



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**Cr. Appeal No. 566 of 2010**

**Reserved on : 12.8.2016**

**Date of Decision: 17.8.2016**

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State of H.P.

Versus

...Appellant

Sanjay Kumar and others

...Respondents

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**Coram**

**Hon'ble Mr. Justice Rajiv Sharma, Judge.**

**Hon'ble Mr. Justice Vivek Singh Thakur, Judge.**

Whether approved for reporting? Yes

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For the appellant: Mr. M.A. Khan, Addl. A.G. with Mr. P.M.  
Negi, Dy.A.G.

For the respondents: M/s Dalip K. Sharma, Avinash and Vijay  
Sharma, Advocates.

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**Per Rajiv Sharma, Judge:**

This appeal is instituted by the State against the impugned judgment dated 10.6.2010 rendered by the learned Sessions Judge, Solan, in Sessions Trial No. 1-S/7 of 2010, whereby the respondents (hereinafter referred to as the "accused"), who were charged with and tried for offences punishable under Sections 498-A and 306 of the Indian Penal Code have been acquitted.

2 The case of the prosecution, in a nutshell, is that deceased Lata, daughter of PW1 Kamla Devi, was married with accused Sanjay Kumar in the month of January 2008. The accused Sanjay Kumar,

Kaushalya Devi, Neelam and Reema used to harass the deceased. The younger sister of the deceased, PW8 Diksha had gone to the house of the accused where she noticed that all the accused persons used to torture and harass the deceased on trivial matters. The deceased had also informed telephonically PW5 Jai Dev, her cousin, about her torture by the accused persons. The deceased was not offered food and the accused Sanjay used to ask her to take loan of Rs. 1 lac in her name. PW7, Mamta, another sister of the deceased, had also visited the house of the accused persons to meet the deceased about 2-3 times. The deceased also informed her that the accused persons used to torture her for money and accused Sanjay used to ask her to take loan. The death anniversary of the father of the deceased was in the month of May, 2008. The accused Sanjay also accompanied the deceased to her parental house to attend the said anniversary. On that day at about 10.00 P.M., when they were in the room, the deceased attended a call and accused slapped her. She, her sister and mother went to the room and asked the accused to behave properly. Thereafter, the accused and the deceased went to the lintel of the house. The accused Sanjay dragged her from the stairs. The deceased gave birth to a female child. Three days prior to her death, the deceased had given a telephonic call to her mother, informing about the torture meted out to her by the accused persons, but the mother (PW1) did not inform any authority about it because she had four more daughters to get married and it would not be proper for her to make the issue public. On 16.11.2009, when PW1 Kamla Devi was in the fields, PW7 Mamta

came running to her and informed that the accused Sanjay Kumar had given a telephonic call that the deceased was very serious and the accused persons had brought her to Arki Hospital. PW15, S.I. Vikram Chauhan, received information telephonically at about 11.30 A.M. from CHC Arki that a lady had consumed poison. Thereafter, he visited the spot. Statement of PW1 Kamla Devi was recorded under Section 154 Cr.P.C., on the basis of which an FIR was registered. The post-mortem was got conducted. The viscera was preserved. Small bottle of endosil mark was recovered. Copy of pariwar register was also obtained. The traces of organochloro insecticide (endosulfan) were detected in the viscera of the deceased. As per the FSL report, the deceased died due to ingestion of organochloro (endosulfan), which was an insecticide. The matter was investigated and the challan was put up in the trial court after completing all codal formalities.

3 The prosecution examined as many as 15 witnesses, in all, to prove its case against the accused persons. Statements of the accused persons under Section 313 Cr. P.C. were recorded, in which they denied the incriminating circumstances appearing against them and pleaded that they have been falsely implicated. According to accused Sanjay Kumar, the deceased by mistake had consumed poison and they tried to save her. The trial court acquitted the accused persons vide impugned judgment dated 10.6.2010. Hence, the present appeal.

