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KULWANT SINGH & ORS.

v.

STATE OF PUNJAB

(Criminal Appeal No. 1548 of 2007)

APRIL 02, 2013

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[A.K. PATNAIK AND MADAN B. LOKUR, JJ.]

C *Penal Code, 1860 – ss.304B and 498A – Death of married woman within seven years of marriage at the house of her in-laws in suspicious circumstances – She died due to aluminium phosphide poisoning – Conviction of husband and parents-in-law u/ss.304B & 498A – Justification – Held: On facts, justified – There was no delay in lodging the FIR – Evidence on record clearly indicates that the deceased was*

D *subjected to harassment for dowry not only by the husband (appellant no.1) but also by the parents-in-law (appellant nos.2 & 3) – Deceased was harassed for dowry till almost immediately before her death – Presumption of dowry death can safely be drawn in the instant case – Evidence Act, 1872*

E *– s.113B.*

F *Penal Code, 1860 – s.304B – Death of married woman within seven years of marriage at the house of her in-laws in suspicious circumstances – Husband (appellant no.1) and parents-in-law (appellant nos. 2 & 3) convicted u/s.304B IPC and sentenced to 7 years RI – Plea of appellant nos.2 and 3 for leniency in sentence considering their old age and physical disability – Held: Rejected – Law prescribes a minimum of seven years imprisonment for offence u/s.304-B IPC – No provision for reducing the sentence for any reason*

G *whatsoever nor has any exception being carved out in law – Even though appellant nos. 2 and 3 are now aged, they were responsible for the death of the wife of appellant no.1 through aluminium phosphide poisoning – Sentence / Sentencing.*

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Evidence Act, 1872 – s.113B – Presumption as to dowry death – When can be safely drawn – Discussed – Penal Code, 1860 – s.304B. A

A married woman died under suspicious circumstances at the house of her in-laws due to aluminium phosphide poisoning. The death occurred within seven years of marriage. The deceased had been allegedly harassed and maltreated by the husband (appellant no.1), and the parents-in-law (appellant nos. 2 & 3) for bringing insufficient dowry. PW5 is the father of the deceased. The appellants were convicted by the courts below under Section 304-B and Section 498-A of IPC. B C

In the instant appeal, while challenging their conviction under Section 304-B and Section 498-A of IPC, the appellants made three submissions - firstly that there was a delay in lodging the FIR by PW5; secondly, there was a great deal of improvement in the case by PW5 and other prosecution witnesses inasmuch as the FIR and the statements recorded during investigations under Section 161 CrPC did not mention anything about the demand for dowry having been raised by the appellants more particularly about a buffalo having been demanded and given to the appellants and payment of Rs.6,000/- again on the demand of the appellants; and thirdly, the ingredients of Section 304-B IPC were not made out since the alleged demand for dowry was not proximate to the death. D E F

Dismissing the appeal, the Court

HELD: 1. There was no delay in lodging the FIR. The facts reveal that PW-5 had made sufficient attempts to have the FIR lodged but was unable to do so since the report of the Chemical Examiner had not yet been received by the concerned police station. In any event, it G H

A is also clear from the evidence of ASI (PW-12) that PW5 had submitted an application which was marked by S.I. (PW-13) the Station House Officer of Police Station to him on 18th October 1989. PW13 also stated in his evidence that he had received an application made by PW5 to the
 B Senior Superintendent of Police and it was then that he registered the FIR on 2nd November 1988. As such, it cannot be said that there was any delay in lodging the FIR. [Pars 28] [615-C-E]

C *Gurmail Singh v. State of Punjab* (2012) 11 SCALE 224 and *Jitender Kumar v. State of Haryana* (2012) 6 SCC 204: 2012 (4) SCR 408 – relied on.

