

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A.(J) No.11 of 2022

Bishnu Ghosh,
S/O late Anil Ghosh
Resident of Village-Chandrapur Khil,
P.S. R.K. Pur, District : Gomati, Tripura.

----Convict-Appellant(s)

Versus

The State of Tripura
Represented by the Secretary,
Home Department, Government of Tripura

---- Respondent(s)

For Appellant(s)	:	Mr. S. Lodh, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P. Mr. K. Pandey, Adv. Mr. S. Majumder, Adv.
Date of hearing	:	13.12.2023
Date of delivery of Judgment & Order	:	09.01.2024
Whether fit for reporting	:	NO

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

[Biswajit Palit, J]

This is an appeal by the convict-appellant Shri Bishnu Ghosh against the judgment dated 23.03.2022 and order of conviction and sentence dated 25.03.2022 passed by the Learned Additional Session Judge, Gomati Judicial District, Udaipur, in connection with case No. ST(GT/U) 38 of 2016 under Section 498A/302 of IPC. By the said judgment Learned Trial Court has

sentenced the convict-appellant to suffer RI for 2 (two) years and to pay fine of Rs 3000/- i.d to suffer SI for 2 (two) months for the offence punishable under Section 498A of IPC and also sentenced the convict under Section 302 of IPC to suffer RI for life and to pay fine of Rs 5000/- i.d. to suffer SI for a further period of 3 (three) months with a direction that both the sentences would run concurrently. The prosecution against the appellant was lodged on the basis of a written FIR laid by the informant namely Smti Kajal Karmakar, w/o Shri Tapan Karmakar, Jalefa, Sabroom, PS Sabroom, District South Tripura to O/C, R.K Pur Women PS, alleging *inter alia* that prior to six months back from the date of lodging the FIR on 28.10.2015 her daughter Smti Sangita Karmakar was given marriage to one Shri Bishnu Ghosh, S/O Late Anil Ghosh of Chandrapur Colony under PS R.K. Pur, as per Hindu Rites and Customs. At the time of marriage, they had given cash amount of Rs.1,00,000/-, gold ornaments of 3 Bhoris and wooden furnitures as a dowry. But after the marriage, the informant's daughter was subjected to cruelty both mentally and physically by her husband and other near relatives of the husband namely Smt. Usha Ghosh, W/O Late Anil Ghosh, Prasenjit Ghosh, S/O Late Anil Ghosh, Sanju Das, S/O unknown, Jiban Biswas, S/O unknown, and Subrata Chakraborty, S/O unknown on demand of money of Rs.30,000/- and more gold ornaments. According to the informant, when the daughter of the informant expressed her parent's inability to fulfill the demand due to their poverty then she was subjected to assault and not only that she was kept in starvation. The informant's daughter was also not permitted to visit her parental house unless the demand could be fulfilled. On 28.10.2015, in the morning, there was a quarrel among the daughter of the informant, her husband and mother-in-law and there the victim was brutally assaulted by them. At about 12:30 hours, the husband of the informant's daughter called the informant through phone and asked her to come to their residence as

their daughter's condition was very critical. The informant alleged that her daughter has been killed by her husband and mother-in-law by setting ablaze fire on her after pouring kerosene oil. Hence she laid the FIR.

2. Based on the said complaint, R.K Pur women P.S case No.108/2015 under Section 498A/302 of IPC was registered and the WSI Madhabi Debbarma took up investigation of the case. On completion of the investigation the final report sending up the appellant for facing the trial was filed with the charges under Section 498A, 302/34 of IPC in the jurisdictional Court. Since the offence punishable under Section 302 of IPC is exclusively triable by the Court of Sessions, so the case was committed to the Learned Sessions Judge, Gomati Judicial District Udaipur and subsequently, the case was transferred to the Court of Learned Additional Sessions Judge, Gomati District Udaipur for disposal. It is to be noted here that charge-sheet was submitted against the present appellant and his mother Smti Usha Rani Ghosh by the I.O. but by the said judgment Smti Usha Rani Ghosh was acquitted from the charge of this case. Before the Learned Trial Court, charge was framed against the present appellant under Section 498A/302 read with Section 34 of IPC for committing murder of the victim Smti Sangita Karmakar. The appellant denied the charge, pleaded not guilty and claimed to be tried.

3. In order to substantiate the charge, the prosecution in total has adduced 15 numbers of witnesses and relied upon some documentary evidences which were marked as exhibits in the case. After recording the prosecution evidence, the appellant was examined under Section 313 of Cr.P.C to have his response on the incriminating materials those surfaced in the evidence. The appellant renewed his claim of innocence and denied those incriminating materials as fabricated and he also took the plea that he has been falsely implicated in this case. He took the plea that as a driver by

profession he used to go out everyday and used to return back at night and he could know from his neighbours that his wife and mother had on some occasions involved in hot altercation on the issue of cooking so there might be some issue between his mother and his deceased wife. However, having appreciated the evidence on record, Learned Trial Court returned the finding of conviction as the prosecution had been successful in establishing the charge against the present appellant.

