



CRA-S-2244-SB-2004

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-2244-SB-2004
Reserved on: 18.05.2026
Pronounced on: 20.07.2026
Uploaded on: 20.07.2026

Whether only operative part of the judgment is Pronounced: NO

Whether full judgment is pronounced: YES

ISHWAR SINGH AND ORS.

....Appellants

V/s

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present: Mr. Ravinder Malik, Advocate for the appellants.

Mr. Mohit Chaudhary, AAG Haryana.

RUPINDERJIT CHAHAL, J. (ORAL)

1. The present appeal has been filed by the appellants assailing the judgment of conviction dated 20.10.2004 and order of sentence dated 21.10.2004 passed by the learned Additional Sessions Judge, Bhiwani, whereby appellants were convicted under Sections 304-B and 406 of the Indian Penal Code, 1860 (for short, 'IPC') and appellant Nos.1 and 2 were sentenced to undergo rigorous imprisonment for 07 years under Section 304-B IPC along with a fine of Rs.2000/- each and rigorous imprisonment for 01 year under Section 406 IPC each. In default of payment of fine, they were further directed to undergo rigorous imprisonment for six months each.

Appellant No.3, namely Jatinder Singh (husband of deceased)

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was convicted under Section 304-B and 406 IPC and sentenced to undergo rigorous imprisonment for 10 years under Section 304-B IPC along with a fine of Rs.5000/-. In default of payment of fine, he was directed to further undergo rigorous imprisonment for 01 year. He was also sentenced to undergo rigorous imprisonment for 01 year under Section 406 IPC. Both the substantive sentences were ordered to run concurrently.

1.1 During the pendency of the present appeal, appellant No.3 namely Jitender Singh unfortunately expired on 21.05.2006. Consequently, vide order dated 25.09.2018, the appeal, in so far as it related to him, stood abated. The present appeal, therefore, survives only qua appellant Nos. 1 and 2, who are the father-in-law and mother-in-law of the deceased respectively.

2. Briefly stated the case of prosecution is that deceased, Babita died an unnatural death by hanging within about six months of her marriage with Jitender Singh (appellant No.3 - since deceased). According to the prosecution, soon before her death, she was subjected to cruelty and harassment by her husband and his parents in connection with an alleged demand for a car or in the alternative a sum of Rs.2,00,000/- in cash as dowry.

On the basis of the allegations levelled by the complainant, Jai Bhagwan, brother of deceased-Babita a criminal case came to be registered against the accused persons.

3. To substantiate its case, the prosecution examined PW-1 Head Constable Dharampal, PW-2 Head Constable Rajpal, PW-3 ASI Kanwar Singh, PW-4 Surender, PW-5 Dr. S.S. Dhankar, PW-6 Kanwar Pal Draftsman, PW-7 SI Om Parkash, PW-8 EHC Krishan Kumar, PW-9

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Constable Satyawar, PW-10 Jai Bhagwan & PW-11 Surender Singh (brothers of the deceased) and PW-12 SI Dharam Singh.

4. After the prosecution evidence was concluded, the statements of the accused persons were recorded under Section 313 of Criminal Procedure Code, 1973. All incriminating circumstances appearing in the prosecution evidence were put to them.

4.1 The accused persons denied the allegations in *toto*, pleaded false implication. It was specifically denied that any demand for dowry had ever been raised or that the deceased had been subjected to harassment or cruelty on account thereof. The defence taken by the accused was that the deceased committed suicide while she was alone at home. Accused Ishwar Singh further set up a plea of alibi, pleading that he was on duty on the given date of occurrence and had gone to a doctor for medicine, and that they were informed of the incident by a sweeper and a neighbour.

4.2 In support of their defence, the accused examined DW-1 Ravinder Kumar, DW-2 Karan Singh, DW-3 Smt. Kaushalya, DW-4 Dhoop Singh, DW-5 Praveen Kumar, DW-6 Jagan Singh who produced the attendance record to substantiate the plea of alibi, DW-7 Jai Bhagwan, DW-8 Satish Kumar and DW-9 Shamsher Singh Malik, a handwriting and finger print expert, who sought to prove certain letters and writings allegedly authored by the deceased.

