

(2013) 01 CHH CK 0012
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 632 of 1995

Shriram Pandey and Others	Vs	APPELLANT
State of Madhya Pradesh		RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 311, 313, 370, 392
Dowry Prohibition Act, 1961 — Section 4
Evidence Act, 1872 — Section 113A, 113B, 114
Penal Code, 1860 (IPC) — Section 106, 107, 108, 109, 300

Citation : (2013) 1 CG.L.R.W. 383 : (2013) 2 CGBCLJ 480 : (2013) 1 CGBCLJ 275 : (2013) 2 CGLJ 43 : (2013) 4 MPHT 56

Hon'ble Judges : Yatindra Singh, C.J.;Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Arun Kochar,s-1 to 3 and Mr. Goutam Bhaduri,-4, for the Appellant;
Sandeep Yadav, Deputy Government Advocate, for the Respondent

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 24.04.1995, passed in Sessions Trial No. 164 of 1990 by the Fourth Additional Sessions Judge, Durg. By the impugned judgment, the appellants have been convicted and sentenced in the following manner:-

BRIEF FACTS

The facts, briefly stated, are as under:

The Deceased was married to appellant Alok Pandey (A-3) on 09.03.1988. Appellant Shriram Pandey (A-1) is father-in-law of the Deceased and appellant Smt. Kamla Pandey (A-2) is mother-in-law of the Deceased. Appellant Nagnarayan Sinha (A-4) was a next door neighbour of appellants-1 and 2 (A-1 and A-2). The Deceased was residing with her husband and in-laws in her in-laws house. She died on account of hanging in her in-laws house at about 10:00-10:30 am on 03.04.1988. She was taken to the hospital and was examined by Dr. VVB Rao (PW-11). After the examination when he found that

she was dead, a mere intimation (Ex. P/3) was sent to the police station at about 11:30 am. Inquest on the dead-body of the Deceased (Ex. P/4) was prepared and dead-body was sent for post-mortem to the Government Hospital, Durg, vide requisition Ex. P/5. The post-mortem examination was conducted by Dr. M.C. Mehnoth (PW-10). He found a broad ligature mark of about 1/2-inch over the front, left and right portion of her neck. Abrasions were also present along with the ligature mark. The ligature mark was ante-mortem. On internal examination, he found that the trachea, lungs, liver, spleen and kidneys were congested. The autopsy surgeon opined that the cause of death was asphyxia due to hanging, however, mode of death being suicidal or homicidal was not mentioned in the post-mortem report. The post-mortem report is Ex. P/6. On 03.03.1988, brother of the Deceased, namely, Siddhnath Dubey (PW-1) lodged First Information Report (FIR-Ex. P/1) on which offences under Sections 498A, 306 and 304B all read with Section 34 IPC and Dowry Prohibition Act, 1961 were registered. During the course of investigation, case-diary statements of Siddhnath Dubey (PW-1)-brother of the Deceased, Dashrath Dubey (PW-3)-father of the Deceased and Chandravathi @ Meera (PW-5)-sister of the Deceased were recorded on 03.04.1988. They made allegations that after the marriage the accused persons were treating the Deceased with cruelty and they were harassing her on account of demand of dowry. Thereafter, the accused persons were taken into custody and a charge-sheet was filed against them. Appellants-1 to 3 (A-1 to A-3) were charged for commission of offences punishable under Sections 498A and 304B, in alternative 306 IPC, whereas appellant Nagnarayan Sinha (A-4) was charged under Sections 306 read with Section 109 IPC and 304B read with Section 109 IPC. The Sessions Judge, mainly relied on the testimonies of Siddhnath Dubey (PW-1), Dashrath Dubey (PW-3) and Chandravathi @ Meera (PW-5) and convicted and sentenced the appellants as above. Hence, the present appeal.

BROAD SUBMISSIONS

2. Shri Arun Kochar, the counsel appearing on behalf of appellants-1, 2 and 3 has argued that the above three relative witnesses, namely, Siddhnath Dubey (PW-1), Dashrath Dubey (PW-3) and Chandravathi @ Meera (PW-5) are not reliable witnesses. There are many contradictions in their case-diary statements and court evidence, therefore, the Sessions Judge erred in law in relying on their testimonies. He also argued that the appellants were not given proper opportunity to defend their case as an application filed by them u/s 311 of Code of Criminal Procedure for recalling these witnesses, was rejected by the Sessions Court. He also argued that the appellants were not allowed to give their complete defence as their right to lead defence evidence was wrongly closed by the Sessions Court.

3. Shri Goutam Bhaduri, the counsel appearing on behalf of appellant Nagnarayan Sinha (A-4) has argued that this appellant was neighbour of the co-accused persons, therefore, he was not the relative of the husband and his conviction u/s 304B read with Section 109 IPC cannot be sustained. He argued

that even if the entire evidence available on record is taken at its face value, it would appear that there is evidence that he had simply demanded for dowry and at the most instigated for such demand and nothing else, therefore, his conviction u/s 304B read with Section 109 IPC cannot be sustained.

4. On the other hand, Shri Sandeep Yadav, Deputy Government Advocate appearing on behalf of the State opposed these arguments and supported the judgment passed by the Sessions Court.

