

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.5 of 2010
Date of Decision: 30.05.2026

Rajeev Kumar & Anr.

.....Appellants

Versus

State of Himachal Pradesh

... Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Appellants: Mr. Ajay Kochhar, Senior Advocate with Ms. Swati Sharma & Mr. Anubhav Chopra, Advocates.

For the Respondent: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General.

Sandeep Sharma, Judge(oral):

Instant criminal appeal filed under Section 374 of Cr.P.C., lays challenge to judgment of conviction dated 21.12.2009 and order of sentence dated 22.12.2009 passed by the learned Additional Sessions Judge (Fast Track Court), Hamirpur, Himachal Pradesh, in Sessions Trial No.26 of 2008/RBT 2 of 2009, titled as ***State of Himachal Pradesh Vs. Rajeev Kumar & Anr.***, whereby court below, while holding the appellants-accused (in short, '***accused***') guilty of having committed offences punishable under Sections 498-A, 304-B and 201 of Indian Penal Code, convicted and sentenced them as under:

¹Whether the reporters of the local papers may be allowed to see the judgment?

Accused No.1

Section	Sentence	Fine	Default sentence
498-A IPC	2 years simple imprisonment	Rs.1000/-	Simple imprisonment for 15 days
304-B IPC	7 years rigorous imprisonment	Rs.5000/-	Simple imprisonment for two months

Accused No.2

Section	Sentence	Fine	Default sentence
498-A IPC	2 years simple imprisonment	Rs.1000/-	Simple imprisonment for 15 days
304-B IPC	7 years rigorous imprisonment	Rs.5000/-	Simple imprisonment for two months
201 IPC	3 years rigorous imprisonment	Rs.1000/-	Simple imprisonment for 15 days

2. In nutshell, case of the prosecution, as came to be presented before the learned Additional Sessions Judge (Fast Track Court), Hamirpur, Himachal Pradesh, by way of challan under Section 173 Cr.P.C, is that FIR came to be lodged on the basis of statement of the complainant Ranjha Ram (PW-1), recorded under Section 154 Cr.P.C (Ext.PW1/A), wherein he alleged that he had solemnized marriage of his deceased daughter Kusham Lata with accused No.1, Rajeev Kumar at Village Balokhar according to Hindu rites and ceremonies and out of their wedlock, one son was born. Complainant alleged that at the time of marriage, dowry articles were given as per his capacity. However, accused No.1 and 2, who were husband and

mother-in-law of the deceased, started subjecting the deceased Kusham Lata to harassment for bringing less dowry after 1½ years of marriage. Complainant further alleged that on 6.12.2007 at 10.30 p.m., Rikhi Ram, the father and husband of accused, telephoned him to inform that his daughter had suffered burn injuries and thereafter, his wife and son rushed to Village Balokhar, where they found the deceased Kusham Lata in a severely burnt condition. Complainant alleged that deceased told them that accused had burnt her and she should be saved. Complainant alleged that his daughter was firstly taken to R.H. Hamirpur and thereafter, referred to PGI, Chandigarh. In the afore background, FIR (Ext.PW-10/A), as detailed hereinabove, came to be lodged against the accused.

3. Investigating Officer PW-15 ASI Man Chand firstly went to the spot and inspected scene of crime. Site plan Ext. PW-15/A was prepared. From the spot, he took into possession shirt Ext. P-1, Sweater Ext. P-2, Vest Ext. P-3, Trouser Ext. P-4, Bra Ext. P-5, underwear Ext.P-6, which were lying in the varandah. Table Cloth Ext.P-9 was taken into possession from the room of deceased Kusham Lata. Carbon Ext.P-10 was collected from the scene of crime. All these articles were taken into possession vide Ext.PW-2/A in the presence of witnesses Rajeev Kumar and Braham Dass and thereafter, he rushed to PGI, Chandigarh, for recording the statement

of the deceased, but she was not fit to make a statement, as such, afore officer again went to PGI, Chandigarh for recording her statement, but could not record her statement on account of her critical condition, as she was declared unfit to give a statement. Again on 09.12.2007, Constable Kuldeep Singh, who was posted at PGI, Chandigarh, moved an application (Ext.PW-7/A) at the behest of PW-15 ASI Man Chand, seeking opinion of the doctor "*whether the deceased was fit to give a statement or not?*" PW-14 Dr. Kajol Dass opined that deceased is fit to give a statement, thereafter PW-15 recorded the statement of deceased on 12.12.2007 (Ext.PW-8/A), which was signed and attested by PW-8, brother of the deceased. In the aforesaid statement, since deceased stated that she was constantly harassed and tortured by the accused for bringing less dowry and she, after having poured petrol on her, set herself on fire, the FIR was initially registered under Sections 498-A and 304-B of Indian Penal Code. It is also pertinent to take note of the fact that during investigation, police found that accused No.2 had made an attempt to destroy the evidence by sweeping the floor and as such, case under Section 201 of Indian Penal Code was also registered against accused No.2. Articles taken into possession vide Ext.PW-2/A were sent to FSL Junga for analysis. On 14.12.2007, Kusham Lata succumbed to the burn injuries and police moved an application for

post-mortem of the deceased. The doctor, who conducted the post-mortem of the deceased vide Ext. PW-6/D, opined that the cause of death was septicemia/ shock due to extensive antemortem thermal burns (85%), which were sufficient to cause death in ordinary course of nature. Report received from State FSL Junga revealed that traces of petrol were detected on the burnt clothes of the deceased, Kusham Lata, as well as on the table cloth; the snaps of the place of occurrence were taken and thereafter, accused were arrested. Subsequently accused No. 2 was released on bail pursuant to order passed by the learned Additional Chief Judicial Magistrate, Court No.2, Hamirpur, Himachal Pradesh, whereas accused No.1 was enlarged on bail in terms of the orders passed by this Court.

