

(2001) 01 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 318 of 1997

Balwant Singh and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 14-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 13, 154, 173, 313
Penal Code, 1860 (IPC) — Section 107, 304B, 306, 498A

Citation : (2001) 1 ShimLC 446

Hon'ble Judges : C.K. Thakker, C.J

Bench : Single Bench

Advocate : Ramakant Sharma, for the Appellant; Vivek Thakur, Assistant A.G., for the Respondent

Judgement

C.K. Thakker, C.J.—This appeal is filed against judgment and order of conviction recorded by the Additional Sessions Judge, Una on July 18, 1997 in Sessions Case No. 11/94, 13/94. By the said judgment, the learned Additional Sessions Judge convicted the accused for offences punishable under Sections 498A and 306 of Indian Penal Code and sentenced them.

2. In paragraph 38 of the judgment, the learned Judge stated:

Thus, keeping in view the extenuating and exaggerating circumstances in the instant case and also viewing the plight of the convicts, it is a fit case where ends of justice shall be met, if convict Kanta Devi is sentenced to undergo simple imprisonment for one year for the commission of offence u/s 498A of the Indian Penal Code and four years for the offence committed u/s 306 of the Indian Penal Code and she is also fined to pay rupees of 1,000 for the commission of each of the said offences and in default of payment of fine, she will undergo further imprisonment (simple) for one month for the commission of each of the offence. All the remaining accused, namely, Balwant Singh, Anup Singh and Ravinder Singh are sentenced to undergo rigorous imprisonment for a period of one year each and they are also ordered to pay a fine of Rs. 1,000 each for the said

offence, in default of payment each of the convict shall undergo further rigorous imprisonment for one month each. The aforesaid accused, namely, Balwant Singh, Anup Singh and Ravinder Singh are sentenced to four years rigorous imprisonment for the commission of offence u/s 306 of the Indian Penal Code and are also ordered to pay a fine of Rs. 1,000 each and in default to undergo further rigorous imprisonment for one month each. The aforesaid period of imprisonment shall run concurrently. The period of imprisonment already if any undergone by the convicts be set off.

3. The Appellants-accused were tried for offences punishable under Sections 498A, 304B and 306 of the Indian Penal Code (hereinafter referred to as "the Code"). The case of the prosecution was that Accused No. 1 Balwant Singh was father-in-law, accused No. 4 Kanta Devi was mother-in-law, accused No. 3 Ravinder Singh was brother-in-law and accused No. 2 Anup Singh was husband of Renu Bala. Said Renu Bala was daughter of one Gurdayal Singh and Kamla Devi. She was married to accused No. 2 Anup Singh on July 6, 1992 in accordance with the Hindu rites and rituals. It was the allegation of the prosecution that only after few days of her marriage, when Renu Bala visited the house of her parents, she complained as to how accused persons were treating her with cruelty by putting demands for fridge and scooter as dowry. It was alleged that on January 5, 1993, Kamla Devi, mother of Renu Bala came to know from Tilak Raj, her brother-in-law (Devar) that Renu Bala was admitted in a hospital at Gagret. She, therefore, along with Tilak Raj went to the hospital, but Renu Bala was not there, and they came to know that Renu Bala was taken to Patohar Kalan, the village where the accused were staying. Both of them then went to the residence of the accused and found Renu Bala dead lying in verandah of the house of the accused and none of the accused was there. Kamla Devi suspected foul play that her daughter Renu Bala was either killed or was compelled to commit suicide by consuming poison on account of their unlawful demand of dowry by the accused and by treating her with cruelty. She, therefore, lodged a report with the police Ex. PW-3/A u/s 154 of the Code of Criminal Procedure, 1973 at Police Station, Una, which was registered as formal FIR vide Ex. PW-11/A. After registration of the case, the investigation started. The police went to the spot, prepared inquest report and lough spot map of the place where dead body of Renu Bala was found. The Investigating Officer also took into possession vomit of Renu Bala and the clothes worn by her at the time of vomiting prior to her death. Two letters, which were produced by Devinder Singh were also taken in possession. Post-mortem was conducted by Dr. Vijay Kumar Raizada, which revealed that Renu Bala was having pregnancy of fourteen to sixteen weeks. He reserved his opinion regarding cause of death on receipt of report of Chemical Analyser. After receiving the report, Dr. Gurcharan Singh opined that cause of death was "peripheral circulatory failure due to aluminum phosphide which was sufficient cause of death in natural course of events." Further investigation was conducted by ASI Jarnail Singh, who obtained two letters produced by Gurdayal Singh, father of deceased Renu Bala. He submitted a

report u/s 173 of the Code of Criminal Procedure in the Court of learned Chief Judicial Magistrate, Una, who committed the case to the Court of learned Sessions Judge, Una vide his order dated April 25, 1994.

