

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL.A.NO.16 OF 2009

State of Tripura,
Represented by the
Secretary-cum-Commissioner,
Government of Tripura,
Department of Home,
Agartala.

..... Appellant

- Vs -

Sri Pradip Debnath,
S/O Late Manindra Debnath of
Paltry Road, Udaipur,
South Tripura.

..... Respondent

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS**

For the appellant : Ms. P. Dhar, Advocate
For the respondent : Mr. D. Bhattacharjee, Advocate
Date of hearing : **30.06.2015**
Date of delivery of Judgment & order : **04.08.2015**

Whether Fit for Reporting :

Yes	No
✓	

JUDGMENT & ORDER

(S.C. Das, J)

Dowry is a heinous social evil. An offence of dowry death is a most hated crime. The Legislature has made stringent laws to deal with the devilish acts of dowry by enacting the Dowry Prohibition Act, 1961 and incorporating in the Penal Code too,

Section 498A and Section 304B as well as Sections 113A and 113B in the Evidence Act. The menace of dowry still survives. It has become a burning problem of the country. It is not unknown that the greed for dowry, and indeed the dowry system as an institution, is at the root of the offence contemplated in Section 498A and Section 304B of IPC. In the cases of offence relating to woman the role of the Courts assumes significant importance.

The Supreme Court in the case of **Kundula Bala Subrahmanyam & Anr. v. State of Andhra Pradesh** reported in **(1993) 2 SCC 684 : 1993 CRI.L.J. 1635** has held that *the role of courts, under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunae in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women.*

The Supreme Court in the case of **Virbhan Singh & Anr. v. State of U.P.** reported in **AIR 1983 SC 102 : 1983 CRI.L.J. 1636** has held that *the instances of bride killing are alarmingly on the increase. If society should be ridden of this growing evil, it is imperative that whenever dastardly crimes of this nature are detected and the offence brought home to the accused, the courts*

must deal with the offender most ruthlessly and impose deterrent punishment.

It is expected that while dealing with an offence relating to woman a trial Judge shall remain alive and most sensitive and should not be a silent spectator in the course of trial. It is the duty of the trial Judge to see and to find out all material aspects of evidence of a case before the Court. A trial Judge cannot be a mere spectator but should control a criminal trial by actively participating therein to find out the truth.

What also should be borne in mind is that howsoever serious a charge may be against an accused, the offence alleged to have been committed by the accused must be proved in accordance with law. The Court of law should not be swayed simply by the gravity of the offence but should consider the case as a whole and should not draw assumption and presumption based on common sense putting apart the facts brought in evidence by the parties.

2. Here is a case of a young married woman Shibani Debnath aged about 26 years, wife of accused-respondent Pradip Debnath, died an unnatural death on receipt of 100 percent burn injuries in the matrimonial home on 26.08.2006 at Poultry Road, Udaipur under R.K. Pur P.S. and respondent Pradip Debnath who is the husband of deceased Shibani and five others were tried for commission of offence punishable under Section 498A and 304B of IPC by the learned Sessions Judge, South Tripura, Udaipur in case

No.ST18(ST/U)2008 and by impugned judgment dated 26.11.2008 the learned Sessions Judge acquitted accused-respondent Pradip Debnath from both the charges and hence this appeal is filed under Section 378 of CrPC challenging the judgment of acquittal.

3. We have heard learned counsel, Ms. P. Dhar for the State appellant and learned counsel, Mr. D. Bhattacharjee for accused-respondent Pradip Debnath.

4. Radheshyam Debnath(PW1), father of the victim Shibani Debnath, set the law in motion by filing an FIR in writing on 26.08.2006 before O/C, R.K. Pur P.S. alleging that his fifth daughter Shibani Debnath was given in marriage socially with accused Pradip Debnath of Poultry Road, Udaipur and thereafter they lived and cohabited as husband and wife and a girl child was also born who was aged two and half years at that time. After about two and half years of marriage, on various pretext Pradip Debnath, husband of Shibani, Sanjit Debnath and Ranjit Debnath, both brothers-in-law of Shibani and Kajal Debnath, Sutapa Debnath and Sefali Debnath, all sisters-in-law of Shibani used to inflict assault and mental torture upon her. She was carrying pregnancy of seven months and the accused persons at that time demanded ₹10,000/- (rupees ten thousand) from him through his daughter Shibani. Five/six months ago when he visited the shop of Pradip Debnath, Pradip demanded ₹10,000/- directly to him but he expressed his inability to which Pradip threatened that he knows how to realize

