

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (SB) 75 of 2022

With

CRAN 1 of 2022

Smt. Shibani Sarkar

Vs

The State of West Bengal

With

CRA (DB) 107 of 2022

With

CRAN 1 of 2022

Sri Subrata Sarkar

Vs.

The State of West Bengal

For the Appellants : Mr. Debasis Kar, Adv.
Mr. Arka Tilak Bhadra, Adv.

For the State : Ms. Sreyashee Biswas, Adv.
Md. Anawar Hossain, Adv.

Hearing Concluded on : December 16, 2022
Judgement on : January 6, 2023

DEBANGSU BASAK, J.:-

1. Two appeals were taken up for analogous hearing as they emanated out of the same judgement of conviction dated May 10, 2022 and the order of sentence dated May 11, 2022

passed by the learned Fast Track Court No.2, Barrackpore, North 24 Parganas in Sessions Trial No. 01 (04) 2013 arising out of Sessions Case No. 292 of 2012 convicting the appellants under Sections 498A/306 of the Indian Penal Code, 1860.

2. The appellant in CRA (DB) 107 of 2022 was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 5000, in default simple imprisonment for two months for the offence punishable under Section 498A of the Indian Penal Code, 1860 and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000 and in default simple imprisonment for five months for the offence punishable under Section 306 of the Indian Penal Code, 1860.

3. The appellant in CRA (SB) 75 of 2022 was sentenced to suffer imprisonment for three years and to pay a fine of Rs. 5000, in default simple imprisonment for two months for the offence punishable under Section 498A of the Indian Penal Code, 1860 and to suffer simple imprisonment for seven years and to pay fine of Rs. 10,000, in default simple imprisonment for five months for the offence punishable under Section 306 of the Indian Penal Code, 1860.

4. Since the appellant in CRA (DB) 107 of 2022 preferred the appeal from the same impugned judgement of conviction and the order of sentence, the learned single judge released CRA (SB) 75 of 2022 and the same was assigned to be heard by this bench. Consequently, both the appeals were heard analogously.

5. The father of the victim lodged the complaint with the jurisdictional police station regarding mental and physical torture meted out by the in-laws of the victim to her as well as the demand for dowry made by the in-laws from the victim. Such written complaint was lodged on June 26, 2013. The father of the victim stated that, a baby girl was born to the victim. After the birth of the baby girl, the appellants started to claim money and on not getting the same, started to increase the physical and mental torture upon the victim. Once or twice they drove the victim from her matrimonial home. On every occasion, he with the help of local people, kept the victim at her matrimonial home in order to facilitate the victim leading a conjugal life after convincing the appellants with regard thereto. Even thereafter, the appellants continued with the torture on the victim for not getting money. The victim informed him and his family members of such fact

on many occasions. Lastly, on March 30, 2012, at about 3 PM, he came to know from the neighbours of the victim that, the victim was admitted to the hospital in a burnt condition. On getting such news, he and his family members went to the hospital where the victim was admitted and found that, maximum portion of the victim was burnt. The victim on seeing him, asked him to save her and take the daughter of hers with him otherwise the in-laws would kill the daughter also. The victim died in their presence at the hospital on that very day. Later, he came to know that, on the eventful day since morning the appellants were beating the victim as she denied to bring money from him in spite of their demand.

6. The written complaint dated March 31, 2012 was registered as a First Information Report bearing FIR No. 102 dated March 31, 2012 under Sections 498A/304B of the Indian Penal Code, 1860. On conclusion of the investigations, a chargesheet was submitted on March 12, 2012. The Court framed charges against the appellant under Section 498A/304B and in the alternative Section 302 of the Indian Penal Code, 1860 as also under Section 406 thereof and under Sections 3/4 of the Dowry Prohibition Act, on April 4,

2013. The appellants pleaded not guilty and claimed to be tried.

7. At the trial, the prosecution examined 15 witnesses. The prosecution relied upon various documentary and material evidence. The appellants, on conclusion of the evidence of the prosecution, were examined under Section 313 of the Criminal Procedure Code where they claimed that they were innocent. The appellant in CRA (DB) 107 of 2022 examined himself as the only defence witness.

