

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A (J) 36/2022

Shri Pijush Chakraborty alias Janardan

son of Sri Krishnadhan Chakraborty, resident of East Dhwajanagar,
P.S. RK Pur, District- Gomati, Tripura

----Appellant

Versus

The State of Tripura, represented by the Secretary-cum-Commissioner,
Home Department, Government of Tripura

----Respondent

For Appellant(s)	:	Mr. BN Majumder, Sr. Advocate Mr. DJ Saha, Advocate
For Respondent(s)	:	Mr. S. Debnath, Addl. PP
Date of hearing and delivery of Judgment & Order	:	05.07.2023
Whether fit for reporting	:	Yes

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH**

JUDGMENT & ORDER (ORAL)

(Amarnath Goud, J)

Heard Mr. BN Majumder, learned senior counsel assisted by Mr. DJ Saha, learned counsel appearing for the appellant as well as Mr. S. Debnath, learned Additional PP appearing on behalf of the respondent.

2. This appeal arises out of the judgment and order of conviction and sentence dated 13.09.2022 passed in connection with case No. S.T. (GT-U) 74 of 2014 by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur, Tripura, whereby and whereunder the learned Additional Sessions Judge had convicted the appellant for the offence punishable under Section 304B IPC, and sentenced him to suffer rigorous imprisonment for ten years.

3. The case of the prosecution, as projected by the learned trial court is that, approximately two and half years back, from the date of lodging the ejahar on 18.04.2012, the daughter of informant namely Chandana Sharma was given in marriage to Pijush Chakraborty, the appellant herein, following the Hindu rites and customs by giving dowry, but after six months of such marriage the

accused persons namely Pijush Chakraborty and his relatives namely Ratan Chakraborty i.e. brother and Smt. Bakul Chakraborty i.e. mother subjected the informant's daughter to cruelty both physically & mentally on demand of further dowry. On 16.04.2012 AD morning time at around 9.00 AM all the accused person's brutally assaulted the daughter of informant with fist and blows as well as kick and by a lathi on demand of Rs.50,000/- to be brought from the paternal house else to leave the matrimonial home. Then again on the next day i.e. on 17.04.2012 AD in the noontime at about 2.00 PM all of them again harassed upon the informant's daughter both physically and mentally on demand of Rs.50,000/- to bring from her paternal house and as such finding no other option, when harassment became unbearable, the daughter of informant namely Chandana Sharma committed suicide after consuming poison. Immediately she was taken to TSD Hospital, Udaipur but from there referred to GB Hospital, Agartala wherein she expired on 18.04.2012 in the morning at around 5:00 AM. Then complaint was lodged with the O/C of R.K. Pur P/S, Udaipur, Gomati District narrating all facts by the informant namely Ajoy Sharma.

4. The said complaint was registered as RK Pur PS case no. 142 of 2012 under Section 304B of the IPC. The matter was investigated by the investigating officer, and after completion of investigation submitted charge-sheet against the convict appellant and his mother, Smt. Bakul Chakraborty under Sections 498A/304B of the IPC. Thereafter, learned CJM, Gomati, took cognizance of the offence under Sections 498A/304B of the IPC and subsequently, the case was transferred to the court of learned Judicial Magistrate, 1st class, Court no. 2, Udaipur, South Tripura. The case was abated against Smt. Bakul Chakraborty since she had died during pendency of the

case. Thereafter, the case was transferred to the court of learned Sessions Judge, Gomati, Udaipur. At the commencement of trial, the learned Sessions Judge had framed charges against the convict appellant under Sections 498A/304B of the IPC and under Section 4 of the Dowry Prohibition Act to which he pleaded not guilty and claimed to be tried. Thereafter, the case was transferred to the court of learned Additional Sessions Judge, Gomati, Udaipur.

5. During trial, the prosecution to establish the charge had adduced 19 (nineteen) witnesses and exhibited some documents. After closure of recording evidences, the convict appellant was examined under Section 313 Cr.P.C. wherein he denied all the allegations levelled against him by the prosecution witnesses and also denied to adduce any evidence on his behalf. After hearing arguments and on examining the evidences and materials on record, the learned Additional Sessions Judge had acquitted the appellant from the charges levelled against him under Sections 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961 since the prosecution had failed to prove the said charges, but had convicted and sentenced the appellant for committing offence punishable under Section 304B IPC. Hence, this appeal before this court.

