



2026:AHC-LKO:27420

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 392 of 1991

Vijai Pal and others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s) : U.P. Singh, Ajai Kr. Singh, Ajai Kumar
Tripathi, Anil Tripathi, Raghvendra Kr.
Singh, Vijay Kumar Tripathi
Counsel for Respondent(s) : Govt. Advocate

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HON'BLE BRIJ RAJ SINGH, J.

1. The present appeal under Section 374(2) Cr.P.C. has been filed against the judgement and order dated 30.07.1991 passed by the IVth Additional Sessions Judge, Hardoi in Session Trial No.412 of 1990, Police Station Sandi, District Hardoi, thereby convicting and sentencing the appellants under Section 498-A IPC for three years rigorous imprisonment with a fine of Rs.5,000/- each and in default of payment of fine to further undergo additional imprisonment of one had a half year and under Section 304-B IPC for seven years rigorous imprisonment. However, all the sentences shall run concurrently.

2. Since Desh Raj, appellant no.4 and Smt. Ram Devi, appellant no.6 have died as per the office reports dated 18.04.2023 and 05.01.2021, the appeal against them is already dismissed as abated vide orders of this Court dated 07.01.2021 and 06.07.2023.

3. The prosecution case, in brief, is that on 12.08.1989 Smt. Jagdevi, wife of Subedar, submitted an application to the Superintendent of Police, Hardoi with the allegations that her daughter Bitana was married with accused Vijai Pal about two and a half years ago and during this period, she was beaten for several times in connection with dowry. She was also subjected to cruelty and harassment and she was threatened to bring she-buffalo, cycle and Masehari from her parents. It was also asked to her that if she would not bring the dowry, she would be killed. It is alleged that

about seven months ago, her daughter was carried by accused Madan Pal after performing *Vidai* and since then her daughter Bitana remained in the house of accused Vijai Pal, and during this period she was also beaten severally in connection with the demand for dowry and was subjected to cruelty and harassment. Complainant-Smt. Jagdevi also went to the house of accused for *Vidai* of her daughter, but they did not perform her *Vidai* and she was asked that *Vidai* will be not performed till the dowry is not received. The complainant went to the in-laws' place of her daughter a day before Tizian in Sawan for her *Vidai* and accused Vijai Pal asked her that if the dowry is not brought by her within two days, *Vidai* will never be performed and at that time Lala Ram, Dharm Jit Singh, Hari Singh and Shiv Kumar, residents of Village Samjalpur, P.S. Sandi and so many others were present. On 08.08.1989 at 4 A.M., the complainant came to know that her daughter has died. On suspecting that a week before her daughter was quite well, then how she died, the complainant went to the Police Station Sandi and submitted an application for lodging the FIR, but the same has not been lodged. It is alleged that at the time of post-mortem, thumb impression of her husband was taken on a blank paper without giving him any information. It is further alleged that in the night of occurrence, her daughter shouted loudly, on which Lala Ram came there and saw in the light of Torch that accused Vijai Pal and Madan Pal were throttling the neck of Bitana with Lathi and wife of Chet Ram gagged her mouth and accused Jagannath, Dash Raj and Jagat Ram were caught hold her. On being challenged by Lala Ram, body of Bitana was carried in side the *Kothri* by the accused by pulling it. When the complainant reached to the spot, the entire story told to her by Lala Ram.

4. On this typed report (Ext.Ka.1) of the complainant, Superintendent of Police, Hardoi Passed an order (Ext.Ka-5) for registration of the case and accordingly F.I.R. (Ext.Ka.3) was written at Police Station Sandi, District Hardoi on 17.08.1989 and the case was registered vide General Diary Report No.7 at 8 A.M., carbon copy of which is Ext.Ka.4. After conducting inquest, post-mortem was done and report (Ext.Ka.6) was prepared accordingly. During inquest, Sari of the deceased was recovered, which is Ext.Ka.13. During investigation, the Investigating Officer visited the spot and prepared site plan, which Ext.Ka.14.

