

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.104 of 2002

Judgment Reserved on : 16.1.2020

Judgment Delivered on : 15.6.2020

1. Durga Vishwas, W/o Late Sahdeo Vishwas, aged 63 years,
 2. Monica Vishwas, W/o Jaideo Vishwas, aged 28 years,
- Both residents of Village Ajab Nagar, P.S. Jainagar, District Surguja,
Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh

--- Respondent

For Appellants	:	Shri Neeraj Kumar Mehta, Advocate
For Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 15.1.2002 passed by 6th Additional Sessions Judge (FTC), Surajpur in Sessions Trial No.453 of 1993, whereby the Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 7 years
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 1 year

2. Prosecution case, in brief, is that name of the deceased is Laxmibai. Appellant No.1 is mother-in-law of the deceased and Appellant No.2 is sister-in-law of the deceased. Marriage between

deceased Laxmibai and son of Appellant No.1, namely, Krishna Vishwas was solemnised in November, 1992. On 22.7.1993, the deceased, who was pregnant, was got admitted by her husband in Mission Hospital, Ambikapur in her 94% burn condition telling that she burnt accidentally. On 22.7.1993 itself, at 10:30 p.m., dying declaration (Ex.P11) of the deceased was recorded by Tahsildar Rajesh Kumar Shahi (PW10) and on the same day at 22:55 hours, her statement under Section 161 of the Code of Criminal Procedure (Ex.P18) was recorded and in none of which she levelled any allegation and she stated her burn to be accidental. Next day, i.e., 23.7.1993, at 21:20 hours, written complaint (Ex.P1) was submitted by brother of the deceased, namely, Ramchandra Sen (PW1). On the basis of Ex.P1, initially, offence under Sections 307, 498A, 34 of the Indian Penal Code was registered vide First Information Report (Ex.P2). Again on 23.7.1993, at 6 p.m., dying declaration (Ex.P22) of the deceased was recorded by Tahsildar C.L. Yadav (PW12) in which the deceased levelled allegations against her mother-in-law, father-in-law and sister-in-law. It was alleged by her that her mother-in-law (Appellant No.1) poured kerosene on her from her back and both the Appellants set her on fire by a matchstick. It was also alleged that the father-in-law was standing there silently. Thereafter, on 23.7.1993, at 19:15 hours, again statement of the deceased under Section 161 of the Code of Criminal Procedure (Ex.P19) was recorded. During the course of treatment, the deceased died in the hospital on 27.7.1993. Morgue was lodged. Inquest proceeding was conducted. Post mortem examination over her dead body was conducted by Dr. V.K. Shrivastava (PW4). His report is Ex.P4. Statements of other witnesses were recorded under Section 161 of the Code of

Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants and father-in-law of the deceased. Charges were framed against them. During trial, the father-in-law died.

3. In support of its case, the prosecution examined as many as 12 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. 2 witnesses, namely, Krishna Vishwas (DW1), husband of the deceased and Jagbandhu (DW2), neighbour of Krishna Vishwas have been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellants as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submitted that despite there being no clinching and sufficient evidence on record against the Appellants, the Trial Court has convicted them. From perusal of the entire evidence on record, it reveals that material ingredients, i.e., demand of dowry and that too soon before death of the deceased are missing. Therefore, conviction of the Appellants is not sustainable. It was further submitted that there are two dying declarations, i.e., Ex.P11 and P22, which were recorded by two different Tahsildars and there are also two statements of the deceased under Section 161 of the Code of Criminal Procedure, i.e., Ex.P18 and P19 recorded by the same Investigating Officer. First dying declaration (Ex.P11) and first statement under Section 161 of the Code of Criminal Procedure (Ex.P18) were recorded on 22.7.1993 in which the deceased had

