

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRA 279 of 2019

**Chand Dutta & Ors.
Vs.
The State of West Bengal**

**For the petitioner : Mr. Kallol Kumar Basu, Adv.,
Mr. Prabir Kumar Chaudhuri, Adv.,
Md. Jannat Ul Firdous, Adv.,
Ms. Tithi Mazumder, Adv.**

For the State : Mr. Avishek Sinha, Adv.

Heard on : 17.05.2022, 07.06.2022, 09.06.2022.

Judgment on : 10.06.2022.

Bibek Chaudhuri, J.

The appellants were held guilty and convicted for committing offence under Sections 498A/304B of the Indian Penal Code by the Learned Additional Sessions Judge, Katwa, Burdwan (East) in Sessions Trial No. 93/2009 arising out of Sessions Case No. 182/2009

vide order dated 27th March, 2019. The Learned Trial Judge handed down sentence on 29th March, 2019 to the appellants of simple imprisonment of three years with fine and default clause for the offence punishable under Section 498A of the Indian Penal Code and simple imprisonment for seven years for the offence punishable under Section 304B of the Indian Penal Code.

The appellants have challenged the said order of conviction in the instant appeal.

That on 2nd May, 2008, one Biswanath Dey lodged a written complaint stating, *inter alia*, that marriage of his daughter, Khantamoni was solemnized in the month of May, 2003 with appellant no. 1, Chand Dutta. At the time of marriage, the *de facto* complainant gave bridal presents and cash money of Rs.50,000/- to the bride and bridegroom as per the demand of the members of the matrimonial home of her daughter. But, after marriage her daughter was subject to physical and mental torture by her husband, Chand Dutta, father-in-law, Sukumar Dutta, mother-in-law, China Dutta and brother-in-law, Samir Dutta on demand of dowry. The *de facto* complainant and his family members and well wishers went to the matrimonial home of the said Khantamoni more than once to settle the dispute and requested her matrimonial relations with folded hands

to stop such physical and mental torture. However, the husband and other matrimonial relations of the daughter of the *de facto* complainant went on demanding more dowry from the father of Khantamoni and tortured her both physically and mentally. About one month before the unfortunate death of Khantamoni, the *de facto* complainant went to her matrimonial home on the repeated request of her daughter and earnestly urged the family members of her matrimonial home to stop such inhuman torture upon his daughter. At that time, the father-in-law of Khantamoni, namely, Sukumar Dutta abused him with filthy language and also drove him away after assaulting him. He also threatened to kill the daughter of the *de facto* complainant. The *de facto* complainant left his house. Subsequently, his daughter informed him over telephone that her matrimonial relations used to torture her tremendously both physically and mentally. She also requested the *de facto* complainant to take her back to his house. As Khantamoni had a male child aged about four years and at the relevant point of time she was pregnant, the *de facto* complainant insisted upon her to stay at her matrimonial home because the *de facto* complainant thought that the accused persons might change their attitude and behaviour seeing newly born child of his daughter.

That on 2nd May, 2008 at about 1.00 P.M. the *de facto* complainant was informed by a distant relative over telephone that the matrimonial relations of his daughter committed murder of Khantamoni putting fire on her body. Hearing this news the *de facto* complainant and his other relatives rushed to the matrimonial home of his daughter and found her in completely burnt condition in a room on the first floor of her matrimonial home. At that time the matrimonial relations of his daughter were not present in the house.

Over the said complaint, Police registered Ketugram Police Station Case No. 35/2008 dated 2nd May, 2008 under Sections 498A/302/304B/34 of the Indian Penal Code against the appellants and took up the case for investigation. On completion of investigation Police submitted charge-sheet against the accused persons under Sections 498A/304B/34 of the Indian Penal Code.

Trial of the case was conducted by the Learned Additional Sessions Judge, Katwa. The Learned Trial Judge framed charge against the accused persons under Sections 498A/304B of the Indian Penal Code and alternatively under Section 302 of the Indian Penal Code against the accused persons. As the accused persons pleaded not guilty, trial of the case commenced.

