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| 104 | CRIMINAL APPEAL No. 1495 of 2000 Vijai Pandey Vs. State Of U.P.<br>Coram - Hon'ble Ram Chandra 'Deepak', J. and Hon'ble M.K. Mittal, J.<br>Date of decision - 16/03/2005 |
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| 110 | CRIMINAL MISC. BAIL APPLICATION No. 12664 of 2004 Manoj Kumar Bajpayee Vs. State Of U.P.<br>Coram - Hon'ble M.K. Mittal, J.<br>Date of decision - 20/09/2005 |
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**HIGH COURT OF JUDICATURE OF ALLAHABAD**

AFR Reserved

1.Government Appeal No. 5570 of 2003

State Of U.P. ..... ..... ..... . Appellant. Vs.
Satya Narain Tiwari alias Jolly & another..... Respondents

A N D

2.Criminal Revision No. 1797 of 2003

Surya Kant Dixit ..... ..... ..... Revisionist. Vs.
State of U.P. and 2 others..... . Opposite Parties.

Hon'ble M.C. Jain, J.
Hon'ble M. Chaudhary, J.

(Delivered by Hon'ble M.C. Jain, J.)

It is a case of bride's unnatural death within seven years of her marriage. The incident occurred on 3.11.2000 at about 12'O clock in the noon in her Sasural in the city of Farrukhabad. She (bride--Gita) was married to the accused respondent no.1 Satya Narain Tiwari alias Jolly nearly three years before. The accused respondent no.2 Smt. Rani alias Bhuvaneshwari is her mother-in-law. Both the accused respondents have been acquitted for the offences under Sections 498A/304B I.P.C. and ¾ of the Dowry Prohibition Act by the Additional Sessions Judge/Special Judge (D.A.A.), Farrukhabad by judgment and order dated 18.6.2003 passed in Sessions Trial No. 172 of 2001. The State has filed the instant Government Appeal against acquittal and the complainant Surya Kant Dixit (father of the deceased Geeta) has also challenged the judgment of acquittal through Criminal Revision No. 1797 of 2003 which has been clubbed with the Government Appeal. The Government Appeal and the Criminal Revision are being decided by this common judgment.

The essential background facts are these:

Surya Kant Dixit PW 1 (father of the deceased) resident of adjoining district Mainpuri lodged a formal F.I.R. on 3.11.2000 at 5.10 P.M. at Police Station Kotwali, District Farrukhabad on the basis of which a case was registered. Earlier thereto, Smt. Rani, the accused respondent no.2 (mother-in-law of the deceased) had informed the police at 1.10 P.M. the same day, setting up the story of suicide having been committed by the deceased when she (accused respondent no.2) had allegedly gone to her another house under construction and her husband having gone to the place of his employment--Bank and her son (accused respondent no.1--husband of the deceased) having gone to his business shop. The information passed on by her to the police had set the machinery in motion, leading the police to reach the spot, preparation of inquest report etc. of the dead body of the deceased.

The accusations made by the father of the deceased in the formal F.I.R. were that about three years before the incident, he had married her daughter Geeta with the accused no.1 Satya Narain Tiwari alias Jolly after giving Rs. 4 Lacs in dowry as demanded by the in-laws of the deceased. After about six months of the marriage, his daughter's husband and mother-in-law (accused respondents) started demanding a Maruti car as part of the dowry, subjecting the deceased to cruelty on this score. His daughter Geeta used to complain to him in this behalf on phone, his brother Vinay, cousin brother Ravindra Kumar, Jaideo Awasthi etc. About three months before the incident, he and Jaideo Awasthi had gone to the Sasural of Geeta when her mother-in-law Rani repeated the demand of Maruti car. On expressing his inability to meet the said demand, he and Jaideo were insulted and turned out of her house. However, he swallowed all this and did not take any action at the persuasion of Geeta and her father-in-law Ghanshyam Tiwari. On the day of the incident (3.11.2000) at about 12 O' Clock someone gave information to him on telephone at Mainpuri about his daughter's death. He immediately left Mainpuri for Farrukhabad and reached the place of occurrence at about 4 P.M. to find half burnt dead body of his daughter in the bedroom with a half burnt piece of cloth around her neck. Her tongue was protruding. He also noticed drops of blood

and Bindiya lying in the balcony. Shortly put, this was the accusation made by the father of the deceased. As per the F.I.R., he accused that his daughter had been killed by her husband and mother-in-law.

After lodging the F.I.R., the first informant made an application Ex.Ka-2 to the District Magistrate, Farrukhabad for constituting a panel of five doctors for conducting post mortem. Acceding to his request, in consultation with the Chief Medical Officer, Farrukhabad, the District Magistrate constituted a panel of three doctors for conducting post mortem over the dead body of the deceased. It was taken up that very day, i.e., 3.11.2000 at 10.10 P.M. The panel consisted of Dr. R.K. Singh, Dr.R.D. Srivastava and Dr. Janardan Babu who conducted autopsy on the dead body of the deceased. One of them, Dr. R.K. Singh has been examined as PW 3 to prove the post mortem report. The salient features of the same are set forth here for the sake of facility. The deceased was aged about 24 years and about ½ day had passed since she died. She was of average built. Eyes and mouth were partly open. Tongue was between teeth. The body had pugilistic appearance. Smell of kerosene was present. Rigor mortis was also present. There was a half burnt cloth around the neck with knot half burnt. Half burnt bed sheet and other clothes as also a half burnt wire mingled with burnt clothes were found. A burnt cordless phone was also found. The following ante mortem injuries were found on her person:

1.Ligature mark all around the neck, 31 cm x 7 cm. Base slightly grooved with dark red. On cut section-tissue ecchymosed and tracheal ring compressed. Clotted blood under soft tissues found.

2.Superficial to deep burns all over body. Blisters at places present. On cut section serum fluid present.

Internal examination revealed that membranes of brain were congested. Pleura and right lung were also congested. Larynx, trachea and bronchi were congested with sooty particles present. Both chambers of heart were full. Oesophagus, spleen and kidneys were also congested. As per the opinion of the Doctors conducting the autopsy, the cause of death was suffocation with shock as a result of strangulation with simultaneous ante mortem burns.

After investigation, the two accused respondents were booked for trial. Their case was of denial of demand of dowry and according to them, the deceased committed suicide as she was living in gloom and depression for having not been able to give birth to any child after marriage. And, she did so, when no other member of the family was present.

At the trial, the prosecution examined seven witnesses. Surya Kant Dixit PW 1 was the father of the deceased and maker of the F.I.R. who as well as his relative Jaideo Awasthi PW 2 gave evidence about the demand of Maruti car by the accused respondents since after six months of marriage and about the demand of Maruti car being repeated and pressed by both the accused, when both of them had gone to the Sasural of the deceased and had been turned out by the two accused after being insulted on their expressing inability to meet out the demand of Maruti car. Dr. R.K. Singh PW 3 stated that he was included in the panel of doctors conducting the autopsy on the dead body of the deceased and he proved the post mortem report. Head Constable Mohar Pal Singh PW 4 had scribed the check report on the basis of the F.I.R. lodged by Surya Kant Dixit PW 1. Shiv Bahadur Singh PW 5, Tehsildar of Tehsil Farrukhabad prepared the inquest report of the dead body of the deceased and other related papers. S.I. Ghanshyam Gaur PW 6 had collected bloodstains etc. from the spot at the instance of Shiv Bahadur Singh PW 5 and Circle Officer D.P.N. Pandey PW 7 was the Investigating Officer of the case. The defence also examined three witnesses. Vidushi Tiwari DW 1 was the real sister of the husband of the deceased. Devendra Misra DW 2 and Sushil Kumar Misra DW 3 were non-family members of the two accused. Reference to their testimony shall be made later on at appropriate place(s) as and when necessary.

The evidence of the prosecution did not find favour with the trial court. The trial Judge held that the prosecution case was not clear whether the deceased died of strangulation or of burn injuries. According to him, the prosecution also failed to prove the demand of dowry by the accused and of the deceased having been treated with cruelty by them on that score. He accepted the plea of alibi put forth by the two accused respondents and held that the deceased committed suicide on account of mental depression. He therefore, recorded acquittal.

We have heard Miss N.A.Moonis, learned A.G.A. and Sri Prem Prakash for the complainant as also Sri V.P. Srivastava assisted by Sri R.B. Sharma from the side of accused respondents. According to the State and learned counsel for the complainant, the findings of the trial court are illegal and perverse based on surmises and conjectures only to throw away the well established prosecution case. On the other hand, the learned counsel for the accused respondents has tried to support the reasoning adopted by the trial court to find the accused respondents not guilty.

We propose to examine hereunder the whole gamut with reference to all the relevant aspects of the matter keeping in view the arguments advanced from the two sides.

To begin with, it has to be kept in mind that for an offence of dowry death under section 304-B I.P.C., the term ''dowry' has the same meaning as in Section 2 of the Dowry Prohibition Act 1961. Through Amending Acts, i.e., Act No. 63 of 1984 and Act No. 43 of 1986, the definition of the term ''dowry' in Dowry Prohibition Act was altered and the demands made after solemnization of marriage would be ''dowry'. We may refer with profit to the decision of the Supreme Court in the case of State of H.P. Vs. Nikku Ram 1995 Crl. L.J. 4184 in which the legal position on the point has elaborately been clarified in paragraphs no. 12 and 13 as under:

"12. The definition as amended by the aforesaid two Acts does not, however, leave anything to doubt that demands made after the solemnization of marriage would be dowry. This is because the definition as amended reads as below:-
"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 parents 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 person to whom the Muslim Personal Law (Shariat) applies."

"13. The aforesaid definition makes it clear that the property or the valuable security need not be as a consideration for marriage, as was required to be under the unamended definition. This apart, the addition of the words "any time" before the expression "after the marriage" would clearly show that even if the demand is long after the marriage the same could constitute dowry, if other requirements of the section are satisfied."

Further, as held by the Apex Court in the case of Kunhiabdulla Versus State of Kerala, 2004 (48) ACC 950, in order to attract application of Section 304B I.P.C., the essential ingredients are as follows:
1.The death of a woman should be caused by burns or bodily injury or otherwise than a normal circumstance;
2.Such a death should have occurred within seven years of her marriage.
3.She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
4.Such cruelty or harassment should be for or in connection with demand of dowry.
5.Such cruelty or harassment is shown to have meted out to the woman soon before her death.

As generally happens in a crime of dowry death, this case is also based on circumstantial evidence. As regards ingredients no. 1 and 2 of a crime of dowry death detailed above, it is an admitted fact that the deceased Geeta died otherwise than in normal circumstances vide her post mortem report and that the death had occurred within seven years of her marriage in her Sasural in the bedroom. As per the prosecution case, she had been married to the accused respondent no.1--Satya Narain Tewari alias Jolly about three years before this incident occurring on 3.11.2000. Even Vidushi Tiwari DW 1, sister of the husband of the deceased stated in paragraph 2 of her statement that the deceased Geeta was married to her brother Satya Narain Tiwari alias Jolly on 9.12.1997. So, to say precisely, her unnatural death in her Sasural occurred within three years of her marriage.

As regards ingredients no. 3, 4 and 5, the relevant testimony is contained in the statements of the deceased's father Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 (son-in-law of Bua of Surya Kant). Both of them have deposed about the persistent demand of Maruti car in dowry by the accused persons (husband and mother-in-law of the deceased) since after six months of the marriage and harassment/maltreatment of the deceased over the score of non-fulfillment of the said demand. The gist of the testimony of Surya Kant Dixit PW 1 was that he had performed a decent marriage spending Rs. 4 Lacs and giving household goods in dowry but after six months of the marriage, the two accused started torturing his daughter Geeta pressing for the demand of a Maruti car. On her visits to her parental house, she (deceased) used to narrate to him (this witness) her torture and maltreatment. She had also informed him in this behalf on telephone. About three months before the incident, he and Jaideo Awasthi had gone to Geeta's Sasural at Farrukhabad on getting message from Geeta about the atrocities of the two accused heaped upon her rendering her life miserable because of non-fulfilment of the demand of Maruti car. Both the accused were there at their house at Farrukhabad and repeated the demand of Maruti car. On his expressing inability to meet this demand, he and Jaideo Awasthi were insulted and humiliated and turned out of the house. Both the accused told them not to visit their house again without meeting their demand of Maruti car. Surya Kant Dixit PW 1 then went to Geeta's father-in-law at the place of his employment--State Bank because he was a gentleman. He apprised him of the conduct of his wife and son (accused) pressing the demand of Maruti car. He, however, offered consolation. Geeta, daughter of Surya Kant Dixit PW 1, also advised him not to take any action and he went away. The victim might have thought that making of F.I.R. by her father at that juncture would ruin her matrimonial life and so, she advised him not to take any legal step at that time.

Then he received a telephonic message from someone at about 12 O' clock in the noon on the day of incident about the death of his daughter Geeta in her Sasural at Farrukhabad. He at once rushed from Mainpuri to Farrukhabad covering a distance of about 80-85 Km. reaching the Sasural of his daughter to find her dead in the bedroom of the first floor of the house.

Jaideo Awasthi PW 2 has corroborated the statement of Surya Kant Dixit PW 1 in all the essential particulars. He had accompanied Surya Kant Dixit PW 1 about three months before the incident to the Sasural of Geeta as related above while giving the gist of testimony of Surya Kant Dixit PW 1 and thereafter on the day of the incident on the receipt of telephonic message at about 12 O' clock in the noon. It is pertinent to state that this witness used to reside in Mainpuri in a separate portion of the house of Surya Kant Dixit PW 1. He being a close relative of Surya Kant Dixit PW 1, it is quite believable that

he had acquired knowledge of the persistent demand of Maruti car by the accused on Geeta's visits to her parental house and he had also accompanied Surya Kant Dixit PW 1 to her Sasural three months before the incident as also on the day of the incident. The testimony of Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 has the ring of truth regarding the illegal demand of Maruti car in dowry by the two accused since after six months of the marriage and that they subjected her to harassment, maltreatment and humiliation on non-fulfilment of the said demand. It goes without saying that cruelty or harassment may not only be physical but also mental.

Negative sort of evidence given by Vidhushi DW 1, sister of the husband of the deceased could not eclipse the confidence inspiring evidence of these two witnesses.

There is an important feature of the case. In the present case, Surya Kant Dixit PW 1 has described Ghanshyam Tiwari (father-in-law of his daughter) as a gentleman. He has all the praises and regard for him. Even when he was humiliated by the two accused about three months before the incident on his expressing inability to meet their demand of Maruti car in dowry, he (PW 1) had gone to him at his employment place in State Bank and had not taken any action on the consolation offered by him. He mentioned this fact in the F.I.R. too. It appears that he could not control the cupidity of his wife and son (the two accused) and they continued to pursue their greed by tormenting and maltreating the young lady (deceased) to get a Maruti car in dowry from her parents. She (Geeta) had to pay the price of non-fulfillment of this demand of theirs, losing her life at their hands.

Only the husband and mother-in-law of the deceased have been accused of the offences in question. Besides them, there were three other family members, i.e., Ghanshyam Tiwari (father of accused no.1 and husband of accused no.2), Km. Vidushi DW 1 (sister of the accused no.1) and Km. Shalini, another unmarried sister of accused no.2. Such composition of the family has come to be related by Vidushi DW 1. The circumstance that only the husband and mother-in-law of the deceased have been made accused of the offence, sparing other three, is an indicator that Surya Kant (father of the deceased) has not acted out of malice, anger or to wreak vengeance as otherwise, he would have implicated the entire family including the father-in-law of the deceased and two unmarried sisters of the husband of the deceased as is often done by parental side of the bride in a dowry death case. Indeed, the prosecution could not be expected to bring forth any other evidence as to the persistent demand of dowry in the form of Maruti car by the two accused after about six months of the marriage and maltreatment, harassment and torture heaped upon her (deceased) by the two accused on non-fulfilment of the said demand. The evidence on this aspect of the matter as contained in the statements of Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 has the natural aura of the truth.

Learned counsel for the respondents argued that the alleged demand of Maruti car made after about six months of marriage does not answer the test of ''soon before' the death of the deceased. He reasoned that as per the own case of the prosecution, there was no interaction between the two sides since before three months of the death of the deceased when Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 had allegedly been humiliated and turned out by the two accused from their house with the command not to reach there again without Maruti car and that there was no evidence that any such demand was made during the period of three months intervening the alleged incident of turning them out of the house by the accused and the death of the deceased. The counsel for accused respondents made reference to the case of Balwant and another vs. State of Punjab 2005 (1) JIC-7 (SC) to stress the point that proximity test has to be applied. The argument, in our opinion, cannot be accepted.

We should remind ourselves that as held by the Supreme Court in the case of Kunhiabdullah and another vs. State of Kerala 2004 (48) ACC 950 SC , ''soon before' is a relative term and it would depend upon the circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under section 113-B of the Evidence Act. The determination of the period which can come within the term ''soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression ''soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

There can be no quarrel with the proposition that the proximity test has to be applied keeping in view the facts and circumstances of each case. Of the case cited by the learned counsel for the accused respondents, the facts were somewhat different in that the deceased was not shown to have been subjected to cruelty by her husband for at least 15 months prior to her death. On the facts of that case, Section 304B I.P.C. was held to be not attracted.

On the other hand, the present case fully answers the test of ''soon before'. There is emphatic testimony of demand of Maruti car being pressed by the two accused persons after about six months of the marriage of the deceased (which took

place about three years before the incident) and of her being pestered, nagged, tortured and maltreated on non-fulfilment of the said demand which was conveyed by her to her parents from time to time on her visits to parental home and on telephone. The things had reached to such a pass that on getting a message from her about three months before the incident, Surya Kant Dixit PW 1 accompanied by Jaideo Awasthi PW 2 had to go to her Sasural in Farrukhabad in an attempt to wean away and dissuade the two accused from pressing such demand, but they (the two accused) humiliated him and turned him out of the house with the command not to enter their house again without meeting the demand of Maruti car. He did not take any action on the consolation offered by the father-in-law of his daughter and also on the advice of his daughter. It was natural that the victim also did not want her father to take any extreme step against the two accused. The time is the greatest healer. She might have thought that things would improve with the passage of time. But the destiny did not chalk out a smooth course for her. Surya Kant Dixit PW 1 was in a helpless state after suffering humiliation at the hands of the accused persons about three months before the actual incident. He could simply wait and watch in the hope of things to improve, but the situation did not improve at all. It, however, cannot be taken to mean that the demand made by the two accused persons had subsided or was given up by them. By commanding Surya Kant Dixit not to come to their house without meeting the demand of Maruti car, they simply destroyed the bridge of further interaction or dialogue. It can justifiably be inferred from what happened subsequently that they continued to torture the unfortunate lady because of non-fulfilment of the demand of Maruti car. In our opinion, the test of ''soon before' is perfectly answered in the positive by the facts, evidence and circumstances of the present case.

To pick up the thread, ingredients no. 3, 4 and 5 for attraction of Section 304B I.P.C. are also established by satisfactory evidence adduced by the prosecution in the form of the testimony of Surya Kant Dixit PW 1 corroborated by Jaideo Awasthi PW 2.

Now, we switch over to the important question whether the death of Geeta was homicidal as alleged by the prosecution or suicidal as claimed by the defence. There is a popular adage that the witnesses may lie but the circumstances will not. In the present case, certain recoveries made from the spot strongly indicate that the death of Geeta was homicidal. There are two important recovery memos Ex.Ka-10 and Ka-11. The recovery memo Ex.ka-10 relates to the recovery of blood and bloodstained Bindia from the Chhajja (balcony) situated outside the room in which the dead body of the deceased was found lying. The said recovery is a pointer that the deceased had been subjected to violence there and there was struggle between her and her captors. Such recovery leads to the justifiable inference that she had received injuries and blood had oozed in drops found at the Chhajja. She was a young lady of about 24 years of age. The instinct of self preservation is strongest in all human beings. Seemingly, violence had first been applied to her inside the bedroom by the accused and offering resistance she had somehow run out to Chhajja (balcony) adjoining the room and the blood dropped there. Another recovery memo is Ex.Ka-11 relating to the finds inside the room in which the dead body was found. Amongst the finds inside the bedroom, there were broken pieces of bangles also. With the application of force and violence, she was brought back from Chhajja (balcony) to the bedroom where she was done to death.

It is noted from the Panchayatnama Ex. Ka-6 that receiver of the telephone was stuck under left arm of the deceased and burnt telephone wire was found stuck with the dead body.

The post mortem report also makes mention of the burnt wire and burnt cordless phone being found stuck with the dead body along with half burnt scarf around the neck.

The recovery memos Ex.Ka-10 and Ka-11 had been prepared by S.I. Ghanshyam Gaur PW 6 at the dictation of Shiv Bahadur Singh PW 5. Shiv Bahadur Singh PW 5 (Tehsildar Magistrate) is a witness to the recovery memos. Inquest report (Panchayatnama) was prepared by himself. One of the witnesses of the recovery memos and Panchayatnama is Keshav Tiwari, Advocate, uncle of accused no.1. These recoveries were not challenged in the cross-examination of Shiv Bahadur Singh (Tehsildar Magistrate) PW 5 or S.I. Ghanshyam Gaur PW 6. These recoveries amply indicate that the deceased had been subjected to violence in the bedroom and she had succeeded in coming out on Chhajja (balcony) to save her. The signs of struggle and application of violence in the form of broken bangles inside the room and the blood and bloodstained Bindia on the Chhajja were found. Not only this, it appears that the deceased had even tried to make use of the phone to inform someone of what was happening with her but she could not succeed. The presence of burnt cordless phone stuck in the arm and the burnt wire of phone with the dead body indicates that she had tried to contact someone on phone, but in vain. There was nothing to cast doubt on the said recoveries.

Learned counsel for the accused respondents, however, argued that the circumstance of such recoveries could not be read as evidence against them because no question was put under section 313 Cr.P.C. with regard thereto. This contention is factually incorrect. We have checked the questions put to the accused persons under section 313 Cr.P.C. and find that question no.6 specifically relates to the recoveries made through recovery memos Ex. Ka-10 and Ka-11 as also to the Panchayatnama. The answer of both the accused was "Arop Patra Galat Lagaya Gaya Hai."

Learned counsel for the accused respondents argued that the blood was due to menstruation of the deceased. Reference

was made to the written statement filed by the accused Satya Narain Tiwari that menstruation of his wife had started on 2.11.2000. This defence is built on straw and is belied by the recovery of bloodstained Bindia from the balcony. There could hardly be any question of Bindia of the deceased having fallen down on the balcony, had there not been any struggle there. In all probabilities, the two accused subjected her to violence on face, nose etc. inside the room and then in balcony, so much so that her Bindia and some blood dropped down from her injuries. They (the accused) might have assaulted her in the room so that her bangles got broken and blood as also the Bindia fell down on the balcony. They might have struck blows on her face, nose etc. causing blood to come out. Bleeding injury could also be caused by the breaking of bangles during the course of scuffle and struggle. The entire body of the deceased was burnt and it was so badly charred that it gave pugilistic appearance. Resultantly, no signs of such bleeding injury could be noted in the post mortem.

Reference was made by the learned counsel for the accused respondents to the statement of Sushil Kumar Misra DW 3. He was a stranger who stated to have seen some cloth being stuck on the private part of the deceased. We note that he could not give any plausible and acceptable reason for his presence at the scene of incident. He claimed to have gone to Mohalla Simt Sumal to meet his friend Prem Arya at about 11 A.M. for booking a gas cylinder. It sounds to be improbable inasmuch as he knew that his friend Prem Arya, Manager of Swami Gas Service, used to leave his house at 8 A.M. for his showroom. So, there could hardly be any question of his going to the house of Prem Arya at about 11 A.M. for booking a gas cylinder. Obviously, he was a witness picked up by the defence at random. In any view of the matter, cloth around or on private part of the deceased could be half burnt apron or undergarment of the deceased sticking to her body. The same does not overshadow the recovery of blood and bloodstained Bindia of the deceased from the Chhajja (balcony) which we find to be an important piece of evidence of the victim having been subjected to violence there by the accused respondents.

So to come to the point, the recoveries which we have referred to supply important circumstantial evidence in favour of the prosecution and against the accused persons.

Learned counsel for the State and complainant argued that two types of injuries found on the person of the deceased as per the post mortem report further advanced the prosecution case against the accused respondents. On the other hand, the learned counsel for the accused respondents stressed the reasoning adopted by the trial court to support acquittal that the prosecution could not successfully prove as to whether the deceased died of strangulation or of burn injuries. He urged that the post mortem report was manipulated showing strangulation as one of the causes of death. According to him, she committed suicide by burning. He tried to support his argument submitting that no signs of bruises were found underneath the ligature mark; hyoid bone was not fractured and that both the chambers of the heart were found full of blood. These signs, according to him, were more in conformity with death by burning, and not by or with strangulation. It has also been urged that sooty particles were found present in the larynx, trachea and bronchi on internal examination, meaning thereby that she was alive when burnt. It has been urged that had she been strangulated to death, there could hardly be any necessity of burning her. He tried to make out that symptoms found in the dead body of the deceased were in conformity of her having died of burning only which, according to his submission, she did herself while committing suicide.

To appreciate the conclusion flowing from post mortem report and the statement of Dr. R.K. Singh PW 3 who conducted autopsy with two other Doctors, the symptoms found in internal examination of the dead body should be recapitulated. Membranes, pleura, larynx, trachea and bronchi with sooty particles as also both the lungs were congested. Both the chambers of the heart were full. Spleen and kidneys were also congested. The dead body had pugilistic appearance. When a body has been exposed to great heat, it gets cooked and becomes so rigid that it assumes an attitude of toughness, called ''pugilistic posture'.

The learned counsel for accused respondents argued that as per medical science, the symptoms found on death by burning are these: The pleurae are congested; the lungs are usually congested; chambers of heart are usually full of blood and sooty carbon particles are found in larynx, trachea and bronchial tubes. If sooty and carbon particles are found in larynx, trachea, main bronchi and smaller bronchi, the counsel argues, respiration must have been proceeding during conflagration and, therefore, the fire was in progress during life.

The argument of the learned counsel for the accused respondents, however, ignores other important aspects of the matter. We have dealt with above that there was struggle and application of violence to the deceased on the Chhajja (balcony) and in the bed room where she was forcibly taken for being done to death. To incapacitate her of any meaningful resistance, the accused persons interfered with her breathing process with the compression of the windpipe of neck before burning her. Respiration had not completely stopped. To say in other words, air passage was not completely blocked by ligature pressed by the accused around the neck of the deceased. She was strangulated, but not to death. Strangulating her half way to overpower her and to render her incapable of offering any meaningful resistance, the two accused poured kerosene over her and burnt her. It explains the presence of sooty particles in her larynx, trachea and bronchi. Half burnt cloth around her neck with knot had been found by the panel of the doctors conducting post mortem over her dead body. Her

tongue was between the teeth. Ligature mark of large dimension measuring 31 cm x 7 cm all around the neck had been found by the doctors. As stated above, the doctors found a half burnt piece of cloth around her neck with a knot half burnt. It was the constricting material used by the accused for compressing the neck of the deceased.

Dr. R.K. Singh PW 3 explained that strangulation would mean pressing the neck with force. He also emphatically stated that strangulation was made by the cloth found around the neck of the deceased which was bearing a knot. As a matter of fact, ligature mark was the impression left by the constricting object around the neck. The sign of "tissue ecchymosed and tracheal ring found compressed" was explained by the Doctor that it occurred on account of tying the cloth around the neck with toughness. These were the signs of violence and force applied by the assailants on the neck of the deceased, strangulating her to render her immobile and to overpower her, but half way. They sprinkled kerosene on her and burnt her to accomplish their mission of causing her death. Nothing could be brought out of the cross-examination of Dr. R.K. Singh PW 3 to displace the facts emerging from the post mortem report. Sooty particles found in the breathing vessels of the deceased only indicated that her life was not extinct when she was put on fire. She inhaled sooty particles while breathing before being dead.

So far as the absence of bruise underneath the ligature mark is concerned, true Dr. R.K. Singh PW 3 did not find any mark of bruise underneath the cloth wrapped around the neck of the deceased. The object with which neck is pressed leaves the impression on the site of the neck. But if the cloth used as the constricting material for pressing the neck is soft, mark of bruise can not be found. When something soft and yielding is used as ligature, it shall produce nothing more than slight depression or flushing of the skin. In the present case, the base of the ligature mark was found slightly grooved with dark red and the Doctor explained that it was the result of constricting the neck by the cloth. Obviously, the soft cloth would only produce such a sign. Of course, hyoid bone was not found fractured, but it did not negate strangulation and constricting the neck of the deceased with a piece of cloth. As per Taylor's Principles and Practice of Medical Jurisprudence, it is unusual to find fracture of hyoid bone in persons under 40 years of age ( it would be recalled that the deceased was a young lady of about 24 years). On survey, it was found that percentage of hyoid fracture in strangulation by ligature was 13. So, the fracture of hyoid bone was very infrequent. Another celebrated author Modi has also used the word ''may', saying that hyoid bone may be fractured in case of strangulation. The view has received approval of the Supreme Court also in the case of State of Karnataka Vs. K. Gopala Krishna, JT 2005 (2) SC 389 wherein it has been observed in para 11 as under: "It is well accepted in medical jurisprudence that hyoid bone could be fractured only if it is pressed with great force or hit by hard substance. Otherwise, hyoid bone is not a bone which can be easily fractured."

As a matter of fact, it would mostly depend upon the amount of force applied in constricting the neck. Really speaking, the marks on the neck would depend on the relative position of the victim and the assailants and the way in which the neck was gripped and there would be variation depending upon the amount of force.

Judged in the right perspective, the submission of the learned counsel for the accused respondents does not score any point for them.

It takes us to this part of the argument of the learned counsel for the accused respondents that both the cavities of heart were found filled with blood. According to him, it negated the theory of strangulation. It is not possible to agree with this argument for the discussion that follows.

In the chapter of "Deaths from Asphyxia" while dealing with the signs produced in the case of strangulation, the celebrated author Modi's view is that right side of heart is full and left is empty, but sometimes both the cavities are full if the heart stops during diastole. Another celebrated authority Cox (citing one of America's most experienced Forensic Pathologist and writer Dr. Lister Adelson) has said that increased fluidity of blood and dilation of the right side chamber of the heart are quite meaningless and useless and should be disregarded. So, to come to the point, the symptom of both the chambers of heart having been found full of blood did not at all negate the strangulation of the deceased by constricting her neck with a piece of cloth so as to apply force to it. To repeat, the respiration process did not completely stop with the blockage of the air passage, though she was incapacitated of rendering any meaningful resistance and in the meantime the two accused persons doused her with kerosene and burnt her while she was still breathing and she happened to inhale soot and carbon found in her larynx, trachea and bronchi.

We, therefore, reject the argument of the learned counsel for the accused respondents that there was any conflict emerging from the post mortem report.

So far as the alleged manipulation in the post mortem report is concerned, the contention of the accused respondents is wholly unfounded. It was a panel of three doctors formed by the District Magistrate to conduct post mortem over the dead body of the deceased. The complainant was an outsider from another city. It would be preposterous to assume that he had such monstrous influence that he could win over the three doctors to produce a post mortem report of his choice, falsely showing the signs of strangulation over the dead body of the deceased. Keshav Tiwari (uncle of accused no.1) was an Advocate, practising at Farrukhabad who was even present at the time of preparation if inquest report. He

was also a witness of Fard of recovery Ex.Ka-10 and Ka-11. Naturally, he would have been watching the interest of the accused persons. It was practically impossible for Surya Kant Dixit PW 1 (father of the deceased) to maneuver any manipulation in sthe post mortem report.

The theory of suicide put forth by the defence completely falls through on careful analysis of the evidence and the attending circumstances. Two different types of injuries found on the dead body of the deceased, i.e., the ligature mark of large dimension and the body being badly burnt because of the ante mortem burns with smell of kerosene coming out of the body completely rule out the theory of suicide. A half burnt piece of cloth with a knot was also found tied around the neck. If a cloth is suddenly tightened around the neck, it is likely to cause loss of consciousness, rendering it impossible for the victim to perform any action because of the interference with her breathing process. Owing to constricting of neck by a ligature, it could not at all be possible for the victim to catch hold of the container of the kerosene and pouring it upon her with the litting of match stick setting her ablaze. Her mental faculty would not have been in such a position to have undertaken such an activity. It is also to be taken note of that her body was found by the Investigating Officer at point ''A' as depicted in the site plan in the lonely corner of the bedroom where she was rendered immobile and in helpless state.

Vidushi DW 1 sister of accused no.1 tried to support the theory of suicide by her such statement that her sister-in-law (deceased) used to bear Tabiz in her neck. She had allegedly enquired from her about the same and she had replied that she was being haunted by evil spirits having bad dreams in night and further that a month before her marriage, her father had taken her to a Tantrik who had given Tabiz to her assuring that she would bear a child within three years of her marriage. According to her, the deceased remained in mental tension because she had not been able to give birth to any child.

We have not the slightest doubt that the theory of suicide put forth by the defence is a crude concoction. Ours is a superstitious society. A number of males and females wear Tabiz over their persons on the advice of hermits, astrologers, fortunetellers, palmists, Tantriks etc. for general well being. It is preposterous that even before her marriage, the deceased had been taken by her father to some Tantrik for such treatment of sorcery so as to ensure the birth of a child to her within three years of marriage. It also can not be accepted that she was living under gloom or depression for having not given birth to a child. She was only 24 years of age when she died. She was educated upto B.Sc. standard. She had not passed child bearing age. She had been married about three years back. No evidence could be led by the defence that she was suffering from some gynaeco problem running counter to her child bearing capacity. Had there been any such problem, there would have been some history of her consultation with medical expert and related treatment. The accused being her husband and the mother-in-law would have definitely been in a position to put forth documentary evidence in this behalf. A bald assertion from the mouth of the sister of the accused no.1 could not be believed that the deceased was suffering from some mental depression for having not conceived.

The defence also came forward with the story that the Investigating Officer D.P.N. Pandey, Dy. Superintendent of Police, examined as PW 7 had found a suicide note in the drawer of the deceased which was in her writing but he took away the same. He had allegedly read over the same to all present including Keshav Tewari, Advocate (uncle of accused respondent no.1) DW 2 Devendra Misra, Advocate, media persons and members of the family of the in-laws of the deceased as also of her parents side. He, however, took away the same on the ground that he would make mention of the same in the case diary. DW 2 Devendra Misra, Advocate stated that he and others had asked the C.O. to prepare Fard of suicide note but he did not do that. According to DW 2 Devendra Misra, a number of other lawyers were also present at that time. The said C.O. examined as PW 7 denied that he found any such suicide note. It does not get down the throat that any such alleged suicide note could have been taken by the C.O. in the alleged manner in the presence of a number of lawyers, namely, Keshav Tiwari, Devendra Misra and others without preparing any recovery memo. DW 2 Devendra Misra admitted that he knew the importance of the recovery of the said suicide note and also knew that the preparation of recovery memo in that behalf was necessary. It cannot be accepted that in the presence of a large number of persons including lawyers and media persons, the alleged suicide note could be taken away by the C.O., an uninterested person, charged with the duty of investigation of the case. The large number of persons including lawyers would not have permitted him to take away the same without preparing recovery memo. It is also pertinent to state that no complaint was ever made to the higher police authorities in this behalf. No request was made for the change of Investigating Officer either. In our considered opinion, the alleged recovery of suicide note by the C.O. and the same having not been placed on record of the case is a cock and bull story coined in a desperate attempt to create false defence.

The theory of suicide was attempted to be propped up on another plank also. DW 1 Vidushi attempted to prove a diary Ex.Kha-2. According to her, it was in the handwriting of her sister-in-law. It is an old diary of 1998, in which she is purported to have recorded her pleasant events and those in low spirited mood. The learned counsel for the accused respondents argued that it does not contain even a whisper indicating that she had any grievance against her husband or mother-in-law or that there was any demand of dowry from their side. Instead, according to him, in the date of 2.12.1998 she wrote that

at times her husband treated her very lovingly. We are afraid it is not possible to draw any conclusion in favour of the defence on the basis of this diary. We are firmly of the view that it is another piece of fictitious document put forth by the defence. Initial page meant for writing name etc. is missing from the diary. It is not proved at all that it is in the handwriting of the deceased. Rather, the entries of dates 14.4.1998, 17.4.1998, 18.7.1998 and 1.8.1998 clearly indicate that it was a business diary which was in use of the husband of the deceased. The details of business dealings are recorded in these dates. It is obvious that tearing off the first page, which was to give the clue as to whom this diary belonged, false evidence has been attempted to be created by the accused to make a show that the deceased used to write this diary in pleasant and gloomy moments of her life. We reject this argument.

Yet another argument of the learned counsel for the accused respondents was that the room in which the dead body of the deceased was found was bolted from inside and had to be broken open. According to him, it indicated that she committed suicide. To support this argument, he referred to the statement of DW 1 Km. Vidushi that when she reached home from her college, the door of the room (in which the dead body was found) was bolted from inside and the ply of the door was also broken. Our attention was invited to the statement of Shiv Bahadur Singh PW 5 who stated that when he reached the spot and inspected the room, he found that inner latch of the room was a bit twisted and some part of the ply of the door was not in its place. The statement of DW 3 Sushil Kumar Mishra was referred to that the door of the room was closed from inside and the door had to be opened by kicking it, so much so that the ply gave way and the inner latch was twisted. On analysis, it is not possible to accept that the door of the room in which the dead body was found was bolted from inside. Ms. Vidushi DW 1 in her cross-examination retracted her earlier statement that the door was bolted from inside. We gather the impression that she was speaking out of her imagination with the underlying idea to save the accused--her brother and mother. Two falsehoods fight between themselves. So far as DW 3 Sushil Kumar Misra is concerned, he was a got up witness. There was hardly any occasion for him for going to that locality to meet one Prem Arya at about the midday when it was within his knowledge that he (Prem Arya) used to leave his house for his showroom at about 8 O' clock in the morning. The purpose, according to him, was to get a gas cylinder. It is admitted that in the showroom as well as in the godown of the agency, telephone connection was there. The witness also owned a telephone connection. Gas cylinders, it is well known, are dispatched to the consumers on making booking on telephone. The witness did not offer himself to the Investigating Officer for recording his statement to the effect that the door of the room had been bolted from inside and it had to be opened by giving kicks to the door. He simply remained silent for about 2½ years and for the first time appeared in court on 24.5.2003 as a defence witness. The truth of the matter is that the door was found open by the Tehsildar Magistrate and the Sub-Inspector. The offence had been committed by the accused with preplanning. The possibility was very much there that before arrival of the persons of law machinery at the spot, the inner latch of the room was a little twisted and the ply of the door was somewhat made out of place to make a show that the room was bolted from inside and had to be opened by giving kicks to the door.

On judging the theory of suicide from all possible angles, we do not find any iota of substance therein and we reject it.

We record with dismay that the trial Judge has exhibited lack of common sense in taking it to be ground against the prosecution that the knot found around the neck of the deceased was not produced before the court. It spills beyond comprehension as to how the knot of cloth found wrapped around the neck of the deceased could be produced before him. It is obvious that he completely misinterpreted the matter relating to knot and took it as a circumstance against the prosecution. While conducting post mortem, the knot found around the neck of the deceased was untied and removed. To say in other words, the body was to be freed from the knot so as to facilitate the post mortem. Therefore, there could be no question of the knot being produced before the court.

On close scrutiny and threadbare analysis, we are also of the firm view that the trial judge wrongly accepted the plea of alibi put forth by the two accused persons to get away from the consequences of the serious crime committed by them. Their conduct also voluminously spoke against them that it were they who committed this crime. As a matter of fact, only these two accused had an opportunity to commit this offence. The father-in-law of the deceased having gone to State Bank, Farrukhabad (the place of his employment) and his two daughters including DW 1 Vidushi having gone to their educational institution, the two accused persons only (husband and mother-in-law of the deceased) had the opportunity to commit this crime inside the bedroom of one of them, i.e., accused Satya Narain Tewari alias Jolly. No one else could have access there. The manner in which the deceased was done to death, i.e., by first strangulating her and then setting her afire, needed at least two persons, because she (deceased) was also a young lady aged about 24 years. As is well known, the instinct of self preservation is natural in all living beings. A single person could not have possibly overpowered the victim to strangulate her and to set her afire. As a natural instinct, she was bound to offer resistance and having regard to two types of the injuries found on her person at the time of post mortem, it was the handiwork of at least two persons, who undoubtedly were husband and mother-in-law of the deceased. The conduct of the mother-in-law of the deceased was that she lodged false information at the Police Station at 1.10 P.M. that her daughter-in-law had committed suicide. In this

report, she stated that she had gone to supervise the construction work at her another house and noticing smoke emitting from the first floor of the bedroom of the house of incident and on the shouts of the residents of the locality, she came rushing to the scene. Her this statement is false as per the own showing of her daughter DW 1 Vidushi. She stated that the house on which the construction work was going on, for supervision of which her mother had gone, was situated in another locality. She also stated that it was not visible from the house of the incident. It also came down from her statement that the distance of that house under construction from the old house of the incident was 1 or 2 furlongs. This being so, there could be no question of her(accused respondent no.2) noticing emission of smoke from the bedroom of first floor of the house where the incident took place. She (accused Bhuvaneshwari Devi) falsely so stated in the report lodged at the Police Station to misguide the machinery of law through false plea of alibi. The story of seeing smoke coming out of the home and hearing the alarm of the respondents of the locality mentioned in the report of Bhuvaneshwari Devi was a stark lie. She had taken a false excuse to support her baseless plea of alibi of herself as also her son--husband of the deceased.

Interested testimony of DW 1 Vidushi also could not be believed that her brother accused no.1--husband of the deceased had gone to his shop at about 8 A.M. After committing this crime, the two accused vanished from the scene, but before doing that, one of them (Bhuvaneshwari--mother-in-law of the deceased) lodged a false report at the Police Station that her daughter-in-law had committed suicide. Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 denied the presence of the two accused persons when they reached the place of incident. It is there in the testimony of D.P.N. Pandey PW 7 (C.O/Investigating Officer) that the accused Satya Narain surrendered in Court on 7.11.2000 and the other accused Rani alias Bhuvaneshwari on 13.11.2000. Earlier thereto, the attempts to find and arrest them turned to be futile. It is there in his testimony that both of them were absconding and for this reason, on 6.11.2000 a report had been submitted for issuing process against them under section 82/83 Cr.P.C. None of the two accused is witness of inquest report or Fards. Invisibility of both of them after the incident cannot be termed to be normal conduct of innocent persons. The report by the accused Bhuvaneshwari Devi, as we said, was given at the Police Station at 1.10 P.M. on 3.11.2000. It was the outcome of deliberation and consultation with legal experts who had already gathered at the scene of occurrence along with Keshav Tiwari, Advocate uncle of the accused Satya Narain Tiwari, DW 2 Devendra Misra, Advocate, and few other lawyers. We note from the testimony of DW 2 Devendra Misra that the news of the death of daughter in law of Ghanshyam Tiwari was received in the District court at 11.30 A.M. itself, i.e., much before the lodging of the report by Bhuvaneshwari. This witness stated that when he arrived at the scene of occurrence, a group of lawyers was already there. The false report made by the accused Bhuvaneshwari Devi was the outcome of the legal advice to save the culprits from the consequences of the criminal act committed by them.

Learned counsel for the accused respondents also argued that it was the accused Bhuvaneshwari who had passed on the information of the death of the deceased to her parents on telephone. Surya Kant Dixit PW 1 (father of the deceased) denied it that the telephone received by him was from Bhuvaneshwari Devi. According to him, he had received a telephone from some stranger. Even if it is taken for the sake of argument (though we do not believe it to be that) that she had telephoned to him, it is of no consequence and the defence does not score any point on this premise. The reason is that the crime was committed by the two accused with preplanning, so much so that Bhuvaneshwari Devi even lodged a false report at the Police Station to misguide the machinery of law and to create a false defence. Telephoning to the father of the deceased could only be a part of the scheme to project it as a case of suicide.

We are firmly of the view that the presumption of Section 113-B of the Evidence Act is well attracted in this case and the discussion that we have made hereinabove makes it abundantly clear that the defence could not displace the said presumption. The culpability of the two accused respondents in committing this crime is established to the hilt by the facts and circumstances proved by the prosecution. They undboubtedly are the authors of this crime. The irresistible conclusion is that the demand of Maruti car raised by the two accused respondents after about six months of the marriage persisted as it was not settled by the father of the deceased by supplying the same. The prosecution has successfully proved the persistent demand of Maruti car as a part of dowry by the two accused and continuous cruelty and harassment heaped upon the deceased by them over this score.

To sum up, the prosecution has been able to prove the following.

(1)The death of the deceased was caused by strangulation and burning within seven years of her marriage.

(2)The deceased had been subjected to cruelty by her husband and mother-in-law (the two accused respondents) over the demand of Maruti car in dowry raised and persistently pressed by them after about six months of the marriage and continued till her death.

(3)The cruelty and harassment was in connection with the demand of dowry, i.e., Maruti car.

(4)The cruelty and harassment is established to have been meted out soon before her death.

(5)Two accused respondents were the authors of this crime who caused her death by strangulation and burning on the given date, time and place.

The trial Judge recorded acquittal with superfluous approach without indepth analysis of the evidence and circumstances established on record. On thoroughly cross-checking the evidence on record and circumstances established by the prosecution with the findings recorded by the trial court, we find that its conclusion are quite inapt, unjustified, unreasonable and perverse. Proceeding on wrong premise and irrelevant considerations, the trial court has acquitted the accused respondents. The accused respondents are established to have committed the offences under sections 498-A and 304B I.P.C. and under Section 4 of Dowry Prohibition Act.

Now comes the question of sentences to be passed against the two accused respondents for the above offences committed by them. Gravity of the offence is an important guiding factor for determining the quantum of sentence. Some offences including those against women require exemplary punishment. Dowry is a deep rooted malady plaguing our society and many women are burnt to death or otherwise transported to the other world by their husbands and in-laws on non-fulfilment of the demand of dowry. The evil of dowry takes the life of many a young ladies. Dowry confronts and at times haunts many parents of young girls in our country. Relying on " Law in changing Society" by Friedman, the Supreme Court stated in the case of Surjeet Singh Vs. Nahar Ram and another (2004) 6 SCC 513 on the aspect of imposing appropriate sentence on the culprit as under:

" The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix.

The present was the most horrendous bedroom crime committed by the two accused respondents (mother-in-law and husband of the deceased) cutting short the life of the young lady in a very cruel manner for the greed of dowry. It is a fit case where maximum sentence of life imprisonment provided under section 304-B I.P.C. should be awarded to them. For the offence of Section 498-A I.P.C. the two accused persons deserve to be punished with rigorous imprisonment for three years. For having committed the offence under Section 4 of the Dowry Prohibition Act, the sentence of six months rigorous imprisonment would meet the ends of justice.

In the net result, we allow the Government Appeal. We set aside the acquittal recorded by the trial court and convict the two accused respondents, namely, Satya Narain Tiwari alias Jolly and Smt. Rani alias Bhuvaneshwari under sections 304 B I.P.C. with sentence of life imprisonment, under section 498-A I.P.C. with sentence of three years rigorous imprisonment and under section 4 of Dowry Prohibition Act with six months rigorous imprisonment. The substantive sentences of imprisonment shall run concurrently. The two accused respondents Satya Narain alias Jolly and Smt. Rani alias Bhuvaneshwari Devi are on bail. The Chief Judicial Magistrate, Farrukhabad shall cause them to be arrested and lodged in jail to serve out the sentences passed against them. Criminal Revision stands disposed of accordingly.

Certify the judgment to the court below for reporting compliance to this Court within two months from the date of receipt.

Dated: July 12 :2005 Sd/-Hon.M.C. Jain, J.

Akn. Sd/- Hon. M. Chaudhary, J.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Reserved

Government Appeal No. 2272 of 2000

State of U.P.....Appellant

Versus

1.Ram Chandra
2.Madan Lal
3.Smt.Hoshiyari
4.Km.Mithlesh.....Accused
Respondents

Hon'ble M. C. Jain,J.
Hon'ble M.Chaudhary,J.

(Delivered by Hon'ble M Chaudhary,J.)

This is a government appeal filed from the judgment and order dated 6.5. 2000 passed by I Additional Sessions Judge, Moradabad in sessions trial no. 1003 of 95 State versus Ram Chander & others acquitting the accused of the charge levelled against them under sections 498A and 304 B IPC and section ¾ Dowry Prohibition Act.
Brief facts giving rise to this appeal are that at 5: 10 p.m. on 12th of July 1995 Harish Chand, father of the deceased lodged an FIR at police station Bachchrayun, District Moradabad situate at a distance of some 3 Kms from village Dhanauri Khurd alleging that he married his daughter Asha with Madan Lal son of Ram Chandra resident of village Dhanauri Khurd within the limits of police station Bachchrayun according to Hindu rites some three years ago. But since the very inception of her marriage she was used to be harassed and tormented by her husband, parents in-law and ''nanad' Mithlesh for want of dowry; that some ten days prior to the occurrence Ram Chandra, father in-law of Asha went to his house at village Kaitvali Pandaki Amroha and asked him to give Rs.50,000.00 cash as dowry and as he expressed his inability he left his daughter Asha at his house and got annoyed and went away. Some five days thereafter Ram Chandra went to his house to fetch his daughter in-law Asha and took her with him asking her father to send Rs. 50,000. 00 cash to him in dowry. On 12th of July 1995 Harish Chand learnt that his daughter Asha was beaten and strangulated to death by her husband, parents in-law and ''nanad' Mithlesh as their demand of Rs 50,000. 00 cash could not be satisfied by her parents. Then Harish Chand went to the house of in-laws of his daughter and saw that Asha was lying dead and there were injury marks at her neck. The police registered a crime against all the four under section 304 B IPC and started investigation. Investigation of the crime was entrusted to Sri Naresh Pandey, circle officer Dhanaura. Immediately SI Satya Deo Singh went to the scene of occurrence and drew inquest proceedings on the dead body and prepared the inquest report (Ext Ka 2) and other necessary papers (Exts Ka 3 to Ka 6). He also collected vomit in a container lying near the dead body of Asha and prepared its memo (Ext Ka 8). Then he inspected the place of occurrence and prepared its site plan map (Ext Ka 9).
Autopsy on the dead body of Asha conducted by Dr Prabhat Kumar, Radiologist Central Police Hospital, Moradabad on 13.7. 95 at 4:00 p.m. revealed belownoted ante mortem injuries:

1. Contusion 17 cm x 13 cm on lower part of neck and upper part of chest in front underlying subcutaneous tissues and muscles were contused. Abrasions present on corners of lips and nose.

On internal examination brain and its membranes, both the lungs, larynx, pericardium, oesophagus, liver, pancreas, spleen and kidneys were found congested. Tracheal rings and larynx were fractured. The tongue was bitten by teeth in front.

The doctor opined that the death was caused due to asphyxia as a result of ante mortem strangulation.

Thereafter the case was investigated by CO Naresh Pandey. On 15th of August 1995 the crime was altered under section 498-A IPC and section ¾ Dowry Prohibition Act. He also recorded statements of the witnesses. Subsequently the crime was investigated by CO Ayodhya Prasad who after completing the investigation submitted charge sheet against the accused under sections 304-B and 498-A IPC and section ¾ Dowry Prohibition Act.
After framing of charge against the accused the prosecution examined Harish Chand (PW 1), father of the deceased, Inder Singh (PW 2) residing in close neighbourhood of Harish Chand and Hemendra Singh (PW 3) brother of the deceased in support of the prosecution version. PW 5 Dr Prabhat Kumar, Radiologist Police Hospital Moradabad who conducted autopsy on the dead body of Smt. Asha proved the post mortem report. PW 4 SI Satya Deo Singh who drew inquest proceedings on the dead body and did other necessary things has proved the police papers. PW 6 CO Ayodhya Prasad who after completing the investigation submitted charge sheet against the accused has proved the same.
The accused pleaded not guilty denying the alleged occurrence altogether and stating that they were got implicated in the case falsely. Accused Smt Hoshiyari stated that her daughter-in-law Asha died natural death due to illness.
The accused examined DW 1 Dr Akhil Chandra Srivastava, a private medical practitioner. He stated that he had medically examined Smt Asha on 26th of May 95 and at that time she was suffering from epilepsy and he had prescribed medicines to her. They also examined DW2 Kailash Chandra in their support who stated that Asha was married with Madan Lal in February 1988 and after some time of her marriage it was known that Smt Asha was suffering with epilepsy.
On an appraisal of the parties' evidence on record the Additional Sessions Judge disbelieved the prosecution case holding that cruelty or harassment of the deceased by the accused and demand of dowry were not proved. The learned trial judge also held that she died a natural death due to illness as alleged by the defence. Resultantly, the accused were acquitted of the charge levelled against them under sections 498-A and 304- B IPC and section ¾ of Dowry Prohibition Act.
Feeling dissatisfied with the impugned judgment the State preferred this appeal assailing acquittal of the accused.
We have heard Sri Z.K.Hasan learned AGA for the State appellant and Sri R.R.Singh assisted by Sri R.K. Khanna, learned counsel for the accused respondents.
After hearing the parties' learned counsel and going through the record of the case we are of the view that the impugned judgment is perverse and manifestly unreasonable as relevant and convincing evidence and material have been unjustifiably eliminated and, therefore, evidence has to be reappreciated for the purpose of ascertaining if any of the accused really committed any offence or not.
First, we would set out the essential ingredients of Section 304-B IPC which are as follows:
(i) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstance.
(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.
(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113-B of the Evidence Act is also relevant for the case in hand. Section 304-B IPC and section 113-B of the Evidence Act were inserted with a view to combat the increasing menace of dowry deaths. Section 113-B of Evidence Act lays down a presumption as to dowry death. It reads that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.
Expression ''soon before' would normally imply that interval should not be much between cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effects of cruelty based on dowry demand and death of the victim.
The word '' dowry' in section 304-B IPC has to be understood as it is defined in section 2 of the Dowry Prohibition Act. There are three occasions relating to dowry. First is before the marriage, second is at the time of marriage and the third is at any time after the marriage.
In the instant case, the prosecution has come with the case that Harish Chand married his daughter Asha with accused Madan Lal son of Ram Chandra some three years ago according to Hindu rites. PW 1 Harish Chand, father of the deceased and PW 2 Inder Singh, his neighbourer both consistently deposed that Asha was married with Madan Lal some four years ago. PW 3 Hemendra Singh, brother of the deceased stated that his sister Asha was married to Madan Lal according to Hindu rites on 19th of May, 1993. PW 6 circle officer Ayodhya Prasad who after completing the investigation submitted charge sheet against the accused deposed that the card of their marriage was given to the police during investigation and

during the investigation it came to be ascertained that marriage of Asha with Madan Lal took place on 19th of May, 1993. The defence case is that Asha was married with Madan Lal in February 1988. The accused examined DW 2 Kailash Chandra in their defence. DW 2 Kailash Chandra stated that marriage of Asha with Madan Lal took place in February 1988 which is evidently false. In the instant case statements of the accused under section 313 of the Code of Criminal Procedure were recorded on 12th of February,1997. That day accused Madan Lal told his age as 22 (twenty two) years. Thus according to Madan Lal himself in February 1988 he was only 13 years of age. It is unpalatable rather incredible that Madan Lal was married at the age of 13 years as even in those days usually marriages of boys did not take place unless they attained the age of 18 years. There was so much awakening in the villages that even girls aged 13-14 years were not thought of marriageable age. This very fact falsifies the defence case that Asha was married with Madan Lal in February 1988. Therefore, we find that Asha was married with Madan Lal in May, 1993. Admittedly she died in her matrimonial home on 12th of July 1995. The finding of the trial court is wholly erroneous and perverse that marriage had not taken place within seven years preceding the incident.

The trial judge held that Smt Asha was suffering of epilepsy and she died natural death due to the ailment with which she was suffering. But a perusal of the post mortem report goes to show that autopsy conducted by Dr Prabhat Kumar, Radiologist Central Police Hospital Moradabad on her dead body on 13th of July 1995 at 4:00 p.m. revealed ante mortem contusion 17 cms x 13 cms on lower part of her neck and upper part of chest on the front, and underlying subcutaneous tissues and muscles were contused. There were abrasions on corners of her lips and nose. On internal examination tracheal rings and larynx were found fractured. It all goes to show that considerable force was applied by her husband and parents-in-law and she was strangulated to death, and her death was homicidal.DW 2 Kailash Chandra who resided in his neighbourhood stated that the fateful day he was working at his fields and he learnt there that wife of Madan Lal died due to fits. However a perusal of the inquest report goes to show that he was very much present at the house of accused Madan Lal when inquest proceedings were drawn by the sub-inspector on the dead body of Smt Asha as he was one of the ''Panchas' appointed by the police officer. The inquest report bears his signatures under the endorsement that in the opinion of ''Panchas' Asha aDevi was strangulated to death. It goes a long way to reflect that this witness Kailash Chandra (DW 2) is not an honest and straightforward witness. The accused examined Dr Akhil Chandra Srivastava (DW 1) a private medical practitioner who deposed that Asha Devi was brought to him for treatment in May 1995 and at that time she was suffering of epilepsy. Admittedly Dr Akhil Chandra Srivastava was a Psychiatrist and the ailment with which Asha was allegedly suffering had no concern with the medical science of neurology in which he used to practise. Neither PW 1 Harish Chand,father of the deceased nor her brother Hemendra Singh (PW 3) was given a suggestion even in their cross-examination by the defence counsel that at the time of marriage Asha was suffering with epilepsy. In view of the above state of evidence we find that the defence case that Asha, wife of Madan Lal was suffering with epilepsy is palpably false. PW 1 Harish Chand deposed that at about 11:00 a.m. the alleged noon when he reached the house of in-laws of his daughter Asha she was lying dead in the ''verandah' having received injuries at her face, neck etc and none of her in-laws was present there and that sighting him accused Ram Chandra and Madan Lal ran away. When all the accused were questioned regarding inquest proceedings on the dead body of Asha by the sub-inspector they stated that they had no knowledge thereabout. It is unintelligible and unfathomable that if Smt Asha died natural death then why her husband and parents-in-law were not present inside the house. Their absence from the house at the time the dead body of Smt Asha wife of Madan Lal and daughter-in-law of Ram Chandra and Smt Hoshiyari was lying inside the house speaks volumes about their guilt. Accused Madan Lal and Ram Chandra surrendered in the Court of Magistrate concerned on 24th of July 1995 and Smt Hoshiyari and her minor daughter Km Mithlesh on 28th of July, 1995. PW 3 Hemendra Singh deposed that funeral and last rites of Asha were performed by him. All these circumstances lent further assurance to the prosecution case. Thus the said finding recorded by the trial court is manifestly erroneous and contrary to evidence.

Regarding ill-treatment and demand of dowry, PW 1 Harish Chand, father of the deceased stated that he married his daughter Asha with Madan Lal and after 4- 5 days of her marriage she was brought to her parents' house; that after one year of her marriage her ''Gauna' ceremony was to take place and therefore her husband and father in-law came after one year of her marriage for her ''Vida' and at that time they were very annoyed and when he asked them to stay for one day and then to take Asha with them they refused and went back angrily ; that next day they came for ''Vida' but did not stay and Madan Lal took his wife Asha on motor cycle and as he asked that some household articles which he provided in ''Gauna' ceremony as ''Shagun' were to be taken, his ''Samdhi' refused to take the same telling that there was no necessity of all those things and then he sent those articles keeping the same in a rickshaw through his son who kept the same in the bus through which Asha's father-in-law Ram Chandra was returning to his house. He also stated that after one month of ''Gauna' ceremony he went to see his daughter Asha and on meeting Asha complained of ill-treatment suffered by her at the hands of her husband and in-laws as she was being harassed and tormented by them for want of dowry and also

because the demand of Rs 50,000. 00 cash in dowry was not satisfied by her parents and that as he expressed his inability to give Rs50,000.00 cash and asked her in-laws to send Asha with him they created a scene by taking off the ornaments put on by her and throwing the goods given by him in dowry. He further stated that about ten days prior to the said occurrence Ram Chandra taking his daughter Asha went to his house and demanded Rs 50,000.00 cash in dowry; that again he expressed his inability to fulfill the demand; that then he left his daughter Asha at his house and went back angrily; that some five days thereafter he went to his house and took Asha with him asking him to send Rs 50,000. 00 cash demanded by them; that thereafter in the forenoon of 12th of July 1995 at about 11:00 a.m. he learnt that since demand of Rs 50,000. 00 cash could not be satisfied by him his daughter Asha was beaten by her husband and in-laws and strangulated to death; that then he went to the house of in-laws of his daughter at village Dhanauri Khurd and saw the dead body of his daughter Asha lying in the verandah and there were injury marks on front of her neck and chest and that then he sent information to his house regarding the incident and went to the police station and handed over written report of the occurrence to the police there. PW 2 Inder Singh and PW 3 Hemendra Singh corroborated him stating likewise on all the material points. All the three witnesses were subjected to searching and rambling cross-examination but nothing tangible could be brought on the record to shake their credibility.

It has been argued by the learned counsel for the accused respondents that the incident of alleged harassment taking place from time to time was neither reported to the police nor mentioned in the FIR. This contention of the learned counsel for the accused respondents is wholly lacking any merit. Such matters taking place in the early married life of the daughter are delicately handled by her parents, brothers etc in the hope that everything would normalise with the passage of time, and such events are not even discussed with outsiders or reported to the police. It is true that details of the alleged ill-treatment and harassment are not mentioned in the FIR. But there was no necessity of mentioning all these matters in the FIR. Besides it, when the young married daughter was strangulated to death in her matrimonial home and her dead body was lying there unattended, her father must have got perturbed and confounded after seeing her in that condition and at that time whatever he thought necessary he mentioned in the FIR . He categorically mentioned in the FIR that husband and in-laws of his daughter Asha were not satisfied with the dowry provided by him in the marriage and that since the very inception of her marriage she was used to be harassed and ill-treated for want of dowry by her husband and in-laws. He could not be expected to draft the F.I.R. as a legal expert well versed in the art of litigation foreseeing the legal quibblings in a court of law.

The trial court also held that FIR lodged with the police was delayed by six hours and that it was scribed after deliberations with the police. This finding recorded by the trial judge is based on tenuous grounds. PW 1 Harish Chandra deposed that that he had gone to Dhanaura where at a hotel he learnt that a daughter-in-law was done to death at village Dhanauri Khurd; that then he went to the house of in-laws of his daughter Asha at Dhanuri Khurd and saw that Asha was lying dead in the verandah and there were injury marks on front of her neck and chest, and bamboos, cloth etc required for cremation were lying there; that sighting him Ram Chandra and Madan Lal fled away; that then he went to Dhanura and sent information to his family members at his house; that then he went to the police station to lodge FIR of the occurrence but he was asked by the police to give written report of the incident; that then he went at the level crossing situate at a short distance where he got report of the occurrence scribed by one Om Pal and that then he again went to the police station and handed over written report of the occurrence to the police there. Clerk constable Mangey Ram prepared check report on basis of the written report handed over at the police station and made entry regarding registration of the crime in the GD (Exts Ka 10 & Ka 11). PW 4 Satya Deo Singh who drew inquest proceedings on the dead body of Asha has proved the said papers. PW 1 Harish Chandra stated that that day he reached at the house of in-laws of his daughter Asha at about 11:00 a.m. FIR of the occurrence was lodged at the police station Bachhraun at 5:10 p.m. that very day. Under the circumstances finding of the trial court that there was delay of six hours in lodging FIR is absurd. It is very difficult for a father to maintain his mental equilibrium after seeing the dead body of his young married daughter strangulated to death in her matrimonial home and the dead body lying unattended. It appears that under some wrong impression he stated that he reached the matrimonial home of his daughter at 11:00 a.m. PW 1 Harish Chandra might not have the correct idea of time. It is quite possible that he might have reached there at 12:00 noon or so. However, considering all the facts we are of the view that there was delay of some 2-3 hours in lodging FIR of the occurrence at the police station which is not fatal to the prosecution case under the circumstances. A perusal of the FIR further goes to show that it is quite natural and spontaneous.

On carefully scanning the evidence on record which is above reproach of suspicion and considering the above discussed circumstances lending further assurance to the prosecution case we are of considered view that the trial judge committed grave error in doubting the prosecution evidence giving undue importance to matters of trivial and insignificant nature. Since the findings recorded by the trial court are perverse based on surmises and conjectures and on erroneous appreciation of evidence resulting in serious miscarriage of justice, the impugned judgment can not be sustained in law.

Regarding accused Mithlesh, her statement under section 313 of the Code of Criminal Procedure was recorded in February, 1997 and at that time she told her age as 15 years. Thus at the time of occurrence she was a girl of tender age of 13 years only. She being the youngest female child of tender age in the family could hardly have any role to play in demand of dowry, heaping cruelty on the victim or causing her death by strangulation with application of violence to her.
In view of foregoing reasons Mithlesh should be given benefit of doubt. Therefore her acquittal is affirmed. Accused Ram Chandra, Smt Hoshyari and Madan Lal are held guilty of offences punishable under section 498-A and 304-B IPC and under section 4 of the Dowry Prohibition Act.
The appeal is allowed in part and acquittal of accused Ram Chandra, Smt Hoshiyari and Madan Lal of the charge levelled against them is hereby set aside. All the three are convicted under sections 498-A and 304-B IPC and under section 4 of Dowry Prohibition Act and each of them is sentenced to undergo rigorous imprisonment for two years under section 498-A IPC, for ten years under section 304-B IPC and for six months under section 4 of Dowry Prohibition Act. All the sentences shall run concurrently. Accused Ram Chandra, Smt. Hoshiyari and Madan Lal are on bail. Their bail bonds are hereby cancelled. Acquittal of accused respondent no.4 Mithlesh is affirmed. She is on bail. Her bail bonds are hereby discharged. Let judgment be certified to the court below. Record of the case be transmitted to the lower court immediately for necessary compliance under intimation to this court within two months. Chief Judicial Magistrate Moradabad is directed to get accused Ram Chandra, Smt Hoshiyari and Madan Lal arrested and lodged in jail to serve out the sentence imposed upon them.
Dt: 7.10.2005/GA 2272-2000

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Reserved

Government Appeal no. 3474 of 2000

State of U.P.....Appellant

Versus

1.Intzar Husain
2.Sharafat Husain
3.Sarfaraj Husain.....Accused
Respondents

Hon'ble M.C.Jain,J.
Hon'ble M.Chaudhary,J.

(Delivered by Hon'ble M Chaudhary,J.)

This is a government appeal filed on behalf of the State from the judgment and order dated 3rd of August 2000 passed by Ist Additional Sessions Judge Bijnor in sessions trial no. 397 of 1992 State versus Intzar Husain & others acquitting them of the charge levelled against them under sections 304B, 498A and 306 IPC.

Brief facts giving rise to this appeal are that Anis Ahmad lodged an FIR at police station Chandpur on 12th of April 1990 at 10:00 p.m. alleging that his sister Sahnaz Parveen was married with Intzar Husain son o0f Sharafat Husain on 24th of February 1989 according to Muslim rites. Since Intzar Husain was in the habit of not doing any job with sincerity the couple used to face financial crisis and the household expenses were used to be met by father-in-law of Sahnaz Parveen resulting in family clashes. Relations between Sahnaz Parveen and Intzar Husain got strained . On 22nd of November 1989 Sahnaz Parveen gave birth to a male issue and their household expenses escalated. Since Sahnaz Parveen was used to be ill-treated and tormented in her in-laws' house she went to her parents' house on 26th of January 1990 and complained about the ill-treatment afflicted upon her by her husband and in-laws. Then her parents wanted to lodge a report regarding ill-treatment suffered by her at the hands of her husband and in-laws at the police station but on the intervention of some influential persons the report was not lodged at the police station and Israr Husain, ''Jeth' of Sahnaz Parveen went to her parents' house and on the assurance given by him to her parents that she would not be ill-treated or tormented in future she was sent with him to her matrimonial home. At about 8:00 p.m. on 12th of April 90 Nazakat Husain who happened to be the son-in-law of Ashfaq Ahmad in relation went to his house and told that huge crowd was collected at the house of in-laws of Sahnaz Parveen and as he tried to go inside the house he was pushed and turned out. Thereon Anis Ahmad and his father Ashfaq Ahmad alongwith some persons of the locality went to the matrimonial home of Sahnaz Parveen where Smt Nazma told them that since Sahnaz Parveen got burnt she was taken to Civil Hospital. Then Anis Ahmad and his companions went to the Civil Hospital where they saw Sahnaz Parveen lying in burnt condition wrapped in a quilt .Since the doctors were on strike no treatment was being provided and then Rais Ahmad took her to L L R Meerut Medical College for treatment. The police registered a crime against Intzar Husain and his family members under section 498-A IPC and made entry regarding registration of the crime in GD.

SI Hoshiar Singh to whom investigation of the crime was entrusted went at the scene of occurrence and collected empty container of kerosene lying near the bed in the bed room of Intzar Husain , a match box lying on the bed and a wooden ''petti' containing some rough wooden planks kept on the ''chhajli' in front of the house of Sarfaraj and prepared their memo (Ext Ka 8). He inspected the site and prepared its site plan map (Ext Ka 5). He also recorded statements of the witnesses. Then he went to LLR Meerut Medical College where he learnt that Sahnaz Parveen had succumbed to the burn injuries sustained by her. Then the case was altered under section 306 IPC.

Inquest proceedings on the dead body of Sahnaz Parveen were drawn by SI Netra Pal Singh, police station Meerut Kotwali who prepared the inquest report (Ext Ka 8) and other necessary papers.

Autopsy on the dead body of Sahnaz Parveen conducted by Dr P.N.Khanna Medical Officer LLR Medical College Meerut on 13.4.90 at 4:00 p.m. revealed 100% burns (1st and 2nd degree) present all over the body and sooty blackening of particles present. Vesicles were present at places.Scalp hairs, pubic and axillary hairs were partly burnt and singed. Brain and its membranes, both the lungs and pleurae were congested. Passages of trachea and bronchi were full of soot particles. Liver, spleen and both the kidneys were congested.
The doctor opined that the death was caused due to shock and asphyxia as a result of ante mortem burn injuries about one day ago.
On 14th of Aprill, 1990 Ashfaq Ahmad, father of the deceased gave a report to the Superintendent of Police, Bijnor alleging that since the very inception of her marriage Shahnaz Parveen was used to be ill-treated and tormented by her husband and in-laws as they were not satisfied with the dowry provided in the marriage. Since Intzar Husain wanted to run a taxi he used to pressurize his wife Shahnaz Parveen to bring Rs. 20,000. 00 in dowry for purchasing a taxi. On 26th of January, 1990 she was turned out of her matrimonial home to bring Rs. 20,000. 00 cash from her parents and her infant child was retained by her in-laws. Then she went to her parents' house and told them about the ill-treatment suffered by her at the hands of her husband and in-laws for want of dowry. He also mentioned therein that his daughter Shahnaz was burnt to death by her husband and in-laws as their demand Rs.20,000. 00 cash in dowry could not be satisfied.
After completing investigation the police submitted charge sheet against accused Intzar Husain and Sharafat Husain under section 498-A and 306 IPC.

After framing of the charge against both the accused under sections 498-A and 306 IPC the prosecution examined Anis Ahmad (PW 1) the first informant. Then on the application of the prosecution accused Sarfaraj Husain was summoned under section 319 of the Code of Criminal Procedure to stand trial alongwith the accused abovenamed.
Then after completing the statement of PW 1 Anis Ahmad the prosecution examined Ashfaq Ahmad (PW 2) and Smt Khurshida (PW 3) in its support. Testimony of rest of the witnesses is more or less of formal nature. PW 4 HC Vinod Prakash who prepared check report on the basis of the written report handed over to him by Anis Ahmad and made entry regarding registration of the crime in the GD has proved these papers (Exts Ka 3 & Ka4). PW 5 SI Hoshiar Singh who investigated the crime and submitted charge sheet against accused Intzar Husain and Sharafat Husain has proved the police papers.
Subsequently additional charge was framed against all the three accused under section 304-B IPC and an opportunity was given to the prosecution to re-examine the prosecution witnesses and lead additional evidence in its support.
The accused denied the alleged occurrence altogether stating that they were got implicated in the case falsely. However accused Sarfaraj Husain stated that he happened to be the ''Jeth' of the deceased and he tried to save Shahnaz Parveen and in that effort he also received burn injuries.
The accused examined Dr Hari Om Bansal (DW 1) and Dr A.S.Yadav (DW 2) in their defence.
DW 1 Dr Hari Om Bansal, a private medical practitioner practising at Chandpur stated that at about 9:00 p.m. the alleged night Sharafat Husain came to his house and told that his daughter in-law got burnt and he wanted to get her treated and that then he expressed his inability and advised him to take her to some higher centre. DW 2 Dr A.S.Yadav the then Medical Officer in-charge Primary Health Centre Zalilpur deposed that at 2:30 p.m. on 18th of April 90 he medically examined accused Sarfraj Husain and found below noted injuries on his person:
1. Burn injury on face from middle of forehead to the chin and from right pre auricular area to left pre auricular area with sloughing of superficial layer of skin with red colour of deeper skin with singeing of hairs of eye brows and moustaches. No pus was present in the wound.

2. Burn injury on the sternum 9 cm x 3 cm without any breach in layer of skin or blister formation. Slight red colour of skin.

3. Burn injury on whole of the dorsal aspect of right forearm just below the elbow joint up to finger tips. Skin sloughed out below the elbow joint and on the dorsum of right palm. Rest of the skin shows mild effect of heat on skin.

4. Burn injury on anterior, medial and lateral aspect of left forearm and dorsum of left wrist and palm upto the middle phalanx of all the fingers with sloughing of superficial layer of skin in rest of the burnt area with a blister on the middle finger dorsal aspect. Colour of skin was dark brown.

The doctor opined that the injuries were caused by dry heat. The injuries were simple in nature and about 6-7 days old in duration.

On an appraisal of the parties' evidence and material on the record the learned trial judge disbelieving the prosecution case and evidence held that demand of Rs.20,000.00 cash in dowry for purchasing taxi by husband and in-laws of the victim was not established. He further held that the accused did not abet suicide by Shahnaz Parveen nor she was subjected to cruelty in that connection resultantly the accused were held not guilty of the charge levelled against them and acquitted.

Feeling dissatisfied with the impugned judgment and order the State preferred this appeal assailing acquittal of the accused respondents.

We have heard learned AGA for the State appellant and Sri P.N. Misra learned counsel for the accused respondents and gone through the record.

Learned AGA for the State appellant argued vehemently that since the impugned judgment is perverse and unreasonable as relevant and convincing evidence and material have been unjustifiably eliminated evidence has to be reappreciated for the purpose of ascertaining if any of the accused really committed any offence or not. He also contended that accused Intzar Husain kept absconding upto 23rd of April, 1990 as he was not traceable to the police till then and accused Sharafat Husain was also absconding upto 19th of May, 1990 and proceedings under section 82 and 83 of the Code of Criminal Procedure had to be resorted to for procuring his presence and this conduct of the accused goes against them. On the other hand learned counsel for the accused respondents argued that the learned trial judge has given cogent and convincing reasons for acquitting the accused and there is no good ground to interfere therewith.

A perusal of the impugned judgment and evidence on the record goes to show that the learned trial Court committed grave error in doubting the prosecution case and evidence and findings recorded by the Trial Court are based on faulty and erroneous appreciation of evidence resulting in miscarriage of justice. The learned Trial Court incorrectly observed that after summoning of accused Sarfaraj Husain under section 319 of the Code of Criminal Procedure for facing trial alongwith the other accused statement of PW 1 Anis Ahmad was again recorded on 1.12. 98 and that only then for the first time he stated that some 8-10 days prior to the incident the accused had subjected his sister to cruelty as their demand of Rs 20,000. 00 cash in dowry could not be fulfilled. In fact additional charge under section 304-B IPC was framed against all the three accused on 1.12.98 and it was thereafter that an opportunity was given to the prosecution to re-examine its witnesses and lead additional evidence, if any. Further, a perusal of the statement of PW1 Anis Ahmad goes to show that the very first day when his examination-in-chief was recorded on 30th of September,1994 he stated that the accused were dissatisfied with the dowry provided in the marriage of his sister Shahnaz Parveen and they used to demand Rs 20,000. 00 cash in dowry; that his sister Shahnaz Parveen was used to be tormented and ill-treated as their demand of Rs 20,000. 00 cash could not be satisfied by her parents; that whenever Shahnaz Parveen used to visit her parents' house she used to complain about ill-treatment suffered by her at the hands of her husband and in-laws on that account and that feeling harassed on 26th of January 90 Shahnaz Parveen went to her parents' house and complained about the ill-treatment heaped upon her by her husband and in-laws. Then her father and brothers wanted to lodge an FIR about her sufferings with the police but some seasoned persons of the locality intervened and that thereafter Israr Husain ''Jeth' of Shahnaz Parveen and others went to his house and on the assurance given by Israr Husain that now she would be provided proper food and clothing and they would not ask for any dowry Shahnaz Parveen was sent to her matrimonial home. PW 2 Ashfaq Ahmad, father of the deceased corroborated him deposing likewise. However since there is no whisper regarding demand of dowry in the FIR lodged by Anis Ahmad, brother of the victim at the police station on 12th of April 1990 that part of prosecution evidence could not inspire confidence in this regard and has been left out of consideration.

However this much is established by the testimony of the three witnesses namely PW 1 Anis Ahmad, PW 2 Ashfaq Ahmad and PW 3 Smt Khurshida that since Intzar Husain was not sincere to his job he had no regular income and the couple had to face financial crisis and Shahnaz Parveen was used to be ill-treated and subjected to cruelty as she was not provided even bare necessities of life. She could not get milk even for her infant issue in her lap. It goes without saying that cruelty or harassment may not only be physical but also mental. Being a young able bodied person Intzar Husain was bound to earn money even by putting labour so as to meet the bare necessities of his wife and provide nourishment to her infant child. There is no dispute that Shahnaz Parveen used to do entire household work in her matrimonial home to her capacity and discharge her marital obligations. Under the circumstances it was the bounden moral and legal duty of Intzar Husain, husband of the victim to see that his wife and her infant child were being provided proper food and clothing at least according to their requirement. PW 3 Khurshida stated that Shahnaz had told her that even milk was not available for the child on account of financial crisis. Statements of PW 1 Anis Ahmad and PW 2 Ashfaq Ahmad in their examination-in-chief that Shahnaz Parveen was not getting even proper food and clothing have gone unchallenged. None of these two witnesses was given a suggestion even in cross-examination that she and her infant child were provided proper food according to their necessary requirements. If a married girl used to perform her duties in her matrimonial home faithfully

but was not being provided even proper food and clothing and milk even for her infant child and was being harassed therefor by her husband who was young and healthy with earning potentiality it amounted to mental cruelty to her as she was being pestered, nagged and tormented for bare necessities of life. Obviously so harassed and tortured she committed suicide by pouring kerosene upon herself and litting with matchstick. She was married just on 24th of February,1989 and compelled by the circumstances she was driven to put an end of her life on 12th of April, 1990.

Much emphasis has been laid down by the learned counsel for the accused respondents upon the fact that PW 1 Anis Ahmad did not mention in the FIR lodged at the police station Chandpur on 12th of April, 1990 at 10:00 p.m. that his sister Shahnaz Parveen was used to be ill-treated and tormented by her husband and in-laws and was not provided proper food and clothing even. This contention of the learned counsel for accused respondents has not got much substance in it. A perusal of the FIR goes to show that Anis Ahmad mentioned therein that 2- 3 months after her marriage his sister Shahnaz Parveen used to remain in tension and her relations with her husband got strained due to financial crisis as her husband Intzar Husainn was not sincere for his job and had no regular income; that feeling harassed and tormented she came back to her parents' house on 26th of January,1990 and then they wanted to lodge an FIR regarding ill-treatment afflicted upon her at the police station but on the intervention of some seasoned persons of the locality and assurances given by her in-laws his sister was sent alongwith her ''Jeth' Israr Husain to her matrimonial home. No doubt Anis Ahmad, brother of the victim, did not specifically mention in the FIR that his sister was used to be subjected to cruelty and ill-treatment but mention of the fact in the FIR that being harassed and tormented she came back to her parents' house on 26th of January,1990; that then they wanted to lodge a report of the matter at the police station but on the intervention of the mohalla people and assurances given by her ''Jeth' Israr Husain she was sent back with her ''Jeth' to her matrimonial home speaks volumes as to what was transpiring between Shahnaz Parveen on one hand and her husband and in-laws on the other due to idleness of Intzar Husain and resultant financial crisis in that family. FIR regarding matrimonial matters is somewhat different from the cases of assault, murder etc. In those cases the incident is witnessed by some persons and all the salient features of the incident are mentioned in the FIR but the matrimonial matters in which life of a daughter or sister is involved are very sensitive one and the family members take every precaution when compelled to report any matter with the police that nothing so adverse is written in the FIR which may affect her life in the times to come. Since Sahnaz Parveen was rushed to LLR Medical College Meerut for her treatment her brother Anis Ahmad might have taken precaution and on that account he might not have stated everything openly in the FIR in the interest of welfare of his sister Sahnaz Parveen as she also had an infant child at that time.

Now we shall see as to what offence was committed by all the accused or any of them. This much has been established by the testimony of PW 1 Anis Ahmad, PW 2 Ashfaq Ahmad and PW 3 Smt Khurshida that Shahnaz Parveen was subjected to cruelty or harassment by her husband Intzar Husain as she was not provided bare necessities of life including proper food and clothing and her infant child was deprived of nourishment which he was dutybound to provide her. We may mention here that since Ashfaq Ahmad, father of Shahnaz Parveen used to earn his livelihood by putting labour as he was a mason she was brought up and got grown up in a most ordinary family she would have needed only that much which was necessary for her sustenance. To say the other way, she would have had no expectations greater than bare necessities of life which too were denied to her and her infant child.

Since there is no mention in the FIR that any demand was made for dowry by any of the accused and she was subjected to cruelty or harassment in connection with demand of dowry, the provisions of Section 304-B are not attracted.

Now we shall see if the offences under sections 498-A and 306 IPC were committed by any of the accused. Section 498-A IPC has been introduced in the Code to deal effectively not only with cases of dowry death but also cases of cruelty to married woman by husband and his relatives. Section 498-A IPC lays down:

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.

