

IPC, as also, for the charges under Sections 3, 4 and 6 of the Dowry Act.

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21. For the reasons recorded hereinabove we are satisfied, that the impugned order passed by the High Court, does not justify any interference at our hands. The instant appeal being devoid of any merit, is accordingly dismissed.

b **Result:-** Appeal dismissed.

**ABC 2016 (I) 249 SC  
ACQUITTAL & BAIL CASES**

**SUPREME COURT OF INDIA**

c

(Jagdish Singh Khehar & C. Nagappan, JJ.)

Criminal Appeal No. 1460 of 2008 With Criminal Appeal No.1461 of  
2008 And Criminal Appeal No.1462 of 2008

(From Rajasthan High Court)

d

Decided On 2 March, 2016

**SHAHID KHAN**

- Appellant(s).

*Versus*

**STATE OF RAJASTHAN**

- Respondent(s).

e

**Law Covered:-** (A) Indian Penal Code, 1860 – Sections 148, 149 & 302 – Indian Evidence Act, 1872 – Section 3 – relevant fact – Alleged eye witness – Conduct of – did not render any help for shifting the injured to the hospital – slipped after incident – not being noticed by anyone – did not inform to police – went to hospital but did not have the courtesy to go inside the hospital to ascertain the condition – Delay in examination – vehicle used for transporting the injured to the hospital – ownership not established – presence of alleged eyewitnesses doubtful – not supported by any evidence of act or conduct – no corroboration – Held unexplained silence of the alleged eyewitnesses & delayed statement to the police – does not appear to be wholly reliable witnesses – Case not proved beyond reasonable doubt – Acquittal. (Para 10&11)

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(B) Indian Evidence Act, 1872 – Section 3 – relevant fact – Defective investigation – Eyewitness – evidence of – Unexplained delay in recording – Held, casts a serious doubt about their being eye-witnesses to the occurrence – It may suggest that the investigating officer was deliberately marking time with a view to decide about the

*shape to be given to the case and the eye-witnesses to be introduced –fatal to prosecution. (Para 11)*

*(C) Indian Evidence Act, 1872 – Section 3 –relevant fact – Eyewitness – conduct of – slipped from the spot & did not inform the police due to fear – Previous history of witness – a history-sheeter – cases pending against him –Aspect of fear – without any foundation–fatal to prosecution. (Para 11)*

*(D) Indian Evidence Act, 1872 – Section 3 –relevant fact – Defective investigation – Eyewitness – knowledge to the police regarding – not known as to how the police came to know that these witnesses saw the occurrence –fatal to prosecution. (Para 11)*

**Facts:-** The appellants were convicted and sentenced u/s 148, 149 and 302, IPC. The deceased was looking after the factory of Kota stones and was partner in the contract of royalty of toll tax. It was further stated that the partner of the deceased was arrested for committing the murder of a person and the deceased gave assistance to him. Due to this reason companions of the murdered person came to the factory and murdered the deceased by causing injuries with sword and knife. It was alleged that PW 25 came from another city to meet the deceased on the occurrence day and he and his driver saw the occurrence. Due to fear they hid themselves in the factory. The brother of the deceased took the deceased in the Maruti car to hospital where he was declared dead. It was stated by the alleged eyewitnesses in their cross examination that they did not help to shift the injured to the hospital instead, they slipped from the place of occurrence and reached the hospital in a truck and on seeing their car, without entering the hospital, they drove back to their home city without informing any one about the occurrence and they did not also go to the Police Station for lodging the complaint.

