
(2011) 08 CHH CK 0048

In the Chhattisgarh High Court

Case No : Criminal Appeal No. 276 of 2006 with Criminal Appeal No. 374 of 2006

Shyam Khatkar and Another

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2012) 1 Crimes 1

Hon'ble Judges : T.P. Sharma, J; Rangnath Chandrakar, J

Bench : Full Bench

Judgement

T.P. Sharma, J.—Cr. A. No. 276/2006 filed on behalf of Shyam Khatkar & Odkakin @ Darasmati and Cr.A.No. 374/2006 filed on behalf of Surit Ram and Manoj against the judgment of conviction and order of sentence dated 29.3.2006 passed by the 1st Additional Sessions Judge, Baloda Bazaar in Sessions Trial No. 309/ 2005, are being disposed of by this common judgment. By these two criminal appeals, the appellants have challenged legality and propriety of the judgment of conviction and order of sentence dated 29.3.2006 passed by the 1st Additional Sessions Judge, Baloda Bazaar in Sessions Trial No. 309/2005, whereby and where-under learned Additional Sessions Judge while acquitting co-accused Sanjay elder brother-in-law of Smt. Kusum (since deceased), after holding the appellants guilty for commission of dowry death of Smt. Kusum wife of appellant Shyam Khatkar, daughter-in-law of appellants Surit Ram and Odkakin @ Darasmati and sister-in-law of appellant Manoj, convicted the appellants under Sections 304B and 498A of the IPC, and sentenced them to undergo imprisonment for life and pay fine of Rs. 500 each, in default of payment of fine to further undergo R1 for two months and to undergo R1 for three years and pay fine of Rs. 500 each, in default of payment of fine to further undergo R1 for two months, respectively.

2. Conviction is impugned on the ground that without any iota of evidence, the

trial Court has convicted and sentenced the appellants and thereby committed illegality.

3. As per case of the prosecution, Kusum Bai (since deceased) wife of appellant Shyam Khatkar, daughter-in-law of appellants Surit Ram and Odkakin @ Darasmati and sister-in-law of appellant Manoj, was married to Shyam Khatkar in the year 2004. On 9.5.2005 on account of demand of dowry and commission of torture and cruelty upon her by the appellants, she died as a result of burn injuries in the house of the appellants. As per further case of the prosecution, the appellants have taken the badly injured Kusum Bai to Primary Health Centre, Bhatgaon, for treatment where Dr. Narayan Singh (PW8) examined her and recorded her dying declaration vide Ex.P10 and referred her, to Raipur. During the course of journey, she died. Merg was recorded vide Ex.P13. After summoning the witnesses vide Exs.P1A & P1, inquest over the dead body of Kusum was prepared vide Ex.P2. Kerosene oil container with two litres of kerosene oil, broken pieces of bangle, match box, burnt piece of sari and lungi were seized from the spot vide Ex.P9. Mother of the deceased namely Rukmani Bai made written complaint on 10.5.2005 and on the basis of such written complaint. FIR was registered vide Ex.P14. Dead body was sent for autopsy to Primary Health Centre, Bhatgaon vide Ex.P11A. Dr. Narayan Singh (PW8) conducted autopsy vide Ex.P11 and found superficial burns on the body of the deceased, no external injury was noticed, carbon particles were found in trachea and cause of death was burn injuries and shock. Spot maps were prepared vide Exs. P16 & P19. Initially, merg was recorded vide Ex. P17. Seized articles were sent for chemical examination vide Ex.P21 and presence of kerosene oil was confirmed on burnt pieces of clothes vide Article A.

4. Statements of the witnesses were recorded u/s 161 of the CrPC. After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Baloda Bazaar, who committed the case to the Court of Sessions, Raipur, from where learned Additional Sessions Judge received the case on transfer for trial.

5. In order to prove the guilt of the accused persons, the prosecution has examined as many as twelve witnesses. The accused persons were examined u/s 313 of the CrPC in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.

6. After affording opportunity of hearing to the parties, learned Additional Sessions Judge while acquitting co-accused Sanjay elder brother-in-law of the deceased, convicted and sentenced the appellants as aforementioned.

7. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.

