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**(2025) 10 JH CK 0062**

**Jharkhand HC**

**Case No:** Criminal Appeal (S.J.) No. 782, 747 Of 2003

Sanjay Kumar

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

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**Date of Decision:** Oct. 16, 2025

**Acts Referred:**

- Indian Penal Code, 1860 &mdash; Section 34, 304B, 307, 3498(A)
- Dowry Prohibition Act, 1961 &mdash; Section 2, 3, 4
- Evidence Act, 1872 &mdash; Section 113B

**Hon'ble Judges:** Rongon Mukhopadhyay, J; Pradeep Kumar Srivastava, J

**Bench:** Division Bench

**Advocate:** Parambir Singh Bajaj, A.N. Deo, Santosh Kumar Shukla, Vikram Sinha, Santosh Kumar Shukla

**Final Decision:** Allowed

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**Judgement**

Pradeep Kumar Srivastava, J.

1. Heard Mr. Parambir Singh Bajaj, learned Amicus for the appellants assisted by Mr. A.N. Deo, learned counsel for the appellants and Mr. Santosh Kumar Shukla, learned A.P.P. in Cr.A.(S.J.) No. 782/2003 and Mr. Vikram Sinha and Mr. Santosh Kumar Shukla, learned A.P.P. in Cr.A.(S.J.) No. 747/2003.

2. Both the criminal appeals preferred by the appellants against their judgment of conviction dated 30.05.2003 and order of sentence dated 31.05.2003 passed by learned Additional Sessions Judge-XIII, Dhanbad in Sessions Trial No. 225 of 1996, whereby and whereunder, the appellants have been held guilty and convicted for the offence under Section 304B of the I.P.C. and sentenced to undergo rigorous imprisonment for 10 years.

**FACTUAL MATRIX**

3. The factual matrix giving rise to this appeal is that informant Tilak Dhari Ram (P.W.-6) solemnized marriage of his daughter Nilam Devi (deceased) with Sanjay Ram in the year 1992. After marriage, husband, mother-in-law and father-in-law started demanded Sofa Set, Bed and Wrist Watch from the deceased. Due to non-fulfillment of which, Nilam Devi subjected to cruelty by abusing, assaulting and not providing proper food. It is alleged that after marriage, deceased came to her parental home and complained about the aforesaid demand and torture meted with her and she was not willing to return to her matrimonial home. Anyhow she was convinced to join her matrimonial home. Thereafter, informant's nephew Hira Lal Ram, brother Nand Kishore Ram and his son Manoj Kumar went to the matrimonial home of Nilam Devi, but they were not allowed to enter into the house by her husband and mother-in-law and it was categorically stated that unless and until Sofa Set, Bed and Wrist Watch were not delivered, they will not be allowed to meet their sister. The informant's son accepted to give the above articles, then they were allowed to meet with Nilam Devi and at that time also the deceased told weepingly to her brothers that she might be killed at any time and requested to take her back to her parental home. It is alleged that informant's son after pacifying the matter with mother-in-law and husband of the deceased returned to Calcutta. The informant was managing to give the demanded articles, but within 15 days of the above meeting of his son with his daughter, the informant received a message that his daughter has been set ablaze and admitted at the Central Hospital, Dhanbad for treatment. On receiving aforesaid message, the informant went to said Hospital and found that his daughter Nilam Devi was lying in injured condition on bed, although conscious, but not able to speak. She told by sign language about involvement of her husband, mother-in-law, father-in-law and other accused persons, who have set her on fire by sprinkling kerosene oil. The informant also smelt the odour of Kerosene oil on her body. It is claimed by the informant that the accused persons have killed his daughter due to non-fulfillment of demand of dowry in the shape of Bed, Sofa Set and Wrist Watch.

4. On the basis of above fardbeyan of the informant, FIR being Putki P.S. Case No. 21/1994 was registered for the offence under Sections 498 (A), 307, 34 of the I.P.C. and Section 3 / 4 of the Dowry Prohibition Act. After registration of FIR, the deceased died, hence, Section 304B/34 of the I.P.C. was also added against all the named accused persons.

5. After completion of investigation, charge sheet was submitted for the offence under Section 304B of the I.P.C. The learned Judicial Magistrate, after taking cognizance committed the case to the court of Sessions, where S.T. No. 225/1996 was registered. The accused persons pleaded not guilty and claimed to be tried.

