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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJAY KUMAR; J., K. VINOD CHANDRAN; J.
JULY 13, 2026.**

Criminal Appeal No. 3117 of 2026 (@ Special Leave Petition (Crl.) No.474 of 2026)

Brajesh Kumar @ Birjesh Kumar Singh versus The State of Bihar

Criminal Procedure Code, 1973 (CrPC) – Section 173(2), 173(8), 190(1)(b) & 218 – Cognizance and Consolidated/Split Trials – Primacy of the Court – Superior Officer's Intervention - The Superintendent of Police (S.P.) directed a charge sheet to be filed against only two accused who were in custody and ordered further investigation against the remaining fifteen accused despite the initial report finding offences made out against all seventeen - *Held:* The S.P.'s directive to split the investigation and halt the charge sheet against specific individuals was without authority - an invalid investigation does not nullify the subsequent cognizance or trial unless it results in a miscarriage of justice - The formation of an opinion on whether an accused must be placed on trial is the exclusive prerogative of the Investigating Officer, while the ultimate authority to accept a closure report, reject it, or take independent cognizance on the disclosed material rests solely with the Court. Multiple committal orders or separate final reports can be consolidated into a single trial or adjudicated via split trials at the discretion of the Court, provided no prejudice is caused to the accused. [Paras 10-19]

Indian Penal Code, 1860 (IPC) – Sections 304B & 498A – Dowry Death and Matrimonial Cruelty – Standard of Proof – Evaluation of Exculpatory Dying Declaration and Defence Evidence - Conviction of the husband reversed - The prosecution failed to present independent witnesses from the neighborhood to substantiate the generalized and bland allegations of a continuous ₹50,000 dowry demand - the defence effectively dismantled the prosecution's narrative by producing substantial documentary proof of significant joint financial investments, medical receipts showing immediate specialized treatment provided by the husband, and call records demonstrating prompt notification to the bride's family - The exculpatory dying declaration recorded by an Executive Magistrate, combined with the absolute lack of a post-mortem or medical forensic analysis of the burn patterns, created a compelling probability of an accidental fire rather than homicide or suicide. [Paras 27-35]

Criminal Trial – Appreciation of Defence Evidence – Hypothesis of Innocence - Trial courts must bestow equal attention and weight to defence evidence as they do to prosecution evidence - There is no legal baseline to approach evidence led by the accused with inherent distrust or scepticism - If the defence introduces a deeply probable hypothesis of innocence that establishes reasonable doubt, the absolute benefit must inure to the accused - To travel from the realm of "may be true" to "must be true," the prosecution's journey must be strictly paved with legal, reliable, and unimpeachable evidence. [Relied on *Abhinandan Jha v. Dinesh Mishra*, 1967 SCC OnLine SC 107; *H.N. Rishbud v. State of Delhi*, (1954) 2 SCC 934; *Banwari v. State of U.P.*, 1962 SCC OnLine SC 98; *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116; *Swaran Singh v. State of Punjab*, (1957) 1 SCR 953; Para 34-39]

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J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. A serious procedural deviation, resulting in a graver travesty of justice is alleged; of two trials, from two final reports on the same First Information Report, having been proceeded with against seventeen persons leading to conviction of only one of them in the second trial, despite the further investigation having unearthed no evidence against the fifteen accused. The appellant, the hapless husband of a woman who succumbed to burn injuries in her matrimonial home, has been in the dock for a quarter of a century on the accusation of marital cruelty and dowry death. The prosecution is also blamed of having failed to bring in material evidence; adduced by the defense, which the investigators ought to have detected before the charge sheet was filed.

3. The two cases were clubbed together after considerable evidence was led in both separately. Later, after further evidence was adduced jointly, they were de-tagged and adjudicated individually. In the first case the father-in-law and the mother-in-law, the two accused arrayed, were acquitted. Fourteen family members of the husband were acquitted in the second case wherein the husband alone stood convicted. The impugned order remanded the matter to the trial court on the premise of the convicted accused not being present when the witnesses were examined in the other case, before clubbing. The appeal is filed by the sole accused who stood convicted.

