

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 172 of 2002

Prosanta Dutta & Ors.

-Vs-

The State of West Bengal

With

C.R.R. 1276 of 2002

Sandhya Chakraborty

-Vs-

The State of West Bengal & Ors.

For the Appellants	: Mr. Swapan Mallick Mr. Milon Mukherjee Mr. B. Manna
Amicus Curiae	: Ms. Sayanti Santra
For the State	: Mr. Binay Panda Mr. Subham Bhakat
Heard on	: 20.01.2023, 08.02.2023, 05.07.2023, 07.12.2023
Judgment on	: 11.12.2023

Ananya Bandyopadhyay, J. :-

1. This instant criminal appeal is preferred by the appellants against an judgment and order dated 05.04.2002 passed by the Learned Additional Sessions Judge, 3rd Court at Howrah convicting the accused/appellants under Sections 498A/34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- each in default to suffer additional simple imprisonment for 6 months in connection with Sessions Trial Case No. XIV (July) 1998 while holding that the

prosecution could not prove the charge under Sections 302/34 of the Indian Penal Code.

2. The appellant no.1 is the husband of Susmita Dutta, since deceased. The appellant no. 2 is the elder brother-in-law of the deceased Susmita and he is also the elder brother of appellant no. 1. The appellant nos. 1 and 2 are the sons of appellant no. 3 and both of them are day labourers of a hosiary factory. The appellant no. 3 is the mother-in-law of Susmita Dutta, since deceased and she is the mother of both appellant nos. 1 and 2 and she is ailing lady and she is by occupation a private aya.
3. The brief fact of the prosecution case as it appeared from the First Information Report lodged by the deceased's sister Smt. Sandhya Chakraborty was that the sister of the de-facto complainant Susmita Dutta, since deceased was married to the appellant no. 1, i.e., Prosanta Dutta on 03.08.1992. It had been alleged that since after her marriage she was ill-treated and misbehaved by the husband i.e. Prosanta Dutta, by her father-in-law since deceased, by her mother-in-law Smt. Gita Dutta, who was the appellant no. 3 and by elder sister-in-law Smt. Namita Dutta the appellant no. 4 herein, two brothers-in-law namely Swapan Dutta and Tapan Dutta and another sister-in-law namely Jharna Dutta who used to assault her and tortured her on different pretext of family troubles. They also threatened to kill her and instigated her to commit suicide. The complainant and other members of her father's house tried to persuade Susmita to endure the troubles and they used to send the deceased to her matrimonial house. It had been alleged

that on 30.10.1995 at about 11 a.m. in the morning the complainant went to Howrah General Hospital to visit one patient namely Sujit Basu who was admitted at the same time in the hospital and in the meantime while she was at the steps of entrance door of emergency department, she suddenly saw that her brother-in-law namely Prosanta Dutta, appellant no. 1 herein, brought his two years old son namely Surajit who sustained severe burn injury. It was alleged that when she asked her brother-in-law about the incident the appellant no. 1 did not give any reply and thereafter the said boy was admitted in the child ward of the said hospital. It had been further alleged that some neighbouring people were present in the said hospital with the appellant no. 1 but they did not tell anything about the alleged incident. Half an hour later neighbouring people brought her sister Susmita Dutta who also sustained burn injury and the duty surgeon admitted her sister in the family ward. The complainant allegedly could get a chance to enter into the female department and asked her sister about the incident and in reply her sister stated that she was assaulted by her husband, her two brothers-in-law, her sister-in-law, her father-in-law and her mother-in-law at about 10 a.m. in the morning. At that time she could not state much about the incident as the on duty doctor had started preparation for her treatment. Thereafter she informed the matter to the Malipanchghora Police Station wherefrom she again went to the hospital and there she came to know that her sister's sister-in-law Namita Dutta, the appellant no. 4 had poured kerosene oil on the

person of her sister while her two years old child was on her lap and finally set fire upon her. It had been stated in the First Information Report that her sister stated the entire incident to the duty doctor and she came to know from the doctor that her sister gave the dying declaration. Thereafter, at about 3.20 p.m. in the afternoon the minor son of her sister namely Surajit Dutta died in the hospital.

4. Hence, on the basis of the aforesaid complaint the Malipanchghora Police Station Case No. 145 of 1995 dated 30.10.1995 under Sections 498A/307/302 of the Indian Penal Code against the preset appellants and others was instituted.
5. The appellants stated that the victim Susmita Dutta died on 31.10.1995 in the early morning and thereafter inquest was held upon the dead body of Susmita Dutta and Surajit Dutta and thereafter postmortem were done upon both the dead bodies.
6. The police after completion of the investigation submitted Charge-Sheet against some of the accused persons namely Prosanta Dutta, Swapan Dutta, Gita Dutta and Namita Dutta being Charge-Sheet No. 85 dated 29.09.1996 under Sections 498A/306/34 of the Indian Penal Code and the Investigating Officer prayed for discharge of other F.I.R. named accused persons from the case namely Tapan Dutta, Bachu Dutta and Jharna Dutta.
7. The appellants stated that the case was committed to the Court of District Judge at Howrah and thereafter the said case was transferred to the Court of Learned Additional Sessions Judge, 3rd Court at Howrah for trial.