5. The case was investigated by the Investigating Officer and after

completing the investigation, charge sheets were filed under Sections 498-A and 304-B IPC and in the alternate under Section 306 IPC against the accused-appellants (Ext.Ka.15 and Ext.Ka.16). Charges were framed in the aforesaid sections. The accused pleaded not guilty and requested for trial.

6. The prosecution to prove its case, produced the following seven witnesses:-

P.W.1 Smt. Jagdevi (complainant)

P.W.2 Hari Singh (witnesses of fact)

P.W.3 Lala Ram (witnesses of fact)

P.W.4 C. Ram Bahadur Singh (scriber of FIR)

P.W.-5 Dr. S.S. Rathore

P.W.6 Sub-Inspector S.P. Pal

P.W-7 Sri Babu Ram, Investigating Officer

7. The accused were confronted under Section 313 Cr.P.C. and they denied the charges and pleaded before the court that they were falsely implicated in the case due to enmity.

8. P.W-1 Smt. Jagdevi has stated before the court that her daughter was married with accused Vijai Pal. Accused Madan Pal and Smt. Ram Devi are the brother and mother of accused Vijai Pal, whereas accused Jagannath and Deshraj and Jagat Ram are nephew and uncles of accused Vijai Pal and all the accused are residents of Village Samjalpur, P.S Sandi, District Hardoi, which is about five miles away from her village. She has further stated that marriage of her daughter took place with accused Vijai Pal three years ago and her daughter died one year and three months ago in the house of accused Vijai Pal and she was not having any child at the time of her death. She has also stated that when her daughter came back from her Sasural, she told her that her in-laws used to beat her and did not provide food to her and used to say to bring demanded articles from her parents. She also stated that before the death of her daughter she went to the Sasural of her daughter in the month of Baisakhi for her *Vidai*, then they sent her daughter with her and after a

month, accused Vijai Pal took her daughter after getting her *Vidai* from her house. After that she again went to the house of accused persons one day prior to Tija for *Vidai* of her daughter, but the accused persons did not perform her *Vidai* and said to bring demanded articles within ten days, otherwise they would kill her and would not perform her *Vidai*. Thereafter, she came back to her village. She has also stated that her daughter died a day after Tija and information regarding which was brought by Udan, resident of the same village, who informed that her daughter has died, upon which she went to the village of accused persons, where accused persons did not allow her to see the dead body of her daughter. On the same day, she went to the Police Station Sandi, but the police asked her to bring written report, on which she went to the house of her maternal uncle Babu Lal at Sandi and with the help of Ram Sanehi, brother of Babu Lal, got her report written through Munshi and was submitted at the Police Station, but the police did not take any action on that report. Thereafter, on fourth day she came to Hardoi and in Kuchehri, she narrated the incident to a Munshi, who got her report typed, which was read over to her, then she put her thumb impression on it. She proved her report as Ext.Ka.1. She also stated that she went to the residence of Superintendent of Police, Hardoi, where she handed over that report. She further stated that her husband is in not sane and she used to perform all the household works. She also stated that Sub-Inspector got thumb impression of her husband on a paper. She further stated that on getting information about the death of her daughter, she went at the house of Chet Ram, where Lala Ram and Hari Singh met her, who informed her that Vijai Pal and other inmates of his house have killed her daughter by throttling her with Lathi. She also stated that police went to the house of Chet Ram and at that time, she and her husband were present there and then she became able to see her daughter. She also stated that injury on her neck was visible.

9. P.W.-2 Hari Singh has stated that accused persons are known to him. Deceased-Bitana was the wife of Vijai Pal and her marriage was performed two and a half years before her death with Vijai Pal. Bitana was the resident of Village Baj Karehka, P.S. Bilgram and was the daughter of Subedar and she died about one year ago in the house of accused Vijai Pal in Village Sajalpur and she was killed by the accused

persons. He further stated that his house is one furlong away from the house of Chet Ram and his agricultural field is near the house of Chet Ram. A day before Tijia, when mother of Bitana came at the house of Vijai Pal for her *Vidai*, the accused persons were talking about dowry outside their house in Galiyara and at that time, he was working in his field. Vijai Pal and others were saying that till dowry is not provided to them, they would not perform *Vidai* of her daughter and when *Vidai* of Bitana was not performed, her mother went to her house. He further stated that a day after Tijia, he came to know that Bitana has been killed. He further stated that he did not go at the house of Chet Ram and on the noise of Lala Ram, he went at the roof of his house.