6. In course of trial, altogether 10 witnesses were examined by the prosecution.

P.W.-1: Rajendra Singh Chawla;

P.W.-2: Dilip Kumar Sen;

P.W.-3 : Arbind Kumar Sahu;

P.W.-4 : Sanju Devi;

P.W.-5 : Leela Devi;

P.W.-6 : Tilak Dhari Ram (Informant);

P.W.-7 : S.K. Mandal;

P.W.-8 : Vidya Devi (wife of informant);

P.W.-9 : Dr. Shailendra Kumar;

P.W.-10 : Manoj Kumar Ram (son of informant).

Apart from oral testimony of witnesses, following documentary evidences have been adduced:-

Exhibit-1 : Signature of Tilak Dhari Ram on the fardbeyan.

Exhibit-1/1 : Signature of Bijay Kumar on the fardbeyan.

Exhibit-1/2 : Signature of Sita Ram on the fardbeyan.

Exhibit-1/3 : Signature of Bidya Devi on the fardbeyan.

Exhibit-2: Fardbeyan.

Exhibit-3: P.M. Report.

7. On the other hand, no oral or documentary evidence has been adduced on behalf of the defence. The case of defence is denial from the occurrence and false implication due to accidental burn injuries and death of the deceased while cooking.

8. The trial court after appreciating the evidence available on record and hearing the arguments of the parties, arrived at conclusion that the prosecution has been able to prove the charges under Section 304B of I.P.C. beyond all reasonable doubt against all the accused persons and sentenced them as stated above.

9. Learned Amicus Curiae as well as learned counsel for the appellants assailing the impugned judgment of conviction and sentence of the appellants have submitted that there are general and omnibus allegation about demand of dowry in the shape of double bed, sofa set and wrist watch. No specific day, date and time of alleged demand and from whom the demand were made and what type of harassment or cruelty was meted by the deceased at the hands of the accused persons has been explained in the evidence of witnesses. It is further submitted that there is no doubt that the deceased died within seven years of marriage, otherwise than under normal circumstances, but so far other ingredients as to cruelty and torture of the deceased soon before her death on account

of or in connection with any demand of dowry has not been proved by any of the witnesses including the informant and his sons and nephews. The informant has attempted to project a story of dying declaration made to him by deceased through sign language and bodily gesture by pointing towards the appellants that they have set her on ablaze, but there is no evidence on record that the deceased was able to speak and under conscious state to understand or even indicate by gestures and signs anything. No such certificate was provided by concerned Medical Officer. The learned trial court has miserably failed to consider the above aspect of the matter and lack of evidence regarding Ingredient Nos.(iii) & (iv) of offence under Section 304B of the I.P.C., mis-directed himself towards accepting the dying declaration of the deceased and committed serious error of law while recording the guilt of the appellants. There are material contradictions and discrepancies appearing in the evidence of informant and other witnesses of facts namely, P.W.-6, P.W.-8 and P.W.-10, informant, his wife and son respectively, which cannot be get explained by the Investigating Officer, due to non-examination of the Investigating Officer. Therefore, the impugned judgment and order is absolutely perverse, illegal and based beyond the weight of evidence available on record. No presumption under Section 113-B of the Evidence Act can be raised against the appellants in absence of proof of foundational facts constituting offence under Section 304B of the I.P.C. Therefore, the impugned judgment of conviction and sentence of the appellants is liable to be set aside and appellants deserve to be acquitted from the charges leveled against them and this appeal has merits and fit be allowed.

10. On the other hand, learned A.P.P. appearing for the State has vehemently opposed the contentions raised on behalf of the appellants and defending the impugned judgment of conviction and sentence submitted that the learned trial court has properly scanned the evidences of witnesses particularly, P.W.-6, P.W.-8 and P.W.-10, who are father, mother and brother of the deceased. They have categorically proved the incident of demand of dowry by the deceased soon before her death and due to non-fulfillment of the same consequent torture and harassment meted with the deceased. It has also proved that just 15 days prior to the occurrence, the brother and cousin of the deceased went to meet the deceased at her matrimonial home, where they were not allowed to meet her by her husband and mother-in-law and only when they undertake to give the demanded articles then they were allowed and the deceased told about her agony to them and was insisting to take her back to parental home, otherwise she might be killed. The deceased was mercilessly set at ablaze and story of accidental burn is absolutely false and fabricated and concocted by the defence. She was burned through dried fire, which is also corroborated from her post-mortem report. The learned trial court has committed no error of law calling for any interference in the impugned judgment and order by way of this appeal, which is fit to be dismissed.

