

Kailash Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-19-1997

Reported in : I(1998)DMC650; 1998(1)WLC468

Judge : Rajendra Saxena and; P.K. Tewari, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 176, 201 and 304B; [Evidence Act, 1872](#) - Sections 113B

Appeal No. : Crl. A. No. 230 of 1995

Appellant : Kailash Chand

Respondent : State of Rajasthan

Advocate for Def. : R.S. Agrawal, P.P.

Advocate for Pet/Ap. : S.R. Surana and; Anil Upaman, Advs.

Disposition : Appeal allowed

Judgement :

Rajendra Saxena, J.

1. This appeal has been preferred against the judgment dated 29.4.1995 passed by the learned Additional Sessions Judge, Dausa, whereby he convicted the appellant for offence under Section 304B, IPC, and sentenced him to

imprisonment for life and a fine of Rs. 2,000/- and in default of payment of fine, to further undergo three months' S.I.

2. Briefly the relevant facts for the disposal of this appeal are that on 28.5.1994 PW 7 Mool Chand Meena submitted a typed report Ex. D. 1 to PW 14 Mishrilal, SHO, PS Nangal Rajavatan to the effect that about 3 years ago the marriage of his daughter Smt. Rampati was solemnized with appellant Kailash, that for last two years, she was living with her husband in Village Chharera from where she used to come to her parental house off and on and that Rampati gave birth to a male child about a year back, who died. Smt. Rampati was subjected to cruelty and harassment by her husband Kailash alleging that she did not bring sufficient dowry; that on 20.5.1994, Rampati alongwith Kailash had come to his Village Rahuvas to attend the marriage of his nephew. At that time, Rampati told him that the appellant wanted Rs. 16,000/- for purchasing a camel cart. On 22.5.1994, she alongwith me appellant returned to her in-laws house situated in Village Chharera. Mool Chand further alleged that in the morning of 24.5.1994, he received information about the death of his daughter Rampati. Thereupon he alongwith others went to Chharera, where he came to know that the dead body of Rampati was cremated hurriedly in the preceding night between 2 a.m. to 5 a.m. He asked Rewarmal, Kailash and Chhotu (father-in-law, husband, & brother-in-law 'Devar' respectively of the deceased) about the cause of death of Rampati. They told that she had died by consuming 'Akra' milk, but later on they gave different versions about the cause of her death. He, therefore, got suspicious and convened Panchayat of villagers, wherein his suspicion about abnormal death of Rampati was reinforced.

3. PW 14 Mishrilal/ SHO drew formal FIR Ex. P. 8 and registered a case under Sections 304B and 201, IPC. PW 16 Amarjit Singh Dy. SP conducted investigation in this case. On 29.5.1994, he inspected the place of incident and prepared site plan Ex. P. 5 and also seized ash and pieces of charred bones of the deceased vide seizure memo Ex. P. 6 as also 'Tikki', 'Sindoor' etc. vide seizure memo Ex. P. 7, from the cremation ground. After completion of the investigation, the police submitted a challan against appellant Kailash Chand, his father Rewarmal/ his mother Smt. Bachchi @ Parbhati for offences Under Sections 304B & 201, IPC,

and against other co-accused Gopal, Prabhu, Nathulal, Roopa @ Roopnarain and Bhooriya for offences u / Secs.201&176,IPC in the Court of the learned Additional Chief Judicial Magistrate, Dausa, who in turn committed the case to the Court of Sessions. The learned trial Judge framed the charge for offences under Sections 304B, IPC, 201, and 176, IPC against all the accused persons, who denied the indictment and claimed trial. To prove its case, the prosecution examined as many as 16 witnesses. The appellant in his statement recorded under Section 313, Cr.P.C. denied the circumstances appearing against him in the prosecution evidence and asserted that he along with his wife Rampati used to live separately from his parents; that on the ill fated night, Rampati was bitten by some insect while she was urinating and then she died. Co-accused persons also stated likewise. However, no evidence was produced in defence. The learned Additional Sessions Judge after trial by the impugned judgment acquitted co-accused Rewarmal, Smt. Bachhi, Prabhu, Nathulal Gopal, Roopa and Bhourilal Under Sections 304B, 201 & 176, IPC and appellant Kailash for the offences Under Sections 201 & 176, IPC but convicted him for the offence Under Section 304B, IPC and sentenced him in the manner indicated above. Hence this appeal.

