

**Arvind Kumar and ors. Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Apr-26-2001

**Reported in :** 2001CriLJ4834

**Judge :** Sunil Kumar Garg, J

**Acts :** Evidence Act - Sections 113B; [Indian Penal Code \(IPC\), 1860](#) - Sections 113B, 201, 304B and 498A; Code of Criminal Procedure (CrPC) , 1974 - Sections 313 and 482

**Appeal No. :** Criminal Appeal Nos. 125 and 202 of 1997

**Appellant :** Arvind Kumar and ors.

**Respondent :** The State of Rajasthan

**Advocate for Def. :** Ramesh Purohit, Public Prosecutor

**Advocate for Pet/Ap. :** M.L.Garg,; P.R. Choudhary and; Pradeep Shah, Advs.

**Judgement :**

Sunil Kumar Garg, J

1. Both appeal as well as criminal misc. petition are being decided by this judgment, as they arise out of common judgment and order dated 24.02.997 passed by the learned Sessions Judge, Jalore in Sessions case No. 25/93.

S.B. Criminal Appeal No. 125/97 :--

2. The abovenamed accused appellants have preferred the appeal No. 125/97 against the judgment and order dated 24-2-1997 passed by the learned Sessions Judge, Jalore in Sessions Case No. 25/93 by which he convicted and sentenced the accused appellants in the following manner : --

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of accused Convicted Sentence awarded appellants under Section to each accused

appellant

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Arvind Kumar } (Husband of deceased) } 2. Sanwal Chand } 304B, IPC Ten years' (father-in-law of } rigorous deceased) } imprisonment. 3. Kanti Lal } (Jeth of deceased) } 4. Bhanwal Lal } -498A, IPC Three years' (Jeth of deceased) } rigorous imprisonment } and to pay fine } of Rs. 500/-, in 5. Chetal Lal } default of payment (Jeth of deceased) } fo fine, to further undergo SI for 6. Popal Lal } one month. (Devar of deceased) } 7. Smt. Bagtu } (mother-in-law of } deceased) }

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3. The facts giving rise to this appeal, in short, are as follows :-

On 7.8.1992 at about 9.00 A.M. PW 5 Parasmal lodged a written report Ex. P/7 before PW12 Shaitan Singh, who was SHO, Police Station Raniwada, District Pali stating inter-alia that his daughter Laxmi, aged about 22 years (hereinafter referred to as the deceased) was married three years back with accused appellant No. 1 Arvind Kumar S/o Sanwal Chand, resident of village Silason. It was further stated in the report that at the time of marriage, as per custom dowry was given and at the time of marriage, 20 tolas gold was also demanded by the accused appellants and the said demand was also fulfilled. It was further stated in the report that for the purpose of delivery, he took the deceased to his house and at that time, Rs. 50,000/- were also given by him to his son-in-law Arvind Kumar (accused appellant No. 1) and his elder brother and this amount was also not returned back by the accused appellants and they told later on

Both the substantive sentences were ordered to run concurrently. that this amount should be adjusted towards the amount of dowry. It was further stated in the report that ten days back before lodging of the report, he went to her in-laws' house at village Silason and at that time, accused appellants told him that they would not send the deceased unless the demand of dowry was fulfilled and all accused appellants quarrelled on this point and therefore, he came back. It was further dsated in the report that on the fateful day, accused appellants came to him and told that his daughter (deceased) was having stomach pain and, upon this, he immediately went to the place of occurrence, where he found that deceased had been admitted in the hospital in burnt condition and, therefore, he had full confidence that her daughter (deceased) had been killed by accused appellants for not fulfilling the demand of dowry.

On this report, polic FIR Ex. P/8 was chalked out and investigation was got done by PW14 Mahendra Kumar and PW13 Raghuveer Singh.

During investigation, by PW11 Dr. Vasudeo, medical examination of the deceased, before her death, was got conducted on 7.8.1992 at about 5.45 A.M. and her medical examination report is Ex.P/11, which shows that deceased was having 90% superficial burns on her body.

Thereafter, deceased died on the same day i.e. on 7.8.1992 and post morterm of her dead body was got conducted by R. Hastimal, PW15, who opined that cause of her death was shock due to extensive burns and her post mortem report is Ex.P/16 and the separate paper on which her cause of death was opined by PW15 Hastimal is Ex. P/17.

After usual investigation, police submitted challan against the accused appellants for the offence under Sections 498A, 304B and 201, IPC in the Court of Magistrate, from where the case was committed to the Court of Session.

On 27.10.1994, the learned Sessions Judge, Jalore framed charges against the accused appellants for the offence under Sections 498A and 304B, IPC. The charges were read over and explained to the accused appellants. The accused appellants denied the charges and claimed trial.

