

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.261 of 2015

Arising Out of PS.Case No. -52 Year- 2010 Thana -BIRAUL District- DARBHANGA

Manjula Devi, wife of Shyam Jha, resident of village - Jagdishpur (Kahuwa), P.S. Biraul, District - Darbhanga

..... Appellant/s
Versus
The State of Bihar
..... Respondent/s
with

Criminal Appeal (SJ) No. 516 of 2015

Arising Out of PS.Case No. -52 Year- 2010 Thana -BIRAUL District- DARBHANGA

Guddu Jha, son of Shyam Jha, resident of village - Jagdishpur (Kahuwa), P.S. Biraul, District - Darbhanga

..... Appellant/s
Versus
The State of Bihar
..... Respondent/s

Appearance :
(In CR. APP (SJ) No.261 of 2015)
For the Appellant/s : Mr. Ramchandra Sahay-Advocate
For the Respondent/s : Mr. Bipin Kumar-A.P.P.
(In CR. APP (SJ) No.516 of 2015)
For the Appellant/s : Mr. Ramchandra Sahay-Advocate
For the Respondent/s : Mr. Abhay Kumar-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 2-03-2017

Cr. Appeal (S.J.) No.261 of 2015 wherein Manjula Devi is the appellant while in Cr. Appeal (S.J.) No.516 of 2015 wherein Guddu Jha is the appellant commonly originate against the judgment of conviction dated 20.11.2014 and order of sentence dated



22.11.2014 passed by the Additional Sessions Judge-1st, Benipur, Darbhanga in Sessions Trial No.422 of 2010 as well as Sessions Trial No.241 of 2011 convicting both the appellants for an offence punishable under Section 304B/34 of the I.P.C. and sentenced each of them to undergo rigorous imprisonment for 10 years with a further direction of set off against the period having undergone during trial in terms of Section 428 of the Cr.P.C. whereupon have been heard together and are being disposed of by a common judgment.

2. PW-6, Shiv Narayan Chaudhary, father of the deceased Kiran Devi had recorded his fard-bayan on 12.04.2010 at about 6.00 p.m. at Primary Health Centre, Biraul alleging inter alia that on the same day at about 11.00 a.m. while he was at his village, one of the villagers was telephoned from Kahua, Jagdishpur disclosing the fact that daughter of Shiv Narayan Chaudhary died. He was immediately informed whereupon rushed to the place of his daughter Kiran Devi lying at village-Kahua Jagdishpur where he found outer door bolted from outside. After opening of the door, they gone inside the house and in Eastern room, his daughter Kiran Devi was found lying on the ground by the side of a bed in burnt condition. On query, she disclosed that her husband Guddu Jha has sprinkled kerosene oil and during course thereof, her mother-in-law and Nanand Leela Devi caught hold and further, assaulted. Then thereafter, her



mother-in-law lighted match and threw it on her body. At that very time, Bhulla Jha, Shyam Jha, Bhagwan Jha were provoking that she be eliminated and further, they are ready to face consequence. The motive for occurrence has been disclosed as about six years ago at the time of marriage of Kiran Devi, Rs.30,000/- remained due in lieu of dowry and for that, Guddu Jha, Shyam Jha, wife of Shyam Jha, daughter of Shyam Jha were persistently demanding which, on account of poverty, he found unable to pay and for that, Bhulla Jha and Bhagwan Jha scolded him. Furthermore, deceased Kiran Devi was regularly tortured in order to facilitate early procurement of the same. It has also been disclosed that deceased had begotten two siblings, Nitu Kumari aged about 3 years and a son aged about six months.

3. On the basis of the aforesaid fard-bayan, Biraul P. S. Case No.52 of 2010 was registered whereupon investigation commenced and concluded by way of submission of chargesheet in two stages as per presence of respective accused whereupon two separate Sessions Trial, as indicated above, were registered which during course of trial, got amalgamated and concluded whereunder appellants found guilty and convicted while remaining got acquitted whereupon there two appeals arise, the subject matter of adjudication.

4. The defence, as is evident from mode of cross-



examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial of the occurrence. Furthermore, it has also been pleaded that there was congenial, harmonious relationship prevailing amongst the appellants as well as deceased and so, there was no occasion for the appellants to advance demand of Rs.30,000/-, which never oriented right from negotiation. Apart from this, it has also been pleaded that the reason best known to the deceased, she committed suicide by setting fire after locking the door from inside while her husband Guddu (appellant) had gone to visit Darbhanga for his treatment, father-in-law (since acquitted) had gone to participate in a Panchayati, mother-in-law (appellant) had gone to the place of DW-1 Ghurni Devi along with a kid and after seeing smoke coming out from the house, the villagers rushed to rescue the deceased and for that, after opening door, they gone inside, but till then, deceased was already dead. On that very score, one DW has also been examined.

