

Sakatar Singh & Ors vs State Of Haryana on 13 April, 2004

Equivalent citations: 2004 (5) SRJ 213, 2004 (3) SLT 257, AIR 2004 SUPREME COURT 2570, 2004 (11) SCC 291, 2004 AIR SCW 2388, 2004 CRI(AP)PR(SC) 265, 2004 (4) SCALE 529, 2004 CRILR(SC MAH GUJ) 545, (2004) 20 ALLINDCAS 664 (SC), (2004) 2 JCJR 112 (SC), 2004 CRILR(SC&MP) 545, (2004) 20 INDLD 41, (2004) 3 EASTCRIC 33, (2004) 2 HINDULR 182, (2004) 2 MARRILJ 252, (2005) MATLR 480, (2004) 3 RAJ CRI C 711, (2004) 2 RECCRIR 703, (2005) 2 ALLCRIR 1704, (2004) 4 SCALE 529, (2004) 3 CRIMES 1, (2004) 3 SUPREME 661, (2004) 49 ALLCRIC 554, (2004) 3 ALLCRILR 936, 2004 CHANDLR(CIV&CRI) 309, (2004) 2 CURCRIR 245, (2004) 1 DMC 730, 2004 (2) ANDHLT(CRI) 174 SC, 2004 (2) ALD(CRL) 36, (2004) 2 ANDHLT(CRI) 174

Bench: N.Santosh Hegde, B.P.Singh

CASE NO.:

Appeal (crl.) 81 of 1998

PETITIONER:

Sakatar Singh & Ors.

RESPONDENT:

State of Haryana

DATE OF JUDGMENT: 13/04/2004

BENCH:

N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T SANTOSH HEGDE,J.

The first appellant before us is the father of the second appellant and the third appellant is the wife of the first appellant. These appellants and three others who are sisters of second appellant herein were charged for offences punishable under Sections 306 and 498A read with Section 34 IPC before the Additional Sessions Judge, Ambala who after trial acquitted accused Nos. 4 to 6 while convicted the appellants herein for offences punishable under Sections 306 and 498A of the IPC read with Section 34 IPC. The first appellant Sakatar Singh was sentenced for offence punishable under Section 306 for four years RI and a fine of Rs.500/- and in default in payment of fine to undergo further RI for three months, while he was sentenced for an offence punishable under Section 498A for two years RI and a fine of Rs.200/- and in default in payment of fine to undergo further RI for one month. The second appellant Kirpal Singh was sentenced for seven years RI for offence punishable under Section 306 IPC and a fine of Rs.500/- and in default of payment of fine to

undergo further RI for three months, he was also sentenced to two years RI under Section 498A IPC and a fine of Rs. 200/- and in default in payment of fine to undergo further RI for one month. The third appellant Smt. Joginder Kaur was sentenced to undergo three years RI for offence under Section 306 and a fine of Rs.200/- and in default in payment of fine to undergo further RI for one month. While for offence under Section 498A IPC, she was sentenced to undergo RI for two years and a fine of Rs.100/- and in default in payment of fine to undergo RI for one month.

The appellants herein preferred an appeal before the High Court of Punjab and Haryana at Chandigarh against the judgment and conviction of the learned Addl. Sessions Judge, Ambala being Criminal Appeal No. 322-SB/87 and the said appeal having been dismissed confirming the conviction and sentence awarded on the appellants by the Sessions Court the appellants are now before us in this appeal.