the amount. He, however, paid ₹1,500/- to Pradip but torture on Shibani increased. On 22.08.2006, in the morning he went to the house of his daughter and saw the accused persons were about to kill his daughter with *dao*(a sharp cutting weapon) and on seeing him they refrained from doing so but abused Shibani with filthy words. On 26.08.2006 at about 11.00 AM he heard that his daughter was admitted in Udaipur hospital with burn injuries and thereafter she was taken to G.B. Hospital where she died. He stated that he firmly believed that the accused persons with a view to kill his daughter poured kerosene oil on her body and thereafter put her to fire, as a result she died in G.B. Hospital.

4.1. On the basis of this FIR, R.K. Pur P.S. Case No.351 of 2006 under Section 498A and 304B of IPC was registered against six accused persons, namely Sri Pradip Debnath, Sri Sanjit Debnath, Ranjit Debnath, Smt. Kajal Debnath, Smt. Sutapa Debnath and Smt. Sefali Debnath and after investigation by the Sub-Divisional Police Officer, Udaipur namely Pinaki Samanta(PW17) and Ratiranjan Debnath(PW18) charge sheet was laid against all the FIR named accused persons, and accordingly, cognizance was taken and in course of trial learned Sessions Judge, South Tripura, Udaipur on 07.07.2008 framed charges against all those six accused persons for commission of offence punishable under Section 498A and 304B of IPC to which they pleaded not guilty and claimed to be tried.

4.2. In course of trial, prosecution examined 18(eighteen) witnesses, namely PW1 Sri Radheshyam Debnath, PW2 Smt. Jyoti Debnath, PW3 Sri Mantosh Debnath, PW4 Smt. Puspa Rani Debnath, PW5 Sri Ratan Debnath, PW6 Smt. Nanda Debnath, PW7 Sri Gopal Debnath, PW8 Sri Uttam Kr. Nandi, PW9 Sri Radheshyam Bhowmik, PW10 Sri Narayan Ch. Das, PW11 Sri Uma Pada Debnath, PW12 Sri Shankar Bhattacharjee, PW13 Sri Debjan Chakma, PW14 Sri Shiba Ch. Dey, PW15 Sri Prasad Sur, PW16 Dr. Pranab Choudhury, PW17 Sri Pinaki Samanta, PW18 Sri Ratiranjan Debnath.

4.3. Out of the aforesaid witnesses, PW1 is the father of the deceased Shibani and is the informant of the case. PW4 is her mother. PWs 2 and 6 are her sisters and PW3 is her brother-in-law. PW5 is a relative of both the accused and the informant. These witnesses, *i.e.* PWs 1 to 6 are the only material witnesses of the prosecution. PWs 7, 11 and 12 were tendered by the prosecution and neither examined in-chief nor cross-examined. PW8 is a friend of the accused and he stated nothing incriminating against the accused persons. PW9 is a close neighbour of the accused and he was declared hostile by the prosecution and his previous statement recorded by I.O. has been marked as *Exbt.B*. PW16 is the Medical Officer who conducted postmortem examination over the dead body of deceased Shibani. Other witnesses are formal witnesses and there is nothing material in the evidence of other witnesses.

4.4. Prosecution also proved the FIR, seizure list and seized materials and the postmortem examination report, etc. in course of trial.

4.5. After closure of the prosecution evidence, by order dated 10.09.2008 learned Sessions Judge acquitted accused Sujit Debnath, Ranjit Debnath, Kajal Debnath, Sutapa Debnath and Sefali Debnath under Section 232 of CrPC. Thereafter, the accused-respondent Pradip Debnath was examined under Section 313 of CrPC and in his turn the accused declined to adduce any defence evidence. Defence case is nothing but a denial of the prosecution case.

4.6. Learned Sessions Judge at the conclusion of trial acquitted accused Pradip Debnath from the charges levelled against him and hence this appeal by the State appellant.

