

Prakash Chander Vs. the State

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Court : Delhi

Decided On : Dec-14-1993

Reported in : 1995CriLJ368; 53(1994)DLT113; ILR1994Delhi303

Judge : R.L. Gupta and; Y.K Sabharwal, JJ.

Acts : Indian Penal Code, 1860 - Sections 34, 114, 201, 302, 304, 304A, 304B, 323, 326, 392, 406, 407, 411, 498 and 498A; [Code of Criminal Procedure \(CrPC\)](#) , [1973](#) - Sections 236, 237, 238, 313, 366, 368 and 423(1); [Evidence Act, 1872](#) - Sections 113B

Appeal No. : Criminal Appeal No. 1 of 1993 and 228 of 1992 and Murder Ref. 2 of 1992

Appellant : Prakash Chander

Respondent : The State

Advocate for Def. : Ms. Mukta Gupta, Adv.

Advocate for Pet/Ap. : K.K. Sud and; Rakesh Sherawat, Advs

Judgement :

Y.K. Sabharwal, J.

1. Prakash Chander, his parents Smt. Lila Wati and Pyare Lal, his sister Usha and brother Parveen Kumar alias Pappu were all charged for offence under section 302 read with Section 34 IPC for intentionally or knowingly in furtherance of their common intention causing the death of Smt. Swaran Kanta at 2.35 PM on 9th August, 1987. In the alternative they were charged for an offence of dowry death punishable under Section 304B, IPC.

2. The learned Additional Sessions Judge has acquitted Pyare Lal, Usha and Parveen Kumar, Leela Wanti has also been acquitted of offence under section 302/34 IPC. Prakash Chander has, however, been found guilty of offence of murder of his wife Swaran Kanta and has been convicted for offence under section 302 IPC modifying the charge from Section 302/34 IPC to Section 302 IPC and has been sentenced to death. The alternate charge under Section 304B, IPC against Leela Wati has been modified and she has been convicted for offence under section 498A IPC and sentenced to rigorous imprisonment for two years and a fine of Rs. 2,000/- and in case of default in payment of fine she has been ordered to undergo further rigorous imprisonment for six months. Regarding Prakash Chander the learned Additional Sessions Judge has held that the alternate charge does not survive and it has been cancelled.

3. Prakash Chander and Leela Wati have appealed to this court. There is also a Murder Reference. This judgment will dispose of both the appeals and the murder reference.

4. The case of the prosecution briefly is that Prakash Chander and Swaran Kanta were married on 28th November, 1986. The burning incident took place on 9th August, 1987 at midnight at the house of Prakash Chander at 42/14, Ashok Nagar, Delhi. A report was lodged by Pyare Lal, father-in-law of Swaran Kanta at 2.35 a.m. on 9th August, 1987 with Police Station Tilak Nagar, New Delhi, inter-alia, stating that at about 2 O'clock they heard a noise and got up and saw that Kanta was lying in the Verandah in the burnt condition. This information was recorded as D.D. No. 4A and was entrusted to Sub Inspector A. L. Ghai, who along with Constable Rohtas Singh reached the spot. The SHO also reached there. The parents of the deceased also reached there Sh. Ashutosh Kumar, the Sub

Divisional Magistrate of Punjabi Bagh was also called and Sohan Lal, father of the deceased lodged a report with the S.D.M. that after marriage her daughter was being harassed in connection with dowry demand. Sohan Lal, inter alia, stated in his statement that he fully suspects that his daughter had been burnt to death by her husband Prakash Chander, mother-in-law Leela Wati, younger brother Pappu, younger sister-in-law (husband's sister) Usha etc. He also stated that at about 2 or 2.15 AM Surinder Kumar, brother-in-law (sister's husband of Prakash Chand) came and informed them about the burning of Swaran Kanta and on that they reached the spot. The S.D.M. as well as SI A. L. Ghai made their endorsement on that statement of Sohan Lal and got a case registered under section 498 and 304B, IPC. The inquest proceedings were conducted by the S.D.M. The body was then sent for post mortem to All India Institute of Medical Sciences. From the spot one plastic can containing kerosene oil, one match box, burnt pieces of shirt and salwar and broken pieces of flower pot were seized. The post mortem doctor found 95% burns on the body surface and opined that the cause of death was shock as a result of superficial and deep ante mortem burns produced by flames. Dr. Gurinder Singh Ahuja was called at about 1.30 AM and the doctor after examining Swaran Kanta declared her dead. The place of occurrence was also got photographed. The investigation was subsequently entrusted to SI R. S. Dahiya. Later the case was converted under section 302 IPC and after completing the investigation the accused persons were challaned and committed and were charged as aforesaid.

5. Besides the formal witnesses the prosecution has examined father of the deceased Sohan Lal (PA-1), mother Smt. Ram Piari (PW-2), and younger sister usha (PW-5), Jaspal Singh (PW-3) and Arjun Dass (PW-4) are the neighbours of the parents of the deceased. Gulshan Kumar (PW-6) is the husband of the deceased's sister. Constable Rohtas Singh who had accompanied SI A. L. Ghai and had reached the house where the occurrence had taken place at 2.45 AM and had taken the dead body along with Constable Puran Singh to All India Institute of Medical Sciences for getting the post mortem conducted was examined as PW. 11. The first Investigating Officer SI A. L. Ghai was examined as PW-21. Inspector R. S. Dahiya to whom the investigation was later entrusted was examined as PW. 18.

6. PW. 18 Inspector Dahiya on 26th October, 1987 as per Ex. PW 18/D made further enquiries from Dr. G. K. Chobbey of A.I.I.M.S. to elicit information whether there were any injuries suggestive of strangulation and also enquiring as to the position in which the body could be at the time of burning. The further opinion given by Dr. Chobbey on 27th October, 1987 is Ex. PW 20/B. Dr. Chobbey as per Exhibit PW 20/B dated 27th October, 1987 opined that there are no injuries suggestive of strangulation. However, one ante mortem injury in scalp (extra vasation of blood) could be produced by application of blunt force. Dr. Chobbey wrote that he could not opine the position of the body while burning. It seems that after Dr. Chobbey gave opinion Ex. PW 20/B, the case was converted under section 302 IPC on 29th October, 1987. Dr. G. K. Chobbey was examined as PW. 20. Sh. Ashutosh Kumar, S.D.M. who had conducted the inquest proceedings and recorded the statement of some of the witnesses and prepared the death report was examined by prosecution as PW-19. Dr. Gurinder Singh Ahuja, who seems to be residing in the same locality and was called by Surinder Singh, brother-in-law of accused Prakash Chander at about 1.30 AM was examined as PW-12.

