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AFR

Court No. - 12/ (Reserved)

Case :- CRIMINAL APPEAL No. - 479 of 1994
Appellant :- Jai Shankar Shukla
Respondent :- State of U.P.
Counsel for Appellant :- Nalini Jain,Ashish Mishra Atal,Brijesh Kumar,Manjusha Kapil,Ramakar Shukla,Surendra Pratap Srivastav
Counsel for Respondent :- Govt. Advocate

Hon'ble Rajnish Kumar,J.

1. Heard Shri Ramakar Shukla, learned counsel for the appellant and Shri Rajesh Kumar Shukla, learned A.G.A. for the State.

2. The instant criminal appeal has been filed by Jai Shakar Shukla against the judgment and order dated 17.10.1994, passed in Sessions Trial No.19 of 1992 (State Vs. Jai Shanker Shukla and Another) by the Special Judge, Unnao convicting the appellant under Section 498-A I.P.C and sentencing him to rigorous imprisonment for one year and to pay a fine of Rs.1000 and in case of failure of payment of fine, further rigorous imprisonment for one year and further convicting the appellant under Section 304-B I.P.C. and sentencing him to undergo rigorous imprisonment for ten years. It has further been provided that all the sentences would run concurrently.

3. Learned counsel for the appellant submitted that the appellant has been wrongly and illegally convicted and sentenced. He submitted that the offences under Section 498-A and 304-B of the Indian Penal Code (hereinafter referred as IPC) could not be proved against the appellant and there was no charge under Section 3/4 of the Dowry Prohibition Act because no witness supported the prosecution case. He further submitted that five witnesses were produced in support of the charge, out of which PW-4 and PW-5 are chance witnesses and the

conviction has been made solely on the evidence of PW-4, whose testimony is also hearsay evidence. He also submitted that PW-4 and PW-5 did not tell the date and time of the incident. PW-4 was not shown in the site plan and he did not identify the victim, therefore, his presence itself is doubtful. It has further been submitted that the deceased suffered 100% burn injuries as per the postmortem report, therefore, she could not have been in a position to speak anything. However, PW-4 on the basis of a statement allegedly made by the deceased to some person, stated that she was burnt by her husband and in-laws due to the non-fulfillment of demand of dowry, conversely, her father and mother have not supported the factom of demand of dowry. Thus, it has been submitted that the prosecution failed to prove the offences levelled against the appellant.

4. It has also been submitted that the Doctor, Head Muharrir and Investigating Officer were not produced to prove the post-mortem, FIR and charge sheet respectively. Thus, the statement under Section 161 CrPC recorded by Investigating Officer could not have been relied upon. It was also submitted that although two site plans were produced but they have not been proved and since PW-4 was not shown in the site plan, his presence itself at the spot is doubtful, and his presence on the spot could have been proved only by the Investigating Officer, who was not examined.

5. On the basis of the aforesaid submissions, learned counsel for the appellant submitted that the impugned judgment and order passed by the trial court is not sustainable in the eyes of law and liable to be set-aside by this Court. He relied on **Bhupal Singh & Another Vs. State of Uttrakhand; 2025 All SCR (CRL) 341, Judgment and Order dated 07.10.2021 passed in Criminal Appeal No.7380 of 2019; Mohit Kumar Vs. State of U.P. by a co-ordinate bench of this court, judgment and order dated 29.08.2024 passed in Chabi Karmakar and Others Vs. The State of West Bengal; Criminal**

Appeal No.1556 of 2013 by the Hon'ble Supreme Court, judgment and order dated 31.01.2025 passed in Karan Singh Vs. State of Haryana in Criminal Appeal No.1076 of 2014 by the Hon'ble Supreme Court, The State of Uttrakhand Vs. Sanjay Ram Tamta @ Sanju @ Prem Prakash; 2025 (2) RCR (Criminal) 61: (Law Finder Doc ID # 2693666), Jarnail Singh And Others Vs. State of Panjab; 2010 AIR SC 3699 (Law Finder Doc ID # 202527), judgment and Order dated 20.01.2025 passed in Binesh Kumar Vs. State of U.P.; Criminal Appeal No.1627 of 2019 by a Division Bench of this Court, judgment and order dated 22.12.2023 passed in Smt. Gangotri and Another Vs. State of U.P.; Criminal Appeal No.2109 of 2016 by Division Bench of this Court, Ashok Vs. State of Uttar Pradesh; 2024 12 SCR 335, Sovaran Singh Prajapati Vs. The State of U.P.; 2025 (2) RCR (Criminal) 98 (Law Finder Doc ID # 2695295,), Madan Singh and Another Vs. The State Jharkand; Criminal Appeal No.768 of 2003 passed by a Division Bench of High Court of Jharkhand at Ranchi, judgment and order dated 15.03.2024 passed in Ram Ujer & Others Vs. State of U.P.; Criminal Appeal No.103 of 1997 by a co-ordinate bench of this Court, judgment and order dated 20.09.2024 passed in Shoor Singh and Another Vs. State of Uttrakhand; Criminal Appeal No.249 of 2013 by Hon'ble Supreme Court, Judgment and Order dated 09.01.2025 passed in Sadashiv Dhondiram Patil Vs. The State of Maharashtra in Criminal Appeal No.1718 of 2017 by the Hon'ble Supreme Court & Guna Mahto Vs. State of Jharkhand; 2023 (123) ACC 934.