4. We have heard Mr. S.R. Surana, the learned Counsel for the appellant and Mr. R.S. Agrawal, the learned Public Prosecutor at length, and carefully perused the record of the Trial Court-1.

5. Mr. Surana has strenuously canvassed that there has been an inordinate delay of five days in lodging the FIR which has not been explained at all, which raises serious suspicion about correctness and truthfulness of the prosecution case. He asserted that as per testimony of PW 6 Ranglal, it stands amply established that typed report Ex. D. 1 was drafted by an Advocate after due deliberation and this fact, itself raises strong doubt against the prosecution story. His next thrust of argument is that there is not a fringe of evidence to establish that deceased Rampati was subjected to cruelty or harassment by the appellant in connection with any demand of dowry soon before her death. Moreover, there is no cogent evidence about the cause of death of the deceased. Thus, basic ingredients to constitute dowry death as contained in Section 304B, IPC are conspicuously missing. The learned trial Judge has, therefore, committed illegality of fact as well

as of law in convicting the appellant Under Section 304B, IPC. He submitted that the learned trial Judge has disbelieved the prosecution evidence and acquitted father, mother and brother of the appellant and other co-accused persons, but on the self same evidence without any specific allegation and clear, cogent and convincing evidence against the appellant, has convicted him Under Section 304B, IPC. Mr. Surana pointed out that the evidence in this case specially statements of PW 6 Ranglal, PW 7 Moolch and and PW 8 Jansi are inconsistent, contradictory and unreliable. Moreover, PW 1 Jainarain & PW 2 Nahnu, who have not been declared hostile by the prosecution, have not supported the prosecution case at all. On the other hand, they have specifically, stated that Smt. Rampati was never subjected to cruelty or harassment nor any demand of dowry was made by the appellant, that she was not cremated in hot haste and surreptitiously and that the appellant had sent information about the death of Rampati to her parents, who had reached at the cremation ground itself. Mr. Surana submitted that as per prosecution case, appellant and his father had immediately taken Rampati to a doctor. Hence their conduct shows that deceased was not hurriedly or surreptitiously cremated. Another plank of his argument is that the prosecution has miserably failed to establish about exact cause of death of Rampati. Even according to the prosecution story when Rampati insisted to go to her parents' house, co-accused Rewarmal got enraged and inflicted a lathi. But the learned trial Judge has disbelieved the prosecution version on this count and has acquitted Rewarmal. According to him, it is not at all a case of dowry death and that provisions of Section 113B of the Indian Evidence Act raising presumption against the appellant cannot be pressed into service. The learned trial Judge has misread the evidence recorded in this case and committed grave illegality in convicting the appellant.

6. On the other hand, the learned Public Prosecutor contended that PW 7 Mool Chand had convened a Panchayat of community members, which lasted from 25.5.1994 to 27.5.1994 and thereafter he lodged the report Ex. D. 1. Thus, the delay has been satisfactorily explained and the same is not at all fatal. He asserted that from the statements of the PWs Ranglal, Jansi, Jagdish, and Gangasahay, it becomes abundantly apparent that Smt. Rampati was subjected to cruelty and harassment by the appellant and his family members in connection

with their demand of dowry, that on 19.5.1994 the appellant alongwith Smt. Rampati had come to Village Rahu was to attend the marriage of Jagdish and at that time the appellant had asked Ranglal and Mool Chand to give him Rs. 16,000/- for the purchase of camel cart and that when Mool Chand offered to give his own camel cart to him, the latter declined and insisted that cash amount of Rs. 16,000/- be given to him and that when Mool Chand showed his inability, the appellant got enraged and took away Rampati to his house in the evening of 22.5.1994; that the appellant or his father did not inform Moolchand about the death of Rampati instead they hurriedly cremated her dead body. According to him, the prosecution has successfully proved that the death of Smt. Rampati had occurred within 7 years of her marriage in abnormal circumstances and that soon before her death she was subjected to the cruelty and harassed in connection with the demand of dowry. Thus, the learned trial Judge has not committed any illegality in convicting the appellant for offence under Section 304B, IPC.