7. In defense to neighbours of the accused being DW-1 Amarjit Singh and DW-2 Raj Kumar were examined.

8. On aspect of offence of murder the main challenge of accused Prakash Chander is to the testimony of PW-20 Dr. G. K. Chobbey the judgment of conviction for the offence of murder is mainly based on the testimony of Dr. Chobbey. The testimony of Dr. Chobbey, therefore, requires a thorough and close scrutiny.

9. The learned Additional Sessions Judge believing the testimony of Dr. Chobbey has come to the conclusion that blunt force had been used on the head of the deceased before she was burnt. According to learned Judge it is not a case of suicide but a case of murder and that the deceased had been firstly assaulted and then brutally set on fire. The learned Judge has also placed reliance on other material on record to corroborate the medical opinion of Dr. Chobbey.

10. It is not the case of accidental death. None suggested it. It stands established that occurrence had taken place sometime in the mid-night at the house of the

accused person. There is no evidence that deceased caught fire accidentally while cooking or working on a stove. That also stands ruled out because of the time which occurrence took place. It is also not a case of natural death.'

11. The case is based on circumstantial evidence. The nature, character and essential proof required in a criminal case which rests on circumstantial evidence has been well settled in a catena of the decisions. We may, however, notice here the opt quoted passage from the decision of the Supreme Court in *Hanumant v. State of Madhya Pradesh*, : 1953 CriLJ129 that :-

'It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.'

12. It would also be useful to notice five golden principles constituting the Panchsheel on appreciation of a case based on circumstantial evidence as laid down by the Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, : 1984 CriLJ1738 as follows :-

'(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra*, : 1973 CriLJ1783 , where the following observations were made :

'Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from such conclusions.'

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.'

13. Bearing in mind aforesaid principles, we may first examine the medical evidence. The post mortem report dated 10th August, 1987 Ex. PW 20/A does not show that any external injury was suffered by the deceased. It is also not suggestive of any bleeding. It appears that the post mortem was, in fact, conducted by Dr. M. S. Sagar though under the supervision of Dr. Chobbey. That is the testimony of Dr. Chobbey (PW. 20). There are certain cuttings on the post mortem report though the same have been countersigned by Dr. Sagar. The cuttings appear at point 'Z' and 'Z-1' on post mortem report Ex. PW 20/A. The approximate time since death was earlier mentioned as '44 to 46 hours' and after deleting it the words '34 to 36 hours' have been written. The deletions have been signed by Dr. Sagar. Learned counsel for the accused did not contend that the death of deceased took place at a point of time earlier than what is stated in Ex. PW 20/A. In case mention of time since death as 44 to 46 hours was correct, that would show that the death took place not on early hours of 9th August, 1987 but sometime in the afternoon of 8th August, 1987 which is nobody's case. No fault can be found with the correction of a bona fide and accidental error. This circumstances does not in any manner affect the trustworthiness of the medical evidence.

14. Now coming to the vital part of the attack of medical evidence put forth by learned counsel for the appellants it may be noticed that extra vasation of blood has not been mentioned as an injury in the post mortem report. The ante mortem injuries mentioned in the post mortem report are 'superficial and deep burns over head, face, neck, full of chest, abdomen, whole of back, both upper limbs, both thighs, both feet, back of right leg, and perineum and buttocks. There is blackening, peeling of skin, signing of hair, vital reactions seen at places.' In the post mortem report the mention of extra vasation of blood in scalp tissues has been made in schedule of observations relating to skull, brain, meninges and cerebral vessels. In respect of skull it has been mentioned that nothing abnormal was detected. It has been mentioned that in scalp tissue there is extra vasation of blood. The post mortem report does not indicate in any manner that extra vasation of blood occurred because of use of blunt force. The theory of use of blunt force came into existence when the second opinion (Ex. PW. 20/B) was given by Dr. Chobbey on 27th October, 1987 with reference to the application (Ex. PW. 18/D) dated 26th October, 1987 written by Inspector Dahiya to Dr. Chobbey. Ex. PW 18/D reads as under :-

'To

The Doctor In charge,

Department of Forensic Medicine,

A.I.I.M.S. New Delhi.

Subject : Autopsy upon the deceased Swaran Kanta in case FIR No. 413/87 under section 304B/498A/34 IPC P.S. Tilak Nagar.

Sir,

According to P.M. report No. 804/87 in the above cited case there were superficial and deep burns over head, face and neck. In this case there is suspicion that the deceased was killed by strangulation, and thereafter burnt. In the light of above it may please be opined, whether strangulation marks could be detected even if the neck had superficial and deep burns. Both the hands of deceased were free of any

burn injuries according to P.M. report. In this respect kindly suggest in what position the body could be at this time of burning. P.M. report is enclosed for your perusal.

Yours faithfully,

Sd/- R. S. Dahiya

Special Staff West District,

26-10-1987'

15. On the query as aforesaid being made, Dr. Chobbey opined as per Ex. PW. 20/B that :-

'Reference to your application dated 26-10-1987

(1) There are no injuries suggestive of strangulation. However, one ante mortem injury in Scalp (extra vasation of blood) could be produced by application of blunt force. We cannot opine the position of the body while burning.

Sd/- G. K. Chaubey

27-10-1987'

16. On receipt of the aforesaid opinion the case was converted on 29th October, 1987 under section 302 IPC. The post mortem was conducted by Dr. Sagar though as per testimony of Dr. Chobbey under his supervision. Dr. Sagar was not examined as a witness. It is also not disputed that no reference was made to Dr. Sagar before giving the opinion Ex. PW. 20/B.

