
(2012) 05 GAU CK 0017
In the Gauhati High Court
Case No : Criminal Appeal 62 of 2007

Sri Babul Rabi Das

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 05-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374

Evidence Act, 1872 — Section 113B, 32

Penal Code, 1860 (IPC) — Section 299, 300, 302, 304(2), 304B

Citation : (2013) 1 DMC 435 : (2012) 3 GLD 39

Hon'ble Judges : Swapan Chandra Das, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : P. Saha, for the Appellant; D. Sarkar, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Justice S.C. Das

1. This appeal u/s 374 of Cr.P.C. is directed against the judgment and order of conviction and sentence dated 16.04.2007, passed by learned Sessions Judge, South Tripura, Udaipur, in Sessions Trial No.41 (ST/U) of 2006, whereby and whereunder learned Sessions Judge found convict appellant, Babul Rabi Das guilty of committing offence punishable u/s 498(A) and 304(B) of IPC and sentenced him to suffer rigorous imprisonment for life u/s 304B of IPC. We have heard learned legal aid counsel, Mr. P. Saha for the appellant and learned P.P., Mr. D. Sarkar for the State respondent.

2. Briefly stated, prosecution case is that marriage between Parul Rabi Das, a young bride of about eighteen years, and the convict-appellant Babul Rabi Das was solemnized, being arranged socially, and after such marriage, they were residing as tenant in the house of Sefali Sutradhar of Agriculture Chowmuhuni, P.S. R.K. Pur, Udaipur, South Tripura. The appellant Babul Rabi Das, subjected to torture his wife Parul Rabi Das, both physically and mentally, and did not even

provide her food regularly. He demanded Rs.5,000/- and asked his wife to bring the amount from her parents house as a dowry to the marriage and since the parents of Parul were very poor, they could not afford the amount and therefore Parul was subjected to severe physical assault by the accused in the matrimonial home. Landlady of the appellant and the neighbours requested Babul not to physically assault Parul on demand of the amount but he paid no heed and continued to torture and torment upon her physically and mentally. On 01.08.2005(Monday), at about 20.30 hrs., Babul poured kerosene oil on the body of Parul from a table lamp of his house and set her to fire. Parul raising cry, came out and the neighbours rushed there and she disclosed to neighbours that the accused set her to fire pouring kerosene oil. Mother of Parul, the informant, Parbati Rabi Das was immediately reported by Biswajit Chakraborty, a neighbour and a witness to the occurrence, and thereafter, Parul was taken to hospital and she narrated the incident to her mother in presence of other witnesses. On that night at about 01.45 am Parul succumbed to the injury in the hospital. The informant, on the following day i.e. on 02.08.2005 reported the incident to the Officer In-charge of R.K. Pur police verbally, who recorded her statement and registered R.K. Pur P.S. case No.230/2005 u/s 304(B) of IPC and an investigation was taken up. In course of investigation, inquest report was prepared over the dead body and postmortem examination was also done by a team of three doctors in the Tripura Sundari District Hospital, Udaipur and the doctors opined that the cause of death was due to 90% burn injury and was homicidal in nature. The burnt wearing apparels of the deceased and kerosene lamp from which kerosene was poured on the person of the deceased were seized by police and produced before Court. Ultimately, on completion of investigation, SDPO, Udaipur submitted charge sheet against the accused appellant for commission of offence punishable under Sections 498(A) and 304(B) of IPC.

3. On commitment of the case to the court of Sessions, learned Sessions Judge, on 02.08.2006 framed charges against the appellant for commission of offence under Sections 498(A) and 304(B) of IPC to which the appellant pleaded not guilty and claimed to be tried. On 30.11.2006, learned Sessions Judge further framed another charge against the appellant u/s 302 of IPC to which also he pleaded not guilty and claimed to be tried.