5. Learned counsel, Ms. Dhar has submitted that Shibani died an unnatural death on receipt of 100 percent burn injury in the house of the accused-respondents and there is evidence on record that Shibani was subjected to cruelty on demand of ₹10,000/- which could not be fulfilled by the father of the victim *i.e.* PW1 and while such evidence is on record the trial Court was supposed to punish the accused for the offence charged against him and the acquittal of the accused-respondent has caused great injustice, and therefore, the appellate Court should interfere. She has further

submitted that Shibani died an unnatural death within seven years of her marriage and the trial Court beyond the evidence on record has taken judicial notice of a marriage invitation card produced by the accused persons which was not proved by adducing any evidence and thereby wrongly discarded the prosecution evidence while all the material witnesses stated that the marriage was solemnized in the year 2000 and Shibani died on 26.08.2006, which was within seven years. It is also submitted by Ms. Dhar, learned counsel that the evidence of PW5 who is a most reliable witness shows that the accused-respondent and all other accused persons were present in the house when Shibani was burning but they did not take any step to put out the fire which suggests that they intended the death of Shibani. It is further submitted that it is immaterial whether the death was accidental or suicidal but since death has caused within seven years of marriage and there is evidence that she was subjected to cruelty on demand of dowry there is no escape from punishment.

6. Learned counsel, Mr. Bhattacharjee, on the contrary, has submitted that the trial court meticulously considered the evidence on record and arrived at a reasonable finding. Six accused persons were arrayed in the trial but five were acquitted under Section 232 of CrPC. The evidence on record cannot be splitted or appreciated separately for each of the accused persons. While five accused persons were already acquitted under Section 232 of CrPC, based on the same set of evidence the accused-respondent also

could not be punished by the trial Court and the decision was rightly taken. He has also submitted that except substantial and compelling reasons, the appellate Court should not interfere in the order of acquittal passed by the trial Court.

7. Let us first travel through the evidence on record.

7.1. FIR lodged by PW1 has been proved as *Exbt.1*. If we sift the statements/allegations made in the FIR we find the following allegations:

(i) Marriage of Shibani was solemnized with accused Pradip in the Bengali month of Falgun of the English calendar year 2000 and thereafter they lived and cohabited as husband and wife and a girl child also born who was aged 2½ years at that time.

(ii) After 2½ years of marriage all the accused persons named in the FIR used to inflict physical and mental assault on Shibani on different pretext.

(iii) Shibani got pregnant for seven months at that relevant point of time and the accused persons demanded ₹10,000/- through Shibani.

(iv) Five/six months ago(before the death of Shibani) the informant went to the shop of Pradip Debnath and Pradip demanded ₹10,000/- and he expressed his

inability to which Pradip told him that he knows how to realize the amount.

(v) He somehow managed ₹1,500/- and paid it to Pradip.

(vi) On 22.08.2006, he went to his daughter's house and saw the accused persons about to kill his daughter by '*dao*' and on seeing him they refrained from doing so but they abused her with filthy words.

7.2. In his deposition as PW1 he stated that he had given marriage of his daughter to Pradip Debnath in the year 2000 and his daughter Shibani lived peacefully with Pradip for a period of three years. His son-in-law demanded ₹10,000/- from him through his daughter in the year 2004. He could not pay the amount because of poverty. Accused threatened his daughter that he knew the way to realize the money. Thereafter, he paid ₹1,500/- to his son-in-law. In the year 2006 all the accused persons set fire to her daughter after pouring kerosene oil in their kitchen. On 22nd of that month he went to the house of the accused persons on account of *Manasa* puja and after reaching there he found that the accused persons had been torturing her daughter physically and on seeing him they stopped the torture. A girl child was born to Pradip and his daughter and his daughter was carrying seven months pregnancy at that time. Six months prior to the death of his daughter he went to the shop of his son-in-law and at that time his son-in-law

demanded ₹10,000/- and he expressed his inability to pay the amount. He has also stated that one Ratan Debnath(PW5) had seen the accident of commission of murder of his daughter and he narrated the story to him. He reported the incident to R.K. Pur P.S. and he proved the FIR.

