



2026:AHC-LKO:11724-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 534 of 1995

Ram Pheran and Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Petitioner(s)	: H.P. Pathak, M.P. Yadav
Counsel for Respondent(s)	: Govt. Advocate

Court No. -10

**Reserved on 08.01.2026
Delivered on 16.02.2026
AFR**

**HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.**

(Per : Rajnish Kumar, J.)

- (1) Heard Sri M.P. Yadav, learned counsel for the appellants and Sri Pawan Kumar Mishra, learned AGA for the State.
- (2) The instant Criminal Appeal has been filed assailing the judgment and order dated 25.08.1995, passed in Sessions Trial No.498/1994 (The State versus Ram Pheran and Others) by the Sessions Judge, Gonda, arising out of Case Crime No.29/94, under Sections 498-A/ 304-B/ 302 read with Section 34 of Indian Penal

Code(hereinafter referred to as IPC) and Section 3/5 of Dowry Prohibition Act (hereinafter referred as D.P. Act), Police Station Harraiya, District Gonda, by means of which the appellants have been convicted under Section 302 read with Section 34 IPC and Section 498-A IPC and sentenced each of them to undergo imprisonment for life under Section 302 read with Section 34 IPC and to undergo one year rigorous imprisonment under Section 498-A IPC alongwith a fine of Rs.1000/- payable by each of them and in default of payment of fine, to undergo further rigorous imprisonment for one month. It has further been provided that all the sentences shall run concurrently.

- (3) The prosecution story, in short, is that Smt. Meena Devi, daughter of Moti Lal was married to the appellant no.2 Mansha Ram, resident of Village Sonpur, Police Station Harraiya, District Gonda in the year 1989. The accused Ram Pheran is the husband of the accused Smt. Maharani. They are the father-in-law and mother-in-law of the deceased. The accused persons used to demand Rs.1,000/- as dowry from the deceased and harass her on account of non-fulfillment of their demand. It was further alleged that, since the marriage of the brother of the deceased was scheduled to take place on 23.06.1994, her brother Ram Chandra had come to take her on 19.06.1994. However, she was not sent with Ram Chandra, the brother of the deceased and he was forced to return without her. He was told that if the amount of dowry of Rs.1000/- would not be paid, his sister would face dire consequences. In the midnight between 19.06.1994 and 20.06.1994, the deceased was

allegedly burnt by the appellants, on account of non-fulfillment of their demand of dowry. The written F.I.R. was given at Police Station Harraiya on 20.06.1994 at about 04:45 p.m. by Moti Lal, the father of the deceased. On the basis of the said written report, Chick F.I.R. was prepared and case was registered against all the three accused/appellants at Crime No.29/94, under Sections 498-A/ 304-B I.P.C., entry of which was also made in the GD, a copy of which is on record.

- (4) As borne out from the records, before the aforesaid F.I.R. was lodged by Moti Lal on 20.06.1994, a written information had been furnished by the accused/appellant Ram Pheran at Police Station Harraiya on 20.06.1994 at about 8:05 a.m., intimating therein about the death of his daughter-in-law on account of burning. This information was entered in the GD at Serial No.10, a copy of which is on record. Accordingly, the process was undertaken for inquest proceedings of the dead body on the basis of said information at 2:00 p.m. Thereafter, the dead body was sent for post mortem examination, which was conducted on 22.06.1994 at about 1:00 p.m. in the mortuary, Gonda. The Investigating Officer prepared the site plan of the spot, took into his custody the dhibri, prepared Naksha Lash and on completion of the investigation, he submitted the charge sheet against all the three accused persons on 16.09.1994 under Sections 498-A, 304-B and 201 IPC. The cognizance was taken by learned Magistrate. Thereafter the matter was committed to the session. The Session Court framed the charges against all the

accused persons i.e. the appellants under Section 304-B, 498-A and Section 302 read with Section 34 IPC as well as Section 3/5 D.P. Act, to which they pleaded not guilty and claimed trial.

