

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

**IA No.: CRAN 2/2017(Old No.:CRAN/4171/2017),
CRAN 3 of 2021
In
C.R.R 744 of 2015**

**Arindam Kumar
-Vs-
The State of West Bengal**

For the Appellant: Mr. Jayanta Narayan Chatterjee, Adv.,
Ms. Nandini Chatterjee, Adv.,
Mr. Nazir Ahmed, Adv.,
Ms. Jayashree Patra, Adv.

For the State: Mr. Ranabir Roy Chowdhury,

Heard on: November 17, 2021.

Judgment on: January 27, 2022.

BIBEK CHAUDHURI, J. : –

1. The appellant has already suffered sentence in Sessions Trial No.5 of 2012 arising out of Session Case No.237 of 2010. After serving out the term period of sentence of imprisonment, he is now released. However, the appellant has pursued the instant appeal questioning the legality of conviction passed by the learned trial court.

2. Chanditala P.S Case No.80 of 2008 was registered on the basis of a written complaint submitted by one Prosanta Kumar Koley before the Officer-in-Charge of the said P.S on 13th July, 2008 alleging, inter alia, that his niece Bulti, since deceased, wife of appellant Arindam Kumar received severe burn injury on 13th July, 2008 and she was admitted to Chanditala Rural Hospital. The complainant and other paternal relations of Bulti went to the said hospital and came to know that she was referred to Calcutta Medical College and Hospital for better treatment. They also came to know that on that date at about 9.30 am the appellant and his parents brutally tortured her both physically and mentally and poured kerosene oil on her body and ablazed her. It is also alleged that the time of marriage of Bulti with the appellant, the father of Bulti gave bridal presents, gold ornaments, cash of Rs.1,00,000/- and other articles as per the demand of the bride groom. However, after some days of her marriage, Bulti was subjected to torture by her husband and parents-in-law on demand of dowry. When Bulti expressed her inability to convey demand of her husband and parents-in-law to her father, they raised level of torture upon her. She fled away from her matrimonial home and took shelter at her paternal home but her father, mother and other relatives persuaded her to go back to her matrimonial home.

3. Initially police registered Chanditala P.S Case no. 80 of 2008 dated 13th July, 2008 under Section 498A/326/307/406 of Indian

Penal Code against the appellant and his parents. But the victim succumbed to her injuries after 17 days of incident. After her death the accused persons were prosecuted under Section 302 of the Indian Penal Code.

4. On submissions of charge-sheet under Section 498A/326/302/120B/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, the case was transferred to the Court of the learned Additional Sessions Judge, Serampore for trial and disposal. The learned trial judge on conclusion of trial convicted accused Arindam Kumar for the offence punishable under Section 498/304B of the Indian Penal Code. The parents of the appellant was however acquitted from the charge.

5. The order of conviction is under challenge in the instant appeal.

6. During trial, prosecution examined as many as 20 witnesses. The witnesses examined during trial of the case may be classified in the following manner:-

A. Related witnesses:

1. PW1: Prosanta Kumar Koley (Uncle of the deceased and defacto complainant).
2. PW2: Provat Koley (Uncle of the deceased).
3. PW3: Amit Koley (Uncle of the deceased).
4. PW4: Ashim Koley (Father of the deceased).
5. PW8: Dipankar Koley (Uncle of the deceased).

B. Doctors:

1. PW7: Dr. Kuntal Biswas.
2. PW11: Dr. Tarun Kumar Sarkar (Examined the victim Lady).
3. PW12: Dr. Tapas Kumar Bose.
4. PW15: Dr. Debasis Halder (Examined the lady).
5. PW16: Dr. Tanveer Adil.
6. PW18: Dr. Rubik Roy (Issued death certificate of the deceased).

C. Police Personnels:

1. PW13: Partha Sarathi Mazumdar.
2. PW14. Subrata Mukherjee.
3. PW17: Nasim Ali.
4. PW19: Samir Sarkar (First Investigating Officer).
5. PW20: Subhas Chandra Sarkar (Second Investigating Officer).