2.1. It is true that in the FIR PW5 did not give any specific instance of the demand for dowry made by the appellants
 D but he did categorically mention that there was a demand for more dowry by the appellants. Apart from the statement in the FIR, both the Courts have considered the overwhelming evidence of several prosecution witnesses to the effect that there was a demand for dowry made by the
 E appellants and concurrently held that the appellants had made a demand. There is no reason to interfere with this finding of fact. [Para 30] [615-H; 616-A-B]

2.2. That apart, there is sufficient evidence on record
 F that the appellants had demanded a buffalo from PW5 and this demand was acceded to. There is also sufficient evidence that the appellants had demanded Rs.6,000/- from PW5 and even this demand was acceded to with PW-11 giving the amount to the appellants. [Para 31] [616-C-D]
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3. The evidence on record clearly indicates that the deceased was subjected to harassment for dowry not only by appellant no.1 but also by his parents. In fact, the harassment continued, as stated by the members of the
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Panchayat who visited the house of appellant no.1 on 13th September 1988 and also by PW-9 on 8th October 1988. The deceased was, therefore, harassed for dowry till almost immediately before her death. [Para 33] [617-A-B]

4. The presumption of a dowry death can be raised in four circumstances, viz.: (1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.); (2) The woman was subjected to cruelty or harassment by her husband or his relatives; (3) Such cruelty or harassment was for, or in connection with, any demand for dowry and (4) Such cruelty or harassment was soon before her death. All these ingredients are present in this case and a presumption of a dowry death can safely be drawn. [Para 35] [617-F-H; 618-A-B]

Tarsem Singh v. State of Punjab (2008) 16 SCC 155: 2008 (17) SCR 379 – relied on.

Appasaheb & Anr. v. State of Maharashtra (2007) 9 SCC 721: 2007 (1) SCR 164; and *Vipin Jaiswal v. State of Andhra Pradesh* 2013 (3) SCALE 525 – held inapplicable.

Bachni Devi v. State of Haryana (2011) 4 SCC 427: 2011 (2) SCR 627 – referred to.

5.1. There is no doubt that insofar as the present case is concerned, the deceased was harassed by her husband and in-laws for dowry and that she died under abnormal circumstances due to aluminium phosphide poisoning. There is sufficient evidence to hold the appellants guilty of offences punishable under Section 304-B of the IPC and 498-A of the IPC. There is no reason to disturb the conclusions concurrently arrived at by both the Courts below. [Para 38] [618-H; 619-A-B]

A 5.2. The law prescribes a minimum of seven years imprisonment for an offence under Section 304-B of the IPC. There is no provision for reducing the sentence for any reason whatsoever nor has any exception being carved out in law. Even though appellant nos. 2 and 3 are now aged, they were responsible for the death of the wife of appellant no.1 through aluminium phosphide poisoning. The deceased was a young lady when she died and one can only guess the trauma that her unnatural death would have caused to her parents.

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C Sympathizing with an accused person or a convict does not entitle to this Court to ignore the feelings of the victim or the immediate family of the victim. [Paras 40, 41] [619-D-F]

Case Law Reference:

D (2012) 11 SCALE 224 relied on Para 29
 2012 (4) SCR 408 relied on Para 29
 2008 (17) SCR 379 relied on Para 35

E 2007 (1) SCR 164 held inapplicable Para 36
 2011 (2) SCR 627 referred to Para 36
 2013 (3) SCALE 525 held inapplicable Para 37

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1548 of 2007.

From the Judgment & Order dated 02.05.2007 of the High Court for the States of Punjab & Haryana at Chandigarh in Criminal Appeal No. 356-SB of 1993.

G Nagendra Rai, Rishi Malhotra, Gopi Raman for the Appellants.

H V. Madhukar, AAG, Paritosh Anil, Anvita Cowshish, Srajita Mathur, Kuldeep Sing for the Respondent.

The Judgment of the Court was delivered by

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MADAN B. LOKUR, J. 1. The question before us is whether the conviction of Kulwant Singh (appellant No.1), his father Gurtehal Singh (appellant no.2) and his mother Harminder Kaur (appellant no.3) for offences punishable under Section 304-B and Section 498-A of the Indian Penal Code (IPC) ought to be sustained. In our opinion, there is sufficient evidence on record to sustain their conviction.

