

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No.115 of 2003

....

Prakash Mandal, Son of Amrit Mandal, resident of Bhutahi Murganna, Police Station – Bishnugarh, District-Hazaribagh

.....**Appellant**

Versus

The State of Jharkhand

.....**Respondent**

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. K.S. Nanda, Advocate

For the State : Ms. Lily Sahay, APP

.....

Judgment

CAV on 08.07.2025

Delivered on 17.10.2025

1. This Criminal Appeal has been filed on behalf of the appellant by challenging the judgment of conviction and sentence dated 30.11.2002 passed by Sri Ashok Kumar Chand, then learned 6th Additional Sessions Judge, Hazaribagh in Sessions Trial No. 347/2002/41/2002 by which the appellant has been convicted for the offence under Section 304-B of the IPC and sentenced him to undergo R.I. for seven (07) years.

Although, the learned Trial Court had acquitted the co-accused namely Amrit Mandal and Girija Devi for the offence under Section 304(B)/34 of the IPC vide judgment dated 30.11.2002.

2. The prosecution case, in brief, is that the Informant Most. Jageshwari Devi of village Ulibar, P.S.-Bagodar (Sariya) District-Giridih received information on 19.07.2000 in the morning at about 09.00AM with respect to the death of her daughter and rushed to the place of occurrence at village Bhutahi Murganna, P.S.-Bishnugarh, District-Hazaribagh along with her family members and villagers. She had alleged that they were informed by one Sudil Mahto @ Sudan Mahto and many villagers of

village Bhutahi Murgaon that Gulabi Devi (i.e. the daughter of Informant, aged about 22 years), was assaulted by iron rod and was killed and her dead body was thrown into the well in the night of 18.07.2000 due to non-fulfillment of demand of dowry of Rs.25,000/- cash, motorcycle and one color TV etc.

3. Heard learned counsel for the appellant and learned counsel for the State.

4. Learned counsel for the appellant has submitted that the judgment of conviction and sentence passed by the Learned Trial Court is illegal, arbitrary and not sustainable in eyes of law. It is submitted that the Informant has falsely implicated the appellant and only the interested witnesses and family members of the Informant have supported the allegation, however, independent witnesses PW-1, namely, Jagdish Prasad, PW-2, namely, Bulaki Mandal, PW-3, namely, Sudan @ Sudil Mahto and PW-4, namely Suresh Yadav have not supported the allegation against the appellant.

However, it is further alternatively submitted that the appellant had faced long protracted trial for more than 22 years, and the appellant remained in custody for more than four and half (4½) years and hence lenient view may be taken in favour of the appellant.

5. On the other hand, learned A.P.P for the State has raised no objection and submitted that necessary order may be passed.

6. It reveals that FIR giving rise to Bishugarh P.S. Case No.46/2000 was lodged by the informant namely Most. Jageshwari Devi on 19.07.2000 for the occurrence which took place on 18.07.2000 at 09.00 PM against the appellant and two others namely Amrit Mandal and Basmatiya Devi for the offence

under Section 304-B of I.P.C.

7. It transpires that the police, after investigation, had submitted the chargesheet against the appellant namely Prakash Mandal and two others namely Amrit Mandal and Basmatiya Devi on 30.09.2000 under Section 304-B/34 of IPC before the learned C.J.M Hazaribagh. Then, learned C.J.M. Hazaribagh had taken cognizance against the appellant and two others namely Amrit Mandal and Basmatiya Devi under Section 304-B/34 on 11.10.2000.

8. Thereafter, the police papers were supplied to the accused persons and the case was committed to the Court of Sessions.

9. The charges had been framed against the appellant and said Amrit Mandal and Girija Devi for the offence under Section 304-B/34 of IPC on 21.02.2002 by Sri A.K. Chand, then learned 6th Additional Sessions Judge, Hazaribagh and to which the appellant and said two persons pleaded not guilty and claimed to be tried.

10. During trial, the prosecution got examined twelve (12) witnesses in support of its case, who are as follows:-

- (i) PW-1 is Jagdish Prasad,
- (ii) PW-2 is Bulaki Mandal,
- (iii) PW-3 is Sudan Mahto,
- (iv) PW-4 is Suresh Yadav,
- (v) PW-5 is Jagarnath Mandal (i.e. uncle of deceased),
- (vi) PW-6 is Dr. S. Kumar (i.e. the Doctor),
- (vii) PW-7 is the Jaswa Devi (i.e. Mausi of deceased)
- (viii) PW-8 is the Tahal Mahto (i.e. uncle of deceased)
- (ix) PW-9 is Tulsi Mandal,
- (x) PW-10 is Jageshwari Devi (i.e. the Informant),

(xi) PW-11 is Chandra Mohan Jha, (i.e. I.O.) and

(xii) PW-12 is H.N. Paswan, (i.e. another I.O).