17. On being cross examined on the aspect of extra vasation of blood Dr. Chaubey said :-

'It is correct that whenever there is application of intense heat to the body of the human being there is extra vasation of blood. This extra vasation of blood was between the cranium and the scalp. Beneath the skin there are layers of various tissues which form part of the scalp. Tissues contain various small arteries. It is

correct that these small arteries end in capillaries. It is correct that these capillaries get ruptured in intense heat by burning. I did not mention the particular location of extra vasation of blood in my report because it was spread over to the whole of the scalp. It is not necessary that there will be any rupture of scalp tissues or laceration of scalp tissues or localised haematoma but it is equally true all these three things can happen when blunt force is applied. Degree of force used by the blunt object and the relative position of the victim and the momentum of the victim will decide the nature of injury produced by the blunt force. I did not give specific measurement of the extra vasation of the blood as it was medically not important. Since the extra vasation of blood was normal in colour commensurate with the findings of burns as such I did not specifically mention the colour of the blood.'

18. This testimony of Dr. Chaubey shows that extra vasation of blood could be caused either because of the application of intense heat or because of application of blunt force. It seems clear from the aforequoted deposition of Dr. Chaubey that at the time of conducting the post mortem no importance was attached to the extra vasation of blood and that seems to be the reason that in post mortem report Ex. PW 20/A no mention is made of the fact that the extra vasation of blood was on account of application of blunt force. Further, in answer to a court question Dr. Chaubey stated as under :-

'There are differences between extra vasation of blood due to heat and due to blunt force. Whenever there is application of intense heat the general features over the body are different. They include heat ruptures over the body and charring of the body areas. Internally the extravagated blood forms a clot which is called heat haematoma. The nature of these heat hematomas is that its colour is dark brown, its appearance is like honey comb. These features are absent wherever there is extra vasation or blood due to blunt force. In this particular case since there is no evidence of heat haematoma which is generally in the form of extra-dural haematoma comes or appears that is why in this case I have given the report that this extra vasation of blood in scalp is due to application of blunt force.'

19. The learned Additional Sessions Judge on the basis of the aforesaid testimony has come to the following conclusions :-

'The doctor has thus very categorically deposed that this contention i.e. extra vasation of blood in scalp tissues was not due to heat of burning fire but due to blunt force and he has given reasons for this opinion. The reasons given by him has not been rebutted either in cross-examination or by any other doctor or by any other evidence or material. This opinion cannot be said to be un-reasonable or un-reliable. Obviously the first omission cannot be said to be deliberate and was due to accidental omission on his part. The second opinion is based not on any new material but on the same material and circumstances which he had noticed at the time of post-mortem examination. He has admitted in further cross-examination that his opinion was not mentioned in his earlier report Ex. PW 20/A due to omission. There is no reason to disbelieve this Doctor on this aspect.'

20. The post mortem, as noticed above, was conducted on 10th August, 1987. The second opinion was given by Dr. Chaubey on 27th October, 1987. Dr. Chaubey was examined as a witness about three years later. In Ex. PW 20/B. Dr. Chaubey did not give a definite opinion that ante mortem injury in scalp (extra vasation of blood) was not a result of application of intense heat to the body and was caused due to application of blunt force. In that opinion Dr. Chaubey has only opined that the said injury could be produced by application or blunt force. It is one, thing to say that the said extra vasation of blood was produced by application of blunt force and not on account of intense heat and it is altogether a different thing to say that it could be produced due to application of blunt force. In Ex. PW 20/B, the doctor has not given a definite and positive statement. In fact Ex. PW 20/B means that extra vasation of blood could be caused either by application of blunt force or by application of intense heat to the body. While appearing as a witness in court also Dr. Chobbey also deposed that extra vasation of blood could be produced either by application of blunt force or by application of intense heat to the body. In answer to a court question PW. 20 stated he had given the report that this extra vasation of blood in scalp is due to application of blunt force. That was, however, not his report. The report was only that it could be caused due to application of blunt force. Admittedly, whenever there is application of intense heat to the body of a human being that can also result in extra vasation of blood. According to the testimony of the doctor the colour of the blood can throw light on the question whether the extra vasation of blood was produced because of

application of blunt force or because of application of heat. When the post mortem was conducted no importance was attached to the colour of the blood. The colour of the blood has not been mentioned in the post mortem report. On this aspect the doctor says that 'since the extra vasation of blood was normal in colour commensurate with the findings of burns, as such I did not specifically mention the colour of the blood.' The learned Additional Sessions Judge says that 'the opinion of the doctor that extra vasation of blood in scalp tissues was not due to burning fire but due to blunt force, cannot be said to be unreasonable or unreliable and that the first omission cannot be said to be deliberate and was due to accidental omission on the part of the doctor.' We are unable to sustain this approach of the learned Judge. The question is not whether the second opinion of the doctor on which almost the entire case for offence under section 302 IPC has been built up is 'unreasonable or unreliable' but is whether the other opinion that extra vasation of blood could also be caused by application of intense heat is reasonable or not. It is clear from the evidence on record that two reasonable views could be formed. One, the extra vasation of blood may have been on account of application of heat. Second, it may have been on account of application of blunt force. There is nothing on record to suggest as to what was that accidental omission due to which it was not mentioned in the post mortem report that the extra vasation of blood had been produced by application of blunt force and thus it is not permissible for the court to conclude or infer that there was any accidental omission on this aspect. Further, the learned Additional Sessions Judge has come to the conclusion that the second opinion is based not on any new material but on same material and circumstances which the doctor had noticed at the time of post mortem examination. It has not been explained that which material and circumstances mentioned in the post mortem report led the doctor to give the second opinion. There is no question of the defense rebutting the reasons given by the doctor by producing any other doctor since the prosecution has to stand on its own legs. Where two views are reasonably possible the view favorable to the accused is to be adopted. This principle has special reference to a case where the guilt is sought to be established by circumstantial evidence as in the present case. The circumstances or the circumstantial evidence must convincingly and unerringly establish the guilt of the accused. Where on medical evidence two views are

reasonably possible it is not permissible to adopt the one which favors the prosecution by holding that the said view is not 'unreasonable or unreliable'. That would be against the well established principles of 'criminal jurisprudence'.

21. The accused Prakash Chander has been found guilty of offence under Section 302 IPC and has been given death sentence. We have to adopt a careful cautious and meticulous approach. It is unfortunate that a young girl has died within a span of less than one year of the marriage. Such a happening would certainly shock the conscience of any court. One is likely to suspect, under circumstances in which Swaran Kanta died, that her husband may have done her to death. The suspicion remains a suspicion, however, strong it may be. It cannot take the place of proof. It cannot be the basis for conviction of an accused.

