

Before S.S. Saron & Darshan Singh, JJ.

LOVELY KUMAR AND ANOTHER—Appellants

versus

STATE OF PUNJAB—Respondent

CRA-D No.778-DB of 2011

March 07, 2017

Indian Penal Code, 1860 – Ss. 304-B, 306 – Indian Evidence Act, 1872 – S. 113-A – Code of Criminal Procedure, 1973 – S.221 – Dowry death – Presumption against accused/appellants husband, mother in law of deceased – Abetted suicide within 7 years of marriage by harassing for dowry – Ingredients under Section 306 IPC established – Non-framing of charge under Section 306 IPC immaterial – Court can convict for said offence – In view of Section 221 Cr.P.C. appeal is partly allowed – Conviction under Section 304-B IPC set aside – instead convicted under Section 306 IPC.

Held that, thus, from the material available on record, there is no escape from the conclusion that the conduct of the accused-appellants had abetted the commission of suicide by deceased-Jyoti Arora. The presumption under Section 113-A of the Evidence Act also arises against the appellants as deceased-Jyoti has committed suicide within seven years of her marriage and she was subjected to cruelty by the appellants i.e. her husband and mother-in-law. Thus, in the case in hand the basic ingredients of the offence punishable under Section 306 IPC have been established by the prosecution.

(Para 28)

Further held that, no doubt, the accused-appellants were only charge sheeted for the offence punishable under Section 304-B IPC, but mere non-framing of the charge under Section 306 IPC will not disable the Court from convicting the accused-appellants for the said offence. In such circumstances, the matter will fall within the preview of Section 221 (1) and (2) Cr.P.C. The Hon'ble Apex Court in case K.Prema S. Rao and another Vs. Yadla Srinivasa Rao and others, 2002 (4) R.C.R. (Criminal) 697 (SC) has laid down as under:-

“22. Mere omission or defect in framing charge does not disable the criminal Court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal Procedure has ample provisions to meet a

situation like the one before us. From the statement of charge framed under Section 498A Indian Penal Code (as quoted above). It is clear that all facts and ingredients for framing charge for offence under Section 306 Indian Penal Code existed in the case. The mere omission on the part of the trial Judge to mention Section 306 Indian Penal Code with Section 498A Indian Penal Code does not preclude the court from convicting the accused for the said offence when found proved. In the alternate charge framed under Section 498A Indian Penal Code, it has been clearly mentioned that the accused subjected the deceased to such cruelty and harassment as to drive her to commit suicide. The provisions of Section 221 Criminal Procedure Code take care of such a situation and safeguard the powers of the criminal Court to convict an accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence.”

Thus, there is no legal impediment in recording the conviction of the appellants for the offence under Section 306 IPC instead of Section 304-B IPC.

(Para 29)

Akshay Bhan, Senior Advocate with
Gurinder Singh, Advocate
for the appellants.

Amarjit Kaur, Addl.AG. Punjab.

DARSHAN SINGH, J.

(1) The present appeal has been preferred against the judgment of conviction dated 27.07.2011, vide which accused-appellant no.1-Lovely Kumar and accused-appellant no.2-Sita Rani have been held guilty and convicted for the offence punishable under Section 304-B of the Indian Penal Code, 1860 ('IPC'-for short) and the order of sentence of the even dated, vide which they have been sentenced as under:-

Name of the Convicts	U/S	R.I	Fine	In default
Lovely Kumar	304-B IPC	15 years	Rs.20,000/-	Rigorous imprisonment of two years

