2025:AHC:230549-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1149 of 1991

AFR
Judgment Reserved on 28.10.2025

Judgment Delivered on 19.12.2025

Smt. Omwati and 02 others

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Ashok Kumar Singh Bais, S.k. Agarwa
Counsel for Respondent(s)	:	D.G.A.

Court No. - 44

HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.

(Delivered by Hon'ble Sanjiv Kumar, J.)

1. This criminal appeal has been preferred by the appellants, namely, Smt. Omwati wife of Hukum Singh, Vijay Pal and Om Pal sons of Chhajju Singh, residents of Village, Bhaila, Police Station Deoband, District Saharanpur, against the judgment and order dated 11.06.1991, passed by the Court of the VIth Additional Sessions Judge, Saharanpur, in Session Trial No.103 of 1990, under Sections 304-B/34 and 201 Indian Penal Code (in short 'I.P.C'.), Police Station Deoband, District Saharanpur.

2. By the impugned judgment and order, appellant, Smt. Omwati has been convicted and sentenced to undergo imprisonment for life for the offence punishable under Section 304-B/34 IPC. The appellants, Vijay Pal and Om Pal have been convicted and sentenced to undergo seven years' rigorous imprisonment for the offence punishable under Section 304-B/34 IPC. All the appellants have also been convicted and sentenced to undergo three years' rigorous imprisonment for the offence punishable under Section 201 IPC also. All the sentences have been directed to run concurrently.

3. Feeling aggrieved by the impugned judgment and order, this appeal has been filed by all the three convicts. During the pendency of this criminal appeal, appellant No. 1, Smt. Omwati, has died, and the appeal against her stands ***abated*** vide order dated 02.09.2025. Therefore, the appeal has been heard on behalf of the surviving appellants, Vijay Pal and Om Pal.

4. The brief facts of the prosecution case are that the informant, Satyapal Singh, son of Sube Singh, resident of village, Kapsadh, Police Station Sardhana, District Meerut, filed a written report (Ext. Ka-1) before the In-charge, Police Station, Deoband, District Saharanpur, dated 13.10.1988, wherein it was said that the marriage of his sister, Vimlesh, was solemnized with Jai Bhagwan more than five years ago in village, Bhaila. After the marriage, whenever his sister came over to parents' village Kapsadh, she would say that her in-laws were demanding a television and cash. Whenever the informant went to village Bhaila, the same demand was made to him as well, but due to his poor financial condition, he could not fulfill the demand. The appellant, Omwati (mother-in-law of his sister) would regularly harass the informant's sister in this regard. On the night of 11/12 October 1988, at about 11:00 p.m., his sister was murdered by her mother-in-law, Smt. Omwati, Vijay Pal, and Om Pal by administering poison. Soon thereafter her dead body was cremated. The above incident was witnessed by several residents of the village, including Dharampal son of Fakira and Mahipal son of Shadhu Singh, resident of village, Sabirpur and they went over to informant's

village and informed him about it. On the basis of written report (Ext. Ka-1), a *chik* FIR (Ext. Ka-6) was registered as Case Crime No.416 of 1988, under Sections 302, 201 I.P.C., and 3/4 Dowry Prohibition Act, at Police Station Deoband on 13.10.1988 at 20:30 hours.

5. The investigation was conducted by the Circle Officer, R.D. Singh, who recorded the statements of the informant and other witnesses and also collected the burnt bones and ashes of the deceased from the place where her dead body was cremated. He prepared the recovery memo (Ext. Ka-4). He also inspected the place of occurrence and prepared its site plan (Ext. Ka-3). After completing investigation, he filed a charge-sheet against the appellants, Smt. Omwati, Vijay Pal and Om Pal, under Sections 304-B, 201 I.P.C. and Section 3/4 Dowry Prohibition Act before the Chief Judicial Magistrate, Saharanpur.

6. The learned Magistrate took cognizance of the offence and summoned the appellants. The relevant prosecution papers were furnished to the appellants under Section 207 Cr.P.C. and the case was committed to the Court of Session on 18.04.1990 for trial.

7. The appellants appeared before the Court of Session and charges under Sections 302/34, 304-B/34 and 201/34 Indian Penal Code were framed against the appellants. They pleaded not guilty and claimed to be tried.

