

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 801 of 2008

**Swapan Dandapat
-Vs-
The State of West Bengal**

For the Appellant	: Mr. Navanil De Mr. Rajeshwar Chakraborty Mr. Srijan Ghosh
For the State	: Ms. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	: 05.10.2023, 12.12.2023, 19.01.2024
Judgment on	: 20.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the impugned judgment dated 25.11.2008 and order dated 26.11.2008 passed by the Learned Additional Sessions Judge, Fast Track, 2nd Court, Paschim Midnapore in connection with Sessions Trial Case No. XIV of July 2004 convicting the appellant under Section 498A of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1000/- in default to suffer further simple imprisonment for a period of 1 month and the appellant was further convicted under Section 304B of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for a period of 7 years and to pay a fine of Rs.2000/- in default to suffer

further simple imprisonment for a period of 2 months. Both the sentences are to run concurrently.

2. The prosecution case precisely stated on July 4th 2001 one Srikanta Kotal lodged a F.I.R before the police station alleging inter-alia that his sister Balika Dandapat married one Swapan Dandapat 1407 B.S in the month of Ashar according to Hindu Rites and Customs. At the time of marriage Rs.5,000/ was given as dowry along with other articles. The father of the complainant promised the accused persons to give further amount of Rupees 5000/ within 6 months of the marriage. After the marriage Balika was tortured by her in-laws as her father could not pay Rs.5000/ at the time of marriage, whereby the complainant met the accused persons and assured to pay the remaining amount of Rs.5000/ at the earliest but in vein. On May 8th 2001 the complainant went to meet the victim. Balika told him that if they did not pay the rest amount of Rs.5000/ to the accused persons then she would be tortured and she would have to commit suicide. The complainant told his sister that he would arrange for the money very soon and thereafter he returned. On May 18th 2001 the complainant got the news that his sister had an unnatural death. The complainant rushed to his sister's matrimonial home and found her dead body in the absence of the in-laws. The complainant informed the incident to the police station. As police did not take any steps, the complainant filed the petition of complaint before the Court of the Learned Chief Judicial Magistrate at Paschim Midnapore on June 8th 2001. The Learned Magistrate forwarded the complaint before the Police Station and Keshiary Police Station Case No. 29 of 2001 dated July 4th 2001 under Sections 498A/304B was initiated against 7 accused persons.

3. After completion of investigation the Investigating Officer submitted charge sheet against the 7 accused persons including the present appellant vide Charge Sheet No. 51 dated October 28th 2003 under Sections 498A/304B of the Indian Penal Code.
4. The charge was framed against all the accused persons under Sections 498A/306/304B/34 of the Indian Penal Code.
5. The prosecution examined as many as 12 witnesses and exhibited certain documents.
6. The Learned Advocate for the submitted as follows:
 - i. The alleged incident took place on May 09, 2001 (26th Baishakh, 1408), within one year of the marriage. The brother of the victim, namely Srikanta Kotal (P.W. 1), on July 04, 2001 preferred a petition of complaint under Section 156(3) of the Code of Criminal Procedure before the Learned Court below against the accused persons including the appellant herein, which was subsequently treated as F.I.R. on the same day.
 - ii. On May 10, 2001, after P.W. 1 found the dead body of the victim, he informed the police and thereafter, the police reached the place of occurrence and held inquest over the dead body of the victim. According to the Investigation Report prepared by the Investigating Officer, i.e., P.W. 12, there were no mark of external injury on the deadbody of the deceased, but heavy bloating was found from the vagina of the deadbody which had spread all over the back of the body. After preparing the Investigation Report, the dead body was sent for Post Mortem.

- iii. The Post Mortem Doctor, i.e., P.W. 11 in his evidence stated that on examination of the dead body of the deceased, he did not find any marks of external injury on the dead body of the deceased/victim and was also unable to state without receiving the chemical report whether the *"death was accidental, homicidal or suicidal"*. It completely contradicted the allegation of physical torture imposed upon the victim by the appellant and the in-laws of the victim.
- iv. P.W. 1 i.e, the complainant in his evidence recorded on January 12, 2005 stated in his – in – chief that “presumably” the appellant and other co accused have killed the victim. He further stated that the victim did not ventilate any grievance to him, which completely contradicted the allegations stated in the F.I.R. The P.W. 1 was recalled by the prosecution on October 26, 2006 for further examination, i.e., after 1 year and 10 months from the date of his initial examination. On the date of his further examination, P.W. 1, i.e., the complainant narrated the incident as stated in the F.I.R. Therefore, it could be construed that the allegations levelled against the appellant were concocted.
- v. P.W. 2 i.e., the father of the victim stated in his examination – in – chief that present appellant had murdered his daughter after being intoxicated. Such fact had never been stated in the F.I.R. and neither by P.W. 1 in his evidence.

