

MULAK RAJ AND ORS.

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v.

STATE OF HARYANA

JANUARY 19, 1996

[G.N. RAY AND S.B. MAJMUDAR, JJ.]

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Indian Penal Code, 1860: Sections 302 read with 34 and 201.

Dowry death—Husband and other relatives—Circumstantial evidence—Conviction based on—Validity of.

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Deceased a highly qualified and married lady—Dead body found in kitchen—No suicide note found—Prosecution version—Deceased done to death by gagging—Dead body planted in kitchen—Version corroborated by medical evidence—Held it was a case of homicidal death and not suicide.

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Circumstances in support of guilt of accused—Motive—Dowry—Held established on facts—Extra-judicial confession of accused—Unreliable and uncorroborated version—Held not a circumstance establishing guilt of accused—Subsequent conduct of accused—Not revealing culpability of accused—Mere fact that all accused lived in same house where dead body was found—Held by itself not sufficient to connect accused with crime—Accused held entitled to benefit of doubt.

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Police—Investigation—Lukewarm and cursory approach—Deprecation of.

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K was found dead after about two months of her marriage. Her burnt dead body was found in the kitchen of her matrimonial home. K's father-in-law, A-1, her husband, A-2, younger sister of the husband, A-3 and sister-in-law of K's father-in-law, A-4, who were all living in the same house, were charged with the offence of murder under Section 302 read with section 34 of the Indian Penal Code, 1860. The prosecution case was that K was done to death by gagging her nose and mouth and she died because of suffocation and thereafter her dead body was planted in the kitchen and was subjected to post mortem burning. The prosecution relied upon four aspects of the case viz. (i) motive; (ii) extra-judicial confession of A-1 and 2; (iii) subsequent conduct of the accused persons; and (iv) the

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A situation of the scene of offence.

The alleged motive for the crime was dissatisfaction of the accused persons with dowry. The evidence in this regard was that of the father of deceased K, PW-23. He deposed that at the time of the marriage he gave seven tolas of gold and other articles worth Rs. 25,000. He could not provide refrigerator, television and tape-recorder as demanded by the accused person during 'Shagun' ceremony in the presence of PW-13, an employee of PW-23. Further during her visit to her parent's house after marriage K told her elder sister, PW-16 that her in-laws were harassing and threatening her for insufficiency of dowry. The evidence was also corroborated by other independent witnesses viz. PW-22, a doctor, PW-17 and PW-26 to whom K had complained about dowry demands and conduct of the accused persons.

K's husband and father-in-law were also stated to have made extra judicial confessions to two persons viz. PW-10, a member of the *ad hoc* committee of Janata party and PW-13, an employee of the father of deceased K.

To substantiate the guilt of the accused persons their subsequent conduct was also relied on by the prosecution. Firstly, they did not inform the father of the deceased who was staying in the near vicinity about the death of his daughter. Secondly, none of the accused was found to be lamenting or weeping when being apprised of the incident. Lastly the father-in-law of the deceased K wanted to remove the dead body for prompt cremation but only on the insistence of PW-23 he was not permitted to do so.

As to the scene of occurrence the version of PW-6, a neighbour of the accused person was that on the day of occurrence he heard the cries of accused No. 4 that there was fire in the kitchen. As the kitchen was bolted from inside he broke open the door and found the dead body lying there in a burnt condition. There was evidence to show that there was a service window in the kitchen about 3 feet from the ground floor level which was open and from which at least with difficulty anyone from inside could come out. Further evidence in this regard was that of PW-14, sister-in-law of deceased K, who on the date of occurrence went to the house of accused persons to invite K for the meals on the Baisakhi day. On coming to know of K's death she informed the father of the deceased K who immediately

rushed to the spot and by that time the husband and father-in-law of the deceased had reached back to the spot from their respective offices. On the insistence of deceased father accused No. 1 lodged a complaint in the police station that K had committed suicide. A

The prosecution case was fully supported by medical evidence consisting of post-mortem which revealed that (i) K died before and was burnt later and that death was due to asphyxia which was a result of suffocation; (ii) the burns found on the body were post mortem i.e. the body was burnt after death; (iii) blisters which are normally found if an alive person is burnt were not found on the body of the deceased. On the basis of post mortem report the police registered criminal cases against all the accused persons as it was felt that K had not committed suicide but had died a homicidal death. However proceedings lingered on at the investigation stage and the accused persons were arrested and chargesheeted only after the father of the deceased lodged a private complaint. B C

In their defence accused Nos. 1 and 2 stated that on the date of incident the former had gone to his factory while the latter had gone to attend office. D

The Trial Court acquitted all the accused persons holding that the prosecution was not able to establish beyond reasonable doubt that K had died a homicidal death and that the accused were guilty of murdering her. Though in the light of the medical evidence the trial Judge himself entertained doubt and concluded that the death of K was shrouded in mystery yet relying on the evidence of PW-6 it came to the conclusion that this was not a case of murder but probably of suicide. E F

The version of the witnesses regarding motive was disbelieved by the Trial Court on the ground that in their police statements they have not given details about the dowry complaint of the deceased to which they referred in their evidence before the Court. The extra judicial confession made by accused No. 1 and 2 was held uncorroborated and unreliable. G

The High Court reversed the acquittal order and convicted all the accused persons. Relying on the medical evidence and other related evidence it came to the conclusion that K had not committed suicide but had suffered a homicidal death. H

A In appeal to this Court on the questions whether (i) K died a homicidal death or committed suicide? and (ii) whether the accused or anyone of them had played part in liquidating K?

