
(2010) 06 UK CK 0215
In the Uttarakhand High Court

The State	Vs	APPELLANT
Vijay Pal Singh, Narendra Singh, Rakesh and Gyan Chandra		RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 378
Dowry Prohibition Act, 1961 — Section 2, 3, 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 201, 30, 302, 304B, 34

Citation : (2010) 06 UK CK 0215

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dharam Veer, J.—This appeal, preferred by the State/appellant u/s 378 of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 22.7.1995 passed by Third Additional Sessions Judge, Nainital, Camp Haldwani in Sessions Trial No. 281 of 1991 State v. Vijay Pal and Ors. Where by the learned Third Addl. Sessions Judge acquitted the respondents of all the charges levelled against them.

2. Heard Learned Counsel for the parties and perused the entire material on record.

3. In brief, the prosecution story is that on 25.5.1991 Ramesh Singh lodged a report in the Police Station Jaspur with the averments that his daughter was married to the respondent/accused Narendra Singh S/o Vijay Pal Singh on 10.2.1991. He came to know from respondent/accused Vijay Pal Singh that in the night of 23.5.1991 his daughter has gone somewhere without informing anyone. He tried to make search of his daughter but her whereabouts could not be known. With the same averments, Ramesh Singh lodged the FIR on 25.5.1991 at P.S. Jaspur. That FIR is Ext.Ka-1.

4. On the same day i.e. 25.5.1991, P.W.2 Samar Pal Singh, Village Pradhan also

lodged a report at P.S. Dillari stating therein that on 25.5.1991 one Sukhe, resident of his village, was going to his field and saw one woman lying in burnt condition at a distance of about 1? Kms west from the village. That person told about the same in the village. Then so many people from the village along with him went at the spot and saw the dead body of an unknown woman and probably someone has committed her murder by burning. The dead body is at the spot. With the same averments, this FIR which is Ext.Ka-4 was lodged by Samar Pal Singh, Village Pradhan on 25.5.1991 at 11:50 AM at P.S. Dillari, Muradabad. On the basis of this FIR, Chik FIR of the case was prepared by Head Mohirror Ramanand Sharma and the case was registered against unknown persons u/s 302 and 201 IPC. That Chik FIR is Ext.Ka-9. Necessary entries were also made in the G.D. carbon copy of which is Ext.Ka-10. The investigation of the case was entrusted to Station Officer Ashok Kumar (PW8). Thereafter, the inquest report was prepared by S.I. Ram Gautam on the dictation of S.O. Ashok Kumar, i.e. Ext.Ka-5. Along with the inquest report, other papers viz. Police Form No. 33 (Ext.Ka-11), sketch of the dead body (Ext.Ka-12), letter to R.I. (Ext.Ka-13), letter to C.M.O. for conducting the post-mortem (Ext.Ka-14), Police Form No. 13 (Ext.Ka-15) and specimen of seal (Ext.Ka-16) were also prepared. During the course of investigation, the I.O. took into his possession blood stained and plain earth from the place where the dead body was recovered vide Fard Ext.Ka-6, some ash vide Fard Ext.Ka-7 and half burnt clothes, tube of colgate tooth paste, four Bichuwe, two buttons, one bag and a piece of burnt bag vide Fard Ext.Ka-8. The I.O. also prepared the site-plan of the place where the dead body was lying, i.e. Ext.Ka-17. Photographs of the dead body were also taken. Negatives are Material Ext.1, 2 and 3 and the photographs are Material Ext.4, 5 and 6. Thereafter the dead body was sent for post-mortem examination. On 26.5.1991 at 4:40 PM, post-mortem of the dead body of deceased was conducted by Dr. S.K. Arora (PW10) and Dr. A.P. Singh, who also prepared the post-mortem report i.e. Ext.Ka-20.

