

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 379 Of 2021

Pradip Roy..... Appellant (In Jail)

With

CRA 380 of 2021

With

CRAN 1 of 2022

Kajal Roy & Anr....Appellants (In Jail)

Versus

The State Of West Bengal

For the Appellant s : Mr. Samiran Mondal, Adv.

: MR. Abhinaba Dan, Adv.

: Mr. Nitish Samanta, Adv.

For the State : Mr. Swapan Banerjee, Adv.

: Ms. Purnima Ghosh, Adv.

Hearing Concluded On : March 28, 2023

Judgment On : April 20, 2023

Md. Shabbar Rashidi, J.

1. Both the appeals are taken up together for consideration as they emanate from the one and the same judgment of conviction and order of sentence.

- 2.** The two appeals are directed against the judgment of conviction dated November 29, 2021 and order of sentence dated November 30, 2021 passed by learned Additional Sessions Judge, Bankura in connection with Sessions Trial No. 05 (02) 2017 arising out of Sessions Case No. 09 (11) 2016.
- 3.** By the impugned judgment of conviction and order of sentence, the appellants were convicted for the offences punishable under Sections 498A/304B/34 of the Indian Penal Code. The appellants were sentenced to suffer rigorous imprisonment for two years each and to pay a fine of Rs. 25,000/- each and in default of payment of fine to suffer simple imprisonment for another six months for the offence punishable under Sections 498A/34 of the Indian Penal Code. The appellants were also sentenced to suffer rigorous imprisonment for 10 years for the offence punishable under Sections 304B/34 of the Indian Penal Code. Both the sentences were directed to run concurrently. One of the accused facing trial namely

Uttam Roy was, however, found not guilty of any of the offences and acquitted.

4. One Sadhan Roy, lodged a complaint with the officer-in-charge of Women PS of Sadar Subdivision, Bankura on February 27, 2016 stating, inter alia, that his second daughter Rupa Roy was married to the appellant Pradip Roy as per Hindu customs and rites on 2nd Pous, 1421 BS. It was further stated that the marriage was an outcome of a love affair for which no money or ornaments were given in the marriage as dowry. The written complaint further disclosed that the said daughter of the de facto complainant informed him and his wife that the members of her matrimonial house started torturing upon her after two months of marriage on demand of dowry. The de facto complainant paid Rs. 40,000/- to the appellant and the other in-laws on 4th of Chaitra, 1421 and requested them not to inflict torture upon the daughter of the de facto complainant.

5. It was further stated in the written complaint that even after payment of such amount of dowry, the

daughter of the de facto complainant was subjected to physical and mental torture every day. She was denied proper food and clothes. On February 19, 2016 corresponding to 6th day of Phalgun, 1422 at about 10 o'clock in the night, the appellant Pradip Roy informed over telephone that the daughter of the de facto complainant was burnt. The son of the de facto complainant namely Pradip Roy went to Gobindanagar hospital and saw that the entire body of Rupa Roy, except chest, was burnt. She disclosed to her brother in the hospital that the appellants had done it to her and set her ablaze. She requested her brother not to spare them. The daughter of the de facto complainant died on February 23, 2016.

- 6.** On the basis of such written complaint, Bankura Sadar Women PS Case No. 08/16 dated February 27, 2016 under Sections 498A/304B/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, 1961 was started against the appellant.

- 7.** The police took up investigation and on completion of investigation submitted charge sheet against the husband and other in-laws of the victim on August 17, 2016 under the aforesaid Sections. Accordingly, charges under Sections 498A/304B/34 of the Indian Penal Code were framed against the appellant and other in-laws of the victim on February 16, 2017.
- 8.** In order to bring home the charges, the prosecution examined 22 witnesses in all. In addition, the prosecution also relied upon certain documentary as well as material evidences.
- 9.** Learned advocate for the appellants submitted that the impugned judgment of conviction and order of sentence is based on erroneous consideration of the evidence. It has been contended referring to the evidence of PWs 2, 5, 6, 7, 9, 10 and PW16 that the learned trial court was not justified in convicting the appellants on the basis of the evidence of interested witnesses.
- 10.** Learned advocate for the appellant also contended that learned trial Court arrived to pass the

impugned judgment and order completely ignoring the evidence of independent witnesses.

