

**HIGH COURT OF TRIPURA
AGARTALA
Crl.A.No.15 of 2024**

Smt. Maya Shil @ Maya Rani Shil (58 years),
wife of Late Mihir Lal Shil,
resident of Basanta Nagar,
P.O. & P.S. Kakraban,
District-Gomati Tripura

----Convict-Appellant(s)

Versus

The State of Tripura

----Respondent (s)

For Appellant(s)	:	Mr. Ratan Datta, Adv. Mr. Diptanu Das, Adv. Mr. Aditya Baidya, Adv.
For Respondent(s)	:	Mr. Rajib Saha, Addl. P.P.
Date of Hearing	:	30.11.2024
Date of Judgment & Order	:	07.12.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order

This criminal appeal under Section 374(2) of Cr.P.C. is preferred challenging the judgment and order of conviction and sentence dated 31.05.2024 delivered by Learned Sessions Judge, Gomati District, Udaipur in connection with Case No.ST 49 of 2021 wherein the appellant has been convicted under Section 4 of the Dowry Prohibition Act and she was sentenced to suffer SI for six months and to pay a fine of Rs.1000/-, id to suffer further SI for thirty days and she was further convicted under Section 498A of IPC and was sentenced to suffer one year with fine of Rs.2000/-, id to suffer further SI for two months and it was ordered that both the sentences shall run concurrently.

[2] Heard Learned counsel, Mr. Ratan Datta appearing on behalf of the appellant and also heard Learned Addl. P.P., Mr. Rajib Saha appearing on behalf of the State-respondent.

[3] In course of hearing of argument, Mr. Ratan Datta, Learned counsel appearing for the appellant first of all drawn the attention of the Court referring Sections 2 & 4 of the Dowry Prohibition Act and submitted that on bare perusal of the aforesaid provisions and also after bare perusal of the evidence on record, it appears that the prosecution in this case could not place any material before the Learned Trial Court below to sustain the charge leveled against the appellant under Section 4 of the Dowry Prohibition Act. But the Learned Trial Court below without appreciating the evidence on record properly misconstrued the provision of Section 4 of the Dowry Prohibition Act and convicted her accordingly for which the interference of the Court is required by setting aside the judgment of the appellant under Section 4 of the Dowry Prohibition Act.

[4] In respect of another charge, Learned counsel for the appellant submitted that the present appellant was also convicted under Section 498A of IPC but here in the case at hand from the evidence of the parents of the alleged victim it appears that whatever they deposed before the Court they have heard everything from the victim but here in the given case as the victim is no more, so, no reliance could be placed upon their evidence. Further more from the dying declaration of the alleged victim it is clear that in the dying declaration, the alleged victim did not whisper a single word showing involvement of the present appellant with the alleged crime for which she was charged and other witnesses of the prosecution heard the fact of alleged cruelty from the parents of the victim and since there is no scope to place any reliance upon the evidence of the parents of the victim, so, legally there is also no scope to place any reliance upon the evidence of said independent witnesses. But the Learned Trial Court below at the time of delivery of judgment has failed to appreciate the evidence on record properly and convicted her accordingly under the aforesaid provision of Section 498A of IPC for which according to Learned counsel for the appellant, the judgment cannot

be sustained in the eye of law and urged for setting aside the judgment and for acquitting the appellant from the charges of this case.

[5] On the other hand, Mr. Rajib Saha, Learned Addl. P.P. appearing on behalf of the State-respondent referring the evidence on record of the witnesses of the prosecution stated that there was no infirmity in the judgment delivered by the Learned Trial Court below because the Learned Trial Court based on the evidence on record rightly and reasonably found the appellant to be guilty and convicted her accordingly and there is no scope to interfere with the judgment delivered by the Learned Trial Court. He further stated referring the evidence of some of the witnesses that from the evidence of those witnesses it is crystal clear that the victim prior to her death was subjected to cruelty by the present appellant and her son and accordingly, the Learned Trial Court has rightly convicted the present appellant and her son in the given case. So, he urged for dismissal of this appeal.