8. The prosecution examined six witnesses in support of the prosecution case; namely, P.W.1, Satyapal Singh, (brother of the deceased), P.W.2, Dharampal, P.W.3, Mahipal, P.W.4, Kishan Singh, P.W.5, Rohitash and P.W.6, R.D. Singh (the Investigating Officer).

9. Out of these six witnesses, P.W.1 Satyapal Singh (brother of the deceased and the informant) has proved the written report, (Ext.Ka-1) and said that his sister, Vimlesh was married to Jai Bhagwan, son of Hukum Singh, about five years ago. Smt. Omwati was her mother-in-law whereas Vijay Pal and Om Pal were brothers of Hukum Singh, Jai Bhagwan's father. Whenever his sister would visit her parent's home, she complained about the demand of dowry and harassment by her mother-

in-law. The same demand was also made to him, which he could not fulfill on account of his poverty. About one year and nine months ago, Dharampal and Mahipal came to his house and informed him that on the night of 11/12.10.1988, at about 11:00 p.m., his sister had been killed by Omwati, Vijay Pal, and Om Pal by administering poison mixed in milk and her body cremated on their plot at about 4:00 a.m. Thereafter, the informant went to village Bhaila, made inquiries from different persons, and lodged the FIR.

10. P.W.2, Dharampal, is stated to be a witness, who was present in village Bhaila on the day of the incident. According to P.W.2, he along with Mahipal had gone to purchase a *jhota-buggi*. They selected the *jhota* of Jai Bhagwan. Upon Jai Bhagwan's request they stayed at his *gher* as it had become dark. At about 10-11 p.m., a woman came to Jai Bhagwan's *gher* and told him that his wife had been poisoned. Thereupon, he went to Jai Bhagwan's house alongwith Mahipal. Some residents of the village, Bhaila were also present there. Vimlesh was lying on a cot and she was vomiting. Omwati, Vijay Pal, and Om Pal were also present there. Vimlesh said to Jai Bhagwan, *"अब तो थारे चैन पड़ जायगी, टेलीविजन, सोफासेट व नकद रूपया मिल जायेगा,"* and also said, *"मुझे ओमवती, विजय पाल व ओमपाल ने गेहूँ में रखने की गोली दूध में खिला दी है।"* After saying so, she died. Thereafter, the appellant, Omwati said, *"मेरी बुद्धि खराब हो गयी थी। मैंने अनाज में रखने की गोली इसे दूध के साथ दे दी।"* Thereafter, at about 4:30 a.m., they took Vimlesh's dead body to their plot and burnt it. He has also said that he objected asking the appellants not to burn the body, but they did not agree.

11. P.W.3 Mahipal is also a man, who was present in village Bhaila along with P.W.2 at the time of occurrence. He said that after receiving information that poison had been administered to Vimlesh, he, along with Jai Bhagwan and Dharampal, went Vimlesh's house, where she was suffering in agony and asking Omwati whether her desire for a sofa set, TV, and cash had been fulfilled. Thereafter, she died. The appellants were present there and Vimlesh did not say anything else. We asked Omwati, what she had done, she said that she had committed a mistake

and had administered a wheat pill tablet mixed in milk. Thereafter, the appellants, Vijay Pal and Om Pal insisted on performing her last rites. He told the appellants to inform the Police about the incident, but they refused. Thereafter they picked up the dead body and carried it to their plot.

12. P.W.4, Kishan Singh, a resident of the same village where the incident occurred, has not supported the prosecution case and turned hostile. He said that he does not know the circumstances under which Vimlesh died.

13. P.W.5, Rohitash, also a resident of the village, has also turned hostile and said that he was not present at the time when Vimlesh died.

14. P.W.6, R.D. Singh, Circle Officer, was the Investigating Officer of the case. He said that he conducted the investigation, inspected the place of occurrence, and prepared its site plan (Ext. Ka-2). Thereafter, he went to the place where the deceased was burnt and prepared its site plan (Ext. Ka-3). He also said that he collected the cremated bones and ashes of the deceased from the place where the body was cremated and prepared the recovery memo (Ext. Ka-4). After collecting evidence, he filed a charge-sheet against the appellants, Omwati, Vijay Pal, and Om Pal.

