



2026:AHC-LKO:14626-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**CRIMINAL APPEAL No. - 546 of 2012**

Omkar Misra .....Appellant(s)

Versus

State of U.P. ....Respondent(s)

Counsel for Appellant (s) : R.P. Misra, Aakash Srivastava,  
Devendra Pratap, Kaushal Kishore  
Tewari, Manish Bajpai, Naved Ali,  
Ninni Shrivastava, Pooja Agarwal,  
Smt. Nalini Jain

Counsel for Respondent(s) : Govt. Advocate

**Court No. -10**

**Reserved on 05.12.2025  
Delivered on 24.02.2026**

**A.F.R.**

**HON'BLE RAJNISH KUMAR, J.  
HON'BLE ZAFEER AHMAD, J.**

**(Per : Rajnish Kumar, J.)**

- (1) This appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as "*Cr.P.C.*") emanates from the judgment and order dated 27.03.2012 passed by learned Additional Sessions Judge, Court No.3, Sitapur, in Sessions Trial No. 649 of 2000; *State Versus Omkar Mishra & others*, arising out of Case Crime No.139 of 2000, under

Sections 498A, 302/34 of the Indian Penal Code, 1860 (here-in-after referred to as “*I.P.C.*”) and Section 3/4 of Dowry Prohibition Act, 1961, Police Station Maholi, District Sitapur, whereby the appellant, Omkar Mishra, has been convicted under Section 302/34 I.P.C. for life imprisonment and a fine of Rs.5,000/- and in default of payment of fine, to undergo additional one month’s imprisonment.

- (2) The prosecution case, in short, is that on 20.05.2000, at 12:30 p.m., complainant, Navin Kumar Shukla (P.W.1), had lodged a written report at Police Station Maholi, District Sitapur, alleging that in the year 1994, marriage of his sister (hereinafter referred to as ‘victim’) was solemnized with Omkar Mishra (appellant herein) according to Hindu rites and customs, after giving dowry as per capacity. After marriage, Omkar Mishra, his brother Lallan son of Hari Shankar, Puttan son of Hari Shankar, Sachidanand son of Hari Shankar and their father Harishankar, his wife Bitti and wife of Sachidanand have started harassing his sister for not bringing a Suzuki Motorcycle in dowry. They tortured his sister for not giving a motorcycle in dowry in such manner that out of fear of her life, his sister had to leave her matrimonial home and come to live with him. Within two years of marriage, she was compelled to leave her in laws’ house. Even after that many times, Omkar Mishra, Sachidanand and Harishankar came to his house demanding a

motorcycle. When his sister was so terrified due to the continuous harassment for dowry, then, she had to seek protection from the Court and file a dowry harassment case in the Court at Sitapur, in which the statement of his sister and other witnesses had already been recorded. Thereafter, Omkar Nath and his father Harishankar Mishra came to his house and asked him to withdraw the case and give the motorcycle but due to lack of financial capacity, they could not give motorcycle to them.

It has further been alleged that on 19.05.2000, at 08:00 in the morning, Omkar Nath, Sachidanand, Harishankar Mishra and his wife Bitti came to his house and asked him that they have come last time to his home and if by tomorrow morning, motorcycle would not be send to their home and they do not come to Court to withdraw the case, then, they will cause them to face consequences. At that time, his family and sister pleaded a lot from them, but they did not agree.

It has further been alleged that on 20.05.2000, his sister was returning from Primary School, Kusaila after teaching, sitting on her डेलिया (Tricycle loader), upon which he (complainant) and his uncle Kamlesh Kumar Shukla were also coming to home. डेलिया (Tricycle loader) was being driven by Ganeshi. When डेलिया (Tricycle loader) reached near Tara Talab (pond) at about 11:35 p.m., then, Hari Shankar and his wife Bitti, who were already sitting aside the road, suddenly

stood up and stopped the डेलिया (Tricycle loader) and Hari Shankar slapped Ganeshi, upon which he shouted and ran away. In the meantime, Omkar Nath and Sachidanand, waiving pistol in their hands, arrived and Omkar Nath fired with close range near eye of his sister, upon which he (complainant) and his uncle Kamlesh raised alarm, then, persons working in the fields, crasher and ponds, along with people coming on the road and children ran for saving. Then, Omkar while firing said that if anyone would come forward to save them, he would shoot them as well. At that moment, Sachidanand pulled down his sister from डेलिया and fired a second shot on her back and overturned डेलिया on her. Thereafter, Omkar Nath, Sachidanand and Hari Shankar started firing indiscriminately, due to which persons working in the field, passerby and school children left their belongings and ran to save their lives. Both of us (complainant and his uncle) also ran to save their lives. Thereafter, accused persons waiving pistols in air, ran towards eastern side, consequently, there was complete silence on the spot and belongings of the passerby etc. are lying at the place, therefore, and police force should go immediately, otherwise, corpse of his sister could be disappeared.

- (3) On the basis of the aforesaid written report (Ext. Ka-1), which has been scribed by Manoj Mishra as mentioned in the said report, whereas in the chik F.I.R. the name is mentioned as

Pankaj Misra, bearing Case Crime No. 139 of 2000, under Sections 498-A, 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act, 1961 was registered at police station Maholi, district Sitapur by Head Moharrir Iktidar Husain (P.W.4) and the investigation of the case was entrusted to C.O. Shishu Pal Singh (P.W.5).