5. I have heard counsel for the parties at length and have also perused the records of the sessions case.

DISCUSSION ON THE CASE OF APPELLANTS 1 TO 3

6. Siddhnath Dubey (PW-1) is elder brother of the Deceased. He deposed that his father Dashrath Dubey (PW-3) was working in Bhilai Steel Plant (BSP). His sister, the Deceased was married to Alok Pandey (A-3), son of Shriram Pandey (A-1). Phaldan had taken place on 29.02.1988. Before phaldan his father was called by Shriram Pandey (A-1) and Kamla Pandey (A-2). When his father returned back, he told that Shriram Pandey (A-1), his wife Kamla Pandey (A-2) and his neighbour Nagnarayan Sinha (A-4) had made demand of Rs. 20,000/-, one refrigerator, one colour-TV, one Hero-Honda motorcycle and one VCR in the marriage. One day prior to the date of phaldan, his father gave Rs. 15,000/- cash, one colour-TV and one refrigerator to Shriram Pandey (A-1). Phaldan took place on 29.02.1988. Many persons were present in phaldan. On that day, one golden ring, some utensils and clothes etc. were also given. After phaldan, the date of marriage was settled as 09.03.1988 and the marriage was solemnized on that day. After the marriage, clothes, bedroll and other articles were given by them. On 11.03.1988, he had gone to the place of the appellants for Bidai of his sister. He was accompanied by Ashok Kumar Singh (PW-9). Shriram Pandey (A-1) and Kamla Pandey (A-2) were present in their house. After sometime, Nagnarayan Sinha (A-4) also came there. They said him to send his father on the pretext that his father had not given Hero-Honda motorcycle and VCR till then. When he wanted to meet his sister, they said that how he can meet her as his father has deceived them. Thereafter, he was allowed to meet his sister. His sister (the Deceased) told him that they were demanding Hero-Honda motorcycle and VCR. She was weeping. He returned to his house and told all this to his father. His father told him that he shall take loan and shall fulfil the demand. On 02.04.1988, he again visited the house of in-laws of his sister. He was accompanied by one Milindra Kumar. Shriram Pandey (A-1), Kamla Pandey (A-2) and Nagnarayan Sinha (A-4) were sitting there. Kamla Pandey (A-2) and Shriram Pandey (A-1) again said him for VCR and Hero-Honda motorcycle. He replied them that his father will give those articles. On this, Nagnarayan Sinha (A-4) said to Shriram Pandey (A-1) that they are giving nothing and be-fooling them. When he met his sister, she again told that they were demanding for Hero-Honda motorcycle and VCR. She told that she was unable to tell the entire things and she would tell those things later on. He further deposed that on 03.04.1988 at

about 10:00-11:00 am he received message that his sister has died. He immediately went to Sector-1 Hospital. His mother was present there. She was weeping. When he asked his mother, she told him that his sister (the Deceased) has been killed on account of dowry. Thereafter he went to the police station and lodged the report (Ex. P/1). He also proved the seizure of various articles from the house of Alok Pandey (A-3).

7. Dashrath Dubey (PW-3) is father of the Deceased. He also deposed in similar fashion. He deposed that before marriage Rs. 20,000/-, Hero-Honda motorcycle, colour TV, VCR, refrigerator and various other articles were remanded by the accused. Colour TV, refrigerator and golden ring etc. were given at the time of Sagai. On 13.03.1988, he had gone to the house of his son-in-law. He met his daughter (the Deceased) who told him that he should immediately gave Hero-Honda motorcycle and VCR as she is being harassed by in-laws. The marriage has already taken place on 09.03.1988. He deposed that the accused persons were saying that if the motorcycle and VCR are not given, they will harass his daughter (the Deceased). Then he asked appellant Shriram Pandey (A-1) to send the girl for appearing in the examination. He said that his daughter will not go and if he wants to take her, he can take her for ever. On 03.04.1988, he heard that his daughter has been admitted in Sector-1 Hospital, Bhilai. When he reached to the hospital, by that time his daughter was died. On 02.04.1988, Siddhnath Dubey (PW-1) had met his sister (the Deceased) who had told that she was being harassed by the accused persons on account of demand of Hero-Honda motorcycle and VCR. The in-laws were not giving her food and they were taking hard work from her. He deposed in para-6 that after 13.03.1988, he had not met with his daughter.

8. Chandravathi @ Meera (PW-5) is sister of the Deceased. She deposed that on 28.03.1988 she had gone to the house of her sister (the Deceased) as it was her birthday. She was accompanied by her brothers, namely, Sanjay and Vijay. They left her and returned back. She resided in her sister's house (in her in-laws place) for three days. On all three days, she noticed that the Deceased was sleeping with her. She asked the Deceased that when her husband is also present why she is not going to sleep in his room. On this, she started weeping and told that her mother-in-law Kamla Bai (A-2) says that unless the motorcycle and VCR are not given she will not be allowed to sleep in the room of her husband. She further deposed that during her period of stay with her sister, she noticed that the in-laws and husband were very cruel to her. They were always insulting her. Nagnarayan Sinha (A-4) also used to visit their house and used to tell them that they will not get VCR and Hero-Honda motorcycle. In fact, her sister was being harassed on account of demand of dowry. On one day, some delay took place in preparation of meals, on which Kamla Pandey (A-2) had assaulted her sister.

9. The above witnesses have been cross-examined at length by the defence. Shri Kochar, has drawn the attention of the Court towards para 34 of the evidence of Siddhnath Dubey (PW-1). He has argued that there are many contradictions in

his evidence, and case diary statements. The contradictions have been put to him in paragraphs 34 to 42 of his evidence. I have gone through the contents in the above paragraphs. I find that none of the contradictions are material contradictions. These contradictions in light of the case-diary statements of this witness (Ex. D/5) do not go to the root of the case or do not destroy the testimony of this witness. If the contradictions put to the witness are not of material nature, the credibility of the witness cannot be taken to be unreliable. Dashrath Dubey (PW-3) is the father of the Deceased. He was also contradicted with his case-diary statement (Ex. D/1), but it was also not on material facts. Chandravathi @ Meera (PW-5) admitted in the cross-examination that there were three rooms in the house of the appellants. She has also mentioned as to who was sleeping in which room in the night. From her evidence, it becomes clear that it was not the position of the house of the appellants that there was no space or a separate room for newly wedded couple, and even after having sufficient accommodation for them they were not allowed to sleep together in the night. I have carefully gone through the evidence of all the above witnesses. I am of the view that nothing adverse has been brought in the cross-examination of these witnesses on which either their testimonies may be discarded or it may be said that they were falsely implicating the appellants in the above incident.

10. Section 304B IPC defines dowry death. A perusal of Section 304B would show that this Section has the following ingredients:

- (i) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) such death should have occurred within seven years of her marriage;
- (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) such cruelty or harassment should be for or in connection with demand of dowry; and
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

11. In the instance case, the marriage had taken place on 09.03.1988 and the incident took place on 03.04.1988. There was sufficient evidence to show that the death of the Deceased has occurred, otherwise, than under normal circumstances, as the autopsy surgeon had found a ligature mark over the neck of the Deceased. There is also evidence of treating the Deceased with cruelty and harassment which has been undoubtedly proved by the evidence of Siddhnath Dubey (PW-1), Dashrath Dubey (PW-3) and Chandravathi @ Meera (PW-5). They have categorically stated that firstly there was demand of dowry and thereafter they saw that the Deceased has been treated with cruelty on account of demand of dowry. Since the incident took place within a period of one month, from the date of marriage, therefore ingredient relating to soon before the death was also

fulfilled.