5. In order to substantiate its case, prosecution had examined altogether ten (10) P.Ws. out of whom, PW-1 Dinanand Mishra, PW-2 Ram Kumar Yadav, PW-3 Binod Kumar Mishra, PW-4 Dr. Ramanand Chaudhary, PW-5 Hari Narayan Chaudhary, PW-6 Shiv Narayan Chaudhary, PW-7 Bindeshwar Chaudhary, PW-8 Kedar Mishra, PW-9 Daisundar Devi and PW-10 Ahmad Hussain Khan, the I.O. The prosecution had also exhibited the documents as Exhibit-1



post mortem report, Exhibit-2 signature of PW-5 on inquest report, Exhibit-2/1 inquest report, Exhibit-3 fard-bayan, Exhibit-4 case diary Para-1 to 45. Though, defence had not exhibited any kind of document, but as pointed out, had examined one DW namely Ghurni Devi.

6. Whenever there happens to be prosecution under Section 304B of the I.P.C., the mandate of law requires the prosecution to substantiate:-

(a) That the deceased died on account of burnt or bodily injury otherwise than under a normal circumstance.

(b) The aforesaid death had occurred within seven years of marriage.

(c) Deceased was subjected to cruelty or harassment by her husband or any relative of the husband.

(d) She has been treated with cruelty or harassment for or in connection with demand of dowry.

(e) Such cruelty or harassment is shown to have meted out to the woman soon before her death.

The only confusion relates with soon before her death and for that, it has consistently been held that no straight jacket formula could be prescribed there for and will vary as per facts of individual case. In case, there happens to be consistent and conclusive evidence of the prosecution on that very score, then in that event,



there would be presumption of dowry death in terms of Section 113B of the Evidence Act even then, the accused will have an opportunity to rebut the aforesaid presumption being rebuttable.

7. In *Sher Singh alias Partapa v. State of Haryana reported in 2015 CRI.L.J. 1118* wherein the Hon'ble Apex Court had extempore discussed the aim and ambition of the bill and further, held:-

“10. It is already empirically evident that the prosecution, ubiquitously and in dereliction of duty, in the case of an abnormal death if a young bride confines its charges to [Section 304B](#) because the obligation to provide proof becomes least burdensome for it; this is the significance that attaches to a deeming provision. But, in any death other than in normal circumstances, we see no justification for not citing either [Section 302](#) or [Section 306](#), as the circumstances of the case call for. Otherwise, the death would logically fall in the category of an accidental one. It is not sufficient to include only [Section 498A](#) as the punishment is relatively light. Homicidal death is chargeable and punishable under [Sections 302](#) and [304B](#) if circumstances prevail triggering these provisions.

11. Some doubts remain on the aspect of



presumption of innocence, deemed culpability and burden of proof. One of our Learned Brothers has in [Pathan Hussain Basha v. State of Andhra Pradesh](#) (2012) 8 SCC 594, after extensively extracting from the previous judgment authored by him (but without indicating so) expressed two opinions - (a) that [Article 20](#) of the Constitution of India contains a presumption of innocence in favour of a suspect and, (b) that the concept of deeming fiction is hardly applicable to criminal jurisprudence. The logical consequence of both these conclusions would lead to the striking down of [Section 8A](#) of the Dowry Act, [Section 113B](#) of the Evidence Act, and possibly [Section 304B](#) of the IPC, but neither decision does so. So far as the first conclusion is concerned, suffice it to reproduce [Article 20](#) of the Constitution:

20. Protection in respect of conviction for offences.-

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for



the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Even though there may not be any Constitutional protection to the concept of presumption of innocence, this is so deeply ingrained in all Common Law legal systems so as to render it ineradicable even in India, such that the departure or deviation from this presumption demands statutory sanction. This is what the trilogy of dowry legislation has endeavoured to ordain.

12. In our opinion, it is beyond cavil that where the same word is used in a section and/or in sundry segments of a statute, it should be attributed the same meaning, unless there are compelling reasons to do otherwise. The obverse is where different words are employed in close proximity, or in the same section, or in the same enactment, the assumption must be that the legislature intended them to depict disparate situations, and delineate dissimilar and diverse ramifications. Ergo, ordinarily Parliament could not have proposed to ordain that the prosecution should "prove" the existence of a vital sequence of facts, despite having employed the word "shown" in [Section 304B](#). The



question is whether these two words can be construed as synonymous. It seems to us that if the prosecution is required to prove, which always means beyond reasonable doubt, that a dowry death has been committed, there is a risk that the purpose postulated in the provision may be reduced to a cipher. This method of statutory interpretation has consistently been disapproved and deprecated except in exceptional instances where the syntax permits reading down or reading up of some words of the subject provisions.