6. Mr. BN Majumder, learned senior counsel for the appellant has submitted that the prosecution has miserably failed to establish the charges levelled against the convict-appellant. Mr. Majumder, learned counsel has submitted that the conviction has been rendered basing on the evidence of the father, mother and brothers of the victim and the Medical Officer i.e. PW-1, PW-2, PW-4, PW-5 and PW-3 which according to learned senior counsel are omnibus statements. Learned senior counsel has also submitted that none of the witnesses could have been able to mention any specific date and time. Mr. Majumder, learned senior counsel also has argued that the oral dying

declaration of the deceased to her mother has no evidentiary value, hence, learned senior counsel has urged this court to set the appellant at liberty. Mr. Majumder, learned senior counsel in support of his submission has relied upon the judgment rendered in *Rajbabu and anr. Vs. State of M.P.*, reported in 2008 AIR SCW 5435; *Charan Singh alias Charanjit Singh vs. State of Uttarakhand*, reported in AIR 2023 SC 2095;

7. On the other hand, Mr. S. Debnath, learned Additional PP has supported the findings of the learned trial court while convicting the accused. Learned Additional PP has also submitted that prior to intimating to the police, the victim had given her declaration to her mother. Mr. Debnath, learned PP has also submitted that if the evidences of prosecution witnesses are read conjointly, it could safely be presumed that the convict appellant had committed the alleged offence. Hence, learned Addl. PP has submitted to maintain the findings of the learned trial court. Mr. Debnath, learned Additional PP in support of his submission has relied upon the judgment rendered in *Gurmeet Singh vs. State of Punjab* reported in (2021) 6 SCC 108; *Kamesh Panjiyar alias Kamlesh Panjiyar vs. State of Bihar*, reported in (2005) 2 SCC 388;

8. We have considered the submissions of learned counsel appearing for the parties. We have also perused the evidences and materials on record and the judgment passed by the learned Additional Sessions Judge.

PW 1, the father of deceased in his deposition stated that, his daughter was given in marriage with the appellant in the year 2009. He has also deposed that since after the marriage the appellant used to pick quarrel with his daughter on the demand of money and used to torture her physically and mentally for bringing money. PW.1 further revealed that repeatedly his daughter was sent to

his house for bringing money and sometime he used to pay money as per his capacity, but even after payment of money by him the torture upon his daughter continued by the appellant. PW.1 further deposed that on 20.04.2012 he received an information about the admission of his daughter in the hospital and accordingly his wife and sons went to the hospital and found his daughter Chandana in the hospital bed with tied hands by a rope in the back as her condition was very serious, on the same day she died in the hospital. PW.1 also deposed that on 18.04.2012 he lodged an ejahar with the OC, R.K. Pur PS under his signature which he identified as Exhibit-1.

PW 2, one of the brothers of deceased in his deposition stated that, deceased Chandana Sharma was his sister and she was given in marriage with the appellant in the year 2009. PW.2 also deposed that on 20.04.2012 he received a telephonic information from his brother that his sister was admitted in the GB Hospital as she consumed poison and on the following day in the morning he rushed to the GB Hospital and found his sister Chandana dead. Thereafter inquest was done over the dead body of his sister in his presence and PW.2 put his signature on the report which he identified as Exhibit-2. PW.2 also deposed that subsequently, his mother disclosed to him that the death of his sister was caused due to administration of poison by the appellant.

PW 4, the mother of deceased in her deposition stated that, deceased Chandana Sharma was her daughter who was given in marriage with the appellant about nine years back and out of their wedlock her daughter gave birth to a female child, at the time of death of Chandana, her baby was 2 and 1/2 years old. PW.4 also deposed that after marriage for about seven months her daughter passed peacefully but thereafter her daughter disclosed her that her husband Pijush Chakraborty used to inflict physical torture upon her and started

