
(1992) 03 AHC CK 0056

In the Allahabad High Court

Case No : Criminal Appeal No's. 30, 2854 and 30 of 1988 and 335 of 1989

Bhoora Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-03-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 392, 82, 83
Dowry Prohibition Act, 1961 — Section 2, 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 300, 302, 304B, 306, 313

Citation : (1992) 3 AWC 1857 : (1993) CriLJ 2636

Hon'ble Judges : Palok Basu, J;J.N. Dubey, J;B.L. Yadav, J

Bench : Full Bench

Advocate : K.K. Mishra and P.M. Misra, for the Appellant; A.G.A. and Dileep Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Palok Basu, J.—Two learned Judges comprising a Division Bench having differed almost on each point arising for consideration in the aforesaid criminal appeals, the connected matters have come up before this third Judge as nominated by the Chief Justice.

2. The admitted facts are that Smt. Urmila, a youthful wife of 20 years of appellant Raju, residing with her parents in village Bhadwa, P. S. Malwan, district Fatehpur, married in 1983, was brought to the district hospital Fatehpur on 11-10-1986 at about 3-05 p.m. by Raju's cousin Vijai Bahadur Singh with extensive burn injuries. She was admitted and medically examined by Dr. Harish Chandra (P.W. 5) wherein she died at 5-35 p.m. Her mother Smt. Sankatha Devi (P.W. 3) had reached the hospital soon after her hospitalisation but her father Yadunath Singh had reached the hospital after her death, having come from Allahabad where he was posted as Station Officer, P.S. Mohabbatpur Pansa. The doctor had sent to police Station Kotwali, Fatehpur, a memorandum of Ex.Ka-6 about admission of Smt. Urmila in a seriously burnt condition. After her death,

another memo (Ex.Ka-8) was sent intimating her death. An inquest (Panchnama) was done on the dead body of Urmila by Sub-Inspector Sivali Misra (P.W; 10). Thereafter post-mortem examination was conducted by Dr. B. N. Deo at 2-30 p.m. in the presence of another Medical Officer while the body had reached the mortuary at 11-30 a.m. on 12-10-1986. The FIR lodged at P. S. Kotwali by P.W. 1 Yadunath Singh was forwarded to P.S. Malwan where S.C. Dube, head moharrir (P.W. 9) made necessary entries whereafter Vijai Kumar Sharma, S.O., P.S. Malwan (P.W. 11) had begun investigation and writing the case diary but the investigations were taken over by the Circle Officer D.S. Yadav, Dy. S.P. (P.W. 6). On 14-10-1986 he had gone to the site and got the site plan prepared. He found pieces of Sarhi and one empty glass of kerosene oil and ashes in the oven. He had recorded the statements of Smt. Sukhia and Chanda Devi. In her statement Smt. Sukhiya had told him that she was cleaning her own house when she heard Smt. Urmila "Bachao, Bachao" and she had come up to the door in a burnt condition. In the charge-sheet submitted by D.S. Yadav, all the accused were shown as absconden, as proceedings u/s 82/83, Cr. P.C. had begun against them and the I.O. had shown Raju alias Raghuvendra, husband of Smt. Urmila, Smt. Gulhari Devi alias Champa Devi, mother of Raju, Bhoora Singh, father of Raju and co-accused Km. Aruna Devi, sister of Raju as being prosecuted Under Sections 302 : 304B : 498A, IPC and Section 4 of the Dowry Prohibition Act. The Trial Judge has acquitted Km. Aruna but has convicted and sentenced the other appellants as under:--

1. Raja appellant both u/s 302, I.P.C. -- Death sentence 2. Smt. Gulhari Devi. both u/s 304B, I.P.C. -- 7 years" R.I. both u/s 498A, I.P.C. -- 3 years" R.I. both u/s 4 Dowry -- 6 months" R.I. plus Prohibition Act Rs. 500/- fine. 3. Appellant Bhoora u/s 498A -- 3 years" R.I. & Singh Rs. 500/- fine. u/s 4 Dowry -- 6 months" R.I. plus Prohibition Act, Rs. 500/- as fine.

Against those convictions and sentences the aforesaid two criminal appeals have been preferred and the usual Reference has been sent up by the Sessions Judge because of death sentence having been awarded to Raju and Smt. Gulhari. It may be stated here that about the death sentence being reduced to imprisonment for life, even Hon. Mr. Justice B.L. Yadav has expressed a contrary opinion and has awarded imprisonment for life to them. The other sentences have been upheld by him. Hon. Dr. Justice J. N. Dubey has doubted the entire prosecution case and has, therefore, allowed the appeals.

3. It may further be stated here that in the revision filed by the informant challenging the judgment of the trial court, at the admission stage itself the revision against the acquitted accused Km. Aruna was dismissed.

The not admitted facts are as under:--

1. That the FIR was lodged by informant Yadunath Singh (P.W. 1) at 00.55 of 12-10-1986 or that the case was, in fact, transferred from P.S. Kotwali to P.S. Malwan around 4 a.m. on 12-10-1986.

2. That the deceased Smt. Urmila had made any oral dying declaration to her mother implicating the appellants and the acquitted accused or that she could have been in a position to make any statement whatsoever.

3. That the appellants had ever demanded any dowry from the informant or any other relative.

4. That the deceased had written any letter to her father, the informant on 22-9-1986 (Ex.Ka-2) and it was not in the handwriting of the deceased.

5. That the S.O. Malwan V. K. Sharma (P.W. 11) had recorded any statement of P.W. 1 Yadunath Singh, informant.

4. Some other controversies have arisen during the arguments and will be taken up and dealt with at relevant places in the following paragraphs. Suffice it to say at this stage that the marriage between Raju and Smt. Urmila in the year 1983 has not been doubted. Receiving of burn injuries by Smt. Urmila before 3-15 p.m. on 11-10-1986 in her in-law's house has not been doubted -- but what has been suggested is that it may have been an "accidental-fire". Smt. Urmila was admitted to the hospital where she was examined by Dr. Harish Chandra P.W. 5. It has also not been denied that Dr. Harish Chandra had written a letter to the magistrate concerned for coming immediately to the hospital to record the dying declaration of the deceased. It has not been doubted that on receiving information that the S.D.M. was not able to come because of absence of motor vehicle, Dr. Harish Chandra had sent a communication to the District Magistrate telling him about the urgency of the matter, and further that the executive magistrate had refused to come to the hospital for recording the dying declaration has not been disputed.

5. The points made explicit by the three questions immediately following, have to be clarified at the outset because much of the discussion will then stand concluded automatically.

(1) Would Section 304B I.P.C. apply to the facts of the present case?

(2) Can a charge u/s 302, IPC co-exist with the charge u/s 304B, IPC?

(3) Can Section 113B of the Indian Evidence Act be attracted to the facts of the present case even if it is held that Section 304B, IPC. would not be attracted?