4. The impugned order indicates that before clubbing, in the instant case PW1 to PW6 were examined and after clubbing, PW13 to PW15 and DW1 to DW5 were examined. The trial court has also recorded that the oral testimonies of only those witnesses examined in the presence of the accused in this case would be evaluated to come to a just decision; scrupulously done avoiding any prejudice to the accused. PW1 to PW6 examined herein are respectively PWs 1, 11, 3, 2, 12 & 4 in the first case; the first two, associates of the family, then a cousin, two brothers and the father of the deceased. PW13 proved the sanction order and PW14 & 15 testifying in the joint trial were another brother of the deceased and the Investigating Officer (I.O) respectively. PW5 to PW10 examined in the first case were not even cross-examined by the two accused and their testimonies were completely eschewed even in the first case, the order of acquittal in which is produced as Annexure P-9.

5. The case stems from an incident of the year 2000 and we were of the opinion that a remand at this stage would only prolong the matter. Learned Counsel for the accused agreed to a consideration on merits by this Court at the expense of losing one appellate forum, i.e., the High Court, to which the learned State Counsel also did not object. Hence, we proceed to consider the matter on its merits.

6. The allegation arose from an incident where the wife of the appellant was first taken to the District Hospital, Mirzapur from her marital home on 13.04.2000 allegedly with 40% burns sustained and then re-admitted to a private nursing home, at Allahabad, where the poor lady succumbed a few days later. Was it accidental, as contended by the husband and the in-laws or whether it was self-inflicted or induced, the causation being the cruelty arising from incessant dowry demands, is the moot question arising. The victim died on 02.05.2000 and an FIR was registered at the Kotwali Police Station, Munger, whereunder is situated the parental home of the deceased, on 01.06.2000. It arrayed the husband and his brother as A1 & 2 and A3 to 17; the other family members of which A5 was the father-

in-law and A6 the mother-in-law. We have perused the FIR and also the charge sheets in both the cases received from the trial court and obtained translated copies. The FIR was registered on a complaint dated 15.05.2000 by the father, filed before the Chief Judicial Magistrate's Court, Munger, obviously one under Section 156(3) of the Criminal Procedure Code (*for brevity 'CrPC'; with the year of enactment, wherever relevant*). FIR No.272 of 2000 dated 01.06.2000 resulted first, in Final Report No.625 of 2000 dated 31.10.2000 leading to Sessions Case No.592 of 2001 and then, Final Report No.215 of 2005 dated 31.05.2005 which led to the instant case numbered as Sessions Case No. 504 of 2006.

7. The complaint spoke of the marriage and the continued demand of dowry of Rs.50,000/- despite sufficient gifts having been given by the bride's family and the frequent complaints made by the deceased when she came to her parental home. Even during the pregnancy of the victim, she is said to have been harassed which resulted in the childbirth occurring in the parental home of the mother. The misdeeds continued even after the son was born and there was also an allegation of forced abortion, eventually leading to the death at the marital home. It was also alleged that since the marital family was very influential the entire incident was hushed up. In addition to the husband, his relatives, including immediate in-laws, were arrayed only for reason of the marital home having housed a joint family.

8. In the Final Report of 31.10.2000 after a brief narration of the complaint of constant demands of dowry pursuant to the marriage of the daughter of the complainant with Brijesh Kumar, it was categorically stated that on investigation, the allegation of offences under Sections 498A, 304B read with Section 34 of the Indian Penal Code, 1860 (for short, the IPC) and Sections 3/4 of the Dowry Prohibition Act, 1961 (DP Act) appeared to be true. It was noticed that the father-in-law and mother-in-law were in judicial custody and that the Superintendent of Police (S.P) had directed charge-sheet to be filed against the said accused considering the investigation against them as completed and directed investigation against the other 15 persons in the FIR to be continued. The charge-sheet first filed against the two accused gave rise to Sessions Case No.592/2001, which ended in acquittal of both the accused by judgment dated 17.12.2012. On the very same day, Annexure P10 judgment dated 17.12.2012 was passed in Sessions Case No.504/2006 wherein the first accused alone was convicted, and the other 14 accused acquitted. Sessions Case No.504 of 2006 arose from a final report filed by a different I.O after further investigation finding no further evidence against the 15 accused remaining.