12. So far as argument relating to rejection of application for recalling of witnesses is concerned, I find that the concerned witnesses namely Siddhnath Dubey (PW-1), Dashrath Dubey (PW-3) and Chandravathi @ Meera (PW-5) were examined on 03.02.1992, 10.08.1992 and 11.08.1992 and application for recalling them for further cross-examination was filed on 17.04.1995. The reason assigned for recalling was a diary which according to the appellants was written by the Deceased and in the said diary, the Deceased had not mentioned about the allegations against the appellants. Shri Kochar has argued that if the Deceased was in fact harassed by the appellants in the above manner, she must have mentioned those facts in her diary, therefore, it was necessary for the defence to recalling those witnesses and cross-examine them on the contents of the said diary. The Sessions Judge has rejected this application by passing a detailed order. I also note that the said application was filed after a period of about 3 years at the final stage of the trial. There was no evidence to show that the said diary was belonging to the Deceased. The above witnesses were put to lengthy cross-examinations by the defence on each fact. Even if it is admitted for the sake of argument that the said diary was written by the Deceased, only on account of omission about her ill-treatment in the diary, in view of the positive allegations made in the evidence of these witnesses, it was not possible to hold that nothing as alleged had happened and if the events would have taken place, they must have been mentioned in the alleged diary of the Deceased. It differs from person to person as to how he/she reacts to a particular incident. It is not necessary that if a person is in habit of writing a diary, he/she would write all adverse things in the diary. He/she may write it or may not write it because it would depend on his/her will. The Sessions Judge has rejected the application by passing a reasoned order. I am of the view that the said application for recalling the witnesses was rightly rejected and in the above facts and circumstances of the case, it has not prejudiced the defence of the appellants.

13. Shri Kochar has argued that the Sessions Judge has not allowed all the defence witnesses to be examined. This does not appear to be factually correct. The prosecution evidence was closed on 01.10.1993. The examination of the accused u/s. 313 Cr.P.C. had taken place on 19.11.1993 and a long list of defence witnesses was filed and the case was fixed on 14.12.1993 and only two witnesses could be examined. Thereafter many dates were taken and then, on 21.03.1995 the defence counsel himself closed the defence evidence. It is not a case that the Sessions Court has closed the defence of the accused persons. The defence evidence was closed on the declaration made by counsel for the defence. Therefore, I am unable to accept the argument that proper opportunity to adduce defence evidence was not granted.

14. In the above facts and circumstances of the case, I am of the view that an offence under Sections 304B and 498A IPC, both were made out against the in-laws and the husband of the Deceased, namely, Shriram Pandey (A-1), Kamla

Pandey (A-2) and Alok Pandey (A-3).

15. Shri Kochar, has also argued on sentence. He has argued that looking to the facts and circumstances it was not a case of extreme punishment of life sentence and minimum sentence would have been sufficient to meet the ends of justice. He has referred to many citations in this regard.

16. Shri Yadav, Deputy Government Advocate for the State has vehemently opposed this argument. He has also cited the decision of Rajesh Bhatnagar Vs. State of Uttarakhand,

17. In Vanga Srinivas Vs. Public Prosecutor, High Court of A.P., the appellant/ husband was convicted u/s 304B, IPC. Considering the fact that the alleged occurrence took place on 24.01.1997 and the appellant-accused has undergone the agony for more than 10 years, the Supreme Court held a sentence of 7 years would meet the ends of justice and the appellant was convicted accordingly.

18. In Ashok Kumar Vs. State of Haryana, (2007) 9 SCC 433, the appellant was convicted u/s 304B, IPC and was sentenced to undergo imprisonment for life. His appeal was dismissed by the High Court. In the appeal to the Supreme Court, so far as penalty is concerned, the point raised was that in any view of the matter, the trial court was not justified in awarding extreme penalty of life imprisonment to the appellant. The Supreme Court while maintaining the conviction of the appellant observed that in the facts and circumstances of the case, the ends of justice would be met in case the sentence of imprisonment awarded against the appellant is reduced to 7 years RI. Accordingly, the criminal appeal was allowed in part and, while upholding the conviction of the appellant, sentence of imprisonment awarded against him was reduced to 7 years RI.

19. In Hem Chand Vs. State of Haryana, sentence of 10 years, RI was found to be appropriate in a case of Section 304B IPC and while confirming the conviction of the appellant u/s 304B IPC, the sentence was reduced to RI for 10 years.

20. I have carefully considered the arguments advanced on the quantum of the sentence. What would be an appropriate sentence in a particular case cannot be based upon a straitjacket formula. It depends upon the facts and circumstances of each case. The principle of proportion between crime and punishment is governed by the "Doctrine of just desert". The doctrine is the foundation of a criminal sentence which is ultimately awarded for a punishment to the wrong doer. What one really deserves should be the punishment for having committed a crime is the underlying principle. The punishment must not be disproportionately great is a corollary of "just desert" which is governed by the same principle which says that there cannot be a punishment without guilt and the basic element behind the principle is the proportion between crime and punishment. The lesser is the gravity of the crime, the smaller would be the punishment and the greater is the gravity of the crime, the higher would be the punishment, subject to the ancillary factors for determining the proportion of the same, though all further subject to the statutory obligations specifically provided by law in force (vide U.

Suvetha Vs. State by Insp. of Police and Another,

21. In Rajesh Bhatnagar (supra) on which reliance has been placed, by the State counsel, life sentence u/s 304B IPC was maintained by the Supreme Court taking note of the judgment of Hem Chand (supra). It was noted that there was no mitigating circumstances in favour of the accused which will persuade to take any view other than the view taken by the trial court on the question of quantum of sentence. It was observed that when the offence of Section 304B is proved, the manner in which the offence has been committed is to be seen. In the said matter, it was found that the offence was committed in a brutal manner as it was a burn case. It was further noted that the accused had taken up a false defence before the court to claim that it was a case of an accidental death and not that of dowry death, therefore, the Supreme Court held that in such circumstances the court normally would not exercise its judicial discretion in favour of the accused by awarding lesser sentence than the life imprisonment.

22. The above case is distinguishable on many counts. In the instant case, though there are aggravating circumstances of demand of dowry, harassment, cruelty and death by hanging, but the mitigating circumstances are that the offence was not committed in brutal manner. It was not a case in which the death occurred by burn injuries and that the accused persons, namely, Shriram Pandey (A-1), Kamla Pandey (A-2) and Alok Pandey (A-3) firstly allowed the Deceased to burn and then had taken a false defence of accidental death etc. If a balance is strike between the aggravating and mitigating circumstances, it would appear that the sentence of life imprisonment awarded to Shriram Pandey (A-1), Kamla Pandey (A-2) and Alok Pandey (A-3) is too harsh. I am of the opinion that the ends of justice would be served if the appellants A-1 to A-3 are sentenced to undergo RI for 10 years for the offence u/s. 304B IPC. So far as conviction and sentence u/s. 498A IPC is concerned, there is sufficient evidence for the same which deserves to be maintained.

