2026:CGHC:8246
AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 282 of 2005

Reserved on 22.01.2026

Delivered on 16.02.2026

Yogesh Kosle, S/o. Adhar Das, Koslae, Aged about 27 years, R/o. Village Sangwadeori, P.S. Mungeli, Presently Residing at Marimai, P.S. Civil Lines, Bilaspur

--- Appellant (s)

versus

State Of Chhattisgarh through Station House Officer, Police Station, Civil Lines, Bilaspur District Bilaspur (CG)

--- Respondent(s)

CRA No. 309 of 2005

Adhar Das Kosle S/o. Baldeo Prasad Kosale, Aged About 62 Years, R/o. Village Sangwadeori, P.S. Mungeli, Presently Residng at Marimai, P.S. Civil Lines, Bilaspur District Bilaspur

---Appellant (s)

Versus

State Of Chhattisgarh through Station House Officer, Police Station, Civil Line, Bilaspur District Bilaspur (CG)

--- Respondent(s)

For Appellants (s)	:	Dr. N.K. Shukla, Sr. Advocate with Ms. Riddhi Gupta and Mr. Dinesh Bole, Advocates
For Respondent(s)	:	Mr. Sanjeev Pandey, Dy. Advocate General and Mr. Suresh Tandan, Panel Lawyer

SANTOSH KUMAR SHARMA
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Date: 2026.02.16 16:03:55 +0530

Hon'ble Shri Justice Narendra Kumar Vyas

C A V Judgment

1. Since both the appeals are arising out of the same crime number and are related to the same offence, therefore, they are heard analogously and are being disposed of by this common order.

2. These criminal appeals have been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 28.02.2005 passed by Eight Additional Sessions Judge (FTC) Bilaspur (CG) in Sessions Case No. 364 of 2003, respectively, whereby the appellants have been convicted and sentenced in the following manner:-

Conviction	Sentence
U/s. 304-B of the IPC	RI for 10 years and fine of Rs. 5000/- in default of payment of fine to further undergo additional RI for one year.
U/s. 306 of the IPC	No separate sentence is recorded.

3. Brief facts giving rise to case as unfolds from the documents available on record are that on 06.11.2002 merg intimation No. 54 and 55 of 2002 under Section 174 CrPC was made by point man of Railway namely Baisakhu, stated that the dead body of woman and her daughter were found at between Hathband to Bhatapara Railway Station and cause of death was mentioned as the deceased with one child chopped off by train. On 11.11.2002 the appellant lodged Rojnamcha Sanha No. 716 before Police Station Civil Line stating that his wife along with daughter has left the house

without informing to anybody and despite search was made but the victim was not found.

4. Further case of the prosecution is that complainant Gendram who is father of victim made a written complaint (Ex.P-6) on 20.11.2002 at Police Station - Civil Line, Bilaspur, alleging that his daughter's father-in-law informed his son on 06.11.2002 at about 1. 00 PM that victim along with her daughter left the house on 06.11.2002 at about 7.00 o'clock in the morning. His son has informed this to the complainant at village Hardi, as such he immediately rushed to the house of his son-in-law and inquired about it from them and asked him to search but he has refused to search the victim and when she was not traced out upto 14 days then on apprehension that the in-laws and husband might have committed some incident with his daughter. It has also been contended in the complaint that before date of incident, father-in-law of victim demanded Rs. 12,000/- from the complainant and Rs. 1,00,000/- from his elder son Rajkumar on phone.

5. It is also alleged by the complainant that his daughter was subjected to torture for demand of dowry, harassment and subjected to physical assault by the appellant/husband in drunken condition and by her father-in-law for demand of dowry which has compelled her to commit suicide. The Police investigated the matter and recorded the statements of the family members, other witnesses under Section 161 CrPC and on the basis of written complaint; FIR (Ex.P-8) was registered at Police Station Civil Line-Bilaspur under Section 306, 34 of the IPC against the appellants. The dead body of the deceased was recovered and sent for postmortem; doctor who

conducted the postmortem opined that the cause of death was due to syncope on account of crushed injury haemorrhage caused by train.

