

12. In view of above, this Court does not find any illegality or error in the impugned judgment and award dated 18.10.2019 passed by the Railway Claims Tribunal, Lucknow Bench, Lucknow in Case No.OA/II/U/995/15, 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.

13. The appeal is, accordingly, dismissed.

14. No order as to costs.

(2025) 2 ILRA 28

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 21.02.2025

BEFORE

**THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE VIKAS BUDHWAR, J.**

Government Appeal No. 1062 of 2024
With
Criminal Appeal U/S 372 CR.P.C. No. 254 of
2023

State of U.P. ...Appellant
Versus
Manish Kumar & Anr. ...Respondents

Counsel for the Appellant:

Sri A.K. Sand, Sri Anil Kumar Pandey

Counsel for the Respondents:

Criminal Law - Indian Penal Code, 1860 - Sections 498A, 304B & 302 - Dowry Prohibition Act, 1961 - Section 4 - Code of Criminal Procedure, 1973 - Sections 161 & 313 - Appeal against acquittal - Indian Evidence Act, 1872 - Section 113-B - Death due to demand of dowry not proved as theory propounded by PW1 to PW3 regarding demand of dowry made just

after four days of marriage when deceased (victim) went for first time to her maternal house from matrimonial house stands belied since FIR lodged on 22.6.2017 relating to incident dated 18.6.2017 does not show this fact - No cruelty was inflicted upon deceased - DW1 deposed that A1 was present in his house on fateful day as he came to his house to meet his ailing teacher, two or three women came from house of A1, apprised that wife of A1 consumed pesticide pills, A1 along with DW1 and villagers went to house where victim consumed by mistake thinking it to be medicine for fever - Testimony of DW1 intact, no questions for demolishing testimony has been asked by prosecution. (Para 41, 43)

PW2 and PW3 deposed that accused A2 was staying for the past 30-32 years, where her husband was working - Nothing on record either in deposition of prosecution witness or otherwise suggest that A1 and A2 were involved in commission of crime - No illegality in impugned order. (Para 44, 46)

Appeals rejected. (E-13)

List of Cases cited:

1. Rajesh Prasad Vs St. of Bihar (2022) 3 SCC (471), (Paras 21 to 25)
2. Babu Sahebagouda Rudragoudar & ors. Vs St. of Karn. 2024 (8) SCC 129, (Paras 38 to 40)
3. Yudhishtir Vs St. of M.P., 1971 (3) SCC 436, (Para 11)
4. Digambar & anr. Vs St. of Mah. & anr., Criminal Appeal No....of 2024 arising out of SLP (Crl.) No.2122 of 2020, decided on 20.12.2024, (Para 22)
5. Charan Singh @ Chanranjit Singh Vs The St. of Uttarakhand (2023) 3 S.C.R. 511
6. Baijnath & others Vs St. of M.P. (2017) 1 SCC 101, (Para 13) **(Relied on)**

7. Karan Singh Vs St. of Har., Criminal Appeal No. 1076 of 2014, decided on 31.01.2025

(Delivered by Hon'ble Vikas Budhwar, J.)

1. Impugned in the present proceedings by way of Government Appeal No. 1062 of 2024 at the instance of State of U.P. and Appeal Under Section 372 of Cr.P.C. No. 254 of 2023, preferred by Ashok Kumar (Informant) is the judgment and the order dated 2.3.2023 passed by the court of Session Judge, Auraiya in Sessions Trial No. 174 of 2018, State vs. Manoj Kumar and others arising out of Case Crime No. 75 of 2018, under Sections 498A, 304B, 302 IPC and Section 4 of the Dowry Prohibition Act, P.S. Sahayal, District Auraiya acquitting the accused respondents.

Facts

2. The prosecution theory in brief is that on 20.3.2017, Ashok Kumar (first informant), lodged a first information report in Police Station Sahayal, District Auraiya alleging that his daughter Neeta (victim) solemnized marriage on 29.1.2016 with the accused (A-1), Manish Kumar, son of Brij Kishore Pal, resident of village Gadhaiya, Police Station Sahayal, District Auraiya. It is further alleged that gifts were offered to the groomside as per his status. However, the accused, (A-1) Manish Kumar, his father Brij Kishore Pal, father-in-law of the deceased (victim), accused (A-2) Rajeshwari, mother-in-law of the deceased (victim) and sister-in-law Manu used to demand dowry in the shape of a four-wheeler and amount of Rs.1,00,000/- which according to them was to be tendered since the gifts and the offerings so made by the bridegroom side was thoroughly insufficient. On account of non-fulfilment of the said demand, atrocities

were sought to be made upon the deceased (victim). The said fact was even apprised to the first informant and his family whenever the deceased (victim) met her maternal family members.