D. Other Witnesses:

1. PW5: Swapan Bag (Panchyat Pradhan of Bhagabatipur Gram Panchyat).
2. PW6: Dilip Malik (Resident of Bhagabatipur village).
3. PW9: Sudipta Manna (Member of Paschimbanga Gantantrik Mahila Samiti).

4. PW10: Subhankar Ghosh.

7. Series of documents are marked exhibits and material exhibits which I propose to refer subsequently in body of the judgment.

8. It is submitted by Mr. Jayanta Narayan Chatterjee, learned Advocate for the appellant that marriage of the deceased with the appellant was an outcome of love affairs between the two. This is revealed from the fact that before solemnization of social marriage, marriage between Bulti and Arindam was registered on 10th May 2005. Subsequently, there was a social marriage on 22nd November, 2007 between the two according to the Hindu Rights and Ceremonies. Unfortunately, the deceased received burn injury on 13th July, 2008 and subsequently she died of such injury 17 days after the incident at Medical College and Hospital, Calcutta. It is also not disputed that the victim received burn injury at her matrimonial home at about 9.30/10 am on 13th July, 2008. Mr. Chatterjee confines his argument on the questions as to whether the prosecution was able to prove all ingredients of offence under Section 304B of the Indian Penal Code or not. According to him the ingredients of dowry death was not proved and the learned trial judge convicted the appellant without considering the said issue on surmise and conjecture.

9. In order to substantiate his argument he draws my attention to the evidence of the witness. It is deposed by the PW1, uncle of the deceased that her paternal relations including her parents consented to the marriage of Arindam who is an engineer and only son of his parents and Bulti was the only daughter of PW4 Ashim Koley. At the time of marriage, according to PW1 gold ornaments, brass and steel utensils, furniture and other items and cash of Rs.1,00,000/- was given to the bridegroom as per demand, but some days after marriage they started to inflict torture upon Bulti on demand of more gold ornaments and money from her paternal home. Whenever she came to her paternal home she used to tell about such demand made by the accused persons to her parents and other paternal relations including PW1. When the deceased expressed inability of her father to satisfy the demand of the appellant and her parents, they increased the level of torture upon her. PW1 also stated on oath that they went to matrimonial home of Bulti and requested her husband and parents-in-law not to inflict torture upon her but they did not pay any heed to their request. The father of Bulti (PW1) informed the matter to a local club and a local leaders, named, Sudipta Manna and Swapan Bag. They also tried to resolve the dispute but failed. It is specifically pointed out by Mr. Chatterjee that PW1 has admitted in his examination-in-chief that after receiving burn injury, Bulti was taken to hospital by her husband, father-in-law and mother-in-law. It is further stated by

Mr. Chatterjee that PW1 claimed in his evidence that he and other paternal relations met Bulti in the burn ward of Medical College and Hospital, Kolkata and they came to know from her that on 13th July, 2008 a quarrel broke out between her and the accused persons on demand of dowry. Then her father-in-law and mother-in-law caught both the hands of Bulti and her husband sprinkled kerosene oil on her body and set her on fire. Mr. Chatterjee has raised a question as to whether PW1 had any chance to go inside burn ward of the hospital, because burn ward of the hospital is kept as a non infectious zone and no outsider had any chance to go inside the burn ward. He has also raised a question as to whether the injured lady had the mental capacity to make any statement to PW1. It is further submitted by Mr. Chatterjee that during cross examination PW1 failed to state the date, time and month of torture allegedly inflicted by the appellant upon the deceased. It is also admitted by him that during her lifetime they never lodged any complaint against the appellant alleging torture upon the deceased. Similarly, Mr. Chatterjee refers to the sketch map of the place of occurrence which is the house of the appellant. On the adjacent eastern side of the house of the appellant there is a house of one Horen Banerjee. The said Banerjee's were not examined by the Investigating Officer to ascertain the truth of the complaint made by the defacto complainant. PW1 Provat Koley corroborated the evidence of PW3 in his deposition. Mr. Chatterjee has pointed out that PW2 tried to

introduce a new story stating, inter alia, that during the life time of Bulti the incident that she was subjected to torture by her parents-in-law and her husband was intimated to Chanditala P.S and one S.I Buddhadeb Babu settled the dispute and sent Bulti to her matrimonial home.