- (4) The investigating officer C.O. Shishu Pal Singh (P.W.5), on getting information about the lodging of the aforesaid F.I.R., reached the place of occurrence on the date of the incident. The Investigating Officer, after keeping carbon copy of chik F.I.R. in G.D., recorded the statement of the eye-witnesses and complainant Navin Kumar Shukla (P.W.1) under Section 161 Cr.P.C., inspected the place of occurrence, prepared the site plan (Ext. Ka.5), collected the blood stained and plain soil and prepared the recovery memo (Ext. Ka. 6). S.H.O. Parmanand (P.W.6) and other police personnel reached the place of occurrence for panchanama (inquest) of the dead body of the deceased. After some time, Tehsildar Harishchandra also reached at the place of occurrence and on his direction, inquest of the dead body of the deceased was conducted, a letter was prepared for Reserve Inspector, Police Line, Sitapur seeking permission for post-mortem of the dead body of the deceased and photo lash, letter to Chief Medical Officer and challan lash were also prepared.

(5) The post-mortem of the deceased was conducted by Dr. V.R. Saxena (P.W.3) at P.A.C. Hospital, Sitpaur on 21.05.2000 at 11:00 a.m. Dr. V.R. Saxena (P.W.3) found the age of the deceased about 27 years; probable time of death about one day before the time of postmortem; the deceased was of average built and height; rigor mortis was passed in upper and was passing in lower extremities; and PM staining was present on back. He found following ante-mortem injuries on the body of the deceased :-

1. Firearm wound of entry 7.5 cm x 5 cm x brain deep on forehead and face involving left eye ball just lateral to root of nose. Margins of wound are inverted and lacerated. Blackening, charring and tattooing present around wound. Direction front to back.
2. Fire arm wound of Entry 3 cm x 3 cm x chest cavity deep on the left side chest 2.5 cm below and medial to left inferior angle of scapula. Margins inverted and lacerated. Direction left to right."

In the opinion of doctor, the cause of death was due to shock and haemorrhage as a result of ante-mortem firearm injuries. The ante-mortem injuries no.1 and 2 could have come by firearm and the death of the deceased could be possible on 20.05.2000 at 11:35 a.m.

(6) The Investigating Officer, after completion of investigation, submitted the charge-sheet on 17.08.2000 under Sections 498A, 304B I.P.C. and Section 3/4 of the Dowry Prohibition Act, 1961 against accused Omkar Mishra, Lallan, Puttan, Sachidanand, Hari Shankar, Smt. Bitti and Smt. Archana.

- (7) Learned A.C.J.M.-II, Sitapur took cognizance on the aforesaid charge-sheet and by means of order dated 03.10.2000, committed the case to the Court of Sessions, where charges against the accused persons were framed under Sections 498-A, 147, 148, 302/149 I.P.C. and Section 3/4 of Dowry Prohibition Act, 1961 on 08.07.2003. All the accused persons denied the charges and prayed for trial.
- (8) In order to prove its case, the prosecution produced complainant Naveen Kumar Shukla as P.W.-1, Ganeshi as P.W.-2, Dr. V.R. Saxena, (who conducted the post-mortem of the deceased) as P.W.-3, Constable Iktidar Husain (who prepared the chik-F.I.R. on the basis of written report) as P.W.-4, C.O. Shishupal Singh (Retd.) (Investigating Officer) as P.W.-5 and S.I. Sri Parmanand, S.H.O., Police Station Baddupur, District Barabanki, (who conducted inquest) as P.W.-6.
- (9) In order to prove its case, the prosecution also placed on record and proved written complaint given by the complainant as Ext. Ka.1, post-mortem of the deceased as Ext. Ka.2, chik F.I.R. as Ext. Ka.3, carbon copy of G.D. as Ext. Ka. 4, site plan of the place of occurrence as Ext. Ka. 5, recovery memo in regard to blood stained and plain soil as Ext. Ka. 6, charge-sheet as Ext. Ka. 7, inquest report as Ext. Ka.8, letter to Reserve Inspector as Ext. Ka. 9, sample seal as Ext. Ka.10, photo lash as Ext. Ka.11,

letter to Chief Medical Officer as Ext. Ka. 12 and Police Form No.13 as Ext. Ka.13.

- (10) The accused persons, in their defense, produced Vijay Kumar Singh as D.W.1, Satyaveer Tyagi as D.W.2, Ram Gopal Gupta as D.W.3 and Smt. Rampati as D.W.4. Accused persons have also produced four documentary evidence viz. (1) certificate issued by Parshad (corporator), Nagar Nigam Gaziabad certifying that accused Sachidanand is residing with his wife Archana on rent in House No. H.457, Mariyam Nagar, Nand Gram, Ghaziabad w.e.f. January, 1992 to June, 1998 as Ext. Kha.1; certificate issued by Ram Gopal Gupta, owner of the aforesaid house, certifying that accused Archana Mishra was residing with children in his house on rent w.e.f. July, 1998 to May, 2004 as Ext. Kha.2; certificate issued by Smt. Ramdhathi, resident of Badagaon, Maholi, district Sitapur, certifying that accused Smt. Suman Bala was residing with family in her house w.e.f. 01.01.1992 to 31.12.1994 as Ext. Kha.3; and certified copy of the statement of victim recorded under Section 200 Cr.P.C. dated 05.01.2000 in re: Case No. 2350 of 1999 : Smt. Kusum Mishra, Vs. Omkar Mishra and others, under Sections 498A, 323, 504, 506 I.P.C. and Section 3/4 of the Dowry Prohibition Act, Police Station Maholi, district Sitapur as Ext. Kha.4.