8. Mr. Janak Ram Verma, learned counsel for the appellants, vehemently argued that as per evidence of the prosecution witnesses although Kusum (since deceased) died within one year of her marriage, unnatural death as a result of

burn injuries in the house of the appellants, but evidence adduced on behalf of the prosecution clearly reveals that the appellants have not caused dowry death of the deceased or have not committed torture and cruelty upon her, inter alia, the deceased herself has committed suicide on the ground that her child was weeping and nobody was present in the house for attending her child and, therefore, on account of angry she herself has poured kerosene oil over her body and set herself ablaze, and thereby committed suicide. Mr. Janak Ram Verma further argued that the aforesaid factum of suicide is well corroborated by evidence of Dr. Narayan Singh (PW8) who has recorded dying declaration of the deceased and has conducted autopsy vide Ex.P11. Dr. Narayan Singh (PW8) has clearly deposed that the deceased has committed suicide. Mr. Janak Ram Verma also argued that the deceased was of short temper and on account of petty cause, she herself has committed suicide for which the appellants are not liable. The prosecution has not collected any other evidence to connect the appellants with the crime in question, but the trial Court has convicted and sentenced the appellants on conjectures and surmises and, therefore, conviction and sentences of the appellants are not sustainable under the law. Mr. Janak Ram Verma also argued that the sole dying declaration made by the deceased inspires confidence, it is trustworthy and cannot be disbelieved.

9. Mr. Janak Ram Verma placed reliance in the matter of Padmaben Shamalbhai Patel v. The State of Gujarat Cr. LR (SC) 1991 162, in which the Supreme Court has held that dying declaration recorded by the doctor by asking history of the incident cannot be disbelieved on the ground that it is not in question and answer form. Mr. Janak Ram Verma further placed reliance in the matter of Sharad Birdhichand Sarda Vs. State of Maharashtra, in which the Supreme Court has held that "the law in India does not make the admissibility of a dying declaration dependent upon the person's having a consciousness of the approach of death. Even if the person did not apprehend that he would die, a statement made by him about the circumstances of his death would be admissible u/s 32, Evidence Act. Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice." Mr. Janak Ram Verma also placed reliance in the matter of T. Aruntperunjothi Vs. State through S.H.O., Pondicherry, in which the Supreme Court has held that for proving dowry death, conduct of family members of deceased is relevant and in case no complaint was made by them and they take back all articles given in marriage, husband of the deceased lodged the FIR and if demand for dowry is not established by cogent evidence, then the ingredients of dowry death stand not proved. Misunderstanding between the accused and the deceased i.e. husband and wife would not automatically lead to the conclusion that the appellant committed an

offence u/s 3048 of the IPC, as the law does not raise any such presumption.

10. On the other hand, Mr. Akhil Mishra, learned Deputy Government Advocate appearing on behalf of the State/respondent, vehemently opposed the appeals and submitted that evidence adduced on behalf of the prosecution is sufficient for drawing inference that all the appellants i.e. husband and relatives of husband of the deceased have committed dowry death of Kusum Bai, she died within one year of her marriage in abnormal circumstances as a result of burn injuries sustained by her in the house of the appellants soon before her death and she was subjected to torture & cruelty in relation to demand of dowry. Mr. Akhil Mishra further submitted that the trial Court has rightly disbelieved the suspicious dying declaration recorded by the doctor who instead of immediately treating the injured has recorded such dying declaration and parted from his important duty without any lawful excuse which reveals that Dr. Narayan Singh (PW8) has not recorded the dying declaration but with a view to give benefit to the appellants he has fabricated the document in the style of dying declaration. Mr. Akhil Mishra also submitted that the trial Court has rightly disbelieved such document.

11. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.

12. In the present case, abnormal death of Kusum Bai within seven years of her marriage as a result of burn injuries in the house of the appellants has not been substantially disputed on behalf of the appellants. Even otherwise, it is established by evidence of Smt. Rukmani Bai (PW1) mother of the deceased, Kum. Sushila Soni (PW2) sister of the deceased, Sahasram Soni (PW3)--father of the deceased, Dr. Narayan Singh (PW8) and autopsy report Ex.P11 that the deceased died as a result of burn injuries within 11/2 years of her marriage in the house of the appellants.

