

A.F.R.

Court No. - 4

Case :- CRIMINAL APPEAL No. - 851 of 2015

Appellant :- Mukesh

Respondent :- State Of U.P.

Counsel for Appellant :- Bharat Singh, Sharda Prasad Mishra

Counsel for Respondent :- Govt. Advocate

connected with

Case :- CRIMINAL APPEAL No. - 4893 of 2014

Appellant :- Smt. Ramwati And Another

Respondent :- State Of U.P.

Counsel for Appellant :- Bharat Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Bala Krishna Narayana, J.

Hon'ble Prakash Padia, J.

Per Hon'ble B. K. Narayana, J.

Heard Sri Sharda Prasad Mishra, learned counsel for the appellants and Smt. Manju Thakur, learned A.G.A.-I assisted by Sri Awadhesh Kumar Shukla, brief holder for the State.

These two criminal appeals have been preferred by Mukesh son of Natthu, appellant in Criminal Appeal No. 851 of 2015 and Smt. Ramwati wife of Natthu (A1) and Natthu son of Siyaram (A2), appellants in Criminal Appeal No. 4893 of 2014 against the judgement and order dated 10.12.2014 passed by Additional Sessions Judge, Court No. 6, Budaun in S.T. No. 1082 of 2008, 'State Versus Mukesh' as well as in S.T. No. 322 of 2009, 'State Versus Natthu and another' arising out of Case Crime No. 760 of 2007 u/s 498-A, 304-B, 302, 306, 201/34, 201 I.P.C. and Section 4 of Dowry Prohibition Act, P.S.- Rajpura, District- Budaun, by which all the

three appellants have been convicted and sentenced to imprisonment for life u/s 304-B I.P.C., three years rigorous imprisonment and a fine of Rs. 3,000/- each and in case of default in payment of fine, three months additional simple imprisonment u/s 498-A I.P.C., three years rigorous imprisonment and a fine of Rs. 3,000/- each and in case of default in payment of fine, three months additional simple imprisonment u/s 201 I.P.C. and one year rigorous imprisonment and a fine of Rs. 1,000/- each and in case of default in payment of fine, one month additional simple imprisonment u/s 4 of Dowry Prohibition Act. All the sentences have been directed to run concurrently.

Briefly stated the facts of this case are that P.W.1 informant Dharam Pal son of Kashiram, resident of village- Mehua Hasanganj, P.S.- Rajpura, District- Budaun gave a written report (Ext.Ka.1) at P.S.- Rajpura, District- Budaun on 29.12.2007 at about 14.30 hours stating therein that his daughter Mamta was married to Mukesh son of Natthu Singh, resident of village- Kanhua, P.S.- Gunnaur about four years before according to Hindu rites and customs. He had given adequate dowry as per his financial capacity at the time of the marriage. After the marriage, things remained normal for a few days but thereafter all the three appellants namely Mukesh, Smt. Ramwati (A1) wife of Natthu and Natthu (A2) started demanding one motorcycle, one buffalo and Rs. 50,000/- in cash from her as additional dowry and on account of non-fulfillment of demands of dowry, they started harassing Mamta. Mamta used to complain to him about the conduct of the appellants whenever she came to her maternal home but on each such occasion, he had cajoled her into going back to her matrimonial home. About three months before the incident, Natthu Singh (A2) had brought his daughter Mamta to his house after beating her and while leaving her in his house, he had told her that he would take back his daughter only after his demand for additional dowry were fulfilled. On 26.12.2007, Mukesh called his nephew Hari Om son of Chhatrapal, who resided in the neighbourhood of P.W.1 informant