6. The unfortunate day in the life of Smt. Urmila was 11-10-1986 when yet another defenceless, helpless and destitute Indian woman that Smt. Urmila was, found not only her hopes, aspirations, desires but also her physical existence engulfed in leaps of fire. It reminds one of the famous lines of Rashtra Kavi Maithili Sharan Gupta :

Abala jeevan Hai Teri Yahi Kahani Anchal men Hai Doodh Aur Ankhon Men Pani .

In English to should read thus :

Woman thy worshipful image of love and milk for all! Alas! in return of all this

courage Stream from thy eyes" to fall!

7. Sri P. N. Misra learned Counsel for the appellants, Sri Dileep Kumar, learned Counsel for the informant and Sri Jagdish Tiwari, learned A.G.A. for the State have been afforded prolonged hearing and the entire record has been thoroughly examined and scrutinised with their help.

8. From the evidence it is proved that the appellant Raju was married to the deceased Smt. Urmila in December, 1983 and her death under unnatural circumstances had occurred on 11-10-1986. This will be within about three years of the date of marriage.

9. Section 304B, IPC and Section 113B of the Indian Evidence Act were added on 19-11-1986 by Dowry Prohibition (Amendment) Act 1986 (No. 43 of 1986). These two sections have thus come into being about a month and a week after the brutal end of Smt. Urmila.

10. The new offence "dowry death" created u/s 304B, IPC is punishable with a minimum sentence of 7 years which may extend to imprisonment for life. Therefore, this section is creating a substantive offence and is not merely a provision effecting a change in the procedure for trial of a preexisting substantive offence. Therefore, on the facts of the present case it must be held that Section 304B, IPC is not attracted in terms and consequently the conviction of the two appellants, namely Raju and Smt. Gulhari Devi is illegal and has to be set aside.

11. This takes us immediately to the second and the third questions formulated above.

12. The gist of the two offences punishable u/s 302, IPC and Section 304B, IPC is the extinction of life under unnatural circumstances and there is nothing in the two sections to either explicitly or impliedly exclude either of the two if one is applicable. For charging an accused u/s 302, IPC the prosecution has, in fact, to prove by evidence that the accused by his acts has caused the death of the deceased with the intention of causing death. But for the exceptions carved out in Section 300, IPC which may amount to culpable homicide not amounting to murder, all other instances of culpable homicide would be punishable as murder u/s 302, IPC because it shall come within the definition of murder as delineated u/s 300, IPC. But Section 304B, IPC reads as under :--

304-B. Dowry death-- (1) where the death of a woman is caused by any burns or bodily injury or occurs otherwise than in normal circumstances, within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

Explanation : For the purposes of this sub-section, "dowry", shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life.

13. It is worth noting that neither the words "culpable homicide" nor the word "murder", finds place in Section 304B, IPC. The expression used therein is "the death of a woman deceased" (sic). In view of the compelling nature of the presumption drawable u/s 113B of the Indian Evidence Act, the applicability of the said Section 113B is always to be confined to the cases covered by Section 304B IPC. For ready reference Section 113B of the Evidence Act should be quoted below :

113-B. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation : For the purposes of this section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860) .

14. As noted above, the applicability of the said Section 113B is limited to cases "when the question is whether a person has committed dowry death of a woman.... " That too requires proof of two further facts. Firstly, it is shown that soon before her death such a woman had been subjected by such person to "cruelty" or "harassment" and, secondly, that the cruelty of her husband was "for or in connection with any demand for dowry". If these two facts are established by evidence the presumption u/s 113B as to the commission of the offence u/s 304B, IPC. would be attracted straightway. In view of these reasons as also in view of the very nature of things, the presumption u/s 113B, Indian Evidence Act, cannot be read or drawn or inferable where the charge is confined to Section 302, IPC. The two questions stand answered thus.

15. However, in practice how would the ingredients of the two Sections 302 and 304B, IPC, be proved simultaneously? An offence u/s 302, IPC may be proved only by two methods of evidence i.e. direct evidence and circumstantial evidence. For the purposes of the present discussion confessional statement is being omitted from consideration because that stands on an entirely different footing inasmuch as those cases would depend on accused's own statement rather than the prosecution evidence. A genuine difficulty may arise where the prosecution leads direct evidence or circumstantial evidence to prove the charge u/s 302, IPC and for some reason the court may doubt that evidence. Consequent upon such a doubt about the evidence, it may not be possible to record a conviction u/s 302, IPC. Can the court then fall back upon Section 304B, IPC bringing in the presumption u/s 113B of the Evidence Act and convict the accused u/s 304B, IPC? However, in view of the discussion following relating to the evidence of the present case this question need not be answered.

16. However, in *Soni Devrajbhai Babubhai Vs. State of Gujarat and others*, on which Sri P.N. Misra learned Counsel for the appellants had placed reliance, there is an important observation in paragraph 4 which may be quoted in verbatim (at page 3136; of Cri LJ):

The reason given by the High Court to support its view is that the offence was committed prior to the date of insertion of Section 304B, in the Indian Penal Code on account of which the section can have no application to the present case. None of the courts below has examined the applicability of any other pre-existing more stringent provision even if Section 304B does not apply. As such affirmation of the view that Section 304B does not apply, will not preclude the appellant from contending that any other more stringent provision is attracted on the accusation made. If that point is raised, the courts will have to decide the same on merits on the basis of accusation made. It is in this background that the point raised by the appellant regarding applicability of Section 304B is decided by us.

The lines underlined above by this Court would lend support to the view that in a case, charge u/s 304B as well as u/s 302, IPC may co-exist. This ruling fortifies the view that on the facts of the present case Section 304B, IPC will not be attracted because the section had come into existence quite sometime after the death of Smt. Urmila.

17. In *Gurbachan Singh Vs. Satpal Singh and others*, the Supreme Court has held that a presumption u/s 113B of the Evidence Act would be attracted and applied relating to a case where the accused was charged u/s 306, IPC. A question had arisen as to whether the presumption u/s 113A of the Indian Evidence Act could be raised in the said case or not because while that section was added by Act 46 of 1983 the death of the deceased in that case, Ravinder Kaur, had happened prior to the enactment of the said section. It has been held that the provisions of the said section do not create any new offence and as such it does not create any substantial right but it is a matter merely of procedure and as such it is retrospective and shall apply to that case. This Authority was relied upon by Sri Dilip Kumar in order to argue that the offence of dowry death should also be taken to be existing even prior to bringing into the statute book Section 304B, IPC. The argument was ingenious but has failed to satisfy the close scrutiny of the ingredients of the two sections i.e. Section 302, IPC and 304B, IPC which has been discussed above. Consequently this ruling does not go to defend or lend support to the argument made by Sri Dilip Kumar.

17-A. In *The State of Punjab Vs. Iqbal Singh and others*, the Supreme Court has dealt with the legislative intent behind the enactment of Sections 304B, 498A, IPC. and Section 113A and 113B of the Indian Evidence Act. The accused in the said case was charged u/s 306, IPC as his wife Mohinder Kaur had set herself and her three children ablaze on 7-6-1983 at the residence of her husband Iqbal Singh. The Trial Judge had convicted the accused and had brought in Section 113A of the Indian Penal Code to his aid. The High Court had, however, acquitted

Iqbal Singh. The State of Punjab took up the matter in appeal to the Supreme Court which was allowed and the trial court's judgment in so far as Iqbal Singh was concerned was restored.

