

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Criminal Appeal No. 506/2002

State of Rajasthan.

----Appellant

Versus

Sanwar Mal S/o Hanumanaram, B/C Jat, R/o Toomali Sankhan,  
Tehsil-Rajgarh, P.S. Hamirwas, Distt.-Churu.

----Respondent

Connected With

D.B. Criminal Revision Petition No. 380/2002

Mahavir Prasad S/o Shri Tulcha Ram, R/o Khakhla-ki-Dhani,  
Khetri Nagar, Jhunjhunu.

----Appellant

Versus

State of Rajasthan.  
Sanwar Mal S/o Hanumanaram, B/C Jat, R/o Toomali Sankhan,  
Tehsil-Rajgarh, P.S. Hamirwas, Distt.-Churu.

----Respondents

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| For Appellant(s)  | : | Mr. Rajesh Bhati, PP |
| For Respondent(s) | : | Ms. Anjali Kaushik   |
| For Complainant   | : | Mr. Bhagat Dadhich   |

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**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI  
HON'BLE MR. JUSTICE SUNIL BENIWAL**

**Judgment**

**Reserved on** : **10/07/2025**

**Pronounced on** : **16/07/2025**

**(Per Sunil Beniwal, J.)**

1. The present criminal appeal (D.B. Criminal Appeal No. 506/2002) by the State and revision petition (D.B. Criminal Revision Petition No. 380/2002) by the complainant have been preferred assailing the judgment and order dated 16.03.2002 whereby the accused-respondent has been acquitted for the offences alleged against him under Sections 498A, 304B and 302

of Indian Penal Code (IPC). Since the common questions of facts and law are involved, therefore, we propose to dispose of these matters by this common judgment.

2. The facts in nut shell are that PW-1 Mahavir Prasad submitted a report on 25.09.1998 (Ex. P/1) with an allegation that his younger brother Mohar Singh is having three daughters. Out of three daughters, two daughters are married whose names are Sharda and Siriya. Both were married on 15.05.1995 to Sanwarmal and Satyavir respectively who are sons of Hanuman Ram resident of Toomali Sankhan. It was further stated that Sharda after her marriage was residing at her matrimonial home however the younger daughter Siriya was not going to her matrimonial home as she was pursuing her studies. It is further stated that after marriage Sanwarmal never used to come for picking up Sharda or leaving her to her matrimonial home as he was not happy. It was Hanuman Ram i.e. father of Sanwarmal who usually came to pick up Sharda and also to drop her off at maternal home. It was further stated that about two months prior to the death of Sharda, Hanuman Ram i.e. the father of Sanwarmal visited PW-2 Mohar Singh, father of Sharda and conveyed that he needed Rs.20,000/- as Sanwarmal had to deposit fee for pursuing B.Ed. It is stated that since the fee of Rs.20,000/- could not be arranged therefore, Sharda was subjected to harassment and cruelty and on 24.09.1998 she was murdered by Sanwarmal alongwith persons namely Hanuman Ram, Brother-Satvir, Jamnaram and wife of Jamnaram. Later he by additional statement stated that he had no knowledge about any dowry demand but his brother Mahavir Prasad told him after

death of Sharda that had he arranged Rs.20,000/- for B.Ed. as dowry then perhaps Sharda would not have died.

3. On the basis of above allegation the police started investigation. The father of deceased i.e. Mohar Singh (PW-2) submitted an application before the Dy. Superintendent of Police on 30.09.1998 (Ex. P/10). In the said application it was stated that the incident which occurred on 24.09.1998 and in which Sharda was murdered was on account of the fact that there was consistent dowry demand and when the said dowry demand could not be met by the parents, she was killed by her husband and her in-laws. In the said letter, apart from non-fulfillment of dowry, the factum of illicit relation of Sanwarmal with wife of Jamnaram was also stated as a reason for murder of Sharda. The police after investigation on the above FIR submitted challan and thereafter the accused-respondent was charge-sheeted for the offences under Sections 498-A, 304-B and 302 of IPC. The learned Trial Court after recording evidence of 18 witnesses and 28 documents and statement of accused under Section 313 CrPC as well as one witness namely-Tilokaram as DW-1, acquitted the accused-respondent for the offences under Sections 498-A, 304-B and 302 IPC.