6. After completion of the investigation, charge sheet was filed before the Court of Chief Judicial Magistrate Bilaspur, who in turn committed the case to the Court of Additional Sessions Judge, Bilaspur which was registered as Sessions Case No. 364 of 2003.

7. The prosecution in order to prove the guilt of the appellants examined 12 witnesses Uttamram Jogi (PW-1), Girja Bai (PW-2), Rajendra (PW-3), Sanat Kumar Lahare (PW-4), Sitaram Jaiswal (PW-5), Baisakhu (PW-6), Gendram Benarjee (PW-7), Umdhi Bai (PW-8), V.K. Mishra (PW-9), Awadesh Singh (PW-10), Ramesh Kumar Kurre (PW-11), Dr. Rajendra Maheshwari (PW-12), Vivek Shukla (PW-13) and exhibited the documents from Ex.P-1 to Ex.P-20. Statements of the accused/appellants were recorded under Section 313 CRPC in which they denied the allegations made against them and pleaded their innocence and false implication in the case. The appellant examined 2 witnesses in their support namely Prakash Chand Lahare (DW-1), Laxman Prasad Banjare (DW-2) and exhibited documents in their support namely statements of Uttam Das Jogi (Ex.D-1). Biraj Bai (Ex.D-2), Rajendra Kumar (DW-3), Gendram (DW-4) Umathi Bai (DW-5).

8. After hearing the parties, learned Sessions Judge on the basis of material on record and upon considering the statements of the witnesses has passed the judgment of conviction and order of sentence against the appellants as mentioned above. Learned trial court vide its order dated 25.02.2005 acquitted Geera Bai and Ramesh Kosale of the charges as mentioned above. Being aggrieved with the judgment of conviction and order of

sentence, the appellants preferred these Criminal Appeals. This Court vide order dated 04.05.2005 has released the appellants on bail.

9. Learned Sr. counsel for the appellants would submit that the prosecution is unable to prove their case beyond reasonable doubt as there is no evidence brought on record which can prove that the accused have instigated the victim to commit suicide which is essential ingredients to prove the allegation under Section 304-B of IPC. He would further submit that the prosecution is unable to establish that soon before death the victim was subjected to harassment to fulfill requirement of Section 113-B of the Evidence Act to draw presumption that the victim died within 7 years of marriage in a suspicious circumstances and the prosecution is unable to prove beyond reasonable doubt regarding demand of dowry to attract the commission of offence under Section 304-B of IPC.

10. He would further submit that the appellant No.1 himself has lodged missing report No.68 of 2002 before the Police Station and he was in search of the victim which shows the bonafide of the appellant No.1. He would further submit that no strong evidence has been placed on record by the prosecution to establish that there was demand of dowry and only vague and omnibus allegation have been made against the appellants, as such conviction passed by the learned trail Court suffers from surmises and conjuncture, perversity and contrary to the evidence which is liable to be interfered by this Court. He would further submit that PW-7 in his report Ex.P-6 has nowhere mentioned that at the time of marriage or thereafter the appellants were made demand of dowry which clearly suggests that the FIR and subsequent evidence is after thought story. He would further submit that

Ex.P-7 for the first time the complainant has stated that his daughter was subjected to torture for demand of dowry which the prosecution is unable to establish beyond reasonable doubt.

11. Learned Sr. Counsel for the appellants would further submit that Uttam Das (PW-1) wherein he has stated that the deceased was close friend of Rekha and the deceased told Rekha that father-in-law, mother-in-law and the appellant No.1 have demanded Rs. 1 lakh for starting business but the prosecution has not examined Rekha which goes fatal against the case of the prosecution and the trial court has relied upon the hearsay of Uttam Das (PW-1) who has not been informed by the victim, therefore, on the basis of hearsay evidence, conviction of the appellants is illegal. He would further submit that there are contradictions and omissions in the statements recorded before the Police as well as in the court statement which is fatal for the case of the prosecution story and its make out the case of prosecution as falsely implication of the appellants.