18. In the case referred to above the Supreme Court has made the following observations (at pages 1901 & 1902; of Cri LJ):

The legislative intent is clear to curb the menace of dowry deaths, etc. With a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married woman is subjected to cruelty or harassment by her husband or his family members Section 498A, IPC would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished u/s 304B, IPC. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, Section 113B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course, if there is proof of the person having intentionally caused her death that would attract Section 302, IPC. Then we have a situation where the husband or his relative by his willful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306, IPC. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide.

19. Now coming to the facts of the present case it may be noticed that Yadunath Singh, P.W. 1, the father of Smt. Urmila has stated that he had married his daughter Urmila to Raju in 1983. When he had gone to take Urmila to his house about 6 or 7 months prior to the date of incident, all the three accused and the fourth acquitted accused made repeated demands about the several articles and the additional dowry. They demanded double-bed, bullet motor cycle and further said that if Urmila would die, a second marriage can be performed wherefrom Rs. 80,000/- were promised to be paid. With great difficulty the daughter was permitted to go with her father. On coming to the residence she complained to the father; mother and brothers that all the four accused were not giving her

adequate food, were torturing her, abusing her and constantly threatened her with death. After about 6 or 7 months, he had sent the daughter back to the in-law's family. On 11-10-1986 he got an information by wireless at 7 p.m. that his daughter Smt. Urmila has been admitted to the district hospital, Fatehpur, in a seriously burnt condition where he reached at 10 p.m. and found his daughter had already died. He found his wife, P.W. 3 Smt. Sankatha Devi and his sons Indrabhan, Dinesh and nephew Jagroop by the side of the dead body, who informed him that she had died around 6 p.m. and was admitted around 3 p.m. He prepared a first information report on the basis of information conveyed to him and lodged at P.S. Kotwali at 00.55 a.m. (a little after mid-night of 11/12th October). This FIR has been exhibited as Ka-1. His daughter had sent a letter to him through his nephew (Bhanja) marked as Ex.Ka-2 which was handed over to the Investigating Officer by him. He further says that one of the four accused were present when he had reached the hospital.

20. In cross-examination he has admitted that his daughter had read upto class VIII. He had no other documents having handwritings of Smt. Urmila. He had opened an account in the name of Smt. Urmila when she was minor, that account was still existing in the post office Aijhi. He could not say that a particular writing shown to him was that of his daughter. Urmila had sent no letter to him. He could not say whether she had sent letters to her mother and other children or not. Urmila had come from her in-law's house three or four times.

21. In further cross-examination he has said that he had not handed over the letter to the Station Officer because the letter was kept at his residence and that he told the S.O. that a controversy had arisen about Bidai of the daughter. The S.O. had talked to him at about 10 or 12 noon. The dead body had been removed then and he had said to the S.O. that he was very perturbed and if some day he would come to his house he will hand over the letter. In further cross-examination he has said that some of his other relatives were also present in the hospital. He has said that one Raj Kumar s/o Chandi Devi, a relative had brought his daughter to the hospital and it was he who had informed other members in Bhadwan.

22. In further cross-examination he has said that there was no delay in his report and the distance of the police station from the hospital is 2 kms. He knew that since the magistrate had not come, the formal dying declaration could not be recorded. He had disclosed to the Second Investigating Officer about the letter written by his daughter to complainant about the cruelty. He had spent about Rs. 23,000/- cash and about Rupees 50,000/- on materials at the marriage of his daughter with Raju. He was not paying income tax but the said amount was his earning from agriculture as well as salary.

23. In further cross-examination he has said that his daughter was unhappy due to the behaviour of her in-laws, husband and Nanand (husband's sister).

24. The entire handwritten contents of Ex.Ka-2 (the letter) is that of Urmila. It is

wrong that the handwriting with which the address was written was different.

25. In further cross-examination he said that Chandi Devi was his niece and Chandrapal Singh (employed in the post office examined as P.W. 7) was the brother of Chandi Devi. He had not made any report about maltreatment to his daughter to anyone but he did not evaluate those incidents to be so serious as necessitating lodging of FIR. He did not remember as to who had and how the letter Ex.Ka-2 had come to him. That letter had come by hand through his Bhanja Raj Kishore who had gone to meet her.

26. In further cross-examination he has said that Ex.Ka-2 was handed over to his wife and that he wrote that letter on the 12th as it was handed over to him in the afternoon but regarding it his wife had given to him information earlier. He had lodged the FIR prior to reading the letter since that letter was not with him when his statement was taken down by the S.O. He mentioned about it to the Second I.O. He had not given details to the first I.O. as he was very much perturbed. He then explained at once that he had wrongly stated a little while ago that he had not given any statement about the letter to the first I.O. this was clarified by him that he had referred to about this letter even to the first I.O.

27. The suggestions to this witness are that there was no maltreatment to the daughter, no cruelty was perpetrated by any of the accused, the entire F.I.R. was lodged after due consultation, Ex.Ka-2 is a manufactured document, it did not contain the handwriting of Smt. Urmila, no dowry was demanded or paid at the marriage, Raju was already having his own motor-cycle, Smt. Urmila was cooking food and in that process she caught fire accidentally.

28. P.W. 2 is Raj Kishore Singh (Bhanja of P.W. 1) who has said that at the settlement of marriage of Urmila with Raju, the sum of Rs. 23,000/- in cash was given and valuables of about 20,000/- was given. On 22-9-1986 he had gone to meet his cousin sister when she had said that she was not given food and was being constantly tortured, her in-laws were demanding a double-bed, motor cycle, and cow and were extending threats that she would be done to death because Raju's marriage with another party was settled at Rs. 50,000/- cash. She had given a letter for being handed over to mother and brothers. She further said that she did not sleep in nights because of the threat to her life. She wanted that her father should immediately remove her from their clutches otherwise she would be done to death. He further said that Ex.Ka-2 was the same letter which was handed over by Urmila and she had given it to the mother of Urmila i.e. his Mami.

29. In cross-examination he has said that the letter was not written in his presence which was written about 15 days prior to Dussehra. He had read upto class VIII. He had carried about three letters from Urmila. He had not stated in his statement u/s 161, Cr. P.C. about the allegation that the in-laws of Urmila were saying that Raju may get Rs. 50,000/- if he is married second time. He knew that Urmila had studied upto class VI but he had not seen Urmila writing.

The letter was in four folds.

30. The suggestion to this witness is that his entire statement is false. He had not gone to meet Urmila nor had she handed over any letter and that Ex.Ka-2 was a forged document.