During trial, the prosecution in support of its case examined as many as 15 witnesses and got exhibited some documents. Thereafter, statements of the accused appellants under Section 313, Cr. P.C. were recorded. In defence, four witnesses were produced by the accused appellants.

After conclusion of trial, the learned Sessions Judge through his judgment and order dated 24-2-1997 convicted the accused appellants for the offence under Sections 498A and 304B, IPC and sentenced each of them in the manner as indicated above holding inter-alia : --

1. That deceased died within seven years of her marriage.
2. That at the time of marriage, accused appellants took 20 tolas gold under pressure.
3. That after marriage, accused appellants demanded Rs. 50,000/- and took Rs. 50,000/- as dowry.
4. That deceased was being tortured and harassed by the accused appellants mentally and physically for and in connection with demand of dowry.
5. That statement of the deceased Ex. D/4, which is alleged to have been recorded by DW2 Arvind Kumar Sengwa as dying declaration on 7-8-1992 was not believed by the learned Sessions Judge.
6. That prosecution has been able to prove its case beyond all reasonable doubts against the accused appellants for the offence under Sections 498A and 304B, IPC.
7. That in para No. 40 of the judgment, the learned Sessions Judge has also ordered to take departmental action against PW11 Dr. Vasudeo, PW12 Shaitan Singh and DW 2 Arvind Kumar.

Aggrieved from the said judgment and order dated 24-2-1997 passed by the learned Sessions Judge, Jalore, this appeal has been filed by the accused appellants.

4. In this appeal, the following submissions have been made by the learned counsel for the accused appellants :--

1. That in the present case, so-called dying declaration Ex.D/4, which was recorded by Arvind Kumar Sengwa, Tehsildar, DW2 on 7-8-1992 should have been believed by the learned Sessions Judge and after placing reliance on it, no case of suicidal or homicidal death of the deceased can be held to be proved and the case is one of accidental death and thus, whole findings of the learned Sessions Judge, by which accused appellants were convicted, stand vitiated.

2. That case of the prosecution is not being supported by the statements of PW7 Narainchand and PW9 Jora and thus, the learned Sessions Judge had erred in coming to the conclusion that it was a case of dowry death.

3. That accused appellants No. 3 Kantilal, No. 4 Bhanwar Lal, No. 5 Chetan Lal, who are Jeth of the deceased and No. 6 Popat Lai, who is Devar of the deceased, have nothing to do with the offence and thus, case against them has been wrongly held to be proved without evidence.

4. That findings of conviction recorded by the learned Sessions Judge for the offence under Section 304B IPC are based on conjectures and surmises and not based on legal evidence and thus, such findings be set aside.

Hence, it is prayed that this appeal be allowed and the accused appellants be acquitted of the charges framed against them.

5. On the other hand, the learned Public Prosecutor and the learned counsel for the complainant supported the impugned judgment and order passed by the learned Sessions Judge, Jalore.

6. I have heard the learned counsel for the accused appellant, learned Public Prosecutor and the learned counsel for the complainant and perused the record of the case.

7. In *Shanti v. State of Harvana* AIR 1991 SC 1226 : 1991 Cri LJ 1713, the Hon'ble Supreme Court had an occasion to explain the ingredients of Section 304B, IPC.

His Lordship K. Jayachandra Reddy (as he then was) said 'A careful analysis of Section 304B, IPC shows that this section has the following essentials :-

1. That death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
  2. Such death should have occurred within seven years of her marriage.
  3. She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
  4. Such cruelty or harassment should be for or in connection with demand for dowry.
8. What Section 304B, IPC requires is that death of the woman should be unnatural. In *Shanti v. State of Haryana* (supra), the Hon'ble Supreme Court has clearly held that for applicability of Section 304B, IPC, question whether unnatural death of a woman was homicidal or suicidal is irrelevant.
9. Section 304B, IPC raises a presumption of culpability against the husband or relative hitherto unknown to our jurisprudence.
10. The prosecution must prove with some positive evidence that there must be material to show that soon before death, the victim was subjected to cruelty or harassment.
11. In the cases of dowry death and suicide, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence, that could be direct or indirect. In this respect, conduct of the husband and other relatives also plays a very vital role in coming to the conclusion of the guilt. In this respect, the decision of the Hon'ble Supreme Court in *Gur Bachan Singh v. Satpal Singh* AIR 1990 SC 209 : 1990 Cri LJ 562 may be seen.
12. Motive for a murder may or may not be. But in dowry deaths, it is inherent. And hence, what is required of the Court to examine is as to who translated it into action as motive for it is not individual, but of family. (See *Ashok Kumar v. State of Rajasthan* AIR 1990 SC 2134 : 1990 Cri LJ 2276

13. Before proceeding further, medical evidence of this case has to be seen.

14. In this case, PW11 Dr. Vasudeo medically examined deceased, before her death, on 7-8-1992 at about 5.45 A.M. and found that she was having 90% superficial burns on her body.