P.W. 2 further stated in his examination – in – chief that he was not interrogated by the police.

In his cross examination, P.W. 2 stated that he went to the matrimonial house of the victim on the date of death of the victim to

invite the victim and her husband, i.e., the appellant for "jamai shoshti".

P.W. 2 was also recalled for further examination by the Prosecution on October 26, 2001, which was after 1 year 10 month from the initial recording of his evidence. In his further examination, P.W. 2 narrated the facts as stated in the F.I.R. P.W. 2 further stated that he had visited the matrimonial house of the victim for the first time on May 12, 2001, whereas, the date of death of the victim was on May 09, 2001. Therefore, P.W. 1 being present at the matrimonial house of the victim on the date of death or on the following date was completely false.

- vi. P.W. 3, a neighbour of the appellant was examined on April 04, 2006, when he could not state the reason behind the commission of suicide by the victim. On October 27, 2006, P.W. 3 was recalled by the Learned Public Prosecutor and was cross-examined, when he stated that the *"the relationship between Swapan Dandapat and Balika Dandapat was good. Balika was loved by her husband and in-laws."*
- vii. Subsequently, on January 18, 2008, i.e., after 1 year and 3 P.W. 3 was recalled by the Learned Public Prosecutor for further cross months, examination, where he completely contradicted the allegations stated in the F.I.R., but he was not declared hostile by the prosecution.
- viii. The appellant submits that P.W. 4, P.W. 5, P.W. 6, P.W. 7 and P.W. 8, who were the neighbours of the appellant, stated in their evidence that the appellant herein and the other accused persons of

the present case, i.e., the in - laws, shared a cordial relationship with the victim. Such statements of the witnesses totally contradict the allegations levelled against the appellant in the F.I.R.

None of the independent witnesses, i.e., P.W. 4, P.W. 5, P.W. 6, P.W. 7 and P.W. 8 could state anything about the demand of dowry by the husband and the in-laws of the victim.

- ix. The P.W. 12, i.e., the First Investigating Officer conducted the initial investigation of the case, recorded the statements of the available witnesses as per the provision of Section 161 of the Code of the Criminal Procedure and arrested the appellant along with another co accused person. Thereafter, the investigation of the present case was transferred to P.W. 9, i.e., the Second Investigating Officer due to the transfer of P.W.12.
- x. P.W. 9, the Second Investigating Officer submitted the charge sheet and prayed for submitting supplementary charge sheet but subsequently failed to do the same as he could not collect the F.S.L. Report.
- xi. The Learned Trial Judge while passing the Impugned Judgement and Order of Conviction failed to consider that the allegations levelled against the appellant and the other co accused were general and omnibus in nature. No specific role played by each of the accused have been stated in the F.I.R.
- xii. The aforesaid observation completely violated the observation of the Hon'ble Apex Court in the case of Neelu Chopra and Another V Bharti : (2009) 10 Supreme Court Cases 184 : (2010) 1 Supreme Court Cases (Cri) 286, where the Hon'ble Apex Court was pleased to

observe in paragraph 9 that - *"In order to lodge a proper complaint, mere mention of sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence."*

- xiii. The prosecution had failed to prove beyond reasonable doubt the specific role played by the appellant in commission of the alleged offence. The prosecution had also failed to prove the allegation of torture upon the victim/deceased as it is evident from the Post Mortem Report, Investigation Report and also the evidence of the Post Mortem Doctor (P.W. 11) that there were no marks of injury on the dead body of the victim.
- xiv. Pertinently the allegation of physical torture "soon before" the commission of the alleged offence had not been proved beyond reasonable doubt by the prosecution, which was a necessary ingredient in order to attract Section 304B of the Indian Penal Code as observed by the Hon'ble Supreme Court in paragraph 9 of Hira Lal and Ors. -V-State (Govt. of NCT), Delhi : (2003) 8 Supreme Court Cases 80 : (2003) Supreme Court Cases (Cri) 2016.
- xv. Except the husband, all the other accused have been acquitted from the present case by the Learned Trial Judge. The allegations against the appellant, i.e., the husband were general and omnibus in character. The specific role, mode and fashion of torture have not been specified in the evidences on record.

