

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.551 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

Ratnesh Kumar Sinha, S/o- Satyadeo Narayan Sinha @ Ramjee Babu
Mohalla- Club Road, Ara, P.S. Nawada, Dist. Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anupama Kumari @ Geeta Kumari @ Anupama Sinha D/o- Late Saryu Prasad Srivastava, W/o- Ratnesh Kumar Sinha Mohalla- Mahesh Complex Patthal Lane Saristabad, Ps- Gardanibagh, Dist- Patna

... .. Respondent/s

with

CRIMINAL REVISION No. 561 of 2024

Arising Out of PS. Case No.-926 Year-2004 Thana- GARDANIBAG District- Patna

Anupama Kumari @ Geeta Kumari @ Anupama Sinha Daughter Of Late Saryu Prasad Srivastava, Wife Of Ratnesh Kumar Sinha Resident Of Mahesh Complex Patthal Lane Sristabad, P.S. - Gardani Bagh, District - Patna, Presently Residing At A-801, Blu Springs Jambhulwadi Road Near Telco Colony, Pune City, Katraj, Pune, Maharashtra

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ratnesh Kumar Sinha, Son Of Late Satyadeo Naryan Sinha @ Ramji Babu Resident Of Mohalla - Club Road, Ara P.S. - Nawada, District - Bhojpur

... .. Respondent/s

Appearance :

(In CRIMINAL REVISION No. 551 of 2024)

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate
Ms. Aastha Ananya, Advocate
For the Respondent/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Manoj Kumar, Advocate
Mr. Amitesh Kumar, Advocate

(In CRIMINAL REVISION No. 561 of 2024)

For the Petitioner/s : Mr. Manoj Kumar Manoj, Advocate
For the Respondent/s : Mr. Yogendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 09-05-2025



1. Both the revisional applications challenged one and identical order of conviction and sentence passed against the petitioner of Cr. Revision No. 551 of 2024. Therefore, both the criminal revisions are disposed of by a common judgement.

2. In Criminal Revision No. 551 of 2024, the petitioner has challenged the correctness, legality and propriety of an order of conviction for committing offence under Section 498A of the IPC and consequent order of sentence, passed by the learned Additional Sessions Judge, 3rd, Patna, in Criminal Revision No. 195 of 2017, affirming the order of conviction, passed by the learned SDJM, Patna in G. R. Case No. 5207 of 2004, modifying the order of sentence by imposing rigorous imprisonment of two years instead of rigorous imprisonment of three years, passed by the learned SDJM, Patna, in G.R. Case No. 5207 of 2004 for the offence punishable under Section 498A of the IPC.

3. Criminal Revision No. 561 of 2024, on the other hand, is filed by the victim Anupama Kumari, praying for enhancement of sentence of rigorous imprisonment,



which was modified and reduced by one year by the Court of Appeal.

4. Indisputably, marriage of the Opposite Party No. 2 in Criminal Revision No. 551 of 2024 and the petitioner of Criminal Revision No. 561 of 2024 was solemnized with the convict according to the Hindu Rites and Ceremonies on 29th of November, 2002. The marriage of the parties was mediated by one Anand Bhushan Sahai, a distant relative of the family of the groom. During the talk of marriage, father of the convict told the father of the bride that as his son had been staying in Pune in the State of Maharashtra for the purpose of his job, he would pay a sum of Rs. 1,50,000/- in cash so that newly married couple would purchase the household goods, like Bed, T.V, Fridge, Sofa, Washing Machine, Dining Table etc. as wedding gift. The father of the bride paid the said amount to Satyadeo Narayan Sinha, father of the convict of Criminal Revision No. 551 of 2024. As per local ritual, engagement and Tilak was performed on 19th of May, 2002 and 26th of November, 2002 respectively and marriage was solemnized on 29th of November, 2002. At the time of marriage, father of the



bride gifted jewelry to his daughter worth Rs. 90,000/- and cash of Rs. 60,000/-. Thus, he spent in all Rs. 3,00,000/- to purchase gift items for the newly married couple, jewelry and cash money. After marriage, the daughter of the *de facto* complainant went to her matrimonial home in Ara on 30th of January, 2002. On 4th of December, 2002, newly married couple came to the house of the informant at Patna. Subsequently, the father of the groom and his younger son and other relatives came to the house of the informant for Duragaman. During lunch, the father of the groom claimed a sum of Rs. 3,00,000/- in cash as dowry from the father of the bride and a motorcycle for the groom. The informant told him that there was no demand or agreement for payment of dowry in the form of cash money and motorcycle at the time of settlement of marriage and he expressed his inability to pay such huge amount of money to the father of the groom. At this, father of the groom told the *de facto* complainant that unless he would pay the said amount in cash and a motorcycle, there would not be any Duragaman. Finally, the *de facto* complainant gave a Titan Wrist Watch to his son-in-law and only then Duragaman



