents had given gifts and dowry items beyond their capacity, but husband of Seema namely Jai Karan, Ram Karan, brother-in-law (Jaith), Shanti, mother-in-law, Saroj, sister-in-law (Jaithani) wife of Ram Karan and Sunita, sister-in-law (Nanand), who were also residing in the parental house, were not satisfied with the dowry articles. It was alleged that all these persons used to taunt and commit cruelty on his sister Seema for bringing less dowry in the marriage. Two-three times they visited the matrimonial home of their sister in village Khewra and requested them not to harass Seema, but they did not mend their ways and demanded more and more money. Even they paid Rs.50,000-60,000/- in cash. His sister had a daughter aged 2 ½ years namely Anshu. In January 2014, his sister Seema was ousted from her matrimonial home after giving beatings by her husband Jai Karan, Ram Karan, Saroj, Sunita and Shanti and was directed to bring more money. Again a panchayat was convened in village Khewra and the accused admitted their fault and requested for one opportunity to mend their ways. On 13.02.2014, Jai Karan, Ram Karan, Sunita, Shanti and Saroj went to their house and promised to keep Seema with honour and took her to village Khewra with them. At about 02.00/2.30 PM on 23.02.2014, the complainant received a phone call that Seema was burnt. They asked them to bring Seema to PGIMS, Rohtak for treatment and they would meet them in PGIMS, Rohtak. However, the accused did not come and replied that they were in Delhi. The complainant and others reached Delhi and found them in Mundka (Delhi). They found their sister to be unconscious and struggling between life and death and they took her from Delhi to PGIMS, Rohtak, where she was declared dead after checking by the doctors at the Emergency Ward. It was alleged by the complainant that all the five persons had killed

his sister by burning for not fulfilling their demand of dowry or she had committed suicide after their harassment in connection with demand of dowry raised by them.

With these broad averments, the statement of the complainant was recorded by SI Surender Kumar at 10.30 AM on 24.02.2014 and the FIR, Ex.PW1/A was registered at about 01.00 PM on the same day. Thereafter, the investigation formally commenced and the police found sufficient incriminating evidence against Jai Karan, Ram Karan and Sunita, who faced trial before the court of learned Additional Sessions Judge, Sonapat.

Vide the above-said impugned judgment, the learned trial Court held Jai Karan and Ram Karan guilty for the offence punishable under Section 302/34 IPC. However, the learned trial Court held that the prosecution has failed in proving the case against Sunita beyond the shadow of reasonable doubt and was ordered to be acquitted.

Aggrieved against the above-said impugned judgment of conviction dated 25.09.2015 and order of sentence dated 29.09.2015 passed by the learned trial Court, both accused Jai Karan and Ram Karan have preferred the instant appeal before this Court.

Learned counsel for the appellants have vehemently argued that the prosecution had utterly failed in proving the case against the appellants. They have further submitted that the marriage of appellant No.1-Jai Karan was solemnized with Seema (since deceased) on 11.11.2008 and there was no demand of dowry since beginning. Seema (since deceased) was kept nicely in her matrimonial home and no demand of dowry was ever raised by the appellants. It has further been submitted that it was a case of suicide by

Seema (since deceased) in the matrimonial home and none of the appellants was present at the time when she had committed suicide. Still further, the cause of suicide was that the land of appellant No.1-Jai Karan was given on rent by his brother-in-law Muni Ram (complainant) and rent amount of Rs.2 lacs was given to Muni Ram also for about 02 years and due to this, there was a dispute between the couple and Seema (since deceased) was a hot tempered lady and in a fit of anger, she committed suicide. Learned counsel for the appellants have next contended that the prosecution had failed to prove the motive on the part of the present appellants to commit the crime. In fact appellant No.1-Jai Karan and Seema (since deceased) were married for the last more than 05 years and there had been no complaint from any corner nor any complaint was ever made to the police prior to the present incident. The couple was blessed with a daughter aged about 02 ½ years and were living happily in the matrimonial home. It has further been submitted that Ram Karan, brother-in-law (Jaith) was residing separately and the said fact had been admitted by the prosecution witnesses namely PW-6 Muni Ram (complainant) and PW-7 Karan Singh (father of deceased), Even PW-10 SI Naresh Kumar and PW-14 SI Surender Kumar had also admitted that appellant No.2-Ram Karan was living separately and his case was at parity with Sunita, who had been acquitted by the learned trial Court. Further, it was highly unsafe to rely on the statements of the witnesses PW-6 Muni Ram and PW-7 Karan Singh, who are brother and father of the deceased, respectively as they were the related witnesses and their testimonies did not inspire confidence. The learned counsel have further submitted that even the investigation was tainted in the instant case and the learned trial court failed to appreciate that the appellants had been

falsely framed in the instant case. Even the learned trial court committed grave error in overlooking the evidence led by the defence, which was more probable and the appellants deserve to be acquitted.