[6] Here in the case at hand, the prosecution was set into motion on the basis of an FIR laid by one Baspi Sen to O/C, Kakraban P.S. alleging inter alia that her daughter Smt. Souramita Sen was given in marriage with the accused Shri Ripan Kumar Shil, a resident of Kakraban as per Hindu Marriage and Customs. After the marriage, i.e. from 06.07.2017 her daughter's, parents-in-law and her husband starting inflicting torture upon her for dowry. Her husband at the instigation of her parents-in-law used to assault her for hard cash and send her to her house. At the time of marriage, he gave Rs.50,000/- in cash and 6 bhoris gold and bike to her husband. Then after one month of marriage he again gave Rs.10,000/- and after five months he further gave Rs.20,000/-. In spite of that, the torture continued upon her and very often her parents-in-law and husband used to give in her hand kerosene oil asking her to burn herself to death. On 05.02.2020 in the absence of her husband her father-in-law hold her throat and her mother-in-law beaten her with bamboo and thereby tried to kill her. Thereafter they approached

Kakraban Panchayat when her parents-in-law and husband flouted the call of the pradhan and upapradhan and none of them attended the adjudication meeting on 15.03.2020. After that, on 22.04.2020 at about 11 a.m. he was informed by someone from Kakraban that his daughter was set ablaze by her husband and parents-in-law by pouring kerosene. Immediately, she was taken to Tepania Hospital and hearing this information, the informant and her husband went to Tepania Hospital and as her condition was serious, so she was immediately referred to G.B. Hospital, Agartala. She sustained almost 90% burn injuries. Hence, the informant laid the FIR. On receipt of FIR, O/C Kakraban P.S. registered Kakraban P.S. Case No.28/2020 under Section 498A/396/307 of IPC read with Section 4 of Dowry Prohibition Act and the case was endorsed to IO for investigation. During investigation, Section 304B of IPC was added and by this time the victim expired due to her injury. However, after completion of investigation, the IO laid charge-sheet against this appellant and her son for their prosecution before the Court. The case was committed to the Court of Sessions by the Learned jurisdictional Magistrate and the Learned Sessions Judge, Gomati District, Udaipur framed the charge against this appellant and another Shri Ripan Kumar Shil under Section 498A/302/304B of IPC read with Section 4 of Dowry Prohibition Act and after conclusion of trial, found the present appellant and her son guilty and convicted them accordingly. However, against the sentence the present appellant has preferred this appeal before the High Court and another appeal has been preferred by her son which is pending before the Division Bench.

[7] Now, before coming to the conclusion of this appeal, let us discuss about the relevant synopsis of the evidence on record. To substantiate the charge, prosecution in this case has adduced both oral and documentary evidence on record.

[8] PW-1, Smt. Baspi Sen is the informant of this case. She deposed that Souramita Sen is her daughter. She married with Ripan Shil on

03.07.2017. At the time of marriage as per demand of the groom's party she gave Rs.50,000/- in cash and a motor cycle. Immediately after the reception by the groom-side trouble erupted between her daughter and her in-laws. Her husband and in-laws regularly pressurized her to bring money from her. Within first one month of marriage as per demand she gave Rs.10,000/- to her son-in-law and another Rs.20,000/- five months later. However, this did not stop the physical torture on her daughter. They always told her to commit suicide by pouring kerosene on herself. In the year 2020, she gave birth to a son. On 05.02.2020 her father-in-law and mother-in-law Maya Shil assaulted her with a stick. She had made a complaint to the Kakraban panchayat but the in-laws of her daughter did not come for reconciliation. On 15.03.2020 her daughter was asked to bring money from her parents house and they poured kerosene on her and threw her out of the matrimonial home. They also moved the legal services office in respective panchayat for mediation but nothing fruitful happened due to lock down caused by corona virus. On 22.04.2020 at around 11 am she received an information from the fire service that her daughter has been put on fire by her in-laws and was admitted in Tepania hospital. She went there and found her daughter badly burnt. She was referred to the GB hospital where she breathed her last. Her husband and in-laws had poured kerosene and put fire on her. She lodged an FIR which was written by one Sri Subrata Das and the FIR was written as per her version. On identification the FIR was marked as Ext.P1 and the signature was marked as Ext.P1/1.

During cross-examination, she deposed that the marriage was a negotiated one and took place as per consent of both the parties. The accused was a private tutor by profession. He is the only son of his parents. Sometimes before child birth the accused and her daughter had separated their kitchen and took meal separately. She could not say the exact date when the money was given to the accused persons. They did not lodge any complaint to the police or court. Her daughter was given in marriage six months before her final

examination. She further stated that the father-in-law of her daughter does not have any landed property other than this house. She also stated that fifteen days prior to the child birth her daughter came to her house and left about two months later. Nothing more came out relevant.