Dharam Pal, on his phone at 6.30 p.m. and told him that he was coming to take back Mamta and she should be ready. After sometime, Mukesh came to his house and took away Mamta with him. However, when two hours after Mukesh and Mamta had left his house, P.W.1 informant Dharam Pal enquired whether they had reached village- Kanhua, he was told that Mukesh and Mamta had not reached there on which he himself went to village- Kanhua and upon his inquiry about the whereabouts of his daughter from Natthu (A2) and his wife Smt. Ramwati (A1), they told him that she had not returned to her matrimonial home. He also met there Ram Niwas, Pradhan of village- Kanhua and Palu Singh son of Bhau Singh, residents of village- Noorpur who also denied that his daughter had come there and asked him to do whatever he desired. On 29.12.2007, the dead body of his daughter Mamta was found lying behind the boundary wall of T.C.L. in village- Mehua Hasanganj. The accused, after committing the dowry death of his daughter, had concealed her dead body.

On the basis of the written report (Ext.Ka.1) given by P.W.1 informant Dharam Pal at P.S.- Rajpura, District- Budaun on 29.12.2007 at about 14.30 hours, Case Crime No. 760 of 2007, u/s 304-B, 498-A and 201 I.P.C. r/w $\frac{3}{4}$ Dowry Prohibition Act was registered. Check F.I.R. (Ext.Ka.11) and relevant G.D. Entry vide rapat no. 25, time 14.30 hours dated 29.12.2007 (Ext.Ka.12) was prepared.

After the registration of the case, P.W.5 S.I. Hari Prasad Verma reached the place of occurrence along with Sri Ashok Kumar, S.O. Rajpura and other police personnel and held inquest on the body of the deceased Mamta under the direction of Sri Virendra Singh Dohre, S.D.M.- Gunnaur. After completing the inquest proceedings, P.W.5 S.I. Hari Prasad Verma prepared the inquest report (Ext.Ka.4) and other written documents and thereafter got the dead body of the deceased sealed and dispatched to District Hospital, Budaun for postmortem examination.

The postmortem on the body of the deceased Mamta was conducted

by P.W.6 Dr. J. L. Gupta on 30.12.2007 at 5.10 p.m. who also prepared her postmortem report (Ext.Ka.5). He noted following ante-mortem injuries on her person :-

- 1) *Abrasion 3 cm x 2 cm on lt. side chin*
- 2) *Multiple abrasion on anterior aspect on both lateral aspect of neck 3 cm x 2 cm to 1 cm x 1 cm in size. On dissection of the neck, trachea found congested. Hyoid bone found fractured and some clotted blood present in trachea. Tissue under the skin also congested.*
- 3) *Incised wound of size 4 cm x 4 cm on lt. side of ear.*
- 4) *Abrasion size 1.5 cm x 1 cm on back of neck.*
- 5) *Abrasion size 3 cm x 1 cm on rt. side back of heel.*
- 6) *Abrasion size 1 cm x 1 cm on rt. side middle finger, palm's dorsal aspect*
- 7) *Abrasion on rt. side index finger size 1 cm x 0.5 cm on the middle part*
- 8) *Abrasion on the surface of palm of lt. hand.*

According to P.W.6 Dr. J. L. Gupta, the cause of death of Mamta was asphyxia due to throttling.

P.W.7 Dr. Manoj Kumar, Circle Officer, Gunnaur, District- Budaun inspected the place of occurrence and prepared its site plan (Ext.Ka.6). After completing the investigation, he filed charge-sheet (Ext.Ka.7) against all the three appellants u/s 304-B, 498-A I.P.C. and $\frac{3}{4}$ Dowry Prohibition Act before the Chief Judicial Magistrate, Budaun.

Since the offences mentioned in the charge-sheet were triable exclusively by the Court of Sessions, Chief Judicial Magistrate, Budaun committed the case for trial to the Court of Sessions where the cases of the accused-appellants were registered as S.T. No. 1082 of 2008, 'State Versus Mukesh' and S.T. No. 322 of 2009, 'State Versus Natthu and another'. Both the session trials were made over from there for trial to the Court of Additional Sessions Judge, Court No. 6, Budaun who on the basis of material collected during the investigation and after hearing the prosecution as well as the accused on the point of charge, framed charge

u/s 304-B, 498-A I.P.C. and 4 Dowry Prohibition Act and an alternative charge u/s 306/302/201 I.P.C. against all the accused-appellants who abjured the charges framed against them and claimed trial.