4 Mr. M.A. Khan, learned Additional Advocate General, has vehemently argued that the prosecution has proved its case against the

accused persons beyond all reasonable doubts.

5. M/s Dalip K. Sharma, Avinash and Vijay Sharma, learned Advocates, have supported the impugned judgment dated 10.6.2010.

6 We have heard the learned counsel for the parties and have also gone through the judgment and record meticulously.

7 PW1, Kamla Devi, is the mother of the deceased. She deposed that her husband died in the year 2007. The annual death anniversary of her husband was in the month of May, 2008. They were relaxing after the function. The accused Sanjay started quarreling with the deceased when she was talking on telephone with her brother. The accused inquired from the deceased with whom she was talking and gave a slap to her. She intervened and advised the accused not to quarrel. Thereafter the accused and the deceased went to the lintel of the house. The deceased was dragged from the stairs by the accused. The deceased was pregnant at that time. The deceased used to tell her that her mother-in-law and sisters-in-law were also torturing her. The deceased was kept hungry for days together. Whenever she used to demand anything from the accused persons, they used to say that ask her mother to provide basic necessities to her. After the birth of female child, the deceased remained with her for 10-11 days and at that time, she informed her that the accused persons were torturing her. Three days prior to her death, she made a telephonic call to her informing that she was being tortured by the accused persons and she was weeping. She told the deceased that she would discuss the

matter with her husband's brother and thereafter would take action against them. When she was working in the fields, her younger daughter, Mamta came running to her and informed that the accused Sanjay Kumar had given the telephonic call that the deceased was very serious and they had brought her to Arki Hospital. She went to Arki Hospital along with her relatives. The police also reached the hospital and recorded her statement under Section 154 Cr.P.C. In her cross-examination, she deposed that she had told the police about slapping and dragging the deceased by the accused Sanjay Kumar in her presence on the day of death anniversary of her husband. She denied the suggestion that the accused Sanjay Kumar had telephonically informed her that the deceased by mistake had consumed the poison and asked her to come to Arki.

8. PW2, Asha Parihar, testified that on 16.11.2009, she was telephonically informed by the relatives of the deceased that she had been brought to the hospital as she had taken some wrong medicine. Police also came there. Inquest papers were prepared in her presence. Post mortem was also conducted.

9. PW3, Padam Dass, testified that on 16.11.2009, he received a telephonic message that the deceased had consumed something. He also visited the hospital. The post-mortem was conducted. One bottle was taken into possession in his presence vide memo, Ext.PW3/A.

10. PW4, Manju, testified that the deceased was her younger sister. They both were married same day. The accused Sanjay Kumar used to get annoyed whenever the deceased used to talk on phone with

somebody or her relatives. On death anniversary of her father, the accused Sanjay Kumar slapped the deceased when she was attending a telephonic call. She informed her mother and requested accused Sanjay Kumar not to quarrel. The deceased told her that the accused persons used to torture her and even they were not providing food and basic necessities to her. When she asked the deceased to tell about the torture to mother, she told that they had already lost their father and their mother is now alone and they should not tell her. In her cross-examination, she admitted that accused Neelam was doing B.Ed., accused Reema was Teacher in the School and Roop Lal was in service. She also admitted that her younger sister and brother used to go to the house of the accused during vacation. She denied that the deceased was treated properly by the accused persons.

11. PW5, Jai Dev, testified that the deceased was his cousin. She was married to accused Sanjay Kumar. The deceased had telephonically talked to him that the accused persons were torturing her and not allowing her to remain in the kitchen after preparing food.