4. In course of trial, prosecution examined as many as 15 witnesses and out of them PWs.1 and 8 are the younger brother and mother of the deceased and PW.8 lodged the FIR. PW.2 is the landlady of the appellant where the appellant used to reside with the deceased in a rented hut and PW.10 is the son of PW.2. PWs 3, 4, 5, 6 and 7 are close neighbours of the place of occurrence. PWs.12 and 13 are the two medical officers (out of three), who conducted postmortem examination over the dead body of the deceased and PWs.14 and 15 are the investigating officers of the case.

5. Defence cross-examined the prosecution witnesses. After closure of prosecution evidence, accused was examined u/s 313 Cr.P.C. and on call he

declined to adduce any defence evidence. In course of cross-examination, some suggestions were put forwarded that the marriage of the accused and the deceased was solemnized following love affairs and that was not accepted by the informant and therefore the deceased was harassed and for that reason she committed suicide. There is, however, no iota of evidence adduced in support there of.

6. Learned legal aid counsel, Mr. Saha advanced his argument on the following points:

(i) The incident occurred on 01.08.2005 at about 20.30 hrs. and the FIR was lodged on 02.08.2005 at about 20.10 hrs. and there is no explanation of delay in lodging the FIR. No investigation was also done as to why the delay was caused. For the unexplained delay an adverse inference should be drawn.

(ii) Dying declaration of the deceased was not recorded either by the doctor or by a Judicial Officer, and therefore, it will not be safe at all to rely on the oral dying declaration and to held the appellant guilty of the alleged offence.

(iii) The deceased had no external injury and so the prosecution case that the deceased was subjected to physical torture even on the previous day of her death cannot be believed. Therefore, allegation of exercise of cruelty is liable to be disbelieved.

(iv) The alleged demand of Rs.5,000/- cannot be believed as the amount is negligible and so meager that no prudent man can rely that such meager amount was demanded as dowry.

(v) The convict has been sentenced u/s 304(B) of IPC and he is in custody from the date of his arrest. If he is found guilty by this Court, he may be released with the punishment, already suffered by him.

7. On the other hand, learned P.P., Mr. Sarkar has submitted that PWs.2, 3, 4, 5, 6, 7 and 10, all are independent witnesses having no animosity with the accused. They made categorical statements that the accused used to assault his wife physically on demand of Rs.5,000/-. The deceased could not bring the amount from her parental home and therefore she was not even served with food in the house of the accused. The deceased while on flame raised cry and came out of her hut on the road near Kali temple and she narrated the occurrence to the neighbours that the accused set her to fire pouring kerosene oil and the kerosene lamp from which the oil was poured was also seized. She died on the same night and the doctor, who conducted postmortem examination, got the smell of kerosene on her body and under such circumstances there is no room to disbelieve the prosecution case and the accused has been rightly convicted and sentenced by the trial court, which should be maintained.

8. We have considered the rival contentions presented before us by the learned counsel of both side.

9. On perusal of the impugned judgment passed by the learned Sessions Judge, we find, learned Judge in paragraph 5 of the judgment formulated three points for decision and after considering the evidence on record decided all those three points against the appellant and convicted and sentenced him as aforesaid. The points formulated by the learned Sessions Judge read thus:

(A) Whether the wife of the accused Parul Rabi Das was subjected to cruelty by her husband Babul Rabi Das for having dowry from her parents?

(B) Whether the death of the victim was homicidal in nature?

(C) Whether the deceased's death was subjected to cruelty or harassment for dowry soon before her death?

10. The first charge brought against the appellant is u/s 498A of IPC. This section has been inserted in the Penal Code with a view to stop all sorts of cruelty towards a married woman in the matrimonial home, which has, by the time, become a burning problem of the society. The dowry system, prevailing in the society from hoary past, is the root of the offence contemplated in the section. The Supreme Court observed in strong language about this deep seated malady in our social order resulting in tragic death of newly married girls

Matrimonial offences are normally committed within the four walls of matrimonial home and so the victim woman is the best natural witness of such offence. In natural course, she informs such incidents to her parents, family members and friends and so their evidence is also of worth consideration. The inmates of matrimonial home and their neighbours, normally does not come forward to be a witness against accused husband and in-laws, etc. But the fact of this case is altogether different. Since the accused was a tenant in the house of PW.2, she (landlady), her son PW.10 and all neighbours, came forward, made very natural statement against the accused.