The prosecution case briefly stated is as follows:-

Deceased Devinder Kaur was married to second appellant Kirpal Singh in the year 1982 and they had two issues from the said marriage a girl by name Gurdip Kaur who was two years old and a boy named Bablu aged nine months on the date of incident. The accused persons with their unmarried daughters and said Devinder Kaur with her children were living at Layalpur Basti in Ambala City. The prosecution alleges within two months of the marriage of the second appellant to said Devinder Kaur the appellants and their daughters started making unlawful demand for TV, scooter and fridge which was not fulfilled by the parents of said Devinder Kaur. It is also stated that after the birth of the second child none from the family of her in-laws i.e. family of the accused had come to see her at her maternal home situated at Landran because they were not happy with the family of Devinder Kaur for not satisfying their demands. The prosecution further alleges about nine months prior to the date of incident which happened to be on 21.5.1986 father of said Devinder Kaur died and on his death the appellants were forcing said Devinder Kaur to make a demand for share in the family property and this having not acceded to by said Devinder Kaur she was subjected to harassment and cruelty. It is the further case of the prosecution that mother of said Devinder Kaur (PW-7) had visited the house of the appellants on 18.5.1986 when she found said Devinder Kaur in tears and during her said visit she did not speak to PW-7 since her mother-in-law would not allow her to do so. The further case of the prosecution is that on 21.5.1986 between 9 and 10 a.m. in the house of the appellants said Devinder Kaur committed suicide along with her two minor children by pouring kerosene and burning herself and the children. The prosecution alleges that A-1 took the burnt bodies of the deceased to the hospital and information in regard to this incident was conveyed to the family of Devinder Kaur through PW-12 (Ajmer Singh). On hearing the said news, PW-7 and other members of the family rushed to Ambala and on coming to know that her daughter and grand children were murdered by the appellants, the mother of the deceased (PW-7) lodged a complaint at about 4.00 p.m. on 21.5.1986. The bodies in question were then taken to Landran the village of PW-7 and cremated there. It is also alleged that no member

of the appellants family attended the last rites of the deceased. Based on the complaint lodged by PW-7 though originally a crime under Section 302 IPC was registered against the appellants, after investigation a chargesheet was filed for offences under Sections 306 and 498A read with Section 34 IPC and during the course of the trial the prosecution examined as many as 16 witnesses out of whom it relied on the evidence of PW-7 mother of the deceased, PW-8 the brother of the deceased, PW-12 a family friend of the deceased and PW-14 the maternal uncle of the deceased to establish the case of cruelty and harassment meted out to said Devinder Kaur because of which she was forced to commit suicide by burning herself along with her minor children. The trial court accepting the evidence of the said prosecution witnesses found the appellants guilty as charged while it acquitted accused Nos. 4 to 6 who were the daughters of appellant No.1 on the ground that the prosecution had not established its case as against these appellants. In appeal as stated above the High Court has agreed with the findings of the trial court.

Shri Jaspal Singh, learned senior counsel appearing for the appellants contended that the trial court has proceeded on the mere ipse dixit of the four witnesses examined by the prosecution to establish the case of alleged cruelty and harassment meted out by the appellants to the deceased without really there being any legal material to prove the guilt of the appellants. He pointed out as per explanation to Section 498A of the Indian Penal Code, 'cruelty' has been defined which definition also holds good for establishing the guilt under Section 306 IPC and in the instant case except the fact that these witnesses have orally stated that there was some demand for TV, scooter and fridge as also demand for share in the property of the deceased father, no acceptable material whatsoever has been produced by the prosecution to either establish those facts or to prove that pursuant to the said demand the appellants in any manner committed any act which would have driven the deceased to commit suicide or harassed the deceased in any manner with a view to coerce her to meet the unlawful demand of the appellants. He submitted that the trial court did not look into the necessary ingredients of Section 498A and 306 IPC while coming to the conclusion that the appellants were guilty of the offence charged. It was the argument of the learned counsel for the appellants that the trial court obviously was under an impression that even a legal demand, by itself without anything more would constitute cruelty which the learned counsel submits is wholly erroneous. The learned counsel also pointed out that whatever evidence was produced by the prosecution to establish the so-called illegal demand was merely hear say and not even admissible under Section 32 of the Evidence Act, and none of the witnesses who spoke as to the demand made by the appellants had any personal knowledge about the said demand. Therefore, even in regard to the alleged demand accepted by the trial court the learned counsel submitted the same cannot be sustained because the same is based on inadmissible evidence.

Coming to the judgment of the High Court which has confirmed the conviction and sentence awarded by the trial court, the learned counsel submitted that there has been no application of mind whatsoever by the High Court which is the first appellate forum and which is duty bound to re-appreciate the evidence. He pointed out that a bare reading of the judgment of the High Court would show that the same is nothing but a copy of the judgment of the trial court both in regard to the narration of facts as also in regard to the findings. Shri Vinay Kumar Garg, learned counsel

appearing for the State however contended that it is clear from the evidence of PWs 7, 8, 12 and 14 that the appellants had made certain unlawful demands because of which the deceased committed suicide. It is the contention of the learned counsel that once an unlawful demand is established nothing more is required to be proved that pursuant to the demand there was any other action or overt act of cruelty. On the said basis, learned counsel submitted that the findings of the courts below being concurrent this appeal is liable to be dismissed.