Section 113-A of the Evidence Act lays down as to when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty the Court may presume having regard to all the other circumstances of the case that such suicide had been abetted by her husband or by such relative of her husband. Substantive Section 498-A IPC and presumptive section 113-A

of the Evidence Act have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act 1983. Since Smt Shahnaz Parveen was living with her husband Intzar Husain in the joint family and there is no dispute that she used to do the entire household work to her capacity and discharge her matrimonial obligations her husband Intzar Husain was morally and legally dutybound to provide her and her infant child bare necessities of life comprised of proper food and clothing according to their requirement. It is established that Shahnaz Parveen was not even provided proper food and clothing and her infant child was deprived of nourishment by her husband .

A perusal of the inquest report goes to show that the dead body of Shahnaz Parveen was emitting smell of kerosene badly. The investigating officer found empty container of kerosene lying near the bed of Shahnaz Parveen in her bed room and match box lying on the bed. Since the post mortem did not reveal any ante mortem injury on the dead body excepting burn injuries and her ''Jeth' Sarfaraj Husain also received burn injuries in the effort of saving her it appears that in all probability compelled by the circumstances she was driven to commit suicide . Accused Intzar Husain kept absconding upto 23rd of April, 1990 as he was not traceabale to the police till then. It has come in evidence that when Anis Ahmad (PW 1) and Ashfaq Ahmad (PW 2) reached the Civil Hospital, Bijnor Shahnaz Parveen having received burn injuries wrapped in a quilt was lying at the gate of the Hospital and neither her husband nor any of his family members was present there. This conduct of the accused Intzar Husain , husband of the victim soon after the incident cannot be termed to be normal conduct of innocent person.

In view of the presumptive section 113-A of the Evidence Act we presume that compelled by the circumstances mentioned above feeling harassed and tormented passing a miserable life Smt. Shahnaz Parveen with her starving infant child was driven to commit suicide as she was not being provided even bare necessities of life and her infant child was deprived of nourishment by her husband Intzar Husain and thus the suicide was abetted by the latter.

Accused Intzar Husain did not offer any explanation as to why his wife Shahnaz Parveen was driven to commit suicide almost within 14 months of her marriage nor did he adduce any evidence in this regard.

Accused Sharafat Husain who happened to be the father-in-law of the victim and accused Sarfaraj Husain, who happened to be her ''Jeth' were not legally dutybound to see if Shahnaz Parveen and her infant child were being provided bare necessities of life in presence of her husband who was young and healthy having earning potentiality. Moreover contention of accused Sarfaraj Husain, ''Jeth' of the deceased is that he received burn injuries in the effort of saving the victim which is supported by medical evidence on the record. Accused respondents Sharafat Husain and Sarfaraj Husain are therefore held not guilty of any of the charges levelled against them and they are entitled to acquittal.

Since the learned trial Judge failed to appreciate the evidence on record in its true perspective the impugned judgment acquitting accused Intzar Husain can not be maintained in law and is liable to be set aside. The impugned judgment and order acquitting accused Intzar Husain is hereby set aside. He is held guilty of the offences punishable under sections 498-A and 306 IPC. Accused Intzar Husain convicted under sections 498-A and 306 IPC is sentenced to one year's and seven years' rigorous imprisonment respectively thereunder. Both the sentences shall run concurrently. Accused respondent Intzar Husain is on bail. He shall be taken into custody forthwith and sent to jail to serve out the sentence imposed upon him. Acquittal of accused Sarfaraj Husain and Sharafat Husain is hereby confirmed. The appeal stands disposed of accordingly.

Chief Judicial Magistrate Bijnor is directed to get accused respondent Intzar Husain arrested and lodged in the jail to serve out the sentence imposed upon him.

Office is directed to send certified copy of the judgment alongwith record of the case to the court below immediately for necessary compliance under intimation to this court within three months from today.

Dated: 29th of July, 2005.

Dks/GA 3474-2000

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

Government Appeal No.2998 of 2001
The State of U.P. Versus Deen Dayal and two others.
Hon'ble M.C. Jain, J.
Hon'ble M. Chaudhary, J.

(Delivered by Hon'ble M.C. Jain, J.)

Deen Dayal, Sukh Rani and Amar Singh were tried before the IV Additional Sessions Judge, Agra in S.T. No.740 of 1998 for the offences under Sections 498-A and 304-B I.P.C. Alternatively, they were charged under Section 302 I.P.C. They were acquitted by the trial court by impugned judgement dated 30.4.2001 which has been assailed by the State by means of this appeal.

The relevant facts may be stated briefly; Asha Devi daughter of Churamani PW 1 was married with accused Amar Singh in June 1997. Accused Deen Dayal is the father-in-law and Sukh Rani is the mother-in-law of the deceased. The accused were dissatisfied with the dowry given by Churamani to the best of his capacity. They used to maltreat and assault the victim over the demand of dowry after performance of marriage. Asha Devi used to complain to her parents about her maltreatment in her Sasural on her visits to her parental home. In July 1997, Deen Dayal accused went to Churamani's house for Bidai of Asha Devi and demanded Rs. 10,000/- and gold chain in dowry. When Churamani expressed his inability to meet his demand, he became annoyed and took Asha Devi with him in angry disposition.

On 6.9.1998, Prahlad PW 4 reached at Churamani's house and informed him that the accused, after assaulting Asha Devi, had thrown her in a well and she had died. Churamani lodged the F.I.R. the same night at 9.30 P.M. at Police Station Pithaura, District Agra. The check F.I.R. was written by constable Onkar Singh PW 7. He also made in the G.D. entry and registered the case. The investigation was started by SSI Nain Chandra Gangwar PW 6 who after reaching the spot prepared inquest report of the deadbody of deceased and necessary papers including the site-plan. The investigation was then taken over by C.O. Rajendra Kumar PW 8 and concluded by C.O.Veer Singh PW 9.

Post mortem over the deadbody of the deceased was conducted by Dr. Sunil Bhartiya PW 3 on 7.9.1998 at 3.30 P.M. The deceased was aged about 20 years and about 1½ day had passed since she died. The following ante mortem injuries were found on her person:-

1.Traumatic swelling 3 x 3 cm front upper part of nose.
2.Traumatic swelling 5 x 5 cm top and middle of head.

On internal examination, left parietal bone was found fractured. Membranes of brain were lacerated. Nasal bone was fractured with clotted blood and two ounce of waterly fluid was there in her stomach. The cause of death was coma due to head injury. As opined by the doctor, the death could be possible on 6.9.1998 at about 10.00 A.M. It was also the opinion of the doctor that injuries found on the person of the deceased could have been caused by blunt object. Further, he deposed that there was no water in the lungs and trachea and the injuries found on the person of the deceased could not be possible on fall in a well having water.

At the trial, the prosecution examined, in all, nine witnesses including three police personnel connected with the investigation of the case, one doctor and one constable who had scribed the check F.I.R. and made related entry in the G.D. Churamani PW 1, Daya Shanker (brother of the deceased) PW 2, Prahlad PW 4 (who had gone to house of Churamani to pass on the information of the death of the deceased) and Chameli PW 5 were the other witnesses examined at the trial. The defence was of denial and false implication. According to the accused respondents, Asha Devi died by accidental fall in the well while drawing water. The accused Deen Dayal and Sukhrani (father-in-law and mother-in-law of the deceased respectively) stated in their statements under section 313 of the Code of Criminal Procedure that at the time of her accidental fall in the well, they were at their fields. Amar Singh accused (husband of the deceased) stated that he was not in the village having gone to village Paltua Ka Pura (near Shamsabad) to the house of his Bua.

One Har Prasad was also examined as DW 1. According to him, the deceased was being kept by the accused with affection and they never maltreated or harassed her. He also stated that he never saw any quarrel between the accused and the deceased. He testified that the deceased had gone to fetch water from the well at about 9.30 A.M. on the fateful day. He

had also taken his bullocks to well for giving them water. The deceased was drawing water from the well. As soon as she bent a little to catch hold of the bucket full of water drawn from the well, she fell down in the well and died sustaining injuries. As per his evidence, the accused neither made any demand for dowry nor ever ill-treated Asha Devi. She accidentally fell down in the well and died.

The evidence adduced by the prosecution did not commend itself to the trial judge. The trial Judge recorded acquittal on the ground that the prosecution could not prove the allegation of demand of dowry by the accused and that the deceased accidentally fell in the well while drawing water. He accordingly recorded acquittal.

We have heard Miss Usha Kiran, A.G.A. from the side of the State-appellant and Sri P.N.Misra, learned senior Advocate from the side of the accused-respondents. According to the State Counsel, the acquittal is based on faulty appreciation of evidence and it is illegal. According to her, the demand of dowry by the accused-respondents and maltreatment of the deceased over the non-fulfilment of such demand was clearly established by the prosecution evidence. It was, according to her, also clinchingly proved that after assaulting her the accused-respondents threw her in the well and enacted a drama of her having met an accidental death by falling in the well while drawing water. On the other hand, learned Senior Advocate appearing for the accused-respondents has urged that the prosecution could neither prove the demand of dowry by the accused-respondents nor the alleged maltreatment of the deceased by them. It was a case of accidental death and the view taken by the trial judge is reasonable one, not calling for any interference by this court of appeal.

In a case of dowry death under section 304-B I.P.C., the essential ingredients are: (i) the death of a woman should be caused by burns or bodily injury or otherwise than a normal circumstance; (ii) such a 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.

It is also to be kept in mind that dowry death of the bride mostly takes place in her Sasural and ocular evidence in this behalf is difficult to be adduced by the prosecution. The conclusion is to be drawn having regard to reliability of the evidence concerning the demand of dowry and other allied factors related with the commission of crime. In the present case, it is an admitted fact that the deceased Asha Devi died otherwise than in normal circumstances in her Sasural vide her post mortem report Ex. Ka-2. It is also an admitted fact that she had been married with the accused Amar Singh on 16th June 1997 and the incident occurred on 6th September 1998, i.e., within 15 months of her marriage with the accused Amar Singh. Thus, the ingredients no.1 and 2 of Section 304-B I.P.C. made mention of above do exist in the present case.

As regards the remaining ingredients no. 3,4 and 5 referred to above, the relevant testimony was given by the deceased's father Churaman PW 1 informant, Daya Shankar PW 2 (brother of the deceased) and Smt. Chameli PW 5 (mother of the deceased). The gist of their testimony was that the deceased's father had given dowry in the marriage of his daughter to the best of his capacity but the accused persons were not satisfied. They used to pester, harass and maltreat the deceased for bringing Rs. 10,000/- and a gold chain from her parents in dowry. Churaman PW 1 (father of the deceased) stated that Asha Devi used to inform and narratP.N. Misra, R.P.Dubeye the tale of her woe to him and other members of the family on her visits to her parental house. It has emphatically been stated by all the three witnesses that in July 1998, i.e., about two months before the incident, the accused Deen Dayal had gone to their house for the Bidai of Asha Devi (who was then at her parental home) and had again pressed the demand of Rs. 10,000/-and a gold chain. When Churaman PW 1 expressed his inability to meet the demand, Deen Dayal accused in an angered and displeased mood took Asha Devi to her Sasural. Though Asha Devi was not inclined to go in such tension mounted scenario, but her parents and brother had sent her after consoling her. Thereafter on 6.9.1998 Prahlad PW 4 (of the village of the accused) reached their village at about 2 P.M. to inform that Asha Devi had been killed by the accused persons and her dead body was thrown in a well. Then Churaman PW 1,Daya Shankar PW 2, Smt. Chameli PW 5 and few other persons from their village immediately reached the SaP.N. Misra, R.P.Dubeysural of Asha Devi and found her dead body placed on a cot outside the door of the accused. The accused were not there. There was no other male person near the dead body. Only some ladies of the village of her Sasural were there when they reached the deceased's Sasural . It is in the statement of Daya Shankar PW 2 that they had reached the deceased's Sasural at about 6 P.M. through tractor. Then the report was lodged by Churaman PW 1 at the concerned Police Station at 9.30P.M. No doubt, Churaman PW 1, Daya Shankar PW 2 and Smt. Chameli PW 5 are close relatives of the deceased being father, brother and mother respectively, but undoubtedly, they could be the best witnesses on the point of demand of dowry by the accused and the cruel treatment meted out by the accused to the deceased on non-fulfilment of their demand. Indeed, the demand was to be met by them and the deceased could narrate her misery and tale of woe only to them. All of them spoke about the particular last instance of July 1998 when the accused Deen Dayal went to their house for the Bidai of Asha Devi and reiterated the demand of Rs. 10,000/- and gold chain as dowry. Of course, the demand could not be met because of the financial inability of the parents of the lady. Then, in a displeased and angered mood Deen Dayal brought Asha Devi to her Sasural. She, given to her choice, was reluctant to go to her Sasural in such a tension ridden

situation, but was persuaded by her parents and brother to go with the accused Deen Dayal. The demand of Rs. 10,000/- and a gold chain as dowry raised and made by the accused subsisted and the parents and brother of the deceased only heard of her death thereafter within two months of her having so last gone to her Sasural .

It has come in the evidence of Smt. Chameli PW 5 (mother of the deceased) that her daughter Asha Devi was illiterate. Therefore, there could be no documentary evidence regarding demand of dowry in the form of letters of the lady to her parents or brother. She was not in a position to write a letter at all. Therefore, over and above the oral testimony of the parents and brother of the deceased regarding demand of dowry, no other evidence could possibly be given by the prosecution.

Learned counsel for the accused respondents also argued that the accused themselves had sent information to the parents of the deceased regarding the accidental death of Asha Devi by fall in the well. He tried to draw support from the statement of Prahlad PW 4 who stated in his cross-examination that when he went to Churaman PW 1 and informed him about the death of his daughter, he replied that Deen Dayal (accused) had already informed him in this behalf. We should point out that Prahlad PW 4 is the resident of the own village of the accused. Churaman PW 1 was examined on 11.10.1999 and 6.12.1999 and Daya Shankar PW 2 (brother of the deceased) was examined on 6.12.1999. We note that no such suggestion was made to any of them that any information had been sent by the accused to the parents of the deceased about the death of Asha Devi. Later on, Prahlad PW 4 was examined on 4.1.2000 and to give a boosting to the defence, he stated as above in his cross-examination. He obviously obliged the accused being sympathetic to them.

The trial Judge unnecessarily made criticism that no F.I.R. was lodged regarding the maltreatment of Asha Devi by the accused over the demand of dowry and that no Panchayat was held to reach an amicable solution. In our opinion, such criticism was wholly uncalled for. Sasural is the usual home of a married girl. The deceased herself was illiterate. Her parents were rooted in poverty. Neither she nor her parents could be expected to act in extremity by lodging the F.I.R. on the question of demand of dowry by the accused and regarding her maltreatment over this issue. Nor was it advisable for them to have made a public issue of it by convening a Panchayat. Time is the greatest healer. The parents and the brother of the deceased reasonably thought that things would improve with the passage of time when they sent her with Deen Dayal accused in July 1998, consoling her in that tension mounted situation.

The accused examined Har Prasad as DW 1 to tender negative sort of evidence that the accused used to treat the deceased with affection and there was no demand of dowry. Such negative sort of evidence would not overshadow the confidence inspiring evidence of Churaman PW 1, Daya Shankar PW 2 and Smt. Chameli PW 5. This Har Prasad DW 1 was the immediate neighbour of the accused. It was suggested to him that he was deposing falsely as Deen Dayal accused was his Khandani. He could not deny this suggestion. It was apparent that because of his nearness with the accused, he lent them a helping hand by giving negative sort of evidence over the issue of demand of dowry and also to support their defence version that the deceased had died of accidental fall in the well while drawing water and at that time he had also taken his bullocks to the well to make them to drink water. According to him, two boys of the village had taken her out of the well. To come to the point, the testimony of this defence witness was liable to be rejected. In our considered view, the finding of the trial Judge that the demand of dowry and the ill-treatment of the deceased over non-fulfilment of dowry was not proved, is not in consonance with the evidence on record and is liable to be upturned. The prosecution has successfully established the remaining ingredients of dowry death that the deceased had been subjected to cruelty and harassment by the three accused in connection with demand of dowry till soon before her death.

Now, the discussion has to turn on this aspect of the matter whether the accused caused her death or she accidentally fell in the well while drawing water and died as such. There is a proverb that the witnesses may lie but the circumstances will not. In the case at hand, the post mortem report of the deceased speaks a lot that she had been subjected to violence. There was traumatic swelling on front upper part of the nose and top and middle of head. On internal examination, left parietal bone was found fractured. The nasal bone was also found fractured. The stomach contained only 2 ounce watery fluid. The injuries found on the person of the deceased completely negatived the theory of her having accidentally fallen in the well while drawing water. Had she fallen in the well accidentally while drawing water, there could hardly be any question of such injuries and fracture of parietal bone as also of nasal bone. We find from the testimony of Dr. Sunil Bhartiya PW 3, who conducted autopsy on the dead body of the deceased, that the injuries found on the person of the deceased could not possibly be sustained by a fall in a watery well. Further, had she accidentally fallen in the well while drawing water, she would have died only after being in water for some time and there must have been lot of water in her stomach. But the fact is that there was only 2 ounce water in her stomach. So, the theory of her having met an accidental death by fall in the well while drawing water completely falls to the ground on consideration of the state of her ante mortem injuries and internal examination as found at the time of post mortem. We should say as a passing reference that Har Prasad DW 1 stated that two boys of the village had taken out the dead body of the deceased from the well. None of them was examined to rebut the presumption flowing from Section 113-B of the Evidence Act which is well attracted in

this case. The defence could not at all displace the said presumption.
It is further significant to point out that the three accused simply vanished after committing the crime. None of them was to be found at the time of the visit of the Investigating Officer to the spot and preparation of Panchayatnama and inquest report. Deen Dayal accused could be arrested on 10.9.1998. Amar Singh and Sukh Rani surrendered in court on 6.10.1998. The investigation in the case was started by SSI N.C. Gangwar PW 6 who stated that when he reached the spot, the accused were not there at their house and they could not be found even on search. He also stated that he had also inspected the well but did not find any blood or any other sign in the form of depression of earth etc., around the circle or parapet of the wall to back the theory of the accidental fall of the victim in the well. The dead body was found by him on a cot in front of the door of the accused. It is noted from the inquest report that there was blood near the cot and the nose of the deceased was also bleeding. So, what was found by the Investigating Officer at the spot while preparing the inquest report was consistent with the deceased having been done to death by application of violence, instead of her having died accidental death by fall in the well.
To conclude, the culpability of the three accused respondents (father-in-law, mother-in-law and husband of the deceased) in committing this crime is established to the hilt by the facts and circumstances proved by the prosecution. It admits of no doubt whatsoever that they were the authors of this crime and did the deceased to death with the application of violence on the non-fulfilment of the demand of Rs. 10,000/- and a gold chain as part of dowry made by them. As the demand remained unfulfilled, they continuously treated the deceased with cruelty and ultimately did her to death on 6th September 1998. We conclude thus:
(i)The death of the deceased Asha Devi was caused in her Sasural by the three accused with the application of violence within fifteen months of her marriage.
(ii)The deceased had been subjected to cruelty by the three accused over the demand of Rs. 10,000/- and a gold chain in dowry raised persistently and pressed by them after the marriage, which continued till her death.
(iii)The cruelty and harassment of the deceased was in connection with demand of dowry as stated above.
(iv)Cruelty and harassment had been meted out to Asha Devi soon before her death.
(v)The three accused, namely, Deen Dayal, Smt. Sukhrani and Amar Singh were the authors of the crime who caused the dowry death of the deceased.
The findings of the trial Judge are manifestly erroneous and contrary to the evidence. In our opinion, the sentence of ten years' rigorous imprisonment to each of the accused respondents under Section 304 B I.P.C. and three years' rigorous imprisonment under Section 498A I.P.C. should be awarded.
In the result, we allow this Government Appeal. We set aside the acquittal recorded by the trial court and convict each of the three accused respondents Deen Dayal, Smt. Sukh Rani and Amar Singh under Section 304-B I.P.C. with a sentence of ten years' rigorous imprisonment and under Section 498-A I.P.C. With a sentence of three years' rigorous imprisonment. Both the sentences shall run concurrently. The accused respondents are on bail. The Chief Judicial Magistrate, Agra shall cause them to be arrested and lodged in jail to serve out the sentences awarded to them. He shall send compliance report within two months of the receipt of a copy of this judgement.
Certify the judgement to the lower court.
Dated. September 21; 2005
AKN/-

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

AFR Reserved

1.Government Appeal No. 5570 of 2003

State Of U.P. ..... ..... ..... . Appellant. Vs.
Satya Narain Tiwari alias Jolly & another..... Respondents

A N D

2.Criminal Revision No. 1797 of 2003

Surya Kant Dixit ..... ..... ..... Revisionist. Vs.
State of U.P. and 2 others..... . Opposite Parties.

Hon'ble M.C. Jain, J.
Hon'ble M. Chaudhary, J.

(Delivered by Hon'ble M.C. Jain, J.)

It is a case of bride's unnatural death within seven years of her marriage. The incident occurred on 3.11.2000 at about 12'O clock in the noon in her Sasural in the city of Farrukhabad. She (bride--Gita) was married to the accused respondent no.1 Satya Narain Tiwari alias Jolly nearly three years before. The accused respondent no.2 Smt. Rani alias Bhuvaneshwari is her mother-in-law. Both the accused respondents have been acquitted for the offences under Sections 498A/304B I.P.C. and ¾ of the Dowry Prohibition Act by the Additional Sessions Judge/Special Judge (D.A.A.), Farrukhabad by judgment and order dated 18.6.2003 passed in Sessions Trial No. 172 of 2001. The State has filed the instant Government Appeal against acquittal and the complainant Surya Kant Dixit (father of the deceased Geeta) has also challenged the judgment of acquittal through Criminal Revision No. 1797 of 2003 which has been clubbed with the Government Appeal. The Government Appeal and the Criminal Revision are being decided by this common judgment.

The essential background facts are these:

Surya Kant Dixit PW 1 (father of the deceased) resident of adjoining district Mainpuri lodged a formal F.I.R. on 3.11.2000 at 5.10 P.M. at Police Station Kotwali, District Farrukhabad on the basis of which a case was registered. Earlier thereto, Smt. Rani, the accused respondent no.2 (mother-in-law of the deceased) had informed the police at 1.10 P.M. the same day, setting up the story of suicide having been committed by the deceased when she (accused respondent no.2) had allegedly gone to her another house under construction and her husband having gone to the place of his employment--Bank and her son (accused respondent no.1--husband of the deceased) having gone to his business shop. The information passed on by her to the police had set the machinery in motion, leading the police to reach the spot, preparation of inquest report etc. of the dead body of the deceased.

The accusations made by the father of the deceased in the formal F.I.R. were that about three years before the incident, he had married her daughter Geeta with the accused no.1 Satya Narain Tiwari alias Jolly after giving Rs. 4 Lacs in dowry as demanded by the in-laws of the deceased. After about six months of the marriage, his daughter's husband and mother-in-law (accused respondents) started demanding a Maruti car as part of the dowry, subjecting the deceased to cruelty on this score. His daughter Geeta used to complain to him in this behalf on phone, his brother Vinay, cousin brother Ravindra Kumar, Jaideo Awasthi etc. About three months before the incident, he and Jaideo Awasthi had gone to the Sasural of Geeta when her mother-in-law Rani repeated the demand of Maruti car. On expressing his inability to meet the said demand, he and Jaideo were insulted and turned out of her house. However, he swallowed all this and did not take any action at the persuasion of Geeta and her father-in-law Ghanshyam Tiwari. On the day of the incident (3.11.2000) at about 12 O' Clock someone gave information to him on telephone at Mainpuri about his daughter's death. He immediately left Mainpuri for Farrukhabad and reached the place of occurrence at about 4 P.M. to find half burnt dead body of his daughter in the bedroom with a half burnt piece of cloth around her neck. Her tongue was protruding. He also noticed drops of blood

and Bindiya lying in the balcony. Shortly put, this was the accusation made by the father of the deceased. As per the F.I.R., he accused that his daughter had been killed by her husband and mother-in-law.

After lodging the F.I.R., the first informant made an application Ex.Ka-2 to the District Magistrate, Farrukhabad for constituting a panel of five doctors for conducting post mortem. Acceding to his request, in consultation with the Chief Medical Officer, Farrukhabad, the District Magistrate constituted a panel of three doctors for conducting post mortem over the dead body of the deceased. It was taken up that very day, i.e., 3.11.2000 at 10.10 P.M. The panel consisted of Dr. R.K. Singh, Dr.R.D. Srivastava and Dr. Janardan Babu who conducted autopsy on the dead body of the deceased. One of them, Dr. R.K. Singh has been examined as PW 3 to prove the post mortem report. The salient features of the same are set forth here for the sake of facility. The deceased was aged about 24 years and about ½ day had passed since she died. She was of average built. Eyes and mouth were partly open. Tongue was between teeth. The body had pugilistic appearance. Smell of kerosene was present. Rigor mortis was also present. There was a half burnt cloth around the neck with knot half burnt. Half burnt bed sheet and other clothes as also a half burnt wire mingled with burnt clothes were found. A burnt cordless phone was also found. The following ante mortem injuries were found on her person:

1.Ligature mark all around the neck, 31 cm x 7 cm. Base slightly grooved with dark red. On cut section-tissue ecchymosed and tracheal ring compressed. Clotted blood under soft tissues found.

2.Superficial to deep burns all over body. Blisters at places present. On cut section serum fluid present.

Internal examination revealed that membranes of brain were congested. Pleura and right lung were also congested. Larynx, trachea and bronchi were congested with sooty particles present. Both chambers of heart were full. Oesophagus, spleen and kidneys were also congested. As per the opinion of the Doctors conducting the autopsy, the cause of death was suffocation with shock as a result of strangulation with simultaneous ante mortem burns.

After investigation, the two accused respondents were booked for trial. Their case was of denial of demand of dowry and according to them, the deceased committed suicide as she was living in gloom and depression for having not been able to give birth to any child after marriage. And, she did so, when no other member of the family was present.

At the trial, the prosecution examined seven witnesses. Surya Kant Dixit PW 1 was the father of the deceased and maker of the F.I.R. who as well as his relative Jaideo Awasthi PW 2 gave evidence about the demand of Maruti car by the accused respondents since after six months of marriage and about the demand of Maruti car being repeated and pressed by both the accused, when both of them had gone to the Sasural of the deceased and had been turned out by the two accused after being insulted on their expressing inability to meet out the demand of Maruti car. Dr. R.K. Singh PW 3 stated that he was included in the panel of doctors conducting the autopsy on the dead body of the deceased and he proved the post mortem report. Head Constable Mohar Pal Singh PW 4 had scribed the check report on the basis of the F.I.R. lodged by Surya Kant Dixit PW 1. Shiv Bahadur Singh PW 5, Tehsildar of Tehsil Farrukhabad prepared the inquest report of the dead body of the deceased and other related papers. S.I. Ghanshyam Gaur PW 6 had collected bloodstains etc. from the spot at the instance of Shiv Bahadur Singh PW 5 and Circle Officer D.P.N. Pandey PW 7 was the Investigating Officer of the case. The defence also examined three witnesses. Vidushi Tiwari DW 1 was the real sister of the husband of the deceased. Devendra Misra DW 2 and Sushil Kumar Misra DW 3 were non-family members of the two accused. Reference to their testimony shall be made later on at appropriate place(s) as and when necessary.

The evidence of the prosecution did not find favour with the trial court. The trial Judge held that the prosecution case was not clear whether the deceased died of strangulation or of burn injuries. According to him, the prosecution also failed to prove the demand of dowry by the accused and of the deceased having been treated with cruelty by them on that score. He accepted the plea of alibi put forth by the two accused respondents and held that the deceased committed suicide on account of mental depression. He therefore, recorded acquittal.

We have heard Miss N.A.Moonis, learned A.G.A. and Sri Prem Prakash for the complainant as also Sri V.P. Srivastava assisted by Sri R.B. Sharma from the side of accused respondents. According to the State and learned counsel for the complainant, the findings of the trial court are illegal and perverse based on surmises and conjectures only to throw away the well established prosecution case. On the other hand, the learned counsel for the accused respondents has tried to support the reasoning adopted by the trial court to find the accused respondents not guilty.

We propose to examine hereunder the whole gamut with reference to all the relevant aspects of the matter keeping in view the arguments advanced from the two sides.

To begin with, it has to be kept in mind that for an offence of dowry death under section 304-B I.P.C., the term ''dowry' has the same meaning as in Section 2 of the Dowry Prohibition Act 1961. Through Amending Acts, i.e., Act No. 63 of 1984 and Act No. 43 of 1986, the definition of the term ''dowry' in Dowry Prohibition Act was altered and the demands made after solemnization of marriage would be ''dowry'. We may refer with profit to the decision of the Supreme Court in the case of State of H.P. Vs. Nikku Ram 1995 Crl. L.J. 4184 in which the legal position on the point has elaborately been clarified in paragraphs no. 12 and 13 as under:

"12. The definition as amended by the aforesaid two Acts does not, however, leave anything to doubt that demands made after the solemnization of marriage would be dowry. This is because the definition as amended reads as below:-
"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 parents 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 person to whom the Muslim Personal Law (Shariat) applies."

"13. The aforesaid definition makes it clear that the property or the valuable security need not be as a consideration for marriage, as was required to be under the unamended definition. This apart, the addition of the words "any time" before the expression "after the marriage" would clearly show that even if the demand is long after the marriage the same could constitute dowry, if other requirements of the section are satisfied."

Further, as held by the Apex Court in the case of Kunhiabdulla Versus State of Kerala, 2004 (48) ACC 950, in order to attract application of Section 304B I.P.C., the essential ingredients are as follows:
1.The death of a woman should be caused by burns or bodily injury or otherwise than a normal circumstance;
2.Such a death should have occurred within seven years of her marriage.
3.She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
4.Such cruelty or harassment should be for or in connection with demand of dowry.
5.Such cruelty or harassment is shown to have meted out to the woman soon before her death.

As generally happens in a crime of dowry death, this case is also based on circumstantial evidence. As regards ingredients no. 1 and 2 of a crime of dowry death detailed above, it is an admitted fact that the deceased Geeta died otherwise than in normal circumstances vide her post mortem report and that the death had occurred within seven years of her marriage in her Sasural in the bedroom. As per the prosecution case, she had been married to the accused respondent no.1--Satya Narain Tewari alias Jolly about three years before this incident occurring on 3.11.2000. Even Vidushi Tiwari DW 1, sister of the husband of the deceased stated in paragraph 2 of her statement that the deceased Geeta was married to her brother Satya Narain Tiwari alias Jolly on 9.12.1997. So, to say precisely, her unnatural death in her Sasural occurred within three years of her marriage.

As regards ingredients no. 3, 4 and 5, the relevant testimony is contained in the statements of the deceased's father Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 (son-in-law of Bua of Surya Kant). Both of them have deposed about the persistent demand of Maruti car in dowry by the accused persons (husband and mother-in-law of the deceased) since after six months of the marriage and harassment/maltreatment of the deceased over the score of non-fulfillment of the said demand. The gist of the testimony of Surya Kant Dixit PW 1 was that he had performed a decent marriage spending Rs. 4 Lacs and giving household goods in dowry but after six months of the marriage, the two accused started torturing his daughter Geeta pressing for the demand of a Maruti car. On her visits to her parental house, she (deceased) used to narrate to him (this witness) her torture and maltreatment. She had also informed him in this behalf on telephone. About three months before the incident, he and Jaideo Awasthi had gone to Geeta's Sasural at Farrukhabad on getting message from Geeta about the atrocities of the two accused heaped upon her rendering her life miserable because of non-fulfilment of the demand of Maruti car. Both the accused were there at their house at Farrukhabad and repeated the demand of Maruti car. On his expressing inability to meet this demand, he and Jaideo Awasthi were insulted and humiliated and turned out of the house. Both the accused told them not to visit their house again without meeting their demand of Maruti car. Surya Kant Dixit PW 1 then went to Geeta's father-in-law at the place of his employment--State Bank because he was a gentleman. He apprised him of the conduct of his wife and son (accused) pressing the demand of Maruti car. He, however, offered consolation. Geeta, daughter of Surya Kant Dixit PW 1, also advised him not to take any action and he went away. The victim might have thought that making of F.I.R. by her father at that juncture would ruin her matrimonial life and so, she advised him not to take any legal step at that time.

Then he received a telephonic message from someone at about 12 O' clock in the noon on the day of incident about the death of his daughter Geeta in her Sasural at Farrukhabad. He at once rushed from Mainpuri to Farrukhabad covering a distance of about 80-85 Km. reaching the Sasural of his daughter to find her dead in the bedroom of the first floor of the house.

Jaideo Awasthi PW 2 has corroborated the statement of Surya Kant Dixit PW 1 in all the essential particulars. He had accompanied Surya Kant Dixit PW 1 about three months before the incident to the Sasural of Geeta as related above while giving the gist of testimony of Surya Kant Dixit PW 1 and thereafter on the day of the incident on the receipt of telephonic message at about 12 O' clock in the noon. It is pertinent to state that this witness used to reside in Mainpuri in a separate portion of the house of Surya Kant Dixit PW 1. He being a close relative of Surya Kant Dixit PW 1, it is quite believable that

he had acquired knowledge of the persistent demand of Maruti car by the accused on Geeta's visits to her parental house and he had also accompanied Surya Kant Dixit PW 1 to her Sasural three months before the incident as also on the day of the incident. The testimony of Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 has the ring of truth regarding the illegal demand of Maruti car in dowry by the two accused since after six months of the marriage and that they subjected her to harassment, maltreatment and humiliation on non-fulfilment of the said demand. It goes without saying that cruelty or harassment may not only be physical but also mental.

Negative sort of evidence given by Vidhushi DW 1, sister of the husband of the deceased could not eclipse the confidence inspiring evidence of these two witnesses.

There is an important feature of the case. In the present case, Surya Kant Dixit PW 1 has described Ghanshyam Tiwari (father-in-law of his daughter) as a gentleman. He has all the praises and regard for him. Even when he was humiliated by the two accused about three months before the incident on his expressing inability to meet their demand of Maruti car in dowry, he (PW 1) had gone to him at his employment place in State Bank and had not taken any action on the consolation offered by him. He mentioned this fact in the F.I.R. too. It appears that he could not control the cupidity of his wife and son (the two accused) and they continued to pursue their greed by tormenting and maltreating the young lady (deceased) to get a Maruti car in dowry from her parents. She (Geeta) had to pay the price of non-fulfillment of this demand of theirs, losing her life at their hands.

Only the husband and mother-in-law of the deceased have been accused of the offences in question. Besides them, there were three other family members, i.e., Ghanshyam Tiwari (father of accused no.1 and husband of accused no.2), Km. Vidushi DW 1 (sister of the accused no.1) and Km. Shalini, another unmarried sister of accused no.2. Such composition of the family has come to be related by Vidushi DW 1. The circumstance that only the husband and mother-in-law of the deceased have been made accused of the offence, sparing other three, is an indicator that Surya Kant (father of the deceased) has not acted out of malice, anger or to wreak vengeance as otherwise, he would have implicated the entire family including the father-in-law of the deceased and two unmarried sisters of the husband of the deceased as is often done by parental side of the bride in a dowry death case. Indeed, the prosecution could not be expected to bring forth any other evidence as to the persistent demand of dowry in the form of Maruti car by the two accused after about six months of the marriage and maltreatment, harassment and torture heaped upon her (deceased) by the two accused on non-fulfilment of the said demand. The evidence on this aspect of the matter as contained in the statements of Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 has the natural aura of the truth.

Learned counsel for the respondents argued that the alleged demand of Maruti car made after about six months of marriage does not answer the test of ''soon before' the death of the deceased. He reasoned that as per the own case of the prosecution, there was no interaction between the two sides since before three months of the death of the deceased when Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 had allegedly been humiliated and turned out by the two accused from their house with the command not to reach there again without Maruti car and that there was no evidence that any such demand was made during the period of three months intervening the alleged incident of turning them out of the house by the accused and the death of the deceased. The counsel for accused respondents made reference to the case of Balwant and another vs. State of Punjab 2005 (1) JIC-7 (SC) to stress the point that proximity test has to be applied. The argument, in our opinion, cannot be accepted.

We should remind ourselves that as held by the Supreme Court in the case of Kunhiabdullah and another vs. State of Kerala 2004 (48) ACC 950 SC , ''soon before' is a relative term and it would depend upon the circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under section 113-B of the Evidence Act. The determination of the period which can come within the term ''soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression ''soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

There can be no quarrel with the proposition that the proximity test has to be applied keeping in view the facts and circumstances of each case. Of the case cited by the learned counsel for the accused respondents, the facts were somewhat different in that the deceased was not shown to have been subjected to cruelty by her husband for at least 15 months prior to her death. On the facts of that case, Section 304B I.P.C. was held to be not attracted.

On the other hand, the present case fully answers the test of ''soon before'. There is emphatic testimony of demand of Maruti car being pressed by the two accused persons after about six months of the marriage of the deceased (which took

place about three years before the incident) and of her being pestered, nagged, tortured and maltreated on non-fulfilment of the said demand which was conveyed by her to her parents from time to time on her visits to parental home and on telephone. The things had reached to such a pass that on getting a message from her about three months before the incident, Surya Kant Dixit PW 1 accompanied by Jaideo Awasthi PW 2 had to go to her Sasural in Farrukhabad in an attempt to wean away and dissuade the two accused from pressing such demand, but they (the two accused) humiliated him and turned him out of the house with the command not to enter their house again without meeting the demand of Maruti car. He did not take any action on the consolation offered by the father-in-law of his daughter and also on the advice of his daughter. It was natural that the victim also did not want her father to take any extreme step against the two accused. The time is the greatest healer. She might have thought that things would improve with the passage of time. But the destiny did not chalk out a smooth course for her. Surya Kant Dixit PW 1 was in a helpless state after suffering humiliation at the hands of the accused persons about three months before the actual incident. He could simply wait and watch in the hope of things to improve, but the situation did not improve at all. It, however, cannot be taken to mean that the demand made by the two accused persons had subsided or was given up by them. By commanding Surya Kant Dixit not to come to their house without meeting the demand of Maruti car, they simply destroyed the bridge of further interaction or dialogue. It can justifiably be inferred from what happened subsequently that they continued to torture the unfortunate lady because of non-fulfilment of the demand of Maruti car. In our opinion, the test of ''soon before' is perfectly answered in the positive by the facts, evidence and circumstances of the present case.

To pick up the thread, ingredients no. 3, 4 and 5 for attraction of Section 304B I.P.C. are also established by satisfactory evidence adduced by the prosecution in the form of the testimony of Surya Kant Dixit PW 1 corroborated by Jaideo Awasthi PW 2.

Now, we switch over to the important question whether the death of Geeta was homicidal as alleged by the prosecution or suicidal as claimed by the defence. There is a popular adage that the witnesses may lie but the circumstances will not. In the present case, certain recoveries made from the spot strongly indicate that the death of Geeta was homicidal. There are two important recovery memos Ex.Ka-10 and Ka-11. The recovery memo Ex.ka-10 relates to the recovery of blood and bloodstained Bindia from the Chhajja (balcony) situated outside the room in which the dead body of the deceased was found lying. The said recovery is a pointer that the deceased had been subjected to violence there and there was struggle between her and her captors. Such recovery leads to the justifiable inference that she had received injuries and blood had oozed in drops found at the Chhajja. She was a young lady of about 24 years of age. The instinct of self preservation is strongest in all human beings. Seemingly, violence had first been applied to her inside the bedroom by the accused and offering resistance she had somehow run out to Chhajja (balcony) adjoining the room and the blood dropped there. Another recovery memo is Ex.Ka-11 relating to the finds inside the room in which the dead body was found. Amongst the finds inside the bedroom, there were broken pieces of bangles also. With the application of force and violence, she was brought back from Chhajja (balcony) to the bedroom where she was done to death.

It is noted from the Panchayatnama Ex. Ka-6 that receiver of the telephone was stuck under left arm of the deceased and burnt telephone wire was found stuck with the dead body.

The post mortem report also makes mention of the burnt wire and burnt cordless phone being found stuck with the dead body along with half burnt scarf around the neck.

The recovery memos Ex.Ka-10 and Ka-11 had been prepared by S.I. Ghanshyam Gaur PW 6 at the dictation of Shiv Bahadur Singh PW 5. Shiv Bahadur Singh PW 5 (Tehsildar Magistrate) is a witness to the recovery memos. Inquest report (Panchayatnama) was prepared by himself. One of the witnesses of the recovery memos and Panchayatnama is Keshav Tiwari, Advocate, uncle of accused no.1. These recoveries were not challenged in the cross-examination of Shiv Bahadur Singh (Tehsildar Magistrate) PW 5 or S.I. Ghanshyam Gaur PW 6. These recoveries amply indicate that the deceased had been subjected to violence in the bedroom and she had succeeded in coming out on Chhajja (balcony) to save her. The signs of struggle and application of violence in the form of broken bangles inside the room and the blood and bloodstained Bindia on the Chhajja were found. Not only this, it appears that the deceased had even tried to make use of the phone to inform someone of what was happening with her but she could not succeed. The presence of burnt cordless phone stuck in the arm and the burnt wire of phone with the dead body indicates that she had tried to contact someone on phone, but in vain. There was nothing to cast doubt on the said recoveries.

Learned counsel for the accused respondents, however, argued that the circumstance of such recoveries could not be read as evidence against them because no question was put under section 313 Cr.P.C. with regard thereto. This contention is factually incorrect. We have checked the questions put to the accused persons under section 313 Cr.P.C. and find that question no.6 specifically relates to the recoveries made through recovery memos Ex. Ka-10 and Ka-11 as also to the Panchayatnama. The answer of both the accused was "Arop Patra Galat Lagaya Gaya Hai."

Learned counsel for the accused respondents argued that the blood was due to menstruation of the deceased. Reference

was made to the written statement filed by the accused Satya Narain Tiwari that menstruation of his wife had started on 2.11.2000. This defence is built on straw and is belied by the recovery of bloodstained Bindia from the balcony. There could hardly be any question of Bindia of the deceased having fallen down on the balcony, had there not been any struggle there. In all probabilities, the two accused subjected her to violence on face, nose etc. inside the room and then in balcony, so much so that her Bindia and some blood dropped down from her injuries. They (the accused) might have assaulted her in the room so that her bangles got broken and blood as also the Bindia fell down on the balcony. They might have struck blows on her face, nose etc. causing blood to come out. Bleeding injury could also be caused by the breaking of bangles during the course of scuffle and struggle. The entire body of the deceased was burnt and it was so badly charred that it gave pugilistic appearance. Resultantly, no signs of such bleeding injury could be noted in the post mortem.

Reference was made by the learned counsel for the accused respondents to the statement of Sushil Kumar Misra DW 3. He was a stranger who stated to have seen some cloth being stuck on the private part of the deceased. We note that he could not give any plausible and acceptable reason for his presence at the scene of incident. He claimed to have gone to Mohalla Simt Sumal to meet his friend Prem Arya at about 11 A.M. for booking a gas cylinder. It sounds to be improbable inasmuch as he knew that his friend Prem Arya, Manager of Swami Gas Service, used to leave his house at 8 A.M. for his showroom. So, there could hardly be any question of his going to the house of Prem Arya at about 11 A.M. for booking a gas cylinder. Obviously, he was a witness picked up by the defence at random. In any view of the matter, cloth around or on private part of the deceased could be half burnt apron or undergarment of the deceased sticking to her body. The same does not overshadow the recovery of blood and bloodstained Bindia of the deceased from the Chhajja (balcony) which we find to be an important piece of evidence of the victim having been subjected to violence there by the accused respondents.

So to come to the point, the recoveries which we have referred to supply important circumstantial evidence in favour of the prosecution and against the accused persons.

Learned counsel for the State and complainant argued that two types of injuries found on the person of the deceased as per the post mortem report further advanced the prosecution case against the accused respondents. On the other hand, the learned counsel for the accused respondents stressed the reasoning adopted by the trial court to support acquittal that the prosecution could not successfully prove as to whether the deceased died of strangulation or of burn injuries. He urged that the post mortem report was manipulated showing strangulation as one of the causes of death. According to him, she committed suicide by burning. He tried to support his argument submitting that no signs of bruises were found underneath the ligature mark; hyoid bone was not fractured and that both the chambers of the heart were found full of blood. These signs, according to him, were more in conformity with death by burning, and not by or with strangulation. It has also been urged that sooty particles were found present in the larynx, trachea and bronchi on internal examination, meaning thereby that she was alive when burnt. It has been urged that had she been strangulated to death, there could hardly be any necessity of burning her. He tried to make out that symptoms found in the dead body of the deceased were in conformity of her having died of burning only which, according to his submission, she did herself while committing suicide.

To appreciate the conclusion flowing from post mortem report and the statement of Dr. R.K. Singh PW 3 who conducted autopsy with two other Doctors, the symptoms found in internal examination of the dead body should be recapitulated. Membranes, pleura, larynx, trachea and bronchi with sooty particles as also both the lungs were congested. Both the chambers of the heart were full. Spleen and kidneys were also congested. The dead body had pugilistic appearance. When a body has been exposed to great heat, it gets cooked and becomes so rigid that it assumes an attitude of toughness, called ''pugilistic posture'.

The learned counsel for accused respondents argued that as per medical science, the symptoms found on death by burning are these: The pleurae are congested; the lungs are usually congested; chambers of heart are usually full of blood and sooty carbon particles are found in larynx, trachea and bronchial tubes. If sooty and carbon particles are found in larynx, trachea, main bronchi and smaller bronchi, the counsel argues, respiration must have been proceeding during conflagration and, therefore, the fire was in progress during life.

The argument of the learned counsel for the accused respondents, however, ignores other important aspects of the matter. We have dealt with above that there was struggle and application of violence to the deceased on the Chhajja (balcony) and in the bed room where she was forcibly taken for being done to death. To incapacitate her of any meaningful resistance, the accused persons interfered with her breathing process with the compression of the windpipe of neck before burning her. Respiration had not completely stopped. To say in other words, air passage was not completely blocked by ligature pressed by the accused around the neck of the deceased. She was strangulated, but not to death. Strangulating her half way to overpower her and to render her incapable of offering any meaningful resistance, the two accused poured kerosene over her and burnt her. It explains the presence of sooty particles in her larynx, trachea and bronchi. Half burnt cloth around her neck with knot had been found by the panel of the doctors conducting post mortem over her dead body. Her

tongue was between the teeth. Ligature mark of large dimension measuring 31 cm x 7 cm all around the neck had been found by the doctors. As stated above, the doctors found a half burnt piece of cloth around her neck with a knot half burnt. It was the constricting material used by the accused for compressing the neck of the deceased.

Dr. R.K. Singh PW 3 explained that strangulation would mean pressing the neck with force. He also emphatically stated that strangulation was made by the cloth found around the neck of the deceased which was bearing a knot. As a matter of fact, ligature mark was the impression left by the constricting object around the neck. The sign of "tissue ecchymosed and tracheal ring found compressed" was explained by the Doctor that it occurred on account of tying the cloth around the neck with toughness. These were the signs of violence and force applied by the assailants on the neck of the deceased, strangulating her to render her immobile and to overpower her, but half way. They sprinkled kerosene on her and burnt her to accomplish their mission of causing her death. Nothing could be brought out of the cross-examination of Dr. R.K. Singh PW 3 to displace the facts emerging from the post mortem report. Sooty particles found in the breathing vessels of the deceased only indicated that her life was not extinct when she was put on fire. She inhaled sooty particles while breathing before being dead.

So far as the absence of bruise underneath the ligature mark is concerned, true Dr. R.K. Singh PW 3 did not find any mark of bruise underneath the cloth wrapped around the neck of the deceased. The object with which neck is pressed leaves the impression on the site of the neck. But if the cloth used as the constricting material for pressing the neck is soft, mark of bruise can not be found. When something soft and yielding is used as ligature, it shall produce nothing more than slight depression or flushing of the skin. In the present case, the base of the ligature mark was found slightly grooved with dark red and the Doctor explained that it was the result of constricting the neck by the cloth. Obviously, the soft cloth would only produce such a sign. Of course, hyoid bone was not found fractured, but it did not negate strangulation and constricting the neck of the deceased with a piece of cloth. As per Taylor's Principles and Practice of Medical Jurisprudence, it is unusual to find fracture of hyoid bone in persons under 40 years of age ( it would be recalled that the deceased was a young lady of about 24 years). On survey, it was found that percentage of hyoid fracture in strangulation by ligature was 13. So, the fracture of hyoid bone was very infrequent. Another celebrated author Modi has also used the word ''may', saying that hyoid bone may be fractured in case of strangulation. The view has received approval of the Supreme Court also in the case of State of Karnataka Vs. K. Gopala Krishna, JT 2005 (2) SC 389 wherein it has been observed in para 11 as under:

"It is well accepted in medical jurisprudence that hyoid bone could be fractured only if it is pressed with great force or hit by hard substance. Otherwise, hyoid bone is not a bone which can be easily fractured."

As a matter of fact, it would mostly depend upon the amount of force applied in constricting the neck. Really speaking, the marks on the neck would depend on the relative position of the victim and the assailants and the way in which the neck was gripped and there would be variation depending upon the amount of force.

Judged in the right perspective, the submission of the learned counsel for the accused respondents does not score any point for them.

It takes us to this part of the argument of the learned counsel for the accused respondents that both the cavities of heart were found filled with blood. According to him, it negated the theory of strangulation. It is not possible to agree with this argument for the discussion that follows.

In the chapter of "Deaths from Asphyxia" while dealing with the signs produced in the case of strangulation, the celebrated author Modi's view is that right side of heart is full and left is empty, but sometimes both the cavities are full if the heart stops during diastole. Another celebrated authority Cox (citing one of America's most experienced Forensic Pathologist and writer Dr. Lister Adelson) has said that increased fluidity of blood and dilation of the right side chamber of the heart are quite meaningless and useless and should be disregarded. So, to come to the point, the symptom of both the chambers of heart having been found full of blood did not at all negate the strangulation of the deceased by constricting her neck with a piece of cloth so as to apply force to it. To repeat, the respiration process did not completely stop with the blockage of the air passage, though she was incapacitated of rendering any meaningful resistance and in the meantime the two accused persons doused her with kerosene and burnt her while she was still breathing and she happened to inhale soot and carbon found in her larynx, trachea and bronchi.

We, therefore, reject the argument of the learned counsel for the accused respondents that there was any conflict emerging from the post mortem report.

So far as the alleged manipulation in the post mortem report is concerned, the contention of the accused respondents is wholly unfounded. It was a panel of three doctors formed by the District Magistrate to conduct post mortem over the dead body of the deceased. The complainant was an outsider from another city. It would be preposterous to assume that he had such monstrous influence that he could win over the three doctors to produce a post mortem report of his choice, falsely showing the signs of strangulation over the dead body of the deceased. Keshav Tiwari (uncle of accused no.1) was an Advocate, practising at Farrukhabad who was even present at the time of preparation if inquest report. He

was also a witness of Fard of recovery Ex.Ka-10 and Ka-11. Naturally, he would have been watching the interest of the accused persons. It was practically impossible for Surya Kant Dixit PW 1 (father of the deceased) to maneuver any manipulation in sthe post mortem report.

The theory of suicide put forth by the defence completely falls through on careful analysis of the evidence and the attending circumstances. Two different types of injuries found on the dead body of the deceased, i.e., the ligature mark of large dimension and the body being badly burnt because of the ante mortem burns with smell of kerosene coming out of the body completely rule out the theory of suicide. A half burnt piece of cloth with a knot was also found tied around the neck. If a cloth is suddenly tightened around the neck, it is likely to cause loss of consciousness, rendering it impossible for the victim to perform any action because of the interference with her breathing process. Owing to constricting of neck by a ligature, it could not at all be possible for the victim to catch hold of the container of the kerosene and pouring it upon her with the litting of match stick setting her ablaze. Her mental faculty would not have been in such a position to have undertaken such an activity. It is also to be taken note of that her body was found by the Investigating Officer at point ''A' as depicted in the site plan in the lonely corner of the bedroom where she was rendered immobile and in helpless state.

Vidushi DW 1 sister of accused no.1 tried to support the theory of suicide by her such statement that her sister-in-law (deceased) used to bear Tabiz in her neck. She had allegedly enquired from her about the same and she had replied that she was being haunted by evil spirits having bad dreams in night and further that a month before her marriage, her father had taken her to a Tantrik who had given Tabiz to her assuring that she would bear a child within three years of her marriage. According to her, the deceased remained in mental tension because she had not been able to give birth to any child.

We have not the slightest doubt that the theory of suicide put forth by the defence is a crude concoction. Ours is a superstitious society. A number of males and females wear Tabiz over their persons on the advice of hermits, astrologers, fortunetellers, palmists, Tantriks etc. for general well being. It is preposterous that even before her marriage, the deceased had been taken by her father to some Tantrik for such treatment of sorcery so as to ensure the birth of a child to her within three years of marriage. It also can not be accepted that she was living under gloom or depression for having not given birth to a child. She was only 24 years of age when she died. She was educated upto B.Sc. standard. She had not passed child bearing age. She had been married about three years back. No evidence could be led by the defence that she was suffering from some gynaeco problem running counter to her child bearing capacity. Had there been any such problem, there would have been some history of her consultation with medical expert and related treatment. The accused being her husband and the mother-in-law would have definitely been in a position to put forth documentary evidence in this behalf. A bald assertion from the mouth of the sister of the accused no.1 could not be believed that the deceased was suffering from some mental depression for having not conceived.

The defence also came forward with the story that the Investigating Officer D.P.N. Pandey, Dy. Superintendent of Police, examined as PW 7 had found a suicide note in the drawer of the deceased which was in her writing but he took away the same. He had allegedly read over the same to all present including Keshav Tewari, Advocate (uncle of accused respondent no.1) DW 2 Devendra Misra, Advocate, media persons and members of the family of the in-laws of the deceased as also of her parents side. He, however, took away the same on the ground that he would make mention of the same in the case diary. DW 2 Devendra Misra, Advocate stated that he and others had asked the C.O. to prepare Fard of suicide note but he did not do that. According to DW 2 Devendra Misra, a number of other lawyers were also present at that time. The said C.O. examined as PW 7 denied that he found any such suicide note. It does not get down the throat that any such alleged suicide note could have been taken by the C.O. in the alleged manner in the presence of a number of lawyers, namely, Keshav Tiwari, Devendra Misra and others without preparing any recovery memo. DW 2 Devendra Misra admitted that he knew the importance of the recovery of the said suicide note and also knew that the preparation of recovery memo in that behalf was necessary. It cannot be accepted that in the presence of a large number of persons including lawyers and media persons, the alleged suicide note could be taken away by the C.O., an uninterested person, charged with the duty of investigation of the case. The large number of persons including lawyers would not have permitted him to take away the same without preparing recovery memo. It is also pertinent to state that no complaint was ever made to the higher police authorities in this behalf. No request was made for the change of Investigating Officer either. In our considered opinion, the alleged recovery of suicide note by the C.O. and the same having not been placed on record of the case is a cock and bull story coined in a desperate attempt to create false defence.

The theory of suicide was attempted to be propped up on another plank also. DW 1 Vidushi attempted to prove a diary Ex.Kha-2. According to her, it was in the handwriting of her sister-in-law. It is an old diary of 1998, in which she is purported to have recorded her pleasant events and those in low spirited mood. The learned counsel for the accused respondents argued that it does not contain even a whisper indicating that she had any grievance against her husband or mother-in-law or that there was any demand of dowry from their side. Instead, according to him, in the date of 2.12.1998 she wrote that

at times her husband treated her very lovingly. We are afraid it is not possible to draw any conclusion in favour of the defence on the basis of this diary. We are firmly of the view that it is another piece of fictitious document put forth by the defence. Initial page meant for writing name etc. is missing from the diary. It is not proved at all that it is in the handwriting of the deceased. Rather, the entries of dates 14.4.1998, 17.4.1998, 18.7.1998 and 1.8.1998 clearly indicate that it was a business diary which was in use of the husband of the deceased. The details of business dealings are recorded in these dates. It is obvious that tearing off the first page, which was to give the clue as to whom this diary belonged, false evidence has been attempted to be created by the accused to make a show that the deceased used to write this diary in pleasant and gloomy moments of her life. We reject this argument.

Yet another argument of the learned counsel for the accused respondents was that the room in which the dead body of the deceased was found was bolted from inside and had to be broken open. According to him, it indicated that she committed suicide. To support this argument, he referred to the statement of DW 1 Km. Vidushi that when she reached home from her college, the door of the room (in which the dead body was found) was bolted from inside and the ply of the door was also broken. Our attention was invited to the statement of Shiv Bahadur Singh PW 5 who stated that when he reached the spot and inspected the room, he found that inner latch of the room was a bit twisted and some part of the ply of the door was not in its place. The statement of DW 3 Sushil Kumar Mishra was referred to that the door of the room was closed from inside and the door had to be opened by kicking it, so much so that the ply gave way and the inner latch was twisted. On analysis, it is not possible to accept that the door of the room in which the dead body was found was bolted from inside. Ms. Vidushi DW 1 in her cross-examination retracted her earlier statement that the door was bolted from inside. We gather the impression that she was speaking out of her imagination with the underlying idea to save the accused--her brother and mother. Two falsehoods fight between themselves. So far as DW 3 Sushil Kumar Misra is concerned, he was a got up witness. There was hardly any occasion for him for going to that locality to meet one Prem Arya at about the midday when it was within his knowledge that he (Prem Arya) used to leave his house for his showroom at about 8 O' clock in the morning. The purpose, according to him, was to get a gas cylinder. It is admitted that in the showroom as well as in the godown of the agency, telephone connection was there. The witness also owned a telephone connection. Gas cylinders, it is well known, are dispatched to the consumers on making booking on telephone. The witness did not offer himself to the Investigating Officer for recording his statement to the effect that the door of the room had been bolted from inside and it had to be opened by giving kicks to the door. He simply remained silent for about 2½ years and for the first time appeared in court on 24.5.2003 as a defence witness. The truth of the matter is that the door was found open by the Tehsildar Magistrate and the Sub-Inspector. The offence had been committed by the accused with preplanning. The possibility was very much there that before arrival of the persons of law machinery at the spot, the inner latch of the room was a little twisted and the ply of the door was somewhat made out of place to make a show that the room was bolted from inside and had to be opened by giving kicks to the door.

On judging the theory of suicide from all possible angles, we do not find any iota of substance therein and we reject it.

We record with dismay that the trial Judge has exhibited lack of common sense in taking it to be ground against the prosecution that the knot found around the neck of the deceased was not produced before the court. It spills beyond comprehension as to how the knot of cloth found wrapped around the neck of the deceased could be produced before him. It is obvious that he completely misinterpreted the matter relating to knot and took it as a circumstance against the prosecution. While conducting post mortem, the knot found around the neck of the deceased was untied and removed. To say in other words, the body was to be freed from the knot so as to facilitate the post mortem. Therefore, there could be no question of the knot being produced before the court.

On close scrutiny and threadbare analysis, we are also of the firm view that the trial judge wrongly accepted the plea of alibi put forth by the two accused persons to get away from the consequences of the serious crime committed by them. Their conduct also voluminously spoke against them that it were they who committed this crime. As a matter of fact, only these two accused had an opportunity to commit this offence. The father-in-law of the deceased having gone to State Bank, Farrukhabad (the place of his employment) and his two daughters including DW 1 Vidushi having gone to their educational institution, the two accused persons only (husband and mother-in-law of the deceased) had the opportunity to commit this crime inside the bedroom of one of them, i.e., accused Satya Narain Tewari alias Jolly. No one else could have access there. The manner in which the deceased was done to death, i.e., by first strangulating her and then setting her afire, needed at least two persons, because she (deceased) was also a young lady aged about 24 years. As is well known, the instinct of self preservation is natural in all living beings. A single person could not have possibly overpowered the victim to strangulate her and to set her afire. As a natural instinct, she was bound to offer resistance and having regard to two types of the injuries found on her person at the time of post mortem, it was the handiwork of at least two persons, who undoubtedly were husband and mother-in-law of the deceased. The conduct of the mother-in-law of the deceased was that she lodged false information at the Police Station at 1.10 P.M. that her daughter-in-law had committed suicide. In this

report, she stated that she had gone to supervise the construction work at her another house and noticing smoke emitting from the first floor of the bedroom of the house of incident and on the shouts of the residents of the locality, she came rushing to the scene. Her this statement is false as per the own showing of her daughter DW 1 Vidushi. She stated that the house on which the construction work was going on, for supervision of which her mother had gone, was situated in another locality. She also stated that it was not visible from the house of the incident. It also came down from her statement that the distance of that house under construction from the old house of the incident was 1 or 2 furlongs. This being so, there could be no question of her(accused respondent no.2) noticing emission of smoke from the bedroom of first floor of the house where the incident took place. She (accused Bhuvaneshwari Devi) falsely so stated in the report lodged at the Police Station to misguide the machinery of law through false plea of alibi. The story of seeing smoke coming out of the home and hearing the alarm of the respondents of the locality mentioned in the report of Bhuvaneshwari Devi was a stark lie. She had taken a false excuse to support her baseless plea of alibi of herself as also her son--husband of the deceased.

Interested testimony of DW 1 Vidushi also could not be believed that her brother accused no.1--husband of the deceased had gone to his shop at about 8 A.M. After committing this crime, the two accused vanished from the scene, but before doing that, one of them (Bhuvaneshwari--mother-in-law of the deceased) lodged a false report at the Police Station that her daughter-in-law had committed suicide. Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 denied the presence of the two accused persons when they reached the place of incident. It is there in the testimony of D.P.N. Pandey PW 7 (C.O/Investigating Officer) that the accused Satya Narain surrendered in Court on 7.11.2000 and the other accused Rani alias Bhuvaneshwari on 13.11.2000. Earlier thereto, the attempts to find and arrest them turned to be futile. It is there in his testimony that both of them were absconding and for this reason, on 6.11.2000 a report had been submitted for issuing process against them under section 82/83 Cr.P.C. None of the two accused is witness of inquest report or Fards. Invisibility of both of them after the incident cannot be termed to be normal conduct of innocent persons. The report by the accused Bhuvaneshwari Devi, as we said, was given at the Police Station at 1.10 P.M. on 3.11.2000. It was the outcome of deliberation and consultation with legal experts who had already gathered at the scene of occurrence along with Keshav Tiwari, Advocate uncle of the accused Satya Narain Tiwari, DW 2 Devendra Misra, Advocate, and few other lawyers. We note from the testimony of DW 2 Devendra Misra that the news of the death of daughter in law of Ghanshyam Tiwari was received in the District court at 11.30 A.M. itself, i.e., much before the lodging of the report by Bhuvaneshwari. This witness stated that when he arrived at the scene of occurrence, a group of lawyers was already there. The false report made by the accused Bhuvaneshwari Devi was the outcome of the legal advice to save the culprits from the consequences of the criminal act committed by them.

Learned counsel for the accused respondents also argued that it was the accused Bhuvaneshwari who had passed on the information of the death of the deceased to her parents on telephone. Surya Kant Dixit PW 1 (father of the deceased) denied it that the telephone received by him was from Bhuvaneshwari Devi. According to him, he had received a telephone from some stranger. Even if it is taken for the sake of argument (though we do not believe it to be that) that she had telephoned to him, it is of no consequence and the defence does not score any point on this premise. The reason is that the crime was committed by the two accused with preplanning, so much so that Bhuvaneshwari Devi even lodged a false report at the Police Station to misguide the machinery of law and to create a false defence. Telephoning to the father of the deceased could only be a part of the scheme to project it as a case of suicide.

We are firmly of the view that the presumption of Section 113-B of the Evidence Act is well attracted in this case and the discussion that we have made hereinabove makes it abundantly clear that the defence could not displace the said presumption. The culpability of the two accused respondents in committing this crime is established to the hilt by the facts and circumstances proved by the prosecution. They undboubtedly are the authors of this crime. The irresistible conclusion is that the demand of Maruti car raised by the two accused respondents after about six months of the marriage persisted as it was not settled by the father of the deceased by supplying the same. The prosecution has successfully proved the persistent demand of Maruti car as a part of dowry by the two accused and continuous cruelty and harassment heaped upon the deceased by them over this score.

To sum up, the prosecution has been able to prove the following.

(1)The death of the deceased was caused by strangulation and burning within seven years of her marriage.

(2)The deceased had been subjected to cruelty by her husband and mother-in-law (the two accused respondents) over the demand of Maruti car in dowry raised and persistently pressed by them after about six months of the marriage and continued till her death.

(3)The cruelty and harassment was in connection with the demand of dowry, i.e., Maruti car.

(4)The cruelty and harassment is established to have been meted out soon before her death.

(5)Two accused respondents were the authors of this crime who caused her death by strangulation and burning on the given date, time and place.

The trial Judge recorded acquittal with superfluous approach without indepth analysis of the evidence and circumstances established on record. On thoroughly cross-checking the evidence on record and circumstances established by the prosecution with the findings recorded by the trial court, we find that its conclusion are quite inapt, unjustified, unreasonable and perverse. Proceeding on wrong premise and irrelevant considerations, the trial court has acquitted the accused respondents. The accused respondents are established to have committed the offences under sections 498-A and 304B I.P.C. and under Section 4 of Dowry Prohibition Act.

Now comes the question of sentences to be passed against the two accused respondents for the above offences committed by them. Gravity of the offence is an important guiding factor for determining the quantum of sentence. Some offences including those against women require exemplary punishment. Dowry is a deep rooted malady plaguing our society and many women are burnt to death or otherwise transported to the other world by their husbands and in-laws on non-fulfilment of the demand of dowry. The evil of dowry takes the life of many a young ladies. Dowry confronts and at times haunts many parents of young girls in our country. Relying on " Law in changing Society" by Friedman, the Supreme Court stated in the case of Surjeet Singh Vs. Nahar Ram and another (2004) 6 SCC 513 on the aspect of imposing appropriate sentence on the culprit as under:

" The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix.

The present was the most horrendous bedroom crime committed by the two accused respondents (mother-in-law and husband of the deceased) cutting short the life of the young lady in a very cruel manner for the greed of dowry. It is a fit case where maximum sentence of life imprisonment provided under section 304-B I.P.C. should be awarded to them. For the offence of Section 498-A I.P.C. the two accused persons deserve to be punished with rigorous imprisonment for three years. For having committed the offence under Section 4 of the Dowry Prohibition Act, the sentence of six months rigorous imprisonment would meet the ends of justice.

In the net result, we allow the Government Appeal. We set aside the acquittal recorded by the trial court and convict the two accused respondents, namely, Satya Narain Tiwari alias Jolly and Smt. Rani alias Bhuvaneshwari under sections 304 B I.P.C. with sentence of life imprisonment, under section 498-A I.P.C. with sentence of three years rigorous imprisonment and under section 4 of Dowry Prohibition Act with six months rigorous imprisonment. The substantive sentences of imprisonment shall run concurrently. The two accused respondents Satya Narain alias Jolly and Smt. Rani alias Bhuvaneshwari Devi are on bail. The Chief Judicial Magistrate, Farrukhabad shall cause them to be arrested and lodged in jail to serve out the sentences passed against them. Criminal Revision stands disposed of accordingly.

Certify the judgment to the court below for reporting compliance to this Court within two months from the date of receipt.

Dated: July 12 :2005 Sd/-Hon.M.C. Jain, J.

Akn. Sd/- Hon. M. Chaudhary, J.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Reserved

Government Appeal No.2713 of 2000
State of U.P. Vs. Kundan alias Utkarsh and three others
and
Criminal Revision No.1933 of 2000
Smt. Chandrawati Gaur Versus State of U.P. and four others

Hon'ble M.C.Jain, J.
Hon'ble M.Chaudhary, J.

( Delivered by Hon'ble M.C. Jain, J.)

Government appeal in question has been preferred by the State against judgement dated 9.6.200R.P. Dubey0 passed by the Special Judge ( Anti-Corruption Act)/Additional Sessiond Judge, Gorakhpur in S.T. No.567 of 1998. The accused respondents Kundan alias Utkarsh, Anushil alias Kunwar, Jagdamba Gaur and Keshav Prasad Gaur have been acquitted of the charges under Section 498-A and 304-B I.P.C. and under Section ¾ of Dowry Prohibition Act. The accused respondent no.1 Kundan alias Utkarsh is the husband of the deceased Minni alias Ranjita Bharti; accused-respondent no.2 Anushil alias Kunwar is younger brother of accused-respondent no.1; accused-respondent no.3 Jagdamba Gaur is the mother-in-law of the deceased and accused-respondent no.4 Keshav Prasad Gaur is her father-in-law. Criminal revision No. 1933 of 2000 has been filed by Chandrawati Gaur (informant and the mother of deceased) challenging the acquittal. We propose to decide them together.

Broad features of the case are thus: The deceased was married with Kundan alias Utkarsh on 2.2.1998 according to Hindu rites and the incident occurred in her Sasural sometime in the night of 25.6.1998 or in early hours of 26.6.1998. The F.I.R. was lodged by deceased's mother-Chandrawati Gaur PW 1 at the concerned Police Station Shahpur, District Gorakhpur on 26.6.1998 at 11.30 A.M. As per the F.I.R., the informant had given sufficient dowry in the marriage of her daughter beyond expectation of her in-laws. Thereafter, the accused respondents started harassing her daughter pressing the demand of a maruti car in dowry. The deceased used to complain in this behalf to her mother. She told her daughter that she was in a financial crisis and would give maruti car too on making arrangement of finances. But the pressure for the same continued from the side of the accused-respondents with harassment of the deceased who, from time to time, used to informed her mother in this behalf on telephone. On 25.6.1998 at about 10.10 P.M. her daughter informed her on telephone bemoaning that she was being beaten up and implored her to save her life. Sensing the exigency of the situation, she with her sons Sanjai Bharti and Chandan Bharti PW 2 immediately went to her daughter's sasural at Bichhiya. Her Sasural's house was found locked. On inquiry from neighbours, she learnt that deceased was wailing, weeping and crying in the night and her in-laws took her to the hospital or somewhere else. Throughout the night, she kept her searching with her two sons in different hospitals and nursing homes but in vain. When she went to Gorakhpur Medical College in the morning, she found her to be admitted in Ward No.5 in precarious condition. She was being medically treated there. She had injuries on her person. She died after sometime. She then lodged the F.I.R., setting the machinery of law in motion.
So, the accusation was that four accused-respondents had committed dowry death of her daughter because of non-fulfilment of their demand of maruti car. Consequent upon the registering of the case, the investigation was made by C.O. Mahendra Yadav PW 5 who reached the Medical College, prepared inquest report of the dead body of the deceased with preparation of necessary papers. The dead body after being sealed was sent for post mortem which was conducted on 26.6.1998 at 6.05 P.M. by Dr. Surendra Deo PW 6 in association with another Doctor A.K. Saxena. The site plan of the house of the accused-respondents was also prepared the same day by the Investigating Officer. After completion of investigation the chargesheet was laid, leading to trial. It should be related here that the deceased had died in Medical College, Gorakhpur at 9.55 A.M. on 26.6.1998. She was aged about 23 years. The following three ante mortem injuries were found on her person:-
1) Abrasion on right side of face 2 cm x 5 cm.

2) Abrasion on right big and second toe.
3)Abrasion 3 cm x 2 cm on post aspect of right leg.
The cause of death could not be ascertained. Viscera was preserved. The viscera report ultimately disclosed the presence of aluminium phosphide poison. The deceased was carrying a male foetus of about 5 months.

The prosecution, in support of its case, examined Chandrawati Gaur informant PW 1, her son Chandan Bharti PW 2 and Harish Dutt Pandey PW 3, besides five other witnesses inclusive of doctor and Investigating Officer. The most material witnesses were Chandrawati Gaur PW 1, Chandan Bharti PW 2 and Harish Dutt Pandey PW 3.
The marriage of the deceased with accused respondent no.1-Kundan alias Utkarsh on 2.2.1998 was admitted, but the defence was that there had never been any demand of dowry from the side of the accused respondents at any point of time. It was allegedly a love-cum-arranged marriage. Earlier to the marriage, the deceased allegedly had erotic relations with one Bablu who wanted to blackmail her. 26.6.1998 was the birth day of Kundan alias Utkarsh. Bablu threatened the deceased on phone in the morning to send her objectionable photographs in her Sasural that day and apprehending her matrimonial life to be on rocks, she consumed poison in frustrated state of mind. Kundan alias Utkarsh immediately carried her to Medical College for treatment but she could not be saved. It was also the part of defence that the information of the incident was given to the mother of the deceased by the accused on the basis of which she had reached the Medical College. The deceased's mother put up a demand of Rs.5,00,000/- in the Medical College after the death of the deceased and as they ( accused) could not meet it, she falsely lodged the F.I.R. projecting it to be a case of dowry death, involving all of them ( entire family).
The accused respondent no.3, Jagdamba Gaur mother-in-law of the deceased, put forward the plea of alibi that she actually was in Banshi at the relevant time where she was a lecturer of B.Ed. in Ratan Sen Degree College. Nishar Ahmad DW 2 was produced in support of this plea. He claimed himself to be the owner of the house where she was residing at Banshi and, according to him, on 26.6.1998 in the morning, the accused Kundan had given a telephonic call which he had received informing that the deceased was seriously ill and that his mother ( Jagdamba Gaur) be immediately sent to Medical College, Gorakhpur. He gave this message to Jagdamba Gaur. Three other witnesses were also produced in defence.

The trial judge recorded acquittal holding that the demand of dowry and causing of injuries to the deceased or her torture by the accused could not be proved. He also held that the defence put up by the accused well competed with the prosecution case.

We have heard Miss Usha Kiran learned A.G.A. from the side of State in support of the appeal. None appeared from the side of the revisionist to argue out the revision filed by Chandrawati Gaur-mother of the deceased. From the side of the accused respondents, the arguments of Sri G.S. Chaturvedi assisted by Sri B.K.Tripathi have been heard. Record has been summoned before us which we have perused. The submission of learned A.G.A. is that the trial judge erroneously disbelieved the testimony of the informant Chandrawati Gaur PW 1 and her son Chandan alias PW 2. There was demand of maruti car in dowry by the accused-respondents and cruelty and harassment were heaped by them on the deceased. The trial judge, argued learned A.G.A., also gravely erred in disbelieving the testimony of Harish Dutt Pandey PW 3, who supported the factum of demand of dowry as hR.P. Dubeyaving participated in a Panchayat at the house of accused on 15.6.1998 along with the mother and brother of the deceased in connection with the said demand of maruti car by them. She urged that certain injuries found on the person of the deceased at the time of her post mortem were the outcome of the beating given to her in between the night of 25/26.6.1998 when she had been poisoned by them. The testimonial assertions of the witnesses, it has been stressed, were in agreement with medical evidence. Thus, the impugned judgement of acquittal has been assailed to be based on faulty appreciation of evidence and has been designated to be based on superficial approach, also unjustifiably ignoring the provision of Section 113-B of Indian Evidence Act.

On the other hand, argument from the side of the accused respondents is that the trial judge has taken a proper view on judicial appreciation of evidence and attending circumstances. The prosecution, it is urged, utterly failed to prove the demand of maruti car in dowry and any harassment of the deceased by the accused on this score. She, it has been submitted, committed suicide in an emotional strain because of threats offered by her erstwhile lover of exposing her in her sasural by sending her objectionable snaps blackmailing her. They, on the other hand, did their best to save her but God willed otherwise.
We have carefully gone through the record and have cross-checked the findings of trial judge with the evidence. We should say before proceeding further that the settled position of law with regard to appeal against acquittal, summarised in few

words, is that High Court is entitled to reappreciate entire evidence on record, but it shall interfere only in cases where the findings recorded by the trial court are unreasonable or perverse or where the court has committed serious error of law, or the trial court has recorded its findings in ignorance of relevant material on record or by taking into consideration the evidence which is not admissible.

In the present case, it is admitted position that death of the deceased took place within five months of her marriage and that the incident took place in her sasural. It is also amply established on consideration of post mortem report and viscera report that the death was unnatural one by poisoning by aluminium phosphide.

We find that several reasoned factors are lined up showing that the prosecution case and evidence regarding demand of dowry and torture of the deceased by the accused respondents was incapable of being believed. Unnatural death of the deceased could not be attributed to any criminal act of the accused respondents or any of them. The prosecution case right from the beginning was as if there was no demand from the side of the accused respondents at the time of the performance of marriage and the dowry voluntarily given by the deceased's mother Chandrawati Gaur PW 1 was beyond their expectations. The demand of maruti car was allegedly started being pressed and the deceased was being tortured on this score by the accused-respondents subsequent to the performance of the marriage. It is there in para 16 of the testimony of Chandrawati Gaur PW 1 that at the time of settlement of marriage of her daughter, the accused had not even enquired about her financial condition. She had told them about her source of income and of the members of her family. She is a widow and teacher. To say in other words, the accused-respondents were not worried about her financial status. She specifically stated that bridegroom's father did not even inquire about her financial status. She also testified that at the time of settlement of the marriage, it was projected that bridegroom ( Kundan alias Utkarsh) was serving as an engineer in Jhansi but after about 3½ months of the performance of marriage, it came to be revealed that he was unemployed with no profitable engagement. It does not stand to reason that the demand of maruti car would have been started to be made and intensified with torture of the deceased subsequent to the performance of the marriage. The bridegroom having been misrepresented to be employed as an engineer at the time of the settlement of marriage, best opportunity to accused respondents to fork out dowry from the mother of the deceased would have been before or at the time of the performance of marriage, and not subsequently when even it came to be revealed that the bridegroom was actually unemployed.

Further, as per the F.I.R. which is the earliest version of the prosecution, the alleged demand of maruti car was being pressed and conveyed to the parental side of the deceased through her ( deceased). There is no mention in the F.I.R. that any demand of maruti car subsequent to the performance of the marriage was made directly by the accused-respondents or by any of them from Chandrawati Gaur PW 1 and/or her sons. The case was that the demand of maruti car was used to be made through the deceased, who in her turn, apprised about it to her mother from time to time on telephone. It was also not the prosecution case in the beginning that 10 days before the alleged incident i.e. on 15.6.1998, the deceased telephoned to her mother that the accused were harassing her in extremity because of non-fulfilment of the demand of maruti car and that then the mother and brothers of the deceased as also Harish Dutt Pandey PW 3 and Dr. Kamal had gone to the Sasural of the deceased and a Panchayat was held in which Chandrawati Gaur had imploringly assured the accused-respondents that on making financial arrangement she would give maruti car too. As per Harish Dutt Pandey PW 3, the said Panchayat was held on 15.6.1998 at about 6 P.M. at the house of the accused-respondents. This story is clearly an improvement at the evidence stage. The allegation of demand of maruti car by the accused-respondents from the mother of the deceased was neither in the F.I.R. nor in the statements made under Section 161 Cr.P.C. In her examination-in-chief also, Chandrawati Gaur did not say anything about the said Panchayat at the house of the accused-respondents on 15.6.1998. To boost up the prosecution case, the story was developed in the testimonial assertions of the deceased's brother Chandan Bharti PW 2 and Harish Dutt Pandey PW 3.

Assuming that any such Panchayat was held on 15.6.1998 ( though it cannot be believed) and the mother of the deceased had imploringly requested the accused-respondents for time to meet the said demand by making financial arrangement, then thereR.P. Dubey could hardly be any occasion for cutting short the life of the deceased by the accused-respondents or any of them barely after ten days. They were in the know of the financial status of the mother of the deceased that she was a widow and simply a teacher. She could not miraculously make financial arrangement for purchase of maruti car within a span of ten days. They would have at least waited for a reasonable time for the demand being satisfied. As a matter of fact, reliance could not be placed on the testimony of Harish Dutt Pandey PW 3 that he had participated in any such Panchayat. As per Chandan Bharti PW 2, it was at about 10. A.M that Ranjita deceased had told her mother on telephone regarding R.P. Dubeyher extreme torture by the accused-respondents because of the non-fulfilment of the demand of maruti car. Then

they had gone to Harish Dutt Pandey who with Dr. Kamal reached Sasural of the deceased in the evening and participated in the Panchayat. The statement of Harish Dutt Pandey PW 3 is that he had been informed by Chandrawti Gaur PW 1 at his residence through telephone and he had asked her to come to the court in his office at about 4.00 P.M. She, her son Chandan Bharti PW 2 and her another son Sanjai Bharti reached at his Takhat in the court at the appointed time. Two or four minutes thereafter Dr. Kamal also came there. After finishing court work, he reached the Sasural of the deceased alongwith these persons. This witness Harish Dutt Pandey PW 3 claimed to be practising law in courts. Earlier, he was a clerk somewhere. Admittedly, while serving as a clerk in the office of RFC Azamgarh, he remained in jail in connection with a case under Section 302 I.P.C. He pleaded forgetfulness to answer any inconvenient question as to in which period he was in jail; who was the complainant in that case, what was the incident; whether he was in jail for 1,2 or 6 months; whether he had informed departmental authorities about this criminal case and whether he had been accused in other criminal cases also. Reliance could not be placed on his testimony to support the story developed by the prosecution at the stage of adducing evidence in court. If it was a matter of such an emergency, it spills beyond comprehension that the mother and the brothers of the deceased waited till evening to reach the house of in-laws of the deceased. The urgent and emergent telephone call given by the deceased to her mother at 9-10 A.M. on 15.6.1998 would have exceedingly alarmed them to reach her Sasural without any loss of time.

There is another aspect which militates against the alleged demand of maruti car in dowry by the accused-respondents from the mother of the deceased either through her ( deceased) or directly. We find that Chandrawati PW 1(mother of the deceased) twisted and coloured her testimony before the court so as to suit her purpose. It would be recalled that the marriage of the couple had been performed on 2.2.1998. She stated in para 20 that settlement of marriage took place on 30.6.1997. She stated in para 16 of her deposition that she came to be introduced to the family of accused a year before of the performance of the marriage. Her this statement is demonstrably false. She admitted in her cross-examination in para 20 that she had got rectified the mistake in the name of the accused Kundan alias Utkarsh (bridegroom) in his high school mark-sheet. When suggested that it was got done in 1991, she gave prevaricating reply that she could not tell the year. Further questioned, she pleaded inability to say as to how many years back she had got it done. To say in other words, she could not deny the suggestion that such correction was got made by her in 1991. It is there in her testimony that her daughter Ranjita had passed high school in 1991. It sounds to be quite probable that Kundan had also passed high school in that year. It goes to indicate that the two families knew each other from long before the settlement of the marriage. The marriage having been settled on 30.6.1997 and performed on 2.2.1998, there was intervening period of 7 months. Chadrawati Gaur stated that after the settlement of the marriage, the accused Kundan alias Utkarsh used to come and meet Ranjita at her house. Not only this, they used to go out together for outing in the city. It goes to indicate that they had developed immense liking for each other and were conducting themselves contrary to the traditional way ( of husband and wife developing intimacy only after the performance of marriage). This scenario runs in the teeth of the alleged demand of maruti car in dowry by any of the accused subsequent to the performance of marriage either directly or through the deceased.