The prosecution in order to prove its case against the accused-appellants examined as many as seven witnesses out of whom P.W.1 informant Dharam Pal father of the deceased, P.W.2 Satyapal brother of the deceased, P.W.3 Smt. Guddo sister-in-law of the deceased and P.W.4 Smt. Meena mother of the deceased were examined as witnesses of fact while P.W.5 S.I. Hari Prasad Verma who had prepared the check F.I.R. (Ext.Ka.11), inquest report (Ext.Ka.4) and other documents, P.W.6 Dr. J. L. Gupta who had conducted postmortem on the body of the deceased and prepared the postmortem report (Ext.Ka.5) and P.W.7 Dr. Manoj Kumar, Investigating Officer of the case, were produced as formal witnesses.

The accused-appellants in their statements recorded u/s 313 Cr.P.C. denied the prosecution case and further stated that all the witnesses had given false evidence against them due to enmity. All the three appellants claimed that they were innocent. Mukesh, appellant in Criminal Appeal No. 851 of 2015 stated that the deceased was of a loose character who did not want to live with him as she had developed illicit relationship with several persons of the village and on account of the aforesaid reason, some men of her village had committed her murder. Smt. Ramwati (A1) and Natthu (A2) stated that they lived separately from Mukesh. The appellants examined one Rajendra as D.W.1. They also filed documentary evidence comprising of the statements of P.W.3 Smt. Guddo recorded in S.T. No. 1082 of 2008 and certified copy of the statement of P.W.2 Satyapal.

Learned Additional Sessions Judge, Court No. 6, Budaun, after considering the submissions advanced before him by the learned counsel for the parties and scrutinizing the evidence on record, both oral as well as documentary, convicted all the three appellants and awarded aforesaid sentences to them.

Hence, this appeal.

Sri Sharda Prasad Mishra, learned counsel for the appellants submitted that the deceased having been found dead in her maternal village and no one having seen the occurrence and there being no evidence whatsoever even prima facie indicating at the complicity of Smt. Ramwati (A1) and Natthu (A2), appellants in Criminal Appeal No. 4893 of 2014, neither the recorded conviction of the appellants nor the sentences awarded to them u/s 304-B and 201 I.P.C. can be sustained and are liable to be set-aside as no presumption u/s 304-B I.P.C. could be raised against them under the facts and circumstances of the case although from the evidence on record even committing of offence by Smt. Ramwati (A1) and Natthu (A2) u/s 498-A I.P.C. and 4 Dowry Prohibition Act is not established against them beyond all reasonable doubts. However, in case this Court is not inclined to acquit them of the aforesaid charges, the sentences awarded to them on their conviction u/s 498-A I.P.C. and 4 Dowry Prohibition Act be modified to the period of imprisonment already undergone by them. As regards Mukesh, appellant in Criminal Appeal No. 851 of 2015, he submitted that apart from highly interested and partisan evidence of the deceased's relatives, P.W.1 informant Dharam Pal and P.W.4 Smt. Meena, who are father and mother of the deceased, there is no other evidence on record pointing out at the guilt of the appellant Mukesh as the two other witnesses P.W.2 Satyapal and P.W.3 Smt. Guddo, brother and sister-in-law of the deceased had failed to support the prosecution case during the trial and were declared hostile. He lastly submitted that in case this Court is not inclined to disagree with the finding of guilt recorded by the trial Judge against appellant Mukesh, since 304-B I.P.C. prescribes awarding of imprisonment for a term which shall not be less than seven years but which may extend for life and considering the fact that appellant Mukesh has already undergone about 12 years imprisonment, this Hon'ble Court may be pleased to allow this appeal qua Mukesh, appellant in Criminal Appeal No. 851 of 2015 to the extent by

modifying the impugned judgement in so far as the quantum of sentence is concerned and reduce the same from life imprisonment to that of 12 years.