10. P.W.-3 Lala Ram has stated that accused persons are known to him and they are the residents of his Village. His house is adjacent to the house of accused persons in south and his father's name is Makrand. Daughter of Subedar, resident of Village Baj Karehka, was married with Vijai Pal one and a half year before her death. Her name was Bitana and she died one year and three months ago in the house of Vijai Pal. He further stated that on the date of incident he was lying on the roof of his house and court-yard of the house of accused persons is visible from his roof and at about 11 P.M. while he was sleeping, he heard the noise of Bitana and in the light of torch, he saw accused persons beating Bitana and on flashing his torch, accused immediately carried Bitana inside the Kothri.

11. In defence, accused-Vijai Pal stated before the court that proceedings under Section 107 Cr.P.C. took place between them and witnesses. Jagannath is his uncle and his wife used to remain ill due to severe pain in chest. In spite of so much treatment, she could not become well and, therefore, she committed suicide. Accused-Jagannath also stated that he gave statement against the witness Lala Ram. Accused-Desh Raj had further stated that proceedings under Section 107 Cr.P.C. took place between him and Lala Ram and Hari Singh. Mani Ram is his brother, who gave statement against the witness Hari Singh. He had further stated that there was a case under Section 324 IPC against Lala Ram, in which his farther was witness. It has been stated under Section 313 Cr.P.C. that Lala Ram and Hari Singh have become witness only for the reason that their enmity with the appellants is established on record, otherwise they had

not seen the occurrence.

12. The post-mortem of the deceased has been conducted by P.W.-5 Dr. S.S. Rathore and in the post-mortem, the following injury has been found on the body of the deceased:-

“Ligature mark of size 26 cm x 1.6. cm around the neck obliquely placed between larynx and Chin with a gap of 6 cm present on lest side of neck below and behind left ear. Mark grooved which had lathering on dissection along with glistening subcutaneous tissue with margin congested.”

13. Cause of death is asphyxia as a result of ante-mortem hanging.

14. The trial court after examining the witnesses and adducing the evidence on record, convicted the appellants as mentioned above. Hence, the present appeal has been filed.

15. Sri Ajay Kumar Singh, counsel for the appellants has submitted that as per the FIR, the incident took place on 08.08.1989 and the inquest report was prepared on 08.08.1989 itself. Father of the deceased, namely, Subedar and her uncle Nanhe Lal were present at the time of inquest. He has further submitted that even the mother of the deceased was present at the time of inquest, which fact is also admitted by her in her cross-examination. But surprisingly no FIR was ever lodged, rather an application was given to the Superintendent of Police, Hardoi on 12.09.1989 and on whose direction, the FIR was lodged on 17.08.1989 and a vague explanation has been given that the police did not lodge the report. Counsel for the appellants has further submitted that there is inordinate delay in lodging the FIR and after nine days from the date of incident, the FIR was lodged, which is an after thought and there is no plausible explanation has come forward from the side of the prosecution, therefore, the entire prosecution case is highly doubtful on this ground alone.

16. Counsel for the appellants has invited the attention of the Court towards the post-mortem report, which indicates that there is no external or internal injury found on the person of the deceased except the ligature mark. Cause of death is asphyxia due to ante-mortem hanging. He has further submitted that post-mortem report falsifies the version of the prosecution in the FIR as well as in the statement of the fact witnesses i.e.