4. After hearing the learned Public Prosecutor for the State as well as learned defence counsel, a charge was framed against the accused for the offences punishable under Sections 498A, 304B and 306 of the Indian Penal Code and they were asked as to whether they plead guilty.

5. The accused did not plead guilty to the charge and claimed to be tried.

6. The prosecution, to prove the case against the accused, examined as many as 16 witnesses. After the prosecution evidence was over, statements of the accused persons were recorded u/s 313 of the Code of Criminal Procedure. They denied the allegations levelled against them. Their case was of total denial. It was also stated by them that they were innocent. The prosecution witnesses were related to the deceased and a false case was filed against them. In support of their defence, they also examined six defence witnesses. From the suggestions put in cross-examination, the defence tried to make out a case that deceased Renu Bala was suffering from epilepsy and hence, frustrated of her life. There was neither demand of dowry nor maltreatment by the accused, but because of epilepsy and frustration, she committed suicide and none of the accused was responsible.

7. At the conclusion of the trial, on the basis of evidence, the learned Additional Sessions Judge held that the charge against the accused u/s 304B of the Code was not established. Hence, they were entitled to acquittal on that count. He was, however, of the view that it was proved beyond reasonable doubt that the accused had committed offences punishable under Sections 498A and 306 of the Code and accordingly convicted them for those offences and imposed punishment, as extracted hereinabove.

8. It is the order of conviction and sentence recorded by the learned Additional Sessions Judge, which has been challenged in the present appeal.

9. The appeal was admitted on July 22, 1997 and the accused were also ordered to be enlarged on bail.

10. I have heard Mr. Ramakant Sharma, learned Counsel for the Appellants and Mr. Vivek Thakur, learned Assistant Advocate General for the Respondent.

11. Mr. Sharma strenuously argued that the learned Additional Sessions Judge has committed an error of fact and of law in convicting the accused. The evidence led by the prosecution did not establish beyond reasonable doubt commission of offences by them. Neither the ingredients of Section 306 nor of Section 498A of the Code were satisfied and the accused were entitled to acquittal. According to the learned Counsel, there were material contradictions in the depositions of prosecution witnesses, which ought to have been kept in mind by the trial Court. By not doing so, an illegality was committed. According to the

counsel, reading the evidence as a whole, it was clear that demand of dowry said to have been made by the accused was not proved, nor anything was stated in the so called letters written by deceased Renu Bala to her father. Moreover, there was no ill-treatment to deceased Renu Bala by any of the Appellants. The letters said to have been written by Renu Bala to Gurdial Singh, her father, could not be said to be proved and no reliance could have been placed on those letters. It was also contended that there was no evidence on record to show as to how and in what manner, the accused abetted the deceased in committing suicide, and the provisions of Section 306 of the Code could be attracted. Similarly, there was nothing to show on what basis the provisions of Section 498A were applied. Even if it is assumed that near the dead body of Renu Bala, none of the accused was present, it would not prove that the accused or any of them was responsible for the death of Renu Bala. It was not disputed that no complaint was filed either before police authorities or before a Panchayat of so called illegal demand of dowry or ill-treatment by any of the Appellants. On the contrary, threat was administered by the complainant party to return Rs. 85,000 said to have been given to the accused as dowry at the time of marriage of Renu Bala with Anup Singh. The counsel also emphasised that one of the relatives of deceased Renu Bala, DW-6 Surinder Singh stated in his deposition that deceased Renu Bala had stated on October 4, 1992 that she would commit suicide. Because of suffering from epilepsy, Renu Bala, in desperate state of mind, she committed suicide. None of the accused was responsible for such act. Immediate steps were taken by the accused when Renu Bala took poisonous medicine and was taken to Government Hospital, Gagret, but in spite of best efforts by them, she could not survive. On all these grounds, it was submitted that the appeal deserves to be allowed and the order of conviction recorded by the learned Additional Sessions Judge deserves to be quashed and set aside.