13. In Section 113A of the Evidence Act Parliament has, in the case of a wife's suicide, "presumed" the guilt of the husband and the members of his family. Significantly, in [Section 113B](#) which pointedly refers to dowry deaths, Parliament has again employed the word "presume". However, in substantially similar circumstances, in the event of a wife's unnatural death, Parliament has in [Section 304B](#) "deemed" the guilt of the husband and the members of his family. The Concise Oxford Dictionary defines the word "presume" as: supposed to be true, take for granted; whereas "deem" as: regard, consider; and whereas "show" as: point out and prove. The Black's Law



Dictionary (5th Edition) defines the word "show" as- to make apparent or clear by the evidence, to prove; "deemed" as- to hold, consider, adjudge, believe, condemn, determine, construed as if true; "presume" as- to believe or accept on probable evidence; and "Presumption", in Black's, "is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted." The Concise Dictionary of Law, Oxford Paperbacks has this comprehensive yet succinct definition of burden of proof which is worthy of reproduction:

"Burden of Proof: The duty of a party to litigation to prove a fact or facts in issue. Generally the burden of proof falls upon the party who substantially asserts the truth of a particular fact (the prosecution or the plaintiff). A distinction is drawn between the persuasive (or legal) burden, which is carried by the party who as a matter of law will lose the case if he fails to prove the fact in issue; and the evidential burden (burden of adducing evidence or burden of going forward), which is the duty of showing that there is sufficient evidence to raise an issue fit for the consideration of the trier of fact as to the existence or non-



existence of a fact in issue. The normal rule is that a defendant is presumed to be innocent until he is proved guilty; it is therefore the duty of the prosecution to prove its case by establishing both the actus reus of the crime and the mens rea. It must first satisfy the evidential burden to show that its allegations have something to support them. If it cannot satisfy this burden, the defence may submit or the judge may direct that there is no case to answer, and the judge must direct the jury to acquit. The prosecution may sometimes rely on presumptions of fact to satisfy the evidential burden of proof (e.g. the fact that a woman was subjected to violence during sexual intercourse will normally raise a presumption to support a charge of rape and prove that she did not consent). If, however, the prosecution has established a basis for its case, it must then continue to satisfy the persuasive burden by proving its case beyond reasonable doubt (see proof beyond reasonable doubt). It is the duty of the judge to tell the jury clearly that the prosecution must prove its case and that it must prove it beyond reasonable doubt; if he does not give this clear direction, the defendant is entitled to be acquitted.

There are some exceptions to the normal rule that



the burden of proof is upon the prosecution. The main exceptions are as follows. (1) When the defendant admits the elements of the crime (the actus reus and mens rea) but pleads a special defence, the evidential burden is upon him to prove his defence. This may occur, the example, in a prosecution for murder in which the defendant raises a defence of self-defence. (2) When the defendant pleads automatism, the evidential burden is upon him. (3) When the defendant pleads insanity, both the evidential and persuasive burden rest upon him. In this case, however, it is sufficient if he proves his case on a balance of probabilities (i.e. he must persuade the jury that it is more likely that he is telling the truth than not). (4) In some cases statute expressly places a persuasive burden on the defendant; for example, a person who carries an offensive weapon in public is guilty of an offence unless he proves that he had lawful authority or a reasonable excuse for carrying it".

14. As is already noted above, [Section 113B](#) of the Evidence Act and [Section 304B](#) of the IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the



word 'deemed' in [Section 304B](#) to distinguish this provision from the others. In actuality, however, it is well nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word 'shown' is used as synonymous to 'prove' and the word 'presume' as freely interchangeable with the word 'deemed'. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word 'deem' to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in [State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory](#) AIR 1953 SC 333 and [State of Tamil Nadu v. Arooran Sugars Limited](#) (1997) 1 SCC 326, requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word 'deemed' so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence



to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word 'shown' in [Section 304B](#) of the IPC as to, in fact, connote 'prove'. In other words, it is for the prosecution to prove that a 'dowry death' has occurred, namely, (i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured, (ii) within seven years of a marriage, (iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband, (iv) in connection with any demand for dowry and (v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry. We are aware that the word 'soon' finds place in [Section 304B](#); but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under [Section 304B](#) or the suicide under [Section 306](#) of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by



preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word 'deemed' was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of [Section 101](#) of the Evidence Act. The purpose of [Section 113B](#) of the Evidence Act and [Section 304B](#) of the IPC, in our opinion, is to counter what is commonly encountered - the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in Court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to Common Law systems, and beyond the contemplation of the [Cr.P.C.](#)



15. *The width and amplitude of a provision deeming the guilt of a person in a legal system founded on a Constitution needs to be briefly reflected on. The Constitution is the grundnorm on which the legal framework has to be erected and its plinth cannot be weakened for fear of the entire structure falling to the ground. If the Constitution expressly affirms or prohibits particular state of affairs, all statutory provisions which are incongruent thereto must be held as ultra vires and, therefore, must not be adhered to. We have already noted that [Article 20](#) of our Constitution while not affirming the presumption of innocence does not prohibit it, thereby, leaving it to Parliament to ignore it whenever found by it to be necessary or expedient. A percutaneous scrutiny reveals that some legal principles such as presumption of innocence can be found across a much wider legal system, ubiquitously in the Common Law system, and restrictively in the Civil Law system. It seems to us that the presumption of innocence is one such legal principle which strides the legal framework of several countries owing allegiance to the Common Law; even International Law bestows its imprimatur thereto. [Article 11.1](#) of the Universal Declaration of Human Rights, 1948 states -*