4. After completion of investigation, police presented challan in the competent Court of law, which having perused documents as well as other evidence adduced on record, proceeded to frame charge against accused No.1 under Sections 498-A, 304-B/34 of Indian Penal Code and against accused No.2 under Section 498-A, 304/34 and 201 of Indian Penal Code, to which they pleaded not guilty and claimed trial.

5. Prosecution, with a view to prove its case, examined as many as 15 witnesses. However, accused did not lead any evidence in defence. In their statements recorded under Section 313 Cr.P.C,

the accused denied the case of the prosecution in toto and claimed themselves to be innocent.

6. Learned trial Court, on the basis of evidence adduced on record by the prosecution, held accused No.1 guilty of his having committed offences punishable under Sections 498-A, 304 read with Section 34 of Indian Penal Code and accused No.2 guilty of her having committed offences punishable under Section 498-A, 304 read with Section 34 and 201 of Indian Penal Code and accordingly, convicted and sentenced them as per description given hereinabove. In the afore background, accused have approached this Court in the instant proceedings, praying therein for their acquittal after setting aside the judgment of conviction and order of sentence recorded by the Court below.

7. I have heard learned counsel for the parties and gone through the case file carefully.

8. Precisely, the grouse of the accused, as came to be highlighted in the grounds of appeal and further canvassed by Mr. Ajay Kochhar, learned Senior Counsel for the accused duly assisted by Ms. Swati Sharma, Advocate, is that Court below, while ascertaining the guilt of the accused, have failed to appreciate the evidence in its right perspective, as a result thereof, findings to the detriment of the accused have come to the fore. Mr. Kochhar, learned

Senior Counsel, vehemently argued that though no cogent and convincing evidence ever came to be adduced on record by the prosecution to prove the demand of dowry, if any, by the accused, but yet Court below proceeded to hold the accused guilty of having committed offence punishable under Section 498-A of Indian Penal Code. While referring to the statements made by PW-1 Ranjha Ram, PW-4 Kunti Devi and PW-8 Rakesh Kumar vis-a-vis statement made by PW-1 Ranjha Ram under Section 154 Cr.P.C, Mr. Kochhar, submitted that afore witnesses, for the first time in the court, deposed that accused had demanded a colour TV, fridge and Rs.40,000/-. He submitted that while lodging FIR, no such allegation was levelled. He further submitted that Court below erred in not appreciating the version put-forth by PW-1 Ranjha Ram and PW-8 Rakesh Kumar with regard to payment of Rs.20,000/- to accused No.1, out of demanded amount of Rs.40,000/-, which stood falsified by the version of PW-4 Smt. Kunti Devi, mother of the deceased, by making a contradictory statement of firstly paying an amount of Rs.15,000/- and thereafter Rs.20,000/- to accused No.1. He further submitted that Court below also failed to take note of fact that prior to lodging of FIR or making statement before the Court below, no report or complaint of alleged harassment or demand of dowry, if any, at the behest of the complainant ever came to be reported to the Gram Panchayat or to

the police. He further submitted that court below conveniently ignored the statement of nephew of the complainant as well as Pradhan of village examined by the prosecution i.e. PW-2 and PW-3, wherein they specifically denied factum, if any, of harassment of the deceased on account of bringing less dowry. While making this Court peruse statements of parents of the deceased i.e. PW-1 Ranjha Ram and PW-4 Smt. Kunti Devi, Mr. Kochhar submitted that as per afore witnesses, the accused set the deceased on fire after she had poured petrol on herself, but such version of them is totally contradictory to the case of prosecution. He submitted that in the case at hand, prosecution attempted to prove the case against the accused that deceased committed suicide by pouring petrol on herself on account of her being tortured and harassed by the accused constantly for bringing less dowry. He further submitted that no other witness except PW-1, PW-4, PW-8, who happen to be father, mother and brother of the deceased, respectively, were examined by the prosecution as prosecution witnesses. He submitted that though version of afore witnesses, being interested witnesses, cannot be brushed aside lightly, but keeping in view the exaggerations, contradictions and inconsistencies in their statements, their version could not have been accepted by the court below as a gospel truth. He submitted that as per own case of the prosecution, especially statement of PW-15,

there were numerous houses in the village, but for no convincing reason, not even a single independent witness ever came to be associated with the investigation or examined by the prosecution. He further submitted that court below wrongly considered Ext.PW-8/A as dying declaration of the deceased because same was not recorded in terms of Rules specified for recording dying declaration. He submitted that in the case at hand, PW-14, who was otherwise not competent to render opinion, declared deceased to be fit on 09.12.2007, however, PW-15 proceeded to record the statement of deceased on 12.12.2007, by which time condition of the deceased had deteriorated. While making this Court peruse statement of deceased recorded under Section 161 Cr.P.C Ext.D-X and juxtaposing the same with the alleged dying declaration Ext. PW-8/A, Mr. Kochhar submitted that it is not understood that why on the same day, two statements were recorded. He stated that both the statements are verbatim and identical. While making this Court peruse statement of PW-8, who happens to be brother of the deceased and attesting witness to Ext. PW-8/A, Mr. Kochhar vehemently argued that PW-15, while recording so-called dying declaration of the deceased Ext.PW-8/A, associated none other than PW-8. He submitted that PW-8, in his cross-examination, categorically denied suggestion put to him that Constable Kuldeep Singh, who is otherwise cousin brother