12. Mr. Thakur, learned Assistant Advocate General, on the other hand, supported the order of conviction and sentence passed by the trial Court. According to him, from the evidence of prosecution witnesses, it was clearly established that the accused compelled Renu Bala to commit suicide and hence they were liable for offences under Sections 498A and 306 of the Code. He also submitted that immediately after marriage in July, 1992, there was illegal demand of dowry by the Appellants and Renu Bala was treated with cruelty. The fact regarding ill-treatment was proved from letters written by Renu Bala to her father, and these were duly proved by evidence of hand writing expert as also from substantive evidence of PW-3 Kamla Devi, mother as well as PW-5 Ram Dulari, sister-in-law (Bhabhi). Mr. Thakur submitted that it was also proved by the prosecution that Renu Bala was not suffering from epilepsy and she did not commit suicide in frustration. It was also in evidence that she was having pregnancy of fourteen to sixteen weeks and there was no earthly reason for her to put an end to her life and life of a child in womb. Strong reliance was also placed by the learned Assistant Advocate General on the circumstance that near the dead body of Renu Bala, none of the accused was present. If it was the case

of the accused that they were very much worrying about ill health of Renu Bala, it would not be probable that they leave dead body of Renu Bala unattended by any of them. Regarding threat by Renu Bala to commit suicide and deposition of DW-6 Surinder Singh, the counsel submitted that it was clear that only with a view to help the accused, DW-6 stated before the Court but there was no material whatsoever to support the averment. Mr. Thakur also submitted that the conduct of the accused all throughout after the marriage of Renu Bala till her death was unnatural. From the beginning, there was demand of dowry and ill-treatment by the Appellants to Renu Bala. The parents of Renu Bala tried their best to get the matter settled and after persuading the Appellants, Renu Bala was sent to her in-laws. In view of settlement, obviously, no complaint was filed before police authorities or before a panchayat and such an act cannot be said to be unusual so as to draw adverse inference against the prosecution. On the contrary, when the prosecution witnesses were trying to settle matrimonial home of Renu Bala, they would not go to police authorities or a panchayat. The learned Additional Sessions Judge was right in observing that non-filing of complaint did not affect the case of the prosecution. On all these grounds, Mr. Thakur submitted that the order passed by the trial Court does not deserve any interference and the appeal is liable to be dismissed.

13. In the facts and circumstances of the case, in my opinion, the appeal deserves to be partly allowed. So far as the prosecution witnesses are concerned, from the medical evidence of two witnesses, PW-1 Dr. Vijay Kumar Raizada and PW-2 Dr. Gurcharan Singh, SMO District Hospital, Una, it was clearly established that the cause of death of Renu Bala was "peripheral circulatory failure due to Aluminum Phosphide and was sufficient cause of death in natural course of events". From the evidence of PW-7 Dr. Rajneesh Gupta, who treated Renu Bala on December 12, 1992, it was also established that Renu Bala was pregnant and she was not suffering from any mental disease. In the cross-examination, he had specifically stated that had Renu Bala visited him for treatment of epilepsy, he would have maintained the record. He also stated that he did not remember that on. October 10, 1992 and October 24, 1992, Renu Bala had come to him for treatment of epilepsy. He denied that a person suffering from epilepsy, he/she would become violent. But a patient suffering from epilepsy with mental ailment might act in violence. He stated that he did not remember whether mother of Renu Bala used to come for treatment of epilepsy.

14. Thus, from the evidence of medical witnesses, it is clearly established that Renu Bala died because of peripheral circulatory failure due to aluminum phosphide. It is also proved from the postmortem report Ex. PA. Medical evidence further revealed that Renu Bala was having pregnancy of fourteen to sixteen weeks. Moreover, from the deposition of PW-7 Rajneesh Gupta it was proved that Renu Bala was not suffering from mental disease. There is nothing to show that because of mental disease, Renu Bala committed suicide in frustration or in desperate state of mind as contended by the accused.

