

DEPARTMENT OF LAWS, PU, CHANDIGARH
MOOTS & PRACTICAL TRAINING
SESSION 2024-25

BEFORE THE COURT OF SESSIONS AT
LUCKNOW, UTTAR PRADESH

CRA. /2025

STATE OF UTTAR
PRADESH

APPELLANT

V.

ARJUN YADAV

RESPONDENT

FOR OFFENCES CHARGED UNDER:

SECTION 302 & 107 OF BHARATIYA NYAYA SANHITA, 2023

UPON SUBMISSION TO HON'BLE SESSIONS JUDGE

MEMORANDUM ON BEHALF OF THE RESPONDENT

SUBMITTED TO:
PROF. NEETU

SUBMITTED BY:
MANAN
SECTION-M
ROLL NO. 285/22

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LIST OF ABBREVIATIONS

<i>ABBREVIATION</i>	<i>FULL FORM</i>
&	And
AIR	All India Reporter
Anr.	Another
Ed. Or Edn.	Edition
Hon'ble	Honorable
Vol.	Volume
Ors.	Others
SC	Supreme Court
SCJ	Supreme Court Journal
SCC	Supreme Court Cases
S. or Sec.	Section
PW	Prosecution Witness
W.P.	Writ Petition
Cr.A.	Criminal Appeal
BNS	Bharatiya Nyaya Sanhita, 2023
CrPC	Code of Criminal Procedure, 1973
No.	Number
V. or V.	Versus
LCR	Law Commission Report
OP	Opposite Party
FR	Forensic Report
CLJ	Criminal Law Journal
FIR	First Information Report

INDEX OF AUTHORITIES

TABLE OF CASES

<i>S.NO.</i>	<i>LIST OF CASES</i>	<i>CITATION</i>
1.	<i>Nara Singh Challan v. State of Orrisa</i>	<i>1997 CriLJ 2204</i>
2.	<i>Lakhanpal v. State of Madhya Pradesh</i>	<i>AIR 1979 SC 1620</i>
3.	<i>Sanwat Khan v. State of Rajasthan</i>	<i>AIR 1956 SC 54</i>
4.	<i>Ramashraya v. State of Madhya Pradesh</i>	<i>AIR 2001 SC 1129</i>
5.	<i>Settu v. State of Tamil Nadu</i>	<i>2006 Cri LJ 3889 (3893)</i>
6.	<i>Commissioner of Income Tax v. Patranu Dass Raja Ram Beri</i>	<i>AIR 1982 PH 1, 4</i>
7.	<i>State of Maharashtra v. Meyer Hans George</i>	<i>AIR 1965 SC 722</i>
8.	<i>State v. Dinakar Bandu</i>	<i>(1951) 3 Pepsu LR 635</i>
9.	<i>Gul Mohummed v. King Emperor</i>	<i>AIR 1947 Nag 121</i>
10.	<i>Chander Bahadur Suha v. State</i>	<i>1978 Cr LJ 942 (Sikkim)</i>

STATUTES REFERRED

1.	THE BHARATIYA NYAYA SANHITA, 2023
2.	THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023
3.	THE BHARATIYA SAKSHYA ADHINIYAM, 2023

BOOKS & COMMENTARIES REFERRED

1.	Batuk Lal, “Commentary on the Indian Penal Code, 1860”, Ed. R. P. Kataria and S. K. A. Naqvi, Vol-I, (Section 1 to 300), (Orient Publishing Company, 1st Edn. New Delhi) (2006-07).
2.	Halsbury’s Laws of India, Vol-32, “Criminal Procedure – I & II”, (Lexis Nexis Butterworths, New Delhi) (2007).
3.	K. D. Gaur, “Commentary on Indian Penal Code”, (Universal Law Publishing Co. Pvt. Ltd., New Delhi) (2019).
4.	Ratanlal and Dhirajlal, “Commentary on the Code of Criminal Procedure”, VolI & II, (Wadhwa and Company, 20th Edn., Nagpur) (2018).
5.	Ratanlal and Dhirajlal, “Law of Crimes”, Vol-I & II, Ed. Justice C. K. Thakkar, (Bharat Law House, 25th Edn., New Delhi) (Reprint 2016).