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The facts:

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2. Rachhpal Kaur (deceased) married Kulwant Singh on 18th November 1984. It appears from the record that even though she brought sufficient dowry, she was harassed and maltreated by her husband and in-laws for bringing insufficient dowry. The harassment and maltreatment continued resulting in the intervention by the Panchayat on or about 13th September 1988 to sort out the problem so that the couple could live a normal married life. Unfortunately, the efforts of the Panchayat did not yield any positive result and about a month later on 14th October 1988 Rachhpal Kaur died under suspicious circumstances.

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3. The record indicates that Rachhpal Kaur was taken to the Civil Hospital, Mandi Gobindgarh after rigor mortis had set in and there was froth coming from her mouth and nose. The appellants submitted an application Exh. DC for taking possession of the corpse without a post-mortem examination but that was not acceded to. A post-mortem examination was conducted on 15th October 1988 which revealed that Rachhpal Kaur was carrying a 26-week fetus. Some parts of her body were then removed, sealed and sent for chemical examination to the Chemical Examiner to the Government of Punjab, Patiala. The report of the Chemical Examiner, received much later, indicated the presence of aluminium phosphide (a pesticide) in the stomach of the deceased and phosphine, a constituent of aluminium phosphide, detected in her liver,

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A spleen, right kidney and right lung. According to Dr. Asha Kiran, Medical Officer, Civil Hospital, Mandi Gobindgarh (PW-1) the contents were sufficient to cause the death of Rachhpal Kaur.

B 4. Her younger sister Avtar Kaur (PW-9) gave intimation of Rachhpal Kaur's death on 15th October 1988 to her father Sukhdev Singh (PW-5). Thereupon Sukhdev Singh reached the hospital and claimed the body of Rachhpal Kaur and later cremated her.

C 5. Sukhdev Singh sought to lodge a first information report (FIR) regarding the suspicious death of Rachhpal Kaur but could not do so. The police authorities declined to register the FIR since the report of the chemical examination was not available. However, Sukhdev Singh did make an application in the concerned police station which was marked for necessary D action to ASI Karnail Singh (PW-12) on 18th October 1988.

6. Eventually, after the cause of Rachhpal Kaur's death was ascertained, FIR No.67/1988 dated 2nd November 1988 was registered and investigations commenced by the police.

E 7. The FIR broadly stated that sufficient dowry had been given to the appellants at the time of Rachhpal Kaur's marriage with Kulwant Singh. However, a few days after her marriage she was maltreated for bringing insufficient dowry, treated with cruelty and beaten up several times. The FIR goes on to state F that a Panchayat had visited the house of Kulwant Singh but he and the other in-laws of the deceased informed the Panchayat that they would continue to maltreat Rachhpal Kaur until their demands for dowry were fulfilled.

G 8. In the FIR, Sukhdev Singh stated that on 15th October 1988 he came to know from his daughter Avtar Kaur that Rachhpal Kaur had been murdered under suspicious circumstances. Sukhdev Singh was astonished to learn this and he reported the matter to the local police but they refused to take action since the report of the chemical examination had H not been received. According to Sukhdev Singh, the appellants

and other in-laws of Rachhpal Kaur had committed an offence punishable under Section 304-B and Section 498-A of the IPC for causing the death of Rachhpal Kaur.

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9. Upon registration of the FIR and receipt of the report of the Chemical Examiner, the local police carried out investigations and filed a charge sheet against the appellants as well as Gurcharan Singh and Sukhwant Singh, brothers of Kulwant Singh. The case was committed to the Sessions Court and registered as Sessions Case No.35-T of 5.5.1989 by the Additional Sessions Judge at Patiala.

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10. After charges were framed, all the accused persons pleaded not guilty and claimed trial.

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11. The prosecution produced several witnesses to bring home its case that the accused persons killed Rachhpal Kaur by poisoning her. The defence also produced their witnesses.