15. After closure of the prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C. In their statements, they have admitted that Vimlesh was married to Jai Bhagwan, but they said that the marriage was solemnized about 8-9 years ago. It was also said that Vijay Pal and Om Pal are not the brothers of Hukum Singh. They have denied the prosecution case and said that during the days when this incident occurred, Vimlesh was pregnant. On the night of the incident, Vimlesh suffered a miscarriage, due to which she died. This information was conveyed to her parental home (a reference to her relation thus). The informant, Satyapal, came over before whom Vimlesh's last rites were performed.

16. The accused have produced D.W.1, Pratap Singh, in their defence. D.W.1 has stated, on oath, that he knows the informant and the accused.

The marriage of Jai Bhagwan (husband of the deceased) was solemnized about 11 years ago. He participated in the marriage. He has heard that Jai Bhagwan's wife died due to miscarriage. He participated in her last rites. The informant, Satyapal Singh, and others from the deceased's parents side were also present there. She died at about 4:00 a.m., and her last rites were performed at about 10:00 a.m.

17. The learned Trial judge, after considering the evidence, adduced by both parties, passed the impugned judgment and order dated 11.06.1991, whereby the appellants, Smt. Omwati, Vijay Pal, and Om Pal, were convicted and sentenced under Sections 304B/34 and 201 I.P.C. as indicated above.

18. Heard Mr. Ashok Kumar Singh Bais, learned Counsel for the appellants and Ms. Divya Ojha, learned Additional Government Advocate-I for the State.

19. It is submitted on behalf of the appellants that the learned Trial Court has not properly considered the evidence of both parties. The marriage of the deceased, Vimlesh, was solemnized with Jai Bhagwan about 8-9 years ago. The appellants, Vijay Pal and Om Pal, are not the relatives of Jai Bhagwan (husband of the deceased) and do not reside with Smt. Omwati (mother-in-law of the deceased). They would not have gained directly or indirectly from any demand for dowry. There is no evidence that they demanded dowry or subjected the deceased to torture or harassment for want of dowry. There is also no evidence that they administered poison to the deceased or assisted Smt. Omwati in administering it. There is no evidence to show that they cremated the dead body of the deceased and thereby caused the disappearance of evidence of the crime. It is also said that P.W.2 Dharampal and P.W.3, Mahipal are chance witnesses as well as interested witnesses, being relatives of P.W.1 Satyapal Singh (informant). Therefore, their evidence is not reliable.

20. On the other hand, the learned A.G.A. has submitted that the prosecution has proved its case against the appellants. P.W.1, Satyapal

Singh is the deceased's brother and has supported the prosecution case regarding the demand of dowry and the torture of the deceased. P.W.2, Dharampal and P.W.3, Mahipal were present in the village when the deceased died. They have supported the prosecution case. There is no ambiguity in the prosecution evidence. The deceased gave her dying declaration before Dharampal and Mahipal, and there was an extra-judicial confession by her mother-in-law, Omwati as well. It is also submitted that appellants administered poison to deceased, Vimlesh, and after her death, secretly burnt her dead body on their plot at about 4:00 a.m. Thus, the prosecution case is proved beyond reasonable doubt.

21. In the present case, the appellants have been convicted for offence punishable under Section 304-B and 201 I.P.C. Section 304-B IPC reads as follows:-

> *" (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."*

22. In ***Harjit Singh v. State of Punjab*; (2006) 1 SCC 463**, the Supreme Court held that, in cases falling under Section 304-B IPC, the prosecution must prove the following essential ingredients for the offence of 'dowry death'.

"(a) The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;

(b) The death must have been caused within seven years of her marriage;

(c) Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and

(d) Cruelty or harassment must be for, or in connection with, any demand for dowry."

23. The Supreme Court has further held that if the aforesaid four ingredients are established by the prosecution, then the death can be called a 'dowry death', and the husband and/or relatives of the husband, as the case may be, shall be deemed to have caused the dowry death. The word 'dowry' has been defined under Section 2 of the Dowry Prohibition Act, 1961 which provides that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to the other party to the marriage or to any other person. The dowry must be given or agreed to be given at or before or any time after the marriage in connection with the marriage of the said parties.

24. Section 113-B Indian Evidence Act raises a presumption as to the 'dowry death', which reads as follows:-

" When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation. For the purposes of this section, dowry death shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)."