WEBSITES REFERRED

- www.scconline.com
- www.indiankanoon.com
- www.highcourtcases.com
- www.judis.nic.in
- www.publications.parliament.uk
- www.lexisnexus.com
- www.lawctopus.com
- www.livelaw.in

LEGAL DICTIONARIES

<u>S.NO.</u>	<u>NAME</u>
1.	<i>BLACK’S LAW DICTIONARY</i> , (WEST PUBLISHING GROUP 8 TH EDN.) (2004)
2.	<i>P. RAMANATHA AIYAR’S, “ADVANCED LAW LEXICON”</i> , VOL-VIII, (WADHWA AND COMPANY, 3 RD EDN., NAGPUR) (2017).
3.	<i>STROUD’S JUDICIAL DICTIONARY OF WORDS AND PHRASES</i> , VOL-I TO III, EDITOR DANIEL GREENBERG, (SWEET AND MAXWELL LTD., 17 TH EDN., 2016, REPRINT 2018) LONDON.
4.	<i>WHARTON’S LAW LEXICON</i> , BY A. S. OPPE, (SWEET AND MAXWELL UNIVERSAL LAW PUBLISHING CO. PVT. LTD., 24 TH EDN., 2017).

STATEMENT OF JURISDICTION

The Prosecution has approached this Hon'ble Sessions Court under **SECTION 21¹ R/W SECTION 23² R/W SECTION 197³** of the BNSS, 2023. The Defendant would like to humbly submit that the present Hon'ble Court of Sessions is well within its respected jurisdiction to hear the aforementioned matter.

¹ ***S. 21. Courts by which offences are triable:*** Subject to the other provisions of this Sanhita, -

(a) Any offence under the Bhartiya Nyaya Sanhita, 2023 may be tried by-

(i) ...

(ii) The Court of Session

(iii)...

² ***S. 23. Sentences which High Courts and Sessions Judges may pass:***

(1) ...

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High court.

³ ***S. 197. Ordinary place of inquiry and trial*** Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

STATEMENT OF FACTS

For the sake of brevity and for this Hon'ble Court's kind perusal, following are stated the facts of the case in brief:

1. On February 5, 2025, Neha Yadav, the deceased was found in her marital home under suspicious circumstances.
2. The deceased's parents alleged that the Respondent and his family had subjected her to constant harassment for dowry since their marriage in January 2023. They claimed that the deceased had informed them about the physical and emotional abuse she endured due to her inability to fulfil repeated dowry demands.
3. Based on such allegations, the police registered a case against the Respondent and the family members under Section 107 (Dowry Death) and Section 302 (Murder) of the BNS, 2023.
4. During the investigation, it was alleged that the deceased had suffered grievous injuries before her death, and the post-mortem report also indicated signs of sexual assault.
5. The deceased's dying declaration, recorded by a Magistrate at the hospital before her death, stated that the Respondent had physically assaulted her on multiple occasions and had threatened to kill her if she did not bring ₹10 lakh from her parents. She also alleged that the Respondent had raped her on February 4, 2025, before attacking her fatally.
6. The Respondent has hereby pleaded no guilty, denied all the allegations raised against him and claimed that the deceased's death was accidental and argued that there was no direct evidence linking him to the alleged murder or sexual assault.

ISSUES RAISED

ISSUE 1: WHETHER THE RESPONDENT IS LIABLE TO BE CONVICTED FOR MURDER UNDER SECTION 302, BNS?

ISSUE 2: WHETHER THE RESPONDENT AND HIS FAMILY MEMBERS ARE LIABLE TO BE CONVICTED FOR DOWRY DEATH UNDER SECTION 107, BNS?

ISSUE 3: WHETHER THE DYING DECLARATION MADE BY THE DECEASED IS ADMISSIBLE FOR CONVICTION OF THE RESPONDENT FOR THE CHARGES FRAMED AGAINST HIM?

SUMMARY OF ARGUMENTS

ISSUE 1: WHETHER OR NOT IS THE RESPONDENT LIABLE TO BE CONVICTED FOR MURDER UNDER SECTION 302, BNS?

