



2026:AHC-LKO:60630

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 834 of 2004

Ram Chandra And 2 Ors.

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Rakesh Kumar Tripathi, Ajeet Kumar Singh
Counsel for Respondent(s)	: Govt.Advocate

Court No. - 12

HON'BLE MANISH MATHUR, J.

1. Heard Mr. Ajeet Kumar Singh, learned counsel for appellants and Mr. Vishwas Saraswat, learned AGA, appearing on behalf of the State.

2. The instant Criminal Appeal under Section 374(2) CrPC has been filed against judgment and order dated 24.03.2004 passed by the Additional Sessions Judge/ FTC Court No.4, Sitapur in Sessions Trial No.581 of 2001, State of U.P. v. Ram Chandra & Ors. arising out of Case Crime No.266 of 1999, under Sections 498-A, 304-B I.P.C. read with Section 3/4 Dowry Prohibition Act, Police Station Laharpur, District Sitapur, convicting and sentencing the appellants as under:-

(i) under Section 498-A I.P.C. to two years rigorous imprisonment and a fine of Rs.2,000/-and in default of fine, six months additional imprisonment each.

(ii)under Section 304-B I.P.C. to seven years rigorous imprisonment to appellants Smt. Hema and Smt. Meena and ten yeas rigorous imprisonment to Ram Chandra.

(iii)under Section 4 of Dowry Prohibition Act to one year rigorous imprisonment and a fine of Rs.1,000/-and in default of fine, one month's additional imprisonment each.

3. As per prosecution version, an application under Section 156 (3) CrPC was filed by complainant stating that his daughter Ramdevi was married

two years prior to filing of complaint to Ram Chandra and allegedly dowry as per his condition was made, but the appellants sought buffalos, T.V and cycle in addition as dowry and on the pretext of unfulfilled dowry demand used to harass his daughter. It is stated that the incident thereafter took place on 11.06.1999, when his daughter was burnt alive and subsequently passed away in the District Hospital, Sitapur. It has also been alleged that initially FIR was sought to be lodged but was not registered by the Police due to which an application to the Superintendent of Police was given on 08.09.1999 but when no consequential action was taken, complaint under Section 156 (3) CrPC was filed, the cognizance of which was taken by the Magistrate concerned and directions were issued for lodging of the FIR.

4. Subsequent to directions issued by court concerned, case crime no.266 of 1999 was registered under Section 498A, 304B IPC read with Section 3/4 Dowry Prohibition Act on 27.09.1999. After investigation, charge-sheet was submitted under the aforesaid sections and charges were framed on the same sections. Prosecution produced seven witnesses while defence was led under Section 313 CrPC. leading to conviction of the appellants.

5. Learned counsel for appellants submits that trial court has erred in recording a conviction against appellants since prosecution was unable to establish its case beyond reasonable doubt. It is submitted that the necessary facts required to be proved under Section 304-B IPC and the presumption under Section 113-B of the Indian Evidence Act has been incorrectly applied by trial court. It is further submitted that there are major contradictions in the prosecution story with regard to demand of dowry and cruelty in connection with demand of such dowry and that too soon before her death, was not proved. It is submitted that the trial court in fact has filled up the gaps and laches in the prosecution story on its own.

6. Learned counsel further submits that first information report was lodged after three and a half months of the incident without any proper and cogent explanation for delay which indicates deliberation has also not been properly adjudicated upon by trial court. He submits that trial court

has erred in treating the statements of deceased to her mother and father as dying declaration under section 32 of the Evidence Act since conviction based solely on such alleged dying declaration, which would not come within the purview of dying declaration, could not have been made. He has also submitted that the prosecution version that hands and legs of the deceased were tied up by appellants no.2 and 3 are negated by the fact that no injuries were sustained by deceased on hands or legs nor were there any rope marks present.