There is yet another important factor to be taken note of. Chandrawati PW 1 admitted in para 26 of her statement that at the time of the incident the deceased was student of B.Ed. She had taken admission in B.Ed. only 10-12 days after her marriage. Her mother-in-law had accompanied her for her admission in B.Ed. She was a post graduate already. The mother and mother-in-law of the deceased were in teaching profession. She (deceased) was also in the process of joining teaching profession after completing B.Ed. Naturally, she would have been a regular income earner for the family of her in-laws after being fixed in employment on completion of B.Ed. It does not fit in the scheme of things that ignoring the future, the accused-respondents would have tortured her for the demand of maruti car in dowry after the performance of marriage and would have done her to death on the non-fulfilment of such demand as alleged by the prosecution.

26.6.1998 was the birth day of the accused Kundan alias Utkarsh ( husband). Chandrawati PW 1 admitted in para 38 of her statement that even before the settlement of marriage, she had attended the birth day party of Kundan alias Utkarsh ( accused respondent no.1) along with her family members on 26.6.1997. So, it comes to be fixed that 26.6.1998 was the birth day of the accused-respondent Kundan alias Utkarsh. It is illogical that he or his family members would choose the night of 25/26.6.1998 to put the deceased to death by poisoning.

Sequence of events sought to be projected by the prosecution does not have the attraction of logic at all. The conduct of Chandrawati PW 1 and her family members goes a long way against the prosecution case and the evidence put-forth to fasten guilt on the heads of the accused-respondents. It is alleged that the deceased contacted Chandrawati Gaur PW 1 at

about 10 P.M. on 25.6.1998 and told her sobbing that she was being assaulted by the accused persons. She earnestly asked her to reach her at once to save her life. Being alarmed, Chandrawti PW 1 immediately reached her daughter's sasural with her two sons using scooter and motorcycle. The distance was about 15 kms. The house of the in-laws of the deceased was found locked and on her call neighbours came out informing that her daughter was weeping and wailing in night and that her in-laws had taken her to the hospital or somewhere. Then she and two sons kept her searching in hospitals and nursing homes of the city but in vain. Disappointed, she and her sons reached back their house and in the morning went to the Medical College with her relations where the deceased was found admitted in ward no.5 in precarious condition. After about an hour, she died. The conduct of the mother of the deceased and her sons does not pass the test of scrutiny. No police help was sought in the night. No information was given at the Police Station, though mother and brother of the deceased were well aware of the exigency of the situation that the life of the victim might be in danger. They had not found her in her Sasural where they had reached by scooter and motorcycle covering a distance of 15 kms. at fast speed immediately on receiving the telephone call from her at about 10 P.M. Chandrawati PW 1 admitted in para 28 of her testimony that nearest the Sasural of Ranjita was the Medical College. She also admitted that best treatment in Gorakhpur was available in Medical College. It goes unexplained as to why the mother and brothers of the deceased did not visit the Medical College in the night itself which was the nearest to her Sasural. They did not do so even on being unsuccessful in tracing her out in any other hospital or nursing home. They returned back to their home at about 3 A.M. believing that something untoward had happened to the deceased. Still they did not inform the police in the night. It is obviously unnatural. It is not easily understandable as to how all of a sudden they along with relations happened to reach the Medical College in the morning.

We should point out that if she was being assaulted by the accused-respondents in the night, they would not have allowed her to make any telephone call to her mother.

All these factors taken together strongly indicate that actually the incident took place in wee hours of 26.6.1998 and the information of the incident was given from the side of accused-respondents to the family of the Chandrawati Gaur PW 1 in consequence whereof she with others happened to reach the Medical College. It was the husband of the deceased who had admitted her in Medical College. Treatment was being given to her. True, aluminium phosphide was found in the viscera report. But, a look at her post mortem report would show that only following ante mortem injuries were found on her person: (1) abrasion on right side of face 2 cm x 5 cm, (2) abrasion on right big and second toe and (3) abrasion 3 cm x 2 cm on post aspect of right leg. Had she been subjected to any assault or beating by the accused-respondents, the injuries would have been much more than these abrasions. It has come in the testimony of Chandan Bharti PW 2 in para 10 that Kundan alias Utkarsh accused had purchased a motorcycle after his engagement, but before marriage. It was in an emergency that she had been taken to the Medical College by her husband (nearest to the house of the accused-respondents where best treatment could be possible). While carrying his wife to medical college in an emergency abrasions might have been sustained by her. So far as the abrasion on right side of face 2 cm x 5 cm is concerned, the same could be caused during the course of gastric lavage. It is a process of treatment in which the locked jaw is opened forcibly for washing the stomach through tube as stated by Dr. Surendra Deo also in para no.7.

On thoughtful consideration, reliance could not be placed on the crude story of the prosecution that demand was made by the accused respondents subsequent to the performance of the marriage regarding maruti car either through the deceased or directly to the mother/brothers of the deceased and that any Panchayat was held on this issue at the house of the accused-respondents in the evening of 15.6.1998 as developed at evidence stage.

On bestowing our thoughtful consideration to the evidence on record and concommittant circumstances, greater possibility was that the deceased and her husband quarrelled over some real or fancied issue and driven by anger, she consumed poison in a fit of sudden impulse. It seems to have so happened, the alleged premarital love affair of the deceased with Bablu alais Dharmendra being left aside. Her husband immediately knowing about it carried her to the Medical College for treatment and did his best to save her life, but God willed otherwise and he lost his wife who was carrying a five months' foetus too. What happened was not the result of any criminal act on the part of her husband or any other member of his family.

Our view tuned by the evidence and voice of the attending circumstances is that the view taken by the trial judge is a reasonable view which does not call for any interference by this Court of appeal. What happened is unfortunate, indeed. But no culpability can be fastened on the heads. The acquittal of the accused-respondents is perfectly justified.

We see no merit in the Criminal Appeal No.2713 of 2000 and Criminal Revision No.1933 of 2000. The Government appeal and criminal revision both are dismissed.

Certify the judgement to the lower court immediately.

Dt. December 14, 2005
MN/-

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Reserved

Government Appeal No. 1795 of 2001

State of U P.....Appellant

Versus

1.Anil Kumar
2.Satish alias Titu
3.Mahkar Singh
4.Smt Rameshwari alias Rameshi.....Accused
Respondents

Hon'ble M.C.Jain,J.
Hon'ble M Chaudhary,J.

( Delivered by Hon'ble M. Chaudhary, J.)

This is a government appeal filed on behalf of the State from judgment and order dated 15th of February 2001 passed by Sessions Judge Ghaziabad in sessions trial no. 1082 of 1998 State versus Anil Kumar & others acquitting the accused of the charge levelled against them under sections 498-A and 304- B read with section 34 IPC and section ¾ Dowry Prohibition Act.

Brief facts giving rise to this appeal are that one Paley Ram and his wife Smt Bharto married their daughter Mithlesh with Anil Kumar son of Mahkar Singh resident of village Tateena, Police station Mawana, District Meerut in the year 1994. After some time of her marriage she was subjected to cruelty by her husband and in-laws for want of dowry and they used to beat her now and then. Subsequently Anil Kumar alongwith his wife Mithlesh started living at village Sadarpur situate in Noida and her ''Devar' Satish alias Titu also resided with them. For sometime they lived happily but again Mithlesh was used to be beaten and ill-treated by her husband and ''Devar' for want of dowry. Anil Kumar also sent a list of articles to be supplied by his father-in-law in dowry through his brother Satish and the demand of those articles could not be fulfilled by them as her parents were not in a financial position to satisfy the same. On 12th of May 1997 they learnt that their daughter Mithlesh died due to burn injuries and then they went to village Sadarpur and learnt that Mithlesh had succumbed to burn injuries. At 2:55 p.m. on 13th of May 97 Smt Bharto Devi lodged an FIR of the said incident at police station Noida situate at a distance of 3 kms from village Sadarpur mentioning therein that she suspected that her daughter Mithlesh was burnt to death by her husband and in-laws for want of dowry. The police registered a crime against Anil Kumar and his parents and brother Satish alias Titu under sections 498-A and 304-B IPC accordingly and made entry regarding registration of the crime in the GD.

Smt Mithlesh wife of Anil Kumar was admitted in Maulana Azad Medical College New Delhi on 11th of May 97 at 11:30 p.m. where she succumbed to the burn injuries at 1:10 a.m. the same night.

It appears that police of police station I P Estate New Delhi was informed on 11th of May 97 that Smt Mithlesh received burn injuries at about 6:00 p.m. that very evening while cooking on kerosene stove. After the death of Mithlesh in the Hospital inquest proceedings on the dead body of Smt Mithlesh were drawn by the police on 13.5.97.

Autopsy on the dead body of Smt Mithlesh was conducted on 14th of May 1997 at 1:00 p.m.by Dr Vinod Chauhan Medical Officer Maulana Azad Medical College New Delhi which revealed dermoepidermal burn injuries all over the body. Scalp hair got burnt to roots at places and singed. All body hair burnt and singed. White ointment was seen all over burnt area. Burnt area showed peeling of skin at places exposing reddish white base. Blackening of unpeeled skin seen at places due to position of unburnt soot particles in skin. The injured sustained almost 100% burns. The doctor opined that the death was caused due to shock as a result of 100% dermoepidermal burn injuries caused by flame due to fire.

The case was investigated by Dy S.P. Dayanand Mishra. He recorded statements of the witnesses, inspected the site and prepared its site plan map (Ext Ka 2). After completing the investigation charge sheets were submitted against the accused under sections 498-A and 304-B IPC and section ¾ of Dowry Prohibition Act.

After framing of the charge against the accused the prosecution examined Smt Bharto (PW 1), Paley Ram (PW 2) and Ramesh Kumar (PW 3) in its support. PW 4 Dayanand Mishra Dy S.P. who investigated the crime and submitted charge sheet against the accused has proved the police papers. PW 5 Dhara Singh, Record Keeper, Maulana Azad Medical College New Delhi filed true copy of the post mortem report proving the same from post mortem register stating that Dr Vinod Chauhan had left the job (Ext Ka 5).

The accused denied the alleged occurrence altogether stating that Mahkar Singh and his wife Smt Rameshwari used to reside at village Tateena and look after their cultivation. Accused Satish also stated that he used to reside separately from his brother Anil Kumar. Accused Anil Kumar stated that his wife Mithlesh got burnt while cooking food on stove in his house at village Sadarpur situate in Noida.

The accused examined DW 1 Om Prakash and DW 2 Narendra Kumar in their defence. DW 1 Om Prakash deposed that Mahkar Singh alongwith his wife used to reside at village Tateena. DW 2 Narendra Kumar deposed that he is maternal uncle of Satish and Anil Kumar and Satish alias Titu used to reside with him since the year 1990 and accused Anil Kumar alongwith his wife used to reside separately.

On an appraisal of the parties' evidence and other material on the record the trial judge disbelieved the prosecution case and evidence finding that the prosecution failed to establish that the victim was subjected to cruelty or ill-treatment by her husband and his relatives in connection with demand of dowry or that she was set ablaze on fire by any of them. The learned trial judge therefore held the accused not guilty of the charge levelled against them resulting in their acquittal. Feeling dissatisfied with the impugned judgment and order the State preferred this appeal assailing acquittal of the accused respondents.

We have heard Sri K.P. Shukla, learned AGA for the State and Sri K.S. Yadav, learned counsel for the accused respondents and gone through the record.

After going though the testimony of PW1 Bharto, mother of the deceased, PW2 Paley Singh, father of the deceased and PW3 Ramesh Kumar, brother of the deceased we are of the view that their interested testimony does not appear to be worthy of credence and the learned trial judge rightly disbelieved their testimony. Neither of the three witnesses specifically told any occasion on which Smt. Mithlesh, wife of Anil Kumar was ill-treated, beaten or harassed by her husband and in-laws as demand of scooter and golden chain made by them could not be satisfied by her parents. There is nothing on the record to show that during the period of three years before the said incident any report was lodged by the victim or by her parents or brother at the police station regarding the alleged ill-treatment afflicted upon her by any of them. It has come in evidence that the fateful evening Mithlesh was cooking food on kerosene stove and she got burn injuries due to bursting of stove. It stands supported by medical evidence. After receiving burn injuries Mithlesh was admitted in JPN Hospital by her husband. A perusal of the record goes to show that statements of Paley Singh, father of the deceased and Ramesh Kumar, her brother were recorded by SDM, Dariyaganj in Tees Hazari Courts on 12th of May, 1997. Both these witnesses admitted in their cross-examination that they stated before the Magistrate that Mithlesh used to reside with her husband separately; that there was no demand of dowry and she was never harassed for anything; that she used to visit her parental home but she never complained of any sort regarding any ill-treatment by her husband and in-laws; that she had infant child in her lap aged about 7-8 months and that the alleged fateful night they were informed at their house that due to bursting of stove Mithlesh received burn injuries and she was admitted in JPN Hospital and that thereafter they learnt that she had succumbed to burn injuries sustained by her and then they inquired into the matter and they had no doubts about her death though with the qualification that they had given the said statements under duress as husband and in-laws of Smt Mithlesh had threatened them to give statement in their favour only then her dead body shall be handed over to them. It is unintelligible and unfathomable that when Smt Mithlesh had succumbed to the burn injuries in the Hospital and her dead body was kept in the custody of the Hospital Authorities in the mortuary and the dead body was not in their possession what pressure could be exercised upon them by husband of the victim and his relatives. Further both these witnesses admitted that when the Magistrate recorded their said statement none of the accused or any other person was present there in that room. In view of these facts it is unpalatable that they gave the said statement to the Magistrate under any pressure.

FIR of the case is also delayed as it was lodged by Smt. Bharto, mother of the deceased at police station NOIDA on 13th of May, 997 at 2:55 p.m. There is no explanation as to why the FIR of the alleged incident was not lodged at the police station soon after reaching at the Hospital if parents of the deceased knew since before that their daughter was used to be subjected to cruelty and ill-treatment by her husband and in-laws as demand of scooter and golden chain made by them in dowry could not be satisfied by them and hence they suspected that she might be burnt to death by them.

Unexplained inordinate delay of more than one day in lodging FIR of the occurrence is fatal to the prosecution case. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of actual culprits and the part played by them and names of eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of afterthought. On account of unexplained delay the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of coloured version of the occurrence. Since in the instant case delay of more than one day in lodging the FIR has not been explained satisfactorily the FIR loses all its corroborative value and authenticity.

Further, it has come in evidence that daughter of Paley Singh's real sister was married to Tilak Ram at village Sadarpur. Then that girl must be on visiting terms with her cousin Mithlesh and she would have been the best witness of the alleged ill-treatment and cruelty heaped upon Mithlesh by her husband and in-laws and the said incident might be within her knowledge but she was not examined by the prosecution in their support for the reasons best known to them.

It has been contended on behalf of the appellant that Anil Kumar, son-in-law of Paley Singh had written a letter to him demanding certain articles in dowry; but no such letter has been brought on the record. What is brought on the record alleging that that was the letter written by Anil Kumar is a list of five articles serially. It is neither addressed to anyone nor mentions the name of its writer nor signed by anyone. No date is mentioned on the list nor there is anything in this list to suggest that it was sent by Anil Kumar to Paley Singh making demand of those things from his father-in-law in dowry.

In view of the foregoing discussion, we are of the view that the learned trial judge has given cogent and convincing reasons for holding the accused not guilty of the charge levelled against them and we have no good reason to differ with the findings given by him. Since the impugned judgment does not suffer from any illegality or perversity so as to call for an interference of this court we find that the appeal has got no life and is liable to be dismissed.

The appeal is dismissed. All the accused respondents are on bail. Their bail bonds are hereby discharged.

Judgment be certified to the Court below.

Dt. 16th of August, 2005

GA-1795 of 2001/P.P.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

Criminal Appeal No. 493 of 1984
Virendra Kumar and another.....Appellants
Versus
State of U.P. .....Respondent
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Hon'ble Imtiyaz Murtaza, J,
Hon'ble Amar Saran, J.

(Delivered by Hon'ble Amar Saran, J)

This criminal appeal arose from the judgement and order dated 10.2.1984 passed by II Additional District and Sessions Judge, Kanpur in S.T. No. 149 of 1983 convicting the appellants Virendra Kumar and Jai Narain to undergo imprisonment for life under Section 302 IPC.

As the appellant Jai Narain died on 19.11.1989 and a report dated 13.1.05 to that effect was received from the Chief Judicial Magistrate, Kanpur Dehat, hence the appeal against the appellant Jai Narain abates and only the appeal of Virendra Kumar survives.

We have heard Shri G.S. Chaturvedi, learned Senior Counsel for the appellant, Shri L.P. Mishra, learned counsel for the complainant and learned Additional Government Advocate.

Briefly, the prosecution case was that the informant Sheo Karan's niece Smt. Pushpa was married to the appellant Virendra Kumar, son of Jai Narain in village Chirli, police station Ghatampur. Immediately after the marriage Virendra Kumar, his brother Suresh Kumar used to humiliate Smt. Pushpa and her other family members for bringing inadequate dowry and being of a dark complexion. They even publicly abused the informant in village Chirli and threatened to end their relations with Smt. Pushpa. This public humiliation was witnessed by Sahdev Singh and Prahlad Singh, residents of Rajepur and Suresh, Bhanu Pratap Dixit and many others of village Chirli. About one and a half month prior to the fateful event Anil Kumar brought Smt. Pushpa in her Sasural in village Chirli. On 7.10.1982 at about 7 A.M. on information sent by Bhanu Pratap Dixit, the informant Sheo Karan reached village Chirli where he found the dead body of Smt. Pushpa. Four fingers of her right hand were burnt and on her hands and legs there were some marks of injuries. There was also a deep mark of hanging on the neck which showed that Smt. Pushpa had been beaten and thereafter done to death. Although the appellant Virendra Kumar was present in the village, however, from the morning of the fateful day (7.10.1982) he was absent, hence it was inferred by the informant that appellant in conspiracy with his elder brother Suresh had murdered Smt. Pushpa after taking help of some accomplice. The report to this effect was lodged by Sheo Karan Shukla on 7.10.1982 at police out post Sarh, police station Ghatampur, district Kanpur (Ext. Ka 1).

However, prior to this report, on 7.10.1982 at about 10 A.M, the co-appellant Jai Narain gave an information (Ext. Ka 4) at the police Chauki Sarh of police station Ghatampur that in the night intervening 6/7/10.1982, the deceased Smt. Pushpa placed her Dhoti in an iron ring on the roof and thereafter she tied her own neck with the same and committed suicide and her body was still hanging from the ring on that roof with the Sari. On this information, the first investigating officer SI Ajab Singh, P.W. 8 reached the house of the co-appellant Jai Narain. He found the dead body hanging from a ring in the "Dhanni" in the western Verandah by means of a Dhoti, which was tied on the neck. The body was taken down and inquest was performed on it by SI Ajab Singh. The inquest, Challan Lash, photo nash and letter for post mortem were prepared, which are Ext. Ka 5 to Ka 8. The opinions of the inquest witnesses were taken and also the body was sealed, which was sent along with the concerned papers for post mortem through Constables Kailash Chandra and Radhey Shyam. The injuries on the dead body were indicated in the inquest. The place where the body was found hanging was inspected by SI Ajab Singh, P.W. 8, who also prepared site plan Ext. Ka 9 in his writing. He recorded the statement of Jai Singh and his wife. As it had become late, the investigating officer returned to the police station. Thereafter the investigation was conducted by SSI Jogendra Singh, P.W. 9. As Smt. Pushpa had tied the knot with the Dhoti that she was wearing, hence it was not taken into possession, but it was sent along with the body of the deceased for post mortem.

P.W. 6, Dr. A.K. Gupta, Medical Officer, ESI Dispensary Kanpur conducted post mortem on the body of Smt. Pushpa on 8.10.82 at 12.45 pm at the E.S.I. Dispensary in Kanpur

SI Jogendra Singh P.W. 9 was handed over the investigation of this case by order of the Superintendent of Police, Kanpur Dehat dated 11.10.1982 on an application by Sheo Karan of the same date, and he commenced the investigation on 15.10.1982. After that the accused were searched, but they could not be arrested. Also as the witnesses were absent on that date, their statements could not be recorded and the police of Chauki Sarh was directed to produce the witnesses at the police station on their arrival. On 3.11.1982 SI Jogendra Singh recorded the statements of Sheo Karan, Sahdeo, Deshraj Singh and Bhagwan Deen at the police station under Section 161 Cr.P.C. On 24.11.1982 he recorded the statement of Prahlad and others. As he could not find the accused in spite of search, hence he obtained order under Sections 82/82 for attachment of their property on 27.11.1982. On 17.12.1982 appellant Virendra Kumar surrendered in Court. After completion of investigation, S.I. Jogendra Singh submitted the charge sheet Ext. Ka. 16 in his hand writing.

The charge was framed on 19.6.1983 against the appellant Virendra Kumar and deceased appellant Jai Narain under Section 302 IPC for committing the murder of Smt. Pushpa in the intervening night of 6/7.10.1982 in their house in village Chirli. The charge under Section 201 IPC was also framed against deceased Jai Narain for giving false information vide GD No. 7 to the effect that Smt. Pushpa had committed suicide in order to screen himself from legal punishment. The appellant pleaded not guilty to the charge and claimed to be tried.

This is a case of circumstantial evidence. Nine witnesses have been examined by the prosecution. P.W. 1 Bhagwan Deen, P.W. 2 informant Sheo Karan Shukla, P.W. 3 Sahdev Singh, P.W. 4 Bhanu Pratap are the witnesses of fact, with regard to the incident. P.W. 5, Prahlad Singh was the Pradhan of the village Rajepur before whom an extra judicial confession is said to have been made by the deceased appellant Jai Narain. P.W. 6, Dr. A.K. Gupta, who conducted the post mortem examination as detailed hereinabove. P.W. 7 Head Constable Indra Pal Singh was examined to prove the report lodged by co-appellant Jai Narain at 10 A.M. on 7.10.1982 vide GD No. 7, which is Ext. Ka 4. P.W. 8, SI Ajab Singh, who was the first investigating officer, who initially investigated the case as described above before it was handed over to the second investigating officer P.W. 9 SI Jogendra Singh, who submitted charge sheet.The steps taken for investigation by these two witnesses have been described above.

P.W. 1 Bhagwan Deen deposed that his house is near the house of Jai Narain Tewari and that Virendra alias Santosh and his wife used to reside with Jai Narain. Virendra Kumar used to beat his wife. At about 12 midnight he was on his roof when he heard the cries of Smt. Pushpa being beaten. Thereupon he went to their house and Virendra alias Santosh is said to have told him that this was their internal matter and that he should do his own work. At that time Jai Narain, and his wife and daughter-in-law were present. The next morning Jai Narain came and told him that his daughter-in-law had died. He should take care and that he should forgive his son for the remarks that he had made.

P.W. 2 Sheo Karan Shukla is the informant of this case. He stated that Smt. Pushpa was his niece (Bhatiji). She was married to Virendra Kumar. Jai Narain was the father of Virendra Kumar. After the marriage there was some dispute over inadequate dowry and that the girl was not fair. After her marriage Smt. Pushpa had gone to her maternal home on 2 or 3 occasions. She told him that she had been humiliated and harassed by her mother-in-law, father-in-law, husband and 'Jeth' Suresh kumar. Thereafter informant (Sheo Karan Shukla) and other family members went to the house of the accused, whereupon they behaved in an objectionable and humiliating manner with him and other family members. The marriage was performed in February, 1981. On the date of incident, 11 months prior to his deposition in court, he learnt at 7 A.M from Bhanu Pratap that his niece had been murdered. On this information, informant and others reached the house of the accused. They reached there at about 12 noon. They found the police present there and the body of the deceased was lying outside the house. The police personnel was looking at the dead body. Sheo Karan Shukla (informant) also saw the dead body. He noticed injuries on the legs, neck and chin of the dead body. There he learnt that Virendra Kumar, his father and mother had committed the murder of his niece. He prepared and scribed an application for the Daroga at the spot and he even handed over a letter written by Suresh giving threats for receiving less dowry, which was marked as Ex. Ka 2. As the police took no action against the accused on his report because Virendra Kumar and his brother Suresh were police constables, hence he gave an application to the SSP on 11.10.1982, which was signed by him.

P.W. 3, Sahdeo Singh deposed that his house was 100 yards away from the house of Jai Narain. On the fateful day at about 7 A.M. there was some talk that Jai Narain's daughter-in-law had died. He went to his house where he found Jai Narain and Virendra Kumar alias Santosh present. On enquiry Jai Narain told him that his daughter-in-law had eaten something, then both of them went inside. Thereupon, he also entered the house. Other ladies of Jai Narain's house were present. The body was lying on the floor. Later he learnt that the body was shown hanging to the police, hence he suspected that Smt. Pushpa had been murdered. He narrated this fact to Sheo Karan Shukla, the informant and the same information was conveyed to Daroga Ji of police station Ghatampur.

P.W. 4, Bhanu Pratap stated that about 11 months before his deposition in court, he heard the sound of crying and beating

from Virendra Kumar and Jai Narain's house. Thereupon he went to their house where he learnt that Virendra Kumar's wife was crying and it seemed that she had been beaten. He told Virendra Kumar and his father that it is not proper to beat Virendra Kumar's wife so late in the night. The mother of the accused was also present. At this, Virendra Kumar replied that this was a matter concerning his wife and he should go home. Right from the time of their marriage the relations of Smt. Pushpa and Virendra Kumar were strained. He did not know what was the conduct of Virendra Kumar and his other family members with Smt. Pushpa. In the house of accused there was often a quarrel between the women. On the next morning he learnt that Smt. Pushpa had died. He was sure that she had died as a result of beating, hence he sent information to her maternal home through Santosh.

P.W. 5, Prahlad Singh deposed that he was Pradhan of village Rajepur. Village Chirli was one mile from village Rajepur. He knew Jai Narain, who came to him about ten and a half or eleven months prior to his deposition in court. Jai Narain had stated that he, his wife and his son Virendra Kumar had murdered Smt. Pushpa and the relations of Smt. Pushpa had got the case transferred from out post Sarh to police station Ghatampur where he had no influence on the police. If Prahlad Singh would represent to the police of police station Ghatampur on his behalf, then they would be saved. Smt. Pushpa was the wife of Virendra Kumar and that she was not beautiful and she did not bring dowry according to their desires, hence Virendra Kumar had quarreled with Pushpa. On the date of incident Virendra Kumar had beaten Pushpa and when her condition deteriorated, all the accused persons had hanged the deceased.

The appellant Virendra Kumar alias Santosh admitted in his statement under Section 313 Cr.P.C. that Smt. Pushpa was his wife and that she (Smt. Pushpa), Jai Narain and Virendra lived in the same house. He, however, denied that he used to beat her and also denied that the witnesses Bhagwan Deen arrived at his house at 12 O' clock on the fateful night when he was giving a beating to Smt. Pushpa and that Bhagwan Deen had implicated the appellant on account of previous enmity. He denied the extra judicial confession of Jai Narain before Bhagwan Deen. He also denied that he had raised an issue about inadequate dowry having been brought by Smt. Pushpa or that she was not of fair complexion. He had married Pushpa after seeing her. He denied having humiliated the maternal relations of Pushpa or Pushpa herself. He claimed that on the information sent by the accused, Sheo Karan Shukla arrived at the house. He stated that the letter Ext. Ka 2, which was written by Suresh Kumar was in connection with the return of 'Bali' (ear rings) and it was not concerned with any dowry demand. He admitted that he and Suresh were constables in the police department. He claimed that a false case has been lodged on the application in collusion with the doctor. He denied that Sahdeo had come to his door when he had given a false information that Pushpa had eaten something. He denied that Bhanu Pratap arrived at his house when beating was being given to Pushpa and that Bhanu Pratap told them not to beat her and that he had said that it was his personal matter and that Bhanu Pratap should go home. The appellant Virendra Kumar stated that he had been falsely implicated because of cases with Bhanu Pratap. He denied that his relations with Smt. Pushpa were strained. He also denied that information was sent by Bhanu Pratap through Santosh to Smt. Pushpa's maternal relations, but he claimed to have sent information through Mahesh. He denied the extra judicial confession of Jai Narain before Prahlad Singh. He admitted that a report was given by Jai Narain at Chauki Sarh on 7.10.1982. He admitted that the investigating officer had found the dead body of Pushpa hanging from her Dhoti in the western Verandah on an iron ring from the "Dhanni", which Dhoti was worn by Smt Pushpa. He further stated that Dhoti was of Nylon. He stated that he was not absconding when 82/83 Cr.P.C. proceedings were initiated, but he was in service and his father was at home. He denied having beaten Smt. Pushpa in the night of 7.10.1982 or of hanging her from the roof with a Dhoti. He claims to have been falsely implicated because of enmity. He stated that Sahdeo had beaten his (Virendra Kumar's) brother for which a case under Section 323/324 IPC was lodged against him. Also a case under Section 107/117 IPC was going on between Sahdeo and his cousin brother Nand Kishore. Sheo Karan and Sahdeo filed a case under Section 506 IPC and both of them used to go for selling milk together. Prahlad Singh filed a case under Section 302 IPC against his (Virendra Kumar's) brother, which ended in a final report. After that a case under Section 302 IPC was filed against Prahlad's brother Karan Singh. A case of dacoity was also going on against Prahlad at police station Gajner. Bhagwan Deen was also involved in a case under Section 323/324 IPC.

Two witnesses D.W. 1 Mahesh and D.W. 2 Ram Prasad Mishra have been produced by the defence.

D.W. 1 Mahesh deposed that he had carried the information about the death of Virendra Kumar's wife to Sheo Karan's house in Misri Kheda at the instance of Jai Narain. Jai Narain told him to tell Sheo Karan that his daughter had committed suicide. He, however, admitted that he never told the police that he had gone to Misri Kheda to convey the information about the death of Smt. Pushpa to her relations and that he was making such a statement for the first time in court.

D.W 2, Ram Prasad Mishra, is a teacher in Bhasker Nand Inter College. He proved the scholar's register of 1959-60 showing that Prahlad and Sheo Karan were studying in that school at that time.

It has been contended by Shri G.S. Chaturvedi, learned Senior Advocate, representing the appellant that the witnesses produced by the prosecution could not be relied upon. P.W. 1 Bhagwan Deen was not an immediate neighbour of Virendra

Kumar and Jai Narain and that he was unlikely to have reached the house at the time of incident. There was enmity with this witness as he had admitted that a case under Sections 323/325 IPC had been filed by Ram Lakhan, but he did not know whether Ram Lakhan was an uncle of Virendra Kumar. Some evidence of enmity between the parties does appear to have been elicited from this witness, but he denied that Sahdeo, Deshraj and Bhanu Pratap belonged to one party. He admits that there were two houses between his house and the house of Jai Narain. Some contradictions in his statement under Section 161 Cr.P.C. have also been elicited from this witness that he had not told the investigating officer that he was sleeping on his roof when he heard the cries from the house of the appellant and he could not explain why this fact was not mentioned in his 161 Cr.P.C. statement. He also admits that there was delay in his 161 Cr.P.C. statement to the investigating officer. From this it was sought to be contended by the learned counsel for the appellant that no reliance could be placed on the testimony of this witness.

We are not inclined to accept the submission of Shri Chaturvedi, because even if relations between the parties are a little strained, when cries are heard in the night, it is not improbable that the witness would reach the house where the cries were raised, and in such circumstances it is not unbelievable that the appellant could have told the witness to mind his own business as the quarrel was their personal matter. Moreover, it is seen that there were 14 contusions on the body of Smt. Pushpa apart from a ligature mark on her neck, hence the theory of beating by the appellant cannot be discarded out right.

Likewise, the testimony of P.W. 4 Bhanu Pratap has also been assailed by the learned counsel for the appellant on the ground that some enmity with this witness has been alleged. This witness had also admitted that his house was at least 25 paces from the house of appellant. He also admitted that his 161 Cr.P.C. statement was recorded after 2-3 months. It was further contended that the immediate neighbours of Virendra Kumar and Jai Narain had not come forward to depose against them and that like witness Bhagwan Deen there was hardly any chance of this witness Bhanu Pratap also hearing the cries of the deceased in the night when the incident took place. He is related to Bhagwan Deen and is also involved in the business of selling milk.

However, for the same reason as Bhagwan Deen the basic guarantee of the truth of the testimony of Bhanu Pratap that on hearing the sound of crying and beating from the house of Virendra Kumar, he visited the house where he found that Pushpa had been beaten and he told Virendra Kumar and his father not to beat Pushpa in the night, are the presence of 15 injuries on the body of Smt. Pushpa.

However, so far as the conclusion of this witness that Pushpa had died as a result of beating administered to her by the appellant, that is the matter which calls for deeper probe.

In this connection, it has been argued by the learned counsel for the appellant that even if it is conceded that Smt. Pushpa was beaten by the appellant in the night on 6/7.10.1982, but from this fact alone an inference cannot automatically be drawn that Smt. Pushpa was murdered by Virendra Kumar and his father Jai Narain and that as a matter of fact she had not committed suicide by hanging herself.

To answer this question, we think that a more in-depth analysis of the medical and other evidence on record is needed because in our opinion the evidence of Dr. A.K. Gupta, P.W. 6 about the opinion that Smt. Pushpa had been strangulated to death is highly ambiguous.

I think it would be useful to reproduce the full statement of Dr. A.K. Gupta P.W. 6 as translated into English hereinbelow:

" I was posted in E.S.I dispensary Ram Barak, Kanpur on 8.10.82. On that date I performed post mortem on the dead body of Smt. Pushpa at 12.45 p.m. The sealed body had been brought by Constables Radhey Shyam and Kailash Chand. The deceased appeared to be about 20 years in age. She had died about 1-1/2 days earlier. Post-mortem staining was present on the buttock, abdomen, thigh and face. Eyes were closed. Tongue was protruded. There was bleeding from the nose and blisters were present on the thigh and buttock. The following ante mortem injuries were present:

1. Contusion 9cm x 2 cm on left shoulder.
2. Contusion 5 cm x 2 cm on left upper arm.
3. Contusion 10 cm x 4 cm on left thumb up to base of palm.
4. Contusion 11 cm x 7 cm on left palm and all four fingers.
5. Contusion 11 cm x 7 cm on left palm and all fingers.
6. Contusion 11 cm x 5 cm on right thumb up to base of right palm.
7. Contusion 4 cm x 4 cm on right wrist.
8. Contusion 3 cm x 2.5 cm on right knee joint.
9. Contusion 7 cm x 3 cm on inner side of left thigh.
10. Contusion 4 cm x 3 cm on outer side of lower thigh.
11. Contusion 7 cm x 2 cm front of upper thigh.
12. Contusion 4 cm x 2 cm on 11 cm below the right knee.

13. Contusion 21 cm x 10 cm on lateral aspect of right buttock.
14. Contusion 8 cm x 3 cm on the chin.
15. Ligature mark around the neck on upper part of neck extending from right ear to left ear, and whose breadth was 2 cm.
On internal examination the following were found. The Larynx, trachea and bronchi were deeply contested. The left lung was congested and the right lung was also congested. Both chambers of the heart were empty. There was one oz. of a watery fluid in the stomach. The liver and spleen were also congested.
In my opinion the cause of death was asphyxia. The original post mortem report is before me. It is written by me in my hand writing. It is marked Ext. Ka 3.
The deceased could have died at 12 in the night or near about that time. Asphyxia could be caused by injury No. 15 and this injury was ordinarily sufficient for causing death. The other injuries could be caused by a blunt weapon such as a lathi, danda or stick. The bleeding from the nose could be due to an external injury, strangulation or due to asphyxia. The blisters could also be caused due to burns. I cannot say whether due to the injuries on the hands and fingers the hands could or could not be used with full force. The injury No. 15 could also be caused by strangulation. I cannot say with what substance the ligature mark was caused."
Cross-examination on behalf of the accused
"The time of injury is based on its colour. I did not note the colours of the contusions. If I had found any colour on the contusions, then I would have noted it. I cannot tell the period of the contusions. Under a contusion a swelling is found. It is not necessary that the swelling should be present all over. It can be diffused. Sometimes there is a swelling on all sides. I have not mentioned any swelling on the contusions. By causing injuries with a blunt object there would not be any swelling on the palm and fingers. I cannot say whether there would be a swelling on the fingers.
I did not find any blisters on the palm or the 4 fingers of the right hand. The injury No. 3 was longitudinal. The injuries on the fingers were inwards. On the right wrist apart from the contusion no other injury or blood was found. Injuries no. 10, 11 and 12 could also have been caused from a mud brick or by banging against the wall. The ante-mortem contusions which had been shown could not have been caused by the body hanging for a long time and they do not look like post-mortem staining marks. The symptoms of asphyxia due to hanging and strangulation are different. In strangulation the neck and face would be swollen. In strangulation abrasions could be found, which would be dependent on resistance. In strangulation discoloration could be found and the tissues are damaged under the ligature mark. Hyoid may be fractured or may not be fractured. In this case symptoms of hanging are absent, hence it was wrong to say that asphyxia was a result of hanging. In hanging tongue and eye balls protrude outside. Because the eyes were closed, hence this was not a case of hanging. In strangulation also the eye balls could protrude out. After death if the eyes are pressed, the eye lids could be closed. No bruises was detected under the ligature mark, but congestion was found. More congestion is seen both in hanging and strangulation. In hanging also blood could come out from the nose.
I do not know Raj Kumar Shukla Advocate from before. I am a resident of Jahanabad. I do not know how far Dori is from Dogri Jahanabad, but he has heard the name of that village. I do not know that Ram Bilas Pradhan was the father of the deceased. It is wrong to say that I have exaggerated the injuries under his influence."
Significantly, in the post mortem report, and initially in the examination-in-chief of this accused it was only mentioned by P.W. 6 Dr. A.K. Gupta that the deceased had died due to asphyxia, although later the doctor has tried to say that the cause of death was strangulation.
In view of the ambiguity of the statement of Dr. A.K. Gupta, P.W. 6, who conducted the post mortem examination, we summoned the medico legal expert by our order dated 4.5.2005 to throw light on the medical evidence and the post mortem examination report and for ascertaining whether the deceased died as a result of strangulation or whether she died as a result of hanging and in case the latter was the case, whether hanging was suicidal or homicidal. In pursuance of our order, Dr. N.N. Srivastava, Additional State Medico Legal Expert, U.P. appeared in Court and was examined as C.W. 1. He also furnished his opinion in writing which has been exhibited as paper No. C.W. 1.
His opinion was that as the ligature mark was all around the neck, hence the death was as a result of asphyxia due to strangulation and the deceased had been hanged thereafter. He perused the post mortem report given by Dr. A.K. Gupta, P.W. 6 in evidence, copy of the report lodged by Sheo Karan Shukla, the informant (Ext. Ka 1), copy of the report lodged by Jai Narain Tewari, co-accused (Ext. Ka-4) and the copy of the inquest report (Ext. Ka-5) and initially his opinion was that the ligature mark did not indicate a case of suicide.
To the query by the learned counsel for the appellant that in injury No. 15, it was not written that there was an injury on the back of the neck, but it was simply written that the injury goes from the right ear to left ear, Doctor N.N. Srivastava replied that as the injury had been described as around the neck, meaning thereby that it was all around the neck. The reference of the ears are indicated to mark the level of ligature mark. He admitted that there was no fracture of hyoid bone and thyroid bone was intact and nothing was mentioned about hyoid bone. To a question by the learned counsel that if slip knot was

tied in a Sari, then in suicidal hanging, ligature mark would be around the neck, the expert replied that in the circumstances there would be some gapping. He admits to a question whether in injury No. 15 ligature mark from right ear to left ear would be on the top most part of the neck, he replied that in this injury ligature mark had been described from right ear to left ear and in the absence of any bony land mark, the length of the mark could not be determined. He admitted that in the injury report ligature mark has been shown on the upper part of the neck. He stated that thyroid was a protruding part in the neck, but he denied that if there was a ligature mark on the thyroid bone, then there would definitely have been injury on the bone. To a question that in the absence of any injury on the thyroid, it indicates that ligature mark was above the thyroid, he, however, denied this suggestion. He admitted that in the Challan Nash, there was no ligature mark on the back of the neck.

To the Court's query that whether as per the photo Nash, ligature mark was around the neck, his answer was in the negative. To a Court question that if on a reading of injury No. 15 and photo Nash, it appeared that the injury was not around the neck, to which he admitted that the injury could be suicidal. His reply was that if the ligature mark was not all around the neck, then the length of the ligature mark becomes material and if the length of ligature mark is less than half of the circumference, then it can be a case of strangulation.

To another pointed query by the Court that if the ligature mark was considered around right ear to left ear, would this be a case that the ligature mark was less than half of the neck, he stated that he was unable to give any answer to this question. To another query by the Court that when the ligature mark was less than half of the neck, then it should be a straight ligature mark and in such circumstances the ligature mark would not be from left ear to right ear. He was unable to give any answer to this query. To another question whether in the post mortem report, it was mentioned that the cause of death was due of asphyxia, whether an inference could be reached that the cause of death was suicidal or homicidal, his opinion was that by simply writing asphyxia, meaning thereby that the doctor was unable to decide whether it was a case of suicide or homicide. To another query by the Court that if the ligature mark was not all around the neck, but length of ligature mark was more than half of the neck, would that be a case of hanging. His replied that if ligature mark was more than half of the neck and not all around the neck, then it would be a case of hanging, but all the parameters would be taken into consideration. To another question whether hanging was usually due to suicide. He answered in the affirmative. To a further query whether his opinion in paper CW-I has been given on the footing that the ligature mark was all around the neck, his answer was in the affirmative. To another question as to whether after looking at the Naksha Nash, whether the ligature mark was all around the neck. He stated that after looking at the Naksha Nash, the ligature mark did not appear to be all around the neck. To a question whether the only basis for his opinion that the cause of death was strangulation, was on the basis of ligature mark as he has seen it, he admitted that he has given his opinion only on the basis of description of the ligature mark.

To a further question by the learned counsel for the appellant, he admitted that he considers Parekh's Medical Jurisprudence and Modi Medical Jurisprudence as an authority in the subject.

A close examination of the opinion of the Medico Legal Expert shows that the expert had initially come to the conclusion that cause of death was strangulation because he was of the opinion that the description of the ligature mark was all around the neck of the deceased. Significantly, injury No. 15 has been described as ligature mark around the neck and upper part of the neck extending from left ear to right ear, breath 2 cm.

In our opinion the Medico Legal Expert appears to have mis-read the description of the injury as significantly the injury was not described as all around the neck, but simply around the neck, which only goes to suggest that the injury was extending from left ear to right ear in the front part of the neck and there was no ligature mark on the back part of the neck. This opinion of ours is supported from a perusal of the photo Nash, which also shows that there was no ligature mark on the back of the neck. The Medico Legal Expert has stated that Dr. A.K. Gupta was probably unclear as to the cause of death whether it was homicidal or suicidal and that is why he had only mentioned in the post mortem report that the death was due to asphyxia and that if the injury was not all around the neck, but from ear to ear, then it could be a case of hanging and suicide. This fact was admitted by this witness when we closely cross examined him and showed him the copy of the photo Nash, which is on record. He also admitted that apart from the ligature mark, which he considered all around the neck, there was no other basis for his inference that it was a case of strangulation and not of hanging.

In this connection, we find that in the ligature mark on the upper portion of the neck there is no fracture and the hyoid and the thyroid base were found intact. All these symptom are more consistent with a case of hanging, which is usually suicidal in nature rather than a case of strangulation, which is invariable homicidal. It does appear to us, however, that Smt. Pushpa has been belaboured badly by her husband as has been indicated 14 other contusions, which we find on different part of the body and it is possible that after the cruel treatment that she has received, she committed suicide. From the presence of so many injuries on the body of the deceased Smt. Pushpa, both Dr. A.K. Gupta, P.W. 6 and Dr. N.N. Srivastava, Medico Legal Expert initially concluded that this was a case of strangulation and in our opinion they have been prejudicially

affected by the presence of so many injuries, on the deceased and hence they have tried to read the medical opinion in that manner. Taking an objective view however the Court feels that no doubt the presence of 15 injuries does prima facie support the case of a homicidal death by strangulation after beating, but on a closer analysis of the medical data about the deceased on record, that the ligature mark was high up on the neck from ear to ear and only on the front side, there was no fracture of hyoid or other features of strangulation. This fact was even admitted by the Medico-legal expert. Hence this Court is of the opinion that the cause of death was hanging, and it was a suicidal death.

The question which still remains for deliberation is as to whether this Court is debarred from convicting the appellant under Section 306 IPC in the event the prosecution fails to establish the charge under Section 302 IPC against the appellant by failing to prove that the cause of death was due to strangulation.

In view of the fact that there is clear evidence that the appellant has perpetrated great cruelty on the deceased for bringing inadequate dowry and being of a dark complexion, he had even publicly abused the informant in village Chilli and threatened to end relations with Smt. Pushpa about one and a half month before the fateful incident on 7.10.1982 and on the date of incident Smt. Pushpa had been badly belaboured and she has as many as 14 contusions on different parts of her body apart from the ligature mark (injury No. 14) , which was the result of hanging as we have observed above. In this backdrop it can certainly be inferred that as a result of cruelty practiced on the deceased Smt. Pushpa, she committed suicide by hanging herself.

Section 113 (A) of the Evidence Act provides that when the question arises whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that suicide has been committed within a period of seven years from the date of her marriage and her husband and other relatives had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case that such suicide had been abetted by her husband or by other relative.

In the explanation to this Section cruelty shall have the same meaning as in Section 498-A of the Indian Penal Code. Section 498-A of the Indian Penal Code explains cruelty to mean-:

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

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."

The incident in question took place one year and eight months after the marriage of the appellant with the deceased and, therefore, it was within seven years of the marriage so as to bring the case within the purview of Section 113 (A) of the Evidence Act. Also the cruelty practiced by the appellant and his other relatives was of such a grave nature and amounted to misconduct, which drove the deceased to commit suicide and in consequence of the said abetment, Smt. Pushpa committed suicide by hanging herself.

In this view of the matter, we think that the ingredients of Section 306 IPC are made out and the appellant had abetted commission of suicide by Smt. Pushpa.

However, it was argued by Shri Chaturvedi that as the appellant had only been charged under Section 302 IPC, he could not be convicted under Section 306 IPC as the offence under Section 302 IPC is homicidal while those of Section 306 are suicidal death and abetment thereof.

It may be noted, there was a conflict of opinion on this point and in a two Judge decision of the apex Court in Sangaraboina Sreenu Vs. State of A.P, (1997) 5 SCC 348, it had been held that although Section 222 Cr.P.C. permits the Court to convict a person of an offence which is minor in comparison to the one for which he is tried, but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC as the ingredients of two offence are distinct and whilst the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof.

A contrary view was taken in another two Judges decision of the apex Court in Lakhjit Singh Vs. State of Punjab, 1994 Supp (1) 173, in which it had been held that it was permissible to convict an accused under Section 306 IPC even if he was only put to notice to meet the charge under Section 302 IPC and the presumption in Section 113 (A) of the Evidence Act could be drawn when there was a demand of dowry and it could not be said that accused was prejudiced because the cross examination of the witnesses would show that the accused had sufficient notice of the allegation which attracted Section 306 IPC.

The conflict between these two decisions was resolved of a recent three Judges Bench decision of the Apex Court in Dalbir Singh Vs. State of U.P. (2004) 5 SCC 334. This case has preferred the view taken in Lakhjit Singh ( Supra) and over the view taken by the Apex Court in Sangaraboina Sreenu (Supra).

Placing reliance on Section 464 (1) of the Code of Criminal Procedure, the Court has held in Dalbir Singh (Supra) that as a result of an omission, no finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless in the opinion of the Court of appeal, confirmation or revision, failure of justice has in fact been occasioned thereby.

It would be useful here to quote the opinion of the Court, wherein Hon'ble G.P. Mathur, J speaking for the Bench, mentioned in paragraphs 14 and 17 of the aforesaid report:

" 14. Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C? Sub-section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C. is in the nature of a general provision which empowers the court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely, Chapter XXXV which deals with irregular proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Code deals with the effect of omission of frame, or absence of, or error in, charge. Sub-section (1) of this section provides that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation of revision, a failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent court unless the appellate or revisional court comes to the conclusion that a failure of justice has in fact been occasioned thereby. In Lakhjit Singh though Section 464 Cr.P.C has not been specifically referred to but the Court altered the conviction from Section 302 to Section 306 IPC having regard to the principles underlying in the said section. In Sangaraboina Sreenu the Court completely ignored to consider the provisions of Section 464 Cr.P.C and keeping in view Section 222 Cr.P.C alone, the conviction of the appellant therein under Section 306 IPC was set aside."

"17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgement by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C. it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangaraboina Sreenu was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC."

In this view of the matter, we think that no failure of justice has been occasioned by framing the charge against the appellant only under Section 302 IPC as there are specific allegations of repeated cruelty on the part of the appellant against his wife Smt. Pushpa in the evidence and in the statement under Section 313 Cr.P.C. There is specific mention of severe beating given in the night in question when the deceased took her life. There are also allegations that deceased was tortured because of lack of dowry and being of dark complexion and that complainant and other relation of the deceased was humiliated on the ground of these facts.

All these circumstances, which are sufficient to induce Smt. Pushpa to commit suicide of which due notice was given to the appellant by putting the circumstances to him under Section 313 Cr.P.C. clearly establish that the appellant is guilty of Section 306 IPC of abetting Smt. Pushpa to commit suicide and non-framing of charge has resulted in no failure of justice and no prejudice has been occasioned to the appellant.

The appeal is, therefore, partly allowed. The conviction and sentence of the appellant for life imprisonment under Section 302 IPC is set aside. It is substituted by imprisonment of ten years RI under Section 306 IPC.

The appellant is on bail. His bail bonds are cancelled sureties are discharged. He should be taken into custody forthwith to serve out the sentence awarded to him.

Office is directed to send a copy of this order to the Chief Judicial Magistrate concerned for compliance.

Dated: 30.9.2005
Ishrat

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Reserved

Government Appeal No. 3087 of 1999

State of U.P.....Appellant

Versus
1. Ram Kishan
2. Smt Kiran Devi .....Accused
Respondents

Hon'ble M.C.Jain,J.
Hon'ble M. Chaudhary,J.

(Delivered by Hon'ble M Chaudhary,J.)

This government appeal has been filed on behalf of the State of U.P. from the judgment and order dated 31st of May 1999 passed by IV Additional Sessions Judge Agra in Sessions Trial no. 697 of 1994 State versus Ram Kishan & others under sections 498A and 304 B IPC acquitting accused Ram Kishan and Kiran Devi. Co-accused Ram Bharosi and Fauran Singh died during the trial and their trial was abated.

Brief facts giving rise to this appeal are that at 6: 15 p.m. on 9th of September 1993 Ramesh Chandra, father of the deceased lodged an FIR at police station Saiyan District Agra alleging that he resided at village Semar-ka-Pura hamlet of Baretha, District Dhaulpur (Rajasthan) and married his daughter Meena with Ram Kishan son of Ram Bharosi, resident of Nagla Chhahri within the limits of police station Saiyan District Agra according to Hindu rites, but her husband Ram Kishan and her in-laws were not satisfied with the dowry provided by him and she was used to be harassed and tormented by them on the pretext that golden chain and ring were not provided in dowry. On 8th of September 1993 Ramesh Chandra alongwith his co-villagers Kedar Singh and Prem Singh went to the house of in-laws of his daughter to fetch her. On reaching at the house of her in-laws, Ram Kishan alongwith his brother Fauran Singh, father Ram Bharosi and mother Kiran Devi met him at the door of their house and as he asked them as to why his daughter Meena was used to be beaten by them now and then Ram Bharosi told that he should provide them golden chain and ring otherwise his daughter would be set ablaze or killed and he would perform another marriage of his son. Then Ramesh Chandra replied that when a child would born to his daughter he would provide them golden chain and ring and thereon they made him to leave that place. At about 3:00 p.m. all of them went inside the house and he sat under the ''Neem' tree near the house. In the meanwhile on hearing the outcry of his daughter Meena, Ramesh Chandra alongwith Prem Singh and Kedar Singh went inside the house and saw that Meena was set ablaze and all the four inmates of the house left that place and went away. Then Ramesh Chandra with the help of Kedar and Prem singh extinguished the fire and took the victim to S N Medical College Agra and got her admitted there.
On the basis of the written report the police registered the crime under section 498 A and 307 IPC. HM Chandra Pal Singh prepared check report and made entry regarding registration of the crime in GD (Exts Ka 4 and Ka 5).
On 10th of September 1993 Sri Ram Avtar Additional City Magistrate Agra on receiving the information from the police went to S N Medical College and recorded dying declaration of Smt Meena after fitness certificate by Dr Vijai Shanker Jha at 10: 15 a.m. She succumbed to the burn injuries sustained by her in the Hospital on 13th of September 1993 at 5: 30 p.m. Inquest proceedings on the dead body of Smt Meena were drawn by SI Kheem Singh under the supervision of CO Shyam Pal Singh who prepared the inquest report (Ext Ka 12) and other necessary papers (Exts Ka 9 to Ka 11) and handed over the dead body in a sealed cover alongwith necessary papers to constable Nek Ram for being taken for its post mortem. SI Khem Singh visited the scene of occurrence, inspected the site and prepared its site plan map (Ext Ka 8). He also recorded statements of the witnesses and did other necessary things.

Autopsy conducted on the dead body of Smt Meena by Dr R.C.Joshi Medical officer District Hospital Agra on 14.9. 1993 at

3:00 p.m. revealed below noted ante mortem injuries on the dead body:

1. Septic burn superficial to deep present on whole of the body excepting right foot, both sole and some part of lower abdomen.
2. Open cut mark present on both the ankles inner aspect. Surgical dressing was found on the body.
He found 100% burn present on the body. Brain and its membranes, pleura, larynx , trachea and bronchi were congested. Spleen and both the kidneys also congested. The doctor opined that the death was caused due to septicemia as a result of burn injuries.

After post mortem on 29th of September 1993 crime was altered under section 498A and 304 B IPC vide GD entry no. 30 (Ext Ka 6).

After completing the investigation CO Shyam Pal Singh submitted charge sheet against the accused accordingly.
In order to bring the charge home to the accused the prosecution examined Ramesh Chand (PW 1), Kedar Singh (PW 2) and Prem Singh (PW 3) as eye witnesses of the occurrence. Out of three eye witnesses namely PW 1 Ramesh Chand, PW 2 Kedar Singh and PW 3 Prem Singh none has supported the prosecution case at all against any of the accused. All the three witnesses were declared hostile and cross-examined by the prosecution with the permission of the court but to no use. PW 5 Prem Singh son of Bahadur Singh who scribed the report on the dictation of Ramesh Chand has proved the same in his examination -in-chief but in his cross-examination he stated that he scribed the report on the dictation of the sub-inspector as he was terrorized by him. PW 4 Dr R.C.Joshi who conducted autopsy on the dead body of Smt Meena has proved the post mortem report stating that she had suffered 100% burns all over the body. PW 6 Sri Ram Avtar ACM who recorded dying declaration of Smt Meena, the victim in the Hospital has proved her dying declaration.
Both the accused pleaded not guilty denying the alleged occurrence altogether. Accused Kiran Devi stated that she was ill and due to ailment she was getting herself treated in the Hospital at Agra. Co-accused Ram Kishan stated that since Smt Meena was not sent alongwith her father to her parents' house she committed suicide and that he and his family members and her father got her admitted in SN Medical College Agra. He also stated that at the time her dying declaration was allegedly recorded in the Hospital she was not in the condition to make any statement.
On an appraisal of evidence on the record the Trial Judge disbelieved the prosecution case and finding the accused not guilty of the charge levelled against them acquitted them.
Feeling aggrieved by the impugned judgment and order this government appeal has been filed on behalf of the State of U.P. for redress.
We have heard learned AGA for the state appellant and learned counsel for the accused respondents.
The only piece of evidence against the accused is the dying declaration of Smt. Meena allegedly made by her to Sri Ram Avtar, Additional City Magistrate, Agra and recorded by him on 10th of September, 1993 at 10:15 a.m. Learned AGA for the State vehemently argued that the court below committed error by ignoring the dying declaration of Smt. Meena recorded by Sri Ram Avtar, Additional City Magistrate, Agra. In our opinion, the said argument advanced by the learned AGA has not got much substance in it. The trial judge was perfectly justified in not placing implicit reliance on the said dying declaration due to material discrepancies in the two dying declarations and prosecution evidence. PW1 Ramesh Chand, father of the deceased stated in his cross-examination that after breaking down the door leaves of the room in which she set herself ablaze on fire and getting the fire extinguished, on being asked by him Meena told him that since he did not take her with him to her parental home she set herself ablaze on fire. However in the dying declaration allegedly made by Smt Meena to the ACM in the Hospital she stated that the demand of scooter in dowry made by her husband and parents-in-law could not be satisfied by her parents, that at about 2:00 p.m. on 8th of September, 93 her father came to fetch her but her husband and in-laws refused to send her with him and thereafter they beat her and her mother-in-law poured kerosene on her and her husband ignited fire to her; that on her shrieks her father alongwith other villagers reached there and extinguished the fire and that it was her father who got her admitted in the Hospital at about 5:00 p.m. that very evening. Smt. Meena stated in her dying declaration that she was used to be harassed and tormented by her husband and in-laws as the demand of scooter in dowry made by them could not be satisfied by her parents. However PW1 Ramesh Chand, father of the deceased mentioned in the FIR that his son-in-law and his parents used to demand golden chain and ring in dowry which he could not provide due to his poor financial condition. He also mentioned in the written report that his daughter Meena was used to be harassed and tormented by her husband and in-laws now and then as the demand of golden chain and ring in dowry made by them could not be fulfilled by him. Thus these two dying declarations are too inconsistent to be reconciled and the dying declaration made by Smt Meena in the Hospital is too discrepant on material points going to the very root of the case.

Learned counsel for the accused respondents placed reliance on Chacko Vs. State of Kerala reported in 2003(8) JIC 38(SC) in which the Hon'ble Apex Court observed that it is difficult to accept that the victim who had suffered 80% burns could make detailed dying declaration after 8-9 hours of burning. No doubt in that case there was no certificate given by a competent doctor as to the mental and physical condition of the deceased to make dying declaration. In the instant case, the doctor who gave the certificate of fitness for making the dying declaration has not been examined by the prosecution. The bed head ticket of Smt Meena, the victim too has not been brought on the record for the reasons best known to the prosecution. Dr. R.C. Joshi who conducted autopsy on the dead body of Meena stated that she had suffered 100% burns. Under the circumstances it is doubtful if Smt Meena, the victim who had suffered 100% burns was in a fit mental state to make the statement ( dying declaration) alongwith the date and time giving the description of the incident within five minutes as the dying declaration was concluded by the ACM at 10: 20 a.m.

In view of above facts and circumstances, the learned trial judge was justified in holding that it was not safe to place implicit reliance on the dying declaration allegedly made by Smt. Meena to Sri Ram Avtar, ACM, Agra recorded in the Hospital on 10th of September, 93 at 10: 15 a.m.

Since the view taken by the learned trial judge can not be said to be perverse or unreasonable it would not be proper for this Court to interfere with the finding of the acquittal arrived at by the court below.

The appeal has got no merit and is liable to be dismissed.

The appeal is dismissed.

Office shall send copy of the judgment alongwith record of the case to the court concerned immediately for necessary compliance under intimation to this court within two months from today.

Dated: 13.4.2005/P.P.

GA-3087-99

After going through the record we find ourselves in complete agreement with the findings recorded by the court below. The only piece of evidence in this case is the dying declaration of Smt Meena recorded by ACM Ramautar (PW6). Out of the three eye witnesses examined by the prosecution none has supported the prosecution case against any of the accused. PW 1 Ramesh father of the deceased and the first informant deposed that he had married his daughter Meena with Ram Kishan some five years ago; that her daughter Meena never told them that she was subjected to cruelty or used to be beaten by her husband or in-laws nor did she ever complain regarding demand of any dowry; that on the alleged day he had gone to the house of in-laws of Meena to fetch her but her husband and father-in-law told him that since her mother-in-law was ill and admitted in Agra Hospital she would not go that time and that thereafter Meena committed suicide by putting fire to herself and then in-laws of Meena got her admitted in Medical College Agra. He also disowned the FIR lodged by him with the police stating that the sub inspector had obtained his thumb impression on some blank paper. He stated in his cross-examination that Jeth and father-in-law of Meena got the door leaves broken and extinguished the fire and at that time Meena told him that since he was not taking her with him she set herself ablaze on fire. PW 2 Kedar and PW 3 Prem Singh also stated likewise. Both of them stated that the day Ramesh went to fetch his daughter from her in-laws' house her mother-in-law was suffering with some ailment and was admitted in the Hospital at Agra. PW 4 Dr R.C.Joshi who conducted autopsy on the dead body of Meena stated that she had suffered 100% burns. PW 5 Prem Singh II scribe of the FIR stated in his cross-examination that he scribed the FIR under police pressure on the dictation of sub inspector. PW 6

ACM Ramautar who recorded dying declaration of Smt Meena in SN Medical College Agra on 10.9.93 at 10: 15 a.m. has proved the dying declaration recorded by him deposing that she told to him that her husband and in-laws used to rebuke her and beat her as her parents could not satisfy the demand of scooter made by them and that on 8th of September 93 at about 2:00 p.m. her father had come to fetch her but her husband and in-laws made him to leave that place and her mother-in-law poured kerosene oil on her and her husband ignited fire to her and that since her both hands got burnt impression of her right toe was taken on the dying declaration (Ext Ka 3). Thus the only piece of evidence against the accused remains the dying declaration of Meena Devi allegedly made by her to ACM Ranmautar (PW 6). In our opinion implicit reliance can not be placed on her this dying declaration as her father Ramesh (PW 1) stated in his cross-examination that after breaking open the door leaves of the room in which she set herself ablaze on fire and after extinguishing the same she told him that since he did not take her with him therefore she set herself ablaze on fire. Learned counsel for the respondents has placed reliance on Chacko versus State of Kerala reported in 2003 (1) JIC 38 (SC) in which the Apex Court observed that it is difficult to accept that the victim who had suffered 80-% burns could make detailed dying declaration after 8-9 hours of burning giving minute details. However facts of that case are somewhat different as in that case there was no certificate by a competent doctor as to the mental and physical condition of the deceased to make such a dying declaration. However since in the instant case both the dying declarations first made by the deceased to her father soon after the occurrence and subsequently her dying declaration recorded by ACM Agra Ramautar (PW 6) are inconsistent and contradictory on material aspects .It would not be safe to place implicit reliance on the alleged dying declaration made by her and recorded by ACM Agra in the Hospital. Moreover the view taken by the learned trial judge can not be said to be perverse or so unreasonable as no court would reach to such conclusion and under the circumstances it would not be proper for this court to interfere with the finding of acquittal arrived at by the court below. The appeal has no merit and is liable to be dismissed.

The government appeal is dismissed.

Dated:13.4. 2005

Dks/GA3087-99

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Court No. 19

Crl. Misc. Bail Application No. 6459 of 2005

Raju.....Vs.....State of U.P.

...

Hon'ble Alok Kumar Singh, J.

Heard learned counsel for the applicant and learned A.G.A. and also perused the material on record.

The applicant Raju is involved in case crime No. 544 of 2004, for the offence under Sections 302,201 I.P.C. and Section 3 /4 Dowry Prohibition Act. Police Station Saiyan, district Agra.

It is alleged that the marriage was solemnized in December 1997. As the member of her in-laws family were not satisfied with the dowry, they started making harassment of the victim. They also made demand for additional dowry and due to non fulfillment they harassed the victim before the death. An information was received by the complainant that on 22.9.2004 the husband, father-in-law, mother-in-law and two brother-in-laws have set the lady victim on fire and then fled away. The report was lodged on 23.9.2004 at 9.30 a.m. by Bhupendra Kumar ( brother of the victim). During investigation it was found that marriage was solemnized on 12.12.1996 that is beyond 7 years. Therefore, Sections 304-B and 498-A I.P.C. were dropped and now the case is only under Sections 302/201 I.P.C. read with Section ¾ Dowry Prohibition Act. Admittedly the body was not inquested upon. There was also no post mortem of the body. Surprisingly, in the rejection order the learned Sessions Judge (Sri S.K.Samadhiya) as Incharge Sessions Judge, Agra has mentioned that post mortem reveals that ante mortem burn injuries were the cause of her death. Considering the gravity of the matter, he refused the bail.

As against the genuineness of the prosecution case and the supporting evidence it is argued that as mentioned hereinbefore the foundation of the prosecution case itself becomes doubtful because initially the report was lodged under Sections 498-A/ 304-B/201, I.P.C alleging demand of dowry and cruelty causing unnatural death within 7 years of marriage. But these allegations were found baseless and the charge-sheet was submitted under Sections 302/201 I.P.C. read with Section 3/4 Dowry Prohibition Act . The main Sections 304-B and 498-A I.P.C. were dropped in the absence of any prima facie evidence to that effect. Secondly, it is argued that almost all the witnesses namely , Keshav Deo, Prem Pal, Bhagirath, Rajveer, Ravindra Singh, Rajendra, Gopal, Gajendra Singh whose statements were recorded under Section 161 Cr.P.C. ( copies on record) have not indicated about the demand of dowry or consequent harassment. It is also emphasized that almost all of them also deposed that lady was issueless due to which she had become short tampered. Day before the incident some verbal dispute between husband and wife also took place. The learned counsel for the applicant also pointed out towards a strong circumstance and bonafide conduct in respect of informing about the incident to the complainant and attending of funeral by them. Although in the F.I.R. it is mentioned that the information regarding incident was received at 9.00 p.m. on the day of lodging the report that is on 23.9.2004, but the mother and two brothers admitted in their statements under Section 161 Cr.P.C. that the information was received on the day of incident itself i.e. on 22.9.2005 on telephone at 5.00 p.m. Witness Rajveer, Ravindra and Gopal who are neighbours, have categorically stated that the complainant side also attended the funeral. It is also pointed out that as no case could be found against mother-in-law, her name was dropped. Besides father-in-law and both brother-in-laws have already been bailed out. Lastly, it is reiterated that the learned Sessions Judge has rejected his bail application wrongly on the ground of post mortem report whereas as per record post mortem never took place.

The bail is, however, opposed by the learned A.G.A.

The points pertaining to nature of accusation, severity of punishment, reasonable apprehension of tampering with the witnesses, prima facie satisfaction of the Court regarding proposed evidence and genuineness of the prosecution case were duly considered.

In view of the entire facts and circumstances of the case, taking into consideration some of the arguments, advanced on behalf of the applicant in respect of the points discussed herein above, without prejudice to the merits of the case, I find it to be a fit case for granting bail. Let the applicant be enlarged on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the concerned Court.

Dt. 14.12.2005.

Rkb.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the applicant, learned counsel for the complainant, learned A.G.A. and perused the record.

Accused applicant Dharmendra Jaiswal son of Shri Arun Kumar Jaiswal has prayed for release on bail in case Crime No. 53 of 2004 under Sections 498-A, 304 B and 323 IPC and Section 3/4 D.P. Act. P.S. Muthiganj, District Allahabad.

Prosecution case is that Smt. Anjali Jaiswal was married with the accused applicant in April, 2000 and dowry was given at the time of marriage but it could not satisfy the accused persons hence she was asked to bring more dowry and was harassed and ill treated. On 2.3.2004 at about 1.30 p.m., the complainant Rakesh Kumar who is the brother of Smt. Anjali was informed by some one on Mobile of Sri Surya Prakash Jaiswal, his uncle that his sister was beaten and then hanged and killed. He was also informed that she was taken to S.R.N. Hospital, Allahabad, when the complainant and others went there they found the dead body with injuries on her neck and right elbow.

Post mortem report shows that the deceased received ligature mark 30 cm X 1 cm on middle part of neck, all around neck continuously and transversally present; underlying tissues were echhymosed and subcutaneous bleeding was present. There was also abraded contusion 2 cm X 2 cm on back of right elbow. Cause of death has been mentioned as asphyxia as a result of strangulation.

Learned counsel for the accused applicant has contended that applicant has been falsely implicated in this case and that no dowry demand was ever made and that it has also come in the statement of complainant as given in the Court that no demand for dowry was made as according to him a loan of Rs. 1,00000/- was taken in the name of his sister and after that no demand for dowry was made. He has further contended that Smt. Anjali committed suicide on account of her extreme mad swings. He has also contended that the information was given to the complainant and that Smt. Anjali was taken to Hospital by accused person and that at the time of inquest report the father, brother and other family members of the deceased were present.

Learned counsel for the complainant has contended that demand for dowry was made and that there was no reason for her to have committed suicide. He has also contended that the death was caused on account of strangulation and it clearly shows that she was killed in her-laws house. He further contended that trial is proceeding and is likely to be concluded at an early date.

Considering the facts and circumstances of the case, but without prejudice to the merits of the case, accused is not entitled to bail and his application is liable to be rejected.

Bail application of the accused applicant is hereby rejected.

Dated 19.10.2005

RKS/2681/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the accused applicant, learned counsel for the complainant, learned A.G.A. and perused the record.

Accused applicant Satish son of Omkar Singh has prayed for release on bail in case Crime No. 204 of 2004 under Sections 304 B, 498-A, 504, 506 IPC, and Section ¾ D. P. Act, P.S. Khanpur, District Bulandshahar.

Prosecution case is that Smt. Rajkumari @ Guria was married with the accused on 12.5.1998 according to hindu rites and dowry was given but the accused were not satisfied and they demanded Rs. 50,000/- in cash and Herohonda Motorcycle, when these things could not be given she was ill-treated and harassed. In month of June, 2004, the complainant Viresh Kumar, who is brother of deceased was married and was given a motorcycle and thereafter the demand for motorcycle was further insisted by the accused persons. The deceased used to tell the complainant and other family members about the demands. The complainant came to village Jadaul and tried to explain to the accused persons that he was poor person but would arrange for motorcycle in the Deepawali. On 12.11.2004, the complainant and his cousin Rajkiran came to meet their sister on Deepawali and also brought some sweets. On seeing them, the accused and his parents started abusing their sister as to why they had not brought the motorcycle. However, the complainant and his cousin pacified them and went to bus stand. When they returned at about 4 p.m., they saw that Omkar and Indrawati parents of the accused applicant were pressing the hands and legs of the deceased and the accused applicant had pressed the neck of the deceased with rope. They tried to save and also raised alarm but the accused ran away threatening to kill them. At that time deceased had one son aged about four years and a daughter aged about one year. The complainant lodged the report same day at P.S. at 11.40 p.m.

The post mortem shows that the deceased died as a result of asphyxia on account of ante mortem hanging.

Learned counsel for the accused applicant has contended that the accused has been falsely implicated in this case. He has further contended that there is direct evidence of the incident as alleged by the prosecution and therefore no presumption under Section 113 B of the Evidence Act would arise and that the accused is entitled to bail under Section 304 B IPC. In support of his contention, he has also placed reliance on the case of Muthu Kutty and another Vs. State by Inspector of Police, T.N., 2005 SCC (Cri) 1202. In that case the accused were convicted under Section 304 B and 498 A IPC and in the appeal Hon'ble Apex Court held that when it was found that the accused were responsible for setting the deceased on fire and causing her death, Section 302 instead of Section 304 B was attracted. However in the case, it has also been held that the provisions contained in Section 304 B IPC and Section 113 B of the Evidence Act were incorporated on the anvil of the Dowry Prohibition (Amendment) Act, 1984, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death. Therefore if there is direct evidence available, the accused persons may be charged and tried under Section 302 IPC but it will not exonerate them of the offence. In this case death of the wife of the accused has taken place in the house of the accused and he has not given any explanation as to how she died. She had two children of tender age and there was no likelihood of her committing suicide.

The complainant and the cousin are the eye witnesses of the incident. The conduct of the accused in absconding from the place of occurrence and in not informing the Police is also material. In the circumstances, accused is not entitled to bail and application is liable to be rejected.

Bail application is hereby rejected.

Dated:7.11.2005

RKS/3295/05Hon'ble M. K. Mittal, J.

Heard learned counsel for the accused applicant, learned counsel for the complainant, learned A.G.A. and perused the record.

Accused applicant Satish son of Omkar Singh has prayed for release on bail in case Crime No. 204 of 2004 under Sections 304 B, 498-A, 504, 506 IPC, and Section ¾ D. P. Act, P.S. Khanpur, District Bulandshahar.

Prosecution case is that Smt. Rajkumari @ Guria was married with the accused on 12.5.1998 according to hindu rites and dowry was given but the accused were not satisfied and they demanded Rs. 50,000/- in cash and Herohonda Motorcycle, when these things could not be given she was ill-treated and harassed. In month of June, 2004, the complainant Viresh Kumar, who is brother of deceased was married and was given a motorcycle and thereafter the demand for motorcycle was further insisted by the accused persons. The deceased used to tell the complainant and other family members about the

demands. The complainant came to village Jadaul and tried to explain to the accused persons that he was poor person but would arrange for motorcycle in the Deepawali. On 12.11.2004, the complainant and his cousin Rajkiran came to meet their sister on Deepawali and also brought some sweets. On seeing them, the accused and his parents started abusing their sister as to why they had not brought the motorcycle. However, the complainant and his cousin pacified them and went to bus stand. When they returned at about 4 p.m., they saw that Omkar and Indrawati parents of the accused applicant were pressing the hands and legs of the deceased and the accused applicant had pressed the neck of the deceased with rope. They tried to save and also raised alarm but the accused ran away threatening to kill them. At that time deceased had one son aged about four years and a daughter aged about one year. The complainant lodged the report same day at P.S. at 11.40 p.m.

The post mortem shows that the deceased died as a result of asphyxia on account of ante mortem hanging.

Learned counsel for the accused applicant has contended that the accused has been falsely implicated in this case. He has further contended that there is direct evidence of the incident as alleged by the prosecution and therefore no presumption under Section 113 B of the Evidence Act would arise and that the accused is entitled to bail under Section 304 B IPC. In support of his contention, he has also placed reliance on the case of Muthu Kutty and another Vs. State by Inspector of Police, T.N., 2005 SCC (Cri) 1202. In that case the accused were convicted under Section 304 B and 498 A IPC and in the appeal Hon'ble Apex Court held that when it was found that the accused were responsible for setting the deceased on fire and causing her death, Section 302 instead of Section 304 B was attracted. However in the case, it has also been held that the provisions contained in Section 304 B IPC and Section 113 B of the Evidence Act were incorporated on the anvil of the Dowry Prohibition (Amendment) Act, 1984, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death. Therefore if there is direct evidence available, the accused persons may be charged and tried under Section 302 IPC but it will not exonerate them of the offence. In this case death of the wife of the accused has taken place in the house of the accused and he has not given any explanation as to how she died. She had two children of tender age and there was no likelihood of her committing suicide.

The complainant and the cousin are the eye witnesses of the incident. The conduct of the accused in absconding from the place of occurrence and in not informing the Police is also material. In the circumstances, accused is not entitled to bail and application is liable to be rejected.

Bail application is hereby rejected.

Dated:7.11.2005

RKS/3295/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

AFR
Reserved
Criminal Appeal No. 3063 of 2005

Rajendra Prasad Pandey ..... ..... Appellant. Vs.
State of U.P. ..... ..... ..... Respondent

Hon'ble M.C. Jain, J.
Hon'ble K.K. Misra , J.

(Delivered by Hon'ble M.C. Jain, J.)

The appellant Rajendra Prasad Pandey is the husband of the deceased Meena Devi who, according to the prosecution, was married to him in June 1992. She was allegedly done to death on 12.2.1997 in her Sasural in village Krishna Nagar, Police Station Naini, District Allahabad. The F.I.R. was lodged by her brother PW 1 Shiv Sagar Dubey, resident of Village Khutari, Police Station Maridhan,District Mirzapur at Police Station Naini, District Allahabad. The instant appeal has been filed by the accused appellant against the judgment and order dated 21.7.2005, passed by Dr. Manjoo Nigam Special Judge, SC/ST Act, Allahabad in Sessions Trial No. 354 of 1998, convicting and sentencing the accused appellant under section 302 and 318 I.P.C.

As per the F.I.R., the complainant had performed a decent marriage of his sister according to his status and had given one Hero Honda motorcycle, cash of Rs. 40,000/-, jewellery and other household articles in dowry. The accused appellant was not satisfied and soon after the marriage he started treating the deceased with cruelty over the demand of dowry, particularly a VCR which could not be given by the complainant for financial difficulties. The accused appellant had also developed illicit relations with one Km. Arti. He continuously treated her with cruelty and ultimately killed her brutally by strangulation after assaulting her. At that time, she had six months pregnancy. It was also mentioned in the F.I.R. that there were ante mortem injuries but those injuries had not been mentioned in the inquest report.

At the trial, charges under sections 498A/304B/318and 201 I.P.C. were framed against the accused appellant. However, the trial Judge has convicted the accused appellant under section 302 I.P.C. with sentence of life imprisonment and a fine of Rs. 10,000/-. He has further been convicted under section 318 I.P.C. with sentence of 2 years' rigorous imprisonment. Both the sentences have been ordered to run concurrently.

We have heard Sri V.C. Misra, learned Senior Advocate assisted by Sri R.P. Dubey for the appellant and Ms. N.A. Moonis, learned A.G.A. for the State in opposition. The record of the lower court has been summoned.

While pressing the bail prayer of the accused appellant during the pendency of the appeal, learned counsel has placed reliance on the case of Sohan Lal Vs. State of Punjab 2004(48) ACC 132 to stress the point that in the absence of a charge under section 302 I.P.C., he (when charged under section 304 B I.P.C.) could not be convicted thereunder for allegedly causing the death of the victim. Through the cited decision, the Apex Court has ruled that an accused neither charged under section 302 I.P.C. nor under section 109 I.P.C. is prejudiced due to non-framing of the charge under either of these sections. Conviction thereunder is wholly unsustainable when he was only charged for dowry death under section 304-B I.P.C. On the other hand, the submission of the learned A.G.A. is that omission and defect in framing charge under section 302 I.P.C. did not prejudice the accused appellant at all. But keeping in view the Supreme Court's decision in Sohan Lal's case (supra), we are of the view that the argument of the learned A.G.A. cannot be accepted.

The accused could not be convicted under section 302 I.P.C. without there being a charge framed under the said section. It has to be kept in mind that parameters of burden of proof are different in a case of dowry death under section 304 B I.P.C. and one under section 302 I.P.C. Under these circumstances, the accused appellant (who was on bail during the trial also) should be released on bail.

At the same time, we are of the clear view that the appeal should not be kept pending. Instead, the case should be remanded for retrial of the accused for the offences he was charged with (viz. under Sections 498-A, 304B, 318 and 201 I.P.C.) with appropriate directions. We would do the same with little relevant discussion.

We should point out that in order to attract the application of Section 304-B I.P.C., the essential ingredients are as follows:

1.The death of a woman should be caused by burns or bodily injury or otherwise than a normal circumstance;
2.Such a death should have occurred within seven years of her marriage;
3.She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
4.Such cruelty or harassment should be for or in connection with demand of dowry;
5.Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

In the present case, without proper discussion of the prosecution evidence on relevant aspects, the trial Judge with precipitated haste jumped to the conclusion that the accused appellant had committed the offence of murder by causing the death of his wife. It is sad to note that the trial judge wrote a perfunctory and sketchy judgment without properly addressing to the prosecution evidence on the aspect of time of marriage, evidence regarding demand of dowry and the alleged cruelty allegedly heaped by the accused appellant on the victim. These facts have been supported by PW 1 Shiv Sagar Dubey (brother of the deceased) and P.W. 2 Kapil Deo Dubey (father of the deceased).

The trial Judge was also seemingly oblivious to the ingredients of the offence under section 498A I.P.C. which are that the woman must have been married, she must have been subjected to cruelty or harassment and such cruelty or harassment must have been shown either by the husband of the woman or by the relative of her husband. There is no legal requirement that such offence must be committed within a span of seven years of the performance of the marriage.

The trial judge has ignored the evidence of PW 1 and PW 2 on the aspect of harassment and cruelty heaped upon the victim by the accused appellant without any proper discussion and without testing the same on the anvil of reliability in conjunction with the evidence of PW 8 Dr. Shiv Kumar kand post mortem report dated 14.2.1997. Earlier to her death, the deceased had been taken to the clinic of P.W. 8 Dr. Shiv Kumar on 12.2.1997 by the brother-in-law (Devar) of the deceased, followed by her husband. She was unconscious and some fluid was oozing from her mouth. There were some unnatural marks on her neck. When the said Doctor inquired from Rajendra Prasad -husband of the deceased about it, he showed his ignorance and the patient was then referred to S.R.N. Hospital, Allahabad. In the post mortem, eight ante mortem injuries were found. The lady was carrying pregnancy of six months. The death was due to asphyxia and vein's congestion as a result of pressure Oapplied to the neck.

The trial Judge disbelieved the factum of marriage having taken place in June 1992, acting on conjectures and surmises without properly discussing the prosecution evidence in this behalf contained in the testimony of PW 1 Shiv Sagar Dubey and PW 2 Kapil Dev. She simply cursorily mentioned that the father of the accused appellant had died on 13.4.1992 and, therefore, the marriage of the accused and deceased could not have taken place in June 1992. The trial Judge also did not discuss the relevant defence evidence adduced to contend that the accused's father had died on 13.4.1992. He accepted the defence allegation that the marriage of the deceased was performed in the month of June 1988 without discussing any evidence of defence in this behalf. It was also a relevant question to be considered by the court that even if the father of the accused appellant had died on 13.4.1992, the marriage of the accused appellant with the deceased could have been solemnized in June 1992.