15. Then what was the reason, which led to death of Renu Bala. Let us consider evidence of witnesses of the prosecution. PW-3 Kamla Devi, mother of the deceased and complainant is indeed a star witness. When she came to know that Renu Bala was admitted to Government Hospital, Gagret, she went there and then to the residence of the accused where Renu Bala was found lying dead all alone. She, therefore, lodged First Information Report. She had stated in her deposition that on July 6, 1992, her daughter Renu Bala got married to accused Anup Singh. After about one and half month of the marriage, when Renu Bala came to her parental home, she complained that all accused were raising demand of dowry and were ill-treating her. Renu Bala also complained that she was being beaten. Kamla Devi further stated that she asked her son-in-law about the complaint made by her daughter Renu Bala, but the latter assured her that it would not be repeated in future and hence Renu Bala was sent to her matrimonial home.

16. On January 5, 1993, her brother-in-law (Devar) PW-4 Tilak Raj came to her house and told her that Renu Bala was admitted in Gagret Hospital. She immediately went to Gagret along with Tilak Raj but she came to know that Renu Bala was taken to Patohar Kalan, the village where the accused were staying. Both of them went to the house of the accused and they saw that Renu Bala was lying in the Court yard/verandah of the accused dead and none was present in the house. Hence, the witness suspected that either her daughter was murdered or she was compelled to commit suicide as she had failed to meet with the demand of dowry raised by the accused party. She, therefore, filed a complaint Ex. PW-3/A.

17. Kamla Devi was searchingly cross-examined on behalf of the accused, however, nothing could be extracted from such examination, which would adversely affect the genesis of the prosecution. It was suggested to the witness that Renu Bala was suffering from mental ailment, but the suggestion was emphatically denied by her. It was also put to her that when Renu Bala was a child, because of epilepsy, she fell down in Hearth (Chullah) and sustained injuries on her face, but the witness denied it. She was also asked that at the time of Shagan (engagement ceremony), an amount of Rs. 11 was paid to the accused (Anup Singh) in which one Puri of Rakh was put, but the said suggestion was denied by her. Similarly, she denied the suggestion that on October 4, 1992, a threat was given by Renu Bala to commit suicide.

18. From the evidence of this witness, it was proved that Renu Bala was not suffering from any ailment. It was further revealed that immediately after marriage, a complaint was made by Renu Bala to the witness about the demand of dowry by the accused and ill-treatment by her in-laws and that when witness reached the matrimonial home of Renu Bala, she was found dead and none of the accused was present in the house.

19. Similar is the evidence of PW-4 Tilak Raj, uncle of the deceased and brother-in-law (Devar) of PW-3 Kamla Devi. He stated that after about a month of the

marriage, deceased Renu Bala started complaining about ill-treatment by the accused and demand of dowry articles, like scooter and fridge.

20. This witness was also cross-examined by the defence. He denied the suggestion that the deceased was suffering from any ailment like epilepsy. He, however, admitted that Renu Bala had a mark of burning injury on her face from the very childhood. She suffered that injury when she fell down in a Hearth (Chullah) when she was about one and half years of age. The witness denied that it was because she was suffering from epilepsy. PW-4 also confirmed that when he went to the village of the accused along with PW-3 Kamla Devi, he saw dead body of Renu Bala in the verandah. Only one person wearing spectacles was present and none else was there.

21. The evidence of PW-3 Kamla Devi and PW-4 Tilak Raj has been corroborated by PW-5 Ram Dulari, sister-in-law (Bhabhi) of deceased Renu Bala. She stated that Renu Bala had studied upto 10th standard and she used to visit the house of her parents at the interval of 15-20 days. She made a complaint of demand of dowry by the accused and ill-treatment by her in-laws.

22. PW-5 admitted in her cross-examination that though she was matriculate and passed JBT, she had not written to her husband the fact regarding demand of dowry by the accused from Renu Bala. No such complaint was also filed either before executive authorities or any other officer. She denied the suggestion that Renu Bala was suffering from epilepsy. She also stated that it was incorrect that PW-3 Kamla Devi (mother of Renu Bala) used to take Renu Bala to Gagret for treatment of epilepsy.

23. Thus, from the evidence of the above three witnesses, it is clear that immediately after marriage of Renu Bala with accused Anup Singh in July, 1992, she was ill-treated by the accused.