P.W.-2 Hari Singh and P.W.-3 Lala Ram. P.W.-3 Lala Ram deposed before the court that in the light of torch, he had seen that accused Vijai Pal, Madan Pal, Desh Raj and Jagannath were assaulting the deceased-Bitana by kicks and fists. P.W.-3, Lala Ram further stated that accused had throttled the neck of the deceased with Lathi, due to which she died. However, he has changed his version before the court while he was examined by the defence side. He has further submitted that since there are material contradictions in the statements of the fact witnesses i.e. P.W.-2 Hari Singh and P.W.-3 Lala Ram and on whose persuasion, the complainant moved an application to the Superintendent of Police, HarDOI for registration of the FIR against the appellants and further the injury mentioned in the post-mortem report does not corroborate with the statements of the fact witnesses, it is clear that the appellants have been falsely implicated in the case and on this ground also the appellants cannot be convicted.

17. Counsel for the appellants has further submitted that P.W.-2 Hari Singh and P.W.-3 Lala Ram are the interested witnesses and they persuaded the complainant to lodge an FIR against the appellants on assurance that they become witnesses of the case as they wanted to settle their personal score on account of enmity between the accused and these witnesses Lala Ram and Hari Singh, which is evident from their statements. Therefore, the statements of P.W.-2 Hari Singh and P.W.-3 Lala Ram, who are interested and inimical witnesses, cannot be relied upon and on that basis, the applicants cannot be convicted in view of the settled law of the Hon'ble Supreme Court in this regard. In support of his contention, counsel for the appellants has placed reliance upon the following judgments:-

1. *Babu Vs. State of U.P.*, 2013 SCC OnLine All 13756;
2. *Ramaiah alias Rama Vs. State of Karnataka*, (2014) 9 SCC 365;
3. *Raju alias Balachandran and others Vs. State of Tamil Nadu*, (2012) 12 SCC 701;
4. *Mahesh Kumar Vs. State of Haryana*, (2019) 8 SCC 128; and
5. *Prahlad Vs. State of Madhya Pradesh*, (2024) 14 SCC 203.

18. Sri Piyush Kumar Singh, learned AGA while rebutting the arguments of learned counsel for the appellants has submitted that seven witnesses have been examined and they have proved their case. He has further submitted that prosecution case is corroborated with medical examination, therefore, no interference is called for by this Court and the appeal is liable to be dismissed.

19. Heard learned counsel for the parties and perused the record.

20. So far the argument of counsel for the appellants regarding inordinate delay in lodging the FIR is concerned, it is to be noted that as per the FIR, the incident took place on 08.08.1989 and the inquest report was prepared on 08.08.1989 itself in the presence of father and uncle of the deceased, namely, Subedar and Nanhe Lal. Even according to the cross-examination of the complainant, who is the mother of the deceased, she was also present at the time of inquest, but surprisingly no FIR was lodged immediately, rather an application was given to the Superintendent of Police, Hardoi on 12.09.1989 by the complainant and on whose direction, the FIR was lodged on 17.08.1989. Therefore, there is inordinate delay of nine days in lodging the FIR, which is an after thought and consultation with the interested witnesses and no plausible explanation has come forward from the side of the prosecution except a vague explanation that police did not lodge the report, which cast doubt on the prosecution case.

21. The law in this regard is settled by the Hon'ble Supreme Court in the case of **Ramaiah alias Rama** (supra) that it was necessary for the prosecution to at least come forward with the explanation as to why the complainant kept quiet and why she did not report the matter to the police immediately. No such explanation is coming forward in the present case. Moreover, in the instant case, the delay is seen as fatal when examined in juxtaposition with other material that has come on record and discussed above, which shakes the veracity of the prosecution case, bringing it within the four corners of doubtful prosecution story. In paragraph-25 of the aforesaid judgement, it has been held as under:-

“We may hasten to add here that many times in such type of cases, there can be reasons for keeping quiet at the given time and not reporting the matter immediately. Therefore, we are conscious of the legal position that delay per se may not render prosecution case doubtful as there may be various reasons for lodging the FIR with some delay (see Sahebrao v. State of Maharashtra [(2006) 9 SCC 794 : (2006) 3 SCC

(Cri) 408J). Thus, there is no hard-and-fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. However, what is emphasised is that if that was so, it was necessary for the prosecution to at least come forward with the explanation as to why the complainant kept quiet and why he did not report the matter to the police immediately. No such explanation is coming forward in the present case. Moreover, in the instant case, the delay is seen as fatal when examined in juxtaposition with other material that has come on record and discussed above, which shakes the veracity of the prosecution case, bringing it within the four corners of doubtful prosecution story.”