Per contra Smt. Manju Thakur, learned A.G.A.-I assisted by Sri Awadhesh Kumar Shukla, appearing for the State submitted that it is proved from the evidence on record that the appellants had caused dowry death of the deceased within seven years of her marriage and had also tried to conceal her dead body. Hence, no interference by this Court either with the recorded conviction or the sentence awarded to the appellants is warranted. This appeal lacks merit and is liable to be dismissed.

We have heard learned counsel for the parties and very carefully scanned the entire lower court record.

The facts which stand out in this case are that deceased Mamta had died within seven years of her marriage. The dead body of Mamta was found lying within the territorial limits of the village where she had her maternal home. The prosecution has come up with a specific case that after the marriage between the deceased and appellant Mukesh was solemnized, all the three appellants had started demanding one motorcycle, one buffalo and Rs. 50,000/- in cash from her as additional dowry and on account of non-fulfillment of aforesaid demands of additional dowry, she was maltreated by them in her matrimonial home. She had complained about her harassment and maltreatment to her father P.W.1 informant Dharam Pal by the appellants on account of non-fulfillment of demands of dowry but every time, he used to cajole her into going back to her matrimonial home. Natthu (A2) brought back the deceased to her paternal home about three months before the occurrence and left her with her parents and had returned telling them that he would take her back to her matrimonial home only if their demands were satisfied. However, on 26.12.2007, appellant Mukesh came to the house of the informant and took away Mamta with him on the pretext that he was taking her back to her matrimonial home but Mamta never reached

her matrimonial home and eventually her dead body was found lying within the territorial limits of her village- Mehua Hasanganj on 29.12.2007.

The prosecution, as already noted hereinabove, has examined as many as four witnesses of fact.

P.W.1 informant Dharam Pal in his examination-in-chief stated that about ten years before the date on which his statement was recorded before the Court, his nephew Hari Om had got a call on his cellphone from Mukesh who told him that he was coming to take back Mamta. Mukesh came to his house on the same day, accompanied with Palu and Ram Niwas. Ram Niwas, Palu and Mukesh asked him to send Mamta with them on which he told them that since they were taking the girl with them, they should keep her properly and not beat or torture her. His daughter had gone with her husband and his companions in the presence of Prakash, P.W.2 Satyapal, Bhoop Singh and Murari Kunwar Pal and he had sent his daughter Mamta with Mukesh on the assurance given to him by Mukesh, Ram Niwas and Palu that they would not harass Mamta on account of any demand of dowry. When 2-3 days after Mamta had gone with Mukesh, he inquired whether Mamta had reached village- Kanhua, he came to know that Mukesh and Mamta had not reached their house. Thereafter, he and his son P.W.2 Satyapal went to village- Kanhua where they met Palu, Ram Niwas, his daughter's father-in-law Nathhu Singh (A2) and mother-in-law Smt. Ramwati (A1) and when he asked from them about his daughter's Mamta whereabouts, they feigned ignorance and told him that she and Mukesh had not come to their place. Then he started searching for his daughter Mamta and son-in-law Mukesh. The dead body of his daughter was found behind the boundary wall of T.C.L. Factory in his village 3-4 days after she had left her house with his son-in-law Mukesh. He further deposed that about 4 years before the incident, he had got his daughter Mamta married to Mukesh and he had given adequate dowry according to his financial status to him at the time of the