4. The learned Public Prosecutor appearing for the State while challenging the impugned judgment has made the following submissions:

- i. The PW-1 Mahavir Prasad deposed in his statement that accused-respondent Sanwarmal had admitted his guilt. The extra judicial confession made by accused Sanwarmal was in presence of PW-2 Mohar Singh, Megh Singh, PW-10 Rajender,

PW-6 Devaram, PW-7 Jainarayan, PW-5 Prahalad, Udai Singh, Sarwanram and Hari Ram. In view of the said extra judicial confession been made by accused-respondent in presence of PW-1 Mahavir Prasad and others there was no reason for the learned trial Court to have acquitted the accused-respondent for the alleged offences.

- ii. The weapon used for committing crime i.e. '*Kussa*' was recovered from accused-respondent and the panchnama of recovery proceedings were part of record as Exhibit P/27.
- iii. The PW-11 Dr. R.K. Saraf clearly deposed that the death of deceased-Sharda was on account of asphyxia caused due to strangulation. The weapon used for strangulation by accused-respondent was the Iron rod (*Kussa*) and therefore there was no reason to disbelieve the prosecution story more particularly when the weapon was recovered at the instance of accused-respondent. Dr. R.K. Saraf also deposed that injury on the neck could not have occurred on account of rope or *chunni* but clearly stated that such injury could have occurred on the neck only after being pressed strongly with a hard object. The statement of Dr. R.K. Saraf and the persons before whom extra judicial confession was made are fully corroborated and that completes the prosecution story without there being any doubt.
- iv. The incident happened within seven years of marriage and the place of incident is also the matrimonial home. The cruelty and harassment and the consistent dowry demand is also established.

v. The motive of killing Sharda at the behest of accused-respondent is also fully established by the prosecution as the dowry demand was not met and secondly, the accused-respondent was having illicit relation with wife of Jamnaram and some how he wanted to get out of matrimonial ties with Sharda and therefore in order to get her out of his way the accused-respondent strangled her and presented a picture as if it was a case of accident wherein all of sudden the stone slab fell from the roof and Sharda got injured and later succumbed to those injuries and died. Further, PW-18 Hari Ram Gehlot, the Investigating Officer, has deposed before the Court that after investigation police concluded that accused-respondent alone was responsible for committing offence under Section 302 IPC.

4.1 In view of the submissions made above, the learned State counsel submitted that the learned Trial Court committed a serious error in not appreciating the evidence available on record and committed a grave error in acquitting the accused-respondent for such heinous crime and as a matter of fact the prosecution completely established its case and therefore accused-respondent was required to be convicted for offences under Sections 498-A, 304-B and 302 IPC.

5. Per contra, learned counsel appearing for the accused-respondent made the following submissions:

i. There was no allegation for dowry demand in the first complaint and after about six days the allegation of dowry demand was added. That being so, the story is concocted one on the face of it.

- ii. The extra judicial confession which is alleged to have been made before PW-1 Mahavir Prasad and other witnesses was also an after thought as there is no mention about any extra judicial confession in the original complaint and the same was added later.
- iii. The contention of PW-1 Mahavir Prasad with regard to extra judicial confession was not supported by PW-9 Roshanlal and PW-10 Rajendra Kumar.
- iv. All the witnesses who have supported extra judicial confession and the prosecution story are interested witnesses.
- v. There is a serious contradiction in the original complaint submitted by PW-1 Mahavir Prasad, the statement recorded by the police under Section 161 Cr.PC and the statement made before the Court.
- vi. The prosecution did not produce any independent witnesses who could support the prosecution story with regard to allegation of cruelty and harassment, quarrel between accused-respondent Sanwarmal and Sharda, and with regard to the commission of offence by the accused-respondent. Also, prosecution could not establish the fact that the accused-respondent was present at the house when the incident occurred.
- vii. The recovery of weapon i.e. '*Kussa*' was in presence of two witnesses namely PW-12 Ramjilal and Tarachand. As far as Ramjilal PW-12 is concerned he turned hostile and the second witness namely Tarachand was not produced by the prosecution and that being so, the recovery of the '*Kussa*' was not fully

established and does not come under the rigor of Section 27 of the Indian Evidence Act, 1872.