not levelled any allegation. From the statements of the witnesses, it reveals that thereafter brother of the deceased, namely, Ramchandra Sen (PW1), who was Reader in the office of the S.D.M., advised the deceased to level allegations against the Appellants and then, on the next day, the deceased levelled allegations against the Appellants in her second dying declaration (Ex.P22), which was recorded by Tahsildar C.L. Yadav (PW12) under the influence of the said brother of the deceased and she also levelled allegations in her second statement recorded under Section 161 of the Code of Criminal Procedure (Ex.P19). It was further submitted that Pradeep Sharma (PW7), who is an Advocate by profession and a close family friend of Ramchandra Sen (PW1) and senior to Rita Sen (PW2), wife of Ramchandra Sen, has deposed that on 23.7.1993, at 9 a.m., he had visited the deceased in the hospital and had a talk with her. At that time, the deceased had disclosed him everything. But, Ramchandra Sen (PW1), brother of the deceased lodged written complaint (Ex.P1) on 23.7.1993 at 21:20 hours. Looking to the relationship between Pradeep Sharma (PW7) and Ramchandra Sen (PW1) and Rita Sen (PW2), Pradeep Sharma (PW7) would have immediately disclosed the discussion took place between him and the deceased in the morning, but the FIR was lodged in the night. Looking to the above, the entire statement of Pradeep Sharma (PW7) is doubtful. It was further submitted that looking to the two different statements of the deceased and other material contradictions and omissions in the statements of the witnesses, the entire case of the prosecution is doubtful.

6. Learned Counsel appearing for the State opposed the above

submission and supported the impugned judgment of conviction and sentence.

7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Before scrutinising the evidence available on record, it would be apt to go through the observations of the Supreme Court made on the subject issue.
9. In **AIR 2014 SC 2555 (Manohar Lal v. State of Haryana)**, it has been observed by the Supreme Court as under:

“19. The expression “soon before her death” used in the Section 304B IPC and Section 113B of the Evidence Act was considered by this Court in *Hira Lal & others v. State (Govt. of NCT), Delhi*, (2003) 8 SCC 80 : *(AIR 2003 SC 2865)*, which reads as under:

“8. Section 304-B IPC which deals with dowry death, reads as follows:

“304-B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

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

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

The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304-B, IPC, the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated

10.8.1988 on “Dowry Deaths and Law Reform”. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of “dowry death” in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand of dowry”. Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of the woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death.”

Similar observation was made by this Court in *Balwant Singh and another v. State of Punjab* (2004) 7 SCC 724 : (AIR 2005 SC 1504). In the said case this Court held:

“10. These decisions and other decisions of this Court do lay down the proximity test. It has been reiterated in several decisions of this Court that “soon before” is an expression which permits of elasticity, and therefore the proximity test has to be applied keeping in view the facts and circumstances of each case. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim.”

20. In the present case, from the statement of PW.1 it appears that the death took place within seven years of marriage. Admittedly, death of the deceased was due to burning i.e. not in normal circumstances. We have to see now whether the remaining two ingredients are satisfied looking into the evidence on record.”

10. In (2008) 1 SCC 202 (*Biswajit Halder v. State of W.B.*), it has been further observed by the Supreme Court as under:

“**13.** If Section 304-B IPC is read together with Section 113-B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under “dowry death” and there shall be a presumption against the husband and the relatives.

14. In this case we find that there is practically no evidence to show that there was any cruelty or harassment for or in connection with the demand of dowry. There is also no finding in that regard. This deficiency in evidence proves fatal for the prosecution case. Even otherwise mere evidence of cruelty and harassment is not sufficient to bring in application of Section 304-B IPC. It has to be shown in addition that such cruelty or harassment was for or in connection with the demand for dowry. (See *Kanchy Komuramma v. State of A.P.*, 1995 Supp (4) SCC 118) Since the prosecution failed to prove that aspect, the conviction as recorded cannot be maintained.”

11. In AIR 2016 SC 5313 (*Baijnath v. State of Madhya Pradesh*), the Supreme Court has observed thus:

“**27.** The evidence on record and the competing arguments have received our required attention. As the prosecution is on the charge of the offences envisaged in

Sections 304B and 498A of the Code, the provisions for reference are extracted hereunder:

“304B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

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

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

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

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

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

While dealing with the case of dowry death, it was further observed by the Supreme Court as under:

“28. Whereas in the offence of dowry death defined by Section 304B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances and

(ii) is within seven years of her marriage and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The explanation to this Section expositis “cruelty” as:

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

(ii) 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 to any person related to her to meet such demand.

29. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

30. The expression “dowry” is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression “cruelty”, as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry to reiterate is the

gravamen o the two offences.

31. Section 113B of the Act enjoins a statutory presumption as to dowry death in the following terms:

“113B. Presumption as to dowry death.—
When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purpose of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).”

32. Noticeably this presumption as well is founded on the proof on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death.