"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

Article 14(3)(g) of the International Covenant on Civil and Political Rights, 1966, assures as a minimum guarantee that everyone has a right not to be compelled to testify against himself or to confess guilt. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, firstly, promises the right to a fair trial and secondly, assures that anyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. We may immediately emphasise that the tenet of presumed innocence will always give way to explicit legislation to the contrary. The presumption of innocence has also been recognised in certain circumstances to constitute a basic human right. Parliament, however, has been tasked with the responsibility of locating myriad competing, if not conflicting, societal interests. It is quite apparent that troubled by the exponential increase in the incidents of bride burning, Parliament thought it prudent, expedient and imperative to shift the burden of proof in contradistinction to the onus of



*proof on to the husband and his relatives in the cases where it has been shown that a dowry death has occurred. The inroad into or dilution of the presumption of innocence of an accused has, even de hors statutory sanction, been recognised by Courts in those cases where death occurs in a home where only the other spouse is present; as also where an individual is last seen with the deceased. The deeming provision in [Section 304B](#) is, therefore, neither a novelty in nor an anathema to our criminal law jurisprudence.[See *Mir Mohammad Omar and Subramaniam v. State of Tamil Nadu* (2009) 14 SCC 415.*

*16. It has already been pointed out that both in *Pathan Hussain Basha* as well as in *Ashok Kumar v. State of Haryana* 2010 (12) SCC 350, authored by our same learned Brother, the use of word "shown" in [Section 304B](#) has palpably not been given due weightage inasmuch as it has been freely substituted by the word "proved". To the contrary in *Nallam Veera Stayanandam v. Public Prosecutor* 2004 (10) SCC 769, it has been opined that "it is for the defence in this case to satisfy the Court that irrespective of the prosecution case in regard to dowry demand and harassment, the death of the*



deceased has not occurred because of that and that the same resulted from a cause totally alien to such dowry demand or harassment.

17. Keeping in perspective that Parliament has employed the amorphous pronoun/noun "it" (which we think should be construed as an allusion to the prosecution), followed by the word "shown" in [Section 304B](#), the proper manner of interpreting the Section is that "shown" has to be read up to mean "prove" and the word "deemed" has to be read down to mean "presumed". Neither life nor liberty can be emasculated without providing the individual an opportunity to disclose extenuating or exonerating circumstances. It was for this reason that this Court struck down the mandatory death sentence in [Section 303](#) IPC in its stellar decision in [Mithu vs. State of Punjab](#), AIR 1983 SC 473. Therefore, the burden of proof weighs on the husband to prove his innocence by dislodging his deemed culpability, and that this has to be preceded only by the prosecution proving the presence of three factors, viz. (i) the death of a woman in abnormal circumstances (ii) within seven years of her marriage, and (iii) and that the death had a live link with cruelty connected with any demand of



dowry. The other facet is that the husband has indeed a heavy burden cast on his shoulders in that his deemed culpability would have to be displaced and overturned beyond reasonable doubt. This emerges clearly as the manner in which Parliament sought to combat the scourge and evil of rampant bride burning or dowry deaths, to which manner we unreservedly subscribe. In order to avoid prolixity we shall record that our understanding of the law finds support in an extremely extensive and erudite judgment of this Court in [P.N. Krishna Lal v. Government of Kerala](#), 1995 Supp (2) SCC 187, in which decisions spanning the globe have been mentioned and discussed. It is also important to highlight that [Section 304B](#) does not require the accused to give evidence against himself but casts the onerous burden to dislodge his deemed guilt beyond reasonable doubt. In our opinion, it would not be appropriate to lessen the husband's onus to that of preponderance of probability as that would annihilate the deemed guilt expressed in [Section 304B](#), and such a curial interpretation would defeat and neutralise the intentions and purposes of Parliament. A scenario which readily comes to mind is where dowry demands have indubitably been made by the accused husband, where in an



agitated state of mind, the wife had decided to leave her matrimonial home, and where while travelling by bus to her parents' home she sustained fatal burn injuries in an accident/collision which that bus encountered. Surely, if the husband proved that he played no role whatsoever in the accident, he could not be deemed to have caused his wife's death. It needs to be immediately clarified that if the wife had taken her life by jumping in front of a bus or before a train, the husband would have no defence. Examples can be legion, and hence we shall abjure from going any further. All that needs to be said is that if the husband proves facts which portray, beyond reasonable doubt, that he could not have caused the death of his wife by burns or bodily injury or not involved in any manner in her death in abnormal circumstances, he would not be culpable under [Section 304B](#)."

8. This case, as stated hereinabove, has some sort of peculiarity in the background of examination of DW, who during course of her evidence admitted death of deceased by fire, though suicidal in nature, however, proper appreciation will be at the relevant stage of judgment, save and except acknowledging that whenever defence witness is examined, then in that event, the divulgence of fact



coming out from his evidence can go against accused as has been held by the Apex Court in *Ashok Kumar vs. State of Haryana reported in (2010) 12 SCC 350*.