- viii. The recovery of '*Kussa*' is itself doubtful. PW-1 and 2 stated that when they had gone to the matrimonial home of Sharda and had met Sanwarmal he had not only confessed and admitted his guilt of killing Sharda but had even shown the weapon '*Kussa*' which had been used by him and thereafter the said '*Kussa*' was handed over to police. This version is not supported by PW-18 Hariram, the Investigating Officer, who stated that '*Kussa*' was recovered at the instance of accused-respondent on a different date (Ex. P/27).
- ix. The FSL report does not indicate any blood on the weapon recovered i.e. '*Kussa*'.
- x. The statements of the witnesses were recorded after considerable delay which indicates that the witnesses exaggerated the story and improved their version so as to ensure that accused-respondent was held guilty.
- xi. The allegation that accused-respondent was having illicit relation with wife of Jamnaram was not duly established with corroborative evidence so as to impute motive.
- xii. The witnesses who appeared as prosecution witnesses have supported the version of the accused-respondent as made by him under Section 313 CrPC, about the family members usually staying in the agricultural field during crop season. This fact further supports the version of the accused-respondent wherein he stated that he was in agricultural field as it was crop season.
6. On the basis of the above submission, the counsel for the respondent submitted that prosecution has completely failed to

establish its case. The chain of circumstances is not fully established and in view of the evidence available on record, the learned trial Court was right in acquitting the accused-respondent for the offences under Sections 498-A, 304-B and 302 IPC.

7. Learned counsel for the revision-petitioner/complainant, while reiterating the submissions made by the learned counsel appearing for the State, further submitted that the accused-respondent, in order to get benefit of the insurance policy, which he got in the name of deceased Sharda, has killed her portraying her death as an unnatural death because as per the policy conditions of insurance policy (Ex.P/14A), if natural death of the insured occurs (i.e. deceased Sharda), the nominee (i.e. accused-respondent) will get Rs.1 lakh and if unnatural death occurs, then the nominee will get double the amount, i.e. Rs.2 lakhs.

8. Heard learned counsel for the parties and perused the material available on record.

9. In the present case the incident occurred on 24.09.1998 and oral report was lodged by PW-1 Mahavir Prasad on 25.05.1998 at around 01:00 PM at Police Station Hamirwas. On perusal of the FIR which was registered on the basis of the statement made by Mahavir Prasad, it nowhere indicates about any dowry demand nor about any extra judicial confession at the behest of accused-respondent. Moreover, in the said complaint, there is no reference or any allegation of illicit relation of accused-respondent with the wife of Jamnaram. It is to be noted that as per the statement of PW-1-Mahavir, on receiving the news that Sharda had died, he along with PW-2 Mohar Singh and other persons went to the matrimonial home of Sharda. It was further stated by Mahavir that

on being asked, Sanwarmal (accused) had accepted his guilt and further stated that he had killed Sharda by strangulating her and weapon used for committing such crime was '*Kussa*'.

9.1 It is further stated that thereafter PW-1 Mahavir Prasad went to the police to submit his report. It is pertinent to note here that if PW-1 Mahavir Prasad was already informed about the said incident by Sanwarmal through an extra judicial confession and also about the '*Kussa*' i.e. the weapon used to commit crime, yet all these facts were not disclosed in the FIR dated 25.09.1998. Another fact which is infact very crucial to adjudicate the veracity of the prosecution story is the letter dated 30.09.1998 (Ex. P/10) which was submitted by PW-2 Mohar Singh wherein the allegation of demand of Rs.20,000/- apart from scooter and refrigerator was mentioned; further, the illicit relation between Sanwarmal and Santosh (wife of Jamnaram) was also mentioned. It is to be noted that when PW-1 Mahavir Prasad went to the matrimonial home of Sharda, PW-2 Mohar Singh was also accompanying him and after taking all details PW-1 Mahavir Prasad went to the Police Station and that being so it becomes highly improbable that PW-1 Mahavir Prasad would not have been told by Mohar Singh about any dowry demand or any illicit relation at the time of lodging FIR. This clearly indicates that the PW-2 Mohar Singh has attempted to improve the story so as to ensure that accused-respondent was held guilty for the offence alleged against him by narrating these facts in his letter dated 30.09.1998 (Ex. P/10).

10. A perusal of the FIR dated 25.09.1998, the letter dated 30.09.1998, the statement of PW-1 Mahavir Prasad recorded by the police under Section 161 Cr.PC and the statement made by

him before the Trial Court shows that there are serious omissions and improvements and therefore, the testimony of PW-1 Mahavir Prasad can not be held to be reliable.