This is a case of dowry death and/or a murder of a young girl in the matrimonial home, by the husband on demand of dowry, setting her to fire pouring kerosene oil. The Supreme court in the case of Kundula Bala Subrahmanyam and Another Vs. State of Andhra Pradesh, , corresponds to 1993 Cri.L.1. 1635, has observed that the role of courts under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunas in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women.

11. Let us now travel through the evidence on records in respect of the charge u/s 498A of IPC.

The alleged incident occurred on 01.08.2005 (Monday) at about 08.30 pm in the house of PW.2(Sefali Sutradhar), where the accused was residing with his wife,

the victim, as tenant in a rented hut. She was shifted to Tripura Sundari District Hospital(in short, T.S.D. Hospital) by the informant and other neighbours with a vehicle of Agriculture Office at about 09.30 pm. She succumbed to the burn injury on the same night at about 01.45 am. PW.8, the illiterate mother of the victim, lodged the FIR with R.K. Pur P.S. on 02.08.2005 at about 08.10 pm, narrating the fact of alleged exercise of cruelty by dint of physical and mental torture on demand of Rs.5,000/-, which the victim girl could not bring from her poor parents.

The FIR contains a clear statement of exercise of cruelty by the accused mentally and physically on demand of Rs.5,000/-. PW.8, the informant in her deposition made a consistent statement that her daughter, the victim Parul told her that her husband used to physically and mentally torture on her on demand of money and that the accused even did not provide food to her.

PW.1, brother of the victim, corroborated the statement of PW.8(mot her) about the demand made by the accused and the physical and mental torture. He stated that he was informed about torture by his mother, who was reported by the deceased.

PW.2 is the most important and vital witness of the prosecution about the exercise of cruelty by accused on his wife, the victim Parul. Admittedly, in her house the accused along with the victim were residing as tenant. She made specific statement that the accused used to assault his wife Parul regularly for having money as dowry from her mother. She and her next door neighbour Gopal Sutradhar(PW.5) requested the accused not to assault his wife. She further stated that the accused even assaulted his wife two days before the date of her death.

PW.2 has been fully corroborated by her son PW.10. Other neighbours, i.e. PWs.3, 5, 6 and 7 also made categorical statements that the accused used to assault his wife on this or that pretext. They unequivocally deposed that the accused demanded Parul to bring Rs.5,000/- from her parents' house, which she could not, and therefore, the accused used to assault her. PW.6 categorically stated that on the date of incident in the evening he went to the house of PW.2, Sefali Sutradhar and he found that the victim had been crying. She did not take meal as the accused did not bring anything for cooking.

Except denial and suggestion, there is nothing in the cross-examination of those witnesses. Their statements remained completely un-rebutted. It is amply established from the deposition of witnesses that the accused willfully dealt his wife, the deceased Parul, with cruelty by physical and mental torture, demanding cash Rs.5,000/- to bring the same from her parental home and also by not providing food regularly.

12. The next charges brought against the accused are under Sections 304(B) and 302 of IPC. Let us now see what the material witnesses of the prosecution stated about the occurrence.

In the FIR, the informant (PW.8) stated, Bis hu Chakraborty (PW.4) of that locality went to her house on 01.08.2005 at about 08.30 pm and informed that her daughter's husband Babul Rabi Das, set her daughter to fire. She at once rushed for her daughter's house and found her lying on the road in front of "Kalir Math" with burn injury. At about 09.30 pm she shifted her daughter to T.S.D. Hospital with the help of local people, arranging a vehicle from Agriculture Office. In the Hospital her daughter repeatedly told her that her husband poured kerosene on her body and set her to fire. At about 02.00 o'clock of the night her daughter expired. She alleged in the FIR that Babul Rabi Das, husband of her daughter, killed her daughter by pouring kerosene on her body and setting her to fire for Rs.5,000/-, which could not be given as per demand of the accused.