Having heard the learned counsel and perusing the records, we notice that since it is the contention of the appellants that the High Court being the first court of appeal on facts, has not applied its mind independently to the facts of the case and it has blindly copied the findings of the trial court, the appellants have lost the benefit of right of appeal because of which their case is prejudiced, we assuming for the time being it to be so, think at this belated stage a remand is not an appropriate remedy. Therefore, we will consider the material on record ourselves to re-appreciate the evidence adduced in this case and determine the guilt or innocence of the appellants.

The allegations against the appellants of cruelty is primarily based on the following facts :

- (1) That the accused started harassing and ill treating Devinder Kaur two or three months after the marriage by demanding Television, Scooter and Fridge;
- (2) The family of the deceased has been paying money to the deceased in instalments to satisfy the demands of the appellants. Sometime Rs.2000/- and sometimes Rs.3000/- were paid for this purpose;
- (3) After the death of the father of the deceased, the family of the deceased were compelling the deceased to make a demand for her share in the family property.
- (4) That after the birth of the second child the appellants did not take back the deceased and the children from her maternal home for nearly 7 months.
- (5) The appellants were not permitting the deceased to talk to her family members.
- (6) When PW-8 brother of the deceased visited her, the deceased had asked him to arrange funds to meet the demands of her in-laws and that they were harassing her because of which she was sad.

In law, the prosecution has to prove the fact that the victim was subjected to cruelty or harassment, and such cruelty should be one which comes within the explanation to Section 498A which defines "cruelty".

In the above background, we will now consider the evidence led by the prosecution to establish the charge levelled against the appellants. In this process, we will first examine the letter written by the deceased to her mother. Though this letter does not mention the date, there is no dispute that the same was posted on 20.5.1986 which is evident from the postal seal found on the envelope which

would be a date prior to the incident leading to the death of Devinder Kaur and the children. The contents of the letter indicates what transpired during her mother's visit to her in-laws house and does not anywhere even remotely indicate any demand made by her in-laws. It only reflects the attitude of the deceased towards her in-laws and that she entertained a feeling that her mother was not properly treated by her mother-in-law during her last visit. The letter also indicates that while the deceased did not wish that her mother should visit her in-laws' place, her brother could do so which is clear from the following statement in the said letter : "Mother do not worry about me. I have make up my will power. When I go angry then I also utter a few things. Mother send brother here, you need not come because they are after your blood." In the said letter she also complained against her brother's wife accepting a Shagun of Rs.20/- from her mother-in-law and says that the same should be returned. A reading of the above letter does indicate that her relationship with her mother-in-law was not good but at the same time she herself was prone to get angry at times and was prepared to retort. In our considered opinion, this letter does not, in any manner, indicate either there was any unlawful demand from her in-laws or pursuant to such demand there was any harassment leading to cruelty.

In this context, it will be appropriate for us to consider the contents of two other letters brought on record by the defence. One such letter is dated 10.3.1986 marked at Ext.DA written by PW-8 to the husband of the deceased (A-2). Of course, this is a letter written about two months before the death of the deceased. At this stage, we must note the fact that PW-8 has denied having written this letter but PW-7 the mother admits the letter being that of her son PW-8. This letter refers to the arrangement of the marriage of deceased's brother and requests the appellants to attend the marriage function. The relevant portion of the letter reads thus: "You will glad to know that the marriage of Paramjit has been fixed for 23.3.1986, Sunday. You may keep ready. We will drop letter. Pay my respect to Maserji and Massiji." It also asked A-2 to bring his sister (the deceased) and her children. This letter indicates two facts that as on 10.3.1986 the relationship between the parties was still cordial and as on that date deceased and her children were in her in-laws house. The next letter which is also relied upon by the defence is marked Ex.DB dated 20.2.1986 is from the deceased to her husband (A-2) written about three months prior to the date of incident. The contents of this letter show that A-2 was corresponding with her and she was replying his letter though belatedly because of the illness of her daughter. She also requested him to reply and indicates that she was eagerly waiting for his reply. She also indicates in the said letter that she was planning to come back on Wednesday or Thursday next. The said letter further indicates that A-2 wanted her to come back within 4 or 5 days but she had overstayed in her paternal home. Ex.DA and DB prove one other fact that between 20.2.1986 and 10.3.1986 the deceased and her children had returned to the matrimonial home and the prosecution case that for 7 months after the birth of the second child, the deceased was not brought to her matrimonial home is wholly false. That apart none of these letters indicate that there was any demand from the appellants for TV, scooter or fridge.