15. It may be stated here that deceased died on the same day and post mortem of her dead body was got conducted by PW15 Dr. Hastimal at about 4.05 P.M. on 7-8-1992.

16. PW15 Dr. Hastimal states in his examination that on 7-8-1992, he conducted the post mortem of the dead body of the deceased and for that, Medical Board was constituted in which apart from him, Dr. Gajendra Singh and Dr. Saloni Agrawal were also members and he found that deceased was having 90% burns and cause of her death was shock due to extensive burns. He has proved the post mortem report Ex. P/16.

17. Thus, from the statement of PW15 Dr. Hastimal and post mortem report Ex. P/16, it appears that deceased died because of burns and in these circumstances, it can easily be said that death of the deceased was unnatural one and for the offence under Section 304B, IPC, it is immaterial whether death is suicidal or homicidal,

18. In the present case, there is no dispute on the point that death of the deceased took place within seven years of her marriage.

19. Thus, in the present case, points Nos. 1 and 2 are well proved by the prosecution so far as the offence under Section 304B, IPC is concerned,

20. The most important aspect of this case is that there is alleged dying declaration of the deceased which is found in her statement Ex.D/4 and the learned Sessions Judge has placed on reliance on it, after giving cogent reasons. These findings of the learned Sessions Judge have been assailed during the course of arguments vehemently and thus, this aspect has to be dealt with carefully,

21. It may be stated here that prosecution has not relied on the so-called dying declaration and that is why, it has been produced in defence and the same is marked as Ex.D/4.

22. In this respect, the statements of PW11 Dr. Vasudeo, PW12 Shaitan Singh and DW2 Arvind Kumar Sengwa are relevant.

23. On this aspect, the case of the defence is that on 7-8-1992 at about 6.30 AM, deceased gave version to DW2 Arvind Kumar Sengwa, which is marked as Ex.D/4, in the following manner :--

That on the night, there was darkness and she took match-box to lit the chimney and when she started to lit the chimney, kerosene oil fell on the ground and it caught hold fire, by which her orna caught fire and, thereafter, her husband tried to save her and people of village gathered and thereafter, she was taken to hospital.

24. The other features of this statement Ex. D/4 are as follows :--

1. That it bears thumb impressions of deceased.
2. That it bears signatures of Tehsildar, Raniwada Arvind Kumar Sengwa, DW2 at place E to F, who recorded it.
3. That it bears signatures of Kantilal Soni, accused appellant No. 3 at places I to J.
4. That it also bears signatures of PW11 Dr. Vasudeo at places A to B.
5. That it also bears endorsement of Tehsildar Arvind Kumar Sengwa, DW2 to the effect that PW6 Smt. Gavri, mother of the deceased, was also present at the time of recording statement Ex,D/4, but she refused to put signatures or thumb impressions on it.

25. PW11 Dr. Vasudeo, who was produced by the prosecution to prove the medical examination report of deceased Ex. P/ 11, has nowhere stated in his examination-in-chief about the so-called dying declaration Ex. D/4, alleged to have been recorded by DW2 Arvind Kumar Sengwa.

In re-examination, he admits the following facts :-

1. That deceased was fully conscious and was in a fit condition to give statement,
2. That Tehsildar recorded her statement in his presence.
3. That his signatures on Ex. D/4 are at places A to B.

In cross-examination, he has admitted the following facts :--

1. That he cannot say that at the time of recording statement Ex. D/4 by DW2 Arvind Kumar Sengwa, whether Jeth of the deceased was there or not.
2. That statement Ex. D/4 was recorded not by the Tehsildar, DW2, but by his Reader,
3. That Thanedar also put his signatures on the statement Ex. D/4.
4. That he did not remember whether thumb impression of deceased was taken once or twice on her statement Ex. D/4.

26. PW12 Shaitan Singh, who was SHO on the relevant date, has stated in his examination that Medical Officer gave him in writing that deceased was in a fit condition to give statement and, thereafter, he called Arvind Kumar Sengwa, Tehsildar, Raniwada, DW2, who recorded the statement of the deceased Ex. D/4 and he was not present at that time and when she was being taken to Gujarat, deceased died on the way.