8. The father of the victim and the de facto complainant deposed as PW 1. He stated that, the victim was given in marriage on May 10, 2006 as per Hindu rites and customs with Subrata Sarkar. The victim died on March 30, 2012 at about 10 PM after sustaining burn injury at her matrimonial home. On March 30, 2012, at about 2 PM, he received telephonic information to the effect that the victim was admitted to the hospital after sustaining burn injury. After receiving such information, he along with his wife, son and daughter went to the hospital and found that most of the body of the victim was burnt. The victim stated in a low voice that, she was not allowed to live and requested them to take her daughter with them failing which the daughter of the victim

might also be killed. On the date of the incident, the victim was severely beaten on demand for money. Prior to that, he met the demand of money of the accused persons and paid Rs. 5000, Rs. 6000 and Rs. 8000 on many occasions. At the hospital, he heard the neighbours of the victim stating that, the victim ate nothing for the last three days and that on the date of the incident, the accused persons assaulted her mercilessly and she was compelled to commit suicide.

9. PW 1 stated that, at the time of the marriage, he gave a bed, almirah, dressing table, television, refrigerator, stand fan, and cash money of Rs. 50,000 to the accused persons as per their demand. After marriage, the victim was not well at her matrimonial home and she was not at peace due to torture of the accused persons due to demand for more money. Once, the victim was driven out from her matrimonial home after assault on her, on account of demand for money. The victim stayed at her paternal house for three months. He went to the house of the accused persons with money and the victim was allowed to stay at her matrimonial home after mediation being held in the neighbourhood. A daughter was born to the victim after few days. The daughter of the victim now resides with

him. The accused persons were dissatisfied with the victim as she failed to be a mother of a male child.

10. PW 1 tendered the written complaint in evidence which was marked as Exhibit 1. He identified the seizure list dated April 3, 2012 which was marked as Exhibit 2. He also tendered the seizure list dated April 25, 2012 which was marked as Exhibit 3. He identified both the appellants in Court.

11. In cross-examination, PW 1 stated that, he was a police personnel and married twice with two wives both of whom were alive. He acknowledged the fact that, the husband of the victim sustained burn injury on the date of the incident along with the victim. He acknowledged the fact that, the written complaint being Exhibit 1 did not describe the stridhan articles given at the time of the marriage. He stated that, after marriage, the victim lived for about eight years. During her lifetime, he did not make any complaint anyway regarding the torture upon the victim. After the incident, the husband of the victim was admitted to the hospital and his mother was arrested. The police made over the custody of the daughter of the victim. He denied the suggestion that, the victim caught fire accidentally in the kitchen when she was

cooking. He stated that, at the hospital, the condition of the victim was very serious and that she was fitted with saline and oxygen. He did not request the doctor to record the statement of the victim. He denied the suggestion that the victim was not in a position to make any statement before him or that he deposed falsely due to the grudge that he bears against the accused persons.

12. The brother of the victim and the son of PW 1 deposed as PW 2. He stated that the victim was given in marriage on May 10, 2006. He corroborated the deposition of his father with regard to the torture, physical and mental, meted out to the victim by the accused persons. He also corroborated the deposition of his father with regard to the increase in the torture subsequent to the birth of the daughter of the victim. His father's testimony with regard to the neighbourhood mediation and the victim being driven out of her matrimonial home after assault as she gave birth to a female child was also corroborated by him. He stated that, one day, Subrata Sarkar called him on telephone and told him that, the victim was beaten to near death by Subrata and that he should take the victim away. He stated that, he went to the house of the appellants with his friend and found the victim to be lying

outside the house wearing only the inner garments on such occasion.