22. In the case of **Babu** (supra), this Court has observed that the incident of the said case took place on 04.04.1989 while the FIR of the case was lodged on 13.04.1989. The application to the Senior Superintendent of Police was moved by the complainant on 12.04.1989 and the FIR was lodged after nine days. The delay in lodging the FIR can be one of the factors, which carries the credibility of the prosecution. In paragraphs 28 and 29 of the aforesaid judgment, it has been held as under:-

*“28. In the instant case the occurrence is alleged to have taken place on 4.4.1989 while the FIR of this case was lodged on 13.4.1989. The application to the SSP was moved by the complainant on 12.4.1989, therefore, the FTR was lodged after a delay of 9 days, while admittedly the occurrence had come to the notice of the complainant and other family members of the deceased on the date of occurrence and they had visited the place of occurrence, participated in the inquest proceedings and also went up to the Hospital and thereafter handed over the dead body to the appellants. In this case there is a considerable delay in lodging the FIR. Hon'ble Apex Court in the case of *Jitendra Kumar v. State of Haryana*, (2012) 6 SCC 204 : (AIR 2012 SC 2488) has considered the effect of delay in FIR on the prosecution case and has held that “it is a settled principle of criminal jurisprudence that mere delay in lodging the FIR may not prove fatal in all cases but in the giving circumstance of the case, delay in lodging the FIR can be one of the factors which carried the credibility of the prosecution version. The delay in lodging the FIR cannot be a ground by itself for throwing away the entire prosecution case. The Court has to seek an explanation over the delay and check the truthfulness of the version to be forwarded. If the Court is satisfied with the explanation then the case of the prosecution cannot fail on this ground alone.”*

29. It is true that if it is so found that the FIR has been lodged after a considerable delay and no satisfactory explanation is coming forward then an inference would rightly follow that the prosecution story may involve some facts after consultation, on the contrary if it is found that there is no delay in recording the FIR the prosecution story stands immeasurably strengthened.”

23. So far the argument of counsel for the appellants that there are material contradictions in the statements of the fact witnesses is concerned, it is to be noted that in the FIR, the complainant has stated that in the night when the incident took place, her daughter was shouting loudly, on which P.W.-3 Lala Ram had seen the incident in the light of torch that accused Vijai Pal and Madan Pal were throttling the neck of the

deceased with Lathi and wife of Chet Ram had gagged her mouth. Jagannath and Desh Raj were dragging the body of the deceased inside the Kothri. However, during cross-examination, they have changed their version particularly P.W.-3 Lala Ram, who said the aforesaid fact, denied the version that he never gave such statement to the police that accused throttled the neck of the deceased with Lathi. The witnesses of fact i.e. P.W.-2, Hari Singh and P.W.-3 Lala Ram have changed their version during cross-examination only for the reason that post-mortem report does not indicate any external or internal injury on the person of the deceased, rather she died due to asphyxia as a result of ante-mortem hanging. The deceased might have committed suicide for the reason that she was suffering from severe illness. Therefore, the entire prosecution case, which is based on the statements of P.W.-2 Hari Singh and P.W.-3 Lala Ram, has been shattered because of material contradictions in their statements, who have set up a case at one point of time and change the same at a later point of time just to improve the prosecution case. It is settled law time and again that if there are material contradictions in the statements of the witnesses of fact, which is the basis of the prosecution case, then there is bleak chance of conviction of the accused on that basis.

24. One important fact to be noted here is that injury mentioned in the post-mortem report does not corroborate with the statements of the witnesses of fact as they have stated that appellants have beaten the deceased with fists and kicks and thereafter they throttled her neck with Lathi and dragged her body in the Kothri. However, in the post-mortem report, no external or internal injury was found on the body of the deceased except the ligature mark, which itself falsifies the prosecution case. The law in this regard is settled that if the medical evidence on record does not corroborate with the statements of the fact witnesses, the conviction of the appellants on that basis cannot be permissible in law.