11. The prosecution in support of its case had marked the following Exhibits which are as follows:-

(i) Ext.1 is Signature of PW-1 on inquest report,

(ii) Ext.1/1 is the Inquest Report,

(iii) Ext.2 is the Postmortem Report,

(iv) Ext.3 is the Fardbeyan,

(v) Ext. 3/1 is the Formal FIR.

12. Thereafter, the appellant and two others were examined under Section 313 of Cr.P.C on 10.10.2002 before the learned Trial Court and to which the appellant and two others namely Amrit Mandal and Girija Devi denied the circumstances put forth before them.

13. Neither any defence witness was examined nor any material and evidence had been marked as Exhibits on behalf of the appellant and two others.

14. Thereafter, the learned Trial Court has passed the impugned judgment and sentence by convicting the appellant for the offence under Section 304-B of IPC and sentence to undergo R.I. for seven (07) years.

However, the learned Trial Court had acquitted the other persons namely Amrit Mandal and Girja Devi. Therefore, the evidence of prosecution witnesses has to be scrutinized.

15. PW-1, namely Jagdish Prasad, who is an inquest report witness and has identified his signature on inquest report of the deceased Gulabi Devi marked as Exhibit-1.

During cross-examination, he stated that he put his signature on the instruction of Daroga Ji i.e. the police but he is not aware of the contents written on the same on which he had put

his signature on the instruction of Daroga ji i.e. the police.

Thus, the PW-1, namely, Jagdish Prasad is a formal witness and has not supported the prosecution case.

Hence the evidence of PW-1, namely, Jagdish Prasad is not reliable as he has also not supported the prosecution case.

16. PW-2, namely, Bulaki Mandal, has merely stated that the deceased Gulabi Devi was wife of Prakash Mahto and was married 7-8 years ago and he heard about taking the dead body from the well. However, he had not heard about the demand of dowry and his statement was not recorded by the police.

During cross-examination, he stated that the accused persons used to behave in good manner with the deceased Gulabi Devi.

Thus, the PW-2, namely, Bulaki Mandal has not supported the prosecution case and was declared hostile by the prosecution. Hence the evidence of PW-2, namely, Bulaki Mandal is not reliable as he has also not supported the prosecution case.

17. PW-3, namely, Sudan, also stated that the marriage took place around 7 to 8 years ago and at the time of occurrence, he was in his house and heard that the deceased Gulabi Devi fell into the well while she went to fetch water from the well. His statement was not recorded by the police.

During cross-examination, he stated that the accused persons used to treat the deceased Gulabi Devi properly and the dead body of the deceased Gulabi Devi was not concealed prior to arrival of the police.

This PW-3, namely, Sudan has also been declared hostile by the prosecution and hence his evidence is not reliable as he has also not supported the prosecution case.

18. PW-4, namely, Suresh Yadav, who is declared hostile by the prosecution, stated during evidence that he had seen the dead body of the deceased being taken out from the well but he is not aware of the persons who are taking out (removing) the dead body of the deceased.

During cross-examination made by the prosecution with the permission of Court, he denied to have stated to have seen the accused persons including the appellant for assaulting the deceased Gulabi Devi due to non-fulfillment of demand of colour television and cash amount in the night of 19.07.2000.

Thus, the evidence of PW-4, namely Suresh Yadav is also not reliable and he has not supported the prosecution case.

19. PW-5, namely, Jagarnath Mandal, who is the uncle of deceased Gulabi Devi, has stated that the marriage between his Niece and the appellant was solemnized in the year 1995. However, on 19.07.2000 he learnt from one Sudan Mandal (i.e. PW-3) that his Niece was murdered by assaulting her by the rod. He further stated that Sudan Mandal had informed him that his niece had been assaulted by Amrit Mandal @ Chotka and his son Prakash Mandal and also by the mother of the appellant. Then, he alongwith 10 to 15 persons went to village Bhutahi Murgaon, and found his niece dead and also saw the marks of rod on her body. He stated that the accused persons had committed the murder of his Niece due to non-fulfillment of demand of motorcycle and Rs.25,000/- cash and they have merely given some cash and silver chain and wrist watch to the accused persons which were demanded by way of dowry. He further stated that his niece used to say that her in-laws used to demand dowry such as color T.V., Rs.25,000/- cash amount and one motorcycle otherwise they will not allow her to stay in her matrimonial home.