11. It was also submitted by learned advocate for the appellant that the learned trial court was not justified in holding the statement of the victim made by the her before her brother in the hospital as the dying declaration of the victim and as such, a conviction secure on the basis of such evidence cannot sustain. On such proposition of law, the learned advocate for the appellant has relied on a decision reported in **(2000) 5 SCC 207 (Kans Raj Vs. state of Punjab)**.

12. Learned advocate for the appellant has also stated that the prosecution has failed to establish the demand of dowry. The witnesses examined on behalf of the prosecution have not supported the case of the prosecution so far as it relates to the demand of dowry by the appellants. In that view of the facts, a conviction for the offences punishable under Section 498A/304B of the Indian Penal Code cannot be justified. It was also submitted that the learned trial court has wrongly

ignored the legal presumptions envisaged under the provisions of Section 113B of the Indian Evidence Act, 1872.

13. It was also contended on behalf of the appellants that in the facts and circumstances of the case, a case under Section 304B was not made out as there was no proximity between the alleged time of inflicting torture upon the victim and that of her actual death.

14. Learned advocate for the appellant also submitted that the prosecution has failed to prove a motive behind the alleged incident. Moreover, it is stated, there was no explanation on the part of the prosecution with regard to delay in lodging the First Information Report. Besides that, certain contradictions in the evidence of the prosecution witnesses have been referred by the appellant to be very vital contradictions telling upon the veracity of the prosecution case. It was contended that a conviction on the basis of such contradictory testimony cannot stand and is liable to be set aside.

15. On the other hand, learned advocate for the State submitted that the prosecution has been able to bring home the charges levelled against the appellants on the basis of convincing evidence. The witnesses examined on behalf of the prosecution have supported the case of the prosecution as made out in the First Information Report and they have been able to prove each and every ingredient of the provisions under Sections 498A/304B of the Indian Penal Code. According to learned advocate for the State, the impugned judgement of conviction and order of sentence is based on convincing evidence on record and as such, does not warrant any interference. Learned advocate for the State, submitted that the impugned judgement of conviction and order of sentence should be upheld.

16. As noted above the prosecution, in order to bring home the charges, examined 22 witnesses in all.

17. One person from the village of the appellants deposed as PW 1. In his the position, PW1 has stated that he heard that the appellant in CRA NO. 379 of 2021

(hereinafter to be referred as first appellant for convenience) got married and that he also heard that his wife died as she caught fire while cooking. PW1 was declared hostile by the prosecution and upon cross examination on behalf of the prosecution, PW1 denied having made any statement before the police. The defence declined to cross-examine him.

- 18.** The father of the victim deposed as PW 2. He stated that the victim was his second daughter and she was married to the first appellant on 2nd day of Pous and after marriage she started residing at her matrimonial house with her husband and other in-laws. The aforesaid marriage was an outcome of a lover affair. PW 2 also stated that after is such marriage, the accused persons the started demanding Rs. 40,000 as dowry. He met the aforesaid demand after two months of marriage but the appellants again demanded money and started inflicting torture upon his daughter. PW 2 further stated that on the day of Sarswati Puja, he met his daughter for the last time when she disclosed before him that she was

subjected to torture and she was worried as to how she will stay there. He further stated that his daughter, the victim, was admitted at Gobind Nagar hospital in bad condition and that she was burnt by the accused persons. PW 2 also stated that in the hospital, his daughter made a statement before his son that she was set ablaze by the accused persons and requested not to excuse them. He further stated that his daughter succumbed to the injuries. Hearing the news PW 2 lost his senses. He lodged the written complaint after the funeral ceremony of his daughter and upon overcoming his mental depression. He also stated that the written complaint was scribed by one Soma Ghosh as per his instructions and PW 2 put his left thumb impression upon the same. He identified the appellants in court. PW 2 was cross-examined on behalf of the appellants.