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Decision of the Trial Court:

12. The Trial Judge, by his judgment and order dated 17th September 1993 found the appellants Kulwant Singh, Gurtehal Singh and Harminder Kaur guilty of an offence punishable under Section 304-B of the IPC. They were then sentenced to undergo rigorous imprisonment for seven years. They were also convicted for an offence punishable under Section 498-A of the IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-. The sentences were to run concurrently.

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13. The Trial Court held that there was no delay in lodging the FIR by Sukhdev Singh. In fact, soon after the cremation of Rachhpal Kaur he went to the concerned Police Station at Amloh and apparently reported the suspicious circumstances under which his daughter had died. However, a case was not registered since the chemical examination report had not been received. Sukhdev Singh also moved an application before senior police officers and even appeared before the Senior

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A Superintendent of Police at Patiala and it is then that the FIR was registered on 2nd November 1988. On these facts the Trial Court concluded that there was no delay in lodging the FIR by Sukhdev Singh.

B 14. On the issue of a demand for dowry, maltreatment and harassment of Rachhpal Kaur, the Trial Court relied on the evidence of Sukhdev Singh (PW-5), his daughter Avtar Kaur (PW-9) his son Jasbir Singh (PW-11) and more importantly the members of the Panchayat, Sohan Singh (PW-7) and Darshan Singh (PW-8) who had gone to Kulwant Singh's house to sort out the issues between him and Rachhpal Kaur. The members of the Panchayat categorically stated (and this was believed by the Trial Court) that when they met Rachhpal Kaur on 13th September 1988 she was crying and had told them that the appellants demanded more dowry from her. She also stated that the appellants were given a buffalo and Rs.6,000/- in cash over and above the dowry given at the time of marriage but the appellants still complained that the dowry was insufficient.

E 15. Avtar Kaur (PW-9) had met Rachhpal Kaur on 8th October 1988 and was told by the deceased that her husband and members of his family were harassing her for dowry. The appellants subjected her to beating and that she wanted to be taken away from the house of her in-laws.

F 16. Jasbir Singh (PW-11) was believed by the Trial Court when he stated that he had borrowed Rs.6,000/- to give to the appellants as demanded by them. It was contended that Sukhdev Singh owned sufficient land and therefore, there was no need for his son to borrow Rs.6,000/- against a promissory note for payment to the appellants. The Trial Court did not accept this contention and found that since Sukhdev Singh had a very large family, it was not unnatural if his son had borrowed some money to give to the appellants.

H 17. The Trial Court also concluded that Rachhpal Kaur had died due to aluminium phosphide poisoning and the ingredients

of Section 304-B of the IPC had been made out and additionally the ingredients of Section 498-A had also been made out. It was held that Rachhpal Kaur's death was not a case of suicide. A

18. On the above findings, the Trial Court concluded that the appellants were guilty of the offences that they were charged with. However, it was held that the prosecution had not been able to prove beyond reasonable doubt that Sukhwant Singh and Gurcharan Singh had committed any offence. On this basis, they were found not guilty while the appellants were awarded the punishment as mentioned above. B
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Decision of the High Court:

19. Feeling aggrieved by the judgment and order as well as the sentence awarded by the Trial Court, the appellants preferred Criminal Appeal No.356-SB of 1993, which was heard and dismissed by the High Court of Punjab and Haryana by its judgment and order dated 2nd May 2007. D

20. The High Court independently examined the evidence on record and concluded that the prosecution had led sufficient evidence to show that the appellants, on account of a demand for dowry, maltreated Rachhpal Kaur and that she died under abnormal circumstances at the house of her in-laws. The High Court believed the witnesses who had consistently supported the prosecution version of harassment, maltreatment and misbehavior by the appellants with Rachhpal Kaur on account of her allegedly bringing insufficient dowry. E
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21. The High Court also believed the case put forward by the prosecution that in addition to the dowry brought by Rachhpal Kaur at the time of her marriage, the appellants had been given a buffalo and Rs.6,000/- in cash by Sukhdev Singh (PW-5) and Jasbir Singh (PW-11). G

22. The High Court considered and rejected the contention of the appellants that the demand for dowry was an afterthought H

- A since it did not find any mention in the FIR. The High Court noted that the FIR clearly records that Rachhpal Kaur had mentioned the demand for dowry to the members of the Panchayat and her immediate family. Though the demand for dowry was not specific, there was undoubtedly a demand made by the
- B appellants and which was satisfied by Rachhpal Kaur's family.