20. During cross-examination, he stated that he learnt about the death of Gulabi Devi from the villagers of her in-law house and the dead body was not cremated till their arrival. He could not tell the Trekkar number with which he had gone to village of her niece and he also could not say the number of rooms in the house of accused persons and could not say the name of the nearby people. However, he stated that the dead body of the deceased was kept in the Courtyard which was covered with the clothes but he had removed the cloth from the dead body to see as to which color sari the deceased had wore and he had not seen any blood. He also stated that the hands and legs of the deceased were not fractured. But he had seen three signs of rod on temple and head but he has not seen the chest. He had merely put his signature on the written application.

However, he admitted that the deceased was cremated in her matrimonial home at para-13 of his evidence. He had never gone to the matrimonial home of his niece till she was alive but his niece alongwith her husband i.e. the appellant had arrived several times in his village. Even the son-in-law i.e. the appellant was treated properly in the village and they used to give clothes also. They had also not made any complaint against her in-laws of his niece for treating her badly and no Panchayati was taken place. He also admitted to heard about giving the chain and wrist watch but he was not aware that they had demanded Rs.40,000/- before instituting the case.

21. Thus, from scrutinizing the evidence of PW-5, namely, Jagarnath Mandal, it would appear that he is the uncle of deceased. Although, during examination-in-chief, he tried to support the prosecution case against the appellant for causing the death of the deceased due to non-fulfillment of demand of dowry

of Rs.25,000/- cash with a color Television and one motorcycle, but during cross-examination, he admitted in para 13 to 17 that the dead body was cremated at her matrimonial home and the deceased alongwith her husband had visited his village several times and the son-in-law (i.e. the appellant) was treated properly and given clothes on various occasions and they had not complained against in-laws prior to the occurrence.

Therefore, the evidence of PW-5, namely, Jagarnath Mandal, is not reliable as he is an interested witness and he had also stated that the deceased was cremated in her matrimonial. He had never gone to matrimonial house of the deceased prior to her death. He also admitted that the appellant had arrived at his village several time and they had given him clothes which shows that the relationship between the deceased namely Gulabi Devi and the appellant, namely Prakash Mandal was cordial.

22. PW-6 is Dr. Sanoj Kumar, who had conducted the postmortem examination of deceased Gulabi Devi and proved the postmortem report marked as Exhibit-2. He had found following injuries on the person of Gulabi Devi as follows:-

- (i). Black hairs of head,
 - (ii). Eyes closed,
 - (iii). White frothy discharged with tinge blood stained from nostril.
- Mouth closed, rigor mortis present both upper and lower limbs.
Swelling of about 1 & ½” x ½” on upper part of forehead.
Bruise 4”x1” on left lower part of thigh.
Bruise 5”x1” on the lateral part of the thigh.

Internal examination :- Heart intact, blood clot in right chamber, lungs intact and swollen, congested, spongy on pressure, blood fluid frothy discharge on cut section of lungs.

Liver Spleen, Kidneys intact and congested.

Stomach-digested Aata, vegetables with water about 31 ounce.

Non gravid uterus urinary bladder-empty.

Time elapsed since death within 48 hours.

Injury opinion- the cause of death was Asphyxia due to drowning and other injuries are caused by hard and blunt substance such rod.

The other injuries found on the person of the deceased were not sufficient to cause her death.”

During cross-examination, he stated that the original Postmortem report was lying with the police line Doctor and he also admitted that he has not mentioned the color of the injury and also not stated the cause of injury on the postmortem report.

23. Thus, from scrutinizing the evidence of PW-6, namely, Dr. Sanoj Kumar, it would appear that the cause of death was asphyxia due to drowning but he has also mentioned other injuries are caused by hard and blunt substance such as rod. However, he had admitted that such other injuries found on the person of the deceased, were not sufficient to cause of her death.