DISCUSSION ON THE CASE OF APPELLANT NO. 4

23. Appellant Nagnarayan Sinha (A-4) was a neighbour of the other appellants. He was frequently visiting the house of the other appellants. Admittedly, he was not relative of the husband.

24. Shri Goutam Bhaduri, counsel for appellant-4 has cited two decisions of the Supreme Court i.e. U. Suvetha Vs. State by Insp. of Police and Another, and Vijeta Gajra Vs. State of NCT of Delhi, , to show that a person who is not a relative of the husband cannot be convicted u/s 498A IPC. He has argued that so far as the phraseology of "relative of husband" is concerned, that is common in Sections 304B and 498A IPC, therefore, applying the same analogy to the facts of this case, appellant Nagnarayan Sinha (A-4) would not have been convicted u/s 304B IPC.

25. In the above decisions, dealing with the cases of Section 498A IPC, it was held that in the absence of any statutory definition, the term "relative" must be

assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word "relative" would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption. It was held that by no stretch of imagination a girl friend or even a concubine of the husband in an etymological sense would be a "relative". Therefore, looking to the provisions of Sections 498A and 304B IPC and in view of the above decisions, I am of the opinion that since appellant Nagnarayan Sinha (A-4) was not a "relative" of the husband of the Deceased, conviction u/s 304B IPC on the analogy of the above two judgments was not possible.

26. Shri Sandeep Yadav, Deputy Government Advocate has argued that in fact appellant Nagnarayan Sinha (A-4) was convicted for abetment to commit an offence u/s. 304B IPC and not as such under this section, therefore, this analogy may not be applied in this case.

27. In the instant case Nagnarayan Sinha (A-4) has not been convicted u/s. 304B as such; but he has been convicted u/s. 109 IPC for abetment of an offence punishable u/s. 304B. Therefore, I have to examine as to whether he had abetted commission of such offence or not? For abetment of an offence u/s. 304B one may not be relative of the husband. Therefore, I have to examine evidence of abetment which, in fact, shall determine nature of offence and punishment therefor.

28. I have carefully examined the provisions in this regard. Section 109 IPC provides punishment for abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. It says that who so ever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this code for the punishment of such abetment, be punished with the punishment provided for the offence. The abetment has been defined in Section 107 IPC. According to this, a person abets the doing of a thing if he instigates any person to do that thing or engages with one or more other persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing or intentionally aids by any act or illegal omission, the doing of that thing. Section 108 IPC defines the abettor. It says that a person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor. Two explanations have been added to this Section.

29. In the instant case, the evidence on record and the role attributed to appellant Nagnarayan Sinha (A-4), would show that he had also demanded dowry from the father & brother of the Deceased along with the appellants-Shriram Pandey (A-1), Kamla Pandey (A-2) and Alok Pandey (A-3). This had

happened on two occasions. It comes in the evidence that when the father and brother of the Deceased had visited the house of in-laws of the Deceased, appellant Nagnarayan Sinha (A-4) was present there and he had also made demands of dowry. This shows that his role was to the effect of demand of dowry and nothing more.

30. Section 4 of the Dowry Prohibition Act, 1961 provides penalty for demanding dowry. It provides that if any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to Rs. 10,000/-.

31. I am of the view that in light of the above evidence on record, appellant Nagnarayan Sinha (A-4) has committed an offence u/s 4 of the Dowry Prohibition Act, 1961 and he would be liable for punishment under this Section alone.

32. Shri Goutam Bhaduri, has argued that no charges were framed under Dowry Prohibition Act, therefore, conviction cannot be awarded under this Section.

33. I am unable to accept the said argument in light of the judgment of Rafiq Ahmed @ Rafi Vs. State of U.P., in which it was held that when the charge for a major offence is not made out conviction for a minor cognate offence, even in absence of a charge, can be sustained. In the said case, it was held that if the accused is charged with a grave offence but if the same is not established on merits or for a default of technical nature, he can still be convicted and punished for lesser offence of cognate nature if its ingredients are independently proved beyond reasonable doubt, and in such cases the accused does not suffer any prejudice and it does not result in failure of justice.

34. Offences under Sections 304B IPC and Section 4 of the Dowry Prohibition Act, 1961 are of "cognate" nature. This would be clear by the statements of objects and reasons for amendments which were with the view to make more stringent provisions in the Dowry Prohibition Act, 1961. Therefore, even if a charge u/s 4 of the Dowry Prohibition Act was not framed and the accused was tried for an offence u/s 304B r/w S 109 IPC, he can be convicted u/s 4 of the Dowry Prohibition Act, 1961.

CONCLUSION

35. (i) Conviction awarded to appellants- 1 to 3 (A-1 to A-3) u/s. 304B and 498A IPC are maintained. However, Sentences of life imprisonment awarded to them u/s. 304B IPC are set-aside. Instead thereof they are sentenced to undergo R.I. for 10 years. Sentences awarded to them u/s. 498A IPC are maintained. Direction to run the sentences concurrently is maintained.

(ii) Conviction and sentence awarded to appellant No. 4 (A-4) u/s. 304B read with Section 109 IPC are set-aside. Instead thereof he is convicted u/s. 4 of the Dowry Prohibition Act, 1961 and sentenced to undergo R.I. for 1 year and to pay

fine of Rs. 5,000/-, failing which, he shall further undergo R.I. for 6 months.

Yatindra Singh, C.J.

36. I had the privilege of listening to erudite judgment of my Brother Sunil Kumar Sinha, J. I agree with him, so far as the conviction and sentence of Shriram Pandey (A-1), Smt. Kamla Pandey (A-2), and Alok Pandey (A-3) are concerned, however, I express my inability to agree with him about conviction and sentence of Nagnarayan Sinha (A-4) proposed by him. In my opinion,

? A person, who is not a relative of the husband (non-relative), can be prosecuted and convicted u/s 109 of the Indian Penal Code (IPC) for abetting the offence u/s 304B of the IPC; and

? Nagnarayan Sinha (A-4), a non-relative neighbour, is guilty of offence u/s 109 IPC for abetting the offence u/s 304B IPC; and

? He should be awarded 8 years rigorous imprisonment.

