



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



D.B. Criminal Appeal No. 131/1993

State of Rajasthan

----Appellant

Versus

Motilal son of Khetmal Ji, b/c Khatri, resident of Village Sayla,
P.S. Sayla, District Jalore.

----Respondent

For Appellant(s) : Mr. Ramesh Dewasi, PP
Mr. S.P. Sharma with
Mr. Abhimanyu Khatri

For Respondent(s) : Mr. Dharendra Singh, Sr. Advocate
assisted by Ms. Priyanka Borana
Mr. Kaushal Sharma
Mr. G.S. Rajpurohit

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE SANDEEP TANEJA**

Judgment

RESERVED ON :: 07.08.2025

PRONOUNCED ON :: 24.09.2025

(Per Hon'ble Sandeep Taneja, J.)

1. By way of instant criminal appeal, appellant-State has challenged the validity and legality of the judgment dated 16.09.1992 passed by the learned Sessions Judge, Jalore (for short 'the learned Trial Court') in Sessions Case No.60/1991, whereby accused-respondent Motilal has been acquitted for the offences under Sections 302, 307 and 304-B IPC.



2. The case of the prosecution is that on 18.08.1991, accused-respondent after giving beating to his wife Pushpa and sons with iron handle of hand pump and considering them as dead, reached at Police Station Sayla and gave information of commission of offence to SHO Ram Lal (PW-11). The Memorandum of Statement (Ex.P/22), reads as under :

बयान श्री मोतीलाल s/o श्री खेताराम, कौम खत्री, उम्र 30 साल, पेशा चक्की चलाना, सा. समदड़ी मु. सं. न. 61, तारीख 18.08.91 u/s 302 IPC, P.S. सायला”

मु. ता. 18/08/91

ने दरियापत पर जाहिर किया कि मेरी शादी पुष्पा d/o कन्हैयालाल कौम खत्री सा. फलोदी के साथ करीब 5 साल पूर्व हुई थी शादी के बाद मैं मेरी औरत को साथ ही रखता था शादी से करीब एक माह पहले मैंने मेरे पिता द्वारा बनाये हुये मकान में चक्की आटा पीसने की लगवाई और काम शुरू किया शादी के 2 माह बाद मेरी औरत पुष्पा को मैं समदड़ी साथ लाया था जहां बाद साथ ही रहती थी मेरे दो लड़के हैं बड़ा पिन्टू उम्र करीब 3½ साल का है व उससे छोटा नरेन्द्र उम्र करीब 7 माह का है मेरी औरत अक्षर मेरा कहना नहीं मानती थी हमारे घर को दिये हुये जेवर भी मेरी पत्नी ने अपने पिता के घर डाल दिये अब अतः जुलाई में मेरे छोटे साले गोविन्द की शादी होने से बड़ा साला नन्दकिशोर लेने आया तब मैंने मेरी पत्नी व बच्चों को फलोदी भेज दिये मैं पीछे शादी पर गया था जहां से शादी होने के 3-4 रोज बाद मैं मय मेरी पत्नी व बच्चों को जोधपुर लाया जहां से जरिये बस सायला आये जोधपुर मैंने मेरी औरत को समदड़ी होकर सायला आने को कहा तो मना किया सायला आने के बाद मेरी औरत मेरे से टेढ़ी चलती थी मैं कहता वैसे नहीं करती थी मुझे कहती बच्चों को रखो आज करीब 5 बजे मेरी औरत बाहर गई किस के वहां गई पता नहीं वापिस करीब एक घंटा बाद आई व खाना बनाया मेरे लिये खिचड़ी बनाई खुद के पापड़ों का साग व फूलके बनाये मैंने खाना खा लिया मेरे औरत छोटे बच्चे को पीणा में सुलाया हुआ था बड़ा बच्चा पिन्टू व मेरी पत्नी पोल में बैठे थे मैं मेरी पत्नी से तंग आ गया था मुझे एक दम रीस आई तब मैंने मेरी औरत व बच्चों को जान से मारना उचित समझकर रसोई के पास पड़े हैन्ड पंप के लोहा के हैन्डल से मेरी औरत के धड़ा-धड़ सिर में व मुंह पर चोटें मारीं वह बेहोश हो गई तब पिन्टू के सिर में दो मारी वह भी बेहोश हो गया फिर नरेन्द्र के पैर पर व सिर पर मारी तब वह भी मर गया तीनों को मरे समझकर सीधा आपके पास आया हूं जिस लोहा के हैन्डल से मेरी औरत व बच्चों को मारे हैं मौका पर ही रखकर आया हूं

2.1 Based on the above statement, a case was registered under Section 302 IPC on 18.08.1991 (Ex.P/23).





2.2 The case of the prosecution is that due to such beating, wife of accused-respondent Pushpa and one son namely Narendra died.