9. Issues arise of the trial court having taken cognizance based on a closure report filed by the I.O finding no evidence against the 15 persons who were not charged at the first instance; urged, placing reliance on ***Mariam Fasihuddin v. State by Adugodi Police Station***¹ and two trials having been proceeded with on the very same allegation of dowry death of the wife of the appellant herein. The first charge sheet filed; Exhibit C2, despite finding the offences made out against all the 17, charged only the two who were in judicial custody on the directions of the S.P who also directed further investigation against the others; such directions being clearly impermissible. The second final report marked as Annexure C3 states that no evidence was found available on the record against all the others and there was no cause to raise a supplementary charge against the 15 accused, by another officer who was not examined before the trial court.

10. We are quite conscious of Section 158 of the CrPC which provides that a report be sent to the Magistrate through a superior officer of police, if the State Government by

¹ 2024 SCC OnLine SC 58

general or special order so directs. Apposite would be reference to Section 173 (3) which provides in such circumstances that the report should be submitted through that superior officer to the Magistrate and pending orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation. Pertinently, the facts of the present case reveal that the report itself was filed by the officer-in-charge of the police station which makes it clear that there was no special or general order passed by the State Government under Section 158. Further, pertinent is the fact that herein the FIR was registered on the complaint forwarded under Section 156(3) on the directions of the CJM. The order of the S.P hence was clearly without any authority.

11. *Mariam Fasihuddin*¹ frowned upon a supplementary charge sheet filed without any new material unearthed by the investigating agency; wherein the further investigation directed was with respect to the dropping of two offences under the IPC. However, here the first charge sheet finds material against the other accused also which makes it imperative that we dwell upon the primacy of the Court which takes cognizance.

12. *H.N. Rishbud v. State of Delhi*² was concerned with an investigation carried out under the Prevention of Corruption Act, 1947, by a police officer below the rank of a Deputy Superintendent of Police, which could have been carried out only with the order of a Magistrate. It was held that investigation is the first step, followed by cognizance and then the trial itself. But an invalid investigation does not nullify the cognizance or the trial based thereon, since a defect or illegality in investigation has no bearing on the cognizance taken or the trial. Though a police report under Section 190 of the CrPC is the material on which cognizance is taken, a valid or legal police report is not the foundation of the jurisdiction of the Court to take cognizance. If, therefore, cognizance is in fact taken on a police report vitiated by breach of a mandatory provision relating to investigation, the trial cannot be set aside merely on that ground, unless the illegality in the investigation is shown to have brought about miscarriage of justice as provided under Section 537 of the CrPC of 1898 (Section 465 of CrPC of 1973). Finding also that the invalidity of an investigation is not to be completely ignored by the court during trial, it was held that if the breach of such a mandatory provision is brought to the knowledge of the court at a sufficiently early stage, the court, while not declining cognizance, will have to take necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for.

13. *Abhinandan Jha v. Dinesh Mishra*³ emphasized the prerogative of the I.O while carrying out an investigation into an offence reported, as juxtaposed with the powers of the jurisdictional court in taking cognizance. The learned Judges dealt with Sections 154 to 176 of the CrPC of 1898 under the heading '*Information to the Police and their powers to investigate*' together with Section 190, relating to the jurisdiction of the criminal court in inquiries and trials; which are almost in *pari materia* with CrPC of 1973. Finding very elaborate provisions made for securing an investigation into a reported offence, without causing any harassment to the accused and at the same time completion without unnecessary or undue delay, it was held that the manner and method of conducting the investigation are left entirely to the police and the Magistrate has no power to interfere with the same. After investigation, if the officer finds no sufficient evidence or reasonable grounds justifying forwarding the accused to the Magistrate, Section 169 provides that the accused shall be released on his executing a bond to appear before the Magistrate.