In her deposition, PW.8 narrated the same fact that she was reported by PW.4 and at once she rushed in front of Kali Temple and found her daughter with severe burn injuries and she along with one Kajal Sutradhar (PW.3) and others shifted her daughter to T.S.D. Hospital. Her daughter told her that accused Babul, after pouring kerosene oil, set Parul to fire since Parul could not bring Rs.5,000/- from her (witness) for the accused as dowry. Her daughter died on the same night at T.S.D. Hospital. She also stated that on the following day, she lodged the FIR and the police officer wrote it as per her statement and she put her thumb impression. In her deposition she also stated that the police officer seized the table lamp from the house of the accused and the wearing apparels of the deceased and she put the articles, which are marked as Exbt. MO.1 series.

PW.1, the brother of the deceased was not at home on that night of occurrence. He got information from his mother (PW.8) and returned home and learnt from his mother that his sister already died on the previous night. He also learnt from his mother that his sister told that the accused set her to fire since she could not bring Rs.5,000/- as dowry from her parental home. This statement of PW.1, though hearsay in nature, but is relevant as *res gestae* since he learnt it immediately after the occurrence from his mother in ordinary natural course.

PW.2, the landlady, stated that she was not present in her house when the incident occurred. She came to know from her next door neighbour Gopal Sutradhar (PW.5) soon after the incident. She was told that Babul set his wife to fire after pouring kerosene oil. The victim sought help of Gopal Sutradhar to save her life. She was shifted to T.S.D. Hospital and died on the same night. On the following morning, she went to T.S.D. Hospital and saw the dead body. She also stated that "Darogababu" prepared inquest report over the dead body of the deceased.

PW.3 stated that on hearing the hue and cry she went out from her house and found mother of Parul had been running towards Kali temple and she also followed her. She found victim Parul had been lying on the ground of Kali Temple with serious burn injury. They took her to Agriculture Office and there from to T.S.D. Hospital. On query made by the informant (PW.8) Parul told that the accused Babul had set her to fire pouring kerosene oil from the table lamp as she

could not bring Rs.5,000/- as dowry for him. Parul died in the hospital at about 01.45 am.

PW.8, the mother of the victim and PW.3, the neighbour of the deceased corroborated with material particulars, the dying declaration made by the deceased and there is no room of suspicion in the statement of the witnesses.

PW.4 is another vital witness, who had first seen the victim with burn injury and reported the informant immediately thereafter and he also accompanied the victim to hospital. In his deposition he stated that at about 09.00 pm, he was going to recite Manasamangal and after coming out from his house he found the victim Parul had been running towards Kali Temple and she was crying. After reaching there he found Parul with burn injuries and on his query she told him that her husband had set her to fire after pouring kerosene oil from table lamp. Thereafter he rushed to the house of the informant and had given the information to her.

PW.5 is another close neighbour of PW.2, where the accused was residing with the victim. In his deposition the witness stated that on hearing the hue and cry of Parul he came out from his house and found the victim with fire and he also found the accused Babul, standing by the side of the victim but doing nothing to save his wife. On his query Parul told him that the accused set her to fire after pouring kerosene oil. She requested him to bring a rickshaw to save her life. Accordingly, he went to bring a rickshaw but on return he found she was already taken to hospital. On the next day he came to know that Parul expired in the hospital.

The deposition of the witnesses, narrated above, are very cogent, consistent and corroborating each other and has not been shaken in any manner. They are all residents of the neighbourhood and they have no animosity with the accused to implicate him with a false accusation. They have also nothing to favour the informant or the prosecution. They made natural statements in ordinary course of human nature and stated before the Court what the victim had stated to them. We find nothing to disbelieve the cogent statement of the witnesses.