7. It is further submitted that the testimony of prosecution witnesses that the appellant no.1 threw a bucket of water upon the deceased when she caught fire has not been adverted to its correct perspective, nor admitted case of the prosecution that it was appellant no.1 who had taken the deceased for medical examination in the Community Health Centre, Laharpur and subsequently of deceased having been hospitalized in the District Hospital, Sitapur. It is submitted that the defence that deceased suffered burn injuries due to accidental explosion of stove has not been adverted to by the trial court in its correct perspective. He has also adverted to the testimony of P.W.2 (Pancham), father of deceased to indicate discrepancies with regard to his presence at the time and date of incident. He has also adverted to testimony of P.W.1 and P.W.2 to the effect that admittedly there was no demand for any dowry either before or at the time of marriage and therefore, trial court has erred in recording a conviction under Section 304-B IPC since no such demand for dowry was made out or established by prosecution. Learned counsel has placed reliance on judgment rendered by Hon'ble the Supreme Court in the cases of *The State of Uttarakhand versus Sanjay Ram Tamta @ Sanju @ Prem Prakash*; Criminal Appeal No.112 of 2014, *Sher Singh @ Partapa versus State of Haryana*; 2015 AIR SCW 716, *Durga Prasad & Anr. versus State of M.P*; 2010 AIR SCW 3673 and *Poonam Bai versus The State of Chhattisgarh*; 2019 (6) SCC 145, "

8. Learned AGA has opposed the appeal with the submission that the impugned judgment is perfectly cogent and has been passed on the basis of relevant evidence placed on record. He submits that admittedly marriage had taken place two years prior to the date of demise of the wife and a case of death by unnatural means that is burning was established by

trial court. He has also adverted to various portions of impugned judgment to submit that harassment of deceased soon before death on the basis of dowry demand is clearly established and has also placed reliance on the statement made by deceased to her parents which has been considered as a dying declaration in terms of Section 32 of the Evidence Act. It is submitted that since dying declaration is of such a sterling quality, conviction would be sustainable merely on the basis of such dying declaration. He has also adverted to the statement of attending doctor as PW4. He further submits that the aspects that palms of deceased were admittedly unburnt, clearly indicates the aspect that deceased was tied up prior to being set a fire. He has relied upon following judgments in the cases of *Parvati Devi versus State of Bihar (Now State of Jharkhand) & Ors.*; (2022)14 SCC 500, *Bhim Singh & Anr. versus State of Uttarakhand*; 2015(4) SCC 281, *Narayanamurthy versus State of Karnataka & Anr.*; AIR 2008 SC 2377, *Rajendra S/o Ramdas Kolhe versus State of Maharashtra*; 2024 LiveLaw(SC) 406 and *State of Gujarat Vs. Laxmanbhai and Ors.* MANU/GJ/1983/2022.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that FIR has been lodged after three and half months of the incident on 11/06/1999. Charge-sheet was filed and charges were framed under Sections 498A, 304B IPC read with Section 3/4 of the Dowry Prohibition Act, resulting in conviction of all the appellants on those sections.

10. For purposes of examination of sections attributable to the appellants, the trial court has first and foremost adjudicated upon cause of death of deceased and has adverted to statement of Dr. Masudal Hasan Usmani, examined as P.W.4 who has specifically stated that the deceased was brought to the Community Health Centre on 10.06.1999 in a burnt state with 50% burn over body but which were third degree burns. Trial court thereafter adverted to the testimony of Dr. P. K. Dwivedi, P.W.3 who has corroborated the postmortem report to the effect that death had occasioned due to burn injuries. It is on the conjoint analysis of testimony of both the doctors that trial court came to a conclusion that death had occasioned due to burn injuries. The defence taken by appellant under Section 313 Cr.P.C. that the body in fact was misidentified and

postmortem was conducted of a male body has thereafter been dealt with. The reason for such a defence being raised was that the postmortem report indicated the body of a male. However trial court upon examination of postmortem report and as per the testimony of attending doctor has come to a conclusion that the said aspect was a typographical error since although the postmortem report indicates the body of a male but it is in fact the female parts which were indicated therein. The aspect of identification of body therefore was held to be that of a female.

11. Another defence raised with regard to identity of the body has also been adverted to by trial court since defence raised was that the body under postmortem and the deceased were of two separate persons being Rambeti and Ramdevi. After adverting to documentary evidence on record, trial court came to a conclusion that even with regard to difference of name, all the documents clearly indicate the husband as Ram Chandra i.e. the appellant and therefore recorded a finding that there was no confusion with regard to identity of deceased.