25. In the light of above legal position, it has to be seen whether the prosecution has proved its case. According to the prosecution, the deceased, Vimlesh, was married to Jai Bhagwan since about five years before her death. P.W.1, Satyapal Singh, brother of the deceased, has said that the marriage of his sister, Vimlesh, was solemnized with Jai Bhagwan about five years ago. The defence has not put any question to this witness to rebut or contradict the said fact. The effect of failure to cross-examine a witness fell for consideration of the Supreme Court in ***State of U.P. Vs Nahar Singh (Dead) and Others (1998) 3 SCC 56,*** in which, the informant (P.W.1) was not cross-examined by the appellant on the point of explanation of delay in lodging the complaint. It was held that since the evidence of P.W.1 had remained unchallenged on the explanation of delay, the same ought to have been believed by the High Court.

26. Further, in ***Muddasani Venkata Narsaiah (Dead) through Lrs Vs Muddasani Sarojana, (2016) 12 SCC 288*** , the Supreme Court has observed that a party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in the cross-examination is not merely a technical one but is one of essential justice. In case of non-cross examination of the witness on a particular fact, the Court would presume that the witness account has been accepted.

27. Again, in **Arvind Singh V State of Maharashtra, (2020) 8 SCC 302**, it was held that the prosecution is required to bring home the guilt beyond reasonable doubt. It would be open to the accused to raise such reasonable doubt by cross-examination of the prosecution witnesses to discredit them in respect of their truthfulness and veracity. A party intending to bring evidence to impeach or contradict the testimony of a witness must give an opportunity to the witness to explain or answer when the witness is in the witness box.

28. The principle then is clear that unless the witness is cross-examined on a particular point while in the witness-box and afforded an

opportunity to explain, his evidence on that point would be treated to have been accepted by the opposite side. Thus, the testimony of P.W.1 on the point of marriage of the deceased would be treated to be accepted by defence.

29. On the other hand, the appellants, in their statements, recorded under Section 313 Cr.P.C., have said that the marriage of Vimlesh was solemnized 8-9 years ago. The defence has produced D.W.1, Pratap Singh, who has said that the marriage of Vimlesh was solemnized about eleven years ago. The period of marriage, he has said is not as per defence case. D.W.1, in his deposition, has given the date of marriage also, but no documentary proof in this regard has been produced by the defence. The Investigating Officer has also not collected any documentary proof with regard to the date or time period of the deceased's marriage. The prosecution has contradicted this witness by giving a suggestion otherwise. D.W.1 has not explained the reason why he would still remember the deceased's date of marriage after such a long lapse of time. Even the appellants have not given the date of marriage of the deceased. Thus, the testimony of D.W.1, on this point, is not reliable.

30. In view of the above, it is held that the deceased, Vimlesh, was married to Jai Bhagwan about five years ago since before her death.

31. According to the prosecution, the deceased was administered poison by mixing it in milk, as a result of which, she died. On the other hand, it is the case of the defence that the deceased was pregnant and on the fateful night, there was a miscarriage, due to which, she died. In the present case there is no inquest report and *post-mortem* report for the deceased. In either of the two eventualities, the death of the deceased cannot be held normal. Therefore, the death of the deceased occurred otherwise than under normal circumstances.

32. The FIR was lodged by P.W.1, Satyapal Singh, the deceased's brother. It has nowhere been said in the FIR that the appellants, Vijay Pal and Om Pal ever demanded dowry from the deceased or the informant

and harassed the deceased due to the above demand. The allegation of demand of dowry is against the appellant Omwati (the mother-in-law of the deceased) alone. P.W.1, Satyapal Singh has said that it was Omwati, the mother-in-law of the deceased, who was demanding a television and cash in dowry. Due to the said demand, she harassed the deceased. P.W.1, Satyapal Singh, has not deposed of any particular act of cruelty or harassment by Omwati. He has not spoken of any instance when the alleged demand of dowry or harassment of the deceased took place.

33. Learned counsel for the appellants drew the attention of the Court to **Criminal Appeal No.1076 of 2014 (Karan Singh vs. State of Haryana)**, decided on 31.01.2025 by the Supreme Court. The said case also related to a dowry death, where there were allegations regarding demand of dowry and cruelty or harassment meted out to the victim. In that context, the Supreme Court held that while deposing about the demand of dowry, the witnesses had not stated any particular act of cruelty or harassment by the appellant, which is an essential ingredient of Section 304-B IPC. The aforesaid judgment is fully applicable to the present case, as the informant in the present matter too has not deposed to any specific act of cruelty or harassment of the victim.

