



2026:CGHC:3234-DB

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NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****ACQA No. 122 of 2016**

1 - Siyaram Sen, S/o Late Baldev Sen, Aged About 58 Years, R/o Village Rasmada, Police Station - Pulgaon, District - Durg Chhattisgarh.

... Appellant**versus**

1 - State Of Chhattisgarh Through Station House Officer, Police Station - Azad Chowk, Raipur, District - Raipur Chhattisgarh.

2 - Kamlesh Sen S/o Omprakash Sen Aged About 30 Years R/o Hanuman Gudi, Awadhiya Para, Police Station - Azad Chowk, Raipur, District - Raipur Chhattisgarh.

3 - Omprakash Sen S/o Kunjlal Sen Aged About 64 Years R/o Hanuman Gudi, Awadhiya Para, Police Station - Azad Chowk, Raipur, District - Raipur Chhattisgarh.

4 - Shanti Bai Sen W/o Omprakash Sen Aged About 55 Years R/o Hanuman Gudi, Awadhiya Para, Police Station - Azad Chowk, Raipur, District - Raipur Chhattisgarh.

5 - Wasika Sen W/o Deepak Sen Aged About 37 Years R/o



Hanuman Gudi, Awadhiya Para, Police Station - Azad Chowk,
Raipur, District - Raipur Chhattisgarh.

... Respondents

For Appellant	:	Ms. Pranoti Das, Advocate on behalf of Mr. Goutam Khetrapal, Advocate.
For Res. No.1/State	:	Mr. Avinash Singh, Govt. Advocate.
Fro Res. Nos. 4 & 5	:	Mr. Surendra Kumar Dewangan, Advocate.

**DB : Hon'ble Smt. Justice Rajani Dubey &
Hon'ble Shri Justice Radhakishan Agrawal**

Judgment on Board
(20.01.2026)

Per Rajani Dubey, J

1. The present acquittal appeal has been filed by the complainant/appellant herein against the judgment dated 07.05.2016 passed in Sessions Case No.79/2015 by the learned 7th Additional Sessions Judge, Raipur (C.G.), whereby the learned Trial Court acquitted the accused/respondents Nos. 2 to 5 herein of the charge punishable under Section 304-B read with section 34 of the Indian Penal Code.
2. The prosecution case, in brief, is that deceased Roshni Sen was married to the accused/respondent No.2 - Kamlesh Sen about four years prior to the incident. Accused/respondent Nos. 3 and 4 Omprakash and Shanti Bai are the father-in-law and mother-in-law of the deceased



respectively, and accused/respondent No.4 - Wasika Sen is her sister-in-law (Jethani). It was alleged that deceased Roshni was subjected to physical and mental cruelty by her in-laws on account of bringing insufficient dowry and was taunted and harassed, and on that ground she was even driven out of the matrimonial home. She was persistently asked to bring cash, gold and silver as dowry. The deceased used to inform her parental family about such harassment from time to time. Her father advised her to lodge a report, however, the deceased kept refusing to do so. At the relevant time, deceased Roshni was residing at her matrimonial home situated at Hanuman Gudi, Avadhiya Para, Raipur, within the jurisdiction of Police Station Azad Chowk, Raipur. On 15.01.2015 at about 1:30 a.m., she suddenly caught fire while sleeping. After bringing the injured Roshni to the hospital, information of the incident was given to her father. The doctors continued her treatment, and during her admission at Dr. Kalda Nursing Home, intimation of the incident was sent to the concerned police station. Thereupon, the police reached the hospital and recorded the dying declaration of the deceased, and investigation of the matter was continued. During the course of treatment, injured Roshni succumbed to her injuries on



25.01.2015 at about 12:30 p.m. Further case of the prosecution is that the police registered a merg, prepared the inquest (panchnama) of the dead body and conducted post-mortem examination. On 28.01.2015, the parental side of the deceased lodged a report against the accused persons alleging dowry death. Upon completion of the merg inquiry, the police registered an offence against the accused persons and took up the case for investigation. During investigation, statements of witnesses were recorded, a spot map was prepared, and the saree worn by the deceased at the time of the incident was seized and sent for chemical examination. The accused persons were arrested and, after completion of usual investigation, a charge-sheet for the offence under Section 304-B/34 was filed against the accused/respondents before the jurisdictional Court followed by charge under Section 304-B/34 of IPC. The accused/respondents however denied the charge and pleaded for trial.