to keep pressure upon her daughter to bring money from them. PW.4 also deposed that according to their capacity they used to pay Rs.500/- to Rs.1000/- to her daughter as per demand of her husband, even after that the appellant continued torture upon her daughter. PW.4 further revealed that on 3rd Baisakha about 6 years back the appellant started putting pressure upon her daughter to give her chain to him, but her daughter refused to which she was physically tortured by her husband and when the torture became unbearable then her daughter consumed poison. Thereafter she was admitted in the GB Hospital being referred from TSD Hospital and on hearing the news of poisoning of her daughter, she along with her husband and son rushed to the TSD Hospital, Udaipur but at that time Chandana was ready to be referred to the GBP Hospital, then PW-4 accompanied her to the GBP Hospital Agartala. PW-4 further deposed that at that time her daughter was in senseless condition, she regained her sense at GBP Hospital Agartala and told PW-4 that for the purpose of taking of chain, her husband and mother-in-law assaulted her. On the following day Chandana died in the GBP Hospital. PW-4 further stated that though there was no meeting on the issue of torture upon her daughter by accused but PW-4 informed to the Panchayet Pradhan.

PW 5, one of the brothers of the deceased, in his deposition stated that deceased Chandana Sharma was his sister who was given in marriage in the year 2009 with the appellant. PW-5 further deposed that after five months of marriage his sister was subjected to physical torture by the accused on demand of bringing money from them and thereafter his sister consumed poison and admitted in the TSD Hospital wherefrom she was referred to the GBP Hospital, Agartala. PW-5 also deposed that his sister consumed poison due to her family disturbances and she disclosed to their mother (PW-4) the reason of her

consuming poison and his mother disclosed to him that his sister consumed poison as she was tortured physically on the issue of procuring her chain to the accused which she denied. PW-5 also deposed that the appellant left away after admitting his sister in the hospital.

PW 3, is the Medical Officer who had conducted post mortem over the dead body of the deceased. PW-3 in his deposition stated that on 18.04.2012 he along with Dr. Ranjit Kumar Das conducted postmortem examination on the body of deceased Chandana Sharma (Chakraborty) at AGMC & GBP Hospital, Agartala in connection with GB TOP GDE No. 588 dated 18.04.2012 on being identified by Shri Uttam Sharma, elder brother of the deceased and constable Mihir Lal Das of East Agartala PS. PW-3 further deposed that while conducting postmortem examination, they found that frothy discharge was coming out through the mouth of the deceased, they did not find any external injury on the body. On internal examination there was 50 ml of dark brown coloured fluid with pungent smell inside the stomach, stomach mucosa was found congested. They preserved the viscera and handed over to the police for arranging Toxicological analysis in SFSL and on that day they kept pending their opinion regarding cause of death. PW-3 further deposed that on 16.10.2012 they received a copy of said Toxicological analysis report and based on postmortem findings and that Toxicological analysis report they opined that cause of death was Asphyxia as a result of Endosulfan poisoning. In their opinion the time of death was 6 hours to 12 hours before postmortem Examination. In the cross-examination PW-3 denied the suggestion of defence side that the death of deceased Chandana Sharma (Chakraborty) was natural.

PW 12, is a neighbour of the complainant who only stated that the deceased once told him that she was tortured by her husband i.e. the appellant herein.

Nothing materials came out from the evidences of PW-6, PW-7, PW-8 and PW-10. PW9 and PW-11 were turned hostile. PW-17 and PW-19 prepared the inquest report and PW-15 and PW-16 put their signatures on the inquest report. PW-18 is a seizure witness. PW-13 is the 1st IO and PW-14 is the 2nd IO who after completion of the investigation submitted the charge sheet.

9. We have meticulously perused the evidences and materials on record which were considered by the learned trial court.

10. In the light of the above and the charges levelled against the appellant and to place the matter in its correct perspective, it is necessary to take note of the provision as contained in Section 304B of IPC which reads as follows:-

“304B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Explanation.—For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 [28 of 1961]. (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

11. On scrutiny and scanning of prosecution evidence and other materials as well as the defence evidences and facts and circumstances on record keeping them in juxtaposition, it transpires clearly that the deceased since after her marriage was tortured by her husband i.e. the appellant herein and her mother-in-law on demand of dowry, which she used to inform on regular basis to her parents and brothers i.e. PWs 1, 2, 4 and 5. From the record it is also evident that the victim had also disclosed the fact of torture on demand of dowry by the appellant to one of her relatives i.e. PW-12. PW-1, PW-2, PW-4 and PW-5, have categorically deposed that the appellant used to torture the victim both mentally and physically on demand of money and that the victim on regular instance used to disclose the said fact to them. Said PWs also had deposed that on many occasions they have also paid money to the appellant as per their