12. PW7, Mamta, testified that the deceased was her elder sister. In the month of May 2008, on death anniversary of her father, at about 10.00 P.M., when they were sitting outside, the deceased and the accused were in the room and arguments took place between them. The accused Sanjay Kumar gave a slap to deceased. The deceased informed her that the accused used to quarrel and beat her on trivial matters. She had also gone to the house of the accused about 2-3 times, where the deceased

also told her that the accused persons were torturing her for money and asked her to take loan. She also visited the house of the accused Sanjay Kumar, when the deceased gave birth to a female Child. At that time also, the deceased told her that the accused persons used to snub her on petty matters and even they were not providing food to her. On 16.11.2009, at about 11.00 A.M., she received a telephonic call from accused Sanjay Kumar that the deceased was ill in the Arki Hospital and asked them to come soon. Thereafter, she along with her mother and relatives went to Arki Hospital. In her cross-examination, she denied the suggestion that the accused Sanjay Kumar had telephonically informed that the deceased had mistakenly consumed the poison.

13. PW8, Diksha, is younger sister of the deceased. She deposed that after the birth of female child, she had also gone to the house of deceased and stayed there for about 20-25 days. The deceased was tortured and harassed on trivial matters by the accused in her presence.

14. PW9, Dr. Nidhi Sharma, has conducted the post-mortem of the deceased. The death had occurred within six hours after the consumption of the poisonous substance. As per FSL report, traces of organochloro (endosulfan) were detected in the contents of P1, P2, P3, P4 and P6. She gave her final opinion vide Ext. PW9/C. According to her opinion, deceased died due to ingestion of organochloro (endosulfan), an insecticide.

15. PW10, Avinash Parihar, deposed that on 16.11.2009, at about 9.00 A.M., the accused Sanjay Kumar came to his shop and told

him that his wife was not feeling well. He requested to accompany him and asked for medicine. He accompanied him and gave him an injection of Decadon. He advised him to get injection administered from an authorized person. When he reached the house of the deceased, she was on the bed and was normal. Thereafter, she was taken to Arki Hospital by the accused Sanjay Kumar. In his cross-examination, he deposed that accused Sanjay Kumar asked him to immediately accompany him to his house. When he reached the house of the accused Sanjay Kumar, the deceased told him that she was suffering from suffocation. On enquiry, she told him that she had taken medicine. When he saw the empty bottle, it was found to be poison. He advised the accused Sanjay Kumar to take the deceased immediately to Arki Hospital. The accused Sanjay and Kaushalya were present in the house at that time.

16. PW15, S.I. Vikram Chauhan, deposed that on 16.11.2009, at about 11.30 A.M., a telephonic information was received from Civil Hospital, Arki that a lady had consumed the poison. Thereafter, he along with other police officials visited the hospital. Statement of Kamla Devi was recorded under Section 154 Cr.P.C. F.I.R. was registered. Post-mortem of the dead body was got conducted. The viscera of the deceased was sent to FSL Junga and chemical examiner's report, Ext.PX was received. Final opinion, Ext.PW9/C on post-mortem report was also obtained.

17. The marriage of the deceased was solemnized with the accused Sanjay Kumar in the month of January, 2008. She died on

16.11.2009. PW1, Kamla Devi, PW4 Manju, PW5 Jai Dev, PW7 Mamta and PW8 Diksha have categorically deposed that the deceased was tortured by the accused Sanjay Kumar. The deceased used to tell her sisters and brother about the torture meted out to her by the accused Sanjay Kumar, however, she also used to tell them not to inform her mother about maltreatment because they had already lost their father and now their mother was all alone. Even on the death anniversary of her father, she was abused and beaten up by the accused in her parental house. Three days prior to her death, the deceased had given a telephonic call to her mother PW1 Kamla Devi, informing her about the maltreatment meted out to her by the accused persons, but the mother did not report the matter to any authority because she had four more daughters to get married and according to her, it would not be proper to make the issue publicized. PW2, Asha Parihar, also testified that on 16.11.2009, she was telephonically informed by the relatives of the deceased that she had been brought to the hospital because she had taken some wrong medicine. She also visited the hospital. The post-mortem was conducted. PW3, Padam Dass, testified that on 16.11.2009, he also received a telephonic message that the deceased had consumed something. Thereafter, he also visited the hospital. One bottle was taken into possession in his presence vide memo, Ext.PW3/A. PW10, Avinash Parihar, in his cross-examination also deposed that the accused Sanjay Kumar requested him to immediately accompany him to his house. When he reached the house of the accused Sanjay, the deceased told him that she was suffering from