4.3 Upon appreciation of oral and documentary evidence, the learned Trial Court convicted and sentenced the accused in the manner noticed herein above.

5. Learned counsel appearing for the appellants has assailed the

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impugned judgment primarily on the ground that the learned Trial Court failed to appreciate the evidence on record in its correct perspective and recorded the conviction on the basis of conjectures and surmises.

5.1 It is contended that the prosecution has failed to establish the essential ingredients constituting the offences under Sections 304-B and 406 IPC and therefore, the statutory presumption under Section 113-B of the Indian Evidence Act, 1872 could never have been invoked against the appellants.

5.2. Learned counsel submits that the defence consistently pleaded that the deceased was emotionally disturbed and was unable to reconcile herself with the marriage. According to the defence, prior to her marriage she was emotionally attached to one Raju, and her inability to come to terms with the changed circumstances ultimately led her to commit suicide. It is argued that the learned Trial Court failed to consider this defence in its proper perspective despite substantial evidence having been adduced in support thereof.

Particular emphasis has been laid upon several letters, notes and writings allegedly authored by the deceased which were placed on record as Mark-DA, Mark-DB, Mark-DC and Mark-C/1 to Mark-C/5. According to the learned counsel, these writings unmistakably reflect the mental condition of the deceased, her emotional turmoil and the absence of any allegations against her in-laws. It is submitted that one of the writings specifically records that her in-laws were not responsible for her condition and that she herself was to blame for her predicament. It has further been argued that the prosecution deliberately withheld these writings from proper investigation

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and made no effort whatsoever to have them scientifically examined through any handwriting expert.

5.3 Learned counsel further submits that in order to prove the authenticity of the writing, the defence examined DW-9 Shamsheer Singh Malik, Handwriting and Fingerprint Expert, who opined that disputed writings were in the handwriting of the deceased. It is submitted that once expert evidence admissible under Section 45 of the Indian Evidence Act, 1872 had been led by the defence and remained unrebutted by any scientific evidence from the prosecution, the learned Trial Court could not have discarded the same merely on the basis of its visual comparison of handwriting. Such an approach, according to the learned counsel, is contrary to the settled principle governing appreciation of expert evidence.

5.4 It has been argued that the prosecution version suffers from material contradictions going to the root of the case. Learned counsel submits that PW-10 Jai Bhagwan and PW-11 Surender Singh, who are admittedly the real brothers of the deceased and constitute as star witnesses of the prosecution, made mutually inconsistent statements regarding the alleged payment of Rs.50,000/- during the marriage ceremony. While one witness (PW-11) stated that the amount was paid at the time of departure of the *Baraat*, the other (PW-10) deposed that the payment had been made at the time of engagement ceremony. PW-10 further admitted in cross-examination that only Re.1/- had been exchanged at the engagement ceremony, thereby probablising the defence version that the marriage was performed in a simple manner without any demand for dowry.

5.5 It has also been contended that despite serious allegations of

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persistent dowry demand and harassment, neither the father nor the mother of the deceased entered into the witness box, though they were the most natural witnesses. Likewise, the mediator through whom the marriage had been arranged was also withheld by the prosecution. According to the learned counsel an adverse inference, deserves to be drawn against the prosecution on this account.

5.6 It has been further argued that the learned Trial Court erred in rejecting the plea of alibi raised on behalf of the appellant No.1 Ishwar Singh. Reliance has been placed upon the testimony of DW-6 Jagan Singh, Time Keeper, C.C.I., Charkhi Dadri, who produced the official attendance registers Ex.DN, Ex.DM and Ex.DO showing that appellant No.1 remained present on duty from 8.00 AM to 5.00 PM on the date of occurrence. Learned counsel submits that the learned Trial Court rejected this documentary evidence on mere assumptions that the appellant could have left his place of work as his residence was situated within the factory premises. Such reasoning, it is argued is wholly speculative and impermissible in criminal trial where the prosecution is required to establish guilt beyond reasonable doubt.