(11) After completion of the evidence of the prosecution, the statement of the accused persons was recorded under Section 313 Cr.P.C., wherein they denied the occurrence and all of them have stated that the marriage of Omkar Mishra was solemnized with victim in the year 1992. Complainant and his family members have lodged false report on account of lust of property of the victim and feeling of revenge. They also stated that brother of P.W.2-Ganeshi was driving the Jeep of complainant, therefore, at the instance of complainant, he gave false evidence.

In addition to the aforesaid, accused Omkar has filed written statement, stating therein that his marriage was solemnized with victim prior to eight years of the incident and before his marriage, victim was doing teaching job in Sakaran Primary School, which was at a distance of 80 Kms. from his in-laws' house and often she stayed there. He further stated that his one house was at Maholi. Before marriage, he was looking after the agricultural work while living separately from the family. He also stated that his wife wanted that he should live with her at Sakran, leaving the agricultural work, which he could not do, on account of which, disagreement between them persisted and his wife and her family members became annoyed with him and his family members. He further stated that after visiting in-laws house for some time, his wife lastly used to reside in Sakran. He tried to explain her, but due to instigation of his in-laws, she did not listen him. After three years of this incident, she was transferred to Primary School Kusaila and used to reside in his in-laws' house. Kusaila was not far from in her in-laws' house, therefore, on number of times, he tried to explain and also tried to get her back to his house, but on account of old rift, she did not come nor his in-laws helped him in sending back her in in-laws house. In November, 1999, he told that he would file a case for restitution under compulsion, upon which she and her family members got angry and lodged a false case against them. He also stated that he had a scooter prior to marriage. In May, 2000, unknown persons killed her wife and due to old malice and with intention to take revenge, he, his father, mother and brothers have falsely been implicated in the case.

Accused Devendra Kumar alias Lalla has stated in his statement under Section 313 Cr.P.C. that he is innocent. He lived in New Delhi along with family w.e.f. 10.06.1991 to 04.10.1995 and was working there in a firm, namely, Special Cables Pvt. Ltd. and thereafter, while working there, he along with family was staying in Unchagaon village, Ballabgarh, Haryana for quite a long time after the incident. He also stated that Sachidanand was also living in Unchagaon along with him separately

while working in Bhivadi w.e.f. June, 1998 till the date of the incident and wife of Sachidanand Archana and son Abhinav had returned to Sitapur.

Accused Surendra Nath Mishra alias Puttan has also filed a written statement, stating that before marriage, his wife Suman Bala Mishra was working on the post of B.H.W (Woman) in Primary Health Centre, Maholi and he used to reside in sub-station Semarawa (Parsehara Gram Sabha) of Primary Health Centre, Maholi with his wife and son Dipak in the house of Pradhan till 31.12.1994 and w.e.f. 04.01.1995 till after the incident, they resided in Government accommodation Housing Colony, P.H.C. (Woman). He has no concern with family of Omkar or Omkar. Being brother, he has falsely been implicated. He is innocent.

Accused Sachindanand has also filed written statement, stating therein that prior to marriage of Omkar, he was working as Tenning Engineer in Vishwakarma Industries Ltd., Mukund Nagar, Ghaziabad w.e.f. 25.06.1991. He got opportunity to work in Uttam Industries Engineering Pvt. Ltd., Rath Road, Ghaziabad in April, 1992, where he worked till 13.11.1995 and by that time, he used to reside with wife Archana and son Abhinav in Ghaziabad. In November, 1995, he switched the job and started working in Global Engineering Ltd., Rajendra Place, New Delhi but he used to reside in Ghaziabad and in June, 1997, he was transferred in Bhivadi unit of this company and w.e.f. June, 1998 till the incident, he alone resided with his brother Bhailal alias Devendra at Unchagaon, Ballabgarh, Haryana. His wife Archana and son Abhinav resided in Ghaizabad till the end of academic session and thereafter his wife came back to Sitapur along with son Abhinav and while living therein, admitted his son in Secret Heart. On getting information about the incident, he reached Maholi on 21.05.2000 at 06:00 a.m., upon which complainant got him arrested from police near tempo stand. He has no concern with Omakar and his family members prior to marriage and after the marriage.

Accused Hari Shankar has also filed written statement, stating therein that before marriage of Omkar with the victim, he was working in Secondary School, Aurangabad district panchayat, Lakhimpur. By means of the order of the Additional Secretary, Regional Office, Allahabad of Board of High School and Intermediate Education, U.P. Board dated 25.04.2000, he was appointed as Assistant Examiner for examining the answer papers of Social Science. His examiner number was 00102. He was directed to present at Examiner Centre, Rajkiya Inter College Lakhimpur on 11.05.2000 at 10:00 a.m. for examining the copy. He was doing the work of examiner w.e.f. 11.05.2000 to 22.05.2000 between 10:00 a.m. to 05:00 p.m. On 22.05.2000, at 05:00 p.m., he was relieved. He joined his District Panchayat School Higher Secondary School Aurangabad on 23.05.2000 at 07:00 p.m. Being father of Omkar, he and his wife have falsely been implicated in the case.

