



HIGH COURT OF TRIPURA
AGARTALA

Crl. A. (J) 22/2025

Smt. Sukhamati Debbarma, wife of late Mangal Debbarma,
resident of Mendi, P.O.+P.S. Salema, District- Dhalai, Tripura;
.... Appellant

Versus

The State of Tripura
-----Respondent

Crl. A. (J) 23/2025

Sri Jitendra Debbarma, son of late Mangal Debbarma, resident
of Mendi, P.O.+P.S. Salema, District- Dhalai, Tripura;
.... Appellant

Versus

The State of Tripura
-----Respondent

For the Appellant(s)	:	Mr. Ratan Datta, Advocate Mr. R. Debnath, Advocate
For the Respondent(s)	:	Mr. Raju Datta, PP
Date of hearing & delivery of Judgment & Order	:	15.07.2026
Whether fit for reporting	:	Yes

BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT(ORAL)

(Dr.T.Amarnath Goud, J)

Heard Mr. Ratan Datta, learned counsel appearing for
the appellants. Also heard Mr. Raju Datta, learned Public
Prosecutor appearing for the respondent-State.

2. Both the appeals have been taken up together for
disposal by a common judgment and order since the appeals arose
out of a common judgment and order of conviction and sentence
on the same incident.



3. The appellants, by means of filing the present appeals have challenged the judgment and order of conviction and sentence dated 04.02.2025 and 05.02.2025, respectively, passed by the learned Additional Sessions Judge, Dhalai Judicial District, Kamalpur, in connection with case No. S.T.(Type-1) 02 of 2014, whereby the appellant No.1, *Smt. Sukhamati Debbarma* had been convicted under Sections 304B read with Section 34 of the IPC and under Section 498A of the IPC, and sentenced her to suffer rigorous imprisonment for 7(seven) years for the offence under Section 304B read with Section 34 of the IPC, and also convicted her to suffer rigorous imprisonment for 1(one) year and to pay a fine of Rs.5,000/- with default stipulation for offence punishable under Section 498A IPC; and the appellant No.2, *Jitendra Debbarma* had been convicted under Sections 304B read with Section 34 of the IPC and under Section 498A of the IPC, and sentenced him to suffer rigorous imprisonment for 10(ten) years for the offence under Section 304B read with Section 34 of the IPC, and also convicted him to suffer rigorous imprisonment for 1(one) year and to pay a fine of Rs.5,000/- with default stipulation for offence punishable under Section 498A IPC;

4. Briefly stated, on 15.03.2010, the marriage between the deceased/victim Jumeli Debbarma and Jitendra Debbarma was solemnized and following two months of the marriage, said Jitendra Debbarma and his family members started torture upon the victim on demand of dowry to which the victim gave Rs.40,000/-, but the torture upon the victim escalated. It was



also alleged that on 25.09.2012 at around 0900 hours, the accused persons, namely, Jitendra Debbarma, Sukhamati Debbarma and their other family members brutally tortured the victim to which she got fainted and at around 1500 hours the victim regained her sense and the accused persons jointly set her on fire after pouring kerosene oil resulting which she sustained severe burn injuries and then she was shifted to Kulai District hospital from where she was referred to GBP hospital for treatment. It was further alleged that on the alleged date of incident at around 2035 hours the victim succumbed to her injuries at GBP hospital.

5. On the basis of the same, the complainant (PW-11) lodged a written complaint which was registered as FIR vide Salema PS case No. 38 of 2012 dated 25.09.2012 under Sections 498A/307 of the IPC, against the appellants and the same was endorsed for investigation to PW-24. However, at the later period section 304B was added. During the course of investigation, the I.O. visited the PO, seized some available materials under seizure lists, recorded statements of the material witnesses, collected medical evidences, and upon completion of investigation, submitted charge-sheet on 30.06.2013 against the accused-appellants for commission of offence punishable under Sections 498A/304B/109 IPC. On receipt of the charge-sheet, cognizance was taken by the SDJM, Kamalpur and documents were supplied to the accused. At commencement of trial, charge was framed against the accused-appellant and others under Sections



498A/304(B)/302 IPC read with section 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act, to which the appellants pleaded not guilty and claimed to be tried.