11. The relevant provisions of law applicable in this case are reproduced hereinbelow:

**304B. Dowry death.** -- (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.â€■

**498A. Husband or relative of husband of a woman subjecting her to cruelty.** [Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, "cruelty means"-

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

**â€œ113B. Presumption as to dowry death.** -- 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 304B of the Indian Penal Code (45 of 1860).â€■

12. In view of the above provisions, in order to convict an accused for the offence punishable under Section 304(B) of the IPC, the following essentials must be satisfied:-

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death.

13. From bare perusal of provision of Section 304B of the IPC, it is evident that it does not categorize death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring otherwise than under normal circumstances can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304-B IPC are fulfilled, any death (homicidal or suicidal or accidental) whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a dowry death and the woman's husband or his relative shall be deemed to have caused her death. The section clearly specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death.

14. In order to attract the provisions of Section 304-B IPC, one of the main ingredients of the offence which is required to be established is that soon before her death she was subjected to cruelty or harassment for, or in connection with the demand for dowry. The expression soon before her death used in Section 304-B IPC and Section 113-B of Evidence Act has been explained by Hon'ble Apex Court in plethora of judgments, *Bansi Lal v. State of Haryana*, (2011) 11 SCC 359; *Mustafa Shahadat Shaikh v. State of Maharashtra*, (2012) 11 SCC 397; *Ramesh Vithal Patil v. State of Karnataka*, (2014) 11 SCC 516, *Maya Devi & Anr. V. State of Haryana*, (2015) 17 SCC 405. *Satbir Singh & Anr. v. State of Haryana* (2021) 6 SCC 1. It has been observed that though the language used is soon before her death, no definite period has been enacted and the expression soon before her death has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term soon before her death is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

15. Hon'ble Apex Court in the case of *Satbir Singh & Anr. v. State of Haryana* (2021) 6 SCC 1 has held that the phrase soon before in section 304B IPC is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time limit. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. Thus, a proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.

16. Section 113-B of the Evidence Act lays down rebuttable presumption of law in respect of dowry. If the ingredients under Section 304-B IPC are attracted, the court shall presume and it

shall record such fact as proved unless and until it is disproved by the accused. However, it is open to the accused to adduce such evidence for disproving such conclusive presumption as the burden is unmistakably on him to do so and he can discharge such burden by getting an answer through cross-examination of the prosecution witnesses or by adducing evidence on the defence side as such putting reverse onus of proving on the accused.

17. In the background of aforesaid jurisprudence of dowry death, we have to appreciate the arguments of learned counsel for the parties apprising ourselves with the evidence adduced in this case by the respective parties.

18. It appears that altogether 10 witnesses have been examined by the prosecution in order to substantiate the charges levelled against the appellants.

19. P.W.-1 Rajendra Singh Chawla is the neighbour of the deceased. According to his evidence, on 10.03.1994 at about 3:00 PM, he was taking lunch, meanwhile, he heard hulla bacho-bacho from the house of Sanjay. He went to the house of Sanjay and saw that his wife has caught fire, then he wrapped her by a quilt. Several other villagers assembled and wife of Sanjay brought to Hospital, where she died.

In his cross-examination, he has stated that he went to the house of Sanjay, at that time, wife of Arbind and other female in-mates were also present. Nilam Devi did not disclose the name of any person, who set her on fire or how she caught fire.

20. P.W.-2 Dilip Kumar Sen is also neighbour of the deceased. On 10.03.1994, he was present at his home and heard hulla from the house of Sanjay at about 2:30 - 3:00 PM, then he went to the house of Sanjay and saw that wife of Sanjay has caught fire and Rajendra Singh Chawla (P.W.-1) was wrapping wife of Sanjay with quilt.

21. P.W.-3 Arbind Kumar Sahu has learnt about the occurrence in the evening of 10.03.1994 that Nilam Devi has died due to burn injuries.

22. P.W.-4 Sanju Devi has also deposed that she heard the hulla screaming coming from the house of Nilam then went and saw that Nilam has caught fire. Rajendra Singh Chawla wrapped her by a quilt. Meanwhile, several other persons assembled there and Nilam Devi was brought to Hospital by tempo. She has stated nothing else about the occurrence.