10. It is further submitted by Mr. Chatterjee that PW3 Amit Koley introduced a new story as to the relationship of deceased Bulti and her husband. Apart from deposing the usual story of physical and mental torture on demand of further dowry like that of other witnesses on behalf of the prosecution, it is deposed by PW3 Amit Koley that once the husband of Bulti tried to commit murder of Bulti by pressing a pillow over her face. The appellant also repeatedly threatened his wife saying that he would marry another girl again. PW3 further claimed that he was present at the time of oral dying declaration made by the deceased to her relatives at Medical College and Hospital, Kolkata.

11. Next is the evidence of the defacto complainant who is the father of the deceased. In his evidence he stated that one day in the morning his daughter came to his shop and told her that her mother-in-law demanded Rs.1 lakh from him for starting a stationary shop business at the junction of Kumirmora. Then he went to the matrimonial home of his daughter with her and expresses his inability to pay such huge amount of money because he spent money in the marriage of his daughter. He also stated that

her mother-in-law said that her son is an engineer and therefore he had to satisfy their demand. On the date of occurrence, it is deposed by PW4 that he received the information that his daughter suffered from burn injury at about 9.30 am and went to Chanditala P.S with his elder brother and one Swapan Bag. From Chanditala Rural Hospital they went to the Medical College and Hospital, Kolkata. He obtained one red card from the hospital office and went to the burn ward to see his daughter. At that time his daughter made a statement that the appellant poured kerosene oil on her body and set her ablaze. It is pointed out by Mr. Chatterjee that in his cross examination PW4 admitted that if any quarrel or altercation takes place in the matrimonial home of the deceased, the neighbours and the passersby would be able to hear such quarrel and altercation. The prosecution did not take any step to produce any witness from the neighbourhood of the matrimonial home of the deceased. It is also pointed out by Mr. Chatterjee referring to the relevant portion of cross examination of PW4 that before social marriage of Arindam and Bulti an agreement of marriage was executed and it was recorded in the said agreement that Arindam and Bulti had love relation from before.

12. PW8 Dipankar Koley is another uncle of deceased Bulti. He corroborated the evidence of, PW1, PW2, PW3 and PW4 in his examination in chief.

13. Referring to the evidence of PW5 it is submitted by Mr. Chatterjee that PW5 was the Pradhan of Bhagabatipur Gram Panchyat at the relevant point of time. The paternal relation of deceased Bulti were the supporters of the same political party of which PW5 belonged. Therefore, PW5 took undue interest in the family matter of Arindam and Bulti. It is ascertained from his evidence that he accompanied the relatives of Bulti to Medical College and Hospital, Kolkata and visited Bulti in the burn ward of the said hospital. She told them that her father-in-law and mother-in-law caught hold of her two hands and her husband poured kerosene oil on her body and lit fire. It is also stated by her that the parents-in-law and her husband used to demand extra dowry and also used to torture upon her and for that reason the accused persons set her ablaze. Her mother-in-law was sitting by the side of the bed of Bulti in the hospital and she was insisting upon her not to say all such facts against them. PW5 Swapan Bag was also examined under Section 164 of Code of Criminal Procedure during investigation and his statement was recorded by the learned Magistrate during investigating of the case. PW9 Sudipta Manna was a teacher of primary school. She stated in her evidence that she is a social worker and attached with Ganatantrik Mahila Samiti. It is found from the evidence of PW9 that on 20th May, 2008, PW4 Ashim Koley made a complaint before them and on the basis of such complaint PW9 and other members of Ganatantrik Mahila

Samiti went to the house of the accused persons to amicably settle the dispute between the accused persons and the deceased. In spite of their best effort, the accused persons were found severely inimical against the deceased. The parents of Arindam openly declared that they would not allow Bulti to live in their house as the wife of Arindam. If she tried to enter into the house from one door, they would drive her away through another door. PW9 informed the father of the deceased that they failed to solve the dispute amicably.