NON-RELATIVE CAN BE PUNISHED FOR ABETMENT

37. The facts have been succinctly narrated by my Brother in his judgment and I need not repeat them. Suffice to say,

? Nagnarayan Sinha (A-4) is not a relative of the husband (A-3) of the Deceased. He was their neighbour;

? He was charged under sections 306/ 109 IPC and section 304B/ 109 IPC; and

? He was convicted u/s 304B read with section 109 IPC for life but was acquitted u/s 306/ 109 IPC.

I now, proceed to give reasons for my disagreement.

Historical Background--Section 304B IPC

38. The early 1980's witnessed an alarming increase in the number of cases in which married women died in suspicious circumstances. These were referred to as "dowry deaths". It is in light of this development that the Law Commission of India suo motu took up the matter. The result was the report titled "Dowry Deaths and law reform: amending the Hindu Marriage Act 1955, the Indian Penal Code, 1860 and the Indian Evidence Act, 1872" (the 91-Report).

39. By the 91-Report, the Law Commission recommended amendments in the IPC, Hindu Marriage Act, and Evidence Act. Two provisions were sought to be substituted in the IPC:

? First was to impose obligation to report the death of a woman within five years of marriage by fire burns or injuries in the house where she was residing with her husband to the police. Any failure to do so, without there being any reasonable explanation, was to be made offence liable for imprisonment of three years;

? Second was to punish persistent cruelty driving a person to commit suicide. In this case, it was recommended that a punishment of three years be provided.

It is necessary to point out that a member of the Commission thought that suggested amendments were light and were not sufficiently stringent.

40. In the meantime, a joint committee of the Parliament was also looking into dowry deaths and made recommendations to make law more stringent.

41. It is because of the aforesaid recommendations, Bill No. XIV of 1983 and then XXIX of 1986 were introduced. They were enacted as Criminal Law (Second Amendment) Act, 1983 (Act No 46 of 1983) (the 1983-Act) and Dowry Prohibition (Amendment) Act, 1986 (Act No 43 of 1986) (the 1986-Act). These two are referred to as the Amending Acts.

42. The recommendation regarding persistent cruelty driving a person to commit suicide was broadly converted into section 304B IPC. It was inserted by the 1986 Act wef 16.11.1986. However, it has a wider scope; it covers deaths by burns or bodily injury or those that occur otherwise than under natural circumstances: it covers not only cases of suicide but also homicidal deaths where murder cannot be proved. The punishment was also enhanced to minimum of seven years and it can extend to imprisonment of life.

43. It appears that the first recommendation of the 91-Report regarding obligation to report death of married woman under certain conditions has not been incorporated by the Parliament.

44. By the Amending Acts, Dowry Prohibition Act, 1961, IPC, CrPC and Indian Evidence Act, 1872 were amended. The objects and reasons of the Amending Acts indicate that:

? The 1983-Act was brought about to curb the increasing number of dowry deaths ie. cases of cruelty by the husbands and their relatives culminating suicide by or murder of the hapless women;

? The 1986-Act was enacted as the law for prohibiting dowry and preventing dowry deaths was inadequate and the amendments were proposed to make it more stringent.

45. A reading of the objects and reasons as well as the Amending Acts indicates that the intention of the Parliament in enacting the Amending Acts was to discourage dowry as well as dowry deaths by punishing it. It was for this reason that:

? The amendments in Dowry Prohibition Act were introduced and it was made more stringent; and

? Where cruelty or harassment of demanding dowry was so serious that the life of a married woman came to an end, then such conduct was made punishable u/s 304B IPC.

46. The intention of the Parliament by inserting 304-B IPC is to punish certain acts and conduct of the husband or his relatives as circumscribed therein. This is clear from the fact that it covers the case where married woman is driven to commit suicide or is a case where she is killed but the prosecution is unable to prove it. Let's consider, if this so.

What Constitutes Offence u/s. 304B IPC

47. Chapter XVI of the IPC is titled "Of Offences Affecting the Human Body". It has many sub-chapters. The first sub-chapter is titled "of offences affecting life". Section 304B IPC is in this sub-chapter.

48. This sub-chapter, not only provides punishment for homicidal deaths (as mistakably presumed), but also for non-homicidal deaths as well. The offence u/s 304B IPC is one such example. It was also explained in the report of the Law Commission of India titled "Proposal to amend section 304B of Indian Penal Code" (the 202-Report).¹ The offence under this section may be committed even when there is suicide.

49. Section 304B IPC is titled "Dowry death". It has been interpreted in many cases. The Courts have held (see below for details)² that the following four ingredients are necessary to attract section 304B IPC:

- (i) Death of the married woman is either by burns or bodily injury or otherwise than under normal circumstances;
- (ii) It should be within 7 years of marriage;
- (iii) It should also be shown that soon before her death she was subjected to cruelty or harassment by husband or a relative of husband;
- (iv) Such harassment or cruelty should pertain to demand of dowry.

50. It is relevant to point out that, out of the four aforementioned ingredients, the first two are fact situation and the next two are the acts or conduct that constitute the offence u/s 304B IPC. If the fact situation--namely the first two--exist, then the acts or conduct forming third and fourth ingredients of the husband or his relatives, constitute the offence u/s 304B IPC.

51. Thus, if the life of a married woman comes to an end within seven years of marriage by burns or bodily injury or occurs otherwise than under normal circumstances, then the offence u/s 304B IPC is for the specified conduct mentioned in sub-section 1 of section 304B {304B(1)} IPC (namely the third and fourth ingredients together). This conduct is punishable under sub-section 2 of section 304B {304B(2)} IPC, for minimum punishment of seven years that may extend upto imprisonment of life.

53. In the present case, the first two ingredients--namely the fact situation--are present:

- (i) The Deceased died because of hanging. Though there is no eyewitness but

opinion of the doctor is that she died by hanging. The injuries indicate that there was no struggle and better opinion is that she committed suicide: the death of the Deceased occurred otherwise than under normal circumstances;

(ii) The marriage took place on 09.03.1988 and she died on 03.04.1988 ie. on 25th day after marriage: it was within seven years.

53. In this case, the first two ingredients (namely, the fact situation) are present--the offence u/s 304B(1) IPC is committed, if the following conduct on the part of the husband or his relative was also present:

? The Deceased was subjected to cruelty or harassment by husband or his relative; and

? Such cruelty or harassment was in relation to demand of dowry.

