A.F.R.

2026:AHC:139780-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2062 of 1989

Chandra Bhan and another

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s) : A.C. Chaturvedi
Counsel for Respondent(s) : D.G.A.

RESERVED

In Chamber

HON'BLE SALIL KUMAR RAI, J.
HON'BLE DR. AJAY KUMAR-II, J.

(Dictated by Hon. Dr. Ajay Kumar-II, J.)

1. Heard Sri Harish Chandra Shukla, advocate assisted by Sri Adesh Pal, learned counsel for the appellants and Sri Vikas Goswami, learned AGA for the State.

2. Challenge in this criminal appeal is to the judgment dated 04.10.1989 passed by Ist Additional Sessions Judge, Etawah in Sessions Trial No. 190 of 1988 (State Vs. Chandra Bhan) connected with Session Trial No. 256 of 1988 (State vs. Jairam) arising out of Case Crime No. 101 of 1988, under Sections 302 IPC and Section 3/4 of the Dowry Prohibition Act, Police Station- Kotwali, District Etawah, whereby learned trial Court has convicted the accused- appellants Jairam and Chandra Bhan for the offence under Sections 304-B, 498-A IPC and sentenced each to undergo rigorous imprisonment for life under Section 304-B IPC and three years rigorous imprisonment under Section 498-A IPC. All the sentences were directed to run concurrently.

3. The present appeal has been filed by accused- convicts Chandra Bhan and Jairam. Accused Chandra Bhan and Jairam were separately tried in Sessions Trial No. 190 of 1988 and Sessions Trial No. 256 of 1988, and both were convicted by a common judgment dated 04.10.1989. During pendency of this criminal appeal, appellant no. 2 Jairam died and this appeal already stands abated against the appellant no. 2 Jairam vide this Court's order dated 16.10.2025. Now this appeal is being heard and disposed of for surviving appellant no. 1 namely Chandra Bhan.

4. Brief facts of the case are that first informant Sri Mahesh Chandra, (father of the deceased Munni Devi) had got lodged FIR on 01.03.1988 at 5:45 am against the appellant- accused Chandra Bhan and three others on the ground that the marriage of his daughter Munni Devi was performed with the accused Chandra Bhan son of Badri Prasad resident of village Sakuva, Etawah about 8-9 months ago. He could not give Scooter in the dowry at the time of marriage of his daughter, hence the accused Chandra Bhan and his family members used to harass his daughter. Chandra Bhan visited their residence in October, 1987 with his daughter, then his daughter told him that her in-laws used to physically torture her for not giving Scooter and also used to state that either a Scooter be given or Rs. 10,000/- cash be given else she will face dire consequences. On 29.02.1988, he has received information that his daughter Munni Devi was burnt, thus, he came to Etawah at Mohalla Madhaiyan Khayaliram, Etawah city and it came to his knowledge that his daughter was burnt to death. Sri Shiv Singh, Din Dayal and other persons of the said locality informed him that his daughter has died in Sadar Hospital due to said reason. His daughter was burnt to death by the accused- appellants including the wife of Sri Prabhu Dayal and Badri Prasad, who were residing at the time of the incident in a rented house in Mohalla Khayaliram due to non fulfillment of demand of dowry.

5. In view of above, Sri Mahesh Chandra, first informant has submitted a written report (Ext.Ka-2) at P.S. Kotwali, District Etawah alleging therein that the accused- appellants and two others have committed

dowry death of his daughter. On the aforementioned written information of the first informant, an FIR was registered on 29.02.1988 as Case Crime No. 101 of 1988, under Section 302 IPC, Police Station- Kotwali, District Etawah.

6. After completion of investigation, charge-sheet was submitted against appellants. Thereafter, cognizance was taken upon same and the case was committed to the Court of Sessions. After hearing both the parties, charges were framed under Sections 498A, 304-B IPC against appellants on 01.02.1989.

7. In order to prove it's case, the prosecution adduced PW-1 Mahesh Chandra (informant and father of deceased), PW-2 Smt. Vimla Devi (mother of deceased), PW-3 Head constable Sri Bhola Prasad Pal (chik writer), PW-4 Dr. S.C. Gupta (who gave fitness certificates before and after dying declaration), PW-5 Sri Udai Vir Singh (Tehsildar, who recorded dying declaration), PW-6 Dr. S.K. Srivastava (Autopsy Surgeon), PW-7 Dr. P.K. Srivastava (who medico legally examined the injured and prepared her injury report), PW-8 (2^{nd} I.O.) Sri Prem Prakash Srivastava (the then Circle Officer, who conducted the final investigation), PW-9 S.I. Sri Sukhvir Singh (1^{st} I.O.) and PW-10 constable Sri Raj Kumar (G.D. writer). The witnesses adduced by the prosecution have given their respective oral evidence and also proved 25 prosecution papers and 08 material objects, which were marked as exhibits. The same are tabulated herein below:-

Sl. No.	**Name**	**Nature of evidence**	**Documents proved**
PW-1	Mahesh Chadra	First informant & father of the deceased	Letter of the deceased as Ext. Ka-1, Written report/ Tehrir as Ext. Ka-2
PW-2	Vimla Devi	Mother of the deceased and witness of fact regarding demand of dowry & harassment to the deceased	-

PW-3	Bhola Prasad Pal	Scribe of the FIR	Chik FIR as Ext. Ka-3
PW-4	Dr. S.C. Gupta	Doctor, who examined the deceased in Sadar hospital and gave fitness certificates before and after dying declaration	Fitness certificates as Exts. Ka-5 and 6
PW-5	Uday Veer Singh (Tehsildar)	Who recorded dying declaration	Dying declaration as Ext. Ka-7
PW-6	Dr. S.K. Srivastava	Autopsy Surgeon	Post mortem report as Ext. Ka-2
PW-7	Dr. P.K. Srivastava	Who examined the deceased in emergency ward, and also examined the appellant Chandra Bhan	Injury report of deceased as Ext. Ka-9 Injury report of accused Chandra Bhan as Ext. Kh-1
PW-8	Prem Prakash Srivastava, CO	2nd I.O.	Charge-sheet against Jairam as Ext. Ka-10 and charge-sheet against Chandra Bhan as Ext. Ka- 11
PW-9	Sukhveer Singh, S.I.	1st I.O.	Site plan as Ext. Ka-12, two quilts as material Ext-I & II, cane of kerosene oil and match box as material Ext. III & IV, recovery memo of quilts as Ext. K-13, recovery memo of cane of kerosene oil and match box as Ext. Ka-14, Red colour Saree and dhoti as material Ext. V & VI and its recovery memo as Ext. Ka-15, Frock and Stove as material Ext. VII & VIII and its recovery memo as Ext. Ka-16, Panchayatnma as Ext. -17, Chalan Nash as Ext. Ka-18, Sample seal as Ext. Ka-19, Photo Nash as Ext. Ka-20, Letter to CMO as Ext. Ka-21, Letter for recording dying declaration as Ext. Ka-22
PW-10	Raj Kumar Singh	G.D. writer	G.D. entry as Exts. Ka-23, 24 & 25

8. After completion of the prosecution evidence, the statement of the accused persons were recorded under section 313 Cr.P.C. They denied the prosecution version and commission of alleged offence. The accused also claimed their innocence. They stated that prosecution witnesses have given false evidence against them.