- 19.** Another villager of the appellants was examined as PW 3. He is also a hearsay witness. He also heard that the wife of first appellant caught fire while cooking. This witness was also declared hostile by the prosecution and

on cross examination by the prosecution, he denied having made any statement before the police.

20. The scribe deposed as PW4. He has stated that on February 27, 2016, he wrote a written complaint at Women Police Station as per the instructions of PW2. He tendered the written complaint which was marked as Exhibit 1 and his signature thereon was marked as Exhibit 1/a.

21. The mother of the victim was examined as PW 5. She stated that the victim was her daughter and was married to the first appellant on 2nd day of Pous. After marriage, she went to her matrimonial house and resided with her husband, the first appellant and other in-laws, the appellants in CRA No. 380 of 2021 (hereinafter to be described as the 2nd appellants for the sake of convenience). She further stated that the accused persons used to inflict torture upon the daughter on demand of further dowry. She could pay a sum of Rs. 40,000/- as dowry.

22. PW5 also stated that her daughter informed over telephone that the accused persons were demanding further dowry. She called her daughter to her house whereupon she came in the month of Magh. Later, her son-in-law came and took her back. She also stated that in the month of Falgun, the victim was burnt by the accused persons. The first appellant informed the son of PW5 and asked him to come to B.S.M.C. & H, Bankura. The son of PW5 went to the hospital and there, her daughter told him that she was burnt by the accused persons. She asked him not to excuse them. Later the victim died. In her cross-examination, PW5 stated that the brothers of the first appellant Uttam and Manik used to reside in separate mess.

23. A person from the paternal village of the victim was examined as PW6. He stated that Rupa Roy of his village was married to a person appellant on 2nd Pous, 1421B.S. After such marriage, she went to her matrimonial house and resided with the appellants. He also stated that the elder brother of the victim was his friend. On one day his

friend told him that there was a dispute going on in the matrimonial house of the victim and asked for his suggestions. PW6, thinking of the conjugal life of the sister of his friend, suggested him not to lodge a complaint before the police and try to settle the disputes amicably. PW6 further stated that 8/9 days prior to the death of the victim, she came to her paternal house. Upon enquiry, the victim told PW6 that she was subjected to mental torture as nothing was given to the groom in her marriage as they had married by fleeing away. PW6 was also informed by the elder brother of the victim that he had given some money to the in-laws of the victim. The victim was taken back to her matrimonial house by her husband. On February 20, 2016 the brother of the victim informed PW6 that the victim was admitted in the hospital on February 19, 2016 being set on fire by the appellants.

- 24.** Another villager from the paternal village of the victim deposed as PW7. He stated that the victim Rupa Roy was married to the first appellant and after marriage

she went to her matrimonial house and decided with the appellants. He further stated that he used to hear from the mouth of the elder brother of the victim that there were frequent disputes at the matrimonial house of the victim and the victim was subjected to torture on demand of further dowry. He also stated that Rupa Roy died of burn injuries, though it could not be said as to how she sustained the injuries. PW7 also stated that the elder brother of the victim told him that Rupa put herself on fire after having disputes with her husband. He identified the first appellant.

25. The brother of the first appellant was examined as PW 8. This witness testified that the victim was married to his brother, the first appellant but he stated in his deposition that the appellants used to behave well with Rupa. PW8 was declared hostile by the prosecution and in his cross-examination on behalf of the prosecution, he denied having made any statement before the police.