31. P.W. 3 is Smt. Sankatha, mother of Smt. Urmila deceased. She says that she was at her residence in Ashok Nagar locality when Raj Kumar of village Bhadwan came and told her that her daughter Urmila has been admitted in the hospital in a burnt condition. On getting this information, she, along with her sons Dinesh, Indrabhan and nephew Jagroop went to the hospital and found Urmila to be in a badly burnt condition. On asking what has happened, Urmila started crying bitterly and said that neither she had set fire to her self nor did she caught it accidentally. On enquiring as to who were there in the house Urmila disclosed that her mother-in-law, husband, Nanand (husband's sister) and father-in-law were present in the house and the mother-in-law asked her to cook "hodge-podge" (Khichri). After cooking it she said "mother Khichri has been cooked" and the mother-in-law then said "Khichri alone does not fill the belly prepare Pratha". At this she mixed flour for preparing Pratha and got busy in firing the oven. The mother-in-law then said "close down the door. She further said that then she went and closed the door and when she was firing the oven in a bent position her husband caught hold of the hand and threw her on the ground. The mother-in-law poured kerosene oil from a glass and set fire by picking a burning wood from the oven. She further said that when she started burning badly all the four accused ran away from the back door. She further said that she went out of the house while shouting and thereafter she did not know what had happened. Later on Chandi Devi had fed some milk through spoon in her mouth. She further said "mother when I come round this, then do not send me to Bhadwan, take me to the residence, if I die to tell my father to take revenge.

32. Smt. Sankatha further said that when her daughter used to come she used to complain always that the in-laws were not feeding her properly and were always threatening with dire consequences if a sofa-set, double-bed, motor cycle and a cow was not brought and handed over to them. In this connection her daughter had sent three letters. Ex.Ka-2 is a letter sent by my daughter. A Dy. S. P. of the Police had come to interrogate her.

33. In cross-examination she has said that her husband has retired as a Daroga. She had opened post office account in the name of her daughter Urmila in Aijhi Post Office. She had put her thumb impression as a guardian. The signatures in the post office are that of Urmila herself.

34. In further cross-examination she has said that Ex.Ka-2 was handed over to her by Raj Kishore Singh about 20 days ago and she had sent her son to her husband, who however, could not come due to duty in the Police. The other two letters were misplaced. She had given this letter to her husband before the Circle Officer came. Her statement was recorded after about 4 or 5 days of the death of

Urmila by the Circle Officer.

35. In further cross-examination she has said that when she had reached the hospital, she found Urmila lying on the bed and the doctor was not present. The whole body had blister marks. The hands, leg and her hair had not caught fire. She was lying with the back on the bed. She remained in the hospital until she died. She remained in the hospital till about mid-night and then went back home and came back to the hospital the next day. During all this period neither Bhoora Singh nor his wife nor their children had come in the hospital.

36. Ex. Ka-2, the letter which Urmila had sent through Raj Kishore Singh is in her handwriting which she knew. She is not so well-read as to read the letter. She cannot identify a handwriting simpliciter if existing on some paper as that of Urmila or not.

37. In further cross-examination she stated at that at the time of Panch-nama on the next day she and her husband had arrived again. She further said that when she had seen Urmila for the first time she was wearing a Balli in her nose and a Turia. I cannot say whether she was wearing those two pieces at the time of Panch-nama or not because I was asked to go a little away at that time. My husband had then sent me back home.

38. She has further said in cross-examination that when she had reached the hospital for the first time she found her daughter badly burnt. On enquiry about the incident the daughter had only enquired whether any one of her in-law's family was nearby. Whatever statement she had made to her she stated before the C.O. and the same was repeated by her in the statement in Court. She could not give any reason why she had not told to the C.O. that the four accused were present. She could not explain why the C.O. had omitted to write about preparing of flour for Pratha and firing the oven, and also that her husband had caught hold of her hand and threw her. She also could not explain why the Investigating Officer had not written in her dying declaration as stated to by the witnesses that she should not be taken to Bhadwan and should be taken to the residence and if she died then her father should be asked to take revenge.

39. She has further stated in cross-examination that as soon as she had reached the hospital and near her daughter the talks regarding the F.I.R. commenced. Nurses were not present. She was alone. The entire talks were narrated by her to her husband, to the I.O. (C.O.) and, in the Court, on the day of her deposition.

40. The suggestion extended to this witness are that no dying declaration was made to her by Smt. Urmila and that she has given a cooked-up version. It was suggested to her that Ex. Ka-2 was not a letter in the handwriting of Smt. Urmila and that it was cooked-up and forged at the instance of her husband. There is no other suggestion relevant for mentioning here.

41. P.W.4 is Dr. V. N. Deo who had conducted the post mortem examination on the dead body of Smt Urmila on 13-10-1986 at 2.30 p.m. He had said that the

deceased was about 20 years of age with a healthy youthful body, the rigor mortis had passed off and decomposition had started. The peeling of the skin had begun, burnt pieces of the brassiere and blouse were present on the body. Eyes and mouth were open. The dead body had first and second degree burns of almost 100%. On internal examination he found carbon particles were noticed in the trachea and the internal organs were congested. He also found that her stomach contained about 1 oz. digested food and small intestines were half full. He then ultimately opined that she had died as a result of ante-mortem injuries sustained by her.

42. He has further said that he had found 25 glass bangles, a dhoti, a blouse piece, petticoat and a brassier from the body of the deceased. He proved the post mortem examination report prepared by him and marked Ex. Ka-3. The burn injuries sustained by her were sufficient in the ordinary course of nature to cause her death.

43. In cross-examination this witness has stated that he did not find any smell of kerosene in the clothes of the deceased and had he received the same, he would have certainly mentioned in the report. He has further found that if a patient was in a coma-state and responds only to deep stimuli then there may not be any correlation between his thoughts and his speech.

44. P.W. 5 is Dr. Harish Chandra. He was posted on 11-10-1986 as Radiologist, District Hospital Fatehpur. He has said that Vijai Bahadur Singh son of Narendra Singh r/o Bhadwa had brought Smt. Urmila, aged about 25 years, wife of Raghuvendra Pratap Singh, r/o Bhadwa. Smt. Urmila was in a burnt condition and he admitted that her injuries were noted in the Accident Register. He found the following injuries of the patient Smt. Urmila:--

G.C. -- V. low

Pulse -- 120/mt vol. low, rapid

Temp. -- Normal

Patient is semi-conscious

(1) Burn injuries on face, head, neck, chest, back abdomen, both hands and both legs.

Degree : III to IV degree about 90%

Patient is kept u.o. Injuries caused by flame alleged by chulha, Duration fresh.

He also proved the bed head ticket of Urmila (Ex. Ka-5) which is as follows:

Alleged to have burnt by flames of chulha. Burn injury all over body. gr. III to IV.

G.C. : V. Low.

Responding only to deep stimuli.

Pulse: 120/mt.

Temp. : N

Prognosis poor explained.

CVS) CNS) NAD Resp.) Abd.

45. He proved the letter (Ex. Ka-6), sent to P. S. Kotwali. He also proved the letter to the District Magistrate regarding the dying declaration (Ex. Ka-7). He proved the informations sent to Kotwali regarding the death of Urmila (Ex. Ka-8). In his statement he stated that after the admission of the patient, some female and male members also arrived there. He proved the letter to S.D.M. (Ex. Ka-9).