The arguments raised by the learned counsel for the appellants have been strongly opposed by the learned State counsel, who submitted that both the appellants had killed Seema in her matrimonial home and the prosecution has proved the charge beyond reasonable doubt.

We have heard learned counsel for the parties and perused the case file minutely.

Admittedly, it is a case based on circumstantial evidence. In a case of circumstantial evidence, the onus is heavy on the prosecution to prove the circumstances and the manner in which the appellants had committed the murder of Seema in the matrimonial home. It is apposite to mention here that in cases, where the evidence is of circumstantial in nature, the circumstances from which the conclusion of the guilt is to be drawn should be fully established in the first instance and the facts so established should be consistent only with the hypothesis of the guilt of the accused. Such circumstances should be of conclusive nature and tendency and should clearly exclude the hypothesis of the innocence of the accused. Further, the chain of evidence/incriminating circumstances should be so complete that it does not leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

In the facts of the case, a reference may also be made to the law laid down by the Hon'ble Supreme Court in the matter of **Sharad Birdhichand Sarda Vs State of Maharashtra, AIR 1984, SC 1622**. While

dealing with circumstantial evidence, Hon'ble the Supreme Court has held that onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by false defence or plea. The Hon'ble Supreme Court laid down the following conditions, before conviction could be based on circumstantial evidence and those are:-

- “(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established;*
- (2). the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- (3) the circumstances should be of a conclusive nature and tendency;*
- (4) they should exclude every possible hypothesis except the one to be proved; and*
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

During the course of arguments raised by learned counsel for the parties, the following circumstances emerge for the consideration and determination by this Court. Even the arguments raised by the learned counsel for both the parties are centered around these issues and those have been separately dealt by us.

- (a) Suicidal or homicidal death;
- (b) Motive;
- (c) Investigation;
- (d) Separate residence of appellant No.2 (Jai Karan);

(e) Other evidence.

Suicidal or homicidal death

Vide the impugned judgment, the learned trial Court held that the prosecution has not been able to prove the charge under Sections 498-A and 304B IPC and convicted the appellants under Sections 302/34 IPC. In order to prove a convict under Section 302 IPC, the first and the foremost aspect to be proved by the prosecution is the factum of homicidal death. On facts held, if the evidence led by the prosecution falls short of the proof of homicidal death of the deceased, the convict cannot be held guilty of the charge under Section 302 IPC. In the instant case, the learned trial Court relied upon the following circumstances to hold that it was a case of homicidal death and accordingly convicted the appellants under Section 302 IPC.

- (i) The cause of her committing suicide, which has been taken by the appellants in their defence is not so strong that would lead a woman to take such an extreme step to end her life.
- (ii) Eight witnesses examined by the accused/appellants had not stated that the deceased was a short tempered lady or was suffering from any kind of mental depression and hence the possibility of theory of suicidal death does not seem genuine and natural;
- (iii) The occurrence had taken place in the matrimonial home of the deceased and all the accused had the opportunity to plan and commit the offence at that time.
- (iv) The learned trial Court invoked the principle enunciated in Section 106 of the Evidence Act and held that the appellants were to explain as to how a deceased had sustained injuries and since they did not give any explanation about the cause of the death of the deceased, it was held to be a case of homicidal death.

- (v) A perusal of the statements of the appellants under Section 313 Cr.P.C. clearly shows that in response to all the questions put to them, they had just taken the simple pleas of denial, false implication and their separate residences and no reason has been mentioned for their false implication.
- (vi) The appellants in their statements under Section 313 Cr.P.C. had given a simple denial of the incriminating evidence appearing against them and it provides as an additional link in the chain of circumstances against them. The appellants had set the deceased on fire and she was not shifted to the hospital immediately thereafter and this conclusively proved towards the guilt of the appellants and it was a case of homicidal death.