- (5) In order to prove its case, the prosecution examined P.W.1; Moti Lal, the informant and father of the deceased, P.W.2 Ram Chandra; brother of the deceased, P.W. 3 Pawan Kumar, P.W. 4 Dr. Ashok Kumar, who conducted the post mortem examination, P.W.5 Constable Mishri Lal, who took the dead body for post mortem examination, P.W.6 S.I. R.K. Chaudhary, who conducted the inquest proceedings of the dead body, P.W.7 Pradeep Kumar; Investigating Officer of the case and P.W.8 Head Constable Ram Sewak to prove the information furnished by Ram Pheran. The prosecution also placed on record certain documentary evidences and proved the same.
- (6) Thereafter, the statements of the accuseds under Section 313 Cr.P.C. were recorded, in which they denied the allegations. They stated that the marriage had taken place nine years back and a wrong post mortem report had been obtained, on account of extraneous consideration. According to the accused Ram Pheran, his wife Smt. Maharani and son Mansha Ram i.e. husband of the deceased were not present at the time of incident, as they were in village Padam Chakki, situated at a distance of about two and a half kilometers from the place of incident. He stated that he alone was present and was sleeping at the door of the house at a distance of about 250 kasies. When the deceased caught fire and raised an alarm, the villagers, particularly the women assembled there.

However, he did not enter into the house, as the deceased was his daughter-in-law. Similar pleas of absence were taken by the accused appellants Mansha Ram and his mother Smt. Maharani. The defence examined D.W.1; Rameshwar Prasad and D.W.2; Krishna Mohan, particularly to prove that the appellants Smt. Maharani and Mansha Ram were not in the house at the time of incident.

- (7) The learned trial court, thereafter after hearing learned counsels for the parties and considering the evidence and material on record, acquitted the appellants under Section 304-B IPC and 3/5 D.P.Act on the ground that the charges under the said sections could not be proved and convicted the appellants under Section 498-A and Section 302 read with Section 34 IPC. Hence, this appeal has been filed.
- (8) During pendency of appeal, the appellants no.1 and 3 have died, therefore, this appeal stands abated on their behalf. Now this appeal survives only on behalf of the appellant no.2.
- (9) We have heard learned counsel for the parties and perused the records.
- (10) In-disputedly, the death of Meena Devi, a young lady of 18 years of age and married to the accused Mansha Ram, had taken place in the intervening of 19/20.6.1994 inside the house of the appellants (accused) in Village Sonpur, on account of excessive burning. The father-in-law of the deceased, who is father of the appellant Mansha Ram, submitted a written report on 20.06.1994 at 8:05 a.m.(Ex Ka-16), intimating therein that a son had been born to his younger brother Kamta Prasad on 19.06.1994 and in celebration thereof, the ladies of

the family were playing musical instruments and singing. He, his brother Kamta Prasad and son Mansha Ram were sleeping outside of the house. After the singing and playing of instruments, his daughter-in-law, wife of Mansha Ram was going to sleep, who had glowing lamp(dhibri) of glass in her hand. When she reached near the door, the flame from the lamp caught her terricot saree and she started burning. On the alarm raised by her, they ran and reached the spot. By that time, the daughter-in-law was extensively burnt and lying unconscious. They tried to extinguish the fire but by that time, she died. This incident occurred at about 1:00 a.m. in the night between 19/20.06.1994. As there was no arrangement in the night, therefore, he has sent Triveni @ Teja son of Rajkumar Mishr and Krishna Mohan Tiwari son of Ram Surat Tiwari to the parental house of the daughter-in-law to inform them and thereafter he has come to the police station to give the information.

- (11)** In view of above, admittedly, the appellants were present at the time of the incident, in which the deceased died on account of burning. However, during trial, they took the plea that only the complainant Ram Pheran was present at the spot, whereas Mansha Ram; the husband of the deceased and his mother i.e. wife of the complainant; Smt. Maharani were not present and had gone to village Padam Chakki. To prove it, they took this defence in their statements under Section 313 C.r.P.C. and also produced two defence witnesses.