5.7 Learned counsel has further submitted that the medical evidence has not been correctly appreciated by the learned Trial Court. It is argued that PW-5 Dr. S.S. Dhankar did not conclusively rule out suicidal hanging and during cross-examination admitted that as per Modi's Medical Jurisprudence and Toxicology, the absence of certain classical signs does not necessarily exclude death by suicide. It is thus contended that medical evidence is not inconsistent with the defence version.

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5.8 Finally it has been argued that the allegations regarding dowry are vague, omnibus and unsupported by any independent evidence. There is no reliable material to establish that deceased was subjected to cruelty or harassment in connection with any demand for dowry “soon before her death” which is an indispensable requirement for attracting Section 304-B IPC.

5.9 Consequently, it is submitted that the conviction recorded by the learned Trial Court deserves to be set aside and that the appellants are entitled to acquittal by extending to them the benefit of doubt.

6. On the other hand, learned State counsel has supported the impugned judgment of conviction and order of sentence, contending that the same are based upon correct and comprehensive appreciation of the evidence available on record and do not suffer from any illegality, perversity or misreading of evidence warranting interference by this Court.

6.1 It is submitted that the prosecution has successfully established all the essential ingredients constituting the offences under Sections 304-B IPC and 406 IPC. The deceased admittedly died an unnatural death within 07 years of her marriage and the evidence adduced by the prosecution clearly establishes that she was subjected to cruelty and harassment in connection with unlawful demands for dowry soon before her death. Consequently, the statutory presumption under Section 113-B of the Indian Evidence Act stood duly attracted against the accused.

6.2 Learned State counsel further submits that the testimony of related witnesses cannot be discarded merely on the ground of relationship if it otherwise inspires confidence. It is argued that PW-10 Jai Bhagwan and

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PW-11 Surender Singh have consistently deposed regarding the persistent demands for a car or in the alternative Rs.2,00,000/- in cash and the harassment meted out to the deceased. According to the learned State counsel the minor inconsistencies pointed out by the defence pertain only to peripheral aspects and do not strike at the root of the prosecution case.

6.3 It has further been contended that the medical evidence sufficiently corroborates the prosecution version and rules out any possibility of accidental death. The defence has failed to produce any cogent material capable of dislodging the statutory presumption arising under Section 113-B of the Indian Evidence Act.

6.4 With regard to the letters relied upon by the defence, learned State counsel submits that the said documents were never proved in accordance with law. Merely because the defence examined handwriting expert would not *ipso facto* render the contents thereof admissible in evidence. It is argued that even assuming the writing to be genuine, we cannot eclipse the otherwise reliable ocular testimony establishing continuous harassment on account of dowry demands. It is therefore submitted that the learned Trial Court has assigned cogent and convincing reasons while recording the conviction and no ground is made out for interference. Accordingly, the present appeal deserves to be dismissed.

7. I have heard learned counsel for the parties at considerable length and with their able assistance, carefully gone through the entire evidence available on record, the impugned judgment, the documentary evidence, the depositions of the witnesses as well as the relevant record.

8. In the light of rival submissions and the material available on

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record, the following issues arise for determination:

- i. Whether the prosecution has proved beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the appellants in connection with the demand for dowry.
- ii. Whether such cruelty or harassment if any, was inflicted “soon before her death” so as to establish a proximate and live link between the alleged dowry demand and the unnatural death.
- iii. Whether the statutory presumption of Section 113-B of the Indian Evidence Act stood attracted in the facts of the present case.
- iv. Whether the prosecution has independently established the ingredients of the offence punishable under Section 406 IPC.

9. Before adverting to the facts of the present case, it would be apposite to reproduce the relevant statutory provisions relating to dowry death.

“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.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven



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years but which may extend to imprisonment for life.”

10. As per the explanation to the Section, "dowry" for the purposes of this Section shall have the same meaning as Section 2 of the Dowry Prohibition Act, 1961 which reads as under:-

“2. Definition of ‘dowry’.—

In this Act, ‘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.”