4. Learned Counsel, Mr. S. Lodh appearing for the appellant in course of hearing strenuously argued that there is no eye-witness and legal evidence and on the basis of surmise the appellant has been convicted. He further submitted that there is serious perversity in the finding of conviction. Learned Counsel also added that to substantiate the charge under Section 498A of IPC the prosecution before the Learned Trial Court could not adduce any single evidence to believe that the victim was subjected to cruelty for unlawful demand of dowry by the present appellant and furthermore there is no evidence on record that the present appellant committed murder of his wife by pouring kerosene oil on her body. He also stated that all the witnesses adduced by the prosecution are *heresay* witnesses. Thus, in absence of any cogent evidence in respect of involvement of the appellant, the finding of the conviction cannot survive. It was further submitted that the evidence of the witnesses of the prosecution are contrary to each other. So, in summing up Learned Counsel submitted that the prosecution has miserably failed to prove the charges framed against the present appellant but the Learned Trial Court by the said judgment convicted the appellant and urged before the Court for acquittal.

5. On the other hand, Learned Additional P.P. appearing on behalf of the prosecution submitted that this case is entirely based on circumstantial evidence and from the evidence on record, it is very much clear that the

deceased prior to her death was subjected to cruelty for demand of dowry by the present appellant and as the demand could not be fulfilled the present appellant committed murder of his wife by pouring Kerosene oil. So, according to Learned Additional P.P. Learned Trial Court rightly after elaborate discussions of the evidence on record delivered the judgment against the present appellant. So, learned Additional P.P. urged this Court not to interfere with the judgment of the conviction and the consequential order of sentence.

6. For appreciation of the submission made by the Learned Counsel for the parties, it would apposite to note at the outset that there is no dispute on record that the daughter of the informant was expired on 28.10.2015 due to burning. Now we are to see as to whether that burning took place due to ill-act committed by the present appellant or not. So, to analyze the matter, let this Court take a short survey of the evidence as led by the prosecution before the Learned Court below.

7. PW-1, Smti Kajal Karmakar, is the informant. She deposed that about two years back, the marriage of her daughter was solemnized with the appellant Bishnu Ghosh of Chandrapur as per Hindu Rites and Customs. In the marriage, cash money amounting to Rs.1,00,000/- along with gold ornaments, furniture and other household articles were given. After the marriage for a period of one month, her daughter lived peacefully at her matrimonial home. Thereafter, her son-in-law Bishnu demanded Rs.30,000/- from her but she refused on account of her financial stringency. Thereafter, according to the informant, the present appellant and his mother started physical and mental torture upon her (daughter). Not only that they stopped providing food to her on regular basis but also she deposed that her daughter was also being slapped by shoe on account of which she developed auditory problem. About five to seven days prior to Durga Puja in the year 2015 she

went to the matrimonial home of her daughter to provide some gifts and at that time, her daughter revealed the incidents of torture upon her. After the marriage, her daughter for one time during 'Fira Yatra' visited her house. After eight days of her return, one day in the noon her son-in-law asked her over mobile phone to visit home at Chandrapur as her daughter was in a critical condition. Knowing the information, she along with her husband, daughter and other relatives went to R.K. Pur Women PS and when she was coming out from her house, she heard from someone that her daughter had been killed by the appellant and his mother by sprinkling Kerosene Oil and setting fire upon her. At PS, one Tutul Deb, recorded her ejahar as per her narration, she put her signature on the complaint and identified her signature marked as Exhibit-1. She further deposed that on the following day, she went to District Hospital where after autopsy she could see the face of her daughter. She also stated that younger brother of the appellant Prasenjit Ghosh was present in the Hospital and no other family members were there.

During cross-examination she stated that in her ejahar she did not narrate that she provided all the articles as per demand from the groom side. Again, she deposed that in her ejahar she did not state that about five to seven days prior to Durga Puja of 2015, she had gone to the matrimonial house of her daughter to provide some gifts and at that time, she revealed the incidents of torture upon her. Again, she stated that in her ejahar she did not say that her daughter was slapped by shoe on account of which she developed auditory problem. She further stated that she did not state in her ejahar that Bishnu himself demanded Rs.30,000/- from her but she denied on account of her financial stringency. She also stated that on the alleged day at about 7:00 to 8:00 PM in the night, the witness along with her husband came to R.K. Pur Women PS.

8. PW-2, Smti Sanju Karmakar is the sister of the deceased. She deposed that the marriage of her sister was solemnized with the appellant and in the marriage, cash money of Rs.1,00,000/-, gold ornaments and other articles were given and for a period of one month after the marriage, her sister lived happily at her matrimonial home and after the marriage, her sister visited twice her parental house. She further deposed that her sister over mobile set informed her that her husband and mother-in-law used to cause torture upon her on demand of money but due to poverty, they could not fulfill the demand and as a result, torture upon her sister was increased. She again stated that she visited the matrimonial home of her sister once or twice when the appellant asked her not to visit his house till the demand of Rs.30,000/- was fulfilled and he also expressed that in the event of non-fulfillment of demand her sister would not be permitted to visit her house. She further stated that the appellant Bishnu had given the mobile number of his immediate neighbour to make contact but subsequently, he stopped that too. One month thereafter, Bishnu, i.e., the appellant again demanded Rs.6000/- from her mother but her mother could not pay it and for that, torture upon her sister was increased. Her sister was being slapped by shoe on account of which she developed auditory problem. About 8 to 9 days prior to the death of her sister, her mother visited her matrimonial home to provide some gifts on the occasion of Durga Puja and on return, her mother told her that Sangita (victim) revealed the incidents of torture upon her on account of demand of Rs.6000/-. She further stated that thereafter one day in the noon, the appellant informed her mother over mobile to visit his house as Sangita was in critical condition. Thereafter, the witness along with her parents and other relatives went to R.K. Pur Women PS where her mother laid the complaint. On the following day in the morning, she along with others went to

Tepania District Hospital where the face of her sister was shown to them after autopsy.