12. He would further submit that Girja Bai (PW-2) has stated before the Court that the deceased informed her that husband of the deceased demanded Rs. 1 lakh and assaulted her intoxication but in (Ex.D-2) in para 5 and 6 she has not stated the same thing, as such, these contradictions make the case of the prosecution case doubtful. Learned Sr. counsel for the appellants would further submit that the material collected by the prosecution is not clear that the victim has committed suicide or fell down under the train and chopped off with the vehicle of the train, as such there is doubt with regard to the cause of the death of the deceased, therefore, the order passed by the trial court is bad-in-law. To substantiate their submission, learned Sr. counsel for the

appellants would refer to the judgments of Hon'ble Supreme Court in the cases of **Gurdeep Singh vs. State of Punjab of Punjab and others reported 2011 (12) SCC 408, Ramnath Yadav vs. State of Chhattisgarh in CRA No. 226 of 2020 decided on 02.11.2023, Roomali and others vs. State of U.P. reproeted in 2021 SCC Online All 765, Jitendra Singh vs. State of Rajasthan reported 2015 SCC Online Raj 9656, Ramaiah Alias Rama vs State of Karnataka 2014 CRI.L.J. 4150, Nehalasgar vs State of Bihar 2004 AIR Jhar. H.C.R. 411, Raijnath vs. State of Madhya Pradesh reported AIR 2016 Supreme Court 5313, Chanchal Kumar vs. UT, Chandigarh reported AIR 1986 SC 752, Jaiprakash Sahu v. State of Chhattisgarh reported AIR Online 2022 CHH 609, Ganesh Sinha vs. State of Chhattisgarh reported 2024 SCC Online Chh 11968, Kashmir Kaur and Anr. v. State of Punjab reported AIR 20134 SC 1039, Parmeshwar and others v. State of M.P. (now CG) reported 2015 SCC Online Chh 1758, State of Chhattisgarh v. Sukchand Salam in CrMP No. 218 of 2019 decided on 20.03.2019, Tikam Chand Rathi, Raipur v. State of Chhattisgarh in CRR No. 643 of 2014 decided on 17.06.2014** and would pray for setting aside the judgments of the trail court.

13. On the other hand, learned State counsel opposes the submission and supported the judgment of conviction and order of sentence and would submit that the prosecution has proved its case beyond reasonable doubt as the victim's father in clear terms has narrated the earlier incident and the manner in which the deceased was chopped off by the train. He would further submit that there is no dispute that the marriage was solemnized before 3-4 years and the deceased died on an abnormal circumstances

within 7 years of marriage and the prosecution has clearly proved that soon before her death she was subjected to cruelty or harassment by the husband as well as the relative of her husband or in connection with demand of dowry, as such, the ingredients which are required for conviction under Section 304-B of the IPC have been proved by the prosecution beyond reasonable doubt and would pray for rejection of the appeals.

14. I have heard learned counsel for the parties and perused the records of the Courts below with utmost circumspection.

15. From the submission made by the parties, the point emerged for determination for this Court is whether prosecution is able to prove the offence under Section 304-B of the IPC against the appellants beyond reasonable doubt to justify the conviction of the appellants?

16. For better understanding the point of determination it is expedient for this Court to extract Sections 304-B of the IPC which reads as under:-

> **304 B. 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 purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

> **Section 2 of the Dowry Prohibition Act, 1961 define dowry as under:-**
> “Dowry” means any property or valuable security given or agreed to be given either directly or indirectly—
> (a) by one party to a marriage to the other party to the marriage; or
> (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage] [in connection with the marriage of the said parties, but

does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.
Explanation II.—The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

17. From perusal of the said provision, essential ingredients for attracting the offence under under Section 304-B of the IPC are as under:-

(i) the death of a woman caused by burns or bodily injury or otherwise than under normal circumstances;
(ii) such death having occurred within seven years from the date of the marriage;
(iii) soon before her death, the woman having been subjected to cruelty or harassment by her husband or any relative of her husband
(iv) such cruelty or harassment being in connection with the demand of dowry. It was, categorically held that if one of the ingredients is absent, the presumption under Section 113B of the Evidence Act would not be available to the prosecution.