11. The PW-1 Mahavir Prasad who was accompanied with PW-2 Mohar Singh i.e. the father of the deceased, though in his statement claimed that accused-respondent Sanwarmal had disclosed his guilt and also had shown the weapon i.e. '*Kussa*' which was used by him for causing injury to Sharda, yet the weapon was not disclosed in the FIR, therefore, it creates serious doubt as to the trustworthiness of these two important witnesses.

11.1 The PW-2 Mohar Singh, who is the father of the deceased Sharda, narrated the incident in the same manner as was stated by PW-1 Mahavir Prasad. As a matter of fact, he stated that he, Mahavir Prasad and other persons had gone to the matrimonial home of Sharda after knowing about the incident. He also states that extra judicial confession was made by Sanwarmal wherein he had admitted the guilt and thereafter Mahavir Prasad had gone to the Police Station to submit the report. It is also stated by PW-2 Mohar Singh that he also had gone alongwith Mahavir Prasad for submitting complaint to the Police Station. If Mohar Singh went to police station with Mahavir Prasad then it raises serious questions as to why the important fact of dowry demand, illicit relation and extra judicial confession was not disclosed to Mahavir Prasad.

11.2 PW-2 Mohar Singh further admits that the family members as well as accused-respondent in the rainy season at the time of cultivation stayed in the agricultural field. It is also admitted that portion of the house is rented to coaching institute.

12. The prosecution has relied upon the extra judicial confession made by accused-respondent while relying upon the statements of PW-10 Rajender, PW-7 Jai Narayan, PW-5 Prahlad and PW-8 Ummaid Singh. However, these statements do not appear to be reliable as these witnesses are interested witnesses and none of them is an independent witness. Furthermore, in normal course it is difficult to accept the preposition that accused-respondent would admit his guilt and that too, in presence of those persons who are family members of the deceased.

13. As far as the recovery of '*Kussa*' i.e. the weapon which is alleged to have been used by the accused-respondent is concerned, it is noted that one of the witnesses to the said recovery proceedings of the weapon was not produced in the witness box and the second witness namely PW-12 Ramjilal turned hostile. That apart, there is serious contradiction in the version as to when the recovery was made. PW-1 Mahavir Prasad and PW-2 Mohar Singh deposed that on being asked, Sanwarmal had not only narrated the story and had admitted the guilt but also had shown the weapon '*Kussa*' and at that moment itself the weapon was handed over to the police. However, the Investigating Officer, PW-18 Hari Ram Gehlot, stated that accused-respondent after being arrested, voluntarily submitted that he could show the place where he had kept the weapon. On his submission, he was taken to his home on 01.10.1998 wherefrom he took out '*Kussa*' and handed it over to the police.

13.1 Furthermore, FSL report does not indicate that '*Kussa*' had any blood stains on it and therefore, the prosecution completely failed to establish the fact that the '*Kussa*' which was allegedly

recovered at the instance of the accused-respondent was in fact used by him while committing the crime in question.

14. It is pertinent to note here that none of the prosecution witnesses were independent rather as a matter of fact, all are interested witnesses. The prosecution could not produce any evidence of the neighbours or independent persons who could have established the presence of the accused-respondent at the time of incident nor this fact could be established by producing independent evidence to prove the allegation of cruelty, harassment or any quarrel or dispute between Sanwarmal and Sharda, so also the murder of deceased Sharda. In absence of any independent witness, the prosecution could not establish its case beyond all reasonable doubt so as to convict the accused-respondent for the alleged offences.

15. Although PW-1 Mahavir Prasad and PW-2 Mohar Singh have stated that extra judicial confession was made in presence of PW-9 Roshan Lal and PW-10 Rajendra Kumar, however, they did not confirm any such extra judicial confession being made in their presence.

16. The prosecution in order to establish the motive behind the commission of the crime by the accused respondent made the allegation of illicit relation with Santosh apart from cruelty and harassment on account of non-fulfillment of dowry demand, however, the prosecution could not establish this fact. It is to be noted that the allegation of illicit relation, at very first instance, became doubtful as the same was missing in the FIR and subsequent letter written to Dy. Superintendent of Police. However, the same was introduced in the statement given by

PW-1 Mahavir Prasad under Section 161 Cr.PC and before the Court. Apart from that, such allegation was otherwise not proved nor such version was supported by the prosecution witnesses and that being so the allegation of illicit relation of accused-respondent with Santosh was not fully established.