24. PW-7, namely, Jaswa Devi, who is the Mausi (maternal aunt) of the deceased and stated during her evidence that the deceased Gulabi Devi was married with the appellant five (05) years ago and they had given 20 bhari (200 grams) Silver and one wrist watch to the bridegroom Prakash Mandal i.e. the appellant. However, lateron the appellant Prakash Mandal and his father and mother had murdered the Gulabi Devi by rod due to non-fulfillment of demand of dowry such as Motorcycle, Color Television and Rs.25,000/- cash which could be not given to her husband. She stated that the deceased Gulabi Devi lived properly in her matrimonial home for around 1-2 months and thereafter, her in-laws started demanding dowry and due to non-fulfillment of the same they started torturing the deceased. She claimed that there was a sign of injury caused by rod on the dead body of deceased Gulabi Devi. Thereafter, she alongwith her husband and

Jageshwari Devi and her sister Tulsi Mahto i.e. the PW-9 etc. had arrived at the home of the deceased Gulabi Devi and had seen her dead. She also heard that someone had put the dead body into well. The deceased was not being kept properly in her matrimonial home and due to non-fulfillment of demand of dowry the accused persons had committed murder the deceased Gulabi Devi.

During cross-examination, she admitted to be residing also in the nearby village at the distance of 20-25 mile and stated that no child was born even after five (05) yeas of marriage and the appellant used to remain in Bombay and used to come to her house for once in a year for one month

She left the matrimonial house of her Niece at around 09:00-10:00 AM in the morning and they had gone to the police station with the dead body. They were angry as the daughter of her sister was drawn to death. She also stated that they had asked the Daroga Ji to institute heavy case against the accused persons. They were angry because her sister's daughter had died. She also stated to have not seen the deceased being assaulted by anyone.

25. Thus, from scrutinizing the evidence of PW-7, namely, Jaswa Devi, it appears that the she is the sister of the Informant and she tried to support the prosecution case.

However, during cross-examination, she admitted to have requested the police to institute FIR in higher section and she is a hearsay witness. She had also not seen the appellant for demanding any dowry of cash, motorcycle and color TV etc. from the deceased. She has not stated about any specific date, month and year for demanding dowry by the appellant. Thus, the evidence of PW-7, namely Jaswa Devi is not reliable.

26. PW-8 is Tahal Mahto, who is also an uncle of the

deceased and he stated to have learnt the occurrence from Dinesh Mandal. Thereafter, he alongwith Lutan Mandal, Jagarnath Mandal and Tulsi Mandal had gone to matrimonial home of her sister's daughter and he tried to support the prosecution case by stating that after marriage, the in-laws of deceased Gulabi Devi used to demand Rs.25,000/- (Rs. Twenty Five Thousand) cash, one motorcycle which could not be fulfilled by them.

However, during cross-examination, he also stated to be not aware of the Trekker number from which he had gone. He claimed to have seen swelling and injury on the dead body of the deceased. However, he could not say about the receipt of silver and could not say as to how color TV works.

He admitted, even after not giving birth to a child by the deceased Gulabi Devi her husband had not abandoned her.

During Court's question, he stated to not have seen any assault or torture upon his niece. They have not asked for return of dowry amount.

27. Thus, from the evidence of PW-8, namely, Tahal Mahto, it reveals that he is a hearsay witness on the point of demand of color TV and Rs.25,000/- cash and Hero Honda Motorcycle.

Thus, from scrutinizing the evidence of PW-8, Tulsi Mahto, it is evident that he was also Jija of the deceased namely Gulabi Devi and he had also been living separately from the Informant. He has raised doubt on the role of the appellant. Hence, his evidence is not reliable.

28. PW-9, namely, Tulsi Mahto, who is Jija of Gulabi Devi and submitted that the occurrence took place around seven years and one month ago from the date of passing of impugned judgment. After the marriage, the deceased Gulabi Devi went to her matrimonial house, where she lived for 1-2 months.

Thereafter, she was being quarreled by the appellant and his mother and father. He had also tried to support the prosecution case on the point of demand of dowry motorcycle, color television and claimed to have seen two signs of injury on the thigh and chest of the deceased.

During cross-examination, he admitted and stated that he cannot say the name of nearby people or their house. However, there is a well behind the house. He was confronted that the well was around 1-1.1/2 foot. However, his statement was not recorded by the police whereas the statement of the Informant was recorded on 10:00 AM also when he admitted to have moved with her Sali i.e. sister-in-law (i.e. the deceased) and he has no paper of Panchayati. He claimed to have seen 3/4 rod injury on the chest of the deceased. He denied the suggestion of demanding of Rs.80,000/- for instituting the false case.

It is evident that the evidence of PW-9, namely, Tulsi Mahto is not reliable as his evidence has been contradicted with by many other evidence i.e PW-3 Sudan @ Sudil Mahto and PW-5 Jagarnath Mandal.