It is in this background, the prosecution primarily relies on the evidence of PWs.7 and 9, that is, the mother and brother to establish the prosecution case.

We will now examine whether such allegations stand proved by the evidence of these two witnesses.

PW-7 the mother in her evidence states that her daughter was married to A-2 about 4 years prior to the date of her evidence and the accused started harassing and ill treating the deceased two to three months after the marriage by demanding TV, scooter and fridge. She also says that the deceased was asked by the accused to arrange for funds and pursuant to such demand she had been sending money in instalments of Rs.2000/- sometimes and some other time Rs.3000/-. She further says that when her elder son PW-8 visited the house of the accused he had to assure them that he would arrange for their every demand item by item after the crop matured for harvesting. She then makes an omnibus statement that Devinder Kaur (the deceased) was being harassed by her husband Kirpal Singh accused, by father-in-law Sakatar Singh, by mother-in-law Joginder Kaur and by her sister's-in-law, namely, Palvinder, Jasvinder and Kulvinder. She also makes a statement that the accused person had demanded the deceased to stake a claim for a share in her father's property which the deceased refused to do.

In the cross-examination when she was asked how she came to know of these demands of the appellants for TV, scooter, fridge and money, she stated that she came to know the same from the letters written by her daughter but she failed to produce those letters because of which an adverse inference will have to be drawn. Further nowhere in her entire evidence she has stated that the deceased at any point of time had personally told her about these demands. In the absence of such material, more so because of the fact this witness herself does not say that the deceased told her orally about these demands, and the alleged letters having not been produced, this part of her evidence will have to be treated as not based on personal knowledge but as an opinion of hers, and as such the same is inadmissible in evidence. Therefore, the prosecution cannot rely upon such evidence to base a conviction. Even the demand of the in-laws in deceased's father's property was not told to PW-7 by the deceased but PW-7 was allegedly told about this by Ajmer Singh PW-12, but PW-12 does not support PW-7 in this regard. That apart in the cross-examination when it was pointed out to her that she had not mentioned in her previous statement about this demand for inheritance in deceased father's property, she stated that she had told the Investigating Agency, but the same was not found in the said statement of hers. It is also clear from her evidence in the cross-examination that she had not even told the Investigating Agency about the demand for money in instalments as spoken to by her in her examination-in-chief. It is to be noticed further that even though she in her examination-in-chief stated that when PW-8 visited the deceased a few days before the incident in question and the deceased had complained to PW-8 about the demand by her in-laws, PW-8 in his evidence does not support PW-7 in this regard. From the above it is clear that the evidence of PW-7 is of no assistance to the prosecution to establish the fact that there was any demand, much less an unlawful demand at all by the appellants on the deceased. The trial court, in our opinion, seriously erred in placing reliance on inadmissible part of PW-7's evidence and ignoring the omissions and improvements established by the defence in the course of cross examination of PW-7.

We will now consider the evidence of PW-8 who is the brother of the deceased who in his evidence has stated that the accused had started harassing and mal-treating the deceased for more dowry and that they were complaining that she had not brought anything significant in the dowry and they expected TV, scooter and fridge in the dowry. While considering this part of his evidence, it is necessary to note that he in the latter part of his evidence has stated that these demands were made