capacity. PW-12 has also categorically stated that the victim had disclosed to him regarding the physical and mental torture meted upon her by the appellant and his mother on demand of dowry. PW-4 also had deposed that the victim had made a dying declaration before her death to her that her daughter i.e. the victim was tortured by the appellant on demand of a golden chain and when such torture became unbearable she had consumed poison. From the record, it is evident that all the PWs i.e. PW-1, PW-2, PW-4, PW-5 and PW-12 have corroborated to the statements of each other. The doctor (PW-3) who has conducted the post mortem over the dead body of the deceased was categorical that the cause of death was a result of Endosulfan poisoning. From the post mortem report it is further revealed that while conducting the post mortem, PW-3 found that *frothy discharge was coming out through the mouth of the deceased*. During the trial, the defence could not shake the evidences of these witnesses. The prosecution has succeeded in demonstrating that the victim had been subjected to cruelty or harassment in connection with demand for dowry soon before her death, thus a presumption shall easily be drawn against the said appellant that he has caused the dowry death, as contemplated under Section 304B IPC.

12. Applying the ratio of the aforesaid evidences especially of PWs 1, 2, 4 and 5, it would be conclusively seen that the victim was tortured physically and mentally by the appellant since after her marriage and lastly on demand of a golden chain, she was tortured which prompted her to consume poison leading to her death. It is also evident that all the PWs 1, 2, 4 and 5 have deposed equivocally which could not be shaken by the defence in any manner whatsoever, and also the said prosecution witnesses are very categorical to their version. From their deposition it is clear that the deceased was subjected to

cruelty before her death on demand of a golden chain. Further, the accused failed to bring any defence during his examination under Section 313 Cr.P.C. and also failed to discard the evidences of the prosecution witnesses by producing any defence witness.

13. In view of the foregoing discussions, it can be held that there is nothing which could shatter the veracity of the prosecution witnesses or falsify the claim of the prosecution. All the prosecution witnesses have materially supported the prosecution case and the testimonies of the prosecution witnesses (PWs 1, 2, 4, 5 and 12) do not suffer from any material infirmity, and are consistent and corroborative. The prosecution witnesses have been able to build up a continuous link. As such, the prosecution has proved the essential ingredients of the offence for which the accused is charged with. Thus, we have no hesitation to agree with the order of conviction passed by the learned court below.

We, therefore, confirm the sentence passed by the learned court below.

Per Lodh,J.

14. I have the advantage of perusing the judgment prepared by my esteemed Brother, Amarnath Goud,J, and I am in complete agreement with the view taken by my esteemed Brother while dismissing the appeal and upholding the conviction and sentence imposed upon the appellant by the learned Additional Sessions Judge. However, in addition to the reasoning given and conclusion arrived at by him, I would like to discuss certain legal issues raised by Mr. Nandi Majumder, learned senior counsel firstly, on the point that once the appellant has been discharged from the charges under Section 498A of IPC and under Section 4 of the Dowry Prohibition Act,

1961, in that event whether the conviction under Section 304-B IPC is sustainable under the law, and secondly, there is no evidence of cruelty towards the victim soon before her death.

15. To advert the merits of the issue, at the outset, it would be useful to take note of Section 304-B IPC, which reads as under:

“304 B. Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]”

16. Again, Section 304-B IPC is correlated to Section 113-B of Indian Evidence Act. Section 113-B of the Evidence Act, reads as under:

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).]”

17. Admitted fact is that the deceased, wife of the appellant, committed suicide by consuming poison within seven years of marriage. Presumption under Section 304-B IPC and also under Section 113-B of the Evidence Act would rise when the wife meet with an unnatural death within seven years of the marriage and the deceased had been subjected to cruelty or harassment for or in connection with demand for dowry. Further Section 113-B of the Evidence Act lays down that *if soon before her death* a woman is subjected to cruelty or harassment for or in connection with demand for dowry by the person who is accused of causing her death, then, the court shall presume that such person has caused the dowry death. The presumption under Section 113-B is a presumption of law and once the prosecution establishes the

essential ingredients mentioned therein, it becomes the duty of the court to raise a presumption that the accused caused the dowry death. [*State of Rajasthan vs. Jaggu Ram*, reported in (2008) 12 SCC 51]