marriage but Mukesh, Natthu Singh, Palu and Ram Niwas were not satisfied with the dowry and they used to demand one motorcycle, one buffalo and Rs. 50,000/- in cash from her as additional dowry. Whenever Mamta visited her parental home, she used to tell him about the demands of dowry made from her and her being tortured by them for non-fulfillment of their demands of additional dowry. About three months before, Natthu (A2) after beating his daughter, had abandoned her in her parental home and told him that he would take her back only after his demands for dowry were fulfilled. He had lodged the report of the incident at P.S.- Rajpura, District- Budaun. He proved the written report of the incident as (Ext.Ka.1). He also deposed that during investigation, the police had exonerated Ram Niwas and Palu against whom he had filed a criminal complaint before the Judicial Magistrate, Allahabad. He had also filed a complaint before the SSP (Ext.Ka.2) along with his affidavit (Ext.Ka.3) stating therein that the accused Ram Niwas and Palu had been illegally exonerated by the Investigating Officer.

P.W.1 informant Dharam Pal in his cross-examination on page 33 and 34 of the paper book deposed that he had neither stated in the written report of the incident (Ext.Ka.1) nor in his statement recorded u/s 161 Cr.P.C. that the accused used to beat Mamta.

P.W.2 Satyapal, brother of the deceased, in his examination-in-chief deposed that marriage between his sister Mamta and Mukesh was solemnized about 8 years before the day on which his statement was recorded. Neither appellant Mukesh or Natthu (A2) or Smt. Ramwati (A1) nor Ram Niwas and Palu had ever demanded any additional dowry nor they had maltreated or tortured her on account of non-fulfillment of any demand of dowry. Mamta had never made any complaint to him about being tortured on account of any demand of dowry. About one year before, Mamta's body was found lying in a forest in his village. He was not aware about the cause of her death. He had no knowledge that accused Mukesh etc. had committed her murder. The inquest on the body of the

deceased was conducted by S.D.M. Gunnaur and police officers and he was witness of inquest and had signed the inquest report. P.W.2 Satyapal was declared hostile on the request of the learned A.D.G.C. and cross-examined by him with the permission of the Court. In his cross-examination by the A.D.G.C., he categorically stated that the Investigating Officer had not recorded his statement during the investigation. When his statement purported to have been recorded by the Investigating Officer u/s 161 Cr.P.C. was read over to him, he denied having made such statement and stated that he had no idea about how the same came into existence. He denied that he was colluding with the accused or that he was giving false evidence.

P.W.3 Smt. Guddo, aunt of the deceased also failed to support the prosecution case in toto in her examination-in-chief except the factum of her marriage with Mukesh which was admitted by her. She was also declared hostile on the request of learned A.D.G.C. and cross-examined by him with the permission of the Court. P.W.3 Smt. Guddo in her cross-examination stated that neither the appellants had ever demanded any additional dowry nor they had maltreated or tortured her on account of non-fulfillment of any demand of dowry. Mamta had never made any complaint to her about being tortured on account of any demand of dowry. She was not aware about the cause of her death. She had no knowledge that the aforesaid appellants had committed Mamta's murder. When her statement purported to have been recorded by the Investigating Officer u/s 161 Cr.P.C. in which she had supported the prosecution case was read over to her, she denied having made such statement and deposed that she had no idea how the same came into existence. She denied that she was colluding with the accused or that she was giving false evidence.

P.W.4 Smt. Meena, mother of the deceased in her examination-in-chief stated that marriage of her daughter Mamta was solemnized with Mukesh, son of Natthu about four years before. At that time, he was studying and also running a general merchandise shop. About 1½ years