26. The cousin brother of the victim deposed as PW9. He has stated that Rupa was married with the first

appellant on 2nd Pous, 1421 BS. After such marriage she started residing at her matrimonial house. She was subjected to torture by her husband and in-laws on demand of Rs. 40,000/-. He further stated that although, Rs. 40,000/- was paid to the appellants by his uncle but the torture upon his cousin sister continued. PW9 also stated that suddenly on February 19, 2016 at about 10 PM the elder brother of Rupa got information that the accused persons had set fire on her body. PW9 also got to know the same from the elder brother of the victim. He has also stated that the elder brother of the victim went to BSMC & H, Bankura where the victim told her that she was set on fire by the appellants. The victim succumbed to the injuries after four days. PW9 has also stated that the police visited the hospital and conducted inquest upon the dead body of Rupa Roy. He also signed on the said inquest report which he tendered in evidence (Exhibit 2). PW9 also signed on the magisterial inquest report.

27. A villager of the paternal village of the victim deposed as PW 10. He has stated that the victim was married to the first appellant on 2nd Pous two years ago. After marriage she went to her matrimonial house and resided with her husband and other in-laws. PW 10 further stated that Rupa used to tell him that she was having disputes with her in-laws regarding money. The appellants demanded of her Rs. 40,000/- from her which was later paid by her father to the appellants. The disputes, however, did not end. He has also stated that he came to know that the victim was admitted in the hospital with burn injuries. He came to know from Pradip, the brother of the victim that the appellants set the body of the victim ablaze after assaulting. PW 10 tendered the photographs of the victim which were marked as Mat. Exhibiti I series.

28. The aunt of the first appellant was examined as PW 11. She did not add any substance to either the case of the prosecution or the defense.

- 29.** The ambulance driver was examined as PW 12. He carried Rupa wife of the first appellant to the hospital as she had sustained burn injuries.
- 30.** The police constable of Bankura PS deposed as PW 13. He has stated that on February 24, 2016 he went to BSMC & H, Bankura. After inquest, he carried the dead body under proper dead body challan for post-mortem examination. He has tendered the dead body challan (Exhibit 3). After the post-mortem examination he carried certain articles like bangle, photographs et cetera and handed over the same to the investigating officer who seized the same under a seizure list. PW 13 also signed on the said seizure list.
- 31.** PW 14 is the another witness to the seizure list dated March 3, 2016, through which, certain articles like conch bangle, red bangle, photographs et cetera were seized. He has proved his signature on the seizure list dated March 3, 2016 (Exhibit 4/a).
- 32.** The officer who conducted inquest over the dead body of the victim deposed as PW 15. He stated that on

February 24, 2016 he conducted inquest on the dead body of the victim Rupa Roy at BSMC & H, Bankura in connection with Unnatural Death Case No. 108/16 dated February 24, 2016 and prepared a report in this regard. He has proved the inquest report (Exhibit 2/a) and his signature thereon (Exhibit 2/b).

33. The brother of the victim has deposed as PW 16. He has stated that the victim Rupa was his sister. She was married to the first appellant Pradip on 2nd Pous of, 1421 BS. They had a love affair prior to their marriage. He has further stated that after marriage Rupa went to her matrimonial house and started residing there with the appellants. PW 16 has further stated that Rupa used to tell him that she was subjected to torture by her husband and other in-laws on demand of money. A sum of Rs. 40,000/- was given to the appellants. In spite of receiving the aforesaid amount, torture upon the victim continued.

34. PW 16 also stated that on February 19, 2016 at about 10 PM, the husband of the victim informed him

that the sister of PW 16 had sustained burn injuries. Accordingly PW 16 went to BSMC & H, Bankura and could see that his sister had sustained burn injuries all over her body except chest and face. He also stated that upon enquiry, the victim Rupa Roy told him that her husband and parents-in-law had set her body on fire. She also requested PW 16 not to let them go. The sister of PW 16 died on February 23, 2016 at about 2.30 p.m. An inquest was conducted upon the dead body in his presence and he signed on such inquest report (Exhibit 2/C). He also came to have signed on the magisterial inquest report. PW 16 further stated that his sister was carrying when she died.