24. Over and above the evidence of the above PW-3, PW-4 and PW-5 on cruelty and demand of dowry, reliance was placed by the prosecution on letters Exs. PW-5/A to PW-5/C, PW-5, Ram Dulari, stated in her evidence that Renu Bala had studied upto 10th Class and she was able to read and write. She also identified hand writings of Renu Bala on letters Ex. PW-5/A to PW-5/C and there was no cross-examination of PW-5 Ram Dulari on that point by the accused. Thus, her statement remained unchallenged.

25. Moreover, there is evidence of PW-12 Suresh Kumar, Police Station, Amb. According to him, on January 24, 1993, Gurdyal Singh, father of deceased Renu Bala (who could not be examined in the court as he died during the pendency of the trial), produced to ASI Jarnail Singh letters said to have been written by deceased Renu Bala. Those letters were duly proved through the evidence of PW-15 Dr. B.R. Sharma, hand writing expert, who stated that the letters were written by one and the same person. His evidence was not effectively challenged in the cross-examination. Nothing could be extracted which would destroy his case in the examination-in-chief.

26. The learned Additional Sessions Judge also noted that the letter Ex. PW-5/A was proved to have been written by Renu Bala to her father and the address given on it established that the letter was sent to him when he was on duty in Uttar Pradesh. There was nothing in the said letter incriminating the accused and it only showed love and affection of Renu Bala @ Baby towards the father. Ex. PW-5/B was written by deceased Renu Bala, which was sent as admitted hand writing and it also did not incriminate the accused. Ex. PW-5C, however, was a most material document, which involved accused Kanta Devi and proved that Renu Bala was treated with cruelty by her mother-in-law. In the said letter, it was stated by the deceased as to how accused Kant Devi was telling Renu Bala that her brother had done some mischief, which had disturbed peace of the family of the accused and how Kanta Devi, was torturing the deceased beyond tolerance.

27. Certain objections were raised at the time of trial on behalf of the accused that there was delay in recording First Information Report. In my opinion, however, the learned Additional Sessions Judge rightly held that there was no unexplained delay in lodging FIR. The incident took place on January 5, 1993. PW-3 Kamla Devi was informed by PW-4 Tilak Raj that her daughter was taken to Gagret Hospital. Both of them then went to Gagret, but they came to know that Renu Bala was taken by her in-laws to the matrimonial home. She, therefore, went to the village of the accused. There she found Renu Bala dead and none of the accused was present. It is in evidence of PW-3 Kamla Devi that her husband Gurdyal Singh, father of Renu Bala was doing his business in Kashipur, Uttar Pradesh and was not present at the village when the offence took place. PW-4 Tilak Raj stated in his deposition that on seeing dead body of her daughter Renu Bala, Kamla Devi became unconscious. She was taken to her residence as the witness thought that if she would not be immediately taken from the place, she might collapse. It is further in evidence that in the evening, they reached the village. On the next day i.e. on January 6, 1993, at about 10.30 a.m., FIR was lodged. In these circumstances, it cannot be said that there was unexplained or unreasonable delay in lodging FIR or that it was filed after due deliberation involving the accused. The learned Judge, in my opinion, appreciated the circumstances in their proper perspective. He also rightly observed that when the mother received the information that her daughter was admitted to hospital, she was very much worrying when she found that the daughter was dead, she was terribly disturbed. Seeing the dead body of her daughter, the mother received mental shock. The learned Judge also was right in keeping in mind that her daughter died within less than one year of the marriage. Hence, the contention of the learned Counsel for the accused that there was delay on the part of PW-3 in lodging FIR cannot be upheld and was rightly rejected by the learned Judge.

28. It was also contended that there were material contradictions in the evidence of prosecution witnesses. Reliance in this connection was placed on injury found on the face of deceased Renu Bala. The fact of injury on the face of Renu Bala was not admitted by PW-3 Kamla Devi, mother, but it was admitted by PW-4

Tilak Raj as well as PW-5 Ram Dulari. In my opinion, however, the learned Additional Sessions Judge was right in observing that the factum of injury on the person of deceased Renu Bala, in the facts and circumstances of the case, was not a material circumstance. The endeavour on the part of the accused was that Renu Bala was suffering from epilepsy and she fell on Hearth (Chullah) and sustained the said injury. But the allegation was denied by one and all prosecution witnesses. From the evidence of PW-4, it was proved that when Renu Bala was a child of tender age of one and half years, she fell on hearth and sustained injury. It is, therefore, nothing to do with so called mental ailment by Renu Bala and that circumstance cannot help the accused.