22. We may also notice that by application Ex. PW 18/D, the opinion of PW. 20 was not sought on the question as to how the extra vasation of blood was produced but was sought only with regard to strangulation and position of the body. Dr. Chaubey found that there were no injuries suggestive of strangulation and he could also not opine about the position of the body while burning and on his own seems to have given the opinion that extra vasation of blood could be produced by application of blunt force. What was the occasion for giving such unsolicited opinion after lapse of more than two months has also not been explained by the prosecution. The suggestion given to the doctor in the cross examination that the subsequent opinion was given at the instance of relatives of the deceased has been held by the learned Additional Sessions Judge to be not bona fide as according to learned Judge no such suggestion was given to the relatives of the deceased when they appeared in the witness box. The evidence of Dr. Chobey was recorded long after the recording of the testimony of relation witnesses. On the facts and circumstances of the present case not putting of suggestions to the witnesses who were relations of the deceased in cross examination is not of much consequence. Further, it is also not possible to attach any importance to the fact that there is no rebuttal to the second opinion of the doctor particularly when the evidence clearly establishes that two views are reasonably possible. The entire basis for finding that the blunt force had been used on the head of the deceased before she was burnt is based on the medical

opinion referred to above. In our view the evidence does not justify the finding beyond reasonable doubt that blunt force had been used on the head of the deceased before she was burnt.

23. In our view, there is also no convincing corroborative evidence to hold that the blunt force had been used on the head of the deceased before she was burnt. The learned Additional Sessions Judge has found that broken pieces of flower pot had been seized from the spot and concludes that 'there is every reason to believe that this flower pot had been used in hitting the deceased on her head. It, however, would not mean that no other blunt force would have been used by the accused.' This view of the learned Judge, in our opinion, is based on surmises and conjectures. There is no evidence worth the name on record to suggest that flower pot had been used in hitting the deceased on her head. The finding that some other blunt force could have been used is again in the realm of conjectures. It is also pertinent to notice that no question was put to the accused in his statement under section 313 Cr.P.C. that he had inflicted injuries on the head of the deceased with flower pot or with any other object before she was burnt. Further, the broken pieces of flower pot were not found from the place of occurrence which was the courtyard were as the said broken pieces were found in a room below the T.V. It would be a conjecture to hold that if a flower pot had broken on a previous day or earlier the said pieces would not have been lying there. No question was asked from the accused about the presence of the said pieces and thus the learned Additional Sessions Judge was not right in observing that the accused had not given any Explanationn in his statement under Section 313 Cr.P.C. about the presence of the said pieces in the room. In absence of any evidence on record we find it difficult to sustain the finding of the trial court that the deceased was immobilised after being hit.

24. The learned trial court has also found fault with the calling of PW. 12 Dr. Ahuja soon after the occurrence. There is no basis for the finding that Dr. Ahuja was called as if only to declared her dead to create evidence about innocence. Dr. Ahuja, it has come in evidence, was living in the same locality and was running a clinic from his residence. Dr. Ahuja was examined as a witness by the prosecution. He has deposed that on examination he declared Swaran Kanta dead. In face of

this prosecution evidence the finding of the trial court that the accused persons have not shown their bona fide in not removing her immediately to a proper hospital without waste of time is unsustainable. If immediately after occurrence a doctor from the locality is called and he declares the person dead it is not possible to infer lack of bona fide from the fact that the deceased was not removed to proper hospital. The normal conduct of a human being would be to first call a doctor who can be available without waste of time and no adverse inference can be drawn from such a conduct.

25. As noticed earlier, the main evidence in the case is of Dr. Chaubey, PW-20. Almost the entire judgment of conviction for offence under section 302 IPC is based on testimony of PW. 20 and his second medical opinion Ex. PW. 20/B. The said evidence and other evidence on record does not establish an absolute link to connect the accused with the offence of murder. Thus, in our view, it would not be safe to hold accused Prakash Chand guilty of offence punishable under section 302 IPC.

26. Our aforesaid conclusion on offence under section 302 IPC, however, does not conclude the entire matter as there was also an alternate charge against accused Prakash Chand and other accused for having caused death of Mrs. Swaran Kanta by burn or otherwise than normal circumstances, within seven years of her marriage and they having subjected her to cruelty and harassment for and in connection with demand of dowry and thereby having committed an offence of 'Dowry Death' punishable under Section 304-B IPC.

27. On charge under section 304B, learned Additional Sessions Judge has held that 'it does not survive and it is cancelled.'

28. On the aspect of offence under section 304B, IPC, the questions which fall for determination are :-

1. Whether the order cancelling charge under section 304-B IPC is legal
2. If answer to question No. 1 is in negative, does the cancellation of charge on the facts and circumstances of the case, amount to an order of acquittal and, if so,

what is the effect of State not having filed an appeal

3. Whether evidence establishes or not the commission of offence under section 304-B, IPC by the accused Prakash Chander

29. Cancellation of the charge after the evidence has been led is unknown to the criminal jurisprudence. Before a charge is framed an accused may be discharged if the facts and circumstances so justify. After the charge is framed the accused has either to be found guilty or not guilty of the charge. Mr. Sud also did not dispute that the order cancelling the charge is not legal. The learned trial court committed manifest error by holding that the alternate charge does not survive and is cancelled. The first question is, therefore, answered in negative.

30. Mr. K. K. Sud, learned counsel for the accused conceding that the order cancelling the charge is not legal vehemently contended that in fact the order cancelling the charge amounts to acquittal of Prakash Chander of offence under section 304B. Learned counsel argues that Prakash Chander having been acquitted of the offence under Section 304-B and the State having not filed any appeal against the judgment of acquittal, this court has no power or jurisdiction to convict the accused for offence under section 304-B IPC. The further contention is that in any case, the evidence does not prove commission of offence under section 304-B. On the other hand, learned counsel for the State vehemently contends that assuming the accused is acquitted of offence under Section 302, the charge against him for offence under section 304B stands fully established from the evidence on record and he is liable to be convicted of the said offence.