23. The High Court found that the death of Rachhpal Kaur was due to aluminium phosphide poisoning and that there was sufficient evidence on record to hold the appellants guilty of the offences that they were charged with. Accordingly, the appeal
- C filed by the appellants was dismissed by the High Court.

24. It is under these circumstances that the present appeal is before us.

D **Submissions and discussion:**

25. Learned counsel for the appellants made three submissions before us. It was firstly submitted that there was a delay in lodging the FIR by Sukhdev Singh inasmuch as the incident occurred on 14th October 1988 but the FIR was lodged
- E on 2nd November 1988; secondly, there was a great deal of improvement in the case by Sukhdev Singh and other prosecution witnesses inasmuch as the FIR and the statements recorded during investigations under Section 161 of the Code of Criminal Procedure did not mention anything about the
- F demand for dowry having been raised by the appellants more particularly about a buffalo having been demanded and given to the appellants and payment of Rs.6,000/- again on the demand of the appellants. It was contended, in other words, that a completely new story was set up by the prosecution witnesses
- G and for this reason they should not be believed; thirdly, the ingredients of Section 304-B of the IPC were not made out since the alleged demand for dowry was not proximate to the death of Rachhpal Kaur.

- H 26. We are unable to agree with learned counsel for the

appellants in respect of any of the submissions advanced by him. A

27. As far as the delay in lodging the FIR is concerned, we are in agreement with the conclusion arrived at by the Trial Court that there was no delay in lodging the FIR. It may be mentioned that the argument of delay in lodging the FIR was not raised before the High Court. B

28. Be that as it may, the facts reveal that Sukhdev Singh (PW-5) had made sufficient attempts to have the FIR lodged but was unable to do so since the report of the Chemical Examiner had not yet been received by the concerned police station. In any event, it is also clear from the evidence of ASI Karnail Singh (PW-12) that Sukhdev Singh had submitted an application which was marked by S.I. Balbir Singh (PW-13) the Station House Officer of Police Station Amloh to him (Karnail Singh) on 18th October 1989. S.I. Balbir Singh also stated in his evidence that he had received an application made by Sukhdev Singh to the Senior Superintendent of Police at Patiala and it was then that he registered the FIR on 2nd November 1988. As such, it cannot be said that there was any delay in lodging the FIR. C D E

29. We may also mention that the issue about the delay in lodging an FIR has been dealt by this Court *ad nauseum* and we should not make a fetish out of any perceived delay in lodging the FIR. Some time back, one of us (Madan B.Lokur, J.) had occasion to deal with this issue in *Gurmail Singh v. State of Punjab*, (2012) 11 SCALE 224 and it is not necessary to repeat the conclusions arrived at nor is it necessary to reaffirm the principle that delay in lodging the FIR cannot be a ground for throwing away the entire prosecution case as held in *Jitender Kumar v. State of Haryana*, (2012) 6 SCC 204. F G

30. The second contention urged by the appellants also does not merit any serious consideration. It is true that in the FIR Sukhdev Singh did not give any specific instance of the H

A demand for dowry made by the appellants but he did categorically mention that there was a demand for more dowry by the appellants. Apart from the statement in the FIR, both the Courts have considered the overwhelming evidence of several prosecution witnesses to the effect that there was a demand for dowry made by the appellants and concurrently held that the appellants had made a demand. We do not see any reason to interfere with this finding of fact.