by the accused persons after his father died which was on 21.7.1985 (20 days before the birth of second child of the deceased Devinder Kaur which was on 10.8.1985). Whereas PW-7 in her evidence had stated that the demands for TV, Scooter and Fridge was made two months after the marriage of the deceased. We have noticed that the marriage of the deceased took place sometime in the year 1982 and the deceased died on 21.5.1986 and father of the deceased had died 9 months prior to the death of the Devinder Kaur which was on 21.7.1985. If the statement of PW-7 in regard to these demands for TV, Scooter and Fridge is true the same was sometime in the year 1982 itself, whereas as per PW-8 the said demand was after August, 1985, that is, after the death of the father. This contradiction in regard to the timing of the demand is a material contradiction which goes to the root of the prosecution case and the same is not considered by the trial court. This witness then states that none of the appellants, including A-2 the husband of the deceased, visited the deceased for nearly 7 months after the birth of her second child. This allegation which indicates neglect or a mental torture of the deceased by the indifferent attitude of A-2, in our opinion, is per se unbelievable because of the letter Ex.DA to which we have already referred wherein this witness himself wrote to A-2 requesting him and other members of the family to attend the wedding of his brother Paramjit. This letter was addressed on 10.3.1986 and in the said letter he specifically says to convey his respect and love to his sister and children and to bring them to the wedding which means by that time the deceased was already in her in-laws house and the allegation of PW-8 that the deceased was not taken back from her maternal home for 7 months after the delivery of the second child by A-2 stands falsified. Then again this witness is not very sure whether various demands made by the appellants were towards dowry or towards the birth of a male child because in one part of his examination he states : "The reason for their in-difference was that on the birth of the male child, they should be given something by the parents of Devinder Kaur. We asked the accused party to have patience and that we would give something after the crop ripens and the harvests done". From this part of the evidence of PW-8, we get an impression that demand for TV, scooter and fridge was because of the birth of a male child and not as a part of dowry. This discrepancy between the evidence of PW-7 and PW-8 is also not considered by the courts below. It is to be seen from the evidence of this witness that he was on regular visiting terms with his sister and practically every Sunday or alternate Sunday he used to visit her. We find it extremely difficult to accept the post death allegation of these witnesses for the unlawful demands when the relationship between them was such that the appellants were invited for every function in the house of PW-7 and they attended those functions. PW-8 was a regular visitor to the house of the accused and inspite of all that the appellants would indulge in such activity of cruelty and harassment which would compel the deceased to commit suicide. From the above discussion of the evidence of this witness, we are unable to come to the conclusion that the prosecution has established the allegation of demand made by these appellants. The next witness whose evidence requires consideration by us is PW-13, Kulwant Singh, a family friend. He in his evidence stated that during his life time the father of the deceased used to tell him that the deceased Devinder Kaur was sad and unhappy after the marriage and she was being harassed and ill-treated on account of bringing insufficient dowry. He also stated before the court that the deceased's father used to tell him that the accused were demanding more dowry that is TV, scooter, fridge etc. The defence had objected to this answer of the witness on the ground that this witness was trying to prove the statement of a deceased person. This objection was overruled by the Court on the ground that the witness was deposing about the fact from his knowledge which he had acquired in his routine life. We do not agree with the trial court that what

was being spoken to by this witness in regard to harassment and ill treatment on account of insufficient dowry by the witness was a fact which he had known personally, because he was actually referring to the statement of the deceased father of Devinder Kaur and not to a fact based on his personally acquired knowledge. After the said objection was raised, this witness tried to import some personal knowledge by stating that he had an occasion to meet the deceased Devinder Kaur at Banur in Rajpura Tehsil of Patiala Distt. where per chance he met the deceased when deceased mentioned to him that she was on way to her in-laws but was not sure what was in store for her there. This witness also says that the deceased further mentioned that after the death of her father and after mutation of her father's property was sanctioned, the bitterness between the sides had increased. We have no doubt that this is a statement made by the witness only to improve upon his earlier inadmissible statement. This is clear from the answer given by this witness in the cross-examination when he states that the police did not enquire from him in the hospital at the time of death of Devinder Kaur nor he had volunteered to mention any of the above facts stated by him in his examination-in-chief to the police at that time. It is also relevant to note that his statement was recorded by the police for the first time on 25.7.1986 nearly two months after the incident. He also admits in the cross-examination that he does not remember the day, date or the month when father of the deceased mentioned to him about the ill treatment of his daughter. Even the fact of the deceased Devinder Kaur meeting this witness at Banur in Rajpura Tehsil is also highly doubtful because in the cross-examination he states that at the time when he met the deceased at the said place she was accompanied by her brother Jaspal Singh PW-8, but PW-8 does not corroborate this fact. Therefore, in our opinion, to base a conviction on the evidence of this witness would be highly dangerous.