*On appeal, the High Court confirmed the conviction and sentence. Aggrieved by the same the present appeals were preferred.*

*The hon'ble Apex Court found nothing on record to show the Maruti vehicle belonged to PW 25 and in any event this will not clinch the presence of alleged eyewitnesses. Their slipping away, unnoticed by the others particularly after the alleged attack was held utterly unbelievable and unreal. They did not render any help for shifting the injured to the hospital nor had the courtesy to go inside the hospital to ascertain the condition and also did not inform the occurrence to the police. The aspect of fear was held without any foundation and not supported by any evidence of act or conduct more so because PW 25 was a history-sheeter, and two cases under NDPS Act were imposed on him and he was also bound down under Section 110 Cr.P.C.*

- Unexplained delay in the recording of the evidence of the alleged eye witnesses was also pointed out. No knowledge as to how the police came to know that these witnesses saw the occurrence was further observed. The delay in recording their statements was considered as a serious doubt about their being eye-witnesses to the occurrence. No corroboration of their evidence from any other independent source was also observed. It was held that the case against the appellants has not been proved beyond reasonable doubt. Acquittal was ordered.*

**Law of relief:-** *Slipping from the place of occurrence & not informing the police due to fear by an eyewitness, who is history-sheeter, is unbelievable.*

- Held:-** Both the above witnesses are residents of Kota which is at a distance of about 150 kms. from Jhalawar town. According to PW 25 Mirza Majid Beg he went to Jhalawar to meet Ashok Kumar and on reaching the factory at 1.00 p.m. they happened to witness the occurrence. It is relevant to point out that PW 9 Anwar and PW 19 Anil Kumar Jain, who on intimation rushed to the occurrence place, did not state that they saw PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir in the occurrence place. It is only PW 19 Anil Kumar Jain with the help of PW 9 Anwar and PW 20 Lal Chand lifted injured Ashok Kumar and put in the Maruti vehicle and took him to Jhalawar hospital, where he was declared dead. Thereafter PW 19 Anil Kumar Jain went to the Police Station and lodged the written complaint. In the said complaint, the names of the assailants are not mentioned and also the names of the persons who were present during the occurrence are not mentioned. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir have stated in their cross examination that they did not help PW 9 Anwar and PW 19 Anil Kumar Jain to shift the injured to the hospital and they rushed towards Toll Tax and reached the hospital in a truck and on seeing their car, without entering the hospital, they drove to Kota and they did not inform any one about the occurrence and they did not also go to the Police Station for lodging the complaint. The High Court in the impugned judgment has concluded that the presence of PW 25 Mirza Majid Beg is established in view of the fact that his Maruti van was used for shifting injured to the hospital. There was nothing on record to show the Maruti vehicle used for transporting Ashok Kumar to the hospital belonged to PW 25 Mirza Majid Beg. In fact PW 19 Anil Kumar Jain in his cross examination has stated that he did not know the Registration number of the Maruti van in which Ashok Kumar was taken to

hospital and he also did not know whose vehicle it was. In other words, nothing is stood established by the use of this Maruti vehicle for transporting to the injured to the hospital and in any event this will not clinch the presence of PW 25 Mirza Majid Beg at the time of occurrence. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir slipping away unnoticed by the others particularly after the alleged attack is utterly unbelievable. It appears unreal. They are not strange to expect and they did not render any help for shifting the injured to the hospital nor had the courtesy to go inside the hospital to ascertain the condition and also did not inform the occurrence to the police. The aspect of fear is without any foundation and is not supported by any evidence of act or conduct. This plea does not impress us. In this context, it is relevant to point out that PW 25 Mirza Majid Beg has admitted that he is a history-sheeter, and two cases under NDPS Act were imposed on him and he was also bound down under Section 110Cr.P.C. (Para 10)

The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they are not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eye-witnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, does not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and re-appreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt. (Para 11)

### JUDGMENT

*C. NAGAPPAN, J.:* - 1. These three appeals are preferred against the judgment dated 20.12.2006, passed by the High Court of Judicature

for Rajasthan at Jaipur in DB Criminal Appeal No.1001 of 2003.