suffocation. On enquiry, she also told him that she had taken medicine and when he saw the empty bottle, it was found to be poison. He advised the accused Sanjay Kumar to take the deceased immediately to Arki Hospital. PW9, Dr. Nidhi Sharma, conducted the post-mortem and gave her final opinion vide Ext. PW9/C. According to her opinion, the deceased died due to ingestion of organochloro (endosulfan), which is an insecticide. The defence taken by the accused Sanjay that the deceased mistakenly consumed poison is not believable.

18. Their Lordships of Hon'ble Supreme Court in ***State of West Bengal vs. Orilal Jaiswal, AIR 1994 SC 1418***, have held that date of maltreatment or demand for dowry need not be proved exactly when deceased was alive only for 10 months after marriage. More so, when it was nobody's case that the deceased complained about the maltreatment given in remote past or only on specific occasions. The conduct of the deceased making complaint about her mal-treatment only to her mother and no other family member was most natural because a newly wedded woman is not expected to make her misfortunes public. Absence of complaint to other family members cannot raise doubt about prosecution case. Their Lordships have further held that physical torture and abuses are generally not made in public and non-examination of neighbours would have no adverse impact on the prosecution case. Evidence about physical and mental torture of deceased coming from mother, elder brother and other close relations, need not be discarded simply on score of absence of corroboration by independent witnesses. Their Lordships

have held as under:

13. Coming to the finding that no specific date has been given when the deceased had allegedly told her mother about the demand of dowry and mal-treatment to the deceased, it may be indicated that although exact date has not been given, there is positive evidence of the mother and the elder brother of the deceased that when after about a month of the marriage, Usha came to her parental house, she had narrated about cruelty and mental torture suffered by her in the house of the accused. She specifically complained that within a few days after her marriage the father-in-law of the accused No. 2 had died and in view of such death, she was abused and treated with cruelty by the accused No. 2. Thereafter, on other occasions also whenever she had come to the parental house, she had talked about such mal-treatment. Usha was alive Only for about 10 months after marriage and it is nobody's case that the deceased complained about the mal-treatment given in remote past or only on specific occasions so that exact date was required to be mentioned. Coming to the finding of the High Court that the adult member of the family of the deceased consisting of four brothers, sisters and brothers-in-law and the father were residents of Calcutta but Usha had not complained anything to them and non-complaint to such close relations was not in conformity with the human conduct, we may indicate that there is no basis for such finding and such finding is contrary to the evidences adduced in the case. We have already pointed out that the deceased had complained to the mother and other members of the family about the mal-treatment and the members of the family have deposed to that effect. The prosecution case was not properly investigated by the police for which the learned Sessions Judge has rightly commented on the lapses on the part of the Investigating Officer, Sri Bimal Chandra Biswas, Sub-inspector of Police. As the Investigating Officer failed and neglected to examine the members of the family of the deceased at an early date, the learned Sessions Judge, in fairness, has not taken into consideration the evidences of the sister and other close relations of the deceased and has mainly relied on the evidence of the mother in basing his finding. Ever if it is held that the deceased had complained to her mother only about the cruel treatment meted out to her, we think that for a newly married woman, her misfortune in the house of in-laws was not expected to be made public and confining to the mother was only natural. Coming to the observation of the High Court that the neighbours or the tenants have not been examined, it appears to us that in the facts of the case, no adverse inference can be drawn for such non-examination. The abuse, and insult hurled on the daughter-in-law usually are not