During cross-examination, she stated that she did not say to IO that on the last occasion, when she visited her sister's matrimonial home, that time, the appellant asked her not to visit again till the demand of Rs.30,000/- was fulfilled and he would not allow her sister to visit their house till the fulfillment of the demand.

9. PW-3, Shri Anup Sarkar only deposed that wife of the appellant died about 6-7 months back and after hearing the fact of incident, he went to the residence of the appellant when police personnel were also present. That time, police prepared inquest report over the dead body of the deceased and the witness put his signature and identified his signature marked as Exhibit-2. He further deposed that the police seized one plastic container, burnt pieces of saree, some burnt soil sample, one pair of sleeper by preparing seizure list and identified his signature marked as Exhibit-3 and identified the seized alamats marked Exhibit-MO-1 series.

10. PW-4, Shri Uttam Dey deposed that previous year on the following day of Laxmi Puja, the wife of the appellant died. At that time, when he was in his house, he heard the cry of Smti Usha Rani Ghosh that there was fire. Immediately, he along with others rushed to the house of Bishnu Ghosh where Usha Rani Ghosh told that there was a fire in the room of her daughter-in-law. Accordingly, they broke open the door by kicking and saw her body was in flames and she was lying on the ground. Immediately, they poured water over the body. He further deposed that on that day, in the morning, there was a dispute between the appellant and his mother. The victim was rolling on the ground due to burn injuries and could not say anything. This witness was declared hostile by the prosecution and his portion of statement was marked subject to confirm by IO.

During cross-examination, he specifically stated that the appellant is a driver by profession and he used to leave his house in the morning between 6:00 am to 7:00 am. He again stated that on that day also, the appellant left for his works as usual. He also stated that when he reached the spot hearing the cry of Smti Usha Rani Ghosh, Bishnu Ghosh was not there. He also stated that the visitors who were present, made a call to the Fire Brigade, as well as to the appellant giving the information. He has further stated that the door was bolted from inside and that is why, it could not be opened from outside. Further, he stated that being immediate neighbours, the victim used to visit their house and sit together with his family members and used to share her family matters and during those conversation she used to tell that financial condition of her husband was too bad and for that reason she had to suffer a lot and out of that she had a feeling of committing suicide. And again deposed that on the said day after the incident Fire Brigade personnel and Police reached and examined the persons present there including him and recorded the statements.

11. PW-5, Shri Sushil Baidya deposed that the wife of the appellant died about two years back in the month of Aswina. That day Smti Usha Rani Ghosh raised a cry and he went to the spot. As per his knowledge there are two rooms in the hut of Bishnu i.e the appellant wherein there are two doors one for each. There, the bed room of the wife of Bishnu was opened by giving push/thrash and he could see that Sangita (victim) was lying on the ground with burn injuries over the body and there was some movement in her body. This witness was declared hostile by the prosecution.

During cross-examination by the appellant-accused he deposed that the door was bolted from inside and there was no other way to enter it that's why it had to be broke open. Again stated that Uttam (PW-4) was present and he himself broke opened the door by kicking. Again deposed that

Bishnu is a driver by profession and he used to leave for work in the morning between 6:00 am to 7:00 am. Again deposed that out of the visitors somebody made a call to Fire Brigade, as well as, Bishnu (appellant) giving the information and on the same day after the incident, the Fire Brigade personnel and police came and examined the persons including him.

12. PW-6, Shri Ashim Das only deposed that before the death of Sangita in the year 2015, one day her mother had told him that the matrimonial life of her daughter was not peaceful on account of some money demand from her and after the death of Sangita her mother told that she was killed first and thereafter set on fire.

13. PW-7, Shri Sankar Karmakar deposed that deceased Sangita was his cousin. Her marriage was solemnized with the appellant and after the marriage she was happy at her matrimonial home. After 6 to 7 months of marriage his aunt told him that her son-in-law was demanding Rs.30,000/- from her but he could not say as to whether the demand was fulfilled or not. Subsequently, on another occasion his aunt told that her son-in-law had met with an accident and for that he again demanded Rs.6000/- from the mother of the victim. On the occasion of Durga Puja, his aunt had visited the matrimonial home of the victim to present some gifts to her and that time Sangita told her that there was some disturbance at her matrimonial life and she was given shoe slap by her husband and some days thereafter Sangita died. He further deposed that on the relevant day he along with his uncle and aunt first went to the house of Pradhan and thereafter to the Woman PS. During cross-examination, he deposed that he did not state to IO that his aunt told him that her son-in-law was specifically making a demand of Rs.30,000/- from her.

14. PW-8, Shri Maran Madraji, Dom deposed that on 28.11.2015 he was posted as Dom in the Tepania District Hospital and on that day, in his

presence darogababu seized samples of stomach, kidney, liver, scalp hair and skin of deceased Sangita Karmakar by preparing a seizure list and he identified his signature on the seizure list marked as Exhibit-4.