25. So far the argument of counsel for the appellants that since P.W.-2 Hari Singh and P.W.-3 Lala Ram are the interested and inimical witnesses, their statements cannot be relied upon and on that basis, the appellants cannot be convicted, is concerned, it is to be noted that P.W.-1 Jagdevi admitted in her cross-examination that P.W.-2 Hari Singh and P.W.-3 Lala Ram told that her daughter was throttled by the accused with Lathi, due to which she died and on their statement, she had given

information to the police. Thus, it is clear that the entire prosecution case has been set up by the complainant at the behest of these two witnesses. Lala Ram and Hari Singh are interested witnesses and the enmity between the parties is established on record. More over, P.W.-2 Hari Singh in his cross-examination has admitted that Ram Kishun is belonging to his village and one criminal case under Section 107/117 Cr.P.C. is pending between him and the accused along with Ram Kishun and he was arrested in the said case. An arm was also recovered from his possession and a false case was lodged against him. Similarly, P.W.-3 Lala Ram has also deposed before the court that Shiv Kumar is his cousin brother. Ram Kishun had lodged a case under Section 324 IPC and in the said case, accused Jagannath was witness. P.W.-1 Jagdevi has specifically admitted in her cross-examination that P.W.-2 Hari Singh and P.W.-3 Lala Ram persuaded her to lodge the FIR on assurance that they would become witnesses of the case as they wanted to settle their personal score with the appellants because of enmity between them. Both independent witnesses Hari Singh and Lala Ram are interested witnesses and their enmity with the appellants is established on record particularly they themselves have deposed before the court that enmity with the accused was going on. Thus, testimony of P.W.-2 Hari Singh and P.W.-3 Lala Ram cannot be relied upon and taken into consideration while convicting the appellants.

26. In the case of *Raju alias Balachandran* (supra), Hon'ble Supreme Court has considered the issue of interested and inimical witnesses and has observed that PW-5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinised with great care and caution. In paragraphs 24, 25 and 26 of the aforesaid judgment, it has been held as under:-

“24. For the time being, we are concerned with four categories of witnesses—a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorisation of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that

is expected and required.

25. *In the present case, PW 5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinised with great care and caution.*

26. *In Dalip Singh v. State of Punjab [(1953) 2 SCC 36: AIR 1953 SC 364 : 1953 Cri LJ 1465 : 1954 SCR 145] this Court observed, without any generalisation, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused—each case has to be considered on its own facts. This is what this Court had to say: (AIR p. 366, para 26)*

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

27. In the case of ***Prahlad*** (supra), Hon’ble Supreme Court has considered the question of veracity and credibility of the statements of the interested and inimical witnesses. In paragraph 42 of the aforesaid judgment, it has been held as under:-

“42. It is also equally well settled that previous enmity is a double-edged sword. Though, it can provide a motive for the crime, it can also be a ground for false implication. Reliance in this respect, could be made on the judgment of this Court in Ramashish Rai v. Jagdish Singh [Ramashish Rai v. Jagdish Singh, (2005) 10 SCC 498 : 2005 SCC (Cri) 1611], wherein this Court has observed thus: (SCC p. 501, para 7)

“7. ... By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence.”

28. So far the ingredients of Sections 498-A and 304-B IPC in the case of appellants are concerned, it is to be noted that P.W.-1 Jagdevi in her statement has stated that at the time of Bidai, accused Vijai Pal, Jagannath and Madan Pal had demanded a she-Buffalo, bicycle and Masehri, on which she had told them that she will provide the aforesaid dowry later on. After fifteen days from the Gowna, the deceased came back to her parents house and told that she was being harassed and beaten by her in-

laws and they were demanding the dowry. However, in spite of the aforesaid allegation, no FIR or report was ever lodged either by the deceased or by her parents. Thus, it is a case where there is no pre-demand of dowry because no FIR was ever lodged before the death of the deceased. Thus, the ingredients of Section 498-A IPC are not found in the present case. So far the offence under Section 304-B IPC is concerned, it has been submitted that the prosecution case has been shifted from the version of the FIR when the prosecution witnesses were examined before the court. In the FIR, allegation is levelled that the deceased was throttled by the accused and the incident was witnessed by the witnesses Lala Ram and Hari Singh, but during cross-examination, they have denied the aforesaid version and they have said that the deceased committed suicide because of the dowry demand and torture made by the accused. It is relevant to note here that alternative charge under Section 306 IPC was also framed, but the trial court did not find the charge was proved under Section 306 IPC, rather appellants have been convicted under Sections 498-A and 304-B IPC.