46. In cross-examination he has said that he had made the following endorsements in his register, "Patient is semi-conscious, responds to deep stimuli". He has further said that he had sent for the Magistrate in good faith so that if the patient could revert to the position of making a declaration it could be got recorded. He has admitted that Dr. V. N. Deo was senior to him and was much experienced. He further admitted that he had recorded the words "burnt by flames of choolha at the information of V. Bahadur." The said sentence was not his own conclusion but was stated to be so by the said Vijai Bahadur Singh. Then the witness volunteered to add that the injury by flames was his own conclusion but from "oven" was not his conclusion.

47. The witness then admitted that he had mistakingly written the words "alleged by Choolha" after the words "injury caused by flames" and he was not certain at that time that those injuries had been caused by the flames of the oven. The name of the husband of Smt. Urmila was disclosed by Vijai Bahadur Singh as also the other details noted in the register.

48. He has further said that the Senior Medical Superintendent had advised him to writ a note to the D.M. and in the meantime if the patient was able to give a declaration it should be noted down by him.

To a direct question a direct answer was given which is reproduced below:

Q. : Is it not clear from your letter to the D.M. and the contends therein that the patient was not in a position to make a dying declaration?

A. : It does not so appear that the patient was in a position to make a dying declaration. If the patient was in a fit condition to give the statement I would have recorded the same and informed the District Magistrate accordingly. I had written the letter to the Magistrate at the asking of the Senior Medical Superintendent. I know that letters are written to the Magistrate. This, however, is dependent upon whether the conduct of the patient is such and so much time is available so as to secure the presence of the Magistrate.

49. He has very emphatically said the following sentences in further cross-examination "I had sent the letter to the Magistrate at 3.10 p.m. If he would

have arrived and the patient would have come to senses the statement may have been recorded.... " Then another question and answer would be very relevant.

Q. : Was the patient in a semi-conscious state or not?

A. : She was responding only to deep stimuli. I had not written the fact about responding to deep stimuli in the register. I have only written that the patient is semiconscious.

Q.: What did you mean by writing "patient is semi-conscious"?

A. : The patient was in a half senses.

This witness then denied the suggestion that there could be distinction in the type of injury sustainable by accidental fire and by someone intentionally setting fire to.

50. P.W. 6 is D. S. Yadav who was posted as C.O. (City), Fatehpur, in 1986. He has said that the case was initially registered u/s 302, I.P.C. at P.S. Kotwali and subsequently it was forwarded to P.S. Malwan for investigation as offence under Sections 498A and 302, I.P.C. were allegedly made out to which the case was altered. He took up investigation on 13-10-1986 from Vijai Kumar Sharma (P. W. 11). On 14-10-1986 he reached the spot and got the door or Bhoora Singh's house opened and inspected the spot, got the site plan prepared by the head-muharrir at his dictation (Ex. Ka-10). He recorded the statement of Smt. Sukhia and Smt. Chandi Devi. The three memorandum prepared by the earlier Investigating Officer relating to pieces of Sarhi, glass of kerosene oil and ash from the oven etc. were taken over. Thereafter he came to Fatehpur and recorded the statements of Sankatha Devi, Indrabhan Singh, Dinesh Singh, Jagroop Singh and Yadunath Singh. He took into possession a letter written by the deceased handed over to him by Yadunath Singh. He received the post mortem examination report on the dead body of Smt. Urmila on 15-10-1986. He recorded the statement of Bachraj Singh and Dr. Harish Chandra. Although he had continued the search of the accused for which he had deputed informants. On 25-10-83 he took steps u/s 82/83 against all the accused which were finalised on 26-10-1986. He came to know on 17-11-1986 that accused Bhoora Singh and accused Raghuvendra Pratap Singh alias Raji had surrendered in the Court on 6-11-1986.

51. This witness further stated that he filed a charge sheet against accused Bhoora Singh and Raju on 2-12-1986. However, the accused Gulhari Devi, Km. Aruna Devi continued to abscond and, therefore, they were charge-sheeted as absconding accused.

52. In cross-examination this witness had admitted that he got the photostat copy of the letter prepared for getting the identity of the handwriting fixed. Then he tallied the same with the handwriting of the deceased existing in the post office account; since he was satisfied that both were of the same person, opinion

of the handwriting expert was obtained.

53. In further cross-examination he has said that he did not record the statement of the person who had brought the deceased to the hospital. He then clarified that he did not record the statement of V. B. Singh because he came to know that he was related to the accused and would not divulge anything truthful. No dying declaration was recorded by the doctor or by a Magistrate. He had seen the exchange of letters between the doctor and the Magistrate. He further said that he had not forwarded the burnt clothes for chemical examination.

54. P.W. 7 is Chandrapal Singh who has proved opening of the account No. 1072200 in the name of the Urmila Devi, daughter of Sankatha Devi in the post office Aijhi where he was posted as Branch Post Master. He stated that the signature of Urmila Devi was made in his presence in the register.

55. In cross-examination this witness has stated that Smt. Sankatha used to deposit money in the name of Urmila Devi but had not withdrawn anything from the account. He further stated that he could not say whether the signature of Urmila Devi allegedly existing on Ex. Ka-2 were that of her or not because it was not made in his presence whereas the signature on the Register in the post office was that of Urmila Devi because it was made in his presence. He has further admitted that Yadunath Singh would be his maternal uncle. Smt. Chandi Devi is his own sister, who is married to Mahabir Singh, the own brother of Bhoora Singh accused.

56. He has said that on 20-6-1983 a sum of Rs. 702/-, on 25-5-1984 a sum of Rs. 150/- and on 7-6-1985 a sum of Rs. 200/- were deposited in the account of Urmila Devi.

57. P.W. 8 is constable Bhagwati Prasad Maurya. He was head-muhrrir, P.W. Kotwali on 12-10-1986. He has stated that on 12.55a.m. Yadunath Singh, P.W.1, had lodged the F.I.R. (Ex. Ka-1) on the basis of which he had prepared the chick F.I.R. No crime No. was written by him, because the case related to P.S. Malwan. He had made the corresponding entry in the General Diary. He proved the true copies of the two entries as Ex. Ka14 and Ex. Ka-15. On the basis of the General Diary entry he forwarded the report to P.S. Malwan through constable Akshaibar Pandey. He further proved that the memoranda recording the admission and death respectively of Smt. Urmila had been received from District Hospital, Fatehpur about which entries in the General Diary were made by him.

58. In cross-examination this witness has said that P.S. Kotwali would be about two and a half kms. from the hospital. The intimation of admission of Smt. Urmila in the hospital and reached at 5.30 p.m. at Police Station (Ex. Ka-6) but news of the death of Smt. Urmila had reached the Police Station at 1.00 a.m. on 12-10-1986 (Ex. Ka-8).

59. It may be mentioned here that this witness has stated that on the reverse of these two exhibits "there appeared to be some endorsement by the two

Jamadars namely, Munna and Dukhnoo and there is some endorsement of timing but it has been cut away and mutilated." He could not say whether the timing written behind Ex. Ka-6 was 18.13 p.m. and behind Ex. Ka-8 8-30 p.m. were written or not.