18. If the aforesaid four ingredients are established, the death can be called a dowry death, and the husband and/or husband's relative, as the case may be, shall be deemed to have caused the dowry death. To determine the dowry death, this Court has already extracted the definition of dowry and from perusal of definition of dowry, it is clear that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to the other party to the marriage or to any other person. The dowry must be given or agreed to be given at o r before or any time after the marriage in connection with the marriage of the said parties.

19. To ascertain whether there is demand of dowry or the victim has suffered death in a abnormal condition, this Court has to meticulously examine the evidence of witnesses brought on record by the prosecution and the statement of the defense witnesses adduced by the appellants.

20. Birij Bai (PW-2) mother of victim's friend has stated in her examination-in-chief that the victim told her that her husband demanded Rs. 1 lakh for starting business. She has stated that under intoxication the appellant used to press her neck and assaulted her for demand of money. She also stated that when she had gone to the house of the victim for some customary programme (sixth day celebration of newly born baby) where the victim informed her about marpit and demand of dowry. This witness has also stated that when victim's husband came to her house for searching the victim, she scolded the Appellant No. 1 regarding demand of dowry from the victim. She has also affirmed in her statement recorded under Section 161 CrPC has stated that she scolded the victim's husband for demanding money from his inlaws. In the cross-examination, in para-5 she has stated that at the time of recording of (Ex.D-2) she mentioned about attending the programme in the house of Ramkumari /victim and also about her stay there.She has also stated that the victim on the same night told her that Yogesh demanding Rs. 1 lakh and also harassing her for money. She has also stated that her husband used to torture her many times under intoxication and used to press her neck. Again in the cross-examination at para-7, this witness was remained affirm in her statement about demand of money by the appellant No.1.

21. Rajendra (PW-3) brother of deceased has stated in his examination-in-chief that the deceased informed him that her in-laws and the appellant were torturing her for demand of dowry. He has also stated that after born of girl child the appellants used to torture, harassing her for bringing money Rs. 1 lakh then he along with his brother's friend had gone there and asked that

they were unable to give money. Again in the cross-examination in para 6 and 7, he has stated that his sister informed him that accused were demanding Rs. 1 lakh and the appellants were harassing her because of non-fulfilment of money. This witness has affirmed that his sister making complaint regarding demand of Rs. 1 lakh by the accused. The witness in para-10 has reiterated the stand taken by him in his police statement (Ex.D-3) recorded under Section 161 CrPC wherin he has stated that the appellants demanded money from his sister after birth of girl child.

22. Gendram (PW-7) father of the deceased has stated in examination in chief that his deceased daughter was married to Appellant No.1 and within a few months of her marriage, the accused maltreating her and complained about inadequate dowry given by her parents. This witness has stated that after few months of marriage, Appellants demanded Rs. 1 lakh from him on phone, thereafter he went to the in-laws house of her daughter wherein he stated that he is unable to give money then father-in-law of the deceased again demanded Rs. 1 lakh for starting business of his son and for purchase of plot. This witness has stated that the father-in-law of the deceased immediately demanded Rs. 12, 000/- then he stated that at present he was unable to give Rs. 12, 000/- and Rs. 10000/- which he would have been kept in the house, can be given to the appellants and same can be used by them as per their own wishes. This witness has further stated that the appellant under intoxication committed marpit with his daughter. Statement of this witness was recorded under Section 161 CrPC (Ex.D-4) wherein he has stated that after birth of girl child the appellants started harassing, torturing her to bring dowry and demanded Rs. 1 lakh. He has also stated that

whenever he visited the matrimonial house of her daughter, she informed the incident of assault committed by the appellants and also confirmed demand of Rs. 12,000/- and due to non-fulfilling of Rs. 12,000/-, the appellant No.1 assaulted her daughter under intoxication. He has also confirmed about his condition that he was not in sound position so that he was unable to fulfill their demand of Rs. 1 lakh. He has also stated that his daughter left the house on 06.11.2002 on account of torture and committed suicide by chopped off herself in the train. The contents of complaint (Ex.P-6) and complaint (Ex.P-7) are also corroborated from the statement recorded under Section 161 (Ex.D-4) as well as in the Court statement.