9. From the evidence of DW-1, it is apparent that though she had not disclosed the time span over marriage, but had admitted that deceased died of burnt at her sasural and for that, she explained it as suicide. In the aforesaid background, when the evidence of PW-4 Dr. Ramanand Chaudhary is taken up, it is apparent that deceased died of burnt injury. He further perceived following ante mortem injuries:-

Scalp, eyebrow and pubic hairs were singed. Kerosene oil like smell perceived, in the smell of the body of deceased. Dermoepidermat burn wound was seen over the face, neck, front and back portion of trunk. Upper limbs, both lower limbs including both sole of feets and genetalia. Black soots were seen over burnt portion of the body.

On dissection-The mucosa of respiratory passage was congested, All internal organs in general liver, spleen and both kidneys were found congested. Both lungs were congested. Right chamber of heart was full and left empty. Urinary bladder was empty, uterus was non-pregnant. Stomach was empty. The brain and its meninges was congested.

Opinion- The above noted burn injuries were ante mortem in nature. Death resulted from hypovolemic shock, due to



above mentioned injuries caused by flame fire. Time elapsed since death was 18 to 24 Hrs. from the time of P. M. Examination.

And further, kerosene oil happens to be source of ignition, therefore, death by burnt is found out of controversy.

10. With regard to other ingredients, the time span should be within seven years of marriage. It is apparent that right from fard-bayan, there happens to be disclosure at the end of the informant, PW-6, father of deceased that death occurred within six years of her marriage and is found intact even during course of evidence which PW-5 in Para-4 of his examination-in-chief had reiterated and stood firm during course of cross-examination at Para-11, apart from being substantiated by other PWs. Therefore, this issue also found duly proved.

11. Now, the cumulative aspect happens to be regarding demand of dowry and further, subject of cruelty or harassment to the deceased soon before her death. On the above score, two kinds of evidence have been adduced. The first one relates with oral dying declaration having made by the deceased and the second one direct evidence by the PWs on this score.

12. Now, coming to reliability of oral dying declaration, it is evident that all the material witnesses have stated that when they reached at the house of deceased, the main door was found closed



from outside, whereupon was opened. During said course, heard sound of groaning of deceased whereupon they gone near her, enquired whereupon deceased disclosed that in the background of persistent demand of dowry appertaining to Rs.30,000/-, which remained due, the husband sprinkled kerosene oil and then, mother-in-law set fire, and at that very time, Bhulla and Bhagwan enticed them. During cross-examination, as is evident, PW-1 was not all cross-examined on the score whether deceased was dead since before their arrival, or deceased was not at all in a position to make any kind of disclosure. However, from Para-5, he had stated that he came to know on the disclosure having made before him. PW-2, in likewise manner, also not been cross-examined on the physical mental condition of the deceased as well as she was dead since before their arrival, or was not in a position to make any statement. PW-3 also not been cross-examined to that effect. However, at Para-16, he had stated with regard to physical condition of the deceased on their arrival. PW-5, under Para-13, had stated regarding physical condition of the deceased whom they had seen after entrance in the house, but again, defence did not dare to test his status over dying declaration. PW-6 also not specifically been cross-examined and in similarity, PW-7 and PW-8, have also been cross-examined. Furthermore, as is evident that by way of cross-examination, the defence drew attention of each of the



PW on substantial part of their evidence, but the same has not been confronted to PW-10, the I.O. and that being so, it could very well be said that no material development have been found in the evidence of each PWs. Apart from this, as stated above, PW-4, doctor has not been cross-examined to suggest that there was no possibility of deceased being in position to make dying declaration.

13. Coming on the score of admissibility, acceptability of oral dying declaration that has been subject of minute scrutiny in ***Vijay Pal vs. State (GNCT) of Delhi reported in 2015 CRI.L.J. 2041***, it has been held:-

“15. The submission of the learned counsel for the appellant is that the oral dying declaration lacks intrinsic truth and it does not deserve acceptance. At this juncture we think it appropriate to refer to certain authorities how an oral dying declaration is to be scrutinized.

16. In the case of [Laxman v. State of Maharashtra](#)[(2002) 6 SCC 710], the Constitution Bench has held thus:

"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 and definite."

17. The aforesaid judgment makes it absolutely clear that the 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 communication is positive and definite. There cannot be any cavil over the proposition that a dying declaration cannot be mechanically relied upon. In fact, it is the duty of the Court to examine a dying declaration with studied scrutiny to find out whether the same is voluntary, truthful and made in a conscious state of mind and further it is without any influence.

18. At this juncture, we may quote a passage from [Babulal v. State of M.P.](#)[(2003) 12 SCC 490] wherein the value of dying declaration in evidence has been stated:-



"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."

19. Dealing with the oral dying declaration, a two-Judge Bench in [Prakash V. State of M.P.](#)[(1992) 4 SCC 225] 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 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."

20. Thus, 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, PW-1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the appellant that he has been falsely implicated because his



money was deposited with the in-laws and they were not inclined to return, does not also really breathe the truth, for there is even no suggestion to that effect.