3. In order to prove its case, the prosecution examined as many as 11 witnesses. Statements of the accused/respondents were also recorded under Section 313 of the Cr.P.C. wherein the accused/respondents pleaded innocence and false implication in the crime. No defence



witness has been examined by the accused/respondents in the case.

4. The learned Trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment acquitted the accused/respondents of the charge under Section 304-B/34 of IPC. Hence, this appeal by the complainant/appellant.
5. Learned counsel for the appellant submits that the impugned judgment suffers from serious legal infirmities, is perverse in nature, and is based on improper appreciation of facts and evidence on record. The learned Trial Court has failed to apply settled principles of criminal jurisprudence, thereby resulting in grave miscarriage of justice. It is submitted that deceased Smt. Roshni Sen died an unnatural death in her matrimonial home within four years of her marriage with respondent No.2. The learned Trial Court failed to appreciate that such a circumstance squarely attracted the presumption under law and warranted framing of an alternative charge under Section 302 of the Indian Penal Code. The learned Trial Court further erred in ignoring material evidence available on record, particularly the dying declaration (Ex. P-18) recorded by Executive Magistrate, wherein the deceased categorically stated that she was set



on fire while sleeping and that at the relevant time only she and respondent No.2 were present in the room. This vital piece of evidence clearly indicated the involvement of respondent No.2, but was not considered in its correct perspective. It is further submitted that the evidence on record establishes that the deceased was subjected to continuous cruelty and harassment on account of dowry demands and was repeatedly sent to her parental home due to non-fulfillment of such demands, which constitutes “soon before death” within the meaning of Section 304-B of the Indian Penal Code. The learned Trial Court acquitted the accused/respondents without proper appreciation of oral and documentary evidence and without assigning cogent reasons, rendering the findings baseless, erroneous and contrary to law. Thus, the acquittal under Sections 304-B read with 34 of the Indian Penal Code is unsustainable and calls for interference by this Hon’ble Court. Accordingly, it is prayed that the impugned judgment of acquittal may be set aside.

6. Learned State counsel has duly assisted the Court.
7. Learned counsel for respondent Nos. 2 to 5 submits that she is representing the accused/respondent Nos. 4 and 5 as the accused/respondent Nos. 2 & 3 left for heavenly abode



during the pendency of appeal. She submits that the impugned judgment of acquittal is based on proper appreciation of evidence and does not warrant interference by this Hon'ble Court. The prosecution has failed to establish any specific role, overt act or direct involvement of respondents No.4 and 5 in the alleged incident. It is submitted that the evidence on record is general, omnibus and vague in nature so far as respondents No.4 and 5 are concerned. No independent or reliable evidence has been produced to prove that they subjected the deceased to cruelty or harassment for dowry soon before her death, which is a mandatory requirement for attracting Section 304-B IPC. The dying declaration relied upon by the prosecution does not attribute any role to respondents No.4 and 5, nor does it suggest their presence at the time of the incident. In the absence of direct, cogent and trustworthy evidence, the learned Trial Court rightly extended the benefit of doubt to respondents No.4 and 5. Therefore, the acquittal of respondents No.4 and 5 is legal, justified and deserves to be affirmed.

8. We have heard learned counsel for the parties and perused the material available on record.
9. It is clear from the record of the learned Trial Court that the



learned Trial court framed charges under Section 304-B/34 of the IPC and after appreciation of oral and documentary evidence, the learned Trial Court acquitted the accused/respondents of the said charges on this ground that the prosecution has failed to prove that the death of deceased was suicidal in nature and it also failed to prove that the deceased was subjected to any cruelty in relation to demand of dowry soon before her death.