3. A first information report came to be lodged in Police Station, Mangalpur, Kanpur Dehat on 22.6.2017 being FIR No.265/2017, under Sections 498A, 323, 504, 506 IPC read with Section 3/4 Dowry Prohibition Act and thereafter, on an advice being tendered to them not to repeat the said act but they continued to demand dowry and maltreat the victim. On 19.03.2018, the accused (A-1), Manish Kumar informed the brother of the first informant, Brijesh Kumar that the deceased (victim) had consumed poison on account whereof the victim was taken for medical treatment, however, she died. On the receipt of the said information, the first informant along with his family members and villagers came to the matrimonial house of the victim where they found that the body was lying outside the house of the accused, they were absconding and the house was locked.

4. A first information report came to be lodged on 20.03.2018 at 0020 hours which was registered as Case Crime No.75 of 2018 under Sections 498A, 304B, IPC read with Section 3/4 of the Dowry Prohibition Act against the accused (A-1) Manish Kumar, Brij Kishore Pal, (A-2) Rajeshwari and Manu. The first information report was registered by Head Constable, Sobran Singh and the inquest was also prepared in the presence of PW-4 Premchand Pandey, the Naib Tehsildar. The corpus of the deceased was sent for postmortem and the postmortem was conducted by Dr. Subodh Kumar. PW-6 Bandana Singh, Circle Officer was

appointed as the Investigating Officer to conduct investigation. The necessary formalities with respect to preparation of the site plan was also undertaken and the statement of the PW-1 Ashok Kumar (father of the deceased), PW-2 Arun Kumar, (uncle of the deceased) and PW3, Rita, maternal sister-in-law of the deceased was also recorded under Section 161 of the Cr.P.C. The Investigating Officer conducted the investigation and submitted the charge sheet, under Sections 498A, 304B, IPC, read with Section 3/4 of the Dowry Prohibition Act accused A1, Manish Kumar, A2, Rajeshwari and Brij Kishore Pal whereas Ms. Manu was exonerated from the charges. Thereafter cognizance was taken and the case was committed to the Court of Sessions.

5. During the trial, the prosecution examined as many as 8 witnesses namely, Ashok Kumar, informant PW-1, PW-2, Arun Kumar and PW-3, Rita. PW-4, Prem Chand, Naib Tehsildar, Tehsil Bidhuna proved the inquest, PW5, Constable Sharif Khan proved the Chik FIR which was lodged by Head Constable Sobran Singh, PW-6, Circle Officer, Bandana Singh proved the steps taken in conducting the investigation, PW-7, Rajesh Yadav, Pharmacist proved the factum of postmortem which was conducted by Dr. Subodh Kumar, (since deceased). After prosecution evidence was closed the trial court recorded the statement of A-1, Manish Kumar, A-2, Rajeshwari Devi, under Section 313 of the Cr.P.C. The accused denied the allegations level against them and stated that they have been falsely implicated in the criminal case. During trial Brij Kishore Pal (father-in-law) expired on 18.9.2022. The trial court found the accused A-1, Manish Kumar, A-2, Rajeshwari Devi, innocent and acquitted

them from the charges under Sections 498A, 304B, 302 IPC and read with Section 4 of the Dowry Prohibition Act.

6. In order to establish its case, the prosecution had produced the documentary and oral evidence-

Documentary evidence

Written Report	A-1
Panchayatnama	A-2
Letter CHO	A-3
Photo of the Corpus	A-4
Challan of the Corpus	A-5 and A-6
G.D. report	A-7
Chik, First Information Report	A-8
Site-Plan	A-9
Charge sheet	A-10
Post mortem report and Forensic Report	A-11