14. PW10 Subhankar Ghosh brought Bulti to Chanditala Rural Hospital by his car. He does not know about any incident between the accused persons and the deceased.

15. Mr. Chatterjee, learned Advocate for the appellant next draws my attention to medical evidence on record. PW7 Dr. Kuntal Biswas was the Registrar of Kolkata Medical College and Hospital. He produced the treatment-sheets (bed head ticket) of the deceased. The said treatmentsheets were marked exhibit-Y to Y-25 for identification. PW11 Dr. Tarun Kumar Sarkar of Medical College and Hospital, Kolkata examined Bulti on 13th July, 2008 at about 11.18 am at emergency ward of the hospital. The patient came to the hospital with 70% burn injury over her face, chest, head and lower part of limb. She was semi conscious and the prognosis was uncertain. He prepared the injury report and it was signed by the father-in-law of the patient, named Bishnu Pada Kumar. Mr. Chatterjee especially draws my attention to the cross examination of

PW11 where he stated that he did not record any statement of the injured because she was not in a position to speak. He also stated Arindam and another person admitted her to the hospital. The injury report prepared by PW11 was marked Exhibit-10 during trial of the case. It is found that the appellant admitted her and disclosed the history of burn injury. It is recorded by PW11 that Bulti Kumar received burn injury at home at 9.30 am on 13th July, 2008 **“as per party there were some problems about dowry”**. PW15 Dr. Debasis Halder treated the deceased at Chanditala Rural Hospital. He found burn injury on the person of the said patient. He estimated the injury 70% to 80% with smell of kerosene. He referred the patient to Medical College and Hospital, Kolkata. The injury report written and signed by him was marked as Exhibit-5

16. PW16 Dr. Tanveer Adil was a post graduate trainee in Medical College and Hospital, Kolkata on 13th July, 2008. It is ascertained from his evidence that the statement of the deceased was recorded in his presence. His signature on the said statement was marked as Exhibit-13/1. The learned Advocate for the appellant has severely criticized the said statement recorded by the Investigating Officer without ascertaining the fact as to whether the deceased was mentally fit and alert to make such statement or not. Secondly, the said statement was not recorded in question answer form. Thirdly, it is contended by Mr. Chatterjee that a lady having 70% burn injury could not make such coherent statement before the Investigating

Officer. He also submits that from Exhibit-10 it is found that the patient was semiconscious at the time of her medical examination in the emergency ward of the hospital. A semiconscious patient was not in a position to give any dying declaration as claimed by the prosecution. It has not been established by the prosecution that Dr. Tanveer Adil had duty in the burn ward of the hospital on 13th July, 2008. He merely stated that the statement was recorded in his presence. He did not ascertain as to whether the patient was in her sense to make such statement or that she was mentally alert and fit to give dying declaration to the Investigating Officer of this case. Mr. Chatterjee has further questioned that if it is assumed that the victim made a dying declaration before Investigating Officer, it was the duty of the Investigating Officer to get her dying declaration recorded by a Magistrate in question answer form. In the absence of such statement, evidence of PW16 and his note on the purported statement of the deceased that she made the statement in his presence cannot be relied upon.

17. PW18 Dr. Rubik Roy issued death certificate of Bulti Kumar and PW12 Dr. Tapas Kumar Bose Autopsy Surgeon who hold post-mortem over the dead body of Bulti Kumar. The post-mortem report is marked Exhibit-11 during trial of the case.

18. He opined that the death of Bulti Kumar was due to effect of toxic absorption from infected ulcers resulting from burn injuries, ante-mortem in nature. In his cross examination PW12 explained

that toxic substance literally means poisonous elements infected. When a wound gets infected, there is accumulation of bacteria at the site of the wound. Bacteria produce toxic substance that may be absorbed in the system causing toximea or septicemia which can cause death of a person in ordinary course of nature.