of the deceased and nephew of PW-1, was accompanying PW-15 at the time of his recording dying declaration Ext. PW-8/A, whereas PW-15 ASI Man Chand, in his cross-examination, admitted that Constable Kuldeep Singh was present with him and had recorded the dying declaration of the deceased on his instructions. PW-15 also stated that dying declaration was written by Constable Kuldeep Singh and attested by PW-8 Rakesh Kumar. However, PW-8, in his statement, categorically denied factum of his acquaintance or relationship, if any, with the Constable Kuldeep Singh as well as his presence on the spot at the time of recording of dying declaration Ext. PW-8/A. While referring to aforesaid statements made by PW-8 and PW-15, Mr. Kochhar, argued that very factum of giving so-called dying declaration, as recorded in Ext. PW-8/A by the deceased, is highly doubtful, rather same appears to have been manufactured by the prosecution at the behest of Constable Kuldeep Singh, who according to the statement of PW-1, is his nephew and cousin brother of the deceased and at relevant time, was posted at Police Station Bhoranj, District Hamirpur, Himachal Pradesh. Mr. Kochhar further argued that no plausible explanation ever came to be rendered on record by the prosecution that why PW-15 ASI Man Chand failed to obtain opinion on 12.12.2007 from the doctor, who was attending upon the deceased before recording the so-called dying declaration

Ext. PW-8/A. He further submitted that admittedly, at the time of recording the statement of the deceased, she was admitted in emergency ward, where number of persons were present, but yet PW-15 ASI Man Chand proceeded to make PW-8 Rakesh Kumar, real brother of deceased, as an attesting witness to the statement. While referring to Punjab Police Rules, 1934, which are applicable in the State of Himachal Pradesh, Mr. Kochhar, submitted that Rule 25.21, which deals with dying declaration, clearly provides that dying declaration should, whenever possible, be recorded by a Magistrate, and in his absence, by a Medical Officer or any Gazetted officer. He submitted that in afore Rule, it has been specifically mentioned that Investigating Officer should take note of the fact that no interested witness should be present at the time of recording dying declaration. However, in the instant case, what to talk about associating independent witnesses, a Magistrate, or even a doctor, ASI only associated brother of the deceased as well as cousin brother, Constable Kuldeep Singh, who otherwise never came to be examined. Lastly, Mr. Kochhar, submitted that as per version put-forth by PW-8 i.e. attesting witness, deceased had made her statement in Pahari, whereas statement Ext. PW-8/A placed on record is in Hindi. He further submitted that on 14.12.2007, unfortunately deceased passed away and intimation with regard to the same was sent to

Police Station Bhoranj vide DDR Ext. DD on 14.12.2007, but interestingly, case under Section 304-B came to be registered against accused on 22.12.2007 i.e. after eight days of death of the deceased, which substantiates the suspicion of accused that no dying declaration was given by the deceased on 12.12.2007 and the same was subsequently manufactured to falsely implicate the accused at the instance of Constable Kuldeep Singh, who at relevant time was working at Police Station Bhoranj and also accompanied PW-15 ASI Man Chand to PGI, Chandigarh.

9. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while supporting the impugned judgment of conviction recorded by the Court below and refuting the aforesaid contentions raised at the behest of the accused, vehemently argued that there is no mis-appreciation of evidence led on record by the prosecution, rather court below rightly held accused guilty of having committed offences punishable under Sections 498-A, 304-B & 201 of Indian Penal Code. He submitted that though there is overwhelming evidence adduced on record by the prosecution to prove the guilt of the accused, but otherwise sole statement of the deceased recorded on 12.12.2007 Ext. PW-8/A is sufficient to connect the accused with the alleged commission of offences punishable under Sections 498-A, 304-B & 201 of Indian Penal Code. He submitted that though opinion

with regard to fitness of the deceased to make a statement was given on 09.12.2007 by PW-14, but since at relevant time, PW-15 was not available at Chandigarh, rather he came on 12.12.2007 and on that day, deceased was fit to give a statement as is evident from her statement, no illegality can be said to have been committed by PW-15 by not taking fresh opinion. He further submitted that by now it is well settled that at the time of recording dying declaration, it is not compulsory for Investigating Officer to associate doctor attending upon the deceased or Magistrate as is being claimed by the learned Senior Counsel for the accused. While making this court peruse statements made by PW-1, PW-4 and PW-8, Mr. Kahol further argued that they all in unison stated that deceased was being harassed constantly by the accused for bringing less dowry. He submitted that afore all witnesses stated that after 1½ years of marriage of the deceased with accused No.1, accused made demand of TV, fridge and cash, which were provided to them, as such, no illegality can be said to have been committed by the Investigating Agency, while registering case against the accused under Section 498-A. He submitted that since accused No.2 attempted to clean the floor before arrival of the police, she rightly came to be booked under Section 201 of Indian Penal Code. While making this Court peruse Section 498-A of Indian Penal Code, Mr. Kahol submitted that since deceased died

within seven years of her marriage, death of the deceased rightly came to be presumed as dowry death. He further submitted that demand of TV, fridge and cash stood duly proved with the return of these items by the father of accused No.1 to the father of the deceased vide inventory prepared as Ext.DA. He submitted that had accused not demanded afore articles from the parents of the deceased, there was no occasion for them to return the same to the father of the deceased. Lastly, Mr. Kahol submitted that accused have committed heinous crime punishable under Sections 498-A, 304-B & 201 of Indian Penal Code and prosecution has been able to prove beyond reasonable doubt their guilt, as such, present appeal filed at the behest of the accused deserves outright dismissal.