[9] PW-2, Sri Kajal Sen is the father of the victim. He deposed that the deceased Souramita Sen was her only daughter. She was married with Ripan Shil on 03.07.2017. At the time of marriage as per demand of the groom's party they gave Rs.50,000/- in cash and a motor cycle worth Rs.75,000/-. Immediately after the reception by the groom-side trouble erupted between her daughter and her in-laws. Her husband and in-laws regularly pressurized her to bring money from her parents. Within first one month of marriage as per demand they gave Rs.10,000/- to her son-in-law and another Rs.20,000/- five months later to her mother-in-law. But this did not stop the physical torture on his daughter. He further stated that they always told her to commit suicide by pouring kerosene on herself. In the year 2020 she gave birth of a son. On 05.02.2020 her father-in-law tried to throttle her and mother-in-law assaulted her with a bamboo stick. They had made a complaint to the Kakraban panchayat but the in-laws of his daughter did not come for reconciliation. Few days before the incident her daughter was asked to bring one lakh rupees from her parents house and they poured kerosene on her and threw her out of the matrimonial home. They also moved the legal services office in respective panchayat for mediation but nothing fruitful happened due to lock down caused by corona virus. On 22.04.2020 at about 11 am they received one information from the fire service that his daughter has been put on fire by her in-laws and was admitted in Tepania hospital. He went there and found his daughter badly burnt. She was referred to the GB hospital where she breathed her last. Her husband and in-laws had poured kerosene and put fire on her. He signed the inquest report of his daughter prepared by police and identified his signature marked as Ext.P2.

During cross-examination, he stated that he visited his daughter around 8 to 10 times after the marriage. He cannot say about the neighbours of his daughter's matrimonial home. He never confided with the neighbours of his daughter's in-laws. Also nor filed any written complaint with the panchayat or panchayat legal aid office, nor filed any complaint with the police before his daughter's death. Also stated that his daughter and her husband used to stay separately from her in-laws. Nothing more came out relevant.

[10] PW-3, Sri Bimal Saha deposed that he have a shop opposite to the house of the accused Ripan Shil. On 22.04.2020 at about 11 am he saw smoke coming out from the room of the accused Ripan. He rushed to the spot and saw that Ripan and his parents are standing outside the room and his son was in his lap. He went inside of the room and saw that his wife was sitting in one corner and 99% of her body was burnt. Unable to bear the sight he rushed out. The victim was later taken to the hospital by fire service and he later heard that she died in GBP hospital. He further stated that on 2/3 occasions the victim told him that she was physically tortured in her matrimonial house. On the next day police seized one bottle containing kerosene from the PO. He signed on the seizure list as witness. The witness identified his signature on the seizure list marked as Ext.P3 and the bottle is marked Ext.MO 1.

During cross-examination, he deposed that he did not specifically state to the police that the victim on 2/3 occasions told him about physical torture on her. Nothing more came out relevant.

[11] PW-4, Sri Shibudhan Bhowmik is the neighbour of accused Ripan Shil. He deposed that on 22.04.2020 at about 11 am he saw smoke coming out from the room of the accused Ripan. He along with Arup Shil, Rupak Saha rushed to the spot and saw that Ripan and his parents are standing outside the room. He went inside of the room and saw that his wife was sitting in one corner and 90% of her body was burnt. He tried to douse the fire. The victim was later on taken to the hospital by fire service and he later on heard that she

died in GBP hospital. He further stated that once before her death she told him that her in-laws physically tortured her for dowry.

During cross-examination, he deposed that he did not say to police that once before her death she told him that her in-laws physically tortured her for dowry.