19. PW13 Partha Sarathi Mazumdar was posted at Chanditala as Officer-in-Charge on 13th July, 2008. On that date, he received a complaint in connection with this case from Sri. Prosanta Kumar Koley and started Chanditala P.S Case No.80 of 2008 dated 13th July, 2008 under Section 498A/326/396/406 of the Indian Penal Code against the accused persons. The formal FIR was marked as Exhibit-12 at the instance of PW13. It is further ascertained from his evidence that he endorse the case to S.I Samir Sarkar for investigation.

20. PW17 Nasim Ali performed inquest over the dead body of the deceased and prepared a report which was marked Exhibit-16 during trial of the case. PW19 Samir Sarkar is the First Investigating Officer and PW20 Subhas Chandra Sarkar is the Investigating Officer who submitted charge-sheet in the instant case.

21. It is submitted by Mr. Chatterjee with reference to the cross examination of PW19 Samir Sarkar that the alleged incident took place on 13th July, 2008 and he visited Medical College on 22nd July, 2008 and collected treatment report from the record keeper of

the female ward of Calcutta Medical College and Hospital. According to the statement of the record keeper, the deceased was in critical condition and he was unable to speak.

22. According to Mr. Chatterjee if the treatment-sheet reveals that the deceased was not in such physical capacity to speak, there was no scope for her to make dying declaration as to the cause of her death and such dying declaration ought to have been held to be concocted and falsely created for the purpose of this case.

23. PW20 Subhas Chandra Sarkar submitted charge-sheet against the appellant and other two accused persons under Section 498A/326/307/302/201 of the Indian Penal Code read with Section 3 and 4 of the Dowry Prohibition Act on the basis of the investigation carried out by PW19 Samir Sarkar.

24. PW13 Partha Sarathi Mazumdar was posted at Calcutta Medical College and Hospital outpost within Bowbazar P.S on 13th July, 2008. He recorded the statement of the deceased on 13th July, 2008 in presence of Dr. Tanveer Adil (PW16) the said statement was marked as Exhibit-13. In course of his cross examination the witness admitted that there is no certificate or any note to the effect that the person making the statement was found physically fit and mentally alert to make such statement. It has also not been mentioned that under what basis PW13 recorded the statement of the deceased.

25. Mr. Jayanta Narayan Chatterjee has urged that the learned trial court convicted the appellant only on the basis of the purported dying declaration allegedly made by Bulti Kumar. It is not in dispute that Bulti Kumar sustained burn injury on 13th July, 2008. After she received burn injury at her matrimonial home. The appellant and her parents took her to Chanditala Rural Hospital for medical treatment and from Chanditala she was taken to Medical College and Hospital, Calcutta for treatment. The husband and parents-in-law admitted her in the female ward of Medical College and Hospital, Calcutta for medical treatment. Had there been any animosity between the deceased and her husband and parents-in-law they might not take step for medical treatment of the deceased. It is further submitted by Mr. Chatterjee that the Medical Officer at Chanditala Rural Hospital first medically treated the deceased. She had 60/70 per cent burn on her person. Deceased Bulti Kumar did not make any statement as to the cause of her injury to the said Medical Officer. The prosecution has failed to prove under what circumstances PW13 recorded the purported statement of deceased Bulti. It is also not clear that how Dr. Tanveer Adil (PW16) was present in the female ward at the time of recording of the statement by PW13. Dr. Tanveer Adil admitted that injured Bulti was not admitted under his supervision. Therefore, there was no occasion for Dr. Tanveer Adil to examine the deceased medically. He was also not in a position to say whether the deceased was mentally oriented

to make statement before PW13. Mr. Chatterjee further submits that the attending nurse was the best person who could state the physical and mental condition of the deceased but no attending nurse was called to witness the statement of the victim. Under such circumstances, victim's alleged declaration cannot be taken into consideration.