6. The prosecution to substantiate the charge, adduced as many as 35 witnesses and introduced some documents which were exhibited by the learned trial court. On closure of the prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. to which they denied all the incriminating materials brought against them and declined to adduce evidence on their behalf. After completion of recording of evidences and having heard the learned counsel appearing for the parties, the learned Additional Sessions Judge convicted and sentenced the accused-appellants under sections 498A/304(B)/34 of the IPC, but acquitted them from the charge under Sections 302 read with section 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act. Hence, this appeal.

7. Mr. Ratan Datta, learned counsel appearing for the appellants has submitted that there are substantial contradictions in the statement of the prosecution witnesses. Learned counsel has also submitted that the delay in lodging the FIR has not been properly explained. He has also submitted that participation of the appellants in the alleged crime has not been established. Learned counsel has further submitted that there was no demand on the part of the appellants at the time of marriage or after the marriage. Learned counsel has also submitted that there is no corroboration in the evidence of the prosecution witnesses.



Learned counsel Mr. Datta, also raised the question of acceptability and authenticity of the dying declaration since the same is not in form and hence the same creates cloud on the prosecution story. In this regard, he has submitted that since the deceased suffered 87% burn injury, as per prosecution story and evidence, it could easily be presumed that she was not fit to give her declaration, thus the said dying declaration suffers from infirmity. Further, he has submitted that there is no eye witness to the alleged incident and none of the prosecution witnesses has supported the version of PW-11, the complainant and in the entire episode there is no whisper regarding any demand raised by the appellants. Learned counsel has further argued that none of the prosecution witnesses has deposed that the appellants had tortured or inflicted assault upon the victim-deceased at any point of time or has caused any mental harassment/cruelty towards the deceased-victim. Mr. Datta, has further submitted that the deceased-victim in her dying declaration did not state as to who has put fire on her body. Mr. Datta, learned counsel has submitted that though the prosecution cited PWs 16, 17 and 18 as eye witnesses to the alleged incident, but their statements during trial were not credible and trustworthy and do not prove that the appellants set fire upon the deceased-victim. Learned counsel further submitted that the prosecution has miserably failed to establish its case. Showing all the discrepancies therein, learned counsel has submitted that the entire investigation is perfunctory, hence, according to him this is a clear case of acquittal. In support



of his submission, Mr. Datta, has relied upon the decision of the apex court in ***Durga Prasad & anr. Vs. State of MP***, reported in ***2010 Cri.L.J. 3419*** (paras 14 to 17); ***Jayamma & anr. Vs. State of Karnataka***, reported in ***AIR 2021 SC 2399*** (para 14 onward); ***Constable 907 Surendra Singh & anr. Vs. State of Uttarakhand with Ashad Singh Negi vs. State of Uttarakhand***, reported in ***AIR 2025 SC 998*** (paras 17 and 18); ***Appasaheb & anr. Vs. State of Maharashtra*** reported in ***AIR 2007 SC 763*** (para 9); ***Karan Singh vs. State of Haryana***, reported in ***2025 SCC Online SC 214*** (paras 5,6,17,18); ***Phulel Singh vs. State of Haryana*** reported in ***(2023) 10 SCC 268*** (para 20 to 26)

8. On the other hand Mr. Raju Datta, learned PP appearing for the State-respondent has submitted that the anticipation of the appellants has been proved beyond reasonable doubt and the same has been established by the eye witnesses. Mr. Datta, learned PP has submitted that from the deposition of the witnesses, it is aptly clear that the appellants had direct involvement in setting fire upon the victim. Learned PP has further submitted that the appellant during their examination under Section 313 Cr.P.C. declined to adduce any witness on her behalf which establishes their involvement in the alleged crime. Further the dying statement of the victim is taken in proper form and the victim gave her statement in sound and fit state of mind and the same has been proved in the evidence and marked as Exhibit 18. He has further submitted that the appellants had



tortured the victim both mentally and physically on demand of dowry. Learned PP has further submitted that the conviction returned by the learned trial court is based on a thorough and careful appreciation of the oral and documentary evidences which is well-reasoned and legally sound and the same requires no interference.

9. This court has meticulously gone through the case records, the orders and the judgments relied upon by the learned counsel to the *lis*, contained therein.

10. The case was put to trial under sections 498A/304(B)/302 IPC read with section 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act against the appellants and since no offence under sections 302 IPC read with section 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act, could be proved against the appellants, they were acquitted from the said charges. Now, this court is tasked with re-evaluating trial court's findings, by assessing whether the conviction under Section 498A/304B read with Section 34 IPC is fully supported by the evidences, oral and documentary, beyond a reasonable doubt or not.