expected to be made public so that the neighbours may have occasions to criticise the improper conduct of the accused and hold them with disrespect and contempt. The High Court has expressed doubts about the genuineness of the case of physical torture and abuses made by the husband and the deceased for the absence of any Independent evidence given by the neighbours and cotenants about such physical assault or the abuses hurled on the wife by the accused. We have indicated that ordinarily it is not expected that physical torture or the abuses hurled on the wife by the husband and the mother-in-law should be made in such a way as to be noticed by the tenants living in the adjoining portions of the house. It is also not the case of the prosecution that the deceased was physically assaulted so violently that the neighbours came to know about such assault. It is also not the case that abuses used to be hurled loudly so that the tenants had occasions to hear them. It was therefore not necessary to examine neighbour or tenants to prove the prosecution case. In the instant case, the evidence about physical and mental torture of the deceased has come from the mother, elder brother and other close relations. Such depositions by close relations, who may be interested in the prosecution of the accused, need not be discarded simply on the score of the absence of corroboration by independent witness. Whether the evidence of interested witness is worthy of credence is to be judged in the special facts of the case. In Our view, the acts of cruelty by the accused were expected to be known by the very close relations like mother, brother, sister, etc. The evidence of the mother has been accepted by the learned Sessions Judge as worthy of credence and we do not think that the same should be discarded. in the facts of the case.

14. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of S. 498A, I.P.C and S. 113A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in *Bater v. Bater*,

(1950) 2 All ER 458 at p. 459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter.

16. In the instant case, the learned Sessions Judge has come to the finding that the charges levelled against the accused have been proved by indicating cogent reasons therefor. We have already indicated that the learned Judges of the High Court have entertained a grave doubt about the correctness of the prosecution story for the circumstances indicated hereinbefore. We have analysed those circumstances and in our view the said grounds do not stand scrutiny and they are against the weight of the evidence. We may add here that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing Suicide. If it transpires to the Court that a victim committing suicide was hyper-sensitive to ordinary petulance dischord and differences in domestic life quite common to the society to which the victim belonged and such petulance dischord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of Suicide should be found guilty. But in the facts and circumstances of the case, there is no material worthy of credence to hold that Usha was hyper-sensitive and that for other reasons and not on account of cruelty she had lost normal frame of mind and being overcome by unusual psychic imbalance, decided to end her life by committing suicide. The evidence adduced in the case has clearly established that Usha was subjected to abuses, humiliation and mental torture from the very beginning of her married life. Within a few days after the marriage when a newly married bride would reasonably expects love and affection from the in-laws, she was abused by the mother-in-law, the accused No. 2 by saying that the deceased was a woman of evil luck only because an elderly member in the family had died after her marriage. According to the evidence given by the mother of the deceased. the accused No. 2 even suggested that being a woman of evil luck (alakshmi) the deceased, should not live and end her life. When Usha conceived for the first time she had the misfortune of abortion. When the unfortunate daughter-in-law would reasonably expect sympathy and consolation from the mother-in-law, the evidence in this case is that the mother-in-law abused the deceased in the hospital by telling that she was a woman of evil luck. The evidence in the case reveals an act of extreme form of cruelty by telling the

unfortunate mother that she was vile enough to swallow her own baby and she should commit suicide. There is also evidence in the case that the husband used to come home drunk and abuse her and also used to assault her on occasions. The bridal presents brought by thier were branded as goods of inferior quality and she was asked to take the said articles back to her parental home. Such acts, to say the least, were very unkind and a newly married woman is bound to suffer a great mental pain and humiliation. Even if we do not take into consideration the demand for further dowry gifts since the case of such demand had not been indicated in the earlier statement made by the mother which was treated as F. I. R., there is no manner of doubt that the evidence of the mother which has been accepted by the learned Sessions Judge and in our there is no reason to discard the same, clearly establishes that the deceased had been subjected to physical and mental torture all throughout. It is only unfortunate that the accused No. 1, the husband. instead of giving her solace against the humiliation and abuses hurled by the mother-in-law, either kept silent or expressed his inability to give good counselling to the mother and to protest against act of mental torture and humiliation. On the contrary, he also treated the wife with Cruelty, by telling her to take the bridal gifts back to her parental home and also by physically assaulting her. Such acts, in our view, were quite likely to destroy the normal frame of mind of the deceased and to drive her to frustration and mental agony and to end her life by committing suicide. Under explanation (a) of S. 498A, I.P.C., "cruelty" means- "any wilful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman".