7. A circumspection of prosecution witnesses revealed as follows:

- i. PW-1 in his deposition stated that Balika Dandapat since deceased was his sister. She was given marriage to Swapan Dandapat. Cash of Rs. 5000/- and other Youtuks were presented. After marriage she lived with her husband at in-laws' place. PW-1 could not state what for his sister died. Eight months after marriage they got an information from the house of in-laws place. Presumably they murdered his sister. The complaint was prepared by his advocate. He signed the complaint was marked Ex.1. His sister did not ventilate any grievance to him. He could not state what for she consumed poison. That was my signature on the inquest report marked Ex.2.
- ii. During cross-examination PW-1 stated that on the date of his sister he lodged diary at Keshiary P.S. Police came and caused investigation. Only on the date of Asta mangala he met his sister. After Asta mangala he did not meet his sister. He could not state the contents of the FIR. He had no enmity with police. He named the persons who were aware of the incident.
- iii. In further examination of PW-1 he stated that he filed the case in Court through his lawyer Jagannath Ghosh. His complaint was written by lawyer Asim Chakraborty which was read over to him and thereafter he signed. These were his signatures on the complaint. Signature of the witnesses were marked Ex. 1/2 series. It was a fact that he stated all true at that time to his lawyer. He also stated that during marriage they paid Rs. 5000/- in cash and a other Rs. 5000/- remained due and they could not afford to pay that money. It was a fact that he also stated that

after some days from marriage her husband inflicted torture on his sister mentally and physically and whenever his sister would come she would state all this to him. She came to their house and thereafter he went to her in-laws' house and after 3 days the occurrence took place and the date of occurrence was the date of Election. Perhaps the date was 10th. He could not state the month. After that he received information that she died. After that he went to her in-laws' house and he found the dead body of his sister in the house and all other persons of their house fled away. It was a fact that his sister stated to him that they would immediately require to be paid due cash money of Rs. 5000/- to her husband otherwise she would have to die by committing suicide. After occurrence they went to PS but police did not take any action. Then they filed the case in Court. They requested the husband of his sister that I would pay due money within 7 days from that time and accordingly they prayed to give 7 days time but last all he did not give time.

iv. During cross-examination by defence PW-1 stated that he stated all to his lawyer. His lawyer was Jagannath Ghosh. He did not know Asim Chakraborty. He had not enmity with the police. Earlier he deposed in Court but he could not state all at that time. On that date he could not complete all by stating all. He could not state the date when his sister came to his house for the last time.

v. PW-2 stated that the accused persons were identified in Court. The deceased was his daughter. His jamai actually murdered his

daughter after being intoxicated. He went to their house to take his daughter and jamai to their place. His jamai gave out that on the day of Jamai Sasthi they would come with his daughter. On Wednesday at night he went to their house. On another Wednesday at night at his house he got information from the father of his jamai that his daughter committed suicide by taking poison. He rushed to their place but found none of the accused persons present in their house. He found his dead daughter lying there. Police did not interrogate him.

vi. During cross-examination PW-2 stated that he could not state on what date, time, month and year he went to call his daughter and jamai. For the purpose of Jamai Sasthi he went to call them. But the accused persons stated that on the day of Jamai Sasthi Jamai would not go as there was trouble in the house because their daughter was required to come. Obviously, his daughter got mental injury.

vii. During further examination PW-2 stated that during marriage of Balika Dandapat, he gave cash money of Rs. 5000/- out of Rs. 10000/- and rest Rs. 5000/- remained due and he also gave other articles. It was a fact that her husband asked her to bring rest cash of Rs. 5000/- from them and for that reason he sent her to their house. It was a fact that he stated to police that after he came to the house of the accused and stated to them that they should not inflict any torture on her and he also promised to pay that due money of Rs. 5000/- very shortly. Her husband and other did not pay any heed to his request and continued torturing

her. On 8.5.01 his son Srikanta went to the house of the accused and at that time Balika stated to him that they should pay remaining money of Rs. 5000/- immediately otherwise they would continue torturing on her and kill her or alternatively she would have to commit suicide.

viii. During cross-examination by defence PW-2 stated that he did not hide any truth during the last time of his deposition. He stated all as he was stating today. He could not state the date when he paid cash money of Rs. 5000/-. He also could not state the date when his son-in-law and husband of his daughter and other accused demanded further cash money of Rs. 5000/-. He could not state the dates when his daughter came to his house after marriage. He went to the house of accused on 12.5.01 for the first time after marriage. He could not remember the date when police recorded his statement. He saw police after 6 months on the date of occurrence. It was a fact that his daughter came for the last time on 7.12.2000. He did not see his daughter before or earlier.

ix. PW-3 in stated that relation between Swapan Dandapat and Balika Dandapat was good. Balika was loved by her husband and in laws. He never saw police. Police did not ask him anything. He did not state to police that husband of Balika and other in laws of Balika would inflict torture on Balika.

x. During cross-examination PW-3 stated that though he signed police papers, police did not state the contents of the same and he did not read it.