8. The Learned Additional Sessions Judge, 3rd Court, Howrah after perusal of the materials on record and after hearing both the sides was pleased to frame charge under Sections 498A/302/32 of the Indian Penal Code against the present appellants and the charge was read over and explained to the appellants and where they pleaded not guilty and claimed to be tried.
9. The prosecution examined as many as 15 witnesses and filed 12 documents to prove the case and on the contrary the defence examined 6 witnesses to disprove the case and all the witnesses were examined from the side of the defence were all Charge-Sheeted witnesses.
10. Based on the complaint received on 31.10.1995 Malipanchghora Police Station Case No.145 dated 31.10.1995 under Section 498A/307/302 of the Indian Penal Code was registered. Upon completion of the investigation charge-sheet was submitted under Section 498A/302 read with Section 34 of the Indian Penal Code to which the appellants pleaded not guilty and claimed to be tried
11. The Learned Additional Sessions Judge, 3rd Court at Howrah after hearing both the sides and perused all the documents and examining all the witnesses passed the judgment and order dated 05.04.2002 and thereby held that the appellants were guilty for commission of offence under Sections 498A/34 of the Indian Penal Code and as such convicted all the appellants. The Learned Additional Sessions Judge further acquitted all the appellants from the charges under Sections 302/34 of the Indian Penal Code.

12. Learned Advocate for the appellants submitted that:-

- i. The order of conviction and sentence is liable to be set aside as there are serious omissions amounting to contradiction which had materially affected the merits of the prosecution.
- ii. There being no materials against the present appellants for the offences under Sections 498A/34 of the Indian Penal Code the conviction and sentence is not sustainable in law result and the same has resulted in gross miscarriage of justice.
- iii. PW-1 was the de-facto complainant of this case stated in her deposition which was partially corroborated by the other witnesses and while she had deposed before the Learned Judge for the first time stated that her sister was ill-treated and assaulted and/or tortured by all the members of her matrimonial house but in the cross-examination she also stated that her sister had told the entire incident of torture while she was in the hospital bed for the first time and that she should know the entire incident from one neighbour who was living nearly to the house of her sister. Those statements were contradictory to each other whereby the evidence of the witnesses thoroughly unreliable and relying upon such version and such deposition, nobody should be convicted.
- iv. The PW-1, the de-facto complainant stated in her deposition that the victim told her about the alleged story of torture for the first time in her hospital bed but she admitted that she

had heard the story from someone in the hospital premises which was not admissible at all and she further stated that the victim wanted to tell something but she did not hear anything and as such alleged story of torture against the members of the in-law's house was out and an after thought.

- v. The de-facto complainant, PW-1 stated in her deposition that she had been living at a distance of 10 to 15 minute walk from the house of the victim but in spite of staying at a very close distance and being the near relative of the victim, she never heard the alleged story of torture upon the deceased by the members of her in-law's house and as such the ingredients of Section 498A of the Indian Penal Code had been really lacking.
- vi. The de-facto complainant, PW-1 never stated in her deposition that her sister was subjected to torture by the members of the in-law's house.
- vii. The de-facto complainant, PW-1 never stated any specific date, time, place, manner and reason of torture in her entire deposition.
- viii. From the deposition of the de-facto complainant, PW-1, it is evident after the alleged occurrence the injured boy was brought to the hospital by his father i.e., appellant no. 1 with the help of his neighbour and almost at the same time her injured sister, since deceased was brought to hospital by the neighbouring people of the same area. The husband of the deceased i.e. appellant no. 1 and other members of his

family were all along present with other neighbouring people of that locality and the husband rendered needful assistance towards the treatment of his injured wife and incurred expenditure for the treatment of his wife and son and as such it could be said that the appellant no. 1 had performed his duty honestly and diligently and no allegation as to his laches had been made but in spite of such state of evidence Learned Judge failed to appreciate the evidence in its proper perspective.

- ix. The de-facto complainant and other witnesses did not allege there was any demand of dowry and even the F.I.R. lodged by the complainant herself did not reveal anything of that sort and all the witnesses including the de-facto complainant (PW-1) failed to attribute any motive behind the alleged torture by the members of the matrimonial house.
- x. PW-2 was not a reliable and trust worthy witness as she had stated exaggerated facts which was contrary to her own statement recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure. She stated that she heard the alleged story from the deceased while she was in her own bed but she could not give particulars of her own bed, nor the bed number of the victim nor there was any evidence to show that she had been a patient there and hence there is no credibility of the value of her statement and as such her evidence cannot be relied upon and as such conviction and sentence liable to be set aside.

- xi. The PW-2 was an interested and politically related with the complainant's family and as such and her evidence should be discarded.
- xii. The PW-2 was a chance witness and no reliance could be placed upon her evidence.
- xiii. The PW-2 stated in her deposition that she had undergone one vital operation on that day and in spite of her major operation it was improbable to gather so much information about deceased.
- xiv. From the deposition of the PW-3 it was crystal clear that he was a tutored witness, firstly because he did not identify any of the accused person while the present appellants were on the dock and secondly he attended only the marriage ceremony of the deceased. Thirdly although being a neighbour he never visited the house of the deceased and further he stated that the deceased did not say anything and fourthly he admitted in the cross-examination that he occasionally went to the house of the victim's father. He was a highly interested witness without having any knowledge about the incident and as such his deposition is liable to be discarded.
- xv. From the deposition of PW-3 it was quite clear that his evidence without knowing anything made his deposition and the same contrary to the statement recorded by the Investigating Officer, while taking statements under Section 161 of the Code of Criminal Procedure and the same had

been admitted by the Investigating Officer/PW-15 in his cross-examination.