18. Again, it is settled proposition of law that initial burden of proof lies on the prosecution. The burden would not shift on the accused merely on the fact that unnatural death had occurred within seven years of the marriage without even proving the demand of dowry prior to the incident. [*State of Rajasthan vs. Teg Bahadur and ors.*, reported in (2004) 13 SCC 300]

19. Further, the expression “soon before her death” has not been defined in either of the statutes. The Hon’ble Supreme Court in catena of decisions held that what would satisfy the requirement of “soon before her death” within the meaning of Section 304-B IPC depends upon the facts and circumstances of each case. [*T.Arontperunjothi vs. State through SHO, Pondicherry*, reported in (2006) 9 SCC 467; *T.Arontperunjothi vs. State through SHO, Pondicherry*, reported in AIR 2006 SC 2475; *Ram Badan Sharma vs. State of Bihar*, reported in (2006) 10 SCC 115; *Ram Badan Sharma vs. State of Bihar*, reported in AIR 2006 SC 2855; *Raja Lal Singh vs. State of Jharkhand*, reported in 2007 (AIR SCW) 3690]

20. It is held that the court has to analyze the facts and circumstances of each case leading to the death of the victim and decide whether there is any proximate connection between the demand of dowry, the act of cruelty or harassment and the death. [*State of Rajasthan vs. Jaggu Ram*, reported in (2008) 12 SCC 51; *State of A.P. vs. Raj Gopal Aswa and anr.* reported in (2004) 4 SCC 470; *Arun Garg vs. State of Punjab and anr.* reported in (2004) 8 SCC 251; *Kaliyaperumai and anr. Vs. State of Tamil Nadu*,

reported in (2004) 9 SCC 157; *Kamesh Panjiyar vs. State of Bihar*, reported in (2005) 2 SCC 388]

21. “Soon before” is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formulae can be laid down by fixing any time limit. The term is not synonymous with the term “immediately before” and is opposite to the expression “soon after”. These words would imply that the interval should not be too long between the time of making the statement and the death. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. [*Kans Raj vs. State of Punjab*, reported in (2000) 5 SCC 207, para 15]

22. Mere lapse of sometime by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the phrase “soon before her death” is an elastic expression and can refer to a period immediately before her death or within a few days or even a few weeks before it, but the legislative object in providing such a radius of time is to emphasis the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. It is for the court to decide on the facts and circumstances of each case whether the interval could be called “soon before her death”. [*Satvir Singh and anr vs. State of Punjab*, reported in (2001) 8 SCC 633]

23. It is also well settled that in a case of dowry death actual participation of a husband or his relative in the commission of offence of death is not

required. [*Vadde Ramarao vs. State of Andhra Pradesh*, reported in 1990 Cr.L.J. 1666]

24. In *Om Prakash vs. State of Punjab*, reported in (1992) 4 SCC 212, the Hon'ble Supreme Court had observed that, in a case of death because of torture and demand for dowry, it is the duty of the court to examine the circumstances of each case and evidence adduced on behalf of the parties for recording a finding on the question as to how the death took place. While judging the evidence and circumstances of the case, the court has to be conscious of the fact that a death connected with dowry takes place inside the house, where outsiders who can be said to be independent witnesses in the traditional sense, are not expected to be present.

25. The learned Additional Sessions Judge while convicting the appellant has referred to the essential ingredients of the offence under Section 304-B IPC, which are as under:

- “(1) Death should be caused by burns or bodily injury or otherwise than under normal circumstances;***
- (2) Such death should have occurred otherwise than under normal circumstances with seven years of her marriage;***
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;***
- (4) Such cruelty or harassment should be for or in connection with demand for dowry;***
- (5) The deceased death was subjected to cruelty or harassment for dowry soon before her death;***
- (6) Soon before her death the woman was subject to cruelty or harassment by her husband or any other relative or her husband in connection with any demand for dowry.”***

26. Keeping in mind the aforesaid principles, in the instant case, we find that PW-4, mother of the victim has stated in her deposition that *on 3rd Baisakha about 6 years back accused Pijush started putting pressure upon my daughter to give her chain to her husband but my daughter refused and so she was physically tortured by her husband and when the torture became*