12. Considering the admitted situation as per testimony on record, trial court also reached a conclusion that death has occasioned within a period of seven years of marriage.

13. Thereafter the aspect of ascertainment of dowry demand has been adverted to by trial court particularly upon analysis of the dying declaration, which the trial court held amounted to a dying declaration under section 32(1) of the Evidence Act and on that basis as well as on the basis of testimony of parents of deceased, come to a conclusion that the aspect of dowry demand was established.

14. The trial court has also adverted to the fact that despite death having occasioned otherwise than under natural circumstances and within seven years of death and was corroborated by dying declaration, the burden under Section 113-B of the Evidence Act was not discharged by appellants since neither any suggestion nor cross-examination was done under Section 313 Cr.P.C. with regard to same. Trial court also recorded the fact that due to police inefficiency in timely recording FIR, no delay in lodging of FIR can be attributed to the informant.

15. It is on the basis of aforesaid findings that conviction has been recorded against the appellants.

16. For proper appreciation of the present dispute, it would be relevant to examine the provisions of section 304B, 498A IPC read with 113-B Evidence Act and section 4 of Dowry Prohibition Act which are as follows:-

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

Explanation.—*For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*

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

"498A. Husband or relative of husband of a woman subjecting her to cruelty.— *Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation.— *For the purpose of this section, "cruelty" means—*

(a) any wilful conduct which is of such a 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; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

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

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

" 4. Penalty for demanding dowry.- *If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:*

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

17. For purposes of applicability of Section 498-A IPC, it is imperative for prosecution to establish that the husband or relative of the husband of a woman has subjected such woman to cruelty for which punishment has been indicated. The explanation to Section 498-A IPC clearly indicates

definition of word 'cruelty' to mean (a) wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury for danger to life or limb or health of a woman or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

18. For applicability of section 304-B, it has been provided that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, the same shall be called 'dowry death', and such husband or relative shall be deemed to have caused death. The definition of dowry has been indicated in the explanation as the same as under Section 2 of the Dowry Prohibition Act.

18(a) The said aspect is also required to be examined in the light of section 113-B of Evidence Act where a presumption as to 'dowry death' has been indicated to the effect that when a question arises whether a person has committed 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 has caused the dowry death. The definition of dowry death has again been adverted to have the same meaning as under Section 304-B IPC.

19. In view of aforesaid aspects, it is thus evident from conjoint analysis of section 304-B IPC read with section 113-B Evidence Act that where the death of a woman has been by burn or bodily injury or otherwise another normal circumstances within a seven years of marriage and the conditions indicated in section 304-B IPC are met with, the deeming clause as indicated therein comes into play and in terms of section 113-B of the Evidence Act, the burden of proof shifts from prosecution to the accused.

20. The aspect regarding presumption against an accused as indicated in section 304-B IPC has been enunciated upon by Hon'ble the Supreme Court in the case of **Parvati** (Supra) is as follows:-

"13. As can be seen from the aforesaid provision, for convicting the accused for an offence punishable under Section 304-B IPC, the following pre-requisites must be met:

(i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;

(ii) that such a death must have occurred within a period of seven years of her marriage;

(iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and

(iv) that such a cruelty or harassment must have been for or related to any demand for dowry.

17. Section 304-B IPC read in conjunction with Section 113-B of the Evidence Act leaves no manner of doubt that once the prosecution has been able to demonstrate that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, soon before her death, the court shall proceed on a presumption that the persons who have subjected her to cruelty or harassment in connection with the demand for dowry, have caused a dowry death within the meaning of Section 304-B IPC. The said presumption is, however, rebuttable and can be dispelled on the accused being able to demonstrate through cogent evidence that all the ingredients of Section 304-B IPC have not been satisfied."

21. The aforesaid judgment therefore is a proposition for the law that once prosecution has been able to demonstrate cruelty or harassment having been suffered by a woman, which is in connection within a demand for dowry and that too soon before her death, it will be presumed that the persons who are alleged to have subjected her to cruelty or harassment in relation with demand to dowry would have caused her death within meaning of Section 304-B IPC with such presumption being rebuttable.