Accused Archana Mishra has also filed written statement, stating therein that his husband Sachidanand was working in Ghaziabad and she used to live with him there. When her husband was transferred to Bhivadi, then, on completion of academic session, he came to Sitapur along with her son Abhinav and admitted her son in Secred Heart and started living there. Her husband was working in Bhivadi and he resided there along with his brother Lallan alias Devendra in Ballabgarh, Haryana. She further stated that she is innocent.

- (12) The trial Court, after analyzing and appreciating the evidence on record, found the case of the prosecution against accused Omkar Mishra under Section 302/34 I.P.C. proved beyond reasonable doubt and convicted and sentenced him as disclosed in first paragraph of this judgment, however, acquitted other accused persons from charges framed against them, by means of the impugned judgment and order dated 27.03.2012. Hence the instant appeal has been filed against the same by Omkar Nath Mishra.
- (13) Learned A.G.A. informed that no appeal either on behalf of the State or the complainant has been filed against the order of acquittal of other accused persons by means of the impugned judgment and order dated 27.03.2012.
- (14) Heard Shri Aakash Srivastava, learned Counsel for the appellant and Shri R.S. Dwivedi, learned A.G.A. for the State.
- (15) Learned counsel for the appellant submitted that the appellant has wrongly and illegally been convicted by means of the impugned judgment, whereas no crime has been committed by him. He further submitted that the appellant has wrongly and falsely been implicated in the case on account of matrimonial dispute between him and the deceased, in regard to which, a case was also filed by the deceased and on account of the said dispute, the complainant implicated the appellant and his family members to get the monetary and service benefits, as the

deceased was in government service. He further submitted that the alleged eye witness i.e. uncle of the complainant, namely, Kamlesh has not been produced in evidence, which creates serious doubt about the prosecution story. He further submitted that the thelia, pellets and the weapon of crime have not been recovered and the learned Trial Court, even after finding that the complainant, who claims to be an eye witness is not reliable and there are contradictions in the evidence of P.W.-1 and P.W.-2 and the post-mortem also does not support the prosecution case, but relying on their evidence, convicted the appellant, which could not have been done. He also submitted that all the family members of the appellant were implicated in the case but, except the appellant, none have been convicted considering the plea of alibi as they have not been found present on the place of incident. Therefore, the prosecution story itself is false and not reliable. Thus, learned counsel for the appellant submitted that the impugned judgment and order is liable to be set aside and the appellant is liable to be acquitted.

- (16) Learned counsel for the appellant relied on the judgment and order dated **23.01.2025 passed in Criminal Appeal No.1588 of 2015; The State of Uttar Pradesh Vs. Raghuvir Singh** and judgment and order dated **23.11.2024 passed in Criminal Appeal No.477 of 2017; Yogarani Vs. State by the Inspector of Police** by the Hon'ble Supreme Court and the judgments

rendered in the case of **Ram Laxman Vs. State of Rajasthan;**  
**(2016) 12 SCC 389** and **Balaram Vs. State of Madhya Pradesh;** **(2023) SCC OnLine SC 1468.**

- (17) Learned A.G.A. vehemently opposed the submissions of learned counsel for the appellant. He submitted that the appellant has rightly and in accordance with law been convicted by the impugned judgment by the Trial Court after considering the evidence and material on record. He further submitted that the prosecution case has been proved by the eye witnesses, which is corroborated by the injuries sustained by the deceased, therefore, there cannot be any doubt about the prosecution case. He further submitted that the deceased was wife of the appellant but he has not lodged any F.I.R., therefore, his conduct also creates doubt on him. He also submitted that merely because the co-accused persons have been acquitted considering their plea of alibi, the appellant is not entitled for any benefit of the same and parity is not applicable in the claim of alibi and the plea of alibi is to be specifically pleaded and proved. He further submitted that the case laws relied by learned counsel for the appellant are not applicable on the facts and circumstances of the case. This appeal has been filed on baseless and misconceived grounds, which is liable to be dismissed. He relied on **Moniruddin Ahmed alias Lalu Dealer and Others Vs. State of West Bengal;** **(2010) 12 SCC 238.**

- (18) We have considered the submissions of learned Counsel for the parties and perused the records.
- (19) The deceased was the wife of the appellant. Their marriage was solemnized in the year 1992, which has been shown as 1994 in the F.I.R., as found by learned Trial Court upon considering the evidence and material on record. On account of matrimonial dispute, the deceased was living separately. She was in a Government Job as a teacher. Undisputedly, on account of the matrimonial dispute, a case under Section 498-A, 323, 504, 506 I.P.C. and Section 3/4 of the Dowry Prohibition Act, Police Station Maholi, district Sitapur; *Smt. Kusum Mishra, Vs. Omkar Mishra and others*, filed by the deceased was pending at the time of the incident and on account of the said dispute, the deceased was residing with her brother i.e. the complainant.
- (20) On the date of incident, while the deceased was returning from the school after it was over, the incident had happened. As per prosecution story, the school of the deceased was from 7:00 AM to 11:30 AM and after the school was over, she was returning home by the thelia, which was being driven by P.W.-2, Ganeshi. The said thelia was purchased by the deceased. It has also been alleged that the complainant and his uncle; Kamlesh were also coming by the said thelia with the deceased.
- (21) The complainant, who appeared as P.W.-1, stated that when they reached near Tara Talab, the accused Hari Shankar (father-