Testimony of the Prosecution Witnesses

7. **PW1 Ashok Kumar.** The informant has been examined as PW1, he is the father of the deceased (victim). PW1 in his examination-in-chief has deposed that the marriage of her daughter, with deceased (victim) was solemnized on 29.01.2016 with A1, Manish Kumar, who used to demand dowry. The complaint of demanding of dowry was apprised to him when he had gone after a period of 4 days post marriage on 29.01.2016 to call her in her maternal house which is celebrated as a ceremony. The deceased (victim) had apprised him that A1, Manish father-in-law Brijesh Kumar, A2 Rajeshwari (mother-in-law) and maternal sister-in-law used to demand dowry in the shape of Rs.1,00,000/- and four-wheeler and due to non-offering of the same, she was administered beating and subjected to maltreatment. He further deposed that the deceased (victim) was thrown out by in-laws on 18.06.2017 in the outskirts of the

village and on gathering the said knowledge a first information report was lodged. First information report was lodged on 22.06.2017 before the Police Station Mangalpur, District Ramabai Nagar, under Sections 323, 498A, 506 IPC, read with Section 3/4 of the Dowry Prohibition Act. Thereafter, a settlement took place, pursuant where to the deceased (victim) went back to her in-laws place and the family members assured that they would not repeat the said acts. He further deposed that whenever the deceased (victim) used to come from matrimonial place to her maternal home then she used to complain about beating and maltreatment and requested that the demand of dowry be made good. PW1 further deposed that all efforts were made by the first informant and his family to somewhat pacify them and not to raise demand. On 19.03.2018 through telephone, information was given that the deceased (victim) had consumed poison on account of which she died. On gaining the said information, the first informant along with the family members and villagers went to the matrimonial place of the deceased (victim) whereupon they found that the corpse of the deceased (victim) was lying outside the house and the house was locked. Thereafter, written report was submitted before the police station on dictation through the scribe Anurag Pal, who thereafter read the written report and on being satisfied the first informant signed the written report. After the arrival of the police, the inquest was prepared and the corpse of the deceased (victim) was sealed. The first informant in his examination-in-chief deposed that the deceased (victim) about one month prior to the fateful day on which she died met him in a family marriage complaining that her in-laws were demanding dowry in the shape of a four-wheeler and money in cash

and in case the same is not tendered that they would kill her.

8. PW2 Arun Kumar got himself examined as PW2 and he in his examination-in chief deposed that the deceased (victim) is her niece, who got married with accused A1, Manish Kumar on 29.01.2016. When post marriage, she first time visited her maternal house then she apprised that the accused are demanding dowry by way of cash of Rs 1 lakh and a four-wheeler and on account of non-fulfillment of the demand of dowry, she was maltreated. He also deposed that the deceased (victim) was on account of non-fulfillment of the dowry was thrown away from the house in the outskirts of the village, thereafter a first information report stood lodged and pursuant to a settlement and the assurance so sought to be extended by the accused faction that they would not ill-treat her, the deceased (victim) went back to her matrimonial house. In his deposition PW1 further stated that one month prior to the death of the deceased (victim), she in one of the family relatives house apprised him that her father, first informant and PW2 should take endeavours to fulfil the demand raised by way of dowry otherwise she would be killed. PW2 further deposed that on 19.03.2018 at about 8.00 in the late evening information was received that the accused/in-laws of the deceased (victim) had killed the victim and when they went to the matrimonial house of the deceased (victim) then they found the deceased (victim) dead pursuant where to PW1, Ashok Kumar got the written report submitted in the police station, FIR was registered, the inquest was done.

9. PW3 Rita stepped in the witness box as PW3. She deposed that she is the

maternal sister-in-law of the deceased (victim). She also narrated that the marriage of the deceased (victim) with A1, Manish Kumar was solemnized on 29.01.2016, they were demanding dowry and when post marriage, she for the first time came to her matrimonial house then she made complaint that dowry was being demanded by way of cash of Rs. 1 lakh and four wheeler. She also complained that she would be killed in case the dowry demand is not fulfilled. She also narrated that deceased (victim) was thrown away from the house pursuant where to an FIR was lodged and on a settlement being entered into the deceased (victim) went back to her house. PW3 also deposed that a month prior to the death of the deceased (victim), she met the deceased (victim) in one of the marriages of her sister-in-law complaining that the accused are demanding dowry and in case the dowry is not fulfilled, she would be killed. On receiving the information regarding the death of the deceased (victim), she along with the other family members had gone to the place of deceased in-laws.