2.3 After investigation, charge-sheet was filed against accused-respondent under Sections 302, 307 IPC and subsequently additional charge was framed against him under Section 304-B IPC. Accused-respondent denied the charges levelled against him and pleaded innocence.

2.4 During trial, prosecution examined 13 witnesses and got 29 documents exhibited i.e. Ex.P/1 to Ex.P/29. Statement of accused-respondent was recorded under Section 313 CrPC. In defence, the accused-respondent got 9 documents exhibited i.e. Ex.D/1 to Ex.D/9.

2.5 Upon appreciation of evidence, the learned Trial Court acquitted accused-respondent from the charges leveled against him vide impugned judgment.

2.6 Being aggrieved by the said judgment, this appeal has been preferred by the State against acquittal of the accused-respondent.

3. Learned Public Prosecutor submitted that the learned Trial Court failed to appreciate the statements of the witnesses in the correct perspective, thereby committing a grave and serious error of law in acquitting the accused-respondent of the charges under Sections 302, 307 and 304-B IPC. It is further submitted that in the instant case, information was given by the accused-respondent himself, which amounts to his confessional statement. It is further submitted that presence of accused-respondent at the time of incident in the house, which was in his exclusive possession, absolutely rules out the possibility of a stranger's





entry during the daytime. It is also submitted that accused-respondent's remorseful conduct immediately after the occurrence is admissible in evidence.

3.1 It is submitted that recovery of iron handle of hand pump at the instance of accused-respondent pursuant to his confessional statement is also relevant and admissible in evidence. It is further submitted that at the time of lodging report, accused-respondent was wearing a *tehmal (lungi)* stained with human blood, which connects him to the crime and indicates his presence on the spot at the time of incident.

3.2 It is also submitted that from the evidence of Kanhaiya Lal (PW-10), Nand Kishore (PW-12) and Smt. Sugni Bai (PW-13), father, brother and mother of the deceased respectively, it was clearly established that there were complaints by the deceased-wife that accused-respondent used to harass her and also gave threats for finishing her life for want of money. It is submitted that there was also evidence that money was paid by father, mother and brother of the deceased-wife to satisfy the demands of accused-respondent. There was also evidence to show that accused-respondent wanted to marry another woman. It is also submitted that since the incident took place within five years from the date of marriage, there is a presumption of guilt under Section 113-B of the Indian Evidence Act, 1872 (for short 'the Act of 1872').

3.3 On the basis of above submissions, learned Public Prosecutor submitted that prosecution has proved its case beyond reasonable doubt. In view of above circumstances, there was no reason to disbelieve the prosecution case and, therefore, learned Public





Prosecutor prayed for quashing and setting aside the impugned judgment. Learned Public Prosecutor further prayed that the impugned judgment may be reversed and accused-respondent should be held guilty for the offences charged.

4. Per contra, learned Senior Counsel appearing for the accused-respondent submitted that the learned Trial Court has thoroughly appreciated the evidence and material available on record and rightly held that prosecution has failed to prove the case beyond reasonable doubt.

4.1 It is submitted that statement given by accused-respondent to the police officer is not admissible in evidence. Any statement given to a police officer is not admissible under Section 25 of the Act of 1872. It is submitted that no recovery was made at the instance of the accused-respondent. It is also submitted that there are contradictions in the statement of witnesses. It is further submitted that though it is correct that information was given by accused-respondent to the police officer, however, statement was not recorded as was given by accused-respondent. It is also stated that the house was not in the possession of accused-respondent. It is submitted that when accused-respondent saw his wife and children in injured situation, he immediately rushed to the police station and submitted a report. He took the name of Hastimal. However, police did not record the Memorandum of Statement correctly. It is further stated that the accused-respondent has falsely been implicated in this case. Learned counsel for the respondent relied upon judgment passed by the Hon'ble Supreme Court in the case of **Aghnoo Nagesia Vs. State of Bihar** reported in **AIR 1966 Supreme Court 119**.





5. Heard learned counsels for the parties and perused the record.

6. There is no direct evidence/eye witness of the incident. The Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **(1984) 4 SCC 116** has held that when the case is entirely based on circumstantial evidence, the chain of evidence must be so far complete, such that every hypothesis is excluded but the one proposed to be proved. The principles laid down by the Hon'ble Supreme Court in the above-referred judgment read as under :

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.....

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."