11. PW-11 is the complainant and father of the victim. PW-9 and 10 are his relative. PW-12 is the Ex-Pradhan of Mendi village, PW-25, PW-26, PW-29 and PW-30, are the neighbours of the complainant. From the evidences of PWs 9,10,11,12,25,26, 29 and 30, nothing material regarding the alleged incident has



been elucidated. Further, PWs 2,3,4,5,27 and 28 are the hearsay witnesses and their deposition has no credibility as their testimony is not admissible. PWs 16, 17 and 18 are claimed to be the eye witnesses to the alleged incident. PWs 16, during deposition stated that *in the year 2012 I was working on a culvert near Mendi para. I knew the deceased Jumeli Debbarma who was a girl from my neighbouring village. She married Jitendra Debbarma. One day we saw fire and smoke coming from the house of Jumeli. My co-worker Ramendra Debbarma's wife raised alarm. I alongwith Gourmani Debnath, Mitan Debnath and Ramendra Debbarma went to their house and found that Jumeli was on fire. Ramendra Debbarma informed the fire service who came and took the victim to the hospital.* PWs 17 and 18 had deposed to the same tune as to that of PW-16. Nothing material has been elucidated from their cross examination.

Upon a careful scrutiny of the testimonies of these prosecution witnesses, as discussed here-in-above, it is manifest that the allegations of cruelty remain general, omnibus and uncorroborated. No specific instance of unlawful demand of dowry or overt act of cruelty has been substantiated. The depositions of the material witnesses do not disclose consistent or cogent details regarding the alleged acts of harassment. None of the witnesses has supported the alleged act of the appellants setting fire upon the victim. Further, on a close scrutiny of the evidence adduced by the prosecution, it is apparent that there is complete absence of cogent and trustworthy material to show



that the victim was subjected to cruelty as contemplated under Section 498-A IPC. Out of the above prosecution witnesses, there is no reliable testimony to prove persistent harassment, unlawful demand, or conduct of such gravity as to cause grave mental or physical or burn injury to the victim leading to her death.

12. PW-33 is the Medical Officer who has recorded the statement of the victim Jumeli Debbarma on 25.09.2012 at around 04.15 p.m in the Dhalai District Hospital, Kulai and the said dying declaration has been proved and marked as Exhibit 18. PW-33 in her deposition stated that *the patient was mentally sound and her orientation of time, place and recent and past memory was normal at the time of giving statement*. From the evidence of PW-34, it is revealed that the victim sustained 87% burn injury. Since the injury is grave in nature, PW-33 ought to have conducted a professional evaluation and issue a "Certificate of Fitness" stating that the patient i.e. the victim is conscious, oriented, and in a sound mental state to understand and answer questions, but such 'Certificate of Fitness' is found absent in the instant case. Hence, PW-33, being the doctor who recorded the dying declaration of the victim failed to **certify** that the patient was in a fit state of mind and conscious enough to understand the questions and provide answers.

13. Exhibit 18 i.e. the dying declaration of Jumeli Debbarma. From bare perusal of Exhibit-18, it is evident that the victim did not mention the name of any specific person who set



her on fire. The Dying declaration (Exbt.18) is reproduced here-in-below:

“Today i.e. on 25th September, at about 4.15 p.m., I Jhumeli Debbarma, aged about 22 years, wife of Shri Jitendra Debbarma, resident of Mendi, knowing you as the doctor of Kulai Hospital, do hereby state, in the presence of the witnesses mentioned below, state that today, at about 10:00-1:00 a.m. my husband, my father-in-law and my mother-in-law engaged in an altercation with me. During the said quarrel, my husband subjected me to physical assault, due to which I became unconscious.

After regaining consciousness, I realized that my husband was pouring kerosene upon my body. However, I could not see who actually set fire to my body.”

The said dying declaration does not reveal the name of the appellants to have participated in setting the victim on fire. If the victim explicitly states that she was burnt, but could not or did not identify the perpetrator, the court will not presume who did it. The guilt of individual must be proven beyond a reasonable doubt. Further, from the deposition of the witnesses, participation of the appellants is totally absent and also there is no corroborative statement to the alleged incident which makes the case of the prosecution trustworthy.