10. PW4 Prem Chand Pandey stepped in the witness box as PW4, according to him he was posted as Naib Tehsildar of Tehsil Bidhuna on 20.03.2018 and on receiving information through phone from Deputy District Officer, he went to the Village Garehwa, Police Station, Sahayal, District, Auraiya, where the deceased (victim's) body was lying and he proved the inquest. He also deposed that the injuries which the deceased (victim) sustained was got inspected by female constable Priyanka Singh, in the presence of the mother of the deceased.

11. PW5 Constable Sharif Khan. He is a formal witness, who has proved that on

20.03.2018, he was posted in Police Station, Sahayal as Clerk / Computer Clerk and on that date HCP, Sobaran Singh was also posted in the said Police Station. He has proved the factum of lodging of written report and Chik FIR.

12. PW6 Bandana Singh, the Investigating Officer deposed that he was posted as Circle Officer, Auraiya on 20.03.2018. According to him, he was assigned the task to conduct investigation, he had taken depositions of the prosecution witnesses. He also proved that inquest was prepared, body was sent for post-mortem and she further claimed that the charge sheet was submitted against the accused.

13. PW7 Rajesh Yadav. He deposed that he since October, 2016 is posted as Pharmacist in C.H.P. Acchnada, the postmortem was conducted by Subodh Kumar, who is now deceased. Postmortem was conducted on 20.3.2018 in his presence at 2.30 p.m. which concluded on 3.00 p.m. He proved the factum of postmortem.

Testimony of Defence Witness

14. D.W.1 Sudheer Kumar, stepped into the witness box, as D.W.1. According to him, on 19.3.2018, A1, Manish Kumar had come to his house to meet his father, Lajaram, who was unwell and they were sitting just on the gate in front of their house. Apart from A1, Manish Kumar, there were other villagers also who were sitting and at about 5-6 p.m. in the evening, two or three women came from the house of A1, Manish Kumar, screaming that the deceased (victim), who is the wife of A1, Manish Kumar had due to inadvertence has consumed pesticide pills. He also deposed that the deceased (victim) for the past two

to three days before her death on 19.03.2018 was suffering from fever and due to inadvertence, she had eaten the pesticide pills on account whereof, her condition deteriorated. After receiving the information, A1, Manish Kumar along with him and other villagers, who were sitting outside his house immediately rushed to the house of A1, Manish Kumar, whereupon it was found that the health condition of the deceased (victim) was deteriorating and in front of all the villagers including him, the deceased (victim) uttered, stated that due to misconception had eaten the pesticide pills thinking it to be the medicine for curing the fever. Thereafter, A1, Manish Kumar took the deceased (victim) to Kanpur for medical treatment, and he went back to his house since his father was not well. On the same day, at about 7-7.30 p.m., he received information that the deceased had succumbed to death and when he went to the house of A1, Manish Kumar, he found the corpus of the deceased. He further deposed that A1, Manish informed his in-laws through phone that the deceased (victim) is no more. At that time A1, Manish was sitting outside his house just in front of the door. D.W.1, further deposed that the father of A1, Manish Kumar, Brij Kishore Pal is a teacher in one of the institutions in District Shivpur, in Madhya Pradesh, which is about 500-600 k.m. away from his village. Along with Brij Kishore Pal, his wife A1, Rajeshwari and the daughter Manu also stays with them, and at the time of the said incident, they were not physically present.

Legal Position:

15. Before pondering into the niceties of the judgment of acquittal under challenge in the proceedings under Section 378(3) Cr.P.C. at the instance of the State,

this Court has to re-memoirise itself the fact that the present proceedings are in a form of appellate jurisdiction occasioning scrutiny of a judgment of acquittal wherein there are certain limitations provided therein which needs to be recognised before the delving in the issue.

16. Broadly speaking until and unless the judgment under challenge is perverse and there are substantial and compelling reasons followed by miscarriage of justice to be meted by the parties, this Court should not in routine manner interfere with the judgment of acquittal as the accused is possessed with double presumption of innocence.

17. To put it otherwise as a matter of right, this Court cannot at the instance of the appellant, who happens to be State exercise the jurisdiction while converting the judgment of acquittal into conviction.