1. It is humbly submitted that the commission of any said crime involves the two ingredients- *actus reas* and *mens rea*. The essentials of the alleged offence also do not stand fulfilled in the present case. In the absence of *actus reas* and *mens rea*, it is hence, argued that the accused is not guilty of murder. The accused neither had the intention to cause the death of his wife, nor to cause any bodily injury likely to cause death, much obviously because she was found dead in the marital home under mysterious circumstances and the same was not in the knowledge of the accused that the deceased is dead. Furthermore, the circumstantial evidences are unreliable giving reasonable doubt.

ISSUE 2: WHETHER THE ACCUSED AND HIS FAMILY MEMBERS ARE LIABLE TO BE CONVICTED FOR DOWRY DEATH UNDER SECTION 107, BNS?

2. It is reverentially contended that the act of the accused and his family members does not qualify the essentials as being “a dowry death” within the ambit of BNS, 2023 as it does satisfy the ingredients of the same. For a person to be liable under S.107, it is essential that the principal offence alleged to have been committed must be proved beyond reasonable doubt. But in the present case, the death of the deceased has not been owing to any act of the accused or his family members. Marital disputes or domestic issues arising from non-dowry factors (e.g., personal disagreements, mental health, incompatibility) do not qualify as dowry death. Because it has not been proved that the accused or his family members have committed the offence of dowry death, liability under this provision is uncalled for.

ISSUE 3: WHETHER THE DYING DECLARATION MADE BY THE DECEASED IS ADMISSIBLE FOR CONVICTION OF THE RESPONDENT FOR THE CHARGES FRAMED AGAINST HIM?

3. It is vehemently submitted that the dying declaration of the deceased does not qualify

the essentials as being “an admissible dying declaration” within the ambit of BSA, 2023 as it does fulfil the ingredients of the same. For a person’s dying declaration to be admissible in nature, it is essential that the condition of the deceased under which such declaration is being made is given consideration. In the present case, the deceased had suffered grievous injuries and was in a critical condition. No eyewitnesses, prior complaints, or written communication corroborate the allegations of rape or dowry threats immediately prior to death. The statement was given in the presence of family members who had strong motivation and emotional bias. Allegations made in the declaration could have been influenced by pre-existing hostility or pressure, especially amid the alleged history of abuse. Hence, in the absence of establishment of the credibility of the dying declaration beyond reasonable doubt, the alleged charges framed against the Respondent stand defeated and are liable to be struck down.

ARGUMENTS ADVANCED

ISSUE 1: WHETHER OR NOT THE RESPONDENT IS LIABLE TO BE CONVICTED FOR MURDER UNDER SECTION 302, BNS?

1. The counsel for the defense humbly submits that the accused is not liable for committing murder u/s.302. Murder, as defined under Sec.300 of the Indian Penal Code, is specie of culpable homicide, which is given in Sec.299 of the IPC⁴.
2. **According to the Black's Law Dictionary**, *"Murder implies the crime committed where a person of sound mind and discretion kills any human creature in being without any warrant, justification or excuse in law, with malice aforethought, express or implied, that is, with a deliberate purpose or a design or determination distinctly formed in the mind before the commission of the act"*.
3. Therefore, it is contended that the death of the deceased was not due to the act of the accused. The mere fact that the accused and the deceased were in a matrimonial setup and had a prior history of conflicts does not lead to the irresistible inference that the accused must have murdered the deceased⁵.
4. There is no eyewitness to the alleged murder or the events leading to the death of the deceased. The case of the defendant is entirely circumstantial, which ought to be scrutinized with greater caution. It is humbly presented before the court, that under Sec. 300(2), a person is guilty of committing murder if he acts with the intention of causing such bodily injury which he knows to be likely to cause the death of the person to whom such harm is caused. It is the felonious killing of another human being with malice aforethought⁶.
5. A person is guilty of murder if he intentionally causes the death of a person or causes such bodily injury as he knows, is likely to cause death of that person or causes such bodily injury, which in the ordinary course of nature results into death or commits an act so dangerous that it must, in all probability cause death of that person.

⁴ Nara Singh Challan v. State of Orrisa, 1997 CriLJ 2204.

⁵ Lakhanpal vs State of Madhya Pradesh AIR 1979 SC 1620.