14. Admittedly, the marriage was a love marriage in between the victim and Jitendra Debbarma and as such, it is quite natural that there was no scope of demand of any dowry at the time of marriage. However, in trial, PW-9 (uncle of the victim), PW-10 (grand-father of the victim), PW-11 (father of the victim) conjointly stated that husband of the victim i.e. Jitendra Debbarma had purchased a land at Bhatkhawri and for that he wanted the victim to bring some money from her father i.e. PW-11 and accordingly once her father i.e. PW-11 paid Rs.18,000/- to Jitendra Debbarma by selling pigs. From the version of PWs 9, 10 and 11, it cannot be said that the victim was tortured for such



demand and, more particularly, the said demand of money was made for purchasing a plot of land which is a family matter/ understanding between the victim and her husband. Such demand cannot be said to be illegal demand because Jitendra Debbarma did not demand the money as a condition of marriage, or persistently did not pressurize his wife i.e. the victim, to bring money from her father. There is nothing on record regarding any demand subsequent to the marriage and for non-fulfillment of such demand the deceased was tortured by the appellants at any point of time.

15. On a close analysis of the depositions of the prosecution witnesses, this Court finds that their testimonies suffer from serious infirmities, improvements, and contradictions which go to the root of the prosecution case. The law is well settled that conviction cannot rest on shaky and untrustworthy evidence. Independent witnesses especially Eye-witnesses to the alleged incident, as alleged, also failed shed light on the alleged cruelty or harassment. It is equally significant about the unnatural conduct of the witnesses especially PWs 9, 10 and 11. If, as alleged, the victim was subjected to sustain cruelty on demand of dowry, the normal human reaction of her parental family would have been to promptly approach lawful authority, register complaints, or seek intervention. Their silence and inaction for a prolonged period is wholly inconsistent with the natural course of human conduct and such type of unnatural conduct on the part of the witnesses reduced their testimony to a



level of suspicion. Section 498-A IPC is enacted to protect married women from domestic cruelty and harassment by their husbands or in-laws. The law defines cruelty as any willful conduct by the husband or his relatives that is likely to drive the woman to suicide, cause grave physical/mental injury, or endanger her life or health. Section 498-A IPC reads as follows:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— For the purpose of this section, “cruelty” means—

(a) 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

(b) 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.”

In the present case, the complainant has not narrated any continuous or consistent course of conduct attributable to the accused-appellants which would constitute either cruelty or dowry demand in the legal sense. No complaint, medical record, or neighbour's testimony has been brought on record to support the version of the complainant. Such absence of details raises a serious doubt about the truthfulness of the allegation. Uncorroborated statements of the prosecution witnesses not connecting with any unlawful demand of dowry, wholly fails to prove any instance of harassment or torture so as to attract the ingredients of Section 498-A IPC. In the absence of consistent, specific and credible evidence, it would be unsafe to convict the



appellants on the basis of such vague allegations. The complainant has neither specified the exact date and time of the alleged occurrence nor has he described with clarity the nature of the conduct attributed to the appellants. Such vague assertions, which lack in particulars, fail to inspire confidence in judicial mind. In cases arising under Section 498-A of the Indian Penal Code, which specifically deals with cruelty to a married woman by her husband or his relatives, it is a settled principle of law that the prosecution bears the burden of proving its case by leading cogent, reliable and trustworthy evidence. The mere use of the expression "cruelty" in the complaint or deposition is not sufficient. The law mandates that the prosecution must establish, beyond reasonable doubt, that the accused subjected the victim to such cruelty as is contemplated under the statutory provision. Mere general and omnibus statements about ill-treatment or discord in the matrimonial life, unaccompanied by specific particulars, are insufficient in law to warrant conviction under this penal provision. There is no reliable testimony to prove persistent harassment, unlawful demand, or conduct of such gravity as to cause grave mental or physical injury to the victim. In absence of any cogent evidence on record to establish the ingredients of Section 498-A, the charge cannot be said to be maintained. The present case suffers precisely from such infirmity.