During trial, prosecution examined 10 witnesses. Amongst them, P.W.1 is the father of the victim and de-facto complainant of the case. P.W.3 is the mother of the victim. P.W.2 and P.W.5 are relatives of the de-facto complainant. P.W.4 is a neighbour of the matrimonial home of the victim who turned hostile during trial. P.W.6 is a police constable who brought the dead body from the place of occurrence to the police morgue. P.W.10 is the scribe of the FIR. P.W.9 is the Autopsy surgeon who conducted the post mortem over the dead body of the victim. P.W.8 is the Executive Magistrate and P.W.7 is the first Investigating Officer.

It is pertinent to mention here that the second Investigating Officer who submitted charge-sheet against the appellants was not examined during trial of the case because his attendance could not be ensured in spite of repeated steps taken by the Trial Court.

Though no defence witness was examined on behalf of the accused persons, the defence case as disclosed from the trend of cross-examination of the witnesses on behalf of the prosecution and examination of the accused persons under Sections 313 of the Criminal Procedure Code appears to be denial of the prosecution case. The accused persons also took the specific defence that the victim was accidentally caught fire by stove bursting.

The learned Trial Judge on appreciation of evidence on record and considering the submission made by the learned Counsel for the parties, convicted the accused persons for committing offence under Sections 498A/304B of the Indian Penal Code read with Section 34 of the Indian Penal Code and sentenced them accordingly.

During hearing of appeal, it is submitted by Mr. Kallol Kumar Basu, learned Counsel on behalf of the appellants that one of the accused, namely, Sarabhuja Dutta expired during trial. Therefore, case against the said deceased accused was abated. It is also submitted by him that indisputably marriage of the victim was solemnized with the appellant no.1, Chand Dutta about 5 years before the unfortunate unnatural death of his wife by burning. The appellants are the husband, father-in-law, mother-in-law and brother-in-law of the deceased.

Next, he submits that except the parents of the deceased and two relatives of the victim girl, no other witness was examined by the prosecution in support of its case. The witnesses being close relatives of the victim are interested witnesses and their evidence should not be considered without due caution and scrutiny. It is pointed out by the learned Advocate for the appellants that the father of the victim deposed during trial that the accused persons allegedly treated the victim with cruelty on demand of Rs.20,000/- from him after the marriage of his

daughter with the appellant no.1. The said witness also stated that the victim used to narrate such incident of torture and illegal demand of money over phone to him from a telephone booth situated at village Nirole. However, the Investigating Officer did not examine the booth owner to ascertain as to whether the victim actually used to call her father from the said telephone booth or not. The de-facto complainant also stated that her daughter was killed and was later set on fire by the accused persons on 19th Baisakh about 7 years back and he got the news from a distant relative residing at village Nirole after the death of his daughter. The said distant relative was also not examined by the prosecution. Therefore, the prosecution has failed to prove the genesis of the case.

Learned Counsel for the appellants has also pointed out the cross-examination of P.W.1 wherefrom it is ascertained that the minor child of the victim resides with the appellant No.1. He has raised a question if the appellant no.1 had so much animosity that he set the victim on fire, it might not have been possible for him to rear and maintain their only child. P.W.1 also stated that victim was medically treated by a Doctor after she came to her paternal home on being assaulted. However, he could not state the name of the Doctor.

It is the specific case of the de-facto complainant that the appellants started to treat the victim with cruelty on illegal demand of dowry after few days of marriage. However, during her lifetime neither the victim nor the de-facto complainant made any complaint before the police or local Panchayet or any other authority narrating the incident of torture upon the victim by her matrimonial relations, only after her unnatural death, the complaint was lodged and some concocted story was made about the past incident of physical and mental torture on demand of dowry. In the absence of any material to this effect, the learned Trial Court disbelieved the evidence of the witnesses examined on behalf of the prosecution and such evidence ought not to have been accepted by the Court below.

