

DALBIR SINGH

A

v.

STATE OF U.P.

APRIL 8, 2004

[S. RAJENDRA BABU, DR. AR. LAKSHMANAN AND  
G.P. MATHUR, JJ.]

B

*Code of Criminal Procedure, 1973:*

*Section 464—Charge—Omission to frame—Effect of—Held: Appellate or revisional court could convict an accused for an offence for which no charge was framed unless a failure of justice had in fact been occasioned—In order to determine whether a failure of justice had in fact been occasioned, it is necessary to examine whether the accused was aware of the basic ingredients of the charge and the main facts sought to be established against him.*

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D

*Penal Code, 1860:*

*Section 306—Suicide—Abetment of—Omission to frame charge for—Effect of—High Court found accused guilty of abetment of suicide by his wife—But accused was not convicted as no charge was framed under S. 306—Correctness of—Held: If the accused was aware of the basic ingredients of the charge and the facts sought to be established against him conviction is possible even though no charge was framed under S. 306—In the circumstances of the case, accused convicted under S. 306.*

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The appellant-accused was charged under Section 302 of the Penal Code, 1860 for having committed the murder of his wife and his two daughters. He was also further charged under Section 304B IPC for causing dowry death of his wife and also under Section 498A IPC for subjecting her to cruelty. The trial court convicted the appellant-accused under Section 302 IPC and Section 498A IPC but acquitted him of the charge under Section 304B IPC.

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In appeal, the High Court held that the charge under Section 302 IPC was not established but maintained the conviction under Section 498A

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**A IPC.**

The High Court was further of the opinion that the evidence on record clearly established the charge against the appellant-accused under Section 306 IPC for abetting the suicide of his wife and he could be convicted and sentenced for the said offence. However, in view of the fact that no charge under Section 306 IPC had been framed and there was conflict of opinion in two decisions of this Court rendered by Benches of equal strength and as in such a situation a later decision was to be followed, the High Court came to a conclusion that the accused could not be convicted under Section 306 IPC. Hence the appeals.

**C**

The following question arose before the Court:-

“Whether in a given case is it possible to convict the accused under Section 306 IPC if a charge for the said offence has not been framed against him?”

**D**

Disposing the appeals, the Court

**HELD: 1.** In view of Section 464 of the Code of Criminal Procedure, 1973, it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact be occasioned. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. [953-F-G]

**F**

*Willie Slaney v. State of M.P.*, AIR (1956) SC 116 and *Gurbachan Singh v. State of Punjab*, AIR (1957) SC 623, followed.

*Lakhjit Singh v. State of Punjab*, [1994] Supp. 1 SCC 173, approved. *Sangarabonia Sreenu v. State of A.P.*, [1997] 5 SCC 348, overruled.

**G**

**2.** In view of the material on record, the conviction under Section 306 of the Penal Code, 1860 against the appellant-accused can safely be recorded and the same would not result in failure of justice in any manner. [954-G]

**H**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 479 A  
of 1999.

From the Judgment and Order dated 9.3.98 of the Allahabad High  
Court in Crl. A. No. 803 of 1997.

WITH B

Crl. A. No. 480 of 1999.

Appellant-in-Person.

Pramod Swarup and J.K. Bhatia, for the Respondent in Crl. A. No. 479/  
99 & appellant in Crl. A. No. 480/99. C

The Judgment of the Court was delivered by

**G.P. MATHUR, J.** In view of conflict of opinion in two decisions of  
this Court rendered in *Lakhjit Singh and Anr. v. State of Punjab*, [1994] D  
Supp. 1 SCC 173 and *Sangarabonia Sreenu v. State of A.P.*, [1997] 5 SCC  
348 these appeals have been directed to be placed for hearing before a three-  
Judge Bench.