5. On 26.5.1991, Ramesh Singh lodged another report at P.S. Dillari, Muradabad alleging that his daughter Saroj Devi, aged about 20-22 years, was got married on 10.2.1991. After the marriage, his daughter had gone to her in-laws house at Kasampur, P.S. Jaspur, District Nainital with her husband Narendra Singh two times and third time on 19.5.1991, his son-in-law Narendra had come at 12 Noon and had taken his daughter along with him at 4 PM. Besides the articles he had given as dowry since marriage, the respondents/accused were continuously making demand of T.V., Fridge and Cooler. He (complainant) had assured them to fulfill their demand but due to weak economical condition he could not fulfill their demand. When his son-in-law Narendra Singh had come to take his daughter second time, then his father Vijay Pal Singh, brother-in-law of his daughter Rakesh Singh and brother of his son-in-law had also come with him. All the respondents threatened him to fulfill the demand of dowry and told that his daughter is T.B. patient. They also threatened to leave his daughter or to cause harm to her in case demand of dowry is not fulfilled. During this conversation,

his family members, people of the vicinity and some villagers were also gathered. His brothers Durga Singh and Gannu Singh, brother-in-law Ram Pal, and son-in-law Braham Pal Singh, were also present at that time. His family members and relatives had made promise to fulfill the demand of dowry and had also requested not to torture and cause harm to his daughter. On this assurance, family members of his son-in-law went back and respondent/accused Narendra Singh stayed in his house, who had taken his daughter next day. On 25.5.1991 at about 8 AM, younger brother of his son-in-law, namely, Rakesh Singh came to his house and told that his daughter Saroj is missing since the intervening night of 23/24.5.1991. On this information, he along with him reached Kasampur and enquired from all the family members of his son-in-law but to no avail. Thereafter as per the advice of respondent/accused Vijay Pal, he lodged a written report at P.S. Jaspur. On 26.5.1991, he came to know that the police has recovered a half burnt dead body of an unknown lady from the forest of Village Sahaspuri on 25.5.1991 and which has been sent to Muradabad for post-mortem. On this information, he along with Durga Singh, son-in-law Braham Pal Singh and brother-in-law Om Prakash reached post-mortem house and saw the dead body. By seeing the half burnt clothes, earrings, ring (Anguthi), ring (Challa) and bangles of the dead body, all of them identified the dead body to be of his daughter Saroj. He took the dead body of his daughter in his supardagi for its cremation. He alleged that his son-in-law Narendra Singh, brother of his son-in-law Rakesh Singh, father of his son-in-law Vijay Pal Singh and brother-in-law of his son-in-law, have committed murder of his daughter and has tried to destroy the dead body by burning it near village Sahaspuri. He further alleged that Vijay Pal Singh sent the missing information of his daughter through Rakesh so as to mislead him. With the same averments, Ramesh Singh lodged another FIR on 26.5.1991 at P.S. Dillari. That FIR is Ext.Ka-3. Since the incident was related to Village Kasampur, Police Station Jaspur, therefore, the investigation was transferred to P.S. Jaspur, District Nainital (now Udham Singh Nagar) and subsequently the investigation was entrusted to Deputy S.P. Mahendra Singh Tyagi (PW9) on 27.5.1991, who during the course of investigation, recorded the statement of the witnesses and prepared the site-plan of the house of respondents, i.e. Ext.Ka-18. On completion of the investigation, the I.O. filed the charge sheet against the respondents/accused under Sections 304B/498A/201 of IPC and 3/4 of Dowry Prohibition Act. That charge sheet is Ext.Ka-19.

6. After receiving the charge sheet, learned Addl. Chief Judicial Magistrate, Kashipur committed the case to the court of Sessions on 10.10.1991, after giving necessary copies to the respondents/accused as prescribed u/s 207 Cr.P.C.

7. On 20.2.1992, learned IVth Addl. Sessions Judge, Nainital, Camp Kashipur framed the charge of offence punishable under Sections 304B r/w Section 34 IPC, 302 r/w 34 IPC, 498A IPC and 201 IPC against the respondents/accused. The charge was read over and explained to the respondents/accused, who pleaded not guilty and claimed to be tried.

8. In order to prove its case, the prosecution has examined PW1 Ramesh Singh, complainant and father of the deceased Saroj, PW2 Samar Pal Singh S/o Dharam Singh, Village Pradhan, who lodged the report Ext.Ka-4, PW3 Sukhe, who first saw the dead body lying on road and thereafter informed to the Village Pradhan about the same, PW4 Vikram Singh, witness of the recovery memo, PW5 Dr. Muzahid Hussain and PW6 Ishwari Prasad, witness of Panchayat, PW7 Braham Pal Singh, PW8 Ashok Kumar, who initially conducted the investigation of the case, PW9 Mahendra Singh, Deputy S.P., I.O. of the case, PW10 Dr. S.K. Arora, who conducted the postmortem of the dead body of deceased Saroj, PW11 Hamander Kumar, photographer and PW12 Samar Pal Singh S/o Kehar Singh, witness of inquest report.