The learned Advocate for the appellants next draws my attention to the evidence of P.W.3 who is the mother of the victim. In her evidence, she stated that at the time of marriage they gave a sum of Rs.15,000/- in cash, nine bhoori gold ornaments and other gift items to the bride and bridegroom as per the demand of the accused persons. However, they failed to produce any documents in support of purchase or procurement of the said articles by the de-facto complainant or P.W.3. P.W.3 also stated in her evidence in chief that whenever her daughter used to come to her paternal home, she used to report them about

torture inflicted upon her by the appellants. They also threatened her to commit murder by hanging unless the de-facto complainant could provide further dowry. The husband of the victim also threatened her that he would again marry and throw away the de-facto complainant in destitute. In cross-examination, P.W.3 clearly stated that she could not file any document to prove that at the time of marriage of her daughter with appellant no.1, they give cash, gold ornaments and other gift items. The witness denied the suggestion during cross-examination that her daughter received burn injury due to stove burning.

P.W.2 is the son-in-law of the de-facto complainant. In his evidence he stated that the victim told her that the accused persons used to assault her. They did not offer food to her and demanded further dowry from her father. On 2nd May, 2008 he learnt from his father-in-law over telephone that her daughter Khantamoni died after receiving burn injury. He is a witness to the inquest held by the police over the dead body of the victim. He is also a witness to the seizure. During cross-examination, it is submitted by P.W.2 that he heard about the demand of further dowry from Khantamoni but she did not say the amount to him.

Learned Advocate for the appellants emphasized heavily on the evidence of the P.W.4, Swapan Mistri who turned hostile against the

prosecution. It is submitted by him that the said witness was cross-examined by the defence and he unequivocally stated that the accused persons used to behave well with Khantamoni. Thus, the only witness who is one of the neighbours of the matrimonial home of the deceased did not support the prosecution case.

P.W.5 is cousin brother of the deceased. His evidence suggests that he has direct knowledge about the incident and his evidence is in the nature of hearsay.

The Learned Advocate for the appellants next takes me to the evidence of P.W. 9 who was the Autopsy Surgeon and conducted post-mortem examination over the dead body of the victim. It appears from his examination that the victim died after receiving burn injury but he could not opine as to whether it is homicidal or suicidal or accidental. In examination-in-chief, he also opined that since the burn injury of the deceased was almost 100 per cent, such injury could not be caused accidental by catching fire due to stove bursting.

P.W. 8 is the Executive Magistrate who conducted inquest over the dead body of the victim girl in connection with Ketugram Police Station U.D. Case No. 13/2008 dated 2nd May, 2008.

P.W. 7 is the first Investigating Officer. He only seized some burnt articles and a kerosene jar from the place of occurrence. He

also seized some photographs of the place of occurrence. On his prayer statement of accused Sarabhuja Dutta, since deceased, was recorded under Section 164(2) of the Code of Criminal Procedure. It appears from his cross-examination that he did not examine any witness.

Thus, to sum up the argument advanced by the Learned Advocate for the appellants, neither the *de facto* complainant nor the victim lodged any complaint before the Police or any other authority alleging that the victim was subjected to physical torture and mental trauma by the accused persons on demand of dowry. The story of illegal demand of dowry and consequent torture only came up after the unfortunate death of the daughter of the *de facto* complainant. There is absolutely no evidence that soon before the death of the victim she was subjected to torture by the appellants on demand of dowry. Thus, the allegation under Section 304B of the Indian Penal Code cannot stand against the appellants. In support of his contention the Learned Advocate for the appellants refers to a decision of the Hon'ble Supreme Court in ***State of Haryana –Vs.- Angoori Devi & Anr.*** reported in ***AIR 2019 SC 3647***. In paragraph 16 of the said judgment it is observed by the Apex Court as hereunder:-

"16. It is true, that the victim died of burns. The death was otherwise than under normal circumstances and within seven years of marriage. However, to attract Section 304B of the Indian Penal Code, the prosecution has to establish that soon before the death the deceased was subjected to cruelty and harassment in connection with demand for dowry. The High Court rightly found that the evidence did not show any proximate connection between the demand of dowry and the act of cruelty of harassment and/or the death. The prosecution has not been able to prove that the victim was subjected to cruelty or harassment soon before her death in connection with any demand for dowry".