In cross examination, he has admitted the following facts :--

1. That when statement of the deceased Ex. D/4 was being recorded by DW2 Arvind Kumar Sengwa he was not in the room, but was in the hospital premises.
2. That when he reached the hospital deceased was speaking.
3. That he also recorded the statements of DW2 Arvind Kumar Sengwa, Tehsildar and PW11 Dr. Vasudeo during investigation.

27. DW2 Arvind Kumar Sengwa has stated in his examination that on 7-8-1992, he was Tehsildar, Raniwada and one constable came to him with Tehreer stating that one lady, namely, Laxmi (deceased) was admitted in the hospital and her statement was to be recorded and thereafter, he reached the hospital, where he enquired from PW11 Dr. Vasudeo on the point whether deceased was in a fit condition to give statement and PW11 Dr. Vasudeo told that she was in a fit condition to give statement. Thereafter, he recorded the statement of the deceased Ex. D/4, as per the version given by her. He has further stated that when statement Ex. D/4 was being recorded by him, PW6 Gavri, mother of the deceased was also there, but she refused to sign it and at the time of recording statement of the deceased Ex, D/4, PW11 Dr. Vasudeo was also there.

In cross examination, this witness admits the following facts :--

1. That before recording the statement of the deceased Ex. D/4, Tehreer was given to him in writing by the police and he took out the Tehreer from the pocket of his coat and carbon copy of it, was produced by him during the course of his examination and the same is marked as Ex. D/5.
2. That at the time of recording statement of the deceased Ex. D/4, PW12 Shaitan Singh, SHO was not there.
3. That it is correct to say that before recording the statement of the deceased Ex. D/4, he did not take certificate from the doctor on the point that she was in a fit condition to give statement.
4. That before recording statement of the deceased Ex. D/4, he asked the deceased how the fire took place and apart from this, he did not ask any question, but such type of formalities are not mentioned in Ex. D/4.
5. That it is also correct to say that at the time of recording statement Ex. D/4 of the deceased, he did not oust her mother PW 6 Gavri and PW11 Dr. Vasudeo.
6. That it is also correct to say that he did not have any experience how dying declaration should be recorded.

7. That it is also correct to say that there is no endorsement on Ex.D/4 of the fact that statement was read over to the deceased and she admitted it to be correct one and, thereafter, her thumb impressions were taken and for non-observing these formalities, he could not assign any reasons.

8. That after recording statement of the deceased Ex. D/4, he took signatures of her Jeth Kantilal, accused appellant No. 3, who was sitting at that time in the Chamber of the doctor.

9. That it is also correct to say that dying declaration Ex, D/4 was not sealed on the spot and it was given open to SHO, PW12 Shaitan Singh,

10. That before recording the statement of the deceased Ex. D/4, he did not ask the deceased how incident took place and what she was doing.

11. That he took two thumb impressions of deceased and causes of taking two thumb impressions have been assigned in the statement, but Ex. D/4 does not bear such reasons.

28. On the above evidence, the learned Sessions Judge came to the conclusion that so-called dying declaration Ex, D/4 cannot be believed. In my opinion, the findings of the learned Sessions Judge in this respect appear to be appreciable and liable to be confirmed, as they are based on correct appreciation of evidence on record.

29. It may be stated here that one of the important tests of the credibility of the dying declaration is that the person, who recorded it, must be satisfied that the deceased was in a fit state of mind. For placing implicit reliance on dying declaration, Court must be satisfied that the deceased was in a fit state of mind to narrate the facts of occurrence. If the capacity of the maker of the statement to narrate the facts is found to be impaired, such dying declaration should be rejected, as it is highly unsafe to place reliance on it. The dying declaration should be voluntary and should not be prompted and physical as well as mental fitness of the maker is to be proved by the prosecution.

30. In the present case, from the state-1 ment of DW2 Arvind Kumar Sengwa, it is lvery much clear that though DW2 Arvind Kumar Sengwa says that he took the certificate from the doctor to the effect that deceased was in a fit condition to give statement, but the same is not on the file. PW11 Dr. Vasudeo simply says that deceased was in a fit condition to give statement,, but statement of the deceased Ex.D/4 does not bear such endorsement of PW11 Dr. Vasudeo.

31. Another factor which impaires the credibility of the so-called dying declaration Ex.D/4, is that according to PW11 Dr. Vasudeo, dying declaration Ex. D/4 was recorded by the reader of the Tehsildar Arvind Kumar Sengwa, DW2 and not by the Tehsildar Arvind Kumar Sengwa, DW2 himself and thus, the manner in which it is recorded creates doubt whether it was recorded correctly or not.