- (12) D.W.1; Rameshwar Prasad stated that at about 12:30 p.m. in the night, he heard the noise that there is a fire, then he went to the house of Mansha Ram and found that his wife was burning and the persons present were trying to extinguish the fire by the cotton and clothes. At that time, Mansha Ram and Maharani were not present at home, as they had gone to Village Padam Chakki, which is at a distance of about 8-9 kms from Sonpur. Ram Pheran was at his house, at about 250-300 steps in the south. He also stated that Mansha Ram and Maharani returned in the morning, on the information given to them. He denied the suggestion that the appellants had killed the deceased on account of dowry demand.
- (13) D.W.2; Krishna Mohan also stated that about 1 year two months back, at about 12:00-1:00 a.m., he heard the noise that the house of Ram Pheran is burning. He ran towards his house and found that the daughter-in-law of Ram Pheran was burning and whoever reached there was trying to extinguish the fire. At that time, Mansha Ram and Maharani were not present at the house. Subsequently, he came to know that they had gone to village Padam Chakki, which is about 5-6 kms. away from Village Sonpur. He, in his cross examination, has admitted that he has affinity with Ram Pheran, the complainant.
- (14) The evidence given by D.W.1 and D.W.2 is contrary to the information given by the complainant i.e. the appellant Ram Pheran on 20.06.1994 (Ex. Ka-16) at 8:05 in the morning at the Police Station Harraiya, District Gonda, wherein he admitted that he, alongwith his son and

brother Kamta Prasad was sleeping outside the house, therefore, the plea of alibi taken by the appellants is an after thought, and the evidence of D.W.1 and D.W.2 is not reliable. Even otherwise, they are not eye witnesses.

- (15)** The learned trial court, after considering the evidence and material on record, recorded that the plea of absence required strict proof thereof, which could not be done. D.W.1 and D.W.2 were not found worthy of placing any credence, as they made efforts to state a fact against the own admission of accused Ram Pheran, who had himself admitted his presence at the relevant time and the plea of alibi of Smt. Maharani also could not be proved and discarded the plea. This Court is in agreement with the view taken by the learned trial court. Now this Court has to see as to how the deceased died and the cause of death and under the circumstances, the appellants could only have the perpetrators of crime.
- (16)** Dr. Ashok Kumar, who appeared as P.W.4, proved the post mortem report (Ex. Ka-2). He found that inner and middle coats of carotid arteries were found lacerated with extravasation of blood within their walls. The cornu of hyoid (left cornu) was found broken(fractured). The body was of a young lady of average built and muscularity with both eyes proptosed and mouth semi opened. Whole body was burnt except both feet and both soles. Scalp hairs were also disarranged. Smell of kerosene was found present on the body and clothes. Abdomen was burst open and the abdominal contents were coming out. Small to medium sized maggots were found present on the body. Occasional

blisters were also found present on the body, which were containing air only. As per the post mortem report, the following anti mortem injuries were found:-

"Post mortem bum of face, head, neck, trunks and both extrimities including perinium except both soles and both feet. There was no line of redness. Occasional vesications containing air with their bases hard, dry and yellow. No reparative process was found present. It has further been recorded that the larnyx were marked by congested mucosa. No sooty particles were found present in trachea of bronchits. Both lungs were found markedly congested showing haemorrhage i.e. petechiae and exuding dark fluid blood on section. Emphysematous patches on the surface of lungs were also found present. The cause of death was due to asphyxia on account of strangulation."

- (17) He opined that the death of the deceased had occurred in the night of 19/20.6.1994. He stated that he alongwith his companion Dr. P.K. Agarwal, found the cause of death was strangulation and thereafter burning of the dead body, which was different than the reason given in the inquest report, therefore, he wrote a letter dated 22.06.1994 to the Superintendent of Police in this regard and as per the directions received, the post mortem was conducted in the presence of Chief Medical Officer by him and his companion Dr. P.K. Agarwal. He proved the letter written to the Superintendent of Police (Ex. Ka-3). He proved the report written on the said letter by the Chief Medical Officer as Ex.Ka-4. In his cross examination, he stated that in his opinion, in the living status, if the dead body is burnt of a living person, then certain particles of carbon necessarily go in the wind pipe, which is called sooty particles. However, in the present case, the wind pipe was congested from inside, which, according to him is reason of death by strangulation. He further stated that the blood was not deposited in the

lungs on account of hue because no sooti particles had gone inside. He also stated that the hyoid bone was fractured. He also stated that hyoid bone cannot be fractured in case of pressure at the time of burning. He stated that the dead body of the deceased was about 90% burnt. Thus, it is proved that the deceased had already died before burning.

