

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Crl. A(J) No.43 of 2024

1. Ripan Kumar Shil, son of late Mihir Lal Shil, resident of Basanta Nagar, P.O. & P.S. Kakraban, District: Gomati Tripura.

.....Appellant

_V_E_R_S_U_S_

1. The State of Tripura.

.....Respondent

For Appellant(s)	:	Mr. Ratan Datta, Advocate. Mr. A. Baidya, Advocate.
For Respondent(s)	:	Mr. R. Datta, P.P.
Date of hearing and delivery of judgment and order	:	18.02.2026
Whether fit for reporting	:	YES

HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
_F_I_N_A_L_ O_R_ D_ E_ R_

Heard Mr. Ratan Datta, learned counsel appearing for the appellant also heard Mr. R. Datta, learned P.P. appearing for the respondent-State.

[2] This is an appeal filed under Section-374(2) of Cr. P.C. against the impugned judgment and order of conviction and sentence dated 31.05.2024 passed by the learned Sessions Judge, Gomati Tripura, Udaipur in case No.ST 49 of 2021, whereby and whreunder, the appellant has been convicted under Section-4 of Dowry Prohibition Act and thereby sentenced him to suffer SI for six months and to pay a fine of Rs.1,000/- and in default, to suffer further SI for 30 days and further the said convict has been sentenced to suffer SI for one year with fine of Rs.2,000/- only under Section-498A of IPC, in default to suffer SI for further two months and further convicted under Section-304B of IPC and sentenced him to suffer rigorous imprisonment of 10 years and all the sentences shall run concurrently.

[3] Genesis of the case of the prosecution can be traced back to the lodging of written ejahar by Smt. Baspi Sen (P.W.1) alleging, *inter-alia*, that she gave her daughter Smt. Souramita Sen (Shil) @ Bunti (since deceased) in marriage with the accused Ripan Kr. Shil, the accused person on 03.07.2017 and that after marriage i.e. after coming from 'Phirajatra' on 06.07.2017 her parents-in-laws and

husband started torturing her both physically and mentally on dowry demand and that often her husband on the instigation of her parents-in-laws used to assault her demanding money and also used to send her to her paternal house. It is further alleged that at the time of marriage as per demand she gave Rs.50,000/- to the convict appellant along with motor bike and gold ornaments etc. and after one month of marriage paid Rs.10,000/- and Rs.20,000/- after five months to the accused persons but inspite of that degree of torture upon her daughter raised day by day.

[4] It is again alleged that often the parents-in-law of her daughter used to offer her kerosene oil to put herself on fire by pouring it and that on 05.02.2020 attempt was made to kill her daughter when in presence of her husband, her father-in-law throttled her and her mother-in-law assaulted her with a bamboo stick and that the matter of family discord was informed to Kakaraban Panchayet but the accused persons did not attend there and that on 22.04.2020 at around 11 a.m. the informant got information from Kakraban that her daughter was set on fire by pouring kerosene by her parents-in-law and husband and she was taken to Tepania Hospital and that immediately the informant along with her husband rushed to Tepania hospital and as her condition was serious she was referred to GBP Hospital, Agartala but 90% of the body of her daughter was burnt and she was struggling for survival. It is also alleged by the informant that the husband of her daughter was a gambler and often used to return home at 3/4am and at that time her daughter was having a male child of seven months, namely, Rupayan Shil.

[5] On receipt of the complaint, O/C Kakraban P.S. registered FIR No.28 of 2020 dated 22.04.2020 under Sections-498A/326/307 of IPC and Section-4 of the Dowry Prohibition Act and endorsed the case to WSI Madhabi Debbarma for investigation. The I/O on completion of investigation submitted charge-sheet dated 30.04.2021 against the accused person. The learned Chief Judicial Magistrate, Gomati District, Udaipur took cognizance of offence under Sections-498A/306/304B/34 of IPC and Section-4 of the Dowry Prohibition Act. As the offences are exclusively triable by the Court of Sessions, the case was committed for trial.

[6] In course of trial, the prosecution examined as many as 13 witnesses. Upon closure of prosecution evidence, the accused person was examined under

Section-313(1)(b) of Cr. P.C. wherein, the case was in total denial and reluctant to adduce any evidence in defence.