9. Thereafter the statement of the respondents/accused were recorded u/s 313 Cr.P.C. The oral and documentary evidence were put to each of them in question form, who have denied the allegations made against them. However, they have not produced any oral or documentary evidence in their defence.

10. After appreciating the entire evidence on record and hearing Learned Counsel for the parties, learned IIIrd Addl. Sessions Judge, Nainital Camp Haldwani vide his judgment and order dated 22.7.1995 acquitted the respondents/accused of all the charge levelled against them. Against the said judgment and order dated 22.7.1995, the State has preferred the present appeal.

11. Before further discussion, it is pertinent to mention that the post-mortem of the dead body of deceased was conducted by Dr. S.K. Arora (PW10) and Dr. A.P. Singh on 26.5.1991 at 4:40 PM, who found the following ante-mortem injuries on the person of dead body:

- i) Lacerated wound 10 cm x 4 cm x skull deep on the occipital region of head underneath occipital, left parietal, temporal bone fractured.
- ii) Contusion semi-circular 20 cm x 3 cm on the front of neck underneath blood vessel lacerated and clotted blood present and cornua of hyoid bone both side fractured.

One post-mortem injury was also found on the dead body of the deceased, which reads as under:

- i) P.M burn whole of body including both extremities, abdomen, chest, face and back.

Cause of death due to asphyxia caused by strangulation.

12. To prove the post-mortem report, the prosecution has examined PW10 Dr. S.K. Arora, who stated that on 26.5.1991 he was posted as Medical Officer at T.B. Clinic Muradabad. On that day at 4:40 PM he conducted the post-mortem of the dead body of an unknown lady and found the above-noted ante-mortem injuries. The dead body was brought in sealed by Constables Alla Mehar and Debendra Singh of P.S. Dilari. The deceased was about 20 years of age and she

had died about 2-3 days before. He also found the injuries on the dead body which was caused after death. He further stated that the post-mortem was conducted by him and Dr. A.P. Singh and according to them, the deceased had died due to asphyxia caused by strangulation. He further stated that the post-mortem report was prepared by him and the same was signed by Dr. A.P. Singh and him. He proved the post-mortem report Ext.Ka-20. He further stated that he had also handed over clothes, earrings, ring (Anguthi), pieces of plastic bangles, Bichuwe, rings, one bangle, burnt pieces of saree, petticoat and blouse of the deceased to Constable Alla Mehar.

13. To prove its case further, the prosecution has examined PW1 Ramesh Singh, who has stated that he had married his daughter Saroj with the respondent/accused Narendra on 10.2.1991 and had given Rs. 10,000/- cash, one scooter and other household articles as dowry. After eight days of the marriage, he had brought his daughter from her in-laws house. After the marriage, she went to her in-laws house with her husband two times. Third time on 19.5.1991, his son-in-law had come at 12:00 Noon and had taken her along with him at 4:00 PM. During that period, in-laws of his daughter were continuously making demand of T.V., Fridge and Cooler and used to say to her that his father always gives promise of giving the above-said articles but never gives the same. This fact was told to him by his daughter. When second time his son-in-law had come to take his daughter then his father Vijay Pal Singh, younger brother Rakesh and brother-in-law had also come with him and all of them had threatened him due to demand of aforementioned articles. At that time, his neighbours Gannu Singh, Durga Singh, Ishwari Prasad, Dr. Mushahid, Dharampal Singh, Ram Singh and others were also present. The respondents also told him that his daughter is suffering from tuberculosis and they threatened him to leave his daughter or to cause harm in case the demand of dowry is not fulfilled. Then Gannu Singh, Durga Singh, Braham Pal Singh and Ram Pal Singh give promise of giving the aforesaid items. Thereafter other respondents went back while respondent Narendra stayed in his house at night and next day morning he taken his daughter along with him. On 25.5.1991, respondent Rakesh came at about 8 AM and informed him that his daughter Saroj is missing from the night of 23/24.5.1991 and he does not know where she has gone. Then he came Village Kasampur with Rakesh and enquired from all the family members but could not know anything. Thereafter he went to Police Station Jaspur and lodged the report as per the advice of respondent Vijay Pal. He proved the report Ext.Ka-1. On 26.5.1991, he came to know that a half burnt dead body, recovered by the police from the forest of Sahaspuri, has been sent for post-mortem. Then, he, his wife, brother Durga Singh, son-in-law Braham Pal Singh and brother-in-law Om Prakash went to post-mortem house at Muradabad, where he identified the half burnt dead body and its clothes to be of his daughter Saroj. He identified the dead body by seeing its earrings, finger ring and bangles. He had also identified the face of dead body. All persons who had come with him also identified the dead body. Then he took the dead body in his supardgi for cremation. He proved