(18) In view of above, it has been proved that the deceased was killed, thereafter, she was burnt after pouring kerosene oil on her to give it a colour of suicide.

(19) P.W.1, i.e. the complainant, has stated that the appellants used to demand Rs.1000/- as dowry and since he was not in a position to pay the amount, they used to beat his daughter and they also do not give food to her. He also stated that the marriage of his son Shiv Dayal, was fixed for 23.06.1994, therefore, he had sent his another son Ram Chandra on 19.06.1994 to invite her and bring her home, but she was not sent on the ground that the complainant has not given Rs.1,000/- as demanded by the appellants. He proved the F.I.R. lodged by him. He further stated that on the next day, while he was preparing for going to the house of his daughter's in-laws, he received the information regarding her death. Thereafter he went to the house of his in-laws, where he found her dead body and also came to know that her daughter has been killed, therefore, he gave a written complaint i.e. Paper No.4/2 for lodging the F.I.R. He proved the same as Ex. Ka-1. In the cross examination, he stated that in the room of her daughter he had not found any burnt article except the clothes of his daughter. Her face was

also burnt. Besides her saree, six-seven other sarees were found burnt. The dead body was near the cot, where she used to sleep. He denied the suggestion that her daughter had died her natural death.

(20) P.W.2 Ram Chandra, the brother of the deceased has also stated that the appellants used to demand Rs.1,000/-. He also stated that he does not know as to whether his father had given the same or not. He further stated that the marriage of his brother was fixed in the month of June 1994, therefore, he had gone to bring his sister on 19.06.1994 but she was not sent on account of non-payment of Rs.1,000/-. He further stated that he was also told that if the money was not paid, then the life of the girl would be in danger. He had also met his sister Meena, who told him that the appellants used to harass her for the money and if the money would not be given, her life would be in danger. She had also informed that they do not give her food. He had made request for sending his sister but they told that she would not be sent, unless the money was paid. On 20.06.1994, he came to know about the death of his sister. In the cross examination, nothing could be extracted, which may create any doubt about the veracity of the evidence given by P.W.2. All the other witnesses, who proved lodging of F.I.R., inquest report, taking the body for post mortem and the investigation, but nothing could be extracted from them, which may create even a single doubt in their evidence.

(21) The learned trial court, after considering the post mortem examination report and the testimony of P.W.4 Dr. Ashok Kumar, has recorded a

finding that at first the deceased was strangled and thereafter she was set ablaze by sprinkling kerosene oil in attempt to conceal the evidence and to give different version of story. Not only hyoid bone was found fractured but there were no sooty particles found in trachea and bronchitis though there was smell of kerosene oil on the body with absence of redness in the injury which alongwith the symptoms as mentioned in the post mortem, indicates clearly that the burns were post death and that the lady had already died on account of strangulation.

(22) On the basis of above, learned trial court has found that the charges under Section 498 A IPC and Section 302 read with Section 34 IPC have been found proved against all the three accused i.e. the appellants, as the deceased was subjected to cruelty soon before her death by her father-in-law, husband and mother-in-law and they committed murder of Smt. Meena by strangulating her with a common intention and thereafter setting her on fire, after sprinkling kerosene oil and convicted accordingly. However, the learned trial court acquitted the appellants from the charges under Section 304-B IPC and Section 3/5 of D.P. Act, as the charges under the said provisions have not been found proved. The said part of the judgment has not been assailed by either the State or the complainant.

(23) This Court is in agreement with the findings recorded by the trial court and the conclusion drawn. On giving thoughtful consideration to the evidence and material on record, this Court also finds that the deceased

was subjected to harassment soon before her death and even she was not being given food. She was killed by strangulation and on account of her harassment, even her hyoid bone was fractured. Thereafter to give colour of suicide, she was burnt by pouring kerosene oil on her.

(24) In the facts and circumstances of the case, and upon considering the case in hand on the touch stone of five golden principles of circumstantial evidence enumerated in the case of *Sharad Birdichand Sarda versus State of Maharashtra; (1984) 4 SCC 116*, the appellants, who were present at the time of crime could only have committed the crime. The plea of alibi of the husband and mother of deceased by the defence could not be proved as discussed above. The relevant paragraphs 153 and 154 of *Sharad Birdichand Sarda(supra)* judgment are extracted here-in-below:

"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.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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."