21. It is contended by the learned counsel for the appellant when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in [Mafabhai Nagarbhai Raval v. State of Gujarat](#)[(1992) 4 SCC 69] wherein it has been held a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial Court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

22. In [State of Madhya Pradesh v. Dal Singh and Others](#)[(2013)14 SCC 159], a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.”

14. At the present juncture, deficiency persisting on



record, though not raised on behalf of appellants, have been perceived which relates with manner of recording of statement of appellants under Section 313 Cr.P.C. From plain reading of the same, it is evident that learned trial Court confronted the incriminating circumstances in generic way, however failed to confront with the event of dying declaration. However, the impact of such omission on trial, has been taken into consideration by the Apex Court in ***Nar Singh vs. State of Haryana reported in 2015 CRI.L.J. 576***, whereunder it has been held:-

“16. Undoubtedly, the importance of a statement under Section 313 Cr.P.C., insofar as the accused is concerned, can hardly be minimised. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being put against him so that he can give a proper explanation to meet that case. If an objection as to Section 313 Cr.P.C. statement is taken at the earliest stage, the Court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 Cr.P.C. statement is raised in the appellate court, then difficulty arises for the prosecution as well as the accused. When the trial court is required to act in



accordance with the mandatory provisions of Section 313 Cr.P.C., failure on the part of the trial court to comply with the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the Court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Insofar as non-compliance of mandatory provisions of Section 313 Cr.P.C., it is an error essentially committed by the learned Sessions Judge. Since justice suffers in the hands of the Court, the same has to be corrected or rectified in the appeal.

*17. So far as Section 313 Cr.P.C. is concerned, undoubtedly, the attention of the accused must specifically be brought to inculcable pieces of evidence to give him an opportunity to offer an explanation, if he chooses to do so. A three-Judge Bench of this Court in **Wasim Khan v. The State of Uttar Pradesh**, AIR 1956 SC 400; and **Bhoor Singh & Anr. v. State of Punjab**, AIR 1974 SC 1256 held that every error or omission in compliance of the provisions of Section 342 of the old Cr.P.C. does not necessarily vitiate trial. The accused must show that some prejudice has been*



caused or was likely to have been caused to him.

18. *Observing that omission to put any material circumstance to the accused does not ipso facto vitiate the trial and that the accused must show prejudice and that miscarriage of justice had been sustained by him, this Court in **Santosh Kumar Singh v. State through CBI, 2010(4) R.C.R.(Criminal) 593 : 2010(5) Recent Apex Judgments (R.A.J.) 518 : (2010) 9 SCC 747 (Para 92)**, has held as under:*

"... the facts of each case have to be examined but the broad principle is that all incriminating material circumstances must be put to an accused while recording his statement under Section 313 of the Code, but if any material circumstance has been left out that would not ipso facto result in the exclusion of that evidence from consideration unless it could further be shown by the accused that prejudice and miscarriage of justice had been sustained by him..."

19. *In **Paramjeet Singh alias Pamma v. State of Uttarakhand** (supra), this Court has held as under:-*



"Thus, it is evident from the above that the provisions of Section 313 Cr.P.C. make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead, he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of any inadvertent omission on the part of the court to question the accused on an incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court."

20. The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance of Section 313 Cr.P.C. has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under Section 313 Cr.P.C., it cannot be inferred that any prejudice had been



caused to the accused, even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that accused has suffered some disability or detriment in relation to the safeguard given to him under Section 313 Cr.P.C. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice. Facts of each case have to be examined to determine whether actually any prejudice has been caused to the appellant due to omission of some incriminating circumstances being put to the accused.

*21. We may refer to few judgments of this Court where this Court has held that omission to put the question under Section 313 Cr.P.C. has caused prejudice to the accused vitiating the conviction. In **State of Punjab v. Hari Singh & Ors. (2009) 4 SCC 200**, question regarding conscious possession of narcotics was not put to the accused when he was examined under Section 313 Cr.P.C. Finding that question relating to conscious possession of*



*contraband was not put to the accused, this Court held that the effect of such omission vitally affected the prosecution case and this Court affirmed the acquittal. In **Kuldip Singh & Ors. v. State of Delhi** 2004(1) R.C.R.(Criminal) 292 : (2003) 12 SCC 528, this Court held that when important incriminating circumstance was not put to the accused during his examination under Section 313 Cr.P.C., prosecution cannot place reliance on the said piece of evidence.*

22. We may also refer to other set of decisions where in the facts and circumstances of the case, this Court held that no prejudice or miscarriage of justice has been occasioned to the accused. In **Santosh Kumar Singh v. State thr. CBI** (*supra*), it was held that on the core issues pertaining to the helmet and the ligature marks on the neck which were put to the doctor, the defence counsel had raised comprehensive arguments before the trial court and also before the High Court and the defence was, therefore, alive to the circumstances against the appellant and that no prejudice or miscarriage of justice had been occasioned. In **Alister Anthony Pareira v. State of Maharashtra** 2012(1) R.C.R.(Criminal) 524 : 2012(1) Recent Apex Judgments 43 : (2012) 2 SCC 648, in the



facts and circumstances, it was held that by not putting to the appellant expressly the chemical analyser's report and the evidence of the doctor, no prejudice can be said to have been caused to the appellant and he had full opportunity to say what he wanted to say with regard to the prosecution evidence and that the High Court rightly rejected the contention of the appellant-accused in that regard.