60. He has denied the suggestion that the general diary was stopped in the night of 11th of October, 1986 and entries had been made subsequently at the police station with active connivance of Yadunath Singh who was a Police Inspector himself, in order that the police papers may be manufactured later on.

61. He has admitted that in the chick report he had noted the time of incident as "Agyat" (unknown) and then cut it out under his initials and he has put down 6 p.m. below it. This witness admits that this time he had mentioned on the basis of the F.I.R. He further admits that Section 498A, I.P.C. has not been noted in the chick F.I.R. He has denied the suggestion that only Section 302, I.P.C. was mentioned so that the matter could be investigated by the S.O. as he knew that a case u/s 498A, I.P.C. was to be investigated by the Dy. S. P. One very important thing which he has admitted is that between the evening of 11-10-1986 and 8 a.m. of 12-10-1986 no cognizable or non-cognizable F.I.R. has been lodged at the Police Station Kotwali. He has denied the specific suggestion that the General Diary was stopped in evening of 11-10-1986 to facilitate making of entries at the connivance of Yadunath Singh.

62. P.W. 9 is Suresh Chandra Dube who was the head-muharrir, P. S. Malwan on 12-10-1986 on which day he registered the case No. 445 of 1986 u/s 302, I.P.C. vide G. D. entry No. 3 which was brought by Akshaibar Pandey of P. S. Kotwali. This case was registered at his police station against crime No. 161 of 1986 u/s 302, I.P.C. The investigation was handed over to V. K. Sharma who proceeded to the spot at once with the police force. Sri Sharma came back to the police station at 11 a.m. on 12-10-1986. The case was altered u/s 498A, I.P.C. vide G. D. entry No. 17 true copy of which has been proved as Ex. Ka-17.

63. In cross-examination he has stated that he himself did not alter the case to Section 498A, I.P.C. also with Section 302, I.P.C. because Sri Sharma was his superior authority who took up the investigation. He denied that the dowry deaths are investigated by Gazetted Officers. He admitted that only one case at crime No. 162, u/s 380, I.P.C. was registered at 1.30 a.m. at the police station he has denied however, that at the asking of the police at Kotwali the general diary had stopped at that police station also and that the investigation was handed over the B. K. Sharma in order to facilitate the conversion of the case later on into Section 498A, I.P.C.

64. P.W. 10 is Shivaji Misra who was posted as S.I. at P. S. Kotwali on 12-10-1986. He reached the district hospital in night itself to execute the inquest report on the dead body of Smt. Urmila Devi because of paucity of light. He commenced the preparation of inquest report (Panchanama) at 7 a.m. (Ex. Ka-18). He prepared the other necessary documents, challan nash etc. (Ex.

Ka-19, 20, 21, 22 and 23 and despatched the dead body for post-mortem examination through Prakash Narain and Ram Asrey constables. In cross-examination he said that he had not seen the F.I.R. prior to the proceeding to the spot and that is why there is no mention of any crime number in the Panchanama. He stated that he commenced the Panchayatnama at 9 a.m. Yadunath Singh, father of the deceased Urmila, had identified the dead body after removing the cover from the face of the dead body. There was no ornaments in the nose or in the neck of the deceased.

65. He has further admitted in the cross-examination that while the Panchanama was being executed the witnesses to the Panchanama wrote in their own handwriting that in the meantime a case has been registered at the police station. He has denied the suggestion that till the execution of the Panchnama the murder was treated as an accidental death.

66. P.W. 11 is V. K. Sharma. He was Station Officer P. S. Malwa in October, 1986. He took up investigation in the instant case on 12-10-1986 just after the lodging of the F.I.R. After recording the statement of constable Suresh Chandra, he proceeded to Fatehpur. He recorded the statement of Yadunath Singh and that of the head-muharrir of P.S. Kotwali. He went to the residence of the accused and found it locked whereafter he went back to the police station. He added Section 498A, I.P.C. also and converted the case accordingly whereafter the case was handed over to the Circle Officer because it related to dowry death.

67. In cross-examination he has admitted that on reading the F.I.R. he had come to know that it was a case of dowry death but he thought it essential to record the statement of the informant because initially the case was registered only u/s 302, I.P.C. and thus he proceeded to the spot at once. It is after recording the statement of the informant that he converted the case. He had recorded the statement of the informant in the case diary whereafter he made an attempt to interrogate the witnesses and the S.I.R. who had conducted the Panchanama but had left.

68. On a question put by the Court the witness said that he had gone to the hospital on a tempo and when he had met the informant at the gate he took his statement u/s 161, Cr.P.C. The informant was sometimes weeping and sometimes murmuring and had said that the Panchnama was being conducted inside the hospital. In cross-examination by the defence counsel he said that in the case diary he had noted that the dead body had been removed before he had reached the hospital and even the S.I. and the witnesses had all gone away as he had already written in the case diary that he took the statement of the informant after that.

69. He has denied the suggestion that he had put in the name of Yadunath Singh as informant so that the letter allegedly written by Urmila could be procured and manufactured. He volunteered that since the case was registered u/s 302, I.P.C. he thought it proper to record the statement of the informant first.

70. At this stage it may be pointed out that from the statement of P.W. 6 D. S. Yadav it appears that he had taken into possession three memoranda prepared at the spot, but in the record there was only one memorandum exhibited while the other two remained unexhibited. Consequently this Court summoned both the witnesses-P. W. 6 D. S. Yadav and P.W. 11 Vijai Kumar Sharma, as C.W. 1 and C.W. 2. The other two memoranda prepared by V. K. Sharma have been proved as Exhibit C 1 and Exhibit C 2, respectively. C.W. 1 Dy S. P. has said that those two documents were handed over to him by V. K. Sharma.

71. In cross-examination of the Dy. S. P., it was suggested that when he had reached the house of Bhoora Singh, his minor son Raghuvendra Singh opened the lock of the house. He has denied the suggestion that the boy who opened the lock was appellant Raghuvendra Singh. He, however, stated that the said boy was aged about 7 or 8 years and he remembers the same though that is not mentioned in the case diary. The witness was specific that the boy and the accused were two different persons. He admitted that the instant case was second investigation of his career.

72. In the cross-examination of V. K. Sharma it was suggested that the two memoranda were prepared at the asking of informant Yadunath Singh and nothing was in fact recovered as noted in those documents. The witness has admitted that the glass was not sent for chemical examination as he ceased to be I.O. of the case.

73. The three appellants were summoned by this Court and the two statements, referred to above, were read out to them and their statements u/s 313, Cr.P.C. was recorded. All the three appellants denied the genuineness of the memoranda. They said that because the informant was a Daroga the statements were made to support him and they did not want to produce any evidence in this case.

74. In the trial Court, however, the accused had examined three defence witnesses namely, Raj Bahadur, Mata Prasad and Wasit Ali.