a 2. The appellants in DB Criminal Appeal No.1001 of 2003 are  
accused nos.2 to 5 in the Sessions case no.31 of 2003 on the file of the  
Special Judge, SC/ST(POA), Jhalawar and they were tried with  
accused no.1 for alleged offences under Sections  
147, 148, 302/149 and 397 Indian Penal Code. The Sessions Court  
b found accused no.1 not guilty of all the charges and found accused  
nos. 2 to 5 not guilty of the charge under Section 397. At the same  
time Sessions Court convicted accused nos. 2 to 5 for the offence  
under Section 148 and sentenced them each to undergo Simple  
imprisonment for 2 years with fine of Rs.500 and in default to  
c undergo further simple imprisonment for one month and convicted  
them under Section 302/149 and sentenced them each to undergo life  
imprisonment with fine of Rs.2000 and in default to undergo simple  
imprisonment for six months.

d 3. Aggrieved by this conviction and sentence, accused nos. 2 to  
5 preferred appeal being DB Criminal Appeal No.1001 of 2003, before  
the High Court of Rajasthan at Jaipur Bench. During pendency of  
appeal, appellant/A3 Irfan Ali died and his appeal abated. The High  
Court by its judgment dated 20.12.2006 dismissed the appeal  
preferred by the appellants. Challenging the same accused nos.2, 4  
and 5 have preferred present appeals.

e 4. The prosecution case as it discerned from the records is  
briefly, as follows : PW 19 Anil Kumar Jain is the brother of deceased  
Ashok Kumar. On 22.1.2001 he submitted Exh. P34 complaint at  
Police Station Kotwali Jhalawar stating that Ashok Kumar was  
looking after the factory of Kota stones and the contract of royalty of  
f toll tax was obtained by Abdul Khalid in which his brother Ashok  
Kumar was also a partner. It is further stated that Khalid was arrested  
for committing the murder of Kallu and Ashok Kumar gave  
assistance to Khalid. Due to this reason on 22.1.2001 companions of  
Kallu came to the factory and murdered Ashok Kumar. It is further  
g stated therein that as per the information provided by PW 20 Lal  
Chand the accused were five in number and they caused injuries to  
Ashok Kumar with sword and knife. PW 25 Mirza Majid Beg came  
from Kota to Jhalawar to meet Ashok Kumar on the occurrence day,  
and he and his driver PW 24 Mohamed Shakir saw the occurrence in  
h which the accused inflicted injuries with weapons on Ashok Kumar.  
Due to fear they hid themselves in the factory. PW 19 Anil Kumar Jain

took injured Ashok Kumar in the Maruti car to hospital at Jhalawar where he was declared dead. On the written complaint of PW 19 Anil Kumar Jain a case under Sections 147, 148 302/149 and 448 IPC was registered and investigation commenced. PW 17 Dr. Arvind Kumar Bohra conducted autopsy on the body of Ashok Kumar and found the following ante-mortem injuries: a

1. Incised wound 2 ½ x ½ x bone deep horizontally mid of forehead. b

2. Abrasion 3 ½ long in front and over the pinna of left ear.

3. Stab incised wound 2" X ½" X cavity deep omentum and fresh blood come out from wound vertically Rt para umbilicus region. c

4. Stab incised wound 2" X ½" X cavity deep. Vertically oblique omenten and fresh blood comes out left para umbilicus part of abdomen. d

5. Stab incised wound 2" X ½" X cavity deep omentum and fresh bleeding present vertically left renal region of abdomen.

6. Stab incised wound 2" X ½" X cavity deep oblique ½" below lower costal margin left Hypochondrium of abdomen. e

7. Incised wound 1" X ¼" x skin deep oblique lat. Aspect of middle of left thigh."

He issued Exh.P21 post-mortem report by expressing opinion that the cause of death was hemorrhagic shock as a result of cutting of pedicle of spleen omental and mesenteric vessels. f