was performed. After few days of marriage when the son of the informant went to the matrimonial home of his sister with Kalewa (Gift Items Like Sweet, Food Materials, Cloths Etc.), the husband of her sister, his parents and his younger brothers refused to accept Kalewa unless their demand of dowry and motorcycle was satisfied. The daughter of the informant told her brother that her father-in-law took away all jewelry from her and had kept it in his custody. The informant also alleged in the complaint that his daughter was subjected to physical torture and mental cruelty by her husband, father-in-law, mother-in-law and brother-in-law. Her husband left for Pune, leaving her alone under the control of his parents and brothers at Ara. The informant tried to settle the matter amicably time and again but failed. On 12th of October, 2003, the son of the informant went to Pune and try to persuade the son-in-law of the informant that his wife should not be beaten up by his matrimonial relatives on demand of dowry. On 16th of October, 2003, the son of the informant went to Ara and told the parents of the husband of his sister that they did not have money at the relevant point of time and they are trying



to make arrangements for the same and requested them not to harass his sister. At this, the father-in-law, mother-in-law and brother-in-law of his sister told him to immediately purchase steel almirah as the husband of his sister would come to Ara from Pune. Accordingly, he purchased almirah and delivered the same in the matrimonial home of his sister on 28th of October, 2003.

5. On the face of repeated demands of dowry and experiencing the harassment caused by the accused persons upon the daughter of the informant, he somehow arranged a sum of Rs. 45,000/- and handed over to the father of his son-in-law. While taking the money, the father of his son-in-law asked him to arrange for the remaining money soon. After payment of Rs. 45,000/-, daughter of the informant was taken to Pune by her husband. They started living in a rented apartment in Pune. On 4th of December, 2003, the daughter of the informant told him over phone that her husband assaulted her very badly on demand of dowry. He also threatened her to kill. Hearing this, the informant and his well-wishers went to Ara to meet the father of the husband of his daughter and again paid a sum



of Rs. 35,000/- to him and requested him to save his daughter's life. On 14th of December, 2003, father-in-law of the daughter of the informant went to Pune with the said money. Thereafter, the son-in-law of the informant told him to arrange for the rest money and one motorcycle at the earliest. Hearing this, the son of the informant transferred a sum of Rs. 6,000/- to the bank account of the brother of the husband of the informant's daughter. On 12th of November, 2004, the daughter of the informant and her husband came to Ara. She was severely assaulted by her matrimonial relatives on demand of rest amount of dowry money. They also stopped her providing food on 14th of November, 2004. They sent her to the house of the informant at Patna with Dr. Anand Bhushan Sahai. Again, the informant along with Dr. Sahai and others went to the matrimonial home of his daughter and try to settle the dispute amicably but failed. On 20th of November, 2004, the husband of the daughter of the informant took her to Pune. She was being harassed at Pune on demand of dowry. The daughter of the informant went to Pune to settle the dispute amicably. He found his sister in very bad health in the apartment of her husband.



When he asked the husband of his sister about the reason of her ill health, he threw away both the son and daughter of the informant from his apartment and left his flat putting lock and key. Finding no other alternative, the daughter of the informant returned to her parental home.

6. On 30th of November, 2004, the informant lodged a written complaint before the SHO, Gardanibagh Police Station. On the basis of his written complaint, Gardanibagh P.S. Case No. 926 of 2004, for the offence punishable under Sections 379, 498A and 34 of the IPC and Sections 3/4 of the Dowry Prohibition Act was registered against the husband, father-in-law, mother-in-law and brother-in-law of the daughter of the *de facto* complainant. Police took up the case for investigation. On completion of investigation, charge-sheet was submitted against accused persons before the learned SDJM, Patna. The case was registered as G. R. Case No. 5207 of 2004. The charge was framed against the Ratnesh Kumar Sinha, husband of the daughter of the informant, Satyadeo Narayan Sinha and Smt. Urmila Sinha, father-in-law and mother-in-law of the wife of Ratnesh under Section 498A/34, 379 and 34 of the



IPC and Sections 3/4 of Dowry Prohibition Act.