6. Per contra, learned Additional Government Advocate submitted that the appellant has been rightly and in accordance with law convicted and sentenced by the learned trial court because the case is proved by the prosecution. He further submitted that the evidence of chance witnesses cannot be discarded, as they are independent

witnesses. The accused stated in his statement under Section 313 CrPC that the burning was due to sprinkling of seasoning (Chauk lagane se), but there is no evidence to support this claim. The case is proved by Fard recovery itself. He also submitted that since 100% burn injuries were found and if it would have been due to the burning of thatch, the deceased must have tried to save herself on start of fire,, but there is no such evidence. The smell of kerosene oil was found from the body of the deceased and the accused stated in his statement under Section 313 CrPC that he does not know about it. It was also submitted that the information of the incident was not given by any family member of the accused to the parents of the deceased but by a third person. It was further submitted that the non-examination of the Investigating Officer etc., cannot be a ground for exoneration of the accused when the charge has been proved against the appellant.

7. On the basis of above, learned Additional Government Advocate submitted that the learned trial court has rightly and in accordance with law convicted and sentenced the appellant. The impugned order does not suffer from any illegality or error, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed. He relied on **Selvamani Vs. The State represented by the Inspector of Police; MANU/SC/0403/2024**, **The State of U.P. Vs. Ramesh Prasad Mishra and Another; 1996 (10) SCC 360**, **State of U.P. Vs. Vijay Kumar Kori and Others; MANU/UP/1218/2016, Rohtash Kumar Vs. State of Haryana;MANU/SC/0573/2013, Ram Badan Sharma Vs. State of Bihar; MANU/SC/8427/2006, Mano Dutt And Another Vs. State of Uttar Pradesh; (2012) 4 SCC 79 & Bassu Vs. State of M.P.;MANU/MP/0670/2023 (MANU/SC/0403/2024).**

8. I have considered the submissions of learned counsel for the parties and perused the records.

9. As per prosecution the daughter of Raj Kishore @ Rajju was married to the appellant, Jai Shankar Shukla son of Ram Autar Shukla, about a year prior to the date of incident i.e.11.06.1991. In the marriage, the dowry was given as per his capacity. The appellant i.e. the husband of the deceased and her mother-in-law had been demanding Rs.5000/- since two months prior to the date of the incident. This came to the knowledge when the daughter of the complainant visited his house. When second time the daughter went to his in-laws house, then after some days the complainant himself went to the house of his daughter to bring her and he told to the appellant and the mother-in-law of the daughter that he is not in a position to give Rs.5000/-, upon which he was threatened that if he would not give the money, he himself would be responsible for any consequences and he was not allowed even to meet her. On 11.06.1991, a Pasi from the village Taura informed him that his daughter, who was married in Bhadin, has been burnt. She has been taken to Purva Hospital and if he wants to see her, he should reach there. Upon coming to know about it, he went to the Purva Hospital but he could not find anybody there, therefore, he went to the Police Station, where he was informed that his daughter's dead body is kept at Fatehganj and he may go there. He went to Fatehganj, where he found the dead body of his daughter, which was badly burnt. He is confident that his daughter has been burnt by the in-laws and husband due to the non-fulfillment of demand of money. The FIR of the incident was lodged at Police Station- Purva, District- Unnao, on 11.06.1991, at 21:30. The FIR was lodged based on the written information given by the complainant.

10. A written information of the incident was also given by Ram Autar on June 11, 1991, at 16:40. In this information, it was stated that his daughter-in-law, Smt. Suman, wife of Jai Shankar, has died due to burning from a fire in thatch. It was stated in the said information that

Smt. Suman was preparing food at about 10:00 AM on 11.06.1991 and as soon as she sprinkled seasoning for vegetables (Chaunk Lagana) in the wok (karahi), the thatch was burnt and since Smt. Suman was wearing Nylon Saree, she was badly burnt. She was taken to the hospital by bullock cart (Bailgadi), but she died only when he could reach Fatehganj.

11. The matter was investigated by Investigating Officer, who prepared the site plan of the place of incident and where she had died, the recovery memo of the cloths of the deceased and the recovery memo from the place of incident. The deceased's body was sent for post-mortem examination after preparation of inquest, in which the father-in-law is also a member. The post-mortem was conducted on 12.06.1991, at 3:15 PM. As per report, the death was caused by asphyxia and shock resulting from ante-mortem injuries. These ante-mortem injuries consisted of I to IV degree burns covering approximately 10% of the body. However, all the parties are at consensus that such burns are considered equivalent to 100% severe burns. After investigation, the charge sheet was filed, on which the cognizance was taken by the judicial magistrate and since the case was triable by the sessions court, it was committed to session on 04.09.1992.