Sita Rani	304-B IPC	15 years	Rs.20,000/-	Rigorous imprisonment for two years
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(2) The brief facts giving rise to this prosecution are that deceased Jyoti Arora daughter of complainant Vipan Kumar Arora was married with accused-appellant-Lovely Kumar on 02.05.2004 according to Hindu Rites and Ceremonies. She gave birth to two children namely son Anshu aged about four years and daughter Disika aged about nine months. After two months of the marriage both the accused-appellants started harassing and maltreating deceased-Jyoti Arora for demand of dowry. They used to say that she has not brought the good gifts, whereas the parents of the daughters even give the cars. The deceased has been telling all these facts to the complainant. They also had been convincing their son-in-law Lovely Kumar and his mother Sita Rani. Many a times accused Lovely Kumar, the son-in-law of the complainant used to leave the deceased at their house after giving her beatings. The complainant had been fulfilling their demands as per his financial capacity. But, even then their lust for dowry could not be satisfied. About two years back, the marriage of the sister of Lovely Kumar was solemnized and they have given a car in the marriage. After that the accused started harassing and torturing deceased-Jyoti that they had been given a car to their daughter in the marriage, she should also bring the car from her parents. Deceased-Jyoti told the complainant but, he said that he has already given the dowry more than his financial capacity and now it is not possible for him to give anything more. After that they started maltreating/ beating the deceased and also threatened to kill her. The complainant, his wife-Kiran and his son-Pawan Kumar went to the matrimonial house of Jyoti and explained their inability and pleaded before them. Accused-appellant Lovely Kumar said that the house was in the name of his mother-Sita Rani. They should purchase for him a separate plot or a residence to end the daily dispute. The complainant replied that he cannot fulfill this demand. He will help whatever possible after the marriage of his son. On 26.08.2009 Jyoti gave a miss call from mobile phone no. 92179-24193 to the mobile phone number of the complainant i.e. 99155-90985. Then, he gave the back call and deceased-Jyoti told him that the accused-appellants have extremely harassed her. It is very difficult for her to live there. They should take her from there. He advised his daughter on telephone that they will come on the next morning and will take her back. On 27.08.2009,

at about 7.00 a.m. complainant along with his wife-Kiran and son-Pawan Kumar accompanied by Neetu went to the matrimonial house of Jyoti and found that the dead body of Jyoti was lying on the ground in the lobby of the house. There were signs of hanging on the neck. The complainant stated that his daughter has been hanged by the accused-appellants due to non- fulfillment of their demand of dowry. On the statement of complainant- Vipin Kumar Arora Ex.PD, PW-10 SI Lekh Raj made his endorsement Ex.PL and sent the same to the Police Station for registration of the case. On the basis of which, the formal FIR Ex.PL/1 was registered and investigation initiated.

(3) Thereafter, PW-10-SI Lekh Raj went to the spot at house no. 23, Nirankari Colony, Amritsar. The dead body of Jyoti was lying in the lobby. He inspected the spot. He took into possession one '*dupatta*' in torn condition belonging to the deceased, which was converted into sealed parcel and was taken into possession vide memo Ex.PF. The Investigating Officer carried out the inquest proceedings and prepared the inquest report Ex.PM and dead body of Jyoti was handed over to Head Constable's Deva Singh and Daljit Singh for getting the postmortem examination conducted vide application Ex.PC/1. He also got collected the photographs of the place of occurrence. The Investigating Officer prepared the rough site plan of the place of occurrence Ex.PN. He carried out the search of the house and from the bed room of Lovely Kumar and deceased-Jyoti a suicide note Ex.PQ written by deceased-Jyoti in Hindi was recovered from the books of the children, which was taken into possession vide memo Ex.PG. Both the accused-appellants were arrested on the same day. During investigation, the Investigating Officer also collected the call details of mobile phone of deceased-Jyoti bearing no. 92179-24193. He also collected the record of account no.2311 from Punjab @ Sind Bank, Fatehgarh Churian Road, branch, Amritsar in the name of accused-Lovely Kumar and deceased-Jyoti. He also took into possession the admission record of Anshu vide memo Ex.PJ. The suicide note Ex.PQ, record of account no. 2311 Ex.PT and admission record of Anshu were sent to Forensic Science Laboratory, Chandigarh, Punjab ('F.S.L.'-for short) for getting compared the hand writing of the deceased in the suicide note. The report of the F.S.L Ex.PX was received. Thereafter, on completion of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'-for short) was presented in the Court.

(4) The case was committed to the Court of Sessions by the

learned Chief Judicial Magistrate, Amritsar vide order dated 07.11.2009.

(5) Both the accused-appellants were charge sheeted for the offence punishable under Section 304-B IPC by the learned Sessions Judge, Amritsar, vide order dated 12.11.2009 to which both the accused- appellants pleaded not guilty and claimed trial.