23. When such objection as to omission to put the question under Section 313 Cr.P.C. is raised by the accused in the appellate court and prejudice is also shown to have been caused to the accused, then what are the courses available to the appellate court? The appellate court may examine the convict or call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him under Section 313 Cr.P.C. and the said answer can be taken into consideration.

24. In Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra (1973) 2 SCC 793, this Court considered the fallout of the omission to put a question to the accused on vital circumstance appearing against him and this Court has held that the appellate court can question the counsel for the



accused as regards the circumstance omitted to be put to the accused and in para 16 it was held as under:-

".... It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate Court any plausible or reasonable explanation of such circumstances, the Court may assume that



no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, Cr.P.C., the omission has not been shown to have caused prejudice to the accused...." (underlining added)

25. The same view was reiterated by this Court in ***State (Delhi Administration) v. Dharampal, 2001(4) R.C.R.(Criminal) 550 : (2001) 10 SCC 372***, wherein this Court has held as under:-

"Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate Court can always make good that lapse by calling upon the



counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him.

This being the law, in our view, both the Sessions Judge and the High Court were wrong in concluding that the omission to put the contents of the certificate of the Director, Central Food Laboratory, could only result in the accused being acquitted. The accused had to show that some prejudice was caused to him by the report not being put to him. Even otherwise, it was the duty of the Sessions Judge and/or the High Court, if they found that some vital circumstance had not been put to the accused, to put those questions to the counsel for the accused and get the answers of the accused. If the accused could not give any plausible or reasonable explanation, it would have to be assumed that there was no explanation. Both the Sessions Judge and the High Court have overlooked this position of law and failed to perform their duties and thereby wrongly acquitted the accused."



26. This Court has thus widened the scope of the provisions concerning the examination of the accused after closing prosecution evidence and the explanation offered by the counsel of the accused at the appeal stage was held to be a sufficient substitute for the answers given by the accused himself.

27. The point then arising for our consideration is, if all relevant questions were not put to accused by the trial court as mandated under Section 313 Cr.P.C. and where the accused has also shown that prejudice has been caused to him or where prejudice is implicit, whether the appellate court is having the power to remand the case for re-decision from the stage of recording of statement under Section 313 Cr.P.C. Section 386 Cr.P.C. deals with power of the appellate court. As per sub-clause (b) (i) of Section 386 Cr.P.C., the appellate court is having power to order retrial of the case by a court of competent jurisdiction subordinate to such appellate court. Hence, if all the relevant questions were not put to accused by the trial court and when the accused has shown that prejudice was caused to him, the appellate court is having power to remand the case to examine the accused again under Section 313 Cr.P.C. and may direct



remanding the case again for re-trial of the case from that stage of recording of statement under Section 313 Cr.P.C. and the same cannot be said to be amounting to filling up lacuna in the prosecution case.

28. *In Asraf Ali v. State of Assam 2008(3) R.C.R.(Criminal) 835 : 2008(4) Recent Apex Judgments (R.A.J.) 570 : (2008) 16 SCC 328, this Court has examined the scope and object of examination of accused under Section 313 Cr.P.C. and in para (24) it was observed that in certain cases when there is perfunctory examination under Section 313 of the Code, the matter could be remitted to the trial court with a direction to retry from the stage at which the prosecution was closed.*

29. *In Ganeshmal Jashraj v. Government of Gujarat & Anr., (1980) 1 SCC 363, after closure of evidence of the prosecution and examination of accused under Section 313 Cr.P.C. was completed, the accused admitted his guilt presumably as a result of plea bargaining and the accused was convicted. Pointing out that the approach of the trial court was influenced by the admission of guilt made by the accused and that conviction of the accused cannot be sustained, this Court has remanded case to trial court to proceed afresh from*



the stage of examination under Section 313 Cr.P.C.

30. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under :-

(i) Whenever a plea of non-compliance of Section 313 Cr.P.C. is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer;

(ii) In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

(iii) If the appellate court is of the opinion that non-compliance with the provisions of



Section 313 Cr.P.C. has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 Cr.P.C. and the trial Judge may be directed to examine the accused afresh and defence witness if any and dispose of the matter afresh;

(iv) The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.”

Now, coming to the present case, it is apparent that neither this point was raised at the end of appellants during course of argument nor been able to show what kind of prejudice they faced on account of such omission. Moreover, the appellants, as faced the trial was very much aware with the nature of evidence having been



adduced on behalf of prosecution against them. Therefore, it could not be said that such omission has any way caused prejudice to the appellants.

15. Now, the second part of evidence having been adduced on behalf of prosecution is coming out from the evidence of PW-6, informant, father of the deceased. Right from fard-bayan, there happens to be specific disclosure that on account of due amount of dowry of Rs.30,000/-, deceased was frequently subjected to dowry which, he during course of evidence also reiterated. No cross-examination has been made on behalf of appellants in a way to demolish such assertion.

16. In ***Gangabhavani vs. Rayapati Venkat Reddy & others reported in 2013 CRI.L.J. 4618***, it has been held:-

“17. This Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 examined the effect of non- cross examination of witness on a particular fact/circumstance and held as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his



statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in [Section 138](#) of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by [Section 146](#) of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Rohtash Kumar v. State of Haryana, JT



2013 (8) SC 181; and Gian Chand & Ors. v. State of Haryana, JT 2013 (10) SC 515).

18. Thus, it becomes crystal clear that the defence cannot rely on nor can the court base its finding on a particular fact or issue on which the witness has not made any statement in his examination-in- chief and the defence has not cross examined him on the said aspect of the matter.”

17. It has been submitted on behalf of learned counsel for the appellants that the evidence of all the witnesses is fit to be brushed aside on account of being unreliable. In order to substantiate the same, it has been submitted that in spite of claiming their presence, PW-1, PW-2, PW-3 have not said a word against the appellants over demand of dowry and further, torture having inflicted over the deceased since before her death on that very score and so, the evidence of PW-5 as well as PW-6 should not be accepted on that very score. Furthermore, it has been argued that when there happens to be plausible explanation at the end of the accused regarding death of the deceased, then in that event, accepting the same, appellant should have been acquitted.

18. Furthermore, it has also been submitted that unreliability of the witnesses is itself apparent from their conduct which, after going through their evidences will suggest. The prosecution took a novel method by making a disclosure that they



reached at the appellants place till then, deceased was alive, who on query, had disclosed the whole event which would not have been in the background of the finding recorded by the doctor PW-4, found hundred per cent ante mortem burn injuries. Furthermore, the witnesses are inconsistent with regard to verbal narration of the so alleged oral dying declaration as well as with regard to physical condition of the deceased and that being so, the dying declaration having at the end of the prosecution to be the major plank of evidence is found non-recognizable in the eye of law. That being so, the prosecution version should not have been relied upon.

19. It has also been submitted that from the evidence of PW-10, the I.O., it is evident that apart from fallacious investigation conducted by him, he going to camp of the prosecution, had tried to give undue advantage and further, under such activity, he failed to inspect the P.O. properly. Had there been a proper investigation, then in that event, the objective finding would have suggested probability of the defence case justifying the evidence of the defence witness disclosing commission of suicide and further, at that very moment, none of the family members were present and so, the finding of the learned lower Court requires reappraisal.

20. It has also been submitted that once on the similar kind of evidence, the other co-accused have already been acquitted,



then in that event, appellants would not have been convicted. So, the cumulative effect nullify the judgment impugned.

21. Per contra, it has been submitted on behalf of learned Additional Public Prosecutor that death is no more under controversy, death within seven years of marriage is also not been challenged, then in that event, the other ancillary event as projected by the learned counsel for the appellants would have no impact upon the fate of the prosecution on account of consistent evidence on that very score. That being so, the judgment of conviction and sentence recorded by the learned lower Court is found maintainable.

22. Having minute observation of the evidence as discussed above, it is evident that the death within span of seven years from the date of marriage and demand of dowry followed with treatment meted out to the deceased soon before death is found duly substantiated. Furthermore, complicity of the appellants also found duly proved.

23. In the aforesaid background, now, it could very well be said that it happens to be a case of dowry death and on account thereof, the appellants would have an opportunity to rebut which they availed by way of examine one DW Ghurni Devi. When the evidence of Ghurni Devi has been gone through, it is evident that the villagers, after seeing smoke coming out from the house of the appellants,



rushed. The door, which was closed from inside was broken and then, villagers gone inside the house where they saw the victim dead on account of being burnt. The aforesaid event though introduced but found shaky one as from the evidence of PW-10, the I.O., it is apparent that appellants have not cross-examined PW-10 on that very score, even suggesting that he failed to inspect the door, the latches affixed thereupon. Moreover, had there been it a case of suicide, then in that event, having presence of dead body in static position lying on the ground would not have been visualized. Not only this, some sort of ancillary event would have also been visualized by way of burning of thatched wall as well as presence of shadow of flame, the bed-sheet, the bed also have been burnt which has not been found by the I.O.

24. Acquittal of co-accused would not be a ground for acquittal of other co-accused in case there happens to be substantial evidence against him. Considering the present nature of the case in consonance with the status of appellants and further, the crime having been committed within four corner of the house as well as oral dying declaration identifying the appellants to be perpetrator of the crime did not justify the claim of the appellants to be treated at par with the accused having been acquitted.

25. That being so, both the appeal san merit and are



accordingly, dismissed. Appellants are under custody, which they remain till saturation of the period of sentence.

(Aditya Kumar Trivedi, J)

Vikash/-

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