23. Investigation Officer (PW-9) has proved the FIR (Ex.P-7) lodged by father of the victim and also stated that he has recorded the statements (Ex.D-1 to Ex.D-4) as per the statement of the witnesses only.

24. Dr. Rajendra Maheshwari (PW-12) who conducted the postmortem of the deceased has opined that the cause of death was due to crush injury haemorrhage caused by train. He has also opined that the body was divided into parts from chest, as such one part of body above chest and below stomach were separated and breast of the dead body was also totally crushed. The dead body of child was also divided in two parts. The witness in the cross examination has admitted that if any person is fallen under the train then also similar type of injury will be caused and death is confirmed.

25. Prakash Chand Lahare (DW-1) has stated that there no custom of dowry in their community and at the time of finalization of marriage he was also present when father-in-law of accused discussed about dowry, appellant No.2 has refused to accept dowry as all essential commodities are available

in the house and the accused were jointly possessing 12-15 acres of land. He has also stated that appellant No.2 retired principal of Govt. School. In the cross-examination, he has admitted that appellant No.1 Ramesh after education is unemployed and he was dependent upon income of the parents and still he is not working. He has also stated that oftenly he used to take computer class.

26. Laxman Prasad Banjare (DW-2) has admitted in para-12 of the cross examination, that appellant No.1 Ramesh after education is unemployed and he was dependent upon income of the parents and still he is not working.

27. From the evidence brought on record by the prosecution the following facts are revealed;-

(I) The deceased and Yogesh were married and deceased was residing in her matrimonial home and within 3-4 years of marriage the deceased passed away by chopped off by train and no explanation was given by the accused that the deceased was residing at Bilaspur and Hathbandh-Bhatapara is about 40 KM away from their residence as to why she had travelled such a long distance.

(ii) The witnesses particularly statements of Gendram (PW-7), Rajendra (PW-3), Biraj Bai (PW-2) have consistently deposed that the demand of Rs. 1 lakh and witnesses have specified that the deceased told that she had been tortured for demand of money.

(iii) The case of the prosecution is consistent in so far as demand of dowry by the appellants just after birth of girl child, even on the sixth day celebration of the daughter of the deceased as fortified from the evidence of Birij Bai (PW-2).

(iv) From the evidence of Laxman Prasad Banjare (DW-2) it is quite clear that the appellant No. 1 even after education is unemployed and he was dependent upon income of the parents and he was not working which leads to affirm the demand of Rs. 1 lakh as dowry.

(v) The appellant No.2 in his statement recorded under Section 313 CrPC has tried to take defense that the victim was treated like his daughter and for that he opened a bank account and deposited money there which can be used by the deceased as per her own wishes. But this statement under Section 313 of CrPC cannot dilute the evidence of Gendram (PW-7), Rajendra (PW-3), Biraj Bai (PW-2) and suspicious death of deceased by chopping off by train.

(vi) As per merg intimation report, recovery of the body from the railway track indicates that Rajkumari had died under abnormal circumstances that could only be explained by her husband and in-laws, as she was residing at her matrimonial home when she suddenly disappeared and no plausible explanation was offered for her disappearance.

28. From the evidence of Gendram (PW-7), Rajendra (PW-3) and Biraj Bai (PW-2) which testified to the effect of continues harassment of the deceased, as such the expression soon before her death as explained by the Hon'ble Supreme Court in the case of **Ashok Kumar vs. State of Harayana reported in 2010(12) SCC 350 and Pawan Kumar vs. State of Haryana 1998 (3) SCC 309** would be satisfied and the presumption under Section 113-B of the Indian Evidence Act 1872 will come into effect as soon as it stood proved that the deceased had been subjected to cruelty soon before

her death and went unrebutted by the defense since no evidence was led by the appellants.

