

\$~R-112

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 10th May, 2019

+ Crl. Appeal no. 934/2002

KISHAN LAL

..... Appellant

Through: Mr. Amitabh Kumar Verma,
Adv. with appellant in person.

versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for the State with SI Ravinder
Singh, PS Najafgarh.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was held guilty and convicted by judgment dated 31.10.2002 of the court of additional sessions judge, upon conclusion of trial in sessions case no. 12/2002, on the charge for offences punishable under Sections 304 B and 498A of Indian Penal Code, 1860 (IPC) and, by subsequent order dated 15.11.2002, sentenced to rigorous imprisonment for seven years on the first count in addition to rigorous imprisonment for three years with fine of Rs. 1,000/- on the second count. The appeal at hand challenges the said judgment of conviction and order on sentence.

2. Anjana, then aged about 21 years, daughter of Shakuntala Paharia (PW-2) and Ram Swaroop Paharia (PW-4), both residents of

16/1662, Govind Puri, New Delhi, was married to the appellant on 04.02.1995 and had shifted to live with her husband in the matrimonial home. The appellant was working as a teacher with a school of Delhi government at the relevant point of time. Her father (PW-4), on the other hand, was an employee of Dena Bank.

3. Sometime after 8 a.m., on 02.04.2000, Anjana suffered burn injuries in the matrimonial home described as house no. D-26, Shyam Vihar, Najafgarh, New Delhi. She was taken to Deen Dayal Hospital (DDU Hospital) by the appellant (the husband), she being accompanied at the time by three neighbours, they being Madan Lal Mahajan, Shoshal Kumari and Beena Raghav (PW-3), the first two being a couple and residents of next door no. D-27, the last mentioned person being a local resident of a house at a little distance. Medico legal examination at 9.40 a.m. (Vide Ex.PW-5/A) by Dr. Shirish Mishra (PW-5) assessed, tentatively, the burn injuries to be 65% covering the chest and back besides other parts of the body, the burns being superficial to minimum in depth. On the same day, Anjana was referred from DDU Hospital to Safdarjung hospital, where she was brought at about 11.40 a.m. The death summary (page 55 of the trial court record) which was admitted by the appellant under Section 294 of the Code of Criminal Procedure, 1973 (Cr.P.C.) shows that the condition of Anjana gradually deteriorated, she eventually being declared dead at 2.10 p.m. on 03.04.2000. No formal statement of Anjana could be recorded after the burning incident till her death.

4. The initial input about Anjana being brought to DDU Hospital with burn injuries was received in police station Najafgarh (the police station) vide DD no. 11A (Ex.PW-9/A) at 10 a.m. The matter was entrusted to ASI Chander Kanta (PW-9) who set out for the said hospital accompanied by Constable Multan. It has come in the evidence that by the time PW-9 (the investigating officer) could reach DDU hospital, Anjana had been shifted to Safdarjung Hospital. He thus, proceeded to that hospital, the information about such shifting having also been duly logged vide DD no. 18A (Ex.PW-9/B) recorded in police station at 12 o'clock noon time. When the investigating officer (IO) reached Safdarjung Hospital, he made an application (Ex.PW-9/C) seeking permission of the medical officer for recording the statement of the victim. The attending medical officer, however, made endorsement (Ex.PW-9/D), first at 1.30 p.m., and then again at 3.45 p.m., to the effect that Anjana was not fit for statement.

5. The IO had also informed Mr. Arun Kumar Mishra, the sub – divisional magistrate (SDM). The testimony of SDM (PW-1), and the proceedings recorded by him which are part of the evidence which was presented at the trial, reveal that when he reached the hospital, only three neighbours were present, the parents of the victim being not immediately available. The SDM recorded the statements of the said neighbours, the same being Ex.PW-1/A (of Madan Lal Mahajan), Ex.PW-1/B (of Shoshal Kumari) and Ex.PW-1/C (of Beena Raghav).

6. After Anjana Kumari had succumbed to injuries, information about death was also conveyed to the police station at 2.45 p.m. on

03.04.2000 and was duly lodged vide DD no. 20/A (Ex.PW-9/D). In the wake of this event, inquest proceedings were held and steps were taken for getting the post-mortem examination of the dead body carried out. The proceedings included preparation of death report (Ex.PW-1/E) and death summary (page 55 of the trial court record), the latter indicating that at the time of arrival in Safdarjang Hospital, it was the mother (PW-2) who was present with the victim.