22. In the case of **Bhim Singh** (supra), it has been held that there are three occasions when demand for dowry can be made i.e. before marriage, at the time of marriage and after marriage. It has been held that merely because a demand for dowry was not made prior to or at the time of marriage, would not raise a presumption that it cannot be made during the course of marriage. The relevant paragraph is as follows:-

"The first ground of defense taken by the appellants in this appeal is that there is no specific incident of abuse or torture for dowry and no prior report of dowry demand was filed by the family of the deceased. It is also stated that there was no demand of dowry made by them before marriage as is evident from the statements of PW-1 Birbal Singh and PW-2 Man Singh. However, as held by this Court in the State of Himachal Pradesh v. Nikku Ram & Ors., (1995) 6 SCC 219, the demand for dowry can be made at any time, and not necessarily before marriage. The demand can be made on three occasions; before marriage, at the time of marriage and after marriage. The relevant extract of the said judgment is reproduced hereunder:

"Dowry, dowry and dowry. This is the painful repetition which confronts, and at times haunts, many parents of a girl child in this holy land of ours where, in good old days the belief was: "Yatra Naryastu Pujyante ramente tetra dewatah" (where woman is worshipped, there is abode of God). We have mentioned about dowry thrice, because this demand is made on three occasions: (i) before marriage; (ii) at the time of marriage; and (iii) after

the marriage. Greed being limitless, the demands become insatiable in many cases, followed by torture on the girl, leading to either suicide in some cases or murder in some."

The accused have taken the defense that the PWs. have also stated in their statements that no demand for dowry was made before marriage and that the marriage was concluded by the consent of the two parties. They also took the defense that no prior police complaint of dowry demand was made by the family of the deceased. However, in light of the decision of this Court in State of Himachal Pradesh v. Nikku Ram & Ors. (supra) and the social evil of dowry that is prevalent in the Indian society, this defense does not hold water. The demand for dowry can be made at any time and not necessarily before marriage. The appellants have also taken the plea that no specific incidents of abuse or torture were there. But in the present case, PW-3 Trilok Singh has categorically stated in his statement that the accused Aan Singh had come in the ceremony of durgud, which is celebrated after marriage in which he had stated in the presence of all the persons that he had not recovered the money he had spent in the marriage and became angry. The PWs. have also stated that, the deceased, Smt. Prema Devi had also complained to her family members twice, regarding taunts and demand for dowry by the four accused persons. These incidents occurred "soon before her death" as she died within 5 months of her marriage This raises a presumption, under Section 113-B of the Evidence Act, as to dowry death punishable under Section 304-B of I.P.C. A conjoint reading of Section 113B of the Evidence Act and Section 304-B of I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The prosecution is obliged to show

that soon before the occurrence there was cruelty or harassment for or in connection with the demand for dowry. In other words, only when the prosecution proves that soon before her death, the lady was subjected to cruelty or harassment for or in connection with any demand for dowry as laid down by this Court in Kaliyaperumal and Anr. Vs. State of Tamil Nadu (2004) 9 SCC 157. The prosecution has proved by producing cogent evidence that soon before her death the lady was subjected to cruelty or harassment in connection with the demand for dowry. Thus, it becomes obligatory for the Court to raise a presumption that the death is a dowry death.

It is the case of the defense that the deceased would have tried to commit suicide by consuming poison and when she was apprehensive whether she would die or not, she set fire to herself. Assuming, without conceding, that Smt. Prema had committed suicide, then under Section 113A of the Indian evidence Act, onus is shifted on the accused to dislodge the presumption of having committed abetment of suicide by a married woman. Unlike as in Section 304- B where the court "shall presume" dowry death, when the prosecution has established the ingredients, under Section 113A of the Evidence Act, discretion has been conferred upon the Court wherein it has been provided that the Court may presume abetment of suicide. Therefore the onus lies on the accused to rebut the presumption, and in case of Section 113-B of the Evidence Act relatable to Section 304B of IPC, the onus to prove shifts exclusively and heavily on the accused as held in Bansilal v. State of Haryana (2011) 11 SCC 359. Thus, where the death of the wife was concurrently found to be unnatural, viz., by strangulation, and there was demand for dowry and also cruelty on the part of the husband the presumption under Section 113B has been rightly drawn, as held in Hemchand v. State of Haryana AIR 1995 SC 120, 121)."