[12] PW-5, Smt. Ratna Sen deposed that the victim Souramita is the daughter of her elder brother-in-law. She was given in marriage with Ripan Shil on 03.07.2017. After the marriage the victim was physically and mentally tortured for dowry. For the peace of his daughter her brother in law paid Rs.10,000/- within one month of the marriage and Rs.20,000/- within six months. When the victim was pregnant her in-laws demanded Rs.1,00,000/- which they could not give. After the birth of the child the in-laws of the victim did not accept her for 2/3 months nor, they bear any expenses of child birth. The mother in law of the victim forced her to stay separately with her husband. She was not given access to water or kitchen. Even she had to put up cloth line outside the house to hang her cloths after washing. About 2 months prior to the incident her father in-law grabbed her mouth and mother-in-law beat her with a stick. She received many injuries on her body. On this issue they had approached the Kakraban panchayat but the in-laws of the victim refused any attempted conciliation. They had also approached Lok Adalat but due to lock down caused corona virus the matter could not be settled by mediation. On 22.04.2020 her sister-in-law received information that her daughter was severely burnt. She went to the hospital and saw her with more than 90% burn. While she was holding the saline bottle she told her that her in-laws brought kerosene oil and instigated her to put herself on fire. She also told her to take care of her son.

During cross-examination, she stated that she did not say to IO that after the birth of the child, the in-laws of the victim did not accept her for 2/3 months. They also did not bear any expenditure for child birth. The mother

in law of the victim forced her to stay separately with her husband. She was given access to water or kitchen. Even she had to put up cloth line outside the house to hang her cloths after washing. She also did not say to IO while she was holding the saline bottle she told her that her in-laws brought kerosene and instigated her to put herself on fire. She also told her to take care of her son. She further stated that the house of the accused is about 8 km from her house. She also stated that she did not have any chat with the neighbours of the accused about the incident. Nothing more came out relevant.

[13] PW-6, Sri Rakesh Shil deposed that the victim was the daughter of Kajal Sen who is the resident of Jamjuri panchayat. She was given in marriage to Ripan Shil. After the marriage, the parents of the victim complained that their daughter was tortured by the husband and in-laws for money. In fact they also told him that they had in two installments paid Rs.30000/- to the in-laws of the victim. He informed the matter to Kakraban panchayat but they told him that the accused Ripan Shil and his family do not attend meetings for reconciliation. He also approached the legal cell attached with the panchayat but before reconciliation could be attempted there was lock down. In the year 2020 they heard that the victim had committed suicide by pouring kerosene on herself and setting her ablaze. In the hospital she gave statement that she put herself on fire but was forced to do so because of the domestic violence inflicted on her.

During cross-examination he could not say the name of the Pradhan of Kakraban panchayat. He stated that he spoke with the Upa-pradhan who lives next door of that of the accused persons.

[14] PW-7, WSI Hemlata Debbarma deposed that on 23.04.2020 in connection with GBP GD entry No. 2 she conducted inquest over the dead body of Souramita Sen aged about 24 years. The victim had suffered burnt injury from head to toe. The witness identified the inquest report marked as Ext. P2/1. She also seized some burnt hair and skin of the victim vide seizure list

dated 23.04.2020 (1645 hours) marked as Ext. P4/1. She also seized the stomach, small intestine and liver etc. of the victim collected by the doctor vide seizure list dated 23.04.2020 marked as Ext. P4/1.

During cross-examination she stated she was directed to conduct only inquest. She did not record any statement of parents of the victim.

[15] PW-8, Inspector Madhabi Debbarma deposed that on 22.04.2020 she was posted at Kakraban PS and on that day this case was endorsed her for investigation. She identified the signature of Ramesh Yadav and the same was marked as Ext. P1/1. She identified the printed FIR form marked Ext.P5. She examined Bapi Sen, Kajal Sen. She visited the PO, seized one 2 liter mineral water bottle containing kerosene oil vide seizure list dated 23.04.2020 (0830 hours) marked as Ext. P3/1. She prepared hand sketch map with index marked as Ext.P6. She arrested Mihir Lal Shil and Maya Rani Shil and forwarded them to the Court. The victim died on 23.04.2020 at GBP hospital at Agartala and on 17.06.2020 she handed over the case docket to the SDPO, Udaipur for further investigation.

During cross-examination, she stated that she did not record any statement of ASI Hemlata Debbarma nor did record any statement of DCM Animesh Dhar.