⁶ Sanwat Khan vs State of Rajasthan AIR 1956 SC 54.

6. It is pertinent to note that a guilty mind or mens rea is a legally essential ingredient in determining criminal liability and it is clearly not visible in the present case⁷.
7. Whether the offence falls under S. 302, BNS, the nature of the injuries sustained by the deceased and the circumstances under which the incident took place are relevant determining factors. From the nature of death of the deceased and genesis of the incident involved, it could be spelt out that all the ingredients of the offence of murder are not made out and it is not possible to hold the accused liable under S. 302, I.P.C⁸.
8. The requisites of Sec.300, BNS not being established beyond reasonable doubt in the present case, the accused is not guilty of murder punishable under Sec.302, BNS.
9. The criminal intent in order to be punishable must become manifest in some voluntary act or omission. Actus reus is any wrongful act. It is the conduct that constitutes a particular crime. Every criminal act is based on actus reus and mens rea. This is a physical result of human conduct, and therefore, an event which is distinguished from the conduct which produced the result. In a murder case, it is the victim's death which is an event and, therefore, is an actus reus.
10. It is humbly submitted before the court that situations where the concurrent contributory causes exist which make it impossible to say that the act in question was a substantial cause, and where the connection between the act and the death is obscure, believe the principle of causa causans. The law states that for an act to be considered the cause of the death of a victim it must be the effective cause of the death, and this is necessary to prove the guilt of an accused for the offence of culpable homicide.

⁷ Sharad Bhardi Chand Sarda v. State of Maharashtra (1984).

⁸ Ramashraya vs State of Madhya Pradesh AIR 2001 SC 1129.

[A] THAT THE PROSECUTION HAS FAILED TO ESTABLISH THE ESSENTIAL INGREDIENTS OF MURDER UNDER SECTION 302, BNS:

11. It is a settled principle of law that the burden of proof in murder cases is stringent and must be met beyond reasonable doubt. Section 302 of the BNS, 2023 penalizes the offence of murder. For conviction under the said provision, the prosecution must prove that:
 - i. The accused committed an act with the intention of causing death, or
 - ii. With the intention of causing such bodily injury as is likely to cause death, or
 - iii. With the knowledge that his act was so imminently dangerous that it must, in all probability, cause death.
12. In *Sharad Birdhichand Sarda v. State of Maharashtra*⁹, the Supreme Court clearly laid down that in a case based on circumstantial evidence, all circumstances must be *fully established* and must form a chain so complete that it leaves no reasonable ground for any conclusion other than that the accused is guilty.
13. However, the prosecution in the present case has failed to conclusively prove either motive, means, or opportunity in a manner that satisfies this standard.
14. It is also pertinent to note that there is no direct evidence of the actus reus of the Respondent or the family members as such, in the given case at hand. The entire case of the prosecution is built on circumstantial evidence. There are no eyewitnesses, CCTV footage, or confession linking the Respondent directly to the act of murder. Mere presence in the household or vague testimonies from neighbours about hearing “screams” cannot substitute for concrete proof of the commission of the act by itself by the Respondent.
15. In *Varkey Joseph v. State of Kerala*¹⁰, the Court held that suspicion, however strong, cannot be the basis of conviction unless supported by substantive evidence.

[B] THAT THE CIRCUMSTANTIAL EVIDENCE RELIED UPON BY THE PROSECUTION IS NEITHER CREDIBLE NOR CONCLUSIVE:

16. It is the case of the Respondent that the Post-Mortem findings and the medical reports do

⁹ (1984) 4 SCC 116.

¹⁰ (1993) Supp (3) SCC 745.

not establish the guilt of the Respondent. The post-mortem report is an extremely relevant and important document, in cases brought under Sec.302, of the BNS¹¹. The post mortem report becomes important in cases where the cause of death is to be established and is a matter of controversy¹². The post-mortem clearly indicates the death of the deceased owing to the grievous injuries and possible signs of sexual assault. However, it is pertinent to observe herein that the said post-mortem report does not directly connect these injuries to the Respondent at all. The nature and location of injuries can, at best, suggest that death was unnatural — but it cannot, and has even failed to, establish that the Respondent had caused such injuries and sexual assault.