17. In his statement under Section 313 of the Cr.P.C., the accused-respondent claimed that he was not at home when the incident occurred. He explained that he owns agricultural land, which includes an open well and a temporary shelter where he and his family used to stay during the crop season. According to him, they were staying in the agricultural field at the time of the incident, and therefore, he was not present at his residence.

17.1 The prosecution did not lead any evidence to show that accused-respondent was present at the place of incident by leading any corroborative evidence, more particularly the evidence of neighbours or any other independent witnesses who could have established the fact that he was seen at home or he was seen going home just prior to the incident. In absence of this, the presence of the accused-respondent at the time of incident becomes highly improbable and the prosecution was not able to establish this fact beyond reasonable doubt that accused-respondent was in fact present at the time when the incident occurred.

18. So far as the contention of the learned counsel for the revision-petitioner/complainant with regard to get the benefit of the insurance policy (Ex.P/14A) is concerned, no evidence has come on record which could establish the fact that the accused-respondent murdered the deceased Sharda to get the benefit of

the insurance policy. Though the death of deceased Sharda was unnatural but this fact also could not establish that it was a murder to get the undue benefit of the insurance policy.

19. In view of the discussion made above what emerges out is that there were major improvements by the complainant as well as other witnesses. The presence of the accused-respondent at the time of the incident was not established. The factum of extra judicial confession was also not established as the same was not supported by all the persons before whom the said statement was made. It was even admitted by the prosecution witnesses that in the crop season the family members of Hanuman Ram and the accused-respondent used to stay in the agricultural field which rather support the version of the accused-respondent which he made under Section 313 Cr.PC. The recovery of weapon was also not established. Even the FSL report does not indicate any blood stain on '*Kussa*' and therefore, the weapon which is alleged to have been used was not corroborated by sufficient evidence. The finding given by the learned trial Court as well as the reasons and conclusion of the trial Court were examined and in view of the evidence on record, this Court finds no illegality in the order passed by the learned Trial Court. As a matter of fact, there was no evidence against the accused-respondent so as to convict him under Section 498-A, 304-B and 302 IPC. The impugned judgment therefore requires no interference.

20. At this juncture, this Court deems it appropriate to reproduce the relevant portions of the judgments rendered by the Hon'ble Apex Court in the cases of **Mallappa & Ors. Vs. State of Karnataka (AIR 2024 SC 1252)** and **Babu Sahebagouda**

**Rudragoudar and Ors. Vs. State of Karnataka (AIR 2024 SC 2252), as hereunder-:**  
**Mallappa & Ors. (Supra):**

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

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”

**Babu Sahebagouda Rudragoudar and Ors. (Supra):**

“38. Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka (2023) 9 SCC 581** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows:

- “8.1. The acquittal of the accused further strengthens the presumption of innocence;
- 8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;
- 8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles: (a) That the judgment of acquittal suffers from patent perversity; (b) That the same is based on a misreading/omission to consider material evidence on record; (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

21. Learned trial Court passed the impugned judgment of acquittal of the accused-respondents under Section 498-A, 304-B and 302 IPC, which in the given circumstances, is justified in law, because as per the settled principles of law as laid down by the Hon'ble Apex Court in the aforementioned judgments, to the effect that the judgment of the trial Court can be reversed by the Appellate Court only when it demonstrates an illegality, perversity or error of law or fact in arriving at such decision; but in the present case, the learned trial Court, before passing the impugned judgment had examined each and every witnesses at a considerable length and duly analyzed the documents produced before it, coupled with examination of the oral as well as documentary evidence, and thus, the impugned judgment suffers from no perversity or error of law or fact, so as to warrant any interference by this Court in the instant appeal.

22. The scope of interference in the acquittal order passed by the learned trial Court is very limited, and if the impugned

judgment of the learned trial Court demonstrates a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal as held by the Hon'ble Apex Court in the aforementioned judgment, and thus, on that count also, the impugned judgment deserves no interference by this Court in the instant appeal.

23. Resultantly, the impugned order of acquittal of the accused-respondent is maintained and hence, the appeal as well as revision petition is **dismissed**.

24. All pending applications, if any, stand disposed of.

**(SUNIL BENIWAL), J.**

**(DR. PUSHPENDRA SINGH BHATI), J.**

AbhishekK/skm/-