Allowing the appeal and setting aside the conviction, this Court

B HELD : 1. The finding of the High Court that deceased K would not have committed suicide but had suffered a homicidal death are well established on record. K was highly qualified and was serving as a teacher in a school. If she was out to commit suicide it would be natural that she would leave any suicide note. No such note was found at the place of the incident.
C Secondly, if she had committed suicide by setting herself on fire then at least some cry or sound would have escaped from her mouth. No such evidence is found in the case. The bolting of the door of the kitchen from inside was not a clinching circumstance which could rule out homicidal death of deceased K. From the medical evidence also it becomes clear that deceased K had died a homicidal death and the burn injuries found on her dead body were
D post mortem and not ante mortem. [803-F-G, 806-A]

2. The Trial Court obviously erred in placing implicit faith in the omissions in police statements and in discrediting the version of the witnesses before the court in connection with the motive evidence deposed to by them. The police allowed the investigation to drag on in a cursory
E manner without taking any serious interest in the investigation. Consequently the statements of witnesses recorded by the police could not be treated to have represented a faithful and complete version recorded by the investigating agency so far as these witnesses are concerned. The reasoning adopted by the High Court that the evidence regarding motive
F as laid by the prosecution through its witnesses is quite reliable. [808-C-F]

3. In the circumstances of the case no reliance could be placed on the extra-judicial confession said to have been made by the accused to PW-10. This witness was not known to any of the parties and hence it was unlikely that accused would confide in him and confess their guilt before him. So far
G as the extra-judicial confessions said to have been made by the accused to the employees of K's father, PW-13, is concerned it is still on a weaker footing. If the accused had confessed their crime then this witness in the normal course of conduct would have rushed to his employer i.e. K's father and told him about the same. But curiously enough he informed no one
H about the so-called extra-judicial confessions and only when his further

statement was recorded by the police he stated about this so-called confession. Evidence of extra-judicial confessions apart from being inherently weak is not at all established on record. No reliance can be placed on this evidence. Once that conclusion is reached the most important connecting link between the accused on the one hand and the homicidal death of deceased K on the other gets snapped and eliminated. [810-A-D, 811-D]

4. The subsequent conduct of the accused had not revealed any clinching circumstance to necessarily connect the accused with the crime. [811-G]

5. There is no clear evidence led by the prosecution to show as to what was the exact time of death of the deceased even though she died a homicidal death in the household of the accused. Under these circumstances it is possible to visualise that when accused nos. 1 and 2 came back from their respective places of work after being informed about the death of the deceased there was no occasion for them to inform the father of the deceased at any prior time as by the time they reached the scene of offence the father of deceased had already been informed. [812-C]

6. So far as accused nos. 3 and 4 are concerned both of them were ladies. The former being a girl aged about sixteen-and-a-half years and the latter being an elderly lady. Both of them might not have thought it fit to inform the father of the deceased about the tragedy till the elder males were informed. Consequently this conduct on their part also cannot clinchingly show that they were co-conspirators who had shared a common intention with accused nos. 1 and 2 to liquidate deceased K or that they were the principle accused. [812-E]

7. The insistence of accused nos. 1 and 2 to cremate the body also cannot by itself be a circumstance which would necessarily lead to their culpability as accused no. 1 had already lodged a complaint before the police about the suicide of his daughter-in-law. [812-G]

8. Merely because deceased K who was staying with the accused had died a homicidal death in their household and her body was found in the kitchen with post mortem burns it cannot be said that the said circumstance by itself would connect all the accused or any one of them with the crime. [813-E]

A 9. However strong the suspicion may, it cannot take the place of proof. It is impossible on the state of evidence on record to bring home the offence under Section 302 read with Section 34 beyond the shadow of reasonable doubt to any of the accused. [814-B]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 5. of 1996.

From the Judgment and Order dated 10.12.81 of the Punjab & Haryana High Court in CrI. A. No. 1451 of 1979

C U.R. Lalit, R.L. Kohli, H.M. Singh and K.K. Gogia for the Appellants.

I.S. Goyal for Ms. Indu Malhotra for the Respondent.

The Judgment of the Court was delivered by

D **S.B. MAJMUDAR, J.** This is an unfortunate case in which a young bride named Krishna Kumari lost her life on the altar of dowry demands on the morning of 12th April 1977 in the household of present appellants who were charged with the offence of murder under Section 302 read with Section 34 of the Indian Penal Code (in brief 'IPC'). The Trial Court acquitted them. The respondent-State's appeal against acquittal was allowed by High Court and the appellants were convicted under Section 302 read with Section 34 of the IPC and were sentenced to undergo imprisonment for life. Appellant Nos. 1 and 2 were further sentenced to pay a fine of Rs. 3000. each and in default, to suffer further rigorous imprisonment for two years each. Fine, if realised, was ordered to be paid to Wasanda Ram Taneja, P.W.23, father of the deceased Krishna Kumari and that is how the appellant-accused are before us in the statutory appeal invoking Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

G As the acquittal of the appellants is reversed by the High Court in appeal and they have been sentenced to imprisonment for life we have carefully gone through the entire evidence on record, both oral and documentary, with the assistance of learned counsel appearing for both the sides with a view to finding out whether deceased Krishna Kumari died a homicidal death or had indulged in self-effacement by committing suicide and whether appellants or any one of them had been guilty of murdering her.

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Prosecution Case

It will be apposite to note at the outset the salient features of the prosecution case laid against the four appellants who will be referred to as accused nos. 1 to 4, for the sake of convenience, in the latter part of this judgment. Accused no. 1 was the father-in-law of deceased Krishna Kumari. Accused no. 2 was her husband. Accused no. 3 is the younger sister of accused no. 2 while accused no. 4 is the sister-in-law of accused no. 1. It is not in dispute that all the accused were living together in the same house situated at Urban Estate, Gurgaon in the State of Haryana. The prosecution story as emerging from the record is that marriage of Krishna Kumari deceased with accused no. 2 was settled by her father Wasanda Ram Taneja P.W. 23. This 'Shaggan' ceremony was performed two days before the date of marriage, Gopal Dass, P.W. 13 Joginder Singh, P.W. 18 had also accompanied Wasanda Ram on that occasion. When they reached the house of the accused all the four accused were present there. As soon as the articles of 'Shaggan' were placed before them, they asked as to what had been brought in the 'Shaggan'. They remarked that no refrigerator, television, tape recorder etc. had been brought. Wasanda Ram, P.W. 23 got puzzled and requested the accused with folded hands that he would supply these articles slowly and slowly. All these persons returned after the 'Shaggan' ceremony. Krishna Kumari deceased then was married to Hira Lal accused no. 2 on 10th February 1977. Wasanda Ram gave seven Tolas gold and other necessary articles worth Rs. 25,000. He, however, could not provide refrigerator and television.