(6) In order to substantiate its case, the prosecution examined as many as eleven witnesses besides bringing on record the documents.

(7) When examined under Section 313 Cr.P.C, the accused-appellants denied the allegations appearing in the prosecution evidence. They pleaded their innocence and false implication. They further pleaded that deceased-Jyoti was not feeling comfortable being ignored by her parents after the marriage of her brother. She was under depression that in-spite of her invitation to her brother and his wife to visit their house, they never turned up and the entire parental family was ignoring her which was making her feel disturbed. On getting knowledge about the incident, they gave information to Jyoti's parents and on receiving the information of the unfortunate incident, they came to their house. However, nursing the grudge against them, they reported the matter to the police and later on came to their house and got them arrested. Jyoti was feeling depressed on account of partial behavior by her parents and she was not given due care and attention during the marriage ceremony of her brother. The children of the deceased are being maintained till date by the family members of the accused. Accused-Lovely Kumar stated that he is owning a house of 400 sq. yards newly constructed and a car and was there was no occasion for him or any of his family member to make any demand of dowry. They were living happy married life and were blessed with everything by the grace of god. They further pleaded that no suicide note was written or recovered from their house. Jyoti was not using or possessing any mobile phone. Appellant-Sita Rani also raised the plea on the similar lines.

(8) In the defence evidence, accused examined DW-1-Jatinder Kumar, Manager, Punjab & Sind Bank, Fatehgarh Churian Road, Amritsar who has proved the FDR's Ex.DW1/A to Ex.DW1/D. DW-2 Sanjay Sharma, Asstt. Adm. Officer, LIC Unit II Hall Bazar, Amritsar who has proved the record of insurance policy no. 472003540 Ex.DW2/A. DW-3 Vinod Kumar, DW-4 Anil Kalia, DW-5 Paramjit Kaur and DW-6 Khushwant Singh are residents of Nirankari Colony, Fatehgarh Churian Road, Amritsar and supported the defence plea of

the accused that deceased-Jyoti was never harassed or maltreated by the accused for the demand of dowry. DW-7 Rohit Arora, Clerk Office of Sub-Registrar Office, Amritsar-II has proved the copy of the sale deed Ex.DW7/A. DW- 8 Jatinder Kumar was the mediator of the marriage. He also deposed that there was no maltreatment of deceased-Jyoti and demand of dowry by the accused. DW-9 Sukhpreet Kaur, the finger print and hand writing expert has proved her report Ex.DW9/A. Thereafter, the defence evidence was closed.

(9) On appreciation of evidence on record and the contentions raised by learned counsel for the parties, the learned Sessions Judge, held guilty and convicted the appellants for the offence punishable under Section 304-B IPC vide impugned judgment of conviction dated 27.07.2011 and they were sentenced as mentioned in the upper part of the judgment vide impugned order of sentence dated 27.07.2011.

(10) Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred by both the appellants.

(11) We have heard learned counsel for the parties and have meticulously examined the record of the case.

(12) Initiating the arguments, learned counsel for the appellants contended that the prosecution has not been able to establish any demand of dowry. He contended that the statements of PW-4-Vipan Kumar Arora, the father and PW-5 Smt. Kiran, the mother of the deceased with respect to the demand of dowry are not believable particularly in view of the cross-examination of PW-5-Smt. Kiran. He further contended that as per the case of the prosecution, the house where the deceased was residing with her husband and mother-in-law was in the name of accused-appellant Sita Rani and accused-appellant Lovely Kumar has raised the demand that the parents of deceased should purchase a plot or a house for him. He contended that this version is falsified from the fact that accused-appellant Lovely Kumar has himself purchased a plot in the name of deceased vide registered sale deed Ex.DW7/A. He has also purchased various FDR's in favour of the deceased. He further contended that the witnesses of locality namely DW-3-Vinod Kumar, DW-4 Anil Kalia, DW-5-Paramjeet Kaur and DW-6-Khushwant Singh have consistently deposed that deceased was never harassed or maltreated by the accused-appellants nor they ever raised any demand of dowry from the parents of the deceased. Even, DW- 8-Jatinder Kumar, who is the cousin brother of Smt. Kiran, the mother of the deceased and was

mediator of the marriage has negated the maltreatment of the deceased and demand of dowry by the appellants. He further contended that no complaint at all has been lodged by the deceased or her parents with the police or any other authority regarding the maltreatment and harassment of the deceased by the appellants. There is no medical evidence on record to show that she was ever subjected to any beating. Even, no Panchayat was held by the parents of the deceased to raise any grievance regarding the illegal demand of dowry. Thus, he contended that the ingredients of the offence punishable under Section 304-B IPC are not made out.