54. In the present case, the aforesaid conduct was also there. This has been elaborately dealt with by my Brother in his judgment. It is for this reason, that Shriram Pandey (A-1), Smt. Kamla Pandey (A-2) (the parents of the husband), and Alok Pandey (A-3) (the husband) are convicted u/s 304B IPC and I agree with him. The question is, whether Nagnarayan Sinha (A-4), a non-relative, can be prosecuted and punished for abetting this conduct or not?

Cases Relied By Appellant--Distinguishable

55. The counsel for Nagnarayan Sinha (A-4) places reliance on U. Suvetha Vs. State by Insp. of Police and Another, (the Suvetha case) and Vijeta Gajra Vs. State of NCT of Delhi, (the Vijeta case) and submits that:

? Section 304B and 498A IPC are similarly worded;

? The offence under these sections can only be committed and abetted by the husband or his relatives and not by any other person;

? A non-relative cannot be prosecuted or punished of offence under sections 304B or 498A IPC or for its abetment;

? Nagnarayan Sinha (A-4), being a non-relative neighbour, cannot be punished even for abetment of offence u/s 304B IPC.

In my opinion, these cases are not applicable to the facts of the present case and submissions are fallacious.

56. There is no denying that only the husband or his relative can be prosecuted and punished u/s 498A IPC: a non-relative can neither be prosecuted nor punished u/s 498A IPC. This was also so held in the aforesaid two cases.

57. In the aforesaid cases, the non-relative was not charged u/s 109 for abetting a crime u/s 498A IPC. Had the prosecution/conviction been u/s 109 IPC for abetting offence u/s 498A IPC then the matter would have been different. It cannot be said that even then, the Supreme Court would have set it aside.

58. In *Quinn vs. Leatham* 1901 AC 495, Lord Halsbury observed:

A case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it such a mode of reasoning assumes that the law is necessarily a logical code whereas every lawyer must acknowledge that law is not always logical at all.

59. The *Suvetha* or the *Vijeta* cases are not an authority for the proposition that a non-relative can not be prosecuted and punished for offence u/s 304B IPC or for offence u/s 109 for abetting the offences u/s 304B or 498-A IPC.

60. In fact, in the *Suvetha* case, the Supreme Court explained that a non-relative can be charged, prosecuted and punished u/s 109 IPC for abetting the offence u/s 498A IPC but it was not done as the concubine--who was held, not to be relative of husband--was not so charged (see below for relevant part of the judgment)³

61. *Nagnarayan Sinha* (A-4) is not convicted u/s 304B IPC read with section 109 IPC though, by mistake it is so mentioned by the Court below. In fact, he has been convicted u/s 109 IPC for abetting the crime u/s 304B IPC. This is how, the Court below should have convicted him. However, a wrong description of sentence part does not affect the conviction or the sentence.

62. There is difference between section 34 and section 109 IPC:

? Section 34 IPC does not provide substantive offence; no one can be convicted under this section; it is merely a rule of evidence, it aids or assists in convicting a person under a section that is a substantive offence: it is an auxiliary section and was enacted on the principle of joint liability in doing a criminal act;

? Whereas, section 109 IPC is itself a substantive offence. A person can be convicted under this section. It is only for finding out the punishment that other section is seen.

63. The *Suvetha* and *Vijeta* cases are not applicable to the facts of the present case. In fact the *Suvetha* case makes it clear that a non-relative can be tried and convicted for abetment of the offence u/s 498A IPC and a posteriori or inductively a non-relative can also be prosecuted and punished for abetment of offence u/s 304B IPC.

NAGNARAYAN SINHA--GUILTY OF ABETMENT

64. Section 107 IPC defines abetment. It states that a person abets the doing of a thing, who instigates any person to do that thing or engages with one or more persons in any conspiracy for the doing of that thing or intentionally aids by any act to the doing of that thing.

65. The relevant point is that section 107 IPC does not use the word "offence". It merely uses the word "act", "thing" or "omission". As explained under the sub-heading "What Constitutes Offence u/s. 304B IPC, of the preceding main heading

"NON-RELATIVE CAN BE PUNISHED FOR ABETMENT", the offence u/s 304B IPC, is for the act or conduct of subjecting a married woman to cruelty or harassing her soon before her death regarding dowry, when her life comes to an end within seven years of marriage by burns or bodily injury or occurs otherwise than under natural circumstances. The act or the conduct on the part of the husband or his relatives constitute the offence of "Dowry death" u/s 304B(1) IPC as it is inferred to be cause of her death and is punishable for minimum punishment of seven years or upto imprisonment of life u/s 304B(2) IPC.

66. In case persons, whether they are the relative or not--instigate the husband or his relatives to do the aforesaid acts (or follow that conduct); or engage with them for the conspiracy of doing of the aforesaid thing (or follow that conduct); or intentionally aid the aforesaid conduct--then they abet that conduct that is offence u/s 304B IPC.

67. In the present case, the fact situation, namely, the first two ingredients were present:

(i) The death was within seven years of marriage. It was on 25th day of marriage;

(ii) It was by hanging, otherwise than under natural circumstances.

In this scenario, there was persistent demand for Hero Honda motorcycle and VCR.

68. The cruelty and harassment was to extent that mother-in-law Smt. Kamla Pandey (A-2) had slapped the Deceased and she (the Deceased) was not permitted to sleep with her husband. This was told by the Deceased to her younger sister Chandravathi alias Meera (PW-5), who has stated it in her statement.

69. The conduct of the husband and his parents (A-1 to A-3) was not only cruel, torturous, and inhuman, but inconceivable; depriving the young bride to sleep with her husband, when sufficient accommodation was available. This part is also clear from the statement of Chandravathi alias Meera (PW-5), the younger sister of the Deceased.

70. Nagnarayan Sinha (A-4) had not only instigated the husband and the relatives (A-1 to A-3) but has also engaged with them and has intentionally aided them in doing the acts and following the conduct that constitutes the offence u/s 304B IPC.

71. The prosecution has examined the following witnesses to prove the abetment by Nagnarayan Sinha (A-4) of the punishable conduct of the husband and his parents (A-1 to A-3) u/s 304B(1) IPC:

(i) Sidhnath Dubey (PW-1), brother of the Deceased, stated that:

? He had gone to the house of in-laws of the Deceased on two occasions on

11.03.1988 and 02.04.1988;

? At one time, he was with his friend Ashok Kumar Singh (PW-9) and the other time with Milind Kumar (PW-6);

? On both the occasions, Nagnarayan Sinha (A-4) was present and he was instigating the accused for dowry i.e. to do the acts that constitute the offence u/s 304B IPC.

