SUPREME COURT OF INDIA

Rajesh Bhatnagar

Vs.

State of Uttarakhand

Crl.A.No.851 of 2010

(Swatanter Kumar J.)

10.05.2012

JUDGEMENT

SWATANTER KUMAR, J.

1. Learned Second Additional District Judge, Haridwar, vide its judgment dated 2nd December, 1996 held all the three accused, namely, Mukesh Bhatnagar, Rajesh Bhatnagar and Smt. Kailasho @ Kailashwati, guilty of an offence punishable under Section 304B of the Indian Penal Code, 1860 (IPC) for causing the death of Smt. Renu motivated by non-payment of dowry demands and sentenced all of them to undergo life imprisonment. Against this judgment, the appellants preferred an appeal before the High Court.

The High Court vide its judgment dated 14th October, 2009 dismissed the appeal of all the accused confirming the conviction and order of sentence passed by the learned Trial Court. Aggrieved therefrom, two of the accused have preferred separate appeals. Criminal Appeal No.851 of 2010 has been preferred by the accused Rajesh Bhatnagar while Criminal Appeal No.850 of 2010 has been preferred by Mukesh Bhatnagar. As both these appeals arise from a common judgment, we shall dispose of these appeals by this common judgment. The prosecution filed a charge sheet in terms of Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.). After completing the investigation and examining the witnesses, the investigating officer presented the charge sheet stating that these three appellants had committed an offence punishable under Section 304B IPC as together they had burnt, by pouring kerosene, Renu, the deceased wife of the accused Mukesh Bhatnagar, as she and her parents failed to satisfy their demands of dowry.

2. The facts, as they appear from the record of the case, are that Ms.Renu (deceased) was daughter of Smt. Vimla Devi Bhatnagar, widow of Rajbahadur, resident of Mohalla Kayasthwada, Sikandrabad, Police Station Bulandshahar. Vimla Devi had sought a marriage alliance for her daughter Ms. Renu. Finally, the mother of Ms. Renu and Mukeshs family had agreed to alliance of marriage between Mukesh and Renu. When the engagement (sagai) ceremony was to be performed at the house of Mukesh, family of Ms.Renu along with their relations, Sanjay Bhatnagar, Shailendera Bhatnagar and others had gone to the house of Mukesh. At that time itself, Mukesh, his brother Rajesh and his mother Kailasho (all the accused) demanded a refrigerator as dowry. The mother and relations of the deceased expressed their inability to buy a refrigerator but their request brought no results and the accused family pressurized them to pay Rs.10,000/- for purchasing the refrigerator then and there. Upon persuasion by their own relations, the family of Ms. Renu paid a sum of Rs.10,000/- to Rajesh Bhatnagar for purchasing the refrigerator, whereafter the ceremony was performed. On 26th May, 1994, the marriage between the parties was solemnized as per Hindu rites at Roorkee. The family of Ms. Renu had come to Roorkee from Sikandrabad to perform the marriage at Roorkee to the convenience of the boys family. After performing the marriage, Ms. Renu went to her matrimonial home while her other family members came back to their house at Sikandrabad (Bulandshahar). Not even one and a half months of the marriage had elapsed but Mukesh is stated to have brought Renu to her parental home, where he informed her family that a television and a cooler had not been given as dowry in the marriage and these articles should be given immediately. If this was not done, he would not take Renu back to her matrimonial home. The members of Renus family tried to impress upon Mukesh not to pressurize them so much, but Mukesh persisted with his demands. At that time, Ms Renu also informed her family members that all the accused persons were beating her frequently for not bringing television and cooler as part of the dowry. However, left with no alternative, the mother and uncle of Ms. Renu assured Mukesh that everything would be settled and he need not worry. However, the television and cooler were not given at that time. The behavior of the accused towards Ms. Renu did not change and whenever she came to her parental home, she complained about the behavior of her in-laws and demands of dowry from them. She even wrote letters to her family from time to time complaining of cruel behavior of the accused towards her. In May 1995, Ms. Renu gave birth to a male child.