Learned Advocate for the appellants also refers to another decision of the Hon'ble Supreme Court in ***Shindo @ Sawinder Kaur & Anr. –Vs.- State of Punjab*** reported in ***(2011) 2 JT 364***. It is observed by the Hon'ble Supreme Court in the above-mentioned report that undoubtedly in a case of a dowry death under Section 304B, a presumption of Section 113B does arise against the accused. However, the presumption is relateable to the fact that the prosecution must first spell out the ingredients of the offence and then only can a presumption arise. In the present case we find that the death was an unnatural one and had taken place within seven

years of the marriage. But the third ingredient that any demand for dowry had been made soon before the death has not been proved. In this view of the matter, the presumption under Section 113B of the evidence cannot be raised.

The Learned Public Prosecutor-in-Charge, on the other hand, submits at the outset that in a case of matrimonial dispute, cruelty upon a married lady and consequent unnatural death of the married lady, generally the witnesses who are not related with the parties do not come forward to depose against the accused persons. They usually do not want to involve themselves in such matrimonial family matters because of the fact that they do not want to antagonize their neighbours. Therefore, the Court is left with no other alternative but to decide the case on the basis of the evidence adduced by the witnesses who are related to the victim.

With this introduction, it is submitted by the Learned Advocate for the respondent that from the evidences of P.W. 1, P.W. 3, P.W. 2 and P.W. 5 it is ascertained that the victim narrated the incident of torture inflicted upon her about one month prior to her death. The victim also stated that she was tortured on demand of dowry to the above-named witnesses. The Learned Public Prosecutor-in-Charge has pointed out the evidence of P.W. 1 where he stated that he also

witnessed the accused persons torturing his daughter at her matrimonial home. On one occasion, he and his daughter were both assaulted and the accused persons stated that his daughter would be hanged unless he would pay the amount and told him to do whatever he would like. This part of evidence was not specifically challenged during cross-examination of P.W. 1. Only a suggestion was put to the effect that accused never assaulted him or that he never had any occasion to witness any torture upon his daughter as stated by him or that the appellant no. 1 never stated that his daughter would be hanged unless he would pay the amount. The *de facto* complainant (P.W.1) has readily denied such suggestion. Thus, it is urged by the Learned Public Prosecutor-in-Charge that during cross-examination the defence did not even try to take contradiction of his statement made in FIR as well as in his evidence-in-chief. On the question of applicability of Section 304B of the Indian Penal Code it is submitted by the Learned Public Prosecutor-in-Charge that proximity theory between the torture inflicted upon a married woman on demand of dowry and her unnatural death is subjective one and it varies from case to case. In this regard, he refers to the evidence of P.W. 3 who is the mother of the victim where she stated that about 15 days prior to the death of the victim she came to her paternal home and

informed her about torture and demand of dowry. The victim died within 15 days of her disclosure of torture on demand of dowry to her mother. Thus, narration of the victim about the incident to her mother establishes a proximate connection between demand of dowry and the act of cruelty and harassment and the unnatural death of the victim. In support of his contention, the Learned Public Prosecutor-in-Charge refers to a decision of the Hon'ble Supreme Court ***in Maya Devi & Anr. -Vs.- The State of Haryana*** reported in **(2015) 17 SCC 405**. Paragraphs 23 to 26 of the said report is absolutely relevant to decide the instant appeal and is reproduced below:-

23. *To attract the provisions of Section 304-B, 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 or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned Senior Counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and*

circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

24. *The aforesaid provisions were considered by this Court in Bansi Lal v. State of Haryana wherein it was held that:*

"17. While considering the case under Section 304-B, cruelty has to be proved during the close proximity of the time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide."