29. PW-10 is Jageshwar Devi i.e. the Informant in this case and she stated the deceased Gulabi Devi was her daughter and she had been married with Prakash Mandal (i.e. the appellant) around five years ago as per the customs and they used to assault her due to non-fulfillment of demand of cash of Rs.25,000/-, Color Television, one Motorcycle. She learnt from one Sudh Mahto that the in-laws including the husband of her daughter had assaulted her by rod and due to which she died and they had thrown the dead body. Thereafter, she came to the matrimonial home of her daughter and saw the dead body on the Varandah (courtyard) thereafter, she went to the police station and her fardbeyan was

recorded.

30. During cross-examination, she stated when her daughter became adult then they started searching bridegroom for performing marriage with the good family. However, no child was born. She also got treated her daughter and admitted that some demand was made by her in-law parents. She used to respect and give good treatment to her son-in-law. She also used to visit matrimonial home of her daughter where she was treated properly.

She further stated that she was informed by Sudh Mahto that her daughter was killed by assaulting by rod and Sudh Mahto happens to be her gotia. She has no quarrel/ dispute with Sudh Mahto of which she was not aware.

She further stated that she was not aware that there was litigation between Sudh Mahto and her son-in-law i.e. the appellant. She had gone by bus and arrived there at 12.00 noon at village Bhutahi, Murganna. When she arrived then the dead body was sent for postmortem. Thereafter, she went to Hazaribagh where the postmortem was performed and then she went to police station and arrived there at around 12.00 hour and remained there for the whole night in the house of the accused persons.

She had shown ignorance for giving money to Daroga Ji i.e. the police for instituting the case. She had also shown ignorance regarding the amount even to the police but she stated that her thumb impression was taken when she had gone to the police station. She had not seen the well and she had not remembered as to who had accompanied her when she had arrived at matrimonial home of her daughter. She denied the suggestion for instituting false case against the appellant.

31. Thus, from scrutinizing the evidence of PW-10,

Jageshwari Devi i.e. the Informant, it is evident that she had not seen the dead body of her daughter in the courtyard of matrimonial home of her daughter as at that time, the dead body was sent to postmortem.

PW-10, Jageshwari Devi i.e. the Informant further contradicts the evidence of PW-5 namely Jagarnath Mandal and PW-7 namely Jaswa Devi, who had stated to have seen dead body of the deceased in the courtyard, as the dead body was not present because it was taken for postmortem examination.

She claimed that she was informed by Sudhan (Sudh) Mahto for assaulting her daughter by the appellant and his family members. However, one Sudhan Mahto, who was examined as PW-3, has been declared hostile by the prosecution.

32. PW-11, namely, Chandra Mohan Jha, i.e. Investigating Officer of this case, and stated that he had taken the charge of investigation on 10.08.2002 from the previous Investigating Officer. Then he obtained the postmortem report on 11.08.2002 and after completing the Investigation, he had submitted chargesheet against the appellant Prakash Manda and also against Amrit Mandal and Basmatiya Devi the under Section 304-B/34 of IPC.

During cross-examination, he stated that he had gone only through the contents of the case diary, which were written by the previous Investigating Officer. He further stated that none of the witnesses had stated before him that any dowry demand was made from the deceased Gulabi Devi. He was not aware about which document was seized by the previous Investigating Officer with regard to demand of dowry. He had read the postmortem report and read the reason of death of the deceased and he had not investigated the cause of death.

He admitted to have not recorded the statement of any witness.

33. Thus, from scrutinizing the evidence of PW-11 namely, Chandra Mohan Jha, i.e. Investigating Officer of this case. It is evident that he had merely conducted investigation on the point of obtaining the postmortem report and submitted the chargesheet and he is completely silent on the role of any accused persons and statement of any prosecution witness.

Thus, the evidence of PW-11 namely, Chandra Mohan Jha, i.e. Investigating Officer of this case is not reliable as he had done perfunctory evidence.

34. PW-12, namely, H.N. Paswan, i.e. is another Investigating Officer of this case, and he stated during evidence that while he was posted as Sub-Inspector at Bishnugarh Police Station on 19.07.2000 then he heard a rumor that a murder had been committed at village-Bhutahi Murgaon, then after making Sanha No.610 in the Station Diary entry, he left the house of deceased for verification. He was accompanied by Anil (Sub-inspector) and other police force. After arriving at the place of occurrence, he had seen the dead body of deceased, namely Gulabi Devi, who was the wife of Prakash Mandal i.e. the appellant then he prepared the inquest report in his writing and signature marked as Exhibit-1/1.