Placing reliance on the judicial pronouncement of the Supreme Court in the case of *Navaneethakrishnan v. State*¹³, it is stated that the Supreme Court acquitted the accused in a murder case despite injury reports, due to lack of direct evidence connecting the accused to the fatal injuries.

17. It is also humbly submitted by the Respondent's counsel that the statements and testimonies of the neighbours are hearsay and lack evidentiary value in the eyes of law. The neighbours merely claim to have heard "screams" on the night of February 4, 2025. These statements rendered by the neighbours as witness to the offences alleged to have been committed by the Respondent are highly inadmissible and unbelievable as there is no confirmation that these screams were of the deceased herself, and whether those screams were in fear of life, or that the Respondent was seen entering or leaving the room in suspicious circumstances by these witnesses of the Prosecution. There is nothing on record of this Hon'ble Court to prove that the evidence and the testimonies rendered by the neighbours is sound in the eyes of law to establish the guilt of the Respondent beyond reasonable doubt. This evidence is speculative and inadmissible to prove guilt of the Respondent under Section 302, BNS.

[C] THE ALLEGED DYING DECLARATION CANNOT BE SOLELY RELIED UPON TO CONVICT FOR MURDER:

18. The Dying Declaration of the deceased is a weak piece of evidence and requires corroboration in serious charges like that of a murder as alleged in the present case. Even

¹¹ Sheo Govind Bin v. State of Bihar, 1985 BBCJ 632.

¹² Kehar Singh v. State (Delhi Administration), AIR 1988 SC 1883.

¹³ (2018) 1 SCC 405.

if assumed to be admissible, it is a settled principle of law that a dying declaration by itself—particularly when uncorroborated and recorded under questionable circumstances—cannot sustain a conviction for murder, as held in the case of *State of Punjab v. Parveen Kumar*¹⁴.

19. The defence challenges the admissibility and voluntariness of the dying declaration of the deceased. It was recorded while the deceased was under severe trauma as per medical records, raising doubts about her mental clarity. In *Uka Ram v. State of Rajasthan*¹⁵, the Court held that a dying declaration recorded without medical certification of mental fitness loses its probative value.
20. Furthermore, the discrepancies in the dying declaration undermine its reliability. The deceased's declaration allegedly refers to dowry threats, sexual assault, and intent to kill. However, it lacks detail about the actual mode of murder — the exact weapon used, sequence of events, or whether others were present. These are crucial in a murder trial, and their absence renders the declaration vague and unreliable.

[D] THAT THE INTENTION AND MOTIVE OF THE RESPONDENT HAVE NOT BEEN SUFFICIENTLY ESTABLISHED:

21. It is humbly submitted by the counsel for the Respondent that the motive alleged by the prosecution is weak, inadmissible and unsubstantiated by credible evidence. The prosecution claims that the motive of the Respondent to cause the death of the deceased was her failure to bring ₹10 lakh in dowry from her family. However, there has been no substantial evidence or credible testimony placed on record of this Hon'ble Court to establish this baseless averment. Even if such allegation is assumed, the Prosecution has, in turn, failed to prove:
- i. That such a demand was made directly by the Respondent;
 - ii. That the Respondent had the intention to kill the deceased, rather than merely threatening or harassing her.
22. The Supreme Court held that motive alone, without sufficient proof of the actus reus and mens rea, cannot lead to a conviction under Section 302.

¹⁴ (2005) 9 SCC 769).

¹⁵ (2001) 5 SCC 254.

23. It is also the submission of the counsel for the Defence that the alternate theories remain plausible and have not been excluded in the present case at hand. The Respondent has claimed that the deceased's death was accidental. While this claim may seem improbable to the prosecution, it has not been disproved entirely. In a criminal trial, the benefit of every reasonable doubt must go to the accused. Hence, even in the present case pending before the Hon'ble Court for adjudication, the Prosecution has failed to establish the guilt or involvement of the Respondent in the occurrence of the death of the deceased beyond reasonable doubt. In these compelling circumstances, the Respondent is liable to be acquitted of the charges of the murder so alleged.