before the incident, accused Mukesh, his mother Smt. Ramwati, his father Natthu Singh, Ram Niwas and Pallu, had started demanding a motorcycle, one buffalo and Rs. 50,000/- in cash from her as additional dowry and torturing her daughter for non-fulfillment of demands of additional dowry. Whenever Mamta used to come to her place, she used to tell her about the incidents of violence to which she was subjected on account of non-fulfillment of additional demands of dowry. About three months before the incident, Natthu Singh (A2), father-in-law of Mamta had come to her house and left her in her paternal home and left her house warning her that he would take her back to her matrimonial home only after a motorcycle, one buffalo and Rs. 50,000/- in cash was given to him. About 3-4 days before the murder of Mamta took place, Mukesh had informed her nephew Hari Om on his cellphone that he was coming to take Mamta back. On the same evening, Mukesh, Palu and Ram Niwas came to her house and took away Mamta with them after assuring her family that in future, neither any demand of dowry shall be made nor she would be tortured or beaten. She further deposed that 2-3 hours after Mamta had left her house with her husband, she had called Mukesh on his phone to enquire whether they had reached village- Kanhua or not on which Natthu Singh (A2) had told her that they had not reached village- Kanhua. They had called Natthu Singh (A2) when Mukesh had failed to respond to their calls. Upon receiving the aforesaid information, her husband P.W.1 informant Dharam Pal and her son P.W.2 Satyapal rushed to village- Kanhua where they were told by Palu, Ram Niwas, Natthu Singh (A2) and Smt. Ramwati (A1) that neither Mamta nor Mukesh were there and they told them to do whatever they wanted to do. Thereafter, her husband and her son returned from there and started searching for Mamta and Mukesh with the other family members. Three or four days after Mamta had gone with Mukesh, her dead body was found lying behind the boundary wall of T.C.L. Factory towards Ganga river. The accused were not satisfied with the dowry given by her to them at the time of the

marriage and as a result, they had started demanding additional dowry and torturing Mamta.

P.W.5 S.I. Hari Prasad Verma who had prepared the inquest report (Ext.Ka.4) stated before the trial court that he was posted as S.I. at P.S.-Rajpura on 29.12.2007. On that date, after the registration of the Case Crime No. 760 of 2007 u/s 498-A, 304-B, 201 I.P.C. and $\frac{3}{4}$ Dowry Prohibition Act, he had visited the place of occurrence along with S.O. Ashok Kumar and other employees where inquest on the body of the deceased was conducted by Virendra Singh Dohre, S.D.M. Gunnaur on whose dictation, he had filled up the inquest report. He had also got the related documents namely photo lash, specimen seal, challan nash, letter addressed to R.I. and letter addressed to C.M.O. as (Exts.Ka.6 to Ka.10) prepared on the spot. He also proved the check F.I.R. as (Ext.Ka.11) and the relevant G.D. Entry vide rapat no. 25 at 14.30 hours on 29.12.2007 as (Ext.Ka.12).

Dr. J.L. Gupta who had conducted the postmortem report on the body of the deceased was examined as P.W.6. He in his evidence tendered before the trial court deposed that on 30.12.2007 at about 5.10 p.m., he and Dr. Harpal had conducted postmortem on the body of the deceased Mamta who had died about three days before. He proved the postmortem report of the deceased as (Ext.Ka.5).

Dr. Manoj Kumar who was posted on 30.12.2007 as C. O. Gunnaur and had investigated this matter was examined as P.W.7. He in his evidence tendered before the trial court narrated the various steps taken by him during the course of the investigation. He proved the site plan of the place of occurrence as (Ext.Ka.6) and the charge-sheet as (Ext.Ka.7).

Thus, from the perusal of the evidence on record, it is established that the death of the deceased was homicidal and she had died approximately on 27.12.2007 at about 5 p.m. about one day after she had left her parental home with accused Mukesh. Record shows that however