[7] Having heard the learned counsel appearing for the parties and gone through the material evidence on record, the learned Court below has observed as under:

“63. Considering the nature of the offences committed, condition of the victim at the time when she committed suicide and the pain and trauma she underwent because of 97% of burn injuries as well as the present condition of the convicts, this Court is of the opinion that ends of justice shall meet if the convicts Smt. Maya Shil and Ripan Shil are sentenced to suffer simple imprisonment for 06(six) months and fine of Rs. 1,000/- (rupees one thousand) each for commission of offence punishable under Section 4 of the Dowry Prohibition Act and in default of payment of fine, further simple imprisonment for 30 (thirty) days and to suffer simple imprisonment for 01 (one) year and to pay a fine of Rs.2,000/- (rupees two thousand) each for commission of offence punishable under Section 498A of IPC and in default of payment of fine they shall suffer further simple imprisonment for 02 (two) months. Further justice will be served if the convict Ripan Shil is sentenced to suffer rigorous imprisonment for 10(ten) years for commission of offence punishable under Section 304B of IPC.

Accordingly, convict Smt. Maya Shil is sentenced to:

(i) Suffer simple imprisonment for 06(six) months and fine of Rs. 1,000/- (one thousand) for commission of offence punishable under Section-4 of the Dowry Prohibition Act and in default of payment of fine, she shall suffer further simple imprisonment for 30 (thirty) days.

(ii) Suffer simple imprisonment for 01 (one) year and to pay a fine of Rs.2,000/- (rupees two thousand) for commission of offence punishable under Section 498A of IPC and in default of payment of fine, she shall suffer further simple imprisonment for 02 (two) months.

Convict Ripan Shil is sentenced to:

Suffer simple imprisonment for 06(six) months and fine of Rs. 1,000/- (one thousand) for commission of offence punishable under Section-4 of the Dowry Prohibition Act and in default of payment of fine, he shall suffer further simple imprisonment for 30(thirty) days.

(ii) Suffer simple imprisonment for 01(one) year and to pay a fine of Rs.2,000/- (rupees two thousand) for commission of offence punishable under Section 498A of IPC and in default of payment of fine, he shall suffer further simple imprisonment for 02 (two) months.

(iii) Suffer rigorous imprisonment for 10(ten) years for commission of offence punishable under Section 304B of IPC.

66. All the sentences shall run concurrently.

67. The period of detention, if any, undergone by the convict during investigation, inquiry and trial, shall be set-off from the substantive period of sentence.

68. The bail bond with surety stands discharged. However, the bond submitted as per provision under Sec. 437A, Cr.P.C. shall remain in Force for a period of six months from today.

69. Convicts are informed about their right to appeal.

70. Convicts Smt. Maya Shil and Ripan Kumar Shil are taken into custody. They be sent to Jail for suffering of sentence.....”

[8] Being aggrieved by and dissatisfied with the same, the learned present appeal has been preferred by the appellant before this Court for ends of justice.

[9] Mr. R. Datta, learned counsel appearing for the appellant has submitted that the learned Court below relied on the improved versions of all the PWs illegally and on the basis of such improved versions, convicted and sentenced the appellant only on surmise and conjecture.

[10] The learned Court below failed to appreciate that, family discord i.e. minor problems which are common in each and every family cannot come under the provision of Section-498A or 304B of IPC. Further the learned Court below failed to appreciate that, dowry demand means any demand related to marriage or in connection with marriage. Not admitting but assuming that, there was any demand during the marital life to maintain the family livelihood cannot be treated as dowry demand or the death of the deceased cannot be treated as a Dowry Death.

[11] The prosecution witnesses Nos. 1 and 2 deposed before the Court that soon after marriage i.e. on 03.07.2017, their daughter was subjected to physical and mental torture by the Convict appellant and his mother but the prosecution witnesses measurable failed to deposed before the Court as to when and in what manner tortures were inflicted by the appellant. Before the alleged incident till the year 2020, the victim never lodged any complaint regarding the physical assault upon her before any appropriate authority and as such the testimony of the prosecution witnesses is not believable and the same concocted story has been framed in order to falsely entangle the convict appellant and his mother. Had frequent tortures after marriage were inflicted upon the victim, she ought to have informed the entire incident to her parents, but from the deposition of the prosecution witness it is revealed that there is no whisper regarding the frequent

mental and physical assault upon the victim and neither of the prosecution witness reveled the exact date and time on which the victim was assaulted till the year 2020.

[12] PW-1 had deposed before the learned Court that after one month and five months of marriage, they gave Rs. 10,000/- and Rs. 20,000/- to convict appellant whereas PW.2 while deposing before the learned Court stated that Rs. 20,000/- was given by them to the mother of the convict appellant. Further PW.5 in her examination in chief stated that the said amount of Rs. 10,000 and 20,000/- was paid for the peace of the victim. Therefore the testimony of prosecution witness Nos.1, 2 & 5 does not corroborate the statements of each other and hence the veracity of the prosecution witnesses remains shaken and not reliable in the eye of Law.