[16] PW-9, Animesh Dhar deposed that on 22.04.2020 he was posted as Deputy Collector and Magistrate to the of the SDM, Sadar, On that day, as per requisition from GB TOP vide GD No.15 dated 22.04.2020 and after having visiting doctors certification he recorded Dying Declaration of the patient Souramita Sen, 24 years who was admitted in the hospital with burn injuries and was expected to die soon. Before recording her statement the patient was found conscious, oriented to time, place and person and was declared to be fit to give statement by the doctor. As per statement the incident happened in her own residence at Kakraban, Udaipur, Gomati District on 22.04.2020 at about 9 am. She stated that her husband Sri Ripan Shil always used to scold her and

instigated her to commit suicide. She further stated that there was a long family dispute between her and her husband and they have a son of 9 months. On that day, on her husband's instigation, she resorted to commit suicide by putting herself on fire. She held her husband fully responsible for that. As per her version he recorded her statement and also obtained her RTI in the statement in presence of visiting doctor Jaba Dewan. Identified the report prepared by him marked as Ext P7 (as a whole).

During cross-examination, nothing came out relevant.

[17] PW-10, Sri Raki Deb was declared hostile by the prosecution and his statement was marked as Exbt. P-8/PW10 subject to confirm by IO.

During cross-examination, he stated that he was not examined by IO.

[18] PW-11, Sri Subrata Das who scribed the ejahar of the informant and identified the same marked as Exbt. P-1/2.

During cross-examination, he stated that he knows Baspi Deb as he is the Pradhan of her locality.

[19] PW-12, Sri Dhruba Nath is the second IO of this case who stated that he re-examined the witnesses who were already examined by the first IO. He confirmed Exbt.P/8, collected the dying declaration and SFSL report and also the final opinion of post mortem report from the doctor and identified the SFSL report received by him in two sheets marked as Exbt.P/8. Identified the report of the Toxicology Division in two sheets marked as Exbt.P/9 and finally he laid charge-sheet and identified the same marked as Exbt.P/10.

During cross-examination, nothing came out relevant.

[20] PW-13, Dr. Pulak Chakma deposed that on 23.04.2020, he was posted as Tutor of Dept. of FMT, AGMC and GBP Hospital, Agartala. On that day, he along with Dr. Sutirtha Dasgupta conducted the post mortem over the dead body of Souramita Sen aged about 24 years in reference to G.B. TOP GDE No.02, dated 23.04.2020. The inquest report with the body was received

at 12:41 pm on the same day and Autopsy was started at 01:05 pm to 02:25 pm. These are epidermal to dermo-epidermal burn injuries are present over the face and front of neck in patches and the nape of neck (8% of body surface area), front of chest and abdomen (18% body surface area), back of the trunk (18% of body surface area), right upper limb (09% of body surface area), left upper limb (09% of body surface area), right lower limb sparing sole of foot (17% of body surface area), left lower limb sparing sole of foot (17% of body surface area) and external genitalia (1% of body surface area) constituting about 97% of total body surface area. Base of the burnt areas are reddish brown in colour. On cut section no pus is seen coming out from the burnt surfaces. Hair lines over the forehead and body hair are singed. Age of the above mentioned burn injuries are fresh in duration at the time of death and ante-mortem in nature. The brief history has also mentioned of the page no.3 of the report. Time of death was 12 to 18 hours from the time of post mortem. The opinion was given by both of us and the opinion was that the cause of death is shock resulting from 97% total body surface area burn injuries which are caused by flame. However, viscera have been preserved and handed over to police to rule out any associated poisoning/intoxication. On 23-03-2021, the report from SFSL was received and thereafter, the final opinion was given by both of us. The final opinion was one set of xerox copies (03 sheets) of toxicological analysis report no. SFSL484/20/TOX/150/20/5513, dated 05-08-2020 issued by Tripura State Forensic Science Laboratory, Govt. of Tripura along with original postmortem reports (01 set) have been received from 1.0. Sub-Divisional Police Officer, Udaipur, Gomati District, Tripura. As per toxicological analysis report, preserved viscera sample were negative for the presence of common organophosphorous, organochloro, carbamates, pyrethroids group of pesticides, benzodiazepines, barbiturates group of drugs and ethylalcohol. Finally he identified the postmortem report prepared by him

along with Mr. Dasgupta containing five sheets which was marked as Exbt.P/11 and identified the final opinion report dated 23.03.2021 marked Exbt.P/12.

During cross-examination, he stated that the fresh means the Injury within 12 hours. It depends upon the capability of a person injured that he can speak or not with 97% of the burn injury. Nothing more came out relevant.

These are the sum and substance of the evidence on record of the prosecution.