2. The accused Dr. Dalbir Singh was charged under Section 302 IPC  
for having committed the murder of his wife Vimla and two daughters Km. E  
Neha aged 7 years and Km. Shruti aged 1½ year on 28.3.1991. He was  
further charged under Section 304-B IPC for causing dowry death of his wife  
Vimla and also under Section 498-A IPC for subjecting her to cruelty. The  
IXth Addl. Sessions Judge, Agra, by his judgment and order dated 20.3.1997  
convicted him under Section 302 IPC and sentenced him to death. He was F  
also convicted under Section 498-A I.P.C. and was sentenced to 3 years R.I.  
but was acquitted of the charge under Section 304-B IPC. In appeal the High  
Court came to the conclusion that the charge under Section 302 IPC was not  
established and accordingly acquitted him for the said offence. The High  
Court also came to the conclusion that the accused was guilty under Section G  
306 IPC for having abetted commission of suicide by Vimla by setting herself  
on fire wherein her two daughters also died. But in view of the fact that no  
charge under Section 306 IPC was framed against the accused, the High  
Court, relying upon *Sangarabonia Sreenu v. State of A.P.*, [1997] 5 SCC  
348, held that the accused could not be convicted for the said offence. The  
High Court noticed that a contrary view had been taken in an earlier decision H

A in *Lakhjit Singh v. State of Punjab*, [1994] Supp. 1 SCC 173 but chose to rely upon the later decision as the settled view of the said court was that if there was conflict of opinion in two decisions of this Court rendered by benches of equal strength, it is the later decision which has to prevail. The conviction of the accused under Section 498-A IPC and sentence imposed thereunder was, however, maintained.. The accused Dr. Dalbir Singh and also the State of U.P. have preferred appeals against the decision of the High Court.

3. Dalbir Singh, a MBBS Doctor, was at the relevant time posted in a government hospital in Almora in the hills of U.P. (now in the State of Uttaranchal). His wife and two daughters were living in a flat bearing No. 9/8 Sanjay Palace, ADA Colony in the city of Agra. The accused used to come to Agra almost every fortnightly. PW 13 Jagdish Chandra Agrawal, who carries on business in Delhi, had come to Agra and was staying in flat No. 1/3 with Shri Narendra Dhar in the same colony. At about 10.30 a.m. on 28.3.1991, after hearing a commotion, he came out and saw smoke coming out from a flat situate on the second floor. He went there and found that the outer door of flat was closed but it got opened after some pressure had been exerted. He along with others entered the flat and found a badly burnt girl lying on the sofa. In the inner room there was smoke and a badly burnt body of a lady and her daughter were found on the double bed. He alongwith another person then went to PS Hari Parwat and gave information about the incident to the Head Constable who asked him to give the same in writing which he did. PW1 DK Jain who lived in the adjoining flat also went inside the flat of the accused alongwith other persons and had seen the body of the elder daughter on the sofa and the bodies of Vimla and younger daughter on the double bed in the inner room. PW 8 Raja Ram Pal Inspector of PS Hari Parwat immediately reached the scene of occurrence and by that time the fire Brigade had already arrived and efforts were being made to extinguish the fire. He went inside the flat, saw the bodies of the three victims and also a cooking gas cylinder at a distance of about one and half feet from the double bed. In the same room a diary was found on the dressing table and on three pages thereof bearing the dates 29th to 31st March a letter had been written by the deceased Vimla by red pen. This letter has an important bearing in the case and we will refer to it later on. The ceiling fan, the walls and the roof of the room had become black on account of smoke. The investigation of the case was done by PW 14 Pramod Kumar Mishra, Dy. S.P. who took in his possession the gas cylinder with regulator, diary, a kerosene lamp, burnt portion of some clothes and quilt etc. After recording statement of witnesses he submitted charge-sheet against the accused on 21.6.1991. The learned

Sessions Judge framed charges under 302,304-B and 498-A IPC against the accused who pleaded not guilty and claimed to be tried. In the course of trial the prosecution examined 16 witnesses and filed some documentary evidence. The accused also examined 6 witnesses in his defence. A