(ii) Milind Kumar (PW-6) and Ashok Kumar Singh (PW-9), the friends, who had accompanied Siddnath Dubey (PW-1) were also examined and supported his statement.

(iii) Dashrath Dubey (PW-3), father of the Deceased, Stated that:

? He had gone to the house of the in-laws of the Deceased once before marriage to settle the same and the other time, after the marriage, on 13.04.1988;

? All accused (A-1 to A-4) {that included Nagnarayan Sinha (A-4)} were present, though he did not mention Nagnarayan Sinha (A-4) by name; and

? All accused (A-1 to A-4) were insisting for dowry (VCR and Hero Honda).

(iv) Prahlad (PW-4), who had accompanied Dashrath Dubey (PW-3) before marriage and Mohd Mustafa (PW-8), who had accompanied Dashrath Dubey (PW-3) on 13.04.1988, were also examined by the prosecution. Both of them have named presence of Nagnarayan Sinha (A-4) and have stated that he was demanding dowry and was aiding them in the conduct that constitutes offence u/s 304B(1) IPC.

72. There is nothing in their cross-examination to show that they were telling a lie. There is no material contradiction in their statements or with their statements u/s 161 CrPC. There is no reason to disbelieve them.

73. Apart from above, there are other circumstances that make the prosecution evidence credible:

? The husband's relative consisted of his parents and sister also (see cross-examination of Dashrath Dubey PW-3). Yet, allegations were only against husband and his parents. There is no allegation against the sister;

? There were other persons, who had joined the baraat and used to visit the house. The accused themselves have produced two such witnesses, namely, Prabhat (DW-1) and Digvijai Dubey (DW-2), who deposed that they used to visit the house of the husband. There is no allegation against them.

74. There was sister-in-law of the Deceased as well as other friends and neighbours, who visited the house. Yet, apart from the husband and his parents, allegation, as well as evidence was produced against one of them, namely, Nagnarayan Sinha (A-4). The prosecution has not unnecessarily involved the other family members, or neighbours, or friends. This leads credence to the

prosecution evidence.

75. In the present case--the Deceased committed suicide on the 25th day of marriage; there was persistent demand of dowry; she was slapped and not permitted to sleep with her husband despite there being sufficient accommodation. In these circumstances, normal presumption under Sections 113B (that is not limited to husband or his relatives and it could be drawn against any one) as well as 114 of the Evidence Act is that it was demand of dowry that forced the Deceased to take her life. This is, what constitutes the offence u/s 304B IPC.

76. The evidence produced by prosecution proves beyond reasonable doubt that Nagnarayan Sinha (A-4) abetted the conduct of the husband and his parents that drove the Deceased to commit suicide. It was for him {Nagnarayan Sinha (A-4)} to show otherwise.

77. It would be strange to hold that in the circumstances, so far as Shriram Pandey (A-1), Kamla Pandey (A-2), and Alok Pandey (A-3) are concerned, their conduct constituted dowry death and punishable u/s 304B IPC but so far as Nagnarayan Sinha (A-4) is concerned, even though he abetted that conduct, it would not be abetment of "dowry death" or of the offence u/s 304B IPC.

78. In my opinion, it is established beyond reasonable doubt that Nagnarayan Sinha (A-4) not only instigated but was in conspiracy with the husband, his parents (A-1 to A-3) as well as intentionally aided them in harassing the Deceased so as to drive her to end her life and he abetted in the dowry death of the Deceased.

79. The counsel for the Nagnarayan Sinha (A-4) submits that:

? The act of the Appellant (A-4) may at the most, constitute an offence u/s 4 of the Dowry Prohibition Act or abetment of offence u/s 498A IPC;

? The same act can neither constitute nor be punished under different section, namely 304B IPC;

? In any case, even if it is so, then the accused be punished u/s that provides lesser punishment.

In my opinion, these are fallacious submissions.

80. The same act can be an offence under different section: it depends on the fact situation eg,

? If a convict commits murder, he will be punished u/s 303 IPC, but any other person commits the murder then he will be punished u/s 302 IPC. A person abetting them would be punished accordingly;

? If attempt to murder is committed by a life convict, then punishment is different than attempt to murder by any other person. So would the punishment for abetting them.

81. The same act of demand of dowry, that drives a married woman to commit suicide after seven years of marriage, would constitute an offence u/s 106 IPC read with Section 4 of the Dowry Prohibition Act. However, in case, she commits suicide within seven years of marriage for the same reason then it would constitute an offence of "Dowry death" u/s 304B IPC. Anyone abetting them would be punished accordingly.

82. So far as the submission regarding awarding punishment for the offence providing lesser punishment is concerned, suffice to say that it is not an ordinary offence. It affects half of our population as well as sex ratio: dowry promotes female foeticide. This is also so observed in the 202-Report (see below)⁴. There is no justification for accepting the submissions advanced by the counsel for Nagnarayan Sinha (A-4).

83. In my opinion,

? A person, not relative of the husband (non-relative), can be prosecuted as well as punished for abetting a crime u/s 304B of the IPC;

? Nagnarayan Sinha (A-4) is guilty of an offence u/s 109 of the IPC for abetting the crime of "Dowry death" under section-B(1) IPC; and

? The punishment for his crime is the punishment provided u/s 304B(2) IPC and not the one provided u/s 306 IPC or Section 4 of the Dowry Prohibition Act.

84. The counsel for Nagnarayan Sinha (A-4) submits that at present he is aged about 75 years and should be given a lenient sentence.

85. Nagnarayan Sinha (A-4) was a teacher. He was a neighbour of the husband of the Deceased. He was an independent person. He should have advised his neighbours not to indulge in any such activity and not to create such situation so that the life of a newly married (only 25 days old) may come to an end. It is unfortunate that a teacher has chosen to behave in such reprehensible manner. It is not a case of lenient punishment.

86. I would have given him a harsher punishment but, as the main offenders have been awarded 10 years RI, it would meet the ends of justice if Nagnarayan Sinha (A-4) is awarded RI for 8 years.

87. I would like to mention here that I have already held that:

? Nagnarayan Sinha (A-4) can be prosecuted and convicted u/s 109 of the IPC for abetment of crime u/s 304B IPC; and

? He should be convicted u/s 304B IPC and punished for 8 years RI.

However, in case, had I not held so, then I would have agreed with my Brother that Nagnarayan Sinha (A-4) is atleast guilty u/s 4 of the Dowry Prohibition Act and would have awarded punishment as proposed by my Brother.