7. We have given our thoughtful and anxious consideration to the rival submissions of the learned Counsel for the parties.

8. The nature of evidence adduced by the prosecution in this case consist of the statement of PW 1 Jainarain and PW 2 Nahu, who are the neighbours of the appellant. Both of them have deposed that deceased Smt. Rampati was married to appellant Kailash about four years prior to the incident, that the deceased used to live with her husband, who looked after her well. Appellant was living away from his parents and used to live in a separate house. Kailash and deceased Rampati had gone to attend a marriage about 2-3 days prior to the incident, that on the ill-fated night at about 12-1 O'clock, when Rampati went outside her house to urinate, she was bitten by some poisonous insect. Rampati raised an alarm. Thereafter Kailash also raised hue and cry. Thereupon they went to appellant's house and thereafter Rampati breathed her last. These witnesses have further deposed that on the next day at about 8-9 a.m. they alongwith other villagers cremated the dead body of Rampati and that by that time her father had also arrived at the cremation ground. They further deposed that the father of the deceased did not raise any objection. These witnesses have not been declared

hostile by the prosecution and as such there is no valid reason to dis-believe their sworn testimony. The learned trial Judge has, however, conveniently ignored the deposition of these two witnesses.

9. PW 3 Shri Narain, PW 4 Ram Nath & PW 5 Kalyan, who are the residents of Village Chharera, have stated that when the deceased was urinating she was bitten by some insect and that the members of appellant's family had sent a person to inform the parents of the deceased. These witnesses have also stated that appellant Kailash used to keep the deceased comfortably and well. However, these witnesses have been declared hostile.

10. PW 5 Kalyan has also stated that no Panchayat was convened in his presence though in his police statement Ex. P. 3 he had stated that after the death of Rampati a Panchayat was convened in the night of 23.5.1994, wherein he alongwith PW3 Shri Narain, PW 4 Ram Nath, PW 10 Ganga Sahai, Hargovind and Nathu had participated, that the Panchayat had asked appellant Kailash and other co-accused persons not to cremate the dead body of the Rampati without informing the police, but they did not pay any heed to their advice and hurriedly cremated her dead body in the early hours of the night. However during trial PW 3 Narain and PW 4 Ram Nath have denied these facts incorporated in their police statements and deposed that the dead body of Rampati was cremated at about 8-9 a.m. next day. PW 5 Kalyan has also been declared hostile and he does not render any assistance to the prosecution.

11. PW 6 Ranglal and PW 7 Mool Chand are the brother and father respectively of the deceased. They stated that the deceased was married to appellant Kailash about 3 years prior to the incident, that the deceased had given birth to a male child, who died within 2/3 days, that her in-laws used to harass and maltreat her, that Rampati informed them (PWs 6 & 7) about the said harassment, that on 19.5.1994 appellant alongwith deceased Rampati had come to Village Rahuwas to attend the marriage of Jagdish, that at that time the appellant demanded Rs. 16.000/- for purchase of a camel cart, that thereupon Mool Chand offered to give his camel cart, which the appellant refused to accept and on 22.5.1991 took away Smt. Rampati and that on 24th May, 1994, Jugal Kishore(PW 15) informed them

about her death. It may be mentioned here that PW 15 Jugal Kishore, who is the real brother-in-law of PW7 Mool Chand, has specifically stated that he did not inform Mool Chand and Ranglal about the death of Rampati. He has also resiled from the contents of his police statement Ex. P.11. This witness has also been declared hostile. Thus Jugal Kishore has not corroborated the testimony of PWs Ranglal and Mool Chand.

12. PW 8 Jansi, is the elder brother of PW 7 Mool Chand, while PW 9 Jagdish and PW 10 Ganga Sahai are cousins of the deceased. These witness stated that the deceased used to tell them that her husband maltreated and harassed her in connection with demand of dowry. They also stated that the appellant had asked Mool Chand to give him Rs. 16,000/- for purchasing a camel cart, but the testimony of these witnesses is quite vague, inconsistent and contradictory.