In cross-examination he stated that prior to marriage of his daughter the accused used to reside in a joint mess with his father and brothers. His father had two dwelling houses, one at R.K. Pur town and they all used to stay in the house of the eastern bank of Dhani Sagar. After marriage of his daughter they used to live in the joint mess for a period of one year and thereafter they had shifted to the house situated at Poultry road. The father of the accused died while they had been residing in the Poultry Road. His eldest daughter used to reside in the Poultry Road. The husband of his another daughter used to reside at Rajnagar adjacent to Poultry Road. His son Maran Debnath died an unnatural death on account of burn injury.

He denied the suggestion that marriage of accused Pradip with his daughter was solemnized on 01.03.1999. He admitted that he did not mention in the *ejahar* or did not state to police that he had found the accused persons physically torturing her daughter on the day of *Manasa* Puja. He denied the suggestion that the accused persons did not demand ₹10,000/- and his daughter was not set to fire by the accused persons.

7.3. PW2 stated that deceased Shibani was her younger sister and the marriage of Shibani with accused Pradip was solemnized in the year 2000 and thereafter they lived and cohabited as husband and wife peacefully for about two and half years. The accused persons thereafter started torture on Shibani both mentally and physically. They demanded ₹10,000/- from her father. Since her father could not pay the amount Shibani was set to fire by pouring kerosene oil on her body and she died on 26.08.2006 in the kitchen of accused Pradip. On 25.08.2006 she met her sister and her sister told her mother in her presence that if her father failed to pay ₹10,000/- the accused will kill her. She saw the accused persons used to torture on the victim. Her father told her that the accused persons killed her sister as he could not pay ₹10,000/-. At the time of death her sister was carrying seven months pregnancy. The accused demanded ₹10,000/- from her father to give the loan and her father paid ₹1,500/- to accused Pradip. Her brother-in-law Ratan Debnath(PW5) who used to reside with her at Rajnagar had intimated her at first that the accused persons had killed her sister in the kitchen by pouring kerosene oil. She also stated that Ratan told her that all the accused persons were sitting in their respective dwelling huts while the body of the victim Shibani was burning. She was shouting and Ratan had tried to put out the fire.

In cross-examination she stated that she did not state to I.O. that the accused persons had demanded ₹10,000/- to her

father. She also did not state to I.O. that she saw the accused persons used to torture the victim. She also did not state to I.O. that her father had reported her that the accused persons killed her sister as he could not pay ₹10,000/- to them. She also admitted that she did not state to I.O. that her father had paid ₹1,500/- to accused Pradip. She did not state to I.O. that the accused persons had killed her sister Shibani in the kitchen by pouring kerosene oil on her body.

7.4. PW3 stated that deceased Shibani was his sister-in-law and Shibani was given in marriage with accused Pradip in the year 2000. For about two and half years Pradip and Shibani lived and cohabited peacefully. Accused Pradip demanded ₹10,000/- from his father-in-law but his father-in-law could not give the amount and he learnt it from his father-in-law. Accused Pradip threatened his father-in-law and thereafter his father-in-law paid ₹1,500/-. He came to know from his father-in-law that on 22.08.2006 his father-in-law found that all the accused persons were torturing Shibani. They came to know about the occurrence from their relative Ratan Debnath(PW5) that all the accused persons poured kerosene oil on the victim and set her to fire on 26.08.2006 at about 10.30/11.00 AM.

In cross-examination he denied the suggestion that the accused did not demand ₹10,000/- to his father-in-law and his father-in-law did not say anything to him. He also denied the

suggestion that his father-in-law did not pay ₹1,500/- to the accused.

7.5. PW4 in her deposition stated that the victim Shibani was her daughter and she was given in marriage with Pradip. She lived peacefully for about two and half years in the matrimonial home. All the accused persons killed her daughter as they could not pay ₹10,000/- to accused Pradip as per his demand. The victim came to her house and enquired about her father and said that an amount of ₹10,000/- was demanded by her husband and if the amount is not paid they will kill her. Her husband paid ₹1,500/- and on the next following day they came to learn that the accused persons killed her daughter. The victim was carrying seven months pregnancy at that time. She also stated that on the day of *Manasa* puja her husband went to the house of accused persons and after reaching there he had seen that all the accused persons were torturing Shibani physically.

In cross-examination she stated that accused Pradip and his brothers used to reside separately from three years before the death of her daughter. She denied the suggestion that her daughter did not visit her house and did not state about the demand of ₹10,000/- by accused Pradip. Her attention was drawn to her previous statement and it is recorded that there was no such statement.