10. Though in the case at hand, police recorded the statements of 15 prosecution witnesses, but version put-forth by PW-1, PW-2, PW-3, PW-4, PW-8, and PW-15 would be material to ascertain the correctness of the judgment of conviction recorded by the court below. If the version of PW-1 Ranjha Ram, PW-4 Kunti Devi and PW-8 Rakesh Kumar, i.e. father, mother and brother of the deceased is read in conjunction, they, while stating that marriage of deceased had taken place with accused No.1 about three years before her death, in unison stated that after about 1½ years from the date of marriage, deceased was kept nicely by the accused, but

thereafter her husband i.e. accused No.1 and mother-in-law i.e. accused No.2 started harassing her for bringing less dowry. They also stated that demand of dowry articles i.e. Fridge and colour TV was placed by the accused, which was fulfilled and after two months from the date of handing over the aforesaid articles, accused No.1 further placed a demand of Rs.40,000/- through deceased and same could not be met and only a sum of Rs.20,000/- was given to accused No.1 after withdrawal from bank. Though it came to be stated by afore witnesses that afore amount was handed over by PW-8 Rakesh Kumar to accused No.1, but no evidence qua withdrawal of the same from the bank ever came to be adduced on record. They further stated that accused were not satisfied with the aforesaid articles and again demanded an additional amount of Rs. 20,000, which the complainant side was unable to arrange or pay. They stated that on the date of alleged incident, PW-4 Smt. Kunti Devi had received a telephone from deceased Kusham Lata, who disclosed to her that she was being harassed by the accused. However, at about 10:30 p.m., PW-1 Ranjha Ram, father of the deceased, received a telephone call from Rikhi Ram informing him that deceased Kusham Lata had suffered burn injuries. Afore witnesses further stated that when they reached matrimonial house of their deceased daughter, accused No. 2 had cleaned petrol from the floor of the room, where the deceased

was found and thereafter, the deceased was taken to R.H. Hamirpur, from where she was further referred to P.G.I. Chandigarh. PW-4 Kunti Devi, in her statement, deposed that when she visited Village Blokhar, she found her daughter lying on a cot in the veranda, covered with a quilt and without clothes. On inquiry, Kusham Lata told her that throughout the day the accused persons had quarrelled with her and under these circumstances, she had sprinkled petrol on herself, whereupon accused No. 1 set her on fire. If the version made by the aforesaid material prosecution witnesses is read juxtaposing initial statement of PW-1 vis-a-vis so-called dying declaration of deceased Ext. PW-8/A, this Court is persuaded to agree with Mr. Ajay Kochhar, learned Senior Counsel for the accused, that besides, there being material contradictions with regard to demand of dowry, an attempt came to be made by these witnesses to improve their version.

11. PW-1 Ranjha Ram, while lodging FIR nowhere specifically mentioned with regard to demand of articles i.e. fridge, TV and cash amounting to Rs.40,000/-, rather he disclosed to the police that his deceased daughter had told him that she was being harassed and tortured on account of bringing less dowry. Story of demanding dowry, if any, by the accused came to be introduced for the first time by PW-1, PW-4 and PW-8, while getting their statements recorded in the Court. Mr. Rajan Kahol, learned Additional Advocate General,

while referring to inventory Ext. DA, vehemently argued that demand of dowry stands duly proved on the basis that articles i.e. fridge, TV and other items allegedly demanded by the accused were subsequently returned to the family of the deceased after her death. PW-8, in his cross-examination, categorically admitted that he had not specifically mentioned the demand of TV, fridge and cash in his statement under Section 161 of Cr.P.C. However, after having carefully perused inventory prepared at the time of returning of articles Ext.DA, this Court finds that articles received by the complainant were those articles, which were given by them to the deceased at the time of marriage and not subsequently, as has been attempted to be proved by the prosecution. Most importantly, in the case at hand, no cogent and convincing evidence ever came to be adduced on record by the prosecution to prove that prior to alleged demand of TV, fridge and cash, report, if any, with regard to maltreatment and harassment of the deceased at hands of the accused on account of her bringing less dowry was ever lodged either in Gram Panchayat or to the Police.

12. Though PW-1, PW-4 and PW-8, in their respective statements given in court, attempted to prove that deceased was being constantly harassed and tortured by the accused for bringing less dowry, but they nowhere stated that prior to lodging of FIR, which

is the subject matter of the present case, they had ever reported the matter to the police or Gram Panchayat. At this stage, it would be apt to take note of the statements made by PW-2 and PW-3. PW-2 Rajeev Kumar, who is from the same village as of PW-1, categorically deposed that deceased used to meet him frequently, but at no point of time, neither deceased nor her father ever complained to him about any harassment. Similarly, PW-3 Braham Dass, who was Up Pradhan of Gram Panchayat Tal, stated that at no point of time, neither PW-1 nor his family member ever lodged complaint with regard to harassment or demand of dowry, if any, by the accused.