[13] PW.1 Smt. Baspi Sen deposed that on 05.02.2020 the mother of the convict appellant and his father assaulted with the victim with a bamboo stick but PW.2 deposed that on 05.02.2020 the father of the appellant throttled the victim and the mother of the convict appellant assaulted her with a bamboo stick. The testimony of the PWs.1 & 2 regarding the assault upon the victim is also not believable as they contradict their own prosecution story. The prosecution story of PWs.1 & 2 that on 15.03.2020, after torture were inflicted upon the victim, PWs.1 & 2 approached Kakrabon Panchayet and legal service of his for conciliation process but neither the he convict appellant nor the mother of the convict appellant attended the conciliation whereas PWs.5 & 6 deposed that the conciliation process could not be conducted owing to strict lockdown measures. The statements of PW.1 & 2 do not corroborate with the statements of Pw. 5 & 6 and raises enough suspicion regarding the credibility of the prosecution witnesses. The prosecution measurably failed to establish their own story and on the basis of such shaken evidence, the conviction of the appellant is liable to be set aside.

[14] During examination of PW.2, namely Mr. Kajal Sen deposed before the learned Court that before the alleged incident took place i.e. 22.04.2020 the convict appellant demanded Rs. 1,00,000/- (one lakh), from his in-laws house. Whereas PW.5 contradicted the stand of PW.5 as he deposed that the said Rs. 1 lakh was demanded by convict appellant during the pregnancy of the deceased. The deceased and the convict appellant use to live separately in a rental accommodation after marriage and they had also started their separate kitchen as they took meal

separately, the separation of the deceased and the appellant was the decision of the deceased to live separately from the house of her in laws as she never used to perform matrimonial duties and obligations or house hold works and also refused to take care of the ailing mother and father of the convict appellant. Therefore from the deposition of the prosecution witnesses, it is clear that the convict appellant has been living separately with the deceased as per the wish and desire of the deceased as she was less interested to perform her matrimonial duties.

[15] As per version of the PWs.1 & 2 the convict appellant and his mother who were the persons who put fire on the body of the deceased with kerosene but the testimony of the prosecution witnesses has not been rebutted in this case as the PWs.5 & 6 clearly deposed that, it was the deceased who herself put fire on her with the help of kerosene. But the learned Court appreciated the contradictory versions of the Prosecution witnesses without ascertaining the examination and cross-examination of the witnesses correctly and as such the convict appellant has been deprived.

[16] The learned Court below failed to appreciate that, the death of the deceased was a result of frustration, mental agony and dissatisfaction regarding the solemnization of marriage between the deceased and the convict appellant. The deceased was never happy in her matrimonial life and she repeatedly raised her grievance regarding the arrange marriage in view of the consent of the family members of both the parties and also the learned Court failed to consider that the deceased always use to treat the convict appellant in such manner uttering that, her husband is good for nothing and he does not fit in the category of husband material and for the same she always used to remain upset. The learned Court also did not considered the fact that the convict appellant was paralyzed and always use to use a crutch for his movement, though the mother of the convict appellant used to make her understand regarding the essence of marital life and always tried her best to maintain a cordial relationship with the deceased but all in vain. The deceased was always in a habit of raising grievance regarding the marriage as arranged by the family members of both the parties. Therefore it is clearly revealed that the death of the deceased is a result of mental depression and frustration on the part of the deceased.

[17] The learned Court below failed to consider that, in the dying declaration of the deceased there is also no whisper in the prosecution story that the

convict appellant had physically assaulted the deceased prior to the commission of the alleged incident or the appellant had been torturing the appellant. The convict appellant was not in a stable condition for recording her dying declaration but the same was done only in order to entangle the convict appellant.

[18] The learned Court below committed a grave error in not appreciating the expert evidence i.e. PW.13 namely, Dr. Pulak Chakma as he clearly opined that a person with 97% burn injury is not in a possession to speak or identify. Though dying declaration of the deceased was conducted by PW.9 namely, Sri Animesh Dhar, DCM but the entire recording of the dying declaration suffers from severe procedural defects. Though, the victim was at her death bed suffering 97% burn and was not fit, PW.9 recorded the statement of an unfit person and even the statement of the deceased was not recorded in Bengali. The mother tongue of the deceased was Bengali but the PW.9 for unknown reasons did not record her dying declaration in Bengali. The dying declaration was recorded in an improper manner wherein neither her statements were recorded in question and answer form nor the PW.9 stated as to who identified the deceased. Such gross illegalities in the recording of dying declaration are not tenable in the eye of Law and as such the testimony of the witness No. 9 is not reliable in the eye of Law.