² (1954) 2 SCC 934

³ 1967 SCC OnLine SC 107

14. On the other hand, if sufficient evidence or reasonable grounds are found to make out an offence, then the accused has to be forwarded to the Magistrate under Section 170 if the offence is bailable or otherwise released on bond requiring his appearance before the Magistrate. However, be it invocation of Section 169 or Section 170 the police officer has to submit a report to the Magistrate under Section 173, either a closure report; finding no offence made out or a charge sheet; with material allegations based on valid evidence leading to the offence. It was categorically held relying on **King Emperor v. Khwaja Nazir Ahmad**⁴ that the functions of the judiciary and the police are complementary and not overlapping, leaving each to exercise its own functions, subject only to the right of the court to intervene in an appropriate case. When the jurisdictional court has no right to interfere less said the better about the interference made by a superior officer, herein the S.P, especially when the I.O forms an opinion that a case for trial is made out.

15. It was categorically held that the formation of opinion as to whether or not there is a case to place the accused on trial is exclusively with the officer in charge of the investigation. If a closure report is filed; finding no case made out, it is not open to the Magistrate to direct the police to file a charge sheet. It was also clarified that this is not to say that the Magistrate is absolutely powerless since the Magistrate is competent to proceed to take cognizance of the offence, on the materials revealed in the investigation, under Section 190 which imports a judicial discretion on the Magistrate to receive such report under Section 173. The Magistrate, hence, is not bound to accept the opinion of the police that there is no case to place the accused on trial as it is always open to take a contrary view on the facts disclosed in the report.

16. **Ram Naresh Prasad v. State of Jharkhand**⁵ held that when the police file a report, colloquially termed a 'closure report'; finding no sustainable case made out, the Court cannot direct a charge sheet to be filed, but could always take cognizance on the basis of the material in the report or direct further investigation. **H.S. Bains v. State (U.T. of Chandigarh)**⁶ & **Ramswaroop Soni v. State of M.P.**⁷ reiterated that when a closure report is filed finding no offence made out, the Court has three options; (i) to accept the same and close the proceedings or (ii) take cognizance of the matter on the materials in the report or (iii) direct further investigation. It is thus open to the Magistrate on submission of a closure report to look into the material facts disclosed in the report and form an opinion as to whether it constitutes an offence and take cognizance of the offence under Section 190(1)(b). To buttress this position, **Abhinandan Jha**³ made reference to Section 169 of the Code which provides that even if the police officer finds on investigation that there is no reasonable ground or sufficient evidence to put the accused on trial, the officer while releasing the accused has to take a bond for appearance before the Magistrate, if required. The primacy of the Court to take cognizance or deny it is the law discernible from the very provisions of the CrPC.

17. In the instant case the first charge sheet was filed only against the two accused and investigation was continued against the other 15 accused arrayed in the FIR, on instructions of the S.P, which should have been left to the Court taking cognizance, especially when the charge sheet found a trial enabled against all the accused. On submission of the first charge sheet and if there is felt a need for further investigation, ideally it should have been done with the orders of the Court and the commencement of

⁴ 71 IA 203, 212

⁵ (2009) 11 SCC 299

⁶ (1980) 4 SCC 631

⁷ (2020) 18 SCC 327

trial ought to have awaited the completion of such investigation. But the cognizance taken by the Court against the fifteen accused, on the basis of the subsequent final report cannot be faulted since though the report on further investigation found no fresh material, the first report found the offence made out against all the accused, which was also before Court when the closure report was considered.