12. The sessions court framed charges against the accused-appellant under Section 498-A read with Section 34 IPC and 304-B read with Section 34 IPC. The accused pleaded non guilty and prayed for a trial. In oral evidence, five witnesses were examined; Raj Kishore as PW-1, Smt. Shiv Devi as PW-2, Arjun Singh as PW-3, Susheel Kumar as PW-4 and Babu Lal as PW-5. The genuineness of the documents placed on record by the prosecution has been admitted by the appellant and it is recorded in the judgment of trial court also and it has not been disputed.

13. Before proceeding further, this Court deems it appropriate to reproduce the relevant provisions under which the appellant has been convicted and sentenced, as well as the relevant provisions of the Evidence Act applicable to the facts and circumstances of the case because the main thrust of the arguments of learned counsel for the appellant is that the ingredients of the offences under Section 498-A and 304-B IPC have not been proved against the appellant, therefore, no presumption could have been drawn against him. Section 498-A, 304-B IPC & 113-B of Evidence Act are extracted here-in-below:-

> ***498A. Husband or relative of husband of a woman subjecting her to cruelty.—****Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*
>
> *Explanation.—For the purposes of this section, "cruelty" mean—*
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> ***(a)** any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
>
> ***(b)** harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]*
>
> ***304B. Dowry death.—(1)** Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*
>
> *Explanation.—For the 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.*
>
> ***113B. Presumption as to dowry death. —-**When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman 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 304B of the Indian Penal Code (45 of 1860).*

14. On a conjoint reading of the aforesaid provisions, it is apparent that for presumption that the death is dowry death punishable under Section 304-B IPC, the death of a married woman should be due to any burn or bodily injury or occurred 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 of dowry. If all the said ingredients are proved, the presumption of dowry death under Section 113-B of the Evidence Act can be drawn. This presumption can be drawn when all the initial ingredients of dowry death are proved beyond reasonable doubt. The explanation to Section 304-B of the Indian Penal Code, 1860, clarifies that the term "dowry" shall have the same meaning as provided in Section 2 of the Dowry Prohibition Act, 1961. The "dowry" has been defined under Section 2 of the Dowry Prohibition Act, 1961, which, on reproduction, reads as under:-

> ***"2. Defmition of "dowry"-*** *ln this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly*
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> *(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 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 Laws (Shariat) applies.*
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> *Explanation II- The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45of1860)."*

15. The Hon'ble Supreme Court, in the case of **Shoor Singh & Another Vs. State Uttra Khand (Supra),** has considered it. The relevant paragraphs 12 and 13 are extracted here-in-below:-

> ***"12.*** *To constitute a 'dowry death', punishable under Section 304- B7 IPC, following ingredients must be satisfied:*
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> *i. death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances; ii. such death must have occurred within seven years of her marriage;*
>
> *iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and iv. such cruelty or harassment must be in connection with any demand for dowry.*
>
> *Section 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 purpose 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 The phrase 'otherwise than under normal circumstances' is wide enough to encompass a suicidal death.*
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> ***13.*** *When all the above ingredients of 'dowry death' are proved, the presumption under Section 113-B8 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."*

16. A similar view has been taken by the Hon'ble Supreme Court, in the cases of **Bhupal Singh & Another Vs. State of Uttrakhand (Supra), Chabi Karmakar and Others Vs. The State of West Bengal (Supra), Karan Singh Vs. State of Haryana (Supra)** & **Ram Badan Sharma Vs. State of Bihar (Supra).**

17. Adverting to the facts of the present case, the deceased was a married woman. She died due to burn injuries within seven years of

her marriage. Thus, it is to be seen in this case, as to whether it has been proved that deceased was subjected to cruelty or harassment by her husband or any relative of her husband soon before her death for demand of any dowry or not.

18. The incident had occurred at about 10:00 AM in the morning on 11.06.1991, the information of which was given to the father of the deceased on the same date at about 3:00 PM by a third person of the village, where the daughter of the complainant was married and she with her in-laws resided. On coming to know about the incident, the complainant went to the hospital and thereafter to the police station and on the information given by police station, he reached the place where the dead body of his daughter was kept and found it badly burnt. Thereafter, he got a written information prepared and submitted it at the Police Station on the same date, on which the first information report was lodged at 21:30.

19. It is not in dispute between the parties that the deceased was married to the appellant about one year prior to the date of incident i.e. 11.06.1991. It is also not in dispute that the deceased died on 11.06.1991 due to burn injuries sustained by her. The dispute is in regard to demand of dowry by the appellant and the mother-in-law of the deceased and cruelty or harassment with the deceased by them due to such demand, before her death due to burn injuries and the manner in which she sustained burn injuries, which ultimately caused her death from the burn injuries and since the death occurred within seven years of marriage, whether the presumption of dowry death under Section 113-B of the Indian Evidence Act, 1872, could have been drawn.