16. Section 304B of the IPC defines "dowry death". A death is classified as a dowry death if a woman dies unnaturally e.g., burns or bodily injury, within seven years of her marriage,



and it is proven she faced dowry-related cruelty or harassment by her husband or in-laws. To prove Section 304-B it must be shown that the victim was subjected to cruelty or harassment by her husband or his relatives and the harassment must be linked directly to, or be in connection with, any demand for dowry. Section 304-B of the IPC, reads as under:

“304B. Dowry death.—

(1)Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.— For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2)Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

In the present case, although the death occurred within seven month of marriage and was an unnatural death, the prosecution has failed to establish the foundational facts. The complaint lodged by father of the victim i.e. PW-11, contains general allegations without particulars or incidents of any demand of dowry or acts of harassment. Even the statement of PW-11 along with his relatives i.e. PW-9 and 10 recorded before the court does not disclose any specific incident, date or proximate act of cruelty relatable to the period immediately preceding the death. The allegations remain general in material respects and are unsupported by independent corroboration, thereby limiting their evidentiary weight for establishing cruelty “soon before death”. The absence of any complaint or grievance by the deceased to her parents or relatives or any authority prior



to her death is a highly relevant. Where cruelty is of such gravity as to drive a woman to suicide, there ought to have some reflection in the form of complaint or communication to parents or relatives by the deceased-victim. In such a case, a mere assumption that there could have been demand of dowry, would not be sufficient. The expression "soon before her death" requires that the cruelty or harassment must not be too remote in time and must have a direct nexus with the death. In the present case, there is no complaint, no independent corroboration and no specific incident close in time to the death which would suggest that the deceased was driven to commit suicide on account of dowry demands. While dealing the same issue, the Hon'ble apex court in ***Appasaheb & anr. Vs. State of Maharashtra*** reported in ***AIR 2007 SC 763***, has observed thus:

"9. Two essential ingredient of Section 304-B IPC, apart from others, are (i) death of women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) women is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

Section 2 of Dowry Prohibition Act reads as under :-

"2. Definition of "dowry" - In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dowry or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See *Union of India v. Garware Nylons Ltd.*, AIR (1996) SC 3509 and *Chemicals and Fibres of India v. Union of India*, AIR (1997) SC 558). A demand for money on account of some financial stringency or for meeting some



urgent domestic expenses of for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

17. Mr. Ratan Datta, learned counsel for the appellant has raised the issue of reliability of a dying declaration in the instant case and has submitted that solely basing on the dying declaration, the appellant cannot be convicted. In this regard, the Hon'ble apex court in ***Phulel Singh vs. State of Haryana*** reported in **(2023) 10 SCC 268**, has observed as under:

"20. The present case mainly rests on the dying declaration of the deceased. No doubt, that a conviction can be solely recorded on the basis of dying declaration. However, for doing so, the court must come to a conclusion that the dying declaration is trustworthy, reliable and one which inspires confidence. In the present case, the dying declaration is recorded by Shri Sadhu Singh (PW-5), Executive Magistrate. He stated that he obtained the certificate from the doctor regarding the fitness of the deceased to make the statement. He further stated that he recorded the statement of the deceased and thereafter it was read over and explained to her. He further states that she had thumb marked the same after admitting its contents to be correct.

21. In the dying declaration recorded by Shri Sadhu Singh (PW-5), Executive Magistrate, the deceased is said to have stated that on 5th November 1991 at around 12.00 noon, her husband Phulel Singh, i.e., the appellant herein, Jora Singh, father-in-law and Dhan Kaur, mother-in-law caught hold of her. Her husband, the appellant herein put kerosene on her person and set her ablaze. She further stated that when she was set on fire, she raised an alarm but the accused overpowered her.

22. It is relevant to note that the deceased received burn injuries on 5th November 1991 but the dying declaration came to be recorded on 8th November 1991 after an application was made by the relatives of the deceased to the SDM, Ludhiana. Shri Sadhu Singh (PW-5), Executive Magistrate, in his evidence, admitted that the boys, who had brought the application containing the order of the SDM, Ludhiana had told him that the statement of the deceased should be recorded and that she was in a position to make the statement. He further admitted that those boys had told him that whatever they had to tell the deceased, they had told her and that he should accompany them to record her statement. He has further admitted that those 2-3 boys were related to the deceased and some other persons were also in the room in which he recorded the statement of the deceased.

23. It could thus be seen that there is a grave doubt as to whether the dying declaration recorded by Shri Sadhu Singh (PW-5), Executive Magistrate was a voluntary one or tutored at the instance of respondent No.5. It is further relevant to note that Dr. Jatinder Pal Singh (PW-8), in his deposition itself, states that Shri Sadhu Singh (PW-5), Executive Magistrate had recorded the dying declaration of the deceased on 8th November 1991 at 04.40 p.m. whereas the opinion with regard to her fitness was given by him at 06.00 p.m. on 8th November 1991. He has further admitted that he had not mentioned in the bed-head ticket that he had attested the statement of the deceased at 04.40 p.m. on 8th November 1991. It is thus doubtful as to whether Dr. Jatinder Pal Singh (PW-8) had really examined the deceased with regard to her fitness prior to her statement being recorded by Shri Sadhu Singh (PW-5), Executive Magistrate.