34. The appellants, Vijay Pal and Om Pal are residents of the same village, Bhaila. There is no evidence to show that they live together with co-appellant, Omwati. According to the prosecution, the appellants, Vijay Pal and Om Pal are the maternal uncles-in-law of the deceased, and P.W.1 Satyapal Singh, has said that they are brothers of Hukum Singh (father of Jai Bhagwan). Both appellants have denied that they are brothers of Hukum Singh and said that Hukum Singh's father was Kashi Ram, whereas their father's name is Chhajju Singh. They live separately from Omwati.

35. To attract the offence under Section 304-B IPC, the prosecution has to prove that the cruelty was committed by the husband or the relatives of the deceased's husband. In the present case, the prosecution has failed to prove that the appellants, Vijay Pal and Om Pal, are

relatives of Jai Bhagwan, the husband of the deceased. According to P.W.1, he received information about the death of his sister the next day. Therefore, P.W.1 is not an eye-witness to the incident and his statement is only with regard to the demand of dowry and harassment of his sister, a fact which, the prosecution have failed to prove.

36. The prosecution has examined P.W.2, Dharampal and P.W.3, Mahipal to prove that the appellants committed murder of the deceased and the deceased made a dying declaration before them in this regard. Thereafter, in order to cause destruction of evidence of the crime, her dead body was cremated in the early hours of the next day. Upon a perusal of the testimony of both these witnesses, their evidence does not inspire confidence, and it is very hard to believe their version of the story. Admittedly, both these witnesses are residents of another village. Therefore, their presence at the place of occurrence is not normal and both of them are chance witnesses. Being chance witness their testimony is to be closely scrutinized.

37. It has come out in P.W.1, Satyapal Singh's evidence that P.W.2, Dharampal, is the elder brother of Sompal, to whom his other sister is married. Thus, P.W.2, Dharampal, is a relative of the informant. P.W.3, Mahipal, is also a distant relative of the informant. The prosecution's case is that both these witnesses went together to the village of Bhaila to purchase a *jhota-buggi.* According to the statement of P.W.2, Dharampal, they liked and selected Jai Bhagwan's *jhota-buggi.* According to P.W.3, Mahipal, they also settled the price to purchase this *jhota-buggi.* However, since it was late for them to return to their respective villages, they stayed overnight at the house of Jai Bhagwan. It has come out in the testimony of P.W.2, Dharampal that he did not purchase the *jhota-buggi* from Jai Bhagwan, but instead purchased it from Jalalabad about 20–25 days later. P.W.3, Mahipal, has also stated that Dharampal purchased a *jhota-buggi* after 5–7 days of the incident from someone else. The prosecution has not clarified why Dharampal refused to purchase the *jhota-buggi* from Jai Bhagwan later, despite initially liking it and agreeing to purchase it. This lends weight to the appellants' argument

that the purpose of their visit to Bhaila was concocted. Both P.W.2 and P.W.3 are resident of Shabbirpur, and, according to P.W.2, Dharampal their village is 4 miles away from Bhaila. It has come in evidence of P.W.2 and P.W.3 that the price to purchase the *jhota buggi* was settled by 6:00 p.m. It was not too late for them to return home to their village. Therefore, their stay in village, Bhaila is not a normal event or happending.

38. Besides this, P.W.2 Dharam Pal said that he did not go to the Police Station to lodge the report, as he did not deem it necessary. On the other hand, P.W.3 Mahipal said that they would have lodged the FIR at the Police Station if someone had allowed them to do so. P.W.3 had said that the appellants would not let them go. Therefore, the two witnesses could not go to the Police Station to lodge a report. Both the above stands are contradictory to each other and the reason shown by both of them in not going to the Police Station to lodge an FIR is not very convincing and dependable.

39. According to P.W.1 Satyapal Singh, on the next day of the incident, he went to village, Bhaila and inquired of the villagers regarding the cause of his sister's death. Thereafter, he lodged the FIR on the following day. P.W.1 has not disclosed the name of any person from whom he gathered information about the cause of her death. The prosecution has not produced any such person in support of the prosecution case. The prosecution has produced P.W.4, Kishan Singh and P.W.5, Rohitash, both residents of the same village, where the incident occurred. Both of them have not supported the prosecution case and turned hostile.