32. The fact that before recording the statement of the deceased Ex.D/4, DW2 Arvind Kumar Sengwa did not ask preliminary questions, which should have been put before its recording, also goes to show that so-called dying declaration Ex. D/4 was not correctly and properly recorded and creates doubt whether it contains version given by the deceased or not.

33. The fact that after recording statement of the deceased Ex. D/4, it was given open to PW12 Shaitan Singh further creates doubt on the veracity of dying declaration Ex. D/4.

34. The fact that Tehreer, upon which, DW2 Arvind Kumar Sengwa recorded so-called statement of the deceased Ex. D/4, has not been produced in the present case and carbon copy of which, was produced by DW2 Arvind Kumar Sengwa during the course of his examination, also creates doubt about the manner and conduct of DW2 Arvind Kumar Sengwa.

35. The fact that PW6 Gavri, mother of the deceased, was present at the time of recording statement of the deceased Ex. D/4, but she refused to put signatures or thumb impressons on it, further goes to show that something was wrong at the time of recording statement of deceased Ex. D/4 and that is why she did not put her signatures on it.

36. The fact that accused appellant No. 3 Kantilal, Jeth of the deceased, was also brought to put signatures on the so-called dying declaration Ex. D/4 further goes to show that this dying declaration Ex. D/4 was got prepared by DW2 Arvind Kumar himself and it cannot be correct version of the deceased.

37. The fact that PW11 Dr. Vasudeo was present when the statement of the deceased Ex. D/4 was recorded by DW2 Arvind Kumar and non-mentioning of fact in it by Dr. Vasudeo, PW11 that deceased was in a fit state of mind to give statement, also goes to show that she was not in a fit state of mind to give statement, otherwise there should have been endorsement of PW11 Dr. Vasudeo that deceased was in a fit state of mind to give statement and thus, what has been written by DW2 Arvind Kumar in Ex.D/4, that has been written with his own desire and not at the dictation of the deceased.

38. The fact that Ex. D/4 does not bear endorsement that it was read over and explained to deceased, also creates a doubt on credibility of so-called dying declaration.

39. For the reasons stated above, in my opinion, the learned Sessions Judge has rightly held that so-called dying declaration Ex. D/4 of the deceased was not reliable document and he was right in not placing reliance on it. Hence, the findings of the learned Sessions Judge in this respect are confirmed.

40. In coming to the above conclusion that so-called dying declaration Ex. D/4 was not a reliable document in absence of certificate of doctor that deceased was in a fit state of mind to give statement, the decision of the Hon'ble Supreme Court in Paparambaka Rosamma v. State of Andhra Pradesh 1999 Cri. L.R. (SC) 658 : 1999 Cri LJ 4321 may be referred to, where it was held that in absence of proof of fit state of mind of injured, impugned dying declaration in that case was not found admissible.

41. Similarly, in the present case, after relying on the above decision of the Hon'ble Supreme Court, it can easily be said that so-called dying declaration Ex. D/4 also suffers from the same basic infirmity and it is also inadmissible in evidence.

42. Now the point for consideration is whether before her death, deceased was subjected to harassment by accused appellants and such harassment was for or in connection with demand of dowry or not.

43. In this case, report Ex. P/7 was lodged by PW5 Parasmal on the fateful day i.e. on 7-8-1992 and the main allegation in that report was that he brought deceased to his house when she was to deliver a child and at that time, Rs. 50,000/- were given by him to his son-in-law accused appellant No.1 Arvind Kumar and her Jeth Kantilal (though in the report Ex. P/7, the word 'Jeth' alone is mentioned, but in evidence, this 'Jeth' means accused appellant No.3 Kantilal.) It was also mentioned in the report that when he demanded back this amount back from accused persons, they told that this amount should be adjusted towards dowry demand.

44. The next incident alleged in the report Ex.P/7 was that ten days prior to fateful incident, PW5 Parasmal went to village Silason, her in-laws' place, to take deceased, but she was not sent by them as they said that demand of dowry was not fulfilled by him and then, he returned back.

45. In the report Ex. P/7, it was also mentioned that on 7-8-1992, PW5 Parasmal was told by accused persons that her daughter (deceased) was having stomach pain and, thereupon, he went to the place of occurrence, where he found that her daughter (deceased) was admitted in the hospital in burnt condition.

46. On the back of the report Ex. P/7, some more facts are mentioned and details of incident which took place ten days prior to fateful incident, are also given and it was also stated that at that time along with PW5 Parasmal, PW8 Mahendra Kumar and PW10 Pratap Singh were also there.