18. The aforesaid principle of law has already been crystallized by Hon'ble Apex Court in plethora of decisions and just for the sake of illustration reference may be made to the judgment of **Rajesh Prasad Vs. State of Bihar (2022) 3 SCC (471)** wherein the Hon'ble Apex Court wherein the following was observed.-

“21. Before proceeding further, it would be useful to review the approach to be adopted while deciding an appeal against acquittal by the trial court as well as by the High Court. Section 378 CrPC deals with appeals in case of acquittal. In one of the earliest cases on the powers of the High Court in dealing with an appeal against an order of acquittal the Judicial Committee of the Privy Council in Sheo Swarup v. King Emperor² considered the provisions relating to the power of an

appellate court in dealing with an appeal against an order of a acquittal and observed as under: (SCC OnLine PC)

"16. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

"..... But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as: (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

It was stated that the appellate court has full powers to review and to reverse the acquittal.

*22. In *Atley v. State of U.P.*³, the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion*

*that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao, J. (as his Lordship then was) in *Sanwat Singh v. State of Rajasthan*: (*Sanwat Singh case*⁴, AIR pp. 719-20, para 9)*

*"9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in *Sheo Swarup*² afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."*

*The need for the aforesaid observations arose on account of observations of the majority in *Aher Raja Khima v. State of Saurashtra*⁵ which stated that for the High Court to take a different view on the evidence "there must also be substantial and compelling reasons for holding that the trial court was wrong".*

*23. *M.G. Agarwal v. State of Maharashtra* is the judgment of the Constitution Bench of this Court, speaking through Gajendragadkar, J. (as his*

Lordship then was). This Court observed that the approach of the High Court (appellate court) in dealing with an appeal against acquittal ought to be cautious because the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial".

24. In *Shivaji Sahabrao Bobade v. State of Maharashtra*, Krishna Iyer, J., observed as follows: (SCC p. 799, para 6).

"6. ... In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents."

25. This Court in *Ramesh Babulal Doshi v. State of Gujarat*, spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows: (SCC p. 229, para 7)

"7. ... While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can and then only reappraise the evidence to arrive at its own conclusions."

The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In another words, there should not be an acquittal of

the guilty or a conviction of an innocent person.

31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [*State of U.P. v. Sahai*] d Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [*Arunachalam v. P.S.R. Sadhanantham*]. An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal."

19. Recently, the Hon'ble Supreme Court in **Babu Sahebagoada Rudragoudar and others Vs. State of Karnataka 2024 (8) SCC 129** the Apex Court had flagged a note of caution in the matters of exercise of appellate jurisdiction when the Appellate Court is confronted with an order of acquittal, the following was observed:-

"38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

39. *This Court in Rajesh Prasad Vs. State of Bihar encapsulated the legal position covering the field after considering various earlier judgments and held as below: (SCC pp. 482-83, para 29)*

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case, SCC p. 432, para 42)

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may read its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the

accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

40. Further, in H.D. Sundara Vs. State of Karnataka this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C. as follows: (SCC p. 584, para 8)

“8. ... 8.1. The acquittal of the accused further strengthen the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

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

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a

reasonable doubt and no other conclusion was possible.”

20. Broadly speaking the same principles also stands applied to the appeals under Section 372 of the Cr.P.C. by the informant / complainant.

21. Bearing in mind the principles of law so laid down by the Hon'ble Apex Court as referred to above the present case is to be proceeded with while giving it a logical end.

Submissions advanced on behalf of the State appellants and counsel for the informant

22. Sri Anil Kumar Mishra, learned AGA along with Sri Anil Kumar Pandey, who appear for the informant have made the manifold submissions namely:

(a) The accused herein have committed offence which stood proved beyond doubt, as the sequence of the events itself show that there was a consistent demand raised by the accused for fulfilment of dowry and on account of non-satisfaction of the same, the deceased was done to death.

(b) Once the death of the deceased (victim) was not under normal circumstances, that too within a period of 7 years of the marriage in the matrimonial house, then the onus to prove innocence lies upon the accused faction.

(c) The depositions of PW1, PW2 and PW3 could not have been discarded as unworthy of acceptance particularly when in the past also with relation to demanding of dowry coupled with administration of beating and maltreatment, an FIR stood lodged.

(d) In any case, demand of dowry could not be ruled out to be a factor for commissioning of the offence, particularly when the deceased (victim) used to complain about demand of dowry and in absence of fulfilment of the same, she was threatened to be done to death.

(e) The present case comes within the ambit of the yardsticks relating to the essential ingredients of Section 304-B IPC read with Section 113-B of the Evidence Act, so as to show that the death of the deceased (victim) was on account of dowry while injecting the theory (soon before her death).