13. The unfortunate young girl Parul Rabi Das, aged about 18 years, died due to burn injuries in T.S.D Hospital, Udaipur on the night of her receiving injuries i.e. the intervening night of 01.08.2005 and 02.08.2005, at about 01.45 am. PWs.12 and 13 along with another, Dr. Debasis h Ray of T.S.D. Hospital, conducted the postmortem examination over the dead body of the deceased. They have opined that they found the body of the victim with 90% superficial dry burn injury except forehead and scalp and they also got the smell of kerosene oil from the body of the victim. They did not found any other external injury over the body. Both the lungs were congested and oedematous. According to their opinion the cause of death was 90% burn injury, which was ante-mortem and homicidal in nature. They stated that it was a clear cause of homicide as they did not find any burn injury over the forehead and scalp of the victim.

The evidence of the doctors remained completely un rebutted. Nothing is in evidence on record to doubt the opinion of autopsy surgeons in respect of nature of injury and cause of death of deceased.

14. Let us now consider the points raised by the defence counsel in course of argument. Regarding delay in lodging the FIR, it is true that no explanation was given in the FIR. The informant is a rustic illiterate poor woman and for the whole night of the night of occurrence she was with her daughter and on the following day the FIR was lodged in the afternoon, might be, after funeral, etc. of her daughter. It was the duty of the police to find out the reason of delay and to bring it on record. Unfortunately, the investigation was done just as a matter of routine and it was never diverted to ascertain the reason of delay. The Sessions Judge also acted like a silent spectator. It was the duty of the trial Judge also to see and to find out all the material aspects of evidence of a case before the Court. A trial judge cannot be a mere spectator but should control a criminal trial by actively participating therein to find out the truth.

In the present case, though there was no explanation of delay given either in the FIR or in the evidence on record, we find nothing that because of the delay the informant or the prosecution derived any benefit or that there was any sort of embellishment or afterthought in the prosecution case.

The law has not fixed any time for lodging the F.I.R. Hence a delayed FIR is not illegal. Of course, a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity of any possible concoction of a false version. When there is a criticism on the ground of delay in lodging the FIR, the court has to look into the reasons for such delay.

In the case in hand neither prosecution explained the delay by adducing evidence nor defence raised any question during cross-examination of the prosecution witnesses. Even not a suggestion was put to informant that the case was otherwise than what was stated in the FIR.

In the case of *Sahebrao and Another Vs. State of Maharashtra*, , the apex court held that the settled principle of law of this court is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging FIR could put the court on its guard to search if a plausible explanation has been offered and if offered whether it is satisfactory.

In the case of *State of Himichal Pradesh Vs. Gian Chand*, , the apex court held that delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any plausible explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the

prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

In the case of *Ramdas and Others Vs. State of Maharashtra*, , the apex Court observed thus-

8In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report.

It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them.

In the case of *Gurbachan Singh Vs. Satpal Singh and others*, , FIR was lodged after about twenty four hours of occurrence. It was a case of abatement of suicide of a newly married girl. Information of the occurrence was given to the father of the deceased girl in the evening and the father with other family members rushed to the hospital and stayed there overnight till the body of the deceased was handed over. After the body was disposed, the FIR was lodged. The Supreme Court accepting the circumstances held that the delay in lodging the FIR does not raise any doubt regarding the veracity of the prosecution case.

FIR is the information of a cog. offence, first in point of time. Promptness makes the FIR more dependable. Delay makes possibility of concoction and false version. Delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication. The courts would not be too fastidious when there is some delay in lodging FIR, especially when there is no doubt about the incident, unless, of course the delay is likely to corrode the credibility of the prosecution case. In this case the informant and the accused are from lowest strata of society. Further the informant is an illiterate lady, even cannot put her signature. She was liable to be struck with the horrors of the incident. Moreover, from beginning to end, prosecution case is found to be consistent. Therefore, delay of one day has no significance at all.

15. The next point raised by learned counsel, Mr. Saha is on the oral dying

declaration that it is not safe to be relied on. Clause (1) of Section 32 of the Evidence Act provides that statements, written or verbal, of relevant facts made by a person who is dead, are themselves relevant facts when the statement is made by a person as to his cause of death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the causes of that person's death comes into question.

It is well settled that there is a difference between the Indian Rule of Evidence and the English Rule with regard to the necessity of the declaration having been made under expectation of death. In the English Law, the declaration should have been made under the sense of impending death whereas under the Indian Law it is not necessary for the admissibility of the dying declaration that the deceased at the time of making it should have been under the expectation of death.