47. So far as the fact that Rs. 50,000/- were given by PW5 Parasmal to accused appellants No. 1 Arvind Kumar (husband of deceased) and No. 3 Kantilal (Jeth of deceased) is concerned, the same is found well proved by the statements of PW5 Parasmal, PW6 Gavri and PW8 Mahendra Kumar, PW5 Parasmal has clearly stated that at the time when her daughter (deceased) was to deliver a child, he paid Rs. 50,000/- to accused appellants No. 1 Arvind Kumar (husband of

deceased) and No. 3 Kantilal (Jeth of deceased) and they took that amount on loan. Similar is the statements of PW6 Gavri, mother of the deceased. PW8 Mahendra Kumar, Mama of the deceased, also narrated the same fact. This fact is also found in the report Ex.P/7 lodged by PW5 Parasmal on the fateful day.

48. Thus, there is convincing evidence produced by the prosecution on the point that Rs. 50,000/- were given by PW5 Parasmal to accused appellants No. 1 Arvind Kumar (husband of deceased) and No. 3 Kantilal (Jeth of the deceased) at the time when her daughter (deceased) was to deliver a child.

49. The next point, which is to be considered is that whether the said amount of Rs. 50,000/- was paid back by these two accused appellants, namely, Arvind Kumar and Kantilal, husband and Jeth of the deceased respectively to PW5 Parasmal or not and on demand by PW5 Parasmal, what was the reply given by the accused appellants.

50. PW5 Parasmal has clearly stated in his statement that whenever this amount was demanded by him from accused appellants, they used to say that this amount be adjusted towards dowry, but he did not accept that demand and because of this, a dispute arose between them. Similar is the statement of PW6 Gavri, mother of the deceased.

51. Thus, the fact is that this amount of Rs. 50,000/- was not returned back by the accused appellants and for that amount, a dispute arose between the parties and accused appellants instead of returning that amount to PW5 Parasmal, requested that this amount be adjusted towards dowry.

52. From the statement of PW5 Parasmal, it further appears that two months prior to fateful incident, when deceased was in his house, in the evening, accused appellant No. 4 Bhanwarlal (Jeth of deceased) came to his house to take deceased back and he did not allow her to go with him and thereafter, on the same day, accused appellant No. 4 Bhanwarlal (Jeth of deceased) again came to his house along with accused appellant No. 3 Kantilal (Jeth of deceased), Shaitan and accused appellant No. 7 Bagtu (mother in law of deceased) at about 9-10.00 PM and knocked the door. Thereafter, he and PW6 Gavri came out and they

started quarrelling and told that above amount should be adjusted towards dowry and at that time, PW3 Taga and PW7 Narayan were also there. PW6 Gavri also states this incident. However, the fact of this incident was not mentioned in the report Ex. P/7 lodged by PW5 Parasmal.

53. Two independent witnesses for the above incident have been produced by the prosecution and they are PW3 Taga and PW7 Narayan.

54. PW3 Taga states that about two months prior to fateful incident, at about 9-10.00 PM, he saw that accused appellants No. 4 Bhanwarlal (Jeth of deceased), No. 3 Knatilal (Jeth of deceased) and No. 7 Bagtu (mother-in-law of deceased) and one Shaitan came to the house of PW5 Parasmal and started knocking the door and upon them, PW5 Parasmal and his wife PW6 Gavri came out from the house and thereafter, PW5 Parasmal and these persons started quarrelling over some money transaction, but he could not say what was the transaction between them.

55. The next witness is PW7 Narayan-chand. Though he has been declared hostile, but admits that quarrel was going on between the parties,

56. Thus, from the statements of PWS Parasmal, PW6 Gavri, PW3 Taga and PW7 Narayanchand, one fact is established that some dispute over transaction of money was going on between the parties and this fact should be limited to that extent and in this incident, factum of dowry demand cannot be added as this fact is not found in the report Ex. P/7 and independent witnesses, namely, PWS Taga and PW7 Narayanchand describe this incident only to the extent of dispute with respect to money transaction.

57. Another incident which was mentioned in the report Ex. P/7 was that before ten days of death of the deceased, when PWS Parasmal went to her in-laws' house to take deceased, she was not sent by accused persons and thereafter, he returned back. However, in that report Ex. P/7, this aspect that accused persons threatened him in any manner, is missing.

58. There is one more aspect that in the report Ex. P/7, it was also not mentioned that when PWS Parasmal went to her in-laws' house, he was accompanied by PWS Mahendra Kumar and PW10 Pratap Singh, but this aspect is mentioned in police proceedings on back of Ex. P/7.

59. In his statement recorded in the Court, PWS Parasmal states that when he went to her in-law' house, he was accompanied by PWS Mahendra Kumar and PW10 Pratap Singh and at that time, deceased told him that accused appellants used to harass and torture her for dowry demand, but the fact that dire consequences would follow in case dowry demand was not satisfied, has not been mentioned by this witness.