the four witnesses of fact examined by the prosecution during the trial, P.W.2 Satyapal, brother of the deceased and P.W.3 Smt. Guddo, aunt of the deceased had failed to support the prosecution case and were declared hostile. However, P.W.1 informant Dharam Pal fully supported the prosecution case as spelt out in the written report of the incident which was lodged by him at P.S.- Rajpura, District- Budaun (Ext.Ka.1). P.W.4 Smt. Meena, mother of the deceased also substantially corroborated the evidence of P.W.1 informant Dharam Pal on all material particulars pertaining to the incident. However, what stands out upon a threadbare evaluation of their testimony is that although they have given last seen evidence against appellant Mukesh but there is nothing in their evidence which may indicate that when Mukesh had come to the house of P.W.1 informant Dharam Pal to take back his wife, deceased Mamta, accompanied with either Natthu (A2) or Smt. Ramwati (A1). It is also proved from the evidence of the witnesses of fact as well as formal witnesses that the deceased's body was found within the territorial limits of village- Mehua Hasanganj. There is absolutely no evidence on record even remotely indicating that the incident had taken place inside the house of the appellants in village- Kanhua, P.S.- Gunnaur and hence, as far as Natthu (A2) and Smt. Ramwati (A1) are concerned, there is not even an iota of evidence on record indicating at their complicity in either causing homicidal death of Mamta or concealing her dead body. From the evidence of P.W.1 informant Dharam Pal and P.W.2 Satyapal, the only allegation which emerges out against appellant Natthu (A2) and Smt. Ramwati (A1) is that they were demanding one motorcycle, one buffalo and Rs. 50,000/- cash as additional dowry and were maltreating and torturing Mamta for non-fulfillment of demands of additional dowry and Natthu (A2) after beating Mamta had abandoned her in her paternal home and had returned warning her parents that he would take Mamta back to her matrimonial home only after the demands for additional dowry were fulfilled. There is no evidence on record indicating that the deceased had

died in her matrimonial home. However, there is positive evidence of P.W.1 informant Dharam Pal and P.W.4 Smt. Meena evincing that the deceased had been living in her parental home for the last three months preceding her death.

Thus, in our opinion, as far as Smt. Ramwati (A1) and Natthu (A2), appellants in Criminal Appeal No. 4893 of 2014 are concerned, the prosecution has failed to prove the charge framed against them u/s 304-B & 201 I.P.C. beyond all reasonable doubts. However, from the evidence of P.W.1 informant Dharam Pal and P.W.2 Satyapal, the charge framed u/s 498-A I.P.C. and 4 of Dowry Prohibition Act against Smt. Ramwati (A1) and Natthu (A2) stands proved against them and hence, the learned trial Judge did not commit any illegality or legal infirmity in convicting Smt. Ramwati (A1) and Natthu (A2) u/s 498-A I.P.C. and 4 of Dowry Prohibition Act.

Now, coming to the case of Mukesh, appellant in Criminal Appeal No. 851 of 2015, we find that the prosecution has succeeded in establishing its case against him beyond all reasonable doubts. The last seen evidence given by P.W.1 informant Dharam Pal and P.W.4 Smt. Meena against appellant Mukesh is throughout consistent and clinching. We do not find any reason to disbelieve their testimony to the fact that after Mukesh had come to the house of informant and taken away his daughter Mamta with him, she was never seen alive. The medical evidence on record indicates that the deceased had died within 24 hours of leaving her parental home with appellant Mukesh.

Thus, the facts relating to the cause of her death were within the special knowledge of appellant Mukesh and he having failed to come up with any explanation for her death, no fault can be found with his conviction recorded by the trial court u/s 498-A, 304-B I.P.C. and 4 of Dowry Prohibition Act.

Now, the question arises as to whether we should reduce the

appellants' sentence and if so, to what extent, as urged by the appellants' counsel.

This issue has been the subject matter of debate before the Apex Court in several cases, which arose out of Section 304-B I.P.C read with Section 498-A I.P.C. and wherein the Apex Court while interpreting the expression "may" occurring in Section 304-B I.P.C held that it is not mandatory for the Court in every case to award life imprisonment to the accused once he is found guilty of offence under Section 304-B I.P.C. It was held that the Court could award sentence in exercise of its discretion between seven years to life imprisonment depending upon the facts of each case. It was held that in no case it could be less than seven years and that extreme punishment of life term should be awarded in "rare cases" but not in every case.