9. By the impugned judgment dated 04.10.1989, trial Court convicted and sentenced the accused- appellants Chandra Bhan and Jairam of the charges under Sections 498-A and 304-B IPC. Feeling aggrieved by the said judgment, present appeal has been preferred by the appellants-convicts.

10. Learned counsel for appellant submits that the impugned judgment is illegal, erroneous and, therefore, liable to be set-aside by this Court. He further submits that Court below without appreciating the prosecution evidence has illegally and erroneously, convicted him of the charges. As such, the impugned judgment is illegal and perverse and therefore liable to be set-aside by this Court.

11. It has been argued by the learned counsel for appellant that the prosecution has failed to prove the very story, which, it set out to prove. The prosecution story is based solely on the allegation that the deceased was harassed on account of non fulfillment of additional demand of dowry, but after appreciation of evidence of PW-1 and PW-2, there is no evidence that the alleged Scooter/ amount was ever demanded and no specific instance regarding cruelty coupled with persistent harassment was brought on record, there was no harassment of the deceased on account of non fulfillment of additional demand of dowry soon before death and prosecution has failed to prove the essential ingredients of Section 304-B IPC, therefore, the trial court has wrongly convicted the appellant and as such, the impugned judgment is liable to be set aside by this Court.

12. Learned A.G.A. for State has vehemently opposed the present appeal. He submits that the impugned judgment passed by Court below does not suffer from any illegality of law or fact much less an illegal error so as to warrant interference by this Court. Court below has examined the prosecution case in the light of the evidence on record threadbare without leaving any aspect of the matter untouched. Court below has thus, rightly convicted the accused persons. Lastly, it has been argued that no ground to interfere in the impugned judgment is made out. Learned A.G.A. thus urged for dismissal of the present appeal.

ANALYSIS

13. In the light of above arguments, following questions arise for consideration in present appeal:-

(I) Whether the prosecution has been able to prove beyond reasonable doubt that cruelty or harassment to the deceased was committed in connection with any demand for dowry as contemplated under Sections 498-A and 304-B IPC?.

(II) Whether the prosecution could be able to prove it's case against the appellant- convict beyond reasonable doubt?.

ORAL EVIDENCE ON RECORD

14. PW-1, who is father of the deceased Munni Devi, has stated in his examination-in-chief that Munni Devi was his daughter. About more than a year ago, he was informed by someone that his daughter Munni Devi has been burnt at her in-laws' house in Madhaiyan Khayaliram. He had married Munni Devi to Chandra Bhan. The accused Jairam is brother-in-law (Jeth) of Munni Devi. At the time of the incident, Munni's brother-in-law Jairam, sister-in-law Sunita and father-in-law Badri Prasad resided at her in-laws' house. Munni Devi was married 8-9 months before the incident. After the marriage, Chandra Bhan, Sunita and Jairam had demanded a Scooter. When he was unable to fulfill their

demand, they started beating his daughter and accusing her. These persons also said that if you cannot give a Scooter, then give Rs. 10,000/-. All these things were told by his daughter Munni Devi. A letter written by his daughter was received by him through post office, which was produced and proved by this witness as Ext. Ka-1. His daughter had studied till 4th grade. Upon receiving information about this incident, he went to Madhaiyan Khayaliram. where, Shiv Singh and Deen Dayal told that your daughter has been burnt to death.

15. PW-1 in his cross-examination has stated that Badri Prasad is his Samadhi (father-in-law of his daughter). He is 70-80 years old. He is a resident of village Sabuan, police station Jaswant Nagar. He had five sons, out of which one has died and four are alive. The son who died was named Prabhudayal. He was Supply Inspector. Now his wife and three children are alive. His wife's name is Prago alias Sunita. After her husband's death, she got Chandra Bhan appointed in the supply office in place of his brother (i.e. husband of Sunita). Prabhudayal was elder brother of Chandra Bhan, whose residence is situated in Shanti Colony at Mainpuri Road. His son-in-law, Chandra Bhan was living with his daughter in a rented house situated at Mohalla Madhaiyan Khayaliram in Etawah City. **Prabhudayal's house and Chandra Bhan's rented house are about a mile apart. His daughter's marriage with Chandra Bhan was arranged by Maniram, who is brother-in-law of Prabhudayal's wife. It was Chandra Bhan's first marriage. No dowry was fixed at the time of marriage. His daughter visited his house two or three times after the marriage and Chandra Bhan also used to visit. His daughter also sent letters to him. His daughter never wrote to him in any letter that her husband was demanding a Scooter. This witness himself stated that his daughter had told him about this verbally. She also didn't mention the demand for ten thousand rupees and a watch in any letter.**

16. PW-1 further stated in his cross-examination that Chandra Bhan sent a letter to his daughter when she was at her parents' home. In the said letter also there was no demands for a Scooter or money or a watch.

When this incident occurred, a boy from Madhaiyan Khayaliram came to inform him. He didn't ask him who had sent him. He doesn’t know the boy's name. He told him that Munni Devi's in-laws had set her on fire and burnt her. They had poured kerosene on her. At that time, the boy didn't reveal any names. He told him that he had left Munni at home. The boy arrived at his place around 10-11 pm. It takes him 2- 2.5 hours to reach Etawah from his place. Upon receiving the information, Harischandra, Suresh Chandra and he left for Etawah. They came by jeep; the fourth man was the driver. After reaching Etawah, he first reached Madhaiyan Khayaliram. It was 5:20 in the morning. He met Shiv Singh and Deen Dayal at Madhaiyan Khayaliram. He spoke to these two. There were other people as well. They told him that Chandra Bhan, Jairam, Sunita alias Prago, and Badri Prasad had killed his daughter by pouring kerosene on her. This conversation took 2-3 minutes. He was told that the girl was at Madhaiyan Khayaliram. Shiv Singh and Deen Dayal told him at the same time that the girl was in the hospital. He did not go to the hospital at that time. He reached the hospital at 6.30 in the morning. He reached the hospital after filing the report. **His wife had come to Etawah at 6.30-7 in the morning and 2-4 women were with her. His daughter already died at that time.**

17. In the written report, Ext. Ka-2, there is no mention of burning by pouring kerosene oil, however, he (PW-1) cannot give any reason for this. In the written report/ Ext. Ka-2, the names of Prago alias Sunita and Badri Prasad are not mentioned among those who set the fire, he cannot give any reason for this. When he went to the police station with his written report, witness Shiv Singh was not with him. While filling the Panchayatnama, Harischandra, Vidyaram, he and there may be others too whose names he does not know, were present. He does not remember whether his signature was obtained on the Panchayatnama or not. Only two witnesses Harischandra and Vidyaram from the place where he lived, were present at the time of Panchayatnama. No one else was from his place, they must be from Etawah. **Chandra Bhan met him in the**

hospital. His hands were burnt, and his face was also burnt. It is wrong to say that he fabricated this case for blackmailing.