13. At this stage, it is also important to take note of cross-examination of PW-4, mother of the deceased, who stated that premature withdrawal from the account of her daughter Monu, of Rs.20,000/- was made and Rs.15,000/- and Rs.20,000/- were given in two installments to accused No.1, which version of her is totally contradictory to the version of PW-1 and PW-8. No bank statement pertaining to the account of Meenu or Monu was ever produced on record to substantiate the alleged withdrawals or payments. After having perused statements made by PW-1, PW-2, PW-3 and PW-4 and PW-8, this Court is not persuaded to agree with the findings returned by the court below as well as submissions made by Mr. Rajan Kahol, learned Additional Advocate General, that prosecution

was able to prove beyond reasonable doubt that deceased was being constantly harassed and tortured by the accused for bringing less dowry and such fact ultimately drove her to end her life.

14. Learned trial Court, merely taking note of the fact that PW-1, while lodging FIR, nowhere mentioned the name of the father of accused No.1, proceeded to conclude that version put-forth by PW-1, PW-4 and PW-8 is a natural version and had afore witnesses any intention to falsely implicate the accused, they would have also implicated Sh. Rikhi Ram, father of accused No.1 and husband of accused No.2. Besides above, court below, while ignoring the material fact with regard to non-lodging of report/complaint to the Gram Panchayat or police on account of constant harassment of the deceased for her bringing less dowry at the behest of the accused, had given totally absurd and implausible explanation i.e. it is desire of every parents that their daughter lives happily in her matrimonial home, which is based upon emotional relationship and as such, said matters were not reported to the police and authorities as well as demand of dowry was being complied with. Once the complainant claimed that they were trying to meet the demands of dowry made by the accused, coupled with the fact that prior to lodging of FIR, which is the subject matter of the present case, no report ever came to be made to the Gram Panchayat or police, explanation rendered on

record by the complainant qua not filing report to the Gram Panchayat or police could not have been accepted by the court below. Most importantly, in the case at hand, this Court finds that Investigating Officer for the reasons best known to him chose not to associate any independent witnesses, rather he built up the entire case of prosecution on the basis of statements made by PW-1, PW-4 and PW-8, who happen to be father, mother and brother of the deceased. True it is that version put-forth by the afore witnesses cannot be brushed aside, rather it has the same evidentiary value as of other independent witness, but certainly on account of material contradictions and inconsistencies, as have been taken note hereinabove, their version could not have been accepted as a gospel truth, rather in the event of association of independent witnesses, if any, by the prosecution, it would have been easier for the court below to ascertain the correctness of the story put-forth by the prosecution. It has come in the evidence that village, wherein deceased was residing, there were number of houses in and around house of the deceased, but Investigating Officer made no attempt to record the statement of nearby persons, who could have disclosed factum, if any, of constant harassment of the deceased by the accused on account of her bringing less dowry.

15. Having scanned the entire evidence, this Court is not convinced that prosecution was able to prove beyond reasonable doubt that deceased was being constantly harassed/tortured for her bringing less dowry, rather this Court is persuaded to agree with Mr. Ajay Kochhar, learned Senior Counsel for the accused that no case much less under Section 498-A is made out against the accused. True it is that under Section 304-B of Indian Penal Code, there is a presumption that in case women dies within seven years of her marriage that would be presumed to be dowry death as provided under Section 113-B of Indian Evidence Act, but to invoke aforesaid provision of law, it is also mandatory to show that right before her death, such woman was subjected by such person to cruelty or harassment in connection with any demand of dowry. At this stage, it would be apt to take note of judgment passed by the Coordinate Bench of this Court in ***State of Himachal Pradesh Vs. Yog Raj, 1996 STPL(LE-Crim) 7018 HP***. Relevant para of the afore judgment is extracted hereinbelow:-

8. As had been held by the Hon'ble Supreme Court in Shanti v. State of Haryana, AIR 1991 SC 1226 : (1991 Cri LJ 1713), before a person can be convicted for the offence under Section 304-B, Indian Penal Code, the prosecution must prove the following:-

(1) That the death of the deceased was caused by burns or bodily injury or otherwise than under normal circumstances;

(2) That such death had occurred within seven years of the marriage of the deceased;

(3) That the deceased had been subjected to cruelty or harassment by her husband or any relative of her husband; and

(4) That such cruelty or harassment was for or in connection with the demand for dowry.

16. Reliance is also placed upon judgment passed by the Hon'ble Apex Court in Criminal Appeal No.1408 of 2013, titled as ***Bhupal Singh & Anr. Vs. State of Uttarakhand***. Relevant paras of the afore judgment are extracted hereinbelow:-

"9. For proving the offence of dowry death, the prosecution must prove that (i) the death of the woman is caused by any burns or bodily injury or has occurred otherwise than in normal circumstances, (ii) the death has occurred within seven years of her marriage, (iii) soon before her death, she was subjected to cruelty or harassment by her husband or his any relative and (iv) the cruelty or harassment was for or in connection with the demand for dowry.

10. We must note that both the witnesses have not deposed about the specific instances of cruelty or harassment apart from stating that there was a demand for dowry. As stated earlier, the version of both the witnesses regarding the demand for dowry is an omission. In the circumstances, the necessary ingredients of the offence under [Section 304B](#) of the IPC were not established.

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As stated earlier, there was no legally admissible evidence of the demand for dowry made by the present appellants. There is no specific evidence of any cruelty."