This Court further held that where the cruelty has been proved during the close proximity of the time of death then the provisions of Section 113-B of the Evidence Act, 1872 providing for presumption that the accused is responsible for dowry death, have to be pressed in service. In paras 19 and 20 of the judgment, this Court has further held as follows:

"19. It may be mentioned herein that the legislature in its wisdom has used the word 'shall' thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the

provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein I had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression 'soon before her death' has not been defined in either of the statutes. Therefore, in each case, the court has to analyze the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death."

25. *This Court, in Mustafa Shahadal Shaikh v. State of Maharashtra held as under :*

"9. In order to convict an accused for the offence punishable under Section 304-B IPC, the following essentials must be satisfied:

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death. If the abovementioned ingredients are attracted in view of the special provision, the court shall presume and it shall record such fact as proved unless and until it is disproved by the accused. However, it is open to the accused to adduce such evidence for disproving such compulsory presumption as the burden is unmistakably on him to do so and he can discharge such burden by getting an answer through cross-examination of the prosecution witnesses or by adducing evidence on the defence side.

11. To attract the provisions of Section 304-B, 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 or harassment 'for, or in connection with the demand for dowry'. The expression 'soon before her death' used in Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned counsel appearing for the appellant submitted that there is no proximity for the alleged demand of dowry and harassment.

*With regard to the said claim, we shall advert to the same while considering the evidence led in by the prosecution. Though the language used is 'soon before her death', no definite period has been enacted and the expression 'soon before her death' has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term 'soon before her death' is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. These principles have been reiterated in *Kaliyaperumal v. State of T.N.* and *Yashoda v. State of M.P.**

26. *In Ramesh Vithal Patil v. State of Karnataka this Court held as follows:*

20. Moreover, admittedly the deceased committed suicide within a period of seven years from the date of her marriage. Section 113-A of the Evidence Act is, therefore, clearly attracted to this case. Presumption contemplated therein must spring in action. This provision was introduced by the Criminal Law (Second Amendment) Act, 1983 to resolve the difficulty of proof where married women are forced to commit suicide but incriminating

evidence is difficult to get as it is usually available within the four walls of the matrimonial home."

On the basis of the ratio laid down in the foregoing paragraphs the Hon'ble Supreme Court was pleased to analyze the evidence led by the prosecution. It was brought in evidence in the said report that in June, 1996, the deceased was brought to home by the accused persons. After some days when the complainant visited her matrimonial home at Rohtak, he was informed that situation has not changed and whenever she brings money, the peace returns for 10/20 days otherwise she is beaten mercilessly by the accused persons. On 26th September, 1996, the complainant got the information about the death of his daughter "otherwise than under normal circumstances". Therefore the Hon'ble Supreme Court decided the case against the appellants taking note of the ingredients under Section 304B and the presumption of law provided under Section 113B of the Evidence Act where the Court "shall presume", leaving no option with a Court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. According to the Learned Public Prosecutor-in-Charge, the appellants failed to rebut such presumption.

It is further argued by the Learned Public Prosecutor-in-Charge that the victim received burn injury at about 1.00 P.M. Immediately after receiving such information the father of the victim and other relations rushed to the matrimonial home of the victim. When they reached there they did not find any of the accused persons present in the house. All of them fled away after the incident. It is submitted by the Learned Public Prosecutor-in-Charge that this is another strong circumstance to lead the Court to hold that the accused persons were responsible for unnatural death of the victim.