35. PW 16 recorded his statement before the Magistrate. He proved his signature is on such statement (Exhibit 5 series). PW 16 was cross-examined on behalf of the defence. However, nothing favourable appears to have been extracted from such cross-examination.

36. The autopsy surgeon was examined as PW 17. He has stated that on February 24, 2016 he conducted post

mortem examination on the dead body of the victim Rupa Roy in connection with Bankura PS UD Case No. 108 dated February 24, 2016. Upon such examination, PW 17 was of the opinion that the death was due to antemortem burn injuries. He tendered the post-mortem report which was marked as Exhibit 6.

37. The executive Magistrate who conducted inquest on the dead body of the victim, deposed as PW 18. He has stated that on February 24, 2016 he held an inquest report over the dead body of the victim Rupa Roy in connection with Bankura PS UD Case No. 08 dated 724 2016.

38. The medical officer of BSMC & H was examined as PW 19. He has stated that on February 19, 2016 at 10. 47 PM, a patient namely Rupa Roy was admitted in the burn unit of BSMC&H with eighty percent burn injuries on. PW 19 had attended the said patient. He has tendered the Bed Head Ticket under his pen and signature (Exhibit 7 collectively). He further stated that the victim died on February 23, 2016. In his cross-

examination, PW 19 has stated that at the time of admission the patient party disclosed about accidental injury of Rupa Roy during cooking food.

39. Another doctor of BSMC & H deposed as PW 20. He has also stated that the victim Rupa was admitted in the hospital with burn injuries on February 19, 2016 at 10:47 PM and she died at 3 PM on February 23, 2016. PW20 stated to have attended the patient together with PW19.

40. The recording officer deposed as PW 21. She stated that on February 27, 2016 she was posted at Women PS Sadar Bankura. She stated that on the said date she received a written complaint from PW to and started Bankura Women PS Case No.8/16 dated February 27, 2016 under Sections 498A/304B/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. PW21 filled up the formal first information report (Exhibit 8).

41. The investigating officer deposed as PW 22. She has stated about the course of investigation of the case. She

has stated that being endorsed with the investigation of the case she visited the place of occurrence and prepared rough sketch map with index thereof (Exhibit 9 and 9/1), recorded the statement of the witnesses under Section 161 of the Criminal Procedure Code. They arrested the accused persons, arranged for recording statement of witnesses under Section 164 of the Code of Criminal Procedure. In course of investigation he also collected and seized several articles belonging to the victim together with the medical reports under proper seizure list. On completion of investigation, PW 22 submitted charge sheet on August 17, 2016.

42. Upon completion of the evidence on behalf of the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure. The appellants claimed that the allegations made against them were false and the investigation was not done properly. Although, the appellants gave out not to adduce any defense witness, nevertheless, the first appellant, Pradip Roy deposed as DW1.

43. In his deposition, DW1 stated that the victim Rupa Roy was his wife. She died of burn injuries from the fire of the stove. He further stated that the incident occurred at about 9.00/9.30 pm. At that time he was in the locality. Hearing hue and cry, he came back and found his wife in injured condition. He tried to save his wife and as a result, he himself sustained burn injuries on his hand. His wife was admitted at the BSMC & H in the night of the incident. DW1 further stated that he was himself admitted at BSMC & H for treatment where he remained admitted for four days. He was discharged on February 24, 2016. DW1 tendered his discharge certificate issued by the BSMC & H which was marked as Exhibit A, upon objection from the prosecution.

44. In his cross examination, DW1 admitted that his marriage with the victim was outcome of a love affair. He further admitted that the brother of his wife Pradip Roy came to meet the victim on the night of admission of Rupa at BSMC & H. He, however, denied the payment of Rs. 40,000/- as dowry after the marriage and that the

victim used to be tortured by him or other in-laws on demand of dowry. He also denied that the victim had disclosed to her brother that she was assaulted by him and other family members and was set on fire by pouring kerosene oil.