23. The concept of soon before indicated in section 304-B IPC has also

been enunciated upon in the case of **Narayanamurthy** (supra) in the following manner:

"18. In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench of this Court in Satvir Singh v. State of Punjab [(2001) 8 SCC 633] wherein it was held: (SCC p. 643, paras 21-22) "21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time' after the marriage. The third occasion may appear to be an unending period.

But the crucial words are 'in connection with the marriage of the said parties'.

This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry'.

Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened 'soon before her death'. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of

time by employing the words 'soon before her death' is to emphasise the idea that her death should in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval which elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'

19. *Da Hira Lal v. State (Govt. of NCT), Delhi ((2003) 8 SCC 80)*, this Court observed that: (SCC pp. 86-87, para 9) "The expression soon before her death' used in the substantive S. 304-B, L.P.C.

and 8.113-B of the Evidence Act is present with the idea of proximity test.

No definite period has been indicated and the expression soon before' is not defined. A reference to expression soon before used in 8. 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death."

24. Upon applicability of aforesaid judgments in the present facts and

circumstances of the case, it thus is evident due to finding recorded by trial court with which this court concurs that death has occasioned within two years of marriage and was as a result of an unnatural cause i.e burning. The said aspects of Section 304-B IPC thus stand satisfied.

25. With regard to the background of victim-deceased dying due to burn injuries, defence has been taken that she got burn injuries while cooking food. It is therefore useful to refer to the postmortem report which has been corroborated by Dr. P. K. Dwivedi as P.W.3 in which it has been corroborated that the victim-deceased suffered third-degree burns throughout the body except both legs, foot and both palms. The aspect of no burn injury on the palms therefore is significant and corroborates the allegation that the hands of victim-deceased were tied at the time when she was burnt. It is but natural if any person is on fire to try to douse the fire and the first body part used for that purpose would naturally be the palms and therefore as a consequence burn injuries would have been reflected on the palms. The absence of any such burn injury on the palm is corroborative of the prosecution version that her hands were tied at the time when victim-deceased was burnt. The defence on that aspect therefore has been rightly rejected by trial court.

26. It has also been submitted by defence that such a plea could not have been taken for the first time during deposition in trial and there is no such mention of the hands of the victim-deceased being tied in the statement under section 161 CrPC.

27. However, a perusal of the statement of P.W.1 Mayavati and P.W.2 Pancham recorded under section 161 CrPC clearly belies the said assertion since there is specific statement of both prosecution witnesses of the fact of deceased's hands having been tied at the time when she was burnt.

28. In such circumstances, as addressed here-in-above, the aspect of unnatural death by burn injuries within a period of seven years of marriage instance stands established.

29. The aspect of harassment due to dowry demand would also require consideration and to that extent, the statements of P.W.1 Mayavati and

P.W.2 Pancham are relevant in which they have specifically stated that demand for dowry was made at the time of marriage seeking buffaloes, T.V. and cycle. Both witnesses also have corroborated that whenever their daughter returned from her matrimonial house, she informed them of the harassment being caused to her by her in-laws due to said unfulfilled dowry demand. The aspects of their testimonies therefore clearly corroborate the prosecution version of harassment of deceased due to dowry demand.

30. Learned counsel for appellants has adverted to statement of P.W.2 Pancham to submit that admittedly no dowry was given at the time of marriage.

31. Here a distinction is required to be drawn between demand of dowry and actual giving of the same. In the instant case, the mere fact that no dowry was given at the time of marriage would be inconsequential since specific allegations pertaining to demand of dowry at the time of marriage have been made by P.W.1 and P.W.2. Even otherwise as has been held by Hon'ble the Supreme Court in the case of **Bhim Singh** (supra), demand for dowry can be raised even after marriage, even if it cannot be proved to have been made prior to or at the time of marriage. The submissions of learned counsel for appellants on that aspect therefore stand rejected.

32. The aspect of establishing harassment due to dowry demand has also been found substantiated by trial court on the basis of dying declaration of the deceased given to her mother. The said declaration has been held by trial court to come within purview of a dying declaration in terms of Section 32 of the Evidence Act.