The next witness relied upon by the prosecution to establish its case is PW-14 Gurbux Singh who is the maternal uncle of the deceased. He in his evidence states that after two or three months of the solemnization of the marriage, Devinder Kaur started complaining that she was being harassed. This was confirmed to him by his brother-in-law, who was the father of the deceased Devinder Kaur. This statement again in our opinion is not admissible because he has no personal knowledge about the harassment meted out to the deceased Devinder Kaur but he was only repeated what his brother-in-law had stated to him. Then again there is a contradiction in regard to the timing of the demand which according to the information of this witness was two months of the marriage, while PW-8 specifically stated such demands started coming in after the death of his father about which we have already expressed our view herein above. PW-14 also states in his evidence that with the passage of time he learnt that the accused had asserted for a share also in the property of his brother-in-law which again is mere hear say notice of which cannot be taken for basing a conviction. In the cross-examination this witness stated that he had mentioned in his statement to the police about the aforesaid three demands made by the accused, but when confronted with his previous statement, it was noticed by the court that no such statement was made. He also admits in the cross-examination that he had no occasion to visit the in-laws of Devinder Kaur in Ambala after her marriage and he did not receive any letter or other message from Devinder Kaur or from her father or her mother or any other relation of the deceased intimating that Devinder Kaur was being harassed on account of demand for more dowry. This admission clearly goes to show that whatever he spoke in the examination-in-chief about the demand made by the accused was not based on his personal knowledge but on what he heard from others. He further admits in his cross-examination

that in the statement before the police he did not say that Devinder Kaur committed suicide under pressure of the accused because of the demand of dowry. In our opinion, such evidence which is not based on personal knowledge of the witness cannot be the foundation for basing a conviction. Having discussed the oral evidence led by the prosecution, we will now consider certain circumstances relied by the trial court to hold the appellants guilty of the offences charged. These circumstances have already been discussed briefly by us hereinabove but since the trial court has placed considerable reliance on these circumstances, we think it appropriate to deal with the circumstances once again somewhat elaborately. One such circumstance taken note of by the trial court is based on an allegation made by PWs.7 and 8 that A-2 did not go to the parental house of the deceased Devinder Kaur after her second delivery for nearly 7 months which circumstance according to the trial court, indicated the indifference of A-2 towards the deceased because of the fact that the family of the deceased did not fulfil his and his family's demands. In our opinion, a perusal of the evidence led by the prosecution in this regard itself shows that this is a non-existent circumstance. The second child was born on 10.8.1985. According to the evidence of PWs.7 and 8, A-2 did not come to their house for 7 months after the birth of this child which would mean that till about March, 1986 A-2 did not visit his in-laws nor did he take his wife and children to his own house. This statement is clearly disproved by the documentary and other oral evidence found in the record. Ex. P.28, a letter written by deceased Devinder Kaur to A-2 which itself shows that A-2 wanted her and the children to come back to the house of A-2 at the earliest but she could not come because of the illness of her first child. She indicated in the said letter that she would come as soon as the child gets well. Thus a reading of this letter Ex.P.28 shows that it is not because of A-2 that her stay was prolonged in her mother's house. Ex. DA a letter written on 10.3.1986 by PW-8 to A-2 shows that by then deceased and her children were already in the house of A-2 and PW-8 wanted A-2 and his family along with the deceased and her children to attend the wedding of his younger brother which was fixed for 23.3.1986. If really deceased Devinder Kaur and their children were still in the house of her mother the question of PW-8 requesting A-2 to bring them for the wedding and conveying his love and respect to them would not have arisen. As a matter of fact it has come in evidence that the entire family of A-2 along with the deceased had attended the wedding of the younger brother of PW-8. Thus it is clear from the prosecution case itself that the allegation of neglect as made out in the evidence of PWs.7 and 8 is wholly incorrect.