the supardginama Ext.Ka-2. Thereafter he lodged the report Ext.Ka-3 of this incident at P.S. Dilhari. In the examination-in-chief, this witness also stated that on 26.5.1991 he, Braham Pal Singh and Durga Singh had gone at Post-mortem house where post-mortem of the dead body of his daughter was conducted. The medical officer had sealed the finger ring, pieces of plastic bangles, one ring, pieces of petticoat, blouse and saree and earrings, found from the dead body of deceased to which he had identified. This witness also identified the aforesaid articles in the court below, which are Ext.1 to 10. He also identified the photographs of his daughter which are Ext.4 and Ext.5.

In the cross-examination, he stated that second time when his daughter went to her in-laws house then she stayed there for 7-8 days and then he had called her. When she came to her parental house, she told him that the respondents/accused are harassing her for dowry. This witness was cross-examined at length by the defence Counsel but nothing has come out from his evidence, which may create any doubt in his evidence. The evidence of this witness is reliable, believable and inspires confidence.

14. PW2 Samarpal Singh stated that on 25.5.1991 Sukhe (PW3) informed him that a burnt dead body of a woman was lying on road at a distance of about 1 km west from the village. On this, he and some villagers went to see the dead body but they could not identify the dead body. Being a Village Pradhan, he lodged the report at P.S. Dillari. He proved the report Ext.Ka-4. In the cross-examination, he stated that the face of the deceased was identifiable but it was not the dead body of known person.

15. PW3 Sukhe stated that one day before the said incident, he went to plough his field. In the evening when he returned to his home there was nothing on road. Next day in the morning when he again went to his field he found the burnt dead body of a woman at a distance of about 1 Km from the village. Then he informed about the same to Village Pradhan Samar Pal Singh.

16. PW4 Vikram Singh stated that he had also gone at the place where the dead body was lying. He stated that the dead body was lying on road at a distance of 1 or 1? kms from the village. It was the dead body of a woman. He was appointed a Panch by the Police. The I.O. inspected the dead body and prepared the inquest report Ext.Ka-5 in which he also made his signatures. Bloodstained and plain earth was taken from the spot by the I.O. and were sealed on two separate boxes, a Fard thereof was prepared which is Ext.Ka-6. Some ash, burnt clothes and etc. were also taken into possession by the I.O. vide Fard Ext.Ka-7. Burnt piece of blouse and saree, colgate paste, four bichuwe, button and some other items were taken into possession vide Fard Ext.Ka-8. He proved the Fards Ext.Ka-6, Ka-7 and Ka-8. He further deposed that the face of the dead body was identifiable but it was not the dead body of known person.

17. PW5 Dr. Mushahid Hussain stated that he was medical practitioner in the village from last 25 or 26 years. Ramesh was known to him, whose daughter

Saroj was married in Village Kasampur. Ramesh Singh had performed the marriage as per his status but the respondents/accused used to demand dowry and were demanding T.V., Fridge and Cooler. Once he and others had also tried to persuade the in-laws of Saroj in presence of Ramesh Singh. There Ramesh Singh told that he will give TV, Fridge, Cooler and other in future but the in-laws of Saroj were saying that Saroj is T.B. patient. Then he told them that he is also a doctor and Saroj is not suffering from T.B. After persuading her in-laws, her in-laws taken Saroj to their house. Later on, the dead body of Saroj was found in burnt condition in the forest of Village Sahaspuri. In the cross-examination, he stated that a Panchayat was held in order to make her in-laws understand not to harass her for dowry. He stated that on that day, her in-laws had made a demand of dowry before him.