31. We may notice that the fact that the death of Swaran Kanta occurred within 7 years of her marriage is not in dispute. It also cannot be disputed that her death was caused by burns or in any case had occurred otherwise than under normal circumstances. It was not a natural death. It was not under normal circumstances. It was also not a case of an accident. None disputed these facts. On the questions relevant to offence under section 304-B IPC, some of the conclusions arrived at by the learned Additional Sessions Judge in the impugned judgment are :-

'The core of the testimony of PW 1, PW-2 and PW-5 is that deceased Swaran Kanta was married to accused Prakash Chander on 28th November, 1986. She was not treated well in the matrimonial home from the very beginning of marriage. Obviously, they were not satisfied from the dowry brought by her and also a demand of Rs. 50,000/- was made from her parents which was not met and the harassment and maltreatment was continued till her death in the matrimonial home when this demand was not met and it culminated in the present incident It was natural that he would have thought to look forward to the new source and so he started making demands of money from the parents of the deceased and on their failure to oblige him he had thought of getting rid of the new bride to find some other source to meet his extravagant needs I do not find any valid reason to disbelieve PW. 1, PW. 2 and PW. 5 on the question of ill treatment to deceased and demand of money of Rs. 50,000/- from her parents. There was, thus, strong motive to get rid of deceased by the accused persons.'

32. In view of the aforesaid conclusions reached by learned Additional Sessions Judge it is not possible to accept the contention that Prakash Chander was acquitted of offence under Section 304B, IPC. It seems that learned Additional Sessions Judge having found Prakash Chander guilty of offence of murder thought, though under mis-conception of law, that the graver offence having been established it is not necessary to specifically record conviction for offence under S. 304-B in spite of the fact that the learned Judge, as per his conclusion extracted above, had recorded a finding about cruelty, harassment and demand of dowry against Prakash Chander and under these circumstances held that the alternate charge under section 304B, IPC does not survive and directed its cancellation. As earlier stated the cancellation of charge is unknown to the criminal jurisprudence.

33. In support of the contention that the State not having filed the appeal this court has no power to alter the finding of acquittal in respect of offence under section 304-B into finding of conviction, reliance is placed by Mr. Sood to a decision Privy Council in *Kishan Singh v. Emperor*, (1928) 29 Cri LJ 828 : AIR 1928 PC 254. In the cited decision the accused was charged for offence under Section 302 IPC but was convicted of offence under section 304, IPC. The State did not file any appeal against the implied acquittal of accused of offence under section 302. The State,

however, filed a revision petition for enhancement of sentence and seeking conviction of the accused for offence under section 302. The High Court reserving the decision of the trial court convicted the accused of offence under section 302. The Privy Council reversing the decision of the High Court held that the High Court had no power to convict the accused for offence under section 302 since the State had not filed any appeal against the judgment of the trial court acquitting the accused of offence under section 302 IPC. Two points of distinction have to be kept in view. One - in that case there was no alternate charge. Two, the conviction was for minor offence whereas charge was for graver offence. The cited decision has no applicability to the facts and circumstances of the present case.

34. Reliance was also placed by Mr. Sud on decision of the Supreme Court in *State of Andhra Pradesh v. T. Narayana*, : [1962]2SCR904 in the said case the accused was charged for offence under sections 302 and 392 IPC. The trial court acquitted the accused of both the charges but convicted her of offence under Section 411, IPC. The State did not file any appeal against the order of acquittal. The accused, however, appealed to the High Court against the order of conviction under section 411, IPC. In the said appeal of the accused the High Court directed the retrial of the accused for offences under sections 302 and 392 IPC. An objection was raised before the trial court during the retrial that the accused cannot be legally tried for the said offences having already been acquitted by the trial court. The objection was overruled by the trial court on the ground that as a subordinate court it was bound by the order of the High Court. Against that order a revision petition was filed in the High Court which was accepted holding that the retrial for offence under sections 302 and 392 was not permissible in view of the earlier acquittal and the State having not filed an appeal against the order of acquittal. This order was challenged by the State in Supreme Court. While dismissing the appeal of the State the Supreme Court held that under Section 423(1)(b)(ii) of the old Code only the order of conviction can be varied and the words 'after the findings' in the said section do not include the power to alter or modify the finding of acquittal. It would, however, be useful to extract the following passage from the Supreme Court decision :- (Para. 13)

'There is yet another consideration which leads to the same conclusion. Section 423(1)(b)(2) emphatically refers to the sentence and requires that despite the alteration of the finding the sentence must be maintained. In other words, the finding and the sentence go together and the clause provides that even if the finding is altered the sentence may be retained. Similarly, the sentence may be reduced with or without altering the finding. The reference to the sentence in both the cases indicates that the finding which can be altered under the clause is a finding which has led to the imposition of sentence on the accused person. This clause would naturally raise the question as to what are the kinds of cases in which the power can be exercised. The answer to this question is furnished by the provisions of Ss. 236, 237 and 238. Section 236 deals with cases where it is doubtful with offence has been committed. S. 237 deals with cases where a person may be charged with one offence and yet he can be convicted of another, and S. 238 with cases where the offence proved includes the offence charged and another offence not so charged. Where a person is charged with a major offence, such as for instance under S. 407 of the Indian Penal Code, he may be convicted either of that offence or of a minor offence, as for instance under S. 406. That is the result of S. 238 of the Code. Now, if a trial court charges, and convicts an accused person of an offence under S. 407 and sentences him the Appellate Court may alter the finding of guilt of the accused from S. 407 to S. 406 and in that case it may retain the same sentence or reduce it. It is, however, clear that in exercising the power conferred by S. 423(1)(b)(2) the sentence imposed on an accused person cannot be enhanced, and that may mean that the conviction of a minor offence may not be altered into that of a major offence. In our opinion, therefore, the power conferred by S. 423(1)(b)(1) is intended to be exercised in cases falling under Ss. 236 to 238 of the Code. We would accordingly hold that the power conferred by the expression 'alter the finding' does not include the power to alter or modify the finding of acquittal. The finding specified in the context means the finding as to conviction, and, the power to alter the finding can be exercised in cases like those which we have just indicated.'

35. The Supreme Court has affirmed the view expressed by Privy Council in Kishan Singh's case, 1928 (29) Cri LJ 828, the controversy as to the ambit of power to alter the finding within the meaning of Section 423(1)(b)(2) of the old

Code thus stands settled by the Supreme Court.