[19] The learned Court below also committed a grave error in considering that, the expert witness PW-13 namely Dr. Pulak Chakma and Dr. Sutrittha Dasgupta clearly opined that, the death of the deceased was caused owing to "shock" caused by flame and there is no opinion as to whether death was homicidal or suicidal. As per Modi's Medical Jurisprudence, Doctor ought to have opined specifically whether the death caused was suicidal, homicidal or accidental in nature meaning thereby Doctor is bound to opine that, the death caused is homicidal or suicidal in nature. Until and unless such opinion is revealed in the post mortem report or from the evidence of the Doctors, the Court cannot conclude that, the death of the deceased was homicidal in nature. For convicting a person under Section-304B of IPC, it is the mandatory ingredient that the death was homicidal in nature. In this instant case, the learned Court came to a wrong finding stating *inter-alia* that the cause of death of the deceased was dowry death meaning thereby the death was homicidal in nature. So, the impugned judgment and order passed by the learned Court suffers from grave error both on law and facts and liable to be set aside.

[20] The learned Court below failed to appreciate that, after soon after marriage, the prosecution witnesses were unable to furnish a single piece of paper regarding the commission of torture upon the deceased by the convict appellant. Even the PW.1 who is informant of the case clearly stated that, they did not lodge any complain the police or court prior to the commission of the alleged incident. Had the deceased would have subjected to cruelty in view of the FIR filed by the informant, there would have been reflection of the grievances of the tortures inflicted upon the deceased either by the deceased or her family members. Therefore the learned Court had erred in pronouncing the judgment in both law and facts and held the convicted appellant to undergo offence punishable under Sections-304B and 498A of IPC read with Section-4 of the Dowry prohibition Act which is illegal and liable to be set aside. The ingredients of Section-304B of IPC and Section-498A of IPC and Section-4 of the Dowry prohibition Act, does not at all attract in the instant case against the convict appellant as she has been falsely entangled in this instant case owing to the poor investigation on the part of the investigating authority and as the learned Court has not taken into consideration the material documents, records in view of the defense led by the convict appellant and as such, the entire judgment is perverse and liable to be set aside.

[21] Mr. R. Datta, learned counsel appearing for the appellant in support of his argument has placed reliance on a decision of the Hon'ble Apex Court in *Inderpal v. State of M. P.*, reported in (2002) Cri. L.J. 926, wherein, the Hon'ble Court has observed as under:

“5. Apart from the statement attributed to the deceased none of the witnesses had spoken to anything which they had seen directly. The question is whether the statements attributed to the deceased could be used as evidence in this case including the contents of Exhibits P-7 and P-8.

6. 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 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 Damayanti was not due to commission of suicide.

7. 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 circumstance of the transactions

which resulted in her death, in cases in which the cause of death comes into questions. By no stretch of imagination can the statements of Damayanti contained in Exhibit P-7 or Exhibit P-8 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 disjuncted from the offence under 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.”

[22] In Appasaheb & Another v. State of Maharashtra, reported in (2007) SC 763, the Hon’ble Apex Court has observed thus:

9. Two essential ingredient 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 dowry 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.”

[23] It has been further submitted that by assailing the prosecution case on the ground mainly that there is no clear and convincing evidence about torture and dowry demand by the accused person and also the evidence is not strong enough to show that the torture of the accused person on dowry demand led the victim to commit suicide. He has further submitted that the appellant is innocent and have been falsely implicated on the basis of emotion and sentiment of the prosecution following the death of the deceased. He further contends that the prosecution has also failed to prove the alleged dying declaration of the deceased as per the provision of law.

[24] Arguing the case for the prosecution Mr. R. Datta, learned PP has submitted that they have examined 13 witnesses in the case including the parents and relatives of the deceased as well as the medical officer, police officers. He has further submitted that they have also proved the dying declaration of the deceased by examining the Executive Magistrate who recorded the dying declaration. He has further submitted that all the witnesses have strongly corroborated the prosecution story with regard to the fact of torture, dowry demand and dowry death by the accused person and also it has been proved beyond shadow of doubt that the deceased committed suicide due to the torture committed by the accused person on dowry demand and has urged for conviction of the accused person on all the counts of charge and also for exemplary punishment.