To say in nutshell, the trial court has not properly and judiciously considered the evidence related to the commission of the offences under section 304-B and 498A I.P.C. by the accused. Therefore, while granting bail to the accused appellant, we shall remand the case back to the lower court. Our final order is as follows:

(1)The appeal is allowed. The impugned judgment and order of conviction and sentence are set aside. The case is remanded back to the trial court for retrial by reappraisal of evidence on record after hearing counsel for both the sides for the offences the accused appellant is charged with, namely, under Sections 498-A,304B, 318and 201 I.P.C.

(2)It is made clear that the trial Judge shall be free to come to an independent conclusion on the basis of the judicial appraisal of the evidence keeping in view the arguments of the two sides, without being prejudiced by the observations contained in this judgment which have been made to indicate the necessity of remanding the case and the gross carelessness and cursory approach of the trial Judge in preparing the impugned perfunctory and sketchy judgment.

(3)The retrial shall be confined to the conditions given in preceding paragraphs and shall be concluded by the trial court within three months from the date of receipt of the certified copy of this order along with the record which shall be transmitted by the office of this Court within a week to facilitate early retrial in the manner indicated above.

(4)During retrial, the accused appellant shall be enlarged on bail on furnishing a personal bond with two sureties, each in the like sum to the satisfaction of the Chief Judicial Magistrate, Allahabad. To ensure early retrial, it is also directed that after availing of the bail order the accused appellant shall appear before the court below on 4.10.2005.

(5)A copy of this judgment shall also be sent to the District and Sessions Judge, Allahabad for being served on the Additional Sessions Judge concerned for her guidance in future.

Dated. 8th September 2005, Sd/Hon. M.C.Jain, J.

Akn. Sd/ Hon. K.K. Misra, J.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

Criminal Misc Bail Application No. 8924 of 2005

Kaptan Singh Raghav and another...Vs..... State of U.P.

.....

Hon'ble Ravindra Singh, J.

Heard Sri M.P.S. Chauhan learned counsel for the applicant, learned A.G.A. and Sri R.P. Singh learned counsel for the complainant.

This application is filed by the applicant Kaptan Singh Raghav with a prayer that the applicant may be released on bail in case Crime no. 138 of 2005, under Sections 498-A, 323, 324, 307, 506 I.P.C. and Sections 3/4 Dowry Prohibition Act P.S. Quarsi, District Aligarh.

From the perusal of the record it appears that in the present case the F.I.R. was lodged by one Smt Anita Raghav the daughter-in-law of the applicant on 24.2.2005 at 1.30 a.m. in respect of the incident which had occurred from 23.2.2005 to 28.2.2005.

According to prosecution version the applicant was demanding a sum or Rs. One lac as dowry. To fulfill the demand of dowry the first informant was subjected to cruelty and the applicant was pressurizing the first informant for leaving the house and in case the demand of dowry was not fulfilled she will be murdered. Prior to the alleged occurrence the applicant has made murderous assault on the person of the first informant on 31.1.2005. Its report was lodged at the police station Quarsi. In the night of 23.2.2005 at about 12.00 O' clock the applicant and other came in the room of the first informant and started beating. She was beaten by Smt Neelam Raghav by using kicks and fists blows.

Thereafter, the applicant Kaptan Singh used knife blows. Consequently, the first informant received injuries on her neck and right hand. Due to injuries received by her there was a profuse bleeding. Then the first informant ran away to save her life. Co-accused Vijay Raghav hurled abuses and fired by country made pistol, fortunately the shot fired by him did not hit the first informant. At hue and cry made by the husband of the first informant, other persons came at the place of the occurrence.

From the perusal of medical examination report it appears that Smt Anita Raghav daughter-in-law of the applicant received five visible injuries in which the injury no. 1 and 2 were incised wound on the right side of the neck, both the injuries were caused by the sharp edged weapon. The injuries no. 3,4, and 5 were abrasion and contusion. Injury no. 6 was complain of pain. During the investigation the statements of the first informant and other witnesses including Ajai Pratap Raghav the son of the applicant was recorded. They have fully supported the prosecution story.

It is contended by the learned counsel for the applicant that the injuries received by the injured are simple in nature and there was no demand of dowry. The applicant is father-in-law of the first informant. The injured has been discharged from the hospital on 6.12.2004 in hale and hearty condition.

It is opposed by learned A.G.A. and the learned counsel for the complainant by submitting that the injured who is the daughter-in-law of the applicant has received five visible injuries, out of which injuries no. 1 and 2 were caused by knife which were on the neck, the vital part of the body. Prior the alleged occurrence also murderous assault was made on the person of the injured in which

she has received grievous injury and the son of the the applicant has also supported the prosecution story. He has given statement against the applicant. In such circumstances there is no reason of false implication of the applicant.

Considering the facts and circumstances of the case and submissions made by the learned counsel for the applicant, learned A.G.A. and learned counsel for the complainant and without expressing any opinion on the merits of the case, I am of the view that the applicant Kaptan Singh who caused knife injury on the person of the injured ,is not entitled for bail, at this stage.

Therefore, the prayer for bail in respect of applicant Kaptan Singh is refused.

Accordingly, this bail application is finally disposed of.

Dated: 9.09.2005.
Rcv

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
RESERVED

In the High Court of Judicature at Allahabad.

First Appeal No. 199 of 1993

Smt. Shobhana Sharma alias Babli ..... ..... .. .. Appellant.
Versus
Brijesh Kumar Sharma ..... .... .... ... ... ... Respondent.
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Hon'ble Yatindra Singh,J.
Hon'ble R.K. Rastogi,J.

( Delivered by Hon. R.K. Rastogi,J.)
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This is an appeal against judgment and decree dated 11.3.1993 passed by Sri M.K. Mittal, then Judge, Family Court, Agra in matrimonial suit no. 137 of 1991, Sri Brijesh Kumar Sharma Vs. Smt. Shobhana Sharma alias Babli.
2. The facts relevant for disposal of this appeal are that Brijesh Kumar Sharma had filed the aforesaid matrimonial suit originally under section 9 of the Hindu Marriage Act for restitution of conjugal rights against Smt. Shobhana Sharma with these allegations that Smt. Shobhana Sharma, who is his legally wedded wife, had left him without reasonable and lawful excuse and is living with her father, so she should be ordered to come back to his house to perform her marital obligations. His marriage with Smt. Shobhana Sharma had taken place on 25.11.1988. After marriage she remained in his house for eight days and during this period her behavior was very rough and non co-operative and she was reluctant to perform her martial obligations. The marriage was solemnized in a simple manner without taking any money from the parents of the defendant. The plaintiff Brijesh Kumar Sharma had also given her several ornaments and clothes at the time of marriage. After eight days of the marriage, she went to her parent's house along with her brother and at that time she took all valuable ornaments and clothes with her. She had made promise that she would return within one or two days but she did not return. Hence, the plaintiff, Brijesh Kumar Sharma filed this suit for restitution of conjugal rights under section 9 of the Hindu Marriage Act.
3. The defendant appeared and filed written statement in which she admitted her marriage with Sri Brijesh Kumar Sharma but levelled allegations of cruelty against him. It was also pleaded that her parents had spent a sum of Rs.1,00000/- in different ceremonies of marriage. Engagement ceremony had taken place at Mathura on 19.2.1987 and at that time a sum of Rs.15,000/- cash and Rs.5000/- for Milani, 12 Thals, one woollen suite piece of Raymond, coconuts, Peanuts covered with silver, golden ring, steel drums, sweets and fruits were given. Thereafter at the time of Lagan Rs.10,000/- cash, utensils of brass and steel Thal and Parat, rings of gold and silver, sweets and fruits were given. This ceremony of Lagan had taken place on 19.11.1988 at Gandhi Nagar, Agra and a sum of Rs.15,000/- was spent in this ceremony. Thereafter on 25.11.1988 at the time of marriage items worth Rs.25,000/- were given including Rs.10,000/- cash, one Bajaj scooter, utensils, cloth for suite, wrist watch etc. At the time of marriage the parents of Smt. Shobhana Sharma had given her four golden Churis weighing five Tolas, one golden Pendal weighing three Tolas, two golden rings weighing one Tola, silver Tories weighing five Tolas, 15 Sarees, one Sofa-set, double bed, dressing table, Usha sewing machine, Almirah, dinner set etc. All these items are still lying with Brijesh Kumar Sharma and she had never taken any item to her parents' house at Bharat Pur. Her parents also spent a sum of Rs.25,000/- at party and decoration. She remained at her father-in-law's house for three days only and during this period the members of her in-laws family were complaining that she had not brought sufficient dowry and they tortured her. On 30.11.1988 her brother came for her Vida. At that time she did not take any valuable Saree or ornaments with her and all the items were kept by the parents of Sri Brijesh Kumar Sharma.
4. After filing of the written statement of Smt. Shobhana Sharma, the plaintiff moved an application for amendment of the plaint in which he alleged that the defendant had deserted him in March, 1989 without any reasonable and proper cause and had also committed cruelty upon him by levelling false allegations against him and so he prayed that inspite of passing of the decree for restitution of conjugal rights decree for divorce should be passed.

5. Smt. Shobhana Sharma filed additional written statement in which she denied the allegations of desertion and cruelty and pleaded that no case for divorce is made out. She also moved an application under section 24 of the Hindu Marriage Act for recovery of interim alimony and legal expenses of the suit. That application was allowed by the court vide order dated 26.5.1991 in which it was ordered that Brijesh Kumar Sharma would pay Rs.250/- per month to Smt. Shobhana Sharma for her maintenance during pendency of the case and would also pay Rs.500/- for legal expenses of the suit.
6. Following issues were framed in the suit:

(i)Whether the defendant treated the plaintiff with cruelty and did not co-operate with him in discharge of marital obligations?

(ii)Whether the defendant went to her parents' house without plaintiff's permission after taking her ornaments and other valuables with her in March, 1989?

(iii)Whether the defendant did not return back with the plaintiff when he had gone to her parents' house to take her and insulted him?

(iv)Whether the defendant had deserted the plaintiff without any reasonable cause ?

(v)Whether the defendant had levelled false allegations against the plaintiff and his family members and had committed cruelty upon the plaintiff in this manner?

(vi)Whether a sum of Rs. one lakh was spent by the defendant's father in her marriage?

(vii)Whether the defendant is entitled to return of items given in dowry or to recover its price?

(viii)Whether the plaintiff did not provide food to the defendant and beat her and committed cruelty upon her?

(ix)Whether the plaintiff asked the defendant to bring more dowry from her parents' house, and when she did not do so, did he beat her?

(x)To what relief, if any, is the plaintiff entitled?

7. The learned Judge, Family Court decided issues no. 1, 5, 8 and 9 together and held that the behavior of Smt. Shobhana Sharma was not co-operative with Brijesh Kumar Sharma and she had levelled false allegations against him which amounted to mental cruelty. He further held that the plaintiff had not kept the defendant hungry nor had committed any cruelty upon her, nor any demand of dowry was made by the plaintiff. He held on issues no. 2, 3 and 4 that the defendant had gone to her parents' house in March, 1989 with the consent of the plaintiff and had taken her ornaments with her and that he came back to the plaintiff's house on 31.1.1990 and remained with the plaintiff upto 20.4.1990. Thereafter she went to her parents' house, but since the period of two years had not been completed from 20th April, 1990, it cannot be held that she had deserted the plaintiff. He held on issues no. 6 and 7 that it was not sufficiently proved that a sum of Rs.1,00000/-was spent in the marriage. He further held that under section 27 of the Hindu Marriage Act only those items of dowry could be returned which were given jointly to the parties. He held that ornaments were not covered under section 27 of the Hindu Marriage Act and the items which could be returned under this section were worth Rs.21,925.72P only. He was, therefore, of the view that the defendant was entitled to recover Rs.22,000/- only in respect of these items. He held on issue no. 10 that in view of the findings given above, the plaintiff was entitled to take divorce on the ground of cruelty, but he was liable to pay permanent alimony to the defendant under section 25 of the Hindu Marriage Act. He, therefore, awarded Rs.450/- per month as permanent alimony to the defendant and decreed the plaintiff's suit for divorce. It was further ordered that the plaintiff shall pay Rs.22,000/- to the defendant in respect of the items which were liable to be returned under section 27 of the Hindu Marriage Act. Aggrieved with that judgment and decree, the defendant, Smt. Shobhana Sharma filed this appeal.
8. We have heard learned counsel for both the parties and have perused the record.
9. It is to be seen that so far as the decree of divorce passed by the lower court is concerned, this part of the decree was not challenged by the defendant-appellant and so the finding of the learned Judge, Family Court is confirmed in respect of the decree of divorce.

10. The only plea taken by the learned counsel for the appellant was that the court had awarded a very meagre amount under section 27 of the Hindu Marriage Act and so this amount should be enhanced. In this connection, first of all it would be proper to go through section 27 of the Hindu Marriage Act, which runs as under:
"27. Disposal of property:- In any proceeding under this Act, the Court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife."

11. It was contended by the learned counsel for the respondent that under Section 27 of the Hindu Marriage Act an order will be passed only in respect of that property which jointly belongs to both the husband and the wife and no order will be passed in respect of separate property of the husband or the wife. In support of this contention he cited before us a ruling of Hon'ble Apex Court in the case of Balkrishna Ramchandra Kadam Vs. Sangeeta Balkrishna Kadam AIR 1997 SC 3562. He submitted that in view of the ruling of Hon'ble Supreme Court , the learned Judge Family Court had rightly held that, those items which were separately given to the husband or the wife, were beyond the ambit of Section 27 of the Hindu Marriage Act and hence the learned Family Court has rightly declined to pass any order in respect of the items separately owned by both the parties.
12. The above ruling of Hon'ble Supreme Court was followed by a Division Bench of this court in the case of Hemant Kumar Agrahari and another Vs. Smt. Lakshmi Devi 2003 (52) ALR 166, where referring to the observations made in the above ruling of Hon'ble Supreme Court, it was pointed out that Hon'ble Supreme Court had not laid down any such proposition in the above case that the separate properties of the parties could not be dealt with under Section 27 of the Hindu Marriage Act. The relevant paras of the aforesaid Division Bench rulings are as under:-
" 18. The counsel for the husband submitted that it was not enough that property should have connection with marriage but should jointly belong to the parties. According to him though some of them (sofa, almirah or TV etc.) could be joint property of the parties, but others (jewelry etc.) though presented at the time of marriage were exclusive property of the wife and no decree could be passed in respect of them. With due respect, the Supreme Court did not lay down any such proposition in the Balkrishna case.

19. Matrimonial cases are tried by the District Court and if Family Court has been established then by the Family Court. They are decided by the senior Judges at the district level and civil procedure code is applicable. The entire proceeding is like a regular suit; though court is required to conciliate between the parties. The Judges manning matrimonial courts are senior enough to decide about exclusive property on the regular side. Same procedure is applicable in the matrimonial cases. It is correct that section 13 of the Family Courts Act declares that a party shall not have right to legal representation, but court can always permit legal representation . In case complicated questions are involved, permission for legal representation in the family court is normally granted; more so in a case where complicated questions regarding disposal of property are involved. In case the matter is before matrimonial court, then it is proper that all disputes relating to the parties should be settled by one court at the same time: leaving a part of the dispute to be decided in future in another suit would prolong acrimony and agony. Life should be spent in a fruitful way, rather than wasting it in constant bickering. There seems to be no reason as to why joint property presented at the time of marriage can be disposed of, but exclusive property presented at the time of marriage should be disposed of separately. This will not only result in multiplicity of the proceedings, but will also cause delay in final settlement and start of new life by the parties.
21. Section 27 uses the phrase 'property presented at the time of marriage, which may belong jointly to both the husband and the wife' This section has one prerequisite as laid down in the Balkrishna case: the property must be connected with the marriage. So far as the question of property being jointly owned by the parties is concerned, suffice to say that the section nowhere uses mandatory word 'must' as being suggested by the counsel of the husband; it uses the word 'may'. The phrase 'which may belong jointly'--because of the use of the word may--includes within it penumbra the property which may not belong jointly to the parties. In our opinion, section 27 of the Act does not confine or restrict the jurisdiction of matrimonial courts to deal only with the joint property of the parties, which is presented at or about the time of marriage but also permits disposal of exclusive property of the parties provided they were presented at or about the time of marriage.

23. Our conclusions are as follows:
(a) Under section 27 of the Hindu marriage Act, Matrimonial courts have jurisdiction to dispose exclusive property of the spouses provided it was presented at or about the time of marriage."

13. Thus, it is clear that suitable orders may be passed under Section 27 of the Hindu Marriage Act in respect of separate property of the spouses provided it was given at the time or in connection with the marriage.

14. Let us, now, consider the documentary evidence filed by the appellant in respect of the items given at the time of engagement, Tilak and marriage . The following receipts (paper Nos. 77-Ka to 96-Ka) have been filed by the defendant appellant in respect of the items given at the time of engagement on 19.2.1987, Tilak on 19.11.1988 and marriage on 25.11.1988.

(i)Paper no. 77 Ka - a receipt in respect of golden and silver rings, coconut and peanuts etc. amounting to Rs.1926.25/-.
(ii) Paper No. 78Ka -Cash memo of Cheap Cloth Store dated 15.2.87 regarding suiting and other clothes amounting to Rs.692/-.
(iii) Paper No. 79 Ka -Cash memo of Pradeep Fancy General Store dated 15.2.87 in respect of one towel amounting to Rs.33/-.
(iv)Paper No. 80 Ka- Cash memo of Om Prakash & Bros. dated 15.2.87 Regarding purchase of handkerchief amounting to Rs.18/-.
(v)Paper No. 81 Ka- Cash memo on a guarantee card issued by Janak watch Service in respect of a Weston wall clock dated 27.6.88 amounting to Rs.105/-.
(vi)Paper No.82 Ka - Cash memo of Hari Electronics dated 2.8.88 regarding purchase of Milton Cool amounting to Rs.126/-.
(vii) Paper No. 83Ka- Cash memo of Gumbar Variety Store dated 31.9.88 regarding purchase of a brief case amounting to Rs.225/-
(viii)Paper No. 84Ka- Cash Memo of Prince Bartan Palace dated 1.11.88 amounting to Rs.327.40 Ps.
(ix) Paper No. 85Ka- Cash memo of Hukum Chand Mills Ltd. dated 4.11.88 for a bed sheet amounting to Rs. 175/-
(x)Paper No. 86Ka- Casm memo of New Arya Wastra Bhandar in respect of suiting and shirting amounting to Rs.458/-
(xi) Paper No.87Ka- A receipt showing an amount of Rs.34880/- in respect of ornaments of the bride.
(xii)Paper No.88Ka- Cash memo of Prince Bartan Palace dated 6.11.88 amounting to Rs. 449.50 Ps.
(xiii) Paper No.89Ka- Cash memo of Bharat Sales Corporation dated 10.11.88 regarding purchase of Sofa set, double bed, dressing table and center table amounting to Rs.4950/-
(xiv)Paper No. 90Ka- Cash memo of Sri Ram Cutpiece Store dated 10.11.88 regarding purchase of Suit, pant , shirt Tauliya, Shawl etc. amounting to Rs.7775/-.
(xv)Paper No. 91Ka- Cash memo of Prince Bartan palace dated 12.11.88 in respect of some utensils worth Rs.225/-.
(xvi)Paper No. 92Ka - a receipt dated 13.11.88 in respect of cushion and pillow worth Rs.1050/-.
(xvii)Paper No.93Ka- cash memo dated 15.11.88 in respect of bucket, cooker etc. worth Rs.1212.30/-
(xviii)Paper No. 94 Ka- Cash memo dated 15.11.88 of Jindal Brothers in respect of Almirah worth Rs.1550/-.
(xix)Paper No. 95Ka - Cash memo dated 25.11.88 in respect of Cooker worth Rs.248/-.
(xx)Paper No.96 Ka- Receipt dated 24.10.88 in respect of Bajaj Scooter worth Rs.10934.92.

15. Out of the above items, it was contended by the learned counsel for the respondent that the ornaments worth Rs.34880/- (paper no. 87Ka) which are of the appellant, were taken by her from the house of the respondent at the time of her Bidai after marriage. The appellant has stated that all the ornaments were detained by the respondent and his parents at the time of Bidai and she had not taken those ornaments with her. It is, however, to be seen that the learned Presiding Officer of the Family Court has pointed out in the judgment that Smt. Shobhana Sharma had no where specifically stated in her statement as D.W.1 that these ornaments were detained by the plaintiff and his parents at the time of her Bidai . On the other hand the Trial Court has found the evidence of the plaintiff - respondent and his witnesses more reliable on the point that at the time of first Bidai the defendant appellant had taken all her ornaments with the consent of the plaintiff, and the Family Judge has concluded that when the defendant was going to his parents' house with the consent of the plaintiff and his parents, there was nothing unnatural in taking her ornaments with her, and there was no question of detention of her ornaments when the defendant was going to her parents' house with the consent of the plaintiff. We have carefully gone through the evidence on the point and we are in agreement with the conclusion of the learned Judge of the Family Court on the point of custody of these ornaments of the appellant, and since these ornaments are with the defendant appellant, the question of payment of their price to her

does not arise.
16. As regards other items, the learned Judge of the Family Court did not consider the items mentioned in papers no.77Ka to 80Ka on the ground that these items were purchased in the year 1987 while the marriage had taken place in November, 1988 and so these items could not be considered to be given in the marriage . It is , however, to be seen that the engagement ceremony had taken place on 19.2.1987 and the items referred to in these receipts were purchased on 15.2.1987 and so there was no reason for rejecting these items which had been given at the time of engagement ceremony.
17. Similarly the other items referred to in paper nos.81Ka to 86 Ka and 88Ka to 96 Ka are to also be considered for the purpose of passing order under section 27 of the Hindu Marriage Act and the total price of these items referred to in paper nos. 77Ka to 86 Ka and 88 Ka to 96 Ka comes to Rs.32480.37/-. It is to be seen that there has been rise in prices but it is also to be seen that these items were purchased in the year 1987 and 1988, and taking into consideration the depreciation in their values, it will be proper to award that amount only which is mentioned in the cash memo etc. and so it would be reasonable to award a sum of Rs. 32480.37 , the round figure of which is Rs.32500/-. Thus, we are of the view that this amount of Rs. 32500/- should be awarded to the appellant under section 27 of the Hindu Marriage Act.
18. Thus, the appeal deserves to be partly allowed and the amount of prices of the items which was allowed by the learned Judge Family Court under Section 27 of the Hindu Marriage Act deserves to be enhanced from Rs 22,000/- to Rs.32500/-. It appears from the record that the amount of Rs.22000/- has already been paid to the defendant appellant by the plaintiff, hence she would be entitled to recover the excess amount of Rs. 10500/- only.
19. The appeal is, accordingly, allowed only to this extent that the amount of prices of items which is payable to the defendant appellant under Section 27 of the Hindu Marriage Act is enhanced to Rs.32500/- from Rs.22000/- awarded by the Judge Family Court and after adjustment of Rs.22000/-, already paid to the defendant appellant, she will be entitled to recover an additional amount of Rs.10500/- only awarded by this court, and that amount shall be payable within four months. The decree of lower court in other respects is confirmed. The appellant is also allowed pendentelite and future interest till the date of actual recovery of the amount of Rs.10500/- at the rate of 6% per annum.
21. Both the parties shall bear their own costs of this appeal.

Dated:4.7.05
RPP/MLK

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Court No. 3/AFR

Criminal Misc. Writ Petition No. 12670 of 2005.

Rajesh Gupta and another. ..... ..... Petitioners.

Versus

State of U.P. and another. ..... ..... Respondents.

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Present:

(Hon'ble Mr. Justice Amitava Lala and Hon'ble Mr. Justice Shiv Shanker)

Appearance:

For the Petitioners : Sri R.B. Sahai.

For the Respondent No. 1 : A.G.A.

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Amitava Lala, J.-- The petitioners have filed the present writ petition for quashing the F.I.R. relating to Case Crime No. 11 of 2005, under Sections 304-B, 498-A, 342, 506 I.P.C. and ¾ Dowry Prohibition Act, Police Station Khukhundu, District Deoria. Learned Counsel appearing for the petitioners contended before this Court that so far as commission of offence under Section 304-B I.P.C. is concerned, the place of occurrence is at Mumbai, therefore, this Court has no jurisdiction in view of the judgement reported in AIR 2004 SC 4286 (Y. Abraham Ajith and others Vs. Inspector of Police, Chennai and another). We have carefully considered such judgement. In the said judgement, we find that ordinarily the offence will be inquired into and tried by the Court within whose local jurisdiction the crime has been committed. The word "ordinarily" has been clarified in another judgement of the Supreme Court reported in 2001 (42) ACC 860 (Mohan Baitha and others Vs. State of Bihar and another). We have considered the Sections 177 and 178 of Code of Criminal Procedure. We found that Section 177 Cr.P.C. speaks for inquiry and trial ordinarily to be held at the place given under such section. But Section 178 is very categorical in respect of the factual aspect of the matter herein. Factually, save and except Section 304-B I.P.C. other sections are applicable in the place at Deoria, Uttar Pradesh and not at Bombay. Therefore, Section 178 Cr.P.C. will be categorical in this respect. Such section is quoted hereunder;-

"178. Place of inquiry or trial.--- (a) When it is uncertain in which of several local areas an offence was committed, or
(b) where an offence is committed partly in one local area and partly in another, or
(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
(d) where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

It appears to us that in AIR 1997 SC 2465 (Sujatha Mukherjee (Smt.) Vs. Prashant Kumar Mukherjee) the same issue was considered. We can get such reference also from the judgement cited by the petitioners i.e. AIR 2004 SC 4286 (supra). That apart, a recent trend is that if a part of cause of action arose in two different places, the writ jurisdiction can be available in either of the places even in respect of the criminal cases irrespective of the seat of the Government. The part of cause of action is sufficient for the purpose of invocation of jurisdiction. In AIR 2004 SC 4286 (supra) factual aspect of the judgement reported in AIR 1997 SC 2465 (supra) had been distinguished. The factual distinguishing part is as follows:-

"11. A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee (Smt.) v. Prashant Kumar Mukherjee (1997 (5) SCC 30). There the allegations related to commission of alleged offences punishable under Sections 498A, 506 and 323 I.P.C. On the factual background, it was noted that though the dowry demands were made earlier the husband of the complainant went to the place where complainant was residing and had assaulted her. This Court held in that factual background that clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178 (c) of

the Code relating to continuance of the offences cannot be applied."

Therefore, the ratio of the judgement as reported in AIR 2004 SC 4286 (supra) is not applicable herein. From AIR 2005 SC 1989 (Ramesh and others Vs. State of Tamil Nadu) it appears that in respect of commission of offence between two places the third place i.e. place of residence can not be the appropriate place for adjudication; meaning thereby two other places, where the commission was partly held, can be the appropriate jurisdiction. We have not called upon for forum selection between two places where the jurisdiction partly arose. Hence, in the instant case, a part of cause of action can be said to be arisen at the aforesaid place in the State.

So far as merit is concerned, we do not find any cogent reason to interfere with the submissions of the learned Counsel appearing for the petitioners in support of his case. Gravity of the Case Crime No. 11 of 2005, under Sections 304-B, 498-A, 342, 506 I.P.C. and ¾ Dowry Prohibition Act, Police Station Khukhundu, District Deoria does not prescribe any interference. Therefore, the writ petition stands dismissed.

No order is passed as to costs.

The application for bail shall be decided in accordance with law and only for expeditious disposal of the bail application the ratio of Full Bench judgement of this Court as reported in 2004 (All. C.J.) 1846 (Smt. Amarawati and another Vs. State of U.P.) can be followed.

(Justice Amitava Lala)

I agree.

(Justice Shiv Shanker)

Dated: 15.12.2005.
SKT/12670-05.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 19

Crl. Misc. Bail Application No. 5434 of 2005
Mobin @ Momin Khan.....Vs.....State of U.P.
...

Hon'ble Alok Kumar Singh, J.

Heard learned counsel for the applicant and learned A.G.A. and also perused the material on record.
The applicant Mobin @ Momin Khan is involved in case crime No 44 of 2004, for the offences under Sections under Sections 498-A, 304-B I.P.C, and ¾ Dowry Prohibition Act, Police Station Acchalda , district Auraiya.
It was argued on behalf of the applicant-husband that there is an inordinate unexplained delay of 13 days in lodging the F.I.R. The information regarding incident was given by the husband of the real sister residing in the same village on the same day i.e. 14.7.2004 at 9.00 a.m. but the report was lodged on 27.7.2004 at 3.10p.m. It was also pointed out that being Muslims the evil of dowry demand is not so much prevalent amongst them. There is also no previous letter, report or any sort of evidence to show the alleged demand of dowry after the marriage. The F.I.R. was lodged by brother Shamsuddin. His real brother Hasuddin was present at the time of Panchayatnama. He also did not raise any objection/ complaint. As mentioned hereinabove the is real sister, her husband and real brother of complainant were present in the same village but still the report could not be lodged for 13 days and there is no explanation at all regarding this inordinate delay. There were no external injuries and even the bangles were found intact in both the hands of the victim. In para 8 of the affidavit it was mentioned that victim is first marriage took place with one Khudado in the year 1997 but he gave divorce because she had illicit relation with another person and due to this the victim also had eaten a poisonous substance. These contentions have not been specifically denied in the counter affidavit. This uncontroverted contentions prima facie support the applicant's version that the victim had a tendency to commit suicide and that in the back drop of her earlier divorce due to illicit relations with another person, she probably committed suicide due to depression and frustration.
Learned A.G.A. opposed the bail application on the ground that in muslim community also the custom of dowry is becoming prevalent and that the marriage took place within 7 years and hence the burden lies entirely on the applicant-accused.
In view of the entire facts ,circumstance and considering some of the argument advanced on behalf of the applicant as mentioned therein above, without any prejudice to the merit of the case I find it to be a fit case for granting bail.
Let the applicant Mobin @ Momin Khan involved in case Crime No. 44 of 2004, under Sections 498-A, 304-B I.P.C and ¾ Dowry Prohibition Act, Police Station Acchalda, district Auraiya be enlarged on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.
Dt. 22.11.2005.
Rkb.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 14100 of 2005
Razia Begum Vs. State of U.P. and another.

Hon. Mrs. Poonam Srivastava, J.
Heard learned counsel for the applicant and learned A.G.A for the State.
The order dated 27.8.2005 passed by Chief Judicial Magistrate, Allahabad on an application under Section 156(3) Cr.P.C. has been challenged, whereby the learned Magistrate has refused to register the case.
The argument on behalf of the applicant is that an application was filed by the applicant bringing facts and allegations against the accused to the notice of the Magistrate, which constitute an offence under Sections 498-A, 323, 504, 506 I.P.C. read with Section 3/4 Dowry Prohibition Act, Police Station Utraon, District Allahabad. The allegation of demand of dowry and the victim being subjected to cruelty for non-fulfillment of the demand of dowry was made out and the Magistrate was absolutely wrong while examining the merits of the case. The prayer for registering the first information report was refused for want of injury report and also after sifting the evidence regarding the demand of dowry. Counsel for the applicant emphasized that once fact is brought to the notice of the Magistrate and on the basis of allegations prima facie cognizable offence is made out, then the Magistrate is not required to assess the correctness of the allegations.
Reliance has been placed by the counsel for the applicant on a number of decisions of this Court. The first decision is, Kamaluddin Vs. State of U.P., 2005 (1) J.I.C., 336, (Alld.). In the said case, this Court observed that it was obligatory on the part of the Magistrate to direct the registration of the case and to investigate, in the event, a perusal of application discloses commission of a cognizable offence. Another case relied upon by the counsel is, Rajendra Prasad Mishra Vs. State of U.P., 1994 J.I.C., 216 paragraph 9. Several other final orders passed by this Court disposing of the applications have been brought to my notice. In Criminal Misc. Writ Petition No. 1412 of 2005, Zaved Vs. State of U.P. and others, this Court remanded the case and directed the Magistrate concerned for afresh decision vide order dated 14.2.2005. The order refusing to register and investigate the offence despite a cognizable offence was made out on the basis of the allegations made in the application under Section 156(3) Cr.P.C. was set aside. In another Criminal Misc. Application No. 11987 of 2005, a similar order was passed on 5.9.2005 and also in Criminal Misc. Writ Petition No. 10179 of 2004, the case was remanded to the Magistrate to consider afresh.
In the instant case, the Magistrate has taken the pains to go into details and evidence of the allegations and also whether the offence will be made out on the basis of the evidence, besides that the allegations do not appear to be natural. These questions are to be gone into by the Magistrate after the completion of the investigation and after the charge sheet is filed. The Magistrate should not assume the role of a trial court while passing the orders on an application under Section 156(3) Cr.P.C. On perusal, if it appears to the Magistrate that the allegations prima facie constitute a cognizable offence and it requires investigation by the police, the Magistrate is under obligation to direct the police station concerned to register the case and investigate the same.
Taking into consideration the entire facts and circumstances of the case, the order dated 27.8.2005 passed by the Chief Judicial Magistrate, Allahabad is set aside and the learned Magistrate is directed to pass afresh orders in accordance with law.
With these observations, this application is finally disposed of.
Dt/-29.9.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

Criminial Revision No.5467 of 2004

Smt. Jyoti Chopra Vs State of U.P. and another

with

Criminal Misc. Case No.6873 of 2005

Smt. Raj Kapoor and another Vs. State of U.P. and others

and

Criminal Misc. Case No.14381 of 2004

P.A.Kapoor Vs State of U.P. and another

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Hon.Shiv Shanker,J.

Criminal Revision no.5467 of 2004, Smt. Jyoti Chopra Vs. State of U.P. and another, Criminal Misc. Case no.6873 of 2005, Smt. Raj Kapoor and Sanjay Kapoor vs. State of U.P., and Criminal Misc. Case no.14381 of 2004, P.A. Kapoor vs. State of U.P. and another have been directed against the impugned order dated 8.9.2004 passed in criminal case no.317, State vs. Sanjay Kapoor and others, under Sections 498 A,323,504 and 506 I.P.C. and 3/4 Dowry Prohibition Act by Chief Judicial Magistrate, Gautam Budhnagar whereby the accused Sanjay Kapoor, P.A. Kapoor, Smt. Raj Kapoor and Jyoti Chopra were summoned by the trial court for the aforesaid offence.

All the above three criminal revisions are related to only one impugned order, therefore, all the three above criminal revisions are being disposed of by a common judgement and order. Criminal Revision no.5467 of 2004 shall be the leading case.

Brief facts, arising out of the revisions, are that marriage in between Smt. Aparna Mehta Kapoor and accused Sanjay Kapoor was solemnized according to the Hindu customs and rites on 25 July, 1993 at Samarat Hotel, Chanakya Puri, New Delhi. Rs.12 lakhs were spent by her father according to the demand of the accused persons. However, they were not satisfied. They were demanding more dowry. Therefore, she was subjected to cruelty bodily and mentally by her husband, Sanjay Kapoor, P.A.Kapoor, father-in-law, Smt. Raj Kapoor, mother-in-law and Jyoti Kapoor (Nanad). Costly ornaments as Stri Dhan and other articles were taken by the accused from her by giving inducement, which were not returned to her by the accused. She was turned down from in law's house situated in Faridabad in August, 1993 by her husband, father-in-law and mother-in-law. Thereafter, she was living with her parent's house. Her husband was residing with her parents till December, 1993 in Faridabad. During the period of August, 1993 to December 1993 she and her parents had tried to pacify the matter by meeting with the above accused persons but they were demanding hard cash. In the month of January 1994, she was taken by her husband on her or her parent's request, at flat no.1526, Sector 29 NOIDA, which was the official residence of the company. Therefore, she and her husband were residing in the said flat. She was pressurized by her husband, Sanjay Kapoor to purchase T.V. Freeze, Cooking Gas and bed etc. from her parents. Such demand was fulfilled by her parents.

On Ist August, 1995 she gave a birth to a daughter Yashashvi in the hospital but accused did not care even to see her and her daughter in the hospital. All expenditure regarding delivery were borne out by her parents. She lived with husband from January,1994 to Feb.1999 in the rented house. Her husband had gone Mumbai in the month of Feb. 1999. He sustained injuries by fallen down in the bathroom, after getting such information she wanted to go to Mumbai but her husband and father-in-law have denied to go there. When her husband came back from Mumbai she went to meet her

husband in the hospital where she was abused by the accused. Her husband was taken by his parents after getting discharge from the hospital to Faridabad. After March 1999 her husband did not come to live with her. Several letters were written to him and she also contacted upon the telephone. However, her husband gave threatening to that she will be divorsed by him. She was living in the said house no.1135 Sector 37 NOIDA along with her daughter. She and her daughter were not maintained by her husband. Her daughter was admitted in January 2001 and December 2001 but he did not give any assistance in Feb.2000 Sanjay accused had come at her parent's house, in absence of her they tried to pacify the matter from her husband and request to live with his wife and his daughter upon which he became anger and her parents were abused by him on 19.11.2000 at about 10.00 A.M.. She along with her daughter and her parents reached at Faridabad to meet with her husband and her parents requested him to settle the dispute. However, they were abused by him, her father was pushed by her husband and her father-in-law she was pushed by her husband at the wall and she was beaten with kicks and fists, her hands were caught by her father-in-law and gave warning to go out from the house immediately, her mather-in-law also standing there she was also instigating to her husband, she was also abused by her. Few months ago her husband, father-in-law and mother-in-law started threatening to her upon telephone also and they were terrorized her to get divorse. Due to this mental and bodily cruelty she made written complaint on 25.8.05 to Mahila Ayog, NOIDA upon which the case against the accused Sanjay Kapoor, P.A.Kapoor, Smt Raj Kapoor and Jyoti Kapoor was registered on 19.11.2003 at 16.45 P.M. under Sections 498 A,323,504,506 and 3/4 Dowry Prohibition Act

Investigation of this case was entrusted to S.I. Rakesh Vashistha. After completing investigation I.O. submitted final report in the court. Thereafter, an order issuing notice, was passed by the Magistrate for the complainant of this case on the final report, whereupon a protest petition was filed by the complainant along with the affidavits of witnesses Col. M.S.Gill, Smt. Bina Haldar and several other relevant papers. Thereafter, trial court rejected the final report and all the above four accused persons were summoned for the trial for the offence under Sections 498 A,323,504,506 I.P.C. and 3/4 Dowry Prohibition Act. Feeling aggrieved it, all the four accused persons preferred above three criminal revisions.

Heard arguments of learned counsel for both the parties and perused the whole record as alleged in the impugned order. It is contended on behalf of the revisionist that First Information Report was lodged with delay of three years, no sufficient reason has been given regarding it. It is further contended that final report was submitted by the Investigating Officer and cognizance was only to be taken on the basis of material available in the case diary. It is further contended that protest petition was to be treated as complaint case and procedure for complaint case was to be adopted by the trial court. It is further contended that cognizance was taken and the prescribed limit under Section 468 Cr.P.C. is applicable and cognizance was time bared accordingly. Therefore, court below has committed illegality and material irregularity in passing the impugned order.

On the other hand, it was argued that all the evidence available in the case diary was to be looked by the court and procedure of complaint case was not to be adopted by the trial court. Therefore, trial court has not adopted the procedure of complaint case. It is further argued that Magistrate has empowered to take cognizance not only on the material available in the case diary etc. On that basis, learned court below has not committed any illegality or material irregularity.

It has been observed in Jagdish Ram vs. State of Rajasthan and another 2004,SCC (Cri) 1294 that "recording of reasons by the Magistrate at the stage of issue of process under Section 204 Cr.P.C., held, not required. It was further observed that proceedings at the stage of taking cognizance-plea that complaint was filed as a result of vindictiveness-held, not relevant to be considered by the Supreme Court at this stage-accused to raise all the pleas available to him in law before the trial court at an appropriate stage." This pronouncement of Hon.Supreme Court is applicable in this case. Therefore, the case of the accused revisionist was not to be looked at the stage of cognizance. In the present case the final report was submitted by the Investigating Officer upon which the protest petition was filed on behalf of respondent/complaint, against the final report there is pronouncement of Division Bench of this Court Pakhando and others Vs. state of U.P. and another 2001(43)ACC 1096 wherein it has been observed that where the Magistrate refuses final report the following four courses are open to him and he may adopt any one of them as the facts and circumstances of the case may require:-

"(1) He may agreeing with the conclusions arrived at by the police, accept the report and drop the proceedings. But before so doing, he shall give an opportunity of hearing to the complainant; or

(II) He may take cognizance under Section 190(1)(b) and issue process straightaway to the accused without being bound by the conclusions of the investigating agency, where he is satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed;or

(III) he may order further investigation, if he is satisfied that the investigation was made in a perfunctory manner; or

(IV) he may, without issuing process or dropping the proceedings decide to take cognizance under Section 190(1) (a) upon the original complaint or protest petition treating the same as complaint and proceed to act under Sections 200 and 2002 Cr.P.C. and thereafter decide whether complaint should be dismissed or process should be issued."

It has also been observed that Magistrate not bound to follow procedure prescribed under Sections 200 and 202 of the Code-Proviso to Section 201 (2) Cr.P.C. will have no application.

After perusal of the impugned order it appears that the trial court has considered the material available in the case diary also the affidavits of the witnesses and other papers filed with the protest petition. After adopting the above pronouncement of the Division Bench learned court below has committed illegality and material irregularity in considering the affidavits of the witnesses and other papers filed with the protest petition. The trial court was bound to consider only the material available in the case diary not any other evidence on the basis of the material available in the case diary. Prima facie case was made out to proceed the case then the accused may be summoned for the trial. At this stage it is proper that matter be remanded back to the trial court to decide the fresh order according to the law and above direction.

In view of above discussions made, I come to the conclusion that the petitions filed under Section 482 Cr.P.C. are not maintainable and are liable to be dismissed. However, the revision is liable to be allowed and the impugned order is liable to be set aside.

The Criminal Revision No.5467 of 2004, Smt. Jyoti Chorpa and another is allowed and the impugned order is set aside. The matter is remanded back to the court below for afresh decision in accordance with law and the observations made in this order after giving opportunity of hearing to the affected parities. The Criminal Misc. Case no.6873 of 2005 and Criminal Misc.Case No.14381 of 2005 are, hereby, dismissed.

No order as to costs.

Dt. 2005

Asha

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Court NO. 49

Criminal Misc. Bail Application No. 18859 of 2005

Anil Kumar Vs. State of U.P.

Hon'ble M. K. Mittal, J.

Heard learned counsel for the accused applicant, learned A.G.A. and perused the record.

Counter affidavit has been filed by learned A.G.A. be taken on record. Accused applicant Anil Kumar Shukla @ Raja son of Ajai Kumar Shukla has prayed for release on bail in case crime No. 217 of 2004 under Sections 498-A, 304 B IPC and Section ¾ D. P. Act, P.S. Chaubepur,District Kanpur Nagar.

Prosecution case is that Smt. Soni sister of the complainant Sunil Kumar was married with the accused applicant on 9.5.2004. Dowry was given but Smt. Soni was harassed for not bringing Rs. 50,000/- in cash, Freeze and Golden Chain. The complainant had agreed to give a motorcycle and had also looked the same but could not make payment and had to make the payments in instalments and the payment was made on 31.8.2004. The accused left Smt. Soni at her Maika on 18.9.2004 with the instruction to come to Ramdham Crossing in Bithoor on 20.9.2004. On 20.9.2004 Smt. Soni along with her younger sister Suman went to Ramdham crossing and there the accused met them. Thereafter Km. Suman left for her school. Zameel son of Babu Khan of the complainant's village saw the accused and Smt. Soni near the Zuriha Talab. At about 9.00 a.m. Ashish Kumar son of Uma Shanker, Munshi Lal son of Chota who were going to Bithoor in connection with their work saw that Smt. Soni was lying in unconscious condition near the pond by the side of the road. They recognised her and took her to the complainant's house. There the complainant called Dr. Ramu Savita and he after examining her declared her dead. According to the complainant accused gave some poisonous substance as the dowry demand could not be fulfilled. A report was lodged on 23.9.2004 prior to that the complainant had given information at P.S. Chaubeypur on 20.9.2004. It was entered in General Diary at Rapat NO. 201 at 3.00 p.m. He further contended that it is a clear case of dowry death and the poison was given by the accused when he had called the deceased at Ramdham Crossing.

Post mortem was conducted on 21.9.2004 and the cause of death could not be ascertained and Viscera was preserved. During examination poison was found in the Viscera part.

Contention of learned counsel for the accused applicant is that accused has been falsely implicated in this case and that the death of Smt. Soni took place in her Maika and she was killed by her father and other family members and that the accused also filed a complaint in the Court under Section 156(3) Cr. P.C. in this connection on 22.9.2004 and thereafter on the direction of the Court case was registered on 10.12.2004. According to the complaint made by the accused he had left his wife in her Maika on 18.9.2004 who had told him to come back within 2-4 days after. She had also stated to bring Rs. 5,000/- from her father. When his wife did not return, he went to his sasural on 22.9.2004 and came to know in the village that his wife was killed by her father and brothers on 20.9.2004 and on account of fear he came back. He was not informed by family members of his wife and they also performed her funeral rites.

Learned counsel for the accused applicant has further contended that there is no evidence to suggest that the accused has committed the murder of his wife. In the affidavit annexed with the bail application in para -13, it has been contended that in a pre planned manner a demand of Rs. One lakh was made from the applicant and he was also threatened that if the demand would not be fulfilled a report would be lodged against him and his family members. But in the affidavit, it has not been mentioned as to when the demand was made and who made this demand from the side of the complainant. It is also important to mention here that no such allegation has been made in the complaint given by the accused on 22.9.2004 under Section 156(3) Cr.P.C. Had there been any such demand the accused must have mentioned this fact in the report. To the contrary his complaint shows that he did not meet the father or brother of his wife. On account of fear he came back when he was told by the villagers about the death of his wife.

Learned A.G.A. has contended that in a pre planned manner the accused had asked his wife to come to Ramdham Crossing on 20.9.2004 and she went there with her younger sister and the accused met her as has been stated by Km. Suman in her statement under Section 161 Cr. P.C. and thereafter Km. Suman left for her school. He has further contended that Zameel and Raju son of the complainant had also seen the accused talking with his wife. They have made statement to that affect before the Investigating Officer.

Learned A.G.A. has further referred to the statements of Ashish Kumar and Munsilal who saw Smt. Soni lying in unconscious state near the pond. They had taken her to her house where she was declared dead by the doctor. Viscera report has

confirmed that poison was given to the deceased. He has further contended that it is a clear case of dowry death and the poison was given by the accused when he had called the deceased at Ramdham Crossing.
Considering the facts and circumstances of the case, but without prejudice to the merits of the case, accused is not entitled to bail and his application is liable to be rejected.
Bail application of the accused is hereby rejected.
Dated: 27.10.2005
RKS/18859/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

COURT No.54

CRIMINAL MISC. APPLICATION NO. 14642 OF 2005

Smt. Laxmi.....Applicant.

Versus

State of U.P. and another.....Opposite parties.

Hon. Mrs. Poonam Srivastava, J.

Heard Sri R.P. Tripathi, learned counsel appearing for the applicant and learned A.G.A. for the State.

The prayer in this application is to quash the order dated 30.8.2005 passed in Session Trial No. 1418 of 2005 State Vs. Smt. Laxmi under Sections 498-A, 304-B I.P.C. read with Section 3/4 Dowry Prohibition Act alternate 302/34 I.P.C. P.S. Sahibabad, District Ghaziabad. The main objection on behalf of the applicant is that by means of the order dated 30.8.2005, which is a memorandum of charge, is against specific provision of the Code. Learned counsel for the applicant has placed Sections 212, 213, 228 (2) Cr.P.C, the relevant provision of the Code is enumerated herein below:

Section 212. Particulars as to time, place and person.- (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219:

Provided that the time included between the first and last of such dates shall not exceed one year.

Section 213. When manner of committing offence must be stated.- When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Section 228. Framing of charge.- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Sessions, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

The objection is that provisions relating to framing of the charge prescribe that charge shall contain specific particulars regarding the time and place of the alleged offence and name of the person and also in respect of which an offence is alleged and the Judge shall also read and explain charge to the accused and shall ask whether he pleads guilty of the offence charged or claims to be tried. Perusal of the order dated 30.8.2005 clearly shows that it starts from " Patravali

Prastut Huyee" it does not appear that the memorandum of charge has yet been framed against the applicant. It is only an order whereby the Additional Sessions Judge, Ghaziabad has expressed his opinion that prima facie he is of the view that a charge under Sections 498-A, 304-B or alternatively a charge under Section 302/34 will be made out as sufficient evidence is available. The concluding line of the order clearly states that a charge under Section 498-A, 304-B I.P.C. is to be considered. In view of the specific recital of the order, I do not feel that this is a memorandum of charge. In fact, the Additional Sessions Judge, Ghaziabad has only passed an order to the effect that first question as to whether death of the deceased will be covered within the ambit of "Dowry death" or not and alternatively if the court comes to a conclusion that the deceased was not done to death within seven year of the marriage and was subjected to cruelty for demand of dowry and the death is unnatural one, then alternatively the question of charge under Section 302 read with Section 34 I.P.C. will be considered. In the circumstances, though I am in agreement with the argument of the counsel for the applicant that charge has to be necessarily framed in confirmation with Sections 212, 213 Cr.P.C., but I do not agree with the submission that the order dated 30.8.2005 is a memorandum of charge.

Looking to the facts and circumstances of the case, I dispose of this application with a direction to the Additional Sessions Judge, Ghaziabad to proceed in Session Trial No. 1418 of 2005 and frame charge in accordance with law after going through the entire record available.

Dt. 6.10.2005

rkg

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

COURT No.54

CRIMINAL MISC. APPLICATION NO. 14642 OF 2005

Smt. Laxmi.....Applicant.

Versus

State of U.P. and another.....Opposite parties.

Hon. Mrs. Poonam Srivastava, J.

Heard Sri R.P. Tripathi, learned counsel appearing for the applicant and learned A.G.A. for the State.

The prayer in this application is to quash the order dated 30.8.2005 passed in Session Trial No. 1418 of 2005 State Vs. Smt. Laxmi under Sections 498-A, 304-B I.P.C. read with Section 3/4 Dowry Prohibition Act alternate 302/34 I.P.C. P.S. Sahibabad, District Ghaziabad. The main objection on behalf of the applicant is that by means of the order dated 30.8.2005, which is a memorandum of charge, is against specific provision of the Code. Learned counsel for the applicant has placed Sections 212, 213, 228 (2) Cr.P.C, the relevant provision of the Code is enumerated herein below:

Section 212. Particulars as to time, place and person.- (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219:

Provided that the time included between the first and last of such dates shall not exceed one year.

Section 213. When manner of committing offence must be stated.- When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Section 228. Framing of charge.- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Sessions, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

The objection is that provisions relating to framing of the charge prescribe that charge shall contain specific particulars regarding the time and place of the alleged offence and name of the person and also in respect of which an offence is alleged and the Judge shall also read and explain charge to the accused and shall ask whether he pleads guilty of the offence charged or claims to be tried. Perusal of the order dated 30.8.2005 clearly shows that it starts from " Patravali

Prastut Huyee" it does not appear that the memorandum of charge has yet been framed against the applicant. It is only an order whereby the Additional Sessions Judge, Ghaziabad has expressed his opinion that prima facie he is of the view that a charge under Sections 498-A, 304-B or alternatively a charge under Section 302/34 will be made out as sufficient evidence is available. The concluding line of the order clearly states that a charge under Section 498-A, 304-B I.P.C. is to be considered. In view of the specific recital of the order, I do not feel that this is a memorandum of charge. In fact, the Additional Sessions Judge, Ghaziabad has only passed an order to the effect that first question as to whether death of the deceased will be covered within the ambit of "Dowry death" or not and alternatively if the court comes to a conclusion that the deceased was not done to death within seven year of the marriage and was subjected to cruelty for demand of dowry and the death is unnatural one, then alternatively the question of charge under Section 302 read with Section 34 I.P.C. will be considered. In the circumstances, though I am in agreement with the argument of the counsel for the applicant that charge has to be necessarily framed in confirmation with Sections 212, 213 Cr.P.C., but I do not agree with the submission that the order dated 30.8.2005 is a memorandum of charge.

Looking to the facts and circumstances of the case, I dispose of this application with a direction to the Additional Sessions Judge, Ghaziabad to proceed in Session Trial No. 1418 of 2005 and frame charge in accordance with law after going through the entire record available.

Dt. 6.10.2005

rkg

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 15451 of 2005.
Chandra Shekhar and others Vs. State of U.P. and others.

Hon. Mrs. Poonam Srivastava, J.
Heard learned counsel for the applicants and learned A.G.A for the State.
This application has been filed for quashing the entire proceedings and charge sheet in case No. 953 of 2005, State Vs. Chandra Shekhar and others, arising out of case crime No. 128 of 2005, under Sections 498-A, 323, 504, 506 I.P.C. and ¾ Dowry Prohibition Act, Police Station Arnia, District Bulandshahar, pending in the court of Additional Chief Judicial Magistrate (A.C.J.M.) Khurja, District Bulandshahar.
The submission on behalf of the applicants is that the first information report has been registered only with a view to cause harassment to the applicants and the entire prosecution story is false and fabricated. The charge sheet has been submitted with collusion of the local police. Copy of two applications dated 22.9.2005 and 27.9.2005 have been annexed as Annexures 4 and 5 to the affidavit. After lodging of the first information report, the allegations were raised against the Investigating Officer Ram Sewak. Two applications were moved solely with the purpose that a faire and impartial investigation may be carried out. Annexure-6 is a certificate issued by Principal of Ramjas Bal Senior Secondary School No. 1 Dariyaganj, New Delhi certifying that Prem Chandra Sharma, who is also an accused in the present case, was present at the relevant time and date of occurrence in the school and therefore, it has been argued that the entire prosecution instituted on the basis of first information report as well as the second charge sheet is nothing short of an abuse of the process of the court.
Reliance has been placed on a decision of the Apex Court in the case of Sushil Kumar Sharma Vs. Union of India and others, 2005 All JIC, 697. Emphasis has been laid that the Apex Court has taken a note of frivolous prosecution of the in-laws and husband in the garb of Section 498-A I.P.C. is unconstitutional and ultra vires. However, the court hastened to add that however to prevent abuse of well intentioned provision it is necessary for legislature to find out ways as to how makers of frivolous complaints or allegations can appropriately be dealt with. The Apex Court had noted that the object of the provision introduced was to prevent the dowry menace but instances are not wanting where the complaints are not bonafide and are filed with oblique motive. This decision lays down that in the event, the court finds that the entire allegations were only with a view to cause harassment then suitable action should be taken against misuse of the provisions, which was only with a view to prevent dowry torture and cruelty. The police investigated the matter and has come to a conclusion that the occurrence did take place and submitted charge sheet. A bare reading of the first information report as well as charge sheet prima facie discloses commission of offence, despite there is injury report annexed as Annexure-2. Admitting that the injuries are simple but this can not be ruled out that the victim was manhandled, it was resulted in the injuries, therefore, accepting the argument on behalf of the applicants, the possibility of the occurrence having taken place can not be completely ruled out.
In the circumstances, the applicants are permitted to appear through counsel and claim discharge at the appropriate stage, and the court below shall decide the said application, in accordance with law, after affording opportunity of hearing to the parties, by a reasoned order. However, in case the applicants appear within three weeks from today and moves an exemption application under Section 205/317 Cr.P.C., (as the case may be) personal appearance of the applicants shall not be compelled during pendency of the application moved on behalf of the applicants. The court shall take an undertaking from the applicants that they will appear on such dates if the court requires their presence. Till the application for discharge is finally decided, no coercive measures shall be taken against them.
With these observations, this application is disposed of.
Dt/-20.10.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 14653 of 2005.
Mange Ram Vs. State of U.P.

Hon. Mrs. Poonam Srivastava, J.
Heard Sri W.H. Khan, learned counsel for the applicant and learned A.G.A for the State.
This application has been filed for quashing the charge sheet arising out of case crime No. 261 of 2001, under Sections 458-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act, Police Station Jani, District Meerut and also the order issuing non bailable warrant and process under Section 82-83 Cr.P.C.
A first information report was registered at case crime No. 261 of 2001, against the husband Pappu Sharma, father-in-law Raghuvir Singh, applicant Jeth Mange Ram, Dewars Ram Singh and Sanjay and mother-in-law Premwati. The present applicant along with co-accused Ram Singh and Sanjay were not arrested and they have absconded. The session trial commenced against the husband, mother-in-law and father-in-law as Sessions Trial No. 82 of 2002. The session trial ended in a clear acquittal vide judgment dated 2.9.2005. A copy of the judgment has been annexed as Annexure-4 to the affidavit. In the order of acquittal, it is clearly stated that on the basis of evidence, the learned Sessions Judge has concluded that the deceased Rekha died on account of an accidental fire, her husband and other in-laws in the family tired their best to get her treated for the burn injuries, also her brother tried his best to save her but accident proved to be fatal. In the circumstances, the death of the deceased was held not to be ''dowry death' and the accused were acquitted.
This is an application on behalf of Jeth Mange Ram for quashing the charge sheet as the other co-accused husband, mother-in-law and father-in-law have been given a clear acquittal by the learned Sessions Judge, Meerut. The submission on behalf of the applicant is that the evidence recorded in the said session trial will be same evidence in the case of the present applicant and since once the court has given a verdict of acquittal, the proceedings, if allowed to continue against the present applicant, will only be a futile exercise and no good result can be expected. It is almost certain that the trial of the present applicant if allowed to continue, will only end in an acquittal and there is no even a remote chance of conviction. In the facts and circumstances and on the basis of a decision of this Court in the case of Manoj Vs. State of U.P. and another, 2004 (49) ACC, 302. it is prayed that the principle of ''stare decisive' will squarely apply to the facts of the present case and in view of the aforesaid decision, the charge sheet should be quashed. Another decision cited by learned counsel for the applicant is Smt. Begum and others Vs. State of U.P. and others Vs. State of U.P. and another, 2005 Current Bail Cases, 546.
After hearing the counsel and going through the decisions cited above on behalf of the applicant, it is true that there is no prospect of the case ending in conviction against the present applicant and only if, the trial is allowed to continue, it will amount to wastage of valuable time of the court. The trial, if allowed to continue, will only be a hallow formality of pronouncing the same judgment which has already been passed in respect of other co-accused in the same case crime number and entire exercise will be rendered futile.
In the facts and circumstances of the case, this application is allowed and the charge sheet and subsequent proceedings initiated against the applicant arising out of case crime No. 261 of 2001, under Sections 458-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act, Police Station Jani, District Meerut are quashed. The orders issuing non bailable warrant and process under Section 82-83 Cr.P.C. are set aside.
Dt/-7.10.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 8650 of 2005.
Rashim Vs. State of U.P. and another.

Hon. Mrs. Poonam Srivastava, J.

Heard learned counsel for the applicant and learned A.G.A. for the State.
This application under Section 482 Cr.P.C. has been filed for availing the benefit of principle of stare decisis. A first information report was lodged by the contesting opposite party against six persons including the present applicant under Sections 498-A, 323 I.P.C. read with Section 3/4 Dowry Prohibition Act, Police Station Sikandrabad, District Bulandshahar on 20.1.2002 which was registered at case Crime No. 21 of 2002. A charge sheet was submitted against the accused persons. It appears that some of the accused including the applicant had approached this Court and got the proceedings stayed in Criminal Misc. Application No. 62545 of 2002. The co-accused Vibhu, Vivek, Ravi, Rashmi, Nirmala and Brij Lal Santoshi have been given a clear verdict of acquittal vide judgment dated 5.11.2004. A certified copy of the judgment is annexed as Annexure-3 to the affidavit. It is, therefore, prayed that since the present applicant is also an accused in the same case crime number, the evidence is also common. The witnesses were declared hostile and finally the trial has ended in acquittal. In the circumstances, the claim of the applicant is that there is no prospect of the case ending in conviction if allowed to continue against the applicant. It will only result in wastage of valuable time of the Court. If the trial is allowed to continue, it will be sheer formality and, therefore, the applicant has claimed that she should be given the benefit of principle of ''stare decisis' and proceedings should be quashed. Reliance has been placed on a decision of this Court in the case of Narayan Rai Vs. State of U.P. and another, 2004 (1) J.I.C. 508 (Allahabad). I have gone through the judgment of acquittal in respect of the other co-accused and it is apparent that P.W.-1 had supported the prosecution story in examination-in-chief but subsequently when he was recalled on 1.11.2004, he admitted that the accused had made no demand of dowry from his daughter and she was never subjected to cruelty whatsoever. There was certain differences between the husband and wife, thus as a result his daughter has come to her father's home. He had also admitted that both the daughters have been remarried and they have been given alimony during the divorce proceedings and in the circumstances, for want of evidence, the judgment of acquittal was recorded. I am satisfied that if the proceeding against the present applicant is allowed to continue, there will be no other outcome but for the same verdict which has been recorded in the other case.
In the circumstances, I allow this application and grant the benefit of principle of stare decisis and criminal proceedings initiated against the applicant on the basis of first information report registered at case Crime No. 21 of 2002, under Sections 498-A, 323 I.P.C. read with Section 3/4 Dowry Prohibition Act, Police Station Sikandrabad, District Bulandshahar is quashed. The application is allowed.
Dt/-5.8.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Court No. 49.

Criminal Misc. Bail Application No. 1164 of 2005

Sanjeev Mishra Versus State of U.P.

Counsel for the petitioner: S/sri R.P.Tiwari, R.K.Mishra, P.P.Singh Rathore.

Counsel for the respondents: A.G.A., R.P.S. Chauhan

Hon'ble M. K. Mittal, J.

Accused applicant Sanjeev s/o Braj Nandan Mishra has prayed for release on bail in case Crime No. 928 of 2004 under Sections 304 B, 306, 498 A, 302 IPC and Section ¾ of D.P.Act, P.S.Civil Lines, District Budaun.

I have heard learned counsel for the applicant, leaned counsel for the complainant, learned A.G.A. and perused the record.

Learned counsel for the applicant has prayed that he be allowed to correct the Sections under which the bail is prayed. He is allowed to amend the Sections.

Prosecution case is that Smt Jyoti D/o the complainant Surendra Kumar Sharma was married with the accused applicant about 2-1/2 years prior to the incident according to Hindu rites and dowry was given at the time of marriage. But it could not satisfy the in laws of Smt. Jyoti and demand for Rs. 50,000/- in case and motorcycle was made. When the demand could not be fulfilled Smt. Jyoty was ill-treated, harassed and beaten by the accused persons. The complainant tried to make the things clear but to no affect. On 9.8.2004 Achal Sharma, elder son in law of the complainant informed him on phone that some poison was given to Jyoti and she had been killed. The complainant came to the matrimonial house of his daughter and found that the accused were absconding and the dead body was lying in the house. The complainant lodged the report same day at 11.30 p.m. At the time of post mortem, the cause of death could not be ascertained and Viscera was preserved and subsequently it has come on record that Aluminium Phosphide was found in the Viscera part as per Annexure-No. -3 to supplementary affidavit.

Learned counsel for the applicant has contended that the applicant has been wrongly implicated in this case and that Smt. Jyoti committed suicide. Learned counsel for the applicant has contended that in this case after investigation charge sheet was submitted under Section 306 IPC but the Police Superintendent directed for further investigation and without there being any further investigation charge sheet has been submitted under Section 304 B IPC and learned Trial Court has framed the charges not only under Section 306, 304 B IPC but also under Section 302 IPC in the alternative. On this basis, he contended that prosecution itself is not certain that it is dowry death case and therefore accused is entitled to bail.

Learned counsel for the accused applicant also referred to the statement of Smt. Anju Sharma, Sister of the deceased wherein she has stated that the deceased did not tell her about any demand of dowry.

Learned A.G.A. and learned counsel for the complainant have contended that first investigating officer has prepared the charge sheet under Section 306 IPC but it was not submitted in the Court and further investigation was directed by the Superintendent of Police because the first Investigating Officer had in collusion with the accused persons spoiled the prosecution case.

Learned counsel for the complainant further contended that in the bail application the ground for suicide as mentioned is that Smt. Jyoti had no child and therefore she committed suicide. But in para-6 of the counter affidavit, it has been deposed that the deceased had a daughter who is alive, it shows that the grounds for suicide as alleged by the accused in the bail application is incorrect.

Learned counsel for the applicant while giving the ground for suicide, has referred to Purcha no. 9 (paper Annexure no. R.A.-1), wherein it has been mentioned that the deceased insisted that accused should construct a house in Budaun city but the accused did not agree and therefore she committed suicide.

According to learned counsel for the complainant and learned A.G.A. none of these grounds can be taken to be sufficient for committing suicide. They have further contended that the statement of Smt. Anju Sharma, the Sister of the deceased is not material as she had met her sister for the last time in November, 2003 whereas the incident took place in August 2004. If the learned Trial Court has framed the charges under Section 306, 304 B and 302 IPC in alternative it cannot be a ground to release the accused on bail.

In the circumstances of the case, accused is not entitled to bail and his bail application is liable to be rejected.

Bail application of the accused is hereby rejected.

Dated: 2.9.2005
RKS/1164/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Reserved

Criminal Misc Bail Application No. 12688 of 2005
Bijendra Tiwari ...Vs..... State of U.P.
.....

Hon'ble Ravindra Singh, J.

Heard Sri P.N. Misra, Senior Advocate assisted by Sri Apul Misra learned counsel for the applicant, learned A.G.A. and Sri S.K. Pandey learned counsel for the complainant.
This application is filed by the applicant Bijendra Tiwari with a prayer that the applicant may be released on bail in case Crime no. 446 of 2005, under Sections 498-A and 308 I.P.C. P.S. Prem Nagar, District Bareilly
From the perusal of the record it reveals that in the present case the F.I.R. was lodged by Sri Ram Kumar Sharma at P.S. Prem Nagar on 17.5.2005 at 10.05 a.m. in respect of the incident which had occurred on 16.4.2005 at 2 p.m., with the allegation that the marriage of Smt Ruchi Tiwari the daughter of the first informant was solemnized with the applicant about three years prior the alleged occurrence. The daughter of the first informant was subjected to cruelty by the applicant and other co-accused persons, to fulfill the demand of dowry because they were demanding Rs. 2 lac. On the date of occurrence the applicant, co-accused Smt Savitri Devi, Umesh and Smt Vijay Laxmi had badly beaten Smt Ruchi Tiwari. Consequently, she received injuries. This information was given to the control room by some neighbour, on that information the police came at the house of the applicant and has taken out to Smt Ruchi Tiwari from the house. Thereafter a detailed information was given to the police by the first informant. The injured Smt Ruchi Tiwari was medically examined on 16.4.2005 at 1.45 p.m. She has received three injuries. Injury no. 1 was on the both hands, wrist , forearms, elbow and shoulder. The injury no. 2 was multiple lacerated wound 8 in number over the scalp with fresh bleeding. The injury no. 3 has shown the fracture on third metacarpal with the fracture on base of second metacarpal. The injures were fresh and grievous in nature.
It is contended by the learned counsel for the applicant that the allegation of demand of dowry is false and concocted because the applicant has purchased a plot in the name of Smt Ruchi Tiwari under Avas Vikas Scheme. The said amount was deposited in installments by the bank draft and there is joint account of Smt Ruchi Tiwari, Brijendra Tiwari and Sri S.P. Tiwari in UCO Bank, Bareilly. It is further contended that the applicant had bear the expenses of the treatment. It is further contended that the injuries were not dangerous to life. It is further contended that with the wedlock of the applicant and Smt Ruchi Tiwari a son was born, thereafter Smt Ruchi Tiwari became more irritable and temperamental. On the date of alleged occurrence she exceeded all the limits of decency and on every petty matter over the looking after of the child she started hurling abuses on the applicant and also for other family members. It was protested by the applicant and the applicant persuaded her to calm down, but in a fit of rage she slapped the applicant and abused the applicant and his family and hurled filthy abuses to the applicant and his mother, this resulted in a sudden loss of self control. In these circumstances the applicant caused injury.
It is opposed by the learned A.G.A. by submitting that the marriage of the applicant has been solemnized with the injured Smt Ruchi Tiwari about three years back. During the investigation the evidence has been collected by the I.O. to show that there was a demand of dowry and to fulfill the same she subjected to the cruelty. On the date of occurrence the injuries were caused on the head and other parts of the body of Smt Ruchi Tiwari. The injuries were grievous in nature. It has been admitted by the applicant that he had caused the injury, but he had shown a different manner of the occurrence, so the applicant is not entitled for bail.
Considering all the facts and circumstances of the case and submissions made by the learned counsel for the applicant, learned A.G.A. and learned counsel for the complainant and without expressing any opinion on the merits of the case, I find that it is not a fit case for bail at this stage.
Accordingly, the bail application is rejected at this stage.

Dated: 09..09.2005.
Rcv

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

Criminal Misc. Bail Application No. 15367 of 2005

Bhagat Singh..... Versus..... State of U.P.

Hon'ble Ravindra Singh,J.

Heard Sri Pankaj Kumar Shukla, learned counsel for the applicant and the learned A.G.A. and Sri Rajiv Goswami, learned counsel for the complainant.

This application is filed by the applicant Bhagat Singh with the prayer that he may be released on bail in Case Crime No. 146 of 2005 under sections 498 A, 323,506,364 I.P.C. and ¾ Dowry Prohibition Act, P.S. Highway district Mathura.

From the perusal of the record it reveals that in the present case F.I.R. was lodged by Pritam Singh after 8.6.2005 in respect of the incident which had occurred after 4.5.2001. According to the persecution version Smt. Nirmala, Sister of the first informant, is the wife of the applicant. Their marriage was solemnized on 4.5.2001. In he marriage dowry was given by the first informant according to his status but the applicant and other co-accused persons were not satisfied. They were demanding Rs. 1 lac in cash and to fulfill this demand they were harassing to Smt. Nirmala. Thereafter from the wedlock of the applicant and Smt. Nirmala a female child was born. Thereafter the behaviors of the applicant and other co-accused persons was changed and they started beating of Smt. Nirmala. About two years prior lodging the present F.I.R.Smt. Nirmala was beaten and she was expelled by the applicant and other co-accused from their house.

Thereafter a case was filed in the court by the father of the first informant, then the applicant and other co-accused accepted their mistake and taken away to Smt. Nirmala to their house but again she was extended threat that in case Rs. 1 lac was not given the applicant would perform second marriage. Smt. Nirmala was having a pregnancy of six months. The first informant got the information that the applicant and other co-accused persons, by way of conspiracy, for the purpose of performing the second marriage Smt. Nirmala was hidden. Efforts were made by the first informant to trace out his sister but no satisfactory reply was given by the first informant and others in respect of Smt. Nirmala. Thereafter the present F.I.R. was lodged by the first informant.

It is contended by the learned counsel for the applicant that in the present case Smt. Nirmala w/o of the applicant has not been concealed by the applicant and others co-accused persons. She is in the custody of the first informant because prior to the alleged occurrence an application under Section 125 Cr.P.C. was filed by Smt. Nirmala Devi and that was treated as a complaint but that was dismissed under section 203 Cr.P.C. That application was given for the purpose of blackmailing. It is further contended that the allegation of demand of Rs. 1 lac as dowry is false as there is no evidence in support of this allegation.

It is further contended that the applicant is an innocent persons and he has not committed this offence.

It is opposed by the learned AG.A. and learned cousnel for the complainant by submitting that the wife of the applicant is missing from his house till now she has not been recovered and no application has been given by the applicant in respect of her missing. The applicant being the husband is the sole responsible person to explain about the missing of his wife.

Considering the facts and circumstance of the case and the submission made by the learned counsel for the applicant and without expressing any opinion on the merits of the case the applicant is not entitled for bail at this stage.

Accordingly this bail application is rejected

Dt. 5.10.2005

N.A.

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**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

Criminal Misc Bail Application No.13858 of 2005

Sonu Pal ...Vs..... State of U.P.

Hon'ble Ravindra Singh, J.

Heard Sri Vinod Sinha learned counsel for the applicant, learned A.G.A. and Sri Ashutosh Srivastava learned counsel for the complainant.

From the perusal of the recored it reveals that in the present case the applicant is Devar of the prosecutrix. The F.I.R. was lodged by the prosecutrix Smt Shashi Pal against the applicant and co-accused Rakesh Pal (husband), Awadh Pal father-in-law and Smt Rani Pal mother-in-law on 12.5.2005 under Section 498-A, 323, 506, 376 and Section 3/4 Dowry Prohibition Act, Crime No. 139 of 2005 District Allahabd. According to prosecution version the marriage of the prosecutrix was solemnized with the co-accused Rakesh Pal on 13.2.2001. Soon after the marriage the applicant and other co-accused persons started beating the prosecutrix to fulfill the demand of colour T.V., refrigerator and Rs. 50,000/-. In the mean time the prosecutrix became pregnant and she gave birth a female child who died after six days of her birth because the prosecutrix was subjected to cruelty before her birth. The prosecutrix was sent to her parents house. Thereafter a panchayat was arranged. Again she came to the house of her in-laws where she was again subjected to cruelty. She stayed at the house of her in-laws for about 4 and 5 months. During that period she became pregnant again. Again the prosecutrix was beaten and she was sent to her parent's house where she gave birth a female child. At the time of lodging the F.I.R. she was aged about 18 months. The applicant and other co-accused persons constantly developing pressure to fulfill the demand of dowry, but in a compromise an assurance was given that the prosecutrix would not be subjected to cruelty. Again she came to the house of her in-laws. After ten days of her arrival she was badly beaten on 20.3.2005 and she was confined in a room where the applicant was permitted by her mother co-accused Ranipal to commit rape with the deceased. The applicant committed rape by putting off her cloths. Then she became pregnant. After one and half month of her pregnancy she was beaten and she was pressurized for abortion. At the gun point signature of the prosecutrix was taken at the blank papers and thereafter, she was expelled from the house on 22.4.2005 by giving warning that without T.V., refrigerator, and Rs. 5000/- she would not be allowed to come back. The statement was given by the prosecutrix before learned Magistrate under Section 164 Cr. P. C. Medical examination report dated 16.5.2005 shows that she was having pregnancy of 8 to 10 weeks.

It is contended by the learned counsel for the applicant that the relation between the husband and wife was not cordial, therefore, the co-accused Rakesh Pal the husband of the prosecutrix filed civil suit no. 150 of 2005 under Section 5 of the Hindu Marriage Act against the prosecutrix in the court of learned Civil Judge, Allahabad on 7.3.2005. Thereafter, the prosecutrix and the other co-accused persons entered into compromise on 8.3.2005, so there was no occasion for the applicant and other co-accused persons to commit the alleged offence and the present F.I.R. has been lodged for the purpose of harassment of the applicant and other co-accused. It is further contended that the F.I.R. is delayed by 20 days without any plausible explanation and the prosecutrix was not immediately medically examined. There is delay in medical examination of the prosecutrix also and no injury was seen on her person.

It is opposed by the learned A.G.A. and learned counsel for the complainant by submitting that there was constant demand of dowry. The prosecutrix was subjected to cruelty and the rape was committed with her by the applicant and she expelled from the house. The prosecution story fully corroborated by the prosecutrix in her statement recorded under Section 164 Cr. P. C. The detention of the applicant in jail is very short. In such circumstances the applicant dose not deserve for bail.

In view of the facts and circumstances of the case and submissions made by the learned counsel for the applicant, learned A.G.A. and learned counsel for the complainant and and without expressing any opinion on the merits of the case, I find that it is not a fit case for bail at this stage.

Accordingly, the bail application is rejected at this stage.

Dated: 9.8.2005.

Rcv

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 19

Crl. Misc. Bail Application No. 21695 of 2005
Km. Preeti Dixit.....Vs.....State of U.P.
...

Hon'ble Alok Kumar Singh, J.

Heard learned counsel for the applicant and learned A.G.A. and also perused the material on record.
The applicant Km. Preeti Dixit is involved in case crime No 1491 of 2005, for the offences under Sections 498-A,304-B,201 I.P.C and 3/ 4 Dowry Prohibition Act, Police Station Kotwali Fatehgarh, district Farrukhabad.
The allegations are that the marriage was solemnized about 4 years ago. Immediately there after demand for additional dowry started to be made and due to non-fulfillment the lady was being harassed. On 5.9.2005 at about 9.00 a.m. father of the lady received information that his daughter has been killed and her body has been taken away by the members of her in-laws in Qualis (vehicle). Subsequently the dead body was recovered from river Ganga in Kannauj.
The applicant happens to be husband's unmarried sister ( Nanad) who is aged about 22 years. It was pointed out that there is neither dying declaration nor any specific allegation against her.
The learned A.G.A. however, opposed the bail application.
In view of the entire facts, circumstance and the submissions made before this Court, without any prejudice to the merit of the case, I find it to be a fit case for granting bail.
Let the applicant Km. Preeti involved in case Crime No.1491 of 2005, under Sections 498-A, 304-B, 201, I.P.C, and 3/4 Dowry Prohibition Act, Police Station Kotwali, district Fatehgarh be enlarged on bail on her furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.
Dt. 25.11.2005.
Rkb.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 19

Crl. Misc. Bail Application No. 21141 of 2004
Sardar.....Vs.....State of U.P.
...

Hon'ble Alok Kumar Singh, J.

Heard Sri Pratap Kanchan Singh, learned counsel for the applicant and also the learned A.G.A.
The applicant is involved in case crime No. 89 of 2004, for the offences under Sections 498A, 304B IPC, and ¾ Dowry Prohibition Act Police Station Pailani District Banda. The counter and rejoinder affidavits have been exchanged.
It is alleged that a marriage was solemnized on 16.5.2003. After 15 days of the marriage the victim came to her mother's house and told that her husband, mother-in-law and father-in-law are demanding motor cycle and golden chain weighing one Tola. When the in-laws came to take her, they also insisted for these two things. The victim was not ready to go with them. But some respected persons of the village persuaded her and she went to in-laws' house. After 15 days the victim again sent the same information. Her father ( complainant ) went to meet her and came back. Then befoe Holi festival his nephew brought her with him when he found that she was being beaten by her husband. Thereafter, the victim's father-in-law came to take her back during Navratri and assured the complainant that there would not trouble for the victim. She came with her father-in-law. On 21.4.2004 at about 2 p.m. Asha Ram (cousin of applicant)informed that the victim has received serious burn injuries and has been taken to hospital for treatment. But when the complainant reached there he found her dead. He went to the police station to lodge report but was sent back. Then he sent registered application to the higher authorities but no action was taken. Ultimately he lodged the FIR on 11.5.2004 at the police station Pailani, district Banda.
As against the genuineness of the prosecution story and proposed evidence, it is argued that applicant ( husband ) earns his livelihood in Gujrat. His wife was also desiring him to take her with him but due to non availability of residential accommodation and poor economical condition the husband was not able to oblige his wife. Due to this reason she set her on fire. This would be evident from the circumstances that followed and the circumstances never speak lie while human beings can. The applicant (husband) immediately rushed to the hospital and also informed his In-laws who came to the hospital and subsequently one of them also participated in the proceedings of inquest report and there was no complaint or protest from the side of complainant. But after a lapse of about 20 days however, he lodged a false typed report implicating all the family members [( father-in-law, mothering-law, husband and brother-in-law (Devar)], under political influence after consultation. On the very next day applicant's father sent an application to S.P., Banda by registered post seeking relief, Annexure- 12 of Supplementary-affidavit. It is emphasized that there is no dying declaration indicating any involvement of the applicant. There is also not a single witness of that village. The accused and his family members did not run away from their house. They remained present there which shows their bonafide conduct. The incident of burning took place on 22.4.2004 at 9.05 a.m. in village Pailani, Police station Pailani from where the applicant immediately took his wife to district hospital Banda after covering a distance of 70 kms. and reached there at 11.05 a.m.. At 2.10 p.m. however, she died. Her post mortem was got performed at 3.45 p.m. at Banda wherein no ante mortem injury was found except burning. In Inquest report also no other injury was found except burn injury. It is further emphasized that this marriage was got settled with the help of one Chunnu who has stated under Section 161 Cr.P.C. that the marriage was settled without any exchange of dowry, because both the parties were poor. It is said that the parents of the victim were not in position to meet the alleged demand of motor cycle and golden chain because of their poverty. It is further pointed out that as is evident from the FIR itself that the victim went to her in-laws lastly around 21/22.3.2004 during Navratri while the death occurred after about a month that is, 21.4.2004.
Thus thee is no live link between the two ingredients-cruelty and death. According to the principle laid down by Hon'ble Apex Court there must exist a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty, if any, is remote in time and has become stale enough not to disturb the mental equilibrium, it would be of no consequence.

The bail is however, opposed by the learned A.G.A. on the ground that the marriage was solemnized within seven years and the victim died an unnatural death. Therefore, presumption to be taken against the applicant who is more accountable in comparison of other family members.

The points pertaining to nature of accusation, severity of punishment, reasonable apprehension of tampering the witnesses, prima facie satisfaction of the Court regarding proposed evidence and genuineness of the prosecution case were duly considered.

In view of the entire facts and circumstances of the case, taking into consideration some of the arguments advanced on behalf of the applicant in respect of the points discussed herein above, without prejudice to the merits of the case, I find it to be a fit case for granting bail. Let the applicant be enlarged on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the concerned Court.

Dt:13.12.2005

Zh/21141

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

Government Appeal No.998 of 2000

State of U.P.....Appellant

Versus

Shri Prakash.....Accused

Respondent

Hon'ble M.C. Jain, J.

Hon'ble (Mrs.) M. Chaudhary, J.

(Delivered by Hon'ble M. Chaudhary, J.)

This is an appeal filed on behalf of the State of U.P. from judgment and order dated 19th of January, 2000 passed by IV Additional Sessions Judge, Shahjahanpur in Sessions Trial No.168 of 1992 State vs. Shri Prakash acquitting the accused of the charge levelled against him under section 498-A, 302 and 506 IPC and section 4 of Dowry Prohibition Act.

