IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ALOK AWASTHI

CRIMINAL APPEAL No. 3639 of 2019

CNR No.: MPHC020111372019

DEEPTI BEESANI D/O SHRI RAJENDRA BEESANI THR. POWER OF ATTORNEY HOLDER SHRI RAJENDRA BEESANI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Vivek Singh, learned Senior Advocate assisted by Shri Piyush Parashar, learned counsel for the appellant.

Shri Ambuj Patel, learned Govt. Advocate for the respondent No. 1/State.

Shri Avinash Sirpurkar, learned Senior Advocate assisted by Shri Yogesh Kumar Gupta, learned counsel for the respondent Nos. 2 & 3.

HEARD ON : 06.10.2026

PRONOUNCED ON : 13.10.2026

J U D G M E N T

This appeal is preferred by the appellant being disgruntled by the impugned judgment of acquittal dated 02.03.2019 passed by XXth Additional Sessions Judge, District Indore (M.P.) in Criminal Appeal No.286/2017 (Akhilesh and Another Vs. Akhilesh and another), No. 369/2017 (State of MP Vs. Akhilesh and another) and No. 370/2017 (State of M.P. Vs. Akhilesh

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and another), acquitting the respondent Nos. 2 & 3 under Section 498-A of Indian Penal Code, 1860 (hereinafter referred as, 'IPC') and Section 4 of the Dowry Prohibition Act, 1961 (for brevity "the Dowry Act") by setting aside the judgment dated 03.04.2017 passed by Judicial Magistrate First Class, District Indore in Criminal Case No. 35855/2007, wherein the respondent Nos. 2 & 3 were convicted for the offence under Section 498A of IPC and Section 4 of the Dowry Act and sentenced to undergo rigorous imprisonment of 01 year with fine of Rs.1,000/- each with default stipulation while acquitting the respondent Nos. 2 & 3 for the offence under Sections 506 Part-II and 406 of IPC.

02. In the present appeal, it is undisputed fact that the appellant was married with the respondent No. 2/Akhilesh on 21.07.2007.

03. The case as alleged by the prosecution, in brief, is that on 06.08.2007, an FIR (Exhibit-P/1) was lodged stating that the marriage of the appellant/Deepti Beesani and respondent No. 1 /Akhilesh Daga was solemnized on 21.02.2007 as per Hindu Rites and Rituals in Bhuwaneshwar, Odisha. The parents of the appellant gave gold and silver jewellery, house hold articles and cash of Rs.17,00,000/- to the respondent Nos. 2 & 3 at the time of marriage and all the expenses of the marriage were borne by the parents of the appellant. Further, upon reaching the matrimonial house, the appellant came to know that her husband / respondent No. 1 had made a false claim about his educational qualification as he had passed only XIIth Standard, whereas before marriage, it was claimed that the respondent No. 1 had done BBA from United States of America.

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Signing time: 13-Oct-26 6:08:49 PM

04. After sometime, the respondent Nos. 2 & 3 started to harass the appellant physically and mentally for having brought only Rs.17,00,000/- instead of expected dowry of Rs.25,00,000/-. For getting balance amount of dowry of Rs.8,00,000/-, the appellant was beaten and when the said demand was not fulfilled, she was kicked out of the house. Being compelled, on 06.08.2007, a complaint was lodged by the appellant against the respondent Nos. 2 & 3, whereupon an FIR was registered for the offences under Sections 498-A, 406, 506 & 34 of IPC.

05. During the investigation, statements of witnesses were recorded and on the basis of memorandum of statement of respondent No. 2 recorded under Section 27 of the Evidence Act, jewellery of the appellant was seized from the bank locker at Mumbai for which seizure memo of the articles was prepared. Arrest memo of the accused was prepared. Upon completion of investigation, a charge sheet was filed for the offences under Sections 498-A, 506, 406 & 34 of IPC and Section 4 of the Dowry Act before the learned trial Court. When the charges were read over to the respondent Nos. 2 & 3, they abjured their guilt.

06. To bring home the charges, the prosecution has examined as many as 09 witnesses viz. Deepti, who happens to be the complainant (PW-1), Alka, appellant/complainant's mother (PW-2), Rajat, appellant's brother (PW-3), Rajendra, appellant's father (PW-4), Manoj Goel, a friend of apellant's father (PW-5), Nisha Reddy, Thana In-charge, Mahila Thana (PW-6), Alka Singar, Investigating Officer (PW-7), Krishna Devi, ASI, Mahila Thana (PW-8), and Rakesh, watchman, Pune residence (PW-9). On behalf of

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Signing time: 13-Oct-26 6:08:49 PM

defence, no witness has been adduced.