- xvi. From the depositions of the PW-3, 4, 5, 6 and 10, it was alleged that the married life of the victim was abnormal and as such there were made allegations of torture upon the victim as inflicted by the in-law's of her matrimonial house but these witnesses failed to cite details of any of such incidents or any motive as to why the victim was subjected to torture and as such the story of alleged torture.
- xvii. The Trial Court has failed to appreciate that the prosecution at the time of trial did not examine some vital Charge-Sheeted witnesses and even the prosecution did not give any cogent reasons as to why those witnesses had not been examined during trial and as such adverse inference should be drawn against the prosecution.
- xviii. It has been revealed after careful scrutinization of the witnesses recorded under Section 161 of the Code of Criminal Procedure that the deceased and her child had been recovered after breaking the door of the rooms but the prosecution did not produce such type of witnesses who after breaking the door recovered the deceased and her son and the prosecution did not highlight before the Learned Trial Court as to why such witnesses were not examined by the prosecution.
- xix. The defence witness had admitted that while the alleged accident took place, the husband of the victim i.e. the

appellant no. 1 was not at all present at the spot and he was all along in the pandel of local Jagadhatri Puja and as such the alleged story of assault to the victim by the husband is a false statement by the tutored prosecution witnesses

- xx. Some Charge-Sheeted witnesses have not be examined by the prosecution and they were examined as defence witnesses, who stated the actual facts of the alleged occurrence but the Learned Judge have failed to appreciate their evidence and as such there is serious omission on the part of the Learned Judge and as such conviction is liable to be set aside.
- xxi. It had been admitted by the complainant/PW-1 that “Mejo Bhasur and Mejo Jaa”, the appellant nos. 2 and 4 respectively were all through had been residing in the same premises where the victim had been residing but they had regular connection as they were separated for many years and this witness did not give any cogent reason as to why there was torture upon the deceased on the date of occurrence and as such there was no basis of torture of the “Mejo Bhasur and Mejo Jaa” upon the victim.
- xxii. None of the prosecution witnesses can be relied upon and their statements are contrary with each other, even their statements before the police under Section 161 of the Code of Criminal Procedure are at variance from the deposition and as such their statement cannot be relied upon.

- xxiii. The defence by adducing the evidence through left out Charge-Sheeted witnesses and thereby has been able to make out the defence case more than probable and as such Learned Trial Judge has failed to consider the same in the light of probability point of view.
 - xxiv. The framing of charge has been defective and resultantly the appellants have been deprived from fair trial and/or opportunity to defend themselves effectively.
 - xxv. The conviction and sentence was passed by the Learned Sessions Judge at Howrah is based upon surmise and conjecture and as such the conviction and sentence is liable to be set aside.
13. The circumsppection of the persecution witness revealed PW 1 to be the sister of the victim lady who attended the Howrah Hospital in the morning of 31.10.1995 to meet a patient namely Sujit Bose. She witnessed a burnt boy accompanied by appellant no.1 Prasanta (since deceased) who was accompanied by certain local boys. Prasanta as well as the local boys did not reply to the query of PW.1. The child was admitted in the child ward. After lapse of half an hour or forty five minutes her sister Sushmita the victim lady was brought to the hospital by local boys and admitted in the female ward. PW.1 went to the female ward and on query the victim lady divulged to have been assaulted. Victim lady wanted to say something but could not be heard by PW.1 and she went to the police station. She thereafter returned to her house at Kalitala and found Ganesh Mondal on the way and both of them reported

the matter to the police station. She stated that her sister told her to have been assaulted by all the members of her matrimonial home. The victim lady wanted to say something which was not heard by the PW.1 as she was burnt. Subsequently the police officer was sent to the hospital. She further stated to her in the hospital that the husband of the victim assaulted her since morning. Thereafter her "Mejo Ja" threw kerosene oil on her person when her boy child was sitting on her lap and thereafter they set fire and she sustained burn injury. Doctor stated to have recorded the same. At about 3:20P.M. boy child expired. As the condition of the victim deteriorated PW.1 went to the police station in the night along with Ganesh Mondal who wrote the complaint in her presence which was signed by her marked as Exbt.1.

14. During her cross-examination PW.1 stated Sujit Bose would not depose in the instant case and police did not examine him. She further stated as long as she was there in the hospital she did not know that her sister was also burnt. She went to the child ward and stayed for 15-20 minutes. When she reached emergency ward she learnt that the mother of the child was also burnt. She further stated in her cross examination that she met the victim first and she did not enquire the name of the hospital where she was first admitted. She did not go to Howrah police station. When her sister was brought by the local boys she spoke to her and went to M.P Ghora police station. It was about 12/12:15 a.m. At first she did not lodge the written complaint at the police station and did not ask the police to arrest the person who killed her sister. She

further stated that *"I came to hospital at about 1/1:30 A.M. night. In the hospital I saw Amar Patra of M.P. Ghora police station. It was about 1:30 A.M. At that time I did not give any written complaint to Amar Patra. I did not tell Amar Patra to record my statement and arrest Prashanta. I was in the hospital of day long. At about 8:00/9:00 P.M. I went to the police station. I did not go to the house of Prasanta or his locality before going to police station. I went to our house. I went to police station at 9:00 P.M. and returned to home at 12 at night. I saw the body of my sister's son Surajit burnt. After seeing Surajit I was in the hospital for 45 minutes. When I saw Surajit I and the mother of Sujit Bose was at the hospital. The mother of Sujit Bose went to see Surajit. The mother of Sujit is alive"*.