Brief facts giving rise to this appeal are that on 7th of September, 1990 Om Prakash gave an application to District Magistrate, Shahjahanpur that he was employed as Lekhpal in Tehsil Sadar ; that some eight years ago he married his daughter Madhubala with Shri Prakash son of Ram Prakash resident of village Keshopur within the limit of police station Kant, District Shahajahanpur according to Hindu rites and that for the last three years Shri Prakash alongwith his family started living in a rented accommodation in the house of Ram Niwas Baba at town Powayan, Shahjahanpur and started running a medical shop. About one month prior to the occurrence Shri Prakash asked his father-in-law Om Prakash to provide him motor cycle as assured by him at the time of marriage. In order to avoid tension in the family Om Prakah did not tell that his son-in-law Shri Prakash was demanding motor cycle. However Madhubala had told his cousin Jasvant Kumar residing at Powayan that he should inform her father that he should provide motor cycle to her husband as he used to threaten her now and then. On 5th of September, 1990 Shri Prakash poured kerosene on Madhubala and set her on fire. Shri Prakash did not inform about the incident to his father-in-law or any of his family members. On 6th of September, 1990 his family members residing at Sonara Bujurg learnt about the incident. They tried to contact him in Shahjahanpur but since he had gone on duty they could not contact him. Brothers of Madhubala went to see her in the District Hospital but learnt that she had succumbed to burn injuries in the Hospital that very morning at 8:20 a.m.

On receiving information at the police station Shajahanpur Kotwali SI Rama Shanker Sharma went to the District Hospital and drew inquest proceedings on the dead body of Madhubala, prepared the inquest report (Ext Ka 8) and other necessary papers (Exts Ka 9 to Ka13) and handed over the dead body in a sealed cover to constable Nirbhay Singh and HG Ram Pal for its post mortem.

Autopsy was conducted on the dead body of Madhubala by Dr. K.K. Srivastava, Senior Consultant ENT, District Hospital Shahjahanpur. Autopsy conducted on the dead body on 6th of September, 1990 at 4:00 p.m. revealed 1st and 2nd degree burns over face, front and back of neck, chest, arms and forearms, back of abdomen, lower part of both thighs, both the hips, front and back of both legs and dorsum of both the feet and fingers. Eyebrows and eyelashes were singed. Kerosene smell was present in the body and about 80% of the body was burnt. On internal examination brain and its membrane, both the lungs and pleurae, spleen and both the kidneys were found congested. The doctor opined that death was caused due to shock as a result of extensive antemortem burn injuries.

On 7th of September, 1990 Om Prakash went to his village Sonara Bujurg and after learning about the incident went to police station Powayan to lodge FIR of the occurrence but his report was not taken out by the police. Shri Prakash also threatened that if FIR was lodged regarding the said incident his younger sister Anita who was married with his younger brother Ravindra Kumar would meet the same fate. In pursuance of the orders passed on the said application by Higher Authorities the police of police station Powayan was directed to inquire into the matter. Subsequently a case was registered at police station Powayan against the accused on 19th of September, 1990 under sections 304-B, 498-A and 506 IPC and section ¾ Dowry Prohibition Act.

Crime was investigated by Sri Mrigendra Singh, Circle Officer, Powayan who visited the place of occurrence. He picked up stove, a steel ''Bhagona', broken bottle etc. from the scene of occurrence, sealed them in a packet and prepared its memo ( Ext Ka 6). He inspected the place of occurrence and prepared its site plan map ( Ext Ka 5). After completing the

investigation he submitted charge sheet against the accused accordingly.
After framing of charge against the accused the prosecution examined Om Prakash ( PW 1), Pradeep Kumar ( PW 2), Ram Saran (PW3) and Bhupendra ( PW 4) as witnesses of various facts. PW5 Dr K.K. Srivastava who conducted autopsy on dead body of Madhubala in presence of Dr P.K. Khattri has proved the post mortem report. PW6 O.P. Khattri deposed that post mortem was conducted by Dr. K.K. Srivastava on the dead body of Madhubala in his presence. Pw 7 Constable Bhagwan Din proved check report prepared on the basis of written report sent to District Magistrate, Shahjahanpur by Om Prakash and GD entry regarding registration of the crime made by HM Rajvir Singh (Exts Ka 3 & Ka 4). He also proved other police papers.
The accused pleaded not guilty denying the alleged occurrence altogether and stating that at about 8:00 p.m. the alleged evening he received information at his medical shop that his wife got burnt; that immediately he went to his house and on being enquired his wife Madhubala told that she was boiling milk on the stove and the clothes worn by her caught fire from the stove; that then he took his wife to Primary Health Centre, Powayan and that she was sent to District Hospital therefrom where she succumbed to burn injuries sustained by her.
On an appraisal of the evidence on record the learned trial judge disbelieved the prosecution case and evidence and held the accused not guilty of the charge levelled against him and acquitted him.
Feeling aggrieved by the impugned judgment and order this appeal has been preferred on behalf of the State for redress.
We have heard learned AGA for the State appellant and learned counsel for the accused respondent.
After going through the record and evidence adduced by the prosecution we find ourselves in full agreement with the findings recorded by the trial judge. PW1 Om Prakash, father of the deceased and the first informant nowhere deposed that she was ever ill-treated or tormented by her husband Shri Prakash as he stated only thismuch that prior to the said occurrence Shri Prakash had asked him that since he had become doctor he should provide him motor cycle. He also stated that the alleged evening on returning back to his house he was informed that his sons Sudeep and Rajesh left the message that Madhubala had passed away and that then he went to Powayan and learnt that Shri Prakash poured kerosene on Madhubala and set her on fire but he could not tell as to who told him about the said fact. He admitted in his cross-examination that when his daughter got burnt she was taken to the hospital by her husband Shri Prakash. He also admitted that after marriage Shri Prakash got his wife Madhubala passed High School and she also received training of nurse and whatever amount she had got during training period she deposited in the bank in her own name which she withdrew as she needed money to meet household expenses. PW3 Pradeep Kumar, real brother of the deceased stated in his examination-in-chief that he learnt from his younger brother Rajesh that Madhubala got burnt; that then he went to District Hospital, Shahjahanpur where he found that she had succumbed to burn injuries sustained by her and inquest proceedings were about to be drawn on the dead body. He also stated that his sister Madhubala never told him that her husband used to demand motor cycle nor she ever complained of any ill-treatment at any time by her husband Shri Prakash. PW4 Bhupendra who happened to be uncle of Madhubala stated in his examination-in-chief that he did not know as to how she died nor he could say as to how she got burnt. He also stated in his cross-examination that Shri Prakash never demanded motor cycle or any other thing from the father of Madhubala nor did he make any confessional statement in his presence that he had set her on fire and he would also ruin the life of her younger sister Anita. However PW3 Ram Saran stated that he used to deal in grains, that at about 4:00 p.m. some 3-4 weeks after the death of Madhubala Shri Prakash told Bhupendra (PW4) in his presence that if Om Prakash took any action against him he would ruin his younger daughter Anita and that he had set Madhubala on fire by pouring kerosene on her but Bhupendra to whom the alleged confession was made by the accused has denied the said fact empathically. Testimony of rest of the witnesses is that of formal nature. Since there is no evidence on the record that Smt. Madhubala was subjected to cruelty or ill-treated by her husband Shri Prakash nor it is established by cogent and convincing evidence that Shri Prakash demanded motor cycle in dowry we are of the view that the learned trial judge was perfectly justified in holding the accused not guilty of the charge levelled against him. Since the impugned judgment does not suffer from any infirmity or illegality nor it can be said to be erroneous or perverse, we find no good reason to interfere therewith.
The appeal has got no merit and is liable to be dismissed.
The appeal is dismissed.
Office is directed to send certified copy of the judgment and transmit record of the case to the lower court immediately for necessary compliance under intimation to this court within two months from the date of receipt of copy of the judgment.
Dt: 8th of July, 2005
GA-998-2000

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

First Appeal No. 1132 of 1999

Ram Babu Babeley Vs.Smt. Sandhya

Hon'ble Yatindra Singh,J

Hon'ble R.K.Rastogi,J

(Delivered by Hon'ble R.K.Rastogi,J)

1. This is an appeal against the judgment and decree dated 26.1.1999 passed by Sri M.Q. Siddiqui, then learned Judge Family Court, Jhansi in Suit No. 34/98, Ram Babu Babeley Vs. Smt. Sandhya.

2. The facts giving rise to this appeal are that the plaintiff appellant filed the aforesaid suit against the defendant-respondent in the court of Family Judge, Jhansi under Section 13 of the Hindu Marriage Act with these allegations that the marriage of the parties had taken place according to the Hindu Rites on 15.5.1981. The plaintiff Ram Babu Babeley was working as a labourer mostly at Nagpur and Maharashtra under the contractors and so he asked the defendant to reside at Nagpur with him as he had already taken a room on rent at Nagpur ,but she refused to do so, and after lapse of two months from the date of marriage she went to her parents' house at village Dinara . She said to the plaintiff that he should not go outside Jhansi and then only she would reside with him and not otherwise. Thereafter the plaintiff started to work at Jhansi and he has been doing the work of labourer at Jhansi for the last seven years . The defendant came to his house at Jhansi in May,1990 ,and stayed for ten days only; then she went with her father to her parental home at village Dinara, Tahsil Karaira District Shivpuri (M.P.) and also took those ornaments with her which were given by the plaintiff to her. Thereafter the plaintiff went to her house in July,1990 to call her back but of no avail, and since then he has been regularly visiting the house of her parents after the lapse of 4-5 months each. Some times he went alone, some times with friends & relations, and sometimes he sent his father for 'Vida', but the defendant always refused to come back, her father also refused to send her and he asked the plaintiff that he should come to his house at Dinara and look after his agricultural work as Ghar Jamai . The plaintiff did not agree to this proposal. Then the defendant and her father became more angry. The defendant and her father wanted to grab the ornaments given to her by the plaintiff, and so she had not come to the plaintiff's house after 1990. The plaintiff several times sent notices to the defendant asking her to come to his house for restitution of conjugal rights, but the defendant in collusion with the post man sent a report that the addressee was not available at the house and that she had gone out of station for a long time. The defendant had deserted the plaintiff since May,1990 without any lawful excuse , hence now the plaintiff wants divorce from the defendant , and so he filed the suit for divorce.

3. The defendant contested the suit. She admitted her marriage with the plaintiff but denied rest of the allegations. She pleaded that the plaintiff''s allegation that he is working as labourer at Nagpur and Maharashtra is false. The source of the plaintiff's income is agriculture and rent and he is earning Rs. 10,000/- per month . His allegation that defendant refused to go to Nagpur with the plaintiff is false. She is always ready to reside with the plaintiff wherever the plaintiff resides. She never forced the plaintiff to reside at Jhansi or at any other place. The defendant always resided with the plaintiff after marriage . She never refused to perform her marital obligations. She did not go to her father's house taking ornaments with her. The true facts are that the plaintiff had been making demand of a Motor Cycle since the time of marriage; and when she objected to it, he started to commit cruelty upon her and he has been levelling false allegations against her. The plaintiff's allegation that he himself and his parents, relations and friends went to her father's house for her Vida, is totally false . She never asked the plaintiff to come to village Dinara and to reside there. On the other hand the position is that the plaintiff repeatedly forced her to leave his house and pressurized her to meet his demand of dowry. The defendant even after being thrown out from the house went to the plaintiff's house. No notices of the plaintiff were received by her . It is false that she got any endorsement done on those notices in collusion with the Post man . She had not deserted the plaintiff. On the other hand the plaintiff himself forced her to leave his house and was levelling false allegations against her so that he may perform second marriage after divorcing her. She had neither deserted the plaintiff nor committed cruelty upon him .She is still ready to reside with the plaintiff so the plaintiff's suit is liable to be dismissed as he has got no cause of action for filing the suit.

4. The suit was heard and decided by Sri M.Q.Siddiqui vide his judgment dated 26.1.1999. He held in his judgment that

the plaintiff had failed to establish that the defendant had deserted him or had committed cruelty upon him. He , therefore, dismissed the plaintiff's suit . Aggrieved with that judgment and decree the plaintiff filed this appeal.
5. We have heard the counsel for both the parties and have perused the record.
6. It was contended by the learned counsel for the plaintiff appellant that the defendant had deserted the plaintiff without any lawful excuse and the finding of the trial court that the allegation of desertion was not proved is erroneous. He, therefore, contended that this appeal should be allowed and the decree of divorce should be passed. On the other hand , the learned counsel for the defendant contended that the defendant never deserted the plaintiff and actually the plaintiff wants a motor cycle in dowry, and the defendant even after being thrown out of the house , repeatedly, came to the plaintiff to reside with him, but she was again forced to leave the house after being beaten by the plaintiff. He submitted that in this way the plaintiff himself is guilty of forcing her to leave house and the defendant can not be treated to have deserted the plaintiff, and so the trial court has committed no error in dismissing the suit.
7. Let us now examine the evidence led by both the parties on the point.
8. It has been alleged by the plaintiff in his statement as P.W.1 that after marriage the defendant came to his house at Jhansi and he was working as labourer at Nagpur at that time and had also taken a room on rent at Nagpur, and he had asked the defendant to accompany him to Nagpur but she refused to do so, and stated that she would reside with him only when he resides at Jhansi and she does not want to go any where else and then she went to her parents' house at village Dinara.
9. The defendant in her statement as D.W.1 had denied the aforesaid allegations of the plaintiff. Now it is to be seen that generally ladies after marriage want to reside with their respective husbands at such a place where other persons of the family of husband are not residing so that they may enjoy the life without being interrupted by any one else. In the present case the allegation of plaintiff is just otherwise. The plaintiff''s house is at Jhansi where his parents also reside, and, according to him, after marriage, he asked the defendant to accompany him to Nagpur where he was working as labourer and had taken a room on rent. Any newly married wife will joyfully accept this offer because she would get an opportunity of residing with her husband without being interrupted by other family members of the husband, but in the present case the plaintiff's allegation is that the defendant refused to do so, and she stated that she would reside with him only when he resides at Jhansi where the parents of the plaintiff also reside, and that she would not reside with him if he goes any where else. Such an allegation does not inspire any confidence.
10. The plaintiff has further alleged that the defendant and her parents wanted that the plaintiff should come to village Dinara to reside in the house of the defendant's father as "Ghar Jamai" and since he refused to accept this proposal , the defendant refused to come to live with him and the defendant's father also did not permit the defendant to live with the plaintiff'. The defendant denied this allegation. She has alleged that she has got three brothers and two sisters, and as such there was no question of asking the plaintiff to reside in the house of her father as "Ghar Jamai". This assertion of the defendant again appears to be quite natural and probable. Generally the fathers of those girls keep their sons-in-law as "Ghar Jamai" who have got no son and there is no male member in their family to look after their business etc, and then they ask their sons- in- law to reside in their house . In the present case when the defendant's father has got three sons , the allegation that he asked the plaintiff to reside in his house as "Ghar Jamai" does not appeal to reason. In this connection, the allegation of the defendant is that actually the plaintiff made demand of a Motorcycle at the time of Kalewa and when her father expressed his inability to meet this demand , the plaintiff felt aggrieved , he left the Kalewa, threw away his Pagari and left her house without taking her with him saying that in case her father wants that she should live with the plaintiff, he would himself send her to the plaintff's house alongwith the Motorcycle. It has been alleged in the cross examination of Sri Arun Kumar Pathak P.W.2, who is brother-in-law (Bahnoi) of the plaintiff, that after this incident the defendant's father took a bullock-cart and got the defendant seated in that bullock cart and took her to the Janwasa and got her seated in the bus of the Barat as the plaintiff had left the house without performance of Bida.
11. The plaintiff has further alleged that he sent three notices to the defendant in the months of June, July and September,1995 asking her to return back to the matrimonial home further stating that if she does not come to his house, he would file a suit for restitution of conjugal rights against her . He has further alleged that the defendant in collusion with the post man got these original notices returned back ( Papers No. C-12, C-13 and C-14). The defendant has denied receipt of any such notice. She has also denied the allegation of getting any false endorsement done on these notices in collusion with the post man . Her allegation is that she never received these notices and the plaintiff had himself got a false endorsement on these notices in collusion with the post man that she was not available at the house, and the allegation of plaintiff that the defendant is constantly residing at her father's house since 1990 is totally false. She has further alleged that the allegation of the plaintiff that she herself left the plaintiff's house in May, 90 , is false and actually she had been forced by the plaintiff to leave the house and then she came to her father's house; and

after some time she again went to the plaintiff's house, and resided there for some time and then she was again forced to leave the house. Her allegation is that in this way she goes to the house of the plaintiff and to her father's house after short intervals. She has also alleged that some Panchayats were also called and in those Panchayats it was settled that the plaintiff would keep her peacefully, and the plaintiff took her after proceedings of the Panchayat, but he again forced her to leave his house. She has further alleged that in the year 1997 also such a Panchayat was called, and after that Panchayat she again went to the house of the plaintiff but again she was forced to leave the house . She also examined Sri Ram Sahai as D.W. 2 who was present in that Panchayat. His statement was recorded on 13.10.1999 and he stated that the Panchayat was organized about three years ago. The defendant Smt. Sandhya Kumari (D.W.1) stated that she had gone to the house of the plaintiff after the 1997 Panchayat, but the plaintiff after keeping her for ten days again forced her to leave his house , and since then she is residing at her parents' house and the plaintiff did not come to her parents' house to take her.

12. It was submitted by the learned counsel for the plaintiff that the notices papers no. 12-C,13-C and 14-C are documentary evidence to show that that the plaintiff had asked the defendant to come to his home but the defendant did not come to his house and in this way the defendant had deserted the plaintiff and so the plaintiff is entitled to divorce on the ground of desertion. The defendant, on the other hand, has denied receipt of any such notice and alleged that the plaintiff himself procured false endorsement on these notices in collusion with the post man.

13. Before adverting to the notices Papers no. 12-C and 13-C, We are first taking up the notice paper no. 14-C which is addressed to the defendant's father Pt. Bhagwat Prasad Tiwari , Pradhana Adhyapak , Shashkiya Madhyamik Vidyalaya, Gram and post Dinara Tahsil Karaira District Shivpuri (M.P.).There is an endorsement of the post man on this notice that upon an inquiry in the Madhyamik Vidyalaya he came to know that there was no Pradhana Adhyapak of this name in the school and so it was returned to the sender. If Mr. Bhagwat Prasad Tiwari was working as Pradhana Adhyapak in the above school, this type of endorsement that there was no Pradhana Adhyapak of this name in the school does not inspire any confidence. The report apparently appears to be collusive. There is endorsement on the notices (Papers no. 12-C and 13-C) that the addressee Smt. Sandhya is not available as she has gone out of station , hence notices were being returned.

14. Without entering into this controversy as to who is guilty for these so called fictitious reports on these notices , it is to be seen that even if the endorsements on these notices are taken to be true on their face value, they fail to give any support to the plaintiff's case. It has no where been reported that the addressee refused to take notice .If a notice is returned back with this report that the addressee was not there at the house and was out of station, the service can not be deemed to to be sufficient , and so no adverse inference can be drawn against the addressee on the basis of such an endorsement. These notices, in this way, fail to give any support to the plaintiff's case . It is also to be seen in this connection that in these notices the plaintiff had stated that if the defendant does not come to his house, he would file a suit for restitution of conjugal rights but instead of doing so , he filed the suit for divorce.

15. It is also to be seen that in the entire plaint there is no other allegation against the defendant except this allegation that she had deserted the plaintiff without any lawful excuse .The defendant has denied this allegation and her case is that she repeatedly went to the plaintiff's house for residing with him, but the plaintiff after permitting her to reside for some time forced her to leave the house. She has levelled the allegation of demand of motorcycle against the plaintiff . She has stated in her written statement that she is still ready to reside with the plaintiff. She has made the same statement in the witness box as D.W. 1 that she is still ready to reside with the plaintiff. On the other hand the plaintiff has stated in his statement as P.W. 1 that he does not want to keep the defendant with him as she has deserted him. The same thing has been stated by his brother-in-law (Bahnoi) Mr. Arun Kumar Pathak ( P.W.2) who too stated that even if the defendant is willing to live with the plaintiff, the plaintiff is not ready to keep her with him.

16. Learned Presiding Officer of the court below has rightly held taking into consideration the evidence led by both the parties that the defendant has not deserted the plaintiff and so the plaintiff had no good case for grant of divorce. We find no error in the above finding and confirm the same.

17. It was contended by the learned counsel for the plaintiff appellant that even if it is found that the plaintiff had failed to prove the allegation of desertion , the marriage should be dissolved on the ground that it had irretrievably been broken and a decree of divorce should be passed on this ground alone. Several rulings of Hon'ble Apex Court were cited before us in this regard.

18. We have gone through all those rulings and now we proceed to discuss them . One of the cases in which the decree of divorce was passed on the ground that the marriage was irretrievably broken is the case of Chandra Kala Trivedi Vs. Dr. S.P. Trivedi : (1993)4 SCC 232. In this case their Lordships of the Apex Court referring to the facts of the case observed in para 2 as follows:

"Both the appellant(wife) and the respondent(husband) come from middle class families. Their father were Vaid by

profession. The husband while he was doing internship at the J.J. Hospital, Bombay, was married to the appellant and from their wedlock a daughter was born who admittedly is now married. Differences appear to have arisen sometime in late seventies nine years after marriage due to alleged intimacy of the husband with another lady doctor, which ultimately led to filing of the petition for divorce by the husband on ground of cruelty. When written statement was filed and allegations of adultery were made against the husband he set up a case of undesirable association of his wife with young boys. Unfortunately for the appellant, even the matrimonial court, which dismissed the petition, found that her behaviour was not of a Hindu married woman. Whether the allegation of the husband that she was in the habit of associating with young boys and the findings recorded by the three courts are correct or not but what is certain is that once such allegations are made by the husband and wife as have been made in this case then it is obvious that the marriage of the two cannot in any circumstances be continued any further. The marriage appears to be practically dead as from cruelty alleged by the husband it has turned out to be at least intimacy of the husband with a lady doctor and unbecoming conduct of a Hindu wife." ( underlined by us)

19. It may be mentioned that the Supreme Court holding that the finding of the court below that the behaviour of the wife appellant was unbecoming appeared to be shaky, deleted this finding and confirmed the divorce decree with this condition that the husband should provide one bed room flat to the wife -appellant and should deposit a sum of Rs. 2,00,000/- for her welfare .

20. Another case on the point is of V. Bhagat Vs. Mrs D. Bhagat : (1994)1 SCC 337. In this case V. Bhagat , who was a practising Advocate in the Supreme Court , had filed a suit for divorce against his wife Mrs. D. Bhagat. In this case the parties had married in the year 1966. The husband Mr. B. Bhagat , who was a practising Advocate in the Supreme Court, filed a divorce suit against the wife in the year 1985 mainly on the ground of adultery alleging that she is an incorrigible adulteress. The wife filed a written statement denying the allegations. In her written statement she had stated as follows:

".....that the petitioner is "suffering from mental hallucination" that he is a "morbid mind"..... for which he needs expert psychiatric treatment" and further that " the petitioner is suffering from paranoid disorder. He needs expert psychological treatment.... He is incoherent in his thinking..... The petitioner is a mental patient . The petitioner needs treatment by a psychiatrist to whom he was directed by his own sister..... He is a patient and needs treatment and restoration of normal mental health.....The petitioner needs psychiatrical treatment to make him act a normal person".

21. It may be mentioned that after filing of the written statement , the plaintiff- husband got his plaint amended and added that the allegation of insanity levelled against him in the written statement amounts to cruelty and so a decree of divorce should be passed on this ground alone.

22. On the request of petitioner husband the case was withdrawn from the file of the trial court and it was transferred to the Delhi High Court for early hearing and expeditious disposal. However, it could not be decided in spite of direction of Hon'ble Apex Court . The petitioner's statement was recorded and during the course of cross examination"The Senior Advocate appearing for the respondent wife put several questions suggesting that the petitioner and the several members of his family including his grandfather are lunatics and that a streak of insanity is running in the entire family. When he protested against the said questions, the learned Senior Advocate made the following statement in the court---- "all of your (petitioner's) family including your grandfather and others are lunatics with streaks of insanity running in the entire family; this is the respondent's case; and that is why these questions have been asked."

23. The matter again went to Hon'ble Apex Court with the allegation that the case is being delayed and the period of 8 years has passed but the statement of the defendant is still to be recorded.

The Hon'ble Apex Court taking note of serious allegation of insanity levelled by wife against her husband and still her assertion that she wants to reside with her husband observed as follows:

".10. ..... The assertion of the wife that she wants to live with the husband even now , appears to be but a mere assertion. After all the allegations made against her in the petition and the allegations levelled by her against the petitioner, living together is out of question. Reapproachment is not in the realm of possibility. For the parties to come together , they must be superhumans, which they are not . The parties have crossed the point of no return long ago. The nature of the allegations levelled against each other show the intense hatred and animosity each bears towards the other. The marriage is over except in name..... "It is significant to note that this is not a case where allegations are made only by one party against the other; both have levelled serious allegations against the other. The husband calls the wife an adulteress and the wife calls the husband a lunatic."

X X X

20..... Making such allegations in the pleadings and putting such questions to the husband while he is in the witness - box, is bound to cause him intense mental pain and anguish besides affecting his career and professional prospects. It is not as if the respondent is seeking any relief on the basis of these assertions. The allegations against her may not be true; it may also be true that the petitioner is a highly suspicious character and that he assumes things against his wife which are not well founded. But on that ground, to say that the petitioner has lost his normal mental health, that he is a mental patient requiring expert psychological treatment and above all to brand him and all the members of his family including his grandfather as lunatics, is going far beyond the reasonable limits of her defence. It is relevant to notice that the allegations of the wife in her written statement amount in effect to " psychopathic disorder or any other disorder" within the meaning of the Explanation to clause (iii) of sub-section (1) of section 13, though, she has not chosen to say that on that account she cannot reasonably be expected to live with the petitioner- husband nor has she chosen to claim any relief on that ground. Even so, allegations of ' paranoid disorder', 'mental patient', 'needs psychological treatment to make him act a normal person' etc. are there coupled with the statement that the petitioner and all the members of his family are lunatics and that a streak of insanity runs through his entire family. These assertions cannot but constitute mental cruelty of such a nature that the petitioner, situated as he is and in the context of the several relevant circumstances , cannot reasonably be asked to live with the respondent thereafter. The husband in the position of the petitioner herein would be justified in saying that it is not possible for him to live with the wife in view of the said allegations. Even otherwise the peculiar facts of this case show that the respondent is deliberately feigning a posture which is wholly unnatural and beyond the comprehension of a reasonable person. She has been dubbed as an incorrigible adulteress. She is fully aware that the marriage is long dead and over. It is her case that the petitioner is genetically insane. Despite all that, she says that she wants to live with the petitioner. The obvious conclusion is that she has resolved to live in agony only to make life a miserable hell for the petitioner as well. This type of callous attitude in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the petitioner with mental cruelty. It is abundantly clear that the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or living together again. Having regard to the peculiar features of this case, we are of the opinion that the marriage between the parties should be dissolved under section 13(1)(i-a) of Hindu Marriage Act and we do so accordingly. Having regard to the peculiar facts and circumstances of this case and its progresses over the last eight years--- detailed herein before------ we are of the opinion that it is a fit case for cutting across the procedural objections to give a quietus to the matter."

24. In this case the Hon'ble Apex Court, while recalling the case to its own file granted decree of divorce on the ground of cruelty, even without full trial but observed that the allegations levelled by the petitioner against wife were not proved and in this way the honour and character of the wife stands vindicated.

25. However, it was further observed by the Apex Court that this ruling is not of general application and can not be applied in every case. Their observations in this regard are as follows:

"21. Before parting with this case, we think it necessary to append a clarification. Merely because there are allegations and counter-allegations, a decree of divorce cannot follow. Nor is mere delay in disposal of the divorce proceedings by itself a ground . There must be really some extraordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a full trial. Irretrievable breakdown of the marriage is not a ground by itself. But while scrutinising the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind. The unusual step as the one taken by us herein can be resorted to only to clear up an insoluble mess, when the court finds it in the interest of both the parties."

26. The third case cited before us is of Romesh Chander Vs. Savitri : (1995)2 SCC 7. In this case the facts were that the husband had earlier filed a suit for divorce on the ground of desertion . The suit was finally dismissed by the Apex Court on 23.4.1980. Thereafter another suit was filed by the husband on the ground of cruelty. The allegation was that the wife

had cast serious aspersions on the character of the husband in the written statement filed by her in the earlier suit and had alleged that he was in the habit of mixing with undesirable girls in the presence of wife . It was held that neither any evidence was led nor it was proved and so it could not be made basis for claiming divorce on the ground of cruelty. Aggrieved with that judgement the husband filed appeal before the Apex Court . It was held by the Apex Court that , taking into consideration the facts and circumstances of this case, the marriage was dead both emotionally and practically. So , exercising power under Article 142 of the Constitution of India , the Hon'ble Apex Court directed that the marriage between the appellant and the respondent shall stand dissolved subject to the appellant's transferring a house in the name of his wife.

27. The fourth case cited before us is of Ashok Hurra Vs. Rupa Bipin Zaveri : 1997(3) A.W.C. 1843(SC). In this case the marriage between the parties was solemnized on 3.12.1970. No issue was born to them . On 30.6.1983 the wife left the matrimonial home . On 21.8.1984 a joint petition for divorce was filed under section 13B of the Hindu Marriage Act . It was stated in the application that all the matters regarding ornaments, clothes and other movables were settled between them and the wife had pronounced her right to claim maintenance and the parties simply sought a decree of dissolution of the marriage by mutual consent. On 4.4.1985, the husband alone moved an application for passing a decree of divorce. Since the wife had not come, a notice was issued to her. On 27.3.1986, the wife moved an application for withdrawing her consent for divorce .

28. After hearing the parties, the learned City Civil Judge ( the trial court) held that since the consent was withdrawn before the decree could be passed , it has to be accepted and he dismissed the petition for divorce by mutual consent. Aggrieved with that judgment the husband filed an appeal and in that appeal the Single Judge of the Gujarat High Court passed a decree for divorce . Against that judgment an appeal was filed before the Division Bench and the Division Bench set aside the order of Single Judge and dismissed the petition for divorce. Then this matter went before the Apex Court and the Hon'ble Apex Court observed as follows:

"19. After considering the matter in detail, we find that the appellate court has not disputed the following:

(a) the marriage between the parties is dead and has irretrievably broken down;

(b) there are allegations and counter-allegations between the parties and also litigations in various courts and no l ove is lost between them;

(c) there is delay in the disposal of the matter;

(d) the husband has married again and has got a child ; and

(e) the wife has not withdrawn her consent lawfully given for a period of 18 months and it is not a case where the consent given is revoked on the ground that it is vitiated by fraud or undue influence or mistake etc;

(f) that the joint petition filed in court by the parties stated (a) that the parties have settled all the matters and the wife had renounced her right to claim maintenance and (b) what the parties prayed for, was only a decree of dissolution of the marriage by mutual consent.

X X X

22. We are of the view that the cumulative effect of the various aspects n the case indisputably point out that the marriage is dead, both emotionally and practically , and there is no chance at all of the same being revived and continuation of such relationship is only for name-sake and that no love is lost between the parties, who have been fighting like " kilkenny cats" and there is long lapse of years since the filing of the petition and existence of such a state of affairs warrant the exercise of the jurisdiction of this Court under Article 142 of the Constitution and grant a decree of divorce by mutual consent under Section 13B of the Act and dissolve the marriage between the parties, in oder to meet the ends of justice, in all the circumstances of the case subject to certain safeguards. Appropriate safeguard or provision for the respondent/wife to enable her to have decent living should be made. The appellant is a well to do person and is a Doctor. He seems to be affluent being a member of the medical fraternity. But his conduct during litigation is not above board. The suggestion or offer of a lump-sum payment of rupees four to five lakhs , towards provision for life , is totally insufficient , in modern days of high cost of living and particularly for a woman of the status of the respondent. At least, a sum of about Rs.10,000 p.m. Will be necessary for a reasonable living . Taking into account all aspects appearing in the case, more so the conduct of the parties and the admissions contained in the joint petition filed in court, we hold that the respondent(wife) should be paid a lumpsum of rupees ten lakhs (Rs. 10 lakhs) ( and her costs in this litigation as estimated by us) on or before 10.12.1997 as mentioned herein below, as a condition precedent for the decree passed by this Court to take effect."

29. Another ruling cited before us is of the Hon'ble Apex Court in Chetan Dass Vs. Kamla Devi : AIR 2001 SC 1709. In this case the facts were that the husband had filed a suit for divorce against wife on the ground of desertion . The wife in her written statement made allegation of adultery against the husband and she had averred in her statement that she is still ready to live with him provided he snaps his relationship with the other woman. After recording evidence ,it was found that the allegations levelled by the wife against the husband were proved and so the suit for divorce was dismissed . The husband went to Hon'ble Supreme Court taking a plea that a decree of divorce should be passed on the ground that the marriage had irretrievably been broken down . It was held that the husband could not take advantage of his own wrong and so the decree of divorce could not be passed on the ground that the marriage had been irretrievably broken down. It was further observed that:
"20. In this case , the averments made in the petition for obtaining a decree for divorce, namely, desertion on the part of the wife without any reasonable cause have not been found to be correct. The petition was liable to be dismissed on that ground alone. The defense of the respondent for having a justified reason to live away from the husband has been found to be correct. Behaviour of the appellant certainly falls in the category of misconduct on his part. In such circumstances, it is too much on his part to claim that he be given the advantage of his own wrong and be granted a decree of divorce on the ground of desertion on the part of his wife who is still prepared to live with him provided he snaps his relationship with the other woman. Similar offer had also been made on behalf of the appellant, which , we have already dealt in the earlier part of the judgment. He perhaps prefers to snap relationship with the respondent rather than with Sosamma Thomas. A decree of divorce on the ground of marriage having been irretrievably broken cannot be granted in the facts and circumstances of the case as indicated above."

30. The next ruling cited before us is of Savitri Pandey Vs. Prem Chandra Pandey : (2002) 2 SCC 73. In this case the marriage between the parties had taken place on 6.5.1987. They lived together upto 21.6.1987. After 21.6.1987 they started living separately . Thereafter the wife filed a petition for divorce on the grounds of cruelty and desertion. It was also alleged that the marriage had not been consummated. It was found that the husband was not responsible for non consummation of marriage and it was the wife who did not permit consummation of the marriage. In view of this finding it was held that when the wife herself did not permit the husband to consummate the marriage , it was not a case of cruelty or of desertion and so the suit was dismissed.. The wife went in appeal before Hon'ble Supreme Court taking a plea that the marriage had irretrievably been broken down and so a decree for divorce should be passed under Article 142 of the Constitution of India. Reliance was also placed upon the following observations of the Apex Court in Ms. Jorden Diengdeh Vs. S.S. Chopra : AIR 1985 SC 935:
"16..... It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases..... There is no point or purpose to be served by the continuance of a marriage which has so completely and signally broken down. We suggest that the time has come for the intervention of legislature in those matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situation in which couples like the present have found themselves."

31. Repelling the above contentions and dismissing the appeal their Lordships observed as follows:

"16..... Marriage between the parties cannot be dissolved only on the averments made by one of the parties that as the marriage between then has broken down, no useful purpose would be served to keep it alive. The legislature , in its wisdom , despite observation of the Court has not thought it proper to provide for dissolution of the marriage on such averments. There may be cases where , on facts, it is found that as the marriage has become dead on account of contributory acts of commission and omission of the parties, no useful purpose would be served by keeping such marriage alive. The sanctity of marriage cannot be left at the whims of one of the annoying spouses. This Court in V. Bhagat Vs. Mrs. D. Bhagat (AIR 1994 SC 710) held that irretrievable breakdown of the marriage is not a ground by itself to dissolve it.(underlined by us)
17. As already held, the appellant herself is trying to take advantage of her own wrong and in the circumstances of the case, the marriage between the parties cannot be held to have become dead for invoking the jurisdiction of this court under Article 142 of the Constitution for dissolving the marriage."

32. The next ruling cited before us is of Shyam Sunder Kohli Vs. Sushma Kohli : (2004)7 SCC 747. In this case the appellant and respondent were married on 18.11.1981. The appellant filed a suit for divorce on the ground that the respondent had left the matrimonial home on 28.1.1987. The respondent claimed that she was driven out of the matrimonial home. She

claimed that she was always and even now is ready to stay with the appellant. The suit was dismissed by the trial court holding that the allegation of desertion was not proved and that decree was also affirmed by the Division Bench of High Court . Aggrieved by that judgment the husband filed an appeal before the Hon'ble Apex Court and prayed for grant of divorce on the ground that the marriage had irretrievably been broken down. The Hon'ble Apex Court referring to the above plea made following observations:

"12. on the ground of irretrievable breakdown of marriage, the court must not lightly dissolve the marriage. It is only in extreme circumstances that the court may use this ground for dissolving a marriage. In this case, the respondent , at all stages and even before us, has been ready to go back to the appellant. It is the appellant who has refused to take the respondent back. The appellant has made baseless allegations against the respondents. He even went to the extent of filing a complaint of bigamy, under section 494 IPC against the respondent. That complaint came to be dismissed. As stated above, the evidence shows that the respondent was forced to leave the matrimonial home. It is the appellant who has been at fault. It can hardly lie in the mouth of a party who has been at fault and who has not allowed the marriage to work to claim that the marriage should be dissolved on the ground of irretrievable breakdown . We, thus , see no substance in this contention."

33. The recent ruling of the Hon'ble Supreme Court in A.Jayachandra Vs. Aneel Kaur : (2005)2 SCC 22 was also cited before us . In this case both the appellant husband and the respondent wife developed love affairs when they were student in a medical college . They were married on 10.10.1978. Both of them got employment in a hospital established by the husband's father Dr. A Ram Murthy. They had two children out of this wedlock. On 5.3.1997 the husband gave a notice to the wife seeking divorce on the ground of mental cruelty alleging that the behaviour of the wife was obnoxious and humiliating and they had not shared the bed and there was no physical contact between them for over two years. Reply was given by the wife on 21.3.1997 denying the allegations and suggesting that there should be a free and heart to heart discussion to sort out the problems. The discussion took place but in vain. Ultimately the husband filed a petition under section 13 of the Hindu Marriage Act on the ground of cruelty alleging that the conduct of the wife was causing mental agony and there was no sharing of the bed and cohabitation for more than two years . It was further alleged that the wife had ill-treated her husband , abused him in vulgar language in the home and at the hospital and at other places thereby causing mental agony, damage and loss personally and professionally and also in the social circle and she had also levelled allegations against his character also. She had filed caveats at different places describing wrong address of the husband to defame him and create an impression of her innocence. The wife in her written statement denied the allegations and stated that her bona fide act in advising her husband to act properly and to be decent in his behaviour was misconstrued and it was being projected as nagging and insulting behaviour and the petition for divorce was based on unfounded allegations.

34. The wife also filed O.S No.89 of 1997 in respect of her right to practise in the hospital . This suit was not contested by the husband . It was decreed exparte on 20.11.1997. Thereafter the wife moved an application for attachment of the hospital equipment belonging to her husband and for his detention in civil prison for alleged disobedience of the order of injunction and she categorically stated in the court during trial that she was not willing to withdraw the application for his detention in civil prison until divorce case was finalised. The suit was decreed by the Judge Family Court on the ground of cruelty . The wife filed an appeal before the High Court and the Division Bench was of the view that since the husband had not produced any witness from the hospital to prove the allegations of cruelty, an adverse inference should be drawn against him, and so the allegation of cruelty was not proved. The appeal was, therefore, allowed. Then the husband filed an appeal before the Hon'ble Apex Court.

35. The Hon'ble Apex Court observed that the trial court had rightly held that the behaviour of the wife amounted to mental agony and cruelty upon the husband, and the High Court did not discuss the evidence at all and wrongly set aside the finding of cruelty on the ground that no witness of the hospital was produced. This approach was held to be not proper. Hon'ble Apex Court was of the view that the husband was entitled to decree of divorce on the ground of mental cruelty. The court also considered the aspect of irretrievable break down of marriage and observed in paragraph 16 of the judgment as follows:

"16. The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct. In the instant case, after filing of the divorce petition a suit for injunction was filed, and the respondent went to the extent of seeking detention of the appellant. She filed a petition for maintenance which was also dismissed. Several caveat petitions were lodged and as noted above, with wrong address. The respondent in her evidence clearly accepted that she intended to proceed with the execution proceedings, and prayer for arrest till the divorce case was finalised. When the respondent gives priority to her profession over her husband's freedom it points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage"

36. The discussion attempted above leads to the following conclusions:
(i)The irretrievable beak down of marriage is not a ground for divorce by itself. But while scrutinizing the evidence on record to determine whether the grounds on which divorce is sought are made out, this circumstance can be taken into consideration as laid down by Hon'ble Apex Court in the case of Savitri Pandey Vs. Prem Chand Pandey and V. Bhagat Vs. Mrs. D. Bhagat (supra).
(ii) No divorce can be granted on the ground of irretrievable break down of marriage if the party seeking divorce on this ground is himself or herself at fault for the above break down as laid down in the case of Chetan Das Vs. Kamla Devi, Savitri Pandey Vs. Prem Chand Pandey and Shyam Sunder Kohli Vs. Sushma Kohli (supra).
(iii The decree of divorce on the ground that the marriage had been irretrievably broken down can be granted in those cases where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties can not live together as laid down in Chandra Kala Trivedi Vs. Dr. S.P.Trivedi (supra).
(iv) The decree of divorce on the ground that the marriage had been irretrievably broken down can be granted in those cases also where the conduct or averments of one party have been so much painful for the other party ( who is not at fault ) that he cannot be expected to live with the offending party as laid down in the cases of V.Bhagat Vs. D.Bhagat, Romesh Chandra Vs. Savitri, Ahok Hurra Vs. Rupa Bipin Zaveri and A.Jayachandra Vs. Aneel Kaur (supra).
(v) The power to grant divorce on the ground of irretrievable break down of marriage should be exercised with much care and caution in exceptional circumstances only in the interest of both the parties as observed by Hon'ble Apex Court at paragraph no.21 of the judgement in the case of V.Bhagat and Mrs. D. Bhagat (supra) and at para 12 in the case of Shyam Sunder Kohli Vs. Sushma Kohli (supra).

37. Now let us apply the aforesaid law to the facts of the present case.
38. We have already held that in the present case there was no fault on the part of the wife who was always willing to reside with her husband and is still ready to do so and her grievance is that the husband was not keeping her with him because there was demand of the motorcycle in dowry and when her father could not meet his demand the appellant forced her to leave his house . In the present case the fault is of the husband and so he can not be permitted to seek divorce on the ground of irretrievable break down of marriage and to take benefit of his own wrong as provided under section 23 of the Hindu Marriage Act as well as in the rulings in Chetan Das Vs. Kamla Devi, Savitri Pandey Vs. Prem Chandra Pandey and Shyam Sunder Kohli Vs.Sushma Kohli (supra).

39. The appeal, in this way, has got no force and is dismissed with costs.
Dated:
MLK

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

1.Criminal Misc. Writ Petition No. 822 of 2000

Zeba Khalil and 4 others..... Petitioners.
Versus
State of U.P. and 3 others..... ..... Respondents

2. Criminal Misc. Writ Petition No. 5159 of 2002
Nadeem Khalil and 2 others..... Petitioners
Versus
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Hon'ble M.C. Jain, J.
Hon'ble M. Chaudhary, J.

(Delivered by Hon'ble M.C. Jain, J.)

These two writ petitions are related to each other and we propose to decide them together.
Necessary facts may be stated to get the hang of the controversy. In both the writ petitions the main respondent is Arsi Yusuf (wife) arrayed as respondent no.4 in writ petition no. 822 of 2000 and respondent no.5 in writ petition no.5159 of 2002. Nadeem Khalil (husband) is petitioner no.5 in writ petition no. 822 of 2000 and petitioner no.1 in writ petition no.5159 of 2002 . Khalil Ahmad Khan--father of Nadeem Khalil is petitioner no.2 in both the writ petitions. Other remaining petitioners in the two writ petitions are other family members and relatives of Nadeem Khalil (husband). In writ petition no. 822 of 2000, the petitioners sought the quashing of the F.I.R. dated 30.1.2000 in case crime no. 32 of 2000 under sections 498A/323/504/506/307 I.P.C. And ¾ of Dowry Prohibition Act as well as stay of their arrest. The copy of the F.I.R. is annexure-5 to writ petition no. 822 of 2000. Nadeem Khalil (husband) filed his own affidavit in support of the said writ petition. As per the averments contained in the writ petition, Arsi Yusuf was married to Nadeem Khalil in November 1998, but marital relations did not go smooth and divorce was allegedly effected through a Talaqnama dated 12.12.1999. Nadeem Khalil, however, allegedly received threats from Arsi Yusuf on phone that unless the petitioner paid an amount of Rs. 5 Lacs, they would be implicated falsely in various criminal cases. Nadeem Khalil filed a civil suit in the Court of Civil Judge (S.D.), Aligarh being O.S.No. 106 of 2000, praying for a decree that she be restrained from claiming herself to be his wife and not to enter his house. However, she lodged the instant F.I.R. against the petitioners at P.S. Khatauli, District Muzaffarnagar, making the following false allegations:

".....ijUrq vkt fnukad 30 tuojh lu~ 2000 dks esjs ifr us eq>ls dgk fd esjs lkl] llqj] uun] uUnksbZ fdlh dke ls :Mdh tk jgs gS ;g yksx phry ij :dsaxs ge yksx Hkh pydj fudyrs gaS A D;ksafd vkt nqgh gS A M~zkboj eS vkSj esjk ifr viuh ek:fr dkj ls ogak ij djhc pkj cts igqaps esjs lkl] llqj] uun] uUnksbZ igys ls gh viuh ek:fr oSu ls ;gak igqaps gq, Fks igys ge lc yksx ,d lkFk cSB x;s ckrs 'kq: gks x;h esjs llqj us ckrs ls dgk fd rsjk cki QySV ysdj dc nsxk bl ckr ij eSus mu yksxksa ls dgk fd eS muls Q~ySV ds fy, ugh dg ldrh ;g ckr lqudj esjs llqj eq>s xkyh nsus yxs esjs ifr cksys ;gak 'kksj er djks vkSj Hkh yksx lqu jgs gS pyks ugj ds fdukjs py jgs gS eS vius ifr ds lkFk ugj dh rjQ py nh dqN ij py dj eSus ns[kk fd esjs lkl llqj uun uUnksbZ Hkh vk jgs gS ;g yksx Hkkx dj esjs ikl vk;s vkSj eq>s idM dj ugj es Mkyus yxs esjs llqj us esjk xyk idMk rFkk lkl] uUkn us cky uUnksbZ vkSj ifr Hkh idMdj /kDdk ns jgs Fks eSus iwjh fgEer ls vkokt yxk;h vkokt lqudj dqN yksx phry dh rjQ ls nkSMdj vk;s mu yksxks us fpYykdj dgk fd yMdh dks D;wa ekj jgs gSa ;g yksx ml vknfe;ksa dks ns[kdj viuh xkMh ls Hkkx x;s eS vdsyh jg x;h tks yksx esjh enn dks nkSMs Fks mues ls eks0 v;hc [kka ]'kkg u;u esjB rFkk eks0 ulhe [kka lsDVj 23 xk0 ckn ds gS d`i;k esjh fjiksVZ fy[kdj dk;Zokgh dh tkos A"

The said offence was allegedly committed near the canal within P.S. Khatauli of Muzaffarnagar district.
It was, inter alia, averred in writ petition no. 822 of 2000 that on 30.1.2000 Nadeem Khalil had been on duty as invigilator in Aligarh Muslim University, where he was a lecturer and a certificate allegedly issued in this respect by the Superintendent of Examinations on 3.2.2000 was annexed as Annexure 6 to the writ petition.

On 11.2.2000 this Court stayed the arrest of the petitioners of writ petition no. 822 of 2000 in the aforesaid case crime directing the issuance of notices and asking for counter and rejoinder affidavits. However, the investigation was ordered to continue and the petitioners were directed to make themselves available to the Investigating Officer for interrogation whenever required.

Arsi Yusuf (wife) filed counter affidavit. She prayed for vacation of the stay order and also for initiating criminal proceedings against the petitioners for filing false and fabricated document (Annexure 6 to the writ petition). She reiterated the allegations made in the F.I.R. in question. According to her, with a view to defraud and obtain an ex parte order of stay of arrest, her husband falsely alleged that on 30.1.2000, the date in question, he had been on duty as Invigilator in Aligarh University. In the counter affidavit filed on her behalf by her pairokar P.K. Chhabra, ( sworn on 22.2.2000), photostat copy of the letter dated 7.2.2000 allegedly written by Prof. F.A. Ansari, Superintendent of Examinations, Faculty of Engineering and Technology, Aligarh Muslim University, Aligarh together with photostat copy of list of invigilators dated 30.1.2000 had been filed to indicate that Nadeem Khalil was not at all on invigilation duty on 30.1.2000 from 2.30 P.M. to 5.30 P.M. as falsely shown in Annexure 6 to the writ petition filed by the petitioners. As per the photostat copy of his letter dated 7.2.2000, the said Prof. F.A. Ansari never issued any such certificate. Prof. Khalil Ahmad was the Principal of the Engineering College and had allegedly exerted pressure for issuance of false certificate of invigilation duty in favour of his son Nadeem Khalil. Prof. F.A. Ansari denied his signatures on the certificate (Annexure-6), a copy of which was also annexed with the counter affidavit filed by P.K. Chhabra on behalf of Arsi Yusuf. He even purported to submit his resignation as Superintendent of Examinations through his letter dated 7.2.2000 addressed to the Vice Chncellor of Aligarh Muslim University, Aligarh.

Making an application under Section 340 Cr.P.C. in writ petition no. 822 of 2000, it has been prayed that Nadeem Khalil and his father be prosecuted for the offences under sections 193/466/471/120B I.P.C. for filing false affidavit and forged invigilation duty certificate to back the baseless plea of alibi of Nadeem Khalil.

In writ petition no.5159 of 2002 , the quashing of another F.I.R. dated 17.8.2002 in case crime no. 797 of 2002, under section 498A I.P.C., read with section ¾ Dowry Prohibition Act, P.S. Kavi Nagar, District Ghaziabad (Annexure 11 to the writ petition) has been prayed for. In this F.I.R., Arsi Yusuf claimed that she was all alone at her parental home at Ghaziabad on 1.1.2002 when Nadeem Khalil threatened her on telephone to get him paid Rs. 5 Lacs from her parents only whereafter he would divorce her in legal way. She allegedly gave information to the police on telephone. The other relevant recitals of the F.I.R. read thus:

" ---------- eSaus blds ckn rRdky VsyhQksu }kjk bryk iqfyl dks nh ftl ij ,d lQsn jax dh xkMh vk;h Fkh vkSj eq>ls iwNrkN dj pyh x;h Fkh blds ckn esjs firkth lwpuk ikrs gh QSDVzh ls ?kj vk, rks eSaus mUgsa iwjh ckr dh tkudkjh nh ftls ;g os iqfyl okfil pys x;s blh chp izksQslj 'kyhe vgen ,oa mudsnks lkFkh Hkh esjs?kj ij vk, A vius ls ,d ekS0 bLyke [kak iq= Lo- bLekby [kak ikBo gkml ljlS;~;n uxj dks eSa igpkurh gWw vkSj nwljs dks eSa ugha igpkurh ge yksxksa ds ?kj ij xUnh&xUnh xkfy;ka nh vkSj eqdnek okfil ys ysus ij tku ls eq>s vkSjesjs ekrk firk dks ekjusdh /kedh nh rFkk blds ckn mUgksaus eq>s izrkfMr djds 5 yk[k :i;s dh ekax dh vkSj okfil pys x;s bl izdkj esjh llqjky okys eq>s vHkh mRihfMr dj jgs gSa rFkk ngst dh ekax djjgs gSa blds f[kykQ dkuwuh dk;Zokgh dh tk; rFkk eq>s U;k; fnyk;k tk, A"

This petition was connected with writ petition no. 822 of 2000 vide order dated 5.9.2002. This Court observed that it appeared to be a malicious prosecution. Time was given for counter and rejoinder affidavits and the arrest of the petitioners in the said case crime was stayed until further orders. However, the petitioners were directed to cooperate with the investigation which was to continue. Arsi Yusuf, the main respondent filed an application supported by counter affidavit sworn by her father, praying for the vacation of stay order and also to register a case of perjury against the petitioners. It has been contended in paragraphs no. 6 and 9 as under:

"6. That to challenge the First Information Report dated 30.01.2000, the petitioners filed a Criminal Misc. Writ No. 822 of 2000 in which they set up a plea of alibi alleging that on the day of the incident, i.e. 30.1.2000, the petitioner no.1, Nadeem Khalil was conducting the engineering examination as invigilator in the Z.H. College of Engineering and Technology, Aligarh Muslim University, Aligarh and to support their plea, the petitioners filed a certificate dated 03.02.2000 allegedly issued by the Superintendent of Examinations certifying the presence of Nadeem Khalil in the College on 30.01.2000, which was filed as Annexure No. 6 to Criminal Writ Petition no. 822 of 2000. It is submitted that although a prima facie case was made out against the accused/ petitioners, but appears that this Court probably relying upon the plea of alibi set up by the petitioners, granted them an order on 11.02.2000 against their arrest, which is filed by the petitioners as Annexure no.3 to this writ petition."

"9. That subsequently, when the deponent enquired the matter from the University Authorities about the authenticity of the alleged certificate, it transpired that no such certificate was ever issued by the Superintendent of Examinations certifying the presence of Nadeem Khalil as Invigilator on 30.01.2000. On the contrary, the Superintendent of Examination,

Professor F.A. Ansari, under whose signature the said certificate was alleged to have been issued, wrote a letter to the Vice Chancellor on 07.02.2000 complaining about the misdemeanour of petitioner no.2 Professor Khalil Ahmad Khan, who was the Principal of the Engineering College at that time. The Superintendent of Examinations also expressed his apprehension that Professor Khalil Ahmad Khan might have tampered with the college records to procure the desired certificate in favour of his son, Nadeem Khalil. Subsequently, the petitioner no.2, Professor Khalil Ahmad Khan was removed from the post of Principal on this charge by the University."

We have heard learned counsel for the parties and perused the material on record.

It would be recalled that while granting the stay of arrest in both the writ petitions, it had been directed that the investigation would go on. It is an admitted position that in ultimate culmination chargesheets have been submitted in relation to the F.I.Rs impugned in both the writ petitions. Therefore, both the writ petitions are to be dismissed without any further debate and the law has to take its own course with regard to the chargesheets submitted in court.

The Court has however, to consider the application of Arsi Yusuf made under section 340 Cr.P.C. for prosecution of petitioners for perjury. It has been urged on her behalf that the petitioners could not dare to file rejoinder affidavit in writ petition no. 822 of 2000 to controvert the allegation that the certificate of invigilation duty, Annexure 6 filed by them, was a forged document. It has been vehemently argued that advancing the false plea of alibi on the basis of this forged certificate, they succeeded in securing an order of stay of arrest in writ petition no. 822 of 2000. The argument of the learned counsel is that the false plea of alibi was repeated in writ petition no.5159 of 2002 to project that the F.I.Rs were being lodged against the petitioners without any basis and it led the Court to make observation in its initial order dated 5.9.2002 passed in writ petition no.5159 of 2002 to the effect that it appeared to be a malicious prosecution and the stay of arrest was granted with relation to the F.I.R. of the incident of 1.1.2002. Reliance has been placed from her side on the case of Indian Bank Vs. M/s Satyam Fibres (India) Pvt. Ltd. AIR 1996 SC 2592 and Afzal and another Vs. State of Haryana and others AIR 1996 SC 2326. It has been urged on the basis of first referred case of India Bank (supra) that by relying on a forged certificate of invigilation duty and filing the same with criminal writ petition no. 822 of 2000, the petitioners played fraud not only on her but also on the Court. On the basis of the second referred case of Afzal (supra), the argument is that the false or misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with due course of judicial proceedings and it amounts to "criminal contempt" defined in Section 2(c) of Contempt of Courts Act.

On the other hand, the submission from the side of the petitioners is that offering challenge to the authenticity of the invigilation duty certificate, no affidavit has been filed of Professor F.A. Ansari, Superintendent of Examinations who by his alleged communication dated 7.2.2000 to the Vice Chancellor of A.M.U., is purpoted to designate the same as 'forged', not containing his signatures. According to the learned counsel, the petitioners filed photostat copy of the invigilation duty certificate as annexure 6 in writ petition no. 822 of 2000, relying the same as being the copy of the certificate issued by Professor F.A. Ansari, whereas, filing the copy of purported communication dated 7.2.2000 by Prof. F.A.Ansari to the Vice Chancellor, AMU, the same (annexure 6) was alleged to be forged on the basis of the counter affidavit filed by PK Chhabra, pairokar of Arsi Yusuf. So, there was only oath against oath without any further concrete or sterling evidence, which could be in the shape of affidavit of Prof. F.A. Ansari himself to pronounce the invigilation duty certificate to be forged one. As to the observation of the Court in writ petition no.5159 of 2002 while passing the order dated 5.9.2002 that it appeared to be malicious prosecution, the learned counsel argued that a series of FIRs had been lodged by Arsi Yusuf against her husband and his other family members and all the facts were related by the petitioners in writ petition no.5159 of 2002. Nothing adverse can be interpreted against them if on cumulative consideration, the Court observed in its order dated 5.9.2002 that it appeared to be malicious prosecution. The learned counsel stressed that it, indeed, was malicious prosecution as would appear from mere reading of the F.I.R. of case crime no.797 of 2002 under Sections 498-A IPC and ¾ of Dowry Prohibition Act of the alleged incident of 1.1.2002 lodged on 17.8.2002

The learned counsel for Arsi Yusuf urged that the letter of Professor F.A. Ansari dated 7.2.2000 to the Vice Chancellor of A.M.U., Aligarh was, in fact, official communication and deserves to be taken on its face value that invigilation duty certificate relied upon by 3.2.2000 was a forged document. This reasoning, we are afraid, cannot possibly be accepted, because the said alleged copy of the letter of Professor F.A.Ansari has not come from proper source. It is not understandable as to how Arsi Yusuf could get hold of such official communication. If Professor Ansari had himself passed it on to her, he could definitely file his own affidavit to support the contents of the same.

It is a fact that Pofessor F.A. Ansari himself did not file any affidavit to say that invigilation duty certificate in question was forged and the same did not contain his signatures. It has to be kept in mind that necessary prelude for action under section 340 Cr.P.C. is that the Court should be of the opinion that it is expedient in the interest of justice to do so. Action under section 340 Cr.P.C. should be taken only when the court on objective consideration of the entire facts and circumstances, is of the belief and opinion that the interest of justice so requires. The court may act suo motu also. It is for

the court to decide whether to take action and initiate proceedings. Even when an application is made by one of the parties, it becomes a matter between the court and the alleged perjurer. Action under section 340 Cr.P.C. is undertaken in the interest of justice and not to satisfy the private grudge of a litigant. Every case of perjury need not result in prosecution.

An action of law should not be equated to a game of chess. Indeed, the wife cannot rely on the sheer technicality that no rejoinder affidavit has been filed by the petitioners in criminal writ petition no. 822 of 2000. It is for the court to consider the entire material and the attending circumstances to come to a right decision to be taken in the matter. The action cannot be permitted to be used by a party as a tool to derive sadistic pleasure in nailing his opponent.

On cumulative consideration that chargesheets in both the cases have been submitted in court setting the law on its course with regard to the alleged offences and that Professor F.A. Ansari himself did not file any affidavit to support the contention of the wife designating the invigilation duty certificate in question to be forged and fictitious, we do not think it to be expedient in the interest of justice to accede to the prayer of Arsi Yusuf (wife) to take any action under section 340 Cr.P.C. Hence the applications under section 340 Cr.P.C. are liable to be rejected.

In the final result, criminal writ petition no. 822 of 2000 and criminal writ petition no.5159 of 2002 are hereby dismissed. The applications of Arsi Yusuf praying for action under section 340 Cr.P.C. are also rejected.

Dt. November 18 ; 2005.

akn.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

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The said offence was allegedly committed near the canal within P.S. Khatauli of Muzaffarnagar district.
It was, inter alia, averred in writ petition no. 822 of 2000 that on 30.1.2000 Nadeem Khalil had been on duty as invigilator in Aligarh Muslim University, where he was a lecturer and a certificate allegedly issued in this respect by the Superintendent of Examinations on 3.2.2000 was annexed as Annexure 6 to the writ petition.

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Arsi Yusuf (wife) filed counter affidavit. She prayed for vacation of the stay order and also for initiating criminal proceedings against the petitioners for filing false and fabricated document (Annexure 6 to the writ petition). She reiterated the allegations made in the F.I.R. in question. According to her, with a view to defraud and obtain an ex parte order of stay of arrest, her husband falsely alleged that on 30.1.2000, the date in question, he had been on duty as Invigilator in Aligarh University. In the counter affidavit filed on her behalf by her pairokar P.K. Chhabra, ( sworn on 22.2.2000), photostat copy of the letter dated 7.2.2000 allegedly written by Prof. F.A. Ansari, Superintendent of Examinations, Faculty of Engineering and Technology, Aligarh Muslim University, Aligarh together with photostat copy of list of invigilators dated 30.1.2000 had been filed to indicate that Nadeem Khalil was not at all on invigilation duty on 30.1.2000 from 2.30 P.M. to 5.30 P.M. as falsely shown in Annexure 6 to the writ petition filed by the petitioners. As per the photostat copy of his letter dated 7.2.2000, the said Prof. F.A. Ansari never issued any such certificate. Prof. Khalil Ahmad was the Principal of the Engineering College and had allegedly exerted pressure for issuance of false certificate of invigilation duty in favour of his son Nadeem Khalil. Prof. F.A. Ansari denied his signatures on the certificate (Annexure-6), a copy of which was also annexed with the counter affidavit filed by P.K. Chhabra on behalf of Arsi Yusuf. He even purported to submit his resignation as Superintendent of Examinations through his letter dated 7.2.2000 addressed to the Vice Chncellor of Aligarh Muslim University, Aligarh.

Making an application under Section 340 Cr.P.C. in writ petition no. 822 of 2000, it has been prayed that Nadeem Khalil and his father be prosecuted for the offences under sections 193/466/471/120B I.P.C. for filing false affidavit and forged invigilation duty certificate to back the baseless plea of alibi of Nadeem Khalil.

In writ petition no.5159 of 2002 , the quashing of another F.I.R. dated 17.8.2002 in case crime no. 797 of 2002, under section 498A I.P.C., read with section ¾ Dowry Prohibition Act, P.S. Kavi Nagar, District Ghaziabad (Annexure 11 to the writ petition) has been prayed for. In this F.I.R., Arsi Yusuf claimed that she was all alone at her parental home at Ghaziabad on 1.1.2002 when Nadeem Khalil threatened her on telephone to get him paid Rs. 5 Lacs from her parents only whereafter he would divorce her in legal way. She allegedly gave information to the police on telephone. The other relevant recitals of the F.I.R. read thus:

" ---------- eSaus blds ckn rRdky VsyhQksu }kjk bryk iqfyl dks nh ftl ij ,d lQsn jax dh xkMh vk;h Fkh vkSj eq>ls iwNrkN dj pyh x;h Fkh blds ckn esjs firkth lwpuk ikrs gh QSDVzh ls ?kj vk, rks eSaus mUgsa iwjh ckr dh tkudkjh nh ftls ;g os iqfyl okfil pys x;s blh chp izksQslj 'kyhe vgen ,oa mudsnks lkFkh Hkh esjs?kj ij vk, A vius ls ,d ekS0 bLyke [kak iq= Lo- bLekby [kak ikBo gkml ljlS;~;n uxj dks eSa igpkurh gWw vkSj nwljs dks eSa ugha igpkurh ge yksxksa ds ?kj ij xUnh&xUnh xkfy;ka nh vkSj eqdnek okfil ys ysus ij tku ls eq>s vkSjesjs ekrk firk dks ekjusdh /kedh nh rFkk blds ckn mUgksaus eq>s izrkfMr djds 5 yk[k :i;s dh ekax dh vkSj okfil pys x;s bl izdkj esjh llqjky okys eq>s vHkh mRihfMr dj jgs gSa rFkk ngst dh ekax djjgs gSa blds f[kykQ dkuwuh dk;Zokgh dh tk; rFkk eq>s U;k; fnyk;k tk, A"

This petition was connected with writ petition no. 822 of 2000 vide order dated 5.9.2002. This Court observed that it appeared to be a malicious prosecution. Time was given for counter and rejoinder affidavits and the arrest of the petitioners in the said case crime was stayed until further orders. However, the petitioners were directed to cooperate with the investigation which was to continue. Arsi Yusuf, the main respondent filed an application supported by counter affidavit sworn by her father, praying for the vacation of stay order and also to register a case of perjury against the petitioners. It has been contended in paragraphs no. 6 and 9 as under:

"6. That to challenge the First Information Report dated 30.01.2000, the petitioners filed a Criminal Misc. Writ No. 822 of 2000 in which they set up a plea of alibi alleging that on the day of the incident, i.e. 30.1.2000, the petitioner no.1, Nadeem Khalil was conducting the engineering examination as invigilator in the Z.H. College of Engineering and Technology, Aligarh Muslim University, Aligarh and to support their plea, the petitioners filed a certificate dated 03.02.2000 allegedly issued by the Superintendent of Examinations certifying the presence of Nadeem Khalil in the College on 30.01.2000, which was filed as Annexure No. 6 to Criminal Writ Petition no. 822 of 2000. It is submitted that although a prima facie case was made out against the accused/ petitioners, but appears that this Court probably relying upon the plea of alibi set up by the petitioners, granted them an order on 11.02.2000 against their arrest, which is filed by the petitioners as Annexure no.3 to this writ petition."

"9. That subsequently, when the deponent enquired the matter from the University Authorities about the authenticity of the alleged certificate, it transpired that no such certificate was ever issued by the Superintendent of Examinations certifying the presence of Nadeem Khalil as Invigilator on 30.01.2000. On the contrary, the Superintendent of Examination,

Professor F.A. Ansari, under whose signature the said certificate was alleged to have been issued, wrote a letter to the Vice Chancellor on 07.02.2000 complaining about the misdemeanour of petitioner no.2 Professor Khalil Ahmad Khan, who was the Principal of the Engineering College at that time. The Superintendent of Examinations also expressed his apprehension that Professor Khalil Ahmad Khan might have tampered with the college records to procure the desired certificate in favour of his son, Nadeem Khalil. Subsequently, the petitioner no.2, Professor Khalil Ahmad Khan was removed from the post of Principal on this charge by the University."

We have heard learned counsel for the parties and perused the material on record.

It would be recalled that while granting the stay of arrest in both the writ petitions, it had been directed that the investigation would go on. It is an admitted position that in ultimate culmination chargesheets have been submitted in relation to the F.I.Rs impugned in both the writ petitions. Therefore, both the writ petitions are to be dismissed without any further debate and the law has to take its own course with regard to the chargesheets submitted in court.

The Court has however, to consider the application of Arsi Yusuf made under section 340 Cr.P.C. for prosecution of petitioners for perjury. It has been urged on her behalf that the petitioners could not dare to file rejoinder affidavit in writ petition no. 822 of 2000 to controvert the allegation that the certificate of invigilation duty, Annexure 6 filed by them, was a forged document. It has been vehemently argued that advancing the false plea of alibi on the basis of this forged certificate, they succeeded in securing an order of stay of arrest in writ petition no. 822 of 2000. The argument of the learned counsel is that the false plea of alibi was repeated in writ petition no.5159 of 2002 to project that the F.I.Rs were being lodged against the petitioners without any basis and it led the Court to make observation in its initial order dated 5.9.2002 passed in writ petition no.5159 of 2002 to the effect that it appeared to be a malicious prosecution and the stay of arrest was granted with relation to the F.I.R. of the incident of 1.1.2002. Reliance has been placed from her side on the case of Indian Bank Vs. M/s Satyam Fibres (India) Pvt. Ltd. AIR 1996 SC 2592 and Afzal and another Vs. State of Haryana and others AIR 1996 SC 2326. It has been urged on the basis of first referred case of India Bank (supra) that by relying on a forged certificate of invigilation duty and filing the same with criminal writ petition no. 822 of 2000, the petitioners played fraud not only on her but also on the Court. On the basis of the second referred case of Afzal (supra), the argument is that the false or misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with due course of judicial proceedings and it amounts to "criminal contempt" defined in Section 2(c) of Contempt of Courts Act.

On the other hand, the submission from the side of the petitioners is that offering challenge to the authenticity of the invigilation duty certificate, no affidavit has been filed of Professor F.A. Ansari, Superintendent of Examinations who by his alleged communication dated 7.2.2000 to the Vice Chancellor of A.M.U., is purpoted to designate the same as 'forged', not containing his signatures. According to the learned counsel, the petitioners filed photostat copy of the invigilation duty certificate as annexure 6 in writ petition no. 822 of 2000, relying the same as being the copy of the certificate issued by Professor F.A. Ansari, whereas, filing the copy of purported communication dated 7.2.2000 by Prof. F.A.Ansari to the Vice Chancellor, AMU, the same (annexure 6) was alleged to be forged on the basis of the counter affidavit filed by PK Chhabra, pairokar of Arsi Yusuf. So, there was only oath against oath without any further concrete or sterling evidence, which could be in the shape of affidavit of Prof. F.A. Ansari himself to pronounce the invigilation duty certificate to be forged one. As to the observation of the Court in writ petition no.5159 of 2002 while passing the order dated 5.9.2002 that it appeared to be malicious prosecution, the learned counsel argued that a series of FIRs had been lodged by Arsi Yusuf against her husband and his other family members and all the facts were related by the petitioners in writ petition no.5159 of 2002. Nothing adverse can be interpreted against them if on cumulative consideration, the Court observed in its order dated 5.9.2002 that it appeared to be malicious prosecution. The learned counsel stressed that it, indeed, was malicious prosecution as would appear from mere reading of the F.I.R. of case crime no.797 of 2002 under Sections 498-A IPC and ¾ of Dowry Prohibition Act of the alleged incident of 1.1.2002 lodged on 17.8.2002

The learned counsel for Arsi Yusuf urged that the letter of Professor F.A. Ansari dated 7.2.2000 to the Vice Chancellor of A.M.U., Aligarh was, in fact, official communication and deserves to be taken on its face value that invigilation duty certificate relied upon by 3.2.2000 was a forged document. This reasoning, we are afraid, cannot possibly be accepted, because the said alleged copy of the letter of Professor F.A.Ansari has not come from proper source. It is not understandable as to how Arsi Yusuf could get hold of such official communication. If Professor Ansari had himself passed it on to her, he could definitely file his own affidavit to support the contents of the same.

It is a fact that Pofessor F.A. Ansari himself did not file any affidavit to say that invigilation duty certificate in question was forged and the same did not contain his signatures. It has to be kept in mind that necessary prelude for action under section 340 Cr.P.C. is that the Court should be of the opinion that it is expedient in the interest of justice to do so. Action under section 340 Cr.P.C. should be taken only when the court on objective consideration of the entire facts and circumstances, is of the belief and opinion that the interest of justice so requires. The court may act suo motu also. It is for

the court to decide whether to take action and initiate proceedings. Even when an application is made by one of the parties, it becomes a matter between the court and the alleged perjurer. Action under section 340 Cr.P.C. is undertaken in the interest of justice and not to satisfy the private grudge of a litigant. Every case of perjury need not result in prosecution.

An action of law should not be equated to a game of chess. Indeed, the wife cannot rely on the sheer technicality that no rejoinder affidavit has been filed by the petitioners in criminal writ petition no. 822 of 2000. It is for the court to consider the entire material and the attending circumstances to come to a right decision to be taken in the matter. The action cannot be permitted to be used by a party as a tool to derive sadistic pleasure in nailing his opponent.

On cumulative consideration that chargesheets in both the cases have been submitted in court setting the law on its course with regard to the alleged offences and that Professor F.A. Ansari himself did not file any affidavit to support the contention of the wife designating the invigilation duty certificate in question to be forged and fictitious, we do not think it to be expedient in the interest of justice to accede to the prayer of Arsi Yusuf (wife) to take any action under section 340 Cr.P.C. Hence the applications under section 340 Cr.P.C. are liable to be rejected.

In the final result, criminal writ petition no. 822 of 2000 and criminal writ petition no.5159 of 2002 are hereby dismissed. The applications of Arsi Yusuf praying for action under section 340 Cr.P.C. are also rejected.

Dt. November ; 2005.

akn.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

HON. S.S. KULSHRESTHA, J.

HON. K.N. OJHA, J.

Heard and also perused the materials on record.

This petition has been brought for quashing the written report registered at Case Crime No. 330 of 2005 for the offences under Sections 498-A and 323 IPC and also under Sections 3/ 4 of the Dowry Prohibition Act, Police Station Cantonment, District Varanasi. It is said that the entire case has been fabricated against the petitioners by the complainant merely because a divorce petition under Section 13 of the Hindu Marriage Act was brought by them in the court of the Judge Family Court, Varanasi. Even when the victim woman left her nuptial home she gave threats to the petitioners that she would see their prosecution by bringing a false case for making the demand of dowry. Emphasis has also been laid that this threat has also been referred in the divorce suit and as a counter blast this FIR was registered by the complainant. More so it is said to be malafide.

Suffice is to mention that in the divorce suit it was averred that the complainant was suffering from Leukoderma and she had gone to her parents house at her own. This does not find support from any material on record that without any cause she has withdrawn from nuptial home. Further in the written report specifically the allegation of demand of dowry has been made and for that reason she was turned out by the petitioners.

Prima facie offences, indicated above, are appearing against the petitioners. In the given circumstances, we do not find any justified and justifiable ground to interfere in the matter. Reliance may be placed in the cases of State of Haryana v. Ch. Bhajan Lal AIR 1992 SC 604, Ajay Mitra vs. State of UP [AIR 2003, (SC) Page 1069] and Union of India vs. Prakash P. Hinduja and Another [JT 2003 (5) SC 300]. In the result, the petition is dismissed. However, the bail application of the petitioners shall be dealt with expeditiously.

19.X.2005

10529/05/sk

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 11714 of 2005.
Smt. Kushama and another Vs. State of U.P. and another.

Hon. Mrs. Poonam Srivastava, J.

Heard learned counsel for the applicants and learned A.G.A. for the State.
This application has been filed on behalf of mother-in-law and father-in-law, who are said to be sick, infirm and old persons. The Investigating Officer had granted them bail granting benefit of Section 437(ii) proviso in case Crime No. 480 of 2004, under Sections 498-A, 304-B I.P.C. read with Section 3/4 Dowry Prohibition Act, Police Station Shikohabad, District Firozabad. The prayer is, the applicants be permitted to furnish fresh bail bonds and they may not be sent to jail. Reliance has been placed on some decision of this Court, Smt. Radha Devi Vs. State of U.P. and others, 2002 (1) J.I.C., 21 and Yaqub and others Vs. State of U.P. and another, 2001 (42), A.C.C., 301 and also an order passed in Criminal Misc. Application No. 6506 of 2005, Sanjay Vs. State of U.P. dated 10.6.2005.
I have gone through all these orders but none of them relates to an offence where punishment is life imprisonment. Section 437(1)(i) Cr.P.C. states:-
"such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life".
The punishment under Section 304-B I.P.C. is seven years which can extend to imprisonment for life. In the circumstances, the decision cited by counsel for the applicants is of no help. However, the first proviso grants the liberty to such accused who are below 16 years of age, woman or a sick or infirm. The applicant no. 1 is a lady and her medical certificate is annexed as Annexure-3 to the affidavit. So far the medical certificate of the applicant no. 2 is concerned, there is no such serious illness.
Taking the entire facts and circumstances of the case in to consideration, I dispose of this application with the direction to the court below that the Magistrate shall accept fresh bail bonds in respect of the applicant no. 1 Smt. Kushama, wife of Rameshwar Singh and she shall not be sent to jail. The applicant no. 1 shall file personal bonds and two sureties for an amount of Rs. 50,000/- each before the court concerned which shall be accepted by the court. The applicant no. 2 shall appear before the court concerned within a period of three weeks and if he moves bail application in case Crime No. 480 of 2004, under Sections 498-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act, Police Station Shikohabad, District Firozabad, the same shall be considered and disposed of by the courts below expeditiously, if possible on the same day.
Dt/-25.8.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 15620 of 2005.
Smt. Munni Devi Vs. State of U.P. and another.

Hon. Mrs. Poonam Srivastava, J.
Heard learned counsel for the applicant and learned A.G.A for the State.
This application has been filed for quashing the charge sheet No. Nil of 2004 arising out of case crime No. C-2 of 2002, under Sections 498-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act, Police Station Kailiya, District Jalaun and also for quashing the proceedings in Criminal Case No. 185 of 2004, pending in the court of Chief Judicial Magistrate Orai, District Jalaun. It appears that the case has not yet been committed to the court of session in respect of the present applicant. The first information report is annexed as Annexure-2 to the affidavit.
The present applicant Smt. Munni Devi is the mother-in-law. The first information report was registered against four accused, husband, brothers of the husband and mother-in-law. The Investigating Officer submitted a charge sheet against the accused Sukhpal Singh, husband, Pratipal Singh and Rampal Singh, and the case was committed to the court of session. The trial proceeded in Session Trial No. 234 of 2003, State Vs. Sukhpal Singh and others. Three witnesses were examined during the trial who did not support the prosecution case and trial court acquitted the husband and other family members vide judgment dated 8.4.2004 in Session Trial No. 234 of 2003. A copy of the judgment has been annexed as Annexure-5 to the affidavit. The charge sheet against the mother-in-law (present applicant) was submitted subsequently and it is still pending before the Chief Judicial Magistrate Orai at Jalaun. The prayer in this application is to quash the proceedings in respect of the present applicant as the same evidence is also against the present applicant which was adduced in the session trial in respect of the husband, brother-in-law and father-in-law. The court had given a clear verdict of acquittal and, therefore, the proceedings against the present applicant is liable to be quashed.
The submission on behalf of the applicant is that the evidence recorded in the said session trial will be same evidence in the case of the present applicant and since once the court has given a verdict of acquittal, the proceedings, if allowed to continue against the present applicant, will only be a futile exercise and no good result can be expected. It is almost certain that the trial of the present applicant if allowed to continue, will only end in an acquittal and there is not even a remote chance of conviction. In the facts and circumstances and on the basis of a decision of this Court in the case of Manoj Vs. State of U.P. and another, 2004 (49) ACC, 302. it is prayed that the principle of ''stare decisive' will squarely apply to the facts of the present case and in view of the aforesaid decision, the charge sheet should be quashed.
After hearing the counsel for the parties and going through the decision cited above on behalf of the applicant, it is true that there is no prospect of the case ending in conviction against the present applicant and if, the trial is allowed to continue, it will amount to wastage of valuable time of the court. The trial, if allowed to continue, will be a hollow formality of pronouncing the same judgment which has already been passed in respect of other co-accused in the same case crime number and entire exercise will be rendered futile.
In the facts and circumstances of the case, this application is allowed and the charge sheet No. Nil of 2004 arising out of case crime No. C-2 of 2002, under Sections 498-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act, Police Station Kailiya, District Jalaun and the subsequent proceedings in Criminal Case No. 185 of 2004, pending in the court of Chief Judicial Magistrate Orai, District Jalaun initiated against the present applicant are quashed.
Dt/- 24.10.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

The accused applicant Haider who is the husband of deceased has prayed for release on bail in case Crime No. 18 of 2004 under Sections 498 A/304B, 201 IPC, P.S. Bishunpura, District Kushinagar.

According to F.I.R., the deceased was married to the accused about six years prior to the incident and dowry was given but the accused and his family members demanded more dowry and ill treated and threatened to kill her. Panchayat was also held several times. As per F.I.R. the complainant who is brother of the deceased was informed by some unknown person on 23.1.2004 that his sister has been killed and dead body has been disposed of. Thereafter he enquired the matter and lodged the report at the Police Station on 24.1.2004.

Learned counsel for the applicant has contended that the deceased was a short tempered lady and she committed suicide as there was some dispute regarding cooking with her mother in law and on that account she consumed poison. It appears that the applicant did not inform the police and also the complainant although as alleged in the bail application, deceased had taken poison. It further appears that the dead body was kept in the gunny bag and thrown in the canal and even no post mortem could be conducted.

Considering the facts and circumstances of the case, but without prejudice to the merits of the case, applicant is not entitled to bail and his application is liable to be rejected.

Bail application of the accused Haider is hereby rejected. However learned Trial Court is directed to expedite the hearing of the case and proceed under Section 309 Cr.P.C. It is expected that the accused shall cooperate in his speedy trial. Learned Trial Court shall make every effort to conclude the trial within a period of four months from the date of receipt of this order. In case the Trial is not concluded within the prescribed time then the concerned Court shall submit a report explaining the reasons for delay.

Copy of this order be sent to learned Trial Court within a week.

Dated : 17.8.2005

RKS/11911/

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Criminal Misc. Bail Application No. 15717 of 2005
Vimlesh Kumar Mishra Vs. State of U.P.

Hon'ble M. K. Mittal, J.

This is the second bail application filed on behalf of Vimlesh Kumar Mishra with the prayer to release him on bail in Case Crime No. 141 of 2004 under Sections 498-A, 304 B IPC and Section ¾ D. P. Act, P.S. Phoolpur, District Allahabad. First bail application was dismissed in default by order dated 11.7.2005.

I have heard Sri P.S. Mishra, learned counsel for the applicant, Sri R.K. Tripathi, learned counsel for the complainant, learned A.G.A. and perused the record.

Prosecution case is that Smt. Geeta was married with accused applicant in the year 1997 and Gauna had taken place after some time. Dowry was given but it could not satisfy the accused and his family members and demand for Colour Television, Freeze, Washing Machine etc. was being made but when these items could not be given she was burnt on 14.5.2004. The intimation was given by the brother of the complainant Rajnath Dubey on phone as he was in Bombay at that time.

The brother of the complainant Chabiley Dubey after getting the information about the death of Smt. Geta along with Smt. Vidyawati, Malti Devi, Jai Prakash Dubey, Amarnath Dubey, Munna Dubey and others came to her in-laws house and found that she was lying dead. She was burnt either by poring kerosene oil or petrol. The complainant was suspected that her daughter was beaten and strangulated. The report was lodged on 17.5.2005 against the applicant, his brother Kamlesh Kumar, wife of Kamlesh Kumar and Doodh Nath. In this case the information was given by village Chaukidar Ram Das at Police Station Phool Pur on 14.5.2004 that Smt. Geeta wife of Vimlesh had burn herself none else was present in the house and therefore he informed the police. On the basis of this information, the inquest was prepared on 15.5.2004 and at that time Ram Chandra Dubey uncle of deceased, Jai Prakash, Amar Nath and others of the village of the deceased were present. Post mortem report was conducted on 16.5.2004 and according to it there were superficial to deep burn all over the body and no other mark of injuries was found by the Doctor. The death was due to shock as a result of ante mortem burn injuries. Post mortem report also shows that carbon particles were present in Trachea and Hyoid bone was intact. Carbon particles were also present in both the lungs.