45. PW1 also admitted in his cross examination that the discharge certificate produced by him (Exhibit A) did not contain any seal and stamp and that his residence at village Bhedua was not disclosed in such certificate. He also denied a suggestion advanced to him that he had deposed falsely that Rupa sustained burn injuries due to bursting of stove. He admitted that the burst stove was not shown to the police.

45. According to the case made out by the prosecution, the victim was married to the first appellant Pradip Roy. After such marriage, she went to her matrimonial house and resided with the appellant in matrimony. It was further the case of the prosecution that while so residing at her matrimonial house, the victim was subjected to physical and mental torture by the appellant by her

husband and other in-laws i.e. the appellants on demand of further dowry. A sum of Rs. 40,000/- was once paid by the parents of the victim to the appellant but the torture upon the victim continued. Ultimately, the victim was set ablaze. She was admitted to the hospital with burn injuries and ultimately, she succumbed to such injuries in course of her treatment. According to the case of the prosecution, the victim was admitted into the hospital for injuries on February 19, 2016. The doctor who attended her has deposed as PW19 and stated that on February 19, 2016 at 10.47 pm, a patient i.e. the victim was admitted in the burn unit of BSMC & H with a history of 80 percent burn injuries. According to PW19, the patient was admitted through emergency department of the hospital. He attended the said patient along with another doctor. PW19 also proved the bed head ticket regarding the treatment of the victim (Exbt. 7 collectively). The assistant professor attached to BSMC & H was examined as PW20. He has corroborated the testimony of PW19 regarding admission of the victim with eighty percent

burn injuries. He also proved the relevant entries in the bed head ticket. Therefore, from the evidence of PW19 and PW20, as well as, the testimony of Exbt. 7 series it is quite evident that the victim was admitted with 80% injuries in BSMC & H, Bankura on February 19, 2016. The victim was under the treatment of PW19 and PW20 and ultimately, she died on February 23, 2016 at 3 pm. After such death of the victim, an inquest was conducted over her dead body and thereafter, a post mortem examination was conducted. The autopsy surgeon deposed as PW 17. He conducted the post-mortem examination of the dead body of the victim and tendered the post-mortem report (Exbt. 6) The Exhibit 6 goes to show that the autopsy surgeon in course of post-mortem examination noted the injuries found on the dead body of the victim:- **“Infected ulcer forming burn injuries present all over the body except face, head, anterior and posterior aspect of thorax including both shoulder joints, antero-lateral aspect of Rt. Upper limb and external genitalia, both foot including both**

sale. All the injuries showed evidence of vital reaction. No other injury either revealed or concealed could be detected even after careful dissection and examination with the help of a hand lens.”

46. In the opinion of PW17, the cause of the death of the victim was due to the effect of an antemortem burn injuries as noted in the post mortem report. Therefore, in consideration of the evidence adduced by PW17 together with the testimony of Exhibit 6, it can conclusively be held that the victim died in the circumstances which were unnatural. From the materials on record, it transpires that the victim was married to the first appellant in the year 1421 B.S. and the incident took place in month of Falgun 1422 B.S. corresponding to February 19, 2016. The incident appears to have taken place within a year of the marriage of the victim with the appellant. A case has been set out by the prosecution that the victim married the first appellant out of love affair between them. They fled away and married each other. For such reason, no dowry was given in their

marriage. However, it is the case that when the parents and another family members of the victim accepted the marriage between the victim and the first appellant, the victim went to matrimonial house and resided with her husband and other in-laws i.e. the appellants. In course of such state of the victim at her matrimonial house, it is alleged that the victim was subjected to physical and mental torture by the appellant on demand of further dowry. PW2 in his deposition has stated that after marriage of the victim, the appellant started demanding Rs. 50,000/-. PW2 made the aforesaid demand of Rs. 40,000/- to the appellants after two months of the marriage of the victim but the appellants continued with the torture upon the victim on demand of further dowry. PW1 has categorically stated in his deposition that he was reported by the victim that she was subjected to torture by the appellants on demand of further dowry and that she was worried as to how she will stay at her matrimonial house. Later on, the victim was admitted in the hospital and the son of PW1 was informed over

phone that she sustained burn injuries. When PW16, the son of the PW1 went to meet his sister in the hospital, she is said to have disclosed before PW16 that she was set on fire by the appellant on demand of further dowry and requested PW16 not to spare the appellants. Similar statements were made by the mother of the victim PW5, a co-villager PW6, PW9 and PW10.