- xi. PW-4 in his deposition stated that he could not state the exact position of relationship between accused and wife of accused Swapan, but apparently he did not know the whole thing. Wife of Swapan died about 3/4 years back perhaps. He saw the dead body of wife of Swapan but he could not state how she died.
- xii. During cross-examination PW-4 stated that relationship between wife of Swapan and accused persons was very good. They would love their daughter-in-law very much.
- xiii. PW-4 further stated that distance between his house and the house of accused was not too far. In between his house and the house of accused there were about 3/4 houses. Wife of Swapan died in the house of Swapan. At the time of death of wife of Swapan the age of that wife was about 16 years and she was married about 3 years prior to her death. She did not have any issue. Father of wife of Swapan was a cultivator and sometimes he also caught fish.
- xiv. PW-5 in his deposition stated that after marriage Balika came to her husband's house and started residing with her husband but Balika did not give birth to any child from their wedlock. Balika committed suicide in the house of her husband consuming poison and that took place about 5/7 years back, but he could not state the exact date of incident. He could not state as to why Balika committed suicide consuming poison. When police came to their house, he also came to the house of Swapan and saw dead body of Balika.

- xv. During cross-examination PW-5 stated that Balika was very good in the house of her in-laws. In-laws of Balika would love her very much.
- xvi. PW- 6 stated that he knew Swapan Dandapat because he was his neighbour. He would know Balika because he was the wife of Swapan. During the time of marriage he was present. He could not remember the quantum of money or any other Youtuk that was given by father of Balika to Swapan. He was short of hearing. About 2/3 years back he heard that Balika consumed poison and died and he heard the same on the following morning. He could not state why Balika committed suicide by consuming poison.
- xvii. During cross-examination of PW-6 he stated that accused persons behaved well with Balika. Accused persons loved Balika.
- xviii. PW-7 in his deposition stated that he knew all the accused (identified). Balika was married with Swapan Dandapat about 5/6 years back. After marriage Balika came to the house of accused Swapan. They resided at their house as husband and wife. At that time there was good relation between Swapan and Balika. On the date of accident he went to field for work. He did not hear anything about the incident.
- xix. PW-8 in his deposition stated that he knew all of them because they were his neighbours. Balika was the wife of Swapan and she was good. He could not state anything about the incident.

- xx. During cross-examination of PW-8 he stated that his house was located beside the house of Swapan. All the accused persons would love Balika.
- xxi. PW-9 stated that on 12.8.03 he was posted at Keshiary P.S. and on that date the case was endorsed to him by O.C. for further investigation. After that he received the C.D. and perused the same and he found that F.S.L. report was pending and he tried to collect F.S.L report and after that he submitted C.S. vide no. 51/02 dated 28.10.03 u/s 498A and 304 IPC arising out of Keshiary P.S. Case No. 29/01 dated 4.7.01 before the Court of S.D.J.M. Midnapore against accused Swapan Dandapat and 5 others. He would have submitted supplementary C.S. if he could collect the F.S.L. report.
- xxii. PW-10 in his deposition stated that on that day he received one complaint from Srikanta Kotal. On that day he received a complaint u/s 156(3) Cr.P.C. and accordingly he started Keshiary P.S. Case No. 29/01 dated 04.07.01 u/s 498A/304B IPC. The written complaint (Exhibit 1) was shown to the witness. The witness said that that was his endorsement with his signature. The endorsement with signature of the witness was marked Exhibit 1/1. He also filed the formal FIR and also signed it and directed S.I. Anil Baran Mandal to investigate the case. The formal FIR was marked as Exhibit 2. He had no personal knowledge.
- xxiii. PW-11 stated in his deposition that on 11.5.01 he was posted in the same place with same capacity. On that day he hold P.M.