Learned counsel for the applicant has contended that the accused has been wrongly implicated in this case and that Smt. Geeta committed suicide. He has further contended that in the F.I.R., the facts were not correctly stated including the period of marriage and the gauna of the deceased.

He has also contended that Doodh Nath was wrongly implicated in this case. He has also argued that in the F.I.R., it has been mentioned that Smt. Geeta was beaten and neck was pressed but the post mortem report does not support this contention. He has further contended that the spot inspection report shows that the door of the room was removed from the wall and it shows that she committed suicide by closing herself in the room. The spot inspection was done in presence of the complainant and other witnesses on 17.5.2005. He has further contended that at the time of inquest report the uncle and other family members of the deceased were present and they were satisfied that the deceased had committed suicide and that is why no report was lodged on that day. He has further contended that inspite of opportunity given to the complainant and the State no counter affidavit has been filed and therefore the contention as made in the affidavit become un-rebutted.

Learned A.G.A. and learned counsel for the complainant have contended that the accused has committed the murder of his wife as dowry was not given and that father in-law after coming to know about the incident came to Allahabad and then lodged a report.

Learned counsel for the complainant also contended that evidence is being recorded in this case and two witnesses have already been examined.

Considering the facts and circumstances of the case but without prejudice to the merits of the case, accused is entitled to bail.

Let the accused named above involved in above case be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned.

Dated: 4.10.2005
RKS/15717/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the parties and perused the record.

Accused Karamveer son of Sri Sukhveer Singh has prayed for release on bail in Case Crime No. 374 of 2004 under Sections 304 B, 498 A IPC Section ¾ D. P. Act, P.S. Sikarpur, District Bulandshahr.

Prosecution case is that Smt. Rakesh, sister of the complainant Satendra Singh was married to the accused applicant in the year 2000. She had one son and one daughter. The daughter was living with the complainant. The accused and his brothers had been demanding dowry and used to beat Smt. Rakesh as she could not bring motorcycle, freez and colour T.V. On the Bhaiadooz day, she had told about her ill-treatment and demand of dowry to the complainant and other family members. However, she was sent back to her matrimonial house. On 18.11.2004 the information was sent on telephone that his sister was killed by the accused persons. When the complainant and others reached her matrimonial house, the dead body was lying there but the accused were absconding. He lodged the report on 18.11.2004 at Police Station.

At the time of post mortem the cause of death could not be ascertained and Viscera was preserved. At the time of spot inspection insecticide phial was recovered.

Learned counsel for the accused applicant has contended that the accused who is husband of the deceased has been wrongly implicated in this case and Smt. Rakesh committed suicide. According to him the applicant was earlier adopted by his uncle Satyaveer Singh and at that time Satyaveer had no issue. But subsequently children were born to him and then he left the applicant and his wife and they had to live in the parental village of the applicant in very poor condition. The deceased was Graduate whereas the accused is only High School and the deceased was a lady of hot temperament and modern thinking and she committed suicide after consuming insecticide.

Learned A.G.A. has contended that the deceased had two children and there was no reason for her to have committed suicide. He has further contended that the conduct of the accused in not giving any information to the Police or the complainant and absconding from the place of occurrence show the involvement of the accused in this incident. He further contended that the ground as alleged by the accused that the deceased committed suicide is not probable and a lady would not have committed suicide leaving her two children at the mercy of the accused persons.

Considering the facts and circumstances of the case, but without prejudice to the merits of the case, accused is not entitled to bail and his application is liable to be rejected.

Bail application of the accused Karamveer is hereby rejected.

Dated: 30.8.2005

RKS/8405/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

No. 19

Crl. Misc. Bail Application No. 21635 of 2005
Bhairo Nath and another .....Vs.....State of U.P.
...
Hon'ble Alok Kumar Singh, J.

Heard learned counsel for the applicant and learned A.G.A. and also perused the material on record.

The applicants Bhairo Nath and Shubhwanti are involved in case crime No. 292 of 2003, for the offence under Sections 498-A, 304-B I.P.C. and ¾ Dowry Prohibition Act, Police Station Barsathi, district Jaunpur.

It is alleged that the marriage took place within 7 years of the incident and immediately after solemnization of the marriage there was a demand of additional dowry. As a consequence of non fulfillment of demand the harassment of the victim Was being made. Ultimately on 25.8.2005 the husband, father-in-law and mother-in-law strangulated her and killed. The repost was lodged on 1.9.2005.

In the context of genuineness of the prosecution case and the supporting evidence it is argued that the applicants happen to be aged father-in-law and mother-in-law against whom no specific allegations have been made. There are only common allegations in the F.I.R. Although in the F.I.R. it is alleged that the victim was killed by strangulation but the post mortem report shows the cause of death was ante mortem hanging. No sign of strangulation was found. There is also no dying declaration indicating involvement of the applicants. The report itself was lodged after a lapse of one week. The applicants have no criminal history against them.

The bail was, however, opposed by the learned A.G.A.

The points pertaining to nature of accusation, severity of punishment, reasonable apprehension of tampering with the witnesses, prima facie satisfaction of the Court regarding proposed evidence and genuineness of the prosecution case were duly considered.

In view of the entire facts and circumstances of the case, taking into consideration some of the arguments, advanced on behalf of the applicant in respect of the points discussed herein above, without prejudice to the merits of the case, I find it to be a fit case for granting bail. Let the applicants be enlarged on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the concerned Court.

Dt. 9.12.2005.
Rkb.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Imtiyaz Murtaza, J.
Hon'ble Ravindra Singh, J.

Heard learned A.G.A. for the State.

This application is filed by the State of U.P. with the prayer that leave to appeal may be granted against the judgment and order dated 23.7.2005 passed by learned Addl. Sessions Judge, S.C.S.T. (PA) Act, Fatehpur in S.T. No. 1142 of 2002 whereby the respondents have been acquitted for the offence punishable under Sections 498A, 304B, 201 I.P.C. and ¾ of Dowry Prohibition Act.

It is contended by the learned A.G.A. that the impugned judgment of acquittal is erroneous and bad in law. The trial court has not considered the entire evidence. The findings of the acquittal are perverse. It is further contended that the marriage of the deceased was solemnized within 7 years of her death. There was demand of dowry and the death was unnatural even then the trial court has acquitted the respondents on the basis of conjecture and surmises

From the perusal of the impugned order it appears that the findings of the acquittal require reconsideration. Therefore, leave to appeal is granted.

Accordingly this application is allowed.

Dated 14.12.2005.

o.k.

5157/05

Hon'ble Imtiyaz Murtaza, J.
Hon'ble Ravindra Singh, J.

Admit.

Issue bailable warrant against the accused respondents, namely, Mohammad Yaseen and Smt. Kuraisa ensuring their presence before this Court on 31.1.2006. If they appear or are produced before the C.J.M., Fatehpur, they shall be released on bail on each of them executing a personal bond of Rs. 25,000/- and on furnishing two sureties each in the like amount to the satisfaction of C.J.M., Fatehpur.

A condition shall be provided in the bail bonds that they will appear before this Court on the date fixed (31.1.2006) and on further dates whenever required. After the accused respondents file the bail bonds, as stated above, the photocopies of the same shall be submitted to this Court by the C.J.M., Fatehpur within two weeks from the date of its execution.
Office is directed to summon the lower court's record within three weeks and prepare paper book within three months and put up for hearing before the appropriate court after obtaining order from the Hon'ble The Chief Justice.
Office is also directed to communicate this order to C.J.M., Fatehpur for immediate compliance.
List on 31.1.2006 for appearance of the above accused respondents before this Court and for further appropriate orders.

Dated: 14.12.2005
o.k.
5157/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard Sri Tapan Ghosh, learned counsel for the accused applicants, learned A.G.A. and perused the record.

Application under Section 482 Cr.P.C. has been filed to quash the order dated 5.9.1998 passed by C.J.M., Farrukhabad and the order dated 13.9.2005 passed by Special Judge, Dacoity Affected Area, Farrukhabad. By the order dated 5.9.1998 learned C.J.M. Directed to summon the accused persons under Sections 498-A, 304 B and 201 IPC in Case Crime No. 142 of 1994. By the order dated 13.9.2005, the revision filed against this order was dismissed.

Brief facts of the Case are that the opposite party no. 2 Brahmanand is father of the deceased Smt. Laxmi Devi, who was married to accused applicant no. 1 Rajesh Kumar about four years prior to the incident. The complainant lodged a report at P.S. alleging that his daughter was killed by her in-laws (accused applicants) in the night of 28/29-5-1994 and they also disposed the dead body. After investigation final report was submitted in the matter. Against that final report complainant filed protest petition and also examined himself as P.W.-1, Ramteerth P.W-2, Smt. Sudha P.W.-3, Saleem Khan P.W.-4 and Ramshankar P.W.-5.

Learned Magistrate after considering the statements of the witnesses found that there was prima facie case against the accused persons and he rejected the final report and directed to summon the accused persons taking cognizance in the matter, by order dated 5.9.1998. It appears that against that order the accused filed criminal revision but the same was not pressed. Thereafter a fresh criminal revision was filed on 21.4.2001 along with application under Section 5 of the Limitation Act but the learned Sessions Judge rejected the application under Section 5 of Limitation Act and also the revision. Against that order one of the accused Smt. Shyama Devi filed a Criminal Misc. Application No. 11714 of 2004 which was allowed by order dated 5.11.2004 by this Court and the case was remanded and the learned Revisional Judge was directed to decide the revision on merits. Thereafter the revision has been decided by the impugned order dated 13.9.2005 and the summoning order dated 5.9.1998 has been confirmed.

Learned counsel for the accused applicants has contended that impugned orders are not legal as no reason has been given by the learned Magistrate before taking cognizance and summoning the accused persons. He has also contended that although learned Trial Court has right to disregard the final report but should have given reasons for differing from it. But the learned A.G.A. has contented that learned Magistrate has summoned the accused persons as he found a prima facie case against accused persons and no illegality has been committed by him.

At the stage of summoning of the accused a detailed discussion of the evidence is not required and the Magistrate has to see if prima facie case is made out against the accused persons or not.

In the instant case, the complainant examined himself and his witnesses and the learned Magistrate found that there was prima facie case against the accused applicant and therefore he rejected the final report and directed to summon the accused persons. Learned Revisional Judge has given reasons in support of his order and he has mentioned that the witnesses have stated about the demand of dowry as well as harassment given by the accused persons. They have also stated about her death on account of dowry. The witnesses Brahmanand is the father of the deceased and Ramteerth is brother of the deceased. Witness Saleem also corroborated the prosecution case. The complainant had also given an application to the District Magistrate alleging that the life of his daughter was in danger. Therefore the contention as made by the learned counsel for the accused applicants that the learned Magistrate and learned Sessions Judge did not give any reasons, cannot be accepted.

Considering the facts and circumstances of the case, I do not find any illegality in the impugned orders and this application under Section 482 Cr.P.C. is devoid of any merit and is liable to be dismissed and is accordingly dismissed.

Dated: 29.11.2005

RKS/15776/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Rakesh Tiwari,J.

Heard counsel for the parties and perused the record.

The petitioner was appointed on the post of Peon in Baba Bharat Puri Higher Secondary School Nandpur Nauli, Kannauj in the year 1985 and was promoted to the post of Clerk vide order dated 30.10.1988. He was jailed in 1999 under the Dowry Prohibition Act. Consequently, he was suspended and was acquitted in the criminal case under the Dowry Prohibition Act. The District Inspector of Schools, Kannauj by his order dated 27.7.2004 informed the Management of School Baba Bharat Puri Higher Secondary School, Nandpur Nauli, Kannauj, respondent no.3 about the aforesaid fact of the acquittal of the petitioner and had directed that the petitioner may be immediately permitted to join his duties.

It appears that the Management did not comply with the order of the D.I.O.S. Consequently, a reminder was again sent vide letter dated 12.8.2005 in this regard but to no avail.

Aggrieved the petitioner has filed this writ petition for issuance of a direction in the nature of mandamus commanding respondent no. 3 to comply with the order dated 12.8.2005 of the D.I.O.S. for permitting him to join the post of Clerk in the Institution.

To my mind the D.I.O.S. has ample powers to get his order enforced. The petitioner may move a representation before the D.I.O.S. to get the order dated 27.7.2004 passed by him implemented.

In the circumstances, it is not a fit case for interference under Article 226 of the Constitution of India.

For the reasons stated above, the writ petition is dismissed. No order as to cost.

Dated 11.11.2005

CPP/-53628-2004

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M.C. Jain, J.
Hon'ble Vinod Prasad, J.

We have heard Sri M.C. Joshi, A.G.A. and have perused the impugned judgement of acquittal.
One Smt. Kavita died in hospital on 7.12.1995. The information regrading her death was given by the complainant on 10.12.1995 at the police station with the allegation that it was a case of dowry death and torture under Sections 304-B, 498-A IPC and ¾ of Dowry Prohibition Act. The prosecution examined three witnesses of fact, namely, PW 1 Kanwar Pal, PW 2 Azad and PW 3 Devendra. PW 1 Kanwar Pal and PW 2 Azad are the real brothers of the victim Kavita whereas PW 3 Devendra is the son of brother of the deceased's mother. The trial court after perusal of the evidence rightly came to the conclusion that the deceased had died accidentally because of consuming some poisonous substance and she was got admitted in the hospital by the accused respondents themselves.
The findings recorded by the trial court can neither be said to be perverse nor unreasonable. Rather, it is based on proper and judicious appraisal of evidence on record, the leave to appeal is declined.
Dt:21.10.2005.
Akn-GA5155--02

Hon'ble M.C. Jain, J.
Hon'ble Vinod Prasad, J.
The leave to file appeal having been declined vide order of date passed on the leave application, the appeal is dismissed.
Dt:21.10.2005.
Akn-GA5155--02

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

RESERVED.

First Appeal no. 403 of 1996
Arun Kumar . . . . Vs. . . . . Smt. Indira.

And

First Appeal no. 863 of 2003
Smt. Indira . . Vs. . . Judge, Family Court,
Meerut and another.

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Hon'ble Yatindra Singh,J.
Hon'ble R.K. Rastogi,J.

( Delivered by Hon'ble R.K.Rastogi,J. )

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1. Both these appeals have arisen out of the judgment and decree dated 19.8.1996 passed by Sri S.K. Bhatt, then learned Judge, Family Court , Meerut in original suit no. 492 of 1989, Arun Kumar Vs. Smt. Indira. It may be mentioned here that F.A. no. 863 of 2003 was originally registered as defective F.A. 721 of 1996 and after removal of defects regular F.A. no. 863 of 2003 was allotted to it. Since both these appeals have arisen out of the judgment in same suit, we heard both of them together and now we are deciding them vide a common judgment.

2. The facts giving rise to both these appeals are that the plaintiff Arun Kumar had filed original suit no. 492 of 1989 in the court of the Civil Judge, Meerut against the defendant, Smt. Indira under section 13 of the Hindu Marriage Act with these allegations that their marriage had taken place at Meerut on 29.1.1988 according to Hindu rites. Thereafter Smt. Indira came to the house of the plaintiff Arun Kumar to reside with him. The behaviour of Smt. Indira was very arrogant towards Arun Kumar and she misbehaved with him and his other family members. On 30.4.1998 brother of Smt. Indira came to the house of Arun Kumar and took Indira with him saying that she will come back after two days as she wanted to see her mother. Smt. Indira took all her ornaments with her. On 3.5.1988 Arun Kumar went to the house of parents of Indira to take her back but she refused to come back and her family members misbehaved with Arun Kumar. Thereafter Arun Kumar and his family members repeatedly met Smt. Indira and her parents and other family members for her Vida, but all invain. Then Arun Kumar filed original suit no. 662 of 1988 for restitution of conjugal rights. After coming to know about this suit Smt. Indira' s behaviour became worse towards Arun Kumar and he had to withdraw his above petition. On 8.8.1988 Smt. Indira filed an application under section 156 Cr.P.C. in the court of Chief Judicial Magistrate, Meerut against Arun Kumar, his parents and two unmarried sisters under sections 307, 313, 498-A, 506 I.P.C. and ¾, Dowry Prohibition Act. The Magistrate passed an order directing SHO. Kotwali Meerut to register a case, and then Arun Kumar was arrested by the police and his parents and sisters had to surrender in court. Arun Kumar remained in jail for 25 days and then he was bailed out. Smt. Indira sent false complaints to the police authorities and so the factory of Arun Kumar was raided by the police, and with connivance of Press, false stories were published in the news papers. His shop was also taken into custody and the police gave it in Supurdagi of another person. When Smt. Indira left the house of Arun Kumar she was pregnant. Subsequently she got an abortion done against wishes of Arun Kumar. Then Arun Kumar filed this suit for divorce on the ground of cruelty.

3. Smt. Indira contested the suit and filed her written statement in which she admitted her marriage with Arun Kumar but denied rest of the allegations. She claimed in her written statement that after marriage she went to the house of Arun Kumar and resided with him as his wife. She went to her parents' house on 30.1.1988 alongwith Arun Kumar and returned back to the house of Arun Kumar in that very night with him and thereafter continuously remained with him upto 28.2.1988. Then she came to her parents' house on that date and stayed there upto 12.3.1988 to celebrate Holi, as according to the custom her first Holi could not be celebrated at her inlaws' house. She continuously resided with Arun Kumar from 12.3.1988 to 30.4.1988 when she was forced at about 8 P.M. to leave the house in wearing apparel only and

since then she is continuously residing with her father. Arun Kumar and his family members are greedy. A sum of Rs.1,50,000/-was spent in the marriage. A sum of Rs.51,000/- was given by her father to Arun Kumar at the time of engagement and items like scooter and colour T.V., watches, LPG gas connection with cylinder, gold and silver ornaments, Sarees, wearing suites, utensils, double bed, almirah and suite-case etc. worth Rs.75,000/- were also given. Smt. Indira had been employed in Trilok Chand Shakuntala Sharma Adarsh Academy Junior High School, Purani Mohanpuri, Meerut for a period of three years prior to her marriage. When she went to her inlaws' house after marriage, Arun Kumar kept all her ornaments with him in the first week of February, 1988, and he and his family members started to make demand that she should bring her entire salary including previous salary which she had earned during the past three years of service. She replied that she did not have this amount with her and that it had been spent. Then Arun Kumar felt aggrieved and asked her to bring Rs.10,000/- from her father at the time of Holi festival further stating that otherwise he would not keep her at his house and also beat her. Arun Kumar and his family members forcibly snatched monthly salary of Smt. Indira from her. Her father gave a sum of Rs.10,000/- to Arun Kumar on 12.3.1988 at the time of her Vida and also gave other items of Rs.1000/-. After receipt of this amount Arun Kumar and his family members became more greedy and they started a demand of Rs.30,000/- more. Smt. Indira became pregnant and when Arun Kumar came to know this fact he asked her that he should get her aborted because he did not want a child at that time and he administered medicines to her and also gave injection to her for abortion. He forced her to leave the house on 30.4.1988 at about 8 P.M. and thereafter repeatedly made demand of RS.30,000/-. He made a phone call to her on 7.8.1988 at about 8 P.M. and enquired about Rs.30,000/-, then she replied that the amount could not be arranged and that she was alone at her house. Then Arun Kumar, his father Jai Prakash and sister, Manju came to her house at about 9 P.M. and they closed the main door of the house from inside. Arun Kumar took out a blank stamp paper from his pocket and asked Indira to sign it. She refused to do so, then Arun Kumar's father and sister said that it was a good opportunity and since Indira was alone at the house of her father, she should be burnt then and there and that in this way there shall be no suspicion upon them. Then Arun Kumar's father and sister caught hold of her and Arun Kumar poured kerosene oil upon her. She shouted for help but Manju pushed her mouth and Arun Kumar' father throttled her neck. In the meantime her brothers Raj Kumar and Vinod came inside the house from the side of the drawing room, and on seeing them Arun Kumar, his father and sister rushed away on their scooter. They also left that blank stamp paper at that place in a hurry. Then Raj Kumar and Vinod got her medically examined and filed a complaint before the Chief Judicial Magistrate under section 313, 307 and 498-A I.P.C. which is still pending. Arun Kumar was running a factory of artificial medicines, and on receiving this information the police and the Drug Inspector raided his factory on 20.8.1988, arrested Arun Kumar and two lady employees, namely, Manju Rani and Anita and registered a case under sections 274/276 I.P.C. and section 18/27, Drugs Act. A News item regarding this raid was published in news papers. After this raid in the factory Arun Kumar and his family members disappeared and the police took action under section 82 and 83 Cr.P.C. and attached their movable property. Thereafter Indira moved an application before the Chief Judicial Magistrate for releasing those items which belonged to her. Arun Kumar also moved an application for the same relief. The Chief Judicial Magistrate asked the parties to produce evidence in respect of their respective claims. Aggrieved with that order Arun Kumar filed Crl. Revision no. 365 of 1988 before the Sessions Judge, which was decided by Ist. Addl. Sessions Judge,. He allowed it vide order dated 22.12.1989. The defendant was entitled to return of the items which were given at the time of marriage under section 27 of the Hindu Marriage Act and so she was making a counter claim in that regard. Arun Kumar had forcibly obtained signature of Indira on several blank small slips.
4. Following issues were framed in the said suit:

(i) Whether the defendant treated the plaintiff with cruelty as alleged in the plaint? If so, its effect.

(ii) Relief.

(iii) Whether the defendant is entitled to return of her goods by way of counter claim or in the alternative to its price? If so, its effect.

5. This case was heard and decided by Sri S.K. Bhatt, then learned Judge, Family Court, Meerut vide his judgment dated 19.8.1996. He held on issue no.1 that the defendant had treated the plaintiff with cruelty. He held on issue no. 3 that the defendant was entitled to recover Rs.11,600/- as price of scooter, Rs.7,500/- as price of Televista Televison and Rs.2,100/- cash given at the time of engagement ceremony; in all Rs.21,200/-. He therefore, held on issue no. 2 that the plaintiff was entitled to a decree of divorce and the defendant was entitled to recover a sum of Rs.21,200/- in respect of the counter claim. He, therefore, decreed the suit for divorce and also the counter claim of the defendant for recovery of Rs.21,200/- only.

6. Aggrieved with that portion of the judgment and decree whereby Smt. Indira's counter claim was partly allowed for recovery of Rs.21,200/-, Arun Kumar filed F.A. no. 403 of 1996, and aggrieved with that portion of the decree whereby the suit had been decreed for divorce and the counter claim for rest of the amount had been disallowed, Smt. Indira filed an appeal which was originally registered as defective F.A. no. 721 of 1996 as it was time barred and after condonation of delay in filing the appeal ,it was registered as F.A. no. 863 of 2003.
7. We have heard learned counsel for both the parties and have perused the record.
8. It may be mentioned that learned counsel for Smt. Indira did not challenge, at the time of argument, the divorce decree passed by the court below. His only contention was that the court below had not properly dealt with the counter claim of Smt. Indira and the counter claim should have been allowed in toto. On the other hand, learned counsel for Arun Kumar challenged the decree of Rs.21,200/- passed by the trial court in respect of the counter claim. As such since the decree of divorce passed by the court below is not being challenged by either party, that part of the decree deserves to be confirmed.

9. We now proceed to decide the question of counter claim of Smt. Indira.

10. Smt. Indira had made counter claim in respect of items mentioned at serial nos. 1 to 15 in Schedule A of her written statement. Below that list of 15 items there is description of eight items of golden ornaments and four items of silver ornaments. All those items have been alleged to have been given at the time of engagement ceremony and marriage. Out of these items the learned Presiding Officer of the court below has allowed the claim in respect of a Bajaj Scooter worth Rs.11,200/- and a Televista Television worth Rs. 7,500/- and for return of cash of Rs.2,100/- . The claim in respect of the remaining items has been disallowed by him. He has taken the view that ornaments and wearing apparels of Smt. Indira did not come under the definition of the term 'joint property' as referred in section 27 of the Hindu Marriage Act. He was further of the view that Smt. Indira had filed some documents which have been termed as rough estimate and no cash memo has been filed. Besides there were some receipts issued by Dharam Kata which were in respect of weight of some ornaments and no purchase was proved. He has, therefore, disallowed the claim in respect of these items and their prices.

11. In this connection, it will be useful to go through section 27 of the Hindu Marriage Act, which runs as under:

"Disposal of property:- In any proceeding under this Act the Court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife."

12. The above section was considered by Hon'ble Apex Court in Balkrishna R. Kadam Vs. Sangeeta B. Kadam -AIR 1997 SC page 3652. The Hon'ble Apex Court observed in this case as under:

"It ( Section 27 of the Act) includes the property given to the parties before or after marriage also, so long as it is relatable to the marriage. The expression 'at or about the time of marriage' has to be properly construed to include such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their "joint property," implying thereby that the property can be traced to have connection with the marriage. All such property is covered by Section 27 of the Act."

13. The above ruling of the Hon'ble Apex Court was followed by a Division bench of this Court in Hemant Kumar Agrahari Vs. Laxmi Devi - 2003 (32) ALR 166 and their Lordships relying on the above ruling of Hon'ble Apex Court observed as under:

" Section 27 uses the phrase 'property presented at the time of marriage, which may belong jointly to both the husband and the wife'. In view of the Balkrishna case this section has one prerequisite: the property must be connected with the marriage. The Supreme Court in this case has not held that exclusive property given at the time of marriage cannot be dealt by the matrimonial courts. Section 27 nowhere uses mandatory word 'must'; it uses the word 'may'. The phrase 'which may belong jointly'---because of the use of the word may--includes within it penumbra the property which may not jointly belong to the parties. It would be incorrect to say that section 27 confines or restricts the jurisdiction of matrimonial courts to deal with the joint property of the parties only, it also permits disposal of exclusive property of the parties provided it

was presented at or about the time of marriage."

14. It is thus clear from perusal of the above ruling that all the properties which are given in connection with the marriage either at the time of marriage or before the marriage or after the marriage can be dealt with under section 27 of the Hindu Marriage Act and so this view of the learned Presiding Officer of the Court that ornaments and wearing apparels etc. of Smt. Indira could no be dealt with under section 27 of the Hindu Marriage Act is erroneous and suitable orders should be passed in respect of these items also.

15. With this back ground , now we deal with counter claim of Smt. Indira. This counter claim has been decreed by the court below for following items:
(1) Televista Television worth Rs.7,500/-.

(2) Scooter worth Rs.11,600/-.

(3) Rs.2,100/- cash given at the time of engagement ceremony.

16. F.A. no. 403 of 1996 was filed by Arun Kumar against the decree passed by the court below in respect of the aforesaid three items. Hence, first of all we deal with these three items.

17. So far as Televista T.V. Worth Rs.7,500/- is concerned, Smt. Indira has filed the cash memo of purchasing it which is paper no. C-106. It is dated 11.1.1988 and is in the name of Km. Indira. There is no reason to disbelieve this cash memo. This Television was purchased just before marriage, which took place on 28.1.1988. The learned Presiding Officer of the court has rightly decreed the claim of Smt. Indira in this regard.
18. As regards the scooter, allegation of Arun Kumar is that he had purchased this scooter from his own money. Smt. Indira has filed a receipt dated 15.1.1988 ( paper C-107) in the name of Dr. Arun Kumar. The claim of Smt. Indira is that the scooter was to be given to Arun Kumar in the marriage, so it was purchased in the name of Arun Kumar. This contention has been accepted by the Presiding Officer of the court below. He has further observed that this very fact that it was purchased just before marriage on 15.1.1988 goes to show that it was purchased by parents of Smt. Indira to give it in the marriage, otherwise if Arun Kumar had purchased the scooter from his own money, he would have purchased it much earlier to his marriage or after marriage, but he would not have purchased it just before the marriage from his own money. We agree with his finding on this point also.

19. As regards award of cash of Rs.2,100/- allegedly given at the time of engagement, the case of Smt. Indira is that actually a sum of Rs.51,000/- was given at that time. The case of Arun Kumar is that only a sum of Rs.2,100/- was given. It was pointed out before the Presiding Officer of the trial court that a photograph has been filed from the side of Smt. Indira, paper no. C-140, showing delivery of cash and in that photograph only two packets of currency notes have been shown. It was contended that if actually a sum of Rs.51,000/- had been given, there would have been five packets of 100 notes of Rs.100/-, but in the photograph only two packets have been shown. When it was pointed out that these packets are of the notes of Rs.100/- each, it was alleged by Arun Kumar P.W.1 in his statement that these packets were of the notes of Rs.10/- only and at the top of both these packets two currency notes of Rs.100/- were appended so as to give appearance that all the notes were of Rs.100/- each. We do not find any force in this contention. If two notes of Rs.100/- each had been affixed at the top of the two packets of the notes of Rs.10/- each then the amount would not be Rs.2,100/- but Rs.2,200/-. Moreover, this allegation also does not appear probable that actually the notes were of Rs.10/- only, and at the top, two notes of Rs.100/- on each packet had been affixed. After close scrutiny of the above photograph it appears that actually there were two packets of notes of Rs.100/- and at the top of one such packet a few notes of Rs.100/- each, which were tied by rubber band, had been kept. It may be mentioned that no rubber band appears to have been used in respect of the two remaining packets, which apparently contained 100 currency notes of Rs.100/-each respectively. So, on perusal of this photograph it appears that actually two packets of 100 notes each of the denomination of Rs.100/- were given, and ten notes of the same denomination of Rs.100/- tied in a rubber band and kept above one packet were also given. These notes were tied in a rubber band giving an appearance separate from the remaining two packets, so it appears that actually a sum of Rs.21,000/- was given in cash. The finding of the court below is modified in regard to these currency notes and we are of the view that actually a sum of Rs.21,000/- in cash was given at the time of engagement and so Indira is entitled to return of this amount,i.e. Rs.21,000/- as cash.

20. Now we take up the remaining items. Smt. Indira has filed paper no. C-95 to C-131 to substantiate her claim in respect of these items. Out of them we have already dealt with paper nos. C-106 and C-107 regarding purchase of T.V. and Scooter. Out of the remaining documents papers no. C-96 to C-102 are slips of Panchayati Dharmkata, Bazar Sarrafa, Meerut Shahar. These slips are in respect of weighing some metal but neither this fact has been mentioned as to what metal was weighed nor its price has been mentioned nor the name of purchaser has been mentioned. So, these documents fail to lead us to any conclusion. Hence, we reject them as irrelevant documents.

21. Similarly, paper no C-103 is also an unintelligible document. It is not clear on its perusal as to by whom it was issued and what was purchased and this document is also illegible. This document is in respect of Rs.958/- but since it is not clear as to what was purchased vide this document, we reject it also.

22. The remaining documents, i .e. paper no. C-95, C-104, C105 and C-108 to C.116 and C-119 to C131 are in respect of purchase of silver ornaments, utensils, clothes, watches, double bed, table,
electric press , almirah, sarees ,blouse pieces, shawl, clothes, woollen suites, mattresses, pillows, bed covers, sandles, nighty set and pressure cooker etc. The purchases referred to in these documents were made in the months of November and December, 1987 and January, 1988. Grand total of the amounts mentioned in these documents comes Rs.27055/-.

23. Smt. Indira has also filed a certificate issued by Geetanjali Enterprises on 16.10.1988, Paper no. C-141, in which it has been stated that they had issued a gas connection in the name of Rashmi Bala r/o 74 Thalairware Meerut City vide S.V. No. 558300 dated 12.9.87. This document was filed to show that a gas connection was also given in dowry. However, it is to be seen that this connection was issued on 12.9.1987 in the name of Rashmi Bala, who has been shown to be resident of 74 Thalairware, Meerut city. It is not in the name of Smt. Indira nor in the name of her father nor in the name of her husband, and address of the parents of Smt. Indira is 126 Devi Nagar, Suraj Kund Road, Meerut city. There is no evidence to show that this gas connection was issued in the name of Smt. Indira. So, this document also does not render any support to the case of Smt. Indira.

24. Arun Kumar has challenged the aforesaid document filed by Smt. Indira. He has produced a certificate, paper no. C-154 issued by Amar Safe Industries on 18.9.1994 in which it has been stated that this firm had not sold any Almirah to Smt. Indira and only a quotation was issued by it. It may be mentioned that Smt. Indira had filed paper no. C-111 to show that she had purchased an almirah from Amar Safe Industries on 28.6.1988 for Rs.1500/-.
25. Arun Kumar has also filed another certificate issued by Rang Roop Saree Wale, paper no. C-155 in which they have mentioned that Arun Kumar had produced before them bill no. 814 dated 23.1.1988 for Rs.465/-. The date in the bill was not clear and on receiving this bill they checked their account of 23.1.1988 and 23.10.1988 and found that no such bill was issued from their shop on the above dates. They further stated that in 1988 bills exceeding the figure 6000 were issued and no bill bearing no. 814 was issued in this year.

26. The aforesaid certificate is, however, irrelevant because in the present case Smt. Indira has filed only one bill ( paper no. C-130) issued by M/S "Rang Roop." She has not filed any cash memo or bill of "Rang Roop Saree Wale." She has filed only one cash credit memo issued by "Rang Roop" for Rs.385/- and its number is 9211. There is no denial of the genuineness of this bill issued by "Rang Roop."

27. Arun Kumar has also filed another certificate issued by M/S Upasna, paper no. C-156, in which they have stated that they had simply issued an estimate, paper no. C-114, and no item was sold by them to Smt. Indira. Arun Kumar has also filed a certificate issued by
Poonam Bartan Bhandar, paper no. C-157, and Jain Bartan Store, paper no. C-158 contending that no purchases were made by Smt. Indira from their shops and they had only issued estimates of the items mentioned in paper nos. C-104 and C-105.

28. It was argued on behalf of Arun Kumar that the aforesaid certificates go to show that Smt. Indira had only obtained rough estimates of the items, as stated in the aforesaid certificates, papers no. C-154 to C-158 and she had falsely alleged that she had made the purchases of the items mentioned therein.

29. After careful perusal of the record we do not find any force in the above contention. Actually what happens is that business-men with a view to escape liability of paying trade tax do not issue cash-memo in respect of the sales made by

them and they also persuade the customers to accept rough estimate or receipts issued on letter heads to avoid payment of trade tax. That has been done in the present case also because otherwise there was no question of issuing such rough estimates. One such rough estimate is paper no. C-111 in respect of almirah regarding which the above certificate has been issued by Amar Safe Industries that it was not sold by them and it is actually a quotation/estimate. But if it had been actually a quotation or estimate, particulars of depth, length, breadth, and height of the almirah and gauge etc. of the tin used in the almirah must have also been quoted. Similarly the letter issued by M/S Upasana, paper no. C-156 in respect of the receipt paper no.C-114 that it has been issued as an estimate and that no sale was made, again does not inspire any confidence. The word, 'estimate' has no where been stated in paper no.C-114. It is actually a receipt issued on a letter head with a view to avoid payment of trade tax. Moreover, if only prices had been quoted by way of quotation, there would have been description of rate only and the price of three bed covers at the rate of Rs.200/- per piece would not have been mentioned. Similarly in the case of certificates issued by Poonam Bartan Bhandar, paper no. C-157, and Jain Bartan Store, paper no.C-158, which have been issued in respect of the receipts, paper nos. C-104 and C-105, are also actually receipts and not estimates. If they had been estimates, full particulars of dinner set regarding its make etc. must have been mentioned in paper no.C-104 and similarly rates of one Thal and one Parat each would have been disclosed and not the price of four Thalis and two Parats would have been mentioned. Similarly, in the so-called estimate of Poonam Bartan Bhandar, paper no. C-105, rates of the items with their make etc. would have been quoted and the prices of six Katorees and two Dibbas would not have been mentioned. All these facts make it quite clear that actually the items mentioned in all the documents were sold by vendors, but with a view to avoid payment of trade tax, cash memos were not issued and receipts were issued either on the paper titled as "rough estimate or quotation" or on letter head. When an inquiry was made from those shop keepers regarding the sale as disclosed in paper no. C-104, C-105, C-111 and C-114, they had no other alternative but to deny all these transactions of sale because these transactions were not noted in their account books and if they admitted those transactions in writing, they would have become liable for the offence of evasion of tax.

30. The position in this way is that Smt. Indira had been able to substantiate the claim in respect of following amounts:
(1) T.V. - - Rs.7,500/-
(2) Scooter - - Rs.11,600/-
(3) Cash given at the time of engagement - Rs.21,000/-;
(4) Items mentioned in receipts paper
no. C-95, C-104, C-105, C-108 to C-116,
C-119 to C-131 for - - - - - - - - - - - - - - - - Rs.27,055/-;
Total- - - - - - - - - - - - - - - Rs.67,155/-.

31. In this way Smt. Indira has made out a successful counter claim of Rs.67,155/- and we are of the view that she is entitled to recover this amount from Arun Kumar because the items have become old.

32 In this way, F.A. no. 403 of 1996, which was filed by Arun Kumar against award of counter claim deserves to be dismissed, but F.A. no. 863 of 2003 filed by Smt. Indira deserves to be partly allowed and the decree passed by the trial court in respect of the counter claim deserves to be modified and the amount of counter claim awarded by the trial court is liable to be enhanced to Rs.67155/-Smt. Indira is also allowed simple interest on this amount at the rate of 6% per annum from the date of her counter claim till the date of actual recovery.

33. F.A. no. 403 of 1996 filed by Arun Kumar is dismissed with costs and F,.A. no. 863 of 2003 filed by Smt. Indira is partly allowed and the decree passed by the court below regarding counter claim made by Smt. Indira is modified and the amount of counter claim is enhanced to Rs.67155/-. However, so far as the decree of divorce passed by the trial court is concerned, that decree is confirmed. Smt. Indira is allowed simple interest on the above amount at the rate of 6% per annum from the date of counter claim till the date of actual recovery of the amount. The decree of divorce passed by the trial court is confirmed.

Both the parties shall bear their own costs of the appeals.

Dated:
RPP.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble A.K. Yog J.

Hon'ble Vikram Nath J

Heard learned counsel for the petitioner and learned AGA and perused the record of writ petition including first information report dated 19.5.2005 registered as case Crime No.99/05 under Sections 498A, 323 I.P.C. and 3 /4 Dowry Prevention Act, P.S. Govind Nagar District Mathura (Annexure-1 to the writ petition) No case is made out for quashing the FIR under Article 226 of the Constitution.

Considering the facts and circumstances of the case we direct the respondents not to arrest the petitioners in case Crime No.99/05 under Section 498-A,323 I.P.C. and 3 /4 Dowry Prevention Act P.S. Govind Nagar, District Mathura till filing of the police report under Section 173(2) Criminal Procedure Code, 1973 provided petitioners cooperates with the investigation.

Writ Petition is finally disposed of subject to above observation and direction.

Dt.16.6.2005

Hsc/6076/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Court No. 46

Criminal Appeal No. 4315 of 2004

Nageena Versus State of U.P.

Hon'ble R. C. Deepak, J.

Hon'ble M. K. Mittal, J.

The accused appellant Nageena son of Shyam Deo has prayed for release on bail during the pendency of Criminal Appeal no. 4315 of 2004, filed against his conviction under Sections 498 A, 304 B IPC and Section ¾ Dowry Prohibition Act and sentence for different terms, including life imprisonment, which are to run concurrently, as awarded by the Court of Addl. Sessions Judge, (F.T.C.),Chandauli in S.T. No. 279 of 2002.

We have heard Sri R.V. Pandey, learned counsel for the accused appellant, Sri R.B.Singh, learned counsel for the complainant and learned A.G.A. and perused the record.

Prosecution case is that Smt Lalmani daughter of the complainant Panna Lal was married to the accused appellant Nageena on 25.6.1999. At the time of marriage, the complainant had given dowry according to his capacity but he could not fulfill the demand of the accused of golden chain and Rs. 35000/- cash. Since the demand could not be fulfilled, Smt. Lalmani was harassed, beaten and ill treated and even food was not given. She was kept under lock in separate house of the accused and his other family members. Gauna had taken place in April 2001. There was also a Panchayat and thereafter on 14.10.2001, on the assurance that she would not be ill treated, the complainant had agreed to send her daughter. The complainant was informed by Nihal Singh on 20.1.2002 that his daughter was burnt alive by the accused and his other family members. The complainant and his son Chandrashekhar came to the Sasural of Smt. Lalmani but they found her dead. She was burnt and the dead body was lying near the room steps inside the house. It has also come in prosecution case that the villagers had seen smoke coming out of the house at about 10 a.m. Ramavtar, a neighbour had raised alarm and the villagers had collected. In the meantime, the accused Nageena and co accused Shyamdeo, Deenanath, Somari Devi and Gulabi Devi locked the house and absconded. The villagers broke open the door and quenched the fire. The complainant lodged the report on the same date at about 12.40 p.m.. The postmortem report shows that almost whole of the body was burnt. There was carbon shoot in the trachea and both lungs were burnt.

The defence case is that there was electric short circuit in the house and on account of accidental fire Smt Lalmani received burn injuries and died.

Learned counsel for the accused appellant has contended that accused has been falsely implicated in this case as the death took place on account of accidental fire but the learned A.G.A contended that there is sufficient evidence to show that Smt. Lalmani died an unnatural death in the house of the accused appellant and that no reasonable explanation has been given by the accused for the same. He also contended that the accused after setting Smt. Lalmani on fire absconded by locking the house and the villagers broke open the doors when they saw the smoke coming out of the house but by that time she had died. He further contended that the presence of carbon shoot in trachea shows that she was burnt alive. The theory of accidental fire as taken by the accused is not tenable and the defence has not given any cogent evidence to substantiate this plea. The accused has only d in his ment under Section 313 Cr.P.C. that on account of fire in the electric wire as a result of short circuit, this incident took place. But this contention cannot be accepted particularly in view of the conduct of the accused that he absconded along with his other family members after locking the house and the villagers had to break open the door.

In view of the facts and circumstances of the case, but without prejudice to the merit of the appeal in any manner whatsoever, we are of the opinion that the accused appellant is not entitled to bail at this stage; therefore, the bail application is liable to be rejected.

Bail application of accused Nageena is hereby rejected.

Dated:- 9.3.2005

RKS/

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved.

Criminal Appeal No. 1000 of 2003
Dharam Deo Yadav Vs. State of U.P.
Alongwith
Govt. Appeal No. 2726 of 2003
State
Vs.
1. Kali Charan Yadav
2. Sindhu Harijan
3.Ram Karan Chauhan
4.Kesar Prasad Yadav
5.Mahesh Chandra Miasra
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Criminal Reference No. 21
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Hon'ble Imtiyaz Murtaza, J.
Hon'ble Amar Saran, J.

(Delivered by Hon'ble Imtiyaz Murtaza, J.)

The above two appeals are filed against the judgment and order dated 24-2-2003 passed by District & Sessions Judge, Varanasi, in S.T. No. 184 of 1999 whereby the appellant Dharam Deo Yadav was convicted under section 302/34 I.P.C. and sentenced to death, under section 201 I.P.C. he was sentenced to seven years rigorous imprisonment and the respondents in Govt. Appeal No. 2726 of 03 Kali Charan Yadav, Sindhu Harijan, Ram Karan Chauhan, Kesar Prasad Yadav and Mahesh Chandra Misra are acquitted of all the charges. The criminal reference is for the confirmation of death sentence.

The factual matrix of this appeal is related to the unfortunate murder of one Diana Clare Routley (hereinafter referred to as ''Diana''), a New Zealander, who visited India in the year 1997. On 7.8.97 she arrived in Varanasi from Agra and stayed in Old Vishnu Guest House in Room No.103. She left the Vishnu Guest House on 10.8.97 at 7.00 a.m.for going to Darjeeling. Thereafter, she was missing and her father Allen Jack Routley informed the authorities about the missing of his daughter. A team of police officers was constituted headed by Raghvendra Singh, Station House officer P.S.Laksa. The team searched Diana but she could not be traced and it was revealed that one Dharam Deo Yadav came in contact with Diana and she was last seen along with him. The police team submitted its report to Superintendent of Police (City), Varanasi on 24. 4. 98 (Ex.42).

Thereafter, a written report was lodged by Allen Jack Routley, father of Diana, at P.S. Bhelupur, district Varanasi which was registered as Case Crime No. 254 of 1998 under Section 366 I.P.C. The report is reproduced below.

"Dear Sir,

Re.: Re Diana Clare Routley, aged 25 yr.

I write in connection with the disappearance of my daughter, Diana Clare Routley last seen in Varanasi on Aug. 10th 1997. She had arrived in Varanasi on the morning of Aug. 7th, 1997.

She was staying at Old Vishnu Guest House.

She last had contact with her family on Aug. 8th, 1997 when I rang her at Old Vishnu Guest House and she wrote a letter to me. Since then her family and friends have had no contact.

The person we suspect that could be involved in her disappearance is Dharam Dev Yadav who is a local guide in Varanasi and worked for Old Vishnu Guest House. If he is not involved in her disappearance he certainly knows something of her movements on the day she disappeared."

After the registration of the report, investigation of the case commenced. On 19.8.98 P.W.14 Anil Kumar Rai, S.H.O., P.S. Shivpur, Varanasi received information that Dharam Deo Yadav would reach Shivpur railway station .The information was

registered in G.D. No. 7 of the police station. He interrogated Dharam Deo Yadav and he confessed to have committed the murder of Diana and buried her in his room and on his pointing out her skeleton was recovered buried under the floor of his house (Ex. Ka 6). The skeleton was subsequently identified as of Diana. Thereafter P.W. 14 Anil Kumar Rai arrested him and on his disclosure complicity of Kali Charan Yadav, Sindhu Harijan and Ram Karan Chauhan was known and they were also arrested by P.W.14. The inquest on the skeleton was prepared by Indra Kumar Mandal, Station Officer, P.S. Bahariyabad, Ghazipur on the dictation of P.W.16 Rajendra Pratap Singh, S.D.M., Tehsil Jakhaniya, District Ghazipur. Post-mortem examination of the skeleton was done by a team of doctors consisting of Dr. R.B. Singh, Dr. S.K. Tripathi and Dr. V.K. Gupta on 20.8.1998 at 4.00 P.M. Post-mortem report is Ext. Ka. 18. Kali Charan Yadav got recovered a shirt, jeans and telescope on 3.9.1998. A pair of shoes allegedly belonging to Diana was recovered from the shop of Shiv Shankar Lal and a recovery memo Ext. Ka. 37 was prepared. On the information of arrested accused Kesar Yadav, one bag of black colour was recovered. One sleeping bag and one automatic camera were recovered and recovery memo is Ext. Ka. 35. Kesar Yadav had also transferred a cheque of American dollars to accused Mahesh Chandra Mishra and he was also arrested.

The police after the conclusion of the investigation and arrest of Kali Charan Yadav, Sindhu Harijan, Ram Karan Chauhan, Kesar Yadav and Mahesh Chandra Misra submitted charge sheets (Ex Ka. 40 and Ka. 41).

After the committal of the case, the court of sessions framed charge under section 411 I.P.C. against Kali Charan, Kesar Yadav and Mahesh Chandra Misra. Charges under sections 302/34, 201 and 394 I.P.C. were framed against Dharam Deo Yadav, Kali Charan Yadav, Sindhu Harijan and Ram Karan Chauhan. Dharam Deo Yadav was further charged under section 364 I.P.C. In course of the trial, the prosecution relied upon the testimony of 27 witnesses. P.W. 1 Jarman Singh, P.W. 2 Bachau Lal, P.W. 3 Rais Khan, P.W. 4 Bharat Singh, P.W. 5 Shiv Narain Yadav alias Sanjay Nepali, P.W. 6 Nasim Ahmad, P.W. 7 Ajay Kumar Jaiswal, P.W. 8 Raja Ram Sahani, P.W. 9 Lal Chand, P.W. 10 Vijay Bahadur Singh, P.W. 11 Niranjan Chauhan, P.W. 12 Ajay Singh, P.W. 13 Manoj Kumar Singh, P.W. 14 S.I. Anil Kumar Rai, P.W. 15 S.I. Indra Kumar Mandal, P.W. 16 S.D.M. Sri Rajendra Pratap Singh, P.W. 17 Ram Sinhasan Singh, P.W. 18 Con. Pateshwar Lal, P.W. 19 Dr. G.K. Tripathi, P.W. 20 Dr. C.P. Tripathi, P.W. 21 Dr. G.V. Rao, P.W. 22 Lal Bachan Prajapati, P.W. 23 Con. Moharrir Dharm Narain Pandey, P.W. 24 Jagjit Singh, P.W. 25 S.I. Prashant Kumar, P.W. 26 S.I. Raghvendra Singh and P.W. 27 S.K. Singh, City Magistrate, Varanasi. The accused did not produce any witness in their defence.

The case of Dharam Deo Yadav was of total denial. He denied the fact that he was attached as a guide to Old Vishnu Guest House and he further denied that he accompanied Diana in her local visits in Varanasi and also denied any association with Diana.

P.W. 1, Jarman Singh, deposed that for the last 15 - 16 years he is plying cycle rickshaw in Varanasi city. He used to ply the same in the year 1997 - 98 also. Mostly he used to ply the rickshaw from Banaras Railway Cantt. station to Bhelupur, Sonarpur, Godouliya and Harish Chandra Ghaat. He used to carry foreign passengers and if they were not available then local passengers. Dharam Deo Yadav also used to ply the cycle rickshaw from 1993 to 1996 and on that account he had acquaintance with him. He and Dharam Deo Yadav had plied the rickshaw for several years and on that account they were acquainted with each other. Dharam Deo Yadav had left rickshaw plying in the year 1996 and his financial position improved by doing the work of a guide. He had seen Dharam Deo Yadav in the month of August, 1997. At that time he was carrying passengers from Sonarpur crossing to Pandey Haveli. At the crossing of Sonarpur Dharam Deo Yadav was coming alongwith a foreign lady in a rickshaw. At that time two foreign passengers were sitting in his rickshaw and he was carrying them to Vishnu Guest House. He had recognised the photograph, Ext. Ka. 1, of that lady, who was coming alongwith Dharam Deo Yadav. He also told him that he was going to railway station. After dropping the passengers at Vishnu Guest House he enquired about the guide of the guest house, the manager told him that for the last about 2 - 3 days a lady Diana was staying in the guest house and Dharam Deo Yadav had taken her alongwith him. In the cross examination he deposed that he did not meet Dharam Deo Yadav after 1996. He had also stated that the photo of the lady, which he had seen, was affixed at many places at the railway station. The same photograph was also affixed at Vishnu Guest House and other hotels. He had seen the posters of the lady about one year after he had seen this lady sitting alongwith Dharam Deo Yadav. The investigating officer had also recorded his statement. He did not see any remains of any lady nor identified the same. He had not gone to identify the bones and face of any lady.

P.W. 2 is Bachau Lal. He stated that he is working in Old Vishnu Guest House regularly for the last 6 - 7 years. On 7th, 8th, 9th and 10th August, 1997 he was present on his duty at the guest house. His duty was to look after the persons who were staying in the guest house. His duty was also to changing the bed sheets etc, cleaning the rooms, taking away the dirty utensils etc. He had no other connection with the persons staying in the guest house. Dharam Deo Yadav used to come as a guide in the guesthouse. The lady of the photograph , Ext. Ka. 1, had stayed on 7th August, 1997 in room no. 3. Her name was Diana. She stayed there for about 3 days. Two other girls had also accompanied her but they stayed in the separate rooms. Both of them had left the hotel next day. He had gone into the room of Diana 5 - 6 times. He had seen Dharam Deo Yadav and Diana in the hotel rooms and in the room they were talking to each other. He had seen them on 8th and 9th

inside the hotel room. On 8th and 9th August, 1997 he had gone to bring the dirty utensils and on 9th August, 1997 in the night for the last time he had gone to bring the same. At that time Dharam Deo Yadav was not in the room of Diana. In the cross examination he stated that he lives in the quarter situate within the premises of Old Vishnu Guest House and his duty was of 24 hours. Three girls came together. Diana stayed in Room no. 3 and the other two girls stayed in Room no. 7. He did not know the names of the girls. He knew only the name of Diana. He also stated that her photograph was brought in the hotel. Then he knew the name of this girl as Diana. Her photograph was affixed at several places. The Daroga came alongwith the father of the girl, then he met him. He had not seen Diana roaming around alongwith Dharam Deo Yadav. He had informed the Daroga that Diana had come to his hotel in August, 1997. If it has not been mentioned in his statement then he could not give any explanation. He had informed the police that he had gone to the room of Diana 5 - 6 times but if this fact has not been mentioned in his statement, he could not tell the reason. He had also informed the police that Dharam Deo Yadav was working as guide in the guesthouse, but why the Daroga did not mention this fact in his statement, he could not tell the reason.

P.W. 3 is Raees Khan. He stated that for the last 12 - 14 years he is hiring out rickshaws for plying. Dharam Deo Yadav also used to take a rickshaw for plying. He used to ply the rickshaw for about 6 years and thereafter he became a guide. He used to come to the railway station for reservation and he used to meet him. He met with Dharam Deo Yadav on 10th August, 1997 at platform no. 1 and he had also talked with him. At that time a foreign lady was also alongwith him. He had also recognised the photograph of Diana and stated that she was alongwith Dharam Deo Yadav. He had to go to his village by a passenger train. Dharam Deo Yadav also told him that he was going to his village by the same train. He had also boarded the same compartment alongwith the foreign lady. The train reached Harbhujpur Halt station and Dharam Deo Yadav alongwith foreign lady got down from the train. He had told him that he was going to his village and he will stay there for 2 - 3 days. Dharam Deo Yadav disclosed the name of the foreign lady as Diana and also told him that she belonged to New Zealand. He stated that his 164 Cr.P.C. statement was also recorded which is Ext. Ka. 1. In the cross examination he stated that the investigating officer had not recorded his statement but his statement was recorded after about one year of his journey under Section 164 Cr.P.C. He had also seen the posters of the lady which was affixed at the railway station. He stated that in his statement before the Magistrate he did not state that Dharam Deo Yadav had informed him about the name of the lady as Diana and that she was a resident of New Zealand. He had disclosed to the Magistrate that Dharam Deo Yadav had told him that she would stay alongwith him for 2 - 3 days. He did not inform the Magistrate because it was not asked. He admitted that he had disclosed this fact after enquiring from the government advocate. He stated that he had seen the photograph of the lady and he had told the police also that he had seen this lady alongwith Dharam Deo Yadav.

P.W. 4 is Bharat Singh. He stated that from 7th to 10th August, 1997, he was Manager of Old Vishnu Guest House. Govind Lal Srivastava @ Khatau Dada was Assistant Manager alongwith him. Bachau was posted as an employee for cleaning and Sanjay Nepali and Pappu Bihari were cooks in the kitchen. Dharam Deo Yadav and Naseem were employed for accompanying persons staying in the guest house for sight seeing. The owner of the hotel was Ajay Jaiswal. The management of the hotel was looked after by his cousin Ganesh Prasad. Out of these two guides, Dharam Deo Yadav was more efficient in attracting the customers. He was more fluent in conversation and he was particularly adept in attracting foreign lady customers. During that period he was employed in the guest house. Jarman Singh was a regular rickshaw puller who used to carry passengers to the hotel. He had identified the photograph of the foreign lady, Ext. 1, who had stayed in his hotel from 7th to 10th August, 1997. Two other girls had also come alongwith her on 7th August. The entry of their arrival and departure was mentioned in the register and the original register, which he had brought. Its photostat copy was filed as paper no. 37A/275 and 376. The entries of 7th and 8th August of arrival and departure are in the handwriting of Diana. She was allotted room no. 103. The other two girls, who had come alongwith Diana, had left the hotel on the next day at 11.45. On 7th and 8th August Diana accompanied with the two other foreign girls had gone alongwith guide Naseem. From 8th to 10th August up to 6.00 A.M. she had gone alongwith Dharam Deo Yadav. On 8th August at about 12.00 noon Naseem guide had told Dharam Deo Yadav in his presence that the girl who was staying in room no. 103 had asked him whether he was married and he told her that he was already married. Thereafter, Dharam Deo Yadav became guide of Diana. He used to eat alongwith her. This continued from 8th to 10th, August 1997, morning. On 10th Diana had left the hotel alone and after about 10 minutes Dharam Deo Yadav had also gone outside the hotel. On 9th/10th at about 10.30 P.M. Diana had taken her dinner at the restaurant situate on the roof and Dharam Deo Yadav had also taken his dinner alongwith her. Diana had left the hotel on 10th August and after about 20 minutes Jarman Singh had brought two foreign passengers to the hotel and he had informed him that he had seen Dharam Deo Yadav alongwith a foreign lady. After 10th August, Dharam Deo Yadav had returned after about 15 - 20 days to the hotel. During her stay of 3 days 2 - 3 times telephone calls were received from New Zealand and she had also enquired about the location of the post office and also the place for sending a fax. About 7-8 months after 10th August, 1997, the father of Diana had come to the hotel and he had also shown big posters of Diana which were affixed outside the hotel. At that time he knew that Diana

was missing and did not reach her house. He further disclosed that in the register 1207 in the column of the passengers the name of Diana Routley is mentioned. He admitted that in front of the name of Routley, room no. 107 was mentioned which was corrected as 103. Diana had mentioned room no. 107 because the girls who had arrived alongwith her were allotted room no. 107 and she had wrongly entered their room number. He admitted that there is some cutting at Sl. No. 1206 and in the column of arrival in India. He also admitted that in the column of departure there is some cutting in the month. He also admitted that there is difference of ink in the date of departure and signature. He also stated that Diana Routley had left the guesthouse and after about 10 - 15 minutes Jarman Singh, rickshaw puller, had brought two foreign tourists. One of them was female and the other was male. He also admitted that Diana Routley had left the guest house alone and Dharam Deo Yadav had not left the guest house alongwith her. Jarman Singh had informed him that he had seen Dharam Deo Yadav alongwith a foreign lady. Sanjay Nepali works in the kitchen. There were two guides in the hotel. He could not tell the reason why and how the investigating officer mentioned that Sanjay Nepali and Pappu Bihari were also employed in the guesthouse for sight seeing of the tourists. He further deposed that Diana Routley's father had come alongwith photos in to the hotel about 7 - 8 months, after Diana had left the hotel.

P.W. 5 is Shiv Narain Yadav @ Sanjay Nepali. He stated that on 7th - 8th August, 1997, he used to work in the kitchen of Old Vishnu Guest House. Pappu Bihari was also working alongwith him. He had identified the accused Dharam Deo Yadav and stated that he was working as a guide in Vishnu Guest House on 7.8.1997. He had also identified the posters of Diana and stated that she had stayed in Old Vishnu Guest House and used to take her dinner in the restaurant. He further deposed that on the date when Diana had arrived in the guest house, she was accompanied with two other girls who had left the guest house the next day. The last time he had offered food to her was on 9.8.1997 between 9.00-10.00 P.M. At that time Dharam Deo Yadav had also taken his food alongwith her. He had left the guesthouse at 11.00 P.M. and at that time Dharam Deo Yadav and Diana were talking to each other. Diana had left the hotel on 10.8.1997 at 7.00 A.M. Dharam Deo Yadav did not return to the guest house after the Diana had left the hotel. Dharam Deo Yadav had returned after 20 - 25 days and when he enquired about his whereabouts he told him that he had gone to his village. He had also enquired about Diana. He told him that she had gone to Darjeeling. On 10.8.1997 after checking out of the hotel Diana had come to the restaurant for making the payment and at that time he had enquired from Diana why she was leaving the hotel. She told him that as her train was in the evening, she was going to Sarnath and from there she would go to Mughalsarai for boarding the train. In the cross examination he stated that the investigating officer had met him about a year after Diana had left the hotel. The photograph, Ext. 1, he had seen in the month of March - April, 1998 in Vishnu Guest House and at other places. He had not told any one that he had given food to her in Vishnu Guest House. He had informed the investigating officer that he had offered food to her in Vishnu Guest House. The Daroga had shown him the photograph (Ex.1).

P.W. 6 is Naseem Ahmad. He stated that on 7.8.1997 he used to work as a guide in Old Vishnu Guest House. Dharam Deo Yadav was also working as a guide in the hotel alongwith him. He had identified Dharam Deo Yadav. From 7.8.1997 to 10.8.1997 Dharam Deo Yadav was working as a guide in the hotel. He had identified the photo of Diana Routley, Ext. 1, and stated that this girl had stayed in the guest house from 7th to 10th August, 1997. She had come to the guest house alongwith two other foreign girls. He had gone alongwith them for sight seeing from 7.8.1997 to 8.8.1997 at about 11.30 A.M. When he contacted Diana she enquired whether he is married or not. He had informed her that he is married and he has children. She told him that if he has not been married, she would have arranged his marriage. He had informed to the Manager about the conversation with Diana. Dharam Deo Yadav and Sanjay were also present there at that time. After 8.8.1997 noon he had not taken Diana for sight seeing. She had gone alongwith Dharam Deo Yadav. He had also accompanied Diana to the P.C.O.

P.W. 7 is Ajay Kumar Jaiswal. He is the owner of Old Vishnu Guest House He stated that the guest house is managed by his cousin Ganesh Prasad. He used to stay in the hotel for 5 - 10 minutes. He knew about the employees of the hotel who were working in August, 1997. There were 7 employees in the hotel. Bharat Prasad was Manager. Kitchen was looked after by Sanjay and Pappu Bihari. Naseem and Dharam Deo Yadav were working as guides. Bachau was working as a sweeper. He had identified Dharam Deo Yadav and also identified the photograph, Ext. 1. He stated that he had seen Dharam Deo Yadav alongwith the girl of the photograph on 10.8.1997 at 7.00 A.M. He had also seen them on the way to Sonarpur. He had enquired from Manager Bharat Prasad as to why Dharam Deo Yadav was going alongwith the girl. He told him that she had checked out from the hotel and Dharam Deo Yadav had gone alongwith her. He met Dharam Deo Yadav after about 3 - 4 months. Dharam Deo Yadav had not been permitted to work in the hotel because he left the hotel without any permission. He also stated that Jarman Singh, rickshaw puller, used to bring tourists in 1997 to the guest house.

P.W. 8, Raja Ram Sahni, stated that he is plying a boat at Harishchandra Ghaat. Mainly he takes passengers from Sandhya Guest House and used to work in the said guest house. Dharam Deo Yadav used to bring tourists of Old Vishnu Guest House for sight seeing at Harishchandra Ghaat. He had met Dharam Deo Yadav due to this reason. He had identified Dharam Deo

Yadav. He also identified Kali Charan. Kali Charan is also resident of the village of Dharam Deo Yadav. He is also a friend of Dharam Deo Yadav. He met Dharam Deo Yadav through Kali Charan. He had gone thrice to the house of Dharam Deo Yadav in village Vrindaban.

P.W. 9 is Lal Chand, a rickshaw puller. He stated that he recognises Dharam Deo Yadav for the last 7- 8 years. He also identified Dharam Deo Yadav in court. He had gone to the house of Dharam Deo Yadav on several occasions. The name of his village is Vrindaban and the railway halt is Harbhujpur. Dharam Deo Yadav had told him that he had married with an English girl and she had paid money for construction of the house. He had gone to the house of Dharam Deo Yadav about 3 years back alongwith the police. Dharam Deo Yadav was not present there. His brother, mother, father and wife met him. Police had also searched in the house of Dharam Deo Yadav but he was not there. The police had recovered several photographs of foreign girls, letters and other papers.

P.W. 10 is Vijay Bahadur Singh. He stated that Dharam Deo Yadav is resident of his village and he knows him since his birth. He had come to Varanasi and started plying tempo rickshaw and thereafter he became a guide. He used to come to the village alongwith foreign ladies. He stated that about 4 years back Dharam Deo Yadav came to the village alongwith a foreign lady. He had seen Dharam Deo Yadav alongwith that foreign girl roaming in the village. She had stayed in the house of Dharam Deo Yadav. He had identified the photograph of Diana and stated that she remained alongwith Dharam Deo Yadav in the village. He had seen this lady lying 4 - 4½ years back in the village. The wife of Dharam Deo Yadav and children lived in a Kachcha house adjacent to the Pakka house.

P.W. 11 is Niranjan Chauhan. He lives 2 - 2½ Km. away from the house of Dharam Deo Yadav. He stated that about 4 - 4½ years back Dharam Deo Yadav came to his house at about 6.00-6.30 A.M. for masonry work. He had gone to his house alongwith one Murari Mistri and 3 laborers. He alongwith other persons reached at the house of Dharam Deo Yadav. He had opened the door of the house. He showed one room and told him that he wanted to prepare the floor and wall plaster. The floor was covered with bricks and in the middle it was slightly elevated. He told Dharam Deo Yadav that he will level the floor first, only then plaster can be done but Dharam Deo Yadav said that he has to do plaster in the same position. He plastered the walls in two days and on the third day he had prepared the floor. He had also worked in another room. He also stated that Daroga interrogated him about 3 - 3½ years back.

P.W. 12 Ajay Singh stated that Dharam Deo Yadav is resident of his village. He also knows Kali Charan, Sindhu Harijan and Ram Saran Chauhan. They are also residents of his village. He stated that Dharam Deo Yadav was doing agricultural work in the village. Thereafter he went to Varanasi and started plying cycle rickshaw and thereafter he became a guide. He had seen foreign lady roaming in the village alongwith Dharam Deo Yadav. He showed his ignorance that Dharam Deo Yadav had brought any foreign girl to his village. He was declared hostile.

P.W. 13 Manoj Kumar Singh is a pathologist/technologist. He stated that he is a diploma holder. His clinic is in Bhojupeer Urmila Katra for the last 7 years. On 1.9.1998 in the presence of City Magistrate S.K. Singh he had collected a 10 ml. sample of blood in the tube of Alen Jack Routley in a tube. The tube and syringe were arranged by the City Magistrate. In his presence the tube containing blood was sealed by the City Magistrate. At that time Daroga, Raghvendra Singh, was also present who had called him to the house of City Magistrate. A form was also filled in which was signed by City Magistrate, Raghvendra Singh, the Daroga and he had also signed the same. The form contained an attested photograph of the person whose blood sample was taken.

P.W. 14 Anil Kumar Rai stated that in the month of August, 1998 he was posted as Station House Officer, P.S. Shivpur, Varanasi. On 19.8.1998 he received information that Dharam Deo Yadav, who is connected with the murder of Diana, is sitting at railway station for going somewhere. He had prepared G.D. No. 7 on 19.8.1998 at 3.05 A.M. He had also entered his departure in the G.D. No. 9. Copies of the G.D. entries were Exts. Ka. 4 and Ka. 5. He had enquired his name and about the abduction of Diana. He stated that he was the guide of Diana who was a resident of New Zealand. On 10.8.1997 he had taken her to Vrindaban, P.S. Bahariyabad and also informed him that she stayed in his house. Diana had traveler cheques of dollars. He alongwith Kali Charan, Sindhu Harijan and Ram Saran Chauhan on 13.8.1997 strangulated Diana to death and buried her dead body in a room and they had taken the cheques and other articles. Believing the information given by Dharam Deo Yadav as correct, he immediately informed the higher authorities on telephone. He took Dharam Deo Yadav in his jeep and reached at P.S. Bahariyabad. He had asked S.H.O. Indra Kumar Mandal, P.S. Bahariyabad to company him alongwith force. He had already received information on wireless and he was ready and they proceeded alongwith Dharam Deo Yadav to Vrindaban which was at a distance of 9 Kms. from the police station. They had gone on foot for about 6 Kms. then they reached the house of Dharam Deo Yadav. He had opened the lock of the door from the key which was kept in his pocket. He pointed out one room and stated that the dead body of Diana had been buried here. The whole floor was plastered. He had dug the floor and at a depth of about 2 feet one skeleton was recovered. Dharam Deo Yadav told him that this skeleton is of Diana. He had arrested Dharam Deo Yadav and taken him into custody. He had also confessed that Sindhu Harijan, Kali Charan and Ram Saran Chauhan are also residents of his village. He had prepared the recovery memo,

which is Ext. Ka. 6. He had asked the S.H.O. Bahariyabad for preparation of the inquest memo and to conduct further enquiry and he left the place for the arrest of the other accused persons alongwith Dharam Deo Yadav. From the house of Dharam Deo Yadav they reached at the house of Sindhu Harijan and he esd arrested. Thereafter Ram Saran Chauhan and then Kali Charan were also arrested. He had prepared the memo of arrest Ext. Ka. 7. Thereafter he came to P.S. Shivpur and made an entry in G.D. No. 4 dated 20.8.1998. The G.D. entry is Ext. Ka. 8.

P.W. 15 is Indra Kumar Mandal, S.H.O., P.S. Bahariyabad, district Ghazipur. He stated that on 19.8.1998 he was posted as S.H.O., P.S. Bahariyabad, district Ghazipur. On the said date at about 7.15 A.M. Anil Kumar Rai, S.H.O., P.S. Shivpur, Varanasi came to his police station and informed him that Dharam Deo Yadav had confessed that the dead body of Diana is buried in his room. He prepared G.D. No. 9 at 7.15 A.M. which is Ext. Ka. 9. The written information given by Anil Kumar Rai is Ext. Ka. 10. Dharam Deo Yadav took them to his house and opened the lock of the room and he pointed out a place and stated that the dead body of Diana was buried here. Dharam Deo Yadav had also told him that Kali Charan, Sindhu Harijan and Ram Saran Chauhan were also involved alongwith him. Dharam Dev Yadav brought a Fowada and started digging the floor of the room. After digging 2 feet a skeleton was recovered and he confessed that he had buried Diana after committing her murder. Anil Kumar Rai had arrested Dharam Deo Yadav for the murder. Anil Kumar Rai prepared the memo, which is Ext. Ka. 6. Dharam Deo Yadav had also informed him that his other companions are present in the village and he went alongwith Dharam Deo Yadav for arresting them. He had summoned the papers for preparation of inquest memos. The information sent by him is entered in G.D. No. 19. The relevant papers were brought by Con. Ram Sinhasan and Con. Sunil Rai from the police station. He had prepared the inquest memo in the presence of S.D.M., Jakhaniya, R.P. Singh. For examining the skeleton it was brought outside the house. At the time of preparation of inquest memo Anil Kumar Rai reached alongwith other co-accused persons and higher officers had also arrived. Inquest report is Ext. Ka. 13. Photo lash and challan lash were prepared which are Exts. Ka. 14 and Ka. 15. The skeleton was handed over to Con. Ram Sinhasan and Con. Sunil Rai for post-mortem examination.

P.W. 16, Rajendra Pratap Singh, deposed that in the month of August, 1998 he was posted as Sub Divisional Magistrate, Tehsil Jakhania, district Ghazipur. On 19.8.1998 he had received an order of the District Magistrate through police station Bahariyabad to prepare the inquest memo of the recovered dead body in village Vrindaban. He had received this information at 2.00 O'clock. He reached village Vrindaban at 3.30 P.M. In a room of the house of Dharam Deo Yadav there was a pit in the eastern-northern corner, a skeleton was lying there. The pit was 5 x 5 feet in length and 2 x 3 feet in width. He met S.H.O. Bahariyabad, Indra Kumar Mandal there. He had shown the skeleton in the room. He had started the inquest proceedings at 4.00 P.M. On his dictation Indra Kumar Mandal had prepared the inquest memo. The skeleton was also taken out from the pit and kept outside the house. He further deposed that at the place of occurrence he was informed that one accused was arrested and for arresting the remaining accused the police of Varanasi was deputed. The police of Varanasi had brought 2 - 3 accused after their arrest from the village. Dharam Deo Yadav was also arrested. The skeleton was kept in wooden box and sealed. Photo lash and challan lash were also prepared and they are Exts. Ka. 13, Ka. 14 and Ka. 15.

P.W. 17 is Con. Ram Sinhasan Singh. He deposed that in the month of August, 1998, he was posted at police station Bahariyabad, district Ghazipur as a constable. Constable Sunil Kumar Rai was also posted there. Indra Kumar Mandal was Station House Officer of the police station. On 19.8.1998 village chowkidar of the village Vrindaban had come to the police station and he alongwith Sunil Rai proceeded to village Vrindaban for inquest. S.H.O. Indra Kumar Mandal was present in the house of Dharam Deo Yadav. S.D.M., R.P. Singh, was also present there. He had handed over the inquest papers to S.H.O. and thereafter the inquest proceeding had started. The skeleton was inside the pit of the room. After starting the inquest proceedings, the skeleton was kept in a box outside the house. Inquest report is Ext. Ka. 13. The sealed box of skeleton was handed over to him and Con. Sunil Rai. They had taken the sealed box to Ghazipur mortuary. The doctors had reached there on 20.8.1998 at 4.00 P.M. He handed over all the papers and sample seal to the doctors. The doctors had conducted the post-mortem examination.

P.W. 18, Con. Pareshwar Lal, deposed that on 19.8.1998 he was posted as constable photographer, Ghazipur. He had received information from Anand Swaroop, I.P.S., S.S.P., Ghazipur for taking photographs of the skeleton which was recovered in village Vrindaban. He came to village Vrindaban and taken photograph of the skeleton. He reached at the house of Dharam Deo Yadav at 2.00 P.M. He found that the skeleton was in a dug out place inside the room. The skeleton was taken out. Several police officers were present there. He had also taken photographs of the pit inside the room. He deposited the negatives in the office which is Ext. 2.

P.W. 19 is Dr. G.K. Tripathi. He deposed that on 20.8.1998 he was posted in district Ghazipur as senior heart specialist. Dr. Ram Murti Singh and Dr. D.K. Gupta were also posted in the District Hospital, Ghazipur. He stated that at 4.00 P.M. Con. Ram Sinhasan Singh and Con. Sunil Rai of P.S. Bahariyabad, Ghazipur brought a skeleton sealed in a wooden box. The post-mortem was conducted in the presence of three doctors. He had found the skeleton of a young lady of average built and

the hair were golden brown. He found the following features in the external examination:
1. Scalp bone with hairs.
2. Bones of the face, upper jaw and lower jaw.
3. Bones of upper and lower extremities attached with muscles and soils.
4. Few ribs of chest wall.
5. Lower part of the lumbere vertebra, thoracic vertebra and sacrum.
6. Both pelvic bones.
7. Both scapula.
Bones are not decomposed, bones of upper and lower extremities are attached with a few ligaments and muscles. Bones were preserved for further investigation. The cause of death could not be ascertained. Post-mortem examination report is Ext. Ka. 18.
P.W. 20 is Dr. C.B. Tripathi. He is professor and Head of Department of Forensic Medicines Department, Kashi Hindu Vishwavidhalaya, Varanasi. He had examined the body parts of alleged Diana Clair Routley, daughter of Alen Jack Routley, resident of 56, Monasila Road, Mohinarama, Auckland, New Zealand. The District Magistrate, Varanasi had ordered and on the request of I.G. (Zone), Varanasi a sealed box was received from S.H.O., P.S. Bhelupur, Varanasi which was brought by Con. Har Govind Bharti and Anil Kumar Singh. They had brought the box in sealed condition. This witness has duly proved the process, which he had adopted in analysis and results of analysis alongwith factual observations made by him in the course of analysis and he prepared the report, Ext. Ka. 28. He further deposed that one femur bone and one humerus bone were preserved by him for D.N.A. test.
P.W. 21 is Dr. G.V. Rao. Chief D.N.A. Finger Printing Laboratory, C.D.E.D., Hyderabad. He has stated about his technical and expert qualifications on the relevant subject, which, as a matter of fact, are accepted, as not questioned or rebutted. He has stated that on September 1998 Prashant Kumar, Sub-Inspector and Constable Kameshwar Singh Yadav, P.S. Rohania, District Varanasi reached in the laboratory and produced the requisition from Chief Judicial Magistrate, Varanasi alongwith two parcels pertaining to crime No. 254/98 of P.S. Bhelupur, Varanasi of which this witness alongwith his assistant made examination and method of examination has also been proved by oral testimony of this scientist witness Dr. G.V. Rao, P.W. 21. He has stated that he had satisfied himself regarding authenticity of seal and its intactness. He adopted the test known as short Tandam Space Repeats (S.T.R.) analysis. He has also stated that he arrived at the conclusion after satisfying himself twice and issued the report. He has proved in detail Ext. Ka. 26; the original report sent by him to the court. He has also proved the process and other things required on the subject by his statement and has confirmed his opinion that Ext. A i.e. blood sample of Alan Jack Routley is biologically related to the sources of Ext. B and C i.e. humerus and femur bones of deceased. He has proved his second conclusion those sources of Exts. B and C in his report i.e. humerus and femur bones are from one and the same source and he has thus proved the complete material alongwith his report submitted to the Court by his oral testimony.
P.W. 22 is Lal Vachan Prajapati. He deposed that he has a photography shop. About 4 years back he had gone to village Vrindaban alongwith police for photography. S.H.O. had also gone alongwith him. One person, who was owner of the house, had gone with the police inside the room. The digging work in the room was in progress. He had seen bones in a pit. He had taken photographs of the skeleton. Photograph nos. 1,2,3,4,5,6,7 and 8 were taken by him. He had submitted the negatives of the photograph which are Exts. 5/1 to 5/10.
P.W. 23 is Dharm Narayan Pandey. In the year 1998-99 he was posted as Constable Moharrir at P.S. Bhelupur. On 28.7.1998 Alen Jack Routley son of Fransis Kisman Routley, resident of 56, Melanesiya Road, Kohimarama, Auckland, New Zealand, lodged a report in English at 2.45 P.M. On the basis of the said report he had prepared the chik F.I.R. and entered it in G.D. No. 40. Chik F.I.R. and G.D. are Exts. Ka. 30 and 31. The case was converted under Section 302 and is entered in the G.D. dated 20.8.1998 (Ext. Ka. 32).
P.W. 24, Jagjeet Singh, deposed that he had a videography shop in Ghazipur. On 19.8.1998 he had gone to village Vrindaban for photography. C.O., Srivastava, had sent one constable and he had gone on his direction. He had gone to the house of Dharam Deo Yadav. He reached there and saw that a human skeleton was kept outside the house. He had done videography. He had given the video cassette to the investigating officer and had identified the cassette.
P.W. 25, S.I. Prashant Kumar Srivastava, stated that on 19.9.1998 he was S.I. under training, P.S. Rauhaniya. On 19.8.1998 he had taken a polythene packet in sealed condition from the court of C.J.M., Varanasi which contained one packet of bones and blood in a container for carrying it to C.D.F.D., Hyderabad. He had deposited the same in C.D.F.D., Hyderabad.
P.W. 26, Raghvendra Singh, Special Operation Group, Sonbhadra deposed that in the month of August, 1997, he was posed as Station Officer, Laksa. He received information of missing of Diana from the office of Senior Superintendent of Police, Varanasi. A committee was constituted by the Superintendent of Police (City), Varanasi, consisting of five other members alongwith him. A poster photograph of Diana (Ext. 1) was got prepared by Alen Jack Routley and he had delivered it to him.

This photograph was received by him in the month of April, 1998. They could not find her. In connection with the enquiry he had visited Old Vishnu Guest House. During the enquiry he came to know that the last time she was seen alongwith Dharam Deo Yadav. They could not find out Dharam Deo Yadav. They had gone to village Vrindaban, Ghazipur also. They had also shown the poster of Diana (Ext. 1) to the villagers and they had informed him that they had seen her alongwith Dharam Deo Yadav on 28.7.1998. D.I.G., Varanasi, had informed him that Routley, father of Diana, had arrived and investigation of the case was entrusted to him. He had met Routley on 28.7.1998 and a written report addressed to Station House Officer, Bhelupur was prepared and lodged at the police station which is Ext. Ka. 34. Chik F.I.R. is Ext. Ka. 30 and copy of G.D. is Ext. Ka. 31. He had commenced the investigation of the case on 29-7-08. He had also identified the photo of Routley on Ext. Ka. 25. An information dated 22-5-2002 was received from the embassy that on account of his bad health Routley is unable to come to India in connection with the case. He had proved the signature of Routley by secondary evidence. He prepared the site plan of Old Vishnu Guest House. He had also recorded the statement of several villagers in Vrindaban. He had recorded the statements of employees of Old Vishnu Guest House namely Ajai Kumar, Ganesh Prasad, Naseen, Bachau, Bharat Singh, Jarman Singh. He also recorded the statements of Lal Chand @ Kareli, Shiv Nath, Shiv Narain Yadav, Sanjai Nepali, Raja Ram Sahni etc. He again recorded the statement of Jarman Singh on 5.8.1997. He received information that Dharam Deo Yadav will be arriving from Bombay on the next day. He had informed S.H.O. Shivpur, Anil Rai, who had arrested Dharam Deo Yadav and skeleton of Diana was recovered on his pointing out from his room. On the information of Dharam Deo Yadav three other accused were arrested. S.S.I. Bhelupur had recorded the statement of accused. He recorded the statement of witnesses. The statement of Rajendra Pratap Singh, S.D.M., S.O., P.S. Bahariyabad, Niranjan Das, Murari Mistri was recorded. The statement of photographer Lal Badan Prajapati was recorded. On 29.8.1998 statement under Section 164 Cr.P.C. of Routley was recorded by A.C.J.M. II Sri Ram Chandra Misra. C.J.M. had also authorised the Executive Magistrate for taking blood sample of Routley. Allen Jack Routley was produced before the City Magistrate S.K. Singh. In his presence blood sample of Routley was collected in a container received from Hyderabad. It was sealed and sent to C.J.M. A recovery memo, Ext. Ka. 25, was prepared and it was signed by Routley also and he had identified his signature. S.I. Prashant Kumar was sent to Hyderabad. Accused Kesar Chand was arrested and on his pointing out a sleeping bag and a camera were recovered. Recovery memo of these articles is Ext. Ka. 35. He also prepared the site plan of the place of recovery, which is Ext. Ka. 36. On 3.9.1998 a telescope, shirt and jeans were recovered on the pointing out of Kali Charan (Exts. 9 to 11). Shoe was recovered from the shop of Moti (Ext. 12). He also recorded the statement of Videogrpher Jagjit Singh. The skeleton of Diana was sent for the chemical examination. The site plan of the house of Dharam Deo Yadav is Ext. Ka. 38. On 15.11.1998 he had submitted charge-sheet against Dharam Deo Yadav, Kali Charan Yadav, Sindhu Harijan and Ram Karan Chauhan, Mahesh Chand and Keshar Chand. The charge-sheets are Exts. Ka. 40 and Ka. 41.