In reply, the Learned Advocate for the appellants refers to a decision of the Hon'ble Supreme Court in ***Durga Prasad & Anr. – Vs.- State of Madhya Pradesh*** reported in ***(2010) 9 SCC 73***. In paragraph 16 of the said report the Hon'ble Supreme Court was pleased to allow the benefit of doubt to the appellants having particular regard to the fact that except for certain bald statements made by P.Ws. 1 and 3 alleging that the victim had been subjected to cruelty and harassment prior to her death, there is no other evidence to prove that the victim committed suicide on account of cruelty and harassment to which she was subjected just prior to her death, which, in fact, are the ingredients of the evidence to be led in respect of Section 113B of the Evidence Act, 1872, in order to bring home the

guilt against an accused under Section 304B of the Indian Penal Code. It was further held by the Hon'ble Apex Court that in order to bring home a conviction under Section 304B of the Indian Penal Code, it will not be sufficient to only lead evidence showing that cruelty or harassment had been meted out to the victim, but that such treatment was in connection with the demand of dowry. The Hon'ble Supreme Court finally came to the conclusion that no case was made out on the ground of sufficient evidence against the appellants for conviction under Sections 498A and 304B of the Indian Penal Code.

Thus, it is concluded by the Learned Advocate for the appellants that only some bald and omnibus allegation made against the appellants are not sufficient to bring home the charge under Sections 498A/304B of the Indian Penal Code.

Having heard the learned advocates for the appellants and the respondent, I like to refer at the outset the judgment of the Hon'ble Supreme Court in ***Ranjit Singh vs. State of Punjab*** reported in **(2013) 12 SCC 333** where the plea of non-examination of any independent witness was held by the Hon'ble Supreme Court to be meritless on the ground that it is, but natural, that incident of cruelty and harassment for demand of dowry generally would remain within the personal knowledge of near relations and they would be the best

persons to depose about the same. Therefore, the evidence of physical and mental torture of the deceased from the accused is not to be discarded simply on the score of independent corroboration. In the same judgment it is observed by the Hon'ble Supreme Court that about the harassment meted to a girl normally in Indian family, the matter is first reported to the parents and not to the panchayat. It is not that such matter is required to be reported to the panchayat.

Bearing the principle of appreciation of evidence of related witnesses, let me now scan evidence on record independently. Admittedly, marriage of the victim with the appellant No.1 was solemnized about five years before the date of unfortunate death of the victim. Admittedly, the victim had one male child aged about four years at the relevant date of occurrence. It is also not disputed that the victim was pregnant when she had met with an unnatural death at her matrimonial home. A plea was taken on behalf of the appellants that the victim caught fire accidentally due to stove bursting. This plea does not have any merit because the victim died on the first floor room of her matrimonial home. The Investigating Officer seized some cotton bed sheets and other articles which reasonably suggests that the place of occurrence was the bed room of the victim. No kerosene

stove was seized by the Investigating Officer. Therefore, this Court is not in a position to accept such defence plea by the appellants.

It is also pertinent to note that the victim committed suicide at about 1 P.M. In village area it is generally lunchtime of the village people. Therefore, it is presumed that matrimonial relations of the victim were present when she set herself on fire. Therefore, the reason as to why the victim committed suicide or had met with an unnatural death must be within the special knowledge of the appellants. The appellants failed to throw any light as to how the victim died. This is, of course, an important circumstance which would go against the appellants.

It is needless to say that in order to prove the charge under Section 304B of the Indian Penal Code the prosecution is bound to prove that soon before her death, the woman was subjected to cruelty or harassment by her husband or any relatives of her husband and secondly, such cruelty or harassment must be, or in connection with, demand of dowry.

On careful perusal of the evidence on record it is ascertained that the de facto complainant (P.W.1) had the knowledge that since after few days of her marriage the victim was subjected to cruelty and harassment in the hands of the appellants. It is also the evidence of

P.W.1 that on one occasion when he went to the matrimonial home of the victim to settle the dispute amicably he and his daughter were assaulted by the appellant No.1 and appellant No.2 and the appellant No.2 threatened him saying that he would kill his daughter by hanging. The mother of the victim (P.W.3) stated that about 15 days before the incident, the victim told her that she was tortured on demand of dowry. Thus, it is presumed from the prosecution version that the victim was continuously tortured for about five years. Surprisingly enough, neither the victim nor her father lodged any complaint against the appellants during the lifetime of the victim. Everything surfaced out after her unfortunate death.