47. All the aforesaid witnesses have corroborated and supported the case of the prosecution so far as the marriage of the victim with the first appellant is concerned. The said witnesses have also testified that the victim went to her matrimonial house and resided with the appellants and that she was subjected to torture by the appellants on demand of further dowry.

48. It is a fact; there are no eyewitnesses so far as the factum of torture inflicted upon the victim is concerned. However, the parents of the victim PW1 and PW5 have stated that they were informed by the victim herself that she was subjected to torture by the appellants. Similarly, PW10, one of the uncles of the victim also claimed that

the victim herself disclosed before him that she was having dispute with her in-laws regarding money and that the accused persons demanded Rs. 40,000/- from her.

49. A friend of the brother of the victim, namely PW6, also corroborated the case of the prosecution. He has stated that earlier he was informed by the brother of the victim about some disputes at the matrimonial house of the victim. Later on, the victim came to her paternal house 8/9 days prior to her death and at that time, she disclosed before PW6 that she was subjected to mental torture on the ground that nothing was given to the bride groom at the time of marriage. PW6 also claimed that the brother of the victim (PW16) had told him that some money was given to the in-laws of the victim and thereafter, the husband of the victim took her back to her matrimonial house.

50. It is quite evident from the materials on record that the victim and the first appellant had a love affair and they married each other after eloping from their

respective houses. For this reason, nothing was given in the marriage as dowry. The evidence also discloses that the demand for dowry started after two months of the marriage, when the victim started residing at her matrimonial house.

51. The parents of the victim, PW2 and PW5 have stated that the victim had spat at her matrimonial house over demand of dowry and that, they once paid ₹.40, 000/- as dowry to the appellants and it was on such payment, the victim was taken back to her matrimonial house by the first appellant. They had requested the appellants not to inflict torture upon the victim but the torture continued. The appellants demanded further dowry. Both these witnesses were reported by the victim herself that she was subjected to torture by the appellants on demand of dowry. They were the persons whom the victim would naturally have informed about her plight at her matrimonial house and she actually did so.

52. PW16, the brother of the victim, was first informed by the first appellant about the mishap and burn injuries

sustained by the victim on the day of incident. He naturally, visited his sister in the Hospital where he found the victim with burn injuries all over her body except chest and face. The injuries found by the doctor on the person of the victim are quite commensurate to its description narrated by PW16. The attending doctor also did not find any injury on the face and chest of the victim.

53. Moreover, the victim is said to have made a dying declaration before PW16 in the hospital to the effect that the appellants were responsible for her injuries. She is said to have stated to her brother PW16 that her husband and in-laws had set fire on her body. She requested her not to spare the appellants. The victim died on February 23, 2016 out of the burn injuries.

54. So far as the alleged mishap and the victim sustaining burn injuries are concerned, it is admitted position that the victim sustained burn injuries and was admitted in the hospital for the injuries and ultimately died of such injuries. It is the case of the prosecution that

the victim was set on fire by the appellants in connection with demand of dowry. On the contrary, the defense has come up with a case that the victim caught fire while cooking, ostensibly an accidental situation.

55. In order to prove the case so set forth, the defense adduced defense witness. The first appellant himself deposed as DW1. He stated that at the relevant time, he was in the locality and upon hearing a hue and cry returned to his house and found his victim wife in an injured condition. No one from the locality has been examined on behalf of the defense with whom the first appellant was then sitting or who could have testified the factum of such hue and cry.