[E] THAT THE PRINCIPLE OF BENEFIT OF DOUBT MUST APPLY IN THE ABSENCE OF COMPLETE PROOF:

24. As per the settled principles of law, the guilt must be proved beyond all reasonable doubt, especially in capital offences such as murder as alleged in the present case. In a case where the accused is charged under Section 302—punishable by life imprisonment or death—the courts have insisted on *heightened standards* of scrutiny. In the case of **State of Rajasthan v. Kashi Ram**¹⁶, it was held that the evidence led by the prosecution does not exclude every other hypothesis except that of the guilt of the accused. Hence, the benefit of doubt must accrue to the accused.

¹⁶ (2006) 12 SCC 254.

**ISSUE 2: WHETHER THE ACCUSED HAS CAUSED THE FABRICATION
OF EVIDENCES INVOLVED IN COMMISSION OF THE
ALLEGED OFFENCE?**

[A] THE ESSENTIAL INGREDIENTS OF SECTION 107, BNS HAVE NOT BEEN SATISFIED:

25. As per the settled principles of law, the burden is on the prosecution to establish prima facie ingredients of a dowry death. Section 107 of the BNS is analogous to Section 304-B of the IPC. For conviction under this provision, the prosecution must prove:
- i. That the death of a woman was caused by burns, bodily injury, or occurred under abnormal circumstances;
 - ii. That such death occurred within 7 years of marriage;
 - iii. That the woman was subjected to cruelty or harassment;
 - iv. In connection with demand for dowry;
 - v. Soon before her death.
26. The Courts have held in plethora of cases that unless all the elements of a dowry death are established *cumulatively*, the presumption under law does not arise¹⁷. Since the Prosecution has failed to establish all these essentials of the offence of dowry death so alleged beyond reasonable doubt, the Respondent and his family members are liable to be acquitted of the charges of the dowry death of the deceased in the present case as such.
27. There is no conclusive proof of “Dowry Demand” soon before death of the deceased in the present case. The prosecution's reliance on vague allegations of harassment over time does not fulfil the strict requirement of “soon before death” mandated under the relevant provision of law. The expression *soon before* is a relative term and must show a *proximate and live link* between the cruelty and the death¹⁸.
28. In the present case, there is no cogent evidence—oral or documentary—demonstrating that the deceased was harassed for dowry immediately or shortly before her death. The neighbours' statements do not indicate any dowry-related incidents around February 4–5, 2025.

¹⁷ Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388.

¹⁸ Surinder Kaur v. State of Haryana, (2010) 1 SCC 526.

[B] MERE ALLEGATIONS OF CRUELTY DO NOT CONSTITUTE DOWRY DEATH:

29. In the eyes of law, there is no distinction between general domestic discord and dowry-linked cruelty. The courts have consistently held that every instance of marital discord does not attract the rigours of dowry death. In **Gurnaib Singh v. State of Punjab**¹⁹, the Court held that a conviction cannot be sustained merely on the basis of general allegations.
30. The statements of the deceased's parents refer to dissatisfaction and general domestic troubles, but the necessary nexus to dowry is missing.
31. It is also pertinent to note that the alleged Acts of harassment were not consistently reported or legally documented. There were no prior FIRs, complaints to the police, or medical reports lodged by Neha or her family during the two-year marriage. In **Narayanamurthy v. State of Karnataka**²⁰, the Supreme Court stressed that omissions to report alleged cruelty over time reduce the evidentiary weight of such claims.

[C] NO INDEPENDENT EVIDENCE IMPLICATING THE FAMILY MEMBERS OF THE ACCUSED:

32. It is the submission of the defence counsel that the vague and omnibus allegations cannot result in the conviction of the Respondent's family members for the offences alleged. The complaint filed by the father of the deceased names the Respondent and the family members collectively, without specific acts attributed to each. The courts have cautioned against implicating relatives without concrete evidence²¹. The law demands particularised allegations to hold individual family members liable, failing which the prosecution's case is vitiated by over-implication.
33. Furthermore, the family members were not residing in the same household. There is no evidence to suggest that the accused's relatives lived in the same household or were involved in the daily interactions with the deceased. Proximity to the deceased is essential to infer active participation in harassment.

¹⁹ (2013) 7 SCC 108.

²⁰ (2008) 16 SCC 512.