7. In order to bring home the charge against the accused persons, prosecution examined in all six witnesses: They are Suresh Kumar Sinha (P.W. 1), Sudhir Kumar (P.W. 2), Sudeep Kumar (P.W. 3), Sanjeev Kumar (P.W. 4), Anupama Sinha (P.W. 5) and Satyanand Jha (P.W. 6). P.W. 5 is the victim and wife of Ratnesh Kumar Sinha, P.W. 4 is the brother of victim and P.W. 6 is the Investigating Officer.

8. Some documents, viz, the written complaint, endorsement of SHO, Gardanibagh on the written complaint, some letters written by the daughter of the informant, bank transaction report, prescription issued in the name of the daughter of the *de facto* complainant by Dr. Kanhaiya Singh at Ara and also by the Ram Krishna Math Charitable Homeopathic Hospital at Pune, a copy of the complaint submitted by the victim to the police at Dhankauri out post, certified copy of orders, dated 4th of December, 2008 and 8th of November, 2011, passed in Complaint Case No. 2060 (C) of 2008 and certified copy of Case No. 364 of 2013 filed by Ratnesh Kumar Sinha against the *de facto* complainant were marked as Exhibit 1



to Exhibit 8 respectively. Though no witness had been examined during trial by the defence, some photographs of the victim were marked as Exhibit A to A/14 on admission. An application form submitted by the victim on 20th of April, 2004 to Elixir Academy for self development, a letter in the name of the victim showing that she was working as a teacher in Singhad Technical Education Society, copy of the seizure list, copy of signature of the *de facto* complainant on the seizure list and a bank statement were marked as Exhibit B to Exhibit E respectively.

9. The learned Trial Judge on due consideration of the evidence on record, both oral and documentary held accused Satyadeo Narayan Sinha and Ratnesh Kumar Sinha guilty of committing offence under Section 498A and convicted them accordingly. They were sentenced to suffer rigorous imprisonment for a term of 3 years with fine of Rs. 5,000/-, in default, further imprisonment of 15 days for the offence punishable under Section 498A of the IPC. The above-named persons were convicted for the offence punishable under Section 4 of the Dowry Prohibition Act and sentence to suffer rigorous imprisonment for two years



with fine of Rs. 5000/-, and in default, to suffer further imprisonment of 15 days.

10. It is pertinent to mention at this stage that Satyadeo Narayan Sinha died after delivery of judgement by the Trial Court in G.R. Case No. 5207 of 2004.

11. Being aggrieved by and dissatisfied with the order of conviction of sentence passed by the learned SDJM, Patna in the above-mentioned case, Ratnesh Kumar Sinha, the petitioner of Cr. Revision No. 551 of 2024 preferred Cr. Appeal No. 193 of 2017 which came up for hearing before the learned Additional Sessions Judge, 3rd, Patna. Learned Additional Sessions Judge confirmed the order of conviction passed against Ratnesh Kumar Sinha for the offence punishable under Section 498A of the IPC, but the sentence of imprisonment was modified and reduced to two years rigorous imprisonment.

12. Ratnesh Kumar Sinha has challenged the correctness, legality and propriety of the findings of the court's below and the order of sentence on the following grounds:

(i) The F.I.R. of Gardanibagh P. S. Case No.



926 of 2004, filed by the father of his wife, Anupama Kumari, has not been proved in accordance with the provisions of Evidence Act as the informant / F.I.R. maker died before the trial of the case and he did not get any opportunity to adduce evidence on behalf of the prosecution.

(ii) The Trial Court exhibited the written complaint made by Saryu Prasad Srivastava, since deceased, in evidence through the Investigating Officer of this case. An F.I.R. cannot be exhibited through the Investigating Officer in terms of the decision of the Apex Court in the case of **Lalita v. Vishwanath & Ors.:2025 SCC OnLine SC 370.**

(iii) The finding of the Trial Court is perverse on the ground that it suffers from material contradictions and omissions.

(iv) The Trial Court exhibited some photostat copies of letters, allegedly written



by Anupama Kumari, wife of Ratnesh, to her father and brothers, without following mandatory requirements of Section 65 of the Evidence Act.