23. P.W.-5 Lila Devi is the gotni of the deceased. At the time of occurrence, she was not present and had gone to her parental house. Later on, she came to know that her gotni caught fire and admitted in hospital for treatment and after 3-4 days, Nilam Devi died in hospital.

24. P.W.-6 Tilakdhari Ram is the informant. According to him, on 11.03.1994 at about 9:30 AM, his brother Nand Kishore Ram came to his house and informed that Nilam Devi has caught fire and her treatment is going on at Central Hospital, Dhanbad. Then, this witness along with his brother Nand Kishore Ram went to Dhanbad by boarding on train, where he saw that his daughter was lying unconscious on the bed of hospital. She was badly burnt. Her father-in-law Kedar Ram,

husband Sanjay Ram, mother-in-law Kalawati Devi were present in the hospital, but they disclosed nothing about reason of burn injuries sustained by his daughter. He also felt odour of Kerosene oil coming from the body of his daughter. His fardbeyan was recorded by police in the hospital and he has proved his signature as Exhibit-1 and also signature of other witnesses on fardbeyan as Exhibit-1/1, 1/2 & 1/3. He has further deposed that within two days of the occurrence, his daughter died in the hospital. She was conscious, but unable to speak, hence, by gestures, she disclosed that her husband, mother-in-law, Gita Devi and Mohan Ram have set her on ablaze. He has also deposed that the marriage of his daughter with Sanjay Ram was solemnized in the year 1992 and since after solemnization of marriage, his daughter returned to her parental home thrice, but she was not desiring to go back to her sasural and disclosed that her husband Sanjay Ram, mother-in-law Kalawati Devi, Geeta Devi and Mohan Ram were demanding Sofa Set, Palang and wrist watch and she was frequently assaulted and abused in connection with above demand. She was not properly supplied food. Hence, she was not desiring to go her matrimonial home. Thereafter, she went to her sasural. After some days, son of this witness Manoj Ram along with his cousin Hira Lal and uncle Nand Kishore Ram went to matrimonial home of Nilam Devi, but her mother-in-law and husband did not allow them to meet with the Nilam Devi unless and until the demand of Palang, Sofa Set and Wrist Watch is not fulfilled. He has further deposed that his son Manoj Ram accepted to give the aforesaid articles, then they were allowed to meet with the Nilam Devi. On that occasion also, Nilam Devi weepingly told to her brother to take her to parental home, otherwise, she will be killed by the accused persons. Thereafter, Manoj Kumar convinced the mother-in-law and husband of deceased that he will give the aforesaid articles within 15 days after returning to Calcutta, but in the meantime, his daughter was set on ablaze by the accused persons.

In his cross-examination, this witness has stated that prior to the occurrence, he has nowhere complained about the demand of dowry and torture meted with his daughter, rather he was managing to give these articles to the accused persons.

Attention of this witness has been drawn towards some omissions of fact, which has not been mentioned in the FIR. He further admits that Mohan Ram and Geeta Devi are mousa and mausi of his son-in-law Sanjay Ram, who are resident of Village - Chakai. There is nothing else in his cross-examination to discredit his testimony.

25. P.W.-7 S.K. Mandal is the Advocate Clerk and formal witness, who has proved the fardbeyan of the informant recorded by ASI as Exhibit-2.

26. P.W.-8 Vidya Devi is the mother of the deceased. According to her evidence, the marriage of daughter Nilam Devi was solemnized with Sanjay Kumar about 4 ½ years ago and just after the marriage, the accused persons, mother-in-law Kalawati Devi, husband Sanjay Kumar, Geeta Devi mauseri mother-in-law and Mohan Ram, mausa father-in-law started demanding additional dowry and due to non-fulfillment of the same, she was subjected to physical and mental cruelty. His daughter was not desiring to go back to her sasural due to demand of dowry and torture meted with her. Her son also went to the sasural of her daughter, but he was not allowed to enter into the house unless and until the demand is fulfilled. Then her son took one week's time to give the articles.



Meanwhile, her daughter was set on ablaze due to non-fulfillment of dowry. She went to hospital and saw that her daughter was conscious, but unable to speak and by gesture, she pointed the accused persons, who have set her on ablaze.

She has denied the suggestion of defence that while cooking her daughter caught fire and sustained burn injuries and due to that, she died.