75. Raj Bahadur stated that the specimen signature of Urmila was kept at the sub-post office where he was accountant. He filed three copies thereof as Exs. Kha 2, Kha-3 and Kha-4. Mata Prasad was Postal Assistant who said that in the head post office the specimen signature relating to account No. 1072200 of Smt. Urmila was missing. Similarly Wasit Ali said that he was an Assistant in the Ledger Section and that the endorsement card bearing the specimen signature of Smt. Urmila Devi was not traceable. None of the three witnesses produced by the defence was cross-examined by the prosecution. However, some copies of Khataunis were also filed along with the copy in which some songs were inscribed. There is absolutely no relevance of these documents with the prosecution allegations and were not relied upon at the time of arguments by the learned Counsel for the appellants.

76. This is the appropriate place to know what was the exact defence pleaded by

the respective appellants. So far as appellants Raju and Bhoora are concerned, they have completely dissociated themselves from the knowledge of burning of Smt. Urmila on the date of the incident. But so far as appellant Smt. Gulhari Devi is concerned she has admitted of having the knowledge of the burning of Smt. Urmila Devi while she was returning from the temple and wherefrom she straightaway had gone to the hospital.

77. Another factor to be remembered is that all the appellants were absconding after the case was being investigated and so far as Smt. Gulhari Devi and Aruna Devi are concerned, they had been charge-sheeted as absconder. It will thus be seen that while Bhoora Singh appellant, Raju appellant and Aruna Devi appellant have denied their presence in the house, Smt. Gulhari Devi however, has admitted that she got the information of Smt. Urmila getting into flames through Vijai Bahadur, the nephew of Bhoora Singh appellant and consequently she had gone to the hospital. It has further been admitted by her that in the hospital she had met P.W. 3 Smt. Sankatha Devi who had also arrived in the hospital along with some of her relatives. In this background, the learned defence counsel Sri P. N. Misra severely criticised the alleged oral dying declaration. He has also criticised the prosecution version regarding the lodging of the F.I.R. at P. S. Kotwali on 12-10-1986 at 0.55 A.M. He has also challenged the alleged letter said to have been written by Smt. Urmila Devi and allegedly brought to Yadunath Singh through P.W. 2 Raj Kishore Singh.

78. A complete r?sum? of the statement of the various witnesses has been noted above. From the statement of P.W. 5 Dr. Harish Chandra while it is clear on the one hand that Smt. Urmila was semi-conscious and was responding only to deep stimuli, on the other hand the doctor was expecting that she may come back to senses and be in a position to make a dying declaration and that is why he had sent a notice to the magistrate for immediately coming to the hospital and recording the statement of Smt. Urmila devi. However, statement of P.W. 4 Dr. V. N. Deo who conducted the post mortem examination indicates that the physical condition of Smt. Urmila must not have been such as to give out a voluntary statement. There is a discrepancy in the statements of both these doctors as to the exact nature of the burn injury which was sustained by Smt. Urmila. However, both the doctors agree that Smt. Urmila must not have been fully conscious and it at all, may have been responding to deep stimulation.

79. This apart, the cardinal principle relating to placing of reliance on extra-judicial dying declaration shall have to be re-emphasised here. Such a dying declaration should inspire confidence and completely rule out chances of fabrication or falsehood. For that matter, even judicial dying declarations i.e. recorded by Magistrates, have been discarded by the courts where outside interference, prompting by interested persons and help from other quarters was available to the maker of such a statement. Again, it has been emphasised that preferably a note of what the statement exactly is should be prepared and it should be thumb marked by the maker of the statement. In the instant case

there is no memorandum prepared by Smt. Sankatha Devi inasmuch as she herself was an uneducated lady and was incapable of deciphering alphabets. Her being extremely interested in the matter also cannot be ruled out. Moreover, the patient Smt. Urmila was incapable of giving out a voluntary statement. One could have expected that even Dr. Harish Chandra would have recorded her statement as is done quite often when the condition of the patient is serious and the magistrate's availability is not secured. In her cross-examination Smt. Sankatha Devi has specifically admitted that when the alleged dying declaration was made by Smt. Urmila to her, nobody else, not even a nurse, was present in the room. In any case, there may have been some semblance of corroborative evidence, if in the first information report lodged by P.W. 1 Yadunath Singh the fact of Smt. Urmila's having made a dying declaration to her mother would have been mentioned. The said document does not say that Smt. Sankatha Devi had told the informant of the making of an oral dying declaration to her by Smt. Urmila. The mention of the F.I.R. of the words "Maloom Hua" (came to know) are not so wide as to permit inclusion of an extra-judicial dying declaration within those words. For the aforesaid reasons the making of the extra-judicial dying declaration by Smt. Urmila before P.W. 3 Smt. Sankatha does not inspire confidence.

80. There are two sets of circumstances which remain wholly unexplained if one were to accept that the first information report was, in fact, lodged at P.S. Kotwali on 12-10-1986 at 0.55 a.m. It is admitted case that Smt. Urmila was admitted in the hospital on 11-10-1986 at 3.05 P.M. Dr. Harish Chandra (P.W. 5) has admitted that he had sent the Memo Ex. Ka-6 to P.S. Kotwali soon after her admission in the hospital and as per the statement of head constable the said memo had reached at 7.30 p.m. That means that the intimation about the admission could reach from the hospital to the Police Station Kotwali within about three hours. It is admitted case that the death of Smt. Urmila took place at 5.35 p.m. and the statement of Dr. Harish Chandra is that immediately thereafter he had despatched the said information through Ex.Ka-8 to the Police Station Kotwali within an hour or so. But strangely enough, this document is said to have reached the police station much after the first information report by P.W. 1 Yadunath Singh was lodged at 0.55 a.m. In fact, the very basis of the inquest report is admittedly the entry made vide Ex.Ka-6 at P. S. Kotwali because, according to the statement of P.W. 10 Shivali Misra, he had not seen the first information report lodged by Yadunath Singh nor was he given a copy of the said F.I.R. nor did he mention any crime number and details of the offence in the inquest report because of the absence of the F.I.R. In fact, in the Pan-chnama the mention of the basis of the entries therein made in the Police Papers prepared after intimation was received at P.S. Kotwali vide Ex.Ka-6. The other interesting aspect to be noticed is that the second page of the inquest report finds an endorsement that some of the witnesses testifying about the Panchanama divulged at that hour that a first information report about the incident has been lodged at P. S. Kotwali by Yadunath Singh. This is astounding;

for, the witnesses at the Panchanama are neither the witnesses as noted in the F.I.R. nor were present in the hospital. They are persons whose details are not known to the court as none of them has been examined. Under the circumstances it is unsafe to hold that the first information report had come to be lodged at 0.55 a.m. at Police Station Kotwali.

81. In this very connection the important aspect to be noticed is that the explanation of P.W. 10 as to why he had not carried the F.I.R. or its copy for getting the Panchanama executed is that since the matter related to P.S. Malwan and not P. S. Kotwali he was not handed over copy of the F.I.R. This explanation is devoid of any merit and must be rejected outright. Even if the original F.I.R. were to be sent to another Police Station the details of it must have been handed over to the officer deputed for conducting the inquest so that the necessary columns in the inquest report could be filled in by him and at least the details of the offences were included in the Panchanama.