33. The aspects of when a declaration can come within the scope of a dying declaration has been adjudicated upon by Hon'ble the Supreme Court in the case of **Rajendra** (supra) in the following manner:-

“25. The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court

must be satisfied that it was rendered voluntarily. it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.

26. Section 32(1) of the Indian Evidence Act, 1872 deals with dying declaration. Since the said provision is relevant, it is extracted hereunder:

[32.] Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

26.1. Section 32 says that statements made by a person who is dead or who cannot be found etc., be it in written form or oral, are themselves relevant facts. As per situation(1), when the relevant facts relate to the cause of death, such a statement

would be relevant whether the person who made it was or was not at the time of making the statement under expectation of death. Such a statement would be relevant whatever may be the nature of the proceedings in which the cause of his death comes into question. The relevancy is not confined to the cause of his death but also to the circumstances of the transaction which resulted in his death.

27. In *Khushal Rao vs. State of Bombay*; AIR 1958 SC 22 ', this Court examined the principles governing acceptance of dying declaration. After examining the relevant provisions of the Evidence Act and various judicial pronouncements, this Court laid down the following conclusions:

(i) it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(ii) each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;

(iii) it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(iv) a dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;

(v) a dying declaration which has been recorded by a competent Magistrate in the proper manner stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character,

(vi) in order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties.

28. The above conclusions were reiterated by this Court in Paniben (Smt.) vs. State of Gujarat; (1992)2 SCC 474. This Court declared that there is neither any rule of law nor of prudence that a dying declaration cannot be acted upon without corroboration. However, the court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination; the deceased should be in a fit and proper state to make the declaration. But once the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration.

29. This Court highlighted the significance of a dying declaration in Kundula Bala Subrahmanyam vs. State of Andhra Pradesh; (1993)2 SCC 684. The general rule is that hearsay evidence is not admissible. Unless the evidence tendered is tested by cross examination, it is not creditworthy. However, Section 32(1) of the Evidence Act is an exception to this general rule. This Court observed as under:

*18 .******

A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct

*status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration.******

30. *Elaborating further, this Court in Sher Singh vs. State of Punjab; (2008)4 SCC 265 held that acceptability of a dying declaration is greater because the declaration is made in extremity. When a party is on the verge of death, one rarely finds any motive to tell falsehood. It is for this reason that the requirements of oath and cross examination are dispensed with in the case of a dying declaration.*

31. *In **Sudhakar vs. State of Madhya Pradesh**; (2012)7 SCC 569, this Court observed thus:*

20. The "dying declaration" is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other

prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.”

34. The aspect of reliability of such declaration to a third person other than the Doctor, Police or Magistrate has also been considered by Hon’ble the Supreme Court in the case of **Laxmanbhai** (supra) in the following manner:

“7.9. At this juncture, it is pertinent to note that not a single question is asked by the defence so far as the status of his dying sister/victim is concerned that she was uttering in piecemeal, leveling allegations against the accused persons including father-in-law mother-in-law and her husband qua demand of Rs.10,000/- and Rs.5,000/- which was given on earlier occasion and cruelty and physical and mental torture to which, the victim was being subjected to.

7.10. It is the cardinal principal of law that whenever the facts deposed by any witness/es in the examination-in-chief remain uncontested/uncontroverted by the defence, in such circumstance, the evidence adduced before the Court is believable and admissible in evidence. In the case on hand, the complainant in his complaint as well as in his examination-in-chief on oath has deposed the fact with regard to the oral dying declaration given by the deceased, however, the same is not controverted by the defence in cross-examination and therefore, it is admissible in evidence. In depth perusal of the impugned judgment and order reveals that the learned Judge has failed to appreciate such an aspect in his judgment, which was very much material and important mores when the brother of the deceased victim had come forward with a specific case of demand of dowry coupled with cruelty.