17. Recently, Hon'ble Apex Court in SLP (Cr.I) No.21118 of 2025, titled as **Gandadhipa Sahu Vs. State of Odisha & Ors.**, decided on 26.05.2026, held that, in the absence of proof of any unlawful demand or acts of cruelty, the conviction under Section 498-A was unsustainable. Relevant para of the afore judgment is extracted hereinbelow:-

"11. We are conscious of the fact that to attract Section 498-A, there need not be a demand of dowry, since any unlawful demand made by the husband or his family is covered under Explanation (b). Explanation (a) of Section 498-A also brings in any mindless action, willful in nature, driving the wife to commit suicide under 'cruelty'. But the evidence led by way of oral testimony, here, does not put forth any unlawful demand or such mindless acts of physical or mental torture as rightly found by the High Court. Why then the conviction, is the vexing question."

18. Reliance is also placed upon judgment passed by Hon'ble Apex Court in **Kunhiabdulla & Anr. Vs. State of Kerala, 2004 STPL(LE) 32979 SC**. Relevant paras of the afore judgment are extracted hereinbelow:-

"8. [Section 304B](#) IPC deals with dowry death which reads as follows:

"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.

Explanation For the purpose of this sub- section "dowry" shall have 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."

9. The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of [Section 304B IPC](#), the essential ingredients are as follows:-

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

10. [Section 113B](#) of the Indian Evidence Act, 1872 (in short the '[Evidence Act](#)') is also relevant for the case at hand. Both [Section](#)

[304B](#) IPC and [Section 113B](#) of the Evidence Act were inserted by the [Dowry Prohibition \(Amendment\) Act](#) 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B reads as follows:-

"113B: Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation For the purposes of this section "dowry death" shall have the same meaning as in [Section 304B](#) of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113B in the [Evidence Act](#) has been inserted. As per the definition of 'dowry death' in [Section 304B](#) IPC and the wording in the presumptive [Section 113B](#) of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under [Section 304B](#) IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death.

11. A conjoint reading of [Section 113B](#) of the Evidence Act and [Section 304B](#) IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where [Section 113B](#) of the Evidence Act and [Section 304B](#) IPC are pressed into service. 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 prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket 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 113B](#) of the Evidence Act. The expression 'soon before her death' used in the substantive [Section 304B](#) IPC and [Section 113B](#) 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 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 its 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 concerned cruelty or harassment 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 concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

19. Careful perusal of judgments passed by this Court as well as Hon'ble Apex Court reveals that to invoke Section 304-B of Indian Penal Code, there should be material to show that soon before her death, the victim was subjected to cruelty or harassment. The expression 'soon before' is very relevant, where Section 113-B of Indian Evidence Act and Section 304-B of Indian Penal Code are pressed into service. Presumption would operate only in case prosecution is able to prove that soon before occurrence, deceased was subjected to cruelty or harassment. In **Kunhiabdulla** (supra), Hon'ble Apex Court categorically stated that 'soon before' is a relative term and it would depend upon circumstances of each case and no

strait-jacket formula can be laid down as to what would constitute a period 'soon before' the occurrence.

20. At this stage, Mr. Rajan Kahol, learned Additional Advocate General, while referring to statements made by PW-1, PW-4 and PW-8 as well as so-called dying declaration Ext. PW-8/A, vehemently argued that before the alleged incident of burning, deceased was subjected to cruelty and harassment, as such, no illegality can be said to have been committed by the court below, while holding the accused guilty of having committed offence punishable under Section 304-B of Indian Penal Code. However, this Court is not persuaded to agree with Mr. Kahol, learned Additional Advocate General, for the reason that in earlier part of the judgment, this Court, after having noticed material contradictions and inconsistencies in the statements of afore witnesses, has already held that version put-forth by the afore witnesses with regard to constant harassment of deceased on account of her bringing less dowry cannot be accepted, rather this Court, having carefully perused statement of PW-4 has serious doubt about the correctness of story put-forth by the prosecution. If the case of prosecution, as came to be projected, is seen, deceased is alleged to have committed suicide on account of her being constantly harassed and tortured by the accused for bringing less dowry, but if the statement of PW-4 given in Court is

perused in its entirety, it reveals that when afore witness reached the house of the deceased, deceased allegedly disclosed to her that through out the day, accused had quarreled with her and under these circumstances, she sprinkled petrol on herself and accused No.1 set her on fire. If afore version of PW-4 is taken into consideration, it not only creates serious doubt about the story put-forth by the prosecution, rather also creates serious doubt with regard to correctness of so-called dying declaration Ext. PW-8/A, wherein deceased disclosed that she, on account of constant harassment, poured petrol and burnt herself. There is another aspect of the matter that alleged incident happened on 06.12.2007, thereafter deceased was taken to RH Hamirpur, from where she was referred to PGI Chandigarh on 07.12.2007. On 07.12.2007, an application came to be moved by the Investigating Officer for recording the statement of deceased, but she was declared not fit to make the statement, as such, statement could not be recorded. Again on 09.12.2007, an application Ext. PW-7/A came to be made to the Medical Officer for rendering opinion "*whether the deceased is fit to give statement or not?*". PW-14 Dr. Kajal, who admittedly had not been treating the patient regularly, rather was working as a Senior Resident in the emergency, opined the deceased to be fit for making statement. Interestingly, after three days of rendering opinion, Investigating

Officer PW-15 ASI Man Chand proceeded to record the statement of the deceased, but even at that time, he failed to associate any doctor or staff of the hospital, rather he chose to record the statement of deceased in presence of Rakesh Kumar, brother of the deceased. Though story of prosecution with regard to recording the aforesaid statement on 12.12.2007 Ext. PW-8/A is also highly doubtful on account of statement of PW-8, wherein he categorically stated that at the time of recording the statement of the deceased Ext. PW-8/A, Constable Kuldeep Singh was not present, whereas PW-15 ASI Man Chand, categorically deposed that he recorded the statement of deceased Ext. PW-8/A in the presence of Constable Kuldeep Singh and PW-8 Rakesh Kumar, but even otherwise, there is no explanation that why Investigating Officer failed to take fresh opinion of the doctor on 12.12.2007 with regard to fitness of the deceased.