4. PW 11 RD Chetwal who is the father of deceased Vimla, has deposed that the marriage had been arranged through the mediation of a distant relation Piarey Lal who had informed that the accused no doubt came from a poor family but he was well qualified. He had given 9-10 tolas of gold ornaments, black and white T.V., refrigerator, double bed, steel almirah and other articles of domestic use as presents in marriage. Subsequently he had given a scooter to the accused when he was posted at Pinhat. Vimla had told him that the accused used to often complain that the articles given in the marriage were not of his standard. He used to frequently taunt her in this regard. Thereafter he had given Rs. 25,000 in cash to the accused for the purpose of purchasing a flat in Agra and for this purpose he had withdrawn money from his provident fund. He further deposed that he had taken a certificate regarding withdrawal of money (which he produced in court) in order to show to the accused that he would not be in a position to pay any more amount and he should not cause any further harassment to his daughter relating to demand of money. His wife, who was an income tax payee, had given cash money to Vimla on different occasions which she had deposited in a bank. PW11 further deposed that the mother of the accused Dr. Dalbir Singh and a person known as Laktakia used to frequently assault Vimla and the assaults had increased after the birth of the second daughter. PW 12 Maya Devi who is the mother of Vimla has also deposed that according to their status ornaments, clothes and other items had been given at the time of marriage. Vimla had come to her parental home 2-3 months after the marriage and at that time she had become very lean and thin and was not keeping well. On inquiries she had informed that the accused Dalbir used to frequently taunt her that the articles given at the time of the marriage were not of his standard. She has corroborated the version of PW 11 that an amount of Rs.25,000 was sent to the accused through PW 9 Inder Pal Singh for the purpose of buying the flat. She used to give Rs.2,000 to Rs.5,000 in cash every time Vimla came to her parental home. Vimla had come to her parental home about two and a half months prior to the incident and had told her that the accused Dalbir would kill her. The wife of PW 9 Inder Pal Singh is the sister of PW 12 Smt. Maya Devi and he is thus related to PW 11. He has deposed that the accused was not happy or satisfied with the dowry given at the time of marriage and used to frequently harass Vimla in that regard. The father of Vimla had given money B  
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A to the accused for the purpose of buying the flat but even thereafter he used to make demand of various items like scooter etc. The accused had obtained a Power of Attorney of the flat from Vimla in his favour and used to frequently assault her. Vimla had also complained to him about one month before the occurrence that she apprehended threat to her life from Dalbir.

B 5. The handwriting and the signature of Vimla on the letter recovered from the diary has been proved by PW 10 Rajender who is the husband of her younger sister. He has deposed that Vimla used to write letters to his wife Suman and thus he was familiar with her handwriting. The letter has been quoted in extenso in the judgment of the High Court. This letter was written  
C in Hindi by Vimla to her husband whom she has addressed as 'Dear Dalbir' and expresses the feelings of a wife who is being constantly harassed by a greedy husband on account of alleged inadequacy of dowry and it is a pathetic reading. It is difficult to convey the same feelings by translating it into English. In nutshell what she has written is that he (Dalbir) had constantly harassed her by taunting her almost everyday on the issue of dowry. He had  
D been complaining that the double bed was of very cheap quality; that the steel almirah was of very light quality; that her father had given a black and white T.V. and not a colour T.V; that the sofaset was of very inferior type and that the suits given to him were of very cheap quality. He had also been complaining that no scooter had been given at the time of marriage and that the ornaments were very cheap and light. She had been bearing all this for  
E several years in the hope and expectation that he would improve himself but he had taken undue advantage of her patience. She had been tolerating the frequent assaults made by him but she cannot bear the beating caused to Neha (daughter) who was still very young and it was the time for her to play. Therefore she was taking away Neha and Shruti as well along with her. In  
F the second paragraph she has written that now he can marry again wherein he can amass lot of dowry and have several sons which would make his mother happy. She did not want to say anything against Pappu (Laktakia) but God will certainly see him for the assaults made by him upon her. Thereafter she has said that he did not allow her to wear the ornaments given by her  
G father as he thought that their value will be reduced if she wore them. If he had even small amount of human values left in him, the said ornaments be given to Santo Devi widowed daughter of her Shanti Bua and if she was not prepared to accept the same it may be donated to any Anathashram. In the last paragraph she has written that she would pray to God that he may always remain happy and he should not behave with anybody else in the same  
H manner in which he had behaved with her.