07. After appreciation of the evidence came on record, learned trial Court has pronounced the judgment dated 03.04.2017 and convicted the respondents for the offences under Sections 498-A of IPC & 4 of Dowry Act and sentenced to undergo RI for 01 year alongwith fine of Rs1,000/- with default stipulation, however, learned trial Court acquitted both the respondents for the offences under Sections 506 Part-II and 406 of IPC.

08. Being aggrieved by the aforesaid judgment, the respondent Nos. 2 & 3 preferred a Criminal Appeal No. 286/2017 challenging the order of conviction. The State also filed a Criminal Appeal No. 369/2017 seeking enhancement of sentence and also a Criminal Appeal No. 370/2017 against the order of acquittal. All the appeals were decided analogously by common impugned judgment dated 02.03.2019, whereby the learned Sessions Judge has acquitted the respondents for the offences mentioned in para 1. Hence, present appeal before this Court.

09. Shri Vivek Singh, learned Senior Advocate for the appellant has argued that the learned Appellate Court has committed grave error in passing the impugned judgment. He has also argued that the impugned judgment is based on an erroneous legal premise by treating the absence of a fixed or pre-marriage agreement for demand of dowry as destructive of a subsequent demand made after marriage. It is contended that the statutory concept of dowry and the offence of demand dowry do not require proof of a prior written or settled bargain and the said fact was supported by PW-2 to PW-5.

10. It is further contended that the appellate Court has ignored the

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Signing time: 13-Oct-26 6:08:49 PM

fact that the earlier amount of Rs.17 lacs was described in different parts of the evidence as cash in "FIR", as "property" in examination-in-chief of PW-1. It is submitted that the exact accounting or composition of the earlier amount is not the statutory ingredient either of Section 498-A of IPC or Section 4 of Dowry Act.

11. It is further submitted that the learned Appellate Court has erred in treating the evidence concerning dated 18.04.2007 as unsupported because Alka Beesani (PW-2) did not depose the story step-by-step. As per statement of appellant, Rajat (PW-3), Rajendra (PW-4), Manoj (PW-5) fully supported the incident occurred at Indore. On many occasions, the matter of demand of dowry came to the knowledge of family of the appellant. A person having lots of money, does not mean that he cannot ask for or claim more money as greed has no limits, no matter how rich someone is. Further attention of this Court is drawn towards Explanation (b) to Section 498-A, according to which 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. On such premises, it is prayed that the present appeal be allowed and impugned judgment dated 02.03.2019 be set aside.

12. Shri Avinash Sirpurkar, learned Senior Advocate for the respondent Nos. 2 & 3 has opposed the prayer and supported the impugned judgment. He has submitted that the prosecution has failed to establish any prior or settled agreement done between the parties before the marriage. The

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Signing time: 13-Oct-26 6:08:49 PM

dowry demand of Rs.8,00,000/- is doubtful as amount of Rs. 17,00.000/- was not consistent as to whether the amount represented in cash, by way of property or other articles. It is submitted that the statements of the prosecution witnesses suffer from material discrepancies. The incident occurred on 18.04.2007 was not corroborated properly. The learned Appellate Court has rightly examined the evidence available on record. In these grounds, the present appeal deserves to be dismissed.

13. Learned Govt. Advocate for the respondent No. 1/State also supported the judgment dated 03.04.2017 passed by the trial Court.

14. Having learned counsel for the parties at length, I have perused the entire record available.

15. The following questions arise before this Court for determination :-

(i) Whether the Appellate Court has passed the impugned judgment in correct legal standard while interfering with the conviction recorded by the trial Court ?

(ii) Whether the evidences adduced by the prosecution are sufficient to establish the demand of dowry, subjecting the appellant harassment so as to attract Section 498A of IPC and Section 4 of the Dowry prohibition Act ?

16. The appellate Court is entitled to re-appreciate the entire evidence, but interference is warranted where the judgment under challenge suffers from a manifest error of law or fact, misreading or non-consideration of material evidence. If such infirmity is found, reappraisal of the evidence is not only permissible but necessary to prevent an erroneous acquittal from becoming final merely by reason of the form of the order.

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Signing time: 13-Oct-26 6:08:49 PM

17. Deepti / complainant (PW-1) has deposed in para 2 of her statement that after marriage, she was told that in-laws had expected Rs.25 lacs and she came with only Rs.17 lacs, then what will be the solution about the remaining amount of Rs.8,00,000/-. After asking repeatedly, she said that lots of money has been spent by her father in marriage, therefore, they had to wait for some time. But the respondent Nos. 2 & 3 started to harass her for the same issue by taunting that she belongs to poor family. She further deposed that in the month of April, 2007, she told everything to her mother and also told her to make the respondents live peacefully, owing to which, the parents of Deepti (PW-1) also said the respondent Nos. 2 & 3 that they would arrange the money, hence, wait for sometime.

18. She also deposed that after 6-7 days from the said incident, the appellant was sent to her parental home to bring balance amount of dowry i.e. Rs.8,00,000/- stating that in-laws would not allow her to live without paying the said amount. Thereafter, on 18.04.2007, respondents came to the parental house of complainant situated at Indore and demanded money of Rs.8 lacs. After convincing them, the complainant went with them to Mumbai. During the time spent there, respondent No. 2 used to quarrel with appellant and she was again sent back to Indore. On 16.06.2007, respondent came to Indore and demanded money, but this time also, on assurance, appellant went to Mumbai with respondents.

19. Furthermore, the appellant in para 4 of her statement deposed that she and respondent No.2 shifted to Pune and respondent No. 2 said her that they would not shift to Mumbai until the rest amount is paid. On

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Signing time: 13-Oct-26 6:08:49 PM

25.07.2007, when the appellant was for four months pregnant, the respondent No. 2 quarrelled with her, assaulted her and she was kicked out of the house at about 02:00 am in the night. She also narrated that when she was thrown out from the house at night, she waited till 7 o'clock in the morning and when no one came to her, she called her friend Heena Chakravarti. She told everything to her. At the same time, she was suffering from stomach pain and bleeding as well. On which, her friend took her to Dr. Deoskar and Dr. Deoskar said, without permission of any elder member of the family, he could not give any treatment. Thereafter, she resided with her friend and on 27.07.2007, her mother came to Pune and she was admitted in Rubihal Clinic, Pune, where her abortion was done. During the said period, she tried to contact with respondent No. 2, but all efforts went in vain. She also mentioned that a case under Section 7 of the Family Court was filed by her for taking stridhan.

20. In para 14 of her cross-examination, she deposed that on 15.01.2007, she got engaged with respondent No. 2 in Taj Hotel, Mumbai and all the expenses were borne by her father which was given to her father-in-law in cash. She did not have any knowledge about actual expenditure. She also stated in para 15 that, she did not know that what cost was borne by her parents in purchase of jewellery and most of the jewellery belonged to ancestor. In para 37, she narrated that the jewellery was seized by the police from the joint locker of Kuror Vaishya Bank which is in the name of appellant and respondent No. 2/Akhilesh.

21. The mother of the appellant namely Alka Beesani (PW-2) also

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Signing time: 13-Oct-26 6:08:49 PM

depicted similar version as of the appellant. Similarly, brother of the appellant namely Rajat (PW-3) also narrated the same story.

22. Father of the appellant namely Rajendra (PW-4) has also averred the same version as of the aforesaid witnesses. However, he deposed there was no pre-exising agreement or consideration regarding money, jewellary and other articles to be given. Further, at the time of marriage, there was no estrangement between the parties regarding the dowry.

23. In the same manner, Manoj (PW-5), a friend of appellant's father also stated that appellant's husband/respondent No. 2 and father-in-law/respondent No.3 were demanding an amount of Rs.8,00,000/- for which, they came to Indore on 18.04.2007, he knew because he was present at the moment and the statement of this witness remained unrebutted by the respondents in any manner.

24. On going through statements of aforesaid witnesses, an uncorroborated accusation has been established by the persons who had no connection with the relevant event. Although, the witnesses differ in the details and in the source of their knowledge, but the same allude towards the fact of demand of Rs.8,00,000/- and harassment to the appellant too. A criminal prosecution is not required to multiple witnesses who reproduce an event verbatim. These statements are material facts which were established through credible evidence.

25. So far as the pre-marriage agreement in respect of dowry is concerned, learned appellate Court has relied upon the statement of Rajendra, appellant's father (PW-4) that there had no pre-existing agreement

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Signing time: 13-Oct-26 6:08:49 PM

as to the exact amount, jewellery or articles to be given, which creates two distinct factual propositions as in the absence of an amount, marriage may relevant to the defence contention that there was no dowry bargaining. It is a culture or tradition that a prior dowry contract is not a condition precedent for an offence under Section 4 of the Dowry Act.

26. To this effect, Sections 2 & 4 of the Dowry Prohibition Act, 1961 are reproduced below :-

> "**2. Definition of 'dowry'. -**
> In this Act, **"dowry"** **<u>means any property or valuable security given or agreed to be given</u>** either directly or indirectly—
> (a) by one party to a marriage to the other party to the marriage; or
> (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.
> **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."

27. It is clear from the aforesaid provisions of law that the demand made after the solemnization of marriage would be dowry. **"Dowry"** means

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Signing time: 13-Oct-26 6:08:49 PM

any property or valuable security given or agreed to be given either directly or indirectly by one party to the other side in marriage at or before or any time after the marriage in connection with the marriage of the said parties.

28. In the case at hand, it is apparent that the respondent Nos. 2 & 3 themselves stated that they had expected Rs.25 lacs, as the amount brought by the appellant is not enough i.e. Rs.17 lacs which does not require any documentary proof because the allegation itself is capable of proof by oral as well as statements recorded of the witnesses. There is no rule that the demand of money as dowry can be proved only by producing the documentary evidence.

29. So far as the source of purchasing jewellery is concerned, the appellant (PW-1) has stated in her statements that most of the jewellery was ancestral jewellery. Her mother also used to wear jewellery and at the time of marriage, Rajendra (PW-4) took Rs.1,00,000/- from his friend Manoj (PW-5). Learned appellate Court has not considered the aspect of demand of dowry only on the basis of not repeating the exact words in exact manner by Alka Beesani (PW-2), even the said fact is well satisfactorily explained by the statements of Rajat (PW-3), Rajendra (PW-4) and Manoj (PW-5). There may be some contradictions because the occurrence was of the year 2007 and statements of the witnesses were recorded in the year 2012, but only such variation did not make the entire testimony unreliable.

30. The subsequent incident of 16.06.2007 further supports the continuity of the demand. The appellant (PW-1) deposed that the respondent No. 2/Akhilesh came to Indore and quarrelled with her as the demand was

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Signing time: 13-Oct-26 6:08:49 PM

not fulfilled. The incident having same nature was occurred on many occasions. There was an earlier demand after marriage, when visited Indore on 18.04.2007, incident on 16.06.2007 and surrounding conduct thereafter. The whole crux of above incidents or gone minutely to the statements, well establishes that the respondent Nos. 2 & 3 had demanded dowry and on failure to receive it, subjected the appellant to physical and mental harassment. A result can be drawn by appreciation of these findings which come from the evidence available. If the appellate Court was disagreed with the findings of the trial Court, it would have been noticed the demand and proceeded accordingly, but just opposite, the appellate Court proceeded by isolating the absence of a prior agreement, the discrepancy concerning description of Rs.17 lacs, the non-production of financial documents and also identical narration by PW-2. None of these reasoning, individually or cumulatively, capable to answer the direct evidence of a repeated post marriage demand. The appellate Court, therefore, did not prefer one reasonable stand over another, it adopted a reasoning process which left the center point which, itself, was proved by the evidence available.

31. The letter dated 19.06.2007 written by Rajendra (PW-4) to respondent No. 2/Akhilesh is another circumstance which the appellate Court treated adversely. The record establishes that appellant (PW-1) acknowledged her father's signature on the document and PW-4 acknowledged the letter as being in his handwriting. The appellate Court in paragraph - 24 of the judgment reasoned that if the accused had taken Deepti to Mumbai on 19.06.2007, there was no reason for the letter to have been

Signature Not Verified
Signed by: VINDESH RAIKWAR
Signing time: 13-Oct-26 6:08:49 PM

written on that date and inferred exaggeration. Neither two events occurred on the same date establish their sequence nor it establish that the letter was fabricated. Thus, the same should be considered with oral evidence and not rejected by speculation as to why it was written at that particular point of time. If the evidence does not establish the exact time at which the parties left Indore, the possibility that preceded the departure remains. More importantly, the prosecution case concerning the demand does not stand or fall with the letter. The letter is a surrounding circumstance; the demand itself is established through the testimony of appellant (PW-1) and the supporting witnesses. The appellate Court, therefore, gave the letter a significance which did not bear in the architecture of the prosecution case.

32. The cruelty also establishes from the conduct of the respondent No. 2, the same has been narrated by the appellant (PW-1), Alka (PW-2) and also the statement of watchman (PW-9), who has deposed that he saw the appellant on 25.07.2007 at about 07:00 in the morning going with her friend having 4-5 suitcases. All these things allude towards the conduct of respondent. Besides, Exhibits-D/8 & D/9, which are the medical documents were also considered in relation to the medical circumstances. There may be room for doubt regarding the precise manner in which the later episode unfolded. But the prosecution case regarding the demand made earlier at Indore, does not depend upon establishing every detail of the Pune incident.

33. Even though the trial Court itself did not treat the later incident as the sole foundation of conviction, but it assessed the evidence concerning demand, harassment and the statue separately. However, the appellate Court

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Signing time: 13-Oct-26 6:08:49 PM

used the uncertainty surrounding the incident occurred in Pune as an additional reason to doubt the earlier demand.

34. Only the aspect that the appellant left Pune with luggage is not sufficient to show the appellant's willingness. On this basis, an assumption cannot be made that she left residence voluntarily and without prior harassment. The appellant (PW-1), Alka, appellant/complainant's mother (PW-2), Rajat, appellant's brother (PW-3), Rajendra, appellant's father (PW-4) stated about matrimonial discord and the demand for money. The trial Court considered the statement of Rakesh, Watchman (PW-9) and nevertheless found that the prosecution version could not be discarded merely because she was seen leaving with suitcases. If a person packs up and leaves his/her home after a quarrel, it does not mean he/she was not already being bullied or harassed before that quarrel. Therefore, the appellate Court was required to demonstrate a contradiction of the core case, not merely identity a circumstance capable of an alternative interpretation.

35. Here, it is also pertinent to mention that respondent party filed a case against the appellant and others for the offences punishable under Sections 315, 379 & 380 of IPC, against which, appellant filed a revision before District Judge & Sessions Judge, Pune and after consideration, learned District Judge & Sessions Judge, Pune set aside the order dated 24.11.2008 passed by Judicial Magistrate First Class, Court Room No. 3, Pune.

36. So far as the economical position of the respondent Nos. 2 & 3 is concerned, the record available shows that the respondent Nos. 2 & 3 are

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Signing time: 13-Oct-26 6:08:49 PM

having a residence in Mumbai, commercial properties, investments, luxury vehicles, the circumstances of the engagement and marriage and also statements made by the appellant/Deepti in proceedings before the Family Court. The appellate Court in paragraph - 26 of the judgment observed that the respondent's family sounds well established financially, hence, demand of Rs.8,00,000/- by them is credible.

37. To determine the issue with regard to cruelty, definition provided under Section 498A is self explanatory, thus, the same is reproduced as under :-

"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."

38. In above mentioned clauses operate separately. Proof of the ingredients of Explanation (b) does not require the prosecution, additionally, to establish the ingredient of explanation (a).

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Signing time: 13-Oct-26 6:08:49 PM

39. The impugned judgment while discussing authorities on the meaning and gravity of cruelty, emphasized that the cruelty must be grave, persistent and of a kind which may drive a woman to suicide, and also in the absence of medical evidence concerning physical assault. That approach does not adequately answer the case under Explanation (b). The prosecution case was not merely that the appellant suffered ordinary matrimonial wear and tear, it was that she was repeatedly harassed for an unlawful monetary demand which was made to her and to her parents and in failure to fulfill the demand. Hence, the question, was whether the prosecution had proved harassment connected with the unlawful demand. It was not to prove that the appellant had reached the point of attempting suicide or sustaining grave luxury injury. The appellate Court observation is also that the appellant did not give any specific date for every instance of physical assault and that she did not make a separate police complaint for each incident. This is not a sound basis for rejecting the core allegation. The FIR itself was lodged after a relatively short period following the appellant's return to Indore on 31.07.2007. The trial Court considered the explanation that the family initially attempted to preserve the matrimonial relationship and found the timing of FIR not fatal. The law does not require a woman alleging matrimonial cruelty to lodge a separate complaint every time an act of harassment occurs.

40. The reliance placed by the appellate Court on the statement of Rakesh, Watchman (PW-9) mentioning that he saw the appellant leaving with luggage, this version itself is weak as it does not establish as to why she

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Signing time: 13-Oct-26 6:08:49 PM

left, what had occurred immediately before her departure or whether prior harassment took place or not ? His statement also appears to make reliable the earlier demand at Indore. The same is true of the medical documents relied upon to suggest that the bleeding followed a fall from the stairs. Even if the precise mechanism of the Pune injury is uncertain, that circumstance does not answer whether the accused had earlier demanded and harassed the appellant for non-payment.

41. The appellate Court placed reliance in the case of ***Muluwa v. State of Madhya Pradesh, AIR 1976 SC 989***, whereby it has been held that an infirm witness does not become reliable merely because other witnesses of the same kind corroborate him. The proposition, in the abstract is unexceptionable. The evidence of the prosecution witnesses must first be examined to determine whether the alleged infirmity exists and whether it relates to the core fact. The appellate Court used the principle almost as a reason to discount corroboration, without separately determining the extent to which Rajat, appellant's brother (PW-3), Rajendra, appellant's father (PW-4) & Manoj, friend of appellant's father (PW-5) supported to the occurrence at Indore.

42. So far as the minor discrepancies in the statements of witnesses in dates, wording or in any other manner is concerned, it is to be seen that as and when the facts came to the knowledge of a family members and when they depose their statements. The trial Court expressly noticed that the events in the year 2007 while the witnesses' statements were recorded in the year 2010, due to duration lapse, such variations did not destroy the core

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Signing time: 13-Oct-26 6:08:49 PM

evidence.

43. On this aspect, the Hon'ble Supreme Court in the case of ***Jayaseelan Vs. State of T.N.*** reported in ***(2009) 12 SCC 275*** has made its observation that to support the proposition that minor discrepancies which do not affect the substratum of the prosecution case should not be magnified into fatal contradictions.

44. Similarly, Hon'ble Supreme Court in the case of ***Rajesh Yadav Vs. State of U.P.*** reported in ***(2022) 12 SCC 200***, has discussed the same issue. The relevant paragraph of the judgment is worth to be mentioned here :-

> *22.On the law laid down in dealing with the testimony of a witness over an issue, we would like to place reliance on the decision of this Court in C. Muniappan v. State of T.N., (2010) 9 SCC 567:*
> *"81. It is settled legal proposition that:*
> *"6. … the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."*

45. It is also significant that the defence did not lead affirmative evidence to establish its principal alternative narrative. The defence suggested that the appellant was interested in obtaining the accused family's property, she did not want a child, no dowry had been taken and she left the matrimonial home voluntarily. Suggestions in cross-examination are not substantive of the facts suggested. They could be considered along with the

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Signed by: VINDESH RAIKWAR
Signing time: 13-Oct-26 6:08:49 PM

prosecution evidence, but in the absence of supporting defence evidence they could not make credible the prosecution testimony.

46. The expression **"demand"** is itself the material act contemplated by Section 4 of the Dowry Act. The prosecution was not required to establish that a particular amount had formally fixed as dowry before the marriage. A subsequent demand connected with the marriage can attract the provision. The trial Court expressly relied upon the authorities then placed before it, including ***State of Andhra Pradesh v. Raj Gopal*** reported in ***AIR 2004 SC 1933***, in support of the proposition that a prior dowry contract is not for a prosecution for demand of dowry.

47. The appellate Court drew an adverse inference from the non-examination of Hina, who according to the record, was connected with the later Pune incident. Non-examination of a material witness may, in an appropriate case, a circumstance affecting the prosecution case. But such non-examination depends upon the role assigned to that witness. Where the witness is material only to a collateral episode and the conviction is otherwise supported by evidence of an earlier demand, the omission cannot used to erase the later evidence. The appellate Court converted these neutral or circumstances into affirmative reasons for acquittal without establishing the necessary logical.

48. It is seen that the FIR was lodged on 06.08.2007, after the appellant returned to Indore on 31.07.2007. The trial Court considered the submission of delay and found the explanation relating to efforts to preserve the matrimonial relationship plausible in the circumstances. The record also

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Signing time: 13-Oct-26 6:08:49 PM

contains evidence that the appellant and her family initially attempted discussions and reconciliation. A delay of a few days after the last matrimonial incident, in a matrimonial dispute in which the parties had attempted to resolve the situation, cannot by itself discredit the prosecution case. More importantly, the FIR itself contains the central allegation concerning the expectation of Rs.25 lacs. Thus, the core allegation was not an improvement introduced for the first time in Court. The appellate Court analysis did not give sufficient weight to the fact that the essential demand narrative was present from the inception of the criminal case. The subsequent investigation also yielded a circumstance relevant to the matrimonial dispute, namely the memorandum statement of respondent No. 2 / Akhilesh with regard to the jewellery allegation kept in the Mumbai Bank locker and the subsequent seizure. Although the jewellery allegation under Section 406 of IPC was not proved to the satisfaction of the trial Court, but the investigation and recovery form the part of the overall factual background. The important point is that the trial Court did not use the recovery to mechanically infer guilt under Section 498-A of IPC, it independently examined the evidence concerning demand and harassment.

49. The appellate Court also failed to give due significance to the fact that the trial Court had the advantage of observing the witnesses and had carefully distinguished between proved and unproved allegations. The appellate Court, of course, could re-appreciate the evidence, but the more serious conclusion namely, reversal of a reasoned conviction the greater the need to demonstrate why the trial Courts assessment of the core was

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Signing time: 13-Oct-26 6:08:49 PM

unsustainable. The impugned judgment does not complete that task satisfactorily.

50. The trial Court's judgment, particularly paragraphs 34 to 48, demonstrates that it considered the competing versions, the evidence of each material witness, the defence submissions, the medical material and the authorities cited by both sides. It accepted the evidence on demand and harassment while the allegations of criminal intimidation and criminal breach of trust. That reasoning reflects a judicial evaluation of the record rather than a mechanical acceptance of the prosecution case

51. The appellate Court, in reversing that conclusion, did not identify an evidentiary defect of such magnitude as to make the trial Court's conclusion impossible or perverse.

52. In the considered view of this Court, the learned appellate Court's finding that the prosecution failed to prove the demand of dowry beyond reasonable doubt is, therefore, unsustainable. The evidence establishes a consistent post-marriage demand, reiterated and supported by the testimonies of the appellant and corroborated in material particulars by her mother, brother, father and her father's friend. The demand was linked to the alleged expectation of a higher amount at marriage and to the appellant's treatment in the matrimonial relationship.

53. At the outset, it is necessary to mention that vide order dated 05.10.2026, an application for deleting the name of respondent No. 3 - Ramkumar Daga S/o Ramnath Daga from the array of the parties was made as he died on 19.03.2024. Hence, present appeal is abated qua respondent

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Signing time: 13-Oct-26 6:08:49 PM

No. 3- Ramkumar Daga S/o Ramnath Daga. Since criminal liability is personal and does not survive the death of an accused, no conviction can be restored or recorded against respondent No. 3 - Ramkumar Daga. However, prevent adjufication of the appeal against the surviving respondent No. 2 Akhilesh Daga and is liable to be dealt with on the basis of the evidence and findings which remain legally sustainable against him.

54. In view of the aforesaid proposition, analysis and deliberation, the trial Court after appreciating the material evidence available on record, found that the accused persons had faced the proceedings since 2007 and respondent No. 3 was old while respondent No. 2 was young, considering the nature of the offence and its social impact, the trial Court convicted for the offences punishable under Section 498-A of IPC and Section 4 of the Dowry Act, and sentenced to undergo 01 year's RI each alongwith fine of Rs.1,000/- respondent Nos. 2 & 3 and default stipulations. The State had challenged the sentence as inadequate in its separate appeal, but that appeal was dismissed by the appellate Court.

55. In the instant appeal, the issue is whether the acquittal under Section 498-A IPC and Section 4 of the Dowry Act can stand, based upon the reasons relied upon by the Appellate Court, when tested upon legal touchstone. No separate basis has placed before this Court for altering the awarded sentence by the trial Court. Therefore, the sentence is restored to the extent legally applicable to the surviving accused, subject to adjustment of any period of incarceration already undergone in accordance with law and subject to any order that may have passed by a competent Court during

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Signing time: 13-Oct-26 6:08:49 PM

pendency of the proceedings.

56. In view of the aforesaid discussion, this Court is of the considered opinion that the impugned common judgment dated 02.03.2019, insofar as it allowed Criminal Appeal No.286/2017 and acquitted the accused of the offences punishable under Section 498-A of IPC and Section 4 of the Dowry Act, cannot be sustained with respect to respondent No. 2 Akhilesh Daga. The appellate Court committed material errors in considering the evidence and given wrong findings for discarding the prosecution case do not withstand scrutiny, whereas the findings of the trial Court that the accused persons/respondent No. 2 demanded dowry and subjected the appellant to physical and mental harassment in connection with unlawful demand, is supported by the evidence of appellant-Deepti (PW-1), Alka, appellant/complainant's mother (PW-2), Rajat, appellant's brother (PW-3), Rajendra, appellant's father (PW-4), Manoj Goel, a friend of appellant's father (PW-5) and the surrounding circumstances. The evidence establishes the ingredients of Section 498-A of IPC, particularly Explanation (b), and Section 4 of the Dowry Act. Thus, the impugned judgment dated 02.03.2019 passed by the XXth Additional Sessions Judge, District Indore deserves to be and is hereby set aside.

57. So far as the jewellery / ornaments seized during investigation and forming part of Ex-P/4 are concerned, vide order dated 30.11.2009 passed by this Court in M.C.C. No. 7087/2009, the following directions have been given, which requires to be mentioned :-

(i) The trial Court shall take immediate step of preparation of inventory of the ornaments seized by the police as per seizure

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Signing time: 13-Oct-26 6:08:49 PM

memo of Akhilesh, of the Kurur Vaishya Bank Prabha Devi, Mumbai in presence of the advocates appearing for both the parties and also of the Govt. Advocate. The shape of such ornaments be also taken, and kept in record of the case and in treasury.

(ii) The weight of the gold and diamonds may be ascertained through valuer. A report be received from the valuer in this regard, with his signature thereafter the signature of the counsel appearing on behalf of the parties shall also be obtained thereupon. After preparation of such investory the ornaments be sezied from the custody of police and be taken into the judicial custody and a Panchnama be also prepared in presence of all these persons with the signature of presiding officer/Judge, thereafter it be kept into the treasury as per procedure prescribed.

(iii) The parties are at liberty to apply before the competent Court for determination of their respective ownership and thereafter, they may ask for the custody on Supurdagi or release thereof on culminating criminal proceedings.

58. Regarding the said custody of the jewellery, the contentions on behalf of respondent Nos. 2 & 3, is that there appears to be contradictions in the statements of the witnesses and raised objections regarding jewellery bills relied upon by the appellant. Placing reliance upon the impugned judgment, learned Senior Counsel for the respondents further contended that there are no concrete statements of the appellant's family members and witneses to establish that the jewellery in question belongs to the appellant.

59. On this aspect, the law rendered in the case of ***Smt. Rashmi Kumar Vs. Mahesh Kumar Bhada*** reported in ***(1997) 2 SCC 397***, is relevant wherein Hon'ble Supreme Court has made observation that "stridhan" is the absolute and exclusive property of the wife. The ornaments and gifts received

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Signing time: 13-Oct-26 6:08:49 PM

by her before or at the time of marriage or thereafter, remain her exclusive property, over which the husband has no ownership or independent right. Merely because such ornaments are kept in the custody of the husband or in a joint bank locker, their ownership does not become joint. Accordingly, upon establishing the appellant's ownership, the seized jewellery is liable to be restored to her.

60. However, upon perusal of the trial Court's judgment, it is found that the trial Court had correctly appreciated the evidence available on record. The prosecution had not relied merely upon the oral assertion of the appellant, there was contemporaneous material in the form of the list of gifts and ornaments, the property seizure memo, the statement recorded under Section 27 of the Evidence Act of the respondent No. 2/Akhilesh, wherein he himself stated that jewellery /articles belongs to his wife, pursuant to which the jewellery of the appellant was recovered from the joint account of appellant and respondent No. 2's bank locker so also the jewellery invoices, the valuation certificate of the ornaments. Thus, the record carries substantial and corroborative material connecting the seized ornaments with the appellant. The learned Trial Court, upon appreciation of this material, rightly directed that the seized ornaments be treated as the appellant's property/stridhan and be handed over to her within time frame. The appellate Court, in interfering with the said findings, failed to give due weight to the above documentary and circumstantial evidence and particularly to the circumstance that the recovery itself was pursuant to the disclosure made by the accused in respect of appellant's jewellery. The findings of the appellate

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Signing time: 13-Oct-26 6:08:49 PM

Court that the jewellery was not established to belong to the appellant, therefore, cannot be sustained on the material available on record. Consequently, to the extent the appellate Court interfered or modified the directions of the trial Court, saying the disposal of the seized jewellery, the said part of the appellate Court's judgment having been set aside, the corresponding direction contained in the judgment of the learned Trial Court stands revived. The jewellery /ornaments forming part of the controversy is to be released and handed over to the appellant/Deepti.

61. Accordingly, present Criminal Appeal No. 3639/2019 is partly allowed and the judgment dated 02.03.2019 passed by learned XXth Additional Sessions Judge, District Indore in Criminal Appeal No. 286/2017, Criminal Appeal No. 369/2017 and Criminal Appeal No.370/2017 is set aside to the extent mentioned above and the judgment dated 03.04.2017 passed by the Additional Chief Judicial Magistrate, District Indore in Criminal Case No.35855/2007 is hereby affirmed regarding conviction of the surviving accused/respondent No. 2 Akhilesh Daga for the offence under Section 498-A of IPC and Section 4 of the Dowry Act and sentenced RI for one year alongwith fine of Rs.1,000/- in each of the sections, with the stipulated default sentence. The findings recorded by the trial Court regarding acquittal under Sections 506 Part-II and 406 of IPC, having not been successfully proved in the present adjudication, remains untouched and in view of the death of respondent No. 3 Ramkumar Daga on 19.03.2024, present appeal is abated in respect of respondent No. 3.

62. The respondent / accused is on bail. His bail bond stands

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Signing time: 13-Oct-26 6:08:49 PM

discharged. He is directed to surrender before the trial Court within a period of seven days from the date of this order for completing the remaining part of sentence. In case, he fails to surrender, the learned trial Court shall take all steps to commit him to jail for undergoing remaining part of sentence. The judgment regarding disposal of the seized property stands confirmed.

63. A copy of this order alongwith the record of the trial Court, be sent to the learned trial Court for information and necessary compliance.

64. Pending I.A., if any, stands closed.

Certified copy, as per rules.

(ALOK AWASTHI)
JUDGE

Vindesh

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