7. On 03.04.2000, as part of the inquiry into the death of the married woman, the SDM recorded statements of the parents, the father (PW-4) having deposed before the SDM vide Ex.PW-1/H and the mother (PW-2) having given her statement vide Ex.PW-1/J. From the statement of the father (Ex.PW-1/H), a case involving offences under Sections 304 B and 498 A IPC appeared to be made out. Thus, the police registered first information report (FIR No.156/2000 Ex.PW-6/B) as per endorsement (Ex.PW-6/A) on the statement of the father recorded by the SDM.

8. The dead body was subjected to autopsy by Dr. Chander Kant (PW-10). The autopsy doctor proved his report vide Ex.PW-10/A, it confirming that the death had occurred due to shock and taxaemia as a result of 70% superficial and deep ante-mortem burns caused by flames.

9. The investigating agency in due course presented its report (charge-sheet) under Section 173 Cr.P.C. seeking trial of the appellant for offences under Sections 498A/304 B IPC, the prime basis thereof being the allegations of harassment and cruelty meted out to the victim

in the matrimonial home by the appellant (the husband) in connection with his illicit demands for dowry and precious gifts or money, this based on the statements of the parents of the deceased *i.e.* PW-2 and PW-4.

10. The Metropolitan Magistrate took cognizance and issued process on the charge-sheet and having secured the presence of the appellant after compliance with under Section 207 Cr.P.C. committed the case to sessions. The sessions court put the appellant on trial on charges framed on 20.10.2000 for the afore-mentioned two offences to which the appellant had pleaded not guilty.

11. The prosecution led evidence by examining in all eleven witnesses, they including Arun Kumar Mishra (PW-1) SDM; Shakuntala Paharia (PW-2), the mother of the victim; Beena Raghav (PW-3), the neighbour; Ram Saroop (PW-4), the father of the victim; Dr. Shirish Mishra (PW-5), the medical officer of DDU Hospital; ASI Satbir Singh (PW-6), the duty officer; Constable Balwan Singh (PW-7), duty constable in DDU Hospital; Dr. Prit Anand (PW-8), who had recorded the MLC in DDU Hospital; ASI Chander Kanta (PW-9), the investigating officer (IO); Dr. Chander Kant (PW-10), the autopsy doctor; and Constable Mahesh (PW-11), Duty Constable.

12. The appellant denied the evidence of the prosecution by his statement under Section 313 Cr.P.C., he refuting that he had ever demanded any precious gifts or money from the parents of the deceased. He stated, *inter alia*, that his in-laws were instead demanding money from him under the threat of falsely implicating

him and had also suggested that he should marry one of the unmarried sisters of the deceased to which his parents were not agreeable. He termed the incident wherein Anjana Kumari had suffered burn injuries to be accidental stating that she was insisting that he should send his mother to the native village which he was undertaking to do in the summer vacation. He stated that Anjana Kumari had set a *pocha* (mop), actually an old blouse, on fire in an attempt to pressurise him but, by accident, she had herself caught fire. He denied the evidence about he having made demand of money in connection with construction of a house, as testified by PW-2 and PW-4, referring in this context to certain finances raised by him on his own.

13. The appellant led evidence in defence, in the course of which, he examined himself (as DW-5) primarily to bring home the facts concerning raising of finance for purchase of a plot of land and thereafter for construction thereupon. He also relied on the evidence of other witnesses *viz.* Mukesh Aggarwal (DW-1), an official of Vishnu Cooperative Urban Thrift and Credit Society Ltd.; Rakesh Sharma (DW-2), an official of Delhi Nagrik Sehkari Bank Ltd.; Mohan Lal (DW-3), an official of the government school where he was working as a teacher at the relevant point of time; and Radhey Sharma, (DW-4), an acquaintance.

14. The trial court was not impressed with the defence plea. It found prosecution evidence, particularly statements of PW-2 and PW-4, worthy of reliance and, on that basis, held the charge for aforementioned offences brought home.

15. From the evidence on record, certain facts emerge as indisputable. Anjana Kumari (the victim) had got married on 04.02.1995. Since she succumbed to burn injuries on 03.04.2000 as a result of the incident of 02.04.2000, it is clear that she died an unnatural death within seven years of her marriage. There is no dispute as to the fact that the fatal burn injuries were suffered in the matrimonial home, the evidence clearly showing that the appellant (the husband), and other members of the family (which would include the mother), were all present at home at that point of time.