7.6. PW5 in his deposition stated that on 26.08.2006 he was working as an employee in a shop of Iron Grill. The shop was situated in front of the house of accused Pradip Debnath. On that day, on hearing hue and cry he went to the house of accused Pradip and on reaching there he found that the body of Shibani Debnath was at a blaze. Thereafter, he threw a gunny bag upon her body. At that time all the accused persons were present in the house. Shibani was shifted to T.S. District Hospital by the Fire Service authority. He reported the entire matter to father and sisters of Shibani. He also stated that he gave statement to police and also to the Judicial Magistrate, First Class, Udaipur.

In cross-examination he stated that after seeing the incident on 26.08.2006 he did not leave Udaipur and was all along in his house at Rajnagar. The police officer interrogated him after about 15 days of the alleged incident. On the same day police officer recorded his statement. He came to his shop(working place) on the next following day also. He denied the suggestion that he found the I.O. in the house of the accused persons on the following day of the incident. He admitted that he stated to Magistrate that he, Arjun Bardhan and other people of the locality rushed to the place of occurrence on hearing the hue and cry. He further stated that he did not state to the Magistrate that accused Ranjit was not present in the house and he had gone there subsequently after hearing about the incident. His attention was drawn to his previous statement recorded by the Magistrate under Section 164 of CrPC

and that part of the statement was marked as *Exbt.A* subject to prove by the Magistrate. He denied the suggestion that accused Pradip, Ranjit and Sanjit were not present in the house when the accident had occurred. He, however, admitted that he came to the place of occurrence on hearing the hue and cry raised by the women present in the house. He denied the suggestion that he used to reside in the house of Jyoti Rani Debnath and did not stay in the house of Narayan Debnath. He also denied the suggestion that at the instance of the parents of the deceased he made false statement.

7.7. PW6 made the only statement that the victim was her younger sister and she was murdered by the accused persons.

8. Section 498A prescribes punishment for exercise of cruelty on the married woman by her husband or relative of the husband. *Explanation* to Section 498A defines cruelty which means—(a) any willful 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 and explanation (b) to Section 498A prescribes that 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.

9. It is the case of the prosecution that the deceased was subjected to cruelty on demand of an amount of ₹10,000/- which could not be paid by the father of the deceased and therefore she was subjected to harassment with a view to coerce her or her father to meet the unlawful demand.

10. PW1, the informant in the FIR stated that on 22.08.2006 in the morning he went to the house of the accused persons and found that the accused persons were about to assault Shibani with a *dao* and on seeing him they refrained from doing so but abused her with filthy words. But in his deposition before Court he stated that on the 22nd of that month he went to the house of accused persons on account of *Manasa* puja and after reaching there he found the accused persons had been torturing his daughter physically and on seeing him they stopped the torture. There is no consistency in both the statements of PW1. In cross-examination he admitted that he did not state to I.O. that he had seen the accused persons physically torturing his daughter. Except this statement of PW1 there is no other evidence of torture and/or harassment of the victim Shibani in the matrimonial home.

11. Section 304B prescribes punishment of dowry death. The provision reads as follows:

"[304B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances

within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

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

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

To prove the offence of dowry death the prosecution has to prove that the victim was subjected to cruelty or harassment by her husband or relative of the husband in connection with the demand of dowry. Mere demand of the amount will not be enough to prove the ingredients unless it is proved that the victim was subjected to cruelty or harassment on demand of dowry.

12. The presumption under Section 113B of the Evidence Act will be available to the prosecution only in the event the primary responsibility of proving the ingredients of the offence is established by the prosecution. In the present case, except the parents, sisters and brother-in-law of the deceased, none else uttered a single word that the deceased was subjected to cruelty in the matrimonial home. PWs 8 and 9 in their cross-examination

stated that the relation between the accused-respondent and deceased Shibani was cordial. PW8 stated that the accused with his wife visited his house and he also used to visit the house of the accused and the evidence of PW8 has not been shaken. PW9 was declared hostile by the prosecution. His evidence to that extent which is corroborated by the evidence of PW8 may be fairly accepted that the relation between the husband and wife was good. PW9 further stated that the deceased had been suffering from epilepsy but there was no other item of evidence to support that statement of PW9 who is a close neighbour of the accused and so we cannot put implicit reliance on that part of the statement of PW9.