13. With regard to the incident of March 30, 2012, PW 2 stated that, his father informed him over telephone that the victim was admitted to the hospital after sustaining burn injury. He along with his father and other family members went to the hospital and found that most of the body of the victim was burnt. She was fitted with oxygen and saline. She stated in a clear voice that she should be saved and that her daughter should be taken away from the in-laws otherwise her daughter would also be killed. He learnt from the neighbours of the victim, at the hospital, that the victim was not given food for the last two days and that on the date of the incident, she was assaulted on account of demand for money. He stated that, due to severe torture by the accused persons, the victim was compelled to commit suicide by putting herself on fire. When the victim came out in a burning condition and cried for help, nobody came forward. The victim saw Subrata nearby and embraced him and in the process, Subrata also sustained burn injury. The neighbours put out the fire from the body of the victim. He identified the material exhibits and also his signature on the seizure list dated April 3, 2012. He identified

his signature on the inquest report which was tendered in evidence and marked as exhibit 4. He identified the appellants in Court.

14. In cross-examination, he stated that, physical and mental torture upon the victim started one month of marriage. He also stated that, his father gave Rs. 25,000 to Rs. 30,000 in total on three occasions to the accused persons. He stated that, on two occasions, money was given to Subrata and on other occasions it was given to his mother. He stated that, the accused persons demanded money as the goods given at the time of marriage were not of their choice. He corroborated his father with regard to the articles and money that were given as dowry at the time of the marriage of the victim.

15. The sister of the victim deposed as PW 3. She corroborated the deposition of her father as well as her brother with regard to the articles and money given as dowry at the time of marriage of the victim. She also corroborated her father and brother with regard to the torture, mental and physical that was meted out to the victim by the accused persons. She identified the accused persons in Court.

16. In cross-examination she stated that, money was demanded for business purpose. She acknowledged that after

the marriage, the victim along with her husband visited her paternal house for 2/3 days.

17. Another sister of the victim deposed as PW 4. She corroborated the testimonies of the previous prosecution witnesses with regard to the torture meted out to the victim by the accused persons. In cross-examination, she stated that, she saw normal relation between the victim and the accused persons.

18. The step mother of the victim deposed as PW 5. She corroborated the testimonies of the previous prosecution witnesses with regard to the torture that was meted out to the victim by the accused persons. In cross-examination, she stated that, she saw the accused persons to inflict torture upon the victim but she could not recollect the date.

19. Another sister of the victim deposed as PW 6. She corroborated the evidence of the previous prosecution witnesses relating to the torture on the victim by the accused persons. She identified the two accused persons in Court. In cross-examination, she stated that, she was given in marriage prior to the marriage of the victim. She could not say how much money was given in total and for what purpose the money was demanded. She said that, she did not know the

names of the neighbours of the accused persons who were present at the hospital.

20. A neighbour of the accused persons deposed as PW 7. He stated that, some articles were given by the paternal family of the victim during marriage. However he could not say what was given. He stated that, initially the relationship between the victim and her husband was good but later there was trouble. With regard to the date of the incident, he stated that, he was sleeping at around 2 PM in the noon when he heard cries and came out of his house. He saw the victim lying. He asked the local people to take the victim to hospital. An ambulance was called and the victim was taken to the hospital. He identified his signature on the seizure list dated March 31, 2012 and April 25, 2012. He identified the accused persons in Court.

21. In cross-examination, PW 7 stated that, the husband of the victim was admitted to a nearby hospital and was discharged after one month while the victim succumbed to her injuries. He also admitted that, the father and the brother of the victim used to visit the victim at her matrimonial home. He did not witness any matrimonial disputes between the victim and her husband.

22. A neighbour of the father of the victim deposed as PW 8. He stated that, the victim was not well at matrimonial home. There were matrimonial disputes. When the victim came to her paternal house, she told him that, there were disputes with regard to demand for money. The father of the victim gave money on 2/3 occasions. There were troubles after the birth of the girl child to the victim. As the victim was unable to bear the torture, she set herself on fire in a room. The victim tried to save herself by catching hold of her husband. She went out to the field. Local people then doused the fire and admitted her to the local hospital. He visited the matrimonial home of the victim once with his friend as the husband of the victim called his friend saying that he assaulted the victim and invited her brother to come and see the victim. He corroborated the testimonies of PW 1, 2, 3, 4, 5 and 6 with regard to the statement made by the victim at the hospital. He identified his signature on the seizure list dated April 3, 2012.