16. The parents, PW-2 and PW-4, have alleged that the death was homicidal. They spoke about a series of events, anterior to the said incident, wherein the victim was being pressurized to arrange money from the parental family. They also spoke about the appellant desiring additional money for setting up an STD booth and also to expand his house, such demand having been made in close proximity to the death. The parents spoke about Anjana Kumari having been set afire (*“usne mitti ke tel se aag laga di”*). This is the line on which both the said witnesses testified at the trial. But then, in contrast, the prosecution has also relied upon the evidence of the three neighbours mentioned earlier, out of whom only one (PW-3) was formally recorded, the other two having been given up on the plea that their evidence would be repetitive. The statements of the three neighbours (Ex.PW-1/A to C) made before the SDM on 03.04.2000, the day Anjana died, only one day after the incident, instead bring out facts showing that the appellant had no role to play in setting Anjana afire. The victim had

confided in the said witnesses that she had poured kerosene oil on herself and having lit the mop with a match stick even while the appellant was trying to dissuade her from indulging in any such act.

17. In the given facts and circumstances, particularly in the face of testimony of PW-3, the version of PW-2 and PW-4 about Anjana having been intentionally put on fire by the appellant cannot be acted upon. This was a theory with which the investigating agency or the prosecution were also not convinced. This was a theory which was not even the gravamen of the charges which were framed when the appellant was brought to trial. The examination of the scene of occurrence by the crime team as per its report (page 27 of the trial court record) revealed burnt clothes including the blouse used as mop, a plastic bottle, presumably the one wherein the kerosene oil was kept and certain burnt match stick to be lying there. These were formally seized (vide Ex.PW-9/G). This part of evidence leaves no room for doubt that the deceased was virtually soaked in kerosene oil when she had suffered burn injuries. The evidence of the neighbor shows that the victim had herself lit the fire which had spread on account of the presence of the kerosene oil on her personal clothes. In these circumstances, the insistence of PW-2 and PW-4 in their testimony that the incident was homicidal is incredible and unacceptable.

18. It is clear from the testimony of PW-2 and PW-4 that they were alleging the incident of burning of Anjana to be designedly brought about by the appellant more on speculation and suspicion. They deposed about Anjana having confided in them with the story of the

husband having beaten her up throughout the preceding night and having confined her after setting her on fire. But then, such was not the theory which they projected even when they were making statements to the SDM on the very next day. They have materially improved upon their original version, which raises concern about their veracity. The medical record, which has been referred to earlier, clearly reveals that Anjana Kumari, though conscious when brought to DDU Hospital, was never fit to make any statement to any authority. The medical officer (PW-8) is categorical in stating that Anjana had not shared any information about the cause of burn incident at the time of her arrival in the hospital. Her condition deteriorated over the period till she died on the next day.

19. In above circumstances, it is not acceptable that she would have made any statement to the parents particularly because if such information had been given, the parents would immediately be crying foul and lodging reports in that regard. Since their statements to the SDM on 03.04.2000 do not reveal the kind of facts they came up with at the trial, their later version will have to be rejected.

20. In contrast, the statement of PW-3, the neighbor, by itself is sufficient to rule out the possibility of it being a homicidal death. Rather, the evidence of PW-3, read along with the statements (Ex.PW1/A and B) of the immediate neighbours brings out the preponderance of incident leading to the burn injuries being accidental. This may be elaborated a little more.

21. As noted earlier, the three above mentioned neighbours had accompanied the victim in the same taxi as had been arranged by the husband (the appellant) in which the victim was carried to the hospital. The victim was apparently communicative at that point of time. From the statements of PW-3, and the above mentioned couple Madan Lal Mahajan and Shoshal Kumari, who were given up for the reason that their evidence would be repetitive, Anjana Kumari had confided in them during the journey to the hospital that the appellant had no role to play though she was aggrieved because he had physically assaulted her twice, she being in some tense state of mind for a few days, she admittedly having misbehaved with her mother-in-law (mother of the appellant), having called her in an improper manner (*budhiya*) for which reason she was feeling remorseful and further that on this account the appellant had assaulted her and, out of anger, she had poured kerosene oil on herself. The neighbours also told the SDM that as per the version of the deceased when she had poured kerosene oil on herself, the appellant had snatched away the matchbox from her hand but she had nonetheless proceeded ahead by lighting up the *pocha* (mop) with another matchstick, the fire instead having caught her clothes leading to the burn injuries.