[25] Mr. Datta, learned P.P. appearing for the respondent-State in support of his argument has placed some reliance on the decisions of the Hon’ble Apex Court in *Paranagouda and Another v. State of Karnataka and Another*, reported in (2024) 18 SCC 793, *Surendra Bangali alias Surendra Singh Routele v. State of Jharkhand*, reported in (2021) SCC online SC 3538, *Vijay Pal v. State (Government of NCT of Delhi)* reported in (2015) 4 SCC 749 and *Appasaheb & Another v. State of Maharashtra*, reported in (2007) SC 763 wherein, the Hon’ble Apex Court has held as under:

[26] In *Paranagouda and Another v. State of Karnataka and Another*, reported in (2024) 18 SCC 793, the Hon’ble Apex Court has observed thus:

“30. This takes us to the next question as to whether the accused can be convicted for the offence punishable under Section 306 IPC though not charged for said offence. Similar situation arose before this Court in *Dalbir Singh vs State of U.P.* (2004) 5 SCC 334 where a charge for the offence under Section 306 had not been framed against the accused though accused had faced trial in respect of the charges under Section 302, 498A and 304B IPC as has happened in the instant case where the accused have been tried for the offences punishable under Section 498A, 304B IPC and Section 3 and 4 of DP Act and this Court had answered in the affirmative in *Dalbir Singh’s* case by arriving at the following conclusion:

“17. There is a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that *Sangaraboina Sreenu* [(1997) 5 SCC 348 : 1997 SCC (Cri) 690] was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.

18. The facts and circumstances of the present case may now be examined in the light of the principle discussed above. The trial court and also the High Court have recorded a clear finding and with which we are in complete agreement, that the accused had started making a demand of dowry soon after marriage. Even after his father-in-law had given him a colour TV, a scooter and money for purchasing the flat, he did not feel satisfied and continued to harass his wife. He used to frequently taunt her that some of the items given by way of gift at the time of marriage were of poor quality and were not of his standard. He had also assaulted his wife and even his seven-year-old daughter on several occasions. It was in such circumstances that Vimla took the extreme step of not only setting herself on fire, but also her two daughters, one of whom was only one-year old. The letter written by Vimla just before taking such an extreme step speaks volumes about the treatment meted out to her by the accused. Therefore, the basic ingredients of the offence under Section 306 IPC have been established by the prosecution. These features of the prosecution case were sought to be established by the prosecution in order to substantiate the charge under Section 498-A IPC and also for showing that the accused had a motive to commit the crime of murder for which he was actually charged. The cross-examination of the witnesses shows that every effort was made to demolish the aforesaid aspect of the prosecution case, namely, that neither was any demand of dowry made nor were any gifts or presents or money received by the accused at a subsequent stage and that Vimla had not been subjected to any kind of harassment or ill-treatment. The next question to be seen is whether the accused was confronted with the aforesaid features of the prosecution case in his statement under Section 313 CrPC. His statement runs into six pages where every aspect of the prosecution case referred to above was put to him. He also gave a long written statement in accordance with Section 233(2) CrPC wherein he admitted that Vimla committed suicide. He also admitted that the

scooter and colour TV were subsequently given to him by his in-laws but came out with a plea that he had paid money and purchased the same from his in-laws. There is no aspect of the prosecution which may not have been put to him. We are, therefore, of the opinion that in view of the material on record, the conviction under Section 306 IPC can safely be recorded and the same would not result in failure of justice in any manner. The record shows that the accused was taken into custody on 29-3-1991 and was released from jail after the decision of the High Court on 20-3-1997 and thus he has undergone nearly six years of imprisonment. In our opinion, the period already undergone (as undertrial and after conviction) would meet the ends of justice.”

In Dinesh Seth’s case (supra) it has been held that in certain situations, an accused can be convicted for an offence with which he may not have been specifically charged and an error, omission or irregularity in framing of charge is, by itself not sufficient for upsetting the conviction. The only exception to this general rule as can be noticed from Section 464 of Cr.P.C. is, unless the accused is able to demonstrate a failure of justice has in fact been occasioned thereby. It has been held thereunder as:

“21. The ratio of the abovenoted judgments is that in certain situations an accused can be convicted for an offence with which he may not have been specifically charged and that an error, omission or irregularity in the framing of charge is, by itself not sufficient for upsetting the conviction. The appellate, confirming or revisional court can interfere in such matters only if it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the accused and failure of justice has been occasioned.”

After noticing the meaning to be attached to the plain language of Section 221 and Section 464 of Cr.P.C. this Court in Dinesh Seth-supra has opined:

“11. A reading of the plain language of Sections 221(1) and (2) shows that if a single act or a series of acts constitute several offences and the prosecution is not certain about the particular offence then the accused can be charged with the allegation of having committed all, some or any of the offences. In such a case the accused can be convicted of the offence with which he may not have been specifically charged but evidence produced by the prosecution proves that such an offence has, in fact, been committed.