11. Keeping in view the object, Section 113-B was introduced in the Indian Evidence Act to raise a presumption as to dowry death. It reads as under:

“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 had 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 Indian Penal Code (45 of 1860).”

12. A careful reading of Section 304-B IPC makes it abundantly clear that before a conviction can be sustained, the prosecution must

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establish the following foundational facts beyond reasonable doubt:-

- a) The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;
- b) The death must have been caused within seven years of her marriage;
- c) Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and
- d) Cruelty or harassment must be for, or in connection with, any demand for dowry.

13. Only upon proof of these foundational facts does the statutory presumption under Section 113-B of the Indian Evidence Act come into play, shifting the burden upon the accused to rebut the same by leading cogent and convincing evidence.

However, it is equally well settled that the presumption under Section 113-B of the Indian Evidence Act does not arise automatically merely because the death of a married woman has occurred otherwise than under normal circumstances within seven years of marriage. The prosecution must first independently establish the essential ingredients constituting the offence under Section 304-B IPC. Unless the foundational facts are proved, the burden never shifts upon the accused.

14. The expression “soon before her death” is a relative expression and no straitjacket formula can be laid down for determining its import. The expression has to be understood in the context of the facts and circumstances of each case so as to establish a proximate and live link between the alleged dowry-related cruelty and the consequential death. General, omnibus or stale

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allegations of harassment, unaccompanied by evidence establishing such proximity, would not satisfy the statutory requirement.

15. The Hon'ble Supreme Court, in the judgment of ***Satbir Singh v. State of Haryana, 2021 AIR (SC) 2627***; has summarized the law under Section 304-B, IPC and Section 113-B, Evidence Act as under:

"i. Section 304-B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

ii. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B, IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B, Evidence Act operates against the accused.

iii. The phrase "soon before" as appearing in Section 304-B, IPC cannot be construed to mean 'immediately before'. The prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

iv. Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental."

16. Reliance in this regard is also placed upon the decision of the Hon'ble Supreme Court in ***Bajinath v. State of Madhya Pradesh, 2017 (1) SCC 101***; wherein it was held that the factum of unnatural death in the matrimonial home and that too within seven years of marriage is ipso facto not sufficient to bring home the charge under Section 304-B IPC against the accused, and that general allegations unsupported by cogent and reliable

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evidence are insufficient to invoke the statutory presumption under Section 113-B of the Indian Evidence Act. The relevant paragraphs are reproduced below:

“32. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

33. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.”

.....emphasis supplied

17. Before embarking upon the factual analysis of the present matter, it would be profitable to take note of the principles governing Section 304-B IPC as expounded by the Hon'ble Supreme Court in ***Chabi Karmakar***



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and others v. State of West Bengal, Criminal Appeal No.1556 of 2013, decided on 29.08.2024 (2024 INSC 665); wherein it was observed as follows:

xxxxxxx xxxxxx xxxxxx xxxxxx

“6. After going through the evidence of PW-1, PW-3, PW-4 and PW-16 (who are the brother, father, mother and cousin of the deceased respectively), it becomes clear that the deceased faced cruelty and harassment at the hands of her husband (appellant no.2) which compelled her to commit suicide. However, these witnesses did not state that such cruelty and harassment was in connection with the demand for dowry.

7. Trial Court raised a presumption under section 113B of Evidence Act to convict the appellants under section 304B of IPC. The High Court did not go into the question of whether the trial court was right in relying upon section 113B of the Evidence Act.

In Charan Singh alias Charanjit Singh vs. State of Uttarakhand 2023 SCC OnLine SC 454, where there were allegations against the husband that he was subjecting the deceased therein on the demand of a motorcycle and some land, this Court in relation to Section 113B of Evidence Act and section 304B of IPC, had noted that:

"21. It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the pre-requisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act.....

22. XXXXXXXX

23. On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the prerequisites to raise presumption under Section 304B and Section 113B of the



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Indian Evidence Act having not being fulfilled, the conviction of the appellant cannot be justified. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A of IPC."