13. PW 11 Parbhat is a witness of the Panchayat, which allegedly had taken place in the night of 23rd May, 1994 in Village Chharera. He stated that in that Panchayat appellant Kailash and his father Rewar were also present, but the Panchayat did not come to any conclusion about the cause of death of Rampati. This witness was also declared hostile and his evidence, therefore, does not help the prosecution.

14. PW 12 Mohan Lal, Senior Teacher, deposed that on the ill-fated day at about 8.00 a.m. appellant Kailash had brought his wife in a camel cart to the clinic of Ramjilal Kumar, but he said clinic was closed, that the appellant searched for another doctor and that appellant's wife had told him that she was bitten by some insect and she was feeling drowsy. This witness was also declared hostile and he resiled from the police statement Ex. P. 10.

15. PW 14 Mishri Lal, the then, SHO has proved formal FIR Ex. P.8. PW 16 Amarjeet Singh, Dy S.P., who conducted the investigation has proved the Site Plan Ex. P.5, Seizure Memo Ex. P.6 of charred bones and ash of the deceased and Seizure Memo Ex. P.7 of 'Bindi', Tikka, etc. seized from the cremation ground. He has also proved various statements recorded by him Under Section 161, Cr.P.C. of the witnesses.

16. PW 13 Sampat Singh has stated that after completion of investigation by the Dy. S.P., he filed the charge sheet in the case.

17. From a careful perusal and close scrutiny of the prosecution evidence, it stands well proved that the death of Smt. Rampati had occurred in the night intervening 23 and 24th May, 1994 at the house of the appellant. But there is not a fringe of evidence to establish that her dead body was cremated in the early hours of the night. On the other hand, PW 1 Jai Narain and PW 3 Shri Narain have deposed that her dead body was cremated on the next day at about 8-9 a.m. Both these witnesses have not been declared hostile by the prosecution and as such there is no valid reason to disbelieve their testimony. PW 3 Shri Narain, PW 4 Ram Nath & PW 5 Kalyan, who, have been declared hostile, have also deposed that the dead body of Rampati was cremated on the next day morning. Thus it is not proved that the appellant had cremated the dead body of Rampati hurriedly and surreptitiously in early hours of 24.5.1994.

18. In this case, the alleged incident took place in the night of 23.5.1994, but PW 7 Mool Chand lodged the typed report Ex. D. 1 at Police Station Nangal, Rejawatan as late as on 28.5.1994 at about 3.00 p.m. PW 6 Ranglal, brother of the deceased has admitted that typed report Ex. D. 1 were drafted by Mr. Brij Mohan, Advocate. But no reason whatsoever for the inordinate delay in filing the FIR has been mentioned in Ex.D. 1.

19. PW 7 Mool Chand, the father of the deceased, has specifically admitted that he had reached in Village Chharera alongwith Motilal Sarpanch and other residents of his Village Rahuwas on 24.5.1994 and that he remained there till the Panchayat and that thereafter after having deliberations with the villagers he lodged the report on 28.5.1994 at about 10.00 a.m. But this statement is also against the record because the typed report Ex. D. 1 was lodged at 3.00 p.m. on 28.5.1994 as per testimony of PW 14 Misri Lal, In-charge Police Station. The prosecution has not produced Motilal Sarpanch to corroborate the testimony of Mool Chand on this count. The prosecution has also not produced any witness, who had taken part in the Panchayat of the community, allegedly convened by Mool Chand, which lasted from 25th to 27th May, 1997. If on 24.5.1994 Mool

Chand had come to know that the death of Smt. Rampati had occurred in abnormal or suspicious circumstances then in natural course of human behaviour and conduct he ought to have lodged the report promptly in the police station but he did not do so. Even in typed report Ex. D. 1 no reason whatsoever for this inordinate delay has been mentioned. This fact adversely affects the prosecution case.