24. It is further relevant to note that Dr. Jasmeet Singh Dhir (PW-7) has stated that the history recorded by him while admitting the deceased, was narrated by the deceased herself. He has further stated that the deceased had also narrated that her husband had extinguished fire by pouring water on her.

25. In the totality of the circumstances, it cannot be said that the dying declaration (Ex. P.L.) is free from doubt.

26. The most glaring aspect that is required to be considered is that the High Court itself has disbelieved the dying declaration insofar as Jora Singh, father-in-law of the deceased is concerned. We fail to understand as to how the same dying declaration could have been made basis for conviction of the appellant when the same was disbelieved insofar as another accused is concerned."



In ***Jayamma & anr. Vs. State of Karnataka***, reported in ***AIR 2021 SC 2399***, the apex court has held thus:

“14. Before we advert to the actual admissibility and credibility of the dying declaration (Ex.P5), it will be beneficial to brace ourselves of the case law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

A. In *P.V. Radhakrishna. v. State of Karnataka*¹¹, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard and fast rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.

B. In *Chacko v. State of Kerala*¹², this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded “patient conscious, talking” in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

C. In *Sham Shankar Kankaria v. State of Maharashtra*¹³, it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in *Paniben v. State of Gujarat*¹⁴, wherein this Court summed up several previous judgments governing dying declaration, the Court in *Sham Shankar Kankaria*(Supra) reiterated::

" (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See *Munnu Raja & Anr. v. The State of Madhya Pradesh* (1976) 2 SCR 764]]

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See *State of Uttar Pradesh v. Ram Sagar Yadav and Ors.* (AIR 1985 SC 416) and *Ramavati Devi v. State of Bihar* (AIR 1983 SC 164)]

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See *K. Ramachandra Reddy and Anr. v. The Public Prosecutor* (AIR 1976 SC 1994)]

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See *Rasheed Beg v. State of Madhya Pradesh* (1974 (4) SCC 264)]

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See *Kaka Singh v State of M.P.* (AIR 1982 SC 1021)]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See *Ram Manorath and Ors. v. State of U.P.* (1981 (2) SCC 654)]

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See *State of Maharashtra v. Krishnamurthi Laxmipati Naidu* (AIR 1981 SC 617)]

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See *Surajdeo Oza and Ors. v. State of Bihar* (AIR 1979 SC 1505).]

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See *Nanahau Ram and Anr. v. State of Madhya Pradesh* (AIR 1988 SC 912)].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See *State of U.P. v. Madan Mohan and Ors.* (AIR 1989 SC 1519)].

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held



to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani v.State of Maharashtra (AIR 1982 SC 839)]."

22. Having meditated over the issue to the extent it is possible, and on a minute examination of the original document Ex.P5 (without understanding its contents as it is in Kannada language except that the endorsement of the doctor is in English) read with its true translation placed on record, we do not find it totally safe to convict the appellants on the basis of the said document alongwith its corroboration by PW11 and PW16. We say so for several reasons as summarized hereinafter: Firstly, the narration of events in the dying declaration is so accurate, that even a witness in the normal state of mind, cannot be expected to depose with such precision. Although it is stated that deceased was questioned by the Police officer, the purported dying declaration is not in a questions and answers format. The direct or indirect dominance of the Police Officer appears to have influenced the answers only in one direction. Secondly, the injured victim was an illiterate old person and it appears beyond human probabilities that she would have been able to narrate the minutes of the incident with such a high degree of accuracy.