18. At this juncture, Ext. Ka-1 is perused. Ext. Ka-1 is letter dated 29.11.1987, which was written by the deceased to his father i.e. informant Mahesh Chandra PW-1. In this letter the deceased had stated that on 2nd day after the return of her father from her matrimonial home, her husband stayed in Shanti Colony and even slept there. The deceased waited whole night and when her husband did not return in the morning of next day, then she sent son of his landlord in the office of her husband, where her husband was present and he returned home in the evening. She asked her husband that if he has to go anywhere then she be informed, then he (her husband) stated that who is she to stop him, he will be visiting daily and will also be sleeping there. Her husband is daily visiting Shanti colony. She is writing letter at 10 PM and her husband had yet not returned from Shanti Colony. She even requested her husband that she be allowed to visit her parental home for a night but he has bluntly refused.

19. Perusal of this letter clearly reveals that the deceased was much depressed for the reason that her husband used to visit Shanti Colony nearly daily and also used to stay there in night. There is not an iota of inference in this letter that the deceased was being ever harassed on account of any dowry demand. In this letter the deceased has clearly written that except above mentioned fact rest everything is alright. It is thus crystal clear that the deceased had not written any fact regarding demand of Scooter or cash in lieu thereof. Therefore, as per this letter dated 29.11.1987, the deceased was not being harassed on account of any demand of dowry.

20. Smt. Vimla Devi PW-2 is mother of the deceased who in her examination in chief has stated that she had performed marriage of her daughter Munni Devi with accused Chandra Bhan. Sunita is sister-in-law (Jethani) of her daughter. Accused Jairam is brother-in-law (Jeth) of her

daughter. Her daughter was burnt to death in her in-laws house. She (deceased) was married 8-9 months before this incident. When her daughter Munni Devi came to their house then she told her that her in-laws used to beat her and were demanding a Scooter. She (deceased) further told that if they cannot give a Scooter then accused were demanding Rs. 10,000/- in cash. We could not fulfill their demand. **At the time of incident, accused Chandra Bhan, Jairam and Sunita were residing with her daughter in one common house.**

21. In her cross examination PW-2 stated that one man from Etawah came at her house at 11pm, who told that her daughter had been burnt to death. Said person also told that Jairam, Chandra Bhan, Badri Prasad and Sunita had burnt her daughter. It was also told that her daughter was burnt at 5:00 pm by pouring kerosene oil on her. It was also informed that her daughter was admitted in the hospital. **She does not know who went to Etawah on this information because she was ill. She was suffering from fever and was feeling extreme weakness for the last 5-6 days. She was very weak and her fever returned for 4-6 days. Her husband told everything after returning. She stayed at her house and continued her treatment. Her husband returned after 2 days from Etawah. Whenever her daughter came to their house, she used to tell her that accused Chandra Bhan mostly stayed with his sister-in-law (Bhabhi) and sleeps there and rarely sleeps with her (deceased). Her daughter was absolutely convinced that her husband was having illicit relation with her sister-in-law Sunita. Her daughter used to tell this fact whenever she came to their house and also used to write the same to her. Sister-in-law (Bhabhi of accused Chandra Bhan) was living in Shanti Colony with her children and also sleeps at the same place, where Chandra Bhan also used to sleep there.**

22. PW-1 stated that his wife come to Etawah at 6:30 – 7:00 am alongwith 2-4 women. Mother of deceased Smt. Vimla Devi PW-2 in her deposition has stated that she does not know who went to Etawah on receiving information that her daughter was burnt at 5am by pouring

kerosene oil on her. She further stated that she was suffering from fever and remained at her house and continued her treatment, her husband returned after 2 days from Etawah. Thus it is clear that PW-2 had not gone to Etawah.

23. From the deposition of this witness it is clear that the deceased was convinced that her husband (appellant Chandra Bhan) was having illicit relation with his sister-in-law/ Bhabhi Sunita and the deceased used to tell this fact whenever she visited her parental home. The letter dated 29.11.1987 further corroborates this part of deposition of this witness, however except a general and vague allegation regarding demand of Scooter or Rs. 10,000/- in cash and beating the deceased for this demand, no specific instance of cruelty has been narrated by this witness in her whole deposition.

24. Head constable Bhola Prasad PW-3 is a formal witness, who was scribe of the FIR of Case Crime No. 101 of 1988, who on oath has stated that he recorded FIR (Ext. Ka-3). He also made an entry of FIR in GD No. 12 at 5:45 am on 1.3.1988, which GD entry has been proved by this witness as Ext. Ka-4.

25. Dr. S.C. Gupta, Medical Officer, District Hospital Etawah has been examined as PW-4. This witness in his deposition has stated that he examined Smt. Munni Devi wife of Chandra Bhan in Sadar hospital, Etawah and found that she was fit to give her dying declaration. He gave a certificate to this effect before recording her dying declaration, which certificate has been proved by this witness as Ext. Ka-5. The victim remained fully consciousness during her statement and he gave a certificate to this effect at the end of dying declaration which certificate has been proved by this witness as Ext. Ka-6. This witness also confirmed that aforesaid declaration bears thumb impression of the victim Munni Devi. In his cross examination this witness has stated that during victim’s statement, her words were coming clearly. Victim’s condition was serious at the time of recording of her statement. He

cannot tell whether she was dying or not because a person who has been burnt 99% can die any time. He denied the suggestions that the victim was not fit for giving dying declaration.

26. Udaiveer Singh PW-5 in his deposition has stated that on 01.03.1988 he was posted as Tehsildar, Etawah. On the said day he received information in night from police petrol jeep that dying declaration of Munni Devi wife of Chandra Bhan is to be recorded in Sadar hospital, Etawah. He arrived there and contacted duty doctor who declared Smt. Munni Devi as mentally fit to give dying declaration. Thereafter, he recorded the dying declaration of the victim by asking her a question regarding her burning. Whatever was stated by Munni Devi he recorded the same as dying declaration of the victim. After recording her statement in his own handwriting and signature he took thumb impression of the victim. The victim told her that her sister-in-law (Jethani) and brother-in-law (Jeth) and Chandra Bhan have burnt her yesterday evening after pouring kerosene oil over her. **At that time it was about 6:00 pm.** Chandra Bhan used to stay 3 days with his sister-in-law (Bhabhi) and one day at their house. Her sister-in-law (Jethani) is a widow. After recording the aforesaid statement he narrated the same to the victim and got her thumb impression. He proved the dying declaration as Ext. Ka-7. In his cross examination he has stated that the victim was extensively burnt. Victim was in dying state but was speaking and her words were clear and audible. She was not speaking like a healthy person. Whatever she uttered, he wrote the same. He denied the defense suggestion that the dying declaration of the victim was recorded after her death on the direction of one leader Ram Nath.

27. Dying declaration (Ext. Ka-7) of the deceased is reproduced verbatim herein-below:-

"मुन्नी देवी पत्नी चन्द्रभान उम्र 22 वर्ष निवासी मेडैया खयालीराम ने आज जिला चिकित्सालय मे मरनासन्न अवस्था मे बयान दिया कि मुझे मेरी जेठानी सुनीता व जेठ जैराम व चन्द्रभान ने कल शाम को पांच लीटर मट्टटी का तेल मेरे ऊपर

छिडक कर जला दिया है उस समय करीब 6 बजे शाम थी। चन्द्रभान तीन भौजाई के साथ व एक दिन घर पर रहता था। मेरी जेठानी विधवा है।"

English translation of aforesaid dying declaration is as under:-

"Munni Devi, wife of Chandrabhan, 22 years old, resident of Madiya Khayali Ram, stated today in dying state at the District Hospital that her sister-in-law (Jethani), Sunita and brother-in-law (Jeth) Jairam and Chandrabhan, poured five liters of kerosene oil on her and burnt her yesterday evening. It was around 6 p.m. Chandra Bhan with his sister-in-law (Bhabhi) 3 and 1 day resided at his house. Her sister-in-law (Jethani), Sunita, is a widow."