During her cross examination PW.1 further stated that *"My sister told me of the incident. After returning from police station I found the officer interrogating my sister and I heard it. The police did not record it. The doctor recorded it. The doctor did not ask me to sign so I did not sign. Neither the doctor nor the police asked me to sign. So I did not sign. I did not sign in the hospital. When I reached the doctor already record the statement of my sister. I heard that my sister was taken to Jaiswal Hospital with burnt condition. It was a Jagadhatri Puja day. I cannot say whether there was a Jagadhtri Puja performed in the locality where my sister resided. I do not know whether Prasanta was in the puja pandal from the morning. I do not know whether the local people broke opened the door and brought out my sister and her son in burnt condition. I do not know whether the local*

people reported to the police that they were engaged in Jagadhatri puja pandal where Prasanta was present and on receipt of the information they went and brought my sister and her son out. It may be that they are the witnesses in this case.

I cannot say whether Prasanta was in the puja mandap all through the day. I cannot say whether Prasanta after breaking opened the door took the boy first to the hospital and thereafter my sister was taken to Jaiswal Hospital by the local boys. At the time of lodging diary I stated that my sister wanted to state something more. In the FIR I did not state it. I cannot say whether the father-in-law of Sushmita was old and sick at that time. I cannot say whether her mother-in-law was residing at Calcutta at the time. It is the first floor where the doctor wrote the report.”

The statement of PW.1 did not narrate an incident of continuous torture being inflicted upon the victim by the appellants. There are inconsistencies in her statement with regard to her presence at the hospital, visit to the police station in order to lodge the complaint and also to have a conversed with the victim lady.

PW.2 stated to have been admitted at Howrah General Hospital in female surgical ward on 14.10.1995 with a pain in her stomach. PW.2 stated during her hospitalization, on 31.10.1995 the victim being the burnt women was admitted in the female surgical ward beside her bed. On query by the doctor the patient stated that her husband assaulted her and the “Mejo Ja and Mejo Bhasur” burnt her when her baby was on her lap. The victim had also enquired about her child who could not be seen around. On query by the doctor the

persons who had admitted her in the hospital being her neighbors stated that at the time cooking the victim lady sustained burn injuries. PW.2 further stated that patient was not known to her earlier. The patient disclosed her name when the victim spoke to the doctor in the presence of a nurse for about 4-5 minutes. PW.2 further stated that police did not interrogate her and she did not state anything to the police.

PW.3 the relative of the victim lady stated that the victim narrated to him of being assaulted by her husband "Mejo Ja and Mejo Bhasur". She would be starved for days. During his cross-examination PW.3 stated that police interrogated him on 1.11.1995 for once and he did not visit the house of the victim. PW.3 used to visit the house of the father of the victim occasionally on the date of Bijaya Dashami.

The evidence of PW.4 who resided in the vicinity of the paternal house of the deceased victim being her relative was based on hearsay. She was not interrogated by the police and she did not reveal the cause of death of the deceased to the police.

PW.5 deposed that deceased victim was her friend who disclosed to her of the torture inflicted upon her by her husband and other family members. She further stated to have visited the hospital where the victim on hearing her voice opened her eyes and told her that her husband assaulted her and left. Thereafter her "Bhasur and Ja" put her to death along with her child. During her cross-examination she stated to have met PW.1 at her house on 30.10.1995. She stated to have visited the hospital with other local people. Initially she went to

Jaiswal hospital and thereafter to P.G hospital. At last she went to Howrah General Hospital. She had disclosed to the police that the victim told her to have been burnt by the present appellants.

PW.6 being the brother of the victim (since deceased) stated the victim to have been tortured by her husband and the other family members and also the incident of the victim to have ablazed by the present appellants.

PW.7 held the inquest of the body of the deceased victim lady.

PW.8 conducted the post mortem examination of two year old male child of the deceased victim lady.

PW.9 had been the photographer.

PW.10 was the relative of the victim lady who reiterated the evidence of PW.4,5 with regard to the torture meted out to the victim lady and the assault by her husband and the “Mejo Ja and Mejo Bhasur” to have ignited her on the date of the incident.

PW.11 conducted the inquest of the dead body of the minor child.

PW.12 echoed the evidence of PW.10 in essence.

PW.13 the Medical Officer attached to the Howrah General Hospital on 31.10.1995 interalia stated to have treated the victim lady on 31.10.1995 with 100 per cent burn injury. PW.13 recorded the dying declaration of the victim which was marked as Exbt.8. During his cross-examination PW.13 stated *“There was a doctor attached to the Emergency Deptt who examined the patient and got them admitted. There was an injury report prepared thereafter. The first page of the bed-head ticket is filled up by emergency doctor. Some kind of treatment is given at emergency. For this patient no treatment*

was given in the emergency but she was directly sent to the Deptt at 11:30 A.M.

This is the outdoor ticket of the patient Sushmita Dutta of The J. Jospital dt. 31.10.1995 T.No.8982.

Here Injection compose at 10 a.m. was given. No statement of the patient is mentioned. History of burn all over the body was noted. Referred to Howrah General Hospital and advice for P.G. The patient was examined by a patient there.

I attended the patient at 11:50 A.M. The patient was brought by Asim Kr. Das, 60/2/A Banerjee Bagan Lane, M.P.Ghora. The ticket bears the signature of the doctor admitting the patient but I cannot understand his name. The blood, saline, pain killer injection and oxygen was given as soon as the patient arrived. The treatment continued till her death. She was not given food. The dying declaration was given by her. I did not mention time. No time is mentioned at bed head ticket. The police arrived at 1:45 P.M. I started recording statement at 1:45 { .M. It took half an hour to do it. I have no record of it. It is an exceptional patient so I can remember it. There is no other person save Arun Patra as signatory. I am a member of the Association of doctors. There is no comment written on the report as why nurse did not appear. The patient talked in Bengali language. I am Bengali speaking people. Degree of burns has not been mentioned. It has not been mentioned as to whether I got the smell of kerosene oil on the body of the patient. There is no endorsement to the effect that the patient was conscious and responded to the question and she was at normal understanding. Neither it was written that the patient was

conscious or it was written about the patient's profession. I questioned the patient but I did not write there. Entire statement was written in the same process. I have not made endorsement that I read over the statement to the patient.