[21] In course of hearing of argument Learned counsel for the appellant relied upon few citations. Hon'ble the Supreme Court of India in **Appasaheb & Anr. versus State of Maharashtra** reported in **AIR 2007 SC 763** in para No.9 observed as under :

"9. Two essential ingredients of Section 304-B IPC, apart from others, are

(i) death of women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) women is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961. Section 2 of Dowry Prohibition Act reads as under :-

"2. Definition of "dowry" - In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v.

Garware Nylons Ltd., AIR (1996) SC 3509 and Chemicals and Fibres of India v. Union of India, AIR (1997) SC 558). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

Referring the same, Learned counsel for the appellant drawn the attention of the Court that since from the evidence of the prosecution, no evidence found under Section 2 of the Dowry Prohibition Act. So, there is no scope to found the appellant to be guilty under Section 4 of the Dowry Prohibition Act but the Learned Trial Court below failed to appreciate the same and urged for acquitting the appellant from the said charge.

[22] He also relied upon another citation of this High Court in **Prwritish Dutta and Ors. Versus State of Tripura** reported in **2014(1) TLR 848** wherein in para No.31 this High Court has observed as under :

"31. In Inderpal v. State of M.P., 2002 CrL LJ 926, the Apex Court considered almost a similar nature of case where the witnesses of that case stated that the deceased told them regarding the harassment meted out to her by her husband and held as under :

Before deciding that question we have to point out that the High Court came to a conclusion that the allegation that she committed suicide was not substantiated. A dying declaration was recorded by the Executive Magistrate in which the deceased had stated that she got burns accidentally from a stove. If that be so, death could not be the result of either any harassment or any cruelty which she was subjected to. In this context we may point out that the State has not challenged the finding of the High Court that death of Damyanti was not due to commission of suicide.

Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal), the statement must be as to the cause of her death or as to any of the circumstances of the transactions which resulted in her death, in a case in which the cause of death comes into question. By no stretch of imagination can the statement of Damayanti contained in Exhibit P7 or Exhibit P8 and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under section 498A, IPC disjunctured from the offence under section 306 IPC the question of her death is not an issue for consideration and on that premise also section 32(1) of the Evidence Act will stand at bay so far as these materials are concerned."

[23] He further referred another citation of this High Court in **Biplab Chakraborty and Ors. Versus State of Tripura** reported in **(2011) 6 GLR 775** wherein in para Nos.31, 35 & 38 this High Court observed as under :

"31. Dowry means 'dos muliers. Lat' otherwise called maritagium, or marriage goods, that which the wife brings to the husband in marriage. This word should not be founded with dower-Co. Lift 31-Wharton's law Lexicon. The definition of dowry will also be available in section 2 of the Dowry (Prohibition) Act, 1961. In common parlance, dowry means where the husband or his relations demand valuable security from the parents and other relations of the wife after the marriage. In simple way we want to define the meaning of dowry then we can say a price of marriage. We can say the article demanded by the family of the bride as a price of marriage. In *Satbir Singh v. State of Punjab* (2001) 8 SCC 633; (2001 CrL LJ 4625), the hon'ble Apex Court considered the definition of "dowry" as defined under section 2 of the Dowry Prohibition Act, 1961, with reference to the offence under section 304B of the IPC and held that it should be any property or valuable security given or agreed to be given in connection with the marriage. Customary gift or payment in connection with birth of child or other ceremonies unrelated to the marriage ceremony, held do not fall within the ambit of "dowry". The Apex Court also stated in the same judgment that there are three occasions related to dowry. One is before the marriage, second is at any time after marriage, the third occasion may appear to be an unending period. But the crucial word is 'in connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies prevalent indifferent societies. Such payments are not enveloped within the ambit of "dowry".

35. In the case of *Durga Prasad and another vs. State of M.P.* : 2010 CrL LJ 3479 the Apex court also stated that cruelty or harassment soon before the death has to be proved in relation to demand of dowry. In the instant case neither the mother nor the father, i.e., PWs 2 and 3, stated specifically about the demand of dowry. Therefore, it cannot be said that soon before the death of the victim she was subjected to cruelty or harassment by the appellant for/or in connection with any demand of dowry for treating such death as a dowry death. To prove a dowry death the prosecution cannot escape from the burden to prove that harassment or cruelty was meted out to the victim by the husband or any relative of her husband soon before her death. In the instant case, such evidence is totally missing.