SOME OBSERVATIONS & SUGGESTIONS

88. In this case, I have held that:

? If a married woman dies within seven years of marriage by burns or bodily injury or death occurs otherwise than normal circumstances then--the conduct in subjecting such married woman to cruelty or harassment for dowry soon before her death is the offence u/s 304B IPC. It is irrelevant whether the life of the married woman had come to an end by suicide or is a case where prosecution could not prove charge of murder;

? Nagnarayan Sinha (A-4) has abetted the conduct of the husband and his parents for which, they are punished u/s 304B IPC. It is for this reason that I have convicted him {Nagnarayan Sinha (A-4)} u/s 109 IPC for abetting crime u/s 304B IPC.

89. However, I have not considered the question whether Nagnarayan Sinha (A-4) should be convicted u/s 304B IPC as he was not so charged but the question whether a non-relative can be prosecuted and convicted u/s 304B IPC, may be considered in a suitable case.

90. Offence u/s 498A IPC can only be committed by husband or his relative and not by any one else. Though, a non-relative may abet it. However, section 304B IPC is not worded like section 498A IPC. It is different.

91. In Section 498A IPC, there are no sub-sections. However, in section 304B IPC there are two sub-sections. The first sub-section explains "dowry deaths" and also explains as to when husband or his relative would be deemed to have committed the conduct for which they are punished for dowry death. Nevertheless, it may not mean that they are the only people who can commit that offence.

92. The punishment for such conduct punishable for dowry death is provided in section 304B(2) IPC. It begins with the word "Whosoever commits dowry death...". It is not limited to husband or his relatives.

93. There is similar difference between presumptions under sections 113A and 113B of the Evidence Act:

? Section 113A of the Evidence Act is titled "Presumption as to abetment of suicide by a married woman". It is confined to husband or his relatives;

? Section 113B of the Evidence Act is titled "Presumption as to dowry death". It is not confined to husband or his relatives.

94. Section 304B(2) IPC is also not confined to husband or his relatives. It uses the word "Whoever commits dowry death...". The Parliament has used different language; it should be for some reason: one does not attribute tautology to the legislature.

95. There is no denial that it is a grey area and it would be better if it is re-visited by the Law Commission of India or by the Joint committee of the

Parliament. It may be clarified by the Parliament itself. This would save the time of the courts and also remove ambiguity in the area that is important for the safety and rights of half of the population.

CONCLUSIONS

96. My conclusions are as follows:

(a) I agree with the conviction and sentence proposed by my Brother to Shriram Pandey (A-1), Kamla Pandey (A-2) and Alok Pandey (A-3) u/s 304B and 498A IPC.

(b) Nagnarayan Sinha (A-4) is guilty u/s 109 IPC for abetting offence u/s 304B IPC and is sentenced to rigorous imprisonment of eight years.

ORDER

97. There is partial agreement and partial disagreement in our opinions. We agree so far as conviction of the appellants Shriram Pandey (A-1), Smt. Kamla Pandey (A-2), and Alok Pandey (A-3) are concerned. So far as their conviction and sentences are concerned, they are convicted u/s 304B and 498A IPC. They are sentenced to rigorous imprisonment for ten years u/s 304B IPC and three years rigorous imprisonment u/s 498A IPC. The sentences will run concurrently. Their bail is cancelled. They will be taken into custody to serve out the remaining part of their sentences.

98. There is a difference of opinion between us regarding Nagnarayan Sinha (A-4), whether he should be convicted and sentenced u/s 4 of the Dowry Prohibition Act or u/s 109 IPC for abetting crime u/s 304B IPC. In light of sections 370 and 392 CrPC, our opinions in respect of Nagnarayan Sinha (A-4) be placed before third judge for his opinion.

99. Nevertheless, by our opinions, Nagnarayan Sinha (A-4) is atleast sentenced to undergo RI of one year. In view of the same, the bail granted to Nagnarayan Sinha (A-4) is cancelled. He will also be taken into custody to serve out the remaining part of one year, after adjusting the period over which he had been in jail. His further detention or fine would depend upon the opinion of the third judge. With the aforesaid observations, the appeal of Shriram Pandey (A-1), Smt. Kamla Pandey (A-2), and Alok Pandey (A-3) is partly allowed and the above order is passed on the appeal of Nagnarayan Sinha (A-4).

1 The 202-Report was submitted in pursuance of a recommendation made by the Supreme Court in Criminal Bail Application No. 12466 of 2002 Natthu Vs State of Uttar Pradesh, where the Court had recommended for introducing a bill in the Parliament providing death penalty for offence u/s 304B IPC. The relevant part of the 202-Report is as follows:

"From the aforesaid analysis, the following proposition emerges:

1. The offence of dowry death in section 304B, IPC does not fall into the

categories of the offences for which death penalty has been provided in the Penal Code.

2. Dowry death is different from the offence of murder. Death of a bride may fall under both the categories of offences, namely, murder and dowry death, in which case, death sentence may be awarded for committing the offence of murder in appropriate cases depending upon the facts and circumstances of each case.

3. Dowry death per se does not involve the direct connection between the accused and the offence because of its presumptive character. Where the evidence in a given case clearly shows that the accused wilfully put human life to peril, the case will attract the provisions of section 300 read with 302 and it will no longer be a case of dowry death simpliciter.

In view of the aforesaid, there is no justification for amending section 304B to provide for death penalty. Such penalty will also not be in conformity with the principle of proportionality.

2 The four ingredients of section 304B IPC have been explained in the following cases:

(i) Ravi Kumar Vs. State,

(ii) Kans Raj Vs. State of Punjab and Others,

(iii) Pawan Kumar and Others Vs. State of Haryana,

3 The relevant part of the judgment in the Suvetha case, where it was explained that a non-relative could be charged for abetment of offence u/s 498A is as follows:

"Appellant herein had not been charged for abetment of a crime. Any conspiracy amongst the accused persons has also not been alleged...

It is not the case of the first informant that the appellant had any role to play with regard to demand of dowry."

4 The relevant part of paragraph 2.4.4. of the 2002 report is as follows:

There are various implications of dowry in the society. Dowry has also a bearing for the female foeticide in our country. People do not want a baby girl considering the social situation that one-day they have to pay dowry. On the other hand, if there is birth of a baby boy, they will fetch some dowry. Unfortunately, in the Indian scenario, a girl is looked upon as a liability to her family. The need of the hour is to fight this menace of dowry in the best possible way.