29. It was then contended that only interested witnesses were examined, who were relatives of Renu Bala and in absence of independent witness, the case of the prosecution was not believable. The learned Judge, in my opinion, rightly considered the fact that the persons, who were connected with the incident, were examined. Moreover, they were most natural witnesses. He also rightly noted that it had come on record that father and brother of deceased Renu Bala were serving outside. In absence of father and brother, material evidence was of mother Kamla Devi, Uncle Tilak Raj and sister-in-law (Bhabhi) Ram Dulari. The record also does not show that independent witnesses were available and yet not examined by the prosecution. Renu Bala was said to have been taken to Gagret Hospital by her in laws. Nothing has been stated by the accused nor by defence witnesses nor in their statements u/s 13 of the Code of Criminal Procedure nor any documentary evidence whatsoever has been produced from Gagret Hospital on the point. So far as the prosecution witnesses are concerned, it is clearly established that PW-3 Kamla Devi and PW-4 Tilak Raj had gone to Gagret but Renu Bala was not there. They also came to know that Renu Bala was taken back by her in-laws to matrimonial home. They, therefore, went to the residence of the accused and found that Renu Bala was no more. In these circumstances, it cannot be said that independent witnesses were available, who could be termed as material witnesses but with a view to keep them away from the Court, they were not examined by the prosecution. The grievance made on behalf of the accused is thus imaginary, ill founded and cannot be upheld.

30. It has also to be appreciated that though according to the accused, Renu Bala was taken to Gagret Hospital by them and thereafter, they brought back Renu Bala at the matrimonial home, when PW-3 mother and PW-4 uncle of Renu Bala came to the village of the accused, dead body of Renu Bala was found all alone and none of the accused was present by her side. That was indeed unnatural. If they had taken Renu Bala to Gagret Hospital, they would not go away leaving dead body of Renu Bala in their house.

31. Defence witnesses, in my opinion, has rightly been disbelieved by the trial court. The learned Judge was right that the witnesses wanted to oblige the accused and were not telling truth before the Court. Regarding DW-1 Anant Ram, the learned Judge has commented that though according to him, he was treating

Renu Bala and used to give her medicines, he could not say whether she was pregnant. Similarly, Chanchala Devi, DW-2 was rightly described by the learned Judge as a chance witness and her "dramatic statement" that she was near the tap where the house of the accused was situated, did not inspire confidence. The learned Judge also was right in observing that during the entire period, she remained with Renu Bala but she did not ask the reason why Renu Bala had consumed poison though it was her case that Renu Bala had taken tablets and requested her mother-in-law to save her life. Similar is the evidence of DW-3 Madan Lal. According to him, when he came to know about the incident, he went on the spot and saw that the deceased was crying to save her. He found the case of poisoning and did not medically examine her, but advised accused Kanta Devi to take Renu Bala to hospital. In the cross-examination, he stated that she was lying all alone and none else was present there. According to DW-2 Chanchala Devi however, she was very much there. The learned Judge, in the light of the above evidence, commented that DW-2 and DW-3 were telling "white lies" before the Court. Evidence of DW-4 Ganesh Dass also did not inspire confidence. Apart from material contradictions in the evidence of DW-3 Madan Lal and DW-4 Ganesh Dass, he stated that accused Kanta Devi was present near the dead body of Renu Bala. This is clearly false and is duly established by prosecution witnesses.

32. Deposition of DW-5 Rameshwari Devi also could not be believed. She had stated that at about 9.00 a.m. on the day of incident, when she was crossing by the side of house of the accused, Balwant Singh and Kanta Devi were weeping. The witness went inside the house and found Renu Bala was lying. On being asked Renu Bala replied that she had consumed poison thereby she had committed a mistake. Reading her evidence as a whole, the learned Additional Sessions Judge has commented that the conduct of the witness was highly unnatural, improbable and suggestive of the fact that she was not at all present and her statement had no intrinsic value.