6. In his statement under Section 313 Cr.P.C. and also in the written statement filed by him (in accordance with Section 233(2) Cr.P.C.) the accused admitted that the aforesaid letter was written by Vimla and it is in her handwriting. The contents of the letter are clearly admissible under Section 32 of the Evidence Act as the statement therein has been made by the deceased Vimla as to the cause of her death or as to any of the circumstances or transaction which resulted in her death. The reading of the letter shows that the same has been written by a person who is completely fed up with the demands of dowry and the taunting behaviour of the husband. It appears that the demands, harassment and the cruel treatment meted out to her, further aggravated after the birth of second daughter. The testimony of PW 9 Inder Pal Singh, PW 11 RC Chetwal and PW 12 Smt. Maya Devi shows that the accused had been constantly harassing Vimla as he was not satisfied with the dowry given at the time of marriage and used to make frequent complaints regarding the same. Their testimony further shows that on account of constant demands, father of Vimla later on gave Rs.25,000 in cash to the accused for the purpose of buying a flat and thereafter gave a colour T.V. and a scooter. Thus from the evidence on record it is fully established that Vimla had been virtually compelled to take the extreme step of committing suicide as accused had subjected her to cruelty by constant taunts and mal-treatment relating to demand of dowry.

7. The accused in his statement under Section 313 Cr.P.C. and also in the written statement filed under Section 233(2) Cr. P.C. has stated that Vimla had developed illicit relationship with someone and for this he had scolded her and had further said that he would complain about it to her father and then she had said that if he would speak anything to her father she would commit suicide. He has led some evidence to show that he had deposited money in the account of Vimla in two banks when he was posted at Almora. DW 2 Sh. G.K. Malhotra has proved that there was a credit balance of Rs. 1113 in the account of Vimla in UCO Bank. Similarly DW4 A.K. Dubey has deposed that there was a credit balance of Rs. 45,000 in her name in the District Co-operative bank. The evidence shows that the accused was posted at remote places after marriage and for the last about one and half years he was posted at Almora. He was placed under suspension on 10.1.1991 (prior to the incident) and thereafter he came to Agra and started living there. It appears that on account of his posting to some small and remote places, he had purchased a flat in Agra where his wife and children were living. It was, therefore, natural on his part to keep a bank account at Agra and the same was in the name of Vimla so that she could operate the same for meeting the

A household expenses. He has also stated that he used to remit money out of his salary account from Almora to Agra by bank draft. The fact that there was an account in the name of Vimla in which there was a credit balance of Rs. 45,000 does not in any manner discredit the prosecution case regarding the harassment caused to her relating to the demand of dowry, taunting behaviour and also frequent assaults to her and also to his daughter Neha.

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8. The High Court has given good reasons for holding that the charge under section 302 IPC was not established. The accused could not have set his wife and daughters on fire inside the room and then escaped from there as in that event he could not have bolted the door of the flat and closed it from inside. This shows that the death of Vimla and her two daughters took place due to commission of suicide by Vimla by setting herself on fire. Probably she opened the knob of the gas cylinder and after some gas had leaked out and had got collected in the room, it was ignited. The letter written by Vimla also leads to the inference that it is a case of suicide and not of murder. Having carefully perused the evidence adduced by the prosecution and other circumstances of the case, we are in agreement with the High Court that the prosecution has not succeeded in establishing the charge under Section 302 IPC against the accused. The marriage having taken place on 22.11.1983 i.e. more than seven years earlier to the incident, the learned Sessions Judge had rightly acquitted the accused for the offence under section 304-B IPC.