29. In the case of *Mahesh Kumar* (supra), the issue of soon before death where dowry demand report is lodged has been considered by the Hon'ble Supreme Court, wherein it has been held that for the offence under Section 304-B IPC, the prosecution has to prove that harassment and cruelty were related to the demand of dowry soon before the death. In paragraphs 10, 11 and 12 of the aforesaid judgment, it has been held as under:-

“10. This Court in Satvir Singh v. State of Punjab [Satvir Singh v. State of Punjab, (2001) 8 SCC 633 : 2002 SCC (Cri) 48] examining the significance and implication of the use of the words “soon before her death” in Section 304-B, has held as under: (SCC pp. 642-43, paras 20 & 22)

“20. Prosecution, in a case of offence under Section 304-B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused “soon before her death”. The word “dowry” in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. That definition reads thus:

‘2. Definition of “dowry”.— In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents 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.'

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval which elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

11. In Hira Lal v. State (NCT of Delhi) [Hira Lal v. State (NCT of Delhi), (2003) 8 SCC 80 : 2003 SCC (Cri) 2016] , this Court held that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of death occurring otherwise than in normal circumstances. It was held as under:(SCC pp. 86-87, para 9)

"9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of 'death occurring otherwise than in normal circumstances'. The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession'. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval

should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.”

12. In Sakatar Singh v. State of Haryana [Sakatar Singh v. State of Haryana, (2004) 11 SCC 291 : 2004 SCC (Cri) Supp 58] , the Court was examining as to whether, letter written by the deceased discloses an offence under Section 304-B IPC. It was held that: (SCC p. 297, para 11)

“11. In the above background, we will now consider the evidence led by the prosecution to establish the charge levelled against the appellants. In this process, we will first examine the letter written by the deceased to her mother. Though this letter does not mention the date, there is no dispute that the same was posted on 20-5-1986 which is evident from the postal seal found on the envelope which would be a date prior to the incident leading to the death of Devinder Kaur and the children. The contents of the letter indicate what transpired during her mother's visit to her in-laws' house and does not anywhere even remotely indicate any demand made by her in-laws. It only reflects the attitude of the deceased towards her in-laws and that she entertained a feeling that her mother was not properly treated by her mother-in-law during her last visit.”

30. After going through the contents of the FIR, statements of P.W.-1, Jagdevi, P.W.-2 Hari Singh and P.W.-3 Lala Ram and their cross-examination, it is amply clear that there are material contradictions in their statements and further they have shifted the version of the FIR only for the reason that in the report of the post-mortem, no mark of injury external or internal was found on the person of the deceased, rather the deceased committed suicide by hanging herself due to severe illness.

31. Considering the over all facts and circumstances of the case and the evidence on record, it transpires that the prosecution has miserably failed to prove the case by leading cogent and credible evidence. The trial court has failed to appreciate the evidence on record in the correct perspective. Therefore, conviction of the appellants is not sustained in law and it amounts to abuse of process of law.

32. Accordingly, the appeal is **allowed** and the impugned judgement and order dated 30.07.1991 passed by the IVth Additional Sessions Judge, Hardoi in Session Trial No.412 of 1990, Police Station Sandi, District Hardoi is hereby quashed. The appellants no.1, 2, 3 and 5 are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender unless required in any other case. However, appellants are directed to comply the provisions of Section 437A Cr.P.C.

33. Let lower court record be sent back forthwith along with a copy of this judgement and order for compliance.

(Brij Raj Singh,J.)

April 21, 2026

Rao/-