35. Thereafter, he inspected the place of occurrence on 17.09.2000 and mentioned that place of occurrence is the house of the appellant Prakash Mandal and described in its details, thereafter, he further recorded the statement of Jageshwari Devi (i.e. the Informant) in his writing and signature marked as Exhibit-2. Then, he instituted the formal FIR marked as Exhibit 2/1. He had also recorded the subsequent statement of Informant

on 19.07.2000 and then he recorded the statement of witnesses PW-1, Jagdish Mandal, Prakash Mandal (i.e. the appellant), PW-10, Jageshwar Devi (i.e. the Informant), PW-8, namely Tahal Mandal, PW-7, namely Jaswa Devi, PW-5, namely Jagarnath Mandal (i.e. the uncle of deceased), and PW-9 Tulsi Mandal examined on 21.07.2000. However, PW-2, Bulaki Mandal, is not examined. Thereafter, he handed over the investigation of this case on 05.08.2000 to the then Officer-in-Charge as he was transferred.

He further stated that witness namely Sudan Mahto i.e. the PW-3, had stated before him that on 19.07.2000, while he was in his house, then suddenly he heard noise and he, came outside the house and had seen the appellant Prakash Mandal (i.e. the appellant) Amrit Mandal and Basmatiya Devi (both are acquitted) were abusing and assaulting the deceased.

However, on his further examination, on 08.10.2002, he stated that Sudan Mahto i.e. PW-3 had stated before him that the deceased Gulabi Devi was being confined in a house and was being assaulted and the deceased was crying and when he went there, then he was also abused and threatened.

36. Thus, from the examination-in-chief of PW-12 i.e. the first Investigating Officer namely H.N. Paswan, it is evident that he has given contradictory statement on the point of statement of Sudan Mahto i.e. PW-3 on 05.10.2002, he had stated that he had seen the appellant and two others persons for abusing and assaulting the deceased namely Gulabi Devi by using iron rod.

However, during his further evidence on 08.10.2002 he had stated that the deceased Gulabi Devi was confined in the house and was abused and assaulted and hence, his evidence during examination-in-chief is contradictory itself.

37. During cross-examination, he denied the suggestion at Para 12 to 13 for cutting the date of 18th in the inquest report and by making it 19.07.2000 and in which Bishnugarh P.S. Case No.46/2000, time 10.15 PM is mentioned.

He also denied the overwriting at two places on date 18.07.2000, he stated in his fardbeyan was recorded at 10.45 hours whereas the inquest report was prepared at 10.15 hours in which the case number is mentioned.

He admitted at para-15 in his fardbeyan to have mentioned at the place of occurrence that one well was found open towards the west direction.

It was also mentioned in the diary that the accused used to demand dowry.

However, it is not mentioned that the accused persons used to demand dowry soon after the marriage.

He also admitted in the para-15 of his fardbeyan that even witnesses have not stated that there was any restriction in the movement of deceased Gulabi Devi. Even in para-17, he stated that even the witnesses have not stated for pacifying the deceased person.

He has mentioned the injuries in the inquest report and stated that the occurrence of assault upon the deceased took place at night and the dead body was thrown in the morning, is mentioned at para 20 and 21.

38. Thus, from scrutinizing the PW-12, i.e. the first Investigating Officer, it is evident that he has done overwriting in the inquest report at three places.

39. From perusal of the inquest report made by the Investigating Officer, i.e. PW-12, it would appear in column 1 that the date of overwriting is 19.07.2000 and in column 9 the date is

also mentioned as 19.07.2000.

Although, the overwriting could be formal in nature in three places at column-1, column-3 and column-9. However, in column 1 and 3 and column 9, he did not put his initial or signature below his overwriting.

40. Thus, from the evidence of PW-12 i.e. the Investigating Officer, it is evident that he has done a causal investigation and he had not tried to ascertain as to whether any demand of dowry was made soon before her death by the in-her-law members. He has recorded the vague statement of PW-5, namely Jagarnath Mandal, PW-7 Jaswa Devi, PW-8 Tahal Mandal, PW-9 Tulsi Mandal, PW-10 Jageshwari Devi (i.e. the Informant) regarding the demand of dowry of cash, T.V. and one motorcycle.