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9. Regarding the charge under Section 498-A IPC, the High Court has recorded the following finding:-

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"So far as the charge under section 498-A of the IPC is concerned, the letter written by Vimla Ex. Ka9 is very specific and speaks volumes against the appellant to indicate that the appellant had been teasing his wife on the question of presents which had been given to him at the time of marriage. It is not possible to accept the suggestion of the accused and the evidence in that regard that this letter had been written by Vimla to avoid her badnami. Consequently, we have no reason to disbelieve the contents of this letter. It may be noticed that even R.D. Chetwal PW 11 and Smt. Mayadevi PW 12 had said that the accused used to complain about the dowry. It is, therefore, clear that on account of complaints of Dalbir Singh, Vimla not only committed suicide but she had also put her two daughters on fire. Accordingly, in our view the charge against the appellant under Section 498-A has been substantiated on the evidence on record. The fact that

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there was considerable money in the bank account of Smt. Vimla which the accused used to remit by Bank Drafts does not in any manner affect the evidence relating to the complaints of the accused amounting to cruelty which he used to meet out to his wife on the question of the items which had been given to him at the time of marriage. Hence, the conviction and sentence of the appellant under Section 498-A of IPC is to be maintained.”

10. The evidence on record, the gist of which has been mentioned above, conclusively establishes that the accused had been constantly teasing and harassing his wife Vimla as he was wholly dissatisfied with the dowry given at the time of marriage and he wanted more money and some other articles to be given to him by her parents. Thus the charge under Section 498-A is fully established.

11. The High Court was further of the opinion that the evidence on record clearly established the charge against the accused under Section 306 IPC and he could be convicted and sentenced for the said offence. However, in view of the fact that no charge under Section 306 IPC had been framed and there was conflict of opinion in the two decisions of this Court rendered by Benches of equal strength and as in such a situation a later decision was to be followed, the High Court came to a conclusion that the accused cannot be convicted under Section 306 IPC. On this basis the conviction and sentence of accused under Section 498-A IPC alone were maintained.

12. The main question which requires consideration is whether in a given case is it possible to convict the accused under Section 306 IPC if a charge for the said offence has not been framed against him. In *Lakhjit Singh and Anr. v. State of Punjab* (supra) the accused were charged under Section 302 IPC and were convicted and sentenced for the said offence both by the trial Court and also by the High Court. This Court in appeal came to the conclusion that the charge under Section 302 IPC was not established. The Court then examined the question whether the accused could be convicted under Section 306 IPC and in that connection considered the effect of non-framing of charge for the said offence. It was held that having regard to the evidence adduced by the prosecution, the cross-examination of the witnesses as well as the answers given under Section 313 Cr.P.C. it was established that the accused had enough notice of the allegations which could form the basis for conviction under Section 306 IPC. The relevant para of the observation made in para 9 of the report reads as under:

A “The learned counsel, however, submits that since the charge was for the offence punishable under Section 302 Indian Penal Code, the accused were not put to notice to meet a charge also made against them under Section 306 IPC and, therefore, they are prejudiced by not framing a charge under Section 306 Indian Penal Code and; therefore, presumption under Section 113-A of Indian Evidence Act cannot be drawn and consequently a conviction under Section 306 cannot be awarded. We are unable to agree. The facts and circumstances of the case have been put forward against the accused under Section 313 Cr. P.C. and when there was a demand for dowry it cannot be said that the accused are prejudiced because the cross-examination of the witnesses, as well as the answers given under Section 313 of the Cr. P.C. would show that they had enough of notice of the allegations which attract Section 306 Indian Penal Code also.”

D 13. In *Sangaraboina Sreenu v. State of A.P.* (supra) the judgment is a very short one of just two paragraphs. In the first paragraph it is mentioned that the trial Court convicted the accused under Section 302 IPC on the charge that he poured kerosene on the body of his wife and set her on fire but the High Court set aside the said conviction and convicted the accused under Section 306 IPC. Paragraph 2 of the judgment which contains the whole reasoning for allowing the appeal reads as under :

E “This appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC which was the only charge framed against him the High Court could not have convicted him of the offence under Section 306 IPC. It is true that Section 222 Cr.P.C. entitles a court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 Cr. P.C. for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof.”