20. The allegation in the FIR indicates that there was a demand of dowry of Rs.5000/- since two months after the marriage of the deceased by the appellant and his mother i.e. the mother-in-law of the

deceased, on account of which the complainant was also threatened and he was not allowed to meet to his daughter, when he went to her in-laws' house to bring her. According to the FIR, the information about the burning of the deceased was given by a third person and not by the appellant or any of his family members. The complainant appeared as PW-1, whose chief-examination was recorded on 12.11.1992, in which he completely supported the version of the FIR. He also disclosed the demand of dowry made by the appellant and his mother, as told to him by the deceased and also made to him. He also stated that he was even not allowed to meet his daughter and he had assured the appellant and his mother that as soon as he would be able to arrange the money, he would give it and his daughter should not be harassed but the mother of the appellant stated that no purpose would be served by saying so and he would have to give the money. He also stated that Mastana Mishra, a resident of his village, is married in the village where the complainant's daughter was married. Five to six days after he had gone to meet her, Mastana Mishra's wife had come and informed him that his daughter's in-laws were harassing her, and he should bring her after giving the money. On 11.06.1991, Jai Kisan Pasi of his village informed him that his daughter has been burnt, therefore, he went to the Purva Hospital, but nobody was found there. Then he went to the Police Station, where he was informed that his daughter has died and her dead body is kept at Fatehganj. He went to Fatehganj, where her father-in-law was present. Therefore, he got the FIR written by some person at bus stop in Purva and after reading and signing it, lodged the FIR. He proved the FIR lodged by him. He also stated that the appellant Jai Shankar and his family members had not given any information.

21. The cross-examination of PW-1 was done on 08.08.1994 i.e. after about two years of chief examination. In the cross-examination, he reversed his earlier testimony, giving evidence against what he

stated in the chief-examination. In the cross-examination, he stated that the FIR was lodged after being got written by a person by the Inspector at the Police Station, which was not told to him and his signature was taken. In the cross-examination, he admitted that the appellant is a rich person and he is a poor person and he had given dowry as per his capacity and there was no demand of dowry. The appellant, etc., had not beaten his daughter. The information about the dowry was given by his sister-in-law. Jai Kisan Pasi had informed that his daughter has been burnt during preparation of food and the appellant Jai Shankar had informed Jai Kisan Pasi after coming to his village. It was also informed by him that they were taking her daughter to the hospital and he may reach there. He also informed that no other witness would give any evidence and his son Om Prakash has died.

22. PW-1 was declared hostile and was cross-examined by ADGC, when he stated that there was no pressure of giving dowry on him. His daughter had never told him about the demand of Rs.5000/-. He had not sent his daughter due to Navratra and the reason for not sending was not harassment. He stated that he had given the statement on the last date due to fear of police. He had sent his daughter happily to her in-laws' house. He further stated that Mastana Mishra is resident of Taura and he had an old enmity with Jai Shankar, on account of which he had informed that his daughter is being harassed in her in-laws' house and on his instigation, he had written that his daughter had been burnt. He further stated that when he reached the Police Station, Mastana Mishra was present there and on his saying, the Inspector got written the report written by another person, whereas in his chief and cross-examination before being declared hostile, he had not told this.

23. The learned trial court, after considering the examination-in-chief of PW-1 and his cross-examination recorded after two years, came to the conclusion that he had given the statement in his cross-

examination under some pressure. The learned trial court also recorded that it is also clear from the evidence of PW-1 that the information of death of his daughter was not given by the accused but by one Jai Kisan Pasi and if the deceased would have died during preparation of food, then they would have given the information of burning to the complainant. As stated in the cross-examination by PW-1 that the appellant had come to his village to give information and after giving information to Jai Kisan Pasi went back and if he had come to give information to village, he could have given information to the complainant also, therefore, this conduct of the appellant itself creates doubt. It is not in dispute that PW-1 was not present at the spot, therefore, he could not have proved as to how the deceased died on account of burning and it is to be seen on the basis of circumstances because PW-1 has also given a completely converse evidence in cross-examination, which was done after about two years of the examination-in-chief. However, even in cross-examination, he admitted that Mastana Mishra had informed about harassment and cruelty with his daughter by appellant and his mother and he also told about difference of financial states between him and family of appellant. Thus, this Court is of the view that the finding recorded by the learned trial court that in cross-examination, he was under some pressure from the accused can not be said to be wrong and perverse.

24. Same evidence, as in cross-examination of PW-1, has been given by PW-2 Smt. Shiv Devi, who is mother-in-law of the appellant and the mother of the deceased. Her statement was recorded after recording of cross-examination of PW-1 Raj Kishore on 08.08.1994. She was also declared hostile. Both PW-1 and PW-2 have stated that they do not know as to how their statements under Section 161 CrPC were recorded. The learned learned trial court recorded a finding that similar to PW-1, PW-2 has also given evidence under some pressure from the accused.