It appears from Exbt.1 series that police inquest was held on 2nd May, 2018 soon after the incident. From the inquest report it is ascertained that the victim was found in charred condition in the bedroom of the first floor. At the time of inquest, the father and other relatives of the victim were present. On primary enquiry, it was learnt by the Inquest Officer that since after marriage the victim was subjected to torture over dowry items given to her and her husband at the time of marriage. This part of inquest report does not corroborate the case of the de-facto complainant as stated in the FIR that the victim was tortured on demand of a further sum of Rs.20,000/-. In the inquest held

by the Executive Magistrate, marked 'X' for identification. I failed to understand as to why the said document is marked 'X' for identification in spite of examination of the Executive Magistrate at the time of trial. It is found that the de-facto complainant and other relatives of the victim only stated that she was physically and mentally tortured by the accused persons and failing to bear such torture she committed suicide.

In the instant case not only the husband but also father-in-law, mother-in-law, brother-in-law and grandmother-in-law were implicated by the de-facto complainant as the perpetrator of offence in the FIR. It is quite common to launch prosecution under Section 304B not only against the husband but also against all other matrimonial relations of the victim. In such case the Court has the duty to find out the special role of each of the accused persons. In the evidence on record, the role of each of the accused persons has not been clearly stated by the witnesses. Undoubtedly, the evidence of the witnesses came in the form of bald allegation that all the matrimonial allegations of the victim treat the victim with cruelty on demand of dowry.

I have already held that the case of dowry differs from document to document. It is also not stated by the witnesses specifically about the role attributed each of the accused persons. Therefore, this Court is of the considered view that under such evidence on record, it would be

highly risk to convict the accused under Section 304B of the Indian Penal Code. The appellants are entitled to benefit of doubt under the charge of Section 304B of the Indian Penal Code. At the same time, I am not unmindful to note that the evidence of the witnesses was consistent on the issue that the victim was tortured and harassed at her matrimonial home. Explanation to Section 498A of the Indian Penal Code defines cruelty in the following words:

- (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.*

I have already held explanation (b) of Section 498A of the Indian Penal Code cannot be attracted against the appellants but the fact remains that victim was subjected to cruelty and torture by the appellants. The witnesses being the near relations of the victim are the best witnesses to tell as to whether the victim was subjected to cruelty

or not. All the witnesses stated in the same tune that she was subjected to cruelty. Such cruelty was of such a nature which drove the victim to commit suicide on 2nd May, 2008. Therefore, this Court is of the view that though the appellants are entitled to get benefit of doubt in respect of the charge under Section 304B of the Indian Penal Code for want of satisfactory evidence, the learned Trial Court was absolutely justified in convicting the appellants under Section 498A of the Indian Penal Code. For the reasons stated above, the instant appeal is **allowed** in part. The order of conviction and sentence for the offence punishable under Section 304B of the Indian Penal Code is set aside.

But the order of conviction passed by the Trial Court for the offence under Section 498A of the Indian Penal Code is **affirmed**.

On the point of sentence, this Court is of the view that no lenient approach should be taken against the accused persons because of the fact that due to cruel treatment meted out upon the victim, she committed suicide during her pregnancy. A pregnant lady normally does not want to commit suicide before seeing the sweet face of her newly born baby. She was tortured in such a manner that she lost all her expectations in life. Even she did not want to see the baby growing in her womb at the time of her unnatural death. Therefore, this Court does not find any reason to take different approach on the question of

sentence. The order of sentence for the offence punishable under Section 498A of the Indian Penal Code is affirmed.

The period of incarceration by the convicts shall be set of under the provision of Section 428 of the Criminal Procedure Code against the punishment.

At this stage, it is submitted by the learned Advocate for the appellants that the appellants are in custody to serve out sentence from the date of delivery of judgment and order of conviction and sentence dated 29th March, 2019.

Since this Court has already passed an order of set of under Section 428 of the Criminal Procedure Code, the resultant effect follow upon the appellants.

Let a copy of this judgment be sent to the Court below along with lower court record for information and compliance.

(Bibek Chaudhuri, J.)