23. In cross-examination he stated that, the brother of the victim was a close friend of his. He stated that, no police complaint was lodged with regard to the previous assault on the victim.

24. A neighbour of the accused persons deposed as PW 9. He was declared hostile by the prosecution. On cross-examination by the prosecution after he was declared hostile, he denied telling the police that the parents of the victim gave various articles and cash as dowry at the time of marriage. He denied being interrogated by the police and recording a statement with the police.

25. In cross-examination on behalf of the accused persons, he stated that, he went with the victim and her husband along with others to the hospital by an ambulance. In the ambulance, he asked the victim how she caught fire when she stated that while she was cooking her clothes caught fire. He reached the spot, that is, the field where the victim came while she was on fire. He stated that, while the victim was burning, her husband tried to douse her flame by wrapping her with the blanket. He stated that, he saw the victim and her husband going together to the paternal home of the victim. He did not hear about any matrimonial disputes between the victim and her husband. He also claimed that, the husband of the victim was discharged from the hospital after a month.

26. Another neighbour of the accused persons deposed as PW 10. He was declared hostile by the prosecution. On cross-

examination after being declared hostile, he denied that he was interrogated by the police. He admitted that he was at the hospital with the victim. He denied telling the police that the accused persons created pressure on the victim to bring more dowries and that the dowry given was not up to their liking.

27. In cross-examination by the defence, he stated that, the parents of the victim used to come to the matrimonial home of the victim stay there and thereafter leave. The victim and her husband used to go to the paternal home of the victim together. They used to go shopping together. He claimed that he was in the ambulance along with the victim. He claimed that in the ambulance, the victim told them that, while cooking her wearing apparels caught fire. He claimed that, he wrapped a blanket around the victim after she caught fire. The husband of the victim also wrapped a blanket around the victim. Such blanket started burning and it burnt the body of the victim.

28. The executive magistrate who performed the inquest on the dead body of the victim deposed as PW 11. He stated that, the body of the victim was identified to him by the brother of the victim. In his opinion, the cause of death was from burn injury. The Magisterial Inquest Report was marked

as Exhibit 4. In cross-examination, he stated that, the brother of the victim did not tell him why the victim was tortured.

29. The police officer who registered the First Information Report on the basis of the written complaint, deposed as PW 12. The defence declined to cross examine him.

30. The matchmaker of the marriage deposed as PW 13. In cross-examination, he stated that, he gave evidence as a witness at about 50 to 60 cases.

31. The doctor performing the post-mortem on the body of the victim deposed as PW 14. He stated that, on examination, he found rigor mortis to be present. Smell of kerosene oil from the body was found. Whole body was burnt except the soles. Percentage of burn was around 98%. In his opinion, that was due to shock in a case of burn, ante-mortem in nature. He tendered the post-mortem report which was marked as Exhibit 8. He stated that if someone cooks with the help of firewood then reasonably the smell of kerosene oil would not appear.

32. In cross-examination he stated that, a burn patient may have the capacity to make a statement. He did not detect any external or internal injury in course of the post-mortem

examination. No homicidal feature was detected during the post-mortem examination.

33. The investigating officer deposed as PW 15. He deposed as to the conduct of the investigations. He prepared the rough sketch map with index which was marked as Exhibit 9. He made three seizures on March 31, 2012, April 3, 2012 and April 25, 2012 which were tendered in evidence and marked as Exhibit 10, 11 and 12 respectively. He submitted the charge sheet against the accused persons. He was cross examined on behalf of the accused persons. He stated that, he seized the stridhan articles. The medical documents regarding the treatment and discharge of Subrata Sarkar were tendered in evidence and marked as Exhibit A series.

34. The appellants were examined under Section 313 of the Criminal Procedure Code where they claimed to be innocent. Subrata Sarkar was examined as defence witness. He tendered the marriage registration certificate which was marked as Exhibit B. In reply to a question from the court, he stated that, all three witnesses named in the marriage certificate were dead.