Similarly, in the case at hand, it has not been proved by the prosecution that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry and hence we are of the opinion that this is not a case of dowry death under Section 304B of the Indian Penal Code."

18. Before proceeding further, it would be apposite to refer to another judgment rendered by the Hon'ble Supreme Court in ***Shoor Singh and another v. State of Uttarakhand, 2024 INSC 713, decided on 20.09.2024***; wherein the Hon'ble Supreme Court has held as under:

xxxx xxxxx xxxxx xxxxx

"13. When all the above ingredients of 'dowry death' are proved, the presumption under Section 113-B of the Evidence Act is to be raised against the accused that he has committed the offence of 'dowry death'. What is important is that the presumption under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of commission of the offence of 'dowry death' by the accused when all the essential ingredients of 'dowry death' are proved beyond reasonable doubt by ordinary rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death' the burden is on the prosecution."

.....emphasis supplied

19. Reliance may also be placed upon the judgment of the Hon'ble



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Supreme Court in *State of Haryana v. Angoori Devi and another, Criminal Appeal No. 1801 of 2013, decided on 13.06.2019*; wherein it was observed as under:

XXXXX XXXXX XXXXX XXXXX

“16. It is true, that the victim died of burns. The death was otherwise than under normal circumstances and within 7 years of marriage. However, to attract Section 304B of the Indian Penal Code, the prosecution has to establish that soon before the death the deceased was subjected to cruelty and harassment in connection with demand for dowry. The High Court rightly found that the evidence did not show any proximate connection between the demand of dowry and the act of cruelty of harassment and or the death. The prosecution has not been able to prove that the victim was subjected to cruelty or harassment soon before her death in connection with any demand for dowry.

17. Under Section 304B of the Indian Penal Code, the prosecution cannot escape from discharging its burden of proving that the harassment or cruelty was related to demand for dowry soon before death.”

20. Now this court is to see as to whether the prosecution has succeeded in establishing the foundational facts so as to sustain the conviction recorded by learned Trial Court.

21. In the instant case, it is not in dispute that the deceased Babita, died an unnatural death on August 25, 2001, i.e. within six months of her marriage to Jitender Singh (since deceased). The factum of her death occurring otherwise than under normal circumstances within seven years of marriage is therefore, established.

However, the existence of these two circumstances alone are

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not sufficient to sustain a conviction under Section 304-B IPC. The pivotal question that falls for determination is whether the prosecution has succeeded in proving beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the appellants in connection with demand for dowry and that such cruelty or harassment was meted out soon before her death so as to establish a proximate and live link between the alleged demand and the unfortunate occurrence.

22. The prosecution case, in this regard rests substantially upon the testimonies of PW-10 Jai Bhagwan and PW-11 Surender Singh, who are the real brothers of the deceased. It is therefore, necessary to examine their evidence with due care.

22.1 PW-10 deposed in his examination in chief that on 20.07.2001 the deceased came to her parental home alone and informed the family that she had been turned out of her matrimonial home by the accused persons on account of their demand for a car or a sum of Rs.2 lakhs in cash. However, what assumes significance is his further statement that on the very next day the accused persons came to the parental house of the deceased and took her back to the matrimonial home. This part of the testimony in the opinion of this Court creates an inherent probability in the prosecution version. If the accused had allegedly turned the deceased out of the matrimonial home on account of unmet dowry demand, it appears somewhat improbable that within 24 hours they themselves would come to her parental home and persuade her to return. Though such conduct may not be wholly impossible, it certainly dilutes the prosecution version and calls for closer scrutiny of the remaining evidence. More importantly, PW-10 made certain admissions

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during his cross-examination which materially affects the prosecution case. He admitted that the marriage had been arranged through a mediator and that the mediator had informed the family that the parents of bridegroom had raise no specific demand for dowry before the marriage. Although the witness attempted to explain that ordinary household articles were expected to be given in accordance with customary practice. He nevertheless admitted that there was no specific demand conveyed by the parents of bridegroom. The witness further admitted that only Re.1/- was exchanged at the time of engagement ceremony and volunteered that the parents of the bridegroom had themselves stated that the token amount was sufficient and that the remaining customary articles could be given at the time of the marriage. Thereafter, he again stated that the accused had informed them that the details of the articles to be given would be disclosed later. These statements are not only mutually inconsistent but also create uncertainty regarding the very genesis of the alleged dowry demand.