²¹ *Kans Raj v. State of Punjab*, (2000) 5 SCC 207.

[D] PRESUMPTION UNDER SECTION 118 OF THE BSA, 2023 CANNOT BE INVOKED IN THE PRESENT CASE:

34. As per the principles of law, the presumption is Not Automatic — It arises only when prosecution proves a prima facie cruelty for dowry. Section 118 of the BSA, 2023 creates a presumption of dowry death, but only after foundational facts are established. In the absence of proximate cruelty or harassment, this presumption cannot be drawn²².

²² G.V. Siddaramesh v. State of Karnataka, (2010) 3 SCC 152.

***ISSUE 3: WHETHER THE DYING DECLARATION MADE BY THE
DECEASED IS ADMISSIBLE FOR CONVICTION OF THE
RESPONDENT FOR THE CHARGES FRAMED AGAINST HIM?***

35. Dying declaration, as per Sec. 26 of the BSA, 2023 is an exception to the general rule of excluding the hearsay evidence. The burden of proving the dying declaration is always on the prosecution. Since an accused can be convicted solely on the basis of dying declaration, the court is expected to carefully scrutinize the same.
36. The admissibility of a dying declaration as evidence is based on the legal principle of the legal maxim "*nemo moriturus praesumitur mentire*" meaning "a person who is about to die is presumed to be speaking the truth".
37. It is often cited in relation to the admissibility of dying declarations. This maxim reflects the common law principle that a dying person is unlikely to lie or make false statements when faced with their own mortality. This is why a dying declaration is regarded as a crucial piece of evidence. However, the statement will still be evaluated by the court, which will also take into account all the relevant circumstances and facts.
38. Following are the conditions for the admissibility of a dying declaration:
- i. The statement must have been made by a person who is dead or who cannot be found, or who has become incapable of giving evidence due to his or her physical or mental condition.
 - ii. The declaration must be related to the reason for the person's demise or the events that led to it.
 - iii. The statement must have been made voluntarily and without any external pressure or influence.
 - iv. The person making the statement must have had a clear and sound mind and sufficient opportunity to observe and remember the facts that he or she is stating.
 - v. The claim must be supported by additional evidence.

[A] THE DYING DECLARATION LACKS RELIABILITY AND SHOULD NOT BE THE SOLE

BASIS FOR CONVICTION:

39. The dying declaration of the deceased has no corroboration with independent evidence produced before the Hon'ble Court. In the present case, the prosecution seeks to rely solely on the dying declaration without sufficient corroboration. However, it is a settled principle of law that while a dying declaration can form the sole basis of conviction, it must inspire full confidence of the court. In **Khushal Rao v. State of Bombay**²³, the Supreme Court had held that a dying declaration should be scrutinised closely before being accepted as the sole basis of conviction. The present declaration lacks the requisite consistency and credibility due to absence of independent and direct evidence tying the accused to the alleged acts.
40. It is the submission of the Respondent's counsel that the circumstances surrounding the declaration raise suspicion to the credibility and admissibility of the said declaration. The dying declaration was allegedly recorded by a magistrate, but it is vehemently contended that the deceased was not in a fit physical or mental state to give a coherent statement at that time. The Supreme Court has laid down in various judicial precedents that where there is doubt about the mental fitness of the declarant, the declaration cannot be treated as reliable.²⁴
41. It is also the case of the defence counsel that the possibility of tutoring or influence the deceased in giving the declaration cannot be ruled out. It is useful to note that the declaration was made in the presence of the deceased's family, who had a strong motive to implicate the Respondent and his family members. Given the acrimonious relations between the two families and the timing of the declaration, the possibility of external influence cannot be discounted, raising doubts about its credibility. In **Uka Ram v. State of Rajasthan**²⁵, the Court emphasized that the dying declaration must be free from any influence or tutoring.

[B] DYING DECLARATION MUST BE CLEAR, UNAMBIGUOUS, AND FREE FROM CONTRADICTIONS:

42. It is the most respectful submission made before this Hon'ble Court by the defence counsel that there are various inconsistencies in the declaration and other prosecution

²³ AIR 1958 SC 22.

²⁴ Paparambika Rosamma v. State of A.P. (1999) 7 SCC 695.