28. Dr. S.K. Srivastava PW-6 is autopsy surgeon who has conducted the post mortem examination of the deceased Munni Devi on 1.3.1988. Victim died in District Hospital at 5:10 am on 1.3.1988 as per hospital records. On external examination body of the deceased was average built, abdomen slightly distended, knee and elbow flexed. He found following ante mortem injuries on her person:

> "99% burn injuries over the body, first to third degree, sparing both soles and back of right leg, lower 1/3rd scalp hair of private parts and of body were found burnt and blackened. Black particles stickes on finger. Line of redness and of vesication seen."
>
> "On internal examination, membrane of brain, larynx, trachea lungs were found congested, dark blood was found on the cut of lungs, abdomen and urine bladder were found empty. Cause of death was due to shock as a result of ante mortem injuries."

In cross examination this witness has stated that the deceased could have spoken after burning and before her death and she also could not speak.

29. Dr. P.K. Srivastava, PW-7 in his deposition has stated that on 29.2.1988, he was posted as surgeon in District Hospital, Etawah and was on emergency duty. **On that day at 6:45 pm he medico legally examined Munni Devi wife of Chandra Bhan who was brought by her husband.** He noted following injuries on her person, "deep to superficial thermal burns on face, neck, both upper limbs, chest, abdomen, back, both lower limbs, burnt area in total was around 90%, general condition was poor, pulse 102 per minute, R/R 22 per minute, dehydrated, urine not passed, no vomiting, police informed for necessary action and for dying declaration. "Victim was admitted and her treatment was started, referred to surgeon, cut open done." In his opinion, said burns were deep to superficial burns about 90%. He proved the injury report as Ext. Ka-9. Thumb impression of Munni Devi was also taken on original register. The said memo sent by Dr. P.K. Srivastava was received at P.S. Kotwali Etawah and entry of same was made in GD No. 54 at 7pm on 29.2.1988. The aforesaid GD has been proved by constable clerk Raj Kumar PW-10 as Ext. Ka-23 and on the same day, one memo regarding burnt condition of accused Chandra Bhan was also received at Police Station at 7:25 pm and entry of same was also made in GD which has been proved as Ext. Ka-24.

30. In his cross examination, PW-7 has stated that he also examined injuries of accused Chandra Bhan on that day at 7:00 pm and noted "deep to superficial thermal burns on part of face, part of right knee joint, part of dorsum of left foot and part of left hand, total area of burn injuries was about 15%". In his opinion, his (accused Chandra Bhan) burn injuries was around 15% thermal burn. He has proved the injury report as Ext. Kh-1. He also stated that Chandra Bhan could have sustained these injuries while saving or while pushing, his part of left and right hand was burnt.

31. Deputy Commandant Prem Prakash PW-8 was 2nd IO who in his deposition has stated that he took over the investigation himself on 10.3.1988 as he was posted at that time as CO City for the reason that it

was dowry death. After recording post mortem report in the case diary he searched for other accused, however, they could not be traced, he also recorded discharge slip of accused Chandra Bhan in case diary. He recorded statement of constable who brought the dead body as well as statement of witnesses of inquest. He also recorded dying declaration of the deceased Munni Devi in case diary. Remaining accused could not be traced, therefore, he concluded the investigation and filed charge-sheet against the accused Chandra Bhan and Jairam. He proved charge-sheet filed against these accused as Ext. Ka-10 and 11. **In his cross examination this witness has stated that accused Chandra Bhan was discharged from hospital on 15.3.1988 as per his discharge slip.**

32. Sub Inspector Sukhbir Singh PW-9 was 1st IO who received investigation of this case on 1.3.1988. He inspected the spot and prepared site plan which has been proved by this witness as Ext. Ka-12. He prepared recovery memo which has been proved by this witness as Ext. Ka-13. He proved 2 quilts as material Ext. 1 and 2, 5 liter cane of kerosene oil with its cover lid and match box as material Ext. 3 and 4. Recovery memo of quilts has been proved by this witness as Ext. Ka-13, recovery memo of 5 liter cane and match box has been proved as Ext. Ka-14, one red colour Saree and Dhoti as material Ext. 5 and 6 and its recovery memo as Ext. Ka-15, recovery of one frock of girl having blackening and stove has been proved by this witness as material Ext. 7 and 8 and its recovery memo as Ext. Ka-16. Thereafter, he recorded statement of Mahesh Chandra, Shiv Singh, Deen Dayal, Vidyaram Maurya, Smt. Hardevi, Mohan Lal and others. Accused Chandra Bhan was admitted in hospital at that time, therefore, he submitted a report for taking him into police custody and also recorded his statement. He deposited all recovered items in police Station Kotwali vide GD No. 37 at 3:40 pm on 2.3.1988. He received post mortem report of the deceased Munni Devi and arrested the accused Badri Prasad. He also recorded statement of some other persons on 3.3.1988. Thereafter, investigation was taken over by the Circle Officer. SI Ram Singh also went on the spot with this witness who conducted the inquest proceedings of the deceased

Munni Devi. He proved the inquest report in secondary evidence as Ext. Ka-17, Chalan Nash as Ext. Ka-18, Sample Seal as Ext. Ka-19, Photo Nash as Ext. Ka-20, Letter to CMO as Ext. Ka-21, by identifying signature of Sub Inspector Ram Singh. He also proved the report signed by P.S. Srivastava, the then CO City which was sent to Superintendent, Copying Centre for recording of dying declaration in secondary evidence as Ext. Ka-22. In his cross examination this witness has stated that none of the recovery memos or in the case diary recorded by this witness, there is mention that there was smell of kerosene oil. He deposited recovered articles on 2.3.1988 at 3:40 pm. For the delay in depositing the recovered articles this witness stated that as he recorded statement of other witnesses, inspected the spot, prepared recovery memos and thereafter copied the recovery memos in the case diary and that's why he could not deposit those articles on 1.3.1988.

33. Constable Raj Kumar Singh PW-10 in his deposition has stated that a memo from District Hospital, Etawah was received regarding recording of dying declaration of Munni Devi. He made an entry of same in GD No. 54 at 7pm on 29.2.1988. He proved aforesaid GD as Ext. Ka-23. On that day at 7:25 pm he also received a memo regarding burnt condition of accused Chandra Bhan. He made an entry of same in GD No. 55 which GD has been proved by this witness as Ext. Ka-24. On 1.3.1988 at 5:15 am he received a memo from District Hospital Etawah regarding death of Munni Devi. He made an entry of same in GD No. 11 on 1.3.1988 which GD has been proved by this witness as Ext. Ka-25.

NO DELAYED F.I.R.