A perusal of the impugned judgment clearly shows that the learned trial Court, instead of referring to the prosecution evidence, has placed more reliance on the witnesses of the case of the defence or on the simple denial by the accused/appellants in their defence. The Courts must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in isolation. The prosecution is under a legal duty to prove the case beyond the shadow of reasonable doubt and a judgment of conviction can never be based on the wrong or imaginary inferences drawn from the defence evidence. In the instant case, a perusal of the impugned judgment clearly shows that instead of referring to the prosecution case and its reliability, the learned trial court has simply considered the lacunas in the case of the defence, which is not permissible in law. The accused can always remain silent during the course of trial and even if he/they had taken a false defence, the prosecution can never be absolved of its liability of proving the facts beyond the shadow of reasonable doubt by leading cogent and convincing evidence.

The learned trial Court held that the cause of her committing suicide, which has been taken by the appellants in their defence, is not so strong that would lead a woman to take such an extreme state to end her life. It was further held that the occurrence had taken place in the matrimonial home and all the accused namely Jai Karan, Ram Karan and Sunita had all the opportunity to plan and commit the offence at that time and the theory of suicidal death stood falsified. In fact, it was for the prosecution to show that the accused had a motive to commit the crime and as per the learned trial Court itself, the prosecution had utterly failed in proving the motive against the appellants. Still further, the prosecution also failed to prove that Seema (since deceased) was subjected to cruelty and harassment in connection with the demand of dowry and there was perspectival nexus between the demand of dowry and the homicidal death. Still further, simply because all the accused were living in the same village, an inference can never be drawn that they had every opportunity to plan and commit the crime. In fact the offence of conspiracy has to be proved like any other offence. Still further, the learned trial Court further failed to appreciate that there was no charge under Section 120-B IPC in the instant case. Moreover, even the findings recorded by the learned trial Court are self contradictory. On one hand, the learned trial Court found that Sunita was living separately from appellant No.1-Jai Karan and appellant No.2-Ram Karan, whereas on the other hand, it was held that Ram Karan and Sunita along with Jai Karan were living in the matrimonial home and had opportunity to plan and commit the offence. Still further, the learned trial Court wrongly held that from perusal of the statements of the appellants under Section 313 Cr.P.C., it is apparent that they had taken a simple plea of denial, false implication and their separate

residences and even from this simple denial of incriminating evidence appearing against them without offering any explanation, an adverse inference is certainly to be drawn against them, which provides an additional link in the chain of circumstances. Again, we do not agree with the findings recorded by the learned trial Court. In fact, the learned trial Court had completely overlooked the basic principles of law, which governed the criminal trial before the learned trial Court. The prosecution has to prove the charge by leading unimpeachable evidence and simply because the appellants had either offered no explanation or had simply denied the charge or had offered no defence, does not mean that the charge stood proved against them in a criminal trial. Surprisingly in the instant case, to prove the fact regarding homicidal death, the learned trial Court has placed reliance only on defence evidence or the statements under Section 313 Cr.P.C., even without referring to the evidence led by the prosecution to prove the charge under Section 302 IPC.

The Hon'ble Supreme Court in **Anand Ramachandra Chougule Vs. Sidarlal Laxman Chougala and others, 2019 (8) SCC 50**, has held as under:-

“9. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove

its case beyond all reasonable doubt.

10. *The fact that a defence may not have been taken by an accused under Section 313, Cr.P.C., 1973 again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the circumstances it was not required to prove anything. In **Sunil Kundu v. State of Jharkhand, 2013(4) RCR (Criminal) 147 : (2013) 4 SCC 422**, this Court observed:*

"28... When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabalise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt."

Still further, the learned trial Court wrongly invoked the principle underlying Section 106 of the Evidence Act. The learned trial Court wrongly held that the accused/appellants were to explain as to how the deceased had sustained injuries and since they did not give any explanation about the cause of the death of the deceased and they had failed to offer an explanation in discharge of the burden placed upon them, it would provide an important link in the chain of circumstances against them.