Thus, the evidence of Investigating Officer i.e. PW-12 is also not reliable.

41. From perusal of the inquest report marked as Exhibit-1/1, it would appear that the Investigating Officer i.e. PW-12 has mentioned the cause of death of deceased was due to assault by iron rod and the dead body of the deceased was taken out from well.

42. Thus, PW-12 i.e. the Investigating Officer, appears to be inclined to implicate the appellant merely on the basis of inquest report by stating that the death was caused by iron rod.

43. It further reveals that the evidence of Investigation Officers, PW-11, namely Chandra Mohan Jha and PW-12 namely H.N. Paswan is not supported by PW-1 namely Jagdish Prasad, PW-2, namely Bulaki Mandal, PW-3 namely Sudan @ Sudil Mahto and PW-4 Suresh Yadav, who had clearly stated that the deceased Gulabi Devi had not died due to demand of dowry in her matrimonial house and she was treated well.

44. It is further, evident that none of the witnesses have stated regarding the demand of dowry soon before her death. Even PW-3, namely Bulaki Mandal, PW-5 namely Jagarnath Mandal, PW-7 namely Jaswa Devi, PW-8 namely Tahal Mahto, and PW-9 Tulsi Mahto have not stated about any specific date for demand of dowry. It is only after the death of deceased, namely Gulabi Devi the case has been lodged against the appellant and two others family members for demanding of dowry of cash of Rs.25,000/- one motorcycle and Color T.V.

45. It has also come in the evidence of PW-12 i.e. the Investigating Officer has stated that none of the witnesses had stated that the deceased Gulabi Devi was being restrained by her-in-law members from any movement and for not arriving at her parental house.

46. It is further evident from the postmortem report that the cause of death has been written as Asphyxia due to drowning and it was also stated that some injures are caused by hard and blunt substance.

However, while the Dr. Sanoj Kumar, was being examined as PW-6 he had stated that the cause of death was due to asphyxia. However, he also added superficially that other injuries are caused by hard and blunt substance such as rod, but the rod was not mentioned in the Postmortem report and this amounts to deliberate attempt on the part of doctor to deviate from his postmortem report by attributing that the injuries are caused by hard and blunt substance such as “rod”.

Thus, the Doctor, namely Dr. Sanoj Kumar, i.e .the PW-6 was also under the influence of the prosecution.

47. It has been held in the case of Major Singh and Another versus State of Punjab reported in (2015) 5 SCC 201 at Para

Nos. 7, 8, 10, 11, 16, 17, 18 and 19 as follows:-

“Para:-7. The learned counsel for the appellants contended that the evidence of PWs 1 and 3, the father and brother of the deceased cannot be relied upon as both are interested witnesses. It was submitted that absolutely there is no evidence to establish that the deceased was subjected to harassment or cruelty in connection with demand of dowry and in the absence of proof of essential ingredients of Section 304-B IPC, the courts below erred in convicting the appellants. It was further submitted that the daughter of the deceased who is now 18 years of age is under the care and protection of the appellants and that they are the only persons to take care of the daughter of the deceased.

Para:-8. Per contra, the learned counsel for the respondent State contended that deceased Karamjit Kaur died in connection with demand of dowry within 2½ years of marriage. It was contended that even though PWs 1 and 3 are the father and brother of the deceased, their evidence is consistent and credible and amply establishes that she was subjected to harassment and cruelty in connection with demand of dowry and based on their evidence, the courts below rightly convicted the appellants under Section 304-B IPC and the concurrent findings cannot be interfered with.

Para:-10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:

(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; and

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

Para:-11. If any death is caused in connection with dowry demand, Section 113-B of the Evidence Act also comes into play. Both these sections, Section 304-B IPC and Section 113-B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

“113-B. 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 304-B of the Penal Code, 1860.”

It is imperative to note that both these sections set out a common point of reference for establishing guilt of the accused person under Section 304-B IPC, which is “the

woman must have been ‘soon before her death’ subjected to cruelty or harassment ‘for or in connection with the demand of dowry’”.

Para:-16. To attract conviction under Section 304-B IPC, the prosecution should adduce evidence to show that “soon before her death”, the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the death concerned. In *Hira Lal v. State (Govt. of NCT of Delhi)* [(2003) 8 SCC 80 : 2003 SCC (Cri) 2016 : AIR 2003 SC 2865] it was observed as under : (SCC pp. 86-87, para 9)

“9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of ‘death occurring otherwise than in normal circumstances’. The expression ‘soon before’ is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. ‘Soon before’ is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity

test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression ‘soon before her death’ used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression ‘soon before’ is not defined. A reference to the expression ‘soon before’ used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods ‘soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession’. The determination of the period which can come within the term ‘soon before’ is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression ‘soon before’ would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.”