34. A perusal of written report (Ext. Ka-2) reveals that the informant Mehesh Chandra PW-1 received information that his daughter Munni Devi was burnt on 29.2.1988 and on receiving this information, he came to the house of in-laws of his daughter, which was situated at Mohalla Madhaiya Khayaliram, Etawah. The informant Mahesh Chandra PW-1 has affirmed this fact as narrated in his written report, in his oral

deposition. PW-1 in his cross examination has specifically stated that he came to Etawah by Jeep and he reached the house of in-laws of his daughter at 5:20 am, however, it has come in his deposition that he was informed by a number of persons that his daughter had been killed by pouring kerosene oil on her, however, he did not go to the hospital immediately at that time, but reached the hospital at 6:30 am after filing his report. The informant received information on 29.2.1988 at his residence and as per his deposition, he arrived at Etawah at 5:20 am on 30.2.1988, however, FIR has been promptly lodged on 1.3.1988 at 5:45 am, meaning thereby that there is no delay in registration of FIR.

Question No. 1.

Whether the prosecution has been able to prove beyond reasonable doubt that cruelty or harassment to the deceased was committed in connection with any demand for dowry as contemplated under Sections 498-A and 304-B IPC?.

35. While dealing with an appeal against conviction for dowry death, the Supreme Court in **Karan Singh vs. State of Haryana, 2025 SCC OnLine 214,** has observed as under:-

> "5. Sections 498-A and 304-B IPC read thus:
>
> "498-A IPC- Husband or relative of husband of a woman subjecting her to cruelty- however, 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 purposes of this section, "cruelty" means
>
> (a) any willful 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.
>
> "304-B IPC- Dowry death- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances

within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

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

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

6. The following are the essential ingredients of Section 304-B IPC:

a) The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;

b) The death must have been caused within seven years of her marriage;

c) Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and

d) Cruelty or harassment must be for, or in connection with, any demand for dowry.

7. If the aforesaid four ingredients are established, the death can be called a dowry death, and the husband and/or husband's relative, as the case may be, shall be deemed to have caused the dowry death. Section 2 of the Dowry Prohibition Act, 1961 provides that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to the other party to the marriage or to any other person. The dowry must be given or agreed to be given at or before or any time after the marriage in connection with the marriage of the said parties. The term valuable security used in Section 2 of the Dowry Prohibition Act, 1961 has the same meaning as in Section 304-B of IPC."

In this case Hon’ble Supreme Court also found that PW-6 has not deposed to any particular act of cruelty or harassment by the appellant, which was an essential ingredients of Section 304-B thus, offence was not made out from the evidence of PW-6.

36. While setting aside the judgment of conviction, it has also been observed in the above mentioned judgment that the presumption under Section 113-B of Indian Evidence Act, will apply when it is established that soon before her death, the woman was subjected to cruelty or harassment for, or in connection with, any demand for dowry by the accused. Therefore, even for attracting Section 113-B, the prosecution must establish that the deceased was subjected to cruelty or harassment

for or in connection with any demand of dowry soon before her death by the accused. Unless the said burden is discharged by the prosecution, the presumption under Section 113-B of the Evidence Act cannot be invoked.

BASIC PROSECUTION STORY

37. The basic prosecution story as it emerges from the written report (Ext.Ka-2) is that the deceased Munni Devi was being harassed by her in-laws for additional demand of dowry. In-laws of the deceased were demanding either Scooter or Rs. 10,000/- and she was being harassed for non fulfilling this additional demand of dowry. When aforesaid demand of appellant was not fulfilled then she was burnt to death by pouring kerosene oil over her.

APPRECIATION OF EVIDENCE

38. To prove demand of additional dowry and harassment of deceased on account of non fulfillment of demand of additional dowry, prosecution has examined informant as PW-1 and his mother as PW-2. We have carefully perused the statements of informant PW-1 and PW-2, as referred to in the impugned judgment to find out that whether as per the depositions of PW-1 and PW-2, the necessary ingredients of the charging Sections are borne out/satisfied or not.

39. The brief prosecution story, as unfolded in the first information report, is that within 8–9 months of the marriage of deceased with appellant Chandra Bhan, she was burnt to death on account of non-fulfillment of demand of scooter or Rs.10,000/- in cash. It has been specifically stated in the first information report that the informant could not give scooter in the dowry at the time of marriage, therefore, the accused-appellant Chandra Bhan and his family members started harassing the deceased. It has specifically come on record that the deceased on her visit to her parental home in the month of October, 1987 told the informant regarding this as well as her beating by her in-laws for

not giving the scooter in the marriage. Thereafter, the informant, on 29.02.1988, received an information regarding her daughter being burnt by the appellants. However, the informant Mahesh Chand P.W.1 has clearly stated in his deposition that his *Samdhi* i.e. father-in-law of his daughter had five sons and out of them his son Prabhu Dayal died, who was working as Supply Inspector. Prabhu Dayal was married to co-accused Sunita @ Prago and was having three children out of this wedlock. Co-accused Sunita @ Prago got appointed the accused-appellant Chandra Bhan in the Supply Office in place of her deceased husband Prabhu Dayal. The co-accused Sunita @ Prago was residing in the house of Prabhu Dayal, which was situated in Subhash Colony on Mainpuri Road. However, son-in-law of the informant namely, Chandra Bhan was living with his wife (daughter of the informant) in a rented house in Etawah City and both these house were about a mile apart. Therefore, it is clear that co-accused Sunita @ Prago was living separately with her three children and accused-appellant Chandra Bhan was living separately with his wife i.e. the deceased. P.W.1 has also clearly stated that demand of scooter or Rs.10,000/- cash and harassment of her daughter in the shape of beating was told by her daughter to the informant. Meaning thereby, that none of the accused ever personally demanded any additional dowry from the informant or his wife and the informant or his wife had also not seen any incident of harassment or beating of their daughter at the hands of accused persons. Informant and his wife in their depositions have also not stated that they ever saw any mark of injury on the body of their daughter, whenever she visited her parental home. Therefore, the knowledge of demand of additional dowry and harassment as per deposition of informant and his wife is based on the statement of the deceased made to these witnesses in her parental home.

40. In written report Ext. Ka.-2, the informant (PW-1) has clearly stated that his daughter lastly visited him in the month of October, 1987 when she narrated about her torture and harassment on account of non-fulfillment of demand of scooter or Rs.10,000/-, else she will face dire

consequences. However, no report whatsoever was lodged by either the informant or her daughter regarding this. Even no complaint whatsoever was made by them in this regard. There is no evidence given by this witness (PW-1) that after the month of October, 1987 to the date of death of her daughter i.e. 01.03.1988 the deceased ever informed him again regarding her continuous harassment on account of aforesaid demand of scooter or cash. Surprisingly, the informant P.W.1 has proved a letter dated 29.11.1987 as Ext. Ka.-1, which was written by the deceased to the informant and the aforesaid letter was written after the month of October, 1987 and in Ext. Ka.-1, there is no mention whatsoever regarding any demand of dowry or demand of scooter or cash in lieu thereof. The aforesaid letter Ext. Ka.-1 actually belies the very basic prosecution story put forth by the informant by way of his written report / tehrir Ext. Ka.-2. In Ext. Ka.-1 it is specifically stated by the deceased that her husband accused-appellant Chandra Bhan used to regularly visit the house of co-accused Sunita @ Prago and he also used to stay at nights at her residence and this was the reason that the deceased was much depressed. It has come in the evidence of P.W.1 that it was the co-accused Sunita, who got appointed accused-appellant Chandra Bhan in place of her deceased husband Prabhu Dayal. Therefore, it was not only the moral duty of the accused-appellant Chandra Bhan but was also his social and statutory obligation to maintain the family members of his brother late Prabhu Dayal including Prabhu Dayal’s wife Sunita and their three minor children, because he got appointment in place of his deceased brother Prabhu Dayal in dying in harness. The deceased was annoyed because of her husband’s maintaining / taking care of the wife and children of his late brother Prabhu Dayal.