10. It is not disputed before the learned Trial Court that deceased Roshani was wife of accused/respondent No.2 Kamlesh and their marriage was solemnized 04 years prior to the incident and on 15.01.2015 deceased Roshani suffered severe burn injuries, admitted in hospital where she died on 25.01.2015 during the course of treatment.
11. Siyaram Sahu (PW-1) is the complainant and father of deceased. He has stated that his deceased daughter Roshni was married to accused/respondent No.2- Kamlesh about four years prior and had two children. He has also stated that since her first pregnancy, accused Kamlesh, being addicted to alcohol, along with other accused persons, harassed, abused and assaulted Roshni for demand of dowry. He has also stated that his deceased daughter repeatedly informed him witness about cruelty but



refused to lodge any police complaint due to concern for her children and matrimonial life. He has also stated that he had given Rs.10,000/- and later Rs.20,000/- to accused Kamlesh on his demand and had also given gold jewellery to his daughter. One day prior to the incident, his deceased daughter Roshni again complained of assault by accused Kamlesh under the influence of liquor. Subsequently, this witness received information that his daughter Roshni had suffered burn injuries and found her severely burnt at Kalra Hospital, where treatment was later arranged by the witness. He has also stated that the deceased had told him that she had slept after lighting a mosquito coil and did not know how she got burnt. The prosecution declared this witness hostile and cross-examined him but he denied all suggestions of prosecution, however, he admitted that no dowry demand was made prior to marriage, and dowry was given voluntarily. He also admits that at the time of both deliveries no demand was made, and the entire medical expenses were borne by the accused persons. He also admits that at the time of delivery of his daughter, accused Shanti Sen, Om Prakash Sen and Vasika Sen never personally demanded dowry, and even during his 15–20 visits in his daughter's in-laws house, no dowry demand



was made. He also admits that that one day prior to the incident, he called witch practitioners, suggesting superstition rather than cruelty. He also admits that his deceased daughter herself stated she did not know how the fire occurred and that she was sleeping on the floor after lighting a mosquito coil. He has also admitted that the medical expenses were borne by the accused persons till 23.01.2015, including blood arrangement, and thereafter they expressed their inability to bear further medical expenses and thereafter he made the payment of Rs.90,000/-. He has also admitted that he never complained before police about the demand of accused Kamlesh of Rs.20,000/- in connection with motorcycle.

12. Dropadi Sen (PW-2), mother of deceased Roshani, has made almost similar statement as has been made by Siyaram Sahu (PW-1) and stated that the accused Kamlesh used to beat her deceased daughter under the influence of liquor.
13. Overall, the evidence of PW-1 and PW-2 is improvement-oriented, hearsay-based, and contradictory, containing significant admissions favourable to the defence and failing to establish consistent dowry demand or cruelty proximate to the incident. The admissions made by PW-1 and PW-2



materially weaken the prosecution allegation of dowry-related cruelty proximate to the death.

14. Further, Pankaj Sen (PW-3), brother, and Dhanesh Sen (PW-6), relatives of deceased Roshani, have stated that deceased used to inform them about the torture of accused Kamlesh. PW-6 has stated that the accused did not take the deceased immediately to hospital.
15. Smt. Lata Sen (PW-7) is the aunt of deceased Roshani. She has deposed that after marriage the deceased was subjected to cruelty and harassment by accused Kamlesh under the influence of liquor, and that the accused persons used to taunt her in connection with dowry. She has further stated that on the night of the incident the deceased was found in a severely burnt condition, that medical assistance was allegedly delayed, and that she ultimately died during the course of treatment. The witness has also claimed that the deceased made an oral dying declaration before her, alleging that all the accused persons had burnt her. However, in her cross-examination, this witness has made several significant admissions. He has admitted that there was no demand of dowry at the time of marriage and that whatever dowry was given was voluntarily given as per social custom. She has further admitted that the accused



persons themselves got the deceased admitted to the hospital and arranged her treatment, including blood.