19. Their Lordships of Hon'ble Supreme Court in ***State of Karnataka vs. K. Gopalakrishna, 2005 Cri.L.J. 1436*** have held that the deceased-wife going to place 'G' as newly married daughter-in-law was not expected to complain against her husband in the neighbourhood and failure of prosecution to examine any person from place 'G' in support of allegations of ill-treatment is not a ground to reject evidence of large number of witnesses having deposed in support. Their Lordships have held as under:-

12. There is yet another reason given by the High Court for rejecting this part of the prosecution's case. The High Court observed that no neighbour from Gundlepet was examined to prove the fact that the deceased was being ill treated by her husband. The High court completely lost sight of the fact that the matrimonial home of the deceased was at Gundlepet and therefore, it was not possible for the prosecution to get witnesses from Gundlepet who would have supported the case of the prosecution. Moreover, the deceased had gone to Gundlepet as a newly married daughter-in-law and it was not expected, even if she was ill treated, to go about in the neighbourhood complaining against her husband. In any event this is not a good enough reason to reject the testimony of such a large number of witnesses who have deposed on this aspect of the case.

20. Their Lordships of Hon'ble Supreme Court in **S. Sudershan Reddy vs. State of Andhra Pradesh, AIR 2006 SC 2716** have held that the statement of the witness cannot be discarded on the ground that he was a close relative. Their Lordships have held as under:-

17. To the same effect is the decision in **State of Punjab V/s. Jagir Singh, and Lehna V/s. State of Haryana**,. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW3 to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence of some of the witnesses has been found to be deficient. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called

'a mandatory rule of evidence'. Nisar Ali V/s. The State of Uttar Pradesh. Sucha Singh and Anr. V/s. State of Punjab.

18. Learned counsel for the appellants submitted that the non-mention about the source of light in the FIR is clearly fatal to the prosecution case. Strong reliance is placed on the decisions in Bollauaram Pedda Narsi Reddy and Ors. V/s. State of Andhra Pradesh. As has rightly pointed out by the learned counsel for the Respondent State such a plea was not taken before either the trial court or the High Court. It is interesting that in the cross examination of the witnesses, the defence has suggested that the light was dim because the scooter had practically stopped moving and there was only idling of the engine. PW 2's evidence is categorical that he saw the attack in the light of the scooter head light. This was stated in the cross examination by the accused persons. Similarly PW 3 was asked as to whether he could tell the number of blows each accused gave. He answered in the affirmative. Indirect suggestion therefore was that though the blows were there, he could not tell the number. To say the least this is irresponsible cross examination. Though for that alone the prosecution case does not get strengthened yet this is a factor which can be taken note of. Non mention in the FIR about the source of light is really non consequential. It is well settled that FIR is not an encyclopaedia of the facts concerning the crime merely because of minutest details of occurrence were not mentioned in the FIR the same cannot make the prosecution case doubtful. It is not necessary that minutest details should be stated in the FIR. It is sufficient if a broad picture is presented and the FIR contains the broad features. For lodging FIR, in a criminal case and more particularly in a murder case, the stress must be on prompt lodging of the FIR. Therefore mere absence of indication about the source of light does not in any way affect the prosecution version. Additionally the decision in Bollanaram's case (supra) is really of no assistance to the appellant. It is apparent that the observation regarding the non-mention about the source of light in that case was by way of description of the factual scenario. It was noted by the court that victims were strangers to the accused. In that background the source of light was found to be of some importance.