The endorsement like patient conscious 100 per cent burn was not written in carbon. It was written by my hand.. Not a fact that Arun Patra did not sign in my presence. The police did not interrogate me. There is no entry in the bed head ticket about recording the statement of the patient I found the attendance of the patient once at 11:50 A.M. I did not declare dead.”

PW14 was the first investigation officer. During his evidence he stated that he went to the place of occurrence and narrated the same in the following manner: *“The P.O via room having one door on the East, two window-one in the west another in the north with tolly shed. The ceiling is made of darma(Bamboo) The door is made of wood, the latch was broken from inside. A portion of the back was suspending. The fore was incident the room I find no man of violence outside. Some tiles were removed. Inside the room all household articles were scattered and burned condition. Switch board was burned and damaged. Inside portion of the room including door (Illegible) was covered with smoke. I seized the articles mentioned in the S.I The P.O is thickly damaged polluted area.*

It appears from the investigation that Haradhan Dey, Ranjit babu open the door brought out the son of Prasanta and took him to hospital,

Prosanta also went to the hospital with the son. After sometimes, the local boys took the wife of Prasanta & took him to hospital.

The area of the lane where house situated has not been mentioned. I have submitted memo of evidence. I submitted prayer to submit charge sheet u/s 498A/306/34 IPC.

Gopal Chakraborty was examined by me. He did not state that an inquiry of from Sushmita by her pistuto bone, susmita stated that her husband assaulted and left., her elder bhasur poured kerosene oil and set fire. He stated before me the name of Anup Roy. Santana Roy did not state before that both "mejo ja and mejo bhasur" assaulted Sushmita and both of them set fire on her.

Rekha Dutta did not state to me that the deceased, Mita was admitted to her next bed. She did not state that her "Mejo ja and mejo bhasur" burnt her to death. She did not ask me to not down what ever being stated by the patient.

PW.3 Anup Roy did not state before me that on receipt of the telephonic information from his elder sister she went to the hospital. PW.3 did not state that he went to the hospital on the next date what he stated about the incident on 31.10.1995.

PW.5 Shyamali Dey did not state to me that "Mejo ja and Mejo Bhasur" burnt her to death.

PW.6, Gopal Chakraborty did not state to me that "mejo ja" poured kerosence oil and "mejo bhasur" ignited fire. Examined Gopal Babu on 2.11.1995.

I did not go to the Magistrate or I did not find any Magistrate present there or I did not tell before the superior officers that a dying

declaration is to be recorded by a Magistrate so long I was in the hospital. Not a fact that the dying declaration is a concocted document. “

PW.15 had submitted chargesheet.

During the examination of the appellant No.1 Prasanta Dutta (since deceased) the following questions and neaswer had been found on red produced below:

“Question 13: Will you say anything?

Answer : No. On that day I was at the site of Durga Puja. I came to the hospital with my son Afterwards the local boys brought my wife.”

The statement of appellant no.1 corroborates with that of the PW.1 who had initially stated to have seen appellant no.1 in the hospital along with his son and thereafter witnessed the local boys to have brought the wife of the appellant no.1 i.e. the deceased victim to the hospital.

D.W.1,2,3, 4,5 and 6 being the local people in unison stated that the room of Prasanta the appellant no.1 (since deceased) was closed from inside. The tile shade had to be removed on witnessing smoke emitting of the roof of the house and water haD to be poured in to extinguish the fire. The wooden ceiling inside the room could not be accessible and therefore latch of the door had to be broken in order to enter the room. At first the child was taken to the hospital with the help of the local people and the appellant Prasanta who at that point of time was absent from the house attending Jagadhatri Puja at a distance from the house. Later on, the local people admitted the victim lady at the hospital.

In the instant case the prosecution did not cite any unbiased and impartial independent witness. The prosecution witness being PW.1 was the relative of the victim who was not present at the spot of the incident being an eye witness. Her evidence is based on hearsay. Evidence of the doctor (PW.13) cannot be relied upon due to series of inconsistencies. Any patient who had sustained 100 percent burn injuries and being administered an injection of campose on 10 A.M. and thereafter directly sent to the department at 11:30 A.M. will not be in any sense to answer to any question put to her. The victim lady died on the same day. She was administered with blood, saline, pain killer injection and oxygen. She was not given any food. The condition of the patient must be serious and her statement to have been recorded by the PW.13 only in the presence of S.I Arun Patra cannot be accepted.

15. The Hon'ble High Court of Tripura in the case of ***The State of Tripura versus Utpal Das and Ors.***¹, held that :

“17. it is settled law that the dying declaration should be recorded in verbatim of the deceased. Further, this Court has not lost its sight that no certificate of fitness about the status of health was obtained before recording the dying declaration. So, I am in full agreement with the opinion of the learned Sessions Judge that the evidentiary value of such dying declaration cannot carry much weight as because there is no corroboration with the oral declaration given to the PW. 1 and PW. 5 and the oral declarations being found conflicting and contradictory to each other, the Court must be very cautious to rely upon this type of dying declaration.