21. True it is that doctor, vide Ext. PW-7/A dated 09.12.2007, had declared the deceased to be fit for recording the statement, but this Court cannot lose sight of the fact that with each passing day, health of the deceased was deteriorating on account of her having suffered 85% burn injuries, particularly as she had developed septicemia.

22. At this stage, Mr. Rajan Kahol, learned Additional Advocate General, argued that there was no requirement, if any, for

the Investigating Officer to obtain fresh opinion on 12.12.2007 in the wake of opinion already rendered by the doctor on 09.12.2007. He submitted that there is no evidence adduced on record to prove that condition of the deceased had actually worsened on 12.12.2007. At this stage, it is apt to take note of Rule 25.21 of Punjab Police Rules, which deals with dying declaration.

"25.21. Dying declarations.-(1) A dying declaration shall, whenever possible, be recorded by a Magistrate.

(2) The person making the declaration shall, if possible be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no magistrate can be obtained, the declaration shall, when a gazetted police officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case.

(4) If no such witnesses can be obtained without risk of the injured person dying before his statement can be recorded, it shall be recorded in the presence of two or more police officers.

(5) A dying declaration made to a police officer should, under section 162, Code of Criminal Procedure, be signed by the person making it.

23. Aforesaid Rule clearly provides that a dying declaration shall, whenever possible, be recorded by a Magistrate and the person making the declaration shall, if possible, be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his faculties to make a lucid statement. In case no magistrate is

available, the declaration shall be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case. Interestingly, in the case at hand, dying declaration Ext. PW-8/A was neither recorded in the presence of Magistrate nor in the presence of two or more reliable witnesses unconnected with the Police Department, rather dying declaration Ext. PW-8/A came to be recorded in the presence of PW-8, brother of the deceased, allegedly written by cousin of the deceased Constable Kuldeep Singh. If the version put-forth by PW-15 is read in its entirety, it clearly reveals that Constable Kuldeep Singh, who is the cousin of the deceased and nephew of PW-1, as has been fairly admitted by PW-1, in his cross-examination, had been visiting PGI, Chandigarh frequently with ASI Man Chand. As per version put-forth by PW-15 ASI Man Chand, version of the deceased was written by the Constable Kuldeep Singh in the presence of PW-8, who is otherwise attesting witness. PW-8, in his statement, categorically denied presence of Constable Kuldeep Singh at the spot at the time of recording dying declaration Ext. PW-8/A. Constable Kuldeep Singh never came to be examined. It stands duly established on record that afore Constable Kuldeep Singh, nephew of PW-1 and cousin brother of the deceased, was posted at Police Station Bhoranj, where case against the accused came to be registered. On account of aforesaid

material contradictions in the statements of PW-8 and PW-15, especially with regard to presence of Constable Kuldeep Singh at the time of recording of dying declaration Ext.PW-8/A, entire story of the prosecution with regard to dying declaration, if any, given by the deceased becomes highly doubtful.

24. Recently, Hon'ble Apex Court in Criminal Appeal No.302 of 2014, titled as **Narendra Singh Vs. The State of Madhya Pradesh**, decided on 30.04.2026, held that in criminal trial in case there are two inferences possible, then the one favouring the accused must be followed. Relevant paras of the afore judgment are extracted hereinbelow:-

25. In the background of aforesaid position of law, when the case on hand is examined, it clearly shows that while conviction can be solely based on a dying declaration, the court still has to weigh the same in the light of the surrounding circumstances and with reference to the principles governing the evidence tendered by the prosecution. In the present matter, the allegations made against the appellant - Narendra Singh are generic in nature. The first dying declaration wherein it was alleged that the in-laws burnt the deceased, falls foul with the second dying declaration, wherein the deceased says that she set herself on fire. It is a settled position of law that circumstances cannot take the place of proof and in a criminal trial, the guilt has to be proved beyond reasonable doubt. The golden principles for proof by way of circumstantial evidence, also known as the panchsheel principles, were laid down in the case of Sharad Birdhichand Sarda v. State of Maharashtra², which reads as follows:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

26. In **State of U.P. v. Ashok Kumar Srivastava**³, it was observed by this Court in para 9 that:

"9. This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution

evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.” (Emphasis supplied)

27. Thus, in a criminal trial, in case there are two inferences possible, then the one favouring the accused must be followed. Herein, no direct evidence was produced by the prosecution on record to implicate the father-in-law for mental cruelty, or to show that he was somehow directly involved in torturing the deceased or raising the demand for dowry. It seems that the father-in-law was roped in the present matter by an extension of roping the husband of the deceased, as is the case in certain S. 498A matters. This Court has time and again issued directions in order to ensure that there is no misuse of this law, which was purported by the legislature as a tool to ensure the safety of women in their marital homes and not to take grudges against all the members of the family even in the absence of any role attributable to them.