36. In view of the aforesaid the correct legal position, therefore, is that where an accused is charged with a major offence but is convicted of a minor offence and State does not file an appeal against the order of acquittal of the major offence but the accused files an appeal against the order of conviction of the minor offence, while considering the said appeal of the accused, the High Court has no jurisdiction to alter the finding of acquittal of major offence into a finding of conviction. This legal proposition or the decisions referred to above, however, have no applicability to the facts and circumstances of the present case. Here the conviction of the accused is not for minor offence. In the cited decisions there was acquittal in respect of major offence whereas in the present case there is an order of conviction in respect of the major offence and there is no express or implied order of acquittal in respect of the minor offence. In the present case if the accused Prakash Chander had been convicted of the offence under section 304-B, IPC and acquitted of offence under section 302, IPC, this court would have been powerless to convict him of offence under section 302 IPC while deciding his appeal against the order of conviction for offence under section 304B, IPC in absence of an appeal against the order of acquittal by the State in respect of offence under Section 302 IPC. That, however, is not the case, The position is just reverse.

37. As against the aforesaid decisions, Ms. Mukta Gupta, learned State Counsel, relied upon the case of Kalawati v. State of Himachal Pradesh, : 1953 CriLJ668 . The facts were these. For the murder of the Bikram Singh, the accused Ranjit Singh was charged for offence under section 302 IPC and the accused Kalawati was charged under section 114 and Section 302 IPC with abetment of murder. The Sessions Judge found Ranjit Singh guilty of the offence. He, However, acquitted Kalawati of the offence of abetment under section 302 read with Section 114 but found her guilty under section 201 IPC as she suppressed the evidence, screened Ranjit Singh, and gave false information in respect of the murder. She was sentenced to 5 years rigorous imprisonment. The appeals were filed by both accused in the Court of Judicial Commissioner, Himachal Pradesh. An appeal was also filed by the State against the order of acquittal of Kalawati on charge of

murder. Ranjit Singh's appeal was dismissed. The Judicial Commissioner, however, allowed Kalawati's appeal and set aside her conviction and sentence under section 201 but at the same time also allowed the State appeal against Kalawati and convicted her of an offence under section 302 read with Section 114, IPC. Both Ranjit Singh and Kalawati challenged the order of the Judicial Commissioner before the Supreme Court. No appeal was filed by the State before the Supreme Court to challenge the order of acquittal passed by the Judicial Commissioner in respect of offence under section 201, IPC. The conviction of Kalawati for offence under section 302 read with Section 114 IPC was set aside by the Supreme Court but she was held to be guilty of an offence under section 201, IPC. The contention of counsel of Kalawati that as she was acquitted of offence under section 201, IPC by Judicial Commissioner and as no appeal was filed by the State against the said order of acquittal and thus she cannot be convicted by the Supreme Court of offence under section 201, IPC, was rejected and it was held :- (at p. 672 of Cri LJ)

'It was urged for her by Mr. Mathur that as she was acquitted of this offence by the Judicial Commissioner, and as there has been no appeal by the Government against the acquittal, she cannot now be convicted of the same by this Court. This argument proceeds on a fallacy. Section 201 is not restricted to the case of a person who screens the actual offender; it can be applied even to a person guilty of the main offence, though as a matter of practice Court will not convict a person both of the main offence and under Section 201. The Judicial Commissioner acquitted Kalawati of the offence under section 201 for which she was convicted by the Sessions Judge, only because he thought that the main offence itself, namely, murder, was brought home to her. But if we think for the reasons given above that it would not be safe to convict her of the main offence, the acquittal is no legal impediment to her conviction under section 201. It was held by the Privy Council in *Begum v. King-Emperor*, 1925 (26) Cri LJ 1059, that in a charge of murder under section 302 a conviction under section 201 without a further charge being made was warranted by the provisions of section 237, Criminal Procedure Code. If Kalawati had been acquitted of an offence under section 201 independently of the charge of murder against her, it would have been a different matter. But as her acquittal is so intimately related to the charge of the main

offence, and as it took place only for the reason that she was held guilty of murder, there is no bar to the restoration of the conviction under section 201.'

38. The present case, in our view, is on much stronger footing. The accused has not been acquitted of offence under section 304B, IPC but only charge has been cancelled which is not permissible in law. That does not, on the facts and circumstances of the case as already noticed above, amount to acquittal. Assuming, however, that tantamounts to an implied acquittal, it would only show that the said acquittal was for the reason that he was held guilty of the main offence of murder and not independently. Our conclusion that in view of two reasonable views it would not be safe to hold Prakash Chander guilty of offence under section 302 IPC, is not an impediment for his conviction under section 304-B, IPC. In our view the point in issue is squarely covered by Kalawati's case.

39. Further, apart from the appeal filed by the accused Prakash Chander, this court is also considering the question of confirmation of sentence of death under section 368 of the Code of Criminal Procedure. Under Section 368 this court while annulling the conviction of offence under section 302 IPC has power to convict the accused of any offence of which the Court of Session might have convicted him which would include the conviction for offence under section 304B, IPC. When any case is submitted to the High Court under section 366, Cr.P.C. the whole case comes up for consideration. In other words it means that the entire incident comes up for consideration. (See : Kaikhushru Khursetji v. State, : AIR1953 Bom166 . It is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the merit apart from the view expressed by the Sessions Judge (Bhupendra Singh v. The State of Punjab, : 1969 CriLJ6 .

40. The High Court cannot be a silent spectator when it finds that the trial court has committed a manifest error and has a duty to correct the said error. That manifest error is the order for cancellation of a charge under section 304B, IPC. The interest of the accused is, of course, paramount but at the same time the court has also to keep in view the compelling public interest to see that because of a manifest error the administration of criminal jurisprudence is not reduced to total ineffectiveness which will breed dissatisfaction amongst the public. Like all

procedural laws Code of Criminal Procedure is also designed to subserve the ends of justice and not to frustrate them by mere technicalities. Viewed from this angle too it would be our duty to find out whether the accused is guilty of the charge under section 304B, IPC or not.