27. P.W.-9 Dr. Shailendra Kumar is the Doctor, who has conducted autopsy on the dead body of the deceased Nilam Devi, W/o Sanjay Kumar Ram on 15.03.1994 and found following:-

Dermo epidermal ante mortem burn injuries were found all over the body, only her head with scalp hairs were spared. Puss was found on the injuries of back, injuries were 3/5 days old, no smell of kerosene oil was perceived.

### **On Dissection**

Heart contained blood on both sides. Stomach contained about 30 cc of brownish fluid with no particular smell. Uterus was normal, bladder was empty and all internal organs were pale.

Time elapsed since death 12 to 24 hours.

Cause of death - Death was due to shock as a result of intensive burn injuries.

He has proved the post-mortem report as Exhibit-3.

In his cross-examination, this witness has stated that if there is burn injury by kerosene oil there will be smell of kerosene oil, but this witness volunteered that this is a case after 5 days so there cannot be smell of kerosene oil. Thus, there is nothing else in the evidence of this witness to disbelieve.

28. P.W.-10 Manoj Kumar Ram is the brother of the deceased. In his evidence, he has stated that on 11.03.1994 at about 8:30 AM, his uncle Nand Kishore Ram came and informed me that Nilam Devi has caught fire and she was admitted in Jagjivan Nagar Central Hospital, Dhanbad. Then, this witness along with his father and uncle went to Dhanbad Central Hospital, where he saw his sister in burnt condition. She is unable to speak. He also felt odour of Kerosene oil coming from the body of his sister. Nilam Devi by gesture indicated that her mother-in-law, sister of her mother-in-law Gita Devi, her husband Sanjay Ram and husband of Gita Devi namely, Mohan Ram have sprinkled kerosene oil and set her on fire. On 13/14.03.194, Nilam Devi died. Mother-in-law Kalawati Devi were present in the hospital, but they disclosed nothing about reason of burn injuries sustained by his daughter. This witness has also stated that two months prior to the occurrence, when he along with his brother Hira Lal and uncle Nand Kishore Ram had gone to meet his sister, then it was categorically stated that unless and until the demand of Sofa Set, Wrist Watch and Palang were not delivered, they were not allowed to meet Nilam Devi. Thereafter, this witness has accepted to give the above articles, then they were allowed to meet with Nilam Devi and at that time, her sister weepingly stated that she has been tortured due to demand of dowry.

29. We have given thoughtful consideration to the overall facts and circumstances of the case and the ocular testimony of the witnesses. We have quoted above four ingredients of the offence under Section 304B of the I.P.C. as foundational facts to be proved by the prosecution through cogent and reliable evidence.

30. So far first two ingredients are concerned, it is undisputed that the deceased was married with Sanjay Kumar (appellant no. 1 in Cr. A. (SJ) No. 782/2003) in the month of May, 1992 and she died on 13.03.1994, as such within seven years of her marriage. It is also well-proved through testimony of ocular witnesses that the deceased was burnt in her matrimonial home. The post-mortem report of the deceased (Exhibit-3) conducted by Doctor Shailendra Kumar (P.W.-9) shows that the post-mortem was conducted on 15.03.1994 at 4:00 PM at that time since death about 12 to 24 hours was elapsed. The dermo epidermal ante mortem burn injuries were found all over the body, only head with scalp hairs were spared. Puss was found on injuries of back, injuries were 3/5 days old, no smell of kerosene oil was perceived, but the overall circumstances, as discussed above, clearly shows that the death of deceased has occurred otherwise than under normal circumstances.

31. In view of the above discussion, ingredient nos. (i) & (ii) of Section 304B of the I.P.C. is well-proved by the prosecution.

32. So far ingredient nos. (iii) & (iv) i.e. soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband and such cruelty or harassment must be for, or in connection with, demand for dowry is concerned, in this regard, there is clear cut evidence of P.W.-6, P.W.-8 and P.W.-10, informant, his wife and son have categorically proved that the deceased was married with appellant no. 1 Sanjay Kumar (Cr.A. (SJ) No. 782/2003) about two years prior to occurrence. It is also proved that the appellant no. 1 Sanjay Kumar (Cr.A. (SJ) No. 782/2003) started demanding Sofa Set, Bed and Wrist Watch from his wife and father-in-law and brother-in-law. It has also proved that just 15 days prior to the occurrence, the brother and cousin of the deceased want to meet the deceased at her matrimonial home, where they were not allowed to meet her by her husband and mother-in-law and only when they undertake to give the demanded articles then they were allowed and the deceased told about her agony to them and was insisting to take her to her parental home, otherwise she might be killed. Therefore, demand of Sofa Set, Bed and Wrist Watch as well as cruel treatment with the deceased due to non-fulfillment of the said demand is also well-proved by the prosecution.