22.2 Another significant aspect of his deposition relates to the alleged payment of Rs.50,000/-. PW-10 stated that the said amount had been paid at the time of *vidai* (departure of the bride). However, he candidly admitted that this fact had never been disclosed to the police when his statement under Section 161 Cr.P.C. was recorded.

22.3 This omission assumes significance because an alleged payment of Rs.50,000/- in connection with marriage cannot be treated as an insignificant detail. Had such payment actually been made, one would reasonably expect the same to find mention at the earliest opportunity. The omission, therefore, constitutes a material improvement made for the first

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time before the Court.

22.4 PW-11 who is the real brother of the deceased, has not materially improved the prosecution case. On the contrary, his testimony introduces further inconsistencies. While PW-10 stated that Rs. 50,000/- had been paid at the time of the *vidai*, PW-11 stated that the said amount was paid at the time of engagement ceremony itself. This contradiction is not with respect to a peripheral or insignificant circumstance. The alleged payment of Rs.50,000/- forms an integral part of the prosecution story relating to the alleged dowry demand. Two star witnesses giving entirely different versions regarding the occasion on which such payment was made, cast a serious doubt upon the truthfulness of the prosecution version. PW-11 further admitted during his cross-examination that only about 30-35 persons attended the marriage and at another stage he stated that there were 40-45 persons in the marriage party though this discrepancy itself may not be of much significance, it does probabilise the defence version that the marriage was performed in a simple manner and not with the pomp and grandeur ordinarily associated with cases involving substantial dowry transactions.

22.5 It is well settled that the omission touching the core of prosecution case are capable of amounting to contradictions in the present case. The allegations regarding specific demands of dowry constitute the very foundation of the prosecution case and material omissions relating thereto cannot be lightly brushed aside.

22.6 There is no dispute with the settled proposition that the evidence of a related witness cannot be discarded merely because of his relationship with the deceased. Relationship is not synonymous with

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untruthfulness. If the testimony of such witness is otherwise trustworthy and inspires confidence, conviction can safely be based thereupon even in the absence of independent corroboration.

22.7 At the same time it is equally well settled that where the prosecution case rests predominantly upon the testimony of interest witnesses, particularly in cases involving allegations of matrimonial cruelty occurring within the privacy of matrimonial home the court is required to subject such evidence to careful and cautious scrutiny to rule out exaggeration, embellishment or improvement.

22.8 In the present case, the deposition of PW-10 and PW-11 are not free from material inconsistencies. Their evidence regarding the alleged payment of Rs.50,000/- is mutually destructive. They have also made improvements regarding the alleged dowry demand and several important facts do not find mention in their previous statements recording during investigation. These inconsistencies when considered cumulatively diminish the evidentiary values of their testimony and make it unsafe to accept them without independent corroboration.

23. Another circumstance which assumes considerable significance is the non-examination of the parents of the deceased. The prosecution alleges that the deceased was continuously subjected to harassment on account of demands for dowry. Ordinarily, in such circumstances, the parents of the deceased would be the first ones to whom such grievance would be communicated. They were, therefore, the most natural and material witnesses to depose regarding the alleged acts of cruelty and harassment. Surprisingly, neither the father nor the mother of the deceased

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entered the witness box. No explanation whatsoever has been furnished by the prosecution for withholding these material witnesses. Though it is true that the prosecution is not bound to examine every witness cited in the challan, yet where the most natural witnesses are withheld without any explanation and the prosecution case rests almost entirely upon the testimony of interested witnesses, the Court is justified in drawing an adverse inference under Section 114, Illustration (g) of the Indian Evidence Act that, had such witnesses been examined, their evidence would not have supported the prosecution case.