25. PW-3 was also declared hostile and his evidence does not support the prosecution case. PW-4 Sushil Kumar has stated that about three years ago, when he was going to sell ice in Purva, he found a burnt lady near Mangat Kheda, who was saying that she has been burnt by her mother-in-law and husband, who were demanding Rs.5000/-, on account of which she has been burnt. She was being taken to Purva Hospital by bullock cart. The presence of PW-4 on the spot has been doubted by learned counsel for the appellant on the ground that he has not been shown in the site plan and he could not tell as to who was the deceased and since the deceased was 100% burnt, she could not have been in a position to speak, therefore, his statement cannot be relied upon. However, the learned trial court was of the view that on account of excessive burning, the deceased might have been in great distress, therefore, she could have said such things. Thus, his evidence can be relied upon and the deceased was burnt on account of non-receipt of dowry.

26. The evidence of PW-5 Babu Lal was found strange by the trial court on the ground that on the date of his examination-in-chief i.e. 30.08.1994, his cross-examination was not done by the witnesses and time was sought for cross-examination and on the next date i.e. 07.09.1994, he stated in his cross-examination that on the last date, he had given the statement tutored by the police. Bhagat Kheda is not on his way from the village Purva and he himself had not heard as to what the deceased was saying.

27. The appellant, in his statement under section 313CrPC, stated that he has been implicated on account of factionalism (Party Bandi). His mother stated that she has been implicated due to enmity. In regard to the smell of kerosene oil on the deceased's body found in the post-mortem conducted by Dr. H.K. Tandon, the appellant stated that he does not know, whereas the post-mortem report has been admitted by the appellant. Thus, there is contradiction in regard to the reasons for

implication of the accuseds in the case and no proof for the reasons given for implication in the case has been given. So far as statement by PW-1 in his cross-examination, after being declared hostile, that Mastana Mishra, had an old enmity with Jai Shankar, therefore, on his telling he had levelled allegations against the appellant and his mother is concerned, no proof for the same has also been given, whereas it has been admitted that he had told about cruelty and harassment of his daughter in Chief as well as Cross-examination. PW-1 in his cross-examination stated that Jai Shankar, etc., are rich persons and he is a poor man and thereafter gave a contradictory evidence than in examination-in-chief, which was recorded about one year and nine months ago, therefore, contradictory statement due to pressure or for some other reason can not be denied.

28. The Hon'ble Supreme Court, in the case of **Jarnail Singh And Others Vs. State of Panjab (Supra),** has held that evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident.

29. A Division Bench of this Court, in the case of **Binesh Kumar Vs. State of U.P. (Supra),** has also dealt with the testimony of a chance witness and held that the Court must tread carefully before relying on that solitary piece of evidence to convict the appellants and absence of . any corroboration to the testimony of a chance witness by any other fact proven by the prosecution, if it may not have been relied.

30. A Division Bench of this Court, in the case of **State of U.P. Vs. Vijay Kumar Kori and Others (Supra)**, after considering the issue of testimony of a chance witness after considering certain reports of Hon'ble Supreme Court, has held that it is now well-settled position of law that the evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately narrate his presence at the place of occurrence. The Hon'ble Supreme Court, in the case of **Rana Partap and Others V. State of Haryana; MANU/SC/0137/1983 / 1983 (3) SCC 327,** has held that to discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street is to abandon good sense and take too shallow a view of the evidence. The relevant paragraphs 26, 27 and 29 are extracted here-in-below:-

> ***"26.*** *Learned counsel for both the parties have cited various authorities as regards the chance witness from which reference may be made to the pronouncement of Hon'ble Apex Court in the case of Rana Partap and Others V. State of Haryana reported in 1983 (3) SCC 327 which reads as under:-*
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> *"---------- We do not understand the expression 'chance witnesses'. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that that they are mere chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street is to abandon good sense and take too shallow a view of the evidence." (Emphasis given by us)*
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> ***27.*** *The above view taken by Hon'ble Apex Court was also followed in Vikram Singh and others V. State of Punjab (2010) 3 SCC 56 and till today it still holds good and settled law on the point that even if a witness is a chance witness or a related witness, even then his evidence cannot be discarded solely on the ground that he was a chance or a related witness.*

> ***29.*** *It is now well settled position of law that evidence of chance witness requires a very cautious and close scrutiny and a chance witness must adequately narrate his present at the place of occurrence. The observation made by Hon'ble Apex Court in Jarnail Singh vs State of Punjab, (2009) 9 SCC 719 may be extracted below;*
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> > *"15. The evdence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v Surat Singh (1997) 4 SCC 192; Harjinder Singh v State of Gujarat (2004) 11 SCC 253 ; Acharaparambath & Anr. v State of Kerala (2006) 13 SCC 643; and Sarvesh Narain Shukla v Daroga Singh and Ors. (2007) 13 SCC 360. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discrded (vide Shankarlal v State of Rajasthan (2004) 10 SCC 632. Conduct of the chance witness, subsequent to the incident may also taken into consideration particularly as to whether he has informed anyone else in the village about the incident. (vide Thangaiya v State of Tamil Nadu (2005) 9 SCC 650."*