In the case of **Hem Chand Vs. State of Haryana, (1994) 6 SCC 727**, the courts below had awarded life term to the accused under Section 304-B I.P.C. read with Section 498-A I.P.C. but the Apex Court reduced it to 10 years. This was also a case where the accused was a police officer who had suffered life imprisonment. The Apex Court held as under:

"7..... the accused-appellant was a police employee and instead of checking the crime, he himself indulged therein and precipitated in it and that bride-killing cases are on the increase and therefore a serious view has to be taken. As mentioned above, Section 304-B I.P.C. only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case.

8. Hence, we are of the view that a sentence of 12 years' RI would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B I.P.C., reduce the sentence of imprisonment for life to 10 years' RI....."

Similarly the Apex Court in **State of Karnataka Vs. M.V. Manjunathgowda and Anr., (2003) 2 SCC 188**, while convicting

the accused under Section 304-B I.P.C. awarded 10 years imprisonment in somewhat similar facts.

Recently in **G.V. Siddaramesh Vs. State of Karnataka, (2010) 3 SCC 152**, the Apex Court while allowing the appeal filed by the accused only on the question of sentence altered the sentence from life term to 10 years on more or less similar facts. **Hon'ble H. L. Dattu, J.** (as His Lordship then was) speaking for the Bench held as under:

"31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B I.P.C. However, his sentence of life imprisonment imposed by the courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years' rigorous imprisonment would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B I.P.C., reduce the sentence of imprisonment for life to 10 years' rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed."

Learned counsel appearing for the State has not been able to cite any authority in support of her submission except to oppose the prayer made by the learned counsel for the appellants.

Mukesh, appellant in Criminal Appeal No. 851 of 2015, who was aged about 17 years on the date of the occurrence as per his date of birth recorded in his High School certificate, is now presently aged about 29 years. Appellant Mukesh has already remained in jail for 11 years, 8 months and 3 days. He has admittedly no criminal antecedents and there has never been any complaint against him during his incarceration. Applying the principle of law laid down in the aforementioned cases and having regard to the totality of facts and circumstances of this case, we are of the considered opinion that the ends of justice would be met, if we reduce the sentence of the appellant Mukesh from life imprisonment to the period of imprisonment already undergone by him which in the present case is 11 years, 8 months and 3 days.

In view of the foregoing discussion, Criminal Appeal No. 851 of 2015, 'State Versus Mukesh' and Criminal Appeal No. 4893 of 2014, 'State Versus Natthu and another' succeed partially and are **allowed in part**.

The recorded conviction of Mukesh, appellant in Criminal Appeal No. 851 of 2015 and the sentence awarded to him u/s 498-A I.P.C. and 4 Dowry Prohibition Act are upheld but the sentence of life imprisonment awarded to Mukesh u/s 304-B I.P.C. is reduced to the period of imprisonment already undergone by him.

As far as Smt. Ramwati (A1) and Natthu (A2), appellants in Criminal Appeal No. 4893 of 2014 are concerned, they are acquitted of the charge u/s 304-B and 201 I.P.C. Their recorded conviction u/s 498-A I.P.C. and 4 Dowry Prohibition Act is affirmed. However, considering the fact that both the appellants, Smt. Ramwati (A1) and Natthu (A2) are presently aged about 48 and 51 years respectively and they also have no criminal antecedents to their credit, the sentences of three years and one year rigorous imprisonment awarded to each of the two appellants, Smt. Ramwati (A1) and Natthu (A2), on their conviction u/s 498-A I.P.C. and 4 Dowry Prohibition Act, are modified to the period of imprisonment already undergone by them. However, the fines of Rs. 3,000/- and Rs. 1,000/- awarded to each of the two appellants, Smt. Ramwati (A1) and Natthu (A2), together with the default clause u/s 498-A I.P.C. and 4 Dowry Prohibition Act, are maintained.

There shall however, be no order as to costs.

Order Date :- 17.9.2019

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