16. From the aforesaid evidence and admission, the testimonies of PW-3, PW-6 and PW-7 are largely derivative in nature and based on what the deceased allegedly told them. Even PW-7, who claimed an oral dying declaration implicating all accused, has in cross-examination admitted that there was no dowry demand at the time of marriage and that the accused themselves admitted the deceased to hospital and arranged her treatment, including blood transfusion. Such conduct is inconsistent with the allegation of dowry death.
17. Regarding the medical evidence, Dr. Sunil Kalda (PW-8) has stated that deceased Roshani was admitted in his hospital on 15.01.2015. Deceased has sustained 70 – 75 % burn injuries. In cross-examination, this witness has admitted that on being asked the deceased had told that she burnt accidentally. He has also admitted that during admission of the deceased from 15.01.2015 to 20.01.2015, he treated the deceased but during this period deceased never told him that she was set on fire. This witness has admitted his signature in bedhead ticket (Ex.P-15).
18. Dr. M. Nirala (PW-09) is the autopsy surgeon who conducted postmortem of the deceased and gave his report



under Ex.P-17 opining that the deceased died of burn injuries and its complication. The doctor has admitted this suggestion of defence that the deceased could have been saved if there had been no infection in her body.

19. The evidence of PW-8 and PW-9 supports the defence version. PW-8 Dr. Sunil Kalda has admitted that on being asked, the deceased stated that she had burnt accidentally, and during the entire period of treatment from 15.01.2015 to 20.01.2015 she never stated that she was set on fire. PW-9 Dr. M. Nirala has opined that death occurred due to burn injuries and complications and has admitted that the deceased could have survived if infection had not developed.
20. The prosecution has also filed dying declaration (Ex.P-18) of the deceased which was got recorded by T.R. Maheshwari (PW-10), Tahsildar, who has stated that he had taken imprint of deceased's left toe because both of her hands were covered with bandage due to burn. In cross-examination, this witness has admitted that he had not taken signature of any witness in dying declaration (Ex.P-18). He has also admitted that he had not taken signature of doctor regarding the deceased being in fit state of mind to give dying declaration.



21. Apparently, the dying declaration (Ex.P-18) bears no signature of witnesses and the doctor who gave oral consent about the fit state of mind of the deceased. In order to ascertain the genuineness of dying declaration (Ex.P-18) of the deceased, the relevant portion of the dying declaration is reproduced herein, which reads thus :-

“प्रश्न : कैसे घटना घटी ?

उत्तर : यह घटना कैसे घटी मुझे नहीं मालूम जब मैं नींद से जागी तब मुझे पता चला की मैं जल गई हूँ।

प्रश्न : जिस कमरे में आप सोयी थी वहाँ और कौन थे ?

उत्तर : मेरे पति एवं मेरे दोनो बच्चे सोये थे। दोनो बच्चे साथ ही में थे।”

22. As regards the dying declaration (Ex.P-18), the same does not inspire confidence. PW-10 Tahsildar has admitted that no witness signatures were taken and no doctor's certification regarding the fitness of the deceased to give a statement was obtained, which is the requirement of law. More importantly, the contents of Ex.P-18 clearly state that the deceased did not know how the incident occurred and that she was sleeping in the room along with her husband and children. Thus, the dying declaration does not attribute any act of burning to the accused and, on the contrary, is inconsistent with the prosecution theory of dowry death.



23. On due appreciation of oral and documentary evidence, on record, this Court finds that the essential ingredients of Section 304-B of the IPC are not proved beyond reasonable doubt. For ready reference, Section 304-B of IPC is reproduced herein as under :-

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

24. In view of the above, this Court finds that although the death occurred within seven years of marriage, the prosecution has failed to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment for or in connection with dowry demand soon before her death. The statutory presumption under Section 113-B of the Evidence Act, therefore, does not arise. Consequently, the offence under Section 304-B IPC is not made out against the accused persons.
25. The Hon'ble Apex Court in its recent judgment dated 12.02.2024 (Criminal Appeal No 1162 of 2011) passed in



the matter of **Mallappa and Ors. Versus State of Karnataka**, has held in para 36 as under:-

36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

"(I) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive-- inclusive of all evidence, oral and documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

26. Thus from the discussion aforesaid and judicial



pronouncement of Hon'ble Supreme Court in the matter of ***Mallappa*** (*supra*) & the view taken by the learned Trial Court in acquitting the accused/respondents of the charge under Section 304-B read with section 34 of IPC, this Court finds no illegality in the order impugned acquitting the respondents particularly when there is a settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the Trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

27. Accordingly, the acquittal appeal is dismissed.

Sd/-
(**Rajani Dubey**)
JUDGE

Sd/-
(**Radhakishan Agrawal**)
JUDGE