29. From the evidence brought on record, it is quite vivid that the deceased along with her 1 year girl child have committed suicide by chopped off herself by train as to what was the circumstances before her to compel her to commit suicide and from the evidence brought on record that a demand of dowry was there coupled with assault by the appellant No.1 under intoxication, as such the ingredients of section 304-B of the IPC i.e. soon before death the woman having been subjected to cruelty or harassment being in connection with demand of dowry has rightly been proved by the prosecution beyond reasonable doubt. Even PW-7 father of the victim and brother PW-3, Girja Bai (PW-2) have stated about demand of dowry which have been reaffirmed in the Court statement of the witnesses. No evidence has been led by Appellants showing that death was not due to any cruel treatment meted out to the deceased at her matrimonial home and the death was not an unnatural death. In the instant case, the deceased was continuously subjected to cruelty and harassment by the appellants in connection with demand of money. Moreover in the instant case, an unnatural death of a married woman has taken place within few years of her marriage; presumption of dowry death is made out as the deceased was subjected to cruelty and harassment by the accused in connection with demand of dowry. The Appellants have an opportunity of explain the circumstances particularly brought against them in the statement recorded 313 which has not taken care by them by placing any material.

30. The Hon'ble Supreme Court in the case of **Satbir Singh v. State of Haryana** reported in **2021 (6) SCC 724** has examined soon before death in following paragraphs:-

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

31. Again the Hon'ble Supreme Court in the case of **Virendra Pal @ Vipin vs. State of Harayana reported 2025 INSC 710** has held as under:-

> 38. At the cost of repetition, it may be noted that the demand of money was being made so that the accused-appellant could secure a job. The deceased called her brother Satender Kumar (PW-3) on the date of incident at 07:45 am and complained that she was being maltreated/beaten by her matrimonial family members including the accused-appellant and expressed a grave danger to her life. Hence, there is ample evidence on record

> establishing that deceased- Punita was being treated with cruelty in her matrimonial home owing to the demand of dowry soon before her death.
> 39. Consequently, all the ingredients required to prove the offence punishable under Section 304-B of the IPC against the accused-appellant are made out from the evidence available on record.

32. Again the Hon'ble Supreme Court in the case of State of **U.P vs Ajmal Beg reported in 2025 SCC Online SC 2801** has held as under:-

> 19.2 In this connection, various judgments of this Court have re-stated the position. [See: Radha Mohan Singh vs. State of UP (2006) 2 SCC 450, Hari v. State of UP (2021) 17 SCC 111 and Ravasahed v. State of Karnataka (2023) 5 SCC 391.
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> 20. The position of law being clear, as referred supra let us now consider the evidence. The demand for dowry, and in particular, a motorcycle, a colour TV and Rs.15,000/- in cash, have been established beyond reasonable doubt, with such a version not to have been shaken at all. Equally so, in no manner could it be disputed that the said demand had been reiterated just a day prior to the deceased passing away. This ties in with the fact that PW1 and PW 2, both have testified to the effect of continuous harassment of the deceased. The expression "soon before her death", as explained in Ashok Kumar (supra) would, in the considered view of this Court, be met and all the essentials, as noted in Pavan Kumar (supra) would be satisfied. Here itself, it may then be noted that the presumption under Section 113-B of the Indian Evidence Act, 1872 came into effect as soon as it stood proved that the deceased had been subjected to cruelty soon before her death, and went unrebutted by the defence, since no evidence was led by them.

33. The case of the prosecution is fully established to the extent that there is no much gap between the cruelty/harassment and death and this link remained live. On the strength of the evidence produced by the prosecution, the burden is shifted upon appellant No.1, so as to show that the death of his wife was not due to any cruel treatment at his hands. The death has taken place within three years of marriage under abnormal circumstances. On the basis of statements of Gendram (PW-7), Rajendra (PW-3), Biraj Bai (PW-2),

it is established that deceased was being maltreated due to non-fulfillment of demand of dowry.