(13) On the other hand, learned State counsel contended that from the consistent statement of PW-4-Vipan Kumar Arora, the father and PW-5-Smt. Kiran, the mother of the deceased, it is established that the deceased was treated with cruelty and was harassed in connection with the demand of dowry soon before her death. It is also established from the medical evidence that the deceased has died an unnatural death within seven years of her marriage. She contended that even from the suicide note Ex.PQ, it comes out that deceased was being harassed by the accused- appellants. The accused-appellants have raised the demand of a car and a plot. Thus, she contended that all the ingredients of the offence punishable under Section 304-B IPC are fully established and the presumption under Section 113-B of the Indian Evidence Act, 1872 ('Evidence Act'-for short) also arises against the appellants. thus, they have been rightly convicted by the learned Sessions Judge, Amritsar.

(14) We have duly considered the aforesaid contentions.

(15) The accused-appellants have been convicted by the learned Sessions Judge, Amritsar for the offence punishable under Section 304-B IPC. In order to attract Section 304-B IPC, the following ingredients are to be established by the prosecution:-

- a. The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.
- b. Such death must have occurred within 7 years of the marriage.
- c. Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

d. Such cruelty or harassment must be in connection with the demand of dowry.

(16) In the instant case, there is no dispute that deceased-Jyoti Arora has died otherwise than under normal circumstances within seven years of her marriage. She was married on 02.05.2004 with accused- appellant-Lovely Kumar and she died on 27.08.2009 i.e. within five years of her marriage.

(17) PW-3-Dr. Ashok Chanana, Associate Professor, Department of Forensic Medicines and Toxicology, Government Medical College, Amritsar along with Dr. Manpreet Kaur conducted the postmortem on the dead body of deceased-Jyoti Arora and they observed as under:-

“A dark reddish brown ligature mark was present on the front and lateral aspects of neck. Its width varied from 2.5 cms to 3 cms. It was depressed located at just below the level of thyroid cartilage. The left limb encircled the lateral aspect of the neck, horizontally, whereas, the right limb was directed obliquely upward upto right lateral aspect of the neck, two cms below the right ear lobule. The margins were ecchymosed and its base at places was abraded. It was hard and parchment in consistency. The underlying s/c tissues were ecchymosed. The interior neck muscles were torn. Clotted blood was present at the site. Dark reddish brown infiltration of blood was present in the surrounding structures, associated multiple reddish bluish ecchymotic areas of variable sizes varying from 3.5 cms x 2.5 cms to 2.8 x 2 cms were present bilaterally in the superclavicular region and front part of the neck. It was a dead body of a female, was moderately built and moderately nourished, wearing a capri T shirt and a underwear, a bra and a pair of yellow metallic tops with transparent stone in each ear. Eyes and mouth were closed. Rigor mortis was present in the whole body except right toes and right great toe. Dark coloured postmortem staining was present on the back, except in areas of contact flattening and it was fixed. The lips ear lobules, nails and toes were of bluish discoloration. A yellowish black plastic bangle was present in each wrist. A dark reddish bruise 3 x 2 cms was present on the back and upper part of the head, was revealed on dissection of scalp. Dark reddish brown retrosternal haematoma of 4 x

3 cms was present in upper 1/3rd of sternal area.

Lower part of the oesothagus contained fluid and clotted blood of dark reddish brown colour. Multiple (7) bruises of dark reddish brown colour of variable sizes i.e. 3 x 3 cms to 1.5 x 1 cms was present on the interior and posterior stomach wall. Stomach contained 250 CC of dark reddish brown fluid and clotted blood. Scattered sub mucosal haemorrhages were present. A tear 2 x 1 cm was present in the mucosa of anterior stomach wall with clotted blood. The pleurae, larynx, trachea, both lungs, liver spleen and kidneys were congested. Right side of heart was full of dark and fluid blood. Left was empty. Small intestines, bladder and organs of generation were empty. Large intestines contained faces.