12. Section 222(1) lays down that when a person is charged with an offence consisting of several particulars and combination of only some of the particulars constituting a minor offence is proved then he can be convicted of the minor offence with which he may not have been charged. Section 222(2) lays down that when a person is charged with an offence but the facts proved constitute a minor offence then he can be convicted of the minor offence despite the fact that he may not have been charged with that offence. Sub-section (3) of Section 222 lays down that a person charged with an offence, can be convicted of an attempt to commit such offence even though a separate charge may not have been framed on that account.

13. Section 464(1) lays down that any error, omission or irregularity in the framing of charge including any misjoinder of charges, will not invalidate a finding, sentence or order by a court of competent jurisdiction unless the higher court comes to a conclusion that failure of justice has been occasioned. Sub-section (2) of Section 464 specifies the modes which can be adopted by the court of appeal, confirmation or revision, if such court is of the opinion that a

failure of justice has been occasioned on account of non-framing of charge or any error, omission or irregularity in the framing of charge.”

In the light of aforesaid analysis, the question that would arise is: whether the accused in the instant case can be convicted for the offence punishable under Section 306 IPC? Section 306 reads as under:

“306. Abetment of suicide. —If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

The basic ingredients of an offence under Section 306 is suicidal death and its abetment thereof. To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide would be necessary.

[27] In *Surendra Bangali alias Surendra Singh Routele v. State of Jharkhand*, reported in (2021) SCC online SC 3538, the Hon’ble Apex Court observed as under:

“9. Learned counsel for the appellant has referred to the Constitution Bench judgment of this Court in *Laxman v. State of Maharashtra*. The Constitution Bench clearly held that mere absence of doctor’s certification as to the fitness of the declarant’s state of mind would not ipso facto render the dying declaration unacceptable. It was further held that evidentiary value of such a declaration would depend on the facts and circumstances of the particular case. In the present case Judicial Magistrate, who has appeared in the witness box, has proved the dying declaration and looking to the facts and circumstances especially the presence of doctor who had signed the dying declaration and who had told the Judicial Magistrate that the injured was in a fit condition to give statement, we see no reason to take any contrary view to one which has been taken by learned Trial Court as well as the High Court. The High Court in paragraph 24 while dealing with the evidence of PW.5 has stated as follows:

“24. P.W.5 – Shri S.C. Prasad, the Judicial Magistrate, stated in his evidence that on 23.07.1988, he recorded the dying declaration of Mahesh Pandey at Rajendra Medical College and Hospital, Ranchi at 11:00 pm. The dying declaration which is in few sentences, are quoted here-in-below:-

In cross examination, the Judicial Magistrate stated that he did not know Mahesh Pandey from before. The victim was identified by the Doctor. The doctor stated before him that Mahesh Pandey was in a position to make statement.

The dying declaration not only contains the certificate of the Judicial Magistrate certifying that the statements made by the declarant was voluntary but it also contains the signature of the DOCTOR d.p. Bhandari and Most. Rampati Devi (PW-11). However, Dr. D. P. Bhandari in spite of best efforts, could not be examined since he left Ranchi as has been stated by the Investigating officer P.W. 6 Arun Kumar Singh in his evidence.”

[28] In *Vijay Pal v. State (Government of NCT of Delhi)* reported in (2015) 4 SCC 749, the Hon'ble Apex Court while dealing with the facts has observed as under:

"The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive [pic]and definite.

"7. ... A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentiri). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice."

9. Dealing with the oral dying declaration, a two-Judge Bench in *Prakash V. State of M.P.*[8] has stated thus:

"11. ... In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the

assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused [pic]persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with."

[29] Before entering into the merits of the case, it would be apposite to discuss the evidence on record.

[30] PW.1 Smt. Baspi Sen, the informant, deposed that her daughter Souramita Sen (now deceased) was married with Ripan Shil on 03.07.2017 and at the time of marriage as per demand she gave Rs.50,000/- in cash and a motor cycle and that immediately after reception by the groom side, troubles erupted between her daughter and her in-laws when her husband and in-laws regularly pressurized her to bring money from her and that within one month of marriage, as per demand, she gave Rs. 10,000/- to her son-in-law and Rs.20,000/- later after five months, and that those did not stop the physical torture on her daughter and that the accused persons always told her to commit suicide by pouring kerosene on herself and in the year 2020 she gave birth to a son. She further stated that on 05.02.2020 her parents-in-law assaulted her with a bamboo stick and so she raised complaint to Kakraban Panchayet but the accused persons did not come for reconciliation and that 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. She again stated that they also moved the legal services office for mediation but nothing fruitful happened due to lockdown and that on 22.04.2020 at around 11:00 am, she received an information, probably from the Fire Service, that her daughter was put on fire by her in-laws and was admitted in Tepania Hospital and so she went there and found her daughter badly burnt, and that her daughter was referred to GB Hospital where she breathed her last. She specifically stated that her husband and in-laws poured kerosene and put her on fire.