The Hon'ble Supreme Court in the matter of **Satya Singh Vs. State of Uttarakhand, 2022 (2) R.C.R. (Criminal) 154** has observed as under:-

- "15. Applying the said principles to the facts of the present case, the Court is of the opinion that the prosecution had*

miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance placed by learned advocate Mr. Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused. In Shambu Nath Mehra v. State of Ajmer , AIR (1956) SC 404, this court had aptly explained the scope of Section 106 of the Evidence Act in criminal trial. It was held in para 9:

*"9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are preeminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are **Attygalle v. Emperor [AIR 1936 PC 169]** and*

Seneviratne v. R. [(1936) 3 All ER 36, 49]"

16. *In the case on hand, the prosecution having failed to prove the basic facts as alleged against the accused, the burden could not be shifted on the accused by pressing into service the provisions contained in section 106 of the Evidence Act. There being no cogent evidence adduced by the prosecution to prove the entire chain of circumstances which may compel the court to arrive at the conclusion that the accused only had committed the alleged crime, the court has no hesitation in holding that the Trial Court and the High Court had committed gross error of law in convicting the accused for the alleged crime, merely on the basis of the suspicion, conjectures and surmises.*
17. *In that view of the matter, the impugned judgments deserve to be quashed and set aside and are hereby set aside accordingly. The accused are acquitted from the charges levelled against them and are directed to be set free forthwith."*

We have carefully perused the evidence led by the parties in the light of the principles laid down by the Hon'ble Supreme Court. The law is well settled that in a case of circumstantial evidence, the initial burden is on the prosecution to discharge the burden of proving the facts against the accused. No doubt Section 106 of the Evidence Act constitutes an exception to Section 101 of the Evidence Act, but at the same time as a general rule, in a criminal case, the burden of proof is always on the prosecution and Section 106 of the Evidence Act is certainly not intended to relieve it of the duty. In the instant case, the prosecution was under a legal duty to prove that the death was homicidal in nature and had occurred in the matrimonial home and there was no question of involvement of any other person in the commission of the crime. Consequently, the provisions of

Section 106 of the Evidence Act were wrongly invoked by the learned trial Court.

In fact the learned trial Court completely overlooked the FIR Ex.PW1/A and the statement of the complainant Muni Ram, while appearing as PW-6. In the FIR Ex.PW1/A, the complainant clearly stated that all the above five persons had either killed his sister by burning for not fulfilling their demand of dowry or she had been harassed by them to such an extent that she finished her life after their harassment. While appearing as PW-6 again, Muni Ram deposed on similar lines and stated that either the above said persons had killed her or she had committed suicide due to harassment given by her in-laws. There was no other witness produced by the prosecution, who clearly deposed that Seema had died a homicidal death.

Apart from that, the prosecution examined PW-9 Dr.Vinod Kumar, who had conducted the post-mortem examination on the dead body of Seema (since deceased) on 24.02.2014. He had clearly opined after conducting the post-mortem examination, the cause of death in the present case was burn injuries and its complications. He nowhere stated that it was a case of homicidal death. The said witness was subjected to cross-examination and he clearly stated that except burn injuries, there was no other injury on the body of the deceased indicating any signs of struggle, beatings and assault etc.

Moreover, the learned trial Court held that the occurrence had taken place at about 2.00/2.30 PM and the occurrence had come to the notice of the accused persons at that time. However, the deceased was not taken to the PGIMS, Rohtak, immediately, even on the request by PW-6

Muni Ram and the deceased was taken to PGIMS, Rohtak at about 8.30 PM. In fact, we do not agree by the conclusions drawn by the learned trial Court. The accused can never be convicted in a case under Section 302 IPC, on the basis of conjectures and surmises. The prosecution had led no evidence to show that the alleged occurrence had taken place at about 2.00/2.30 PM except the bald statement of the complainant himself. Still further, the appellants were in Delhi and the complainant wrongly wanted them to come to PGIMS, Rohtak and the deceased could be taken to several good hospitals in Delhi. Rather, the complainant wrongly forced the accused to come to PGIMS, Rohtak, when they had already reached Delhi and several multi-specialty hospitals were available in Delhi. Even it is not the case of the complainant that the doctors in PGIMS, Rohtak were known to him and could have given better treatment to his sister Seema (since deceased).

Thus, it is apparent that the learned trial Court had recorded its finding solely on the basis of weaknesses of the case of the defence and there was no evidence to show that it was a case of homicidal death.