35. Learned Advocate appearing for the appellants submitted that, the so-called dying declaration of the victim

was oral and allegedly made to PW 1 to 6. The evidence of such prosecution witnesses should not be relied upon as they are the relatives of the victim. They were interested witnesses and therefore were likely to be biased as against the appellants and unlikely to speak the truth. He referred to the deposition of PW 7 to 10 and submitted that, these persons accompanied the victim to the hospital in the ambulance. They were present at the hospital. None of them spoke about the so-called dying declaration that the victim allegedly made to the other prosecution witnesses. Therefore, no reliance should be placed upon the so-called oral dying declaration of the victim.

36. Learned advocate appearing for the appellants submitted that, there were contradictory statements regarding the amount of money allegedly paid as dowry. He submitted that, the alleged dowry was not spoken about in the First Information Report. The First Information Report also did not contain anything about the alleged mediation allegedly held with regard to the matrimonial disputes between the victim and her husband.

37. Referring to the testimony of the father of the victim namely PW 1, learned advocate appearing for the appellants

submitted that, the father of the victim admitted in his deposition that, Subrata was admitted at the hospital and that, the victim and her husband lived together for about eight years. He did not complain to any authority with regard to the alleged torture or the demand for dowry. The prosecution did not give any specific dates with regard to the making over of the dowry.

38. Learned advocate appearing for the appellants submitted that, the husband suffered from burn injury trying to save the victim. The husband was hospitalised for about a month. According to him, no physical or mental torture was proved by any of the prosecution witnesses. There was no evidence to establish that, any person instigated the victim to commit suicide. None of the factors constituting the offence of abetment was established at the trial. The entire evidence and attending circumstances did not throw any light upon the guilt of any of the appellants in any manner. In support of his contentions, he relied upon **2011 Volume 14 Supreme Court Cases 448, 2012 Volume 1 Calcutta Criminal Law Reporter 838 (Assoo Vs. State of Madhya Pradesh), 1995 Volume 4 Crime 225 (Darshna Devi Vs. State of Punjab), 2010 Volume 1 Calcutta Criminal Law Reporter 132 (Anil**

***Kumar Sarkar Vs. State of West Bengal*, 2020 Volume 14 Supreme Court Cases 264 (Gurjit Singh Vs. State of Punjab), CRA 518 of 1988 (Pratap Singh Vs. State of West Bengal), 2019 Volume 3 Supreme Court Cases 315 (M. Arjuman Vs. State), 2018 Volume 4 Calcutta Criminal Law Reporter 316 (Md. Sarfulla Vs. State of West Bengal), 2018 Volume 1 Calcutta Criminal Law Reporter 377 (Ananda Gopal Bhandari Vs. State of West Bengal), 2018 Volume 11 Supreme Court Cases 323 (Heera Lal and Another Vs. State of Rajasthan), 2017 Volume 1 Supreme Court Cases (criminal) 439 (Guru Charan Singh Vs. State of Punjab), and 2016 Volume 14 Supreme Court Cases 151 (State of Gujrat Vs. Jayrajbhai Punjabhai Varu).**

39. Learned advocate appearing for the state submitted that, the impugned judgement of sentence and order of conviction should not be interfered with. The prosecution was able to establish that, there was continuous torture upon the victim by the appellants. In this regard, she drew the attention of the court to the deposition of PW 1 to 6 and PW 8 and 13. The victim was driven out of the matrimonial home twice for demand of additional dowry and due to the intervention of the local people, she was taken back to her matrimonial home.

40. Learned advocate appearing for the State drew the attention of the court to the deposition of PW 1 to 6 and to the fact that, the victim at her death bed stated that, the appellants would kill her daughter if she was not taken away.

41. Learned advocate appearing for the state submitted that, PW 2 and 8 established that, on one occasion before the incident, the husband of the victim called the brother of the victim over telephone and told him that, the victim was beaten nearly to death. They went to the matrimonial home of the victim when they found that the victim was lying unconscious.

42. Referring to the deposition of the post-mortem doctor, PW 14 learned advocate appearing for the State submitted that, the doctor found the presence of smell of kerosene oil on the body of the victim. Therefore, the claim of the defence that, the victim caught fire at the time of cooking does not stand on its leg.