7.16. Thus, almost all the prosecution witnesses have supported the case of the prosecution. It is argued that material witnesses are the interested witnesses and no

independent witness has been examined. In this regard, it would be worthwhile to refer to a decision of the Apex Court in Seeman alias Veeranam V. State MANU/SC/0395/2005, the Apex Court has held as under:

*"4. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. **The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested sole witness. The prosecution's non-production of one independent be a circumstance to discredit the evidence of the interested witness witness who has been named in the FIR by itself cannot be taken to and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement.**"(emphasis supplied)*

7.22 It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the

conclusion that the accused is guilty then the Court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which, the administration of criminal justice revolves.”

35. Upon applicability of aforesaid judgments in the present facts and circumstances, it is settled that once a dying declaration is found to be authentic, inspiring confidence of the Court, it can be relied upon and can be the sole basis for conviction without any corroboration if the Court is satisfied that it was rendered voluntarily, is consistent, credible and devoid of any tutoring. In the case of **Rajendra** (supra), reliance has been placed on judgment rendered in the case of **Sudhakar versus State of Madhya Pradesh** reported in (2012)7 SCC 569 that a dying declaration is the last statement made by a person at stage when the said person is in serious apprehension of death and expects no chance of survival, then it is assumed that such a person will speak only the truth in such circumstances and therefore Courts are required to attach intrinsic value of truth to such statement, which however will be subject to rebuttal.

36. In the case of **Laxmanbhai** (supra), the proposition pertaining to dying declaration has been reiterated and it has been held that once the prosecution has discharged its initial burden, the presumption of innocence comes to an end and the burden will thereafter shift to the accused to explain the circumstances and the proof which has been adduced by prosecution. It has also been held that merely because the witness to whom such statement has been given is a relative does not automatically mean that such statement is required to be rejected merely because of the allegation of such a person being an interested witness but it is the duty of the Court to be a bit more careful in scrutiny of such evidence.

37. In the aforesaid context, the observation of trial court is relevant that no questions were put to the prosecution witnesses to challenge the assertion of dying declaration under Section 313 CrPC. Therefore, once the prosecution had established the aspect of dying declaration by producing the mother of victim-deceased as P.W.1, burden of proof shifted upon the defence to have sought rebuttal of such a testimony but

once no such questions were put to the said witness, such a presumption has not been discharged by the defence and the statement pertaining to dying declaration therefore attains the status of being uncontroverted and therefore, in the considered opinion of this Court, trial court has rightly relied on such statement taking it to be a dying declaration under Section 32 of the Evidence Act.

38. So far as the aspect of scrutiny of such statement is concerned, the statement of Dr. Masudal Hasan Usmani as P.W.4 at the relevant time posted in the Community Health Center, Laharpur assumes importance whereunder he has specifically stated that although vitals of victim-deceased were quite precarious, she was able to understand and has also stated that the lady in attendance with the patient was not permitting her to speak. The evidence on record indicates that it is only once parents of victim-deceased came to the scene that the victim-deceased was able to give her statement to her mother. The statement of doctor also indicates that on seeing the condition of the victim-deceased, information had been sent twice to the Police Station for recording her dying declaration but no one turned up on behalf of police.

39. In the considered opinion of this Court, the prosecution cannot be held to be liable nor any adverse inference can be drawn against the prosecution due to inefficiency of police in such a case where the dying declaration is otherwise of sterling quality and has rightly been relied upon.

40. It is also a relevant factor that the dying declaration clearly corroborates the burn injuries since it has been stated that the mother-in-law and sister-in-law had set fire to her after tying her hands and feet.

41. Learned counsel for appellants has sought to impeach the dying declaration on the ground of improbability of presence of the parents of deceased in the hospital due to a time lag but such a submission is required to be rejected at the threshold primarily on account of the fact that no such question or suggestion was put to the prosecution witnesses at the time either of cross-examination or at the stage of Section 313 CrPC and therefore, such a plea being raised for the first time in appeal

cannot be entertained.

42. In view of aforesaid discussion, it is established that death has occasioned due to demand for dowry.

43. The next consideration, therefore, would pertain to the words '*soon before*' under Section 304B IPC. Regarding the aforesaid, it is already established that death has occasioned within a period of two years of marriage and was an account of demand for dowry. The time period of two years, therefore would come within the scope of the words '*soon before*' as envisaged under the said section.