56. PW1 also stated that he, upon seeing the victim in burning condition, tried to douse the fire and in such endeavour, the first appellant himself sustained burn injuries. He was treated for such injuries being admitted in the same hospital for a few days. He was discharged after such treatment. In order to prove his discharge, DW1 proved a discharge certificate (Exhibit A). No doctor

was examined who attended the first appellant for his injuries. No medical document has been brought forth on behalf of the defense to prove the nature of injuries sustained by the first appellant. In fact, there is nothing on the record to establish that the first appellant actually sustained any burn injuries and he was treated for such injury.

57. Exhibit A was proved by PW1 subject to objection on behalf of the prosecution. Apparently, Exhibit A was proved without complying the provisions of Section 65 of the Indian Evidence Act, 1872. Admittedly, the said document did not contain the official seal et cetera, of the issuing authority. The said document also cannot be said to be a public document envisaged under the provisions of Section 74 of the Act of 1872. It was also admitted that the identity of the first appellant on such document was not properly disclosed. In that view of the facts, we have no hesitation to hold that the objection noted in the proof of Exhibit A was not discharged in accordance with law and as such, the said document cannot be relied upon.

Therefore, it can be safely held that the defense has miserably failed to prove that the first appellant sustained burn injuries while trying to douse the fire or that he was treated for such injuries.

58. In the facts and circumstances of the case, the prosecution appears to have established that the victim was the wife of the first appellant. She died within seven years of her marriage with the first appellant. The prosecution has also been able to prove that the victim sustained burn injuries being set on fire by the appellants and that she was so set on fire in connection with demand of further dowry. It also appears that the prosecution has sufficiently prove that the victim was subjected to physical and mental torture at the hands of the appellants in both the appeals i.e. her husband and the in-laws.

59. In the case of **Kans Raj (supra)**, the Hon'ble Supreme Court noted the implications of the words 'soon before' and it was observed by the Hon'ble Supreme Court that the term was not synonymous with the term 'immediately

before'. The Hon'ble Supreme Court laid down that if the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be soon before death' if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before the alleged such treatment and the date of death.

60. The Hon'ble Supreme Court, in the aforementioned judgment, also laid down that the demand of dowry cruelty or harassment based upon such demand and the date of death should not be too remote in time which, in the facts and circumstances, be treated as having become stale enough. No presumption under Section 113 B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment to dispute stood resolved and there was no evidence of cruelty and harassment thereafter.

61. In the present case, however, we have already noted that the death of the victim occurred within one year of marriage. There were consistent and continuous torture inflicted upon the victim without considerable time gap or

any intervening settlement of dispute to discard a presumption and under Section 113B of the Indian Evidence Act.

62. In the facts and circumstances of the case and the evidence adduced on behalf of the prosecution, we are of the view that the Learned Trial Court was quite justified in awarding conviction on the basis of the presumption under Section 113B of the Indian Evidence Act.

63. Therefore, on the basis of aforegone discussions, we are convinced that the prosecution has been able to prove the charges leveled against the appellants/convicts with the help of convincing evidence. The impugned judgment of conviction dated November 29, 2021 and order of sentence dated November 30, 2021 passed by the learned additional Sessions Judge, Bankura in connection with Sessions Trial No. 05 (02) 2017 appears to be well founded on the basis of convincing evidences, sufficient enough to base a conviction upon and does not warrant interference in the facts and circumstances of the case. We affirm the same.

64. Accordingly, both the appeals being **CRA 379 of 2021** and **CRA 380 of 2021** are hereby dismissed.

65. In view of the disposal of the appeals, no interlocutory application survives. Consequently, connected applications, if any, shall stand dismissed.

66. Trial Court records along with a copy of this judgment and order be sent transmitted, at once, to the learned Trial Court for necessary action.

67. Period of detention already undergone by the appellants shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.

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

[MD. SHABBAR RASHIDI, J.]

69. I agree.

[DEBANGSU BASAK, J.]