33. Now the question arises as to against whom the presumption of dowry death as per provisions of Section 113B of the Evidence Act can be raised.

34. In the instant case, the prosecution witness P.W.-6 Tilakdhari Ram (informant) itself stated that Mohan Ram and Geeta Devi are mousa and mausi of his son-in-law Sanjay Ram and they are residing in another Village - Chakai and not frequent visitor at the place of occurrence. They are remote relative having no concern with the family affairs between the appellant and his wife. Their implication in this case appears to be only on the basis of anguish.

35. So far Smt. Kalawati Devi, who is mother-in-law of the deceased is concerned, there is general and omnibus allegation of demand of dowry and torture. No specific overt act has been attributed against her. No specific demand and how the deceased was treated with cruelty at the hands of her mother-in-law has not been specifically stated and proved. Moreover, the only thing against her is simply as an instigator. The things which have been demanded is in need and utility of the husband of the deceased and it was of no use for the old mother-in-law or relatives. Therefore, the presumption under Section 113B of the Evidence Act can be raised only against the appellant no. 1 Sanjay Kumar (appellant no. 1 in Cr.A. (SJ) No. 782 of 2003) and not against the Smt. Kalawati Devi (appellant no. 2 in Cr.A. (SJ) No. 782 of 2003) and Mohan Ram and Geeta Devi (appellants in Cr.A. (SJ) No. 747 of 2003).

36. In view of the above discussion and reasons, we are of the definite opinion that the learned trial court has failed to segregate the genuine case of Smt. Kalawati Devi (appellant no. 2 in Cr.A. (SJ) No. 782/2003) and Mohan Ram and Geeta Devi (appellants in Cr.A. (SJ) No. 747/2003), who are mother, mousa and mousi respectively of Sanjay Kumar from the case of appellant no. 1, namely, Sanjay Kumar, who was sole responsible for the overall affairs and the tragic end of deceased. Therefore, the conviction and sentence of the Smt. Kalawati Devi (appellant no. 2 in Cr.A. (SJ) No. 782/2003) and Mohan Ram and Geeta Devi (appellants in Cr.A. (SJ) No. 747/2003), is hereby set aside and the conviction of appellant no. 1 Sanjay Kumar is upheld and confirmed.

37. **In the result, the Criminal Appeal (SJ) No. 782 of 2003 is partly allowed.** The conviction and sentence of appellant no. 1 namely, Sanjay Kumar is upheld and confirmed. Appellant no. 1 is directed to surrender before the concerned trial court to serve the remaining period of sentence awarded to him by learned trial court within two months from the date of this judgment, failing which the learned trial court shall take all coercive steps to secure arrest and detention of the appellant no. 1 Sanjay Kumar for the purpose of undergoing the remaining period of sentence awarded to him.

38. So far the conviction and sentence of the Smt. Kalawati Devi (appellant no. 2 in Cr.A. (SJ) No. 782/2003) passed by learned trial court is concerned, the same is hereby set aside.

39. Further, Cr.A. (S.J.) No. 747 of 2003 is allowed. The conviction and sentence of Mohan Ram and Geeta Devi (appellants in Cr.A. (S.J.) No. 747/2003) passed by learned trial court is hereby set aside.

40. Smt. Kalawati Devi (appellant no. 2 in Cr.A. (SJ) No. 782/2003) and Mohan Ram and Geeta Devi (appellants in Cr.A. (SJ) No. 747/2003) are acquitted from the charges leveled against them.

41. Smt. Kalawati Devi (appellant no. 2 in Cr.A. (SJ) No. 782/2003) and Mohan Ram and Geeta Devi (appellants in Cr.A. (SJ) No. 747/2003) are on bail. They are discharged from the liability of bail bond and sureties shall also be discharged.

42. Pending I.A., if any, stand disposed of.

43. We take this opportunity to appreciate the assistance rendered by Mr. Parambir Singh Bajaj, learned Amicus Curiae and direct the Member Secretary, High Court Legal Services Committee to process the fees of Rs. 7,500/- to Mr. Parambir Singh Bajaj within a period of four weeks from the date of receipt / production of a copy of this order.

44. Office is directed to ensure that a copy of this order is served upon Member Secretary, High Court Legal Services Committee.

45. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.