Ligature mark and internal injuries were of ante mortem origin. In our opinion, the cause of death in this case was strangulation, leading to asphyxia, which, was sufficient in ordinary course of nature to cause death.”

(18) As per the opinion of medical expert, the cause of death of deceased-Jyoti Arora, was strangulation, leading to asphyxia, which was sufficient in ordinary course of nature to cause the death.

(19) It is settled principle of law that the evidence of the medical expert is only an opinion evidence and it cannot override the substantive and factual evidence. The Hon'ble Apex Court in case *Madan Gopal Kakkad* versus *Naval Dubey*¹ has laid down the expert witness is not a witness of fact. His evidence is of advisory character on the basis of a symptoms found on examination. In case *Vishnu @ Undrya* versus *State of Maharashtra*² also the Hon'ble Apex Court has laid down that the medical evidence is of advisory nature. The prosecution is relying upon the suicide note of the deceased Ex.PQ. The prosecution has led the evidence to establish that suicide note Ex.PQ was written and signed by deceased-Jyoti. Ex.PX is the report of Assistant Director Forensic Science Laboratory, Punjab, Chandigarh. The hand writing expert has compared the signatures in English on the suicide note marked Q-1 with the admitted or standard signatures of deceased-Jyoti Arora in English on 13 documents stamped as mark A-1 to A-22. The hand writing expert in his report

¹ 1992 (3) R.C.R. (Criminal) 461

² 2006 (1) R.C.R.(Criminal) 201

Ex.PX has given the definite opinion that the person who wrote red enclosed standard signatures stamped and marked A-1 to A-22 also wrote the red enclosed questioned signature similarly stamped and marked Q-1. Thus, deceased-Jyoti Arora is the author of the suicide note Ex.PQ. In the suicide note Ex.PQ, the deceased has categorically mentioned that she is ending her life being fed up with her mother-in-law and husband. The said suicide note clearly depicts that the deceased has committed suicide by hanging. Thus, it is established that deceased-Jyoti Arora has died otherwise under normal circumstances i.e. by hanging within seven years of her marriage.

(20) Now, the question arises as to whether deceased-Jyoti Arora was subjected to cruelty or harassment by the accused-appellants in connection with the demand of dowry soon before her death. The prosecution has examined PW-4-Vipan Kumar Arora, the father of the deceased and PW-5-Smt. Kiran, the mother of the deceased. No doubt, in their examination-in-chief, they have stated that they have given sufficient dowry articles according to their status at the time of the marriage of their daughter, but the accused/appellants used to maltreat and harass the deceased for demand of more dowry. They have further stated that about two years prior to the death of their daughter, accused-Lovely Kumar had performed the marriage of his sister and they have given the car in dowry in that marriage. After that they started harassing and maltreating the deceased as she could not bring car in the dowry. They have further deposed that accused-appellant-Lovely Kumar told them that the *Kothi* in which he along with his mother were living, was in the name of his mother and they should purchase either a plot or a *Kothi* for him, so that the entire dispute might come to an end. Thus, as per the statement of both these witnesses, the accused-appellants have raised the demand of car two years prior to the death of their daughter-Jyoti. That demand cannot be stated to be soon before her death. They have further alleged that accused-Lovely has asked them to purchase for him a plot or a *Kothi* as the house wherein they were residing was in the name of his mother (co-accused-Sita Rani). But, both these witnesses have not deposed as to at what point of time, the aforesaid demand of plot/*kothi* was raised by accused-appellant-Lovely Kumar. Thus, the allegations are vague.