31. That apart, there is sufficient evidence on record that the appellants had demanded a buffalo from Sukhdev Singh and this demand was acceded to. There is also sufficient evidence that the appellants had demanded Rs.6,000/- from Sukhdev Singh and even this demand was acceded to with Jasbir Singh (PW-11) giving the amount to the appellants.

32. The final contention urged on behalf of the appellants also requires to be rejected. Section 304-B of the IPC reads as follows:

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

Explanation.- For the purposes of this sub- section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

33. There is no dispute that Rachhpal Kaur died under

abnormal circumstances due to aluminium phosphide poisoning within seven years of her marriage. The evidence on record clearly indicates that she was subjected to harassment for dowry not only by Kulwant Singh but also by his parents. In fact, the harassment continued, as stated by the members of the Panchayat who visited Kulwant Singh's house on 13th September 1988 and also by Avtar Kaur (PW-9) on 8th October 1988. Rachhpal Kaur was, therefore, harassed for dowry till almost immediately before her death.

34. We may also make a reference to Section 113-B of the Evidence Act, 1872 which reads as follows:-

"113-B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)."

35. The presumption of a dowry death can be raised in four circumstances given below and which have been mentioned in *Tarsem Singh v. State of Punjab* (2008) 16 SCC 155:

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

A (3) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(4) Such cruelty or harassment was soon before her death.”

B All these ingredients are present in this case and a presumption of a dowry death can safely be drawn.

36. Learned counsel for the appellants referred to *Appasaheb & Anr. v. State of Maharashtra*, (2007) 9 SCC 721 wherein it was held that asking the wife to bring money for meeting domestic expenses on account of financial stringency and for purchasing manure cannot be held as a demand for dowry. We are unable to see how this decision has any relevance to the facts of the present case or to the controversy that we are concerned with. In any event, the observations made in *Appasaheb* were explained in *Bachni Devi v. State of Haryana*, (2011) 4 SCC 427 wherein it was held that the observations in *Appasaheb* were required to be understood in the context of the case. It was held that *Appasaheb* cannot be read as laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as a demand for dowry.

37. Finally, reference was made to *Vipin Jaiswal v. State of Andhra Pradesh*, 2013 (3) SCALE 525 which also has no relevance to the present case since in that case the ingredients of harassment or cruelty had not been made out. Vipin Jaiswal's wife committed suicide and left behind a note to the effect that nobody was responsible for her death and that her parents and family members had harassed her husband and it is because of this that she was fed up with her life and the quarrels taking place.

38. There is no doubt that insofar as the present case is concerned, Rachhpal Kaur was harassed by her husband and in-laws for dowry and that she died under abnormal

circumstances due to aluminium phosphide poisoning. In our opinion, there is sufficient evidence to hold the appellants guilty of offences punishable under Section 304-B of the IPC and 498-A of the IPC. We see no reason to disturb the conclusions concurrently arrived at by both the Courts below.

39. Learned counsel appearing for the appellants contended that Gurtehal Singh is today about 80 years old and his legs have been amputated because of severe diabetes. It was also submitted that Harminder Kaur is about 78 years of age and she needs to look after Gurtehal Singh. In these circumstances considering their age and physical disability, a sympathetic view should be taken in the matter as far as they are concerned.

40. We have given considerable thought to this submission but find that the law prescribes a minimum of seven years imprisonment for an offence under Section 304-B of the IPC. There is no provision for reducing the sentence for any reason whatsoever nor has any exception being carved out in law. Consequently, we cannot accept this plea.

41. We must not lose sight of the fact that even though Gurtehal Singh and Harminder Kaur are now aged, they were responsible for the death of Rachhpal Kaur through aluminium phosphide poisoning. Rachhpal Kaur was a young lady when she died and we can only guess the trauma that her unnatural death would have caused to her parents. Sympathizing with an accused person or a convict does not entitle to us to ignore the feelings of the victim or the immediate family of the victim.

Conclusion:

42. There is no merit in the appeal. It is accordingly dismissed.

B.B.B.

Appeal dismissed.