43. Learned advocate appearing for the State relied upon ***All India Reporter 1991 Supreme Court 1532 (The State of Punjab Vs. Iqbal Singh and Others), 2012 Volume 11 Supreme Court Cases 172 (Arvindkumar Anupalal Poddar Vs. State of Maharashtra)*** and ***2015 Volume 7 Supreme Court Cases 178 (Tomaso Bruno and Another Vs. State of***

Uttar Pradesh) in support of the contention that, it was upon the husband of the victim to establish how the victim committed suicide.

44. In ***Iqbal Singh and Others (supra)***, it was observed that, the legislature with the intent to curb the menace of dowry deaths introduced Section 113A and 113B of the Evidence Act to strengthen the hands of the prosecution by permitting a presumption to be raised, if certain foundational facts were established and the unfortunate event took place within seven years of marriage. In the facts of the present case, the incident occurred after the expiry of seven years from the date of the marriage.

45. In ***Arvindkumar Anupalal Poddar (supra)***, the first wife was found murdered. The husband was last seen with the deceased. The husband was also seen on the same evening with bloodstained clothes. The stand of the prosecution was corroborated by medical evidence. The theory that the defence sought to put up, that, the first wife ran away from the house was never pleaded before the trial court or the appeal court. In such circumstances, on the basis of circumstantial evidence, the guilt of the husband was established.

46. *Tomaso Bruno and Another (supra)* held that, in order to invoke Section 106 of the Evidence Act, it must be established by the prosecution that, the accused persons were present at the place of occurrence at the relevant time. In the facts of that case, the prosecution failed to do so.

47. *Assoo (supra)* held that, every quarrel between a husband-and-wife which results in a suicide cannot be taken as abetment by the husband. The standard of a reasonable and practical woman as compared to a headstrong and oversensitive one should be applied. In the facts of the present case, there was no evidence to come to a finding that, the victim was headstrong or oversensitive.

48. *Amir Sk. @ Kachai (supra)* held that, no physical or mental torture was proved. Therefore, the conviction under Section 306 and 498A of the Indian Penal Code, 1860 was found unjustified.

49. *Darshna Devi (supra)* was a case where, the husband died out of burn injuries and the wife was convicted under Section 302 of the Indian Penal Code, 1860 and was sentenced to life imprisonment on the charge of burning her husband. In that case, no stained relation between the couple was established. No motive to murder was found. The offence

was found not to be proved beyond doubt and therefore, the wife was acquitted.

50. *Anil Kumar Sarkar (supra)* held that, in order to establish an offence under Section 306 of the Indian Penal Code the abettor must instigate or encourage the victim to commit suicide. Mere fact that, certain persons were named in the suicidal note to be responsible for the death cannot be a ground to frame a charge of abetment. Insulting or abusing is not sufficient to constitute abetment of commission of suicide unless they seem to be reasonably capable of suggesting that the accused intended by such acts the consequence of suicide.

51. In *Gurjit Singh (supra)* it was held that, if the accused was found guilty of offence punishable under Section 498A of the Indian Penal Code, 1860, he cannot be automatically held guilty of offence punishable under Section 306 thereof. In the facts of that case, it was found that, there was no material on record to show that, immediately prior to the deceased committing suicide there was cruelty meted out to the deceased by the accused due to which, the deceased was left with no other option than to commit suicide. There was no material on record to reach a cause-and-effect relationship between cruelty and suicide for the purpose of

raising a presumption. There was also no record to show that there was a proximate nexus between commission of suicide and illegal demand made by the accused.

52. *Pratap Singh (supra)* found in the facts of that case that the prosecution failed to prove that the appellant was guilty of inflicting cruelty of such nature upon the victim which left her with no choice but to commit suicide.

53. *M. Arjuman (supra)* held that, the essential ingredients of offence under Section 306 of the Indian Penal Code, 1860 are firstly the abetment and secondly the intention of the accused to aid or instigate or abet the deceased in committing suicide. It held that, act of accused, in insulting the deceased by using abusive language will not by itself constitute abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide.