On 18th October, 1995, unfortunately, the father of Ms. Renu expired and thereafter the family was not able to meet the dowry demands raised by the

accused persons. Sometime in the second week of November 1995, Ms. Renu came to her parental home at 11.00 p.m. in the night. She was alone and had not even brought her child with her. Being surprised, her mother had asked her what had happened. She started crying and informed her mother and uncle that the accused persons were very unhappy, as the television and cooler had not been given and they had turned her out of the matrimonial home, refusing to even give her, her child. The mother and the uncle tried to pacify Ms. Renu and told her that with the passage of time, things would get settled and she should go back to her matrimonial home. After 20-25 days, Mukesh came to his in-lawshouse. During their meeting, the mother and uncle of Ms. Renu told Mukesh to treat her properly and said that the child should not be kept away from Ms. Renu. They also assured him that as soon as they could make some arrangement, they would give the television and cooler to Mukesh. After this assurance, Mukesh took Renu with him to the matrimonial home. While leaving, Renu told her mother that though they were sending her to her matrimonial home, her in-laws would kill her and she may not come back at all.

3. On 17th February, 1996, the uncle of Renu received a call from PW3, Anoop Sharma, resident of Roorkee, informing him that some accident had taken place and Renu was not well. He asked them to come to Roorkee immediately. Mother and uncle of Renu came to Roorkee, where they learnt and believed that for failing to give television and cooler, Renus mother- in-law, brother-in-law and husband had sprinkled kerosene and set Renu on fire. Before setting her on fire, accused Mukesh had also beat her and when Renu attempted to defend herself, even Mukesh received some bruises on his person. On 17th February, 1996 itself, the mother of the deceased lodged a complaint with the Police Station Gangnahar, Roorkee and case No.32 of 1996 under Section 304B IPC was registered on that very day.

4. PW5, Sub-Inspector R.P. Purohit and PW7, Deputy S.P., M.L. Ghai, along with other police officers, reached the place of occurrence, filled the panchayatnama, Ext.Ka-7, prepared the sketch of the place of occurrence and took the body of the deceased into custody vide Exts.Ka-8 and Ka-1.

The dead body was sent for post mortem and photographs of the dead body were taken vide Exts. 1, 3 and 3. The articles found at place of occurrence, like container containing kerosene, empty container which was having smell of kerosene, the stove pin, burnt ash, cloth rope, bangles, cloths of the deceased, one match box, etc. were recovered from the site and were taken

into custody vide Exts. 18 to 27. The post mortem report of the deceased was Ext. Ka-6 whereafter the dead body was handed over to her family members. Injuries were also found on the person of the accused Mukesh and he was subjected to medical examination on 17th February, 1996 at about 12.30 p.m. vide Ext. Ka-22. When M.L. Ghai, PW7, on 17th February, 1996 before the arrest of the accused persons went to their house, he found the house open and the accused were absconding. He had directed that a lock be put on the door of the house, which was later opened and the site map Ext.Ka-9 was prepared.

5. All the accused faced the trial and were convicted. Their conviction and the sentence awarded by the Trial Court were confirmed by the High Court, as already noticed above. This is how the present appeals come up for consideration of this Court.

6. First and foremost, it has been contended on behalf of the appellants that in the present case, the ingredients of Section 304 B IPC are not satisfied and as such, they cannot be convicted for that offence. This contention is sought to be buttressed by the counsel while relying upon the letters Exts. Ka-2 to Ka-5 (four letters). The argument is that since no complaint of dowry has been made in these letters, therefore, it must follow that there was no demand of dowry made by the accused persons. In absence of such demand, the rigours of Section 304B do not come into play.

Reliance has been placed upon the judgments of this Court in the cases of Meka Ramaswamy v. Dasari Mohan & Ors. [AIR 1998 SC 774] and Rajesh Tandon v. State of Punjab [1996] INSC 169; [1994 (1) SCALE 816].

7. Before we examine the merit or otherwise of this contention, it will be useful to state the basic ingredients of Section 304B IPC. The requirement of Section 304B is that the death of a woman be caused by burns, bodily injury or otherwise than in normal circumstances, within seven years of her marriage. Further, it should be shown that soon before her death, she was subjected to cruelty or harassment by her husband or her husbands family or relatives and thirdly, that such harassment should be in relation to a demand for dowry. Once these three ingredients are satisfied, her death shall be treated as a dowry deathand once a dowry deathoccurs, such husband or relative shall be presumed to have caused her death. Thus, by fiction of law, the husband or relative would be presumed to have committed the offence of dowry death rendering them liable for punishment unless the presumption is rebutted. It is not only a presumption of law in relation to a death

but also a deemed liability fastened upon the husband/relative by operation of law. This Court, in the case of Bansi Lal v. State of Haryana [(2011) 11 SCC 359], while analyzing the provisions of Section 304B of the Act, held as under :

> 18. In such a fact situation, the provisions of Section 113-B of the Evidence Act, 1872 providing for presumption that the accused is responsible for dowry death, have to be pressed in service. The said provisions read as under:
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> 113-B. Presumption as to dowry death.When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death. (emphasis supplied)
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> 19. It may be mentioned herein that the legislature in its wisdom has used the word shall thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by [pic]her husband or any relative of her husband in connection with any demand of dowry.
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> 20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression soon before her death has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death. (Vide T. Aruntperunjothi v.