(21) PW-4-Vipan Kumar Arora and PW-5-Smt. Kiran have also deposed that the harassment of their daughter started just after two months of the marriage. She was even subjected to beating and accused-appellant Lovely Kumar used to leave her at her parental

house. In the normal course, if a women is being tortured and harassed like this, it is not expected that she will not agitate. The parents of such a victim will also not remain silent spectators. They will certainly take some steps for the safeguard of their daughter. In the instant case, there is no medical evidence to show the beating of the deceased at any point of time by the accused-appellants. There is also no material on record to show that either the deceased or her parents had ever moved any complaint to the police or any authority with respect to her harassment. There is also no evidence to establish that the parents of deceased had convened any Panchayat to get redressed the grievances of their daughter. Rather, PW-4-Vipan Kumar Arora has categorically stated in the cross-examination that his daughter was not got medico-legally examined by him and he did not file any complaint either with any women cell or any other authority. However, he stated that his daughter-Jyoti refrained him from giving any such application.

(22) As per the prosecution version, one day prior to the occurrence deceased-Jyoti had a telephonic conversation with PW-4- Vipan Kumar Arora, her father. In his statement Ex.PD, Vipan Kumar Arora has stated that the deceased at that time had told that her husband and mother-in-law had been torturing her and it has become difficult for her to live there. This very statement has been made by him when he stepped into the witness box. Thus, in that telephonic conversation, the deceased has nowhere stated that she was being harassed on account of any demand of dowry.

(23) As already mentioned, the suicide note Ex.PQ is the foundation of the case of the prosecution. In the suicide note, the deceased has simply mentioned that she is ending her life being fed up by her mother-in-law and husband. In the suicide note also the deceased has nowhere mentioned that she was fed up due to any demand of dowry.

(24) PW-4-Vipan Kumar, the father of the deceased has admitted in the cross-examination that the accused was having Maruti car since the year 2003 i.e. prior to the marriage of her daughter with him. He further deposed that his daughter gave birth to her first baby on 15.03.2005 at Lal Hospital, Amritsar and second child was also born to her in the same hospital and on both the occasions, the expenses of delivery was borne by the accused. Thereafter, he become conscious and voluntarily stated that they also met with the expenses of delivery. But, he could not produce any bill in respect thereof. PW-5-Smt. Kiran, the mother of the deceased has made the position more

clear and admitted in the cross-examination that accused were having Maruti car since the year 2003 i.e. prior to the marriage of her daughter with accused-Lovely Kumar. She further admitted that Lovely Kumar was having his own shop prior to the marriage with her daughter. She also admitted that both the children of her daughter took birth at Lal Hospital, Amritsar and on both the occasions, the entire delivery expenses were borne by the accused. She further admitted that both the children of her daughter, at present are living with the family of the accused and have been living in their care and custody.

(25) The prosecution has also not collected any evidence to show that the house wherein the accused and deceased-Jyoti were residing was standing only in the name of Smt. Sita Rani, the mother-in-law of the deceased, which was the foundation of the alleged demand of plot/kothiby accused-appellant-Lovely Kumar.

(26) The defence evidence adduced by the appellants also renders the case of the prosecution doubtful with respect to the demand of dowry. From the statement of DW-1-Jatinder Singh Baweja, Manager, Punjab & Sind Bank, Fatehgarh Churian Road, Amritsar, it comes out that a FDR of Rs. 75,000/- was issued by their bank in favour of Lovely Arora and Jyoti Arora on 05.06.2009 i.e. just less than three months prior to the occurrence. The copy of the said FDR is Ex.DW1/A. He further deposed that another FDR of Rs. 87,575/- was issued in favour of accused- appellant Sita Rani and deceased-Jyoti Arora with maturity date 29.05.2010. The copy of that FDR is Ex.DW1/B. Similarly, another FDR was issued in favour of Lovely Kumar and deceased-Jyoti Arora on 22.06.2009. Copy thereof is Ex.DW1/C. Similarly, another FDR of Rs. 76628/- was issued by their bank in favour of accused-appellant-Sita Rani and Jyoti Arora on 22.06.2009 with maturity date of 11.06.2010. It shows that deceased-Jyoti Arora was associated by the accused-appellants in four FDR's purchased by them from Punjab & Sind Bank, Fatehgarh Churian, Road, branch Amritsar. Deceased-Jyoti Arora was also shown as nominee in the life insurance policy of Lovely Kumar. DW-7-Rohit Arora, Clerk, Sub-Registrar Office, Amritsar-II has proved the copy of the sale deed dated 26.05.2006 as Ex.DW7/A, which shows that a plot measuring 166.66 sq. yards situated within the revenue estate of Kala Ghannupur, Sub-Urban Abadi, Navi Abadi, Tehsil and District Amritsar was sold by Balwant Singh in favour of Jyoti wife of Lovely Kumar for a sum of Rs. 1,67,000/-. The said sale deed in favour of Jyoti was executed through Lovely Kumar (accused-