*unbearable, my daughter consumed poison, and thereafter, she was admitted in GB Hospital being referred from TSD Hospital. On hearing the news of poisoning of my daughter, I along with my husband and son rushed to the TSD Hospital, Udaipur, but at that time she was ready to be referred to the GBP Hospital and I accompanied her to the GBP Hospital Agartala. At that time my daughter was in senseless condition and she regained her sense at GBP Hospital Agartala and told me that for the purpose of taking of chain, her husband and mother-in-law assaulted her. On the following day she died in the GBP Hospital. The statement that PW-4 had accompanied her daughter and on her way to GBP hospital, Agartala, she was in senseless condition and that she regained her sense at GBP hospital, Agartala when the victim told PW-4 that for the purpose of taking of chain, her husband and mother-in-law assaulted her, is an evidence of *res gestae* as envisaged under Section 6 of the Evidence Act, and is admissible in evidence. Furthermore, according to me, this statement narrates the fact relevant as to the cause of death of the victim or as to any of the circumstances of the transaction which resulted in her death, and is admissible in evidence under Section 32 of the Indian Evidence Act.*

27. Added to it, the statements made by the victim after regaining her sense to her mother (PW-4) is nothing but an oral dying declaration. An oral dying declaration, no doubt, can form the basis of conviction, though the court seeks for corroboration as a rule of prudence, but before the said declaration can be acted upon, the court must be satisfied about the truthfulness of the same, and that the said declaration was made by the deceased while she was in a fit condition to make the statement.

28. On perusal of the evidence, particularly the cross-examination of PW-4, it crystallizes that her evidence as regards the above oral declaration by the victim remained unshaken by the defence. The defence could not draw any contradiction to the said statement. I have also taken note of the examination of the appellant recorded under Section 313 CrPC. The court put a specific question to the appellant as regards this episode in question no. 23, which may be reproduced hereunder, in verbatim, for convenience:

“Question No. 23- PW-4 also deposed that at that time her daughter was in senseless condition and she regained her sense at GBP Hospital, Agartala and told her that for the purpose of taking of chain, her husband and mother-in-law assaulted her and on the following day she died in the GBP Hospital.

Have you anything to say regarding this evidence?

Ans. Not true.”

29. PW-5, brother of the victim, during his deposition deposed that his mother disclosed to him that his sister consumed poison as she was tortured physically on the issue of procuring a chain by the appellant to which she denied. Reply to the said question (Question No. 25), the appellant only replied ‘*Not true*’.

30. Further, the appellant was asked to reply as regards the statements of PW-10 that on the relevant date of incident Saraswati i.e. the deceased was not allowed to cook food by her mother-in-law and so there was a quarrel between Saraswati and her mother-in-law and the appellant. The appellant simply replied as ‘*Not true*’.

31. Interestingly, PW-12, Sri Prankrishna Sharma, a neighbour, in his evidence deposed that the deceased-wife of the appellant disclosed to him during her lifetime that she was subjected to physical torture by the appellant, Pijush Chakraborty, and his mother on the issue of payment of dowry. The appellant was confronted with this statement of PW-12 in his examination under Section 313 CrPC, but he only replied ‘*False*’.

32. Under question No. 75, the appellant was asked whether he wants to say anything more in connection with the case. His answer was that “*On the alleged date of incident there was a quarrel between my wife and my mother. I was on my duty about 3/4 k.m. away from my house*”. However, the learned Additional Sessions Judge has given a finding while dealing with this question that the appellant failed to prove his statement that he was on his duty about 3/4 k.m. away from his house.

33. According to this court, had it been a fact that the accused was on duty about 3/4 k.m. away from his house, then, he could easily adduce evidence to substantiate the statement in proof of his plea of *alibi*, he had taken during his examination under section 313 CrPC.

34. On careful scrutiny of the evidences of PW-4, PW-5 and PW-12, it comes to fore that their evidences remained unshaken by the defence. I do not find any material to come to a finding that the appellant failed to draw any contradiction to any of the statements made by PW-4, PW-5 and PW-12 during their cross-examinations. The evidence of the deceased that she had been subjected to cruelty *soon before her death* for the purpose of taking her chain in connection with demand of dowry, and committed suicide by consuming poison has been aptly proved. Furthermore, the appellant was afforded enough opportunities to raise his defence by way of offering plausible explanations as regards the incriminating materials surfaced against him.