18. There could be claimed an irregularity but there is no illegality, miscarriage of justice or prejudice caused to the accused since split trials, in the same offence is not unheard of, which we will now deal with. Useful reliance can be placed on the decision of this Court in **Banwari v. State of U.P.**⁸, wherein the two accused were convicted under charges of Sections 302 & 307 read with Section 34 of the IPC. The Magistrate committed three cases to the Sessions Court two with respect to the two murders and the other for attempt to murder, all by gunshot injuries. The Sessions Court modified the charges and consolidated the three cases, permitting evidence to be adduced in the first case and relied on that evidence in the other two cases. The incidents occurred in quick succession and this Court held that though Section 235 is not applicable, joint trial was justified under Sections 234 & 239 of the Code. When separate commitments are made of distinct offences not coming within the exception to Section 233, they cannot be tried at one trial. But, if there are separate commitment orders; (i) of persons who could be tried together or (ii) of the same person for offences which could be tried together, the accused could still be tried at one trial. Persons accused of committing a particular offence or offences jointly or in the course of the same transaction are not put up for trial at the same time, oftener than ever for reason of some being not available. When they are later made available and subsequently committed, the Sessions Judge is not bound to have two separate trials, one with respect to each commitment, if the trial in the first instance has not commenced.

19. A committal order just gives the Sessions Court cognizance over the trial of the persons committed and is not the basis of the cognizance taken for trial. If there is no prejudice to the accused, multiple committal orders can be consolidated to try the accused at one trial, provided it is justified under Sections 233 to 239 of the CrPC of 1898 (Sections 218 to 223 of the CrPC of 1973). It was held that '*...the validity of a joint trial before the Sessions Judge is dependent on the fact whether the provisions of the Code justify one joint trial or not*' (para 25). The above discussion makes it crystal clear that the opinion in the final report filed is not decisive of the cognizance and the committal order/s is/are not determinative of whether the trial is single/separate/joint; which is at the exclusive discretion of the Court.

20. Herein, though triable together, before the report of further investigation was filed, the first trial commenced. Despite the futile exercise of a joint trial in between, the cases were separated before final adjudication. The relevant witnesses led on behalf of the prosecution and the defence were identical and no prejudice is caused to the accused, which persuades us to consider the matter on its merits.

21. It is distressing that no postmortem was conducted of the deceased who died in the hospital at Allahabad nor is any wound certificate produced. A person who sustained serious burn injuries having been admitted to the hospital, intimation would have gone to the jurisdictional police station; both at Mirzapur and Allahabad but not produced or even enquired into. It is also pertinent that the witnesses examined to prove the allegations are the friend of the father of the deceased (PW1), the father-in-law of one of the brothers of

⁸ 1962 SCC OnLine SC 98

the deceased (PW2), her brothers (PWs 3 to 5 & 14) and her father (PW6). The testimonies of all the prosecution witnesses indicate that though the incident occurred on 13.04.2000 they were informed only on 21.04.2000; effectively controverted in the defense evidence.

22. Be that as it may, PW1 says that the information was passed on to PW6 on 22.04.2000 and he along with PW6 went to see the victim at the hospital on 22.04.2000. PW2 deposed that his son-in-law i.e. PW14, the brother of the deceased went to the hospital at Allahabad on 26.04.2000 and met the victim. PW14 however deposed that on 22.04.2000 he saw his sister, completely burned, at Allahabad and on 30.04.2000 his father returned to Munger for arranging money for the treatment of his sister. It is also the testimony of the brothers and the father of the deceased that on 02.05.2000 when the victim died, a hasty cremation was conducted, to avoid a postmortem.

23. It is very unlikely that having reached the hospital long before the death, the family members of the victim would have abandoned the victim in the company of her in-laws against whom allegations are raised of dowry demands. What is more disturbing is that the I.O has not attempted to bring out what transpired after the victim sustained the burns especially since the incident occurred at Mirzapur, where she was first admitted to the District Hospital and then later taken to a hospital at Allahabad where she succumbed after a few days' hospitalization. The explanation of the relatives of the deceased is only that the accused are very influential in Allahabad which however does not prevent an I.O from inquiring in the neighboring State while carrying out an investigation, bringing to light the facts as they existed.