(f) Even otherwise, once the deceased (victim) was done to death in a matrimonial house then the burden under Section 106 of the Evidence Act, would fall upon the accused, showing the circumstances that they are innocent.

Analysis

23. We have given thoughtful consideration to the arguments advanced by the learned AGA and the counsel for the informant and perused the record carefully including the trial court records.

24. The first information report was lodged on 20.3.2018 at 00.20 hours under Sections 498A, 304B, IPC and Section 3/4 of the Dowry Prohibition Act by the first informant PW1, Ashok Kumar, alleging that the deceased (victim), who happens to be his daughter, solemnized marriage with A1, Manish Kumar on 29.1.2016. However, regular demands were being made for fulfilment of the dowry by way of a four wheeler and cash to the tune of rupees one lakh and on account of the non-fulfilment of dowry demands the deceased (victim) was done to death. The entire basis for implicating the accused is with relation

to demand of dowry. In order to establish that dowry was being demanded by the accused PW1, in his examination-in-chief had deposed that though the marriage was solemnized on 29.1.2016 but post completion of four days stay of the deceased (victim) in her matrimonial house when he came to take her in the maternal house then the deceased (victim) for the very first time apprised him that dowry was being demanded by the accused. He further deposed that whenever the deceased used to meet him, then she used to apprise the family that regular demand of dowry was being made and she was threatened that in case dowry is not being made good, then she has to face music and she was meted with beating and harassment at all levels. PW1 further alleges, that on 18.06.2017, the deceased was thrown out of her house in the outskirts of the village, matrimonial house, village and thereafter a first information report was lodged on 22.06.2017 under Sections 323, 498A, 506 IPC read with Section 3/4 Dowry Prohibition Act. Thereafter settlement was entered into and on the assurance of the in-laws of the deceased (victim), she went back to her matrimonial house. He further alleges, that about one month prior to the death of the deceased (victim) in a place known as Kachaunsi in a family wedding deceased met him and requested to fulfil the dowry demands otherwise she would be killed.

25. PW2, Arun Kumar, uncle of the deceased also narrated the same story while deposing that at the time of her first arrival to her maternal house, post marriage, she apprised that dowry demands are being sought to be raised coupled with the complain of demand of dowry in case of non-fulfilment of demand done to death one month prior to

the fateful day in a relative place at Kachaunsi.

26. Similarly, PW3, Rita, being the maternal sister-in-law deposed that when the deceased, after marriage for the very first time went from matrimonial house to maternal house then she complained that dowry is being demanded and in case the same is not paid, she would be meted with ill-treatment and beating. PW3 further deposed that one month prior to the death of the deceased in her sister-in-law marriage, the deceased had complained about demand of dowry and in case the payment is not made she will be done to death.

27. The statement of PW1, PW2 and PW3 sticks to one fact that the demand of the dowry stood triggered just four days after the marriage, when for the very first time, the deceased (victim) had gone from matrimonial house to maternal house. Interestingly, the first information report lodged on 22.06.2017 by the brother of the deceased (victim), Vinay Pal Singh, son of PW1 Ashok Kumar under Sections 323, 498A, 506 IPC, read with Section 3/4 before the police station, Mangalpur, Ramabai Nagar, FIR No. 0265 alleges that though the marriage of the deceased (victim) with the A1, Manish Kumar, stood solemnized on 29.01.2016 but things were in a proper fashion and manner for six months and thereafter on 18.06.2017, on account of non-fulfillment of the demand of dowry, the deceased was thrown away from the house in the outskirts of the village.

28. The aforesaid facts clearly depicts that the theory so sought to be propounded by the PW1, PW2 and PW3 regarding demand of dowry, just after a period of four

days from the marriage, when the deceased (victim) went for the first time to her maternal house from the matrimonial house, stands belied.

29. Apart from the same, barring lodging of the FIR on 22.06.2017 with relation to be incident dated 18.6.2017 there is nothing on record to show that any further complaint was sought to be lodged regarding demand of dowry. Additionally, the Court finds that the allegation of demand of dowry sought to be raised in statements under Section 164 Cr.P.C. by the accused from the deceased (victim) one month prior to the date of her death does not find mention in the statements of PW-1, PW-2 and PW-3 recorded under Section 161 of the Cr.P.C.

30. PW-6, Bandana Singh, Circle Officer, who conducted the investigation in his statement at page 10 has specifically deposed, that the said allegations were not made in the statement under section 161 of the Cr.P.C. Non-recording of the said statement itself goes to show, that it is nothing but a classic example of improvement being sought to be made so as to develop a theory in order to implicate the accused.