13. Before I like to delve on the submissions made by the learned Advocate for the petitioner, let me state the extent of powers of Revisional Courts to appreciate evidence led by the witnesses during trial of a case. Generally, it is right that appreciation of evidence by the Revisional Court independently cannot be done. The Revisional Court cannot upset the findings of fact by the courts below unless the finding is perverse. In order to come to the conclusion as to whether finding of facts by the Trial Court and the lower Appellate Court is perverse or not, the Revisional Court cannot substitute its own finding of fact on appreciation of evidence. The Hon'ble Supreme Court in the case of ***Vinay Tyagi v. Irshad Ali: (2013) 5 SCC 762*** relying on its previous decision in Amit Kapur v. Ramesh Chander & Anr. Lays down thus: -

"Normally, a revisional jurisdiction should be exercised on a question of law. However,



when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.”

14. We may delineate the scope for interference by the Revisional Court with the findings of fact recorded by the lower court in the following circumstances: -

(a) findings of fact recorded by lower court on evidence not available on record

(b) material evidence, which could have reflected on the merits and the decision of the case, has been ignored by the lower court

(c) finding of fact recorded on an evidence not admissible

(d) material evidence discarded by treating it as inadmissible

(e) finding of fact being perverse in terms of law

(f) while disturbing the findings of fact recorded by the lower court, the



Revisional Court would not proceed to appreciate or re-appreciate the evidence itself. The Revisional Court would only make its observation on the illegality committed by the lower court in appreciating the evidence and recording findings of fact and by setting right the mistakes of law committed by the lower court, would set aside the findings and the order of the lower court by directing it to re-appreciate the evidence, record fresh findings of fact as per law by keeping in view the observations made by the Revisional Court and pass fresh orders.

15. Bearing this principle in mind, let us now examine the prosecution case on the point of F.I.R.

16. It is matter of record that the informant died before commencement of trial of the case. The learned Advocate for the petitioner seriously draws the attention of the Court to note down his objection that the Trial Court committed serious error in marking the F.I.R. as exhibit through the Investigating Officer.

17. In ***Lalita v. Vishwanath*** (supra), the Hon'ble Supreme Court noted that the First Information Report was



lodged by the father of the deceased. However, before the father could step into the witness box, he passed away. In such circumstances, the Trial Court permitted the Investigating Officer to prove the contents of the F.I.R. and read it into the evidence as per Sec. 67 of the Evidence Act.

18. In paragraph 30 of ***Lalita v. Vishwanath*** (supra), the Hon'ble Supreme Court observed as follows: -

“30. F.I.Rs. can be registered by a victim, a witness or someone else with the knowledge of the crime. The police can record three different kinds of statements. The first kind of statement is one which can be recorded as an F.I.R., the second kind of statement is one which can be recorded by the police during the investigation, and the third kind of statement is any kind of statement which would not fall under any of the two categories mentioned above. Evidence is the matter of testimony manifesting the fact on a particular precision or circumstances. The First Information Report is not by itself a substantial piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of Section 32 of the Evidence



Act. It is an admitted fact that the original first informant because of the injuries caused by the applicants. The relative importance of a First Information Report is far greater than any other statement recorded by the police during the course of the investigation. It is the foremost information the police gets about the commission of an offence and which can be used to corroborate the story put-forward by the first informant under Section 157 of the Evidence Act or to contradict his version by facts under Section 145 of the Evidence Act in case he is summoned as a witness in the case by the Court. It may happen that the informant is the accused himself. In such cases, the First Information Report lodged by him cannot be used as an evidence against him because it is embodied in the basic structure of our Constitution that a person cannot be compelled to be a witness against himself.”

19. Finally, in paragraph 34 of the above-mentioned decision, the Hon’ble Supreme Court held that in case the death of the informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injuries inflicted on him in relation to a



matter, the contents of the F.I.R. would not be admissible in evidence. In such circumstances, the contents cannot be proved through the Investigating Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact contents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Officer can, in his deposition, identify the signature of the first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date in a particular police station.

20. It is absolutely incorrect on the part of the Trial Court and the High Court to say that in the absence of the first informant, the police officer can prove the contents of the F.I.R. as per Section 67 of the Evidence Act.

21. The learned Advocate on behalf of the petitioner is, however, factually incorrect in his submission that the FIR submitted by the father of Anupama Kumari was exhibited by the Investigating Officer. On the contrary, the evidence on record shows that the FIR was proved by P.W. 2 Sudhir Kumar, who is the son of the informant, since



deceased. In his evidence, he sated “my father filed a case in Patna. My father has expired. The FIR “लिखित आवेदन” was written and signed by my father. I know his handwriting and signature.