18. PW6 Ishwari Prasad Sharma stated that Saroj was married to respondent/accused Narendra Singh on 10.2.1991. In the marriage, Ramesh Singh had given dowry according to his status even then the in-laws of Saroj were demanding T.V., Fridge and Cooler from Ramesh Singh. This fact was told to him several times by Ramesh Singh. Dead body of Saroj was brought in the Village to which he and villagers had identified and had then cremated it. He further stated that after one month of the marriage, a Panchayat was held in the village in which in-laws of Saroj, some villagers and relatives of Saroj were present. In Panchayat, in-laws of Saroj were demanding dowry. Then they were told that Ramesh Singh will fulfill their demand whenever he will be in a position to give the same.

19. PW7 Braham Pal Singh stated that elder daughter of Ramesh Singh was married to him. On 10.2.1991, his father-in-law Ramesh Singh had married his daughter Saroj in village Kasampur and in the marriage he had given ten thousand cash, scooter, double bed and other articles. Second time, when the respondents/accused had come to take Saroj, they had demanded Colour T.V., Cooler and Fridge in his presence. Ramesh Singh requested the respondents/accused that at present he is unable to give the aforesaid articles but he will fulfill their demand after some days. At the time when this conversation was going on, Gannu Singh, Ishwari Prasad, Mushahid Hussain and others were also present. Except respondent/accused Narendra Singh, other persons went from there and Narendra Singh taken Saroj with him next morning. Third time on 19.5.1991, respondent/accused Narendra Singh had come and taken Saroj. After 5-6 days, he got the information that Saroj is missing from her in-laws house. On that day, he was in his village. After getting the information, he reached Jaspur Police Station, where his father-in-law Ramesh Singh and some others were also present. As told by father-in-law of Saroj, Ramesh Singh lodged the missing report of Smt. Saroj in the police station. On 26.5.1991, he and others came to know that on 25.5.1991 a dead body of an unknown lady has been found by the Police from the forest of Village Sahaspuri and it has been sent to Muradabad for post-mortem. Then he along with his father-in-law went to post-mortem house at Muradabad where after seeing the face, body, burnt clothes, earrings (Kundal), finger ring, ring (Challa) of deceased, he and his father-in-law

identified the dead body to be of Saroj. After the post-mortem, the dead body was handed over to his father-in-law. Then the dead body was sent to the village through him and his father-in-law had gone to lodge the report in the police station Dillari. He further stated that the respondents/accused had tried to destroy the evidence by burning the dead body. The respondents/accused had committed her murder due to non-fulfillment of the demand of dowry and they had given threat to kill Saroj for the same.

20. PW8 Ashok Kumar Rawat stated during the period 25.5.1991 to 10.6.1991, he was posted as Station Officer at P.S. Dillari. He further stated that this case was registered in the police station in his presence. The Chik FIR of the case was prepared by Head Mohirror Ramanand Sharma and entries in the G.D. were also made by him. He proved the Chik FIR Ext.Ka-9 and carbon copy of G.D. Ext.Ka-10. On 25.5.1991, he started the investigation of the case. During the course of investigation, he recorded the statement of the witnesses and reached at the place of occurrence. He inspected the dead body of the deceased and thereafter on his dictation, S.I. Devi Ram Gautam prepared the inquest report Ext.Ka-5. Along with the inquest report, other papers viz. Police Form No. 33, sketch of the dead body, letter to R.I., letter to C.M.O. for conducting the postmortem, Police Form No. 13 and specimen of seal were also prepared, which are Ext.Ka-11, Ka-12, Ka-13, Ka-14, Ka-15 and Ka-16, respectively. Thereafter the dead body was sent for post-mortem examination. During the course of investigation, he also prepared the site-plan (Ext.Ka-17) of the place of occurrence. Bloodstained and plain earth were also taken from the spot and its Fard Ext.Ka-6 was prepared by S.I. Devi Ram Gautam. The same was also signed by him. Some ash and burnt clothes were also taken vide Fard Ext.Ka-7. From the place of occurrence burnt piece of blouse, piece of saree and petticoat, colgate, four bichuwe, two buttons, black thread and a bag was also recovered which was also taken into possession vide Fard Ext.Ka-8. On 26.5.1991, the dead body was given in the supardgi of Ramesh Singh. On the same day, Ramesh Singh lodged a report in the police station. As the matter was related to area Jaspur hence the investigation was then transferred to Police Station Jaspur. He further deposed that at the time of inspecting the dead body, the face of the dead body was identifiable.