15. PW-9, Shri Suman Kumar Chakraborti deposed that on 18.12.2015 he was posted as Dy. Director in SFSL, Tripura. On that day their office received one sealed packet from SDPO, Udaipur containing exhibits in connection with R.K. Pur Women PS case No.108/2015 and the same was endorsed to him for examination. On examination of the exhibits marked F and G were found positive for the presence of residues of inflammable oil. The exhibits marked C, E and H were negative for the presence of residues of inflammable oil. The exhibits marked A, B and D were negative for the presence of common organochloro, organophosphorous, carbamate, group of pesticides, Benzodiazepine group of drugs. The remnants of the exhibits have been returned separately under sealed cover. This is the report prepared by him in two pages which on identification by witness is marked as Exhibit 5 and identified his signature marked as Exhibit-5/1 series.

16. PW-10, Shri Parimal Shil deposed that marriage of Sangita took place with the appellant. After two months of marriage one day Kajal Karmakar came to him and told that there were some family related disputes in the matrimonial home of her daughter and 15/20 days before the death of Sangita, one day Kajal Karmakar came to his house again and informed that her son-in-law met with an accident and for that reason the appellant had asked Sangita to demand some money from her parental home and accordingly Sangita made a call to her mother seeking financial help but owing to their financial hardship Kajal Karmakar expressed her inability to fulfill the demand and after few days Kajal Karmakar informed that Sangita died.

17. PW-11, Smti Dipali Karmakar deposed that Sangita i.e the victim was her niece. Her marriage was solemnized with the appellant. Her matrimonial life was peaceful for a period of one or two months. Thereafter, the appellant started causing torture upon her physically on demand of money from her parental home. On the occasion of first Durga Puja, following the marriage Kajal karmakar went to the matrimonial home of Sangita to present some gifts where she noticed the appellant was torturing physically to the victim and for that Sangita developed some auditory problem. On 28.10.2015, the appellant in connivance with her mother committed murder of Sangita. She went to PS and thereafter to Hospital.

During cross-examination she stated that the witness did not say to police that Kajal told her that she herself had noticed the appellant Bishnu inflicting physical torture upon Sangita when she had gone to present some gifts on the occasion of Durga Puja.

18. PW-12, Dr. Chandan Kumar Tripura is the Medical Officer. He deposed that on 29.10.2015 as a Medical Officer of Gomati District Hospital, Tepania, he along with Dr. Abhijit Datta and Dr. Rituparna Dey conducted postmortem over the dead body of deceased Sangita in connection with RK Pur PS GD entry No.668 dated 28.10.2015. During examination according to him he did not find any external injury on the dead body. There was smell of Kerosene oil on the whole body along with burnt clothings. 100% (superficial and deep) mixed burn seen. Skin was peeling off. Burn was seen in the nostrils. Nasopharynx, larynx were congested and oedematous. Hands were fisted and closed. Knee joint was flexed. Uterous was not bulky. Brain and lungs were congested and oedematous. Liver, spleen and kidney were congested. The other body organs and bony structure were healthy and intact. The witness further deposed that the opinion regarding death is 100% mixed (superficial and deep) burn by kerosene oil and inhalation burn which

were antemortem and homicidal in nature and according to the witness the age of death was 10 to 18 hours before the time of holding postmortem examination. He further deposed that the report was prepared by Dr. Abhijit Datta in his own hand writing. He identified the report prepared by Dr. Abhijit Datta marked as Exhibit-6 and the signature of Dr. Datta marked Exhibit-6/1, his signature marked Exhibit-6/2, identified the signature of Dr. Rituparna Dey marked Exhibit-6/3. He further deposed that the viscera samples of the deceased were sent to SFSL for examination. He further deposed that after receipt of the report, the final opinion was prepared by Dr. Abhijit Datta stating that there is no associated poisoning and the cause of death stands as it stated earlier and the final opinion of Dr. Abhijit Datta bearing his signature was identified by the witness marked as Exhibit-6/4.

During cross-examination he deposed that the symptoms found on the dead body were also reflected in case of suicidal death by burn and further deposed that the basis for expressing the opinion as a homicidal death has not been reflected in the postmortem report.

19. PW-13, Shri Arun Sharma deposed that one day police officer in the house of the appellant seized one plastic drum, a piece of burnt cloth and some soil samples by preparing seizure list. The witness identified his signature on the seizure list marked as Exhibit-3/1 and the seized items marked as Exhibit-MO-1 series.

20. PW-14, Smti Debjani Deb deposed that on 29.10.2015, she was posted as Executive Magistrate (DCM), Udaipur. On that day she conducted inquest over the dead body of the deceased and identified the inquest report marked as Exhibits 8 and the signatures marked as Exhibit-8/1, 8/2 and 8/3.

During cross-examination, she deposed against column No.18 of the inquest report, *prime facie* nothing could be ascertained.

21. PW-15, Smti Madhabi Debbarma is the IO who on completion of the investigation of the case, laid charge sheet against the present appellant and another accused Smti Usha Rani Ghosh for their prosecution before the Court. She also relied upon some documents which were marked as exhibits in this case.

During cross-examination she stated that she conducted inquest over the dead body of Sangita Karmakar at about 14:30 hours in connection with GDE No.668 dated 28.10.2015. She further deposed that the time of seizure of the plastic drum was shown as 15:00 hours against GD entry No.667 dated 28.10.2015 and the same were seized after conducting inquest. She further stated that she went to PO and conducted inquest prepared hand sketch map with index and returned to the PS against the same GD entry.