5. The investigation officer examined the witnesses, arrested the accused and recovered weapons by drawing the necessary memos and on completion of the investigation filed the charge-sheet. The Sessions Court on framing of charges conducted the trial in which prosecution examined 28 witnesses and marked documents and the defence examined 2 witnesses on their side. The trial court acquitted accused No.1 of all the charges and convicted accused Nos. 2 to 5 as stated supra. On appeal the High Court confirmed the conviction and sentence. Aggrieved by the same the present appeals have been preferred. g  
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6. Mr. Sushil Kumar Jain, Senior Advocate appearing for the appellants contended that PW 25 Mirza Majid Beg and his driver PW 24 Mohamed Shakir who claimed to have witnessed the occurrence are chance witnesses whose presence at the place of occurrence is doubtful and their conduct in not informing the relatives of the deceased and not lodging police complaint is quite unnatural and their statements were recorded after 3 days of the occurrence for which there is no explanation and the prosecution case was conceived and constructed after a good deal of deliberation and it is doubtful. It is further contended by him that PW 25 Mirza Majid Beg implicated the appellants falsely because his son-in-law Khalid was tried for committing the murder of Kallu and in the said case the present appellant-Banti gave evidence against him as prosecution witness, resulting in conviction. It is his further submission that the courts below have erroneously believed the uncorroborated testimonies of the eye-witnesses and conviction and sentence imposed on the appellants are not sustainable in law and liable to be set aside. In support of his submission reliance was placed on various decisions of this Court.

7. Per contra the learned counsel appearing for the respondent contended that the presence of the eye-witnesses at the time of occurrence is established and their testimonies have rightly been relied upon by the courts below for convicting the appellants and the impugned judgment is sustainable.

8. Ashok Kumar died of homicidal violence is evident from the medical evidence adduced in the case. PW 17 Dr. Arvind Kumar Bohra who conducted post mortem found 4 stab incised wounds in the abdomen and 2 incised wounds on forehead and left thigh. Exh.P21 is the post-mortem report issued by him in which he has opined that the cause of death was hemorrhagic shock as a result of cutting of pedicle of spleen omental and mesenteric vessels. From the above it is clear that Ashok Kumar died of injuries sustained in the occurrence.

9. The prosecution case is that the appellants (Accused Nos.2, 4 and 5) alongwith other accused inflicted injuries with sword and knife to Ashok Kumar. During the trial PW 20 Lal Chand, PW 24 Mohammad Shakir and PW 25 Mirza Majid Beg were examined as having witnessed the occurrence. PW 20 Lal Chand did not support the prosecution case and was declared hostile. PW 25 Mirza Majid

Beg in his testimony has stated that on 22.1.2001 he started from Kota at 10 O' clock and reached Jhalawar at about 12 O' clock in his Maruti Van driven by his driver PW 24 Shakir and halted for 5-10 minutes in the Toll Post and then went to the factory of Ashok Kumar to meet him and on reaching there they heard the sound of crying and they got down from the vehicle and ran inside the factory and saw accused no.2 Banti and accused no.4 Shahid Khan with daggers in their hand and accused no.5 Mansoor with Gupti type weapon and all the accused were attacking Ashok Kumar with the said weapons. According to him he and his driver stood adjacent to the quarter wall inside the factory and saw the occurrence and thereafter they ran away from the said place to Toll Tax and boarded a tanker lorry and reached the hospital at Jhalawar and they found their Maruti vehicle parked in the hospital and they drove from there directly to Kota in the said vehicle. It is the testimony of PW 24 Mohamed Shakir that on 22.1.2001 he drove the Maruti van of PW 25 Mirza Majid Beg from Kota to Jhalawar and when they reached the factory of Ashok Kumar they heard the sound of crying and both of them got down and rushed inside the factory and saw the appellants and other accused attacking Ashok Kumar with knife and they ran to the backside of the factory and hid themselves near the wall and after 5- 10 minutes they came out and went to the Toll Tax check post and by taking a lift in a truck they reached Jhalawar hospital and on seeing their car there, both of them drove back to Kota.