13. The evidence of the close relative of the deceased in a case of dowry death or that of exercise of cruelty has to be closely scrutinized since such witnesses in natural course will have a tendency of exaggerating or adding facts. This aspect was considered by the apex Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***, reported in ***(1984) 4 SCC 116*** wherein the Court has observed that in cases of such nature the testimony of relative witnesses should be scanned with great care and caution. We may gainfully refer here para 48 of the judgment which reads thus:

"48. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements are to be

considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the tenth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it."

14. The evidence of PW1 that on 22nd of that month he went to the house of the accused persons on account of *Manasa* puja and reaching there he found the accused persons have been torturing the deceased physically and on seeing him they stopped the torture has not been corroborated even by his allegation made in the FIR. In the FIR he stated that he found the accused persons about to assault the deceased with *dao*. But in his deposition he stated that he found the accused persons torturing her physically. This statement what he has made in his deposition was not stated before I.O. and he was contradicted in cross-examination while he

admitted it. So the very basis of that statement of PW1 is not consistent and except that statement of PW1 there is no other evidence as to in what manner Shibani was tortured or harassed in the matrimonial home by the accused-respondent and other members of the family. Nothing stated by the witnesses about the act or omission and/or acts or deeds by which Shibani was subjected to torture. A mere omnibus statement that she was subjected to torture since the demand was not fulfilled cannot be accepted for the purpose of punishing the accused under Section 498A and 304B of IPC.

15. The Supreme Court in the case of ***Amar Singh v. State of Rajasthan*** reported in **(2010) 9 SCC 64** has considered this aspect very meticulously and in para 31 and 32 the Court held thus:

"31. The evidence of PW 5 (brother of the deceased) is that whenever the deceased used to come home she used to complain that her in-laws have been teasing her and they were demanding a scooter or Rs.25,000/- for a shop and that when the deceased came home one month prior to her death, she complained that her mother-in-law and all other in-laws used to torture her and taunt her that she did not bring anything, but PW 5 has not described the exact conduct of the mother-in-law and other in-laws on account of which the deceased felt tortured and taunted. On the other hand, the evidence of PW 4 is clear that Amar Singh used to taunt her that she has come from a hungry house. Thus, there was evidence in the case of Amar Singh about his exact conduct which caused harassment to the

deceased but there was no such evidence in the case of Jagdish and Gordhani.

32. A prosecution witness who merely uses the word "harassed" or "tortured" and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the court in cases under Section 498-A and 304-B IPC. For this reason, the High Court has taken a view that the charges against Jagdish and Gordhani have not been established beyond reasonable doubt and that their case is distinguishable from that of Amar Singh and that Jagdish and appear to have been implicated because they were members of Amar Singh's family."

Since there is no categorical statement of the witnesses about the manner in which the deceased was subjected to torture or tormentation in the matrimonial home on demand of ₹10,000/- as alleged, we are of considered opinion that the prosecution evidence fell short of the requirement of the penal provision for punishment of the accused either under Section 498A or Section 304B of IPC.

16. It is not disputed by the accused persons that the deceased died an unnatural death on receipt of 100 percent burn injuries. The incident occurred on 26.08.2006 at about 10.00/11.00 AM and she died on that day itself at about 1.40 PM. The incident occurred in the house of the accused and the plea of the accused is simple denial of the prosecution case. He has not come out with any explanation or evidence as to how the deceased was caught

with fire. Prosecution also failed to produce any evidence as to whether it was a case of suicide or homicide or a case of accident. So far the evidence of PW5 is concerned, hearing the cries he along with one Arjun Bardhan and some others rushed to the house of the accused and found Shibani with fire. He threw a gunny bag on her body and at that time all the accused persons were present in that house. Defence made the denial that the accused-respondent and other male persons were not in the house but the evidence of PW5 has not been shaken that all the male accused persons were also present in the house. They have not come with any explanation as to how Shibani was caught with fire. Though in the FIR the informant alleged that the accused persons sprinkled kerosene oil on the body of Shibani and set her to fire but in support thereof there is neither direct nor circumstantial evidence. Shibani was found with fire by PW5 in the house and he threw a gunny bag to put out fire. Thereafter with Fire Service vehicle PW10 took her to Udaipur hospital wherefrom she was shifted to G.B. Hospital and at G.B. Hospital she died.