in-law of the deceased) and his wife Bitti, who were sitting aside the road, stopped the thelia. Hari Shanker slapped Ganeshi, on account of which, he ran away raising voice. In the meantime, Omkar and Sachidanand, waiving country made pistol in their hands, came and Omkar put the pistol near the left eye of the deceased and fired, on account of which, the complainant and his uncle Kamlesh shouted. Then the persons working in the fields, crushers and pond came on the road and the passer-by and the children ran to save them. Omkar fired and said that if anybody would come forward to save, he will kill. In the meantime, Sachidanand pulled down the deceased from thelia and made second fire on her back and subverted the thelia on her. Thereafter, Omkar, Sachidanand and Hari Shanker started making repeated fires, on account of which, the persons working in the fields, passer-by and the children of school ran to save their lives. They both also ran. Thereafter, the accused persons waiving their country made pistols in their hands ran towards east, on account of which, it was complete silence and the complainant went to lodge the F.I.R.

- (22) The Ganeshi appeared as P.W.-2. He, in his evidence, stated that he used to drive the thelia of Kusum Mishra, who was a teacher in Kusaila School, and used to take her to school and bring back daily, whereas the deceased, in her statement under Section 200 Cr.P.C. recorded in case by her i.e. Ex. Kha-4, had stated that

Nandu was driving the thelia. He further stated that on the date of incident, he had gone to school to leave Kusum Mishra and while returning, her brother, Naveen and Munna alias Kamlesh were also coming on the thelia, who met him in Kusaila where they had gone for walking and when they reached near Tara Talab at about 11:30 AM, the accused persons, Omkar, Sachidanand, Hari Shanker and Bitti came and stopped the thelia. Thereafter he stated that Hari Shanker and Bitti stopped the thelia. He also stated that Hari Shanker slapped him and thereafter Omkar made fire in the eye of Kusum by a country made pistol and, thereafter, Hari Shanker fired in the back (कोख) of the deceased. He further stated that he ran away and hid himself in the pond and came back near the dead body only when the Inspector had come. He also stated that the Omkar said to the villagers that if anyone will come near, he would kill him. In cross-examination, he admitted that Nandu is his real brother, who is driver of jeep of Naveen Kumar. He also stated that he does not know anything about any accused, except their name and killing by them. He also admitted that he was brought by the complainant for evidence and he has also engaged an advocate who is standing near him.

- (23) In view of above, there is contradiction in evidence of P.W.-1 and P.W.-2 in regard to the person, who made the second fire by the country made pistol on the deceased because the P.W.-1

stated that the second fire was made by the Sachidanand near the dead body, whereas the P.W.-2 stated that Hari Shanker made the second fire. According to P.W.-1, Hari Shanker stopped the thelia and slapped Ganeshi, on account of which he ran away, therefore, he cannot be said to be an eye witness. But Ganeshi, the P.W.-2 states that he ran away after the second fire was made by Hari Shanker and came back near the dead body only when the Inspector had come and P.W.-1, in his cross-examination, has stated that he had seen Ganeshi in evening after the incident. He also does not know about the accused persons and knows only their names and that they have killed. He was also brought by the complainant for evidence. The complainant has failed to disclose as to how he and his uncle; Kamlesh reached Kusaila and were coming on thelia. Therefore, presence of P.W.-2 at the place of occurrence is doubtful. It appears that he has been tutored to show him an eye witness and gave evidence accordingly as he is brother of driver of the complainant.

- (24) P.W.-1, complainant stated that his sister; the deceased was married to Omkar Mishra, the appellant about 7 to 8 years back. He had given the dowry as per his capacity in the marriage but the appellant and his family members were not happy with the same. They started making demand of Suzuki motorcycle immediately after marriage but he could not give the

motorcycle on account of the financial condition, therefore, the appellant and his family members used to harass his sister, therefore, with the fear of murder, his sister left her in-laws' house and started living in his house. It has also been stated by him that even thereafter the appellant and his family members came to his house for demanding Suzuki motorcycle, on account of which his sister was so fearful that she filed a case of harassment, on account of dowry, in the court, which is pending.

- (25) A statement of the deceased i.e. wife of the appellant was recorded under Section 200 Cr.P.C. before the learned Trial Court and the same has been placed on record by the defense as Ex. Kha-4. Perusal of the said statement indicates that the deceased has not stated in her statement, which was recorded on 05.01.2000, that there was any demand of dowry of Suzuki motorcycle. It belies the allegations of the complainant that there was any demand of dowry of Suzuki motorcycle. Even otherwise, the appellant and the co-accused have stated that the appellant had a scooter at the time of incident and since prior to that, therefore, there was neither any requirement nor any question arises for demand of motorcycle. Thus, the motive of the incident shown by the complainant also is not proved. However, in the case of ocular evidence account, the motive is not of much importance. The learned Trial Court also was of the

view that in the case of ocular evidence, the motive loses its effect and will not have any effect on the prosecution case because the demand of dowry could only have a motive for the incident. However, the Trial Court, on the basis of documentary and oral evidence, found that the appellant had scooter.