41. Informant (PW-1), in his cross-examination, has clearly stated that there was no demand of dowry at the time of marriage. It is also clear that there was no demand of dowry even prior to marriage. The informant has clearly admitted when his daughter sent him letter, but in none of her letters there was ever mention of demand of Scooter. The

informant also fairly conceded that accused-appellant Chandra Bhan also sent a letter to his daughter that his daughter was residing at his residence, but there was no demand for a scooter or money or a watch in the said letter by Chandra Bhan. Thus, there is no mention of demand of Scooter or anything else in the letters written by the daughter of informant.

42. The mother of deceased Smt. Vimla Devi P.W.2 in her deposition has although stated that in-laws of her daughter used to beat her and were demanding a scooter or cash of Rs.10,000/- in lieu thereof. However, in her cross-examination, she has clearly stated that whenever her daughter came to their house, she (the deceased) used to tell her that accused Chandra Bhan mostly stayed with his sister-in-law (*bhabhi*) and sleeps there and rarely sleeps with her. She further stated that her daughter was absolutely convinced that her husband was having illicit relations with her sister-in-law (*bhabhi*) Sunita. She further stated that her daughter used to tell this fact whenever she came to her house and also used to write the same to her. The aforesaid part of deposition of this witness is strengthened by the letter dated 29.11.1987 (Ext.Ka.-1) written by the deceased to her father.

43. Informant Mahesh Chandra PW-1 and Vimla Devi PW-2 both in their oral deposition have supported the prosecution version as put-forth in the written report (Ext. Ka-2) and have deposed that the accused were demanding Scooter or Rs. 10,000/- in cash and the deceased was being harassed and torture for this additional demand of dowry. None of these witnesses in their deposition have stated that when the deceased told this specific fact of additional demand of dowry and her (deceased) harassment on account of this, both these witnesses have not specified any date, time and place of last alleged harassment and even no specific instance of harassment or cruelty to their daughter Munni Devi has been narrated by these witnesses in their oral deposition. Notwithstanding of the fact that the death occurred within a year of the marriage of the appellant alongwith the deceased, there is no evidence to indicate that

the deceased was subjected to cruelty or harassment at the hands of the appellant. For the reason that except for a general and vague allegation that there was a demand for scooter or Rs. 10,000/- as additional dowry by the appellant and his relatives and harassment of the deceased on account of this demand, there is not a single instance specifically attributed to the appellant regarding mental and / or physical harassment of the deceased on a particular date, time and place. Therefore, the prosecution has failed to bring on record atleast some specific instance of cruelty or harassment being caused to the deceased in connection with any demand for dowry. Moreover, none of the appellants has ever demanded anything directly from these witnesses. Admittedly, there was no demand of dowry prior to marriage or even at the time of marriage. The letter written by the deceased to her father Ext. Ka-1 also does not support this part of the prosecution story regarding demand of dowry. There is no evidence on record regarding any physical harassment to the deceased on account of alleged demand of dowry. As the prosecution has failed to prove any specific instance of cruelty or harassment, therefore, in our considered opinion, the prosecution has miserably failed to prove that there was any demand of dowry from the side of appellants, as alleged by the prosecution, after the marriage of the deceased and before her death. Thus, the prosecution has not been able to prove beyond reasonable doubt that the cruelty or harassment to the deceased was committed in connection with any demand for dowry and Question No. 1 is, therefore, accordingly decided in negative.

Question No. 2

Whether the prosecution could be able to prove it's case against the appellant- convict beyond reasonable doubt?.

44. As the prosecution has failed to prove any demand of dowry or harassment of the deceased on account of non fulfillment of demand of dowry, therefore, the prosecution has failed to prove the very basic ingredients of dowry death, even otherwise the informant and his wife allegedly got information of harassment of their daughter in the month of

October, 1987. Hon'ble Supreme Court in **Satbir Singh and another vs. State of Haryana, (2021) 6 SCC 1**, has explained the phrase "soon before". In para 15, 16 and 38.3 which are reproduced herein-below:-

> 15. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, "soon before" they did not mean "immediately before". Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exactly the phrase "soon before" entails.
>
> 16. The aforesaid position was emphasised by this Court in *Kans Raj* v. *State of Punjab* [*Kans Raj* v. *State of Punjab*, (2000) 5 SCC 207 : 2000 SCC (Cri) 935] , wherein the three-Judge Bench held that : (SCC pp. 222-23, para 15)
>
> "*15*. … "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. … *In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. … Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough*."
>
> (emphasis supplied)
>
> A similar view was taken by this Court in *Rajinder Singh* v. *State of Punjab* [*Rajinder Singh* v. *State of Punjab*, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225]
>
> 38.3. The phrase "*soon before*" as appearing in Section 304-B IPC cannot be construed to mean "immediately before". The prosecution must establish existence of "*proximate and live link*" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

45. Even for the sake of argument if it is presumed that there was any demand of dowry, then the prosecution has also miserably failed to prove that the aforesaid demand of dowry was ever made soon before the death of the deceased, because as per prosecution evidence, the last knowledge of aforesaid demand of dowry was in the month of October, 1987 whereas the alleged incident had happened on 29.02.1988 and there is no proximate and live link between death of the deceased and

cruelty or harassment made for demand of dowry by the appellants. Thus, it is clear that the alleged harassment, if any, was informed by the deceased to her parents in the month of October, 1987 and thereafter no such complaint was made by the deceased to her parents. There is no evidence on record that the deceased either visited her parents after October, 1987 or informed her parents after October, 1987 regarding her continuous harassment on account of additional demand of dowry. We are therefore, of the opinion that the alleged harassment, if any, was not having any proximate and live link between death of the deceased and her harassment for alleged dowry demand as she died on 1.3.1988.

CONDUCT OF APPELLANT

46. It is specific case of surviving appellant Chandra Bhan that on the fateful day when he returned to his home from the office at 6pm, he saw his wife burning, he tried to put off the fire by placing the quilts but he himself got burnt. Thereafter, he has taken his wife to the hospital. A perusal of the injury report Ext. Ka-9 of the deceased reveals that the deceased Munni Devi was brought by her husband to the hospital on 29.2.1988 at 6:45 pm, where she was medico legally examined. Dr. P.K. Srivastava PW-7 has also stated on oath that Munni Devi (deceased) was brought by her husband Chandra Bhan. A perusal of injury report Ext. Kh-1 of surviving appellant Chandra Bhan reveals that he was also medico legally examined at 7pm on 29.2.1988 and he was also found burnt 15% thus, it was the appellant who brought the deceased to the hospital and even the appellant himself was in burnt condition at that time, which is indicative of his conduct whereby he tried to save the life of his wife Munni Devi.