60. Another witness PWS Mahendra Kumar goes to further say like that if this amount was demanded by PWS Parasmal again, dire consequences would follow and deceased would be killed.

61. Another witness is PW10 Pratap Singh. He has been declared hostile.

62. Thus, from the above evidence, it cannot be said threat of dire consequence was given by the accused appellants at that time, but from the statements of PWS Parasmal and PW8 Mahendra Kumar, the fact that deceased was being harassed and tortured for demand of dowry is established.

63. In this case, as held above, there is clear evidence of the prosecution on the point that amount of Rs, 50,000/- was taken by only two accused appellants No, 1 Arvind Kumar (husband of the deceased) and No, 3 Kantilal (Jeth of the deceased) and not by others, as PWS Parasmal has clearly admitted in his cross examination that at that time, when he gave this amount except accused appellants No, 1 Arvind Kumar (husband of deceased) and No. 3 Kantilal (Jeth of deceased) none else was there. There is also no dispute on the point that when this amount was demanded by PWS Parasmal from the accused appellants mainly Arvind Kumar (husband of deceased) and Kantilal (Jeth of deceased), a dispute arose between the parties about the return of this amount, as it was the case of the prosecution that these two accused appellants told him that this amount should be adjusted towards dowry.

64. In these circumstances, the very pertinent question for consideration is whether all accused appellants should be held guilty for dowry demand or these two accused appellants, namely Arvind Kumar (husband of deceased) and Kantilal (Jeth of the deceased), to have taken this amount, should be held guilty only.

65. It may be stated here that in dowry death cases, the in-laws' of deceased should not be roped in only on ground of being close relations of husband of deceased and overt acts attributed to each of them should be proved beyond reasonable doubt. For the fault of the husband, the in-laws' of deceased or the other relations of husband of deceased cannot be held to be involved in the demand of dowry. In cases where such accusations are made, overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications, such relations should not be held guilty for the offence relating to dowry death. In society, a tendency has, however, developed in these days for roping in all relations of the in-laws' of the deceased wives in the matters for dowry deaths. This aspect was dealt with by the Hon'ble Supreme Court in *Kans Raj v. State of Punjab* AIR 2000 SC 2324 : 2000 Cri LJ 2993.

66. Keeping the above principles in mind, the cases of accused appellants No. 1 Arvind Kumar (husband of deceased) and No. 3 Kantilal (Jeth of deceased) can easily be separated from the cases of other accused appellants in the present case.

67. In the present case, Rs. 50,000/- were taken by accused appellants No. 1 Arvind Kumar (husband of deceased) and No. 3 Kantilal (Jeth of the deceased) from PWS Parasmal and so far as return back of this amount to PWS Parasmal is concerned, PWS Parasmal would naturally ask amount from them, if any dispute has arisen, it does not mean that other persons are equally responsible, as these two accused appellants Arvind Kumar (husband of deceased) and Kantilal (Jeth of deceased) are responsible.

68. Therefore, overt acts so far as other than these two accused appellants No. 1 Arvind Kumar (Husband of deceased) and Kantilal (Jeth of deceased) are concerned, the same have not been proved by the prosecution beyond all

reasonable doubts, looking to the entire evidence on record. Therefore, the findings of the learned Sessions Judge convicting accused appellants No. 2 Sanwal Chand (father-in-law of deceased), No. 4 Bhanwarlal (Jeth of deceased), Chetan Lal (Jeth of deceased), No. 6 Popat Lal (Devar of deceased) and No. 7 Smt. Bagtu (mother in law of deceased) for the offence under Sections 304B and 498A, IPC are liable to be set aside and their appeal deserves to be allowed.

69. However, so far as these two accused appellants No. 1 Arvind Kumar (husband of deceased) and No. 3 Kantilal (Jeth of deceased) are concerned, since in the present case, death, of the deceased was unnatural one as before her death, demand of dowry in shape of return of amount of Rs. 50,000/- was made by these two accused appellants and thus, looking to the entire evidence on record, prosecution has been able to prove its case beyond all reasonable doubts against these two accused appellants for the offence under Sections 304B, IPC and 498A, IPC.

70. It may be stated here that motive is inherent in every dowry death. It plays a vital role in determining the guilt when only circumstantial evidence is available.

71. Apart from this, in dowry death cases, main person is husband and in the present case apart from husband of deceased Arvind Kumar (accused appellant No. 1). Jeth of deceased Kantilal (accused appellant No. 3) is also associated with the demand of dowry in not returning the amount received by them from PWS Parasmal.