54. In *Md. Sarfulla (supra)* the court did not find any direct evidence to establish that, the accused instigated or provoked the victim to commit suicide and therefore granted the accused acquittal.

55. In *Ananda Gopal Bhandari (supra)* the court did not find any evidence that, prior to the occurrence, there was any

kind of torture which endangered the life of the victim or compelled her to commit suicide. It held that, simply because money was claimed and which was not substantiated it did not come within the purview of Section 498A of the Indian Penal Code, 1860.

56. *Heera Lal and Another (supra)* held that, since the accused was acquitted of the charge of cruelty, the accused cannot be held guilty of abetment of suicide. It held that Section 113A of the Evidence Act will apply if three ingredients were satisfied namely, that the wife committed suicide, such suicide was committed within a period of seven years from the date of marriage and the husband or his relatives subjected her to cruelty.

57. *Jayrajbhai Punjabhai Varu (supra)* while dealing with dying declarations observed that, in case of more than one dying declaration, the intrinsic contradiction in the dying declarations were extremely important. It cannot be that dying declaration which supports to prosecution alone can be accepted while the other dying declaration should be rejected. It also held that, courts are entitled to act on the dying declaration and make them the basis of conviction when the dying declaration was voluntary made and truthful. Once the

court is satisfied that the dying declaration was true and voluntary, it can be the basis for conviction without any further corroboration.

58. The victim died on March 31, 2012 due to burn injuries. The post-mortem doctor, PW 14, stated in his deposition that, on examination of the dead body of the victim, he found rigor mortis to be present. He found smell of kerosene oil from the body. Whole body was burnt except the soles of the feet. The burn was about 98%. In his opinion, death was due to shock in the case of burn, ante-mortem in nature. A reference in this regard may also be made to Exhibit 8 which is the post-mortem report. Exhibit 8 was prepared by PW 14. In cross examination, PW 14 stated that, he did not find any homicidal feature during the post-mortem examination.

59. Taking the deposition of PW 1 to 6 about the statement that the victim made at the hospital to them, at the highest, then also, the victim did not state that she was put on fire or was set ablaze by any of the appellants or any other person. The post-mortem doctor did not find any homicidal feature on examination of the body of the victim. The prosecution did not

bring forth any eyewitness claiming that, the victim was set ablaze by her husband or by any person.

60. The husband of the victim suffered from burn injuries. The same will appear from the medical documents of the victim being Exhibit A. The investigating officer being PW 15 tendered the medical documents of the treatment of the husband of the victim in evidence, during his cross examination. It would appear from such medical documents that, the husband of the victim was admitted to the hospital for burn injuries, treated for the same and released after about a month. Prosecution witnesses PW 2, 4, 5 and 8 stated in their deposition that, the victim after being on fire embraced her husband. They however, did not witness the incident. They were not present at the place of occurrence at the time when the incident took place. PW 9 and 10 stated that the husband of the victim tried to douse the flame on the victim by wrapping her with a blanket. They were however declared hostile by the prosecution. They denied the suggestions put by the prosecution that they recorded a statement with the police that the victim embraced her husband when she was burning. At the basic minimum, the medical documents of burn injury of the husband of the

victim and the evidence of the prosecution witnesses established that, the husband of the victim was present at the place of occurrence and at the time of occurrence.

61. The death of the victim was by burn injury and the fact that the husband of the victim was present at the place of occurrence were established conclusively by the prosecution.

62. In view of the deposition of the post-mortem doctor and the post mortem report being Exhibit 8, it cannot be said that, the victim was murdered as the post-mortem doctor did not find any homicidal feature during the post-mortem examination of the body of the victim. The post-mortem doctor however found the smell of kerosene oil from the body of the victim during the post-mortem examination. During his deposition, he said that, she cooked with the help of firewood then reasonably the smell of kerosene oil would not appear. Homicide being ruled out by the post-mortem doctor, then, the death revolves around the question of whether it was accidental or suicidal. The smell of kerosene on the body of the victim in the facts and circumstances of the present case, allows one to infer that, the death was suicidal, particularly when homicide was rule out.