[31] In cross-examination she stated that the marriage was a negotiated one and took place as per consent of both parties and that the accused was a private tutor by profession and was the only son of his parents. She further stated that sometimes before child birth the accused and her daughter had separated their kitchen and took meal separately. In cross-examination, she could not say the exact date on which money was given to the accused persons. She also stated that they

did not lodge any complaint with the police or court. She again stated that her daughter was given marriage six months before her BA final examination. She denied the suggestion that the accused Ripan Shil became paralyzed on one side after a year of the marriage. She admitted that her son-in-law used a crutch to walk. She stated that fifteen days prior to child birth her daughter came to her house and left about two months after child birth. She denied the suggestion that her daughter committed suicide out of mental depression. She also stated that on the date of incident her daughter was scheduled to visit her and she had given many calls which she did not return.

[32] PW-2, the father of the deceased in his cross-examination has stated that he visited his daughter around 8 to 10 times after the marriage but he could not say about the neighbours of his daughter's matrimonial home and that he never confided with the neighbours of his daughter's in-laws and that he did not file any written complaint with the panchayet and with police or Court before his daughter's death. He further stated that his daughter and her husband used to stay separately from her in-laws.

[33] PW-3 who had a shop opposite to the house of the accused person in his deposition has stated that on 24.04.2020 he saw smoke coming out from the room of the accused person and he rushed to the spot and saw the appellant and his parents were standing outside the room and saw that wife of the appellant was sitting in one corner and 99% of her body was burnt and being unable to bear the sight he rushed out. He further stated that on 2/3 occasions the victim told him that she was physically tortured in her matrimonial house. But in his cross examination he admitted that he did not specifically state to the police that the victim on 2/3 occasions told him about physical torture on her.

[34] PW-4, neighbour of the appellant stated that on 22.04.2020 he also saw smoke coming out from the room of the appellant and that he along with others rushed to the spot and saw the appellant and his parents were standing outside the room and that he went inside the room and saw wife of the appellant was sitting in one corner and 90% of her body was burnt. He further stated that once before her death she told that her in-laws physically tortured her for dowry. But in his cross-examination he admitted that he did not specifically state to the police that once before her death she told him that her in-laws physically tortured her for dowry.

[35] PW-6, a Panchayet member stated that after marriage the parents of Souramita Sen complained that their daughter was tortured by her husband and in-laws for money and also told that they paid Rs.30,000/- to the in-laws of the victim in two installments. In his cross-examination he could not recall the name of the pradhan of Kakraban Panchayet. He also stated that he did not have any word with the appellant or his parents regarding this issue.

[36] PW-7, WSI who, on 23.04.2020 conducted inquest on the dead body. As per evidence, the victim had suffered burnt injury from head to toe. In her cross-examination she stated that she was directed to conduct only inquest and she did not record any statement of parents of the victim.

[37] PW-13 Dr. Pulak Chakma who on 23.04.2020 along with another doctor conducted post-mortem over the dead body and on examination their opinion was that the cause of death was shock resulting from 97% total body surface area burn injuries which were caused by flame and according to their final opinion, there was no associated poisoning. In his cross-examination he has stated that it depends upon the capability of the person injured that he/she could speak or not with 97% burn injury. However, he again stated that a person with 97% burn injury could not speak or identify.

[38] Before deciding the issue, let's have a look on the relevant provisions of the Dowry Prohibition Act, 1961.

“Section.2 defines what is “dowry” and it 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 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.

Again Section.4. prescribes Penalty for demanding dowry and it says that 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.”

[39] The dying declaration of the deceased there is no whisper in the prosecution story that the convict appellant had physically assaulted the deceased

prior to the commission of the alleged incident or the appellant had been torturing the appellant. PW.13 namely, Dr. Pulak Chakma as he clearly opined that a person with 97% burn injury is not in a possession to speak or identify. The victim was at her death bed suffering 97% burn and was not fit. The expert witness PW-13 namely Dr. Pulak Chakma and Dr. Sutrittha Dasgupta clearly opined that, the death of the deceased was caused owing to “shock” caused by flame and there is no opinion as to whether death was homicidal or suicidal. As per Modi's Medical Jurisprudence, Doctor ought to have opined specifically whether the death caused was suicidal, homicidal or accidental in nature meaning thereby Doctor is bound to opine that, the death caused is homicidal or suicidal in nature. Until and unless such opinion is revealed in the post mortem report or from the evidence of the Doctors, the Court cannot conclude that, the death of the deceased was homicidal in nature. For convicting a person under Section-304B of IPC, it is the mandatory ingredient that the death was homicidal in nature. Thus, the case is not made out under Section-304B of IPC.