24. As far as the testimonies are concerned, all the witnesses rest content with a bland refrain about the demand of a dowry of Rs.50,000/- commenced from the date of marriage till her death. Admittedly, a son was born to the couple in the meanwhile, and the son was kept with the father after the death of the mother. PW15 is the I.O who does not speak anything worthwhile as to the investigation carried out. His deposition, as found from the impugned order marks the FIR and describes the marital home of the deceased and records that there is no incident reported at the police station at Mirzapur where the marital home is situated. The statement of the doctor at the hospital at Allahabad in which the victim was treated is said to have been recorded but the said person was not summoned as a witness for the prosecution. It was also stated that on enquiries made at the police station having jurisdiction over the location in which the hospital is located, he was informed that a statement of the victim was recorded before the Magistrate. It is further deposed that it was not produced since it was not provided; clearly a lackadaisical approach. What assumes significance is that the I.O. categorically deposes that but for the family members of the complainant, none in the neighborhood came forward to speak of an acrimonious marriage, quite relevant in the context of the defense set up by the accused.

25. The accused examined himself as DW1 and four others. DW2 is the doctor working in the hospital at Allahabad in which the victim was treated. DW3 produced the register from the District Hospital Mirzapur. DW4 was the emergency medical officer who examined the victim at the first instance when she was brought to the District Hospital. DW5 was the Executive Magistrate, the Upzilaadshikari, Sadar, Allahabad who recorded the dying declaration. The defense set up a plea of false implication by the family members of the deceased by reason of the refusal of the husband to marry the sister of the deceased; quite probable viewed in the context of a complaint having been filed at Munger

on 15.05.2000, despite the offence having occurred on 13.04.2000 at Mirzapur and the death on 02.05.2000 at Allahabad.

26. DW4 was the emergency medical officer of the Barrister Yusuf Imam District Hospital, Mirzapur where the victim was first taken at 01.00 am. It was deposed that she was brought by her husband, and she was found to be fully conscious having superficial and deep burns on both hands, face, chest, abdomen and the back with the general condition recorded as poor. His opinion was of 40% burns, and he testified that he took two right thumb impressions of the patient on the accident register, produced as Ext. J by DW3, the custodian of the register. DW4 categorically stated that no finger of the patient was injured, contrary to the statement of PW14 that all the 10 fingers of his sister were burned when he saw her on 22.04.2000, further validating the defense of false implication since it is an attempt to invalidate the dying declaration.

27. DW5 categorically states that he had taken down the statement of the victim which was marked as Exhibit 1/2. The witness spoke of the statement having been recorded in the words of the deceased and admitted that he had not taken the signature of the victim since she was not in a position to affix her signature. He also did not take the right-hand thumb impression of the woman. DW2 corroborated the statement of DW5 since he was on duty at the time the Magistrate took the statement of the victim on 16.04.2000. He identified the writing and the signature of the SDM and affirmed the certification made of the victim being conscious and fit to give her statement. The statement of the deceased absolves her in-laws and speaks of an accident having occurred when she was boiling milk for her child. The rubber pipe of the gas stove got disconnected and the flames engulfed her chest when she immediately switched off the gas. She rolled on the ground and cried out and then ran to the room in which her husband was watching television. Her husband immediately tried to douse the fire with a floor mat and so did the other family members who finally put out the fire by throwing water on her. She categorically stated that none of her in-laws were responsible for the accident.

28. We would, for the moment, not reckon the dying declaration which absolves the accused in toto. It is trite that a dying declaration though delicate, is a crucial piece of evidence if found to be trustworthy from the overall circumstances, enabling a conviction on that basis alone. However, when the dying declaration is exculpatory in nature, then necessarily the entire evidence would have to be analysed and if the other circumstances form a complete chain, the exculpatory statement of the deceased will have to be treated with some circumspection or at times eschewed completely. In the present case, from the evidence at least it is clear that when the dying declaration was recorded, the deceased was admitted to the hospital and looked after by her husband and in-laws. The statements made in the above circumstances, presumably when the injured victim was looked after entirely by the accused will have to be treated with some circumspection and hence, we do not place any reliance on the same, at this point.