41. We may also refer to a Division Bench decision of Andhra Pradesh in Vemuri Venkateswara Rao v. State of Andhra Pradesh, : 1991(3)ALT237 . In that case the accused/husband and another were convicted under sections 302, 201 and 498A, IPC and sentenced to suffer imprisonment for life, 5 years and 3 years respectively. On appreciation of evidence the High Court found that the offence against the husband punishable under section 302 IPC had not been made out. The High Court, however, found that there was harassment and demand of dowry and unnatural death had taken place within a period of 7 years of the marriage. The presumption against the husband under section 113-B Evidence Act was drawn for offence punishable under section 304B, IPC. There was no charge against the husband under section 304B, IPC but the High Court came to the conclusion that in the charge framed it has been clearly mentioned that there was demand for dowry prior to the death of the deceased and it was also mentioned in the charge that deceased was harassed. The learned Judges held that once there is harassment for the demand of dowry and unnatural death occurs within seven years of the marriage the presumption of dowry death is inherent. It was further held that merely because there was no separate charge under section 304B, IPC it cannot be said that any prejudice is caused to the accused since the facts noticed in the charges put together satisfy the ingredients of Section 304B, IPC. The Bench came to the conclusion that once ingredients of Section are proved the offence under section 304B, IPC, is established and thus the contention that in absence of charge under section 304B, IPC, the accused cannot be convicted under the said section was repelled. It was also held that the offence punishable under Section 302 IPC is a graver than the offence under section 304 IPC and, therefore, the court can convict a person for lesser offence when there is a charge passed for a higher offence. There was no charge under section 304B in the case before the Andhra Pradesh were as in the case in hand there was a specific charge for the accused having committed an offence of 'Dowry Death' punishable under section 304B, IPC. The present case is thus on much stronger

footing.

42. It would also be useful to refer to the decision of the Supreme Court in the case of *State of Gujarat v. Haidar ali Kalubhai*, : 1976 CriLJ732 . In that case the trial court convicted the accused of offence under section 304 Part-II and also under sections 323 and 326, IPC. That was altered by the High Court to one under section 304A, IPC and the decision of the High Court was upheld by the Supreme Court. The single Bench decision of Madhya Bharat High Court in *Kanhaiyalal v. Feliram*, 1952 Cri LJ 1953 : AIR 1952 MB 15, a single Bench decision of Allahabad High Court in *Makkhan v. Emperor*, : AIR1945 All81 , and a Division Bench judgment of Allahabad High Court in *Raghunath Singh v. State*, : AIR1950 All471 relied upon by learned counsel for the accused do not throw any light on the point in issue in the present case.

43. We also find that Sections 302 and 304B, IPC are not mutually exclusive. If in a case material on record suggest commission of offence under section 302, IPC and also commission of offence under Section 304B, IPC, the proper course would be to frame charges under both these sections and if the case is established then accused can be convicted under both the sections but no separate sentence need be awarded under section 304B, in view substantive sentence being awarded for the higher offence under Section 302, IPC. In the present case though court rightly framed charge also under section 304B, IPC and also in the course of judgment came to the conclusion that cruelty, demand of dowry and death within seven years of marriage had been established but ultimately proceeded to cancel the challan on the wrong assumption that the two offences are mutually exclusive. In the facts and circumstances of the case we do not think that any prejudice would be caused to the accused by examination of the case from the point of view of offence under section 304-B, IPC. In our view the learned Additional Sessions Judge, for the conclusion reached by him, after holding Prakash Chander guilty of offence under section 304B need not have awarded any separate sentence in respect of the said offence.

44. In view of aforesaid discussion our answer to the second question is that cancellation of charge for offence under Section 304-B, IPC does not amount to an

order of acquittal and the setting aside of the order of conviction for the offence under Section 302, IPC is not an impediment in this court examining whether commission of offence under section 304-B, IPC stands established or not. The State not having filed any appeal against the order cancelling charge is of no effect.

45. For examining third question it would be useful to extract Section 304B IPC which reads as under :-

'S. 304B :

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

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

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

46. In India dowry system is in vogue since ages. Various steps have been taken to eradicate it. In about last two decades the Legislature became alert to the need of eradicating this social evil. In that pursuit. Dowry Prohibition Act, 1961 was enacted and various amendments were made with a view to save the women from harassment etc. at the hands of husband and his relatives arising out of the dissatisfaction over the dowry. It is true that legislation alone cannot solve this social problem. It is through education and other reformative measures such a problem can be solved. But at the same time various legislations can play a pivotal role in curbing the evil of dowry. With that end in view Section 304-B, was inserted in the Indian Penal Code. As ordinarily, cruelty, harassment and demand of dowry

remains confined to the four walls of the house and it becomes difficult to prove these allegations, the Legislature thought of enacting S. 113-B in the Indian Evidence Act. The courts are expected to construe these provisions in a way that the object behind the provisions is fulfilled though, of course, on fulfillment of the ingredients of these provisions.

47. Before a person can be held guilty of an offence under Section 304-B, the ingredients necessary to be established are :-

- 1) That the death of a woman is caused by any burns or bodily injury or it occurs otherwise than under normal circumstances;
- 2) Such death occurs within seven years of her marriage;
- 3) Soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband;
- 4) Such cruelty or harassment was for or in connection with any demand of dowry.

48. When the aforesaid ingredients are fulfilled the death is called 'dowry death' and such husband or relative is deemed to have caused the death. On establishment of the aforesaid factors the law draws a presumption against husband or relative, as the case may be, having caused the death.

49. In view of aforesaid provisions we would now examine whether offence under section 304B, IPC against Prakash Chander on evidence produced or recorded has been established or not.

50. It is not disputed and is also otherwise established by evidence on record that the first two ingredients stand fully established in that the death of Swaran Kanta occurred otherwise than under normal circumstances within seven years of her marriage.

51. We would now examine whether Swaran Kanta was subjected to cruelty or harassment by Prakash Chand soon before her death and if so whether it was for or in connection with demand of dowry.

52. Learned counsel for Prakash Chander vehemently contended that there is no evidence about cruelty or harassment or demand of dowry soon before the death and thus it is submitted that offence under Section 304B has not been established.

53. The main evidence in regard to cruelty, harassment and demand of dowry is that of the father of the deceased, Sohan Lal, PW-1, the mother of the deceased, Smt. Ram Piari, PW. 2 and the sister of the deceased, Usha, PW. 5.

54. Mr. Sud contended that there were numerous contradictions and improvements in the testimony of these witnesses and also that no independent witness was examined except the two neighbours on whose testimony the conviction cannot be based as they did not support the case of the prosecution and were declared hostile.