P.W. 27, S.K. Singh, deposed that in the month of September, 1998, he was posted as City Magistrate, Varanasi. He had received the identity card duly filled in with attested photograph of Alen Jack Routely by Mukul Goyal, Sr. Superintendent of Police, Varanasi which was found by C.D.F.D., Hyderabad and after satisfying himself that the person before him was Alen Jack Routely blood sample was taken in his presence by Manoj Kumar, Pathologist at his residence in presence of Raghvendra Singh, Investigating officer. He had provided tube and syringe to the pathologist. The blood was sealed before him in a tube with a sample seal thereon.

The sessions judge after considering the evidence on record convicted and sentenced the appellant as aforesaid and acquitted the respondents.

We have heard the counsel for the appellant, A.G.A for the State and counsel for the respondents and also perused the order of the Sessions Judge and entire record.

Sri D.S. Misra, counsel for the appellant, submitted that the circumstances relied upon by the court below have not only been established by the prosecution beyond reasonable doubt but also even if all the circumstances can be said to have been established, all of them taken together do not unequivocally point to the guilt of the accused and exclude a hypothesis consistent with his innocence. It is further submitted that the identity of the skeleton is not fixed, the trial court had wrongly relied upon the photograph of Diana (Ext. 1) without its negative for considering the circumstance of last seen of the deceased along with the appellant, the Sessions Judge had considered the recovery of skeleton on the pointing out of the applicant under Section 27 of the Evidence Act whereas at the time of the alleged recovery the appellant was not in "custody". The provisions of Section 27 of the Evidence Act were not applicable and the alleged recovery of skeleton 0n the pointing out of the appellant was inadmissible. It is further contended that P.W. 14, Anil Kumar Rai was not the investigating officer of the case and any act done by him was illegal. The conviction of the appellant under Section 302 I.P.C. is not justified because homicidal death is not proved. The constables who had taken the skeleton to B.H.U., Varanasi, were not examined and link evidence is missing.

Before analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be

seen to have been committed and must, in all circumstances, be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue which taken together form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.
It is a case of circumstantial evidence. It has been laid down by the Apex Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.
In the case of Padala Veera Reddy Vs. State of Andhra Pradesh 1991 SCC (Crl.) 407 the Apex Court laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:
(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with in all human probability the crime was committed by the accused and none else; and
(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

The case at hand has to be gauzed in the background of the aforesaid principles.
LAST SEEN
The first circumstance against the appellant is that when Diana was staying in Old Vishnu Guest House, he was working there as a guide and she was last seen alongwith him. The evidence of P.W. 1, Jarman Singh, clearly shows that in the month of August 1997, he had seen Dharam Deo Yadav alongwith a foreign lady going towards railway station. He had identified the photograph (Ext. 1) of Diana and stated that she was going alongwith Dharam Dev Yadav. P.W. 2 Bachau Lal also stated that in the month of August, 1997, Dharam Dev Yadav was working as a guide and he had also identified the photograph of Diana and stated that she had stayed in Old Vishnu Guest House and he had seen Dharam Deo Yadav in her room. P.W. 3 Rais Khan stated that Dharam Deo Yadav used to ply rikshaw and on 10.8.1997 he had met him at railway station Varanasi. Dharam Dev Yadav had told him that he is going to his village alongwith a foreign lady. He had also identified the photograph of Diana and stated that Dharam Dev Yadav was going alongwith her. He had also boarded the train alongwith them and Dharam Dev Yadav had got down at Harbhujpur Halt railway station alongwith Diana. P.W. 4 Bharat Singh is Manager of Old Vishnu Guest House. He stated that Dharam Dev Yadav worked as a guide. He also identified the photograph of Diana and stated that she stayed in the guest house and Diana came in contact with Dharam Dev Yadav. He also deposed that P.W. 1 Jarman Singh informed him that he had seen Dharam Dev Yadav with a foreign girl in a rikshaw going towards railway station. He further deposed that Alen Jack Routley had given him the photograph of Diana. P.W. 5 Shiv Narain Yadav @ Sanjay Nepali had worked in the kitchen in Old Vishnu Guest House. He stated that Dharam Dev Yadav and Naseem were working as guides in the guest house. After identifying the photograph of Diana that she had stayed in the guest house. He had served meals in the night of 9.8.1997 and Dharam Dev Yadav also took his meal alongwith her. On 10.8.1997 at 7.00 A.M. she had left the guest house. P.W. 6 Naseem Ahmad stated that he and Dharam Dev Yadav had worked as guides between 7.8.1997 to 10.8.1997. Diana stayed in the guest house and she left on 10.8.1997. He stated that from 8.8. 1997 to 10.8.1997 Dharam Dev Yadav accompanied Diana as a guide. P.W. 7 Ajay Kumar Jaiswal is the owner of Old Vishnu Guest House. He deposed that Dharam Dev Yadav was working as a guide. He had identified the photograph of Diana. He saw Diana and Dharam Dev Yadav on 10.8.1997 at 7.00 A.M. on a Rasta towards Sonarpura locality. P.W. 10 Vijay Bahadur Singh was resident of the village of Dharam Dev Yadav. He knew him since his childhood. He deposed that he plied tempo rickshaw in Varanasi and thereafter he worked as a guide. He visited the village alongwith a foreigner. He had identified the photograph of Diana and stated that she had stayed in the village alongwith Dharam Dev Yadav. The testimonies of these witnesses fully prove that Dharam Dev Yadav had worked as a guide in Vishnu Guest House and he came in contact with Diana and she was seen by these witnesses alongwith him. There is no suggestion as to why these witnesses are falsely roping him except a vague suggestion that they are under the pressure of the police. The prosecution has successfully proved the circumstance of last seen of the deceased alongwith the appellant.
The counsel for the appellant has challenged that the witnesses of last seen had identified Diana on the basis of poster photograph (Ext. 1) and the court had wrongly considered the identity on the basis of a photograph alone It is submitted

that in the absence of negative of the photograph, identity cannot be fixed on the basis of a photograph alone. This submission has got no substance. The evidence on record shows that the photograph of Diana was given by Routley to the investigating officer. There is no infirmity in identification of Diana on the basis of her photograph. The counsel for the appellant placed reliance on a decision of State of Gujrat Vs Bharat alias Bhupendra reported in 1991 Crl. L.J.978 where it is observed that the photographs should not be admitted in evidence without examining the person who took the photographs and the negatives of the same being produced on record. The Apex Court in various decisions had considered the desirability of identification on the basis of photograph and in some cases where the photograph of an accused was published in the news paper,his subsequent identification by the witnesses in the identification parade was disbelieved. The identification of Diana by her photograph is further corroborated by the test of super imposition and D.N.A. testing.In the case of D. Gopalakrishnan v. Sadanand Naik,reported in(2005) 1 SCC 85, at page 87 : ''There are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show photographs to confirm whether the investigation is going on in the right direction''. In the case of Laxmipat Choraria v. State of Maharashtra,reported in (1968) 2 SCR 624 ''On the whole, we think that if the court is satisfied that there is no trick photography and the photograph is above suspicion, the photograph can be received in evidence''.It is further observed in the case of Laxmi Raj Shetty v. State of T.N.,reported in (1988) 3 SCC 319, at page 342

''In the world as a whole today, the identification by photograph is the only method generally used by the Interpol and other crime detecting agencies for identification of criminals engaged in drug trafficking, narcotics and other economic offences as also in other international crimes. Such identification must take the place of a test identification''

It is also necessary to point out that during the trial the identity of the photograph was not challenged.

RECOVERY OF SKELETON

The next circumstance is recovery of skeleton under Section 27 of the Evidence Act on the pointing out of appellant from his house. P.W. 14, S.H.O., Anil Kumar Rai had interrogated Dharam Dev Yadav on 19.8.1998. He had confessed to have committed the murder and further disclosed that he could get the dead body of Diana recovered from the place in his village where it is burried. P.W.14 had informed the higher authorities and proceeded to the village alongwith him. Dharam Dev Yadav picked out a key from his pocket and opened the lock of the main door of his house and pointed out a place inside the room where the dead body of Diana was burried. Dharam Dev Yadav dug the floor and after a short dig a skeleton was visible. Thereafter Dharam Dev Yadav was taken into custody. Recovery memo of skeleton was prepared which is Ext. Ka. 6. The inquest memo was prepared. P.W. 15, Indra Kumar Mandal, had also supported the recovery of skeleton on the pointing out of Dharam Dev Yadav. He stated that Anil Kumar Rai, P.W. 14, came to P.S. Bahariyabad, Ghazipur, delivered a written report disclosing information that accused Dharam Dev Yadav has given inforfmation that dead body of a foreign lady lies buried inside his house. This fact was mentioned in G.D. which are Exts. Ka. 9 and 10. They had also accompanied Anil Kumar Rai, P.W. 14, and skeleton was recovered on his pointing out. P.W. 16, S.D.M., Jakhaniya also stated that he had received information through police station Bahariyabad that District Magistrate, Ghazipur, had directed him for completing and preparing inquest memo on a dead body recovered. He reached village Vrindaban at 3.30 P.M. and saw skeleton lying inside the room of house of Dharam Dev Yadav. He dictated while S.O. Indra Kumar Mandal had prepared the Panchayatnama in his writing. He further stated that the skeleton was taken out of the pit and placed before the house of accused. After the preparation of photonash, challan nash Ext. Ka. 13 to 15 were prepared and skeleton was sent for post-mortem alongwith letter to C.M.O. Ghazipur. P.W. 17, Con. Ram Sinhasan Singh, stated that he alongwith Sunil Kumar Rai went to village Vrindaban to the house of Dharam Dev Yadav and saw S.H.O. Indra Kumar Mandal and R.P. Singh present there. He had handed over Jild Panchayatnama to his station house officer. He further stated that he saw a skeleton in a pit inside the room of Dharam Dev Yadav. He had delivered the skeleton at the mortuary alongwith all the relevant papers to a team of doctors. P.W. 18, Con. Patehswar Lal also deposed that he had taken photographs of the skeleton which was placed inside the room of Dharam Dev Yadav. P.W. 22 Lal Bachan Prajapati, had also taken photographs of the recovery of a skeleton. Thus, the evidence on record fully establishes that the skeleton was recovered on the pointing out of the appellant.

IDENTITY OF THE SKELETON

The identity of the skelton is established by the evidence of P.W. 20 Dr. C.B. Tripathi and P.W. 21 Dr. G.V. Rao.

Firstly, it is to be noted that the skeleton was recovered buried inside the house which was in exclusive possession of the appellant.The recovery of skeleton is in pursuance to his diclosure statment made under section 27 of the Evidence Act. The medical evidence with regard to fixing the identity of the skeleton is furnished by P.W.20 Dr.C.B.Tripathi, Professor & Head of the Department of Forensic Medicine, I.M.S., B.H.U., Varanasi, who had conducted the post mortem examination of skeleton on 30.8.98 at 12.30 p.m. He had prepared the post mortem examination report Ext.Ka.28. According to this report the body parts were human and of a single individual belonged to the caucasion race, aged about 24 years, height about 161 cm. and of a female He had also conducted personal identification by super imposition technique. The photograph of

Diana was obtained from S.S.P., Varanasi (Ex.1) from which a black and white photograph (Ex.2) was made. The photograph of skull alongiwth mandible was taken (Ex.3) by minutely adjusting the same angle and distance from which photograph of face (Ex.2) was taken and negative of skull (Ex/3) was precisely adjusted then super imposed photograph was taken firstly partially exposing negative of photograph on photograph paper then exposing negative of skull on the same photograph. Thus the superimposed photograph (Ex.4) was obtained and registration marks and lines were compared and was found that they matched and coincidence exactly establishing that the skull belonged to the photograph of the individual.

Dental record of Diana (Ex.5) was made available by S.S.P., Varanasi with the help of interpol service. In the lower jaw there was evidence of eruption of third molar, both sides, but the teeth were missing. The dental record shows that both the lower third molar were extracated on 8.3.93. The upper third molar both sides teeth was not present and no sign of erruption was seen. The X-ray (dental) (Ex.6) of Diana shows that both upper third molar was not erupted/ intact. The examination of teeth and their X-ray shows that there are cavities and filling in the upper left second molar, upper right first molar, lower left second molar and lower right second molar,and also small cavities in the first molar both sides. The dental chart (Ex.5) and dental X rays (Ex.7) of Diana also shows presence of cavity and filling in these teeth. Thus the comparison of teeth and their x-ray with the dental and their x-ray records from New Zealand of Diana completely establishes the identity of skull and the mandible of being of Diana.

One femur and humerous bones were preserved for analysis and comparison with her father's blood sample.

The Apex Court had also relied upon the super imposition technique in fixing the identiy of the deceased in the case of Henry Westmuller Roberts v. State of Assam, reported in (1985) 3 SCC 291, at page 307

''Those skeletan remains were sent by the Medical Officer, PW 37 duly packed in the presence of the Judicial Magistrate, PW 3 to the Forensic Science Laboratory, Gauhati. The Assistant Director, Biology Section in that laboratory, PW 27 obtained some photographs of Sanjay with their negatives from the boy's family through the police. After performing the superimposition test with Sanjay's enlarged photograph. M. Ex. 59 the Scientific Officer of the Photography Section of that laboratory, PW 28, found the skull, M. Ex. 48 and the photograph, M. Ex. 59 of Sanjay to be of the same person. Ex. 27 is his report. In these circumstances, we think that there is no reason to disagree with the findings of the courts below that the corpus delecti recovered from the place pointed out by Henry as per his confessional statement, Ex. 33 has been proved to be that of Sanjay who had disappeared from the pandal at the temple in Tinsukhia town in the evening of March 26, 1975. We agree with the courts below and find that the prosecution has proved beyond all reasonable doubt that Sanjay, who was about nine years old at the time of his disappearance, had been kidnapped and murdered''

P.W.21 Dr.G.B.Rao, Chief D.N.A. Finger Printing Laboratory, C.D.F.D., Hydrabad had adopted the tests as short tandem space repeats (S.T.R.) analysis and submitted his report(Ex.Ka.26). He had also confirmed that blood sample of Allan Jack Routley is biologically related to the sources of Exts. B & C i.e. humerus and femur bones of the deceased. He had also confirmed that humerus and femur bones are from one source. He also deposed that test adopted by him is known as short tandem sapce repeats (STR analysis) and this is a highly sensitive, conclusive test whcih produces results even on degraded biological samples. This test was done twice to obtained conclusive results.

He also deposed that D.N.A. finger printing technology is so advanced that even if the blood is disintigrated the D.N.A. remains stable unless it is burnt by fire. The scope of error in D.N.A. printing including malfunctionining of the instruments, human error and use of chemicals beyond expiry date, is one in 32 billion. He also deposed that the basic principle remains as per law of genetics that all the D.N.A. present in a biological child should match either with the father or with the mother.In view of the over whelming evidnece on the record the skeleton was of Diana is proved beyond reasonable doubt.

ADMISIBILITY OF RECOVERY UNDER SECTION 27 OF THE EVIDENCE ACT

The counsel for the appellant further submitted that the alleged recovery of the skeleton under Section 27 of the Evidence Act is not admissible because the evidence of P.W. 14 Anil Kumar Rai shows that he was not taken into ''custody'at the time of making confession. After the recovery of skeleton he was arrested. Section 27 of the Evidence Act applies when a statement is given by an accused of an offence while in custody and persuant to his statement something is recovered. Therefore, the Sessions Judge committed illegality in admitting the recovery of skeleton on the pointing out of appellant as an incriminating circumstance. The counsel for the appellant placed reliance on a decision of this court Ramua alias Ram Lal Vs State reported in 1992 Crl.L.J.3972 where the recovery was disbelieved on the ground that at the time of recovery the accused was not in custody. We have considered the submission of counsel for the appellant and we do not find any force in this submission and the decision relied upon by the counsel for the appellant does not lay down correct law. Under Section 27 of Evidence Act custody does not necessarily mean custody after formal arrest, but includes a state of affairs in which the accused can be said to have come into the hands of a police officer or have been under some form of police

surveillance or restriction on his movements by the police. In the case of State of A.P. Vs. Gangula Satyamurti reported in (1997) 1 SCC 272, the Apex Court had observed "such custody need not necessarily be post arrest custody." The testimony of P.W.14 Anil Kumar Rai shows that he had interrogated Dharam Deo Yadav at the railway station and he confessed his crime, thereafter he took him in his jeep to P.S. Bahariyabad. He had asked S.H.O. Indra Kumar Mandal, P.S. Bahariyabad to company him alongwith force. He had already received information on wireless and was ready and they proceeded alongwith Dharam Deo Yadav to Vrindaban which was at a distance of 9 Kms. from the police station. Thereafter, he dug out the skeleton. This clearly shows that he was in ''custody'' within the meaning of Section 27 of the Evidence Act.

HOMICIDAL DEATH

The counsel for the appellant submitted that the prosecution failed to prove homicidal death in this case. The counsel for the appellant has drawn our attention to the post mortem examination of the skeleton conducted by P.W. 19 Dr.G.K.Tripathi which shows that cause of death could not be ascertained and body remains were preserved. It is submitted that in the absence of cause of death, appeallant cannot be convicted for the murder. It is further contended that if the prosecution case is to be believed, the appellant could only be convicted for an offence under Section 201 I.P.C.In support of his submission reliance was placed on a decision of Apex Court State of M.P. v. Ramkrishna Ganpatrao Limsey,AIR 1954 SC 20 wherein it is observed that ''The strongest weapon in the armoury of the learned Advocate-General is the existence of a freshly constructed tomb in the loft of Limsey's house wherein the dead body of Dattu was entombed. The conduct of Limsey in constructing Dattu's tomb in the third storey of his house more or less verges on lunacy and is not conclusive evidence of the fact that Dattu had been murdered by him, though it raises a very strong suspicion against him'.' We have considered the submission of the counsel for the appellant and the decision also. It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court. In the case of Ramkrishna Ganpatrao Limsey(supra) the apex court had also observed that ''The High Court was dealing with the case of a person whose mind was so perverted that he could not see that such conduct on his part would surely recoil on himself and be the strongest proof against his innocence. The possibility therefore cannot be ruled out that he may have acted in a similar way in case he wanted to conceal, for reasons of his own, the death of a person brought about by natural causes in his house. It is not difficult to visualize that Dattu died a natural but sudden death and in a moment of panic and confusion Limsey conceived the idea of concealing his death by entombing him in his own house. There are no such circumstances that militate against the theory that Dattu might have died of alcoholic poisoning or of heart failure while sitting in the company of Limsey and drinking heavily. Limsey having been flabbergasted at what had happened might well have thought of disposing of his body in the manner he did in order to conceal the fact that his death took place while he was in his company and was taking liquor and smoking ganja, his object being to avoid bad repute and his place being described as a den of drunkards and resort of ganja-smokers.'' The fact of this case is totally distinguishable from the case of the present case. The court had observed in the Limsey's case (supra) " the conduct of limsey in constructing Dattu's tomb in the third storey of his house more or less verges on lunacy and is not conclusive evidence of the fact that Dattu had been murdered by him." In the instant case there is evidence that the appellant had called P.W.11 Niranjan Chauhan to plaster the floor and he did not allow him to level the floor. His conduct shows that he knew the consequences of his conduct; therefore, the case of Limsey is not applicable. The counsel for the appellant also placed reliance on a decision of the Apex Court State of Punjab Vs Bhajan Singh reported in A.I.R. 1975 S.C 258 wherein it is observed "' The evidence of Dr Saluja is clear on the point that the features of the persons on whose dead bodies the doctor performed post-mortem were unrecognizable. Question then arises as to whether the death of the two persons whose dead bodies were recovered was homicidal. So far as this aspect is concerned, we find that Dr Saluja had deposed that he found no marks of ligature on either of the two dead bodies. According further to the doctor, he could not find the cause of death because the two dead bodies were in a decomposed state. In the face of the above evidence of the doctor, it is not possible to hold that the death of the two persons, whose bodies were recovered was homicidal''. The facts of this case are distinguishable as the Apex Court had also observed " We, however, find that the evidence which has been adduced in this case is far from satisfactory and that it suffers from a number of infirmities. In the first instance, there is no evidence on record to show that the two dead bodies which are alleged to have been recovered in pursuance of the disclosure statement of Bhajan Singh were those of Bachan Singh and Harbans Singh, deceased''. In the instant case there is sufficient evidence to show that the skeleton, which was recovered, buried in the room of the appellant was that of Diana. The Apex Court in the case of Rama Nand Vs. State of H.P. reported in (1981) 1 SCC page 511 observed :

"This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the "recovery of the dead body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable

homicide. "I would never convict," said Sir Mathew Hale, "a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead." This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale's enunciation has to be interpreted no more than emphasising that where the dead body of the victim in a murder case is not found, other cogent and satisfactory proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eyewitness, or by circumstantial evidence, or by both. But where the fact of corpus delicti i.e. "homicidal death" is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3 of the Evidence Act, a fact is said to be "proved", if the court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculpating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned."

LINK EVIDENCE

The counsel for the appellant also argued that there is nothing on the record to show that how the body remains of Diana reached at B.H.U., Varanasi and the constables who had brought them to B.H.U. are not examined and it is also not clear how the body remains reached at C.D.F.D., Hyderabald. The link evidence is not proved. Dr. C.B. Tripathi had clearly deposed that constables Hargovind Bharti and Anil Kumar Singh had brought the body remains in a sealed condition and he had also compared with the sample seal and he was satisfied with the genuineness of the seal. It is necessarly to point out that Dr. C.B. Tripathi, P.W. 20, was not cross examined by the appellant and no suggestion was given whether the seal was tampered or changed. It is also relevant to point out that the body remains of Diana cannot be substituted because body remains cannot be obtained from any other source. The tampering in any manner was impossible. Therefore, this submission has no substance.

ILLEGALITY IN INVESTIGATION

The next submission of counsel for the appellant is that the investigation of the case is illegal. P.W. 14 Anil Kumar Rai was not an investigating officer of the case, therefore, he was not authorised to investigate the case and any act done by hin in furtherence of the investigation, including recovery of skeleton is illegal. This submission has no substance because report was already registered against the appellant and he was not traceable. As soon as information was received by him he had interrogated him and brought him to P.S. Bahariyabad and also informed higher authorities at the time of recovery of skeleton. Other senior police officers arrived there including a Magistrate. The testimony of P.W. 26 S.I. Raghvendra Singh shows that on 18.8.1998 he had received information that Dharm Dev Yadav will arrive next day from Bombay. He had also instructed the informer to contact S.O. Shivpur and he had also contacted P.W. 14 Anil Kumar Rai and also planned his arrest. He was fully authorised to effect arrest and recovery under Section 27 of Evidence Act and the same cannot be said to be illegal. Even if he was not authorised and any evidence is collected by him that cannot be ignored. In the case of N.M.T. Joy (2004) 5 SCC 729, the Apex Court had observed "so far as India is concerned, its law of evidence is modeled on the rules of evidence which prevailed in English law and courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search of seizure. When the test of admissibility of evidence lies in relevancy, unless there is an express or necessarilly implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out."

MOTIVE

It is further contended on behalf of counsel for the appellant that according to the prosecution the motive for the crime was robbery and the session judge had already acquitted him of the charge under Section 394 I.P.C. and the State had also not preferred any appeal against his acquittal.

It is a case of circumstantial evidence. It is true that motive plays an important role in a case of circumstantial evidence but failure to prove motive does not discredit the otherwise reliable incriminating circumstances. The Apex Court in State of U.P. v. Babu Ram ,reported in (2000) 4 SCC 515 , at page 522 :

''We are unable to concur with the legal proposition adumbrated in the impugned judgment that motive may not be very

much material in cases depending on direct evidence whereas motive is material only when the case depends upon circumstantial evidence. There is no legal warrant for making such a hiatus in criminal cases as for the motive for committing the crime. Motive is a relevant factor in all criminal cases whether based on the testimony of eyewitnesses or circumstantial evidence. The question in this regard is whether the prosecution must fail because it failed to prove the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for such motive could then be counted as one of the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the respondent. Even if the investigating officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law."

It is further observed "In this context we would reiterate what this Court has said about the value of motive evidence and the consequences of the prosecution failing to prove it, in Nathuni Yadav v. State of Bihar1 and State of H.P. v. Jeet Singh2. The following passage can be quoted from the latter decision: (SCC p. 380, para 33)
"33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

The evidence with regard to the last seen and recovery of skeleton on the pointing out of the appellant from his house which was in his exclusive possession is proved by credible evidence. The appellant also failed to offer any explanation as to why so many witnesses are deposing against him. The witnesses were subjected to extensive cross examination but nothing could be elicited to discredit their testimony. There is only a vague suggestion on the part of the appellant that witnesses are deposing under the pressure of police. This explanation cannot be accepted simply because the name of the appellant was disclosed prior to lodging of the report and during investigation. The evidence in this case was recorded after a long lapse of time and it cannot be said that the witnesses are under the constant pressure of the police. The witnesses were extensively cross examined but nothing could be elicited to discredit their testimony. The counsel for the appellant submitted that there is contradiction in the statement of the witnesses about the actual time of the recovery of the skeleton. We have considered the submission and considered the testimony of the witnesses and we do not found any material contradicion. It is also important to point out that some minor contradictions are bound to occur when the evidence is recorded after about three years of the occurrence. The Session Judge also rightly relied upon the recovery of the skeleton.
FALSE DENIAL
In his examination under section 313 Cr.P.C. the appellant had denied the prosecution case completely. It is also relevant to point out that the appellant had denied that he worked as a guide. The evidence on record fully establishes the fact that the appellant earlier used to ply rickshaw and later on he became guide. All the witnesses have categorically stated that he was working as a guide in old Vishnu guest house. Even P.W.12 Ajay Singh who was also resident of his village and declared hostile, stated that Dharm Deo Yadav was doing agriculture work in the village and in Varanasi he had started plying rickshaw and thereafter he became a guide. Thus there is ample evidence to prove that the appellant was working as a guide and he was employed in that capacity in Old Vishnu Guest House. His denial about his profession is false. The circumstance of last seen and recovery of skeleton from his house was put to the accused under section 313 Cr.P.C. His answer was of denial. Thus the appellant had made false denial of his profession, his being last seen with the deceased and about the recovery of skeleton which also provides an additional link in the chain of circumstances. The Apex Court in the case of Anthony Dsouza and others Vs. State of Karnataka reported in 2003 S.C.C. (Crl) 292 observed as under:
"In Swapan Patra V. State of W.B. this court said that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found not to be true then the same offers an additional link in the chain of circumstances to complete the chain. The same principle has been followed and reiterated in State of Maharashtra V. Suresh where it has been said that a false answer offered by the accused when his attention was drawn to a circumstance, renders that circumstance capable of inculpating him. This court further pointed out that in such a situation false answer can also be counted as providing a missing link for completing the chain. The aforesaid principle has been again followed and reiterated in Kuldeep Singh Vs. State of Rajasthan."

In our opinion the circumstances from which an inference of guilt is sought to be drawn are unerringly pointing towards the guilt of the accused and the circumstances, taken cumulatively, form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else; and the circumstantial evidence is complete and incapable of explanation of any other hypothesis than that of the guilt of the appellant. The sessions judge rightly recorded the finding of conviction and we concur with the same.

In Government Appeal No. 2726 of 2003 the Sessions Judge acquitted respondents Kali Charan Yadav, Sindhu Harijan and Ram Karan Chauhan under Section 302/201 I.P.C. on the ground that P.W. 26 Raghvendra Singh, S.I. deposed that the only incriminating circumstance against these persons is the statement of the accused and he could not collect any other evidence. There was no legally admissible evidence against them. The Sessions Judge had rightly held that the guilt of the accused is not proved. Kali Charan was acquitted under Section 411 I.P.C. The Sessions Judge had held that he was charged under Section 411 I.P.C. on the basis of recovery of certain articles of the deceased but the recovered articles were not put up for identification so as to connect the same as belongings of Diana. There is no evidence that these articles were looted and he had with dishonest intention received or retained the looted articles of Diana and has acquitted him under Section 411 I.P. C. The respondent Kesar Yadav and Mahesh Chand Misra were also charged under Section 411 I.P.C. The alleged looted articles were recovered from the possession of respondents Kesar Yadav and Mahesh Chand Misra. The Sessions Judge had wrongly held that recovery on the basis of joint statement cannot be proved against any of the accused. It is rightly held that there was no evidence to prove that Kesar Yadav had the knowledge or reason to believe that the goods and articles were stolen/looted and acquitted him under Section 411 I.P.C. Similarly there is no evidence that Mahesh Chand Misra had received or retained American dollors/travellers cheques in the name of Diana and thereafter transferred the same to some other person for a higher price consideration. Therefore, it can not be said that the trial court was not justified in acquitting the respondents. The Apex Court in the case of State Of Punjab Vs Karnail Singh reported in (2003)11SCC 271 observed as under :

"There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. (See Bhagwan Singh v. State of M.P.1) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra2, Ramesh Babulal Doshi v. State of Gujarat3 and Jaswant Singh v. State of Haryana4."

The Sessions judge rightly acquitted the respondents and we also confirm the acquittal of the respondents and the Govt. Appeal lacks merit and is hereby dismissed.

Lastly, this is a serious question for consideration that whether imposition of death penalty to appellant in the facts and circumstances of case is justified? The Sessions Judge awarded the death sentence on the ground that ''the entire factual and circumstantial scenario and close perusal and keen perception certify as to how the accused/convict Dharam Deo Yadav killed and brutally and criminally buried a lonely young girl of a foreign country betraying the confidence of a Guide reposed by the foreign tourist and displayed dubious and dare/cool in burying the dead body inside a room in ones own house and all that defies all parameters of criminality. More so in relation to a citizen of foreign country with dared attempt to screen from punishment and all that done under darkest veil of secrecy. Added further, all these criminal acts and doings of convict Dharam Deo, as to my mind also disgrace, tarnish and under mine the image of "we the people of India" as enshrined in the preamble of the Indian Constitution.''

Under the old Code of Criminal Procedure ample discretion was given to courts to pass death sentence as a general proposition and the alternative sentence of life term could be awarded in an exceptional case and that too after advancing special reasons for making a departure from the general rule. The new Code of 1973 has entirely reversed the approach. A sentence of imprisonment for life is now the rule and capital sentence is an exception. It has also been made obligatory on the courts to record special reasons if ultimately death sentence is awarded.

In the case of Bachan Singh Vs State of Punjab (1980)2 SCC 684, the constitutional validity of the provision for death penalty was upheld . The constitutional Bench pointed out that the present legislative policy discernible from section

235(2) read with section 354(3) of the code of criminal procedure is that ''it is only when the culpability assumes the proportion of total depravity that 'special reason' within the meaning of section 354(3) for imposition of the death sentence can be said to exist''. Broad illustrative guidelines of such instances were also indicated therein. It was laid down that the legislative policy applied in section in section 354(3) of the code of criminal procedure is that, if a person convicted of murder, life imprisonment is the rule and death sentence an exception to be imposed in the'' rarest of the rare'' cases. In Machi Singh Vs State Of Punjab 1983 (3) SCR 413 it was observed that it was only in rarest of rare cases , when the collective conscience of the community is so shocked that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty.
A reading of Bachan Singh (supra) and Machhi Singh (supra) indicates that it would be possible to take the view that the community may entertain such sentiment in the following circumstances;
1. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
2. When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold blooded murder for gains of a person vis-a-vis whom the murdered is in a dominating position or in a position of trust; or the murder is committed in the course for betrayal of the mother land.
3. When murder of a member of a scheduled caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry death' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation
4. When the crime is enormous in proportion . For instance when multiple murders , say of all or almost all the members of a family or a large number of persons of a particular caste, community or locality, are committed.
5. When the victim of murder is an innocent child or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

In Sevaka Perumal v State of Tamil Nadu (1991)3 SCC 471 the Apex Court had observed that ''Undue sympathy to impose inadequate sentence would do more harm to the justice delivery system to undermine the public confidence in the efficacy of law and society could no longer endure under serious threats. If the courts do not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. ''
The Apex Court in the case of State of U.P Vs Satish J T 2005(92) SC 153 has held that
''The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt."

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allow some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.
Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Anything less than a penalty greatest severity for serious crime is thought to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences''.
We have considered the facts and circumstances of the case and there is no mitigating circumstance in favour of the appellant. We have no hesitation in holding that the case at hand falls in rarest of rare category and the Sessions Judge rightly sentenced the appellant to death and we also confirm the same. In view of the above the appeals are decided as under :
1. Crl. Appeal No. 1000/2003 filed by Dharam Deo Yadav is dismissed. Conviction and sentence awarded by the trial court is confirmed.

2. Govt. Appeal No. 2726 filed by the State against the acquittal of respondents Kali Charan Yadav, Sindhu Harijan, Ram Karan Chauhan, Kesar Prasad Yadav and Mahesh Chandra Misra is dismissed
The reference No. 21 submitted by the sessions judge for the confirmation of the death sentence is allowed.
Office is directed to send a copy of this order to the court concerned within a week.
Dated: 30.9. 2005
S.B.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M.K.Mittal, J.

Heard Sri A. K. Saxena, learned counsel for the applicant, learned A.G.A. and perused the record.

The accused Shyam Babu @ Chhotey Lal has prayed for release on bail in case Crime No. 32 of 2004 under Sections 498 A, 304 B, IPC and Section ¾ D.P.Act, P.S. Basrehar, District Etawah.

The prosecution case is that the accused applicant killed his wife Smt. Mamta on 25.6.2004 at about 8.30 p.m. by giving her spade blows when she was lying on the cot inside the house.

In this matter the F.I.r. has been lodged by Ram Prasad, the brother of the deceased who had come to her matrimonial house to take her. He was sitting out side the hosue and Smt. Mamta, the accused applicant, her son Pradeep Kumar aged about 7 years and Smt. Ram Beti, mother in law of the deceased were inside the house. The accused had been abusing and beating sister earlier also. The complainant heard the shrieks of Pradeep Kumar and Ram Beti, went inside the house and saw that the accused applicant had given her spade blows and she had died on the spot. The incident was seen by Pradeep and Smt. Ram Rati besides the complainant. The report was lodged same day at 10 p.m., the distance between the place of occurrence and the Police Station being one kilometre.

In the F.I.R. allegation about dowry demand has also been made and the case was registered under Sections 498A, 304B IPC and ¾ D.P.Act. But during investigation the witnesses stated that there was no demand for dowry and that the accused had beaten Smt. Mamta earlier also and a report was lodged by her on 22.9.2000 at P.S. Basrehar. The accused wanted to have a second marriage and therefore he killed Smt. Mamta. Subsequently, the case was altered under Section 302 IPC.

Learned counsel for the applicant has contended that the accused had been wrongly implicated in this case and that he was not present at the house when the incident took place and when he came back to the house, he was arrested by the Police.

Learned counsel for the applicant further contended that the house of the applicant is situate in Dacoity Affected Area and some unknown persons came and killed Smt. Mamta. But the plea that the house of the accused is situated in Dacoity Affected Area and the death was caused by some unknown persons has not been taken in the bail application.

Learned A.G.A. contended that the arrest of the accused from his house next day does not point to his innocence. He further contended that the accused has not given any reasonable explanation as to how Smt. Mamta received injuries inside the house. He also contended that even the son of the accused and the mother of the accused have stated under Section 161 Cr.P.C. that accused gave spade blows to Smt. Mamta.

In the circumstances of the case, accused is not entitled to bail and his application is liable to be rejected.

Bail application of the accused is hereby rejected.

Dated: 25.7.2005

RKS/19166/

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the accused applicant, learned counsel for the complainant, learned A.G.A. and perused the record.

Accused applicant Vikas Singh son of Late Banarsi Singh has prayed for release on bail in case Crime No. 63 of 2004 under Sections 498-A/304 B IPC and Section ¾ D.P.Act, P.S. Saiyad Raja, District Chandauli.

Prosecution case is that Smt. Mamta Devi daughter of the complainant Rajvansh Singh was married with the accused applicant according to Hindu Rites on 22..5.2002. Dowry was given but it could not satisfy the accused and demand for colour Television, Freez, washing Machine and Hero Honda motorcycle was made. When these items could not be given Smt. Mamta Devi was harassed and ill-treated and was finally killed on 30.3.2004. Smt. Maya Devi, elder daughter of the complainant was also married in the same village Auraiya and she informed the complainant that the in-laws of Mamta had killed her and wanted to remove the dead body. The complaint and others came to the Sasural of Smt. Mamta but they were not there and some villagers told that they had taken the dead body. The complainant and others reached the Govt. Hospital, Chandauli where the accused persons had left the dead body and had absconded.

Post mortem was conducted on 1.4.2004. Two contusions have been noted as ante mortem injury on the right arm and left hand. But the cause of death could not be ascertained at the time of post-mortem examination. Viscera was preserved. Report of chemical examiner, Vidhi Vigyan Prayogshala, Mahanagar, Lucknow was received and according to this report no poison was found in the Viscera part. Thereafter Viscera sample was sent for examination to Central Forensic Science Laboratory, Hyderabad and report of Director, C.F.S.L., Hyderabad dated 28.10.2005 shows that no common poison could be detected in the Viscera part.

Learned counsel for the applicant has contended that the accused has been wrongly implicated in this case and that there was no demand of any dowry and that the relations between the applicant and his wife Smt. Mamta were cordial. She also gave birth to a male child on 17.3.2004 in the Hospital where she was admitted by the applicant on 10.3.2004.

Learned counsel for the accused applicant has further contended that Smt. Mamta was discharged from the Hospital on 18.3.2004 but there was some post delivery complication and she was taken to hospital but she died on 30.3.2004.

Learned counsel for the complainant and learned A.G.A. have contended that the male child was caesarian and the accused persons had taken her from the Hospital and had beaten her and that resulted in her death. He has further contended that in order to make the dead body dis appear accused persons had taken the same from their house and had left in the hospital premises.

Learned counsel for the accused applicant contended that there was no question of making the dead body disappear and that when she was ill she was taken to Hospital but she died there.

Considering the facts and circumstances of the case and the fact that the cause of death could not be ascertained, accused is entitled to bail.

Let the accused involved in above crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.

The applicant shall furnish an undertaking also before the C.J.M. concerned that he will not indulge in any criminal activity and will not cause either any threat or any physical violence to the complainant and the witnesses and their family members. If any such report is made by any of the above person either to the Court or the police, it shall be properly inquired into and if any substance therein is found, it shall be open for the court below to report to this Court so that their bail may be cancelled.

Dated: 7.11.2005

RKS/12052/04

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 11714 of 2005.
Smt. Kushama and another Vs. State of U.P. and another.

Hon. Mrs. Poonam Srivastava, J.

Heard learned counsel for the applicants and learned A.G.A. for the State.
This application has been filed on behalf of mother-in-law and father-in-law, who are said to be sick, infirm and old persons. The Investigating Officer had granted them bail granting benefit of Section 437(ii) proviso in case Crime No. 480 of 2004, under Sections 498-A, 304-B I.P.C. read with Section 3/4 Dowry Prohibition Act, Police Station Shikohabad, District Firozabad. The prayer is, the applicants be permitted to furnish fresh bail bonds and they may not be sent to jail. Reliance has been placed on some decision of this Court, Smt. Radha Devi Vs. State of U.P. and others, 2002 (1) J.I.C., 21 and Yaqub and others Vs. State of U.P. and another, 2001 (42), A.C.C., 301 and also an order passed in Criminal Misc. Application No. 6506 of 2005, Sanjay Vs. State of U.P. dated 10.6.2005.
I have gone through all these orders but none of them relates to an offence where punishment is life imprisonment. Section 437(1)(i) Cr.P.C. states:-
"such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life".
The punishment under Section 304-B I.P.C. is seven years which can extend to imprisonment for life. In the circumstances, the decision cited by counsel for the applicants is of no help. However, the first proviso grants the liberty to such accused who are below 16 years of age, woman or a sick or infirm. The applicant no. 1 is a lady and her medical certificate is annexed as Annexure-3 to the affidavit. So far the medical certificate of the applicant no. 2 is concerned, there is no such serious illness.
Taking the entire facts and circumstances of the case in to consideration, I dispose of this application with the direction to the court below that the Magistrate shall accept fresh bail bonds in respect of the applicant no. 1 Smt. Kushama, wife of Rameshwar Singh and she shall not be sent to jail. The applicant no. 1 shall file personal bonds and two sureties for an amount of Rs. 50,000/- each before the court concerned which shall be accepted by the court. The applicant no. 2 shall appear before the court concerned within a period of three weeks and if he moves bail application in case Crime No. 480 of 2004, under Sections 498-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act, Police Station Shikohabad, District Firozabad, the same shall be considered and disposed of by the courts below expeditiously, if possible on the same day.
Dt/-25.8.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 12749 of 2005
Vikas and another Vs. State of U.P. and another.

Hon. Mrs. Poonam Srivastava, J.
Heard Sri Amit Daga, learned counsel for the applicants, Sri Niraj Kumar Mishra for the contesting opposite party and learned A.G.A for the State.
On agreement between the counsels for the parties, this application is finally disposed of at the admission stage itself.
This application has been filed for quashing the proceedings in Criminal Case No. 1386/9 of 2005, State Vs. Vikas and another, under Sections 498-A, 323, 506 I.P.C. and 3/4 Dowry Prohibition Act, pending in the court of IIIrd Additional Civil Judge (Junior Division)/ Judicial Magistrate, Meerut. The ground for quashing the criminal proceedings is that the opposite party no. 2 lodged a first information report under the influence of her parent. A Division Bench of this Court had stayed the arrest of the applicants on the condition that the accused continued to pay Rs. 1500/- towards maintenance. This order was complied with and three bank drafts were deposited in the name of opposite party no. 2 before the IIIrd Additional Civil Judge (Junior Division)/ Judicial Magistrate, Meerut for the month of April, May and June which has been withdrawn by the opposite party no. 2. The Close friends and relatives intervened and parties have come into compromise. The agreement of compromise was reduced in writing on 30.8.2005 which has been annexed as Annexure-3 to the affidavit. This compromise was also furnished before the Station House Officer, Police Station Paratpur District Meerut. However, a charge was already submitted before the court on 21.5.2005 which is annexed as Annexure 4 to the affidavit. An application was also moved jointly before the Magistrate concerned that the husband and wife have now started living together after they have compromised. This fact has specifically been mentioned in paragraph 14 of the affidavit, which has been admitted by the opposite party no. 2 in her counter affidavit in paragraph 13. Since the offences alleged are non compoundable, therefore, this application has moved in view of the principle laid down in the case of B.S. Josh and others Vs. State of Haryana and another, 2003(51) A.L.R. (S.C.), 222 and Ruchi Agarwal Vs. Amit Agarwal and others, (2005) 3 S.C.C., 299. The Apex Court had held that in matrimonial disputes resulting in initiation of the criminal cases implicating not only the husband but the entire family members, where a subsequent settlement or dispute take place between the warring parties, has ruled that mere technicality that the offence involved is non compoundable should not be allowed to stand in the way of quashing of the proceedings by the High Court in exercise of inherent powers.
In view of the principle laid down by the Apex Court which has been followed in a number of decisions by this Court, this application is allowed and the proceedings in Criminal Case No. 1386 of 2005, State Vs. Vikas and another, under Sections 498-A, 323, 506 I.P.C. and 3/4 Dowry Prohibition Act, pending in the court of IIIrd Additional Civil Judge (Junior Division)/ Judicial Magistrate, Meerut are quashed.
Dt/-12.9.2005
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 10068 of 2005.
Ramesh @ Ramesh Chandra @ Ramesh Pal Vs. State of U.P. and another.

Hon. Mrs. Poonam Srivastava, J.

Heard Sri Amit Daga, learned counsel for the applicant and learned A.G.A. for the State.
The order dated 12.5.2005 passed by the Additional Sessions Judge, Court No. 7, Meerut in Sessions Trial No. 840 of 2004, State Vs. Ramesh @ Ramesh Chandra has been challenged. The submission on behalf of the applicant is that the court committed an error in rejecting the application for discharge vide order dated 12.5.2005 and subsequently on the same day framed charge under Sections 498-A, 304-B I.P.C. The thrust of the argument of the counsel for the applicant is that Parcha No. 15 submitted by the first Investigating Officer dated 26.7.2004 clearly states that the accused was married 7 years before the alleged incident, inlaws of the deceased never harassed her for want of dowry and marriage was not performed according to Hindu Rites but it was an adjustment called ''Carav'. The Investigating Officer observed that no case under Section 304-B I.P.C. is made out, at the maximum under Section 306 I.P.C. is made out. It was further argued that the doctor who had performed post mortem report, could not ascertain the cause of death and viscera report has not yet been received by the investigating agency. In the circumstances, there is nothing on record to frame the charge under Section 304-B I.P.C. On the basis of various parchas of the case diary, no charge can be framed under Section 304-B I.P.C. as the ingredients of the offences are absolutely missing. In paragraph 20 of the affidavit filed in support of the application, it has been stated that to the best knowledge of the accused applicant viscera report is not available on record before the trial court. In the circumstances, it is evident that the cause of death is not known and it can not be said to be an unnatural death.
Having heard the counsel for the applicant at some length, I have gone through the entire record. No doubt parcha no. 15 annexed along with the affidavit speaks that the case under Section 304-B I.P.C. is not made out but still there are certain evidence which will be produced during the trial. I do not know whether viscera report establishes that the death was a natural one or on account of administration of some foreign substance who proved fatal. It is also question of evidence regarding the form of marriage, date on which marriage was performed and, therefore, in exercise of inherent jurisdiction a number of facts, which are necessary for decision, can not be ascertained at the initial stage. The offence under Section 304-B I.P.C. is a serious offence and charges framed by the learned Sessions Judge can not be quashed at this stage.
In the circumstances, the application lacks merit and is accordingly rejected.
Dt/-3.8.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Amitava Lala, J.
Hon'ble Shiv Shanker, J.

We have heard learned Counsel appearing for the petitioners and learned A.G.A. We have also gone through the F.I.R. in question, which prima facie discloses the commission of an offence inter alia under Section 498-A I.P.C.

Having regard to the facts and circumstances of the case, we finally dispose of the writ petition by directing that the petitioners shall not be arrested in Case Crime No. 661 of 2005, under Sections 498-A, 323, 504 I.P.C. read with Section ¾ of Dowry Prohibition Act, Police Station Bhogaon, District Mainpuri till the trial starts, provided they pay interim compensation to the victim Smt. Ramadevi (the sister of respondent no. 3) @ Rs. 2000/- per month from today. Such interim compensation from today upto 31.12.2005 shall be deposited in the Court of concerned Chief Judicial Magistrate by 07th January, 2006 and for all subsequent months by 07th day of the following month. The victim Smt. Ramadevi shall be entitled to withdraw the same. The liability to pay interim compensation shall be joint as well as individual of all the petitioners.

This order for payment of interim compensation is based on the analogy of the decision of Hon'ble Supreme Court in the case of Bodhisattwa Gautam Vs. Subhra Chakraborty (AIR 1996 SC 922).

In case of failure in payment of interim compensation, the order staying the arrest of the petitioners shall stand vacated automatically.

Dt./- 30.11.2005.
SKT/12018-05.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Amitava Lala, J.
Hon'ble Sanjay Misra, J.

We have heard learned Counsel appearing for the petitioners and learned A.G.A. We have also gone through the F.I.R. in question, which prima facie discloses the commission of an offence inter alia under Section 498-A I.P.C.

Having regard to the facts and circumstances of the case, we finally dispose of the writ petition by directing that the petitioners shall not be arrested in Case Crime No. 25 of 2005, under Sections 498-A, 323, 506 I.P.C. and ¾ of Dowry Prohibition Act, Mahila Police Station, District Kanpur Nagar till the trial starts, provided they pay interim compensation to the victim Smt. Nisha Tiwari, respondent no. 3, @ Rs. 1500/- per month from today. Such interim compensation from today upto 30.11.2005 shall be deposited in the Court of Chief Judicial Magistrate, Kanpur Nagar by 07th December, 2005 and for all subsequent months by 07th day of the following month. The victim Smt. Nisha Tiwari shall be entitled to withdraw the same. The liability to pay interim compensation shall be joint as well as individual of all the petitioners.

This order for payment of interim compensation is based on the analogy of the decision of Hon'ble Supreme Court in the case of Bodhisattwa Gautam Vs. Subhra Chakraborty (AIR 1996 SC 922).

In case of failure in payment of interim compensation, the order staying the arrest of the petitioners shall stand vacated automatically.

Dt./- 28.11.2005.
SKT/11888-05.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard Sri S. C. Tiwari, learned counsel for the accused applicants, Sri C. K. Singh, learned counsel for the opposite party no. 2, learned A.G.A. and perused the record.

Application under Section 482 Cr.P.C. has been filed to quash the order dated 6.7.2005 passed by Addl. Sessions Judge, F.T.C. Court No. VI, Kanpur Dehat in S.T. No. 182 of 2004 State Vs. Santosh Kumar and others. By this order learned Sessions Judge has directed for framing of the charge under Section 313 IPC against the accused applicants along with one Santosh, the husband of opposite party no. 2 Smt. Geeta.

Brief facts of the case are that a F.I.R. was lodged by Smt. Geeta against the accused persons and also her husband Santosh Kumar which was registered at Crime NO. 240 of 2002 under Sections 498-A, 323, 504, 506 IPC. In the F.I.R., it was alleged that when she was pregnant, all the accused persons gave her some medicines which deteriorated her health. She had also alleged about ill-treatment and harassments and demand of dowry against all the applicants. After investigation the charge sheet under Section 313 I.P.C. was submitted against Santosh Kumar the husband only and the other accused applicants were charge sheeted under Sections 498-A, 323, 504, 506 IPC and Section 3/4 D.P.Act. Learned Trial Court vide order dated 23.6.2005 directed that the charges against the applicants be also framed under Section 313 I.P.C. besides other sections as they all were alleged to have given some medicines, against the wishes of Smt. Geeta, resulting in deterioration of her health and consequent abortion. Therefore learned Trial Court framed the charges against the applicants vide order dated 6.7.2005. Accused applicants moved an application for deleting the charge under Section 313 I.P.C. against them but the learned Trial Court rejected that application vide order dated 1.8.2005. In the present proceedings accused applicants have challenged the order dated 6.7.2005 and 1.8.2005 and have not challenged the order dated 23.6.2005.

The contention of the learned counsel for the accused applicants is that accused had been wrongly charged under Section 313 I.P.C., as no specific allegation against them has been made, for the offence under these sections in the F.I.R., and the Investigating Officer also did not submit any charge sheet against them under this section.

Learned counsel for the complainant and learned A.G.A. have contended that learned Trial Court has rightly framed the charge against the accused applicants under Section 313 IPC and that at this stage correctness cannot be challenged by the applicants as it would pre-empt the trial. In support of his contention, learned counsel for the opposite party has cited the case of State of Maharashtra Vs. Salman Salim Khan and another, 2004(1) SCC 525, where it has been held by Hon'ble Apex Court that though it is open to the High Court entertaining a petition under section 482 Cr.P.C. of the Code to quash charges, framed by the Trial Court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. It has also been held in this case that by virtue of such premature finding of the High Court prosecution case gets pre-empted. In the above case, it has also been held that law governing the trial of criminal offences provides for alteration of charges at any stage of the proceedings depending upon the evidence adduced in the case. If the trial is being held before a Court of Magistrate, it is open to the Court at any stage of trial if it comes to the conclusion that the material on record indicates the commission of an offence which requires to be tried by a superior Court, it can always do so by committing such case for further trial to a superior court as contemplated in the Code of Criminal Procedure. On the contrary if the trial is being conducted in a superior Court like Sessions Court and if that Court comes to the conclusion that the evidence produced in the said trial makes out a lesser offence than the one with which the accused is charged, it is always open to that Court based on evidence to convict such accused for a lesser offence. Thus, arguments regarding the framing of a proper charge are best left to be decided by the Trial court at an appropriate stage of the trial.

In vies of this legal position, it is clear that it is the trial Court which can decide the arguments regarding the framing of the proper charge.

In the instant case, the application filed by the applicants for deleting the charge under Section 313 I.P.C. has been rejected. Perusal of the F.I.R. shows that allegations against all the accused applicants have been made that they gave some medicines to the informant which resulted in deterioration of her health and consequent abortion. Therefore at this stage, I do not find any ground to interfere in the impugned order and the application under Section 482 Cr.P.C. is devoid of merits and is liable to be dismissed.

Application is hereby dismissed.
Dated: 13.12.2005
RKS/12387/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard Sri Sanjay Srivastava, learned counsel for the applicants, learned A.G.A. and perused the record.

Application under Section 482 Cr.P.C. has been filed to quash the proceedings of Complaint Case No. 520 of 2005 under Sections 498 Am 406 IPC, P.S. Sahibabad, District Ghaziabad, pending in the Court of Judicial Magistrate, C.B.I., Ghaziabad.

Brief facts are that opposite party no. 2 filed an application under Section 156 (3) Cr.P.C. against the applicants on 27.1.2005 but that application was rejected by the learned Magistrate by order dated 18.2.2005. Thereafter the complainant filed a complaint on 23.2.2005 and learned Magistrate after examining the complainant and the witnesses directed to summon the accused persons vide order dated 7.5.2005. Feeling aggrieved this application has been filed.

The contention of the learned counsel for the accused applicants is that complainant concealed the fact of having filed earlier application under Section 156(3) Cr.P.C. and that the allegation as made are also inherently improbable. Although complainant did not mention about the earlier Application filed under Section 156(3) Cr.P.C. but only on this ground the criminal proceedings cannot quashed. As far as the allegations are concerned, the complainant and the statements of the witnesses prima facie show that there are allegations of demand of dowry and harassment against the applicants. This objection are factual in nature and can be taken by the applicants in the Trial Court at appropriate stage.

In the circumstances, I do not find any ground to interfere in the impugned order and the criminal proceedings cannot be quashed at this stage. Application is devoid of merits and is liable to be dismissed.

Application is hereby dismissed.

Dated: 12.12.2005

RKS/9508/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Court No. 19

Crl. Misc. Bail Application No. 21611 of 2005
Smt. Kunti and another.....Vs.....State of U.P.
...
Hon'ble Alok Kumar Singh, J.

Heard learned counsel for the applicant and also the learned A.G.A.

The applicants are involved in case crime No. CC 7 of 2005, for the offences under Sections 498-A, 304-B IPC, and ¾ Dowry Prohibition Act, Police Station Thariyaon District Fatehpur.
It is said that the marriage of the victim was solemnized in May, 2004 and immediately thereafter there was continuous demand of buffalo and motor-cycle. When the demand could not be fulfilled, the victim was being harassed and ultimately in the intervening night of 23/24.4.2005, the victim's father received an information that his daughter has died. He reached there and her body was found ganging by Dhanni. He went to the police station to lodge the report but no report was lodged. Then an application by registered post dated 25.4.2005 was sent to S.P., Fatehpur who sent to the concerned police station, but even then no action was taken. Ultimately an application under Section 156(3) Cr.P.C. was moved in the Court on 25.5.2005, upon which an order for registering FIR was passed.
It is argued on behalf of the applicants that they happens to be moter-in-law and maternal grand father and both are quite aged. There is no specific allegation of overt act against them. Sweeping allegations against mother-in-law, father-in-law, husband and maternal grand father were made. There is also no dying declaration indicating any involvement of the applicants. Husband and father-in-law are still in jail.
The bail is opposed by the learned A.G.A..
The points pertaining to nature of accusation, severity of punishment, reasonable apprehension of tampering with the witnesses, prima facie satisfaction of the Court in support of the charge and genuineness of the prosecution were duly considered.
In view of the entire facts and circumstances of the case, taking into consideration some of the arguments advanced on behalf of the applicants in respect of the points discussed herein above, without prejudice to the merits of the case, I find it to be a fit case for granting bail. Let the applicants be enlarged on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the concerned Court.
Dt:8.12.05
Zh/21611

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 19

Crl. Misc. Bail Application No. 21735 of 2005
Brijendra Nath Shukla.....Vs.....State of U.P.
...

Hon'ble Alok Kumar Singh, J.

Heard learned counsel for the applicant and also the learned A.G.A.

The applicant is involved in case crime No. 129 of 2005, for the offences under Sections 498-A, 304-B IPC, and ¾ of Dowry Prohibition Act, Police Station Phelkhana District Kanpur Nagar.
It is argued on behalf of the applicant, father-in-law, aged about 68 years. The allegations are common against all the family members. There is no dying declaration.
The bail application was opposed by the learned A.G.A..
In view of the aforesaid facts and circumstances of the case, without prejudice to the merits of the case, I find it to be a fit case for granting bail. Let the applicant be enlarged on bail for the offences indicated above, on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the concerned Court.
Dt:1.12.2005
Zh/21735

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 19

Crl. Misc. Bail Application No. 20683 of 2005
Ram Dutt.....Vs.....State of U.P.
...

Hon'ble Alok Kumar Singh, J.

Heard learned counsel for the applicant and also the learned A.G.A.

The applicant is involved in case crime No. 35 of 2005, for the offences under Sections 498-A, 304-B IPC, and ¾ of Dowry Prohibition Act, Police Station Chaubia District Etawah.
The applicant (father-in-law) is said to have aged about 65 years who lives with his wife (mother-in-law) separately in different portion of the house. There is no specific role of overt act against him. There is also no dying declaration.
The bail application was opposed by the learned A.G.A..
In view of the aforesaid facts and circumstances of the case, without prejudice to the merits of the case, I find it to be a fit case for granting bail. Let the applicant be enlarged on bail for the offences indicated above, on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the concerned Court.
Dt:1.12.2005
Zh/20683

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

RESERVED

Criminal Misc. III Bail Application no. 20204 of 2005

Smt. Kamla Devi . . . . . Vs. . . . . State.

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Hon'ble R.K. Rastogi,J.

Applicant, Smt.Kamla Devi has applied for bail in case crime no. 18 of 2008 under sections 498A, 304B, I.P.C. and ¾ of the Dowry Prohibition Act of police station Raya district Mathura. This is third bail application of the applicant. Her first Bail Application no. 7404 of 2005 was rejected by me on merits vide order dated 25.4.2005. Thereafter she moved second Bail Application no. 8733 of 2005. It was also rejected on 20.5.2005 as no fresh ground for bail had been made out. The learned counsel for the applicant had, however, submitted before me at that time that since the charge sheet has been submitted in the case, a direction should be issued for its early disposal. At that time I had passed an order directing the sessions court to try this case on priority basis taking into consideration the provisions of section 309 Cr.P.C. and it was also ordered that endeavor should be made to complete the trial of the case within a period of three months from the date of filing of the certified copy of this order . It was further provided that the accused shall co-operate in the speedy trial of the case and if the trial is not completed within a period of three months for no fault of the accused, the applicant may move a fresh bail application in this Court. This order was passed on 20.5.2005. Certified copy of this order was filed in the court of the Magistrate where the case was pending for commitment on 13.6.2005. The trial of the case has not yet been completed and so the applicant has moved this third bail application on the ground that in view of the observations made in the order passed in Bail Application no. 8733/ 2005, she should be bailed out.

The prosecution has opposed this bail application and has asserted that the case was being delayed from the side of the accused and so there was no justification for grant of bail to the applicant.

Copies of the order sheets of the court of the Magistrate as well as of the Sessions court have been filed in this bail application. A perusal of the same goes to show that after filing of the certified copy of order dated 20.5.2005 on 13.6.2005 before the Magistrate, the case could not be committed to the court of Sessions upto 25.7.2005 due to absence of the co-accused Guddi, who is daughter of the present applicant and had been granted bail in the case. She appeared in the court on 28.7.2005 and then the case was committed to the court of sessions on that date. Hence, the accused can be blamed for this delay of one and half months in disposal of the case but after commitment of the case to the court of sessions there has not been any delay from the side of the accused and the record goes to show that the prosecution has been seeking adjournments in the case and so even after excluding the period upto July, 2005, the position is that the period of more than 4 ½ months has expired and only one witness named Devi Prasad P.W.1, who is father of the deceased, has been examined but he did not support the prosecution case and he was declared hostile by the prosecution. It was submitted by the learned counsel for the applicant that under these circumstances bail should be granted to the applicant.

The learned A.G.A. has opposed the bail application. He contended that in this case there is direct evidence of dying declaration of the deceased and according to that dying declaration the accused applicant had caught hold of her daughter in law when husband of the deceased poured kerosene oil upon her and burnt her. He submitted that under these circumstances bail should not be granted to the applicant and it is immaterial that father of the deceased had turned hostile. Anyhow when the prosecution was relying upon the dying declaration of the deceased as main piece of evidence it could have summoned the witnesses to prove that dying declaration and could have completed the trial within a period of three months but when there has been no progress in the trial of the case except recording of statement of a hostile witness during the period of about 4 ½ months from the date when the case was committed to the court of sessions, I am of the view that the applicant is entitled to bail in accordance with my order dated 20.5.2005.

The bail application is, therefore, allowed.

Let the applicant Smt. Kamla Devi be released on bail in the aforesaid case on her executing a personal bond and furnishing two sureties each of the like amount to the satisfaction of the court where the case is pending for trial. It is, however, made clear that this order granting bail to the applicant, who is mother-in-law of the deceased, shall not be considered to be a ground for bail to the husband of the deceased who is the main accused in the case and who had allegedly committed her murder by pouring kerosene oil upon her and then burning her.

Dated:20.12.2004
RPP.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Amitava Lala, J.

Hon'ble Shiv Shanker, J.

We have heard learned Counsel appearing for the petitioners and learned A.G.A. We have also gone through the F.I.R. in question, which prima facie discloses the commission of an offence inter alia under Section 498-A I.P.C.

Having regard to the facts and circumstances of the case, we finally dispose of the writ petition by directing that the petitioners shall not be arrested in Case Crime No. C-2 of 2005, under Sections 498-A, 504, 506, 323 I.P.C. and ¾ of Dowry Prohibition Act, Police Station Jarcha, District Gautambudh Nagar till the trial starts, provided they pay interim compensation to the victim Smt. Manju Rani, the respondent no. 4, @ Rs. 1500/- per month from today. Such interim compensation from today upto 31.12.2005 shall be deposited in the Court of Chief Judicial Magistrate, Gautambudh Nagar by 07th January, 2006 and for all subsequent months by 07th day of the following month. The victim Smt. Manju Rani, the respondent no. 4, shall be entitled to withdraw the same. The liability to pay interim compensation shall be joint as well as individual of all the petitioners.

This order for payment of interim compensation is based on the analogy of the decision of Hon'ble Supreme Court in the case of Bodhisattwa Gautam Vs. Subhra Chakraborty (AIR 1996 SC 922).

In case of failure in payment of interim compensation, the order staying the arrest of the petitioners shall stand vacated automatically.

Dt./- 16.12.2005.

SKT/12775-05.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Amitava Lala, J.
Hon'ble Shiv Shanker, J.

We have heard learned Counsel appearing for the petitioners and learned A.G.A. We have also gone through the F.I.R. in question, which prima facie discloses the commission of an offence inter alia under Section 498-A I.P.C.

Having regard to the facts and circumstances of the case, we finally dispose of the writ petition by directing that the petitioners shall not be arrested in Case Crime No. 297 of 2005, under Sections 498-A, 326, 323, 504 & 506 I.P.C. read with Section ¾ of Dowry Prohibition Act, Police Station Bilhaur, District Kanpur Nagar till the trial starts, provided they pay interim compensation to the victim @ Rs. 2000/- per month from today. Such interim compensation from today upto 31.12.2005 shall be deposited in the Court of Chief Judicial Magistrate, Kanpur Nagar by 07th January, 2006 and for all subsequent months by 07th day of the following month. The victim shall be entitled to withdraw the same. The liability to pay interim compensation shall be joint as well as individual of all the petitioners.

This order for payment of interim compensation is based on the analogy of the decision of Hon'ble Supreme Court in the case of Bodhisattwa Gautam Vs. Subhra Chakraborty (AIR 1996 SC 922).

In case of failure in payment of interim compensation, the order staying the arrest of the petitioners shall stand vacated automatically.

Dt./- 13.12.2005.
SKT/12449-05.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Amitava Lala, J.
Hon'ble Shiv Shanker, J.

We have heard learned Counsel appearing for the petitioners and learned A.G.A. We have also gone through the F.I.R. in question, which prima facie discloses the commission of an offence inter alia under Section 498-A I.P.C.

Having regard to the facts and circumstances of the case, we finally dispose of the writ petition by directing that the petitioners shall not be arrested in Case Crime No. 44 of 2005, under Sections 498-A, 323, 506 I.P.C. and ¾ of Dowry Prohibition Act, Police Station Mahila Thana, District Meerut till the trial starts, provided they pay interim compensation to the victim @ Rs. 1500/- per month from today. Such interim compensation from today upto 31.12.2005 shall be deposited in the Court of Chief Judicial Magistrate, Meerut by 07th January, 2006 and for all subsequent months by 07th day of the following month. The victim shall be entitled to withdraw the same. The liability to pay interim compensation shall be joint as well as individual of all the petitioners.

This order for payment of interim compensation is based on the analogy of the decision of Hon'ble Supreme Court in the case of Bodhisattwa Gautam Vs. Subhra Chakraborty (AIR 1996 SC 922).

In case of failure in payment of interim compensation, the order staying the arrest of the petitioners shall stand vacated automatically.

Dt./- 19.12.2005.
SKT/12783-05.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Amitava Lala, J.
Hon'ble Shiv Shanker, J.

We have heard learned Counsel appearing for the petitioners and learned A.G.A. We have also gone through the F.I.R. in question, which prima facie discloses the commission of an offence inter alia under Section 498-A I.P.C.

Having regard to the facts and circumstances of the case, we finally dispose of the writ petition by directing that the petitioners shall not be arrested in Case Crime No. C-12 of 2005, under Sections 498-A, 323, 504, 506 I.P.C. and ¾ of Dowry Prohibition Act, Police Station Akbarpur, District Kanpur Dehat till the trial starts, provided they pay interim compensation to the victim @ Rs. 1500/- per month from today. Such interim compensation from today upto 31.12.2005 shall be deposited in the Court of Chief Judicial Magistrate, Kanpur Dehat by 07th January, 2006 and for all subsequent months by 07th day of the following month. The victim shall be entitled to withdraw the same. The liability to pay interim compensation shall be joint as well as individual of all the petitioners.

This order for payment of interim compensation is based on the analogy of the decision of Hon'ble Supreme Court in the case of Bodhisattwa Gautam Vs. Subhra Chakraborty (AIR 1996 SC 922).

In case of failure in payment of interim compensation, the order staying the arrest of the petitioners shall stand vacated automatically.

It has been contended that the petitioner no. 7 is juvenile. Therefore, her case will be heard by the Board of Juvenile Justice, provided she is minor.

Dt./- 19.12.2005.
SKT/12782-05.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Amitava Lala, J.
Hon'ble Shiv Shanker, J.

We have heard learned Counsel appearing for the petitioner and learned A.G.A. We have also gone through the F.I.R. in question, which prima facie discloses the commission of an offence inter alia under Section 498-A I.P.C.

Having regard to the facts and circumstances of the case, we finally dispose of the writ petition by directing that the petitioner shall not be arrested in Case Crime No. 273 of 2005, under Sections 498-A, 323 I.P.C. and ¾ of Dowry Prohibition Act, Police Station Sehanigate, District Ghaziabad till the trial starts, provided he pays interim compensation to the victim @ Rs. 1500/- per month from today. Such interim compensation from today upto 31.12.2005 shall be deposited in the Court of Chief Judicial Magistrate, Ghaziabad by 07th January, 2006 and for all subsequent months by 07th day of the following month. The victim shall be entitled to withdraw the same. The liability to pay interim compensation shall be joint as well as individual of all the petitioner.

This order for payment of interim compensation is based on the analogy of the decision of Hon'ble Supreme Court in the case of Bodhisattwa Gautam Vs. Subhra Chakraborty (AIR 1996 SC 922).

In case of failure in payment of interim compensation, the order staying the arrest of the petitioner shall stand vacated automatically.

Dt./- 19.12.2005.
SKT/12813-05.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Amitava Lala, J.
Hon'ble Shiv Shanker, J.

We have heard learned Counsel appearing for the petitioners and learned A.G.A. We have also gone through the F.I.R. in question, which prima facie discloses the commission of an offence inter alia under Section 498-A I.P.C.

Having regard to the facts and circumstances of the case, we finally dispose of the writ petition by directing that the petitioners shall not be arrested in Case Crime No. 368 of 2005, under Sections 498-A, 323, 504 & 506 I.P.C. read with Section ¾ of Dowry Prohibition Act, Police Station Kotwali Hathras, District Mahamaya Nagar till the trial starts, provided they pay interim compensation to the victim @ Rs. 2000/- per month from today. Such interim compensation from today upto 31.12.2005 shall be deposited in the Court of Chief Judicial Magistrate, Kanpur Nagar by 07th January, 2006 and for all subsequent months by 07th day of the following month. The victim shall be entitled to withdraw the same. The liability to pay interim compensation shall be joint as well as individual of all the petitioners.

This order for payment of interim compensation is based on the analogy of the decision of Hon'ble Supreme Court in the case of Bodhisattwa Gautam Vs. Subhra Chakraborty (AIR 1996 SC 922).

In case of failure in payment of interim compensation, the order staying the arrest of the petitioners shall stand vacated automatically.

Dt./- 06.12.2005.
SKT/12257-05.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

Accused applicant Kanahaiya Lal @ Kanhail Lal son of Chokhey Lal involved in Case Crime No. 330 of 2003, Sessions Trial No. 203/03, Under Sections 498-A, 340-B and ¾ D. P. Act, P.S. Mau Darwaja, District Farrukhabad.

The contention of learned counsel for the applicant is that applicant has been falsely implicated in this case and that Smt. Sanju Devi died a natural death. He has further contended that she had pain in stomach and also had vomiting and in that case she fell down and also received simple injuries.

At the time of post mortem viscera has been preserved but the Viscera report as filed by learned counsel for the applicant along with supplementary affidavit shows that no chemical poison was found in the Viscera part. He has further contended that Phoofa of the applicant informed the Police and on that basis inquest report was prepared. Prosecution case is that accused has been demanding dowry and when it could not be given Smt. Sanju was killed. According to prosecution case, marriage had taken place in the year 1999 but according to learned counsel for the applicant it has taken place in the year 1995 and in insurance policy Smt Sanju was also nominated by the applicant in the year 1997.

Considering the facts and circumstances of the case, accused is entitled to bail.

Let the accused applicant named above involved in above case Crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.

The applicant shall furnish an undertaking also before the C.J.M. concerned that he will not indulge in any criminal activities and will not cause either any threat or any physical violence to the complainant and the witnesses and their family members. If any such report is made by any of the above person either to the Court or the police, it shall be properly inquired into and if any substance therein is found, it shall be open for the court below to report to this Court so that his bail may be cancelled.

Dated: 7.10.2005

RKS/452/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard Sri D. P. Srivastava, learned counsel for the applicants, learned A.G.A. and perused the record.

Application has been filed under Section 482 Cr.P.C. with the prayer to quash the charge sheet no. 144 of 2003 dated 29.10.2003 in case number 37 of 2003 under Sections 498-A, IPC and Section 3/4 D.P. Act, presently pending in the Court of J.M. -Ist Basti.

Allegations against the applicants are that they demanded dowry and ill-treated and harassed Smt. Sudha Devi opposite party no. 2, who was also turned out of the house.

The contention of the learned counsel for the accused applicants is that applicant no. 4 had filed a case under Section 9 of Hindu Marriage Act against opposite party on 2.9.2003 and after the notice of that case was served she has filed this complaint as counter blast and on the basis of malafide. But the perusal of F.I.R. and the Statement of the witnesses show that thee are prima facie allegations against the applicants. At this stage, the evidence cannot be critically analysed and evaluated. The objection as raised are factual in nature and can be raised in the trial Court at the appropriate stage. There is no ground to quash the criminal proceedings.

Considering the facts and circumstances of the case, application is finally disposed of with the direction that if the applicants surrender before the concerned Court in the above noted case crime within 15 days from today and pray for bail, the same be considered and decided according to law as laid down in the case of Amrawati Vs. State 2004 (57) ALR 390 expeditiously.

Dated: 22.11.2005

RKS/16927/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble R.K. Rastogi,J.

List has been revised.

Sri S.K.Gupta, learned counsel for the applicant is present. Neither any one is present for opposite party no.1 nor any counter affidavit has been filed on his behalf, though notice has been served upon him. Learned A.G.A. is present for the State.

Heard learned counsel for the applicant and learned A.G.A. for the State on the transfer application.

The applicant's allegations is that she is legally wedded wife of O.P. no.1 who had committed offences punishable under sections 498-A and 494 I.P.C. She had lodged a report in this regard at police station Kalyanpur, Kanpur Nagar where she resides. Her marriage had taken place within the jurisdiction of the above police station. However, investigation of the case was conducted by the police of police station Suhawal, Ghazipur because the opposite party no.1 resided at Ghazipur and a final report was submitted by the police in the case. However, on her protest application the accused was summoned by the Magistrate. She has stated that she feels difficulty in going to Ghazipur and so the above case should be transferred from Ghazipur to Kanpur Nagar.

The applicant has filed her affidavit in support of her application. No counter affidavit has been filed on behalf of the O.P. no. 1, so, there is no reason to disbelieve the assertion made in the transfer application. I am, therefore, of the view that the applicant has made out a good case for transfer .

The transfer application is, therefore, allowed and Crl. Case no. 5 of 2001, Shobha Rai Vs. Kamla Kant Rai and others, under sections 498-A/494 I.P.C. and section ¾, Dowry Prohibition Act pending in the court of Ist. Addl. Civil Judge ( Junior Division ), Ghazipur be transferred to the court of the Chief Metropolitan Magistrate, Kanpur Nagar who may either try it himself or transfer it to any other court of competent jurisdiction for trial.

Dated:21.10.2005

RPP/Crl.T.A.240/2002

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

Criminal Misc. Transfer Application No. 214 of 2002
Lal Bahadur Vs. State of U.P. and another

Hon'ble R.K.Rastogi,J

This is an application for transfer of Criminal Complaint Case No. 1558 of 1999, Pushpa alias Bucchi Vs. Lal Bahadur from the court of C.J.M. Kushi Nagar to some other court of the nearest District Gorakhpur or Maharajganj.

The applicant alleges that he is resident of District Gorakhpur. His marriage had taken place with opposite party no.2, Smt. Pushpa alias Bucchi resident of Kushi Nagar. She filed a complaint against him under Section 498-A I.P.C. and ¾ Dowry Prohibition Act which is pending in the court of C.J.M., Kushinagar. She is daughter of a retired Lekhpal and that Lekhpal is exercising undue influence over the police and the administrative authorities. They are harassing the applicant and there is danger to the life of the applicant in attending the court at Kushi Nagar. He has , therefore, prayed that the case may be transferred from Kushi Nagar. He has also filed an affidavit in support the application.

Notice was sent to the opposite party no.2. She is represented through counsel but neither any counter affidavit has been filed by her nor her counsel appeared to contest the transfer application at the time of hearing.

Heard the learned counsel for the applicant and the learned A.G.A.

It is to be seen that the assertions made in the affidavit of the applicant are unrebutted so there is no reason to disbelieve the same. I, therefore, believe the affidavit of the applicant and hold that good ground for transfer has been made out .

This Transfer application is, therefore, allowed. The Criminal Complaint Case No. 1558 of 1999, Pushpa alias Bucchi Vs. Lal Bahadur pending in the court of C.J.M. Kushi Nagar is transferred to the court of C.J.M. Deoria who may either try it himself or transfer it to the court of any other Magistrate for disposal.

Dated:
MLK

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 2.

Criminal Misc. Application No. of 2002
(Under Section 378(3) of the Criminal Procedure Code)
IN
Government Appeal No. 5664 of 2002
State of U.P. Vs. Smt. Chameli Devi and others
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Hon'ble Imtiyaz Murtaza, J.
Hon'ble Ravindra Singh, J.
Heard learned A.G.A. for the State.
This is an application under Section 378(3) Cr.P.C. on behalf of State for leave to appeal against the judgment and order dated 21.8.2002 passed by Additional Sessions Judge, Court No. 2, Varanasi whereby the respondents are acquitted under Sections 304B/498A I.P.C. and ¾ of Dowry Prohibition Act in S.T. No. 416 of 1996 (State Vs. Smt. Chameli Devi and others) by which the respondents were acquitted.
It is contended by learned A.G.A. that the trial court has convicted co-accused Santosh Kumar Mishra on the same set of evidence on which the opposite parties have been acquitted. The order of acquittal is erroneous and liable to be set aside. Santosh Kumar Mishra has already filed Crl. Appeal No. 3386 of 2002. It is further contended that findings of the trial court requires reconsideration.
We have carefully examined the acquittal order. In our opinion, it is a fit case for grant of leave to appeal. Leave to file the government appeal is accordingly granted and the application for leave to file the government appeal is allowed.
Dated : 22.11.2005
S.B.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Reserved.

First Appeal No. 330 of 1997
Smt. Rekha ..Vs. Mukul Prakash

Hon'ble Yatindra Singh,J
Hon'ble R.K.Rastogi,J

(Delivered by Hon'ble R.K.Rastogi,J)
1. This appeal is against the judgment and decree dated 31.7.1997 passed by Additional Principal Judge, Family Court, Kanpur Nagar in Matrimonial Petition No. 74 of 1993, Mukul Prakash Vs. Smt. Rekha.
2. The facts giving rise to this appeal are that the plaintiff respondent filed the aforesaid suit against the defendant appellant under section 13 of Hindu Marriage Act for divorce with the allegation that the marriage of the parties had taken place on 25.11.1987. After marriage when the defendant came to the plaintiff's house it was found that she was a lady of very short temper. She always insisted to go to her parents' house repeatedly. She gave birth to a daughter on 26.11.1988. She exhibited her hatred and dislike towards the plaintiff. She used to make telephone calls repeatedly without disclosing identity of the person to whom these calls were made. She deserted the plaintiff on 26.3.1990 and also left the child and thereafter she did not come back , hence the plaintiff filed the suit for divorce.
3. The defendant contested the suit. She filed her written statement and admitted her marriage with the plaintiff but denied the allegations levelled against her in the plaint. She stated that she never made telephonic call to any one and she always loved her husband and her daughter and was performing her marital obligations. The plaintiff and his family members were not satisfied with the dowry and they were asking her to bring Rs.50,000/- from her parents and they forced her to leave the house after detaining her ornaments and thereafter did not permit her to come back to their house.
4. The following issues were framed in this case:
(i)Whether the defendant treated the plaintiff with cruelty?
(ii) Whether the defendant deserted the plaintiff on 26.3.90?
(iii) Whether the defendant went to her parents' house with all ornaments and clothes leaving her daughter at the plaintiff's house and , if so, its effect?
(iv)Whether the daughter was born out of the wed lock of both the plaintiff and defendant on 26.11.88 as it is alleged in the plaint or on 26.10.88 as alleged in the written statement, if so, its effect ?
(v) To what relief, if any, is the plaintiff entitled?
(vi) Whether the defendant is entitled to permanent alimony under section 25 of the Hindu Marriage Act , if so , to what amount?

5. The learned Judge of the Family Court , after hearing the parties, held on issue no.1 that the defendant had treated the plaintiff with cruelty. He held on issues no. 2 and 3 that she had deserted the plaintiff and had also left her daughter at the plaintiff's house. He held on issue no.4 that the daughter was born on 26.11.88. He held on issues no. 5 and 6 that the plaintiff was entitled to the decree of divorce on the ground of desertion and cruelty but the defendant was also entitled to a sum of Rs.50,000/- towards permanent alimony and that decree of divorce shall be operative only on deposit of Rs.50,000/- in her favour. The Judge of Family Court, thus, decreed the suit on 31.7.1997.
6. Aggrieved by that Judgement and decree the defendant has filed the present appeal.
7. In this appeal a large number of dates were fixed for hearing of arguments but almost on each and every date the case was adjourned on the illness slip of Sri I.P.Singh, the learned counsel for the respondent. On 17.5.2005 an illness slip of Sri I.P.Singh was again received. However, since Sri K.K.Tripathi, learned counsel for the appellant opposed the adjournment , his arguments were heard and Judgement was reserved.
8. We have heard Sri K.K.Tripathi, learned counsel for the appellant and have perused the record.
9. The plaintiff - respondent had examined himself as P.W.1 before the court and had also produced Mr. Manoj Misra as P.W.2 . On the other hand the defendant appellant Smt. Rekha had examined herself as D.W. 1 and Sri Om Prakash

Srivastava as D.W.2.

10. Smt. Rekha has stated in her cross examination that she had resided with her husband upto August,1992. It is now to be seen that the suit was filed on 10.2.1993 and the period of two years had not passed from August, 1992 when the suit was filed and as such it can not be held that the defendant had deserted the plaintiff. It is also to be seen that both the parties have levelled allegations of cruelty against each other but they have failed to produce any reliable evidence in respect of the allegations of cruelty. The burden was upon the plaintiff to prove the allegation of cruelty of his wife. After perusal of the entire evidence on record, we are of the view that the plaintiff has not been able to discharge this burden. Therefore, we are of the opinion that neither the allegation of desertion nor of cruelty is sufficiently proved and thus the Judge, Family Court has erroneously granted the decree of divorce which is liable to be set aside and the plaintiff's suit for divorce deserves to be dismissed.

11. Accordingly, the appeal is allowed exparte .The judgment and decree dated 31.7.1997 granting divorce between the parties passed by Additional Judge Family Court, Kanpur Nagar in Matrimonial Petition No. 74 of 1993, Mukul Prakash Vs. Smt. Rekha are set aside and the plaintiff's suit for divorce stands dismissed. Smt. Rekha may, if she so desires, take proceeding for maintenance in accordance with law. The amount of Rs.50,000/- awarded as permanent alimony in this case ( if it has been paid ) shall not be liable to be returned to the plaintiff respondent but it shall be treated her maintenance allowance for the period and shall be liable to be adjusted in the maintenance proceedings.

Dated:4.7.05

MLK

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Reserved

Criminal Revision No. 926 of 1987

Mumtaz Khatoon Vs. Ali Sabri and another

Hon'ble R.K.Rastogi,J

This is a revision against the judgment and order dated 1.4.1987 passed by Sri S.K.Jain, then learned IIIrd Additional Sessions Judge, Saharanpur in Criminal Revision No. 31 and 171 of 1984 Ali Sabri Vs. Mumtaz Khatoon.