31. A similar view was taken by a three-judge bench of Hon'ble Supreme Court, in the case of **Sovaran Singh Prajapati Vs. The State of U.P. (Supra).** Further while dealing with the rights under Section 311 and 313 CrPC, it considered the examination of the accused under Section 313 and summarized the principles regarding Section 313 CrPC. In **Raj Kumar Vs. State (NCT of Delhi) 45; 2023 SCC OnLine SC 609,** it was held that all the incriminating circumstances were not put to the accused. General, sweeping questions were employed, which were only denied by him and if the statements are not properly recorded, there is an adequate possibility that the appellant has been prejudiced. similar view was taken by the Hon'ble Supreme Court in the case of **Ashok Vs. State of Uttar Pradesh (Supra)** and a Division Bench of this Court in the case of **Smt. Gangotri and Another Vs. State of U.P. (Supra).**

32. The Hon'ble supreme Court, in the case of **The State of Uttrakhand Vs. Sanjay Ram Tamta @ Sanju @ Prem Prakash (Supra),** relying on a three-judges bench judgment in the case of

Darshan Singh Vs. State of Punjab; (2024) 3 SCC 164, held that if the prosecution witnesses have failed to mention in their statements under Section 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. The prosecution cannot seek to prove a fact during trial through a witness, which such witness had not stated to police during investigation and the evidence of that witness regarding the said improved fact is of no significance.

33. The Hon'ble Supreme Court, in the case of **Sadashiv Dhondiram Patil Vs. The State of Maharashtra (Supra),** has held that the prosecution has to prove its case beyond a reasonable doubt and that too on its own strength. The initial burden of proof is always on the prosecution. However, in cases where husband is alleged to have killed his wife in the night hours and that too within the residential house, then undoubtedly the husband has to offer some explanation as to what had actually happened and if he fails to offer any plausible explanation, this can go against him. The relevant paragraph 55 is extracted here-in-below:-

> ***"55.*** *The law in the aforesaid regard is well-settled. Prosecution has to prove its case beyond reasonable doubt & that too on its own legs. The initial burden of proof is always on the prosecution. However, in cases where husband is alleged to have killed his wife in the night hours & that too within the residential house, then undoubtedly the husband has to offer some explanation as to what had actually happened and if he fails to offer any plausible explanation, this can go against him. However, Section 106 of the Evidence Act is subject to one well-settled principle of law. The prosecution has to first lay the foundational facts before it seeks to invoke Section 106 of the Evidence Act. If the prosecution has not been able to lay the foundational facts for the purpose of invoking Section 106 of the Evidence Act, it cannot starightaway invoke the said Section and throw the entire burden on the accused to establish his innocence."*

34. It is settled law that a fair trial must be held and the trial should be fair not only to the prosecution and defense but to the victim also because the victim is the main sufferer of any crime committed against him/her. The court should not allow unnecessary adjournments

at any level, particularly after the recording of examination-in-chief of any witness for cross-examination and if the cross-examination is recorded after a lapse of a certain period, in which the witness changes his stand and deposes contrary to the examination-in-chief, on account of which he/she is declared hostile, her total testimony can not be discarded. In such circumstances, where the witness has changed his stand during cross-examination, there are chances of them being influenced; giving evidence under pressure; or for any other reason, therefore, such evidence is to be examined carefully and the evidence, which is consistent with the case of the prosecution or the defence can be relied upon because the victim, if he/she is not before the court or alive, should not be allowed to suffer discrimination or any injustice to her due to the conduct of the witnesses.

35. The Hon'ble Supreme Court, in the case of **Selvamani Vs. The State represented by the Inspector of Police (Supra)**, has held that the duty of the court is to ensure that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It has also been held that if an accused, for his benefit, takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to ensure that the trial is conducted as per law. It is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative that if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues until late hours, the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The court also found that in the said case, on account of long gap between the examination-in-chief and cross examination, the witnesses were win over by the accused and they resiled from the version as deposed in the examination-in-chief, which

fully incriminates the accused. The relevant paragraphs 8, 9, 10, 11 and 13 are extracted here-in-below:-