22. It is needless to say that the FIR was brought in evidence by marking exhibit through the son of the informant, since deceased as he was acquainted with the handwriting and signature of the informant. Therefore, the contention of the learned Advocate for the petitioner that the FIR was admitted in evidence by P.W. 6 is factually wrong and cannot be accepted.

23. For the same reason, the ratio laid down in *Lalita Kumari v. Vishwanath* (supra) is also not admissible in evidence.

24. At this stage, the issue that falls for consideration is as to whether prosecution case will fail if the FIR is not exhibited during trial of a criminal case.

25. The first informant report does not constitute substantive evidence though its importance as conveying the earliest information regarding the occurrence cannot be doubted. It can however only be used as a previous



statement for the purpose of either corroborating its maker under Section 157 of the Evidence Act or for contradicting under Section 145 of that Act. It cannot be used for the purpose of corroborating other witnesses. It is an information of a cognizable offence given under Section 154 of the Cr.P.C. and if there is a statement made therein, it can only be used for the purpose of a contradicting and discrediting a witness under Section 145 of the Evidence Act. In the second place, the statement given by the informant need not necessarily be an eye witness account of what he has actually seen.

26. An FIR may contain the narration of an incident or series of incidents/acts which the informant came to know from another person, in the instant case, from his daughter, son and others.

27. Therefore, FIR is an important document to set the criminal law in motion. On the basis of the FIR disclosing a cognizable offence, police is bound to lodge formal FIR under Section 145 of the Cr.P.C. Secondly, FIR being the earliest version of the occurrence, the same can be used for the purpose of corroboration under Section 157 of



the Evidence Act or contradiction under Section 145 of the Evidence Act. The FIR does not have any more importance in a criminal trial.

28. Now the same occasion may arise that the contents of the FIR could not be exhibited because of the death of the FIR maker. Death of the maker may be unconnected with the offence complained of. In such cases, the criminal trial cannot be held to be vitiated due to non-examination of the informant and failure on the part of the prosecution to mark an FIR as exhibit. It is the duty of the Court to see as to whether the charge framed against the accused has been proved on the basis of the evidence adduced by the witnesses on behalf of the prosecution. Therefore FIR not being a substantial evidence, prosecution case cannot be thrown away merely because the contents of the FIR has not been proved.

29. Thus, in the instant case, both the Trial Court and the Court of Appeal rightly held that the institution of FIR was proved by PW 2, the son of the informant (since deceased). The Investigating Officer has also proved that on the basis of the said FIR (Exhibit 1) Gardanibagh P.S. Case



No. 926 of 2004, punishable for the offences under Sections 379, 498A/34 of the IPC and Section 3/4 of the Dowry Prohibition Act was registered by the SHO of the said police station and endorsement of the SHO was marked as Exhibit 1/1.

30. With regard to relevancy of the contents of the FIR, it has already been recorded that it can be used for the purpose of corroboration or contradiction with the maker and since the informant was not examined, the contents of the FIR was not exhibited and, therefore, the contents of the FIR were neither corroborated nor contradicted by any of the prosecution witnesses.

31. Mr. Rajendra Narayan, learned Senior Counsel on behalf of the opposite party submits that the Investigating Officer recorded the statement of the informant during investigation under Section 161 of the Cr.P.C. In course of his evidence, the I.O. corroborated the statement of the informant recorded by him under Section 161 of the Cr.P.C. The said evidence of the I.O. is an important piece of evidence and such evidence is admissible against the accused.



32. I am not in a position to concur with the submission made by the learned Senior Advocate on behalf of the opposite party.

33. Section 162 of the Cr.P.C. ensures that no statement made to the police which is reduced to writing be signed by the person who makes it and no such statement or any record of such a statement, whether in a police diary or otherwise or any part of such statement or record shall be used for any purpose other than those stated in the Section. Thus, they may be used by the accused or by the prosecution to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act and when it is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination. It means that statements made to the police can be used for contradicting a prosecution witness in the manner indicated in Section 145 of the Evidence Act. The particular portion of the unsigned statements recorded by the Investigating Officer can be used during the course of the examination of the witnesses for the purpose of contradiction as provided



under Section 145 or for corroboration as provided under Section 157 Evidence Act. They cannot be used for corroboration of the evidence of a witness in Court. Statements to the police are not admissible in any inquiry or trial except for contradiction with the statement made by the maker during trial of the case.