29. Even then we cannot but opine that the testimonies were in the nature of a soulless reiteration of a demand of Rs.50,000/-, having been made right from the inception of the marital life till the death occurred. The defense produced certificates of investments made in the joint names of the husband and the wife which are produced at Annexure P2 & P3; far exceeding the demand alleged. DW1, the accused himself mounted the box to speak of an idyllic marriage and narrated the incident, producing Exhibit A, the medical certificate indicating that his left hand was also scorched in the episode, while trying to save his wife. The accused also testified of informing his father-in-law on 14.04.2000 at 09:18 am through telephone, the call receipt evidencing the same marked as Exhibit B. He had also

sent telegrams on the same day at 08:35 am, the receipts of which were marked as Exhibit C and D. The Kisan Vikas Patra and National Saving Certificates taken out in the joint name of himself and his wife, as also the LIC policy in his name, with his wife as the nominee were produced. The documents relating to the treatment of the deceased were marked as Exhibit E to E/4 and the receipts with respect to the expenses incurred were also marked as Exhibit G to G/14. The prescriptions during the treatment were also exhibited as Exhibit H to H/3, belying the very contention of PW6 having returned to his village to arrange finance for his daughter's treatment.

30. The trial court found that the entire documents from the hospital were not produced and it is not clear as to what medicines were administered to the patient, which in fact ought to have been procured and produced by the prosecution. The dying declaration was rejected on the ground that the same was not forwarded through the jurisdictional CJM, the same having been received at the trial court, as directly forwarded from the office of the ADM. The efficacy of the dying declaration was further doubted since DW5 had not recorded it in the question-and-answer form. As to the demand of dowry, the trial court relied on the testimony of the witnesses regarding the demand made of Rs.50,000/- from 1995 till 1999. It was found that the time when the victim was taken to the hospital is 1:00 am on 14.04.2000 and there is discrepancy between the time of incident and the time claimed by the defense.

31. As we observed, the testimony regarding the dowry demand is a bland repetition of a demand having been made of Rs.50,000/- right after the marriage till the year 1999, which the family of the deceased did not comply with. The defense on the other hand has proof of investments in the joint names of the husband and the wife which belies the above contention. The husband had also taken a LIC policy in the name of himself with the wife as the nominee. A child was also born to the couple in the period in which the sustained demand of dowry of Rs.50,000/- is said to have been continued. The I.O., PW15, categorically stated that except the family members there was no other witness, from the neighborhood coming forward to testify as to the marital discord between the couple. The I.O. has practically not carried out any investigation in Mirzapur or Allahabad and has merely described the marital house in great detail in his testimony.

32. The enquiries carried out at the police station having jurisdiction over the hospital, where the death occurred, clearly indicates a dying declaration having been made which was not produced by the prosecution. The dying declaration was recorded by an Executive Magistrate and the doctor of the hospital, in which the victim was admitted, certified her fitness to make such a declaration. There is no hard and fast rule that a dying declaration should be in the question-and-answer form. The dying declaration, even if not reckoned to absolve the husband and the family members, at least raises a reasonable doubt regarding their culpability coupled with the other circumstances.

33. The family of the victim reached the hospital long before her death and it is very unlikely that they left their child alone when they were arranging money for her treatment. The treatment receipts and the receipts of bills paid as produced by DW1 puts paid the contention that PW6 left the hospital to his native place to arrange money for the treatment. In any event, there is no reason for the family having left en bloc leaving the victim alone, especially in the custody of the in-laws when there was allegation of incessant dowry demands by the in-laws.