22. Learned Additional PP at the time of hearing of argument submitted before the Court that the prosecution has been able to prove the charge labeled against the accused-appellant under Section 498A/302 of IPC and accordingly, the Learned Court below rightly delivered the Judgment against the present appellant. It was further submitted by him that this case was based on circumstantial evidence and from Exhibit-6 it is clear that brain and lungs of the deceased were in congested condition suggestive strangulation and death prior to burning. The present appellant with a view to camouflage a homicide into suicide put the dead body or in nearly dead conditioned body on fire and placed plastic container filled with kerosene oil, nearly to give it an appearance of suicide by the deceased. He also submitted that in a case of this nature it is very difficult to find any suitable eye-witness of the alleged occurrence of offence because this type of offences take place inside a house within the four corners of the wall and generally, it is very difficult for the common people to access and to watch the incident. So, only the near relatives of the deceased or the neighbours who resides nearby the

house of the accused can whisper something about the alleged occurrence of offence. The prosecution in this case has adduced in total 15 numbers of witnesses as already stated and from the evidence of PW-1 Smti Kajal Karmakar (mother of the deceased), PW-2 Smti Sanju Karmakar (sister of the deceased), PW-6 Shri Ashim Das, PW-7 Shri Sankar Karmakar, PW-11 Smti Dipali Karmakar, it is crystal clear that the deceased victim was subjected to cruelty by the present appellant for demand of dowry and ultimately for non-fulfillment of the demand of dowry as provided in Section 498A of IPC the present appellant committed murder of his wife (deceased). So, Learned Additional PP on conclusion of his argument urged for upholding the conviction and sentence delivered by Learned Trial Court below.

23. On the other hand, Learned Counsel Mr. S. Lodh in course of hearing fairly submitted that in this case the prosecution could not adduce any independent witness to sustain conviction against the present appellant. Just on the basis of some omnibus statement there was no scope to impose conviction upon the appellant by the Learned Trial Court below and the Learned Trial Court could not appreciate the evidence on record properly and misconstrued the evidence on record of the prosecution and delivered the judgment which is liable to be set aside. Learned Counsel further submitted that even for the argument sake, if the evidence of PW-1 i.e the mother of the deceased, PW-2 i.e the sister of deceased can be analyzed, it can be found that they in course of their examination stated before the Court that the victim was subjected to cruelty for non-fulfillment of demand of money but they could not specifically say the date, time and place when the victim was exactly subjected to cruelty by the present appellant and furthermore, the evidence of PW-1 and PW-2 are contradictory to each other and the other witnesses as relied upon by the prosecution like PW-3 Shri Anup Sarkar, PW-6 Shri Ashim Das, PW-7 Shri Sankar Karmakar, PW-10 Shri Parimal Shil, PW-11

Smti Dipali Karmakar, could not say anything about the prosecution case, rather they are *heresay* witnesses and they deposed after hearing some facts from the mother of the deceased victim i.e PW-1. So, legally there is no scope to place any reliance upon their evidence. Learned Counsel further submitted that PW-4 Shri Uttam Dey and PW-5 Shri Sushil Baidya although they were declared hostile by the prosecution but the prosecution from their evidence could not derive any benefit in support of the prosecution case rather those witnesses in course of their cross-examination very specifically stated that the present appellant was not at home at the time of alleged occurrence. There was no explanation from the side of the prosecution in this regard and the Learned Court below at the time of appreciating the evidence on record totally ignored the said part of the evidence deposed by the said witnesses during their cross-examination. Because until and unless the prosecution could establish the presence of the appellant to the residence at the time of alleged occurrence then how the charges have been levelled against the appellant. This material fact was totally ignored by the Learned Trial Court below at the time of delivering the judgment of this case. He fairly submitted that it is the settled principle of law that the evidence of *heresay* witnesses cannot be discarded as a whole but from their evidence prosecution could not satisfy the Court that the present appellant was present at residence at the time of alleged occurrence of offence and furthermore, from their evidence also, the prosecution could not satisfy the Court that the deceased victim was subjected to cruelty for unlawful demand of dowry prior to her death. So, Learned Counsel submitted before the Court that the prosecution has measurably failed to uphold the charges levelled against the present appellant and urged before the Court to set aside the judgment passed by the Learned Court below and relied upon some citations which are discussed herein below.

24. In **Tulshiram Sahadu Suryawanshi and another vs State of Maharashtra** in **Criminal Appeal No.507 of 2008** dated 14.09.2012 reported in **(2012) 10 SCC 373** Hon'ble the Supreme Court in Para 8 of the said judgment observed as under:

"Circumstantial Evidence

8. In *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, this Court after referring to various earlier decisions, formulated the following conditions to be fulfilled before a case against an accused can be said to be fully established based on circumstantial evidence:

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* : (1973) 2 SCC 793 where the following observations were made:

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

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

Referring the aforesaid citation Learned Counsel submitted that although this case is based on circumstantial evidence but the prosecution by adducing oral/documentary evidence on record could not show any chain of circumstance to believe the prosecution story because from the evidence on record nothing could be inferred regarding involvement of the present appellant with the alleged occurrence of offence.

25. In **State of Uttar Pradesh vs Krishna Master and others** in **Criminal Appeal No.1180 of 2004** dated 03.08.2010 reported in **(2010) 12 SCC 324** Hon'ble the Supreme Court in para 17 observed as under:

"17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eye-witnesses examined in this case proves the prosecution case."