22. It is not the case of the prosecution that the three neighbours cannot be believed. Instead, the prosecution itself relied heavily on their evidence. They were cited as witnesses, two having been given up after one (PW-3) had been examined. In these circumstances, it has to be assumed that the version of the two, namely Madan Lal

Mahajan and Shoshal Kumari who were given up, would also have been similar to that of PW-3, she having broadly confirmed her account in her statement (Ex.PW1/C) to the SDM.

23. There is no dispute as to the presence of the above mentioned neighbours at the place of occurrence immediately after Anjana Kumari had suffered burn injuries. The evidence is consistent to the effect that after Anjana Kumari had suffered burns, she had sent across a boy to the neighbourhood to call Madan Lal Mahajan and his wife. It is further consistently brought out in the evidence that Anjana Kumari also reposed confidence in PW-3 and had requested her presence as well. Since PW-3 was living in a house a little distance away, she would reach the place of incident later than the other two.

24. Going by their accounts in the statements to the SDM, Madan Lal Mahajan and Shoshal Kumari had rushed immediately, since they were living next door, at the request of Anjana Kumari, who was found by them sitting in a burnt state in the kitchen area. Shoshal Kumari had helped her to change into other clothes, her clothes worn at the time of the incident having got burnt substantially, the same, however, having been seized later (vide Ex.PW1/G). It is clear from the sequence of events that the victim was close to the three said neighbours and, therefore, was ready to take their assistance not only in changing into proper attire before being shifted to hospital but also so as to confide in them as to the background.

25. In the version of PW-3, which it will have to be assumed would also be the version of other two witnesses (who were given up), there

is nothing to show that Anjana Kumari had set herself afire on her own. On the contrary, she had made preparations to self-immolate by pouring kerosene oil on her clothes and then picking up a matchstick in which effort she was obstructed by the appellant. It also comes out vividly from the above evidence that Anjana Kumari was so infuriated that she had picked up another matchbox and lit the mop (blouse) which had been soaked in kerosene to demonstrate to the husband that she was ready to kill herself, her intention being (to borrow the expression from PW-3) “to scarce” him. But then, in the version of PW-3, it is also clear that Anjana Kumari never set herself afire. Instead, she got burnt upon the flames from the mop catching her clothes.

26. In the above facts and circumstances, it is clear that the incident of the deceased catching fire and suffering the burn injuries leading to her unnatural death was neither a case of homicide nor an act of suicide but one purely of accident.

27. In *Pushpender Singh vs. State* 2015 (225) DLT 82; 2015 SCC Online Del 12748, a division bench of this Court (of which I was a member) had the occasion to examine the law concerning the offence under Section 304-B IPC. The broad principles, relevant to the issues which arise here, were culled out in the said decision from various authoritative pronouncements as under :-

“(i) The death of a married woman within seven years of the marriage, otherwise than under normal circumstances must result in a serious attempt on the

part of the investigating agency, and the court, to inquire if it is a case of culpable homicide;

(ii) If the evidence shows the husband or any of his relatives to be the actual or direct participant in the commission of the acts resulting in the death, the trial must proceed on the charge of culpable homicide;

(iii) If the evidence is forthcoming to show that the unnatural death of the married woman within seven years of her marriage was preceded "soon before" her death by she being subjected to cruelty or harassment for or in connection with demand for dowry by the husband or any of his relatives, the charge of "dowry death" is to be invoked as an "alternative charge", or even as a single or main charge against others not implicated by reason of abetment, conspiracy etc.

(iv) The offence of "dowry death" is neither a substitute, nor "minor offence", nor "included" in the offence of "culpable homicide";

(v) To bring home the charge of "culpable homicide", the prosecution must prove the accused to have intentionally committed the act causing death or causing bodily injury resulting in death. In contrast, to bring home the charge of "dowry death", direct nexus on the part of the accused with the act(s) causing death, or resulting in bodily injury causing death, need not be shown. The prosecution needs to prove only the fact of death being otherwise than under normal circumstances (to put it simply, it being an unnatural death), coupled with the fact that the deceased (necessarily a married woman) had been subjected to cruelty or harassment for or in connection with the demands for dowry by the husband, or any of his relatives, the death having occurred within seven years of the marriage. Upon such proof, the Court is bound to presume that the husband, or the relative, who is party to the cruelty or harassment of

the specified nature is responsible for the “dowry death”;

(vi) For the charge of “dowry death”, the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the acts leading to the death;

(vii) To bring home a charge of dowry death, there must be “proximity” or a “live link” between the cruelty and harassment based on dowry demands and the consequential death leading to inference that said conduct was indulged in “soon before” the death;