26. In support of his contention Mr. Chatterjee refers to an unreported decision of the Division Bench of this Court in **CRA 385 of 2016 (Palash Mondal @ Padma Palash Mondal vs. State of West Bengal)**, judgment delivered on 17th February, 2020. In the aforesaid unreported decision the Division Bench of this Court observed as hereunder:

*“No doubt, in **Sher Singh v. The State of Haryana, (2015) 3 SCC 724**, the apex court held such onus need not be discharged beyond reasonable doubt. However, that does not absolve the prosecution from establishing the primary facts on the anvil of preponderance of probability. Prosecution evidence with regard to demand of dowry by the appellant and torture of the housewife soon before her death is a divided house. While PW1 claimed that the appellant subjected his wife to torture on demands of dowry, PW2 deposed the husband had in the face of unjustified demands of his uncle, eloped and married his wife at a Kali Temple. Is it probable that a young person who elopes and marries his beloved in the face of demands of dowry by his relations would subsequently join them in making further dowry*

demands? Probably not. The evidence of PW1 in that regard requires to be assessed on the anvil of reasonable broad probability and normal human conduct and cannot be treated as gospel truth. Hence, even on the anvil of preponderance prosecution appears to have failed to show the appellant had made further demands of dowry and tortured his wife soon before her death. On the other hand, it is more probable that the appellant was an unwilling spectator to the torture and an unfortunate demise of his beloved, whom he had married against the will of his relations who were demanding dowry from her family members.

My conclusion in this regard is further fortified by the fact the appellant had suffered burn injuries at the time when the housewife committed suicide and had been admitted to hospital for more than a fortnight. Trial court appears to have glossed over such circumstance on the specious plea that the appellant did not explain the injuries suffered by him. It is the duty of the prosecution to prove injuries on an accused when such injuries are grave and had occurred in the course of the incident. In fact, it is the prosecution case, as would appear from the evidence of PW17, Investigating Officer, that the appellant suffered injuries while trying to save the housewife.

In this backdrop, I am of the opinion that the prosecution has been unable to discharge its initial onus that the appellant had made demands of dowry and subjected the housewife to torture soon before her death. Under such circumstance, the prosecution cannot solely rely on the statutory presumption and secure a conviction

on the premise that the said presumption stood un rebutted during trial.”

27. The above observation made in **Palash Mondal @ Padma Palash Mondal** (supra) by the Division Bench of this Court, in my considered and humble view, is not applicable under the facts and circumstances of the case. True is that in the instant case the deceased succumbed to her burn injuries. Marriage of deceased with the appellant was registered on 10th May, 2005. Subsequently, there was a social marriage on 22nd November, 2007 between the two according to Hindu Rights and Ceremonies. Within seven months of her social marriage, Bulti committed suicide at her matrimonial home receiving burn injuries. She died after 17 days of the occurrence. Thus, she was alive in the hospital for about 17 days. Unlike the facts in **Palash Mondal @ Padma Palash Mondal** (supra), in the instant case, the Investigating Agency made an attempt through PW14 Subrata Mukherjee, S.I of Police attached to Medical College and Hospital outpost under Bowbazar P.S to record a dying declaration of the victim on the very date of occurrence. The said statement was recorded in presence and hearing of Dr. Tanveer Adil, PW16. The evidentiary value of the said dying declaration recorded by PW14 is of course to be adjudicated upon at the subsequent stage. In the instant case though there was a love affair between the appellant and the deceased prior to their marriage, the evidence on record is sufficient to prove that the victim was

subjected to torture by the appellant and his parents. It is also important to note that the appellant did not receive any injury on his person in order to save his wife. Therefore, the facts of the instant case is not similar to the facts of **Palash Mondal @ Padma Palash Mondal** (supra).