31. Hon'ble Apex Court in the case of **Yudhishtir vs. State of Madhya Pradesh, 1971 (3) SCC 436** in para 11 has observed as under:-

“The evidence given by P.Ws 1 & 6 before the Court was substantially in variance with the version given by them in the statements given to the police at the earliest occasion. Before the Court they have considerably improved their statements. Omissions in the statements to the police were of a very serious nature making their

evidence before the Court false and unacceptable.”

32. Though, the statements under section 161 of the Cr.P.C. may not be heavily relied upon but they are indicative of the fact as to whether, there has been any exaggeration, in the statements under Section 164 of the Cr.P.C. or not. Of course, in the present facts and the circumstances of the case the depositions made, in the statements under Section 161 of the Cr.P.C would play a vital role so as to show, the conduct of the prosecution witnesses, particularly when, the entire case hinges upon demand of the dowry in that regard.

33. Apparently, the allegations contained in the first information report coupled with the testimony of the prosecution witnesses indicate dowry as a motivating factor for the commission of crime and in order to substantiate the same aid and assistance has been taken of the provisions of Section 498A and 304B of the IPC read with Section 113-B of Indian Evidence Act.

34. The offences under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. Such as any wilful conduct which is of a nature is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health for 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 property or valuable security or is on account of failure by her or any person related to her to meet such demand.

35. In order to attract Section 304-B of the IPC, there are certain conditions which have to be fulfilled, namely; (a) death of the woman must have been caused by burns

or bodily injury otherwise than normal circumstances, (b), death must be within 7 years of her marriage, (c) soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative or of her husband and (d) cruelty or harassment must be for or in connection with any demand of dowry.

36. So much so, Section 113-B applies only in those contingencies where it is established that soon before her death, the woman had been subjected by the accused to cruelty or harassment in connection with demand of dowry.

37. The Hon'ble Apex Court in **Criminal Appeal No....of 2024 arising out of SLP (Crl.) No.2122 of 2020, Digambar and another v. State of Maharashtra and another** decided on 20.11.2024, has observed as under:-

22. In another recent judgment of this Court titled **Jayedepsinh Pravinsinh Chavda and Others v. State of Gujarat 2024 SCC Online SC 3679**, the guilt of the appellant therein under Section 498- A of IPC was maintained, however, the ingredients of 498-A of the IPC were discussed. It was observed thus:

"11. From the above understanding of the provision, it is evident that, 'cruelty' simpliciter is not enough to constitute the offence, rather it must be done either with the intention to cause grave injury or to drive her to commit suicide or with intention to coercing her or her relatives to meet unlawful demands."

38. In **Charan Singh @ Chanranjit Singh vs. The State of Uttarakhand (2023) 3 S.C.R. 511** the condition precedent for establishing dowry death came to be considered while relying upon the earlier

judgement of **Hon'ble Supreme Court in Baijnath & others v. State of M.P. (2017) 1 SCC 101** wherein it was observed as under:-

13. A conjoint reading of Section 304B IPC and Section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:-

"32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have [2023] 3 S.C.R. 519 **CHARAN SINGH @ CHARANJIT SINGH v. THE STATE OF UTTARAKHAND** propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in *Shindo v.State of Punjab* [Shindo v. State of Punjab, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in *Rajeev Kumar v.State of Haryana*[Rajeev Kumar v.State of Haryana, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346]. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao v.Yadla Srinivasa Rao*[K. Prema S. Rao v.Yadla Srinivasa Rao, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence

which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".

39. In **Karan Singh v. State of Haryana, Criminal Appeal No. 1076 of 2014**, decided on 31.01.2025, the following was observed:-

"There is something fundamental which goes to the root of the matter. While deposing about the demand of dowry, she has not deposed to any particular act of cruelty or harassment by the appellant. This is an essential ingredient of Section 304B. It is not made out from the evidence of PW6."

40. The principles of law as culled out in the above noted decisions explicitly mandate that in order to put the case within the four-corners of Section 498A, 304B IPC read with Section 113B of the Indian Evidence Act while deposing that the death was attributable to demand of dowry, a particular act of cruelty or harassment is to be pointed out supported by the testimony of the prosecution witnesses.