Motive

The learned trial Court recorded the detailed findings after appreciating the testimonies of PW-6 Muni Ram and PW-7 Karan Singh and rightly held that both the material witnesses had failed to state the exact date and month, when demands have been raised by the accused and when the amount of Rs.50,000/-60,000/- were given to them by the accused. Still further, both the witnesses categorically stated that they could not tell the exact date, month and year, when the appellants had given beatings to the deceased. Even the said witnesses admitted that no complaint was ever made by them to the police nor Seema (since deceased) was ever got

medico-legally examined by them. Still further, there were general allegations of extending beatings and harassment of the deceased at the hands of the accused on account of dowry demand, but no specific demand was attributed to the appellants. Consequently, it was finally held correctly that the deceased was not subjected to cruelty in connection with demand of dowry soon before her death. Still further, the learned trial Court correctly held that since the prosecution had failed to prove that the demand of dowry as raised by the appellants had remained unfulfilled, the prosecution had miserably failed to prove the motive. However, it was held that absence of motive, even if it is accepted, does not come to the aid of the appellants and if other evidence inspires confidence and is cogent enough to point out towards the guilt of the accused, then the motive loses its importance.

In fact, we fail to agree with the findings recorded by the learned trial Court. In a case of circumstantial evidence, the prosecution is under a bounden duty to prove the motive on the part of the accused to commit the crime. It is a case, where the chain of circumstances was incomplete; the evidence led by the prosecution did not inspire confidence. Still further the prosecution had not led sufficient evidence to show that it was a case of homicidal death, the motive was the most important fact to be proved by the prosecution and failure to prove motive is fatal for the prosecution in the instant case.

Investigation

At the preliminary stage, the investigation was conducted by PW-14 SI Surender Kumar, who had also registered the FIR, in the instant case. However, it is apparent that he did not conduct the investigation properly and in a fair manner. He clearly admitted that the house of the

accused, where the occurrence had taken place, was surrounded by Abadi of the village, however, he did not record the statements of the neighbours to verify the facts regarding the crime. Even appellant No.2-Ram Karan was residing in a separate adjoining house, but he did not see the ration card of Ram Karan. Still further, the co-accused-Sunita, daughter of Ram Singh was already married and was residing in a separate home along with her mother. He had not verified whether Sunita was having her separate ration card from the accused/appellant No.1 Jai Karan etc. Even though, he had noticed the above-said facts, still he challaned appellant No.2 Ram Karan and Sunita and ultimately, Sunita was acquitted by the learned trial Court on the ground that she was living separately and had no concern with the matrimonial life of appellant No.1-Jai Karan and Seema (since deceased). Still further, even the defence examined ACP Ajit Singh, Mujesar, Faridabad as DW-5, who was posted as DSP at Sonapat at the time of the alleged occurrence. Even during his verification, it was found that Ram Karan and Sunita were living separately in their separate houses still he presented challan against both of them. Thus, it is apparent that, the Investigating Officer also did not try to bring expert evidence during the course of investigation to ascertain as to whether the death was suicidal or homicidal. Apart from that, no recoveries were effected from the appellants. Still further, the Investigating Officer also did not try to find some evidence as to whether the deceased had offered some resistance or not and thus apparently, the investigation was conducted in the most unfair and partisan manner.

Separate residence of Ram Karan (appellant No.2)

The learned trial Court rightly acquitted Sunita, sister-in-law

(Nanad) of Seema (since deceased) on the ground that she had proved to be residing separately from appellant No.1-Jai Karan in a house situated in another street, however, the learned trial Court wrongly convicted appellant No.2-Ram Karan, brother-in-law (Jeth) of Seema (since deceased). The learned trial Court completely overlooked the testimony of the complainant (PW-6), who admitted in his cross-examination that appellant No.2-Ram Karan was already married at the time of marriage of his sister Seema (since deceased) with appellant No.1-Jai Karan. Appellant No.2-Ram Karan was having children at that time and he was living in a separate portion of the same house from appellant No.1 and he was also living separately from his parents. Similarly, PW-7 Karan Singh, father of the deceased, also admitted in his cross-examination that appellant No.2-Ram Karan was living separately from his brother appellant No.1 and was cultivating his land separately. Similarly, PW-10 SI Naresh Kumar, who remained Investigating Officer, also admitted that appellant No.2 was living separately in a separate house with his family. Still further, PW-14 SI Surender Kumar also admitted that appellant No.2 was residing in a separate adjoining house, however, he had not seen the ration card of appellant No.2-Ram Karan. Apart from that, the defence examined DW-1 Narender Kumar, Inspector, Food and Supplies, who brought the ration card of appellant No.2, which showed his separate residence. Still further, the defence examined DW-4 Anil Kumar, Lambardar of village Khewra/neighbour of the appellants, who clearly stated that appellant No.2 was living separately for the last more than 20 years in a separate house and he had no concern with the family of appellant No.1. Still further, DW-5- Ajit Singh, who was posted as DSP, Sonapat at the relevant time, also stated that during his