(viii) The past events of cruelty or harassment, they not having become stale, continue to be relevant for raising the presumption, if the evidence shows continuity of the incriminating conduct proximate enough in terms of time to the unnatural death, even if interspersed by tentative efforts at resolution or compromise;

(ix) A case of unnatural death of the married woman would not amount to “dowry death”, if it is shown to have occurred on account of an accident or as a result of acts of commission or omission on the part of a third person, i.e. a person other than the husband or any of his relatives, or for reasons not connected with demands for dowry; and,

(x) The accused against whom presumption is raised may dispel its effect by showing that he had no hand at all, in the death, and he may do so either by showing that the death was accidental or brought about by another person unconnected with the cruelty or harassment relating to the demands for dowry”.

28. It is pertinent to mention here that in the course of discussion in the said case, the Court had also concluded thus:-

“93. The expression “otherwise than under normal circumstances” as appearing in the definition clause of Section 304-B IPC casts the net wide. Noticeably, the provision does not deal with the issue as to whether the death was homicidal or otherwise. It proceeds only on two possibilities, one of the death being due to natural causes or the other of the death being unnatural. If the death is due to natural causes, Section 304-B IPC cannot be invoked. If the death is due to burns or bodily injury, it cannot but be unnatural death. Unnatural death may be homicidal, suicidal or accidental. The cases of accidental deaths must necessarily be excluded from the purview for the simple reason, they would generally have no connection with the cruelty or harassment of the kind required. Similarly, in case, the evidence shows the death to be a case of culpable homicide committed neither by the husband nor by any of his relative, but by a third person having no connection whatsoever with the cruelty or harassment of the deceased woman for or in connection with any demand for dowry, a case for the offence of “dowry death” would not arise as it would stand covered by the more serious offence of culpable homicide”.

29. As has been held in the case of *Pushpender Singh* (supra), the cases of accidental deaths, though also unnatural, have to be necessarily excluded from the purview of the penal clause of dowry death. In the foregoing facts and circumstances, it is difficult to uphold the conclusions reached by the trial Court in the case at hand on the charge under Section 304-B IPC.

30. The question remains as to whether the prosecution was able to bring home the case under Section 498A IPC. The provision contained in Section 498 A IPC reads thus :-

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

Explanation.—For the purposes of this section, “cruelty” means—

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

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

31. The core element of the offence prescribed in the above provision is conduct of the husband or his relative towards the married woman whereby she is subjected to “cruelty” within the meaning of either of the two clauses in the explanation appended thereto. In *Savitri Devi vs. Ramesh Chand & Ors.*, 104 (2003) *Delhi Law Times* 824, a learned Single Judge of this court, having examined relevant case law on the subject including the decisions of Supreme Court in *V. Bhagat vs. Mrs. D. Bhagat*, AIR 1994 SC 710 and *S. Hanumantha Rao vs. S. Ramani*, 1999 (3) SCC 620, observed thus:-

“16. For the purpose of Section 498A IPC which is peculiar to Indian families victim spouse is always the 'wife' and guilty is the husband and his relatives-near or distant, living together or separately. Ingredients of

'cruelty' as contemplated under Section 498A are of much higher and sterner degree than the ordinary concept of cruelty applicable and available for the purposes of dissolution of marriage i.e. Divorce. In constituting 'cruelty' contemplated by Section 498A IPC the acts or conduct should be either such that may cause danger to life, limb or health or cause 'grave' injury or of such a degree that may drive a woman to commit suicide. Not only that such acts or conduct should be "willful" i.e. intentional. So to invoke provisions of Section 498A IPC the tests are of stringent nature and intention is the most essential factor. The only test is that acts or conduct of guilty party should have the sting or effect of causing grave injury to the woman or are likely to cause danger of life, limb or physical or mental health. Further conduct that is likely to drive the woman to commit suicide is of much graver nature than that causing grave injury or endangering life, limb or physical or mental health. It involves series of systematic, persistent and willful acts perpetrated with a view to make the life of the woman so burdensome or insupportable that she may be driven to commit suicide because of having been fed up with marital life."

32. For the accusations relevant to section 498-A IPC, the prosecution rests its case on the testimony of PW-2 and PW-4, the mother and the father of the victim. PW-3, a neighbour could also have spoken on the issue inasmuch as from the evidence it appears that she was quite close to the victim. But then, not much can be found in her deposition except that the deceased and the appellant would often quarrel with each other which, in the perception of the witness, were quarrels that generally happen between a husband and wife, she adding that both would also go out together, there having been no

occasion wherein there was any episode of the appellant having beaten up the wife, only the deceased being in the habit of quarrelling in such loud noise as could be heard all over the neighbourhood.