38. On scrutiny of the evidence of the witnesses particularly, PW2 and PW12 and to some extent PW7, this court is of the opinion that the prosecution has failed to prove its case beyond reasonable doubt. Rather a doubt remains in the mind of this court regarding the involvement of the appellants in the alleged offence as there is no direct evidence relating to physical and mental torture upon the victim except the statement made by the deceased to PW12 which are not admissible evidence in view of the provisions of sub-section (1) of section 32 of the Evidence Act. Therefore, there is no

other option except to set aside the judgment and order dated 09.04.2009 and 13.04.2009 respectively as impugned in the instant appeal.”

Referring the same, Learned counsel for the appellant submitted that since in this case, the parents of the victim whatever they deposed before the Court they stated the same after hearing the same from the victim. But, since the victim is no more, so from her dying declaration, it is crystal clear that the victim did not divulge any incriminating word showing involvement of the appellant with the alleged crime and furthermore, the other witnesses who appeared before the Court to support the prosecution case, also did not hear anything directly from the victim rather they also heard the fact. So no reliance could be placed upon their evidence.

[24] So, Learned Counsel stated on the face of the evidence on record, there is also no scope to presume the appellant to be guilty punishable under Section 498A of IPC. But the Learned Court, according to the appellant, misappreciated the evidence on record and found the appellant guilty for the charge punishable under Section 498A of IPC. So, Learned counsel for the appellant also urged for allowing this appeal and to set aside the judgment delivered by Learned Trial Court.

[25] On the other hand, Learned Addl. P.P. taking part in the hearing relied upon one citation **Ganeshlal versus State of Maharashtra dated 10.04.1992 reported in (1992) 3 SCC 106** wherein in para Nos.11 and 12, the Hon'ble Apex Court observed as under:

“11. From this evidence it is clear that the accused appellant and his family members were present in the house at the time when the deceased was burning due to fire lit after pouring kerosene on her and they made no attempt to save her. The contention that the Doctor had stated that the death was instantaneous and nothing was left for the appellant and the other family members to save her, is unacceptable. The normal ordinary human conduct would be that when one of their inmates, namely Kanchana was in flames, they would have made every endeavour to save her life, if it were a case of suicide, and call the people to come to their rescue to save her life or at least would have sought first aid from PW-6, who is next door neighbour, to save the life of the deceased. No such attempt was made nor even attempted. On the other hand the appellant's earliest attempt was to misguide that Kanchana died due to short circuit. This attempt was burried

fathom deep from the evidence of PW.10, Elect. Engr. Then they set up the plea of suicide. We have Ex. 73, the first information report, immediately lodged by A-6 with the police. We need not go into the question as to what extent the admission by a co-accused would be used against the appellant. Suffice it to state that in his examination under Section 313 Cr. P.C., the appellant admitted that A-6 went to the Police Station and gave FIR Ex-73, to the Head Constable, PW11 and that A-6 stated that the deceased caught fire while she was handling the wet clothes for drying, due to short circuit. In Ex-73, it was also stated that this information was conveyed by the appellant himself. This admission is not only a relevant fact under Section 8 of Evidence Act as *res gestae* but a most important circumstance against the appellant. The indifferent and hard-hearted conduct are also important circumstances. It was also admitted that the walls in the room became blackish due to smoke. It is settled law that the conduct of an accused in an offence previous and subsequent to the crime are relevant facts. Absence of any attempt to save the life of the deceased Kanchana while she was burning and was charred to death, their conduct in not attempting to give any medical aid, the conduct of the appellant immediately after the deceased was soaked with kerosene and lighting fire after closing the door A-6 obviously opened it after ensuring that she had died, the appellant's coming down and standing at the grill gate on ground floor; the appellant shouted that uncle A-6 should close down falsely proclaimed that there was short circuit; implying to scare away the people from attempting to save Kanchana. These are most telling and relevant crucial facts apart from repulsive inhuman conduct. The false plea of suicide is yet another relevant fact. When the death had occurred in their custody the appellant is under an obligation in Section 313 Cr. P.C. statement at least to give a plausible explanation for the cause of her death. No such attempt was even made excepting denying the prosecution case. These facts completely are inconsistent with the innocence, but consistent with the hypothesis that the appellant is a prime accused in the commission of gruesome murder of his wife. The circumstantial evidence thus discussed is complete and consistent with the only conclusion that the inmates alone committed the crime and the appellant was one among them.