24. Equally significant is the non-examination of the mediator of the marriage. The evidence on record establishes that the marriage was solemnized through the intervention of a mediator. PW-10 Jai Bhagwan admitted during cross-examination that the mediator had informed them before the marriage that there was no specific demand for dowry from the side of the bridegroom's parents. In matrimonial disputes of this nature, it is a matter of common experience that whenever differences arise between the spouses or their families, the first person usually approached for reconciliation is the mediator who had facilitated the marriage. Such a person would ordinarily be aware of any persistent demands for dowry or attempts at settlement between the families. The prosecution, however, chose not to examine the mediator.

25. Apart from exposing the inconsistencies in the prosecution case, the defence also led affirmative evidence in support of its plea that the deceased was emotionally disturbed and that her death was not the consequence of any dowry related cruelty. The defence produced on record

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certain writings of the deceased marked as Mark-DA, Mark-DB, Mark-DC and Mark-C/1 to Mark-C/5. Though these documents were marked and not exhibited they were sought to be proved through DW-9 Shamsheer Singh Malik, handwriting and finger print expert. DW-9 deposed that, upon comparison of the disputed writings, the questioned documents were in the handwriting of the deceased. A perusal of the writings reveals that the deceased was accustomed to expressing her thoughts in the form of letters, notes and poetic compositions. In one of the writings, she appears to express emotional estrangement from her brothers and her desire to reconnect with them. Another note contains an expression that her in-laws were not responsible for her condition and she considered herself answerable for her own circumstances. Certain other writings disclose an emotional attachment towards a person named 'Raju' and depict considerable mental turmoil. This Court is conscious that the contents of these writings cannot be treated as conclusive proof of the defence version. Equally, however, they cannot be ignored altogether when they form part of the defence evidence and stand supported by expert testimony. The learned Trial Court rejected the opinion of DW-9 primarily on the ground that an expert witness may naturally support the party at whose instance he has been examined and proceeded to compare the handwriting itself. Such an approach, in the opinion of this Court, does not accord with the settled principles governing the appreciation of expert evidence. While it is true that the opinion of an expert is advisory in nature and not binding upon the Court, it cannot be discarded on generalized assumptions. If the Court chooses to disagree with an expert opinion, reasons founded on the evidence must be assigned. In the present

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case, the prosecution neither subjected the writings to examination by any other handwriting expert nor produced any scientific evidence contradicting the opinion of DW-9. In these circumstances, although the writings by themselves may not conclusively establish the defence case, they certainly constitute a relevant circumstance which lends some support to the plea that the deceased was under emotional distress for reasons not necessarily connected with the alleged dowry demand.

26. The defence further examined DW-6 Jagan Singh, Time Keeper, C.C.I., Charkhi Dadri who produced the official attendance register showing that the appellant No.1 Ishwar Singh remained on duty from 8.00 AM to 5.00 PM on the date of occurrence. The learned Trial Court discarded this evidence on the assumption that, since the residential accommodation of the accused was situated within the factory premises, he could have conveniently left his place of work and returned without being noticed. This reasoning, in the considered opinion of this Court is found upon conjecture rather than evidence. A plea of alibi has to be appreciated on the basis of evidence led by the parties. Once the defence produced official records indicating the presence of appellant No.1 at his place of employment, the prosecution was required to discredit the same by cogent evidence. The Trial Court could not have rejected documentary evidence merely on hypothetical possibilities unsupported by any material on record. Though the said evidence may not completely exonerate appellant No.1 by itself, it certainly constitutes another circumstance creating doubt regarding the prosecution version.