²⁵ (2001) 5 SCC 254.

evidence. The dying declaration of the deceased so recorded alleges rape and physical assault, but there is no direct witness(es) to corroborate the occurring of such events. Although the prosecution contends and relies on the testimonies of the neighbours who had merely heard screams, but merely screams and noises so heard by the neighbours do not necessarily establish the Respondent's culpability.

43. Hence, the prosecution has failed to establish the occurrence of the events alleged in the declaration beyond reasonable doubt. Therefore, the dying declaration is highly doubtful and is liable to be dismissed by this Hon'ble Court. In the case of **State of Punjab v. Parveen Kumar**²⁶, the Court had held that contradictions between medical evidence and the dying declaration weaken the probative value of the declaration. Based on these findings of the court, the defence prays that the Respondent be acquitted of the baseless charges framed against him.
44. It is also submitted that the lack of specificity weakens the evidentiary value of the prosecution's case. The declaration fails to detail the specific sequence of events that directly link the Respondent to the fatal act. The Court underscores the need for clarity and specificity in a dying declaration for it to be relied upon for conviction²⁷.

[C] THE DYING DECLARATION CANNOT BE USED TO PROVE CHARGES BEYOND THE SCOPE OF ITS CONTENT:

45. It is the humble submission of the Respondent that the Charges under Section 302 and 107 cannot be sustained solely on the basis of the dying declaration. The dying declaration of the deceased has made references to threats, past assaults, and an alleged rape on February 4, 2025. However, it is crucial to note that the said dying declaration does not offer evidence sufficient in law to sustain conviction under Section 302 (Murder) of the BNS. In the case of **Bikramjit Singh v. State of Punjab**²⁸, the Apex Court had reiterated that dying declarations are not a substitute for direct evidence where such is expected and available.
46. It is also submitted that the Section 32(1) of the BSA, 2023 must be construed narrowly. While Section 32(1) permits statements made as to the cause of death, the defence

²⁶ (2005) 9 SCC 769.

²⁷ Laxman v. State of Maharashtra, (2002) 6 SCC 710.

²⁸ (2020) 10 SCC 616.

humbly submits before the Hon'ble Court that the provision cannot be extended to include all past allegations unless they are directly related to the cause of death. The alleged rape and dowry harassment, unless causally linked to the death, fall outside the scope of admissibility.

[D] THAT THE CONVICTION CANNOT BE SUSTAINED IN ABSENCE OF OTHER CONCLUSIVE EVIDENCE:

47. It is a settled principle of law that the presumption of innocence must be maintained. It is a cardinal principle of criminal jurisprudence that the accused is presumed innocent until proven guilty beyond reasonable doubt. The Panchsheel Test introduced by the Supreme Court serves as an important guideline for evaluating circumstantial evidence, ensuring that the presumption of innocence and the principle of the benefit of the doubt are upheld in criminal jurisprudence. As held in **Sharad Birdhichand Sarda v. State of Maharashtra**²⁹, the Hon'ble Court has rightly held that the chain of circumstances must be complete to exclude every hypothesis except the guilt of the accused. The prosecution has failed to discharge this burden.
48. It is also the submission of the defence counsel that the forensic evidence is merely corroborative and not conclusive in nature. The forensic findings indicating sexual activity do not conclusively prove non-consensual intercourse or rape. The absence of injuries consistent with forcible sexual assault or definitive linkage to the accused limits the evidentiary weight of this finding.

²⁹ (1984) 4 SCC 116.

P R A Y E R

Wherefore in light of the issues raised, arguments advanced and authorities cited, it is humbly and most respectfully submitted that this Hon'ble Court may graciously be pleased to:

1. **Hold** that the dying declaration of the deceased is inadmissible and is liable to be rejected;
2. **Acquit** the Respondent for the charges framed against him for murder under Section 302 of the BNS, 2023
3. **Acquit** the Respondent and his family members for charges framed against them for dowry death under Section 107 of the BNS, 2023
4. Pass any other order or direction that this Hon'ble Court may deem fit in the interests of justice, equity and good conscience with respect to the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE RESPONDENT SHALL, AS IN DUTY BOUND, EVER PRAY.

-Sd

Counsel on behalf of the Defense.