> ***"8.*** *No doubt that the prosecutrix and her mother and aunt in their cross-examination, which was recorded three and a half months after the recording of the examination-in-chief, have turned around and not supported the prosecution case.*
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> ***9****. A 3-Judge Bench of this Court in the case of Khujji @ Surendra Tiwari v. State of Madhya Pradesh MANU/SC/0418/1991 : 1991:INSC:153 : (1991) 3 SCC 627: 1991 INSC 153, relying on the judgments of this Court in the cases of Bhagwan Singh v. State of Haryana MANU/SC/0093/1975 : 1975:INSC:306 : (1976) 1 SCC 389: 1975 INSC 306, Sri Rabindra Kumar Dey v. State of Orissa MANU/SC/0176/1976 : 1976:INSC:204 : (1976) 4 SCC 233: 1976 INSC 204, Syad Akbar v. State of Karnataka MANU/SC/0275/1979 : 1979:INSC:126 : (1980) 1 SCC 30: 1979 INSC 126, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.*
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> ***10.*** *This Court, in the case of C. Muniappan and Others v. State of Tamil Nadu10, has observed thus:*
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> > *"81. It is settled legal proposition that : (Khujji case, SCC p. 635, para 6) '6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.'*
> >
> > *82. In State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543], Gagan Kanojia v. State of Punjab, (2006) 13 (2010) 9 SCC 567 : Radha Mohan Singh v. State of U.P.,(2006) 2 SCC 450], Sarvesh Narain Shukla v.*
> >
> > *Daroga Singh, (2007) 13 SCC 360] and Subbu Singh v. State, (2009) 6 SCC 462.*
> >
> > *83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.*
> >
> > *84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.*
> >
> > *85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide Sohrab v. State of M.P., (1972) 3 SCC 751, State of U.P. v. M.K. Anthony, (1985) 1 SCC 505, Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217, State of Rajasthan v. Om Prakash, (2007) 12 SCC 381, Prithu v. State of H.P., (2009) 11 SCC 588, State*

of U.P. v. Santosh Kumar, (2009) 9 SCC 626 and State v. Saravanan, (2008) 17 SCC 587"

11. *In the case of Vinod Kumar v. State of Punjab, this Court has observed thus:*

"51. It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has come in the re-examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination- in-chief and the re-examination.

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57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial.

That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross- examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on

record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. 57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in- chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. 57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot be allowed to be lonely; a destitute."

13. *In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief."*

36. The Hon'ble Supreme Court, in the case of **Rohtash Kumar Vs. State of Haryana (Supra)**, has also held that the law permits the court to take into consideration the deposition of a hostile witness, to the extent that the same is in consonance with the case of the prosecution and is found to be reliable in careful judicial scrutiny. It has also been held that the law permits the court to take into consideration the deposition of a hostile witness, to the extent that the same is in consonance with the case of the prosecution, and is found to be reliable in careful judicial scrutiny. In an extra- ordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. In a given case, the Court can always examine a witness as a court witness, if it is so warranted in the interests of justice. The Hon'ble Supreme Court also considered the case of **Masalti v. State**

of U.P.; MANU/SC/0074/1964 (AIR 1965 SC 202), in which it was held that it would be unsound to lay down as a general rule that every witness must be examined, even though, the evidence provided by such witness may not be very material, or even if it is a known fact that the said witness has either been won over or terrorised. In such cases, it is always open to the defence to examine such witnesses as their own witnesses, and the court itself may also call upon such a witness in the interests of justice under Section 311 CrPC. The Hon'ble Supreme Court, in the case of **Raghubir Singh v. State of U.P; MANU/SC/0165/1971 (AIR 1971 SC 2156)** relied by Hon'ble Supreme Court in the aforesaid case has held that the appellant's counsel has not shown how the prosecution story is rendered less trustworthy as a result of the non-production of the witnesses mentioned by him. No material and important witness was deliberately kept back by the prosecution. Incidentally we may point out that the accused too have not considered it proper to produce those persons as witnesses for controverting the prosecution version.

37. The Hon'ble Supreme Court, in the case of **Mano Dutt And Another Vs. State of Uttar Pradesh (Supra),** has held that it is not always mandatory for the prosecution to examine the Investigating Officer, provided it can establish its case beyond reasonable doubt even in his absence. It has further been held that where the accused lead no defence, they cannot take benefit of the fact that the prosecution did not examine any independent witness. The accused would be deemed to have been aware of the consequences in law when they gave a statement admitting the occurrence but attributing aggression and default to the deceased and his family members.

38. The Hon'ble Supreme Court, in the case of **Guna Mahto Vs. State of Jharkhand (Supra),** found that in the facts and circumstances of the case non-examination of the Investigation Officer rendered the prosecution case to be doubtful if not false as the

offence under Section 201 IPC could not have been proved without his examination. It has further been held that suspicion, howsoever grave it may be, remains only a doubtful pigment in the story canvassed by the prosecution for establishing its case beyond any reasonable doubt and except for evidence as considered by the Hon'ble Supreme Court that there was no evidence: ocular, circumstantial or otherwise, which could establish the guilt of the accused. Thus, the Hon'ble Supreme Court has passed the said judgment in the facts and circumstances of the case.

39. In view of above, the judgment relied by the learned counsel for the appellant in the case of **Madan Singh and Another Vs. The State Jharkand (Supra),** is not of any assistance to the case of the appellant because it is always not mandatory to produce any witness cited by the prosecution. In the present case the veracity of the document placed on record by the prosecution has been admitted by the defence.