Such a proof is thus the legislatively mandated pre-requisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

33. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

34. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded

confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overruled to gloss-over and condone its failure to prove credibly, the basic facts enumerated in the Sections involved, lest justice is the casualty.

35. This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304B as in *Shindo alias Sawinder Kaur and another v. State of Punjab* – (2011) 11 SCC 517 : (2011 AIR SCW 6556) and echoed in *Rajeev Kumar v. State of Haryana* – (2013) 16 SCC 640 : (AIR 2014 SC 227). In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao v. Yadla Srinivasa Rao* – (2003) 1 SCC 217 : (AIR 2003 SC 11) to the effect that to attract the provision of Section 304B of the Code, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”.

12. In light of the above observations of the Supreme Court, I shall now examine the evidence available on record in the case in hand.
13. Ramchandra Sen (PW1), brother of the deceased has deposed that marriage of the deceased was performed in November, 1992. Thereafter, the deceased usually visited her maternal house with intervals and she also made complaints that in the marriage of her elder sister she was given more dowry, but she (the deceased) was given lesser dowry and for this reason *marpeet* was taking place with her. According to this witness, thereafter, they had been giving money to the deceased. This witness has further deposed that sometimes, in-laws of the deceased had told them also that the

deceased was their daughter and if she was demanding money she should be given. Then they had been giving money to the deceased. However, during cross-examination, this witness has stated that they never called any social meeting. They even did not go to the matrimonial house of the deceased and did not make any complaint there nor did they verify about the complaints of the deceased from neighbours of her matrimonial house.

14. Rita Sen (PW2), wife of Ramchandra Sen (PW1) has deposed that whenever the deceased made complaints they inculcated the in-laws of the deceased that this type of demand is not good. According to Rita Sen, they had gone to the matrimonial house of the deceased 8-10 times to inculcate them.
15. Pradeep Sharma (PW7), an Advocate by profession and senior to Rita Sen (PW2) and also a family friend of Ramchandra Sen (PW1) has deposed that whenever the deceased visited her maternal house, she met with him also and she told him that her in-laws and her sister-in-law were torturing her and committing *marpeet* with her for demand of dowry. According to Pradeep Sharma, after 6 months of the marriage of the deceased, her husband had left her at her maternal house saying that whatever money was being demanded should be given then only they will take her back and thereafter the husband was not coming to take her back. Thereafter, 1 week prior to the incident, on her request, this witness had taken the deceased on his scooter to her matrimonial house and left her there.
16. On appreciation of the evidence of Ramchandra Sen (PW1), Rita Sen (PW2) and Pradeep Sharma (PW7), it reveals that according

to the statement of Ramchandra Sen (PW1), they had given money to the deceased many times, but he has not disclosed that they had given how much money to the deceased and when. According to the statement of this witness, the Appellants never made any direct demand of money from them nor did they themselves give any money to the Appellants directly and whatever money was given the same was given to the deceased only. According to this witness, neither they called any social meeting nor did they go to the matrimonial house of the deceased and try to inculcate in-laws of the deceased and they also did not verify the complaints of the deceased from neighbours of her matrimonial house. Contrary to this, Rita Sen (PW2) has deposed that they had gone to the matrimonial house of the deceased 8-10 times to inculcate in-laws of the deceased. Thus, it is established that Ramchandra Sen (PW1) and Rita Sen (PW2) have stated contrary to each other.

17. As regards the statement of Pradeep Sharma (PW7), according to him, after 6 months of the marriage of the deceased, her husband had left her at her maternal house and he was not coming to take her back and this witness, on the request of the deceased, had taken and left her at her matrimonial house 1 week prior to the incident. But, this fact is not mentioned in his case diary statement (Ex.D1) and Ramchandra Sen (PW1) and Rita Sen (PW2) have also not stated anything in this regard in their Court statements.
18. With regard to the incident, Ramchandra Sen (PW1) has deposed that on 22.7.1993, they came to know that the deceased had burnt and she was admitted in the hospital. They went to the hospital. At