(26) The P.W.-1, complainant, in his statement, has also stated that his parents were alive but now they have died. He further stated that the deceased was his eldest sister and she was B.A./B.T.C. and teacher in a Government School since prior to her marriage. He further stated that there is a brother about 10 years younger to the said sister and then a sister, who was married about 2.5 to 3 years prior to the incident. He also stated that the marriage of the deceased was got solemnized by his parents, but now they have died. Thus, learned Trial Court recorded a finding that the claim of the complainant that he had married his sister as per his capacity and gave the dowry, is not sustainable because the marriage of the deceased was solemnized by their parents.

(27) P.W.-2, Ganeshi stated in his cross-examination that the parents of the complainant, Naveen Kumar are alive and residing with him and he had seen them yesterday i.e. a day prior to the date on which his evidence was recorded, which was recorded after P.W.-1. He further stated that they are capable of movement and talking. Thus, it is apparent that the complainant was speaking lie that his parents have died. A copy of his family register was

also placed on record by the defense in proof thereof. Considering it, the learned Trial Court also recorded a finding that it is apparent from its perusal that the parents of the complainant are alive and this fact has deliberately been concealed by him. Thus, upon consideration of evidence of P.W.-1 and P.W.-2 and the material on record, the learned Trial Court recorded a finding that the demand of dowry and harassment, on account thereof, by the appellant and his family members, as alleged by the complainant, is not true. However, it is apparent from the statement of P.W.-1 that the deceased has been murdered and the question arises as to who killed her which would be decided after examining the evidence of other witnesses. Thereafter, the learned Trial Court proceeded to consider the statement of P.W.-2, Ganeshi, which we have dealt above and found that there is contradiction in the evidence of P.W.-1 and P.W.-2 with regard to the assault made by the accused persons and the two gun shot fires made because, according to P.W.-1, it was by Sachidanand, whereas the P.W.-2, Ganeshi has stated that second fire was made by Hari Shanker.

- (28) The P.W.-1 has also stated that after second fire made by the Sachidanand, he subverted the thelia on the deceased and, thereafter, they left the place. The complainant has stated in his evidence that he has neither removed thelia from the dead body of the deceased nor tried to provide any medical assistance to

her on the ground that as per him she was dead. It has also been stated by the P.W.-1 that his uncle Kamlesh never returned at the place of incident. He has also not been produced in evidence.

- (29) Upon consideration of evidence of both the witnesses, it is apparent that there is contradiction in the evidence and conduct of the witnesses is also not natural. Non production of the parents of the deceased, in evidence to prove the demand of dowry and harassment of the deceased on account thereof, creates serious doubt on the prosecution story coupled with the fact that contradictions for demand of Suzuki motorcycle in the evidence of P.W.-1, which is not in the statement of the deceased before the learned Trial Court in other case by the deceased, a certified copy of which has been placed on record as Ex. Kha-4, which is considerable and has been considered by the learned Trial Court also.
- (30) P.W.-1 has admitted in cross-examination that he had not seen as to which side, Ganeshi had gone and he had also not seen the thelia after the incident and blood on it. The non recovery of thelia from the place of incident and no crusher near the place of incident as admitted by the Investigating Officer also raises serious doubt on the prosecution story and testimony of the eye witnesses.

- (31) The P.W.-3, Dr. V. R. Saxena has proved the post-mortem conducted by him and the injuries suffered by the deceased. The aforesaid two injuries were found and there are contradiction in the manner of assault, which is apparent from the ocular evidence of eye witnesses and the evidence given by the doctor. According to P.W.-1, the thelia was subverted on the deceased after second fire but no injuries on account of it has been found. However, the learned Trial Court recorded a finding that these minor contradictions would not have any adverse effect on the prosecution case. But it creates doubt on prosecution story.
- (32) It has also been mentioned in the FIR that a day prior to the date of incident i.e. 19.05.2000 at about 08:00 AM, the appellant and his family members had come for demand of dowry and stated that they have come for the last time for it and in case it is not fulfilled by tomorrow and the case is not withdrawn from the court, then they would have to face consequences, whereas it has not been stated by the complainant in his evidence before the learned Trial Court. Even otherwise it appears to be unobvious for the reason that the school of the deceased was w.e.f. 7:00 AM to 11:30 A.M., therefore, at that time she would not be at home. Even otherwise this Court failed to comprehend that the accused persons of a dowry case would make demand of dowry and for the said purpose, they would come to home of the complainant.

The learned Trial Court, after considering the evidence and material on record and the proof of scooter with the appellant, recorded a finding that the case of the prosecution for demand of dowry and harassment of the deceased, on account thereof, has not been proved. This Court is in agreement with the finding recorded by the learned Trial Court.

- (33) The Hon'ble Supreme Court, in the case of **Ram Laxman Vs. State of Rajasthan (Supra)**, has held that no doubt, it is an established principle of criminal law in India that only on account of detecting some falsehood in the statement of a witness, who is otherwise consistent and reliable, his entire testimony should not be discarded. It is equally settled law that if a witness is found un-dependable and un-reliable his evidence can not be split to grant benefit to some co-accused while maintaining conviction of another when in all respects he stands on same footing and deserves parity.
- (34) In view of above, there is serious doubt on the prosecution story and P.W.-1 and P.W.-2 are not reliable as there are contradictions in their testimony and the case of demand of Suzuki motor cycle is not tenable. All other accused persons, except the appellant, have not been found present at the place of incident on the basis of evidence and material on record. It is seen that in the cases of matrimonial dispute, the whole family is implicated and it is a classical case in this regard and in this

case neither the demand of dowry could be proved nor the involvement of the accused persons.

- (35) The Hon'ble Supreme Court, in the case of **Yogarani Vs. State by the Inspector of Police (Supra)**, has held that Court Cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. The relevant paragraph 10 is extracted here-in-below:-

*"10. The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of Javed Shaukat Ali Qureshi v State of Gujarat reported in 2023 INSC 829, this court has held that:*

*"15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination."*

*In the case on hand, allegations against the appellant being the same as made against Accused No.3 & 4, the Courts below could not have convicted the Appellant while acquitting the other two.*

- (36) The Hon'ble Supreme Court, in the case of **Balaram Vs. State of Madhya Pradesh (Supra)**, has held that it is well settled that there are three types of witnesses, which are (i) whole reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. It is further held that if the witness is wholly reliable, there is no difficulty inasmuch as relying on even the solitary testimony of such a witness conviction could

be based, again, there is no difficulty in the case of wholly unreliable witness in as much as his/her testimony is to be totally discarded. It is only in the case of the third category of witnesses, which is partly reliable and partly unreliable, that the Court faces the difficulty and the Court is required to separate the chaff from the grain to find out the true genesis of the incident. The relevant paragraphs 11 and 12 are extracted here-in-below:-

*"11. It is well settled, as laid down in a locus classicus case of Vedivelu Thevar v. State of Madras<sup>1</sup>, there are three types of witnesses, which are*

*(i) wholly reliable,*

*(ii) wholly unreliable, and*

*(iii) neither wholly reliable nor wholly unreliable.*

*12. The law laid down in Vedivelu Thevar (supra) is consistently followed by this Court in a catena of judgments. It can thus be seen that, there are three types of witnesses. If the witness is wholly reliable, there is no difficulty inasmuch as relying on even the solitary testimony of such a witness conviction could be based. Again, there is no difficulty in the case of wholly unreliable witnesses inasmuch as his/her testimony is to be totally discarded. It is only in the case of the third category of witnesses which is partly reliable and partly unreliable that the Court faces the difficulty. The Court is required to separate the chaff from the grain to find out the true genesis of the incident."*

- (37) The learned Trial Court found that the charge of murder against the Hari Shankar is not proved as he was a teacher in the government school and he was checking copies at a distant place from 10:00 AM till 05:00 PM w.e.f. 11.05.2000 to 22.05.2000. The charge against the accused, Sachidanand has also not been found proved as it has been proved by the

evidence and material placed on record that he was living separately since prior to the marriage of the deceased, Kusum and he was also not present at the place of incident on the date and time of the incident. The learned Trial Court also found that on account of the contradictions in the evidence of P.W.-1 and P.W.-2, the involvement of these accused is not found. The Charges on Devendra Kumar Mishra @ Lallan and Surendra Nath Mishra alias Puttan have also not been found proved as they were living separately at different places, therefore, they were not present at the place of occurrence. The charge on the accused Smt. Archana Mishra is not found proved as she was found to be living with her husband Sachidanand and separately from the deceased. The charge of demand of dowry and harassment has also not been found proved against them.

- (38) A plea has also been taken by the defense that since the deceased was in a government job and on account of her death, the complainant, who is her brother, could have been benefited not only financially but could also have got the job in dying-in-harness, therefore, the appellant and his family members have been implicated in the case. Though it could not be proved but the evidence and material on records show serious doubt on the prosecution case.
- (39) Perusal of the written report, on the basis of which F.I.R. has been lodged and chik F.I.R. was prepared, indicates that the

same has been written by the same person, who has signed it i.e. the complainant Naveen Kumar but the signatures of the writer are of Manoj Mishra, which is in different handwriting and pen. The chik F.I.R. also discloses that the F.I.R. has been scribed by the Pankaj Mishra, which creates doubt and even the Manoj Mishra and Pankaj Mishra, the scribe of the F.I.R. have not been produced in the evidence, whereas the P.W.-1, complainant has stated in his evidence that the F.I.R. was scribed by the Manoj Mishra. Thus, it appears that the written complaint has been prepared by the complainant himself and got the signatures of Manoj Mishra subsequently.

- (40) The Hon'ble Supreme Court, in the case of **The State of Uttar Pradesh Vs. Raghuvir Singh (Supra)**, held that a trial Judge owes a responsibility to weigh the probability of the prosecution evidence, which he has to do for arriving at the decision whether the prosecution allegations have been proved by the standard laid down in Section 3 of the Evidence Act and for the said purpose he has to consider all the probabilities. The relevant paragraphs 40 and 41 are extracted here-in-below:-

*"40. The trial Judge owes a responsibility to weigh the probability of the prosecution evidence, which he has to do for arriving at the decision whether the prosecution allegations have been proved by the standard laid down in Section 3 of the Evidence Act. In so weighing the probability of the prosecution allegations, of necessity, other probabilities also appearing from the evidence brought before the Court have to be considered for comparative assessment which of the probabilities should be accepted as a fact proved. If, from the evidence, any probability consistent with the innocence of the accused is equally strong as the probability*