The facts relevant for disposal of this revision are that the applicant revisionist had moved an application under Section 125 Cr.P.C. against opposite party Ali Sabri in the court of Judicial Magistrate , Saharanpur which was registered as Case No. 9/81. It was pleaded in that application that the marriage of applicant Mumtaz Khatoon had taken place with the opposite party Ali Sabri on 12.7.1974 and an amount of Rs.10000/- was settled as dower money ( Mehar). A daughter was also born to the applicant out of this marriage and at that time the age of that daughter was two and half years . The opposite party treated the applicant with cruelty. On 1.9.1980, he after beating the revisionist had given her triple divorce and kept her ornaments , clothes etc. worth Rs.15000/- with him and forced her to leave the house alongwith her father. The applicant had been residing at the house of her father since September, 1980 alongwith her daughter . The opposite party did not give any amount for maintenance to them. Monthly income of the opposite party was about Rs.4000/- per month and he could easily give Rs.500/- per month for maintenance of the applicant and her daughter . She, therefore, also filed an application under Section 125 Cr.P.C.

The opposite party Ali Sabri contested the application . He admitted his marriage with the applicant but disputed the amount of dower money. He also denied the allegation of committing cruelty upon her and of divorcing her. He pleaded that the applicant is still his legally wedded wife and he is still ready to maintain her . His monthly income was not more than Rs. 200-250/- per month . No dowry was given in the marriage nor he had kept any property of the applicant with him. Since the applicant was residing separately without any lawful excuse she was not entitled to any maintenance.

Learned Magistrate , after recording the evidence of the parties and hearing them , came to the conclusion that it has already been decided in O.S. No.144 of 1981 Ali Sabri Vs. Mumtaz Khatoon vide judgment of learned Munsif Sri S.B.Singh dated 9.8.1982 that opposite party had divorced the applicant and in view of this finding of learned Munsif, this matter of divorce could not be re- agitated. He further held that the applicant was unable to maintain herself and her daughter and the opposite party had sufficient income. He, therefore, awarded Rs.400/- per month to the applicant for her maintenance and Rs.100/- for maintenance of her daughter w.e.f. 8.9.1981 which is the date on which the application under Section 125 Cr.P.C. was moved. Aggrieved with that order Ali Sabri filed Criminal Revision No.31 of 1984.

Smt. Mumtaz Khatoon moved an application for recovery of the amount of maintenance, and in that case the court passed an order for issuing warrant for realisation of the maiantenance amount. Aggrieved with that order Ali Sabri filed a criminal Revision No.7 of 1984 . Both these revision were filed in the court of Sessions Judge, Saharanpur who transferred them in the court of III Addl Sessions Judge for hearing.

Both the aforesaid revisions were heard and decided by Sri S.K.Jain then IIIrd Additional Sessions Judge , Saharanpur vide his judgment and order dated 1.4.1987 in which he held that after enforcement of Muslim Women (Protection of Rights on Divorce) Act,1986(hereinafter referred to as ''Act'), the applications for maintenance under Sections 125 and 127 Cr.P.C. were not maintainable . He , therefore, allowed both the revisions and set aside the orders passed by the learned Magistrate.

Aggrieved with that order Smt. Mumtaz Khatoon filed the present revision .

Notice for hearing of the revision were sent to both the opposite parties i.e. Ali Sabri and the State and both of them were served. However, none appeared on behalf of the opposite party no.1 Ali Sabri to contest the revision . Learned A.G.A. appeared on behalf of the State .

I have heard learned counsel for the revisionist as well as learned A.G.A.

Learned counsel for the revisionist submitted that the aforesaid Act came into force on 19.5.1986. He contended that this Act did not have any retrospective effect on the rights of the parties and it is applicable prospectively . He further submitted that the application for maintenance under section 125 Cr.P.C. was moved in the year 1981 when the above Act had not been enacted . His contention was that the effect of enforcement of above Act is that after its enactment a

muslim woman will not be entitled to recover maintenance amount under section 125 Cr.P.C. but the order which was passed earlier for grant of maintenances to her, would remain effective till the date on which this Act was enforced. He contended that in this case the order passed by the learned Addl. Sessions Judge allowing the revision and setting aside the order granting maintenance to the revisionist is erroneous and it is liable to be set aside and the order of learned Munsif Magistrate is liable to be restored and that order shall remain into force till the date on which the aforesaid Act was enforced. Learned A.G.A appearing for the State also conceded this legal position.

The revision, in this way, deserves to be allowed to this extent that the order of learned Magistrate granting maintenance to the applicant revisionist for herself and her daughter at the rate of Rs.500/- per month w.e.f. 8.9.1981 is restored but this order shall remain effective upto 18th May, 1986 only . From 19th May, 1986 the applicant will be at liberty to seek suitable remedy under the aforesaid Act. No other point was pressed before me.

The revision is , thus, allowed to this extent only that the order of maintenance passed by the learned Magistrate in favour of revisionist and her daughter is maintained for the period from 8.9.1981 to 18.5.1986 and the revisionist shall be entitled to recover the maintenance for this period from the opposite party no. 1. This order shall cease to have any effect from 19th May, 1986 when the Muslim Women (Protection of Rights on Divorce) Act came into force, and the revisionist shall be at liberty to seek suitable remedy under the above Act in respect of maintenance for post 19.5.1986 period.

Dated:24.3.05
MLK

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

This Criminal Revision under Sections 397/401 Cr.P.C. has been directed against the impugned judgement and order dated 17.6.2005 passed in Criminal Revision No.149 of 2005, Rejeev Kumar Vs. Smt Rekha and another by Sessions Judge, Ghazipur whereby the revision of the revisionist Rajeev Kumar Barnwal was allowed by giving the finding that she is entitled to get maintenance amount awarded by learned court below from the date of order.

Brief facts, arising out of this revision, are that revisionist Smt Rekha Barnwal filed an application under Section 125 Cr.P.C. against her husband Sri Rajeev Kumar Barnwal praying to get the maintenance from him. It was briefly mentioned that Smt. Rekha Barnwal, revisionist was married to the respondent, Rajeev Kumar Barnwal on 30.1.2001 according to Hindu rites and customs. After marriage she resides with the respondent and performed all marital relations. Subsequently, respondent and his family members raised additional demand of Rs.50,000/- cash, refrigerator and cooler etc.. When such demand was not fulfilled the respondent and his family members subjected with the revisionist to cruelty and she was sent to the parental home in July 2002. Her father attempted to persuade the respondent and his family members to keep the revisionist, but in vain and on 12.8.2002 he conducted his second marriage. She was residing with her parents. She is unable to maintain herself while respondent is a person having sufficient means and he has refused to maintain the revisionist. Thereafter, she filed an application under Section 125 Cr.P.C. in the court of Additional Civil Judge (Jr. Division), Ghazipur. The respondent has contested the case by filing objection in which he has admitted the marriage with the revisionist but he has denied all other allegations made in the application. He has denied the fact of demand of additional dowry.

In support of application, the revisionist Rekha Bernwal examined herself as A.P.W.1 and Santosh A.P. W.2. In documentary evidence papers as per list 14-Ba have been filed on behalf the applicant-revisionist. Rajeev Kumar, O.P.W.1 and Rajesh Kumar O.P.W.2 have been examined in defence.

After perusal of the record and hearing oral arguments of the parties, learned Additional Civil Judge (Jr.Divison) allowed the application of revisionist under Section 125 Cr.P.C. vide order dated 14.3.2005 and has directed the respondent/opposite party to pay Rs.850/- per month from the date of application.

Being aggrieved by this order opposite party filed criminal revision no.149 of 2005, Rajeev Kumar Barnwal Vs. Smt. Rekha Barnwal and U.P. State. After hearing arguments of learned counsel for both the parties, revisional court upheld the finding of fact but the revision was partly allowed to the extent that she is entitled to get the maintenance allowance awarded by the trial court from the date of order and not from the date of filing application under Section 125 Cr.P.C.. Feeling aggrieved it, present revisionist preferred this criminal revision.

I have heard the arguments of learned counsel for both the parties and perused the record. It is contended on behalf of the revisionist that no issue was framed by the trial court regarding payment of maintenance either from the date of filing the application or from the date of order. In such circumstances, the revisional court was not empowered to give finding that revisionist is entitled to get the amount of compensation from the date of order by setting aside the finding of date of filing the application. In this circumstance, the revisional court has committed illegality and irregularity in passing the impugned order. On the other hand, it was urged that learned court below has not committed any illegality in passing the impugned judgement and order in the criminal revision, therefore, this revision is liable to be dismissed.

I have considered the arguments of learned counsel for both the parties and also perused the record. Application filed on behalf of the revisionist under Section125 Cr.P.C. was allowed by the trial court wherein it was ordered that she is entitled to get the maintenance from the date of filing application from the respondent. Criminal Revision No.149/05, Smt. Rajeev Kumar Barnwal Vs. Rekha and another was filed against the order passed by the trial court which was partly allowed by the revisional court only on the point of maintenance from the date of order not from the date of filing the application under Section 125 Cr.P.C. on the ground that no any reasons were given by the trial court in the impugned judgement and order to award the maintenance from the date of filing the application. Revisional court has placed reliance in the case of Ramkishan Vs. Judge, Family Court, Moradabad 2002(45) ACC 582 wherein it was laid down that the "order of maintenance was applicable from the date of order but the reasons for granting maintenance from the date of filing the petition were not given when Hon'ble Court has held that the order was not proper in view of the settled view and the same was directed to be paid from the date of order."

It has been provided under Section 125 (2) Cr.P.C.-"such allowance shall be payable from the date of order, or, if so ordered, from the date of application for maintenance" which reveals that maintenance allowance shall be payable from the date of order and not from date of filing the application under Section 125 Cr.P.C. This also reveals that adequate reasons will be

given by the councerned court in granting maintenance allowance from the date of filing the application. In the present case no any reason has been given by the trial court in granting the maintenance allowance from the date of filing the application, therefore, the revisional court has not committed any illegality and irregularity in passing the impugned order by which the maintenance allowance was granted from the date of order and not from the date of filing the application. Impugned judgement and order also does not come within the purview of impropriety.

There was no need to frame any further issue by the trial court in allowing the application from the date of order or from the date of filing the application. Therefore, there is no force in contentions of learned counsel for the revisionist regarding it as it has been specifically provided under Section 125 Cr.P.C.. In view of discussion made above I come to the conclusion that this criminal revision has no force and liable to be dismissed.

This criminal revision is hereby dismissed. The impugned judgement and order passed by revisional court is hereby affirmed.

Dt.24.10.05

Asha

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

It is said that Smt. Parveen Bano had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman.

Having regards the facts and circumstances of the case, we dispose of this petition by directing that the petitioners shall not be arrested in Case Crime No. 104 of 2005, under sections 498A, 323 I.P.C. and 3 / 4 Dowry Prohibition Act, police station Lohata, district Varanasi, till submission of the report by the police provided the petitioner no. 1 pays Rs. 2,000/- (Rs. Two thousand) per month towards maintenance amount through bank draft to Smt. Praveen Bano, the victim woman. The first instalment of the maintenance amount shall be paid on or before 30th September 2005. Subsequent instalments shall be continued to be paid in the successive months on or before the last day of the month. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, (AIR 1996 SC 922.

Dt/-20.9.2005

Pcl (9736/05)

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

This petition has been brought for quashing the written report registered at Case Crime No. 296 of 2005, under sections 498A, 323, 506 I.P.C. and 3 / 4 Dowry Prohibition Act, police station Nauchandi, district Meerut.

It is said that entire case has been fabricated so as to harass the petitioner. Even if the entire evidence are accepted to be true on its face value then all the incident had taken place at Bulandshahr, but with a view to confer jurisdiction on police of Meerut a story has been concocted and concocted persons have also been set up. It is said that the victim woman was taken in a Car at Meerut and that too for demand of a Santro Car and Rs. 2 lacs. It is said that the petitioners are residing at different places and such concoction is a result of malafide so as to harass them. From the report it is ascertainable that the victim woman was subjected to cruelty at Bulandshahr and also at Meerut. There is specific incidence of 23.8.2005 at Meerut. Even otherwise lodging of the report at Meerut stating that identical incidents had taken place at Bulandshahr would not exonerate the petitioners. Prima-facie case for the offences indicated above is made out against the petitioners. The allegations are appearing against the husband and mother and father-in-laws, who are petitioners 2 and 3. As regards them the petition is dismissed. However, the arrest of the petitioners 1 and 4 to 10 for the offences indicated above shall remain stayed till submission of the report.

The petition is disposed of accordingly.

Dt/- 20.9.2005

Pcl (9735/05)

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Criminal Misc. Writ Petition No. 9720/2005
Ranjit Singh & ors. Vs. State of U. P. & ors
AND
Criminal Misc. Writ Petition No. 9721/2005
Randhir Singh Vs. State of U. P. & others

Hon'ble S.S. Kulshreshtha, J.
Hon'ble K. N. Ojha, J.
Heard and also perused the materials on the record.
Both the petitions are taken together as common question of fact and law are involved in as much as the same FIR registered at Case Crime No. 255 of 2005, under sections 498A, 304B I.P.C. and 3 / 4 Dowry Prohibition Act, Police station Bhognipur, district Kanpur Dehat, has been challenged.
The victim woman sustained burn injuries. The incident had taken place in the house of the petitioners of writ petition no. 9720 of 2005 and they are in know of the fact leading to the unfortunate happening and burn injuries sustained by the victim woman. As regards Randhir Singh, petitioner of writ petition no. 9721/05 is concerned, sufficient materials have been brought on record that he is uncle-in-law of the victim and is living separately and even ration card is also separate. As regards Sri Rajaram, petitioner no. 2 of writ petition no. 9720/05 is said to be grandfather of the husband of the victim woman and is about 85 years of age and is old and inferred person. Petitioner no. 3 Km. Geeta Devi is unmarried girl of 13 years of age.
Having regards the facts and circumstances of the case the arrest of petitioners Rajaram & Km. Geeta Devi of writ petition no. 9720/05 and Randhir Singh of writ petition no. 9721/05 shall remain stayed till submission of report and for rest petitioner the petition is dismissed.
Petitions are disposed of accordingly.
Dt/- 20.9.2005
Pcl (9720 & 9721 of 2005)

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Criminal Misc. Writ Petition No. 9720/2005
Ranjit Singh & ors. Vs. State of U. P. & ors
AND
Criminal Misc. Writ Petition No. 9721/2005
Randhir Singh Vs. State of U. P. & others

Hon'ble S.S. Kulshreshtha, J.
Hon'ble K. N. Ojha, J.
Heard and also perused the materials on the record.
Both the petitions are taken together as common question of fact and law are involved in as much as the same FIR registered at Case Crime No. 255 of 2005, under sections 498A, 304B I.P.C. and 3 / 4 Dowry Prohibition Act, Police station Bhognipur, district Kanpur Dehat, has been challenged.
The victim woman sustained burn injuries. The incident had taken place in the house of the petitioners of writ petition no. 9720 of 2005 and they are in know of the fact leading to the unfortunate happening and burn injuries sustained by the victim woman. As regards Randhir Singh, petitioner of writ petition no. 9721/05 is concerned, sufficient materials have been brought on record that he is uncle-in-law of the victim and is living separately and even ration card is also separate. As regards Sri Rajaram, petitioner no. 2 of writ petition no. 9720/05 is said to be grandfather of the husband of the victim woman and is about 85 years of age and is old and inferred person. Petitioner no. 3 Km. Geeta Devi is unmarried girl of 13 years of age.
Having regards the facts and circumstances of the case the arrest of petitioners Rajaram & Km. Geeta Devi of writ petition no. 9720/05 and Randhir Singh of writ petition no. 9721/05 shall remain stayed till submission of report and for rest petitioner the petition is dismissed.
Petitions are disposed of accordingly.
Dt/- 20.9.2005
Pcl (9720 & 9721 of 2005)

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

This petition has been brought for quashing the written report registered at Case Crime No. 163 of 2005, under sections 498A, 304B, 201 I.P.C. and 3 / 4 Dowry Prohibition Act, police station Barhan, district Agra. police station Surajpur, district Gautam Budh Nagar.

It is said that the petitioner is not named in the FIR. He has also not a family member of the husband of the victim and has nothing to do with the family quarrel and how the victim woman died. In the statement of the informant it has come that the petitioner also attended the last rites of the victim by taking the dead body in his Tractor. In the given circumstances the arrest of the co-accused has already been stayed by this Court in Criminal Misc. Writ Petition No. 9195 of 2005.

Having regards the facts and circumstances of the case the arrest of the petitioners for the offences indicated above shall remain stayed till submission of report with the following conditions:

1. The petitioners will not be arrested in respect of the said crime number during the pendency of the investigation provided he cooperates with the investigation.
2. This stay or arrest will operate only if certified copy of this order along with one self-attested copy of the writ petition is served upon the investigating officer within fifteen days from today.
3. The stay of arrest will cease to operate if it is decided to submit a charge sheet after investigation.
4. Because the complainant has not been heard at this stage, therefore, it will be open to the complainant, or the investigating officer who has not been given opportunity to file a counter affidavit or any other party aggrieved to apply in this writ petition for recall/ modification of this order, if any misstatement is found in the material facts stated in the writ petition or other legally valid ground, which may be available to the party so applying.
5. The investigating officer will make all possible efforts to conclude the investigation within three months of the date on which a certified copy of this order is served upon him.

The petition is disposed of accordingly.

Dt/- 20.9.2005

Pcl (9715/05)

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

It is said that Smt. Geeta had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman.

Having regards the facts and circumstances of the case, we dispose of this petition by directing that the petitioners shall not be arrested in Case Crime No. 314 of 2005, under sections 498A, 323 I.P.C. and 3 / 4 Dowry Prohibition Act, police station Uttar, district Firozabad, till submission of the report by the police provided the petitioner no. 7 pays Rs. 1,500/- (Rs. One thousand five hundred) per month towards maintenance amount through bank draft to Smt. Geeta, the victim woman. The first instalment of the maintenance amount shall be paid on or before 30th September 2005. Subsequent instalments shall be continued to be paid in the successive months on or before the last day of the month. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, (AIR 1996 SC 922.

Dt/-20.9.2005

Pcl (9712/05)

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

It is said that Smt. Anjulata had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman.

Having regards the facts and circumstances of the case, we dispose of this petition by directing that the petitioners shall not be arrested in Case Crime No. 362 of 2005, under sections 498A, 323, 452 I.P.C. and 3 / 4 Dowry Prohibition Act, police station Konch, district Jalaun, till submission of the report by the police provided the petitioners pay Rs. 1,500/- (Rs. One thousand five hundred) per month towards maintenance amount through bank draft to Smt. Anjulata Devi, the victim woman. The first instalment of the maintenance amount shall be paid on or before 30th September 2005. Subsequent instalments shall be continued to be paid in the successive months on or before the last day of the month. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, (AIR 1996 SC 922.

Dt/-20.9.2005

Pcl (9711/05)

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

It is said that Smt. Nidhi Dwivedi had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman.

Having regards the facts and circumstances of the case, we dispose of this petition by directing that the petitioners shall not be arrested in Case Crime No. 18 of 2005, under sections 498A, 323, 504, 506 I.P.C. and 3 / 4 Dowry Prohibition Act, police station Mahila Thana, district Kanpur Nagar, till submission of the report by the police provided the petitioner no. 1 pays Rs. 2,000/- (Rs. Two thousand) per month towards maintenance amount through bank draft to Smt. Nidhi Dwivedi, the victim woman. The first instalment of the maintenance amount shall be paid on or before 30th September 2005. Subsequent instalments shall be continued to be paid in the successive months on or before the last day of the month. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, (AIR 1996 SC 922.

Dt/-19.9.2005

Pcl (9674/05)

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

It is said that Smt. Meenu Singh had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman.

Having regards the facts and circumstances of the case, we dispose of this petition by directing that the petitioners shall not be arrested in Case Crime No. 766//05, under sections 498A/504/506 I.P.C. and section 3/4 Dowry Prohibition Act, police station Izzat Nagar,, district Bareilly, till submission of the report by the police provided the petitioner no.3 pays Rs. 2,000/= per month towards maintenance amount through bank draft to Smt. Meenu Singh, the victim woman. The first instalment of the maintenance amount shall be paid on or before 10th October, 2005. Subsequent instalments shall be continued to be paid in the successive months on or before the 15th day of the month. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, (AIR 1996 SC 922.

Dt/-24.09.2005

Ssm/9940/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

It is said that Smt. Rehana had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman.

Having regards the facts and circumstances of the case, we dispose of this petition by directing that the petitioners shall not be arrested in Case Crime No. 43/05, under sections 498A/323/506 I.P.C. and section 3/4 Dowry Prohibition Act, Police Station Mahila Thana, district Meerut, till submission of the report by the police provided the petitioner no.1 pays Rs. 2,000/= per month towards maintenance amount through bank draft to Smt. Rehana, the victim woman. The first instalment of the maintenance amount shall be paid on or before 10th October, 2005. Subsequent instalments shall be continued to be paid in the successive months on or before the 15th day of the month. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, (AIR 1996 SC 922.

Dt/-24.09.2005

Ssm/9915/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

This petition has been brought for quashing the written report registered at Case Crime No. 273/o5, under section 498A/323/506 IPC and 3 / 4 of Dowry Prohibition Act, P.S. Akbarpur, district Kanpur Dehat.

It is said that the victim woman is already getting maintenance by order passed by this Court in Writ Petition No. 8764 of 2005 dated 29th August, 2005.Petitioners have also been involved in that case.

Having regards to the facts and circumstances of the case the arrest of the petitioners for the offence indicated above shall remain stayed till submission of the report.

Petition is disposed of accordingly.

Dt/-24.09.2005

Ssm/9914/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

It is said that Smt. Anchal Sharma had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman.

Having regards the facts and circumstances of the case, we dispose of this petition by directing that the petitioners shall not be arrested in Case Crime No. 328/05, under sections 498A/328/504/506/307 I.P.C. and section 3/4 Dowry Prohibition Act, Police Station Sadar Bazar, district Meerut, till submission of the report by the police provided the petitioner no.1 pays Rs. 2,500/= per month towards maintenance amount through bank draft to Smt. Anchal Sharma, the victim woman. The first instalment of the maintenance amount shall be paid on or before 10th October, 2005. Subsequent instalments shall be continued to be paid in the successive months on or before the 15th day of the month. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, (AIR 1996 SC 922.

Dt/-22.09.2005

Ssm/9858/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

It is said that Smt. Mamta had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman.

Having regards the facts and circumstances of the case, we dispose of this petition by directing that the petitioners shall not be arrested in Case Crime No. 226//05, under sections 498A/504 I.P.C. and section 3/4 Dowry Prohibition Act, police station Nai Ki Mandi, district Agra, till submission of the report by the police provided the petitioner no.1 pays Rs. 2,000/= per month towards maintenance amount through bank draft to Smt. Mamta, the victim woman. The first instalment of the maintenance amount shall be paid on or before 10th October, 2005. Subsequent instalments shall be continued to be paid in the successive months on or before the 15th day of the month. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, (AIR 1996 SC 922.

Dt/-22.09.2005

Ssm/9849/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble S.S. Kulshreshtha, J.

Hon'ble K. N. Ojha, J.

Heard and also perused the materials on the record.

It is said that Smt. Renu Sharma had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman.

Having regards the facts and circumstances of the case, we dispose of this petition by directing that the petitioners shall not be arrested in Case Crime No. 131/05, under sections 498A/323 I.P.C. and section 3/4 Dowry Prohibition Act, Police Station Jahangirabad, district Bulandshahr, till submission of the report by the police provided the petitioner no.3 pays Rs. 1,000/= per month towards maintenance amount through bank draft to Smt. Renu Sharma, the victim woman. The first instalment of the maintenance amount shall be paid on or before 10th October, 2005. Subsequent instalments shall be continued to be paid in the successive months on or before the 15th day of the month. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, (AIR 1996 SC 922.

Dt/-22.09.2005

Ssm/9826/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

Accused applicant Ram Suchit son of Bhullar has prayed for release on bail in case crime no. 62344004005 of 2005 under Sections 498 A, 304 B IPC and Section ¾ D. P. Act, P.S. Industrial Area, District Allahabad.

Prosecution case is that smt. Seema sister of the complainant Suraj was married to the accused applicant about three years prior to the incident. Dowry was given at that time but the accused demanded motorcycle and some money in cash and when it could not be given she was ill-treated and harassed. Panchayat was also held and accused had promised not to harass her but the harassment continued. On 3.1.2005 the informant was told by the son of his maternal uncle that his sister was killed by her in-laws and was hanged. When the complainant came to her matrimonial house, he found that dead body was kept on cot. He lodged the report same day at 7.45 p.m. Thereafter inquest was prepared on the information given by the complainant.

Post mortem report shows that deceased had contusion on right elbow, contusion on back of right scapula and a ligature mark of 18 cm x ¾ cm on the front and antero lateral aspect of neck crossing thyroid cartilage. There was gap of 13 cm in the back. Cause of death has been mentioned as asphyxia as a result of hanging.

Learned counsel for the applicant has contended that the applicant has been falsely implicated in this case and Smt. Seema committed suicide due to frustration. He has further contended that the deceased wanted to live luxuriously and the accused could not afford it and therefore she committed suicide. Learned A.G.A. has contended that the deceased had a son and there was no reason for her to commit suicide. Both the parties belong to labour class and in the circumstances, there was no question of her demanding any luxurious living.

Learned counsel for the applicant has contended that marriage had taken place about seven years prior to the incident but it appears that in the trial court applicant did not take this case and no evidence to that affect has been filed.

In the circumstances of the case, but without prejudice to the merits of the case, accused is not entitled to bail and his application is liable to be rejected.

Bail application of the accused is hereby rejected.

However, learned Trial Court is directed to expedite the hearing of the case and proceed under Section 309 Cr.P.C. It is expected that the accused shall cooperate in speedy trial. Learned Trial Court shall make every effort to conclude the trial within a period of three months from the date of receipt of this order. Learned Trial Court is further directed to take coercive steps against the witnesses if necessary to ensure their presence.

Copy of this order be sent to learned Trial Court within a week.

Dated : 24.9.2005

RKS. 9145/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

Accused applicant Mushtaqeem @ Babbu son of Sri Shaukat Ali has prayed for release on bail in case Crime No. 362 of 2004 under Sections 304-B,498 A IPC and Section ¾ D.P. Act, P.S. Dehli Gate, District Meerut.

According to prosecution case, Smt. Rehana sister of the complainant Rashid Khan was married to the accused applicant on 23.12.2003. Dowry was given but it could not satisfy the accused and they demanded Rs. 10,000/- and used to beat her. According to prosecution case as further disclosed in the F.I.R. the sister of the complainant was killed on 25.9.2004 by the accused persons. Report was lodged by the complainant on 26.9.2004. The inquest report shows that at the time of the inquest complainant, his two relations, Mumtaz Khan and Chand Khan were present.

Post mortem report shows that at the time of post-mortem cause of death could not be ascertained and viscera was preserved. However some injuries were noted which are stitch wounds and abraded contusions. In this matter, the copy of Viscera report was requisitioned from the Court of C.J.M. and it has been received and it shows that no chemical poison was found in the parts preserved for Viscera test.

Learned counsel for the applicant has contended that the applicant has been wrongly implicated in this case. Smt. Rehana had fallen down from stairs about three days prior to the incident and treatment was given at the Hospital and she was discharged from the Hospital but her condition again deteriorated and she was again taken to the Hospital where she succumbed to her injuries. In the F.I.R. no mention about giving of any poisonous substance has been made by the complainant. But in the statement recorded under Section 161 Cr.P.C., the complainant has stated that perhaps some poisonous substance was given to the deceased.

In the facts and circumstances of the case but without prejudice to the merits of the case, accused is entitled to bail.

Let the accused named above involved in above noted case Crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.

The applicant shall furnish an undertaking also before the C.J.M. concerned that he will not indulge in any criminal activity and will not cause either any threat or any physical violence to the complainant and the witnesses and their family members. If any such report is made by any of the above person either to the Court or the police, it shall be properly inquired into and if any substance therein is found, it shall be open for the court below to report to this Court so that his bail may be cancelled.

Dated: 19.9.2005

RKS/8739/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

The accused applicant Ramanandan who is the husband of deceased Manju has prayed for release on bail in case Crime No. 670 of 2003 under Sections 498 A/304B, 201 IPC, P.S. Bilsanda, District Pilibhit.

Prosecution case is that Smt Manju was married to the accused 3-4 years prior to the incident and demand of Rs. 20,000/- was made which could not be made by the complainant, who is mother of the deceased. According to complainant she came to know on 11.10.2003 that her daughter had died and thereafter when she reached her matrimonial house she came to know that the dead body had been disposed of by the accused person without waiting for her. Complainant went to lodge the report but it was not written; then she gave application under Section 156(3) Cr.P.C. and thereafter the case was registered.

Learned counsel for the applicant has contended that Smt. Manju died a natural death as she had returned from her Maika one day prior to the incident and her condition deteriorated and she was taken to the Doctor and he advised for taking her to Pilibhit.

Learned A.G.A. contended that the accused did not wait for the complainant and disposed of the dead body of Smt. Manju and it shows malafide of the accused.

Learned counsel for the applicant further contended that the statement of three witnesses have been recorded. He has filed the copy of the statement of Smt. Hardevi, complainant which shows that there was no demand of dowry but only a part of statement has been filed and it is not relevant.

Considering the facts and circumstances and the manner in which the accused disposed of the dead body without waiting for the complainant and her family members, accused is not entitled to bail and his application is liable to be rejected.

Bail application of the accused is hereby rejected. However learned Trial Court is directed to expedite the hearing of the case and proceed under Section 309 Cr.P.C. It is expected that the accused shall cooperate in his speedy trial. Learned Trial Court shall make every effort to conclude the trial within a period of two months from the date of receipt of this order. In case the Trial is not concluded within the prescribed time then the concerned Court shall submit a report explaining the reasons for delay.

Copy of this order be sent to learned Trial Court within a week.

Dated : 17.8.2005

RKS/8142/

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

The accused Kedar Nath has prayed for release on bail in case Crime No. 459 of 2003 under Sections 498 A/326/304B IPC and Section ¾ D.P.Act.

According to prosecution case Smt. Madhuri Devi was married to Chandr Shekhar son of the applicant according to Hindu rites three years prior to the incident. Accused demanded dowry and when it could not be given, she was burned on 14.9.2003. At about 4 p.m. She was shifted to hospital and her dying declaration was recorded on 16.9.2003. According to dying declaration the accused as well as the other co accused have been alleged to have poured kerosene oil and thereafter the accused applicant set her on fire.

In the circumstances, accused is not entitled to bail and application is liable to be rejected.

Bail application is hereby rejected. However Learned Trial Court is directed to expedite the hearing of the case and proceed under Section 309 Cr.P.C. It is expected that the accused shall cooperate in his speedy trial. Learned Trial Court shall make every effort to conclude the trial within a period of three months. In case the Trial is not concluded within the prescribed time then the concerned Court shall submit a report explaining the reasons for delay.

Dated: 12.8.2005

RKS/605/2004

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the parties and perused the record.

Accused Ram Chandra son of Shri Rajit Ram has prayed for release on bail in Case Crime No. 372 of 2003 under Sections 304 B, 498 A IPC Section ¾ D. P. Act, P.S. Kaptanganj, District Basti.

Prosecution case as disclosed in the F.I.R. is that the accused was married to Smt Israwati Devi @ Gudda about six years prior to the incident according to Hindu rites. At that time the complainant who is brother of the deceased also gave dowry and a motorcycle. Gauna took place after one year. The deceased had two children of 2 and 4 years old. It has further been mentioned in the F.I.R. that Smt. Israwati Devi was harassed and ill-treated as the demand for T.V. and Golden Chain could not be met. On 16.8.2003, an information was received by Kanhaiya, uncle of the complainant that Smt. Israwati Devi and her two daughters had died as a result of burn injuries. The complainant and others came to the matrimonial house of Israwati and found that the dead bodies were lying on the bed in the room on the first floor. At the time, the complainant and others reached, accused applicant and his parents were absconding. The complainant has mentioned in the report that it appeared that all the three were burnt. Report was lodged on 16.8.2003. The inquest reports were prepared after information was given by the complainant on 16.8.2003.

Post mortem reports show that all the three dead bodies had superficial to deep burn and were having pugilistic postures.

Learned counsel for the applicant has contended that the applicant has been falsely implicated and that Smt. Israwati committed suicide in absence of family members of the accused along with two young daughters in her bed room situate in upper story of the house and when the neighbours and persons present in the vicinity of the house observed some smoke coming out of the room, they rushed and by pushing the door with repeated force they could be able to enter in the house where they found all the three persons i.e. Smt. Israwati and her two young daughters dead in burnt condition on the bed itself. It has further been contended by learned counsel for the applicant that when the applicant's parents got the information they rushed and subsequently the applicant also come there who was present at the shop of his cousin situate at a distance of 3-4 furlongs from his house. Learned counsel for the applicant has further contended that the pugilistic appearance as mentioned in the post mortem report and the fact that two girls and Smt. Israwati were lying in hugging and clutching posture as mentioned in F.I.R. show that Smt. Israwati committed suicide.

But the learned A.G.A. has contended that the accused applicant burnt his wife Smt. Israwati and two young daughters and thereafter the bodies were kept on the bed. He has further contended that the accused or his parents did not inform the Police or the complainant and when the complainant and others came to her nuptial home they were absconding. He further contended that the deceased had two daughters and there was no reason for her to commit suicide along with two daughters. Learned A.G.A. has further contended that the accused applicant has not given any reasonable grounds for Smt. Israwati to commit suicide; simply saying that the applicant was a student and that there was some exchange of words between applicant and his father and applicant had left the house throwing the food served to him by his wife, is not sufficient ground for committing suicide.

Learned A.G.A. further contended that the condition of the dead bodies show that they were badly burnt and in the circumstances they could not have been in hugging or embracing postures, at the time they were burnt.

Considering the facts that the accused applicant had not only burnt his wife but also his two young daughters, the act of the accused being extremely abhorring, he does not deserve bail and application is liable to be rejected.

Bail application of the accused is hereby rejected.

Dated: 30.8.3005

RKS/595/04

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the accused applicant, learned A.G.A. and perused the record.

Learned A. G. A. has filed counter affidavit, be taken on record.

Accused applicant Manoj son of Ram Bhool has prayed for release on bail in case Crime NO. 622/2004 under Sections 304 B, 201, 504, 506, 34 IPC read with ¾ D.P.Act, P.S. Chandi Nagar District Baghpat.

Prosecution case is that Smt. Rupesh daughter of the complainant was married with the accused applicant on 16.1.2004. Dowry was given at the time of marriage but it could not satisfy the accused and further demand was made. On 1.11.2004, Sri Pal, Sarhoo of the complainant informed him that husband of Smt. Rupesh had informed on phone that Rupesh was ill. When the complainant reached her in-laws house, he came to know that his daughter was burnt by the accused persons and no information was given to the complainant and even the funeral rites were performed. Report was lodged by the complainant on 2.11.2004.

Learned counsel for the accused applicant has contended that applicant has been wrongly implicated in this case and that Smt. Rupesh died natural death. In the affidavit annexed with the bail application no illness or any other ailment has been mentioned as to how she died.

The contention of the learned counsel for the accused applicant is that complainant and others were present at the time of funeral rites and that report was lodged with delay but there is nothing on record to suggest that complainant and others were present at the time of the funeral rites. The statement of Sri Pal as recorded under Section 161 Cr.P.C. shows that applicant had informed only about the illness of Smt. Rupesh and thereafter no information was given to Sri Pal also. The applicant did not inform the police, although his wife had died within 10 months of the marriage.

Learned counsel for the accused applicant has further contended that after lodging the report complainant is not coming to the Court to give his statement and the case is being unnecessarily adjourned.

In the circumstances of the case, accused is not entitled to bail and his application is liable to be rejected.

Bail application of the accused is hereby rejected.

However, learned Trial Court is directed to expedite the hearing of the case and proceed under Section 309 Cr.P.C. It is expected that the accused shall cooperate in speedy trial. Learned Trial Court shall make every effort to conclude the trial within a period of three months from the date of receipt of this order. Learned Trial Court is further directed to take necessary coercive steps against the witnesses if necessary to ensure the presence of the witnesses.

Copy of this order be sent to learned Trial Court within a week.

Dated: 7.11.2005

RKS/5428/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

Accused applicant Rajesh son of Murli has prayed for release on bail in case crime no. 206 of 2000 (S.T. No. 11 A of 2001) under Sections 304 B, 201 IPC, Section ¾ D.P. Act, P.S. Sindhauli, District Shahjahanpur.

Prosecution case is that Smt. Devanti sister of the complainant was married with the accused about two years prior to the incident. Dowry was given but it could not satisfy the accused and demand for Motorcycle and some money was being made. The complainant came to know on 28.7.2000 that his sister had been killed by the accused. The dead body was hanging in the house.

Learned counsel for the applicant has contended that accused has been falsely implicated in this case and that smt. Devanti committed suicide as she wanted to live in urban atmosphere and not in rural area. He has further contended that information was given to the complainant, his father and other relations were present at the time of cremation. He has further contended that father of the deceased gave in writing that no demand was made and her daughter was suffering from some mental disorder and he had no dispute about her death. The fact that the father of the deceased and other relations were present at the time of cremation has been mentioned in paragraph no. 9 of the affidavit and in the counter affidavit this fact has not been specifically denied.

Learned A.G.A. contended that

applicant did not inform the police.

Considering the facts and circumstances and the fact that the father of the deceased was present at the time of cremation and no objection was raised, accused is entitled to bail.

Let the accused named above involved in above case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.

Dated: 20.9.2005

RKS/21455/04

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M.K.Mittal, J.

Heard learned counsel for the applicants, learned A.G.A. and perused the record.

The accused applicant Gulab is the Jeth of the deceased Smt. Jairani, Smt. Shiv Kali is the mother in law and Smt. Kalloo Devi is the Nanand of the deceased.

According to prosecution case, Smt. Jairani was married to Ram Sewak s/o Smt. Shiv Kali according to Hindu rites on 16.5.2003. Dowry was given but the accused further demanded motorcycle and Rs. 20,000/- in cash but when it could not be given Smt. Jairani was killed on 3.7.2004 and when the complainant came to know about it, he informed the police and thereafter the post mortem was done but the F.I.R was not lodged as alleged by the complainant and then he gave a report on 26.10.2004, thereafter case was registered on 26.10.2004.

Learned counsel for the applicants has contended that these accused live separately from the husband of the deceased and they have wrongly been implicated in this case. He further contended that Smt. Shiv Kali Devi is an old lady and is also ill. He further contended that the deceased committed suicide and there is material delay in lodging of the report and the father of the deceased was present at the time the funeral rites took place and only to harass the applicants their names have been included in the report.

Considering the facts of the case and delay in lodging of the report and the fact that the case of these accused applicants is distinguishable from that of husband, the accused are entitled to bail.

Let the applicants Gulab s/o Ishwari, Smt. Shiv Kali w/o Late Ishwari Prasad and Kallo Devi D/o Late Ishwari Prasad involved in case crime no. 206 of 2004 under section 489 A/304 B IPC and ¾ D.P.Act, P.S. Bindaki, District Fatehpur be released on bail on their executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned.

Dated: 25.7.2005

RKS/20369/

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble A.K. Yog J.

Hon'ble Vikram Nath J

This writ petition, under Article 226 Constitution of India is in the matter of First Information Report dated 2.6.2005 Registered as case Crime No.283 of 2005 under Sections 498-A,323 I.P.C.& Section 3 /4 Dowry Prohibition Act, P.S. Kalyanpur District Kanpur Nagar (U.P.), pending investigation.

Learned counsel for the petitioner fails to satisfy, prima facie at this stage, that no offence in law is made out. Therefore, no case for quashing the F.I.R. during investigation is made out, at this stage.

As far as prayer for bail of the petitioner/s, during investigation is concerned, petitioner/s has an alternative remedy by approaching the concerned respondent/ authority for grant of bail as per law including the Full Bench decision in the case of Amrawati Vs. State, 2004(57) A.L.R. 389, without being prejudiced, in any manner, by dismissal of this Writ Petition.

Hence no case is made out to invoke discretionary extraordinary jurisdiction under Article 226, Constitution of India.

Writ Petition is dismissed summarily in limine without entering into the merits of the case, subject to the above observations.

No costs.

Dt.14.6.2005

Hsc/5994/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble A.K. Yog J.

Hon'ble Vikram Nath J

This writ petition, under Article 226 Constitution of India is in the matter of First Information Report dated 28.11.2004 Registered as case Crime No.467 of 2004 under Sections 498-A, 304 I.P.C. and 3 /4 Dowry Prohibition Act, P.S. Sikandara Rao District Mahamaya Nagar (U.P.), pending investigation.

Learned counsel for the petitioner fails to satisfy, prima facie at this stage, that no offence in law is made out. Therefore, no case for quashing the F.I.R. during investigation is made out, at this stage.

As far as prayer for bail of the petitioner/s, during investigation is concerned, petitioner/s has an alternative remedy by approaching the concerned respondent/ authority for grant of bail as per law including the Full Bench decision in the case of Amrawati Vs. State, 2004(57) A.L.R. 389, without being prejudiced, in any manner, by dismissal of this Writ Petition.

Hence no case is made out to invoke discretionary extraordinary jurisdiction under Article 226, Constitution of India.

Writ Petition is dismissed summarily in limine without entering into the merits of the case, subject to the above observations.

No costs.

Dt.14.6.2005

Hsc/5972/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Imtiyaz Murtaza, J.
Hon'ble Ravindra Singh, J.

Heard learned counsel for the petitioners and the learned A.G.A. for the State.

This petition is filed by the petitioners Smt. Tikoli, Smt. Shanti and Smt. Munni with a prayer that the F.I.R.of case crime no. 410 of 2005 under Sections 304B, 498A, 504,506 I.P.C. and ¾ of Dowry Prohibition Act police station Kaimri District Rampur may be quashed.

From the perusal of the F.I.R., post mortem report of the deceased and on the basis of the allegations made therein, prima-facie cognizable offence is made out, and the allegations made against the petitioners and other co-accused persons are of grave in nature, therefore, prayer for quashing the F.I.R. is refused.

It is further contended that the petitioners are women and are entitled to the benefit of the provisions of Section 437 Cr.P.C. and they want to appear before the court but there is reasonable apprehension that in case they appear and apply for bail, their bail application shall not heard on the same day.

In the circumstances this petition is disposed of finally with the directions that in case the petitioners appear before the court, within two weeks from today, and apply for bail in the above case the same shall be heard and disposed of expeditiously in accordance with law.

Dated: 25.11.2005.
o.k.
11716/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

HON. S.S. KULSHRESTHA, J.

HON. K.N. OJHA, J.

Heard and also perused the materials on record.

It is said that the informant, who is herein respondent no. 3, Smt. Priya Rastogi, had withdrawn from her nuptial home without any just and reasonable cause. The petitioners are all the time ready and willing to maintain the victim woman. Having regards to the facts and circumstances of the case, we dispose of this petition by directing that the petitioner shall not be arrested in Case Crime No. C-7 of 2005 for the offences under Sections 323, 313, 504, 506 and 498-A IPC and also under Sections 3/4 of the Dowry Prohibition Act, Police Station Brahmpuri, District Meerut till submission of the report by the police provided petitioner No. 3 (Sri Vipin Kumar Rastogi) pays Rs. 2000/- per month towards maintenance amount through bank draft to the victim woman. The first instalment of the maintenance amount shall be paid on or before 30th day of October 2005. Subsequent instalments shall be continued to be paid on the successive months on the same day. This order is passed on an analogy of the principle of law laid down in the case of Bodhisattwa Gautam v. Miss Subhra Chakraborty, (AIR) 1996 S.C. 922

19.X.05

10469/05/sk

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Court No. 46

Criminal Appeal No. 1495 of 2000

Vijai Pandey Versus State of U.P.

Hon'ble R. C. Deepak, J.

Hon'ble M. K. Mittal, J.

The accused appellant Vijay son of late Jagdish Prasad Pandey has prayed for release on bail during the pendency of his criminal appeal no. 1495 of 2000 filed against his conviction under Sections 302, 307, 498-A IPC and sentence of life imprisonment, seven years and two years R.I. respectively in S.T. No. 444 of 1998 by the Court of IVth Addl. District and Session Judge, Allahabad.

We have heard Sri A. K. Pandey, learned counsel for the accused appellant, Sri B.A.Khan, learned counsel for the complainant, learned A.G.A. and perused the record.

The prosecution case is that the deceased Smt Sunita was married to the accused appellant about 7-8 years prior to the incident. Since the demand for dowry could not be fulfilled, the accused had left Smt. Sunita and she was living at her parental house. On 23.10.1997 at about 10.30 a.m., the complainant and his sister Smt. Sunita were going to Civil Lines. When they reached infront of the house of Ram Sumer Singh, at some distance from their house, the accused came on Scooter. He stopped there and said that he would not leave Sunita alive and fired at her with country made pistol. She received shot and fell down on the road. When the complainant advanced towards the accused, he took out another country made pistol but in the scuffle, the barrel opened and the cartridge fell down. However, the accused gave but blow on the skull of the complainant. At the alarm raised, the mother of the deceased also came along with other persons. Smt Sunita was shifted to Swaroop Rani Hospital but the Doctor declared her dead. The F.I.R. was lodged by the complainant same day at 12.05 p.m. at P.S. Georgetown, District Allahabad. The postmortem report of Smt. Sunita shows that she received fire arm wound of entry of 1'' X 1'' X cavity deep on left side front of the chest. She also received one abraded contusion of 3 '' X 1-1/2 '' on outer surface of right elbow. The complainant Sunil received lacerated wound on his skull and also traumatic swelling in front of right shoulder.

Learned counsel for the accused appellant has contended that accused has been falsely implicated and that the prosecution witnesses are not reliable and that the complainant was not present at the spot.

Learned counsel for the complainant and learned A.G.A. contended that the complainant was present at the time of incident and he was also injured by the accused and there is no reason to disbelieve the testimony of the complainant. There is nothing in the statement of the complainant to show that he was not present at the spot or that he is not speaking truth. They further contended that the accused had left his country made pistol at the place of occurance and the report of the ballistic expert shows that the cartridge fired by the accused was from this country made pistol and in this connection he referred to the report (Ex-Ka-18). It is a day light murder and the accused had the motive also as he suspected the fidelity of the deceased.

In view of the facts and circumstances of the case, but without prejudice to the merits of the appeal in any manner whatsoever, we are of the opinion that the accused appellant is not entitled to bail at this stage; therefore, the bail application is liable to be rejected.

Bail application of accused Vijai Pandey is hereby rejected.

Dated:- 16.3.2005.

RKS/

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K Mittal, J.

The accused applicant Yadram has prayed for release on bail in Case Crime No. 1550 of 2003 under Sections 498 A, 304 B IPC and Section ¾ of D.P.Act, P.S. Kotwali Farrukhabad, District Farrukhabad.

I have heard the learned counsel for the applicant, learned A.G.A. and perused the record.

Prosecution case is that Smt. Neetu, daughter of the complainant Rajendra was married to the accused about 1 and ½ years prior to the incident and dowry was given at the time of marriage. But the accused being unsatisfied demanded Scooter, Freeze, Colour T.V. and Golden Chain and when it could not be given she was beaten and ill treated. About 22 days prior to the incident efforts were made to solve the problems but in vain. The complainant got the information that his daughter has been killed by the accused and his family members and his son and villagers came to Kachiyala and came to know that the dead body had been sent to the Hospital. When the complainant reached the Hospital, the accused and his family members fled away. Complainant went to lodge the report at P.S. Kotwali Farrukhabad on 24.11.2003 at about 8 p.m. but it was not written. Then he gave an application to Superintendent of Police on 25.11.2003 and by the order of the circle officer, the case was registered on 11.12.2003. The post mortem report shows that the deceased received superficial to deep burn injuries all over the body except the soles and the cause of the death was shock due to anti mortem injuries.

Learned counsel for the applicant has contended that applicant has been wrongly implicated and that Smt. Neetu committed suicide as she was short tempered and wanted to live separately from the other family members of the accused. He also contended that there is delay in lodging of the report, which has not been explained and that even the brother of the deceased was a witness of inquest report and the complainant demanded money from the accused and when it was not given, a report was lodged but the learned A.G.A. has contended that the death of Smt. Neetu took place in unnatural circumstances and the accused did not inform the Police. He also contended that when the complainant reached the Hospital, the accused fled away. This conduct is material. He further contended that the complainant went to lodge the report at Police Station on 24.11.2003 itself but it was not written and then on 25.11.2003 he gave an application to the Superintendent of Police. He further contended that the case diary shows that the circle officer after making preliminary enquiry ordered for registration of the case and if there is any delay in registration of the case, the complainant is not responsible for it.

Learned A.G.A. further contended that the ground as alleged for committing suicide is not sufficient.

Considering the facts and circumstances of the case, but without prejudice to the merits of the case accused is not entitled to bail and the application is liable to be rejected.

Bail application of the accused applicant Yadram is hereby rejected.

Dated: 9.8.2005

RKS/19915/

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

Accused applicant Balveer Singh son of Sri Dev Singh has prayed for release on bail in case Crime No. 1397 of 2005 under Section 498-A, 304 B IPC and Section ¾ D. P. Act, P.S. Sipri Bazar, District Jhansi.

According to prosecution case Smt. Rajni @ Rajjan was married to Sultan Singh younger brother of the applicant in June 1998 and dowry was given but it could not satisfy the accused and demand for Rs. 10,000/- or typing machine was being made; when it could not be given she was ill-treated and harassed and finally she was killed in the night of 13.5.2005. The complainant was informed about the murder of his daughter on 15.5.2005 and he came to village and found that funeral rites of his daughter were being performed and when he went to police Station, his signature was taken on a blank paper and his report was not written but thereafter on the intervention of the Sr. Superintendent of Police, the report was registered on 6.8.2005.

Post mortem report shows that death was caused on account of asphyxia as a result of ante mortem hanging.

Learned counsel for the accused applicant has contended that the accused being jeth has separate living and has also referred to the Ration Card in the name of the applicant, which was prepared in the year 1998, copy of which is annexed as annexure no-3. He has further contended that the marriage of the deceased with the younger brother of the accused applicant had taken place in the year 1995. Sultan Singh has a son born on 10.3.1997.

Considering the facts and circumstances of the case and the fact that the accused had separate living and is Jeth of the deceased, his case is distinguishable from that of husband of the deceased, and the accused is entitled to bail.

Let the accused applicant involved in above case Crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.

Dated: 9.11.2005

RKS/19645/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

The accused Ajay Pal son of Ram Bharosey has prayed for release on bail in Case Crime No. 249 of 2003 under Sections 498 A, 304 B IPC and ¾ D. P. Act, P.S. Rosa, District Shahjahanpur.

Accused applicant is the husband of Smt. Malti Devi. According to the complainant Ram Singh his daughter was married to the accused about 6-1/2 years prior to the incident and dowry was given but it could not satisfy the accused person and they demanded Golden Chain and she Buffalo and when it could not be given she was beaten and ultimately killed in the night of 16/17-12-03. The F.I.R. shows that elder brother of the accused applicant came to the house of the complainant in morning and informed about the death of his daughter. The F.I.R. was lodged same day. The post mortem report shows the cause of death as asphyxia on account of hanging.

Learned counsel for the applicant has contended that the marriage had taken place more than 10 years back and the eldest son of the applicant was born in 1996 as per kutumb register paper annexure-4.

Learned counsel for the applicant further contended that Smt. Malti Devi committed suicide by hanging herself on account of matrimonial acrimony.

In the facts and circumstances of the case, accused is entitled to bail.

Let the accused named above be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned.

Dated: 24.8.2005

RKS/18420/04

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble. M. K. Mittal, J.

Heard learned counsel for the accused applicant, learned A.G.A. and perused the record.

Accused applicant Santosh son of Bhagwan Das has prayed for release on bail in Case Crime NO. 145 of 2005 under Section 304-B, IPC and 3/4 D.P.Act, P.S. Dibai, District Bulandshahar.

Prosecution case is that Smt. Vijay Kumari (Vidyawati) was married with the accused on 24.4.2002 according to Hindu Rites. Dowry was given but it could not satisfy the accused and demand for motorcycle was also made when it could not be given Smt. Vijay Kumari was done to death by the accused persons. Record shows that Kunwar Pal Singh informed the police about the death of Smt. Vijay Kumari. Inquest was prepared on 11.5.2005. Post mortem report shows that death was caused on account of asphyxia as a result of hanging. There was a ligature mark around the neck with gap of 5 c.m. on the back side.

Learned counsel for the accused applicant has contended that the accused has been wrongly implicated in this case and that Smt. Vijay Kumari committed suicide out of frustration. He has further contended that Kunwar Pal, who informed the police about the death of Vijay Kumari, is the real uncle of the accused applicant. In this matter, information was also sent to the complainant who lodged the report after three days of the alleged incident.

Considering the facts and circumstances of the case, accused is entitled to bail.

Let the accused involved in above crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.

The applicant shall furnish an undertaking also before the C.J.M. concerned that he will not indulge in any criminal activity and will not cause either any threat or any physical violence to the complainant and the witnesses and their family members. If any such report is made by any of the above person either to the Court or the police, it shall be properly inquired into and if any substance therein is found, it shall be open for the court below to report to this Court so that his bail may be cancelled.

Dated: 8.11.2005

RKS/18147/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

Counter affidavit filed by learned A.G.A. be taken on record.

Accused applicant Pradeep Kumar has prayed for release on bail in case Crime No. 50 of 2004 under Sections 498 A, 304 B, 201 IPC and ¾ D.P.Act, P.S. Gaurabadshahpur, District Jaunpur.

Prosecution case is that Smt. Anar Kali was married with the accused on 12.6.1998 and dowry was given but the accused and his family members demanded motorcycle. When it could not have been given, she was ill-treated and harassed by her family members. Ultimately she was killed in the night of 13/14-3-2004. F.I. R. shows that information was given to the complainant about some dispute but before the complainant could come to the matrimonial house of Smt. Anar Kali, the dead body was thrown in the river. The police recovered the dead body on 15.3.2004 thereafter post-mortem was conducted on 16.3.2004 and after performing the funeral rites, complainant lodged the report on 17.3.2004.

Learned counsel for the applicant has contended that the applicant has been wrongly implicated and that Smt. Anar Kali committed suicide but learned A.G.A. has contended that according to post-mortem report she died due to asphyxia as a result of ante mortem throttling. The conduct of the accused in not waiting for the complainant even after informing him and throwing the body in to the river is also material.

In the circumstances of the case, accused is not entitled to bail and application is liable to be rejected.

Bail application of the accused Pradeep Kumar is hereby rejected.

Learned Trial Court is directed to expedite the hearing of the case and proceed under Section 309 Cr.P.C. It is expected that the accused shall cooperate in his speedy trial. Learned Trial Court shall make every effort to conclude the trial within a period of three months from the date of receipt of this order. In case the Trial is not concluded within the prescribed time then the concerned Court shall submit a report explaining the reasons for delay.

Dated: 10.8.2005

RKS/15985/

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

Accused applicant Manoj Kumar Bajpayee son of late Ram Krishna Bajpayee has prayed for release on bail in case crime no. 308 of 2003 under Sections 304 B IPC and Section ¾ D.P.Act, P.S. Kotwali, District Shahjahanpur.

According to prosecution case, Smt. Madhu daughter of the complainant was married with the accused about five years prior to the incident. Rs. 50,000/- and Golden Chain were being demanded as dowry and the complainant could not fulfil these demand and Smt. Madhu was given poison by the accused and his family members on 19.10.2003. It has also been mentioned in the F.I.R. that the complainant was informed by unknown person that the accused had given poison to his daughter and she was admitted in Dr. Dinesh Nursing Home. When the complainant came to Nursing home his daughter told that th accused and his family members had forcibly given her poison.

Post mortem report shows that no anti mortem injury was found on the body and as the cause of death could not be ascertained viscera was preserved.

Learned counsel for the accused applicant has contended that the accused has been falsely implicated and that smt. Madhu committed suicide as the father of the deceased i.e. Complainant had taken Jewellery of the deceased and in that connection a report was also lodged against the complainant.

Learned counsel for the applicant has contended that complainant was present at the time of inquest report and no objection was raised at that time and that report has been lodged after five days with false allegations.

In these circumstances, but without prejudice to the merits of the case, accused is entitled to bail.

Let the accused named above involved in above case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.

Dated: 20.9.2005

RKS/12664/04

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard S/sri S. N. Singh, A. K. Shukla and S. K. Tyagi, learned counsel for the applicant, learned A.G.A. and perused the record.

Accused applicant Dharmendra son of Kisan Chand Alias Krishna Chand has prayed for release on bail in case Crime No. 100 of 2004 under Sections 498 A, 304 B IPC and Section ¾ D.P. Act, P.S. Loni, District Ghaziabad.

Prosecution case is that Smt. Anita daughter of the complainant Rajpal was married to the accused on18.2.2003 according to Hindu rites and dowry was given but it could not satisfy the accused and further demand was being made and when it could not be fulfilled she was hanged and killed.

Post mortem report shows that deceased had ligature mark around the neck and death was caused due to asphyxia as a result of hanging.

Learned counsel for the accused applicant has contended that applicant has been wrongly implicated in this case and that Smt. Anita committed suicide as this marriage was not according to her wish rather it was against her wish. He has also contended that at the alleged time of the incident accused was on duty and he was not present

In the circumstances of the case, but without prejudice to the merits of the case, accused is entitled to bail.

Let the accused named above involved in above case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.

The applicant shall furnish an undertaking also before the C.J.M. concerned that he will not indulge in any criminal activity and will not cause either any threat or any physical violence to the complainant and the witnesses and their family members. If any such report is made by any of the above person either to the Court or the police, it shall be properly inquired into and if any substance therein is found, it shall be open for the court below to report to this Court so that his bail may be cancelled.

Dated: 21.9.2005

RKS/11665/04

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble M. K. Mittal, J.

Heard learned counsel for the parties and perused the record.

Accused Babloo son of late Baij Nath has prayed for release on bail in Case Crime No. 80 of 2004 under Sections 498 A, 304 B IPC and Section ¾ D. P. Act, P.S. Manjhanpur, District Kaushambi.

Prosecution case as disclosed in the F.I.R. is that the deceased Smt. Nilu daughter of the complainant Smt. Shyamkali was married with the accused on 8.5.2004 according to Hindu rites and dowry was also given by her according to her capacity. Deceased had told her mother that the accused had illicit relation with some other lady and that she had objected the same and she further told her mother that the accused had been demanding Rs. 50,000/- and splender motorcycle. When these items were not given she was ultimately killed in the night of 9/10-7-2004 i.e. After about three months of the marriage.

Post mortem report shows that Smt. Nilu had abraded contusions on her neck and the cause of death has been noted as asphyxia as a result of strangulation.

Learned counsel for the accused applicant has contended that the deceased committed suicide as she had affairs with other boy and her marriage was against her wishes and when she could not succeed she committed suicide.

Learned A.G. A. has contended that the accused has committed murder of his wife and he himself had illicit relation with other lady as mentioned in the F.I.R.. He further contended that the post mortem report shows that Smt Nilu was strangulated by the accused.

In the circumstances, accused is not entitled to bail and his bail application is liable to be rejected.

Bail application of the accused is hereby rejected. However, Learned Trial Court is directed to expedite the hearing of the case and proceed under Section 309 Cr.P.C. It is expected that the accused shall cooperate in the speedy trial. Learned Trial Court shall make every effort to conclude the trial within a period of four months from the date of receipt of this order. In case the Trial is not concluded within the prescribed time then the concerned Court shall submit a report explaining the reasons for delay.

Copy of this order be sent to learned Trial Court within a week.

Dated: 30.8.2005

RKS/1044/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
A.F.R.
Court No. 54

Criminal Misc. Application No. 13323 of 2005
Ganga Ram and another Vs. State of U.P. and another.

Hon. Mrs. Poonam Srivastava, J.
Heard Sri V.K. Tripathi, learned counsel for the applicants and learned A.G.A for the State.
This application has been filed for quashing the order dated 1.5.2002 passed by Additional Chief Judicial Magistrate 4th, Mathura in case No. 116 of 1998, under Sections 304-B, 201 I.P.C. Police Station Math, District Mathura.
The facts giving rise to the dispute is that a first information report was registered at case crime No. 116 of 1998, under Sections 304-B, 201 I.P.C. Police Station Math, Sub District Math, District Mathura against the husband and other family members. On the basis of investigation, the Investigating Officer submitted a final report on 1.10.1998 which has been annexed as Annexure-5 to the affidavit. Notice was issued to the complainant-opposite party no.2 He filed protest petition and affidavits. The Magistrate by means of the impugned order rejected the final report and summoned the accused in exercise of under Section 190(1) (b) Cr.P.C. The submission on behalf of the applicants is that the deceased died on account of her illness and it is not a case of dowry death and, therefore, the Investigating Officer rightly submitted final report. In support of the contention, a decision of this Court, Gajendra Kumar Agarwal Vs. State of U.P., 1994 U.P. Criminal Rulings, 308 has been placed before me. Emphasis is that once a final report was submitted and in the event, the Magistrate is not in agreement, he should also give an opportunity of hearing to the accused and it is not only the complainant, who should be heard. I have gone through the said decision. In the said case, the protest petition was filed against the final report and the Court was of the view that the accused should also be given an opportunity of hearing.
Another case cited by the counsel for the applicants is, Pappu alias Subodh Kumar Vs. State of U.P., 2004 U.P. Criminal Rulings, 249. In the said case, the Magistrate has taken cognizance after considering the affidavits of two witnesses and it was held that the cognizance was taken not under Section 190(1)(b) Cr.P.C. but it was on the basis of protest petition, therefore, the Magistrate has followed the procedure of a complaint case. Another decision relied upon by the counsel for the applicants is, Smt. Mithilesh Kumari Vs. State of U.P., 1996 (33) A.C.C., 214. In this case it was held that if the Magistrate takes cognizance on the report submitted by police and statement of witnesses examined by police, it will be a case where the cognizance is taken under Section 190(1) (b) Cr.P.C. but in the event, he decided to proceed under Section 200 Cr.P.C. after taking evidence then it will be a case of cognizance under Section 190(1) (a) Cr.P.C.
In the instant case the Magistrate has passed an order without recording any statement under Sections 200 and 202 Cr.P.C. In the case of Pakhandu Vs. State of U.P., 2001 U.P. Criminal Rulings, 604, a Division Bench of this Court had gone into detail regarding the circumstances when the Magistrate takes cognizance whether it is under Section 190(1)(b) or 190(1)(a). In paragraph 14, 15 and 16 of the said decision reliance was placed on a case decided by the Apex Court. Paragraphs 14, 15 and 16 of the said decision are quoted below:-

"14. In the case of Tularam v. Kishan Singh, AIR 1977 SC 2401, it was held that if the police, after making an investigation, sent a report that no case was made out against the accused, the Magistrate could ignore the conclusion drawn by the police and take cognizance of the case under Section 190(1)(b) on the basis of material collected during investigation and issue process or in the alternative he could take cognizance of the original complaint and examine the complainant and his witnesses and thereafter issue process to the accused, if he was of opinion that the case should be proceeded with.

15. From the aforesaid decisions, it is thus clear that where the magistrate receives final report the following four courses are open to him and he may adopt any one of them as the facts and circumstances of the case may require:-
(I) He may agreeing with the conclusions arrived at by the police, accept the report and drop the proceedings. But before so doing, he shall give an opportunity of hearing to the complainant; or
(II) He may take cognizance under Section 190(1)(b) and issue process straightway to the accused without being bound by the conclusions of the investigating agency, where he is satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed; or

(III) He may order further investigation, if he is satisfied that the investigation was made in a perfunctory manner; or
(IV) He may, without issuing process or dropping the proceedings decide to take cognizance under Section 190(1)(a) upon the original complaint or protest petition treating the same as complaint and proceed to act under Sections 200 and 202 Cr.P.C. and thereafter decide whether complaint should be dismissed or process should be issued.

16. Where the Magistrate decides to take cognizance of the case under Section 190(1)(b) of the Code ignoring the conclusions arrived at by the investigating agency and applying his mind independently to the facts emerging from the investigation records, in such a situation the Magistrate is not bound to follow the procedure laid down in Sections 200 and 202 of the Code, and consequently the proviso to section 202(2) Cr.P.C. will have no application. It would however be relevant to mention that for forming such an independent opinion the Magistrate can act only upon the statements of witnesses recorded by the police in the case diary and other material collected during investigation. It is not permissible for him at that stage to make use of any material other than investigation records, unless he decides to take cognizance under Section 190(1)(a) of the Code and calls upon the complainant to examine himself and the witnesses present, if any, under Section 200."

In the instant case, no doubt the protest petition was filed as well as the affidavits have been mentioned in the impugned order but the Magistrate did not follow the procedure of the complaint case and proceeded to record the evidence and has taken cognizance. It is absolutely clear that the Magistrate has taken cognizance under Section 190(1)(b) and not under Section 190(1)(a) Cr.P.C. Merely mentioning the recital of the affidavits in the order is not sufficient to come to a conclusion that the Magistrate has taken cognizance under Section 190(1)(a) Cr.P.C. In that event, the Magistrate would have proceeded to record statement of the complainant and other witnesses. Since nothing was done but the Magistrate has summoned the accused after taking cognizance, it is absolutely clear that this is a case, where the cognizance has taken under Section 190(1)(b). This has also been held in a decision by the Apex Court in the case of M/s India Carat Pvt. Ltd. Vs. State, 1989 Allahabad Criminal Rulings, 178. Paragraph 14 of the said judgment is quoted below:-
"Since in the present case the Second Additional Chief Metropolitan Magistrate has taken cognizance of offences alleged to have been committed by the second respondent and ordered issue of process without first examining the appellant and his witnesses, the question for consideration would be whether the Magistrate is entitled under the Code to have acted in that manner. The question need not detain us for long because the power of a Magistrate to take cognizance of an offence under Section 190(1)(b) of the Code even when the police report was to the effect that the investigation has not made out any offence against an accused has already been examined and set out by this Court in Abhinandan Jha v. Dinesh Mishra, 1967 (3) SCR 668 and H.S. Bains v. State 1980 A Cr R 423= 1981 (1) SCR 935. In Abhinandan Jha v. Dinesh Mishra (supra) the question arose whether a Magistrate to whom a report under Section 173(2) had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge sheet, on his disagreeing with the report submitted by the Police. This court held that the Magistrate had no jurisdiction to direct the police to submit a charge sheet but it was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect under Section 156(3) and if ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance of the offence, notwithstanding the contrary opinion of the police expressed in the report. While expressing the opinion that the Magistrate could take cognizance of the offence notwithstanding the contrary opinion of the police, the Court observed that the Magistrate could take cognizance under Section ''190(1)(c)'. The reference to Section 190(1(c) was a mistake for Section 190(1)(b) and this has been pointed out in H.S. Bains (supra)."

Looking to the facts and circumstances of the case, I am not in agreement with the submissions made by the counsel for the applicants. Since the protest petition was filed and the affidavits were also on record, which also finds mention in the order, the Magistrate has taken cognizance under Section 190(1)(a). The case diary was before the Magistrate and he has formed his opinion independently. The material before the Magistrate was sufficient to summon the accused. It is a case, where the cognizance has been taken by the Magistrate after he was satisfied that prima facie case is made out and summoned the accused under Section 190(1) (b) Cr.P.C. The application lacks merit and is accordingly rejected.
Dt/-19.9.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No.46

Criminal Misc. Application No. 16131 of 2005
Brahm Pal Vs. State of U.P. and others

Hon•??ble Mukteshwar Prasad J.

Heard learned counsel for the applicant, learned A.G.A. and perused the impugned order-dated 14.7.2005 whereby learned Chief Judicial Magistrate rejected the application of the applicant under Section 156 (3) Cr.P.C.
It is submitted that the applicant•??s daughter (Smt. Shobha) was married to opposite party no. 2 (Ravindra) in the year 2003. The husband and other relatives of the lady were not satisfied with the dowry given to her in the marriage and they were pressing for one Maruti car and rupees two lacs cash. Since the parents of the lady could not fulfill the demand, the husband and other members of the family were annoyed and they allegedly committed murder of the applicant•??s daughter.
It is also urged that the applicant made all possible efforts to lodge an F.I.R. at the local Police Station and sent an application also to S.S.P., Meerut by registered post but all in vain.
Ultimately, an application under Section 156 (3) Cr.P.C. was moved by the applicant in the court of Chief Judicial Magistrate which was rejected.
On perusal of the impugned order, I find that the learned Chief Judicial Magistrate called a report from police outpost Lowain, P.S. Inchauli. The local police sent a report that opposite party no.2 alongwith his wife (Smt. Shobha) were going together on a motorcycle and on account of sudden appearance of a Neel Gai on the road, they met with an accident in which Smt. Shobha died on the spot. I find that the learned Magistrate exceeded his jurisdiction by evaluating the report submitted by the police. It is well settled that the Magistrate is not required to call for a report from the Police Station before passing any order on the application under Section 156 (3) Cr.P.C. At the most, he may obtain a report whether any case has been registered at the Police Station or not. In this view of the matter, I find that this petition has force and it has to be allowed.
The application is allowed. The impugned order-dated 14.7.2005 is set aside. Learned Chief Judicial Magistrate, Meerut is hereby directed to consider the application of the applicant under Section 156 (3) Cr.P.C. afresh and will pass appropriate orders in accordance with law. This exercise will be done by the learned Chief Judicial Magistrate within a period of six weeks from the date of communication of this order.

11.11.2005
OP/16131/05

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

Hon'ble Umeshwar Pandey, J.

Heard learned counsel for the petitioners.

In this petition, the order dated 4.10.2005 has been challenged whereby the court below has directed investigation in a case of cognizable offence under the provisions of Section 156 (3) Cr.P.C.

From a perusal of the petition under Section 156 (3) Cr.P.C. as annexure-4, it is evident that the allegations made therein discloses commission of cognizable offence by the petitioners and as such, the court below has directed investigation in this case under Sections 498A, 304B, 201 I.P.C. and ¾ Dowry Prohibition Act. The order does not appear to have any flaw or error warranting any interference against the same.

Learned counsel submits that the petitioners are innocent ladies and other persons and the deceased had committed suicide. It is not a case under Section 304 B I.P.C.

The aforesaid argument does not appear to have any strength even the lady commits suicide the offence under Section 304 B I.P.C. can be made.

This petition having nor force is hereby dismissed.

28.10.2005

gp/16145

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 4539 Of 2005.
Mukh Lal Vs. State of U.P. and others.
Hon. Mrs. Poonam Srivastava, J.

Heard learned counsel for the applicant and learned A.G.A. for the State.
The inherent powers under Section 482 Cr.P.C. has been invoked at the instance of the applicant who is complainant in case Crime No. 343 of 2003, under Sections 498-A, 376, 511, 504, 506 I.P.C. and 3/4 Dowry Prohibition Act, 1961, State Vs. Om Prakash and others. It has been submitted on behalf of the applicant that after the F.I.R. was lodged, investigation was conducted and charge sheet was also submitted on 6.6.2003. A copy of the charge sheet has been annexed as Annexure-2 to the affidavit. After submission of the charge sheet, the A.C. J.M. took cognizance on 15.7.2003 summoning the accused persons and the next date fixed for appearance was 17.8.2003. The summoning order was challenged by filing Criminal Revision No. 260 of 2003, which was dismissed on 19.3.2004. A copy of the order dismissing the revision on 19.3.2004 has been annexed as Annexure-3 to the affidavit. The order dated 19.3.2004 has also been quoted in paragraph 7 of the affidavit that while dismissing the revision, the parties were directed to appear before the concerned court on 23.4.2004. Thereafter entire record of the case disappeared. An application was filed by the complainant/applicant before the District and Sessions Judge, Kushi Nagar for preparation of fresh Patrawali and to proceed with the matter. Subsequently another application was moved on 25.1.2005 before the A.C.J.M. Kasia Kushi Nagar making same request. A copy of the application dated 25.1.2005 has been annexed as Annexure-4 to the affidavit. Thereafter the applicant made request by means of an application dated 3.3.2005 before the District and Sessions Judge, Kushi Nagar, which has been annexed as Annexure-5 to the affidavit. It appears that all the efforts and repeated request on behalf of the complainant/applicant has failed to yield any result. It is very surprising to note that the District Judge Kushi Nagar has adopted such a lackadaisical attitude which can not be appreciated by this Court.
For the reasons, I direct the District and Sessions Judge, Kushi Nagar to ensure that the file is reconstructed within a period of thirty days from the date, a certified copy of this order is produced before him.
List this application on 5.7.2005 for further orders before this Court along with report of the District and Sessions Judge, Kushi Nagar and A.C.J.M. Kasiya, Kushi Nagar.
Dt/-3.5.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 4065 Of 2005.
Dharmendra Singh and others Vs. State of U.P. and another.
Hon. Mrs. Poonam Srivastava, J.

Heard learned counsel for the applicants and learned A.G.A. for the State.
This application has been filed for quashing the summoning order dated 2.4.2005 under Section 406 I.P.C. and 3/4 Dowry Prohibition Act passed by the Judicial Magistrate, Chhibramau, District Kannauj on the basis of complaint case No. 79/11/2004, State Vs. Nekram, pending before the Judicial Magistrate Chhibramau, District Kannauj.
I have gone through the record and I do not find any merit in this case to quash the proceedings at this stage in exercise of inherent powers under Section 482 Cr.P.C.
The Apex Court had held in various decisions in the cases of R. P. Kapoor Vs. State of Punjab, A.I.R. 1960, S.C., 866, State of Haryana and others Vs. Chaudhary Bhajan Lal, 1991 (28) A.C.C., 111 (S.C.), Union of India Vs. Prakash P. Hinduja and another, 2003 (47) A.C.C. 433, where the legal position has clearly been settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie established the offence and only when the court is of the opinion that chances of ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the proceedings could be quashed. In the case of S.W. Palanitkar and others Vs. State of Bihar and another, 2002 (44) A.C.C. 168 it has been ruled that quashing of the criminal proceeding is an exception than a rule. Therefore exercise of power should be consistent with the scope and ambit of Section 482 Cr.P.C. and should be limited to very extreme cases and must be treated as rarest of the rare so as not to scuttle the prosecution. On bare reading of the decisions of the Apex Court, I am of the view that the instant case is not one of the rarest of the rare case in which the proceedings or charge sheet can be quashed.
However, the applicants are permitted to approach the court at the appropriate stage for claiming discharge through their counsel and in the event such an application is moved before the court concerned, the same shall be considered and decided by a well reasoned order in accordance with law after affording an opportunity of hearing to the parties.
With the aforesaid observations, this application is finally disposed of.
Dt/-26.4.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 14193 of 2005
Sanju and others Vs. State of U. P. and others.

Hon. Mrs. Poonam Srivastava, J.
Heard learned counsel for the applicant and learned A.G.A for the State.
This application has been filed for quashing the proceedings in case no. 1817 of 2004, under Sections 498-A, 323, 504 I.P.C., pending in the court of Special Chief Judicial Magistrate, Agra.
The grievance of the applicants is that an application under Section 156(3) Cr.P.C. moved on behalf of opposite party no. 4 has been treated as a complaint. The Chief Judicial Magistrate, Agra recorded the statements of the complainant and witnesses under Sections 200 and 202 Cr.P.C., which cannot be done. The proceedings of complaint case could not be adopted. The second argument on behalf of the applicants is that the Chief Judicial Magistrate did not bather to comply the provisions of Section 210 Cr.P.C. and issued process on 2.6.2004 summoning the applicants under Sections 498-A, 323, 504 I.P.C. The third objection raised by the counsel for the applicants is that the courts at Agra has no jurisdiction to try the case and in view of Section 177 Cr.P.C. the proceedings could not continue in district Agra.
I have given careful consideration to the arguments advanced by counsel for the applicants. The first objection regarding an application under Section 156(3) Cr.P.C. could not be treated as a complaint, is not acceptable. The Apex Court in the case of Joseph Mathuri Vs. Sachchidanand Hari Sakshi, 2001 (Suppl.) A.C.C., 957, held that the view of the High Court is totally erroneous and an application under Section 156(3) Cr.P.C. can always be treated as complaint and the Magistrate can proceed after recording statement under Sections 200 and 202 Cr.P.C. In the case of Suresh Chand Jain Vs. State of U.P., 2001 (42) A.C.C. 459 , similar view was expressed, which has been followed by this Court in the case of Gulab Chand Upadhyay Vs. State of U.P., 2002 (44) A.C.C., 670 where it has been ruled that in the event, the Magistrate is of the view that the allegation in the application under Section 156(3) Cr.P.C. is complete and it does not require any investigation by the police and complainant is in possession of complete details of the accused as well as the witnesses and neither recovery is needed nor any material evidence is required to be collected, the Magistrate is fully competent to adopt the procedure of a complaint case under Chapter XV Cr.P.C. The next argument advanced by the counsel is in respect of compliance of Section 210 Cr.P.C., which provides procedure to be followed when there is a complaint case and police investigation in respect of the same offence. In the instant case, admittedly, no investigation is continuing by the police. The submission is that a complaint was given to Superintendent of Police, Firozabad on 5.12.2003 but the counsel could not state that whether any investigation is continuing or not on the basis of the said complaint. No case crime number has also been mentioned in the complaint. Besides, in the event, investigation is continue, then it is necessary that this fact should be brought to the notice of the Magistrate during inquiry or trial held by him. Since the Magistrate, at no point of time, was apprised of any investigation whatsoever continuing in respect of the same offence, Section 210 Cr.P.C. will not bar the proceedings in the complaint case. The last objection regarding jurisdiction of the courts at Agra is concerned, that is to be seen during the trial as it is for the prosecution to establish that the offence alleged was committed within the jurisdiction of Agra courts or not. At this juncture, it is not possible to examine the offence of demand of dowry and cruelty to the victim. In the circumstances, the objections raised by the applicants has no substance and application is accordingly rejected.
However, since the complaint case is continuing and husband, father-in-law and mother-in-law are facing the proceedings, I permit the applicant nos. 2 and 3 to appear through counsel and claim discharge at the appropriate stage, which shall be decided by the court below in accordance with law after giving an opportunity to the applicants. The applicants shall not be compelled to appear personally till the application for discharge is decided by the court below. No coercive measure shall be taken against the applicants, till the application for discharge is decided.
The applicant no. 1 is husband and in the event, he appears before the court concerned within three weeks from today and moves bail application in case No. 1817 of 2004, under Sections 498-A, 323, 504 I.P.C., the same shall be considered and disposed of by the court below in accordance with law expeditiously, if possible on the same day.
Dt/-29.9.2005.
Rmk.

**HIGH COURT OF JUDICATURE OF ALLAHABAD**
Court No. 54

Criminal Misc. Application No. 13760 of 2005
Smt. Zahrun Nisa Vs. State of U.P. and another.

Hon. Mrs. Poonam Srivastava, J.
Heard Sri N.I. Jafri, learned counsel for the applicant and learned A.G.A for the State.
This application has been filed for quashing the charge sheet and the entire proceedings in case No. 9239 of 1989, State Vs. Zahrun Nisa, arising out of case crime No. 154 of 1989, under Sections 498-A, 304-B I.P.C., pending in the court of learned Chief Metropolitan Magistrate, Kanpur Nagar.
The marriage of the deceased Nasiran was performed with Saghir Ahmad in the month of May, 1989 and allegation in the first information report is that after the marriage, she was subjected to cruelty for bringing insufficient dowry. On 12.8.1989 the deceased died of burn injury and a first information report was registered at the instance of opposite party no. 2 Gulab Khan on 12.8.1989 at Police Station Bekanganj, District Kanpur Nagar. S.T. No. 546 of 1989 proceeded in the court of 5th Additional District and Sessions Judge, Kanpur Nagar, State Vs. Saghir Ahmad and others. The trial proceeded against the husband and mother-in-law and vide judgment dated 24/25.5.1990, both the accused i.e. husband and mother-in-law were acquitted as the prosecution was not able to prove its case beyond doubt. A copy of the judgment dated 24/25.5.1990 is annexed as Annexure 5 to the affidavit. This application is on behalf of sister-in-law Smt. Zahrun Nisa, against whom charge sheet was filed subsequently. A certified copy of the charge sheet is annexed as Annexure-1, a perusal of the same reveals that Saghir Ahmad and mother-in-law Smt. Rahman were challaned on 9.9.1989, whereas the present applicant has been challaned by means of the present charge sheet. On the basis of charge sheet, the proceeding in case No. 9239 of 1989, State Vs. Jaharun Nisa is continuing.
The ground for quashing the charge sheet is that since the main accused i.e. husband and mother-in-law have already been acquitted after evaluating the entire evidence, principle of stare decisive will apply and the proceedings should be quashed. This argument is based on a decision of this Court in the case of Manoj Vs. State of U.P., 2004 (49) ACC, 302. This Court has ruled that since two accused have already been acquitted and the same evidence is to be adjudicated for the second time, it will only amount to wastage of time. Admittedly, no conviction can be procured and there is no prospect of the case ending in conviction against the present applicant, it will only be a hallow formality of completing the procedure of the trial and it is almost certain that the trial will meet the same fate and entire exercise will be rendered futile. In such circumstances, the proceedings can be quashed in exercise of inherent powers applying the principle of the said case. I am in agreement with the argument of the counsel for the applicant.
Another decision relied upon by the counsel is, Smt. Begam and others Vs. State of U.P. and another, 2005 Current Bail Cases, 546. In this case, this Court had held that since the case arises out of the same first information report and the allegations are identical in respect of which an order of acquittal has already been passed, it was held that the proceedings, if allowed to continue, will amount to an abuse of the process of the court.
Looking to the facts and circumstances of the case and after perusing the judgment dated 24/25.5.1990 in Sessions Trial No. 546 of 1989, I am convinced that the proceedings on the basis of the impugned charge sheet should be quashed applying the principle of ''stare decisive'.
In the circumstances, this application is allowed and the charge sheet in case No. 9239 of 1989, State Vs. Zahrun Nisa, arising out of case crime No. 154 of 1989, under Sections 498-A, 304-B I.P.C., Police Station Bekanganj, District Kanpur Nagar, pending in the court of Chief Metropolitan Magistrate, Kanpur Nagar is quashed.
Dt/- .9.2005.