Referring the aforesaid citation Learned Counsel submitted that in view of the above principle, the Court is to determine whether the evidence of the eye-witnesses examined in the case proves the prosecution case or not but here in the case at hand there is no eyewitness or any evidence on record from the side of the prosecution to justify conviction against the case. Because according to Learned Counsel, prosecution first of all in this case could not prove that the present appellant was very much available at his residence at the time of alleged occurrence of offence and secondly, the prosecution by the evidence on record failed to satisfy the Court that it is the appellant who committed murder of his wife for unlawful demand of dowry.

26. In **Prabhudayal and others vs State of Maharashtra** in **Criminal Appeal No.738 of 1992** dated 14.05.1993 reported in **(1993) 3 SCC 573** Hon'ble the Apex Court in para 35 of the said judgment further observed as under:

"35. As pointed out by the High Court there is no direct evidence to connect the appellants with the offence of murder and the prosecution entirely rests its case only on circumstantial evidence. There is a series of decisions of this Court propounding the cardinal principles to be followed in cases in which the evidence is of circumstantial nature. It is not necessary to recapitulate all those decisions except stating the essential ingredients as noticed by Pandian, J. in

the case reported as *State of U.P. v. Dr. Ravindra Prakesh Mittal* :(1992) 3 SCC 300, 309 to prove guilt of an accused person by circumstantial evidence. They are:

- "(1) The circumstances from which the conclusion is drawn should be fully proved;
- (2) the circumstances should be conclusive in nature;
- (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence;
- (4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused."

Referring the said citation Learned Counsel submitted that here in the case at hand prosecution could not place any conclusive circumstances to believe the prosecution story to sustain conviction of the present appellant in this case.

27. In **Vivek Kalra vs State of Rajasthan** in **Criminal Appeal No.221 of 2007** dated 15.02.2013 reported in **(2014) 12 SCC 439** in para 6 also observed as under:

"6. We have considered the submissions of the learned counsel for the parties and we agree with the learned counsel for the appellant that from the evidence of PW 11 one could not hold that the appellant had committed the murder of the deceased to take revenge on his uncle (PW 11), who had not given him Rs 80,000 kept in the fixed deposit. We are, however, of the opinion that where prosecution relies on circumstantial evidence only, motive is a relevant fact and can be taken into consideration under Section 8 of the Evidence Act, 1872 but where the chain of other circumstances establishes beyond reasonable doubt that it is the accused and the accused alone who has committed the offence, and this is one such case, the Court cannot hold that in the absence of motive of the accused being established by the prosecution, the accused cannot be held guilty of the offence. In *Ujjagar Singh v. State of Punjab* :(2007) 13 SCC 90, this Court observed:

"17. ... It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliché) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy."

Referring the aforesaid citation the Learned Counsel submitted that prosecution in this case could not establish any chain of circumstances to sustain conviction against the present appellant by adducing any cogent material evidence on record. So, Learned Counsel urged before the Court to discard the evidence on record of the prosecution.

28. In **Ramnaresh and others vs State of Chhattisgarh** in **Criminal Appeal Nos.166-67 of 2010** dated 28.02.2012 reported in **(2012) 4 SCC 257** Hon'ble the Supreme Court in para 49 observed as under:

"49. In terms of Section 313 CrPC, the accused has the freedom to maintain silence during the investigation as well as before the court. The accused may choose to maintain silence or complete denial even when his statement under Section 313 CrPC is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law."

In respect of examination of accused under Section 313 of Cr.P.C Learned Counsel referred the aforesaid citation and drawn the attention of the Court that the prosecution could not satisfy the Court to draw an inference including adverse inference against the present appellant to sustain his conviction in this case.

29. In **Rameshbhai Mohanbhai Koli and others vs State of Gujarat** in **Criminal Appeals No.1146 of 2008 with No.1166 of 2009** dated 20.10.2010 reported in **(2011) 11 SCC 111** Hon'ble the Supreme Court in paras 16 and 17 discussed about the admissibility of evidence of hostile witness which are as under:

"16. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide *Bhagwan Singh v. State of Haryana* :(1976) 1 SCC 389 *Rabindra Kumar Dey v. State of Orissa* :(1976) 4 SCC 233, *Syad Akbar v. State of Karnataka* :(1980) 1 SCC 30 and *Khujji v. State of M.P.* :(1991) 3 SCC 627.)

17. In *State of U.P v. Ramesh Prasad Misra* :(1996) 10 SCC 360 this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra* :(2002) 7 SCC 543, *Gagan Kanojia v. State of Punjab* :(2006) 13 SCC 516, *Radha Mohan Singh v. State of U.P.* :(2006) 2 SCC 450, *Sarvesh Narain*

Shukla v. Daroga Singh : (2007) 13 SCC 360 and Subbu Singh v. State : (2010) 9 SCC 567.

Referring the aforesaid citation, Learned Counsel submitted that PW-4 and PW-5 were declared hostile by the prosecution in this case. Although according to Learned Counsel, it is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto on the ground that the prosecution chose to treat him as hostile and cross-examined him but the evidence of those witnesses required to be scrutinized closely and that portion of the evidence which is inconsistent with the case of the prosecution or defence can be relied upon. Here in the case at hand, prosecution as already stated could not derive any benefit from their evidence in support of the prosecution case rather those witnesses in course of their cross-examination very specifically stated before the Court that the present appellant was not at home at the time of alleged occurrence of offence which the Learned Trial Court below failed to appreciate at the time of assessing the evidence on record and delivering the judgment and there was also no explanation in this regard from the side of prosecution of this case.