DYING DECLARATION

47. A perusal of dying declaration of the deceased reveals that she has not alleged any harassment or her torture on account of demand of additional dowry at the hands of appellant. She has not even uttered a

single word regarding any demand of dowry or her harassment on account of non fulfillment of such demand if any. Her dying declaration is although brief and precise to the fact that her sister-in-law Sunita, brother-in-law Jairam and Chandra Bhan have burnt her after pouring kerosene oil from a 5 liter cane at about 6pm. In her dying declaration the deceased has stated that Chandra Bhan 3 with his sister-in-law and 1 day resided at his house. She however, stated that her sister-in-law (Jethani) is a widow. However, the aforesaid portion of her dying declaration is little bit vague, but it means that the accused Chandra Bhan used to reside with his sister-in-law (Bhabhi) for 3 days and used to stay at his house for 1 day.

48. In this background the deposition of PW-1 become material. PW-1 in his examination in chief has not stated anything regarding aforesaid contents of the dying declaration of his daughter. However, PW-1 in his deposition has proved a letter (Ext. Ka-1) of his daughter Munni Devi, which has been carefully perused by us. The aforesaid letter is dated 29.11.1986 which is written by Munni Devi to his father Mahesh Chandra, there is no allegation regarding either demand of additional dowry or harassment of Munni Devi on account of non fulfillment of demand of dowry. However, it is specifically mentioned in this letter that her husband stayed in Shanti Colony and had not returned to her house. She waited whole night but her husband had not turned up even in morning then he sent son of their house owner in the office of her husband where her husband was found and he returned in the evening. She stated to her husband that whenever you are going somewhere then please inform her. On this her husband got excited and said who are you to stop him, I shall go daily there and will also sleep there. Now he is daily going in Shanti Colony. This letter reveals that the deceased was annoyed as her husband (present surviving appellant) used to continuously stay in Shanti Colony and was not returning to his own rented house and this fact was the principle bone of contention between the deceased and her husband. Through this letter (Ext. Ka-1) the deceased has informed this fact to her father.

49. Vimla Devi PW-2 in her cross examination has stated that accused Chandra Bhan mostly stayed with his Bhabhi (sister-in-law) and also used to sleep there and rarely slept with the deceased and therefore, her daughter was absolutely convinced that her husband was having illicit relation with her Bhabhi (sister-in-law Sunita). She however conceded that her daughter used to tell this fact that whenever she came to their house and also used to write the same.

50. It is thus clear that there was no demand of dowry as alleged in the prosecution story. However, the deceased was apprehending illicit relationship between her husband Chandra Bhan and her husband's Bhabhi Sunita. In this background, the dying declaration of the deceased gains importance. However, the prosecution instead of prosecuting the accused on account of murder of deceased because of the alleged illicit relationship put forward a specific story that the deceased was being harassed and tortured on account of demand of dowry.

51. The appellant- accused Chandra Bhan had taken specific stand in his statement recorded under Section 313 Cr.P.C. that neither he nor his family members have burnt the deceased. He was in his office and returned at about 6:00 PM and saw that his wife Munni Devi was burning. He tried to douse the fire by placing quilt over her (his wife). He himself got burnt. Thereafter, he took his wife to the hospital. He has further stated that his Bhabhi (sister-in-law/ co-accused Sunita) gave her job. Therefore, he used to help her. He denied that he ever slept there. Accused- appellant Chandra Bhan was injured in the incident and his injury report has been proved as Ext. Kh-1. Sustaining burn injuries in the incident, clearly signifies his presence on the spot, which is further strengthened by his burn injuries. Sustaining burn injuries and taking the deceased to the hospital cannot itself be a factor for giving any benefit to the appellant- accused Chandra Bhan. However, it remains relevant fact to be considered. PW-1 in his cross examination has fairly conceded that he found Chandra Bhan in the hospital when he arrived, therefore, accused- appellant Chandra Bhan had not only got admitted his wife to

the hospital but also remained there and had not fled away. Admittedly, co-accused Sunita was residing separately, therefore, in the totality of circumstances, there is great probability that the accused- appellant actually tried to save his wife and sustained burn injuries and got her admitted for treatment, where he also met the informant.

52. Both PW-1 and PW-2 while deposing about demand of dowry have not deposed to any particular act of cruelty or harassment by the appellant. This is an essential ingredients of Section 304-B and 498-A IPC which is not made out from their evidence. From the deposition of PW-1 and PW-2 it can be seen that except for general and vague statement about demand of Scooter or Rs. 10,000/- cash and physical harassment in the nature of beating, being inflicted on the deceased by the appellant, there is not a single instance specifically attributed to the appellant. Both these witnesses have not deposed about any specific instance narrated to them by the deceased that could indicate that the deceased was subjected to cruelty or harassment specifically by the appellant. Their depositions are in general terms without giving any specific details of any instance of cruelty or harassment meted out to the deceased. It is one thing to make a demand for dowry and another thing to inflicted cruelty for dowry. For sustaining the conviction under Section 304-B IPC, it would be necessary for the prosecution to bring on record atleast some specific instance of cruelty or harassment being caused to the women in connection with any demand for dowry that results in her death occurring otherwise then under normal circumstances within 7 years of the marriage. Such evidence however is missing in the present case, even otherwise the alleged narration of demand of dowry and harassment pertains to October, 1987, however, the present incident had happened on 29.2.1988. Therefore, the incident, if any, of alleged demand of dowry and harassment in lieu thereof did not happen soon before the death. It is not the case of prosecution that the deceased allegedly visited her parental house a week or 15 days or even a month before the incident and she complained about any cruelty or any harassment on account of non fulfillment of demand of dowry. Thus in

the totality of the circumstances, none of the statement of these two witnesses i.e. PW-1 and PW-2 contained any specific instance of cruelty or harassment. Resultantly the prosecution failed to prove the material ingredients of the offence punishable under Section 304-B IPC. Not a single instance of cruelty covered by Section 498-A IPC was proved by the prosecution. Therefore, Section 113-B of Evidence Act would not be applicable. **There does not appear to be any nexus between the alleged demand (although the prosecution has failed to prove the same) and any specific case of cruelty or harassment of the deceased, which resulted in her death, therefore, we find that the reasons recorded in the impugned judgment being against material on record, are perverse and we find that the ingredients of Section 304-B and 498-A IPC are not made out.** Therefore, Question No. (II) is also answered in the negative.

Whether surviving appellant can be convicted under Section 302 IPC.

53. After completion of investigation, charge-sheet was submitted only under Sections 304B, 498A IPC and ¾ of D.P. Act, however, charge against the appellant was framed only under Sections 498A, 304-B IPC, even no alternative charge under section 302 IPC was framed. As the prosecution has miserably failed to prove any demand of dowry or harassment in lieu thereof. When the prosecution has failed to prove the charge under Section 498-A IPC, presumption under section 113-B of Evidence Act also does not attract and, therefore, the prosecution has also miserably failed to prove the ingredients of Section 304-B IPC..

54. Resultantly, the prosecution has failed to prove that the appellant-accused caused dowry death of the deceased. **However, at this juncture, dying declaration of the deceased is again carefully perused with the objective that whether the appellant- accused can be convicted under Section 302 IPC or not.** The dying declaration of the deceased is categorically clear that the appellant- accused poured 05 liters kerosene oil on the deceased and burnt her. However, Section 302 IPC is graver

section than 304-B IPC. The appellant- accused were not tried under Section 302 IPC. Even no question has been put to the appellant-accused regarding commission of murder of the deceased by pouring kerosene oil on her and thereafter burning her in his statement recorded under Section 313 Cr.P.C.