7. To prove the case, the prosecution has laid emphasis on the information given by the accused-respondent himself as his confessional statement and the recovery of articles made on the basis of the said statement (Ex.P/22). It is settled law that no confession made to a police officer shall be proved as against a person accused of any offence. However, Section 27 of the Act of 1872 provides that the information given by the accused can be read against him which distinctly relates to the facts thereby discovered. Reference can be made to the judgments delivered by the Hon'ble Supreme Court in the cases of **Delhi Administration Vs. Bal Krishan & Ors.** reported in **(1972) 4 SCC 659 and Aghnoo Nagesia (supra)**.

8. This Court observes that there are following inconsistencies and contradictions in the testimonies of the prosecution witnesses.

8.1 SHO Ram Lal (PW-11) stated that after registration of FIR (Ex.P/23), while making the accused-respondent to sit in police station, he went to hospital, where head-constable Roop Singh (PW-8) had brought injured Pushpa and Pintu in unconscious condition. He further stated that considering serious condition of the injured, as per the advice of Doctor, he sent both of them along with head-constable Roop Singh (PW-8) to the hospital at Jalore, whereas, Roop Singh (PW-8) has not made any such statement in his evidence that he took Pushpa and Pintu to the hospital.

8.2 Ram Lal (PW-11) has further stated that from the hospital, after reaching to the police station, he arrested the accused-respondent in the presence of motbirs Rajendra Kumar and Deva Ram. At that time, accused was wearing *tehmal (lungi)*, which was





taken into possession in the presence of *motbirs*. Ram Lal (PW-11) has also stated that accused-respondent was arrested at 1 AM in the midnight of 18.09.1991 and 19.09.1991, whereas Rajendra Kumar (PW-3) has not stated the same thing in his statement. He stated that he went to the police station around 12 noon to 1 PM on 19.08.1991 and at that time, memo of arrest was made.

8.3 Ram Lal (PW-11) has stated that Rajendra Kumar (PW-3) motbir was going in his jeep towards Barmer, his jeep was stopped in front of the police station and was made a motbir in the night, whereas Rajendra Kumar (PW-3), stated that due to some personal work with SHO, he went to police station, however, he refused to give explanation about said personal work.

8.4 Ram Lal (PW-11) admitted that he knew Hastimal. Initially, he stated that he had never heard about any enmity between accused-respondent and Hastimal. However, upon showing complaint (Ex.D/8), he admitted that the complaint under Section 107/116 (3) Cr.P.C. was submitted by him, which bears his signatures. He also stated that accused-respondent had submitted a report (Ex.D/9) regarding threat to life from Hastimal. It can be inferred that he was trying to conceal the truth for which no explanation was offered by him.

8.5 Ram Lal (PW-11) further stated that he did not carry out proceedings at the place of incident on 18.08.1991 as it was late in the night and, therefore, he reached on the site on the next day i.e. 19.08.1991 and carried out inspection in the presence of motbirs. It is relevant to note that as per the testimony of SHO Ram Lal (PW-11), Head Constable Roop Singh (PW-8) brought injured Pushpa and Pintu to the hospital. He has also stated that





he went to the house of accused-respondent to bring his clothes and at that time house was open. This shows that the police personnel entered in the house in the absence of accused-respondent on 18.08.1991. Clearly, police officer visited the place many a time in absence of accused, however, no recovery was made in the night of 18.08.1991, therefore, it cannot be said that recovery of weapon was made at the instance of accused.

8.6 It is also pertinent to note that FIR (Ex.P/23) has been shown to be registered at around 8-9 PM on 18.08.1991. In clause No.11 of the said report, it is mentioned that Pushpa had died. As per the statement of Ram Lal (PW-11), Pushpa died at midnight of 19.08.1991. In clause 11, it is also mentioned that Pushpa and Narendra died due to injuries caused by accused. As per the post mortem report (Ex.P/11), Pushpa's death occurred after midnight of 19.08.1991. If Pushpa died at midnight, then, there was no occasion to have mentioned of her death in the FIR, which was stated to be registered at 9 PM on 18.08.1991 i.e. prior to her death. This clearly shows that the report was registered after the death of Pushpa raising suspicion in the fair investigation.

8.7 Roop Singh (PW-8) has stated in his statement that the articles were given to Inder Singh (PW-9) on 04.09.1991 for chemical examination, however, there is no entry of the same in the Malkhana Register (Ex.P/18). Inder Singh (PW-9) has stated in his evidence that firstly, he took the articles on 04.09.1991 along with articles of another case. However, there being objection, he brought back the articles to the Police Station Sayla and, thereafter, he again carried the articles on 05.09.1991, however, he failed to give explanation as to why there is no entry of





carrying articles on 04.09.1991 in the Malkhana Register (Ex.P/18). If the articles were carried for chemical examination on 04.09.1991, there would have been entry in the Malkhana Register in this regard. Furthermore, what objection raised by the S.P. Office with regard to the articles, no explanation has been furnished. The articles were handed over to Mr. Parbat Singh in the S.P. Office, however, Parbat Singh has not been produced by the prosecution in evidence. There is no explanation that in S.P. Office the articles remained with whom, which shows that there was some objection with respect to articles of this particular case, which was tried to be concealed by the prosecution.