44. It is also relevant that parents of victim-deceased as P.W.1 and P.W.2 in their testimony during trial have specifically stated that demand for dowry was made not only at the time of marriage but continued thereafter as was informed to them by the victim-deceased whenever she visited her parental house. It is relevant that neither of the two prosecution witnesses were cross-examined on the said aspect and therefore the statements on that front remained un-controverted.

45. The aspect of '*soon before*' has been adjudicated upon by Hon'ble the Supreme Court in the case of **Narayanamurthy** (supra) as indicated here-in-above and would be squarely applicable in the present case.

46. Learned counsel for appellants has relied upon the case of **Durga Prasad** (supra) but a perusal of same clearly indicates that the same pertains to applicability of Section 304-B IPC when death has occasioned within seven years of marriage of deceased. The judgment therefore does not appear to aid the appellants.

47. In the case of **Sher Singh @ Partapa** (supra) relied upon by learned counsel for appellants, a casual connection between dowry and death is required to be established but the said case pertained to suicide and not to a case of bride burning and therefore would be inapplicable in the present matter. Similarly in the case of **Sanjay Ram Tamta @ Sanju @ Prem Prakash** (supra), the situation pertained to suicide and would also not be applicable in the present case.

48. Learned counsel for appellants has also relied on judgment in the case

of **Poonam Bai** (supra) but the same pertains to be on aspect of dying declaration being unbelievable if no such inference has been drawn in statement recorded under Section 161 Cr.P.C. The said judgment would also be inapplicable since such an inference has in fact been drawn in statement recorded under Section 161 Cr.P.C. 49. In view of aforesaid facts and circumstances as discussed here-in-above, the conditions of Section 304-B as well as Section 498-A IPC, stand fully satisfied and such a presumption as per Section 113-B Evidence Act has not been refuted by the defence.

49. In view of discussion made here-in-above, this Court does not find any good ground to grant indulgence so far as it relates to appellants no.2 and 3, the conviction and sentence to the appellants (Smt. Hema and Kumari Meena) therefore are upheld.

50. So far as the case of appellant no.1(Ram Chandra) is concerned, neither in the statements of prosecution witnesses nor in the dying declaration has any allegation been levelled against the said appellant which comes within purview of Section 304-B, IPC. It is not the case of prosecution that the appellant no.1 was also instrumental in setting fire to the victim-deceased.

51. On the contrary, in the dying declaration as noticed by trial court, it has been stated that once the victim-deceased was on fire, appellant no.1 sought to douse the fire by throwing a bucket of water over her.

52. The statement of Pancham as P.W.2 also indicates the role of appellant no.1 in taking the deceased to the hospital and thereafter also accompanying P.W.2 to the District Hospital from Community Health Center, Laharpur.

53. In such circumstances, the finding recorded by trial court regarding role of appellant no.1 under Section 304-B, IPC is unsustainable and is set aside.

54. Nonetheless, statements of P.W.1, P.W.2 are ample enough to justify his conviction and sentence under Section 498-A, IPC and Section 4 of the Dowry Prohibition Act, which are sustained.

55. In view of aforesaid, the conviction and sentence so far as it pertains to appellant no.1 only is modified to the extent that his conviction and sentence under Section 304-B, IPC is set aside while his conviction under Section 498-A and Section 4 of Dowry Prohibition Act is upheld. So far as appellants no.2 and 3 are concerned, their conviction and sentence are upheld in its entirety.

56. The appeal therefore stands ***partly allowed*** to the aforesaid extent.

57. The appellants are directed to surrender before trial court within a period of three weeks from today to serve out their sentences.

58. Before parting with this case, this Court wishes to place on record its anguish with regard to the conduct of parents of deceased, who despite being intimated time and again by their daughter with regard to harassment being suffered by her as a result of dowry demands, continuously kept sending her back to her matrimonial house ignoring the disparate plea of their daughter even when she informed them that she may be murdered for such dowry demand. It is unfortunately a prevalent practice in India that the daughter is considered to be a burden upon her parents who seek to wash their hands of her fate as soon as she is married and are unconcerned with her well being thereafter. The said conduct of the parents of such brides who are harassed or killed on account of dowry demand in fact are abettor of the in laws of such bribes.

(Manish Mathur,J.)

August 25, 2026

Subodh/-