State; Devi Lal v. State of Rajasthan; State of Rajasthan v. Jaggu Ram, SCC p. 56, para 13; Anand Kumar v. State of M.P. and Undavalli Narayana Rao v. State of A.P.)

8. Similar view was also taken by this Court in the case of Biswajit Halder alias Babu Halder & Anr. v. State of West Bengal [(2008) 1 SCC 202].

9. In light of the enunciated principles, now we will revert back to the facts of the present case. Immediately upon death of the deceased, PW2, Smt. Vimla Devi, mother of the deceased had lodged the report with the police where she had given in writing the complete facts, as we have stated above, and it is not necessary for us to repeat her complaint here. When her deposition was recorded in the Court, she, again, on oath, reiterated the complete facts. According to her, the demand of dowry in relation to various items persisted right from the date of engagement, uptil the death of the deceased. Firstly, demand was raised in relation to purchase of a refrigerator, for which a sum of Rs.10,000/- was given and it was only thereafter that the engagement ceremony could be completed. Thereafter, television and cooler were also demanded, for which they had thrown out the deceased Ms. Renu from her matrimonial home and it was only upon the assurance given by the mother and the uncle of the deceased that Mukesh and his family had agreed to take her back to the matrimonial home. It must be noticed that on 18th October, 1995, the father of the deceased had died, but despite such death, the demands of dowry persisted from the accused persons. Not only this, while Ms. Renu was leaving her home for the last time along with Mukesh, after Mukesh was assured that in future they would arrange for television and cooler, she had categorically stated that she apprehends danger to her life and she may not come back to her home. These circumstances clearly show the kind of threat and fear under which the deceased was living. PW1 is the uncle of the deceased, who also fully corroborated the statement of PW2. According to this witness, Mukesh had climbed up to the roof and said that he would not come down and would not permit the engagement ceremony to be completed, unless a fridge was brought. Then Rs.10,000/- was given to his brother Rajesh Bhatnagar, whereafter the ceremony was completed. There is no contradiction or variation in the statements of PW1 and PW2.

10. One Anoop Sharma had informed them on 17th February, 1996 that Ms. Renu had met with an accident. Anoop Sharma was examined by the prosecution as PW3, and this witness admitted that he had got the marriage arranged between Renu and Mukesh and when he had gone to meet his aunt, who lived in Roorkee, while passing by the place situated near the house of Mukesh, then he saw the

gathering of people there and had made the call to Ms. Renus family from the STD booth to Sikandrabad. This is another circumstance which shows that the accused persons were totally irresponsible and did not even care to inform the family of the deceased, about her death. Dr. Vipin Kumar Premi, PW4, along with Dr. R.K. Pande, had performed the post mortem on the dead body of the deceased Renu.

> According to the doctor, the whole of the body was burnt up to the stage of first and second degree burns and the deceased had expired due to ante mortem injuries and shock. Sub Inspector R.P. Purohit, the Investigating Officer, (PW5) has testified with regard to the inquest investigation, recovery of articles from the place of occurrence and recording of statements of witnesses. In his examination, he specifically denied that the body of the deceased was handed over to Mukesh and Rajesh after post mortem. Deputy Superintendent of Police M.L. Ghai, PW-7 had also visited the spot after complainant Smt. Vimla Devi was examined. He prepared the site plan and conducted the inquest. This witness clearly stated that when at 8.00 p.m. on 17th February, 1996, he went to the house of Mukesh, to make inquiries upon the formal registration of the case, he did not find the accused persons on the spot and, in fact, they had left the house open and fled. Therefore, he had got the house locked by a Havaldar of Chowki Tehsil.

11. From the above evidence, it is clear that there was persistent demand of dowry by the accused persons and they had killed her by sprinkling kerosene on her and putting her on fire. There can be no dispute that the deceased died an unnatural death within seven years of her marriage. Thus, the ingredients of Section 304B are fully satisfied in the present case.