13. As regards dowry death of the deceased and complicity of the appellants in the crime in question, as per dying declaration Ex.P10, autopsy report Ex.P11 and evidence of Dr. Narayan Singh (PW8), the deceased has made dying declaration that on the ground of non-attending of her child by relatives of her in-laws, she got annoyed and poured kerosene oil over herself and set herself ablaze, and thereby she has committed suicide by herself, no other person was responsible for her death. The alleged dying declaration Ex.P10 which has been recorded, as per the document, on 10.5.2005 at about 3.30 a.m. by Dr. Narayan Singh (PW8) reads as follows:

(Matter in other language)

14. Dr. Narayan Singh (PW8) has deposed in his evidence that in the intervening night of 9.5.2005 and 10.5.2005 at about mid night husband of Kusum and his relatives brought Kusum before him at Primary Health Centre, Bhatgaon, Kusum was 100% burnt, he along with the lady doctor started her treatment and considering her serious stage, he recorded her dying declaration in which Kusum

made dying declaration that at the time of such incident her child was weeping and nobody was present in her house and, therefore, on account of anger she set herself ablaze. In para 2 of his evidence he has further deposed that at the time of such statement, Kusum was feeling problem, but she has specifically and clearly stated the aforesaid statement and after recording such statement he referred her to Medical College, Raipur. On 10.5.2005 at about 2.30 p.m. he has conducted autopsy on the dead body of Kusum and found burn injuries over her body. Further, in para 7 of his evidence, he gave opinion regarding death of deceased Kusum which reads thus:

(Matter in other language)

15. As per opinion given by Dr. Narayan Singh (PW8) relating to death of Kusum, cause of death was burn injuries with intent to commit suicide. Opinion recorded by Dr. Narayan Singh (PW8) in autopsy report Ex. P11 reads thus:

(Matter in other language)

16. During the course of investigation, query was made to Dr. Narayan Singh (PW8) vide Ex.P12A and it was asked by the Investigating Officer that he has mentioned in the autopsy report that the deceased herself has poured kerosene oil over her body and set herself ablaze therefore, it be explained as to how he has given his opinion that the deceased herself has poured kerosene oil on her body. Dr. Narayan Singh (PW8) has replied the same vide Ex.P12 and has also deposed in his evidence that he has recorded dying declaration of the deceased and also conducted autopsy in which he found that the deceased has poured kerosene oil over her body and set herself ablaze. Para 9 of evidence of Dr. Narayan Singh (PW8) reads as follows:

(Matter in other language)

Ex. P12 reply to Dr. Narayan Singh (PW8) to query Ex.P12A reads thus:

(Matter in other language)

17. As per evidence of Dr. Narayan Singh (PW8), he along with lady doctor had treated injured Kusum, but for the reasons best known to this witness, he has not submitted or sent such treatment report or examination report of deceased Kusum. As per his evidence, burn injuries found over the body of the deceased were 100%. The prosecution has examined Dr. Narayan Singh (PW8) on 28.1.2006 after more than eight months of the incident, but without any document, this witness has deposed that husband & relatives of husband of deceased Kusum brought her to Primary Health Centre. Bhatgaon in the intervening night of 9.5.2005 & 10.5.2005 at mid night whom he along with lady doctor has examined and burn injuries found on the body of the deceased were 100%. In reply to query or question, he gave answer that on the basis of such injuries or symptoms, the alleged cause of death may be homicidal, suicidal or accidental or the injuries may be caused by some kind of weapon or as a result of some accident or incident. However, on the basis of injuries/symptoms, a

person would not be in a position to state that the injured herself/ himself has poured kerosene oil over her/his body with intent to commit suicide. The person conducting autopsy or examining the body of injured cannot opine that the injuries found over the body have been caused with intent to commit homicide or suicide or with any other intention. Virtually, intention is hidden in the mind of the person who causes or commits such act and normally, it is difficult for the prosecution or the court to find out intention of the person.

18. Dr. Narayan Singh (PW8) is a Government doctor and was working as Assistant Surgeon in Primary Health Centre, Bhatgaon, he was under obligation to immediately examine and provide immediate treatment to the injured. However, we do not find any such document of treatment of deceased Kusum by Dr. Narayan Singh (PW8) and some lady doctor. Inter alia, instead of providing immediate emergency treatment and examination. Dr. Narayan Singh (PW8) has prepared the dying declaration as Ex.P10.

19. Ex.P10, the alleged dying declaration, even does not appear to be natural, inter alia, it appears unnatural. If somebody states the cause of death of an injured that too when the injured was in critical condition of 100% burns and dies within 21/2 hours of the incident, he would only state as to why the injured ablaze herself and under what circumstances, but at least, he will not state that with intent to commit suicide or homicide the injured has burnt himself/herself. While conducting autopsy, the autopsy surgeon may opine the cause of death or injuries, but he would not be in a position to opine the intention of the injured person. Ex.P10, the alleged dying declaration and opinion of Dr. Narayan Singh (PW8) relating to intention of sustaining burn injuries by the deceased as opined in Ex.P11 autopsy report, do not appear to be natural, inter alia it shows that while recording such statement instead of providing immediate treatment and giving such opinion in Ex.P11, Dr. Narayan Singh (PW8) has exceeded his jurisdiction and shown his interestedness which is not proper for a public servant.

20. As held by the Supreme Court in Padmaben's case (supra), the dying declaration recorded by the doctor not in question and answer form does not affect the probative value to be attached to their evidence and it can be safely relied upon. In the present case, the alleged dying declaration Ex.P10 has been recorded by Dr. Narayan Singh (PW8) which is also not in question and answer form, but on the face of record, it does not inspire confidence and is not trustworthy, same is suspicious document. The case of Padmaben (supra) is distinguishable on facts to that of the present case.

21. As held by the Supreme Court in Sharad's case (supra), Section 32 of the Evidence Act is an exception to the rule of hearsay and makes admissible the statement of a person who dies, but before accepting it the courts are required to scrutinize the evidence relating to its truthfulness and if same is found truthful, then same would be sufficient for drawing definite conclusion. In the present case. Ex. P10 dying declaration appears to be suspicious and no reliance can be placed upon such dying declaration. The case of Sharad (supra) is also

distinguishable on facts to that of the present case.

22. In these circumstances, autopsy report Ex.P11 is admissible to the extent that deceased Kusum died as a result of burn injuries sustained by her. The prosecution has adduced another set of evidence relating to commission of torture and cruelty upon deceased Kusum in connection with demand of dowry.

23. The prosecution has examined Smt. Rukmani Bai (PW1) mother of the deceased, who has deposed that just after one month of marriage, the appellants have started committing torture and cruelty upon deceased Kusum in connection with demand of dowry even they sent back the deceased to her house, but after some advise they sent her daughter to in-law's house where she stayed for 5-6 months and again appellant Shyam Khatkar brought his wife to her house where her daughter Kusum told her that her in-laws are demanding Rs. 1,00,000, vehicle and fridge, again after some advise, she sent her daughter back to her in-law's house, thereafter, she conceived. Her daughter was residing in her in-law's house and she gave birth to a male child. They were also Invited for the function on the occasion of birth of male child and then after 11/2 months this incident took place. This witness has presumed that the appellants have killed her daughter. Kum. Sushila Soni (PW2) sister of the deceased has corroborated the evidence of Smt. Rukmani Bai (PW1). Sahasram Soni (PW3)--father of the deceased and Shravan Kumar @ Sakhan (PW4) have also corroborated the evidence of Smt. Rukmani Bai (PW1). Defence has cross-examined these witnesses at length.

24. In her cross-examination, Smt. Rukmani Bai (PW1) has denied the suggestion that appellant Shyam Khatkar and his wife were residing separately from other appellants. She has admitted in para 15 of her cross-examination that at the time of function on account of delivery of child, the behaviour of the appellants was good. In para 18, she has admitted that the appellants have not demanded dowry before her. In para 19 of her cross-examination she has denied the suggestion that when Shyam Khatkar used to come to her house along with her daughter, he used to stay for 2-3 days, but she has specifically deposed that Shyam Khatkar used to return back on same day.

25. Defence has also cross-examined Kum. Sushila Soni (PW2)--sister of the deceased. In her detailed cross-examination she has specifically deposed that her sister Kusum told her, and she used to tell her about torture and cruelty on account of demand of dowry meted out to her by the appellants. She has exaggerated in her cross-examination relating to fracture of hands of her sister Kusum. Sahasram Soni (PW3)--father of the deceased has also deposed in his cross-examination that his daughter had informed him about the alleged torture and cruelty and he has not lodged any report to the police. Shravan Kumar @ Sakhan (PW4) has admitted in his cross-examination that he was not having personal knowledge of aforesaid torture and cruelty.