[40] In the aforesaid analysis of law, when we turn our attention to the facts on hand it would emerge from the records that appellant had been convicted for the offences punishable under Sections-498A, 304B of IPC and Section-4 of Dowry Prohibition Act. The first part would relate to subjecting a married woman to cruelty for any willful conduct which is of such a nature as is likely to drive her to commit suicide or to cause grave injury or danger to life, limb, or health. Second part would indicate that cruelty would encompass harassment of a married woman where such harassment is with a view to pressurize her or any person related to her to meet any unlawful demand for any property or valuable security on account of failure by her or any person related to her to meet such demand.

[41] Section-498A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health or even harassment caused with a view to coerce the woman or any person related to her to meet any unlawful demand of property or valuable security. Section 498-A was added to IPC by amending Act 46 of 1983 in the backdrop of growing menace of dowry related cases in which the women were subjected to cruelty and harassment and were forced to commit suicide. This section lays down that if the husband or his relative subjects a woman to cruelty, then he/she is liable

to be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

[42] Irrespective of the fact that accused have been acquitted for the offence punishable under Section 304B, Section 498A would cover the cases in which the wife is subjected to cruelty by husband or relatives of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health. In the light of dying declaration having been accepted to have been made by the deceased and the contents of the same disclosing that she was unable to withstand the torture meted out, which resulted in her committing suicide would suffice to convict the accused for the offence punishable under Section 498A.

[43] This takes us to the next question as to whether the accused can be convicted for the offence punishable under Section-306 IPC though not charged for said offence. Similar situation arose before this Court in *Dalbir Singh vs State of U.P. (2004) 5 SCC 334* where a charge for the offence under Section-306 had not been framed against the accused as has happened in the instant case where the accused have been tried for the offences punishable under Section 498A, 304B IPC and Section-4 of DP Act and this Court had answered in the affirmative in *Dalbir Singh's* case by arriving at the following conclusion:

“17. There is a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion.

In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that *Sangaraboina Sreenu [(1997) 5 SCC 348 : 1997 SCC (Cri) 690]* was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.”

[44] In the dying declaration, the categorical statements revealed that such an extreme step speaks volumes about the treatment meted out to her by the accused. Therefore, the basic ingredients of the offence under Section-306 IPC have been established by the prosecution. We are, therefore, of the opinion that in view of the material on record, the conviction under Section-306 IPC can safely be

recorded and the same would not result in failure of justice in any manner. In *Dinesh Seth's case (supra)* it has been held that in certain situations, an accused can be convicted for an offence with which he may not have been specifically charged and an error, omission or irregularity in framing of charge is, by itself not sufficient for upsetting the conviction.

[45] Omission to frame charge does not disable the court from convicting the accused for the offence which is found to have been proved on the evidence on record. The code has ample provisions to meet a situation like the one before us. From the statement of charge framed under Section 304B and in the alternative Section 306, it is clear that all the facts and ingredients for framing the charge for offence under Section 306 existed. The mere omission on the part of the trial judge to mention Section 306 IPC with 498A would not preclude this Court from convicting the accused for the said offence when found proved.

[46] The law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness; there is no justification to discard the same. In the instant case the dying declaration of the deceased would clearly indicate that deceased was mentally traumatized and she was unable to tolerate the torture and harassment meted out by the accused person on account of which she committed suicide. It is this taunting or mental torture which she could not withstand and forced her to commit suicide by self-immolation. In that view of the matter, we are of the considered opinion that appellant is liable to be convicted for the offence punishable under Section-498A and Section-306-IPC though charge was not framed. However, it is pertinent to mention herein that on perusal of the evidence scrupulously, we are, therefore, of the opinion that the prosecution has failed to establish the case under Section-4 of the DP Act and also under Section-304B of IPC against the convict appellant.

[47] It has been observed that the appellant does not have any criminal antecedence and also have a minor son, who also lost his mother's love and affection and he has to be looked after. Thus, the appellant is acquitted for the offences punishable under Section-304B IPC and Section-4 of Dowry Prohibition Act and convicted for the offence punishable under Section-306 and Section-498A for 5 years by computing sentence already undergone and shall be released thereafter. However, both the sentences shall run concurrently.

[48] With the above observation/modification, the present appeal stands partly allowed. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

S. DATTA PURKAYASTHA, J

DR.T. AMARNATH GOUD, J

A. Ghosh

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