34. Therefore, an Investigating Officer cannot corroborate the statement of a witness, in the instant case the informant, recorded by him under Section 161 of the Cr.P.C.

35. Such submission made by the learned Senior Advocate opposite party does not have any leg to stand.

36. This Court has already recorded that prosecution examined as many as six witnesses. Amongst them, PW 1, Suresh Kumar Sinha is a distant relative of Ratnesh. In his evidence, he stated that the marriage of Anupama Kumari @ Geeta was solemnized in the year 2002. In the year 2003, the father of Anupama Kumari requested him to go to the matrimonial home of his daughter as his daughter was being harassed for further dowry. The witness also stated that Ramji Babu (Father of



Ratnesh) stated that Ratnesh was demanding a sum of Rs. 3,00,000/- in cash and a motorcycle from the father of his wife. The witness also stated on oath that all of them tried to make him understand that the informant had no such financial capacity to satisfy the demand of Ratnesh but Ramji Babu was not ready to be convinced. The Saryu Babu gave a sum of Rs. 45,000/- to Ramji Babu. Then they came back from the matrimonial home of Anupama. After few days, PW 1 accompanied the father of Anupama and others to her matrimonial home. There was some altercation over payment of dowry and Saryu Babu again paid a sum of Rs. 35,000/-. In course of cross-examination, this part of cross-examination was not contradicted by the defence during cross-examination. Even the cross-examination in-chief of the P.W. 1 was not denied by the defence during cross-examination.

37. PW 2 Sudhir Kumar and PW 3 Sudeep Kumar are the brothers of Anupama Kumari. They also corroborated the incident of demand of dowry of Rs. 3,00,000/- and a motorcycle by Ratnesh, his parents and brother.



38. It is important to note that during cross-examination, the defence took a corroboration from P.W. 3 when he admitted that he knows the contents of the statement made by his father to the police (पिता जी के बयान से वाकिफ हूँ). Thus, PW 2 exhibited the written complaint subjected by Saryu Prasad Srivastava, since deceased, and PW 3 admitted in his cross-examination that he is aware of the contents of the said complaint submitted by the informant, since deceased. PW 4 Sanjeev Kumar is another brother of Anupama Kumari.

39. The learned Advocate for the petitioner has referred to the cross-examination of the PW 2 and PW 5 to demonstrate contradictions between their previous statement under Section 161 of the Cr.P.C. and their evidence on oath in Court.

40. I have perused the judgments passed by the Trial Court as well as the Court of Appeal. Both the Courts have dealt with the contradictions and found that there were omissions in the statement of P.W. 5. Anupama Kumari recorded under Section 161 of the Cr.P.C. regarding payment of a sum of Rs. 45,000/- and Rs. 35,000/- on two



occasions by the informant to father of Ratnesh Kumar Sinha, but the previous statement of P.W. 5 recorded under Section 161 of the Cr.P.C. is consistent with regard to demand of a sum of Rs. 3,00,000/- and a motorcycle by her father-in-law. The evidence of P.W. 5 is also consistent with regard to demand of dowry after her marriage and physical and mental torture by the accused persons at her matrimonial home at Ara and also by her husband in Pune.

41. On careful perusal of the evidence of P.W. 4 and examining the same with his previous statement, I find certain omissions with regard to demand of dowry and payment of money by his father to father of Ratnesh. However, other incidents and matrimonial dispute between Anupama Kumari and Ratnesh and his family members are consistent with his evidence on oath.

42. On the question as to whether there were material contradictions and omissions in the evidence of P.W. 4 and P.W. 5 and whether omissions amount to contradictions, the learned Advocate appearing on behalf of the petitioner refers to a decision of the Hon'ble Supreme Court in *Alauddin & Ors. v. The State of Assam & Anr.*



(Criminal Appeal No. 1637 of 2021), decided on 3rd of May, 2024.

43. I am tempted to quote paragraph nos. 5 to 10 of the above-mentioned judgment in *Alauddin* (supra) because I have not found any other expressions to deal with the issue of contradictions and omissions than what has been decided by the Hon'ble Supreme Court in paragraph nos. 5 to 10.

“5. Before we deal with the merits, something must be stated about how the trial court recorded the prosecution witnesses’ cross-examination in this case, especially when they were confronted with their prior statements. The Trial Court did not follow the correct procedure while recording the contradictions.