examination in respect of dead body of Balika Dandapat aged 20 years Hindu female with reference to U/D Case No. 7/01 dated 10.5.01 of Keshiary P.S. The dead body was brought and identified to him by constable no. C-2156 Arun Tarafdar. On examination he found that the dead body was decomposed, no external injuries could be detected, stomach consist 300 c.c. of food and liquid and was bluish white colour. Blisters (which means phoska in Bengali) were found on the skin of the victim, small intestines and its contents were found to be distended which means inflated and it consisted gas and liquid and the large intestine and also found distended and found in the same condition. Stomach and its contents and kidney portion of large intestine were sent for chemical analysis. He preserved his opinion till receipt of the chemical examination report. This was his report written and signed by him, it was marked as Exhibit 4 as a whole. The colour of the food as stated above might be due to any poison but he could not give the final opinion due to non-receipt of FSL report.

xxiv. During cross-examination PW-11 stated that he could not state without chemical report whether death in question were accidental, homicidal or suicidal. The blistering could have developed due to decomposition of dead body even.

xxv. PW-12 in his deposition stated that on 4.7.01 he was posted at Keshiary P.S. as S.I. On that day he got the endorsement of the case for investigation. Accordingly, he took up the investigation of the case. During investigation he visited the P.O. and prepared

rough sketch map. Those were the 2 pages rough sketch map with the P.O. with index prepared and signed by him. The 2 pages rough sketch map were marked as Exhibit 5 and 5/1. He also examined the witnesses u/s161 Cr.P.C and recorded the statement. He collected S.C.D. from ASI T.K. Jana. The post mortem report also contained in that S.C.D. In his absence O.C. arrested 2 accused namely Swapan Dandapat and Dilip Dandapat and forwarded to the Court of Ld. S.D.J.M Midnapore. On 3.8.01 he made over the C.D. to the O.C. of that P.S. due to my transfer.

8. In ***Hira Lal v. State (Govt. of NCT), Delhi***¹, the Hon'ble Supreme Court held the following:-

“8. ...Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Penal Code, 1860.”

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on “Dowry Deaths and Law Reform”. Keeping in

¹ (2003) 8 SCC 80

view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of “dowry death” in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand of dowry”. Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of the woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death.

9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence

there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test."

9. In **Harjit Singh v. State of Punjab**², the Hon'ble Supreme Court held the following:-

"16. A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Parliament has also inserted Section 113-B of the Evidence Act by Act 43 of 1986 with effect from 1-5-1986 which reads as under:

"113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purpose of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Penal Code, 1860."

² (2006) 1 SCC 463

17. *From a conjoint reading of Section 304-B of the Penal Code and Section 113-B of the Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Penal Code.”*

10. In **State of Rajasthan v. Teg Bahadur**³, the Hon’ble Supreme Court held as follows:-

“18. *Our attention was drawn to Section 113-B of the Evidence Act and Section 304-B of the Penal Code, 1860 by the learned counsel appearing for the accused. A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B of the Penal Code, 1860 shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”.....*

11. In the case of **Paranagouda v. State of Karnataka**⁴, the Hon’ble Supreme Court held the following:-

“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*

³ (2004) 13 SCC 300

⁴ (2023) SCC OnLine SC 1369

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.

25. After three years, Section 304-B was inserted by amending Act 43 of 1986 to deal with cases involving dowry deaths occurring within seven years of marriage. Sub-section (1) of Section 304-B IPC lays down that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for

dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. By virtue of Explanation appearing below sub-section (1), the word “dowry” used therein carries the same meaning as is contained in Section 2 of the Dowry Prohibition Act, 1961.

26. The ingredient of cruelty is common to Sections 304-B and 498-A IPC, but the width and scope of the two sections is different, inasmuch as Section 304-B deals with cases of death as a result of cruelty or harassment within seven years of marriage, Section 498-A 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 unlawful demand for property or valuable security.”

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.”