After marriage Krishna Kumari had been visiting the house of her parents occasionally. A month prior to this occurrence she happened to meet Saroj, P.W. 16, her elder sister while she was at Gurgaon. The deceased was in a depressed mood at that time and on enquiry by Saroj she replied with heavy heart and tears in her eyes that her in-laws were harassing her as television and refrigerator were not given in the dowry. Saroj, P.W. 16 told her that their father would satisfy the demand slowly and slowly. The deceased further told that her in-law were keen to see their demands fulfilled immediately. She further told Saroj that her in-laws were threatening her that in case the demand was not satisfied early she would be finished.

Krishna Kumari deceased was P.Sc. B.Ed. M.A. in History and M.A.

- A Previous in English. She was employed as a teacher in a school at Farrakhnagar drawing a salary of Rs. 600 p.m. On her journey to Farrakhnagar in a bus Krishna Kumari was seen upset upon which Dr. Onkar Kapoor, P.W. 22 talked to her and she commented that the system of giving and taking dowry should be abolished. She wanted to consult Dr. Kapoor otherwise also.

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That one and a half months after the marriage Krishna Kumari also happened to meet Madan Lal, P.W. 17 and finding her in a depressed mood he made enquiries from her upon which she told that the marriage was a gamble and she had lost the same. One further enquiry she told that her in-law were demanding refrigerator and television, and were greedy persons to which Madan Lal Kapoor, P.W. 17 told the deceased that she was earning more than her husband and what else was needed by her in-laws. Thereupon Krishna Kumari started weeping and went away.

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Krishna Kumari, deceased, was also a private tutor of children of Saroj Chopra, P.W. 26. Even after her marriage and on her visit to the house of her parents she had been doing that work. She told her that she was not happy and was in trouble. On enquiry by Saroj Chopra, P.W. 26, the deceased told her that her in-laws were troubling her and she had been tolerating. Some days later Smt. Saroj Chopra, P.W. 26 had gone to the house of Wasanda Ram, P.W. 23 where she met Santosh Kumari, P.W. 14 and told her that if Krishna Kumari comes to their house, she should be sent to her house (Saroj Chopra's house). She was informed that Krishna Kumari would be coming on Baisakhi day for dinner.

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That a month prior to the occurrence Krishna Kumari deceased had come to the house of her parents where she talked to Santosh Kumari, P.W. 14, her sister-in-law that her in-laws were demanding refrigerator and television in the dowry.

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At the end of March, 1977 Krishna Kumari, deceased had gone to the house of her parents when Mohan Lal Grover, P.W. 15 met her at her house and found her in a depressed mood and weak in health. On enquiry the deceased told him that her in-laws were harassing her by taking up the demand of adequate dowry. Krishna Kumari stayed for a week at the house of her parents before this occurrence and then she had gone to her in-laws' house telling that they were going to Vaishno Devi.

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The deceased and her husband actually went to Vaishno Devi and had returned two days earlier to the occurrence. A

Coming to the date of incident it is revealed as per prosecution evidence that on the fateful day of 12th April 1977 at about 11.30 a.m. to 11.45 a.m. Santosh Kumari, P.W. 14 had gone to the house of Krishna Kumari, deceased, to enquire about her and to invite her for the meals on the Baisakhi day. when she reached Krishna Kumari's house she found 2-3 boys present there besides 1 or 2 ladies including accused nos. 3 and 4. On enquiring about the whereabouts of Krishna Kumari, deceased, accused no. 4 told Santosh Kumari, P.W. 14 that she should go inside and see for herself. Thereupon Santosh Kumari, P.W. 14 went inside the house of the accused and found dead body of Krishna Kumari lying in the kitchen. Her tongue was protruding out. There was bleeding from the nose. Santosh Kumari, P.W. 14 informed the father of the deceased, P.W.23 who was her father-in-law. She requested him to come immediately to the house of the accused. Her father-in-law, P.W. 23, immediately rushed to the spot. Mother-in-law of Santosh Kumari also came to the spot. By that time accused no. 1 had also reached there from the factory where he used to go. He had been informed of the incident by his daughter, Veena, accused no. 3 on phone. It is the further case of the prosecution that accused no. 2 also came on spot. That accused no. 1 wanted to cremate the dead body of Krishna Kumari but on the objection taken by her father Wasanda Ram. P.W. 23, accused no. 1 went to the police station and lodged a complaint alleging that the deceased Krishna Kumari had committed suicide. Thereafter Assistant Sub-Inspector Amar Chand, P.W. 25 took up investigation. He came to the spot and prepared an Inquest Report. He recorded the statements of Santosh Kumari, Vidya Wati, Ram Asra, Wasanda Ram and of accused no. 1 accused no. 2 and Rajesh Kumar, brother of accused no. 2. Dr. S.K. Gupta, P.W. 1 conducted the post-mortem on the dead body of Krishna Kumari on 13th April 1977 at 9.00 a.m. We shall refer to the result of the post-mortem examination a little later. Suffice it to say at this stage that on the basis of the said post mortem report the police registered criminal case against all the accused under Section 302 read with Section 34 of the IPC as it was felt that Krishna Kumari had not committed suicide but had died a homicidal death. Thereafter it appears that the proceedings lingered on at investigation stage but the accused were not arrested. Ultimately the father of the deceased, P.W. 23 after making various attempts for attracting the attention of the higher authorities including the B
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A Prime Minister, Chief Minister of Haryana and others, lodged a private complaint before the learned Magistrate in August 1977. Thereafter further statements of witnesses were recorded. We will refer to them at an appropriate place hereafter. Ultimately the accused were arrested in February 1978 and after completing investigation chargesheet was submitted against the accused for offences under Section 302 read with Section B 34, IPC and after usual committal proceedings the case reached the Sessions Court being Sessions Case No. 26 of 1978 and Sessions Trial No. C 39 of 1978. The offences with which the accused were charged were under Section 302 read with Section 34, IPC and also under Section 201 read with Section 34, IPC. The learned Additional Sessions Judge, Gurgaon, who D tried the accused, after recording evidence offered by the prosecution as well as by the defence, came to the conclusion that the prosecution was not able to establish beyond reasonable doubt that deceased Krishna Kumari had died a homicidal death and that prosecution had also failed to establish that the accused were guilty of murdering her. Consequently they were acquitted of the offences with which they were charged. As noted earlier it is this acquittal by the Trial Court that has been reversed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 1451 of 1979, moved by the State of Haryana against the present appellants and that has resulted in the present proceedings.