28. It was noticed by this Court that the factum of dowry demand does not find presence in any of the testimonies of the family of the deceased. It appears that the same was added in their examination in chief as an afterthought so that they could strengthen their case against husband and his family members which was standing on shaky legs due to insufficiency of evidence. It appears to be a legal gimmick rather than an honest contradiction caused due to lapse of time and erosion of the memory, because a fact as important as demand of dowry that was so traumatic so as to lead to a death of a young lady could not have been left out of the statement under Section 161 before the police at the first blush. Rather, had that been a case, the family of the deceased would have been so eager as to visit punishment upon the husband and the in-laws that they would have narrated the entire ordeal to the police in order to avoid any legal discrepancies later on. This does not seem to be the case at hand for the simple reason that when questioned in the cross-examination about the reason of this omission, all the family members of the deceased categorically pinned the blame on the

police for the non-recording of the statement. Further, not a single independent witness could depose anything pertaining to the demand of dowry. In such a scenario it becomes unsafe for the Court to rely on contradictory statements of the interested witnesses to visit punishment upon the husband or the in-laws. For this reason, we are of the opinion that the demand of dowry was not proved.”

25. Leaving everything aside, there are material contradictions and inconsistencies in the statements of material prosecution witnesses, as has been taken note hereinabove. Therefore, statements of these prosecution witnesses could not have been relied upon by trial Court. In this regard, reliance is placed upon the judgment passed by Hon’ble Apex Court in ***C. Magesh and others versus State of Karnataka (2010) 5 Supreme Court Cases 645***, wherein it has been held that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasize, consistency is the keyword for upholding the conviction of an accused. In this regard, it is to be noted that Apex Court in the case titled ***Surja Singh v. State of U.P. (2008)16 SCC 686: 2008(11) SCR 286*** has held that the evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy;..the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.” Relevant para of the afore judgment is extracted hereinbelow:-

46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so," hence utmost caution is required to be exercised in dealing with situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistence in evidence amongst all the witnesses."

26. At this stage, it is very important to take note of the fact that PW-8, who was attesting witness to dying declaration Ext. PW-8/A, categorically deposed that his sister had given her statement in pahari dialect and same represented the actual words spoken by his sister. However, perusal of Ext. PW-8/A suggests that same is recorded in Hindi and not in the Pahadi dialect. Careful perusal of statement of PW-15 ASI Man Chand further reveals that on 12.12.2007, afore officer recorded two statements of deceased, one under Section 161 Cr.P.C and the other so-called dying declaration Ext. PW-8/A. Statement recorded under Section 161 Cr.P.C. has been exhibited as Ext. DX, whereas the dying declaration has been exhibited as Ext. PW-8/A. Once afore officer had already recorded statement of deceased under Section 161 Cr.P.C and on that day, she was declared fit to give statement by PW-14 Dr. Kajol, it is not

understood that what prompted this officer to record so-called dying declaration Ext. PW-8/A on that day.

27. Though at this stage, Mr. Rajan Kahol, learned Additional Advocate General, offered an explanation that since statement recorded under Section 161 Cr.P.C is not signed by the person, who made the Statement and same is not admissible, afore officer proceeded to record second statement Ext. PW-8/A, but such explanation appears to be totally absurd because accepting the aforesaid statement of Mr. Kahol would mean that Investigating Officer had prior knowledge that deceased would die, and as such, he, before that, recorded her statement. At this stage, it is also apt to take note of the fact that in normal circumstances, Investigating Officer could not have recorded the statement of deceased Ext. PW-8/A on 12.12.2007 on the basis of opinion rendered by PW-14 dated 09.12.2007 because as per afore opinion, she was fit on that day not on 12.12.2007, for which date no opinion otherwise came to be rendered by the doctor with regard to fitness of the deceased to make statement. Moreover, this Court finds that PW-14 was not competent to give opinion with regard to fitness of the deceased because, as per her own statement, she was not treating the victim, rather she was working as Senior Resident in the emergency and treating doctor was a Junior Resident and Specialist Plastic Surgeon,

who otherwise could be the best persons to give opinion with regard to fitness of the deceased on the date of recording her statement.

28. Though PW-1, in his statement, stated that while he along with his wife and son reached the house of the deceased, there was smell of petrol and petrol was cleaned or wiped off from the clothes, but there is no evidence that who cleaned or wiped off the petrol. Otherwise also, factum of cleaning floor or clothes by accused No.2 may not be of much relevance for the reason that as per own case of the prosecution, deceased poured petrol on her and burnt herself. None of the witnesses, save and except PW-1, version of whom has been already taken note hereinabove, stated anything specific with regard to destruction of evidence. Though PW-12 Dy.SP Raj Kumar, in his statement, deposed that he, immediately after the incident, visited the spot and found that floor of bed room of accused No.1 and Kusham Lata had been washed with water. The floor was giving smell of kerosene-like substance, but it never came to be proved by the prosecution that who actually cleaned or wiped the room as well as clothes of the deceased. If it is so, no offence under Section 201 of Indian Penal Code is made out against accused No.2.

29. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present appeal and accordingly, the same is allowed.

Impugned judgment of conviction 21.12.2009 and order of sentence dated 22.12.2009 recorded by the learned Additional Sessions Judge, (Fast Track Court), Hamirpur, Himachal Pradesh, passed in Sessions Trial No.26 of 2008/RBT 2 of 2009, is set aside. Accused are acquitted of the charges framed against them. Fine, if any, deposited by the accused be refunded after expiry of period of appeal. Bail bonds, if any, are discharged. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

May 30, 2026
(sunil)