12. The following was observed in **Arvind Singh v. State of Bihar**⁵, the Hon’ble Supreme Court:-

“25. *Coming back to Section 498-A the requirement of the statute is acts of cruelty by the husband of a woman or any relative of the husband. The word “cruelty” in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent thus is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing, the same would be within the meaning of the section. In the instant case there is no evidence whatsoever. It is on this score Mr Verma contended that there is no sufficient evidence for even the dowry demand far less the evidence of cruelty available on record. No outside person has been called to give evidence and even the witnesses being in the category of interested witnesses also restricted their version to sufferings of burn injury and the purported dying declarations to the matter as noticed hereinbefore — apart therefrom nothing more is available on record to attribute any act or acts on the part of the husband or on the part of the husband's relatives — is that evidence sufficient to bring home the charge under Section 498-A? The answer obviously cannot be in the affirmative having regard to the non-availability of any evidence in the matter.*

26. *Significantly however, upon recording of the fact of no dowry demand prior to the date of occurrence the High Court thought it fit to record that charge under Section 498-A stands proved and as such passed the sentence. We are however unable to record our concurrence therewith — torture is a question of fact — there must be proper effort to prove that aspect of the matter, but unfortunately not even an attempt has been made nor any*

⁵ (2001) 6 SCC 407

evidence tendered to suggest the same excepting the boldinterpolated allegations which stand disbelieved and ignored by the High Court, and in our view rightly.”

13. In **Wasim v. State (NCT of Delhi)**⁶, the Hon’ble Supreme Court held as follows:-

“12. Conviction under Section 498-A IPC is for subjecting a woman to cruelty. Cruelty is explained as any wilful conduct which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Harassment of a woman by unlawful demand of dowry also partakes the character of “cruelty”. It is clear from a plain reading of Section 498-A that conviction for an offence under Section 498-A IPC can be for wilful conduct which is likely to drive a woman to commit suicide OR for dowry demand. Having held that there is no evidence of dowry demand, the trial court convicted the appellant under Section 498-A IPC for his wilful conduct which drove the deceased to commit suicide. The appellant was also convicted under Section 306 IPC as the trial court found him to have abetted the suicide by the deceased.”

14. PW-1 i.e., the complainant as well as he brother of the victim had stated in his deposition that his sister never ventilated any grievances before the complainant.
15. P.W 1 in his cross examination stated that he consulted a Learned Lawyer before filing the petition of complaint.
16. PW 1, in his cross examination stated that he met his sister i.e. the victim only on the date of Asta Mangala. After Asta Mangala he never met his sister.

⁶ (2019) 7 SCC 435

17. In the cross examination P.W 1 has clearly stated that he could not state what the contents of the F.I.R. were. On the other hand the said witness admitted that the petition of complaint was drafted by a lawyer.
18. According to PW-2's (Father of the victim namely Jogindra Kotal) examination in chief the appellant refused to go to his in-law's house on the score of Jamai Sasthi.
19. PW-2, namely Jogindra Kotal in his cross examination has stated that the appellant could not go for the function of Jamai Sasti to his in-laws house as because the sister of the appellant was having some problems in her matrimonial house and the sister of the appellant was supposed to come. As the appellant could not go for the function of Jamai Sasthi the victim consumed poison. As such there was no torture upon the victim.
20. PW-2 in his deposition has stated that his daughter was not killed by the appellant. Such statement of the witness contradicted the statement of PW – 1.
21. P.W 3 in his cross examination by the defence stated that the relation between the appellant and the victim namely Balika was good.
22. The other local witnesses i.e. PW-4, PW-5, PW-6, PW-7 and PW-8 have stated that the accused persons including the appellant had a very good relation with Balika i.e., the victim lady.
23. PW-2 stated in his deposition that after 6 months from the date of incident the police took his statement. However, the statements under Section 161 of Code of Criminal Procedure go to show that the said witness was examined by the police just after lodging of the F.I.R. From

this context it could be said that the police has not recorded the statements of the witnesses.

24. The assumption of evidence in entirety it appeared apart from suspicion and assumptions the related witnesses of the victim could not categorically allude any distinct evidence of demand of dowry. The neighbouring witnesses residing adjacent to the matrimonial house of the victim in unison deposed the relationship between the victim, her husband and other in-laws to be cordial and loving.
25. PW-2 deposed the refusal on the part of the family members of the husband of the victim to visit the paternal house of the victim on the occasion of Jamai Sasthi to have frustrated the victim who was relatively young. Such rejection must have emotionally affected the victim lady to impulsively commit suicide out of dismay and disgust and sudden grief.
26. Heard the submission of the Learned Counsel for the State.
27. The prosecution failed to establish the ingredients of continuous mental and physical torture upon the victim for demand of dowry and then immediate or proximate reason to inflict such severe injury upon the victim compelling her to commit suicide.
28. Under the facts and circumstances of the case, any absence of proof of commission of the offence by the appellant beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.
29. Accordingly, the instant criminal appeal being CRA 801 of 2008 stands disposed of.
30. There is no order as to costs.

31. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
32. 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.)