40. A coordinate bench of High Court of Madhya Pradash (at Jabalpur Bench), in the case of **Bassu Vs. State of M.P. (Supra),** has held that the phrase 'soon before her death' in Section 304-B IPC does not mean 'immediately prior to death of deceased'. However, the prosecution must establish the existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives. In the said case the court found that the incident had taken place within one year of marriage and only within eight days when the deceased returned to her matrimonial house from her parental house on assurance of well-keeping by her father-in-law, therefore, the chain of circumstances prove that there existed a live and proximate link between the instances of demand of dowry and the death of deceased.

41. A coordinate bench of this Court, in the case of **Mohit Kumar Vs. State of U.P. (Supra),** relied by learned counsel for the appellant, has held with the law related to dowry death and presumption under Section 113-B of the Evidence Act and as to whether the testimony of PW-1 as deposed during examination-in-chief and retracted in cross-examination is wholly reliable and conviction can be based on it and after considering certain case laws of the Hon'ble Supreme Court held that in case the witness has turned hostile during cross-examination, the statement in examination-in-chief may be taken in support of other reliable and trustworthy evidence available on record and testimony of hostile witness shall not be completely discarded and the part of the statement which supports the prosecution version can always be taken into consideration. Similar view has been taken by a coordinate bench of this Court in the case of **Ram Ujer Vs. State of U.P. (Supra).**

42. The Hon'ble Supreme Court, in the case of **Ram Badan Sharma Vs. State of Bihar (Supra),** has held that there are three main ingredients of offence of Section 304 B; (a) that, there is a demand of dowry and harassment by the accused on that count; (b) that, the deceased died; and (c) that, the death is under unnatural circumstances within seven years of the marriage and when these factors were proved by reliable and cogent evidence, then the presumption of dowry death under section 113-B of the Evidence Act clearly arose. It has further been held that where it is proved that it was neither a natural death nor an accidental death, then the obvious conclusion has to be that it was an unnatural death either homicidal or suicidal. But, even assuming that it is a case of suicide, even then it would be death which had occurred in unnatural circumstances. Even in such a case, Section 304-B IPC is attracted.

43. The Hon'ble Supreme Court, in the case of **State of U.P. Vs. Ramesh Prasad Misra and Another (Supra),** has held that it is settled law that it is the duty of the prosecution to establish all the

circumstances conclusively to hold that the respondent alone had committed the offence. Witnesses may be prone to speak, and in this case, material witnesses have spoken falsehood but it is, therefore, the duty of the court to carefully scan through the evidence on the anvil of human conduct, probabilities and attending circumstances extending all doubts in favour of the accused. In a case of this type, hardly any direct evidence would be forthcoming for the prosecution.

44. In view of above and considering the case in hand in the light of law as discussed above, this Court finds that PW-1 had admitted the demand for dowry, not only on the basis of hearsay evidence of his daughter but also from him. Though in the cross-examination, he resiled from his statement in examination-in-chief, but his evidence in examination-in-chief was consistent with the prosecution case lodged on the basis of the written complaint made by the PW-1 himself. The genuineness of the documents placed on record by prosecution has been admitted by the appellant. Thus, considering the material also, which includes the recovery memo, in which no sign or material of sprinkling of seasoning (Chauk Lagana) for vegetables has been found, because the wok (Karahi) and vegetables were found kept separately near clay stove (Chulha) and burn thatch. It is also noticed that signs of saving herself by the deceased has also not been found because if she would have caught fire during sprinkling seasoning for vegetables, then she would have cried and tried to save her and the family members present at home or the neighbours could have reached to save her. Therefore, the prosecution proved its case even without the evidence of PW-4, whose presence at the spot in question has been doubted and whose evidence is hearsay and it may only be in aid of prosecution case. Thus, in the facts and circumstances of the present case, on account of non-production of any witnesses, i.e., the Investigating Officer or Doctor, it cannot be said that the impugned judgment and order is liable to be set aside.

45. As far as the evidence of PW-1 and PW-2 in the cross-examination is concerned, it was given after a lapse of about two years and the reasoning of converse evidences are visible in his cross-examination itself which shows that there was a significant financial disparity between the appellant's family and the family of deceased, on account of which there was all possibility of being win over by them. However, even in the cross-examination, PW-1 has admitted that Mastana Mishra had told him about the harassment and cruelty being inflicted upon the deceased due to dowry demand. The only plea taken in the cross-examination is that there was some enmity with the family of the deceased, therefore, he had done so but no proof of any enmity could be given or shown even before this Court. Thus, in the present case, the presumption of dowry death, which has rightly been drawn, could not be rebutted by the appellant by any cogent evidence.

46. In view of above, considering the over all facts and circumstance of the case, this Court is of the view that the learned trial court has rightly and in accordance with law, after analyzing the evidence and material on record appropriately, has passed the impugned judgment and order convicting and sentencing the appellant, which does not call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds.

47. The appeal is, accordingly, **dismissed**.

(Rajnish Kumar, J.)

Order Date :- 25.7.2025
Haseen U.