The law in regard to the appreciation of dying declaration is well settled. Before a conviction can be made on a dying declaration the Court must be fully satisfied that the declaration is reliable in the sense that it was actually made by the deceased when fully possessed of the power to understand the implication of his/her statement and the same was made without any exterior influence or ulterior motive. It has further to be proved that the dying declaration reflects a true version. There is nothing in law that a dying declaration unless reduced to writing cannot be proved.

In the case in hand, Parul, the young wife was living with her accused husband in the matrimonial home and she was set to fire by her life partner, the husband, the accused, on whom she had bestowed her all faith and dependence. While she was on flame, she came out of the hut and narrated the occurrence to the independent neighbours and later to her mother and she died on that night itself. This fact in the circumstances of the case, is better and more authentic than that of recorded dying declaration observing all other formalities. Learned counsel, Mr. Saha in the course of argument referred the case of State of Orissa Vs. Parasuram Naik, and submitted that the dying declaration while not recorded by the doctor in the hospital should not be relied on and the husband cannot be held guilty. In the case in hand, there is nothing before us that there was any scope for the doctor to record the dying declaration of the victim in the hospital. She was taken to hospital at about 09.30/10.00 pm and she died at about 01.45 am. There is nothing on record as to whether any doctor had attended her and if so when. Immediately after the occurrence, on the spot she made the statement to the witnesses. What was her condition later on before her death we cannot say since there is no evidence to that effect. The apex Court in the case of Sunder Singh Vs. State of Uttaranchal, as well as in the case of Laxman Vs. State of Maharashtra, has held that normally the court has to satisfy whether the deceased was in a fit mental condition to make the dying declaration and looks up to the medical opinion. But where the eye witnesses stated that the deceased was in a fit and conscious state to make the declaration, the medical opinion will

not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. In the facts and circumstances of this case, we find the dying declaration made by the deceased is absolutely reliable and there is nothing to doubt it.

16. The next point argued by learned counsel is that it is not believable that a meager amount of Rs.5,000/- was demanded as dowry.

All the witnesses including the mother of the deceased stated that the accused demanded Rs.5,000/- which even could not be given by the informant. Rs.5,000/- may be a meager amount to a moneyed man, who has born with immense fortune but it may be something to a poor man who lives on hand to mouth. In the case in hand, we have already observed that the informant and the accused all belonged to the very lower strata of society and were very poor and for them Rs.5,000/- was no doubt a very big amount, which even could not be arranged by the informant and this argument has got no merit at all.

17. The next point argued by learned counsel is that if the accused is found guilty of the charges by this court minimum punishment may be awarded and he may be set free with the imprisonment already suffered by him.

The offence committed by the accused is most brutal and it deserves extreme punishment as prescribed by law. Any leniency to the accused will cause harm to the efficacy of law and society will not accept it.

The apex Court in the case of Virbhan Singh and Another Vs. State of U.P., has held that instances of bride killing are alarmingly on the increase. If society should be ridden of this growing evil it is imperative that whenever dastardly crimes of this nature are detected and the offence brought home to the accused, the court must deal with the offender most ruthlessly and impose deterrent punishment.

In the case of Surja Ram Vs. State of Rajasthan, , the apex Court has held that while considering the punishment to be given to the accused, the Court should be alive not only to the right of the criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also to the rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the court for the appropriate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

In the case of Sevaka Perumal, etc. Vs. State of Tamil Nadu, the apex Court held that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore,

the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

In the case of *Dhananjoy Chatterjee vs. State of West Bengal & Ors.* reported in 1994 SCC(Cr.) 358 the apex Court held that the measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected State of the victim. Imposition of appropriate punishment is the manner in which the Court responds to the Society's cry for justice against criminals. Justice demands that court should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering imposition of appropriate punishment.