10. Both the above witnesses are residents of Kota which is at a distance of about 150 kms. from Jhalawar town. According to PW 25 Mirza Majid Beg he went to Jhalawar to meet Ashok Kumar and on reaching the factory at 1.00 p.m. they happened to witness the occurrence. It is relevant to point out that PW 9 Anwar and PW 19 Anil Kumar Jain, who on intimation rushed to the occurrence place, did not state that they saw PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir in the occurrence place. It is only PW 19 Anil Kumar Jain with the help of PW 9 Anwar and PW 20 Lal Chand lifted injured Ashok Kumar and put in the Maruti vehicle and took him to Jhalawar hospital, where he was declared dead. Thereafter PW 19 Anil Kumar Jain went to the Police Station and lodged the written complaint. In the said complaint, the names of the assailants are not mentioned and also the names of the persons who were present during the occurrence are not mentioned. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir have stated in their cross examination that they did

a not help PW 9 Anwar and PW 19 Anil Kumar Jain to shift the injured to the hospital and they rushed towards Toll Tax and reached the hospital in a truck and on seeing their car, without entering the hospital, they drove to Kota and they did not inform any one about the occurrence and they did not also go to the Police Station for lodging the complaint. The High Court in the impugned judgment has concluded that the presence of PW 25 Mirza Majid Beg is established in view of the fact that his Maruti van was used for shifting injured to the hospital. There was nothing on record to show the Maruti vehicle used for transporting Ashok Kumar to the hospital belonged to PW 25 Mirza Majid Beg. In fact PW 19 Anil Kumar Jain in his cross examination has stated that he did not know the Registration number of the Maruti van in which Ashok Kumar was taken to hospital and he also did not know whose vehicle it was. In other words, nothing is stood established by the use of this Maruti vehicle for transporting to the injured to the hospital and in any event this will not clinch the presence of PW 25 Mirza Majid Beg at the time of occurrence. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir slipping away unnoticed by the others particularly after the alleged attack is utterly unbelievable. It appears unreal. They are not strange to expect and they did not render any help for shifting the injured to the hospital nor had the courtesy to go inside the hospital to ascertain the condition and also did not inform the occurrence to the police. The aspect of fear is without any foundation and is not supported by any evidence of act or conduct. This plea does not impress us. In this context, it is relevant to point out that PW 25 Mirza Majid Beg has admitted that he is a history-sheeter, and two cases under NDPS Act were imposed on him and he was also bound down under Section 110Cr.P.C.

11. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they are not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eye-witnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed

statement to the police, does not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and re-appreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt.

12. Consequently, the appeals are allowed and the conviction and sentence of the appellants is hereby set aside. The appellants are on bail. Their bail bonds shall stand discharged.

**Result:-** Appeals allowed.

**ABC 2016 (I) 258 SC  
ACQUITTAL & BAIL CASES  
SUPREME COURT OF INDIA**

(Dipak Misra & Shiva Kirti Singh, JJ.)

Criminal Appeal No. 209 of 2016 [Arising out of S.L.P.(Crl.)No.1671 of 2016]

(From Gujarat High Court)

Decided On 18 March, 2016

**PARESHBHAI ANNABHAI SONVANE** - Appellant(s).

*Versus*

**STATE OF GUJARAT & ORS.** - Respondent(s).

***Law Covered:- Indian Penal Code, 1860 – Section 395 – Conviction under – sentence enhanced by High Court – Young age – value of the alleged loot very less – No recovery from the appellant – conviction maintained – Sentence reduced to already undergone.(Para 3)***

***Held:-*** After hearing the arguments of both the sides we are not persuaded to interfere with the conviction of the appellant under Section 395 IPC and hence his conviction is affirmed. However, for the same very reasons as recorded by the trial court and finding that nothing was recovered from him, we are persuaded to reduce the sentence of imprisonment. We have been informed on the basis of facts mentioned in the Surrender Certificate dated 19.02.2016 available on record that the appellant has now remained in jail for three years and two months on account of continuous incarceration