> We are least satisfied with the contention of the learned counsel appearing for the appellants, that merely because the letters on record do not specifically mention the dowry demands, such letters have to be construed by themselves without reference to other evidence and rebutting the presumption of a dowry death, giving the benefit of doubt to the accused.
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> These letters have to be read in conjunction with the statements of PW1 and PW2. It is difficult for one to imagine that these letters should have been worded by the deceased as submitted on behalf of the accused. She never knew with certainty that she was going to die shortly. The letters clearly spell out the beatings given to her, the cruelties inflicted on her and reference to the conduct of the family. The evidence has to be appreciated in its entirety. Neither the letters can be ignored nor the statements of PW1 and

PW2. If the letters had made no reference to beatings, cruelty and ill-treatment meted out to the deceased and not demonstrating the grievance, apprehensions and fear that she was entertaining in her mind, but were letters simpliciter mentioning about her well being and that she and her in-laws were living happily without complaint against each other, the matter would have been different. In the judgment relied upon by the learned counsel appearing for the accused, it has specifically been recorded that the letters produced in those cases had clearly stated that relations between the parties were cordial and there was no reference to any alleged cruelty or harassment meted out to the deceased by any of the accused in that case. On the contrary, in the letters, it was specifically recorded that the deceased was happy with all the members of the family. The oral and documentary evidence in those cases had clearly shown that the deceased was never subjected to any cruelty or harassment. In those cases, there was no evidence of demand of dowry and cruelty to the deceased, which certainly is not the case here.

In the case before us, there is definite ocular, expert and documentary evidence to show that the deceased died an unnatural death, she was subjected to cruelty and ill-treatment, there was demand of dowry of specific items like refrigerator, television and cooler and she died within seven years of her marriage.

12. Then the learned counsel appearing for the appellant contended that the accused Mukesh had suffered 12 injuries on his person in attempts to rescue the deceased and there was no proximity between the demand of refrigerator and the occurrence. Therefore, the accused cannot be held guilty of the offence charged. According to him, in any case, the courts ought not to have awarded the punishment of life imprisonment to the accused persons keeping in view the entire facts of the case and the fact that both the accused were young persons while their mother was an aged lady. He placed reliance upon the judgment of this Court in the case of Hemchand v. State of Haryana [(1994) 6 SCC 727]. These contentions again are without any substance. No doubt, as per the statement of the doctor, there were nearly 12 injuries found on the body of the accused Mukesh.

Question is, how did he suffer these injuries? No doubt the accused had suffered number of injuries. PW8, Dr. D.D. Lumbahas explained the injuries on the body of the accused Mukesh as follows :

(1) Abraded swelling 2.0 cm x 1.5 cm, right upper eyelid.

(2) Abraded swelling 3.0 cm x 1.5 cm, right side face, just below right eye.

(3) Abrasion 1.0 cm x 0.2 cm, left side neck, front middle past.

(4) Three abrasions in an area of 6.0 cm x 3.5 cm, each measuring 0.8 cm x 0.2 cm, 0.6 cm x 0.4 cm, and 0.8 cm x 0.2 cm, right upper arm inner side lower past.

(5) Two faint contusions 2.0 cm apast, each measuring 1.5 cm x 0.5 cm and 2.0 cm x 0.8 cm right chest, front, upper past.

(6) Faint contusion 2.5 cm x 0.4 cm, left side chest, front upper past.

(7) Abrasion 1.4 cm x 0.3 cm, left side chest outer side 9.0 cm below armpit.

(8) Two abrasion 1.5 cm apast, each measuring 5.0 x 0.5 cm and 6.0 x 0.5 cm, left upper arm outer side, middle past.

(9) Abrasion 0.8 x 0.2 cm, left upper arm, back, lower past.

(10) Abrasion 0.7 cm x 0.4 cm, right back upper past.

(11) Two abrasion 2.0 cm apast, each measuring 3.0 cm x 0.3 cm and 6.0 cm x 0.5 cm, right back outer site/at to the right armpit.

(12) Abrasion 13.0 cm x 0.5 cm, right upper arm back outer upper 2/3.

13. The question that arises for consideration of this Court is as to how and when the accused Mukesh suffered the injuries. According to the accused, he had suffered these injuries when he was trying to break open the door of the kitchen with the intention to save the deceased, because it was projected by the defence that the deceased had died because of an accident of stove fire while cooking the food. This entire gamut of projections by the defence counsel are not only afterthoughts but, in fact, nothing but falsehood. This aspect has been well considered by the Trial Court, which recorded the following reasons for rejecting this theory propounded on behalf of the defence:

(1) On the spot, a pin of stove was opened, however, the stove was not burning. The switch of heater was also off and it was also not found on.

(2) There was no cooked food.

(3) On the spot the empty container was found which contained kerosene oil smell. Besides this, the one container containing kerosene oil was found.

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(5) From the body of deceased and from earth, kerosene oil smell was coming.