40. It has come in the testimony of P.W.1, Satyapal Singh that Jai Bhagwan, (the husband of the deceased), was the love son of his parents. His father had died, and he was living with his mother. He had his own house and agricultural land in the village. The appellants, Vijay Pal and Om Pal lived separately and had no close relations with Jai Bhagwan. They would not have benefited by the demand of any such dowry. There

is also no evidence that they raised a demand for dowry and harassed the deceased. The facts necessary to reverse the burden and attract the presumption under Section 113-B of the Evidence Act have not been proved by the prosecution *vis a vis* the appellants, Vijay Pal and Om Pal. In view of the above, the burden was on the prosecution to prove the reason, which led the appellants to commit the dowry death of the deceased with the help of co-appellant, Omwati. The prosecution has failed to establish such motive for them to commit this crime.

41. According to the prosecution, the deceased had made a dying declaration before Dharampal and Mahipal. Section 32 (1) Indian Evidence Act, dealing with the admissibility of dying declaration by a person relating to cause of his own death, is as follows:

> *"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.*
>
> *Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose atttendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :*
>
> *(1)When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.*
>
> *(2)……..."*

42. It is settled law that a dying declaration is an important piece of evidence under Section 32(1), Evidence Act and if a dying declaration is found to be reliable, true and voluntary, then there is no need for corroboration by witnesses and conviction can be recorded on its basis alone. But, at the same time, a dying declaration like any other evidence has to be tested on the touchstone of credibility to be acceptable. This is

more so, as the appellants do not get an opportunity to question the veracity of the statement by cross-examination.

43. In the light of above legal position, the version given by P.W.2, Dharampal and P.W.3, Mahipal with regard to the dying declaration by the deceased is not reliable. P.W.2, Dharampal and P.W.3 Mahipal have said that while they were staying at the *Gher* with Jai Bhagwan on the fateful night at about 10-11 p.m., a woman came to the *gher* and informed Jai Bhagwan that his wife had been administered poison. Thereafter, they along with Jai Bhagwan, went to his house where few men and women of the village were already present. The appellants, Omwati, Vijay Pal and Om Pal were also present there. P.W. 2, Dharmpal has said that Vimlesh was lying on a cot and was vomiting. Then Vimlesh said to Jai Bhagwan, "अब तो थारे चैन पड़ जायगी, टेलीविजन, सोफासेट व नकद रूपया मिल जायेगा।" and also said, *"मुझे ओमवती, विजय पाल व ओमपाल ने गेहूँ में रखने की गोली दूध में खिला दी है।"* After saying so, she died.

44. In his cross-examination, P.W.2, Dharampal has deposed differently by saying that Vimlesh was slightly unconscious and was murmuring that her mother-in-law had administered a tablet used for preserving wheat and Vimlesh died while murmuring these words. In his cross-examination, he did not say that Vimlesh said anything against the surviving appellants, Vijay Pal and Om Pal of their involvement in the crime.

45. P.W.3, Mahipal has deposed that Vimlesh was in severe agony and said to Omwati that the latter's desire for a television, sofa set and cash was fulfilled or not ? Thereafter, she died and did not utter any other word. In this statement too, there is nothing said against the surviving appellants, Vijay Pal and Om Pal that they administered poison to the deceased or assisted Omwati in administering it. There is no case that Jai Bhagwan, the husband of the deceased, demanded dowry or was involved in his wife's death. So why the deceased, Vimlesh would utter words to Jai Bhagawan about fulfillment of his demand for dowry. The

Investigating Officer has not taken down the statement of Jai Bhagwan though he is said to have been present on the spot. In view of these contradictions with regard to the dying declaration of the deceased, the dying declaration of the deceased is not believable or reliable. Importantly, there is nothing in the dying declaration against appellants, Vijay Pal and Om Pal that they played a role in the death of the deceased.

46. It is also relevant to mention that the Investigating Officer recorded the statements of P.W.2 and P.W.3 after more than three months of the date when the FIR was lodged. The prosecution has not given any explanation for this delay. Though the names of these witnesses were mentioned in the FIR, being material witnesses, their statements should have been recorded promptly. The belated recording of their statements without sufficient reason, also raises suspicion about the prosecution case.

47. The appellant, Omwati, who died during the pendency of this appeal, had made on extra-judicial confession before Dharampal and Mahipal. It is a settled principle of the law that an extra-judicial confession made by an accused, under Section 24 Evidence Act, is a weak piece of evidence.