34. Neither was a postmortem conducted nor was there an immediate FIR registered, at least in the hometown of the victim. The exact time when the fire occurred is discernible only from the statement in the dying declaration that it was around 10:45 pm. The time

stated could only be an approximation and there would have been some time taken in arranging a transport and taking her to the hospital, first to the District Hospital at Mirzapur where the Doctor deposes, the victim was brought at 1 am. There was no attempt by the prosecution to bring forth the distance between the marital house of the deceased and the hospital. The victim was transferred to a higher medical center at Allahabad on the very same day for better treatment; all of which was carried out by the husband, as is indicated from the documents produced. The oral evidence led by the prosecution fails to prove the case set up of a demand of dowry or the animosity the husband is alleged to have been harboring against the wife. The hollow statement made of demand of dowry echoed listlessly by the witnesses; all relatives of the victim, raise not a grain of doubt but a sea of suspicion regarding the entire story set up.

35. The prosecution has failed to establish the constant demands of dowry, a bitter matrimony or any other circumstance which could lead to a conclusion that the family of the husband or the husband alone had instigated or perpetrated the crime of dowry death or subjected her to cruelty leading to the death. Sadly, the prosecution has completely failed to bring forth the nature of the burn injuries suffered by the victim, which could have, on analysis by a forensic expert, garnered an expert opinion as to whether it was a homicide, a case of fatal self-harm or as argued by the defence, purely accidental. We have to emphasise in this context the absence of the postmortem and unsatisfactory explanation offered on that count.

36. The case set up by the defence of the husband having declined the entreaties of the family of the wife to marry her sister assumes relevance, especially in the context of the delayed FIR registered at the home town of the deceased while her marital home, where the incident occurred was at Mirzapur and she succumbed at a hospital in Allahabad. The defence evidence led, also indicate a happy marriage and a caring husband; which has not been controverted effectively by the prosecution in cross examination. In the circumstances of the valid defence evidence, we could also rely on the dying declaration, exculpating the accused, as a corroborative piece of evidence, making believable the version of accidental burn injuries.

37. The defence evidence was given a complete go by without any valid reasons, despite the substantive testimonies and credible documents produced, remaining uncontroverted. The prosecution has failed to establish the charges beyond reasonable doubt and the attendant circumstances coupled with the defence evidence brings forth a probable hypothesis of innocence. The trial courts would do well to bestow equal attention to the defence evidence as that bestowed on the prosecution evidence. There is no cause to approach the defence evidence with distrust, suspicion or even scepticism. The accused is not obliged to prove his/her innocence and if a reasonable doubt is raised either from the unsatisfactory evidence led by the prosecution or from the evidence led by the defence its benefit should inure to the accused; which is the reasonable hypothesis of innocence as laid down in **Sharad Birdhichand Sarda v. State of Maharashtra**⁹. A valid defence plea, substantiated through testimonies of independent witnesses and documents, as in this case, tested alongside the sketchy evidence led on behalf of the prosecution ought to have raised the judicial antenna of caution especially when the standard of proof is that of proof beyond reasonable doubt. As held in **Swaran Singh v.**

⁹ (1984) 4 SCC 116

State of Punjab¹⁰ in travelling from ‘*may be true*’ to ‘*must be true*’ the whole of the distance should be paved with ‘*legal, reliable and unimpeachable evidence*’.

38. Before leaving the matter, we are constrained to notice the clear travesty of justice which has occurred in the above case, putting on the dock seventeen persons for reason only of having marital ties with the victim who, in all probability, sustained burn injuries in an accidental fire at her matrimonial home. The High Court also should have bestowed better care in disposing of a criminal appeal from a conviction for an offence alleged to have been committed a quarter century back. The casual approach is evident from the remand order made for reason only of lack of opportunity to cross-examine certain witnesses, which testimonies were inconsequential and the impugned order of the Sessions Court having considered only those witnesses led in the trial of the accused, appellant herein.

39. We allow the appeal and acquit the appellant/accused reversing the order of conviction passed by the Sessions Court and the order of remand passed by the High Court. We had released the accused on bail, which if carried out, the bail bonds shall stand cancelled. It goes without saying that if the accused is still in custody, he shall be released forthwith if not wanted in any other case.

40. Pending application (s), if any, shall stand disposed of.

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¹⁰ (1957) 1 SCR 953