¹ MANU/TR/0207/2018

18. in *Lakhan Vs. State of Madhya Pradesh* reported in MANU/SC/0577/2010 : (2010) 8 SCC 514 wherein the Apex Court has observed that- "The law on the issue of dying declaration can be summarized to the effect that in case, the Court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was physically and mentally fit to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. In case, there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case, there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the Court has to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

19. Again, the Apex Court in *Vallabhaneni Venkateshwara Rao Vs. State of A.P.* reported in MANU/SC/0859/2009 : (2009) 6 SCC 484 has observed that--"Where three dying declarations with different versions were made by the deceased, it was held unsafe to rely upon evidence of such dying declarations.

20.1 The Apex Court in *Paniben Vs. State of Gujarat*, reported in MANU/SC/0346/1992 : (1992) 2 SCC 474, has summarized the law relating to the dying declaration, in paragraph 18, after taking note of its earlier pronouncements, as under:-

"18. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either

tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P.)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav, Ramawati Devi v. State of Bihar)

(iii) This Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor)

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P.)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P.)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P.)

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu)

(viii) *Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar)*

(ix) *Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P.)*

(x) *Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan)*

In Sukanti Moharana Vs. State of Orissa [MANU/SC/1336/2009 : (2009) 9 SCC 163], the Apex Court has restated the aforesaid law relating to dying declaration.

21 . According to this Court, it is also necessary to determine as to whether the deceased was in a condition to make any statement or declaration expressing her cause of death.”

16. The Hon'ble Supreme Court in **Uttam versus State of Maharashtra²**, has observed that:

“11. Dying declaration is the last statement that is made by a person as to the cause of his imminent death or the circumstances that had resulted in that situation, at a stage when the declarant is conscious of the fact that there are virtually nil chances of his survival. On an assumption that at such a critical stage, a person would be expected to speak the truth, courts have attached great value to the veracity of such a statement. Section 32 of the Indian Evidence Act, 1872 states that when a statement is made by a person as to the cause of death, or as to any of the circumstances

which resulted in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing made by the deceased victim to the witness, is a relevant fact and is admissible in evidence. It is noteworthy that the said provision is an exception to the general Rule contained in Section 60 of the Evidence Act that 'hearsay evidence is inadmissible' and only when such an evidence is direct and is validated through cross-examination, is it considered to be trustworthy.

12. In Kundula Bala Subrahmanyam and Anr. v. State of Andhra Pradesh MANU/SC/0508/1993 : (1993) 2 SCC 684, this Court had highlighted the significance of a dying declaration in the following words:

18. Section 32(1) of the Evidence Act is an exception to the general Rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not creditworthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A

² 2, MANU/SC/0787/2022

dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration.....

13. In *Shudhakar v. State of Madhya Pradesh* MANU/SC/0590/2012 : (2012) 7 SCC 569, this Court had opined that once a dying declaration is found to be reliable, it can form the basis of conviction and made the following observations:

20. The "dying declaration" is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been

made voluntarily it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.

14. *In Paniben (Smt.) v. State of Gujarat MANU/SC/0346/1992 : (1992) 2 SCC 474, on examining the entire conspectus of the law on the principles governing dying declaration, this Court had concluded thus:*

18.... (i) There is neither Rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. MANU/SC/0174/1975 : (1976) 3 SCC 104)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav MANU/SC/0118/1985 : (1985) 1 SCC 552; Ramawati Devi v. State of Bihar MANU/SC/0135/1983 : (1983) 1 SCC 211).

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor MANU/SC/0127/1976 : (1976) 3 SCC 618).

(iv) *Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. MANU/SC/0160/1973 : (1974) 4 SCC 264)*

(v) *Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. 1981 Suppl. SCC 25)*

(vi) *A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. MANU/SC/0207/1981 : (1981) 2 SCC 654)*

(vii) *Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu 1980 Suppl. SCC 455)*

(viii) *Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar MANU/SC/0269/1979 : 1980 Suppl. SCC 769).*

(ix) *Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P. MANU/SC/0334/1988 : 1988 Suppl. SCC 152).*

(x) *Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be*

acted upon. (State of U.P. v. Madan Mohan MANU/SC/0565/1989 : (1989) 3 SCC 390).

15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the Court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the Court would be expected to carefully scrutinize the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the Court in exercise of its discretion.

16. In *Lakhan v. State of Madhya Pradesh* MANU/SC/0577/2010 : (2010) 8 SCC 514, where the deceased was burnt by pouring kerosene oil on her and was brought to the hospital by the Accused and his family members, the Court noticed that she had made two varying dying declarations and held thus:

9 . The doctrine of dying declaration is enshrined in the legal maxim *nemo moriturus praesumitur mentire*, which means "a man will not meet his Maker with a lie in his mouth". The

doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as "the Evidence Act") as an exception to the general Rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a Rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that

the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide Khushal Rao v. State of Bombay MANU/SC/0107/1957 : AIR 1958 SC 22, Rasheed Beg v. State of M.P. MANU/SC/0160/1973 : (1974) 4 SCC 264, K. Ramachandra Reddy v. Public Prosecutor MANU/SC/0127/1976 : (1976) 3 SCC 618, State of Maharashtra v. Krishnamurti Laxmipati Naidu 1980 Supp SCC 455, Uka Ram v. State of Rajasthan MANU/SC/0242/2001 : (2001) 5 SCC 254, Babulal v. State of M.P. MANU/SC/0855/2003 : (2003) 12 SCC 490, Muthu Kutty v. State MANU/SC/0979/2004 : (2005) 9 SCC 113, State of Rajasthan v. Wakteng MANU/SC/7762/2007 : (2007) 14 SCC 550 and Sharda v. State of Rajasthan MANU/SC/1894/2009 : (2010) 2 SCC 85.