20. The Apex Court in *Thulia Kali v. The State of Tamil Nadu*, AIR 1973 SC 501, has held that FIR in a criminal case is extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial and that the importance of such report can hardly be over-estimated from the stand point of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits, the part played by them as well as the names of the eye witnesses present at the scene of occurrence. The delay in lodging the First Information Report quite often results in embellishment which is a creature of after-thought. The Apex Court has observed that on account of delay the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of the coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the FIR should be satisfactorily explained.

21. In the instant case, the typed report Ex. P1 was drafted by an Advocate after five days of the alleged occurrence: This fact itself raises reasonable suspicion against the prosecution story specially when any explanation for the delay in lodging the FIR is conspicuously missing.

22. The prosecution has also miserably failed to adduce cogent, consistent and convincing evidence regarding the exact cause of death of the deceased. In report Ex. D1 it has been mentioned that appellant Kaitash and co-accused Rewar Mal had informed that Rampati had died after: consuming the milk of 'Akra'. During investigation, the various witnesses in their police statements told the Investigation Officer that co-accused Rewar Mal had admitted to have inflicted a lathi blow to

the deceased, because she insisted to go alone to her parents house. During trial as per testimony of PWs 1 to 4 Rampati died as she was bitten by some insect, while she had gone out to pass urine. PW 12 Mohan Lal, Senior Teacher has also deposed that Smt. Rampati had told him that she was bitten by some insect. Thus, the prosecution has palpably failed to prove about the exact cause of death of Smt. Rampati.

23. The learned trial Judge after discussing, analysing and assessing statements of PW 6 Ranglal, PW 7 Mool Chand, PW S Jansi, PW 9 Jagdish and PW 10 Ganga Sahai has concluded that their testimony was vague, inconsistent and unreliable regarding the alleged demand of dowry or that the deceased was subjected to cruelty and harassment in connection with any demand of dowry. He has, therefore, acquitted appellant Under Sections 201, 176, IPC and co-accused for the offence Under Sections 304B, 201 & 176, IPC. The learned trial Judge has, however, placed reliance on their testimony against the appellant for the alleged demand of Rs. 16,000/- made by him for the purchase of a camel cart about 2-3 days prior to the death of Smt. Rampati. But in typed report Ex. DI at portion C to D Mool Chand (PW 7) has mentioned that on 22.5.1994 Smt. Rampati had gone to Village Chharera alongwith her husband and that at that time she had told him that her husband (Kailash) wanted Rs. 16,000/- for purchasing a camel cart. It was also mentioned therein that for last one year the mother-in law Smt. Bachhi, father-in law Rewar Mal, husband Kailash and Dewar were harassing Smt. Rampati in connection with the demand of dowry. Thus in report Ex. DI it has not been alleged that appellant Kailash had demanded any dowry from the informant. However during trial, PW 7 Mool Chand improved his earlier version and against the facts mentioned in Ex. DI stated that appellant Kailash had told him to give Rs. 16,000/-, that he offered to give him a camel cart but the latter insisted to give him Rs. 16,000/- in cash. Mool Chand was specifically confronted with this material omission in his report Ex. DI and police statement Ex. DI, but he has miserably failed to give any reasonable explanation for this material omission. It is, therefore, apparent that Mool Chand has unsuccessfully tried to make this material improvement during trial which cannot be believed. Mool Chand later on changed his statement and told that the demand of Rs. 16,000/- was made to him by deceased Smt. Rampati as well as by the appellant.

24. On the other hand, PW 6 Ranglal stated that when the deceased had told Mool Chand about the alleged demand of the appellant for Rs. 16,000/-, he(Ranglal) was at a distance of about 2 - 3 fields from them. He categorically refuted that appellant Kailash had ever made any demand for Rs. 16,000/- to him and pleaded his ignorance that he did not know as to whether appellant had made such a demand to his father or not. Thus, from the statements of Ranglal and Mool Chand, it does not stand proved that appellant had made any demand for Rs. 16,000/- to these witnesses. On the other hand Jansi (PW 8) has deposed that appellant and Rampati both had made a demand for Rs. 16,000/- from Moolchand in his presence. Apparently, Jansi has spoken a lie on this score. In our opinion, Jansi is an interested witness and his testimony about the alleged demand of Rs.16,000/- by the appellant does not inspire any confidence.