55. The expression "minor offence" found in Section 222 is not defined under the Code, it can be discerned from the context which is not merely that the prescribed punishment is less than the major offence. In other words, if the two offences are cognate offences and the main ingredients are common, the offence punishable with lesser sentence can be considered as a minor offence with reference to the other offence. The Hon'ble Apex Court in **Shamnsaheb M. Multtani vs. State of Karnataka, (2001) 2 SCC 577** has held as under:-

> "16. What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence.
>
> 17. The composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-à-vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC (husband or relative of husband of a women subjecting her to cruelty). As the word "cruelty" is explained as including, inter alia, "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".

56. Section 222(1) of the Code deals with a case where a person is charged with an offence consisting of several particulars. The Section permits the Court to convict the accused of the minor offence though he was not charged with it. Sub section (2) deals with a similar, but slightly different situation. When a person is charged with an offence and facts are proved which reduces it to a minor offence he may be convicted of

the minor offence although he is not charged with it. As noticed hereinabove, the expression “minor offence” is not defined under the Code. Punishment prescribed under Section 302 IPC is death or life imprisonment, whereas punishment thereafter under Section 304-B IPC is not less than seven years, but may extend to life imprisonment, therefore, when Section 304-B is compared with Section 302 it would clearly indicate that they are separate and distinct offences and by no stretch of imagination can be construed as cognate offences and moreover punishment prescribed under Section 302 IPC is more stringent than 304-B IPC.

57. In the present case admittedly the appellant- accused Chandra Bhan and co-accused Sunita were living separately. It has been specifically averred by the deceased that the appellant and other two co-accused poured kerosene oil on her and thereafter she was burnt, but it has clearly come in the prosecution evidence that the deceased was perturbed on account of appellant- accused Chandra Bhan maintaining the family of co-accused Sunita for the reasons that he (Chandra Bhan) got government job in place of deceased husband of co-accused Sunita, who was his elder brother. The deceased in her letter dated 29.11.1987 i.e. Ext. Ka-1 and PW-2 in her oral deposition have clearly stated that the appellant-accused Chandra Bhan used to reside at the residence of co-accused Sunita and even used to stay in nights. In this background, we have carefully perused the oral as well as documentary medical evidence which clearly indicates that it was the appellant – accused Chandra Bhan who brought her wife (deceased) to the hospital and he had actually sustained burn injuries in this incident. We have already come to its conclusion that there is greater possibility of appellant- accused Chandra Bhan trying to save his wife on seeing her burning, when he returned at his home after office hours at about 6:00 pm. It has come on record that the accused sustained burn injuries and had brought the deceased to the hospital in an injured (burnt) condition. It has also come on record that the informant PW-1 met the appellant- accused Chandra Bhan in the hospital, who had not fled away from the hospital even after admitting

his wife. There is no other ante-mortem injuries on the body of the deceased except burn injuries which could have been indicative of the fact of physical harassment of the deceased at the hands of the appellant prior to her death. The prosecution has also failed to prove that all the accused named in the FIR were residing together under one roof. There is no explanation from the side of prosecution regarding burn injuries so sustained by the appellant- accused Chandra Bhan in the incident.

58. Therefore, we are of the opinion that even the dying declaration is not free from doubts. Thus in the present case even the surviving appellant could not be convicted only on the strength of the dying declaration. Moreover, no charge has been framed under Section 302 IPC and incident pertains to the year 1988, therefore, it is also not appropriate to remand the matter back to the learned trial Court for re-trial of the appellant after framing appropriate charges. Resultantly, this criminal appeal is liable to be allowed.

59. The impugned judgment and order dated 04.10.1989 passed by Ist Additional Sessions Judge, Etawah in Sessions Trial No. 190 of 1988 (State Vs. Chandra Bhan) connected with Session Trial No. 256 of 1988 (State vs. Jai Ram) arising out of Case Crime No. 101 of 1988, under Sections 302 IPC and Section 3/4 of the Dowry Prohibition Act, Police Station- Kotwali, District Etawah is liable to be set aside.

60. Before parting with the judgment we would like to say few words regarding proper investigation of dowry death cases as well as framing of appropriate charges in such cases. The dying declaration of the victim was clear to the extent that it was a case of homicide, however to the utter surprise, the then Investigating Officer submitted the charge-sheet only under Section 304-B IPC even without perusal of the contents of the dying declaration of the deceased. It clearly reflects not only lack of knowledge on the part of Investigating Officer but also is indicative of his failure to perform statutory duties regarding fair investigation. Moreover, the then Presiding Officer of the learned trial Court was also

required to be more careful while framing charges. If he (the then Presiding Officer of the learned trial Court) would have been a little vigilant and had gone through the dying declaration of the victim, he must have framed the main charge under Section 302 IPC and thereafter would have framed alternative charge under Section 304-B IPC. On account of failure of both i.e. the then Investigating Officer and the then Presiding Officer of the learned trial Court, no charge could have been framed under Section 302 IPC and we have not referred back the matter to the learned trial Court for re-trial of the appellant after framing appropriate charges for the reasons that incident pertains to the year 1988. Therefore, we are of the opinion that it is the duty of the trial Courts to frame appropriate charges in cases of dowry death. In such cases, the evidence collected by the Investigating Officers during course of investigation should be carefully gone through at the time of framing of charge and if there is evidence either direct or circumstantial to prima facie support a charge under Section 302 IPC, the trial Courts are duty bound to frame charge under Section 302 IPC and also frame an alternative charge under Section 304-B IPC. Addition of Section 302 IPC should not be mechanical and it should be framed if the evidence collected during course of investigation support framing of charge under Section 302 IPC. It is also important to observe here that the charge under Section 302 IPC should be the main charge rather than an alternative charge. The cases like the present one, clearly signifies the commission of homicide and, therefore, in such cases, framing of main charge under Section 302 IPC is inevitable. **We hope and trust that the trial Courts shall frame appropriate charges in cases relating to dowry death. A copy of this judgment be circulated amongst all Judicial Officers of the State of Uttar Pradesh through Registrar (compliance).**

61. Consequently, this appeal for surviving appellant, Chandra Bhan, is **allowed.** The judgment and order dated 04.10.1989 passed by Ist Additional Sessions Judge, Etawah in Sessions Trial No. 190 of 1988 (State Vs. Chandra Bhan) arising out of Case Crime No. 101 of 1988,

under Section 302 IPC and Section 3/4 of the Dowry Prohibition Act, Police Station- Kotwali, District Etawah for the surviving appellant, Chandra Bhan, is hereby set aside. The surviving appellant, Chandra Bhan, is acquitted of all the charges for which he has been tried. The surviving appellant is reported to be on bail, therefore, he need not surrender subject to compliance of provision of Section 437-A of Cr.P.C. to the satisfaction of the trial Court concerned at the earliest. His bail bonds are cancelled and sureties are discharged.

62. Original record has not been sent by the trial Court. Therefore, photostat copy of the record of the 'Trial Court' be retained and a copy of this judgment be immediately sent back to learned trial Court for necessary information and compliance.

(Dr. Ajay Kumar-II,J.) (Salil Kumar Rai,J.)

July 13, 2026
Dhirendra/

Digitally signed by :-
DHIRENDRA KUMAR
High Court of Judicature at Allahabad