appellant), which shows that even a plot was purchased by accused-appellant-Lovely Kumar in the name of his wife- deceased-Jyoti Arora. Thus, the aforesaid evidence shows that the accused had purchased the FDR's in the name of deceased-Jyoti Arora. Even, a plot was purchased in her name. If accused-appellant Lovely had been purchasing the FDR's and plot in the name of deceased, it is not plausible that she was being harassed and tortured for the demand of car or plot/kothi. The demand of dowry has also been negated by the inhabitants of the locality namely DW-3-Vinod Kumar, DW-4 Anil Kalia, DW-5-Paramjeet Kaur and DW-6-Khushwant Singh and DW-8-Jatinder Kumar, the mediator of the marriage, who also happens to be the cousin brother of Smt. Kiran, the mother of the deceased. Thus, in view of the aforesaid evidence, the explicit reliance cannot be placed on the statements of the parents of the deceased with respect to the demand of dowry. Thus, the prosecution has not been able to establish that deceased-Jyoti was subjected to cruelty with respect to the demand of dowry soon before her death.

(27) However, there is sufficient evidence on record to establish that deceased-Jyoti was compelled to end her life due to her harassment or maltreatment at the hands of the appellants. She has categorically mentioned in the suicide note Ex.PQ that she is ending her life being fed up with her mother-in-law and husband. Deceased-Jyoti was having two children of tender age. Her son was four years of age and daughter was only nine months old. In the absence of the compelling circumstances there was no reason for the deceased to end her life by leaving her two children of tender age. This Court in case *Naveen Kumar etc. versus State of Haryana*³ has laid down as under:-

“No sane lady would try to finish her life until and unless she is subjected to cruelty to such an extent that it had compelled her to finish herself for all times to come from this beautiful world. When a woman agrees for a marriage, she does not expect death under unnatural circumstances but the expectations are that she would get love and affection and financial security at the hands of her husband. If her those hopes are frustrated by the positive act of the husband or by willful negligence of the husband, in my opinion, it will constitute abetment within the meaning of Section 109 Indian Penal Code, punishable under Section

³ 1998 (3) R.C.R. (CrI.) 564

306 Indian Penal Code, if in pursuance of that abetment, the death of a person takes place.”

(28) Thus, from the material available on record, there is no escape from the conclusion that the conduct of the accused-appellants had abetted the commission of suicide by deceased-Jyoti Arora. The presumption under Section 113-A of the Evidence Act also arises against the appellants as deceased-Jyoti has committed suicide within seven years of her marriage and she was subjected to cruelty by the appellants i.e. her husband and mother-in-law. Thus, in the case in hand the basic ingredients of the offence punishable under Section 306 IPC have been established by the prosecution.

(29) No doubt, the accused-appellants were only charge sheeted for the offence punishable under Section 304-B IPC, but mere non-framing of the charge under Section 306 IPC will not disable the Court from convicting the accused-appellants for the said offence. In such circumstances, the matter will fall within the preview of Section 221 (1) and (2) Cr.P.C. The Hon'ble Apex Court in case ***K.Prema S. Rao and another*** versus ***Yadla Srinivasa Rao and others***⁴ has laid down as under:-

“22. Mere omission or defect in framing charge does not disable the criminal Court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal Procedure has ample provisions to meet a situation like the one before us. From the statement of charge framed under Section 498A Indian Penal Code (as quoted above). It is clear that all facts and ingredients for framing charge for offence under Section 306 Indian Penal Code existed in the case. The mere omission on the part of the trial Judge to mention Section 306 Indian Penal Code with Section 498A Indian Penal Code does not preclude the court from convicting the accused for the said offence when found proved. In the alternate charge framed under Section 498A Indian Penal Code, it has been clearly mentioned that the accused subjected the deceased to such cruelty and harassment as to drive her to commit suicide. The provisions of Section 221 Criminal Procedure Code take care of such a situation and safeguard the powers of the criminal Court to convict an

⁴ 2002 (4) R.C.R. (Criminal) 697 (SC)

accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence.”