6. Under Section 161 of the Code of Criminal Procedure, 1973 (for short, ‘CrPC’), the police have the power to record statements of the witnesses during the investigation. Section 162 of CrPC deals with the use of such statements in evidence. Section 162 reads thus:

“162. Statements to police not to be signed: Use of statements in evidence.



—(1) *No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) *Nothing in this section shall be*



deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”

The basic principle incorporated in sub-Section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the Indian Evidence Act, 1872 (for short, ‘Evidence Act’). Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of



Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved.

7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161 (1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161 (1) or Section 164 of CrPC, it is said that there is an omission. There will be an



omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross examination.

8. As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

“145. Cross-examination as to previous statements in writing.—*A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the*



writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his



previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to



the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

9. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in accordance with clause (3) of Section 155 of the Evidence Act, which reads thus:

“155. Impeaching credit of witness.—*The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—*

- (1)*
- (2)*
- (3) by proof of former statements inconsistent with any part of his evidence*



which is liable to be contradicted.”

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case.

*10. We are tempted to quote what is held in a landmark decision of this Court in the case of **Tahsildar Singh & Anr. v. State of U.P.** Paragraph 13 of the said decision reads thus:*

“13. The learned counsel's first argument is based upon the words “in the manner provided by Section 145 of the Indian Evidence Act, 1872” found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his



attention is called to those parts of the writing with a view to contradict him. In support of this contention reliance is placed upon the judgment of this Court in Bhagwan Singh v. State of Punjab [(1952) 1 SCC 514 : (1952) SCR 812]. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act thus at p. 819:

Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then Section 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made.”

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court and similar



decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act is in two parts : the first part enables the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction : in other words, both parts deal with cross examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing



violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate : A says in the witness box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus : If the witness is asked “did you say before the police officer that you saw a gas light?” and he answers



“yes”, then the statement which does not contain such recital is put to him as contradiction. This procedure involves two fallacies : one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness’s statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness’s oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such



a case the question could not be put at all : only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure.”

(emphasis added)

This decision is a locus classicus, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses’ prior statements based on which they were sought to be contradicted in the cross-examination.”

44. Bearing the ratio laid down by the Hon'ble Supreme Court in *Alauddin* (supra) on the question of contradictions and omissions, this Court is of the view that only material contradictions or omissions are the grounds to discredit the witness or to disbelieve his/her testimony. Minor omissions or contradictions brought on record is not sufficient to disbelieve the evidence of witness. What is a



material contradiction or omission depends upon the facts of each case.

45. In the instant case, the evidence of P.W.5, P.W. 2, P.W. 3 and P.W.4 are consistent with regard to demand of dowry from the father of P.W. 5 and on his failure to satisfy the demand, P.W. 5 was physically tortured and mentally harassed.

46. In view of such consistent evidence, this Court holds that the contradictions and omissions as pointed out by the learned Advocate for the petitioner in the evidence of P.W. 4 and P.W. 5 are minor in nature.

47. The learned Advocate appearing on behalf of Ratnesh Kumar Sinha/petitioner lastly submits that the Trial Court exhibited some photostat copies of letters, written by Anupama Kumari to her father and brothers and relied on the contents of the said letters. The photostat copies of letters were not exhibited by the author of the letters. On the contrary, it was exhibited by the brother of Anupama Kumar, who received the letters. Surprisingly enough, the original letters were not produced by the prosecution during trial of the case. The Trial Court exhibited the said letters in



violation of the limitations prescribed under Section 65 of the Evidence Act.

48. It is not denied by the learned Advocate appearing on behalf of the petitioner that a photostat copy of a letters being a secondary evidence within the meaning of Section 63(2) of the Evidence Act, the same is admissible only when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it. Secondly, when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest. Thirdly, when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time. Fourthly, when the original is of such a nature as not to be easily available. Fifthly, when the original is a public



document within the meaning of Section 74. Sixthly, when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence and lastly when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved in a general result of the whole collection.

49. In the instant case, the photostat copy of letters, written by Anupama were exhibited without any explanation as to whether the said letters were lost or destroyed or for any other reason, the party, producing it, was not in a position to file the original letters.

50. It is submitted by the learned Advocate appearing on behalf of the petitioner that both the courts below committed gross illegality in giving reliance on the copies of the letters, allegedly written by Anupama to her father and brothers, holding, inter alia, that those are contemporaneous documents to the incidents of cruelty within the meaning of Section 498A of the IPC.