18. The convict committed murder of his wife within seven months of marriage on demand of Rs.5,000/- as dowry which could not be fulfilled by the helpless poor wife and her poor mother. He poured kerosene oil on her and set her to fire and she received 90% burn injuries and died within six hours. Considering the facts, the brutal manner in which the offence was executed and considering the ratio of the law laid down by the apex Court, we are of the considered opinion that there is no reason at all to show any leniency in respect of punishment to the accused.

19. While deciding point "B", learned Sessions Judge arrived at a finding that death of the deceased was homicidal in nature. Whereas, while awarding punishment, learned Sessions Judge, convicted and sentenced the accused, u/s 304(B) of IPC. The finding of learned Sessions Judge has not been challenged by the prosecution preferring counter appeal. Learned Sessions Judge recorded no finding on the charge u/s 302 of IPC though he held that the death of the victim was homicidal in nature. Learned Sessions Judge utterly failed to distinguish the ingredients of the offence punishable u/s 304(B) and Section 302 of IPC. For drawing attention of the court below the distinction between the penal provisions prescribed u/s 304B and Section 302 of IPC need to be discussed in short.

Sub-Section 1 of Section 304(B) of IPC prescribes dowry death and Sub-Section 2 prescribes the punishment for causing dowry death. Sub-section 1 of Section 304(B) reads thus:

(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.

20. In the case in hand, it is not disputed that the marriage between the accused and the deceased Parul solemnized on 29.01.2005 as stated in the FIR. The incident occurred on 01.08.2005 i.e. within seven months of the marriage. She

died due to burn injuries received by her in the matrimonial home and there is overwhelming evidence that she was subjected to cruelty on demand of dowry of Rs.5,000/-. Presumption u/s 113B of the Evidence Act was available to the prosecution if it was absolutely a case of dowry death. If the death of the woman is caused by burns or badly injury or occurs otherwise then on a normal circumstances and that she was subjected to cruelty or harassment soon before her death it should be termed as a dowry death. The victim was no doubt subjected to cruelty and harassment soon before the death.

21. The words "cruelty" and "harassment" have been explained in Section 498(A) of IPC thus:

(a) any willful 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.

The above ingredients of exercise of cruelty and harassment on demand of dowry are readily available in the evidence on record. In the facts and circumstances of this case, all the ingredients of dowry death have been proved with overwhelming evidence and much more than that what is proved in the case is that it was not merely a case of dowry death but was a clear case of murder. The victim was subjected to cruelty on demand of dowry and was subjected to physical assault to bring the money which proved the motive behind the murder. The young woman of 18 years age, who entered in the marital home with the accused with high hope and aspiration looking for a life full of mirth and merriment has suffered a cruel treatment by the most beloved and trusted one i.e. the accused husband for a meager amount of Rs.5,000/- and her all dreams shattered. The accused, since his demand was not fulfilled, poured kerosene oil on the body of the victim i.e. his wife and set her to fire and when she was crying to save her life, the accused was standing nearby and did nothing to save his wife. What a brutal attitude the accused had exhibited in the commission of the crime. We are really shocked to see that learned Sessions Judge ignored all circumstances and recorded no finding of punishment u/s 302 of IPC though there was charge framed against the accused.

22. Section 299 of IPC defined culpable homicide thus:

"Whoever caused death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

The word, "murder" has been defined in Section 300 of IPC which prescribes

thus:

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly.-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

In the case in hand, the evidence on record overwhelmingly makes it evident that the accused committed murder of the victim, his wife, most brutally with the intention of causing the death as his unlawful demand was not satisfied. Since the accused has already been sentenced for life u/s 304(B) of IPC and since there is no appeal filed by the prosecution, we are not inclined to take further steps to convert the punishment u/s 302 of IPC from that of one u/s 304B of IPC. We are, however, agreeable to the finding that where the accused is held guilty of committing offence both under Sections 498A and 304B of IPC, separate sentence u/s 498A of IPC is not required.

For the forgoing reasons, the judgment and order of conviction and sentence passed by the learned Sessions Judge is affirmed and the appeal stands dismissed. Send back the L.C. records along with a copy of the judgment.