E *Rival contentions*

Shri Lalit, learned senior counsel for appellant-accused has vehemently contended that this is a case in which the prosecution has failed to bring home the offences with which the appellants were charged. That F there is no clear evidence of motive against the appellants. That the prosecution tried to prove the motive by leading evidence of various witnesses but their version stood contradicted with their police statements and were not worthy of acceptance. That the married life of deceased Krishna Kumari was a very short one being of only two months and seven G days and that there was no evidence on record that during that time deceased was in any way harassed or physically tortured by the accused or any one of them. That the demand for refrigerator or television as alleged by the prosecution was also not clearly established on record. On the contrary the evidence showed that Krishna Kumari and accused no. 2, her H husband had gone on a pilgrimage of 'Vaishno Devi' only two days before the date of incident and even on the date of incident Krishna Kumari had

served breakfast to accused no. 2, her husband who thereafter had gone to attend his duties as stenographer in the Agricultural Office at Delhi while accused no. 1, father-in-law had gone to his factory at Gurgaon which he reached before 8.00 a.m., that being the time at which the factory started working. That there was nothing to show as to at what time exactly the deceased died and accused or any one of them were involved in her death. That the dead body was found in the kitchen in a burnt condition and the door of the kitchen was closed from inside. That these circumstances clearly ruled out case of murder but would remain a case of suicide. It was further contended that the co-called extra judicial confessions said to have been made by accused nos. 1 and 2 before P. Ws. 10 and 13 could not be relied upon and were rightly rejected by the Trial Court. That the high Court had believed these extra-judicial confessions without considering the infirmities with which the evidence about these extra-judicial confessions suffered. That once these extra-judicial confessions were ruled out there remained nothing in the prosecution case to bring home the offences to the accused. That this was a case of circumstantial evidence which suffered from absence of complete links and the entire chain of circumstances for linking the accused with the crime was not established by the prosecution. It was further contended that the appellant-accused nos. 1 and 2 could establish by leading cogent evidence in defence that they were not present on spot when the incident occurred. That accused no. 2 had gone to the office of Agricultural Department where he served under the Marketing Officer and his duty hours started from 10.00 a.m. onwards while accused no. 1 had gone to his factory before 8.00 a.m. and was actually in the factory from 8.00 a.m. onwards. That the prosecution has equally failed to establish by cogent evidence the involvement or accused nos. 3 and 4 in the incident in question. He, therefore, contended that this was a case of suicide for which the accused cannot be held responsible and in any case there is no charge against them under section 306 of the IPC. That if the main charge under Section 302 read with Section 34, IPC failed nothing survived for bringing home charge under Section 201, IPC to the accused. It was further contended that the reasons which weighed with the Trial Court for acquitting the accused represented a possible view and could not be treated to be an impossible or unreasonable view and hence in appeal against acquittal the High Court ought not to have interfered.

Learned counsel for respondent-State on the other hand tried to support judgment and order of the High Court convicting the appellants

A and sentencing them as aforesaid.

In the light of the aforesaid rival contentions the following *points arise for our determination* :

- B (i) Whether deceased Krishna Kumari died a homicidal death on the morning of 12th April 1977 or whether she had committed suicide.
- (ii) If it is held that deceased Krishna Kumari died a homicidal death whether accused or any one of them can be held guilty of offences under Section 302 read with Section 34, IPC for murdering deceased Krishna Kumari.
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We shall deal with these points seriatim :

Point No. (i)

D So far as the nature of the death of Krishna Kumari is concerned it has to be appreciated that P.W. 6 Balbir Singh has stated that on 12th April 1977 he was sitting in the 'verandah' of his Premises at about 10.30 a.m. His premises are situated in the vicinity of the house the tragic event of death of Krishna Kumari took place. The witness stated that he heard the cries of accused no. 4 that there was fire. Hearing these cries he and his worker Ram Asra came to the house of accused no. 1. On enquiry from Raj Rani, accused no. 4, he was told that the fire was in the kitchen. He tried to break open the door of the kitchen but it was bolted from inside. When the door could not be opened he asked Ram Asra to bring 'Saddal' (a small hammer) from the factory. Consequently he brought the 'saddal' and with the help of the same the door of the kitchen was opened. On opening the door he found the dead body lying there duly burnt inside the kitchen. He felt the pulse of the body and it was not functioning. The aforesaid evidence of the witness shows that the dead body of the deceased Krishna Kumari was lying inside the kitchen in a burnt condition and the door of the kitchen was bolted from inside. It is this evidence which prompted the learned Trial Judge to come to the conclusion that this is not a case of murder but probably of suicide. Though in the light of the medical evidence the learned Trial Judge himself entertained doubt and had to conclude that the death of deceased Krishna Kumari is shrouded in mystery. The High Court, on the other hand on considering medical

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evidence and other related evidence to which we will presently refer, took the view that deceased Krishna Kumari would not have committed suicide but had suffered a homicidal death, we are inclined to agree with the said finding of the High Court for obvious reasons which are well established on record.