Para:-17. Same principle was also expressed in State of A.P. v. Raj Gopal Asawa [(2004) 4 SCC 470 : 2004 SCC (Cri) 1306 : (2004) 3 SCR 32] ; Balwant Singh v. State of Punjab [(2004) 7 SCC 724 : 2004 SCC (Cri) 2057] ; Kaliyaperumal v. State of T.N. [(2004) 9 SCC 157 : 2004

SCC (Cri) 1417] ; Kamesh Panjiyar v. State of Bihar [(2005) 2 SCC 388 : 2005 SCC (Cri) 511] ; Harjit Singh v. State of Punjab [(2006) 1 SCC 463 : (2006) 1 SCC (Cri) 417] ; Biswajit Halder v. State of W.B. [(2008) 1 SCC 202 : (2008) 1 SCC (Cri) 172] and Narayanamurthy v. State of Karnataka [(2008) 16 SCC 512 : (2010) 4 SCC (Cri) 322]

Para:-18. Applying these principles to the instant case, we find that there is no evidence as to the demand of dowry or cruelty and that deceased Karamjit Kaur was subjected to dowry harassment “soon before her death”. Except the demand of scooter, there is nothing on record to substantiate the allegation of dowry demand. Assuming that there was demand of dowry, in our view, it can only be attributed to the husband Jagsir Singh who in all probability could have demanded the same for his use. In the absence of any evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry “soon before her death” by the appellants, the conviction of the appellants under Section 304-B IPC cannot be sustained. The trial court and the High Court have not analysed the evidence in the light of the essential ingredients of Section 304-B IPC and the conviction of the appellants under Section 304-B IPC is liable to be set aside.

Para:-19. In the result, conviction of the appellants under Section 304-B IPC is set aside and this appeal is allowed. Appellant 2 Mohinder Kaur is on bail and her bail bonds stands discharged. Appellant 1 Major Singh who is in custody is ordered to be set at liberty forthwith. 61. It has been held by the Hon’ble Supreme Court in the case of

Phulel Singh Vs. State of Haryana reported in (2023) 10 SCC 268 that if harassment on account of dowry demand is not established beyond reasonable doubt by evidence on record then prosecution case u/s 304-B of I.P.C. is not proved.”

48. It has been held in the case of Bhupal Singh and Anr. State of Uttarakhand reported in (2025) SCC OnLine SC 109 at Para Nos. 9 and 10 as follows:-

“Para-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.

Para-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.”

49. It has been held by the Hon’ble Supreme Court in the case of *Parvati Devi Vs. State of Bihar reported in (2022) 14 SCC 500* that omnibus allegations with respect to dowry demand is not sufficient to prove the guilt of mother-in-law when the Respondent-State has not been able to indicate any specific allegation, nor point to any specific evidence or testimony against

her and then the Hon'ble Supreme Court had acquitted the mother-in-law Parvati Devi.

50. There is general and omnibus allegation against the appellant and two other in-law members for demanding dowry.

51. It transpires that the appellant was remanded on 20.07.2000 and granted bail by the Co-ordinate Bench (Justice R.K. Merathia as then His Lordship was) of this Court on 03.02.2005. Thus, the appellant remained in custody for more than four (04) years and six (06) months out of R.I. for seven (07) years.

52. Thereafter, the learned Court below, after considering the case of both the sides, has wrongly convicted the appellant as mentioned above and sentenced him on different ground as mentioned above which is not mentioned.

53. Therefore, in view of the discussions made above and also in view of the law laid down by the Hon'ble Supreme Court, the judgment of conviction and sentence dated 30.11.2002 passed by Sri Ashok Kumar Chand, then learned 6th Additional Sessions Judge, Hazaribagh in Sessions Trial No. 347/2002/41/2002 is set aside and the appellant, namely Prakash Mandal is hereby acquitted for the offence under Section 304-B of the IPC and he is also discharged from the liabilities of his bail bonds.

54. Accordingly, this Criminal Appeal No.115 of 2003 is hereby allowed.

55. Let the Original Lower Court records and a copy of this judgment be sent to the learned Trial Court at once by the Office.

(Sanjay Prasad, J.)