*pointing to his guilt, then on the strength of the presumption of innocence in favour of the accused, it could be said that the prosecution has failed to prove its allegations. Even if the probability consistent with innocence is not equally strong with other probability of his guilt, yet the probability of innocence is such as would cast a doubt, then it may be a case of reasonable doubt, the benefit of which must go to the accused. That being so, it is incumbent upon the trial Judge to consider all the probabilities that appear from the evidence before him and he cannot afford to be credulous and omit to consider reasonable probabilities.*

*41. In the aforesaid context, we may quote with profit the observations of the Supreme Court in the case of Lal Mandi v. State of West Bengal, reported in (1995) Criminal Law Journal, 2659, as contained in paragraph 5 of the decision.*

*“5. To say the least, the approach of the High Court is totally fallacious. In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. It is not correct to suggest that the “Appellate Court cannot legally interfere with” the order of conviction where the trial Court has found the evidence as reliable and that it cannot substitute the findings of the Sessions Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. The observation made in Tota Singh's case, which was an appeal against acquittal, have been misunderstood and mechanically applied. Though, the powers of an appellate Court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and separate. The presumption of innocence of an accused which gets strengthened on his acquittal is not available on his conviction. An appellate Court may give every reasonable weight to the conclusions arrived at by the trial Court but it must be remembered that an appellate Court is duty bound, in the same way as the trial Court, to test the evidence extrinsically as well as*

*intrinsically and to consider as thoroughly as the trial Court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An Appellate Court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence."*

(41) In view of the aforesaid discussion and upon considering the overall facts and circumstances of the case, the prosecution story and the involvement of the appellant in the murder of the deceased, cannot be said to have been proved beyond reasonable doubt. Thus, this Court is of the view that the appellant is entitled for benefit of doubt.

(42) The Hon'ble Supreme Court, in the case of **Moniruddin Ahmed alias Lalu Dealer and Others Vs. State of West Bengal (Supra)**, has held that it is basic law that the prosecution is to prove that the accused was present at the scene and had participated in the crime and once the prosecution succeeds in discharging its burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with certainty so as to exclude the possibility of his presence at the place of occurrence. The relevant paragraph 15 is extracted here-in-below:-

*"15. It is basic law that the prosecution is to prove that the accused was present at the scene and had participated in the crime. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. However, once the*

*prosecution succeeds in discharging its burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with certainty so as to exclude the possibility of his presence at the place of occurrence. It is also settled that when the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. In the case on hand, we have already noted the absolute evidence indicating the presence of Lalu Dealer at the scene of occurrence. He was not only at the spot but also caused the death of Abdul Hasib by a fatal blow with spear. As rightly observed by the High Court, the stand taken by the defence witnesses is unacceptable."*

- (43) Adverting to the facts of the present case, as discussed above, there is material contradiction in the prosecution case, as set up in the F.I.R., and the prosecution witnesses and among themselves and the material on record. The case set up by the prosecution has also not been completely proved by the prosecution witnesses. There is material contradiction in the ocular evidence account of the prosecution witnesses i.e. P.W.-1 and P.W.-2, in which there is contradiction in the manner of assault and the gun shot fires and the presence of the persons, who fired, considering which as well as the evidence adduced by the defense and the material placed on record, the accused persons have been acquitted except the appellant. Thus, there is serious cloud on prosecution story because all the accused, except the appellant, have been acquitted considering the plea of alibi, which has been proved. It is true that parity cannot be claimed in the plea of alibi and it is to be specifically pleaded

and proved but certainly it raises serious doubt about the prosecution case.

(44) The prosecution has also failed to produce the best witnesses to prove the demand of dowry and harassment on account thereof and death of deceased, therefore, it appears that the plea was taken by P.W.-1 that the parents of the deceased and the complainant are not alive, whereas according to evidence of P.W.-2, they were alive. The testimony of such a person, who only to get his brother-in-law convicted by taking a plea of death of his parents, creates serious doubts about his testimony and it appears that they and the Kamlesh, the eye witness have been withheld so that the correct thing or picture may not come before the Court. This Court is of the view that evidence of such a witness could not be accepted, unless it is corroborated by the other evidence and material on record because if a person can state in his evidence on oath that his parents are not alive then he can do anything.

(45) This Court also cannot lose sight of the fact that on the basis of same prosecution evidence, all the accused, except the appellant, have been acquitted on one or other ground, as their presence has not been found at the place of incident and the fact that an eye witness i.e. uncle of the complainant, Kamlesh has not been produced in evidence and, admittedly, he had not returned to the place of incident after the incident, it creates

serious doubt on prosecution story. Thus, this Court is of the view that the prosecution has failed to prove its case beyond reasonable doubt but the learned Trial Court even after finding contradictions in ocular evidence account and falsehood in evidence of complainant convicted the appellant, discarding it on probabilities and assumption.

(46) The appeal is, accordingly, **allowed**. The impugned judgment and order dated 27.03.2012, convicting and sentencing the appellant, is hereby set aside. The appellant is acquitted. The appellant is in jail. He shall be released forthwith, if he is not required in any other case.

(47) Let a copy of this judgment as well as Trial Court's record be sent to the Court concerned forthwith and in any case within a week from today for information and compliance.

**(Zafeer Ahmad,J.)**

**(Rajnish Kumar,J.)**

**Order Date :- 24.02.2026**  
Saurabh/-