26. As per evidence of aforesaid witnesses and defence of the appellants,

appellant Shyam Khatkar was residing with the deceased in separate house and other appellants were residing in separate house, but there was no partition between them. As per spot maps Exs.P16 & P19 and merg Ex.P13 lodged by appellant Shyam Khatkar, Kusum left one house where she used to sleep with her husband and the incident took place in another house where other appellants used to sleep. As per Ex.P13 merg, on account of some altercation with appellant Shyam Khatkar, Kusum left the first house and after sometime when he went to his another house where his parents were residing, he saw that Kusum was burning, then he along with his father extinguished the fire and took her to Bhatgaon for treatment. On the advise of doctor of Bhatgaon they were taking Kusum to Raipur but near village Gidhauri, Kusum died. Aforesaid facts are non-confessional statement of appellant Shyam Khatkar which is admissible in evidence and which reveal that on the fateful day at 10.30 p.m. Kusum left her first house and after sometime, the incident took place in second house where other appellants were residing. -As per defence, there was no cause for such incident and the appellants have not caused burn injuries to the deceased.

27. Exs.P13, P16 & P19 and evidence of the witnesses reveal that all the appellants were residing together in two houses and appellant Shyam Khatkar and deceased Kusum were not residing separately from other appellants.

28. Father, mother and maternal relatives of the deceased have not lodged FIR prior to the incident and they have not convened any community panchayat or village panchayat to resolve the problem. In the present case, the deceased died within one year of her marriage.

29. In case of domestic violence or harassment, normally the effected persons i.e. daughter-in-law does not report or inform anyone about the harassment or tortuous attitude of her husband or in-law's to other persons but as and when she gets the opportunity, she informs about it to her parents. The parents of the bride normally do not react immediately but wait for an opportune time, in the hope of amicable settlement between the parties and to avoid further complications which may arise in future. But when the matter becomes intolerable then the daughter-in-law or the effected lady discloses the tortuous attitude of her husband and in law's, to the police, neighbour and other persons related to her to get the dispute resolved with their intervention.

30. On the ground that maternal relatives of the deceased have not lodged\report during the life time of the deceased or had not convened panchayat meeting or community meeting, their evidence cannot be discarded. Evidence of Smt. Rukmani Bai (PW1), Kum. Sushila Soni (PW2) & Sahasram Soni (PW3) reveal that on account of affection and assumption they have deposed that the appellants have killed their daughter/sister, but they were not present on the spot. Therefore, aforesaid evidence relating to killing of the deceased by the appellants is only an exaggerated statement and same can be safely separated from other evidence.

31. Smt. Rukmani Bai (PW1) has specifically deposed In para 12 of her evidence that appellant Shyam Khatkar and deceased Kusum were residing in old house and other appellants were residing in new house, but they used to take meals in new house together. As per para 15 of her cross-examination, at the time of function on account of delivery of child, behaviour of the appellants was cordial. This is not the unnatural fact or conduct, even in case of strain relations, relatives do not show the strain relations at the time of some function, social in nature.

32. Evidence of these witnesses reveal that substantially appellant Shyam Khatkar has demanded dowry, but they have not deposed that whether they have fulfilled the aforesaid dowry demand fully or partially or that they have tried to satisfy appellant Shyam Khatkar relating to the circumstances of non-fulfilment of such dowry. However, evidence of aforesaid witnesses clearly reveal that all the appellants were regularly committing cruelty upon Kusum may be to support appellant Shyam Khatkar. As per para 12 of the evidence of Kum. Sushila Soni (PW2), the appellants have quarreled several times with Kusum and have threatened Kusum that they will cause hurt to her. Attitude and behaviour of appellant Shyam Khatkar, as per evidence of aforesaid witnesses, reveals that whenever he visited their house he has not stayed for a day, but he had stayed for one or two hours. This also shows strain relations and in cordial behaviour of appellant Shyam Khatkar with his wife Kusum.

33. Appellant Shyam Khatkar has lodged merg vide Ex.P13 which has been duly proved by Vinod Dhruv (PW9). Confessional statement made by the accused to the police is inadmissible in evidence, but non-confessional statement of the accused is admissible.