21. Their Lordships of Hon'ble Supreme Court in **Ashok Kumar Chaudhary vs. State of Bihar, 2008 Cri.L.J. 3030** have held that relationship per se does not affect credibility of witness. Merely because witness happens to be a relative of victim of crime, he/she cannot be

characterized as "interested" witness. Their Lordships have held as under:

**7. We are not impressed with the argument. Though it is true that the incident having taken place near the market around 6 p.m. on 17th July, 1988, the prosecution should have attempted to secure public witnesses who had witnessed the incident, but at the same time one cannot lose sight of the ground realities that the members of the public are generally insensitive and reluctant to come forward to report and depose about the crime even though it is committed in their presence. In our opinion, even otherwise it will be erroneous to lay down as a rule of universal application that non examination of a public witness by itself gives rise to an adverse inference against the prosecution or that the testimony of a relative of the victim, which is otherwise credit-worthy, cannot be relied upon unless corroborated by public witnesses. Insofar as the question of credit-worthiness of the evidence of relatives of the victim is concerned, it is well settled that though the Court has to scrutinize such evidence with greater care and caution but such evidence cannot be discarded on the sole ground of their interest in the prosecution. The relationship per se does not affect the credibility of a witness. Merely because a witness happens to be a relative of the victim of the crime, he/she cannot be characterized as an "interested" witness. It is trite that the term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive.**

22. The learned trial court has erred in law by holding that no complaint was filed by the deceased or her mother with any authority.

Normally, it is not expected from the newly wedded wife and her relatives to file complaint regarding ill-treatment against the husband and his family members before the police or any authority for the simple reason that they did not want to make her misfortunes public. Even, the deceased was not supposed to discuss the matter with strangers and neighbours. The learned trial court has also erred in law that Jeth of PW1

Kamla Devi was not examined and he was material witness. What PW1 Kamla Devi had deposed is that when the deceased disclosed to her about the maltreatment meted out to her, she told her daughter that she would discuss the matter with the Jeth and thereafter would take action against the accused persons. Therefore, non-examination of Jeth is not fatal to the prosecution case. It has come on record that her mother-in-law used to remain in the house. The accused Neelam was doing B.Ed. and accused Reema was Teacher in the School. Her father-in-law was also in service. Though, the prosecution has failed to bring home charges against the mother-in-law and sisters-in-law, but has proved beyond reasonable doubt that the deceased was harassed mentally and physically by the accused Sanjay.

23. It has also come on record that the deceased was hale and hearty. The accused Sanjay Kumar used to torture her, asked her to take loan in her own name. He even abused and dragged her in the presence of her mother and sisters. These incidents destroyed the normal frame of mind of the deceased and drove her to frustration and mental agony and to end her life by committing suicide within short duration of her marriage. The prosecution has proved beyond reasonable doubt that the accused Sanjay Kumar has committed the offences punishable under Sections 498-A and 306 of the Indian Penal Code.

24. Accordingly, the appeal is partly allowed and the impugned judgment dated 10.6.2010 rendered by the learned Sessions Judge, Solan, in Sessions Trial No. 1-S/7 of 2010 is set aside to the extent it

acquitted the accused Sanjay Kumar under Sections 498-A and 306 of the Indian Penal Code. Accordingly, accused Sanjay Kumar is convicted for the offences punishable under Sections 498-A and 306 of the Indian Penal Code. He be produced in the Court to be heard on the quantum of sentence on 24.8.2016. The bail bonds are cancelled.

25. The registry is directed to prepare the production warrants.

**(Rajiv Sharma)**  
**Judge**

**(Vivek Singh Thakur)**  
**Judge**

**August 17, 2016**

\*pankaj\*

High Court of H.P.