33. DW-6 Surinder Singh, who is also relative of prosecution witnesses had fully exaggerated the version stating that on October 4, 1992, Renu Bala had administered threat that she would commit suicide. He also stated that on being asked as to why she was frustrated, she replied that she was suffering from epilepsy and the medicines, which was given by Gagret Doctor was not given to her. The witness also stated that she assured Renu Bala that the medicines will be supplied to her. He had admitted in cross-examination that Renu Bala never suffered any attack of epilepsy in his presence. He also admitted that in his presence, Renu Bala did not take any medicine for epilepsy.

34. The learned Judge was right in commenting that it was strange that if Renu Bala was suffering from epilepsy, why she was not treated by the accused for such a serious disease. And if she was treated how that the accused could not produce reliable evidence to prove the said fact.

35. The learned Judge, therefore, in the light of entire evidence rightly held that

there was no reason for the deceased Renu Bala to commit suicide unless there were compelling circumstances. He was, however, of the opinion that the evidence was not sufficient to connect the accused with the crime punishable u/s 304B of the Code. He, therefore, acquitted the accused for the said offence, but it was proved that Renu Bala was forced to commit suicide as the accused persons ill-treated her and cruelty was administered on account of demand of dowry.

36. There is one more circumstance, in my opinion, which also cannot be overlooked and ignored. Renu Bala was pregnant. As per medical evidence, the pregnancy was of fourteen to sixteen weeks. In spite of ill-treatment by the accused, she tried to keep the matrimonial home intact. As per evidence of PW-3 Kamla Devi, the accused were persuaded to treat Renu Bala properly, and they assured that she would be treated properly. Renu Bala was sent to matrimonial home. Thereafter, there was no reason on the part of the deceased to take such extreme step without there being any cause. From the evidence, it is also clear and I am satisfied that Renu Bala was not suffering from epilepsy or any mental ailment as alleged by the accused. In absence of such ailment and in view of the fact that she was pregnant, I am not prepared to believe that Renu Bala had committed suicide though there was no ill-treatment by her in-laws.

37. Reading the letters Ex. PW-5/A to Ex. PW-5/C also, it becomes clear that she was not treated properly by the accused and such complaint was made by Renu Bala to her father. It is, however, clear that in none of the letters of Renu Bala, Ex. PW-5/A to Ex. PW-5/C, she made reference of demand of dowry by the accused. It is true that in the evidence of PW-3 Kamla Devi, PW-4 Tilak Raj and PW-5 Ram Dulari, the said fact has been reflected. But when the evidence disclosed that Renu Bala was literate, when she had written letters to her father making complaint regarding ill-treatment by her in-laws and yet there was no reference of demand of dowry, submission of the learned Counsel for the accused to the limited extent that in absence of demand of dowry by the accused in any of the letters written by deceased Renu Bala, it cannot be said to be established beyond reasonable doubt that the deceased was compelled to commit suicide due to demand of dowry.

38. The learned Additional Sessions Judge also has observed: "But in the present case the prosecution has failed to prove that deceased Renu Bala was being harassed in connection with demand of dowry, but it has certainly proved that she was being harassed to meet out unlawful demand of property i.e. fridge and scooter and besides it, the conduct of the accused persons was of such a nature, which was likely to drive her to commit suicide".

39. My attention was also invited by Mr. Sharma to a decision of Supreme Court in State of Punjab Vs. Gurdip Singh and Others, . In that case also, it was alleged that there was demand of dowry, which resulted into suicide by the deceased and the accused were prosecuted for an offence punishable u/s 306 of the Code. There also mother, aunt as well as cousin of the deceased stated in their

substantive evidence about the demand of dowry and consequential ill-treatment to the deceased by her in-laws. But the letters written by the deceased to her parents and sister did not indicate that she had been taunted or humiliated on account of dowry demand or that she had been physically or mentally tortured in her in-law's house. It was, therefore, held by the Apex Court that it could not be said to be established that the accused had committed offence punishable u/s 306 of the Code.

40. Similarly, in *Meka Ramaswamy Vs. Dasari Mohan and Others*, death of the deceased took place within four months of the marriage. Evidence of the parents of deceased and her friend was to the effect that the deceased committed suicide as a result of cruelty of husband and in-laws in not meeting with dowry demands. There was, however, no evidence that dowry was demanded before or at the time of marriage. Also there was no mention of demand of dowry or ill-treatment in letter written by the deceased and the evidence of the parents and friend of the deceased was not found to be reliable. The accused were, hence, acquitted.