63. The marriage certificate of the marriage between the victim and the husband was introduced in evidence by the husband of the victim as a defence witness. The marriage certificate being exhibit B established that, the marriage took place on March 13, 2005. The date of the incident was March 31, 2012. A period of seven years therefore elapsed from the date of the marriage till the date of the incident.

64. The prosecution established at the trial that, there were matrimonial disputes between the victim and a husband. There were demands for dowry. The family of the victim made over articles and money as dowry to the appellants on their demand.

65. The prosecution also established at the trial that, there were tortures meted out to the victim at the matrimonial home by the appellants. PW 2 and 8 stated that, once the husband of the victim called PW 2 over telephone and informed him that, the victim was beaten by him and that the victim should be removed from the matrimonial home. PW 2 and 8 responded to such phone call and found the victim to be unconscious. They removed the victim from her matrimonial home at that point of time. Subsequently, she was allowed to

return to the matrimonial home after a mediation was effected by the local people.

66. Torture on the victim by the appellants was established by the prosecution at the trial. The trial court therefore correctly found the appellants guilty under Section 498A of the Indian Penal Code, 1860.

67. Charges under Section 498A and 306 of the Indian Penal Code, 1860 are independent of each other and that, acquittal in one ipso facto does not lead to the acquittal in the other. Similarly, finding an accused guilty in one ipso facto does not lead the accused to be guilty in the other. Evidence at the trial is required to be evaluated to arrive at a finding of guilt in respect of the charges independent of each other.

68. In order to establish a charge under Section 306 of the Indian Penal Code, 1860, the prosecution is required to establish that, the victim committed suicide and that, commission of the suicide was a consequence of the abetment meted out by the accused. Abetment is constituted when one adopts a course of conduct or action of intentionally aiding or facilitating another person to end life. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. Courts are required to

evaluate the evidence adduced in the trial to find out whether the cruelty meted out to the victim in fact induced her to end her life by committing suicide or not. Ordinary petulance, discord and differences in domestic life common to the society to which the victim belonged unlikely to induce similarly circumstanced individual to commit suicide would not be sufficient to convict an accused with the charge of abetting the offence of suicide. These propositions of law can be garnered from the authorities cited above.

69. There was no material on record to suggest that the victim was a headstrong or a hyper sensitive woman. She was subjected to torture on numerous occasions by the appellants. The prosecution at the trial established that the victim was subjected to torture on demand for dowry and that, subsequent to the birth of a girl child to the victim, the torture upon her increased. In fact, on one occasion, she was beaten nearly to death when she was removed from her matrimonial home by her brother and his friend. At least there was one mediation by the local people with regard to the matrimonial disputes and torture on the victim. The quality and the quantity of torture meted out to the victim prior to her death

cannot be said to be of ordinary petulance, discord and differences of domestic life.

70. In the facts and circumstances of the present case, the appellants abetted the victim in committing suicide. They played an active role in the victim opting to end her life. They should be held guilty under Section 306 of the Indian Penal Code, 1806 and are so held.

71. The learned trial judge founded the conviction of the appellants under Section 306 of the Indian Penal Code, 1860 on the ground of Section 113A of the Evidence Act. In our view, Section 113A of the Evidence Act will not be attracted due to a period of seven years expiring from the date of marriage till the date of the incident.

72. The learned trial judge acquitted the appellants under Section 406 of the Indian Penal Code, 1860 and also under Sections 3/4 of the Dowry Prohibition Act. The State did not prefer any appeal from such order of acquittal. The family of the victim also did not prefer any appeal.

73. The impugned order of sentence of the appellants is affirmed in light of the discussions noted herein.

74. Accordingly, conviction and sentence imposed upon the appellant are upheld.

75. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon them in terms of Section 428 of the Code of Criminal Procedure.

76. CRA (SB) 75 of 2022 with CRAN 1 of 2022 and CRA (DB) 107 of 2022 with CRAN 1 of 2022 are dismissed accordingly.

77. Trial Court records along with a copy of this judgement and order be sent down at once to the appropriate Court for necessary action.

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

[DEBANGSU BASAK, J.]

79. I agree.

[MD. SHABBAR RASHIDI, J]