17. Primary burden lies on the prosecution to prove as to what was the cause of death of the deceased. PW16 Dr. Pranab Choudhury conducted postmortem examination over the dead body and he simply opined that the cause of death was shock as a result of 100 percent burn injury. He has not given any opinion as to whether it was a homicidal or suicidal or accidental death. It is quite surprising that a young woman died an unnatural death on receipt

of 100 percent burn injury but neither her husband nor other inmates of the house came out with any definite story as to how she was caught with fire and she died. The accused-respondent in his examination under Section 313 of CrPC simply stated that he was not present in the house when the accident had occurred but according to the PW5 he was present in the house and we cannot brush aside the evidence of PW5. The burden of proving the case cannot be shifted to the shoulder of the accused and therefore in the absence of any evidence to that effect we are helpless as to what was the cause that Shibani was caught with fire as a result of which she died. The argument advanced by learned counsel, Ms. Dhar that it should be presumed that she was subjected to cruelty as a result of which she died an unnatural death cannot be accepted in the absence of clear and cogent evidence of that aspect. The conduct of the accused persons, no doubt, raises a strong suspicion, but it is a settled law that suspicion whatever strong cannot take the place of proof.

18. In a case of appeal against acquittal the appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law. Various expressions, such as, "*substantial and compelling reasons*", "*good and sufficient grounds*", "*very strong circumstances*",

"*distorted conclusions*", "*glaring mistakes*", etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of "*flourishes of language*" to emphasis the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion. An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

19. Here in the present case, except there is a general statement that she was subjected to cruelty since the demand of ₹10,000/- was not fulfilled, as already discussed hereinbefore, there is no definite evidence as to the manner in which she was subjected to cruelty. There is no other item of evidence that in any other manner she was wrongfully dealt by the accused persons in the matrimonial home. In the absence of such clear and cogent evidence we are of considered opinion that it is very difficult to

even draw a presumption that she has committed suicide because of any continuous maltreatment. It is also very difficult as to why she will go to commit suicide while she was carrying pregnancy of seven months and she had a kid of about two and half years old.

20. It is quite surprising that neither the prosecution nor the trial Judge attached any importance while recording the evidence of PW16. The prosecution simply got the postmortem report exhibited through PW16. It has not been recorded through the witness as to what he found at the time of postmortem examination. That is why we have observed that the trial Judge should take an active role at the time of recording evidence. The prosecutor also callously conducted the prosecution and did not attach any importance about the evidence of the Autopsy Surgeon in such a case of dowry death. On going through *Exbt.5 i.e.* the postmortem report we find that the smell of kerosene oil was present in the scalp hair and body. So the deceased received 100 percent burn injury due to fire after kerosene doused on her body. Prosecution did not divert investigation as to whether it was a case of murder. They have simply registered the case under Section 304B of IPC that it was a dowry death. Except PW5 other witnesses of the locality who went to the house of the accused persons after the incident also have not been examined by the prosecution. Though there appears to be a serious doubt about the death of the deceased because of 100 percent burn injury, in the absence of any cogent evidence thereof we find no scope to convert the order of

acquittal to an order of punishment while the similarly situated accused persons have been acquitted under Section 232 of CrPC and it was on the prayer of the prosecution. So with the same set of evidence we cannot take a divergent view about the allegation against the present accused-respondent.

21. Learned Sessions Judge by order dated 10.09.2008 acquitted five accused persons except the accused-respondent under Section 232 of CrPC. Order dated 10.09.2008 is quoted here as follows:

"Learned Public Prosecutor, Mr. Biplab Kanti Dutta, is present on behalf of the State.

All the accused persons, namely (1) Pradip Debnath, (2) Sanjit Debnath, (3) Ranjit Debnath, (4) Kajal Debnath and (5) Sutapa Gupta(Debnath), on bail, are present by filing their respective hazira.

The accused persons also file some documents by firisti. Keep it with the case records.

Heard both sides at length.

Learned P.P., Mr. Dutta verbally submits before the Court that except the accused Pradip debnath, there are no sufficient incriminating evidence against the other accused persons. He states that the accused persons namely (1) Ranjit Debnath, (2) Sanjit Debnath, (3) Smti. Kajal Debnath, and (4) Smti. Sutapa Gupta(Debnath) may be acquitted under Section 232 Cr.P.C.