21. PW9 Mahendra Singh Tyagi, Deputy S.P. stated that during the period 14.6.1991 to 21.8.1991 he was Circle Officer, Kashipur. On 14.6.1991, the case was transferred at P.S. Jaspur and thereafter he conducted the investigation of the case. During the course of investigation, he inspected the place where the deceased was living at Village Kasampur and prepared the site-plan Ext.Ka-18. He also recorded the statements of the witnesses and on completion of investigation, filed the charge sheet against the respondents/accused, i.e. Ext.Ka-19.

22. PW11 Hemendra Kumar stated that on 25.5.1991, he was doing work of photography at Dillari. On that day, police personnel had called him at Village

Sahasपुरi where he took the photographs of a burnt lady. He proved the negatives Material Ext.1, Ext.2 and Ext.3 and also the photographs Ext.-4, Ext.5 and Ext.6.

23. PW12 Sammarpal Singh stated that on 25.5.1991, inquest report of the burnt dead body of a lady was prepared by the I.O. in which he was also appointed as a Panch. He proved the inquest report Ext.Ka-5. This witness has also proved the Fards Ext.Ka-6, Ka-7 and Ka-8 prepared by the I.O. at the spot.

24. Thereafter the statement of the respondents/accused were recorded u/s 313 Cr.P.C. The oral and documentary evidence were put to each of them in question form, who have denied the allegations made against them. However, they have not produced any oral and documentary evidence in their defence.

25. Sri Amit Bhatt, learned Additional Government Advocate for the State/appellant argued that the judgment and order passed by court below is not correct and justified as per the evidence discussed above. Per contra, Sri Vinod Sharma and Sri Jitendra Chaudhary, Learned Counsel for the respondents while supporting the impugned judgment and order of the trial court argued that the prosecution has not proved its case beyond reasonable doubt against the respondents-accused. I find force in the argument advanced by learned Additional Government Advocate.

26. Before further discussion, it is pertinent to mention Section 304B of IPC, which reads as under:

[304B. Dowry Death -- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven 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 purpose 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 seven years but which may extended to imprisonment for life.]

Section 2 of the Dowry Prohibition Act, 1961 is also relevant to mention here which provides definition of Dowry, which is reproduced as under:

2. Definition of "dowry"- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly.

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person.

At or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).

Section 113B of Indian Evidence Act, 1872 is also relevant to mention here which also reads as under:

[113-B. Presumption as to dowry death 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).]

"Cruelty" has been defined in Section 498A of IPC, which is also reproduced as under:

498-A. Husband or relative of husband of a woman subjecting her to cruelty -- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

27. To prove the evidence u/s 304B, it is essential to prove the following essentials (1) Death of a woman should be caused by any burns or bodily injury or otherwise than under normal circumstances, (2) death should be caused within seven years of marriage, (3) soon before her death, the woman must have subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

28. From a perusal of the evidence, it is proved that the deceased Saroj had not died in normal circumstances. It is evident from the post-mortem report that the deceased had died due to asphyxia caused by strangulation, which is not a death in normal circumstances.

29. The next circumstance is that Saroj (deceased) was married on 10.2.1991

and her dead body was found from the forest of Village Sahaspuri on 25.5.1991 i.e. the deceased died within four months of marriage during the period when she was residing with her husband in his house. P.W.1 Ramesh Singh, P.W.5 Dr. Mushahid Hussain, PW.6 Ishwari Prasad and P.W.7 Bharam Pal Singh have stated in their statements that the marriage of Saroj was solemnized on 10.2.1991 and her dead body was found on 25.5.1991.