41. While applying the above noted judgements in the present fact of the case, we find that the death due to demand of dowry is not proved for variety of reasons namely (a) the theory sought to be propounded that demand of dowry was being made just after four days of marriage stands belied since the FIR lodged on 22.6.2017 relating to the incident dated 18.6.2017 does not speak about demand of dowry after four days of marriage (b) there is nothing on record that cruelty was inflicted upon the deceased victim, as post the incident dated 18.6.2017 and lodging of FIR on

22.6.2017, there is nothing on record to show that deceased (victim) was meted with cruelty.

42. Now the next question which arises for a determination is whether the accused A1 Manish Kumar and A2, Rajeshwari were present when the incident took place on being fateful day.

43. DW1 Sudhir Kumar in his testimony has deposed that A1 Manish Kumar was present in his house on the fateful day as he had come to his house to meet his ailing teacher Lajjaram. Further, he also deposed that two or three women came from the house of the A1 Manish Kumar and apprised that the wife of A1 Manish Kumar deceased (victim) had consumed pesticide pills and thereafter the A1 Manish Kumar along with DW1 Sudheer Kumar and the villagers went to the house where the deceased victim stated that she had consumed pesticide pills by mistake thinking it to be a medicine for fever. The said testimony of DW1 Sudhir Kumar is intact as in the cross-examination by the prosecution no questions for demolishing the said testimony has been asked by the prosecution. Once the position being so that the deposition of the DW1 remains intact then it becomes highly doubtful that the A1 Manish Kumar was present or he had committed the crime.

44. So much so with relation to A2 Rajeshwari Devi, PW2, Arun Kumar also deposed in his cross-examination that for the past 30-32 years, Brij Kishore Pal, was staying in Madhya Pradesh and doing a Government Job. Similarly, PW3 Rita also deposed in her cross-examination that the accused A2, Rajeshwari Devi was staying in Madhya Pradesh where her husband was

working. Thus, there is no evidence on record to show that A2, Rajeshwari Devi was involved in criminality.

45. Certainty, the conduct also plays a vital role to form a opinion as to whether the accused is actually innocent or not. As regards, A1, Manish Kumar is concerned, it has come on record by way of the deposition of DW1, Sudhir Kumar that he made a telephonic call to her in-laws and apprised about the death of the deceased (victim). His presence was also shown in the house with the dead body of the deceased (victim). It is also come on record by way of deposition of DW1, Sudhir Kumar, that the deceased (victim) was taken for medical treatment by A1, Manish Kumar. The aforesaid facts and circumstances clearly go to show that there is nothing abnormal so as to indicate that the accused A1, had committed criminality.

46. Nonetheless, there is nothing on record either in the deposition of the prosecution witness or otherwise so as to suggest that A1, Manish Kumar and A2, Rajeshwari Devi were involved in the commission of the crime.

47. Cumulatively giving anxious consideration to the judgment and the order passed by the learned trial court acquitting the accused, this Court finds that the learned trial court has not committed any palpable illegality or perversity as the learned trial court has appreciated each and every aspect of the matter from the four corners of law while acquitting the accused. The view taken by the trial court is a possible and plausible view based upon not only the appreciation of the testimony of the prosecution witnesses and the documents so adduced therein but also

upon the cardinal principles of law which govern the subject in question.

48. Thus, this Court has no option but to concur that the judgment and order of the trial court whereby the accused herein has been acquitted.

49. Resultantly, no ground is made so as to accord leave to appeal. Accordingly, leave to appeal is **rejected**. As the leave to appeal stands rejected, thus, the Government Appeal preferred by the appellant under Section 378(3) of the Cr.P.C. and the appeal of the informant under Section 372 of the Cr.P.C. also stands **rejected**.

50. The records be sent back to the court below.

(2025) 2 ILRA 42
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 13.02.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Second Appeal No. 12 of 2022

Ram Lal (Dead) & Ors. ...Appellants
Versus
Smt. Vijay Laxmi & Anr. ...Respondents

Counsel for the Appellants:
Bahar Ali, Ripu Daman Shahi

Counsel for the Respondents:
Sabhapati Verma, Abha Bajpai, Amarendra Kumar Bajpai, Rakesh Kumar Mishra, Tapasya Bajpai, Vinod Kumar Singh

**Civil Law - Code of Civil Procedure, 1908 -
Section 100 - Learned lower appellate
court could not have granted relief of
permanent injunction without recording**