Learned defence counsel, Mr. Naha also admits the said fact.

Considered. I am satisfied with the submission of the learned P.P.

Hence, the prayer of the prosecution is allowed.

All the accused persons except accused Pradip Debnath are hereby acquitted from the charge levelled against them.

Put up the case record on the next date for examination of the accused Pradip Debnath U/S 313 Cr.P.C.

To 24.09.2008 for examination of accused Pradip Debnath U/S 313 Cr.P.C.”

A bare reading of the above order makes it clear that learned P.P. mechanically made the prayer of acquitting the five accused persons under Section 232 of CrPC and the learned trial Judge conceded to the prayer of the learned P.P. and the defence counsel without going through the evidence on record.

22. Section 232 of CrPC reads as follows:

“232. Acquittal.—*If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.”*

This provision should be read together with Section 313 of CrPC. Section 313(1)(b) of CrPC reads as follows:

"313. Power to examine the accused.—*(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—*

.....
(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case"

23. The impugned order dated 10.09.2008 clearly reveals that the trial Judge ignored the provision of Sections 232 and 313(1)(b) of CrPC. As prescribed in Section 232 of CrPC the learned Sessions Judge was bound to examine the accused and then after hearing the prosecution and the defence if he was satisfied that there was no evidence, he would record an order of acquittal. In the present case, the learned Sessions Judge neither examined the accused nor considered the evidence and mechanically passed an order of acquittal of the five accused persons who were similarly situated with the accused-respondent. The prosecution, while made a prayer for acquittal of other accused persons on the same set of evidence, now approached this Court for punishment of the accused-respondent when he was acquitted by the trial Court. The stand of the prosecution, therefore, is highly deplorable and we are of considered opinion that it is against the principles of natural justice. We are of opinion that neither the prosecution was conducted properly nor the learned trial Judge acted in a proper manner while dealing with the case of a dowry death.

We are constrained to observe that the order of acquittal recorded under Section 232 of CrPC by the learned Sessions Judge, in this case, is not in accordance with law. So far the law prescribed under Section 232 of CrPC is concerned, after recording of evidence of prosecution is over, the learned Sessions Judge was bound to consider the evidence on record and then examine the accused and thereafter hear the prosecution and the defence. That examination of accused should be done in accordance with the law as prescribed in Section 313(1)(b) of CrPC. There must be memorandum of examination to afford opportunity to the accused to say whether he has got anything to submit about the prosecution lodged against him. This opportunity has not been afforded in this case. We are of the view that the trial Judge at the time of considering an acquittal under Section 232 of CrPC must consider the evidence on record and thereafter examine the accused and then after hearing the prosecution and defence shall record an order of acquittal under Section 232 of CrPC. There should not be an easy approach of just recording an order of acquittal saying one line that there is no evidence and hence the accused is acquitted.

24. We are further constrained to observe that PWs 7, 11 and 12 were brought in the witness box but were tendered by the prosecution and neither examined in-chief nor cross-examined. The Supreme Court in the case of ***Sukhwant Singh v. State of***

Punjab reported in **(1995) 3 SCC 367** has seriously criticized the tendering of witnesses. The Court has held that tendering of a witness for cross-examination without there being any examination-in-chief not permissible. It amounts to giving up of the witness. Recourse to such a practice was inconsistent with Section 138 of the Evidence Act. Tendering a witness for cross-examination is not relevant.

Law is, therefore, settled by the apex Court that whenever a witness is brought to the witness box he should be examined by the prosecution and there should not be taken an easy course of tendering the witness without examination. Neither the prosecution should indulge in such practice nor the Court should allow such tendering of witnesses.

25. In view of the discussions made above we find no substantial and compelling reasons to interfere with the judgment and order of acquittal recorded by the learned Sessions Judge in respect of accused-respondent Pradip Debnath and accordingly the appeal stands dismissed.

26. Registry is directed to circulate a copy of the judgment to all Judicial Officers of Tripura Judicial Service dealing with sessions cases.

27. Send back the L.C. records along with a copy of the judgment.

JUDGE

CHIEF JUSTICE