Thirdly, there is sufficient evidence on record that the victim had been administered highly sedative painkillers. Owing to 80% burn injuries suffered by the victim on all vital parts of the body, it can be legitimately inferred that she was reeling in pain and was in great agony and the possibility of her being in a state of delusion and hallucination cannot be completely ruled out. We say so at the cost of repetition that the doctor (PW16) made the endorsement that the victim was in a fit state of mind to make the statement 'after' the statement was recorded and not 'before' thereto — being the normal practice. It further appears to us that faculties of the injured had been drastically impaired and instead of making statement in an informative form she had apparently endorsed what the Police Officer (PW11) intended to. True it is that the Police Officer (PW11) had no axe to grind or a motive to implicate the appellants, but his over enthusiasm to solve a criminal case within no time seems to have swayed the Police Officer (PW11) so much that he appears to have not asked the doctor to make an endorsement of fitness of the victim before recording the statement. He also did not deem it appropriate to call a Judicial or Executive Magistrate to record such statement, for the reasons best known to himself.

Fourthly, there is a serious contradiction between the statement of Dr. A. Thippeswamy (PW16) on one hand and the police officer K.V. Mallikarjunappa (PW11) on the other, in respect of the nature of burninjuries suffered on different body parts of the victim. While the doctor acknowledges that burn injuries included the hands of the victim, the police officer claims that her hands were safe and she could put her thumb impression. We have seen the thumb impression very scrupulously and the same appears to be absolutely natural. If that is so, the medical officer, whose statement should carry more weightage in respect of the nature and gravity of injuries, stands belied.

Fifthly, and most importantly the police officer K.V. Mallikarjunappa (PW11) candidly admits that he did not seek an endorsement from the doctor as to whether the injured was in a fit state of mind to make a statement, before he proceeded to record the statement. Both the police officer as well as the doctor have tried to cover up this serious lacuna by referring to the purported oral endorsement of the doctor. It appears that the police officer was in full command of the situation and with a view to fill up the legal lacuna, he later on secured the endorsement from the doctor (PW16) on the available space of the paper, which is ex facie unusual and not in line with settled legal procedure.

Sixthly, the alleged motive for the homicidal death is highly doubtful. There is not an iota of evidence, and the prosecution has made no effort to verify the truth in the statement that the appellants poured kerosene and lit the victim on fire only because her son had assaulted the husband of Appellant No.1 and the accused were insisting on payment of Rs.4,000/ which was spent on the treatment of the said assault-victim. Not much can be said when the deceased's own son and daughter inlaw have denied this incident and rather claimed that their mother/mother inlaw committed suicide.

The Seventh reason to dissuade us from harping upon Ex.P5 is the conduct of the parties, i.e., a natural recourse expected to happen. Had it been a case of homicidal death, and the victim's son (PW2) and her daughter inlaw (PW5) had witnessed the occurrence, then in all probabilities, they would have, while making arrangement to take the injured to hospital, definitely attempted to lodge a complaint to the police. Contrarily, the evidence of the doctor and the police officer suggest that while the son, daughter inlaw and neighbour of the deceased were present in the hospital, none approached the police to report such a ghastly crime. It is difficult to accept that the son and daughter inlaw of the deceased were won over by the accused persons within hours of the occurrence. This unusual conduct and behavior lends support to the parallel version that the victim might have committed suicide.

The Eighth reason which makes us reluctant to accept the contents of purported dying declaration (Ex. P-5), is the fact that victim, Jayamma was brought to the Civil Hospital at 12.30 a.m. on 22.09.1998. She succumbed to her burn injuries after almost 30 hours later at 5:30 am on 23.09.1998. It is neither the case of prosecution nor has it been so stated by PW-11 or PW-16 that soon after recording her statement (Ex. P-5) she became unconscious or went into coma. The prosecution, therefore, had sufficient time to call a Judicial/Executive Magistrate to record the dying declaration. It is common knowledge that such Officers are judicially trained to record dying declarations after complying with all the mandatory pre-requisites, including certification or endorsement from the Medical Officer that the victim was in a fit state of mind to make a statement. We hasten to add that the law does not compulsorily require the presence of a Judicial or Executive Magistrate to record a dying declaration or that a dying declaration cannot be relied



upon as the solitary piece of evidence unless recorded by a Judicial or Executive Magistrate. It is only as a rule of prudence, and if so permitted by the facts and circumstances, the dying declaration may preferably be recorded by a Judicial or Executive Magistrate so as to muster additional strength to the prosecution case.

27. We fully endorse the view taken by the learned trial court. The reasons which we have assigned in paragraph 22 of this Order are sufficient to cast clouds on the genuineness of the prosecution case. We find it difficult to uphold the conviction only on the basis of the dying declaration Ex. P-5."