Next circumstance relied by the trial court as noted hereinabove is that the accused had made a demand for a share in the property of deceased Devinder Kaur's father. Like the earlier circumstance we have dealt with this somewhat briefly while discussing the oral evidence but at the cost of repetition we think it necessary to further discuss this aspect once again. The material in support of this allegation is found in the evidence of PWs.7, 8, 13 and 14. While discussing their evidence we have noted that even according to the prosecution none of these witnesses except PWs.8 and 12, had ever been told by Devinder Kaur personally about this demand. So far as PW-7 is concerned she stated that she came to know of this demand through PW-12 Ajmer Singh but Ajmer Singh has not supported PW-7 in this regard. PW-7 had not stated to the Police also in her previous statement about this part of the demand. Therefore it is clear that this witness is trying to improve her case for the first time in the court. Similar is the evidence of PW-14 Gurbax Singh, the uncle of the deceased who also makes a reference to this demand which he allegedly came to know from the father of the deceased. This witness too has not stated before the Police that such a demand was

made by the accused when his statement was recorded by the Police. Therefore, even this witness has unabashedly tried to improve his evidence before the court. So far as PW-13 Kulwant Singh is concerned he too did not have any personal knowledge of this demand and says in his evidence that he came to know of this demand through deceased Devinder Kaur herself at Banur in Rajpura Tehsil when he met her during a chance meeting there. This witness says that at that point of time PW-8 the brother of the deceased was also present but PW-8 does not support this evidence of PW-13. That apart this witness was present at the time when the dead bodies were brought to the hospital and when the Police arrived and registered a case but did not volunteer any statement to the Police. His statement was recorded only on 25.7.1986 nearly 2 months after the incident hence in our opinion it is not safe to place any reliance on his evidence also. It is of some importance to note here PW-8 the brother of the deceased in his evidence does not state anything about this demand for a share in his father's property. Therefore in our opinion this allegation of pressurising the deceased into demanding a share in her father's property, the prosecution has failed to establish. Hence this circumstance also does not support the prosecution case.

The next circumstance relied by the trial court is the fact that these accused persons did not attend the funeral of the deceased after their bodies were released from the hospital. From their absence at the time of the funeral, the trial court has drawn an inference against the appellants which according to the court indicated the guilty conscience of the appellants. The trial court herein failed to take note of the fact that in the first information report lodged with the police by the family of the deceased the appellants and other members of the family who have since been acquitted, were accused of murdering the deceased and her children. A case in this regard was also sought to be registered. PW-14 who is the maternal uncle of the deceased and also a retired senior IAS Officer in his evidence stated : "My statement before the police then was that Devinder Kaur and her two children had been murdered by the accused by setting fire to them. This was the information which was given to me that day." In such a situation when a murder charge is levelled against an accused, it is hardly possible to expect the accused to be present at such funeral. Therefore, this circumstance also cannot be taken as an incriminating circumstance or a circumstance which corroborates the other evidence led by the prosecution against the accused.

It is based on these erroneous inferences drawn on unproved facts and placing reliance on statements of interested witnesses whose evidence has not stood the test of cross-examination, the trial court came to a wrong conclusion as to the guilt of the accused persons. It is to be noted that 3 letters Ex. P-28, DA and DB which though not very proximate in time clearly show that there was no demand as has been alleged by the prosecution by the accused and the contents of the said letter clearly show that the allegation made after the death of Devinder Kaur of dowry demand or harassment leading to cruelty is unsubstantiated. For all these reasons we are of the opinion that the trial court committed serious error in coming to the conclusion that the prosecution had established its case against the appellants.

There is no need for us to discuss the reasons given by the High Court independently because we are in agreement with the argument of learned counsel for the appellants that there has been no application of mind by the High Court which is evident from a perusal of the judgment of the said court. The learned counsel has taken us through paragraphs after paragraphs of the judgment of the

High Court including the conclusions which, in our opinion, are nothing but paraphrasing of the judgment of the trial court without any application of mind whatsoever. So much so even factual errors committed by the trial court have been faithfully copied by the High Court e.g. the trial court at one place erroneously recorded that the deceased Devinder Kaur had given birth to two female children (See P.19 of the trial court) This error is also copied by the High Court in its judgment (See Page 56 of the High Court). The High Court failed to notice its legal responsibility of discussing the evidence independently and recording its findings on the basis of such independent assessment of its own, because it is the first court of appeal on facts. The reasons given by us for rejecting the findings of the trial court, therefore, should ipso facto apply to reject the finding of the High Court if the same could be called a finding at all.

For the reasons stated, this appeal succeeds. The judgments and sentences passed by the courts below are set aside. If the appellants are on bail, their bail bonds shall stand discharged. If they are in custody, they shall be released forthwith.