30. In Musheer khan alias Badshah Khan and another vs State of Madhya Pradesh in Criminal Appeals No.1180 of 2005 with Nos.1181 and 1204-05 of 2005 dated 28.01.2010 reported in (2010) 2 SCC 748 Hon'ble the Apex Court in para 39 also observed as follows:

"39. In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. This court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances."

Referring the aforesaid citation Learned Counsel submitted that while appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances in such a case but

here in the case the prosecution could not establish any chain of circumstances to sustain conviction against the present appellant of this case.

31. In **Govindaswamy vs State of Kerala** in **Suo Motu Review Petition (Cri) No.1 of 2016** reported in AIR (2016) Supreme Court 5378 Hon'ble the Supreme Court in para 6 further observed as under:

"6. The very elaborate argument advanced on this score is capable of being answered by a reference to Section 6 and Illustration (a) thereof of the Evidence Act, 1872 which engrafts in the Evidence Act the principle of res gestae. The statement made by the middle-aged man to P.Ws.4 and 40 being contemporaneous and spontaneous and that also being the prosecution case and no attempt having been made to discredit this part of the evidence tendered, we are of the view that in a case where the liability of the accused is to be judged on the touchstone of the circumstantial evidence the aforesaid part of the deposition of P.Ws. 4 and 40 must go into the process of determination of the culpability of the accused to rule out any other hypothesis inconsistent with the guilt of the accused."

Referring the aforesaid citation Learned Counsel again drawn the attention of the Court that where the liability of the accused is to be judged on the touchstone of the circumstantial evidence then it would be the duty of the prosecution to determine the culpability of the accused to rule out any other hypothesis in consistent with the guilt of the accused. Here in the case at hand there was no such evidence from the side of the prosecution to sustain conviction against the present appellant of this case and urged before the Court to set aside the judgment passed by the Learned Court below.

32. In **Mangat Ram vs. State of Haryana** in **Criminal Appeal No.696 of 2009** dated 27.03.2014 reported in **(2014) AIR SCW 2085** Hon'ble the Supreme Court in para 26 further observed as under:

"26. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A, IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been

abetted by her husband" would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act. In this connection, we may refer to the judgment of this Court in *Hans Raj v. State of Haryana* : (2004) 12 SCC 257: (AIR 2004 SC 2790 : 2004 AIR SCW 1283), wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113A of the Evidence Act. This Court held that, under Section 113-A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A, IPC."

Referring the aforesaid citation Learned Counsel drawn the attention of this Court that prosecution in this case has failed to show that there was a dowry demand from the side of the present appellant to raise presumption to sustain conviction against the present appellant of this case.

33. In **Vipin Jaiswal (A-I) vs State of Andhra Pradesh** in **Criminal Appeal No. 1431 of 2007** dated 13.03.2013 reported in **(2013) 3 SCC 684** Hon'ble the Supreme Court in para 11 observed as follows:

"11. In any case, to hold an accused guilty of both the offences under Sections 304-B and 498-A IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we find that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased."

Referring the said citation Learned Counsel further drawn the attention of the Court that to hold an accused guilty of offences under Section 498A of IPC the prosecution is require to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused but here

in the case there is no such evidence from the side of prosecution witness that the deceased was actually subjected to cruelty or harassment by the accused prior to her death. Just on the basis of omnibus statement that the present appellant demanded Rs.30,000/- from the mother of the deceased victim i.e PW-1 and the evidence of PW-2 i.e the sister of the deceased whose evidences are also contradictory to each other and furthermore, there is also no evidence from the side of prosecution about the date, time when the present appellant demanded money as dowry from PW-1 has not been proved beyond reasonable doubt by the prosecution in this case.

34. In **Vikramjit Singh alias Vicky vs State of Punjab** in **Criminal Appeal No.1459 of 2005** dated 24.11.2006 reported in **(2006) 12 SCC 306** Hon'ble the Supreme Court in paras 14 and 15 observed as follows:

"14. Section 106 of the Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute.

15. It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt."

Referring the said principle Learned Counsel again drawn the attention of the Court that as per Section 106 of the Evidence Act it does not relieve the prosecution to prove his case beyond reasonable doubt but in the case at hand the prosecution both by oral/documentary evidence on record could not prove the case beyond all reasonable doubt against the present appellant and finally Learned Counsel asked for set aside the judgment passed by the Learned Court below.

35. Learned Counsel also referred another judgment of the Hon'ble Supreme Court of India. In **Criminal Appeals No.1105 of 2010 and**

No.1128 of 2010 dated 17.10.2022 reported in **(2022) SCC online SC 1440**. In para 55 of the said judgment Hon'ble Apex Court again observed as under:

"55. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case of Gangadhar Behera v. State of Orissa, (2022) 8 SCC 381, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility."

Referring the aforesaid citation Learned Counsel submitted that here all the witnesses of the prosecution whose evidence were relied by the prosecution were related to each other so no reliance could be placed upon their evidence and from their evidence also no incriminating materials came out against the present appellant of this case.

36. Lastly, Learned Counsel relied upon another judgment reported in **(2023) 9 SCC 164**. In para 15 of the **Criminal Appeal No.1012 of 2022** dated 13.09.2023 Hon'ble Supreme Court submitted as under:

"15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination."

It was further submitted, here in the case at hand Learned Trial Court below acquitted another accused but convicted the present appellant of this case. But the Learned Court below did not follow the principle of parity in delivering the judgment of this case.