8.8 The FSL Report (Ex.P/29) mentions that the articles including *tehmal (lungi)* and handle of hand pump were stained with human blood, however, the blood groups of the stains could not be determined. In light of the above inconsistencies, contradictions and in the absence of connecting evidence, the prosecution has failed to prove the guilt of the accused-respondent beyond reasonable doubt.

9. This Court observes that statements of Kanhaiya Lal (PW-10), Nand Kishore (PW-12) and Smt. Sugni Bai (PW-13), father, brother and mother of the deceased Pushpa respectively were taken by the police personnel in Phalodi District on 24.08.1991. There is no explanation as to why the statements were taken after a delay of 6 days after the date of incident and from this, alongwith other evidence, it can be inferred that the statements regarding harassment for dowry are after thought.

9.1 Kanhaiya Lal (PW-10) has stated that he went to Sayla on 20.08.1998 but he did not tell anything to police. He did not even





to police station. He has also stated that he had lent money to his daughter. He also admits that in Ex.D/4 and Ex.D/5 written by him, there is no reference of any harassment by the accused-respondent for demand of dowry.

9.2 Nand Kishore (PW-12) has stated that when he went to take the deceased for marriage of his younger brother, at that time, the accused-respondent made three demands i.e. colour television, scooter and Rs.11,000/-. He also stated that accused-respondent wanted to solemnize second marriage for dowry and cash. However, in the statement of Nand Kishore (Ex.P/27), it was not mentioned that the accused-respondent made the above three demands. Clearly, he improved his statement.

9.3 Similarly, when Smt. Sugni Bai (PW-13) was confronted with her statement (Ex.P/28), she could not explain anything.

9.4 On the other hand, accused-respondent had produced letters (Ex.D/4) to (Ex.D/7). A perusal of (Ex.D/6), letter dated 18.01.1991, which was written by accused-respondent to his wife Pushpa, on which, Kanhaiya Lal was also confronted reveals that accused-respondent and his wife had cordial relations. In letter (Ex.D/4) written by Kanhaiya Lal to Khetmal Ji (deceased Pushpa's father-in-law) and letter (Ex.D/5) written by Kanhaiya Lal to Motilal (accused), there is no complaint regarding demand of dowry by the accused. The accused-respondent was invited to attend marriage of his brother-in-law. In the evidence, it is also found that accused-respondent had attended the marriage.

9.5 The evidence of Kanhaiya Lal (PW-10), Nand Kishore (PW-12) and Smt. Sugni Bai (PW-13), father, brother and mother of the deceased respectively do not prove that the deceased Pushpa





was treated with cruelty by the accused-respondent for demand of dowry to draw presumption under Section 113-B of the Act of 1872.

10. The Hon'ble Supreme Court in the case of ***Mallappa & Ors. Vs. State of Karnataka (Criminal Appeal No.1162/2011, decided on 12.02.2024)*** held as under :

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as :

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of





evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”

11. The scope of interference in the acquittal order passed by the learned Trial Court is very limited, and if the impugned judgment of the learned Trial Court demonstrates a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal as held by the Hon'ble Apex Court in the aforementioned judgments, and thus, on that count also, the impugned judgment deserves no interference by this Court in the instant appeal.

12. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case as well as in light of the aforementioned precedent laws, this Court does not find it a fit case warranting any interference with the detailed, reasoned and justified judgment of the learned Trial Court.

13. Consequently, the present appeal is **dismissed**.

14. Keeping in view the provision of Section 437-A Cr.P.C./Section 481 of the Bharatiya Nagarik Suraksha Sanhita (B.N.S.S.), 2023, the respondent-Motilal is directed to furnish a personal bond in a sum of Rs.25,000/- and a surety bond in the like amount before the learned Trial Court, which shall be made





effective for a period of six months, to the effect that in the event of filing of Special Leave Petition against this judgment or for grant of leave, the accused-respondent, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court as soon as he would be called upon to do so.

15. All pending applications, if any, stand disposed of.

16. Record of the learned Trial Court be sent back forthwith.

(SANDEEP TANEJA), J

(DR. PUSHPENDRA SINGH BHATI),J

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