34. As a result, I am not inclined to interfere with the conviction of the accused-appellants as recorded by the trial Court in both the appeals. The impugned judgments and orders i.e., the impugned judgments of conviction and order of sentence dated 28.02.2005, passed by the 8th Additional Sessions Judge, (FTC) Bilaspur, does not suffer from any infirmity warranting interference by this Court.

35. Appellant Yogesh Kosle presently appears to be aged about 51 years. Appellant Adhar Das appears to be 87 years of age. The incident is of the year 2002, appellant Yogesh Kosle remained in jail from 8.12.2002 to 26.04.2003 during tail and after conviction on 23.02.2005 thereafter, he was released on bail by this Court on 04.05.2005, thus he remained in jail about 6 months and 29 days. Appellant Adhar Das Kosle in CRA No. 309 of 2005 has been released on bail by this Court on 04.05.2005 thus he remained in jail about 2 months and 11 days, therefore, ends of justice would meet if sentence imposed upon the appellant Yogesh Kosle is reduced for the minimum sentence as provided for the offence under Sections 304(B) of the IPC i.e. 7 years instead of R.I. for 10 years.

36. So far as Appellant Adhar Das Kosle in CRA No. 309 of 2005 is concerend, Hon'ble Supreme Court in the case of **State of UP vs Ajmal Beg (supra)** considered the age of accused No. 2 in that case who was aged about 94 years has refrained from incarcerating her. The operative part of the said judgment is as under:-

> 24. The upshot of the discussion made in the preceding paragraphs is that the High Court has erred in setting aside the judgment of conviction returned by the Additional District Judge, Bijnor, and acquitting Ajmal and Jamila in connection with the FIR bearing No. 94/2001 registered at P.S Kiratpur, under Section 4989-A and 304-B, IPC and Section 3/ 4 of the DPA, 1961. The State's appeals, therefore, deserve to be allowed.
>
> The judgment of the Trial Court, insofar as it relates to the conviction of both Ajmal and Jamila, is restored, as also the quantum of sentence in respect of Ajmal is concerned. However, insofar as the respondent in Criminal Appeal No. 133 of 2017 is concerned, i.e., Jamila, who, as we have recorded in our order reserving judgment dated 10th September 2025, is 94 years of age - the question we must ask ourselves is whether any fruitful purpose will be served by sending her to prison. While weighing and assessing sentencing particularly in case of convicts of advanced age such as in praesenti causa, the Court must take into consideration humanitarian considerations which dictate that imposing imprisonment may be inhumane, given the severe physical frailty, likely medical dependency, and reduced capacity to endure the hardships of custody, thereby implicating and compromising the dignity protected under law. As such, while we restore the conviction as awarded by the Trial Court however, in the attending facts and circumstances of this case, we refrain from incarcerating her. Respondent Ajmal in Criminal Appeal No. 132 of 2017 is directed to surrender before the concerned Court, within a period of four weeks from today, for serving the sentence awarded by the Trial Court.

37. In view of the above stated legal position though this Court affirmed the order of conviction of appellant Adhar Das Kosle in **CRA No. 309 of 2005,** presently he is 87 years of old person, no fruitful purpose will be served by sendng him to prison, as such this Court must take humanitarin considerations which indicate that imposing imprisonment may be inhumane, given the severe physical frailty, likely medical dependency and reduced capacity to endure the harship of custody, thereby implicating and compromising the dignity protected under law. In the attending facts of the case, I refrain from incarcerating him.

38. Appellant Yogesh Kosle in **CRA No. 282 of 2005** is directed to surrender before the competent Court within a period of 8 weeks from today for serving the reaming jail sentence as awarded by this Court of 7 years after getting usual set off under Section 428 of CrPC/**Section 468** of the new Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. His bail bonds stand cancelled. Consequently the appeals filed by the appellants are allowed in part.

Sd/-

(Narendra Kumar Vyas)
Judge

santosh