17. In *Amol Singh v. State of Madhya Pradesh* MANU/SC/7724/2008 : (2008) 5 SCC 468, when faced with two dying declarations containing inconsistencies, the approach to be adopted by the Court was summarized as under:

13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental

condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See Kundula Bala Subrahmanyam v. State of A.P. MANU/SC/0508/1993 : (1993) 2 SCC 684) However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

18. In Sher Singh and Anr. v. State of Punjab MANU/SC/7151/2008 : (2008) 4 SCC 265, this Court has held thus:

16. Acceptability of a dying declaration is greater because the declaration is made in extremity. When the party is at the verge of death, one rarely finds any motive to tell falsehood and it is for this reason that the requirements of oath and cross-examination are dispensed with in case of a dying declaration. Since the Accused has no power of cross-examination, the court would insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court should ensure that the statement was not as a result of tutoring or prompting or a product of imagination. It is for the court to ascertain from the evidence placed on record that the deceased was in a fit state of mind

and had ample opportunity to observe and identify the culprit. Normally, the court places reliance on the medical evidence for reaching the conclusion whether the person making a dying declaration was in a fit state of mind, but where the person recording the statement states that the deceased was in a fit and conscious state, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of mind of the declarant, the dying declaration is not acceptable. What is essential is that the person recording the dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement without there being the doctor's opinion to that effect, it can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certificate by the doctor is essentially a Rule of caution and, therefore, the voluntary and truthful nature of a statement can be established otherwise.

19. It is thus clear that in cases where the Court finds that there exist more than one dying declarations, each one of them must be examined with care and caution and only after satisfying itself as to which of the dying declarations appears to be free from suspicious circumstances and has been made voluntarily, should it be accepted. As observed in the judgments quoted above, it is not necessary that in every case, a dying declaration ought to be corroborated with material evidence, ocular or otherwise. It is more a Rule of prudence that courts seek validation of the dying declaration

from attending facts and circumstances and other evidence brought on record. For the very same reason, a certificate by the doctor that the declarant was fit to make a statement, is treated as a Rule of caution to establish the truthfulness of the statement made by the deceased.

20. In Kundula Bala Subrahmanyam (supra), this Court had observed that if there are more than one dying declarations, then the Court must scrutinize each one of them to find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying on the same. At the end of the day, each case must be decided on its own peculiar facts. There can be no hard and fast Rule on evaluation of the evidence brought before the Court, including the surrounding circumstances at the time when the deceased had made the dying declaration. The focus of the Court is of ensuring the voluntariness of the process, of being satisfied that there was no tutoring or prompting, of being convinced that the deceased was in a fit state of mind before making the dying declaration, of ascertaining that ample opportunity was available to the declarant to identify the Accused.

21. In Veerpal (supra), this Court has clarified that a dying declaration can be acted upon without any other corroboration and observed as below:

16. Now, on the aspect, whether in the absence of any corroborative evidence, there can be a conviction relying upon the dying declaration only is concerned, the decision of this Court in Munnu Raja MANU/SC/0174/1975 : (1976) 3 SCC 104, and the

subsequent decision in *Paniben v. State of Gujarat* MANU/SC/0346/1992 : (1992) 2 SCC 474, are required to be referred to. In the aforesaid decisions, it is specifically observed and held that there is neither a Rule of law nor of prudence to the effect that a dying declaration cannot be acted upon without a corroboration. It is observed and held that if the Court is satisfied that the dying declaration is true and voluntary it can base its conviction on it, without corroboration. Similar view has also been expressed in *State of U.P. v. Ram Sagar Yadav* MANU/SC/0118/1985 : (1985) 1 SCC 552 and *Ramawati Devi v. State of Bihar* MANU/SC/0135/1983 : (1983) 1 SCC 211. Therefore, there can be a conviction solely based upon the dying declaration without corroboration.

22. However, if a dying declaration suffers from some infirmity, it cannot be the sole basis for convicting the Accused. In those circumstances, the court must step back and consider whether the cumulative factors in a case make it difficult to rely upon the said dying declaration. In this context, it would be profitable to refer to *Nallapati Sivaiah (supra)*, wherein this Court held as under:

46. It is the duty of the prosecution to establish the charge against the Accused beyond reasonable doubt. The benefit of doubt must always go in favour of the Accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. The evidence of the Professor of Forensic Medicine casts considerable doubt as

regards the condition of the deceased to make a voluntary and truthful statement. It is for that reason non-examination of Dr. T. Narasimharao, Casualty Medical Officer, who was said to have been present at the time of recording of both the dying declarations attains some significance. It is not because it is the requirement in law that the doctor who certified about the condition of the victim to make a dying declaration is required to be examined in every case. But it was the obligation of the prosecution to lead corroborative evidence available in the peculiar circumstances of the case.

xxxx xxxx xxxx

52. The dying declaration must inspire confidence so as to make it safe to act upon. Whether it is safe to act upon a dying declaration depends upon not only the testimony of the person recording the dying declaration--be it even a Magistrate but also all the material available on record and the circumstances including the medical evidence. The evidence and the material available on record must be properly weighed in each case to arrive at a proper conclusion. The court must satisfy itself that the person making the dying declaration was conscious and fit to make statement for which purposes not only the evidence of persons recording the dying declaration but also cumulative effect of the other evidence including the medical evidence and the circumstances must be taken into consideration.