72. So far as these two accused appellants No. 1 Arvind Kumar (husband of deceased) and No. 3 Kantilal (Jeth of deceased) are concerned, against them presumption under Section, 113B of the Indian Evidence Act may also be drawn.

73. The presumption under Section 113B of the Indian Evidence Act can be raised only on the proof of the following essentials :-

1. The question before the Court must be whether the accused has committed the dowry death of a woman. This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B, IPC.

2. The woman was subjected to cruelty or harassment by her husband or his relatives.
3. Such cruelty or harassment was for or in connection with any demand for dowry.
4. Such cruelty or harassment was taking place soon before her death.

74. The evidence, which has been discussed above, clearly establishes the above four conditions so far as these two accused appellants No. 1 Arvind Kumar (husband of deceased) and No. 3 Kantilal (Jeth of the deceased) are concerned, as in the present case, death of the deceased was unnatural and under abnormal circumstances and she was subjected to cruelty or harassment by her husband Arvind Kumar, accused appellant No. 1 and her Jeth Kantilal, accused appellant No. 3 and such cruelty or harassment was for or in connection with demand for dowry. Therefore it is a fit case where presumption under Section 113B, IPC can be drawn so far as accused appellants No. Arvind Kumar (husband of deceased) and No. 3 Kantilal (Jeth of deceased) are concerned and for that decision of the Hon'ble Supreme Court in Hem Chand v. State of Haryana AIR 1995 SC 120 can be relied upon

75. For the reasons stated above, it can easily be said that prosecution has been able to prove its case beyond all reasonable doubts against the accused appellants No. 1 Arivnd Kumar (husband of the deceased) and No. 3 Kantilal (Jeth of the deceased) for the offence under Sections 304B and 498A, IPC and thus, the findings of the learned Sessions Judge convicting them for the said offences are liable to be confirmed and their appeal deserves to be dismissed. For rest accused appellants, findings of the learned Sessions Judge are liable to be set aside and they are entitled to acquittal.

S.B. Criminal Misc. Petition No. 202/1997

76. In para 40 of the impugned judgment, the learned Sessions Judge, Jalore directed the higher officers of PW11 Dr. Vasudeo, PW12 Shaitan Singh and DW2 Arvind Kumar Sengwa (Petitioner in the present misc.petition) that action in the

administrative nature be taken against them, after taking into consideration all aspects. Out of these three persons, DW2 Arvind Kumar Sengwa has filed this criminal misc. petition under Section 482, Cr. P.C. with the prayer that the said observations made by learned Sessions Judge in para 40 of the impugned judgment, be quashed.

77. In my considered opinion, the learned Sessions Judge has not ordered that action be taken immediately against DW2 Arvind Kumar Sengwa (petitioner in the present misc.petition), but he only directed the higher officers that the matter be enquired into from all points of view.

78. In the present case, so-called dying declaration of the deceased Ex. D/4 has been found to be false one and in such circumstances, if some observations were made by the learned Sessions Judge in para 40 of the impugned judgment against DW2 Arvind Kumar Sengwa (petitioner) and others, though they in no manner reflect that he has found them guilty, but he has simply ordered that enquiry in this respect be made and from this point of view, these observations should not be set aside and this petition under Section 482, Cr. P.C. filed by petitioner Arvind Kumar Sengwa, DW2 is liable to be dismissed.

The result of the above discussion is that :--

1. The appeal filed by the accused appellants No. 1 Arvind Kumar (Husband of the deceased) and No. 3 Kantilal (Jeth of deceased) is dismissed, after confirming the judgment and order dated 24.2.1997 passed by the learned Sessions Judge, Jalore so far as they relate to them.

Since accused appellant No. 3 Kantilal (Jeth of deceased) is on bail, he shall surrender himself before the trial Court immediately and in case he does not surrender, the trial Court shall take immediate steps for arresting and sending him to jail to serve out the remaining period of sentence.

2. The appeal filed by the accused appellants No. 2 Sanwal Chand (father-in-law of deceased), No. 4 Bhanwar Lal (Jeth of the deceased), No. 5 Chetan Lal (Jeth of the deceased), No. 6 Popat Lal (Devar of the deceased) and No. 7 Smt. Bagtu

(mother-in-law of the deceased) is allowed and the judgment and order dated 24.2.1997 passed by the learned Sessions Judge, Jalore so far as they relate to them, are set aside and they are acquitted of the charges framed against them. Since they are on bail, they need not surrender and their bail bonds stand discharged.

3. The criminal misc. petition filed by the petitioner Arvind Kumar Sengwa, DW2 is also dismissed.

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