35. In my opinion, when the prosecution has been able to prove its burden that the deceased has committed suicide on account of cruelty or harassment in connection with demand of dowry by the appellant, then,

the presumption under Section 113-B of the Evidence Act could easily be drawn against the appellant. In such a case, to rebut the presumption under Section 113-B of the Evidence Act, the appellant should have given the probable cause of her committing suicide and the plea which he would have taken could receive credence only if any tangible evidence in support of his plea would have been given by the appellant. In the present case, the appellant has not made any effort to rebut the presumption under Section 113-B of the Evidence Act.

36. Now, coming to the question raised by learned senior counsel appearing for the appellant as to whether a conviction under Section 304-B IPC can be sustained when the accused is acquitted from the charges framed under Section 498-A IPC and under Section 4 of the Dowry Prohibition Act, the position is well-settled that the offences under Sections 498-A, 304-B IPC and section 4 of Dowry Prohibition Act, are distinct offences and having separate ingredients. Each and every offence must be proved separately by the prosecution. I am unable to accept the analogy advanced by learned senior counsel for the appellant that when an accused is acquitted from the charges under Section 498-A IPC and 4 of Dowry Prohibition Act, conviction cannot be sustained under Section 304-B IPC.

37. Here, I am gainfully refer the judgment rendered by the apex court in *Gurmeet Singh vs. State of Punjab*, reported in (2021) 6 SCC 108, wherein the apex court has observed that ‘Section 304-B and 498-A IPC deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of “cruelty”. In Section 304-B there is no such Explanation about the meaning of “cruelty”. But having regard to the common

background to these offences it has to be taken that the meaning of “cruelty” or “harassment” is the same as prescribed in the Explanation to Section 498-A under which “cruelty” by itself amounts to an offence. Under Section 304-B it is “dowry death” that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. If the case is established, there can be a conviction under both the sections’. The apex court has thus observed that offences under Section 498-A and Section 304-B IPC are distinct in nature. Although cruelty is a common thread existing in both the offences, however the ingredients of each offence are distinct and must be proved separately by the prosecution. If a case is made out, there can be a conviction under both the sections.

In paras 19 and 20 in ***Gurmeet Singh (supra)***, the apex court referring to its earlier decision in ***Kamesh Panjiyar vs. State of Bihar***, reported in (2005) 2 SCC 388, further held thus [scc.p.114 paras 19,20]:

“19. Lastly, the counsel on behalf of the appellant argued that without any charges under Section 498-A IPC a conviction under Section 304-B IPC cannot be sustained. On this aspect this Court in the case of ***Kamesh Panjiyar v. State of Bihar***, (2005) 2 SCC 388 held as under:

“12. It is to be noted that Sections 304- B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of “cruelty”. In Section 304-B there is no such explanation about the meaning of “cruelty”. But having regard to the common background to these offences it has to be taken that the meaning of “cruelty” or “harassment” is the same as prescribed in the Explanation to Section 498-A under which “cruelty” by itself amounts to an offence. Under Section 304-B it is “dowry death” that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. If the case is established, there can be a conviction under both the sections.” (emphasis supplied)

20. Therefore, the argument raised by the counsel on behalf of the appellant cannot be accepted as the offences under Section 498-A and Section 304-B, IPC are distinct in nature. Although cruelty is a common thread existing in both the offences, however the ingredients of each offence are distinct and must be proved separately by the prosecution. If a case is made out, there can be a conviction under both the sections.”

38. In view of the aforesaid enunciation of law, it can easily be held that even in absence of charge under Section 498-A, conviction under Section 304-B can be declared against an accused if the evidence justifies for such conviction and sentence. In other words, the above proposition of law clearly

suggests that if conviction under Section 304-B IPC can be sustained in absence of any charge under Section 498-A IPC, then, there is absolutely no difficulty for me to hold that conviction under Section 304-B IPC can also be sustained in a situation when prosecution fails to prove the charges framed under Section 498-A IPC and Section 4 of the Dowry Prohibition Act.

39. For the reasons stated above and the principles of law discussed here-in-above, the appeal stands dismissed.

The appeal is accordingly dismissed. Send down the LCRs.

JUDGE

JUDGE



**SAIKAT
KAR**

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