30. From the statement of P.W.1 Ramesh Singh and P.W.7 Braham Pal Singh, it is well established by the prosecution that the deceased was harassed by the respondents/accused soon before her death for the demand of T.V., Fridge and Cooler. P.W.1 Ramesh Singh and P.W.7 Braham Pal Singh have clearly stated that after the marriage, the respondents/accused were continuously making demand of T.V., Fridge, Cooler and some other articles. Both of them have stated that after the marriage when second time respondent/accused Narendra Singh had come to take Saroj then his father Vijay Pal Singh, younger brother Rakesh and brother-in-law Gyan Chandra had also come with him and all of them had threatened for the demand of aforementioned articles. At that time, neighbours Gannu Singh, Durga Singh, Ishwari Prasad, Dr. Mushahid, Dharampal Singh, Ram Singh and others were also present. The respondents also told that his daughter is T.B. patient and threatened him to leave his daughter or to cause harm in case the demand of dowry is not fulfilled. P.W.6 Mushahid Hussain and P.W.7 Ishwari Prasad had also supported the fact of dowry. They have stated that a Panchayat was held in the village in order to persuade the respondents/accused not to harass Saroj for dowry. Both these witnesses admitted the fact of demanding dowry by the respondents/accused in the Panchayat. Thus, from the above fact, it is well established and proved that deceased Saroj was being harassed and tortured by the respondents/accused just before her death for the demand of dowry.

31. The trial court has erred in law by holding that the demand of dowry is not proved against the respondents/accused. As per the evidence of PW1 Ramesh Singh, father of the deceased, in the marriage of his daughter, he had given Rs. 10,000/- cash, one scooter and other household articles as dowry. After eight days of the marriage, he had brought his daughter from her in-laws' house. After the marriage, she had gone to her in-laws house with her husband two times. Third time on 19.5.1991, his son-in-law had come at 12:00 Noon and had taken her along with him at 4:00 PM. He has stated that during that period, in-laws of her daughter were continuously demanding T.V., Fridge and Cooler and used to say to his daughter that his father always makes promise of giving the aforesaid items but never gives the same. These facts were told to him by the deceased. When second time his son-in-law had come to take his daughter then his father Vijay Pal Singh, younger brother Rakesh and brother-in-law Gyan Chandra (respondents/accused) had also come with him and all of them had threatened him for the demand of aforementioned articles. At that time, his neighbours Gannu Singh, Durga Singh, Ishwari Prasad, Dr. Mushahid, Dharampal Singh, Ram Singh and others were also present. The respondents

also told him that his daughter is T.B. patient and threatened him to leave his daughter or to cause harm in case the demand of dowry is not fulfilled. Then Gannu Singh, Durga Singh, Braham Pal Singh and Ram Pal Singh made promise of giving the aforesaid items. In his cross-examination, this witness had also stated that second time when his daughter (deceased) went to her in-laws house then she lived there for 7-8 days and then he had called her. Thereafter when she came to her parental house, she told him that the respondents/accused are harassing her for dowry. Above said fact of dowry is also corroborated from the statements of P.W.5 Dr. Mushahid Hussain, P.W.6 Ishwari Prasad Sharma and P.W.7 Braham Pal Singh. P.W.5 Dr. Mushahid Hussain was medical practitioner in the village from last 25-26 years and he was well-acquainted with Ramesh Singh (complainant). He was the resident of same village and he used to visit his house. He has stated that daughter of Ramesh Singh was married in Village Kasampur and Ramesh Singh had performed his daughter's marriage as per his status but the respondents/accused used to demand dowry and were demanding T.V., Fridge and Cooler. In this regard, a Panchayat was also held in which in-laws of Saroj (deceased) were also called. In the Panchayat, he and others had tried to persuade the in-laws of Saroj not to harass Saroj for dowry. But the respondents/accused there also had asked for dowry. Likewise, PW6 Ishwari Prasad Sharma also stated that Saroj was married to respondent/accused Narendra Singh on 10.2.1991. In the marriage, Ramesh Singh had given dowry according to his status even then the in-laws of Saroj used to demand T.V., Fridge and Cooler from Ramesh Singh. Many times this fact was told to him by Ramesh Singh. After one month of the marriage, a Panchayat was held in the village in which in-laws of Saroj, some villagers and relatives of Saroj were present. In Panchayat, in-laws of Saroj were told that Ramesh Singh will fulfill their demand whenever he will be in a position to give the same but her in-laws were demanding dowry. Similarly, PW7 Braham Pal Singh, who is another son-in-law of Ramesh Singh, has stated that on 10.2.1991, his father-in-law Ramesh Singh had married his daughter Saroj in village Kasampur and in the marriage he had given ten thousand cash, scooter, double bed and other articles as dowry. Second time after the marriage, when the respondents/accused had come to take Saroj, they had made a demand of Colour T.V., Cooler and Fridge in his presence. Ramesh Singh requested the respondents/accused that he has just performed the marriage and at present he is not in a position to give the aforesaid items but he will fulfill their demand after some days. At the time when this conversation was going on, Gannu Singh, Ishwari Prasad, Mushahid Hussain and others were also present. He stated that the respondents/accused had given threat to kill Saroj for dowry and they had committed murder of Saroj for the same reason. From the above-said discussion, it is proved that the deceased was being mentally and physically harassed for the demand of T.V., Fridge and Cooler as dowry.