27. The medical evidence also does not substantially advance the

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prosecution case. PW-5 Dr. S.S. Dhankar, who conducted the postmortem examination, stated that there were no external injuries on the body of the deceased apart from the ligature mark. The report of the Forensic Science Laboratory was also negative with regard to poisoning. During his cross-examination, PW-5, Dr. S.S. Dhankar, stated that salivation abrasion of corner of the ligature mark bleeding into the internal muscle and bleeding in the wall of carotid vessels, they are the sure signs of anti-mortem death but if they are absent that does not mean it is post-mortem death. the absence of salivation, abrasion at the corners of the ligature mark, bleeding into the internal muscles and bleeding in the walls of carotid vessels does not necessarily indicate that the death was post-mortem death in nature. Thus, as per this witness, who is an expert in the field, certain classical features ordinarily associated with ante-mortem hanging, such as dribbling of saliva, may not invariably be present. He further admitted that absence of such features does not, by itself necessarily indicate that the death was post-mortem. Thus, the medical evidence does not conclusively negate the possibility of suicidal hanging. It is, therefore, unsafe to derive any inference adverse to the appellants merely on the basis of medical evidence.

28. Upon an overall evaluation on the evidence, the court finds that the prosecution has undoubtedly established that deceased died an unnatural death within seven years of her marriage, however, proof of these two facts alone is insufficient to attract the offence under Section 304-B IPC. The prosecution was further required to establish beyond reasonable doubt that the deceased was subjected to cruelty or harassment in connection with a demand for dowry and that such cruelty or harassment was inflicted soon

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before her death. On a careful scrutiny of the evidence, this Court finds that the prosecution has failed to discharge this burden beyond shadow of reasonable doubt. The prosecution case rests almost upon the testimony of PW-10 Jai Bhagwan and PW-11 Surender Singh who have made material improvements and inconsistent statements on significant aspects of the prosecution case. Their depositions remain uncorroborated by any independent witness. The parents of the deceased who were the most natural witnesses regarding the alleged acts of cruelty and harassment were not examined. Likewise, the marriage mediator who could have thrown considerable light on the allegations regarding dowry demand, was also withheld without any explanation. The defence on the other side, has succeeded in placing on record material which, though not conclusively proving its version, renders the prosecution story doubtful. The writings attributed to the deceased, the unrebutted opinion of the handwriting expert, the documentary evidence relating to plea of alibi and the medical evidence collectively create reasonable doubt which cannot be ignored.

29. It is cardinal principle of criminal jurisprudence that suspicion, however grave, cannot substitute legal proof. The prosecution must stand on its own legs and prove its case beyond reasonable doubt. Where two views are reasonably possible on evidence adduced, the one favourable to the accused must necessarily prevail. In *Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*; while relying upon its previous decision in *Kali Ram v. State of Himachal Pradesh, 1973 (2) SCC 808*; the Hon'ble Supreme Court had emphasised that where circumstances create reasonable doubt, the accused is entitled to its benefit. The relevant part is reproduced

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below:

*“162. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In **Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808**, this Court made the following observations :*

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

30. In the considered opinion of this Court, the prosecution has failed to establish the foundational facts necessary for attracting the statutory presumption under Section 113-B of the Indian Evidence Act. Consequently, the burden never shifted upon the appellants to explain the circumstances of the death.

31. Similarly, insofar as the conviction under Section 406 IPC is concerned there is no satisfactory evidence regarding entrustment of any dowry articles to the appellants or that any subsequent dishonest misappropriation or refusal to return the same. Accordingly, the conviction recorded under Section 406 IPC also cannot sustain.

32. In view of the aforesaid discussion, the present appeal deserves to be allowed.

33. The present appeal is accordingly allowed. The impugned

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judgment of conviction dated 20.10.2004 and order of sentence dated 21.10.2004 passed by the Learned Additional Sessions Judge, Bhiwani, convicting the appellants No.1 and 2 under Sections 304-B and 406 of the Indian Penal Code, are hereby set aside. The appellant No.1 Ishwar Singh and appellant No.2 Sumitra Devi are acquitted of the charges levelled against them by extending the benefit of doubt to them.

34. The appellants are on bail. Their bail bonds/surety bonds shall stand discharged. Pending miscellaneous application(s), if any, shall also stand disposed of.

20.07.2026
puneet

(RUPINDERJIT CHAHAL)
JUDGE

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No