33. In the statement (PW-1/H) to the SDM, the father PW-4 had informed that the appellant had expected dowry in the marriage and had demanded, two days after the ceremony, a dressing table, and a fan and an almirah, his demands having been fulfilled. He also stated that the appellant had thereafter asked for money for purchase of plot of land which he had arranged by borrowing money from relatives, this being followed by consistent episodes of demand for money and, upon failure to abide by such demands, the deceased being subjected to harassment. He spoke about he having given Rs.85,000/- for construction of a house and having also given money by sale of the gold jewellery of the victim. He further stated that he had taken a loan of Rs.75,000/- from the bank and had passed on the same to the appellant, on his demand, this being followed by another demand on 07.03.2000 for Rs.50,000/- to be given as he wanted to expand the house and set up an STD booth. His wife, in her statement (Ex.PW1/J) to the SDM, in contrast, spoke about Rs.90,000/- having been given for purchase of the plot of land, she being conspicuously silent on any demand for furniture, fan, etc. She stated that the appellant had sold the gold jewellery for a sum of Rs.80,000/- and having pressurized Anjana Kumari for a few days for further money to be brought, her version about personal loan having been taken by her husband being not very expressive or clear.

34. In their court testimonies, both PW-2 and PW-4 went beyond what was their original version in the statements to the SDM. PW-2 spoke about Rs.90,000/- having been given followed by loan of Rs.75,000/- from the bank, which had been passed on to the appellant in August or September, 1999. She also spoke about the visit of the deceased on 07.03.2000 with the request for Rs.50,000/- to be given as the house had to be expanded. But then, during her cross-examination, it was brought out that in her statement to the police (Ex.PW2/DA) she had not mentioned anything about the demand of 07.03.2000.

35. There is no corroborative material brought on record to confirm that any money had been borrowed by the parental family pursuant to initial demand or payment of Rs.90,000/-. The father (PW-4) referred to document (Ex.PW4/DA) as one confirming that he had taken a loan of Rs.75,000/- from the bank, where he was employed for the same to be passed on to the appellant. But then, the said document had not been shared during the course of investigation. It was sprung as a surprise during the court testimony, the document even otherwise indicating that it was a loan taken for the purpose of some ceremonies concerning the son of PW-4.

36. The parents have tried to project as if it were they who had arranged the amount of Rs.85,000/- by sale of gold jewellery. But, given the admission that the gold jewellery of Anjana Kumari was sold, the credit for such finance to be organized cannot be taken by them. It was property and asset of the wife and in absence of evidence to the contrary possibility cannot be ruled out that the husband might

have legitimately persuaded her to sell it off since he was constructing a house for the family.

37. During his own statement on oath (as DW-5), the appellant elaborately explained as to how he had raised the finances, firstly for purchase of the plot of land and thereafter for raising construction thereupon. He referred to the arrears which he had received from the government on account of implementation of the 5th Pay Commission's recommendations. He spoke about loans having been taken from the credit and thrift society, and from the bank, at least three times, his word in this regard being corroborated by DW-1 and DW-2. Additionally, the evidence of DW-3 has also brought out the other sources of finance including withdrawal of credit balance from the GPF account, this besides receipt of money (vide Mark DB) against a life insurance policy.

38. The evidence in defence cannot be short shrifted. It does corroborate the word of DW-5, (the appellant), that he had constructed the house on his own strength and with his own financial resources.

39. It stands out from the version of the above said two neighbours, to which elaborate reference has been made earlier, that the deceased had expressed no grievance against the appellant, definitely not about he having subjected her to any such cruelty or harassment as could fall within the mischief of conduct which is prohibited by the penal clause of Section 498 A IPC. She did speak about two episodes of physical assaults. But then, no details of such physical assault or the timeline or

their nexus, if any, with the incident of burn injuries, have been brought out in the prosecution evidence.

40. In the above facts and circumstances, the judicial conscience of the court is not satisfied as to the guilt of the appellant. In this view, this court is not inclined to uphold the judgment of conviction. It is set aside. Consequently, the order on sentence would also stand vacated. The appellant is acquitted. Bail bonds are discharged.

41. The appeal is disposed of in the above terms.

R.K.GAUBA, J.

MAY 10, 2019

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