28. Mr. Ranabir Roy Chowdhury, learned Advocate for the State, on the other hand, has supported the findings made in the judgment and order of conviction by the learned trial judge. It is submitted by him that the victim had met with an unnatural death by receiving burn injury on her person within seven months of her marriage. The evidence of the near relatives of the victim shows that during her stay at her matrimonial home she was subjected to torture on demand of money. The father of the victim stated on oath that after marriage one day the victim came to his shop and told him that her mother-in-law is demanding a sum of Rs.1 lakh to set up a shop at the junction of Kumirmora. The father of the victim took her to her matrimonial home and informed her mother-in-law that it would not be possible for him to pay such huge amount of money as he spent lot of money at the time of marriage of the victim. It is also submitted by Mr. Roy Chowdhury that the evidence of father and uncles of the victim should not be thrown away citing the ground of interestedness because in a case of domestic violence, torture takes place inside the four walls of the house. Independent witness is rarely found to prove a case of demand of dowry and

torture. The neighbours are also reluctant to depose in such case. Therefore the evidence of the near relatives of the deceased ought to be considered as the most natural and best evidence. Coupled with the evidence of the above named witnesses, there is dying declaration made by the victim on the date of occurrence before PW14 in presence of the Medical Officer. There is no reason to disbelieve such dying declaration.

29. In **Trimukh Maroti Kirkan vs. State of Maharashtra, 2006 (10) SCC 681** it was observed by the Hon,ble Supreme Court that the demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride.

But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

30. Section 304B of the Indian Penal Code defines dowry death in following words:-

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.

31. The basic ingredients to attract the provision of Section 304B are:-

- (i) The death of a woman should be caused by burn or fatal injury or otherwise than under normal circumstances:
- (ii) Such 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: and

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

32. In the instant case it is not in dispute that the death of the victim was caused by burn. Secondly, she succumbed to her injuries within seven months of her marriage. The victim stated in her statement recorded by PW14 that on the date and time of occurrence the parents-in-law caught hold of her two hands and her husband poured kerosene oil on her body and set her on fire. It is true that the dying declaration (Exhibit-13) was recorded by a Sub-Inspector of Police attached to Medical College and Hospital outpost. There is an endorsement of one Dr. Tanveer Adil that the said statement was recorded in his presence and hearing. But the said Medical Officer did not certify as to whether the victim was mentally fit and alert to make such statement before the Police Officer. It is vehemently urged by Mr. Jayanta Narayan Chatterjee, learned Advocate for the appellant that the learned trial court committed grave error in placing reliance on the said dying declaration.

33. In **Chacko vs. State of Kerala, 2003 SCC (Cr) 246**, it is held by the Hon'ble Supreme Court that it is not always necessary that a dying declaration should be certified by a doctor before reliance could be placed on the same. But then in the absence of any such

certificate, the Courts should be satisfied that from the material on record it is safe to place reliance on such uncertified declaration.

34. It is not the law that dying declaration recorded by Sub-Inspector of Police is inadmissible in evidence and cannot be relied for conviction. However, the Supreme Court utters a voice of caution in **Dalip Sing vs. State of Punjab** reported in **AIR 1979 SC 1173**. The Apex Court held that better and more reliable methods of recording a dying declaration of an injured person should be taken recourse to and one recorded by the police officer may be relied upon if there was no time or facility available to the prosecution for attaching any better method.

35. The learned Advocate for the state respondent in course of his argument failed to state any special ground for which it was absolutely necessary for the Police Officer to record the statement of the victim on 13th July, 2008. On careful perusal of the said statement it is ascertained that the time of recording statement has not been stated. The victim was not examined by any doctor before giving her statement to ascertain as to whether she was mentally fit and alert to give such statement. From the injury report it is found that when the victim was brought to the Medical College and Hospital, she was semiconscious. She could not speak properly. She received almost 70% burn. Under such circumstances, it is highly improbable to make such coherent statement as recorded in the dying declaration by the victim. Now the question that arises for

consideration is as to whether the appellant is entitled to an order of acquittal for the reason that this Court cannot fully relied upon the dying declaration (Exhibit-13).