that time, condition of the deceased was not good. Therefore, he did not talk with her. Next day, he again went to the hospital. At that time, condition of the deceased was normal. Then she told him that her father-in-law, mother-in-law and sister-in-law had caught her, poured kerosene on her and set her on fire. Rita Sen (PW2) has also deposed that on 22.7.1993 no talk had taken place with the deceased. On 23.7.1993, they met with the deceased after permission of the doctor. At that time, the deceased told them that her father-in-law, mother-in-law and sister-in-law caught her, poured kerosene on her and set her on fire. Ramchandra Sen (PW1) has not disclosed that at what time his talk had taken place with the deceased on 23.7.1993. But, according to Rita Sen (PW2), on 23.7.1993, their visit with the deceased took place at 5-6 p.m. and at that time the deceased had told them about the incident. Meaning thereby, on 23.7.1993, at 5-6 p.m., the deceased had disclosed about the incident to them for the first time. The second dying declaration (Ex.P22) of the deceased was also recorded on 23.7.1993 at 6 p.m. Thus, it seems that when the second dying declaration (Ex.P22) was being recorded, Ramchandra Sen (PW1) and Rita Sen (PW2) were present in the hospital. Therefore, it cannot be ruled out that by that time the deceased had come under the influence of her brother Ramchandra Sen (PW1) and his wife Rita Sen (PW2). The matter was reported by Ramchandra Sen (PW1) vide Ex.P1 on 23.7.1993 at 21:20 hours. According to the statement of Pradeep Sharma (PW7), on 23.7.1993, at 9 a.m., the deceased had disclosed him about the entire incident. Looking to the close family friendship, if Pradeep Sharma (PW7) was aware of the facts in the morning at about 9-10 a.m. then he should have disclosed about this to

Ramchandra Sen (PW1) and Rita Sen (PW2) immediately thereafter. But, Ramchandra Sen (PW1) and Rita Sen (PW2) have not stated anything that they had been told anything so by Pradeep Sharma (PW7). Looking to the above, the entire statement of Pradeep Sharma (PW7) is suspicious.

19. According to the Court statement of Ramchandra Sen (PW1), after the death of the deceased, her last rituals were performed at her matrimonial house in which they did not participate. Contrary to this, Pradeep Sharma (PW7) has stated that when dead body of the deceased was being cremated, at that time, all the four brothers of the deceased were present at the cremation place. From the above also, it is clear that both Pradeep Sharma (PW7) and Ramchandra Sen (PW1) have stated contrary to each other in this regard.
20. On a minute examination of the above evidence, it is established that death of Laxmibai occurred otherwise than under normal circumstances within seven years of her marriage. But, there is no direct evidence available on record to show that demand of dowry was being made from the deceased and *marpeet* was taking place with her therefor and soon before her death also *marpeet* took place with her for demand of dowry. Though on some occasions, as stated by Ramchandra Sen (PW1), some money was given to the deceased by them, when and how much money was given to her has not been disclosed and there is nothing on record to show that there was any direct demand of money by the Appellants. Pradeep Sharma (PW7) has obviously tried to establish that after 6 months of the marriage of the deceased, her husband had left her

at her maternal house saying that they will take her back on fulfillment of their demand of money and this witness had taken and left the deceased at her matrimonial house on her request one week prior to the incident. But, his statement is suspicious. With regard to the incident also, there is material contradictions and omissions in the statements of Ramchandra Sen (PW1), Rita Sen (PW2) and Pradeep Sharma (PW7). Pradeep Sharma (PW7) seems to be an interested witness and he has fully tried to implicate the Appellants. The entire statement of Pradeep Sharma (PW7) is suspicious. There are also two dying declarations (Ex.P11 and P22) of the deceased. There are also two statements of the deceased recorded under Section 161 of the Code of Criminal Procedure (Ex.P18 and P19). Her first 161 statement (Ex.P18) was recorded on 22.7.1993. Her first dying declaration (Ex.P11) was also recorded on 22.7.1993 in which she had not levelled any allegation, rather she had stated that she had burnt accidentally. Her second dying declaration (Ex.P22) was recorded on 23.7.1993 at 6 p.m. At that time, Ramchandra Sen (PW1) and Rita Sen (PW2) were present in the hospital. Therefore, there is possibility that the second dying declaration (Ex.P22) would have been recorded under the influence of Ramchandra Sen (PW1) and Rita Sen (PW2), who were Reader of the SDM and Advocate, respectively. In my considered view, the entire case of the prosecution is doubtful. The prosecution has failed to prove its case beyond reasonable doubt. Hence, the conviction of the Appellants is not sustainable.

21. In the premises of aforestated, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The

Appellants are acquitted of the charges framed against them.

- 22.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE