

(2018) 07 CAL CK 0048
In the Calcutta High Court
Case No : C.R.A. NO. 298 of 2013

Ratan Roy Dakua & Anr.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 304B, 498A
Code Of Criminal Procedure 1973 — Section 161, 198A, 313, 428
Indian Evidence Act, 1872 — Section 113B

Citation : (2018) 07 CAL CK 0048

Hon'ble Judges : JOYMALYA BAGCHI, J;RAVI KRISHAN KAPUR, J

Bench : Division Bench

Advocate : Anasua Sinha, Sudip Ghosh, Bitasok Banerjee

Final Decision : Dismissed

Judgement

Ravi Krishan Kapur, J.

1. This appeal is directed against the judgment and order of conviction dated 21 March, 2013 and 22 March, 2013 passed by the Learned Additional

Sessions Judge, F.T.C, Mathabhaga, Cooch Behar in Sessions Trial No.05(06)/2012 arising out of Sessions Case No.109 of 2012 convicting the

appellants under Section 498A/304B of the Indian Penal Code. By the impugned order the appellant husband (being the appellant No.1) and his

mother (being the appellant No.2) were convicted of offences punishable under Sections 498A and 304B of the Indian Penal Code (IPC) and each

awarded 10 yearsâ?? imprisonment. By the said order the father-in-law was acquitted.

2. The genesis of the prosecution case, lies in the information lodged by Sunanda Barman, the father of the deceased, Sushila Barman @ Sushila Roy

Dakua (Sushila). The information disclosed that, Sushila got married with Ratan Roy Dakua son of Sunil Roy Dakua on Friday, 29 Baisakh, 1418 B.S.

following Hindu rites and customs. For the purposes of marriage and in order to fulfill the demands of the husband, and his parents several items were

given at the time of her marriage being (a) Rs. 25,000 in cash, (b) 100 cc Bajaj Discover Motor Cycle, (c) one Sishu wooden cot, (d) one steel

Almirah and (e) Gold ornaments weighing 1 ½ bharies. Yet beginning from on the day of marriage itself the husband and his father spoke

acrimoniously over the quality of the articles given as dowry and made insinuations that they would not take such articles.

3. After the marriage Sushila went to her matrimonial house and started to reside with her husband and her in-laws. The articles given as dowry were

delivered on the day after Boubhat that is 31 Baishak, 1418 B.S. by the complainant who hired a car on rent and supplied all the items to the

house of the husband.

4. 10 days after the marriage the complainant's daughter and her husband came to visit the complainant. At that time, Sushila told the complainant

and his wife that the motor cycle and the furniture given during the marriage by the complainant were not up to the liking of her husband and her in-

laws and it was for this reason that the husband and her in-laws immediately on receipt of the items started physically and mentally torturing her and

made her life intolerable.

5. On 26 May, 2011 Sushila and her husband who were visiting her parental home were to return to their matrimonial home. However, at 12 noon on

that date Sushila tried to commit suicide by setting herself on fire. This incident took place in the southern room of the complainant's house. On

hearing her screams, the complainant and his son Sukumar Barman rushed towards her and were somehow able to extinguish the fire on her body.

The daughter was forthwith removed to the Mathabhanga Hospital and after first aid she was referred to Siliguri Medical College. On the date of

filing of the complaint, Sushila was undergoing treatment at the Medical College. It was disclosed in the FIR that at the sight of burn injuries sustained

by Sushila on the date of incident the husband fled away from the house of the complainant. The complainant has stated in the FIR that he is of the

firm belief that being unable to bear the torture, cruelty and illtreatment inflicted

by the accused persons, Sushila had decided to end her life and set herself on fire. Sushila ultimately died due to burn injuries on 9 June, 2011.

6. Upon receipt of the complaint, the police investigated the case and submitted a charge sheet against all the three accused persons. The case was committed to the Court of Sessions and thereafter transferred to the Additional Sessions Court for Trial and disposal. Subsequently, charges were framed under Sections 498A/304B of the IPC. All the accused persons pleaded not guilty and claimed to be tried.

7. In the course of trial, the prosecution examined 12 witnesses and a number of documents were proved as exhibits. The defence did not produce any evidence. The accused persons were examined under Section 313 of the Cr.P.C. but they declined to examine any witness in defence. In conclusion of the trial, by a judgment and order dated 21 March, 2013 and 22 March, 2013, the Trial Judge convicted and sentenced the appellant No.1 (husband) and his mother being the appellant No.2 (mother-in-law) of the deceased as morefully stated hereinabove. The other accused person being the father-inlaw of the deceased was acquitted of the charges levelled against him.

8. Hence the present appeal.

9. Ms. Anasua Sinha Advocate appearing for the appellants strenuously argued that in convicting the appellant No.1 husband and the appellant No.2

mother-in-law the Trial Court committed errors both in law and regarding the facts of the case. She argued that, the cross-examination of all the

witnesses was repetitive and of a stereo-type nature . She further argued that the dying declaration by the deceased was not in accordance with law

and no reliance ought to be placed on the same. She further contended that a period of 13 days after the marriage was insufficient to satisfy the

ingredients either under Section 304B or Section 498A of the IPC. She further stressed on the fact that, the shortness of the marriage was such that

neither cruelty nor dowry harassment could have been a factor in Sushila committing suicide. She vehemently contended that the ingredients either

under Section 304B or Section 498A of the IPC had not been satisfied. She further contended that this was not a fit case for activating the

presumption under Section 113B of the Evidence Act and that there was no case of torture or dowry harassment made out either in the FIR or the

evidence of the any of the witnesses. According to counsel, the entire evidence of

the witnesses was vague, bereft of particulars and based of surmises and of no value at all.

10. Before addressing the issues which arise for consideration in the instant appeal it is vital to appreciate the evidence of the witnesses in this

proceeding. PW-1 (Sunando Barman), was the father of the deceased Sushila Barman and also the de facto complainant in this case. He deposed that

his daughter was married to the appellant No.1 Ratan Roy Dakua on 29 Baisakh, 1418 B.S. After the marriage, his daughter went to the house of her

in-laws in village Chongerkhata Khagribari to live with her husband and her inlaws. Sushila died on the 25 day of the month of Jaistha, 1418 B.S. i.e.

within one month of her marriage at Cooch Behar Hospital after sustaining burn injuries which she has suffered at her residence. Sushila had informed

the complainant that her husband along with her in-laws inflicted mental torture upon her primarily concerning their dislike of the presentations given to

her at the time of her marriage. He further deposed that, he consoled Sushila and advised her to lead a family life somehow with the ultimate hope of

future happiness. Sushila had come along with her husband to visit the complainant and his family on the 11 day of Jaistha, 1418. On that day at

around noon, Sushila set herself on fire at her father's house. Whilst she was on fire she raised an alarm and the complainant and his son

managed to sprinkle water upon her and put off the flames.

At that point of time, the appellant No.1 husband had told the complainant to take Sushila to the hospital and informed them that he was going back

home for bringing money for the purpose of her treatment. However, the appellant No.1 husband neither came back to the house nor to the hospital.

Sushila was taken to Mathabhanga S.D. Hospital and after preliminary treatment she was moved to Siliguri Hospital where she underwent treatment

for 8/9 days and was taken thereafter back to the complainant's home. After 2/3 days at the house of the complainant Sushila's health further

deteriorated and she was taken to M.J.N. Hospital, Cooch Behar. Two days later Sushila died. Neither the appellant No.1 husband nor her inlaws

ever came to visit Sushila at the hospital. The police had thereafter registered a case of unnatural death and after the post-mortem examination her

body was returned to the complainant. The entire cremation was conducted by the complainant and his family. This witness further deposed that when

he was in hospital an FIR was lodged by him with the Mathabhanga Police Station on the 12th day of Jaistha, 1418 B.S. The complainant further

deposed that Sushila was subjected to ill-treatment, misbehaviour, torture and repeated taunts about the poor quality of gifts which had been given by

the complainant at the time of her marriage. Sushila was unhappy at her matrimonial home and she set herself on fire primarily because of the ill-

treatment, cruelty and dowry demands that she has been subjected to at the hands of her husband and her in-laws.

In cross-examination, the witness deposed that neither he nor his wife or any of his family members were invited to the "Boubhat" ceremony.

He further deposed that during the intervening period of 10 days of marriage he did not visit Sushila's matrimonial home on a single occasion. He

further deposed that when Sushila along with her husband came to visit him after 10 days of the marriage there was a room on the southern side

where there was a "kupa" and a drum containing kerosene oil, Sushila had gone to the room and set herself on fire. Upon hearing her screams,

the complainant and his son had gone to the room and tried to put off the flames. Sushila thereafter was taken to the hospital. She was able to speak.

She made her statement before the doctor at Mathabhanga hospital. The doctor had examined her. She was audible at the hospital. At around 11 p.m.,

Sushila was shifted to the Siliguri hospital for further treatment. She was released after 4 or 5 days. However, her health deteriorated after she

returned home. She was thereafter, taken to the Cooch Behar Hospital. He further reiterated that Sushila was tortured and ill treated by her husband

and her in-laws and it was due to the ill-treatment that she set herself on fire.

PW-2 (Sushil Barman), was the brother of the deceased. He deposed that his sister's marriage was solemnized on the 29 day of Baisakh, 1418

B.S. He further deposed that after the marriage there was a dispute concerning the articles which had been presented to Sushila. He reiterated that

on 10th day after their marriage Sushila and her husband had come to her parental house. He deposed that Sushila disclosed to her mother in his

presence that her husband and in-laws had abused and taunted her and revealed their dislike towards the articles which had been presented to them at

the time of the marriage. He further deposed that all the accused persons inflicted mental torture upon her. He deposed that Sushila had come to their

house to reside for two days. However, at noon on the day of her departure, Sushila set herself on fire. He deposed as the complainant had, that he

and his father had put out the fire. He had taken Sushila to the Mathabhanga Hospital and thereafter to the Siliguri Hospital for better treatment.

Sushila was released after 8 or 9 days of treatment at the Siliguri Hospital. However, upon return her health severely deteriorated. Sushila was

subsequently taken to the Cooch Behar hospital where she ultimately died. In cross-examination, he stated that, the matrimonial house of Sushila was

a distance of 5/6 miles from his house. He further deposed that after marriage he had gone on one solitary occasion to the matrimonial home of

Sushila. He also deposed that he had taken Sushila for treatment to the different hospitals. He also stated that he had taken Sushila to the hospital at

Cooch Behar where she ultimately expired. He denied that his evidence was false. He deposed that it was not a fact that the marriage of Sushila and

the appellant No.1 the husband were solemnized against the willingness and consent of Sushila. He deposed that it was not a fact that he and his

parents had made any false statement to implicate the accused persons.

PW-3 (Laxmibala Barman), was the mother of Sushila. She deposed that her daughter had died after sustaining burn injuries at her home. She

deposed that the appellant No.1 and the appellant No.2 had picked disputes on the very night of marriage after completion of marriage ceremony in

respect of presentations that had been given to Sushila at the time of her marriage. She deposed that Sushila has returned home after 10 days of her

marriage and on the 11th day she had set herself on fire. She deposed that her husband and son had taken Sushila first to the Mathabhanga Hospital

and then to the Siliguri Hospital for treatment. However, within three days of her return her health deteriorated and she was taken to the Cooch Behar

Hospital. She identified the accused persons. She also deposed that Sushila had set herself on fire being abused and ill-treated by her husband and her

in-laws. In her cross-examination, she deposed that Sushila studied up to Class-IV and her husband i.e. the complainant is an agricultural labourer. She

also deposed that the marriage of Sushila was a negotiated one and all their relatives and neighbours were invited to the marriage. She deposed that

Sushila had set herself on fire in the southern room of their home. No other article inside the room was burnt on that occasion. She was unable to

identify the name of the owner of the hired vehicle in which Sushila was taken to the hospital. She deposed that she had not gone to the police station.

She deposed that at the sight of Sushila's burning she became unwell and lost her senses. She regained her senses in the afternoon. She deposed

she had not given any false statement. She reiterated that Sushila had set herself on fire primarily because of the torture and ill-treatment meted out to

her at the hands of the appellant husband and his parents. She reiterated that they were not happy with the presentations that had been made to

Sushila at the time of her marriage.

Next, PW-4 (Ranjan Barman), a cousin of the deceased victim deposed that Sushila was married to Ratan Roy Dakua. After completion of the

marriage ceremony, on that very night, Ratan Roy the appellant No.1 husband and his mother being the appellant No.2 complained in respect of the

articles of presentation. They abused Sushila and criticised all the articles which had been given to them at the time of the marriage. He further

deposed that after 8 or 9 days of marriage Ratan Roy came to the house with Sushila. Sushila had in front of all the family members informed them

that her in-laws disliked the articles of presentation and they would abuse and inflict mental torture on Sushila. Sushila and her husband stayed for two

days at her parental home and they were to return on 11 Jaistha. However, Sushila had set herself on fire in the southern room of the house.

Hearing her screams this witness had gone to the house of his uncle and he had seen his uncle throw water to put the fire off. Subsequently, he had

arranged a hired vehicle which had taken Sushila to the Mathabhanga S.D. Hospital. Sushila was admitted to the hospital. Thereafter, on the advice of

the doctor, she was shifted to Siliguri hospital for better treatment. He had subsequently visited the police station with the complainant and filed the

complaint. After Sushila was released from Siliguri hospital she returned home but her condition deteriorated after two days. Thereafter, she was

taken to Cooch Behar M.J.N. hospital where she expired. Her body was handed over to the family members and he had participated in the cremation

of Sushila. He had signed the seizure list which also contained an invitation card. He was interrogated by the police. In cross-examination, he deposed

that he owned a shoe shop at a distance of about ½ kilometre from his uncle's home and his dwelling house was 2/3 bighas away from the

house of the complainant. He had gone to his uncle's house when Sushila had set herself on fire and had subsequently taken her to the hospital.

He had visited the police station with his uncle. He stated that he had not given any false evidence. He further stated that Sushila had informed him

and the other family members that her in-laws disliked the articles of presentation and they abused and inflicted mental torture upon Sushila.

PW-5 (Binoy Barman) drafted the FIR on the instructions of the complainant, Sunanda Barman. He then read the contents thereof to the complainant.

In cross-examination, he reiterated that the FIR was drafted by him upon the instructions of the complainant.

PW-6 (Rajendra Raj Sundas) was a member of the West Bengal Civil Service (Executive). He was posted at Mathabhanga S.D.O. Office as a

Deputy Magistrate and Deputy Collector at the relevant point of time. He recorded the dying declaration of Sushila. He had attended the patient on

bed No.Extra-7 of the female ward. Dr. Pradipta Chakraborty, the Emergency Medical Officer and a staff nurse namely, Smt. Sabita Saha were

present at that time. The patient was identified as Sushila Barman " 19 years. He had recorded the dying declaration of Sushila in the presence of

the doctor and the staff nurse. In the dying declaration, Sushila had stated she had been married recently. She further said that her husband and in-

laws had been torturing her since her marriage began, demanding money. She further stated that her husband used to beat her. She stated that she

was not given food and her in-laws were not good to her. She reiterated that they had told her repeatedly to go back to her father's house. She

stated that the injuries she received were by pouring kerosene oil on her body and setting herself on fire. Before starting with the recording of the

statement, Dr. Pradipta Chakraborty certified the mental fitness of the patient on the prescribed format. He signed the fitness certificate in the

presence of witnesses with the official seal.

This witness further deposed that he had complied with all the formalities and had also recorded the statement of the staff nurse Sabita Saha who had

signed as a witness in his presence. Thereafter, this witness signed on the dying declaration (Exhibit-3) in the prescribed format. In cross-examination,

this witness further deposed that the format for recording the dying declaration was supplied by his office. He further deposed that the Mathabhanga

police station S.D.O. instructed him to record the dying declaration. He was entrusted officially by the S.D.O. He had written the G.D. number on the

dying declaration. Though, he had not recorded the dying declaration in the version and language of the victim i.e. Bengali he had translated the same.

He had heard the entire statement of the victim. He had also read out and explained to the victim her dying declaration. He stated that though Bengali

was not his mother language, he could understand the same. He reiterated that he had recorded the statement of the victim verbatim.

PW-7 (Smt. Sabita Saha). This witness is a Government employee who was posted at Mathabhanga S.D. Hospital as a staff nurse at the relevant

point of time. Whilst on duty, she had attended the patient namely, Sushila Barman in the female ward. She also deposed that at the relevant point of

time Dr. Pradipta Chakraborty was the Emergency Medical Officer. He was also by the side of patient. She deposed that, the Executive Magistrate

from Mathabhanga S.D.O office came for recording the dying declaration of Sushila Barman. She had identified the patient to the Magistrate. The

statement of the patient was made in her presence and was recorded by the Magistrate. This witness had signed on the dying declaration. She

identified the signature on the dying declaration. In cross-examination, she deposed that Sushila was not known to her earlier. She had not been

interrogated by the police. She further deposed that she had identified the patient namely Sushila Barman to the Magistrate.

PW-8 (Dr. Pradipta Chakraborty) is a member of the West Bengal Health Service who was posted at Mathabhanga S.D. Hospital as the medical

officer at the relevant point of time. On the date of the incident, he was on official duty at the hospital. He examined Sushila Barman at that hospital.

The patient had been admitted with burn injuries and was under his treatment. He prepared the injury report on the basis of medical examination and

clinical observations. His findings and observations are there in the medical report marked as Exhibit- 4. Thereafter, the patient was referred to

M.J.N. Hospital, Cooch Behar for better treatment and management. The dying declaration of the patient was recorded by the Magistrate in his

presence. He had given a certificate as to the mental fitness of the patient in respect of her dying declaration and this had been noted by the

Magistrate. The certificate was written and signed by him. The declaration was recorded prior to referring the patient to M.J.N. Hospital. In cross-

examination, he deposed that he had examined the patient medically in the course of his duty at the emergency ward. He reiterated that the dying declaration was made in his presence. He also reiterated that, his certificate as to the fitness of Sushila was in accordance with medical science and not otherwise.

PW-9 (Aftab Ahmed) is a member of the West Bengal Civil Service and was the Executive Magistrate, Cooch Behar at the relevant point of time.

He conducted the inquest over the dead body of Sushila the deceased victim at the M.J.N Hospital, Cooch Behar. He prepared his inquest report in presence of witnesses which was signed in his presence.

PW-10 (Dr. Amal Bashak). He is a doctor and was posted at the M.J.N. Hospital, Cooch Behar at the relevant point of time. He had conducted the

post-mortem examination over the dead body of Sushila Dakua. The dead body was identified to him by the constable. He had prepared the post-

mortem examination report and had noted the findings and observations as stated in the post-mortem examination. He was of the opinion that the

death of Sushila had been caused due to shock and sepsis from the burn injuries. In cross-examination, he repeated and reiterated that the contents of

the inquest report prepared by him were true and correct. He deposed that he had made his findings and observations during the post-mortem

examination and on the basis thereof he prepared the post-mortem report.

PW-11 (Raju Roy). He was the Assistant Sub-Inspector of Police at the Kotowali P.S. Cooch Behar. On 9 June, 2011 he was entrusted with the

inquiry in respect of U.D. Case No.264/11. He had visited the female burn ward at the M.J.N Hospital, Cooch Behar. He held the inquest over the

dead body of the deceased in the presence of the witnesses and prepared the inquest report. He identified his signature in the inquest (Exhibit-6). He

thereafter, prepared the dead body challan and despatched the dead body to the morgue (Exhibit-7). He had made preliminary inquiries about the dead

body of the victim and incorporated the results at the time of preparing the inquest report.

PW-12 (Abhijit Dutta). He was the Sub-Inspector of Police and was posted at Mathabhanga P.S. as S.I of police at the relevant point of time. He had

visited the P.O. and a rough sketch map with index was prepared and signed by him (Exhibit-8). He had interrogated and recorded the statements of

the witnesses under Section 161 Cr.P.C. He had seized several documents and prepared a seizure list (Exhibit-2). He had gone to the accused persons. He had made a request for recording the dying declaration of the victim which was recorded by the Magistrate. He had collected the dying declaration during investigation and had conducted all necessary inquiries in accordance with law. He had completed the investigation and submitted the charge sheet. He identified and arrested the accused persons. In cross-examination, he reiterated that he had conducted the entire inquiry after completing all the prescribed formalities. He deposed that he had not seized any article of presentation. He further deposed that it was not a fact that the charge sheet has been submitted on the basis of perfunctory materials and substances collected during investigation.

11. The relevant provisions of law which arise for consideration in this case are extracted hereunder:

S.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. S.498A. 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.

S.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 parents 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 dower or mahr in the case of persons to whom the Muslim

personal law (Shariat) applies.

S.113B. 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 has 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.

S.32 Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. "Statements, written or verbal, of

relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance cannot

be procured, without an amount of delay or expense, which under the circumstances of the case, appears to the court unreasonable, are themselves

relevant facts in the following cases:

(1) When it relates to cause of death. "When the statement is made by a person as to the cause of his death, or as to any of the circumstances of

the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant

whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature

of the proceeding in which the cause of his death comes into question.

12. To establish the offence under Section 304B IPC, the prosecution has to prove beyond reasonable doubt that the husband or his relative had

subjected the deceased to cruelty or harassment in connection with the offence

of dowry death soon before her death. As has been laid down in Smt.

Shanti and Another vs. State of Haryana reported in (1991) 1 SCC 371

Â??A careful analysis of Section 304B shows that this section has the following essentials:

- (1) The death of a woman should be caused by burns, bodily injuries or otherwise than under normal circumstances;
- (2) Such death should have occurred within seven years of her marriage;
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (4) Such cruelty or harassment should be for or in connection with demand for dowryÂ??

13. In order to establish the offence under Section 498A of the IPC, the prosecution has to prove beyond reasonable doubt that the husband or his

relative has subjected the victim to cruelty. As has been held in State of Punjab vs. Iqbal Singh and Others (1991) 3 SCC 1 at para 6. Â??Section

498A came to be introduced whereunder Â??crueltyÂ?? by the husband or his relative to the formerÂ??s wife is made a penal offence punishable

with imprisonment for a term which may extend to three years and fine. The explanation to the section defines Â??crueltyÂ?? to mean (i) 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 her life, limb or health or (ii)

causing harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable

security. Thus, under this provision if a woman is subjected to cruelty by her husband or his relative it is a penal offence and by the insertion of Section

198A in the Code of Criminal Procedure a court can take cognizance of the offence upon a police report or upon a complaint by the aggrieved party

or by the womanÂ??s parents, brother, sister, etc. The offence is made non-bailable.Â??

14. As has been held in Smt. Shanti and Another vs. State of Haryana reported in (1991) 1 SCC 371 (paragraph 4) Â??Section 113B of the Evidence

Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry,

then the court shall presume that such person has committed the dowry death. The meaning of Â??crueltyÂ?? for the purposes of these sections has

to be gathered from the language as found in Section 498A and as per that section "cruelty" means "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 etc. or harassment to coerce her or any other 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". As per the definition of "dowry" any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of "dowry".

15. In *Sher Singh vs. State of Haryana* reported in (2015)3 SCC 724 at para 25 it has been held that "The fundamental and vital question that the Court has to ask itself and find a solid answer to, is whether the evidence even preponderantly proves that the appellant had treated the deceased with cruelty connected with dowry demands. It is only if the answer is in the affirmative will the court have to weigh the evidence produced by the appellant to discharge beyond reasonable doubt, the assumption of his deemed guilt."

16. In the aforesaid backdrop, I will now examine the rival contentions of the parties, the evidence and the impugned judgment. A crucial aspect in this case is the dying declaration recorded by PW-6, the Deputy Magistrate and Deputy Collector the contents whereof are reproduced herein below:

"I have married recently. My husband and my in-laws have been torturing me since my marriage of 13 days demanding money. My husband used to beat me. I was not given food. My in-laws are not good. They told me to go to my father's house."

17. In *Atbir v. Govt. (NCT of Delhi)* after an elaborate consideration of several decisions of the Hon'ble Supreme Court of India, the following propositions have been laid down with regard to the admissibility of a dying declaration:

Â "22. The analysis of the above decisions clearly shows that:

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.â??

18. In the light of the medical evidence is an indisputable fact that the deceased died out of burn injuries after she had attempted to set herself on fire.

Admittedly, she had been married for 13 days. There is otherwise sufficient credible oral evidence corroborated of all the witnesses, including the

dying declaration of the deceased, which would go to show that she had been subjected to cruelty, harassment and dowry demands. The witnesses

include the father of the deceased (PW-1), the brother of the deceased (PW-2), her mother (PW-3) and her cousin (PW-4) and all corroborated the

fact that the deceased had been subjected to dowry demands, cruelty and harassment at the hands of her inlaws and her husband. There is nothing to

contradict the fact that presentations were made to the deceased at the time of the marriage. There is sufficient evidence which has been duly

corroborated to the effect that the husband and the inlaws were not happy with the presentations that had been given during the time of their

marriage. The dying declaration was recorded by the PW-6, Deputy Magistrate & Collector and was duly proved in accordance with law.

Independent and disinterested witnesses to the dying declaration namely the staff nurse (PW-7) and the doctor on duty (PW-8) have corroborated the recording of the dying declaration. There is no evidence that the medical staff had any animosity towards the accused persons.

19. I also find that the dying declaration of Sushila is creditworthy and reliable. She was in a fit mental state to depose. The prescribed statutory formalities relating to dying declarations had been fully complied with. The dying declaration was true, voluntary and has total clarity in its contents. It is not a case where the deceased was either rambling, unsound or had contradicted herself. The evidence of PW-7 (Smt. Sabita Saha) and PW-8 (Dr. Pradipta Chakraborty) who had treated Sushila indicate that at the time of making the statement she was in a fit condition. Their evidence is legally admissible with regard to the capacity of the victim to make the dying declaration.

20. On careful scrutiny, I am satisfied that the dying declaration of Sushila is coherent, consistent and free from any efforts to induce the deceased to make any false statement. Accordingly, there is no legal impediment in accepting the dying declaration of Sushila.

21. After returning to the parental house the deceased had disclosed that her in-laws were unhappy with the presentations made by her family at the time of the marriage. The victim had experienced mental torture and cruelty inflicted on her by the accused persons. She had become mentally upset and decided to commit suicide and ultimately set herself on fire. Admittedly, she died due to the burn injuries. There is no reason to disbelieve the witnesses who had deposed in the instant case. The cross-examination of the witnesses in no manner had shaken their evidence.

22. I am satisfied that the prosecution has established beyond all reasonable doubt that the appellants treated the deceased Sushila with cruelty and the same squarely comes within the meaning of "cruelty" which is an essential ingredient under Section 304B and Section 498A of the IPC. The evidence of the witnesses further goes to show that such cruelty was and in connection with the demand for dowry. It is also an admitted fact that Sushila's death occurred within seven years of marriage. Sushila's death occurred due to burn injuries. There is also a proximate and live link between the effect of cruelty based on dowry demands and the unnatural death of Sushila. Thus, the presumption under Section 113B of the Evidence

Act, 1878 is squarely attracted and there was no rebuttal by the defence.

23. For the foregoing reasons, I am of the view that Section 498A, IPC is also attracted.

24. Dowry killing is a crime and menace of its own kind. This requires to be eliminated from society. The legislative intent is clear and that is to curb

the menace of dowry death with a firm hand. As has been held in *State of Karnataka vs. M.V. Manjunathgowda and Another* reported in (2003) 2

SCC 188 (para 25) that: "The practice of giving and demanding dowry is a social evil having deleterious effect on the entire civilized society and

has to be condemned by the strong hands of the judiciary. Despite various amendments providing deterrent punishment with a view to curb the

increasing menace of dowry deaths, the evil practice of dowry remains unabated. The Court cannot be oblivious to the intendment of the legislature

and the purpose for which the enactment of the law and amendment has been effected. Every court must be sensitized to the enactment of the law

and the purpose for which it is made by the legislature, keeping in view the evil practice of giving and taking dowry, which is having a deleterious

effect on the civilized society. It must be given a meaningful interpretation so as to advance the cause of interest of the society as a whole. No

leniency is warranted to the perpetrator of the crime against the society."

25. It has been argued on behalf of the appellants that the shortness of duration of the marriage was such that there could not have been any cruelty

inflicted on the deceased Sushila. I am of the view that there is no substance in this argument. "Days or months are not what is to be seen. Time

lags may differ from case to case. All that is necessary is that the demand for dowry or the cruelty or harassment meted out to the deceased must not

be stale but should be a continuing cause for the death of a married woman under Section 304B". *Rajinder Singh vs. State of Punjab* (2015) 6 SCC

477 (para 24).

26. As has been held in *Baijnath and Ors. Vs State of Madhya Pradesh* (2017) 1 SCC 101 (para 27) the expression cruelty as explained, contains in

its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. "Be that as it may,

cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry to reiterate is the gravamen of the two

offencesâ??.

27. On an overall scrutiny of the evidence as a whole in my view the conviction of the appellants being the husband and the mother-in-law

respectively of the victim is fully justified in the facts and circumstances of the instant case. To reiterate, the prosecution has successfully managed to

prove the crucial ingredients of cruelty, harassment and dowry demand beyond reasonable doubt. Accordingly, the preconditions having been complied

with the benefit of the statutory presumption under Section 113B of the Evidence Act has been correctly and justifiably invoked.

28. Hence, the conviction of the appellants is upheld. However, keeping in view the age of the mother-in-law being the appellant No.2, I am inclined to

reduce her substantive sentence to rigorous punishment to 7 years. Sentence of appellant No.1 shall remain unchanged. Needless to mention, the

period of detention already spent by the appellants be taken into account in respect of the punishment awarded in terms of the instant judgment.

29. With the aforesaid modification as to quantum of sentence, the instant appeal is dismissed. The bail bonds of the appellant No.2, namely, Juthika

Roy Dakua are cancelled and she is directed to surrender forthwith before the Trial Court and serve out the sentence failing which the Trial Court

shall issue appropriate processes to execute her sentence in accordance with law. The period of detention suffered by the appellants during

investigation, enquiry or trial shall be set off under Section 428 of the Code of Criminal Procedure.

30. A copy of the judgment along with the Lower Court Records be sent back to the Court below at once. The certified copy of this order, if applied

for, be given to the parties on priority basis upon compliance of all formalities.