36. I have extensively narrated the evidence on record hereinbefore. The near relatives of the deceased Prosanta Kumar Koley (PW1), Provat Koley (PW2), Amit Koley (PW3), Ashim Koley (PW4) and Dipankar Koley (PW8) stated on oath that Bulti was subjected to torture by her husband and parents-in-law on demand of dowry. It is also stated on oath that they requested two local political leaders, namely, Sudipta Manna and Swapan Bag to help them to settle the dispute. Both Swapan Bag and Sudipta Manna deposed during trial of the case as PW5 and PW9. From the evidence of PW5 Swapan Bag it is ascertained that he tried to settle the dispute recording demand of dowry by the appellant and his parents during the life time of Bulti. Even on the date when Bulti received burn injury he accompanied the parents of Bulti to the Medical College and Hospital, Calcutta. They saw here in the female ward her mother-in-law was sitting by her side. Bulti told them that both her father and mother-in-law hold her hands from both sides and her husband poured kerosene oil on her body and set her ablaze. Bulti made such statement in presence of PW5. PW9 Sudipta Manna was a teacher and a social worker. She was a member of Paschimbanga Ganatantrik Mahila Samiti. It is found from her evidence that on 20th May, 2008 the father of Bulti lodged

a complaint to her alleging, inter alia, that her parents-in-law and husband were torturing her on demand of dowry. PW9 and other members of Ganatantrik Mahila Samiti went to the house of the accused persons to solve the dispute. But the parents of Arindam told her that they would not allow Bulti to live in their house as the wife of Arindam. If she tried to enter into the house from one door, they would drive her away through another door.

37. PW5 and PW9 are independent witnesses. The relatives of the paternal house of Bulti might be supporters of the same political party in which PW5 and PW9 belonged. But the fact remains that during cross examination of PW5 and PW9 their evidence in chief could not be shaken by the defence. Thus, the prosecution was successful to explain the circumstances in which the wife of the appellant suffered unnatural death due to burn within the anvil statutory presumption under Section 113B of the Evidence Act.

38. Mr. Chatterjee further refers to another decision of the Division Bench of this Court in **Tarak Chakraborty & Anr. vs. The State of West Bengal, CRA 377 of 2011**, judgment delivered on 8th April, 2014.

39. Apart from interestedness of the witnesses who are relatives of the deceased, the Division Bench of this Court observed –

5. Another very important feature of this case is that if the lady was burnt to the extent of 80% then it is difficult to believe that she managed to say so many things to different

prosecution witnesses telling them that the appellant had set her ablaze by pouring kerosene oil. Moreover, not a single witness has said, not even the Doctors, that there was stench of kerosene oil coming from the body. It is common knowledge that if the body is burnt to the extent of 80%, it would mean that a substantial amount of kerosene oil had been used and if that be the position, then there would certainly have been smell of kerosene oil.

40. In the instant case, however, the Medical Officer of Chanditala P.S found smell of kerosene in the body of the victim.

41. I have already stated that Bulti had met with an unnatural death within seven months of her social marriage with Arindam.

42. Admittedly Bulti received burn injury at her matrimonial home on 13th July, 2008 at about 9.30 am. She was brought by Arindam Kumar, the appellant herein to Medical College and Hospital, Calcutta. Only Arindam was the patient party. In Column-8 of the injury report, the Medical Officer recorded as hereunder-

“8 History of injury- H/O Burn. She has burned at home at 9.30 am on 13.07.2008. As per party, there were some problems about dowry after their marriage.”

The said injury report was signed by one Bishnu Pada Kumar father of Arindam.

43. Living aside the dying declaration for acceptance of which Mr. Chatterjee was vigorously critical, it is the declaration of the husband of the deceased, the appellant herein that the deceased received burn injury as there was some problem about dowry after their marriage.

44. In view of such open admission, this Court has no other alternative but to hold that the prosecution successfully proved the burden of Section 113B of the Indian Evidence Act.

45. For the reasons stated above this Court is not in a position to take a contrary view against the order of conviction passed by the learned trial court.

46. At the outset it was pointed out by Mr. Chatterjee that the appellant has already suffered sentence and was discharged but he has challenged the order of conviction in the instant appeal.

47. From the discussion made hereinabove I am not in a position to alter the order of conviction passed against the appellant.

48. For the reasons stated above the instant appeal fails.

49. The judgment and order of conviction passed in is affirmed.

50. Lower court record be sent to the learned court below along with a copy of this judgment forthwith.

(Bibek Chaudhuri, J.)