55. The testimony of father, mother and sister cannot be rejected merely on the ground that they were near relations. The marriage had taken place barely about eight and a half months earlier. The parents of the deceased as well as the deceased were not interested in breaking the matrimonial home. In our society efforts are made till last to try that the marriage is not broken. In the cases of demand of dowry ordinarily only near relative can know as to what is demanded and what is given or not given and such matters do not come to the knowledge of independent witnesses. Under these circumstances, it is but natural that the incidents of cruelty, harassment or demand of dowry would remain within the personal knowledge of the near relations and they would be the best persons to depose about the same.

56. We are taken through the evidence of PW. 1, PW. 2 and PW. 5. It does appear that the detailed version as given in the court in their depositions was not given when soon after the incident their statements were recorded by the Police and attested by the SDM. It stands established from record that PW. 1 and PW. 2 reached the place of occurrence at about 2.30 AM and statement of PW. 1 was recorded by the police and attested by the SDM at 4.45 AM and that was the basis of the registration of the case against the accused.

57. It has been proved that within a span of about two hours the statement of the father of the deceased was recorded. One can fully appreciate and understand the grief and agony which the father must be undergoing at that time. It has to be borne in mind that in the statement given by Sohan Lal specific mention was made in respect of demand of Rs. 50,000/- and that the accused used to harass the deceased and used to beat her in connection with the demand of dowry and in that connection he had visited them even on 8th August, 1987 at 10 PM as well and gave a threat. We may reproduce that statement of Sohan Lal which reads :-

'Statement of Shri Sohan Lal S/o. Buta Singh, aged 55 years R/o. 3/84, Subhash Nagar, Delhi. 'reside at the address mentioned above along with my family and run a grocery shop at Subhash Nagar itself. I have five daughters and a son. Swaran Kanta aged about 24 years was my fourth issue. Swaran Kanta was married to Prakash Chander S/o. Pyara Lal r/o. 42/14, Ashok Nagar, Tilak Nagar on 28th November, 1986. After a week of the marriage, Prakash, Swaran Kanta and her mother-in-law Smt. Leela Wanti had come to my house and made a demand of Rs. 50,000/- as they told that the same were required by them for getting a room constructed on the roof. Prakash was in drunken condition. Wherever Prakash came to our house, he came in drunken condition. My daughter whenever visited our house, she was always taken back either by her mother-in-law or by her husband. She never went alone. Thus Kanta's mother-in-law or her husband Prakash never gave me a chance to have a talk with her in aloofness. Kanta, after visiting our house whenever went back to house of her in-laws, they used to beat her in connection with the dowry. I used to get this information from my younger daughter whom we used to send, in order to have information about the well being of Kanta. Yesterday on 8-8-87 at about 10 p.m. my daughter Swaran Kanta and her husband Prakash Chand came to my house. I gave respect and welcomed them. But Prakash Chand refused to take water etc. and said a film is being made, you may see the same throughout your life', By saying like this, he was giving as a threat which meant that what ever will be done by him, we will be helpless to re-act and we can simply watch. After about half an hour, Kanta and her husband returned to their home. About 2/2 1/4 A. M. Surender Kumar, brother-in-law (sister's husband) of Prakash Chand came and told that Swaran Kanta has got burns. I fully suspect that my daughter Kanta has been burnt to death by her

husband Prakash Chander, Mother-in-law Leela Wanti, younger brother Pappu, younger sister-in-law (husband's sister) Usha etc. Legal action may be taken against them. I have heard the statement and the same is correct.'

58. It has also come in evidence of the father and the mother of the deceased that 2/3 months prior to the date of occurrence Prakash Chander and Swaran Kanta had gone to their house and accused Prakash Chander made a demand of Rs. 50,000/- and declined to have even a glass of water unless this money was paid. He also threatened his wife to leave her at her parent's house in case her father did not fulfill his demands. It has further come in evidence that PW. 2 was not even allowed to meet her daughter though she remained in their house for 2 to 2 1/2 hours.

59. It has also been established from evidence that the accused Prakash Chander was a habitual drunkard and used to beat Swaran Kanta and maltreat her. The testimony of PW-5 Usha who used to visit her elder sister and through whom mostly the parents used to learn about the cruelty and harassment to Swaran Kanta also seems to be natural and convincing. There is ring of truth in the depositions of PW. 1, PW. 2 and PW. 5. Their evidence is convincing and trustworthy. The fact that the father within two and half hours of the incident gave the statement as aforesaid would show that though in a highly disturbed mental condition yet he gave the incidents of cruelty, harassment, demand of dowry soon before death of his daughter with sufficient clarity and detail and that statement cannot be rejected on the ground that the further details to be given in court were not given when on the day of occurrence his statement was recorded. We see no reason to disbelieve PW. 1, PW. 2 and PW. 5 on the question of cruelty and harassment as also on the question of demand of dowry soon before the death. The said witnesses have not been discredited. The variation in their statements are insignificant and natural. It is inconceivable that father would have fabricated false stories about cruelty, harassment and demand of money within a short span of two, and a half hours when he was in a great mental agony and shock. In our view, the ingredients Nos. 3 and 4 also stand fully established.

60. The prosecution has discharged its initial burden. All the four ingredients for offence under section 304B, IPC have been established. Thus, presumption has to be drawn against Prakash Chander. There is nothing on record to show the rebuttal of the said presumption. Accordingly, we hold accused Prakash Chander guilty of offence under section 304B, IPC.

61. There is also an appeal filed by Leela Wanti against the order convicting her for offence under section 498, IPC by modifying the charge under section 304B to one under Section 498A, IPC. The aforesaid discussion for offence under Section 304B, IPC against Prakash Chander would equally apply to Leela Wanti as well but in view of the fact that she has been convicted of a lesser offence i.e. Section 498-A, which implies her acquittal for the higher offence, i.e. Section 304B, IPC and the State not having filed any appeal against her implied acquittal under Section 304B, IPC, the law laid down in State of Andhra Pradesh v. T. Narayana, : [1962]2SCR904 (supra), would be applicable and this court would have no power to convict Leela Wanti for offence under section 304B, IPC.

62. For the reasons stated above, we partly allow Criminal Appeal No. 1 of 1993 filed by Prakash Chand, set aside his conviction for offence under section 302, IPC and convict him of offence under section 304B, IPC and sentence him to undergo imprisonment for life. The Criminal Appeal No. 228 of 1992 of Leela Wanti is dismissed. In view of aforesaid, the reference is declined.

63. Order accordingly.