- (25) The aforesaid has been followed by the Hon'ble Supreme Court in the case of *Anwar Ali and Another versus State of Himachal Pradesh (2020) 10 SCC 166*.
- (26) The aforesaid golden principles still hold the field and upon testing a case appropriately on the said principles and conclusions arrived thereupon, there cannot be any doubt about the conclusions and the conclusions cannot be said to be erroneous or perverse.
- (27) In view of above and considering the overall facts and circumstances of the case, this Court does not find any illegality or error in the conviction of the appellants.
- (28) The learned trial court has awarded the punishment of life imprisonment under Section 302 read with Section 34 IPC and further sentenced each of them to undergo rigorous imprisonment for one year each under Section 498 IPC besides a fine of Rs.1000/- payable by each of the accused and in default of payment of fine, to undergo rigorous imprisonment for one month further. This Court does not find any illegality or error in the sentence and fine awarded to the appellants. However, the appellant no.1 Ram Pheran and appellant no.3 Smt. Maharani have died. Thus, appeal on their behalf has already abated.

- (29)** The appellant no.1 was released on 08.09.2000 in pursuance of Government Order No.1951/22-2-2000-18(75/2000 dated 11.8.2000), on account of completion of 60 years of age and three years of period of incarceration with remission. Appellant No.2 Mansha Ram has been released on 22.02.2019 in compliance of Government Order No.1014/22-2-2019-17 (519)/ 2019 dated 15.02.2019 on remission granted by His/Her Excellency the Governor of Uttar Pradesh under Article 161 of Constitution of India and Government Order No.82/Provation-6/144 dated 20.02.2019 of IG, Jail Administration and Reforms Department, U.P., Lucknow. The appeal on behalf of appellant no.1 has already abated.
- (30)** Now the question arises as to whether the appellant no.2 is liable to be sent again to jail to serve out remaining sentence or not in view of remission granted to him by the Governor under Article 161 of the Constitution of India.
- (31)** This Court is of the view that the punishment awarded to the appellants was sufficient and commensurate to the crime committed by the appellants. However, the appellant no.2 has been released on remission after completion of 24 years 6 months 5 days of incarceration and 29 years 11 months 15 days with remission, therefore, he is not required to surrender to undergo the remaining period of sentence because upholding of conviction and dismissal of appeal confirming sentence will not affect the order passed by Governor under Article 161 of Constitution of India. However, it cannot affect the power of this Court

to decide the appeal and take decision in regard to conviction and sentence.

(32) The Hon'ble Supreme Court, in the case of *Union of India versus Sriharan; 2016 (7) SCC 1*, has held that right to claim remission, commutation, reprieve etc. as provided under Article 72 or Article 161 of the Constitution will always be available being constitutional remedies untouchable by the Court.

(33) The Hon'ble Supreme Court, in the case of *Suresh Yadav versus State of Chhatisgarh; (2022) 19 SCC 469*, in which the appellant was released on remission by the Government and the conviction was upheld, held that dismissal of the appeal shall not be of any adverse effect on such exercise of power of remission by the State Government because under Article 161 of the Constitution of India, the Governor of a State has a power to grant remissions of punishment of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. The relevant paragraph 11 is extracted hereinbelow:-

As per the office report and the custody certificate placed before us, it appears that on 07.09.2019, the appellant, after having served the sentence of imprisonment for a period of 15 years 9 months and 27 days, was released under Section 432 Cr.P.C. by the Government of Chhatisgarh. Having regard to the circumstances, we make it clear that dismissal of the appeal shall not be of any adverse effect on such exercise of power of remission by the Government of chhatisgarh.

(34) In view of above and considering overall facts and circumstances of case, the appeal is **dismissed**, upholding the conviction and confirming the sentence awarded by the learned trial court. However, in view of the fact that the appellant no.2 has been released on remission granted by

the Governor under Article 161 of the Constitution of India, he is not required to surrender to undergo the remaining period of sentence.

(35) Let a copy of this judgment alongwith the Trial Court's record be sent back forthwith and in any case within a period of one week from today.

(Zafeer Ahmad,J.)

(Rajnish Kumar,J.)

Order Date :- 16.02.2026
Akanksha Sri/-