48. In the present case, the extra-judicial confession was made by the co-appellant, Omwati, against whom the appeal has abated. According to P.W.2 Dharampal and P.W.3 Mahipal, she did not say anything in her extra-judicial confession against the surviving appellants, Vijay Pal and Om Pal, regarding their participation in the offence. Therefore, this point does not require any further consideration by this Court.

49. It is the prosecution case that after the death of the deceased, her dead body was cremated by the appellants at about 4:00 a.m. in a plot of land belonging to the appellants. The Investigating Officer has collected the burnt bones and ashes from the place where the dead body was cremated, and, according to the site-plan, it was a plot and not a cremation ground. There is no evidence that the plot belonged to the

appellants. P.W.2 Dharampal has said that he did not go with the dead body for cremation, along with others, and had returned to his house. P.W.3 Mahipal has said that the appellants took the dead body to their plot and he returned to his house. None of the above two witnesses said that the dead body of the deceased was cremated in their presence.

50. It has come in the statements of P.W.2 and P.W.3 that many villagers were present at the house, including Omwati (mother-in-law) and Jai Bhagwan (husband of the deceased). The prosecution has not proved who lit the pyre. It has also not been proved in clear terms that the appellants, Vijay Pal and Om Pal, cremated the dead body along with co-appellant Omwati in order to cause the disappearance of evidence of the crime. In absence of such evidence, it can not be said that the appellants cremated the dead body and caused disappearance of evidence.

51. In view of the above discussion, we come to the conclusion that the Trial Court failed to appreciate evidence in the proper prospective and without applying the settled principles of law, assumed that not informing the informant about the death of the deceased and cremation of the dead body by night raised suspicion that the appellants were involved in the crime. The learned Trial Court also wrongly assumed that the appellants committed the offence and believed the prosecution case on the ground that Jai Bhagwan, the husband of the deceased, was not roped in this case, which rules out the possibility of a false implication of the appellants. It is a settled principle of the law that strong suspicion alone is not sufficient to convict an accused, and suspicion, no matter how strong, cannot replace legal proof in a criminal trial. Proof is established through evidence presented by the prosecution. Suspicion is the distance between “may be true” and “must be true.” The prosecution evidence must cover this distance with ‘clear, cogent and unimpeachable’ evidence to bridge the gap. A Court cannot base a conviction on mere conjectures or to accept suspicion as proof, even if the accused fails to explain certain things. Therefore, there is no concrete

evidence against the surviving appellants, Vijay Pal and Om Pal regarding their involvement in the offence.

52. The prosecution has failed to prove the essential ingredients of dowry death against the appellants, Vijay Pal and Om Pal. It is not proved that they are relatives of the deceased's husband. There is no evidence that they demanded dowry. It is also not proved that they committed cruelty *vis-a-vis* the deceased soon before her death. In view of the absence of essential ingredients, the presumption of dowry death against the appellants, under Section 113-B of the Indian Evidence Act, is not attracted, as already remarked. It is also material to note that the appellants, Vijay Pal and Om Pal did not live in the same house with the deceased and would not benefit by the demand of dowry. There is also no evidence that they cremated the dead body of the deceased to destroy the evidence of the crime. Thus, the prosecution has failed to prove its case beyond reasonable doubt and the Trial Court has not appreciated the evidence in correct prospective. The learned Trial Judge has illegally convicted the appellants. Thus, the impugned judgment and order passed by the Trial Court is liable to be set aside and the appellants, Vijay Pal and Om Pal deserve to be acquitted.

53. In view of the above, the criminal appeal is **allowed.** The impugned judgment and order dated 11.06.1991 passed by the Trial Court is set aside and the appellants, Vijay Pal and Om Pal are acquitted of offence punishable under Section 304-B and 201 IPC.

54. The appellant, Vijay Pal is in custody. He is ordered to be released forthwith, if not wanted in any other case. The appellant, Om Pal is already on bail. He need not surrender. His bail bond is cancelled and the sureties are discharged.

55. The appellants shall execute personal bonds in the sum of Rs.25,000/- each under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against them acquittal.

56. Let a copy of this order be forwarded to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

(Sanjiv Kumar,J.) (J.J. Munir,J.)

December 19, 2025
Amit/-

Digitally signed by :-
AMIT KUMAR
High Court of Judicature at Allahabad