(6) The deceased was not wearing synthetic clothes. No half burnt cloth was found.

(7) About 12 injuries were found on the person of accused Mukesh on different parts of the body. On the spot, the broken bangles of deceased were found. All these things go to prove that deceased was fighting for her life. No explanation was given by Mukesh for his injuries.

(8) The entrance of kitchen was not having any door and the statement given by defence that the door of the kitchen was closed and he had to open the door by pushing it from his hands and chest, is a false statement.

(9) Before the death, deceased has discharged faecal matter and there was rigor mortis on her dead body, which indicates that deceased was afraid of her death. This fact goes to prove that occurrence had not taken place as has been said by accused persons.

(10) The dead body was having first degree and second degree burn injuries and it goes to prove that kerosene oil was sprinkled on the body. It completely rules out the death of accident.

14. The above reasoning given by the Trial Court deserves acceptance by us. Furthermore, the entire conduct of the accused is such as to lead to only one plausible conclusion, i.e., all the accused together had caused the death of the deceased. The arguments of the defence are strange because if the accused had attempted to save the deceased, then he would have suffered some burn injuries. But as per the above details of injuries, there was not even a single burn injury

found on the body of the accused Mukesh. These injuries were such that one could suffer only if he was struggling or fighting with another person, as then alone could he suffer such bruises or minor cuts. Absence of any cooking material in the kitchen is another very important circumstance which would belie the stand of this accused. An accused who raises a false plea before the Court would normally earn the criticism of the Court leading to adverse inference.

> This Court in the case of Asraf Ali v. State of Assam [(2008) 16 SCC 328] has held as follows:
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> 21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.
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> 22. The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in S. Harnam Singh v. State (Delhi Admn.) while dealing with Section 342 of the Criminal procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case.
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> Recording of a statement of the accused under Section 313 is not a purposeless exercise.

15. As far as the contention of the accused that there was no proximity or nexus between the alleged demand of refrigerator and the death of the deceased and the accused is, thus, entitled to benefit of acquittal is concerned, it requires to be noticed only for being rejected. The demand for refrigerator was the first demand of dowry, that too, at the time of engagement. This demand was instantaneously

fulfilled by the family of the deceased under compulsion and threat that the engagement ceremony would not be performed if the refrigerator or money was not given. The demand of dowry raised by the accused persons later for television and cooler could not be satisfied by the family of the deceased for financial limitations upon the death of father of the deceased. As a result, the deceased was treated with cruelty and physical assault. In fact, it ultimately led to her brutal murder at the hands of the husband and his family members. Not only this, the conduct of the accused prior to and immediately after the occurrence clearly shows that they were not innocent. Otherwise, there was no occasion for them to abscond after the body of the deceased was handed over to her relations. These circumstances, along with the circumstances stated by the Trial Court, are inconsistent with their innocence and consistent only with hypothesis that they had killed the deceased by setting her on fire. No explanation, much less a satisfactory explanation, has been rendered by the accused persons in their statements under Section 313 Cr.P.C. On the contrary, the trend of cross-examination of the prosecution witnesses and explanations given by the defence for accused Mukesh having suffered injuries on his body are patently false and not worthy of credence.

16. In these circumstances, we have no hesitation in holding that the accused are not entitled to any benefit, much less acquittal, from this Court. We may also refer to the judgment of this Court in the case of Kundula Bala Subrahmanyam & Anr. v. State of Andhra Pradesh [(1993) 2 SCC 684] where, under somewhat similar circumstances, the Court rejected the plea of the innocence of the accused taking into consideration the conduct of the accused and his failure to furnish a satisfactory explanation.

17. Now we are left with the last contention of the counsel for the appellant that this is a case where the Court may not uphold the sentence of life imprisonment imposed by the courts below. We see no mitigating circumstances in favour of the accused which will persuade us to take any view other than the view taken by the Trial Court on the question of quantum of sentence. Even in the case of Hemchand (supra), relied upon by the appellant, this Court had said that it is only in rare cases that the Court should impose punishment of life imprisonment. When the offence of Section 304B is proved, the manner in which the offence has been committed is found to be brutal, it had been committed for satisfaction of dowry demands, particularly, for material goods like television or cooler and furthermore the accused takes up a false defence before the Court to claim that it was a case of an accidental death and not that of dowry death, then the Court normally would not exercise its judicial discretion in favour of the accused by awarding lesser sentence than life imprisonment.

18. For the reasons afore-recorded, we find no merit in the appeals.

Both the appeals are dismissed accordingly.