12. The evidence on record does establish that more than one would be participants to murder Kanchana. The absence of an appeal against acquittal of A-1 and A-3 to A-6, namely, Hiralal, Ayodhyabai, Premlata, Aruna and Rameshwar, all of them or who among them shared common intention with the appellant is obviated. The appellant is the principal perpetrator of the crime or one among the accused that shared common intention to murder Kanchana. The conviction of the appellant is accordingly altered to one under Section 302 read with Section 34 I.P.C. The appellant is convicted for the murder of his wife, Kanchana under Section 302 read with Section 34 I.P.C. and is sentenced to undergo rigorous imprisonment for life. The conviction under Section 201 is set aside. The judgment and order of the High Court is confirmed with the above modification. The appeal is accordingly dismissed."

Referring the same, Learned Addl. P.P. submitted that from the evidence on record it appears that the present appellant and her son demanded dowry and caused cruelty upon the victim for which the Learned Court below has rightly found the present appellant to be guilty and convicted her and there is no scope to interfere with the judgment.

[26] From the evidence on record, it appears to me that when the FIR was laid the victim was admitted in the hospital with burn injury but later on she succumbed to her injury. So, the evidence of the victim could not be recorded. Now, from the evidence on record as discussed above, it appears that none of the witnesses during their examination uttered that they had seen to cause cruelty to the victim by the present appellant physically. But it is expected that in mental cruelty, it is very difficult to get any direct witness of the alleged occurrence. The parents of the victim stated that the present appellant and her son demanded dowry. For the sake of convenience, I would like to refer herein below the definition of "Dowry" as provided under Section 2 of the Dowry Prohibition Act which provides as under :

"2. Definition of "dowry".- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-
(a) by one party to marriage to the other party to the marriage; or
(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies."

Further, the punishment provided under Section 4 of the Dowry Prohibition Act also provides as under :

"[4. Penalty for demanding dowry.-If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:
Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]"

From the aforesaid definition of "Dowry" as mentioned above and also on perusal of the evidence on record nowhere I find that the aforesaid ingredients of dowry as required by law could be proved by the prosecution against the present appellant showing her punishment for the offence punishable under Section 4 of the Dowry Prohibition Act. So, in absence of cogent evidence on record, it appears that the judgment of the Learned Trial

Court in respect of punishment provided under Section 4 of the Dowry Prohibition Act against the appellant cannot be sustained in the eye of law.

[27] Now, regarding charge framed under Section 498A of the IPC I would like to refer herein below the relevant provision of Section 498A of IPC which provides as under :

"498A. Husband or relative of husband of a woman subjecting her to cruelty. -Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

***Explanation.*—For the purposes of this section, "cruelty" means—**

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

[28] Here, in the case at hand, from the evidence on record it appears that none of the witnesses stated during their examination before the Court that they have/had seen the present appellant to cause any cruelty upon the victim for dowry at any point of time. From the evidence of the parents of the victim it appears that whatever they deposed, they deposed everything after hearing the same from the victim of this case and other witnesses of the prosecution also deposed after hearing the said fact from the parents of the victim but as the victim succumbed to her injury, so, her evidence is not on record. Now, prosecution in this case relied upon the dying declaration which was recorded by PW-9, Sri Animesh Dhar, DCM. From the dying declaration which has been exhibited in this case it appears that there is not a single whisper showing implication of the present appellant with the alleged charge punishable under Section 498A of IPC.

[29] Situated thus, on the face of evidence on record, and in view of the principles of law laid down by this High Court in the afore noted cases, it appears that the prosecution has also failed to prove the charge beyond

reasonable doubt against the present appellant also under Section 498A of IPC. However, the Learned Trial Court below in my considered opinion has failed to appreciate the evidence on record at the time of delivery of the judgment for which in the considered opinion of this Court the judgment of the Learned Trial Court below in respect of punishment of the present appellant is liable to be interfered with.

[30] In the result, the appeal filed by the present appellant is hereby allowed. The judgment and order of conviction dated 31.05.2024 delivered by Learned Sessions Judge, Gomati Tripura, Udaipur in connection with Case No.ST 49 of 2021 in respect of this appellant is hereby set aside and she is at liberty. Her surety also stands discharged.

JUDGE

**SABYASACHI
BHATTACHARJEE**

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