(30) Thus, there is no legal impediment in recording the conviction of the appellants for the offence under Section 306 IPC instead of Section 304-B IPC.

(31) Learned counsel for the appellants has also pleaded for lenient view in the matter of sentence. He contended that appellant-Sita Rani suffers from various ailments. Accused-appellants have also undergone sufficient period in jail.

(32) We have duly considered the aforesaid contentions.

(33) Lovely Kumar (appellant No.1) according to the affidavit of Shri Satnam Singh, PPS, Deputy Superintendent, Central Jail, Amritsar that has been filed, has undergone actual imprisonment for 06 years 09 months and 08 days as on 06.03.2017. He has earned remissions of 04 years and 01 days. With remissions, he has undergone imprisonment for 10 years, 09 months and 09 days.

(34) Sita Rani (appellant No.2) was granted bail by this Court on 19.11.2012. According to affidavit dated 20.01.2017 of Shri Satnam Singh, Officiating Superintendent, Central Jail, Amritsar, she has undergone actual imprisonment of 02 years, 04 months as on 15.12.2012. She earned remission of 11 months and 19 days. She has undergone imprisonment of 03 years, 03 months and 19 days with remissions. However, in an earlier custody certificate filed by way of affidavit dated 17.10.2012 of Shri Amrik Singh, PPS, Superintendent, Central Jail, Amritsar, Sita Rani (appellant No.2) had undergone actual imprisonment of 02 years and 03 months as on 17.10.2012 and she earned remissions of 01 year, 02 months and 11 days and with remissions she has undergone 03 years, 05 months and 11 days of imprisonment. After the sentence of imprisonment was suspended, she was released from custody on 15.12.2012. Therefore, according to the affidavit dated 17.10.2012 Sita Rani (appellant No.2) has undergone 03 and half years of imprisonment, while in terms of affidavit dated 20.01.2017 she has undergone imprisonment of 03 years, 03 months and 19 days. At the time of suspending of sentence of imprisonment it was stated that she was suffering from various ailments. The Medical Officer, Amritsar submitted the following report:-

“Sita Rani w/o Rajinder Kumar aged about 60 years F, is suffering from CAD and HMDI with T2DM with unstable

angina with Myocardial Infarction. She had two episodes of MI. She remained under treatment from cardiology department, Nayyar Hospital, Amritsar and many other private cardiologists.

In spite of all the medicines which have been provided to her, she still has unstable angina. She was referred to Medical OPD, Guru Nanak Dev Hospital, Amritsar with Medical Journal Number 179 dated 07.09.2012. The medicines prescribed by the specialist Doctor are being provided to her. Her condition is very critical and she cannot be managed in the jail premises as she had episodes of unstable angina oftenly. She had two episodes of MI and a third episode of MI may be fatal to her.”

(35) It is also an admitted fact that both the children of deceased-Jyoti Arora are living with the family of the accused-appellants and had been under their care and custody. There is nobody else to look after the small children.

(36) Therefore, in the facts and circumstances, it would be just and expedient to sentence the accused-appellants for the period already undergone by them.

(37) Thus, keeping in view our aforesaid discussion, the present appeal is partly allowed. The conviction of the appellants for the offence punishable under section 304-B IPC is set aside and they are instead held guilty and convicted for the offence punishable under Section 306 IPC. Both the appellants are sentenced to undergo imprisonment for the period already undergone by them. The order of payment of fine of Rs. 20,000/- shall remain intact. However, in default of payment of fine, the appellants shall undergo rigorous imprisonment for nine months. Learned Senior Counsel for the appellants submits that the fine shall be deposited forthwith. In case the fine is deposited by Lovely Kumar (appellant No.1) he be set at liberty forthwith in case he is not wanted in any other case.

Shubreet Kaur