34. As per Ex.P13, on the fateful day at about 10.30 p.m. appellant Shyam Khatkar told his wife, deceased Kusum, that he is going to see nacha (a kind of village entertainment) which she objected, after sometime he came back, then there was some altercation between him and the deceased, thereafter, deceased Kusum left his house, on being asked she told that she will come later on and she did not return on which he went up to the shop of Bhushan where he did not find deceased Kusum whereupon he went to his new house where his mother, father and brother were residing and there he saw that Kusum was burning, then they extinguished the fire. This is non-confessional statement which shows that after 10.30 p.m., after the altercation, Kusum left her old house where Shyam Khatkar was alone. It was not her normal conduct, even it was not expected from a normal person especially a woman to leave her house at about 11 p.m. in the night that too without any exigency and alone. Appellant Shyam Khatkar was present in his house, he has not chased or accompanied her and within few hours, he has seen his wife in burning condition in his new house. This shows the extent of altercation and circumstances leading to commission of such incident and active involvement of appellant Shyam Khatkar.

35. Evidence adduced on behalf of the prosecution, especially evidence of

maternal relatives of, the deceased are sufficient for drawing inference that in support of appellant Shyam Khakar whose relations were strain with his wife just after his marriage and continued till her death, other appellants have supported the act of Shyam Khatkar who has also committed torture upon deceased Kusum. Evidence adduced on behalf of the prosecution is not sufficient for drawing inference that the appellants have committed torture and cruelty upon the deceased in connection with demand of dowry. Bald allegations even without any attempt of fulfillment or any reaction on behalf of parents of the deceased are not sufficient for drawing any inference that the appellants have committed torture and cruelty upon the deceased in connection with demand of dowry. However, evidence adduced on behalf of the prosecution is sufficient to draw inference to the extent that appellant Shyam Khatkar by his act has compelled Kusum for commission of suicide on 9.5.2005 at about 11 p.m. as a consequence of ill-treatment and torture committed by appellant Shyam Khatkar. Evidence adduced on behalf of the prosecution is not sufficient for drawing inference that other appellants namely Surit Ram, Odkakin @ Darasmati & Manoj have abetted or instigated or aided for commission of such suicide by Kusum. However, evidence adduced on behalf of the prosecution is sufficient for drawing inference that appellant Shyam Khatkar has committed the offence of abetment to commit suicide by Kusum and that other appellants have committed torture and cruelty upon her, but have not abetted, instigated or aided the commission of suicide.

36. The act of appellant Shyam Khatkar is punishable under Sections 306 and 498A of the IPC. Likewise, the act attributed to other appellants namely Surit Ram, Odkakin @ Darasmati and Manoj is punishable u/s 498A of the IPC only.

37. While convicting and sentencing the appellants, the trial Court has not considered the sufficiency of evidence relating to demand of dowry soon before the death of the deceased and absence of essential ingredients of dowry death, and thereby committed illegality.

38. For the foregoing reasons, in our considered view, conviction and sentences of the appellants u/s 304B of the IPC is not sustainable under the law.

39. Consequently, Cr.A.No. 276/2006 filed on behalf of Shyam Khatkar and Odkakin @ Darasmati and Cr.A.No. 374/2006 filed on behalf of Surit Ram and Manoj are partly allowed. (1) Conviction of the appellants u/s 498A of the IPC is hereby maintained, instead of sentence of R1 for three years and fine of Rs. 500 each, they are hereby sentenced to undergo R1 for 2-1/2 years and pay fine of Rs. 500 each, in default of payment of fine to further undergo R1 for two months.

(2) Conviction and sentences imposed upon appellants Odkakin @ Darasmati, Surit Ram and Manoj u/s 304B of the IPC are hereby set aside and they are acquitted of the said charge.

(3) Instead of convicting appellant Shyam Khatkar u/s 304B of the IPC, he is hereby convicted u/s 306 of the IPC and sentenced to undergo R1 for six years and pay fine of Rs. 5,000, in default of payment of fine to further undergo R1 for

one year.

Considering the abnormal conduct of Dr. Narayan Singh (PW8), copy of the judgment, copy of the alleged dying declaration Ex. P10, copy of evidence of Dr. Narayan Singh (PW8) and copy of autopsy report Ex P11 be sent to the Secretary, Department of Health and Family Welfare for taking suitable disciplinary action against such responsible public servant. It is made clear that the Secretary, Department of Health and Family Welfare may take appropriate action against Dr. Narayan Singh (PW8) after providing complete opportunity of hearing to him and without being influenced by the findings of this Court.