82. Yet another aspect in this connection is very important. P.W. 11 V. K. Sharma, Station Officer P. S. Malwan has made too damaging statement to be believed in so far as his reaching the hospital and recording the statement of P. W. 1 Yadunath Singh u/s 161, Cr.P.C. is concerned. In his statement noted above, V. K. Sharma has said that he had recorded the statement of Yadunath Singh u/s 161, Cr.P.C. but when cross-examined he could not find out any note to that effect in the case diary prepared by him. Further, while at one place it is said that the Panchanama was being (sic), at the other place it emerges that the body had already been despatched for post mortem examination and was not available in the hospital.

83. In view of the aforesaid discussion it becomes extremely doubtful that the first information report was, in fact, lodged at 0.55 a.m. at Police Station Kotwali even if it may be believed that it was sent by the Police of P. S. Kotwali to the Police of Malwan in the early hours of 12-10-1986 for being registered there as an offence. A word may be stated here relating to the letter allegedly written by Smt. Urmila and carried through P.W. 2 Raj Kishore Singh to her parents. From the statement of P.W. 1 Yadunath Singh and also of P.W. 3 Smt. Sankatha Devi it is abundantly proved that the executant of the letter was Smt. Urmila. The statement of Chandrapal Singh, a relation of both sides i.e., the appellants as well as the informant, shows that he (Chandrapal Singh) was posted at the relevant post office wherein the bank account in the name of Smt. Urmila was opened by Smt. Sankatha Devi. He has proved the signature of Smt. Urmila. The registers were brought in the court and the copies of the signatures were filed in the court. The prosecution case is that signature on the said record brought from the post office and the letter brought by P.W. 2 Raj Kishore Singh were that of Smt. Urmila stands fully established. It may be remembered that the appellants had tried to bring forth some contradiction or negative evidence regarding availability or otherwise of other signatures of Smt. Urmila at the head post office but those records were not available. Consequently, there is no evidence coming

from the other side indicating anything adverse to the prosecution version that the letter Ex.Ka-2 was written by Smt. Urmila to her parents.

84 A criticism about this "letter" was that this letter should not have used two words. It is said that firstly the words "Deegar Samachar" should not have come from Smt. Urmila while writing to her parents. The argument is that the word "Deegar" is generally used in police papers, for example "Deegar Samachar", "Deegar Mulziman" etc. It may be noted that Smt. Urmila was the daughter of a Police Inspector and was educated and, therefore, if she had used a word which she may have heard at her parents' house no adverse inference whatsoever can be drawn from the use of the word "Deegar". By the way, this word only means "other". It is quite often seen what while writing letters persons convey information regarding welfare in a few lines first and then while referring to other informations the word "Deegar" is used. Therefore, the use of the word "Deegar" is on the very face of it does not indicate any foul play. It was argued that in the end of the letter Smt. Urmila should not have said that she was despatching this letter through her uncle's son Raj Kishore Singh. It was argued that when the letter was being carried by Raj Kishore Singh himself what was the fun in writing it out in the letter. This argument is an emphasis on a totally unnecessary detail. There may have been another Raj Kishore Singh in some of the close relations and, therefore, Smt. Urmila may well have said that this letter was being carried by her uncle's son. Therefore, genuineness of the letter is fully proved and the testimony of P.W. 1 Yadunath Singh fully supported by P.W. 3 Smt. Sankatha Devi indicates that the marriage of Smt. Urmila with Raju alias Raghuvendra Pratap Singh had been solemnised in December 1983 when enough cash and valuables were handed over to the appellants but they were constantly torturing Smt. Urmila and also demanding further cash and things as dowry.

85. What should be the conclusion of the aforesaid discussion is a point which has bothered this Court sufficiently. One would have been so happy if the presumption u/s 113B of the Indian Evidence Act could be brought in aid to a charge u/s 302, I.P.C. but one would have been still happier if on the facts of this case the appellants could have been convicted u/s 304B, I.P.C. But, alas, there will be no gainsaying in recording a finding that all the three appellants Bhoora Singh, Raju alias Raghuvendra Pratap and Smt. Gulhari are guilty u/s 304B, I.P.C. because neither can they be convicted nor sentenced thereunder as the said section was brought into the statute book on 19-11-1986 whereas the tragic extinction of life of the youthful lady Smt. Urmila under unnatural circumstances happened on 11-10-1986. The appellants, therefore, go scot-free regarding the charge u/s 304B, I.P.C. by as insignificant a margin as skin of the teeth.

86. Simultaneously, the oral dying declaration being not of absolute reliability, the appellants have to get the benefit of the doubt regarding the charge u/s 302, I.P.C. However, the prosecution evidence has fully made out the charge u/s 498, I.P.C. an Section 4 of the Dowry Prohibition Act against all the appellants.

87. The conclusion, therefore, is that Criminal Appeal No. 2854 of 1988 filed by

Bhoora Singh is dismissed. His conviction u/s 498A, I.P.C. and the sentence of three years" R.I. and a fine of Rs. 500/- is upheld. His conviction u/s 4 of the Dowry Prohibition Act and the sentence of six months" R.I. and a fine of Rs. 500/- is also upheld.

88. Criminal Appeal No. 2917 of 1988 is partly allowed. The conviction of Raju alias Raghuvendra Pratap Singh and Smt. Gulhari alias Champa Devi u/s 302, I.P.C. and the sentence of death awarded to them thereunder are set aside. They are acquitted of the charges punishable u/s 304B, I.P.C. Their conviction u/s 498A, I.P.C. and the sentence of three years" R.I. and a fine of Rs. 500/- each are upheld. Their conviction u/s 4 of the Dowry Prohibition Act and the sentence of six months" R.I. and a fine of Rs. 500/- thereunder are also upheld.

89. The aforesaid opinion be placed before the Bench consisting of Hon. Dr. Justice J. N. Dubey and Hon. Mr. Justice B. L. Yadav at an early date.

(On 6-5-1992) Hon"ble B.L. Yadav, J. and J.N. Dubey, J.:-- 90. In view of the opinion of the learned single Judge u/s 392, Cr.P.C., Criminal Appeal No. 2854 of 1988 of appellant Bhoora Singh is dismissed. His conviction u/s 498A, I.P.C. and u/s 4 of the Dowry Prohibition Act and the sentences passed thereunder are maintained. He is on bail. His bail bonds are cancelled. He will be taken into custody forth with to serve out the sentences passed against him.

91. Criminal Appeal No. 2917 of 1988 is partly allowed. The conviction of appellants Raju alias Raghvendra Pratap Singh and Smt. Gulahari alias Chapma Devi under Sections 302 and 304B, I.P.C. and the sentences awarded to them thereunder are set aside. They are acquitted of the charges levelled against them under Sections 302 and 304B, I.P.C. Their conviction u/s 498A, I.P.C. and u/s 4 of the Dowry Prohibition Act and the sentences passed thereunder are however, confirmed. They are in Jail. They will serve out the sentences passed against them.

92. The reference No. 30 of 1988 for confirmation of death sentence is rejected.