18. In the case in hand, there is no dispute that the death of the victim-wife occurred within seven years of the marriage. Section 113-B of the Indian Evidence Act establishes a mandatory statutory presumption of "dowry death". If a woman dies unnaturally within seven years of marriage, and it is proven she was subjected to cruelty or harassment for dowry "soon before her death", the Court shall presume the husband or relatives caused it. In similar situation, the Hon'ble apex court in ***Karan Singh vs. State of Haryana***, reported in **2025 SCC Online SC 214**, held as under:

"6. The following are the essential ingredients of Section 304-B:

- a) The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;
- b) The death must have been caused within seven years of her marriage;
- c) Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and
- d) Cruelty or harassment must be for, or in connection with, any demand for dowry.

7. If the aforesaid four ingredients are established, the death can be called a dowry death, and the husband and/or husband's relative, as the case may be, shall be deemed to have caused the dowry death. Section 2 of the Dowry Prohibition Act, 1961 provides that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to the other party to the marriage or to any other person. The dowry must be given or agreed to be given at or before or any time after the marriage in connection with the marriage of the said parties. The term valuable security used in Section 2 of the Dowry Prohibition Act, 1961 has the same meaning as in Section 30 of IPC.

8. In this case, there is no dispute that the death of the appellant's wife occurred within seven years of the marriage. Section 113-B of the Evidence Act reads thus:

"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 Indian Penal Code (45 of 1860)."

The presumption under Section 113-B will apply when it is established that soon before her death, the woman has been subjected by the accused to cruelty or harassment for, or in connection with, any demand for dowry. Therefore, even for attracting Section 113-B, the prosecution must establish that the deceased was subjected by the appellant to cruelty or harassment for or in connection with any demand of dowry soon before her death. Unless these facts are proved, the presumptions under Section 113-B of the Evidence Act cannot be invoked.

17. Now, coming to evidence of PW-8, Ram Singh. PW-6 has not deposed that any demand of dowry was made to PW-8 or in his presence. She claimed in the cross-examination that PW-8 had told her about the maltreatment and the demand of dowry by the accused three to four months after the marriage. She stated that before 23rd June 1998, the police did not record the statement of PW- 8. She stated that PW-8 had come to her house after the death of the deceased but she did not tell her brother to make a



statement before the police. The statement of PW-8 was recorded more than two and half months from the date of the incident. Moreover, he had no personal knowledge whether the appellant had subjected the deceased to cruelty or harassment. Therefore, the prosecution did not prove the material ingredients of the offence punishable under Section 304-B. Not a single incident of cruelty covered by Section 498-A was proved by the prosecution. Section 304-B of the IPC was brought on the statute book in 1986. This Court has repeatedly laid down and explained the ingredients of the offence under Section 304-B. But, the Trial Courts are committing the same mistakes repeatedly. It is for the State Judicial Academies to step in. Perhaps this is a case of moral conviction.

18. Therefore, both the offences alleged against the appellant were not proved by the prosecution beyond a reasonable doubt. Hence, the impugned judgments dated 9th November 2010 and 24th January 2002 are hereby quashed and set aside and the appellant is acquitted of the offences alleged against him. The appellant was enlarged on bail pending this appeal. Hence, his bail bonds are cancelled."

19. Under Sections 498-A and 304-B of the IPC, the burden of proving harassment, cruelty, and dowry demands lies entirely on the prosecution. If the prosecution fails to establish these elements beyond a reasonable doubt, the charges against the accused cannot be sustained. When no evidence is led by the prosecution in respect of the harassment meted out on the deceased in the hands of the appellants, the trial Court had erroneously convicted the appellants under section 498-A and 304-B IPC merely on presumption that the appellants had caused harassment to the deceased, relying on the evidence of P.W.33 and the dying declaration. Such conclusion arrived at by the trial Court is perverse, in the absence of the prosecution proving the offence committed under Section 498-A/304-B/34 of IPC, beyond reasonable doubt. As a result, the present criminal appeals are **allowed**. The impugned judgments and orders of conviction and sentences dated 04.02.2025 and 05.02.2025, respectively, passed in S.T.(Type-1) 02 of 2014, are **set aside**. The appellants, are hereby, acquitted of the charges for which they have been tried. Accordingly, the appellants are directed to be set free from incarceration, if not required in any other case.



20. In view of the aforesaid observations, the appeals stand, ***allowed***.

Pending application(s), if any, also stands disposed.

S.DATTA PURKAYASTHA,J

DR.T. AMARNATH GOUD,J