32. The trial court has further erred in law by holding that the dead body was not identifiable. The information that a burnt dead body of an unknown lady is lying

on road was given to Village Pradhan Samar Pal Singh (P.W.2) by one Sukhe (P.W.3). P.W.2. Samarpal being the Village Pradhan had lodged the report in the Police Station Dilari. He and some villagers had gone to see the dead body. In the cross-examination, he has stated that the face of the dead body was identifiable but it was not the dead body of known person. Likewise, P.W.4 Vikram Singh, who was appointed as a Panch by the Police has also stated that the face of the deceased was identifiable. P.W.6 Ishwari Prasad has also stated that the dead body of Saroj was brought in the village and he and villagers had identified the dead body to be of Saroj. P.W.1 Ramesh Singh and P.W.7 Braham Pal Singh stated that on 26.5.1991, he and others came to know that a half burnt dead body of an unknown lady has been found by the Police from the forest of Village Sahaspuri and it has been sent to Muradabad for post-mortem. On this, they went to post-mortem house and after seeing the half burnt dead body and clothes they identified the dead body to be of Saroj. P.W.8 Ashok Kumar, Investigating Officer of the case, has also stated that at the time of inspecting the dead body, the face of the dead body was identifiable. Apart from above, photographs Ext.4 and Ext.5 were produced by the photographer Hemendra Kumar (PW11) before the trial court and in the same, face of the dead body was clear by which one could easily identify the deceased.

33. From the above said facts and circumstances, the prosecution has established its case beyond reasonable doubt against the respondents under Sections 304B r/w 34 of I.P.C. and 498A of IPC. Besides above, it is also necessary to state here that P.W.10 Dr. S.K. Arora who conducted the post-mortem of the dead body of the deceased found two ante-mortem injuries on the body of deceased, one on head and other on neck. He also found burn injuries on the body of the deceased which was caused after the death. Ultimately, he opined that the deceased had died due to asphyxia caused by strangulation. Thus, from the above facts, it transpires that the respondents/accused first committed murder of Saroj at their house at Village Kasampur by throttling her neck and thereafter in order to destroy the evidence, they burnt the dead body and planted it on road in the forest of Village Sahaspuri at a distance of 35 Kms from Village Kasampur and with intention to mislead the complainant Ramesh Singh, they sent a false missing information of the deceased through respondent/accused Rakesh. Thus, in this way, the respondents/accused have also committed offence punishable u/s 201 IPC.

34. Therefore, in view of the above-said discussion, I am of the considered view that the trial court was not correct and justified for acquitting the respondents for the offence punishable u/s 304B r/w Section 34 IPC, 498A and 201 of IPC. The prosecution has successfully proved its case against the respondents/accused beyond reasonable doubt under the aforesaid sections and they are accordingly convicted.

35. Accordingly, the appeal preferred by the State is allowed. The judgment and order dated 22.7.1995 passed by Third Additional Sessions Judge, Nainital, Camp

Haldwani in Sessions Trial No. 281 of 1991 State v. Vijay Pal and Ors. is hereby set aside. The respondents-accused Vijay Pal Singh, Narendra Singh, Rakesh and Gyan Chandra are hereby convicted u/s 304B IPC r/w Section 34 IPC and each of them are sentenced to seven years" R.I. Each of them is further convicted u/s 498A IPC and are sentenced to further two years" R.I. with fine of Rs. 2,000/- each and in default, the defaulter shall undergo further six months" R.I. They are further convicted u/s 201 IPC and each of them is sentenced to one year"s R.I. All the sentences except that of fine shall run concurrently. Let the respondents-accused be taken into custody forthwith in order to serve out the sentence as awarded against each of them. The period already undergone by the respondents-accused during the period of investigation and trial shall be adjusted.

36. Let a copy of this judgment be sent to the trial court concerned for compliance of the order forthwith.