41. In *Mulak Raj and others Vs. State of Haryana*, the Court held that strong suspicion also cannot take place of proof and circumstantial evidence must be conclusive to prove the guilt of the accused. Similar view was taken by the Supreme Court in *State of Maharashtra Vs. Ashok Chotelal Shukla*,

42. In *Pawan Kumar and Others Vs. State of Haryana*, on the other hand, it was ruled by the Apex Court that demand of dowry did not conceive any agreement. Similarly, cruelty or harassment may not only be physical, it may be mental also. Demand for scooter and fridge made soon after the marriage by the husband and his relatives and failure to met with the demand resulted into taunts and maltreatment would be covered by dowry demand and resulting into dowry death and the accused can be convicted for the offence. Even prior to *Brij Lal Vs. Prem Chand and Another*, the Supreme Court held that in such circumstances, the accused can be said to have committed an offence by instigating the deceased to commit suicide.

43. From the evidence, it was proved by the prosecution that there was ill-treatment by the accused towards deceased Renu Bala but it cannot be said that the prosecution was able to establish beyond doubt that there was abetment by the accused to commit suicide by deceased Renu Bala. Necessary ingredients of Section 107 of the Code have not been established in the instant case. The conviction recorded against the accused for offence punishable u/s 306 of the Code will have to be set aside and accordingly, it is hereby set aside.

44. For the foregoing reasons, in my opinion, on the basis of materials placed on record, it is clearly and conclusively established beyond reasonable doubt that Renu Bala was ill-treated by Appellants-accused. The said fact was established from the letters Ex. PW5/A to Ex. PW5/C as well as from sworn testimony of PW3 mother, PW 4 Uncle and PW 5 Sister-in-law (Bhabhi). The case was thus clearly

covered by Section 498A of the Code. Since in none of the letters, the deceased had mentioned regarding demand of dowry by all the accused or any of them, it cannot be said to have been proved beyond reasonable doubt that because of demand of dowry, deceased Renu Bala was compelled to commit suicide and thus there was abetment to commit suicide by the accused. The case, therefore, would not fall within the mischief of Section 306 of the Code and to that extent the order passed by the learned Sessions Judge deserves to be set aside.

45. For the foregoing reasons, in my opinion, the appeal deserves to be partly allowed and is accordingly allowed partly. The order of conviction and sentence for offence punishable u/s 498A of the Code is hereby confirmed, but conviction and sentence for offence u/s 306 of the Code is reversed and set aside.

46. In view of confirmation of conviction u/s 498A of the Code by this Court, the accused are directed to surrender to custody.

47. Before parting with the matter, I must make mention of one lapse on the part of the learned Additional Sessions Judge. While recording the statements of the accused u/s 313 of the Code of Criminal Procedure, 1973 in English language as translated by the Court, some questions put to accused No. 4 (Kanta Devi) have remained unanswered and nothing has been stated. Initially, an objection had also been raised by the learned Counsel for the accused that as no answers of accused No. 4 were recorded by the Court, conviction recorded and sentence imposed on her were contrary to law and liable to be set aside. Prima facie, I was also satisfied that the order deserved to be quashed and set aside. But then my attention was invited by the learned Assistant Advocate General after thorough verification of the record that original statements were recorded in Hindi. In Hindi statements, all questions were put to all the accused and were duly answered by all of them and the learned Additional Sessions Judge had put his signatures. In English version, however, below some questions to accused No. 4, no answers have been written, but since the questions were put by the Court in Hindi and were answered, the trial cannot be held to be vitiated.

48. It must be said to the credit of Mr. Sharma, learned Counsel for the accused that in the light of the explanation by learned Assistant Advocate General and clarification, he did not press the point. He also stated that he had raise an objection on the basis of the record in his possession which was in English language.

49. I must, however, consider it to be proper to observe that the learned Additional Sessions Judge ought to have been much more careful in such serious matters and before putting his signature, he ought to have verified that all the questions were put to the accused and were duly answered by him/her. Since the original statements were in Hindi and all the questions put to accused No. 4 have been answered by her and it contains initial/signature by the learned Additional Sessions Judge, I do not wish to make further observation. But I do hope that the learned Additional Sessions Judge will be much more careful in future and no

such lapse will be repeated. The copy of this order be sent to the learned Additional Sessions Judge.