37. We have heard Learned Counsel at length of both the sides and gone through the evidence on record very carefully and also perused the citations referred by Learned Counsel for the appellant in course of hearing of argument. Admittedly, there was no dispute on record regarding death of the deceased victim due to the burning on the alleged day. Now, to sustain the charge against the present appellant, prosecution has adduced 15 numbers of witnesses. Here, from the evidence on record, it appears to us that PWs-1, 2, 7 and 11 were/are the relatives of the deceased victim. Amongst the said witnesses, PW-1 is the mother of the deceased and PW-2 is the sister of the deceased. PW-1 in course of her examination before the Court deposed that her daughter was subjected to cruelty for demand of dowry by the present appellant. But she could not say specifically the date, time and place when the victim was subjected to cruelty for non-fulfillment of the demand of dowry. PW-2, the sister of the victim also deposed in the same manner, rather she deposed that her sister i.e the deceased was also subjected to cruelty for Rs.6000/- which PW-1 during her examination remained silent. Thus, it appears that, their evidences were contradictory to each other. More so, from their evidence further it appears that in course of cross-examination, PW-1 specifically stated that in her ejahar she did not say that 5 to 7 days prior to Durga Puja of 2015 when she went to the residence of her daughter that time, the victim disclosed the fact of incidents of torture upon her and it appears that for the first time, the witness at the time of recording her evidence stated the said fact to the Court. There was no explanation from the side of the prosecution in this regard. She also stated that the victim was subjected to slap by shoe for which she developed auditory problem and this part of evidence also she deposed after appearing before the Court. There was also no explanation from the side of the prosecution in this matter. Again, she stated that in the ejahar she did not say that the present appellant

demanded Rs.30,000 which she failed to meet up on account of her financial stringency of them. This part of evidence also she deposed only after appearing before the Court. There was also no explanation from the side of the prosecution. Similarly, PW-2 i.e sister of the victim in course of her cross-examination very specifically stated that she did not say to IO that when she visited her sister's house that time, the present appellant asked her not to visit his house till the fulfillment of payment of Rs.30,000/- and he would not allow the victim to go to her parent's house till fulfillment of the demand. The witness deposed that fact only after appearing before the Court. Thus, it appears to us that the evidence of PWs-1 and 2 are not only contradictory but they deposed the improved version after appearing for the first time before the Court. No explanation was from the side of the prosecution in this regard and PWs-7 and 11 only deposed after hearing the said fact from PWs-1 and 2. PW-7 in course of his cross-examination specifically stated that he did not say to IO that his aunt told him about the fact of demand of dowry of Rs.30,000/- by the appellant from his mother-in-law. This witness also deposed the said fact after appearing before the Court for the first time. Similarly, PW-11, Dipali Karmakar, being the relative of the deceased deposed after hearing the fact from the informant against the present appellant. But in course of her cross-examination, she specifically stated that she did not say to IO that the informant told her that she herself noticed the present appellant to cause/inflict physical torture upon the victim when she went to the residence of the appellant during Durga Puja to present some gifts. This part of evidence was also disclosed by the witness after appearing before the Court for the first time.

Thus, it appears that the prosecution in this case could not place any cogent evidence regarding causing of cruelty upon the deceased victim by the present appellant prior to her death for non-fulfillment of the demand of

dowry. Other witnesses like PW-6, PW-3 only deposed after hearing the fact of incident. They could not say anything about the involvement of the present appellant with the alleged occurrence. So, no reliance can be placed upon their evidence. More interestingly, PW-4 Uttam Dey and PW-5 Sushil Baidya to whom prosecution relied upon, but those witnesses were declared hostile by the prosecution and these witnesses during their cross-examination very specifically stated that the present appellant was not at home at the time of alleged occurrence of offence. No explanation from the side of prosecution to disbelieve this part of the evidence of the witnesses. As already discussed that there was no dispute on record regarding the fact of death of the victim by burning but in the case, prosecution both by oral/documentary evidence on record has miserably failed to establish any chain of circumstance to warrant of conviction against the present appellant with the alleged occurrence of offence. Learned Trial Court at the time of delivering the judgment has ignored those material part of evidence as emerged from the evidence of PWs-4 and 5 and also could not assess the other evidence of the prosecution i.e PWs-1, 2 and other evidence of the prosecution who were *heresay* witnesses and thus, came to a wrong conclusion of finding of warrant of conviction against the present appellant of this case. Further from the evidence of PWs-4 and 5 who just appeared to the PO after the alleged occurrence, it is clear that the door was locked from inside of the room and on their appearance that was broken and if the appellant was absent on that relevant point of time how the present appellant committed homicidal death of his wife and thereafter pouring kerosene oil on her body as alleged by the prosecution. There is no explanation from the side of prosecution in this regard. From the medical evidence also, nothing can be inferred against the appellant showing his involvement with the alleged offence. The citations as

referred by Learned Counsel for the appellant are very much relevant for the decision of this case.

Thus, this Court does not find any reason to sustain conviction against the present appellant of this case. In the result, the appeal filed by the present appellant is hereby allowed. The judgment and sentence passed by the Learned Court below is thus hereby set aside. The present appellant is set at liberty and he be released from the custody, henceforth if not warranted in connection with any other case.

38. Send down the LCRs.

JUDGE

JUDGE



सत्यमेव जयते

**MOUMITA
DATTA**

Deepshikha

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