23. In Arvind Singh (supra), this Court has held that dying declaration should be dealt with care and caution and corroboration

thereof, though not essential, is expedient in order to strengthen the evidentiary value of the declaration. Even where independent witnesses may not be available, all the precautions should be taken when it comes to acceptance of such a statement as trustworthy evidence. In other words, even though direct evidence may not be available, circumstantial evidence without a break in the chain of events, would add weight to the evidentiary value of the dying declaration.

24. The principles governing the circumstances where the courts can accept a dying declaration without corroboration, have been dealt with extensively in Khushal Rao(supra) and for ready reference, reproduced as under:

16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute Rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the

weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

17. PW.3 did not mention the presence of other patients specifically. PW.2 an associate of PW.1 along with that of PW.5 and 6 and other prosecution witnesses who claimed to have spoken to the victim lady who narrated the incident of continuous torture upon her by the husband and other family members as well as the burn injury caused by her “Mejo Ja and Bhasur” were untrustworthy. The evidence of PW.13 so far as recording of dying declaration is concerned cannot be relied upon along the evidence

of PW.2,5,6 and 10. The allegation against the appellants being the “Mejo ja and Mejo Bhashur” is misconstrued without any proof, concocted and omnibus in nature. The investigating officer PW.14 described the place of occurrence in his deposition which corroborated with the testimony of the defence witnesses that the room was locked from inside and the tiles of the roof of the room had to be removed to pour water to extinguish the fire. None of the appellants were present on the spot of the incident. These appellants no.s 2 and 4 resided at a separate mess. There was no history of torture inflicted by them upon the deceased victim prior to the incident apart from the vague and untrustworthy allegations. Door and the latches of the room were broken as the same was locked from inside as transpired from the evidence of PW.14 Investigation officer as well as the defence witnesses.

18. The Hon’ble Supreme Court in the case of ***Paranagouda and another versus State of Karnataka and ors***³., has observed that:

“24. Section 498A of IPC prescribes imprisonment which may extend to 3 years and the Explanation thereunder has two parts. The first part would relate to subjecting a married woman to cruelty for any willful conduct which is of such a nature as is likely to drive her to commit suicide or to cause grave injury or danger to life, limb, or health (whether mental or physical). Second Part i.e. Clause (b) of Section 498A would indicate that cruelty would encompass harassment of a married woman

where such harassment is with a view to pressurize her or any person related to her to meet any unlawful demand for any property or valuable security on account of failure by her or any person related to her to meet such demand.

25. *In Dinesh Seth v. State of NCT of Delhi, (2008) 14 SCC 94, this Court has examined the width and scope of two Sections i.e., 304B & 498A and was held to be different. Section 304B deals with cases of death as a result of cruelty or harassment within 7 years of marriage. Whereas Section 498A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce the woman or any person related to her to meet any unlawful demand of property or valuable security. We have already discussed hereinabove as to there being no nexus for the deceased to self-immolate herself on account of such demand having preceded immediately before her death. As such we have opined that convicting the accused/appellants under Section 304B was improper or the prosecution had failed to establish that the death had occurred and soon before her death she was subjected to cruelty or harassment by the appellants.*

26. *It has been held in Dinesh Seth's (Supra) Case*

“24. Section 498-A was added to IPC by amending Act 46 of 1983 in the backdrop of growing menace of dowry related cases in which the women were subjected to cruelty and harassment and were forced to commit suicide. This section lays down that if the husband or his relative subjects a woman to cruelty, then he/she is liable to be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation appended to this section defines the term “cruelty” to mean 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 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.”

27. Section 498A having a wider scope, it will have to be examined as to whether the accused is to be convicted for the offence punishable under Section 498A or in other words, the order of conviction passed by Sessions Court and affirmed by High Court deserves to be affirmed, notwithstanding the conviction under Section 304B having been set aside. Irrespective of the fact that accused have been acquitted for the offence punishable under Section 304B, Section 498A would cover the cases in which the wife

is subjected to cruelty by husband or relatives of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical). In the light of dying declaration (Ex.P-45) having been accepted to have been made by the deceased and the contents of the same disclosing that she was unable to withstand the torture meted out, which resulted in her committing suicide would suffice to convict the accused for the offence punishable under Section 498A.”

19. The prosecution failed to prove the torture to have been inflicted upon the victim either physically or mentally. The prosecution witnesses to have claimed the victim to be tortured were interested and partisan witnesses whose evidence was based on hearsay. They were neither the neighbours or the immediate relatives or the eye witnesses and their evidence can not be relied upon to be trustworthy. On the contrary the evidence of the defence witnesses corroborated with that of the Investigating Officer with regard to the occurrence of the incident to be accidental in nature in the absence of the appellants.

20. Under the facts and circumstances of the case the prosecution has not been able to prove its case beyond reasonable doubt and accordingly the appeal is allowed.

21. In view of the above discussions, the judgment and order dated 05.04.2002 passed by the Learned Additional Sessions Judge, 3rd Court at Howrah convicting the accused/appellants under Sections 498A/34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for 3 years and to pay a fine of

Rs.5,000/- each in default to suffer additional simple imprisonment for 6 months in connection with Sessions Trial Case No. XIV (July) 1998 while holding that the prosecution could not prove the charge under Sections 302/34 of the Indian Penal Code is set aside.

22. Accordingly, CRA 172 of 2002 and CRR 1276 of 2002 are disposed of.

23. There is no order as to cost.

24. I record my appreciation for the able assistance rendered by Ms. Sayanti Santra, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.

25. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

26. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)