25. PW 10 Ganga Sahai, another cousin of the deceased, has come out with a new story and stated that in Village Nangal appellant Kailash, PW 9 Jagdish, PW 7 Mool Chand and PW 6 Ranglal were sitting together and at that time appellant Kailash had demanded Rs. 16,000/- to which Mool Chand showed his inability and told that he was a poor person, but such a version has neither been given by Ranglal nor by Mool Chand nor by Jagdish. Hence these witnesses cannot be believed regarding the demand of Rs. 16,000/-.

26. Explanation to Section 304B, IPC lays down that for the purposes of the said section 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961, which defines dowry as follows :

'1. Definition of 'Dowry'- In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage; to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or 'Mahr' in the case of persons to whom the Muslim Personal Law (Shariat) applies'.

27. From the statements of PW 6 to PW 10 it is not proved at all that a camel cart or Rs. 16,000/- were given or agreed to be given either directly or indirectly by the deceased or her parents or the parents of the appellant or by any other person at or before or any time after the marriage in connection with the marriage of the appellant and the deceased. On the other hand, from the prosecution evidence, it is fairly borne out that appellant was living separately from his parents and other family members. The prosecution has palpably failed to prove that the appellant had demanded Rs. 16,000/- as dowry from Mool Chand. He even did not make any demand of the said amount for the purchase of a camel cart. Hence the learned Sessions Judge has misread the statements of these witnesses and committed a patent illegality in holding that the appellant had made a demand of Rs. 16,000/- in connection with dowry soon before the death of the deceased.

28. In *Bhakhar Ram and Anr. v. State of Rajasthan*, 1994 (2) WLN 653, it has been reiterated that to raise the presumption as to 'dowry death' the basic pre-requisites are: (i) that the death of such woman has been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) that such death should have occurred within seven years of her marriage; and (iii) that it should be shown that soon before her death, such woman had been subjected to cruelty or harassment for, or in connection with any demand for dowry. The initial burden to prove the aforementioned three basic ingredients of Section 304B, IPC lies on the prosecution and if it succeeds in discharging this initial burden then the provisions of Section 113B, Evidence Act can be pressed into service for raising the presumption against the accused person that he caused the dowry death.

29. In the case on hand, the prosecution evidence regarding the alleged cruelty, harassment or maltreatment by the appellant in connection with any demand for dowry is very vague, inconsistent and completely unreliable. The learned trial Judge has conveniently ignored the material contradictions and inconsistencies in the statements of PWs 6 to 10. He has also ignored the unrebutted and unchallenged testimony of PW 1 Jai Narayan and PW 2 Nahnu, who have deposed that the deceased was living comfortably and happily with the appellant. The learned trial Judge has, therefore, committed patent error in raising an adverse presumption Under Section 113B of the Evidence Act against the

appellant.

30. It may also be pointed out here that the learned trial Judge has disbelieved the testimony of PWs 6 to 10 and acquitted the father, mother and brother of the appellant and other co-accused persons of the offence Under Section 304B, IPC but on the self-same evidence has convicted the appellant Under Section 304B, IPC. As per testimony of PW 12 Mohanlal, Senior Teacher, in the night of 23.5.1994 appellant Kailash had brought his wife on a camel cart to the clinic. Mohanlal had also stated likewise in his police statement (Ex. P. 10) but added therein that at that time the wife of the appellant was unconscious while during trial he has deposed that Smt Rampati had told him that she was bitten by some insect. Therefore, for this improvement, this witness was declared hostile. To our mind, he is a partly reliable and partly unreliable witness.

31. A careful perusal of the statement of Mohanlal certainly proves this fact that on the ill- fated night the appellant had brought his wife Smt. Rampati in a camel cart for showing her to a doctor, but since the clinic was closed, the doctor was not available. Therefore, this conduct of the appellant does not show that he had committed her murder or caused her death. The learned trial Judge has also ignored this relevant and material factor.

32. No other point was pressed before us.

33. Hence for the reasons mentioned above, we allow this appeal and set aside the conviction and sentence of the appellant and acquit him of the offence Under Section 304B, IPC. Appellant Kailash be released forthwith, if he is not required in any other case.