It must firstly be kept in view that deceased Krishna Kumari was having normal health and was a working woman. She was highly qualified and was serving as a teacher in a school. She was earning Rs. 600 per month which was more than what her husband accused no. 2 was earning. If she was out to commit suicide it would be natural that she would leave any Suicide Note. No such note was found at the place of the incident. Secondly, if she had committed suicide by setting herself on fire then at least some cry or sound would have escaped from her mouth. No such evidence is found in the case. Her mouth was not found gagged or closed. On the contrary tongue was found protruding out when dead body was detected on spot. It is true that the kitchen door was found bolted from inside as witness Balbir Singh, P.W. 6 has stated and the door had to be broken open. There is evidence on record to show that there was a service window about 3 ft. from the ground floor level which was open and from which at least with difficulty any one inside could come out. The evidence of photographer, P.W. 3 Surinder Singh as well as the evidence of investigating officers Amar Chand, P.W. 25 and Om Parkash, P.W. 27 clearly bring out this fact. There are photographs, P. 7 and P. 9 to P.14 produced by police photographer, P.W. 3 Surinder Singh which clearly show that the kitchen which was the scene of incident could be approached or an exit form there could be affected by any one from the service window though may be with little difficulty. Consequently the reasoning of the High Court that even though the kitchen was found bolted from inside, and the dead body could be found after breaking open the door of the kitchen, if any one had committed the crime of liquidating Krishna Kumari then after putting her dead body in the kitchen the concerned person could escape through the service window even after bolting the door of the kitchen from inside, cannot be faulted. The bolting of the door of the kitchen from inside was not a clinching circumstance which could rule out homicidal death of deceased Krishna Kumari. At this stage it is necessary to note that according to the prosecution case deceased Krishna Kumari was done to death by earlier gagging her nose and mouth and she had died because of suffocation and thereafter it was her dead body which was planted in the kitchen and was subjected to post mortem burning. So far as this part of

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A the case of the prosecution is concerned it gets fully supported by medical evidence on which strong reliance is placed by the High Court. The said evidence consists of the post mortem notes Ex. p. 8 proved by P.W. 1 Dr. S.K. Gupta. The witness stated that on 13 th April 1977 at about 9.00 a.m. he performed post mortem examination on the dead body of Smt. Krishna Kumari, wife of Hira Lal (accused no. 2), aged about 25 years. The observation of the witness in connection with the dead body was as follows:

"The length of the body was 5'2". A blackened body of medium built. A young woman wearing a charred Kutcha Rigor Mortis was present. There was bleeding through both the nostrils. Tongue found protruded 1/3" outside the lips. Outer angles of the eyes were congested and red. No mark of legature could be found. Dissection did not show any redness and congestion under the skin of the neck. Thyroid bone was in tact. The following were found on the body -

- D (1) The body showed extensive burns of mostly second degree and third degree (At the groins) from the head to the lower one third of the legs, excepting the fast.
- (2) The body showed incomplete peeled of dried and burnt epidermis all over.
- E (3) There were no blisters present.
- (4) No red line was found around the margins of the burnt areas.
- (5) The floors of the burnt areas were of glistening white appearance.
- F (6) There were no signs of congestion any where.
- (7) Separating epidermis did not contain any serum. There was a dry appearance of the burnt areas all over.
- G (8) There were no signs of information.

Right and left lungs were highly congested and haemorrhagic at several areas."

H In the opinion of the doctor death was probably because of asphyxia

and the clear signs of the burnt area strongly suggested that burns were post mortem in nature. It is pertinent to note that in the light of the aforesaid observations of the doctor as recorded in the post mortem notes the police registered case under Section 302 read with Section 34 against the appellants on 13th April 1977 itself. Still, curiously enough none of the accused was arrested and the police appeared to have adopted a lukewarm attitude. In the meantime the investigating agency appears to have solicited the opinion of the another doctor, P.W. 2 Dr. Agrawal. Senior Superintendent of Police sent a letter on 19th July 1977 to the witness to give his opinion on the post mortem report of Dr. Gupta. According to Dr. Agrawal the person may die due to suffocation as a result of inhalation of fumes and a smoke in the respiratory passages produced by burning of cloths. He further opined that the line of redness in burns caused during life may take sometime to appear and therefore it is possible that the line of redness may be absent if the death is immediate. There is medical evidence of third doctor, P.W. 7 Dr. Radha Mohan. Witness was Chief Medical Officer, Lucknow and Chief Medico Legal. Expert to the State of U.P. He was Professor Forensic Medicines in medical colleges at Lucknow and Meerut. He had seen the post mortem examination report of the dead body of Smt. Krishna Kumari. The witness clearly stated that in his opinion Krishna Kumari died before and was burnt later and the death was due to asphyxia which was a result of suffocation. His further opinion was that the burns found on the dead body were post mortem. They did not show any signs of body reaction which invariably occurs if death was due to burns. In this case the characteristic attitude of the body known as the pugilistic attitude was not present. In deaths due to burns this sort of attitude is found. This confirmed that the body was burnt after death had occurred. There were no red lines and no blisters. There was no sign of congestion in the skin. The lungs showed deep congestion but the wind pipe did not show the presence of any soot or carbon particles. In cases of death resulting from burns soot particles are found in the wind pipe because they go in with the breathing. Bleeding from nostrils showed that the death had occurred from asphyxia which was of forceful nature, i.e., the patient must have tried hard to breath. The protruding of the tongue showed that the deceased tried to breath hard or if something was introduced into the mouth or the mouth was closed and the patient might have tried to breath hard to overcome the obstruction, the tongue may have come out. Or if something was introduced into the mouth and if that thing was taken out after death, the tongue will come out. If an alive person is burnt there is bound to be blister formation. But there will be no blister at all if the dead

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A body is burnt, because blister formation is sign of life. Nothing substantial could be brought out in his cross examination. In view of this evidence it becomes clear that deceased Krishna Kumari had died a homicidal death and the burnt injuries found on her dead body were post mortem and not ante mortem. The doubt expressed by learned Trial Judge about the nature of death and which, according to learned Trial Judge, was a mystery did not really remain a mystery in the light of the aforesaid clinching medical evidence. Consequently we agree with the finding of the High Court that deceased Krishna Kumari died a homicidal death on the fateful morning of 12th April 1977 in the household of the accused. We answer Point No. (i) accordingly. That takes us to the consideration of the moot question as to whether the accused or any one of them had played part in liquidating deceased Krishna Kumari.

Point No. (ii)

D For bringing home the offence under Section 302 read with Section 34, IPC to the accused the prosecution has relied upon the following aspects of the prosecution case :

(a) Motive;

(b) Extra-judicial confessions of accused nos. 1 and 2;

E (c) Subsequent conduct of the accused; and

(d) Situation of the scene of offence.

(a) *Motive*

F We shall first deal with the prosecution evidence regarding motive. The case of the prosecution as revealed by the evidence of P.W. 23, father of the deceased Krishna Kumari, is to the effect that at the time of her marriage he gave seven Tolas of gold and other necessary articles worth Rs. 25,000 but he could not provide refrigerator and television, tape recorder etc. and that the accused were dissatisfied with the dowry. That G at the time of the betrothal ceremony the accused were not satisfied as the father of the deceased had given only Rs. 101. After marriage Krishna Kumari used to visit the house of her parents occasionally. This part of the evidence is corroborated by the evidence of witness Saroj. P.W. 16, elder sister of the deceased and the evidence of independent witnesses Dr. H Onkar Kapoor, P.W. 22, Madan Lal, P.W. 17 and Saroj Chopra, P.W. 26

to which we have made reference while narrating the prosecution case. Similar is the evidence of witness Santosh Kumari, P.W. 14 who stated that deceased had complained about the conduct of the accused a month prior to the occurrence. In our view the High Court has rightly relied upon the aforesaid evidence for reaching the conclusion that the accused nos. 1 and 2 were dissatisfied with the dowry amount given by Krishna Kumari's father at the time of her marriage with accused no. 2 and that they were demanding refrigerator and television etc. The learned Trial judge on the other hand disbelieved these witnesses on the spacious plea that in their police statements they had not given details about the complaint of deceased Krishna Kumari to which they referred to their evidence before court and to that extent their version stood contradicted by their police statements. In this connection it is to be noted that once it is observed agreeing with the High Court that police investigation in the present case was unfortunately most unsatisfactory and cursory, that aspect loses its significance. It has to be kept in view that on the next day of the incident, that is, 13th April 1977 on receipt of the post mortem notes of Dr. S.K. Gupta the police authorities had themselves registered the case under Section 302 read with Section 34, IPC against the accused, still, the accused were not arrested. Not only that but the police adopted a lukewarm attitude and developed cold feet. Months rolled by. Despite there being clear opinion of the doctor as found in post mortem notes, instead of arresting the accused the investigating agency tried to obtain opinion of another doctor, Dr. Agrawal, and that too was done after about three months, i.e., on 19th July 1977. Even despite that opinion which was in a way non-committal no attempt was made to tighten the investigation and it dragged its feet. That in the meanwhile exasperated father of the deceased, P.W. 23, moved from pillar to post. As noted earlier, his evidence reveals that because the police had taken no steps to arrest the accused the witness sent telegrams to Prime Minister, Home Minister and Chief Minister of Haryana, requesting that a fair investigation be got done. One S.P. from Chandigarh had also come for enquiry. In the meantime one Mr. Atre had joined as S.S.P., Gurgaon who had also received a copy of Mr. Taneja's complaint from the higher authorities. He called him and listened to him and then a further investigation started in the matter. According to the witness, earlier the police was not doing proper investigation because they were bribed by the accused. He got the news published in various newspapers and when the police did not take any action in the matter he filed complaint before the Addl. Chief Judicial Magistrate. He attached the cuttings appearing in the newspapers with the complaint. The court

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A then issued process against the accused and thereafter further investigation started. The aforesaid evidence which has stood the test of cross-examination really reveals that the police for reasons best known to them after registering the offence under Section 302 read with Section 34, IPC against the accused as early as 13th April 1977 allowed the investigation to drag

B on in a cursory manner without taking any serious interest in the investigation. Consequently the statements of witnesses recorded by the police at this stage could not be treated to have represented a faithful and complete version recorded by the investigating agency so far as these witnesses are concerned. The Trial Court Obviously erred in placing implicit faith in the omissions in police statements and in discrediting the version of the witnesses

C before the court in connection with the motive evidence deposed to by them. It was unfortunate that when offence of such a heinous nature which the medical evidence *prima facie* made out was found to be committal and on the basis of which case under Section 302 read with Section 34, IPC was registered against the accused, the police took no steps to find out as to how this homicide took place in the household of the accused on that fateful morning. No effort was made to find out as to where the accused no. 2 and deceased, his wife, had spent the earlier night? What was the situation of the bed room? How far it was from kitchen where the dead body was found in a burnt condition having suffered from post mortem burns, as seen from the post mortem report? It appears that for

D reasons best known to the investigating agency at that time all relevant evidence which could have been gathered with promptness and efficiency in connection with such a heinous crime, was allowed to escape and as will be seen a little later, the result, is that such a crime committed in the household of the accused wherein a young lady had lost her life has to go unpunished. Under these circumstances we entirely concur with the reasoning adopted by the High Court that the evidence regarding motive as laid by the prosecution through the aforesaid witnesses is quite reliable and has to be accepted. It has to be kept in view that accused no. 1 was serving as a Foreman getting about Rs. 1200 p.m. while accused no. 2 was serving as a stenographer earning Rs. 600 p.m. As compared to that deceased was a highly educated lady having Post Graduate degree in English and she was serving as a teacher earning more than what her husband earned. Witness, P.W. 23, father of the deceased girl was comparatively in a better economic condition as he was having his own tailoring shop wherein he was employing assistants. It is, therefore, just quite reasonable to presume that the accused nos. 1 and 2 would have demanded

E refrigerator and television as deposed to by the aforesaid witnesses finding

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the father of the deceased to be in a better economic position. The finding of learned Trial Judge to the contrary is totally lopsided and quite unreasonable and the view taken by the learned Trial Judge on this aspect must be treated to be an impossible one. The High Court in appeal against acquittal was, therefore, quite justified in holding that the prosecution has established by satisfactory evidence that there was a strong motive for the accused to threaten the deceased and to pester her by demanding dowry articles, having not received refrigerator and television from her father.

(b) *Evidence regarding extra-judicial confessions*

That takes us to the consideration of the evidence regarding extra-judicial confessions of accused nos. 1 and 2. We may at once state that coupled with the evidence of motive, if the evidence of extra-judicial confessions of accused nos. 1 and 2 stood the test of scrutiny then there would have been cast iron case against accused nos. 1 and 2. However, unfortunately for the prosecution, on this score it has drawn blank. It is the case of the prosecution that in the months of November, December 1977 accused nos. 1 and 2 approached P.W. 10 Hari Kishan who was a member of the Ad-hoc Committee of the Janata Party and P.W. 13, Gopal Dass who was an employee of the father of deceased Krishan Kumari and stated before them that they had committed mistake and that they had killed the girl in anger and they should get the matter amicably settled. That again after 15 days the accused met the witness Hari Kishan and stated that the girl cannot come back and that they are prepared to compensate. The evidence of this witness was disbelieved by the learned Trial Judge as in the court itself the witness was not in a position to point out accused no. 2 and he pointed out instead one Vinod Kumar, who was alleged to have made the confession before him. Even that apart the statement of the witness that he had informed Shri Taneja, that is, father of deceased Krishna Kumari about this confession, is not corroborated by the evidence of P.W. 23, Shri Taneja himself. The witness also did not inform any one about the co-called confessional statements of the accused. His further statement was recorded by the police on 20th January 1978 in connection with this alleged extra-judicial confession of the accused. If there was any such confession made by the accused before him in November or December there is no reason why he should not have gone to the police immediately and reported about the same when investigation was in progress and even a criminal complaint was filed by the father of the deceased in the

A Magistrate's court and summons were issued to the accused. Consequently no reliance could be placed on the extra-judicial confessions said to have been made by the accused before him. The witness was also not known to any of the parties and hence it was unlikely that accused would confide in him and confess their guilt before him. The learned Trial Judge was, therefore, justified in not placing reliance on extra-judicial confessions of
B accused nos. 1 and 2, said to have been made before this witness.

So far as the extra-judicial confessions said to have been made by the accused during the same period of November and December 1977 before witness Gopal Dass, P.W. 13 is concerned it is still on a weaker footing.
C Gopal Dass was an employee of Krishna Kumari's father Wasanda Ram, P.W. 23. If the accused had told him as alleged by him confessing their crime of having killed Krishna Kumari in anger the witness in the normal course of conduct would have rushed to his employer Krishna Kumari's father and told him about the same. But curiously enough he informed no one about the so-called extra-judicial confessions and only on 20th January
D 1978 his further statement was recorded by the police wherein he stated about this so-called confession about the death of Krishna Kumari. Witness Gopal Dass, P.W. 13 was present on the scene of offence after the incident and his statement was earlier recorded by the police. Under the circumstances nothing prevented him from immediately approaching the
E investigating agency in November/December 1977 and in informing them about the so-called confession of the accused. Still he kept mum and did not do so. Consequently the version of this witness regarding the extra-judicial confessions was rightly not believed by the learned Trial Judge. So far
F as the High Court is concerned, in a very cursory manner the reasoning of the learned Trial Judge was brushed aside by the High Court and reliance was placed on these extra-judicial confessions. We may profitably extract that the High Court had to say in this connection :

G "P.W. 10 Hari Kishan and P.W. 13 Gopal Dass are the witnesses of extra-judicial confession made by Mulakh Raj and Hira Lal respondents. Hari Kishan P.W. is a resident of the same locality and is a retired Military Officer. He is also a member of the *Ad-hoc* Committee of Janta Party. He is not inimical to the respondents. As it was the Janta Party regime in those days, it was quite natural for the two respondents to approach him. These respondents
H admitted their guilt before him and sought his intervention.

Similarly, there is nothing against Gopal Dass, P. W. to whom these respondents approached with the same request. He is a person, who is known to both the respondents and the complainant. These prosecution witnesses are also consistent in their statements recorded by the Magistrate. The trial Court fell in error in not relying upon their testimony and the reasoning adopted by it is not convincing.

It is difficult to appreciate this reasoning of the High Court for placing reliance on the extra-judicial confessions as deposed to by these witnesses. None of the infirmities noted in the evidence of these witnesses have been considered by the High Court. Shri Lalit, learned senior counsel for the appellants was, therefore, right in contending that evidence of extra-judicial confessions apart from being inherently weak is not at all established on record of this case and no reliance can be placed on this evidence. Once that conclusion is reached the most important connecting link between the accused or at least accused nos. 1 and 2 on the one hand and the homicidal death of deceased Krishna Kumari on the other gets snapped and eliminated.

(c) Subsequent conduct of the accused

So far as the subsequent conduct of the accused is concerned strong reliance was placed by learned counsel for the respondent relying upon the observation of the High Court in this connection that the accused did not immediately inform the father of the deceased who was staying in the near vicinity after the alleged suicide of his daughter. That none of the accused was found to be lamenting or weeping when being apprised of the incident. That the accused wanted to remove the dead body for cremation but only on the insistence of witness. Wasanda Ram, P.W. 23, father of the deceased they were not permitted to do so. In our view the aforesaid conduct of the accused had not revealed any clinching circumstance to necessarily connect the accused with the crime. It has to be kept in view that so far as accused nos. 1 and 2 were concerned they have led defence evidence to show that accused no. 1 had gone to his factory on the date of the incident before 8.00 a.m. as the working of the factory started at 8.00 a.m., and accused no. 2 had gone from Gurgaon to Delhi to attend his office which started working at 10.00 a.m. The evidence of Dr. Gupta shows that when he performed the post mortem examination on 13th April 1977 at about 9.00

- A a.m. the physical condition of the dead body was such that death could be taken to have occurred 22 hours before the post mortem examination. That would bring that approximate time of death of the deceased to 11.00 a.m. on 12th April 1977. However, leaving a margin of an hour or two in the light of evidence of P.W. 6 Balbir Singh who heard the cries and commotion at about 10.30 a.m. it could be said that death might have occurred within an hour prior to 10.30 a.m., namely, between 9.30 a.m. to 10.00 a.m. However, this is also a guess work as there is no clear evidence led by the prosecution to show as to what was the exact time of death of the deceased, even though as we have found earlier, she died a homicidal death in the household of the accused on the fateful morning of 12th April 1977. Under these circumstances it is possible to visualise that when accused nos. 1 and 2 came back from their respective places of work after being informed in the afternoon of 12th April 1977 about the death of the deceased there was no occasion for them to inform the father of the deceased P.W. 23 at any prior times as by the time they reached the scene of offence P.W. 23 had already been informed by witness Santosh Kumari, P.W. 14 and had reached the spot. So far as accused nos. 3 and 4 were concerned both of them were ladies. Accused no. 3 was a girl aged about sixteen and a half years while accused no. 4 was an elderly lady and both of them might not have thought it fit to inform father of the deceased about the tragedy till the elder males were informed, namely, accused nos. 1 and 2. Consequently this conduct on the part of the accused nos. 3 and 4 also cannot clinchingly show that they were co-conspirators who had shared a common intention with accused nos. 1 and 2 to liquidate deceased Krishna Kumari or that they were the principal accused. Similarly whether the accused lamented or not is also an equivocal circumstance. On the other hand if it is held that the accused had deliberately planted the dead body of Krishna Kumari in the Kitchen after she was already killed, then to make a show of innocence they would have easily resorted to mock lamenting and weeping. Therefore, this circumstance is also an equivocal circumstance which does not necessarily lead to the culpability of the accused in the crime. The insistence of accused nos. 1 and 2 to cremate the body also cannot by itself be a circumstance which would necessarily lead to their culpability as accused no 1 had already lodged a complaint before the police about the suicide of his daughter-in-law,. Consequently the aforesaid subsequent conduct on which strong reliance has been placed by the High Court to

bring home the offence to the accused cannot really assist the prosecution and it does not represent a strong and clinching link in the chain of circumstantial evidence which is incompatible with any other hypothesis save and except the guilt of the accused. A

(d) Situation of the scene of offence B

That takes us to the last circumstance on which strong reliance was placed by the High Court for convicting the appellants. That pertains to the scene of offence. It is true that the scene of offence was shown to be kitchen in the household of the accused where all the four accused were staying. It is also true that at the time when the dead body of deceased was found lying in the kitchen witness Santosh Kumari, P.W. 14 found that the kitchen was in perfect order and there was no smoke in the kitchen. Kitchen was neat and clean and there was no smell emanating from the kitchen. But even if that is so, it is difficult to appreciate how this circumstance itself points a guilty finger to the accused or any one of them. Merely because deceased Krishna Kumari who was staying with the accused had died a homicidal death in their household and her dead body was found in the kitchen with post mortem burns it cannot be said that the said circumstance by itself would connect all the accused or any one of them with the crime. C D E

The question still remains as to who killed the deceased Krishna Kumari, whether it was accused no. 1 or 2 or 3 or 4 or whether all of them jointly had taken part in killing her by suffocating her. Further question remains as to who was the principal accused guilty of offence under Section 302 out of the four accused and who were guilty of offence under Section 302 read with Section 34 for having shared the common intention to murder her. It is difficult to appreciate how accused no. 3 a minor girl aged sixteen and a half years being sister-in-law of the deceased had shared such common intention if at all there was any. All these questions remain unanswered on the unsatisfactory state of evidence led by the prosecution. As we have noted earlier the basic flaw in the case lies in the lukewarm and cursory investigation initiated by the police after registering the offence under Section 302 read with Section 34, IPC against these accused. Result was that prosecution case became lame from the very beginning and, therefore, it must be visited with the logical consequence of failure to bring home the offence of murder to the accused who may at the most remain F G H

A under the cloud of a strong suspicion of having liquidated Krishna Kumari in their household on that fateful morning. However strong the suspicion may, it cannot take the place of proof. The High Court seems to have been swayed by the unfortunate and untimely homicidal death of a young girl in the household of her father-in-law and husband on the altar of dowry demand. However, it is impossible on the state of evidence on record to bring home the offence under Section 302 read with Section 34 beyond the shadow of reasonable doubt to any of the accused. The High Court with respect seems to have almost rendered a moral conviction against the accused rather than a legal one.

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C In view of the aforesaid discussion point no. (ii) is answered in the negative.

In the result the appeal succeeds and is allowed. All the appellant-accused are acquitted of the offence under Section 302 read with Section 34, IPC with which they were charged. Similarly they are entitled to be acquitted of offence under Section 201 read with Section 34, IPC as they are not held to be criminally involved in the incident. All the accused are given benefit of doubt. The judgment and order of the High Court are set aside and the order of acquittal as rendered by the Trial Court is restored. The accused were on bail pending this appeal. Now there is no occasion for them to surrender. Their bail bonds are ordered to be cancelled and sureties shall stand discharged.

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Appeal allowed.