51. It is contended by the learned Advocate for the petitioner that since the said letters were not exhibited



following the procedure enunciated in Section 65 of the Evidence Act, the said letters are not admissible during trial of the case.

52. In support of his contention, he refers to a judgement in the case of ***Jagmail Singh & Anr. Karamjit Singh & Ors.***, reported in ***AIR 2020 SC 2319***.

53. On the same point, he also refers to the decision of the Hon'ble Supreme Court in ***J. Yashoda v. Smt. K. Shobha Rani***, reported in ***(2007) 5 SCC 730*** and paragraph 10 of ***H. Siddiqui (dead) by LRs v. A. Ramalingam***, reported in ***(2011) 5 SCR 587***.

54. Having heard the learned counsels for the parties and on perusal of the impugned passed by the Trial Court and affirmed by the Court of Appeal, this Court likes to record at the outset that the revisional jurisdiction of this Court is very limited. Unless, the order passed by the courts below are found to be perverse or the view taken by the courts is wholly unreasonable or there is non-consideration of any relevant material or there is palpable mislead of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The



Revisional Court is not meant to act as an Appellate Court. The whole purpose of the revisional jurisdiction is to preserve the power of the Court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the Court under Section 397 to 401 of the Cr.P.C. is not to be equated with that of an appeal. Unless the finding of the Court whose decision is sought to be revised is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the Courts cannot interfere with the decision in exercise of its revisional jurisdiction.

55. This has been observed by the Hon'ble Supreme Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Ors.*, reported in *(2015) 3 SCC 123*.

56. Bearing this principle in mind, let me now consider as to whether there was any illegality, irregularity or lack of propriety in the order of conviction passed by the Trial Court and affirmed by the lower court of appeal.

57. I have already narrated the evidence adduced



by the witnesses during trial of the case.

58. Explanation to Section 498A defines “cruelty” in following words: -

(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.

59. The evidence on record clearly shows that from the date of “Duragaman”, father of Ratnesh started demanding dowry of Rs. 3,00,000/- and a motorcycle. When father of Anupama expressed his inability to pay the said amount, Duragaman was done only after Ratnesh was gifted a wrist watch of Titan Company. P.W. 1 is a distant relative of father of Ratnesh. P.W. 1 and father of Anupama were classmates. In his evidence, he stated that more than



once, he accompanied father of Anupama to her matrimonial home at Ara to settle the dispute relating to demand of dowry by the father of Ratnesh. The accused persons reiterated their demand in presence of P.W. 5. He also stated in his evidence that he saw father of Anupama to pay Rs. 45,000/- and Rs. 35,000/- on two occasions to father of the petitioner. Only after payment of Rs. 35,000/-, Ratnesh took his wife to Pune. The evidence on record is sufficient regarding demand of dowry and harassment of Anupama with a view to coercing her by Ratnesh and other accused persons to meet their unlawful demand of money and motorcycle.

60. Thus, this Court finds that prosecution case in respect of charge under Section 498A of the Indian Penal Code was correctly decided by both the courts below in terms of Clause (b) of explanation to Section 498 A of the IPC.

61. Therefore, this Court does not find any reason to interfere with the order of conviction.

62. Anupama Kumari has filed Cr. Revision No. 561 of 2024 for enhancement of sentence, which was



reduced by the Appellate Court from three years rigorous imprisonment to two years rigorous imprisonment.

63. This Court finds that the criminal case was instituted in the year 2004. The case is pending for last 21 years. During this long 21 years, the petitioner suffered mental trauma and agony, due to pendency of the case. Though the 1st Appellate Court did not assign any reason for reduction of the period of sentence, this Court is of the view that the mitigating factors with regard to penology may induce the Appellate Court to reduce the sentence of imprisonment by one year.

64. Considering the facts and circumstances of the case, I do not find any reason to turn down the said order of sentence passed by the Appellate Court.

65. Both the Criminal Revisions, bearing Cr. Revision No. 551 of 2024 and Cr. Revision No. 561 of 2024 are dismissed, on contest.

66. However, there shall be no order as to costs.

67. The petitioner of Cr. Revision No. 551 of 2024 is directed to surrender before the Trial Court within 15



days from the date of this Order to suffer sentence, failing which the Trial Court is at liberty to take action against the convict, Ratnesh Kumar Sinha, in accordance with law.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	AFR
CAV DATE	05.05.2025
Uploading Date	09.05.2025
Transmission Date	09.05.2025