H 14. Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C. Sub-section(1) of Section 222 lays

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

15. In *Willie Staney v. State of Madhya Pradesh*, AIR (1956) SC 116, a Constitution Bench examined the question of absence of charge in considerable detail. The observations made in paras 6 and 7, which are of general application, are being reproduced below :

"6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of

A procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along with certain well-established and well-understood lines that accord with our notions of natural justice.

B If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

D 7. Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions."

E After analysing the provisions of Sections 225, 232, 535 and 537 of Code of Criminal Procedure, 1908 which correspond to Sections 215, 464(2), 464 and 465 of 1973 Code, the Court held as under in para 44 of the Report:

F "Now, as we have said, sections 225, 232, 535 and 537(a) between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The Code is emphatic that 'whatever' the irregularity it is not to be regarded as fatal unless there is prejudice.

G It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is

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mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction. A

Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. B C

If all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one." D

16. This question was again examined by a three Judge Bench in *Gurbachan Singh v. State of Punjab*, AIR (1957) SC 623 in which it was held as under :

"In judging a question of prejudice, as of guilt, Courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself." E F

17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained H

A to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that *Sangarabonia Sreenu* (supra) was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.

B 18. The facts and circumstances of the present case may now be  
examined in the light of the principle discussed above. The trial Court and  
also the High Court have recorded a clear finding and with which we are in  
complete agreement, that the accused had started making a demand of dowry  
soon after marriage. Even after his father-in-law had given him a colour  
C T.V., a scooter and money for purchasing the flat, he did not feel satisfied  
and continued to harass his wife. He used to frequently taunt her that some  
of the items given by way of gift at the time of marriage were of poor quality  
and were not of his standard. He had also assaulted his wife and even his  
seven year old daughter on several occasions. It was in such circumstances  
that Vimla took the extreme step of not only setting herself on fire, but also  
D her two daughters, one of whom was only one year old. The letter written by  
Vimla just before taking such an extreme step speaks volume about the  
treatment meted out to her by the accused. Therefore, the basic ingredients  
of the offence under Section 306 IPC have been established by the prosecution.  
These features of the prosecution case were sought to be established by the  
E prosecution in order to substantiate the charge under Section 498-A IPC and  
also for showing that the accused had a motive to commit the crime of  
murder for which he was actually charged. The cross-examination of the  
witnesses show that every effort was made to demolish the aforesaid aspect  
of the prosecution case, namely, that neither any demand of dowry was made  
nor any gifts or presents or money was received by the accused at a subsequent  
F stage and that Vimla had not been subjected to any kind of harassment or ill-  
treatment. The next question to be seen is whether the accused was confronted  
with the aforesaid features of the prosecution case in his statement under  
Section 313 Cr.P.C. His statement runs into six pages where every aspect of  
the prosecution case referred to above was put to him. He also gave a long  
G written statement in accordance with Section 233 (2) Cr.P.C. wherein he  
admitted that Vimla committed suicide. He also admitted that the scooter and  
colour T.V. were subsequently given to him by his in-laws but came out with  
a plea that he had paid money and purchased the same from his in-laws.  
There is no aspect of the prosecution which may not have been put to him.  
We are, therefore, of the opinion that in view of the material on record, the  
H conviction under Section 306 IPC can safely be recorded and the same would

not result in failure of justice in any manner. The record shows that the accused was taken into custody on 29.3.1991 and was released from jail after the decision of the High Court on 20.3.1997 and thus he has undergone nearly six years of imprisonment. In our opinion, the period already undergone (as under-trial and after conviction) would meet the ends of justice. **A**

19. For the reasons mentioned above, Crl. Appeal No.479 of 1999 filed by Dalbir Singh is dismissed. Criminal Appeal No.480 of 1999 filed by State of U.P. is partly allowed and he is convicted under Section 306 IPC and is sentenced to the period already undergone. **B**

V.S.S.

Criminal Appeal No. 479/99 dismissed.

Criminal Appeal No. 480/99 partly allowed.