verification and visit at the spot at village Khewra, he clearly saw that appellant No.2 was residing separately in a separate house. Consequently, it is apparent that appellant No.2, who was the brother-in-law (Jeth) of Seema (since deceased), was residing separately from their family and was cultivating his land separately. Even otherwise, appellant No.2-Ram Karan was living with his family members and could never be the beneficiary of demand of dowry by his brother appellant No.1-Jai Karan and has been wrongly convicted by the learned trial Court.

Other evidence

The learned trial Court further failed to appreciate that it was not a case of homicidal death. Seema (since deceased), was aged about 25/26 years and was a well built and rustic lady. During the post-mortem, the doctor did not find any other injuries on the body of the deceased, indicating any signs of struggle, beating assault etc. Even during the course of investigation, the police did not find any such evidence. Had the accused set the deceased on fire, she would have certainly resisted and no such evidence was found at the spot. Apart from that, the learned trial Court failed to appreciate that even the testimonies of defence witnesses could not be brushed aside only on the ground that the said witnesses had been produced by the defence. If the testimony of a defence witness inspires confidence and such a witness stands the test of cross-examination, he can very well be believed. In the instant case, the evidence examined DW-3 Jai Karan, Lineman in the Electricity Board, Haryana, who was on duty in village Khewra on 23.02.2014 and was working near the house of appellant No.1-Jai Karan. He was resident of Sonapat and was an independent witness. He clearly stated that at noon time, he heard the noise from the

house of appellant No.1 and he along with some other villagers went inside his house and found the deceased-Seema lying in burnt condition. The accused and other persons were not present at the spot at that time. Similarly, Sanjay Antil, Sarpanch of village Khewra appeared as DW-8, who clearly stated that there was no dispute of any kind of dowry between the deceased and her husband Jai Karan (appellant No.1). The appellants never demanded any dowry nor they ever harassed. Even PW-6 and PW-7, who are brother and father of the deceased respectively clearly admitted in their respective testimonies that before the marriage, they had enquired about the family of the accused and after that only, they had settled the marriage of Seema with appellant No.1. They admitted that engagement ceremony was performed in a happy atmosphere. Similarly, the marriage ceremony was also performed in a happy atmosphere. It was also admitted that when Seema (since deceased) visited for the first time, in her matrimonial home, then her in-laws gifted her jewelry and clothes. She had come to their house four times and her husband had accompanied her. Apart from that, the marriage between the parties was solemnized on 11.11.2008 and till 23.02.2014, there was no complaint regarding demand of dowry. Consequently, the appellants had no reason to commit the crime. Even otherwise, the learned trial Court had admitted that there was no motive on the part of the present appellants to commit the crime.

Our observations made above, lead us to a definite and legitimate inference that the prosecution has utterly failed to prove its case against both the appellants beyond reasonable doubt. It stands established that the hypothesis put forward by the prosecution to bring home the guilt of the appellants is based on conjectures and suspicions. Our judicial

conscious is not satisfied that the circumstances of the case are so established that there is no escape from the conclusion that within all humane probability, the crime was committed by the appellants. We have already observed that the evidence led by the prosecution regarding commission of offence by both the appellants does not inspire confidence and has to be rejected.

In view of the facts and circumstances of the case noted above, it would be highly unsafe to sustain the conviction of the appellants and they are entitled to benefit of doubt. As a consequence thereof, the appeal succeeds and is hereby allowed. The judgment of conviction dated 25.09.2015 and order of sentence dated 29.09.2015 passed by the Court of learned Additional Sessions Judge, Sonipat are set aside. The bail bonds of both the appellants stand discharged and they may be released from custody, if not on bail and if not required in any other case.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

04 .11.2022
mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO