

(2014) 02 TP CK 0067
In the Tripura High Court
Case No : Criminal A (J) 23 of 2012

Sri Dilip Muhuri VsThe State of Tripura

Date of Decision : 19-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Dowry Prohibition Act, 1961 — Section 2, 3
Evidence Act, 1872 — Section 106, 113(B), 113B, 113-B, 32
Penal Code, 1860 (IPC) — Section 201, 304(B), 304B, 304-B, 306
Probation of Offenders Act, 1958 — Section 4

Citation : (2014) 02 TP CK 0067

Hon'ble Judges : Utpalendu Bikas Saha, J;S. Talapatra, J

Bench : Division Bench

Advocate : A. Dasgupta, for the Appellant; R.C. Debnath, Addl. P.P., for the Respondent

Final Decision : Partly Allowed

Judgement

1. Dilip Muhuri, the accused in sessions trial No. 24(ST/B) of 2010, appellant herein, was convicted under Sections 304(B) and 498(A) of the IPC for committing cruelty leading to dowry death of his wife Smt. Soma Choudhary and sentenced him to suffer imprisonment for life and also to suffer R.I. for three years and to pay a fine of Rs. 3000/-, in default of payment of fine to undergo rigorous imprisonment for three months vide judgment and order dated 24.2.2012 passed by the learned Additional Sessions Judge, South Tripura, Belonia in Sessions Trial case No. 24(ST/B) 2010 and the instant appeal is filed against the aforesaid judgment. Heard Mr. A. Dasgupta, learned counsel appearing for the appellant and Mr. R.C. Debnath, learned Additional P.P. appearing for the respondent-State.

2. Soma Choudhary, (now deceased), the daughter of the informant Sri Shanti Ranjan Choudhary (P.W. 2) was married to the accused appellant at the residence of the informant at Belonia, South Tripura on 7.2.2006 as per Hindu customs and rituals and at the time of marriage, the informant had given gold ornaments and other materials including fridge, T.V. and motor bike. After

solemnization of marriage, Soma went to the house of her husband, the accused appellant and started residing there as husband and wife. But after about a month of marriage, the accused appellant and his mother, another accused, Priyabala Muhuri who was acquitted by the trial Court started torturing upon Soma demanding twenty thousand of rupees and ultimately, on 31.5.2008, Soma sustained severe burn injury in the house of the accused appellant at Sonarpur, Hetalia, and subsequently succumbed to it on the same day. As the death was not caused under ordinary circumstances, but was the result of the burn injury, dead body of Soma was sent for post mortem examination to Niharnagar PHC and on that day, Dr. Rajib Sarkar (P.W. 14) along with Dr. Arup Datta and Dr. Susanta Saha as a team conducted the post mortem on the dead body of the deceased Soma in connection with the aforesaid police case. On the post mortem, it was found that the dead body was burnt having no extra ordinary injury on her person and the cause of death was due to burn injury and cardiorespiratory failure.

3. On the following day, i.e., on 1.6.2008, the informant P.W. 2, father of the deceased Soma lodged a written complaint relating to the incident at the police station which was registered as P.R. Bari P.S. case No. 56 of 2008 under Sections 498-A and 304-B of the IPC against the accused appellant and his mother Priyabala Muhuri stating, inter alia, that after one month of the marriage, his daughter came to his house and told him that she had been sent by her husband to bring Rs. 20,000/- from him, otherwise she would not be allowed to stay in the house of the accused appellant. Then her father considering her future and happiness gave twenty thousand rupees to the appellant and his family through Soma as per their demand. Thereafter, Soma passed sometimes well and she got conceived and ultimately she gave birth to a girl child when her treatment costs were borne by the informant father. After the birth of the girl child, she went to the house of the accused appellant, but few days after she again came back to his house with her girl child and at the time of coming to the parental house, she was told by the accused appellant and his mother to bring another fifteen thousand rupees when returning from her parental house and unless the same is done, neither she nor her girl child would be allowed any place in the house of the accused appellant as they would not be able to feed them. His daughter was also tortured in his house by the accused appellant in presence of her mother for which she had to take treatment. Thereafter, his daughter Soma went to the house of her husband accused appellant when she was given Rs. 1000/- by him.

4. On 29.5.2008, the daughter of the informant Soma again came to her parental house in an injured condition and narrated the story relating to her injury to her father who ultimately took her to the chamber of Dr. Rajib Chakraborty (P.W. 10) and purchasing medicine as prescribed, she was sent to her husband's house in the afternoon. On 31.5.2008, at about 7/7.30 a.m., One Madan Choudhary (P.W. 4) of the adjacent house of the accused appellant came to his house and informed him that his daughter was seriously ill and she was admitted at the hospital and they should go there soon. Then the informant

along with his two brothers and his wife immediately went to Barpathari and enquired at the Barpathari hospital. Not finding his daughter there, they turned to the house of the accused appellant where in a room they found the fire burnt dead body of Soma and the entire room smelled of kerosene.

5. Upon receipt of the said information from P.W. 2, the police registered a specific police case being P.R. Bari P.S. case No. 56 of 2008 under Sections 498A and 304B IPC against the accused persons and took up the investigation. On completion of the investigation, the prosecution presented the charge sheet against the accused persons, the appellant, husband of the deceased Soma and his mother showing the accused appellant as absconder under Sections 498A and 304B IPC as he could not be arrested during the course of investigation. Subsequent to filing of charge sheet, the accused appellant has surrendered before the learned Sub-divisional Magistrate, Belonia who ultimately committed the case to the court of learned Additional Sessions Judge, Belonia. In due course, the charge was framed against the accused appellant and his mother. The relevant portion of the charge is as under:

That after about a month of solemnization of the marriage between you Dilip Muhuri and Soma Choudhary on 24th Magha of 1412 B.S. corresponding to the 7th day of February, 2006 you being her husband and you Smt. Priya Bala Muhuri being her mother-in-law at your house at Sonapur (Hetalia) under P.R. Bari Police Station subjected said Soma Choudhary to cruelty both physically and mentally and even assaulted her for her failure to meet your demand of Rs. 20,000/- as dowry which continued till 31.5.2008 and you thereby committed an offence punishable U/S. 498A IPC and within the cognizance of this court.

Secondly, that you on or about the 31st day of May, 2008 at your house above mentioned caused the dowry death of Soma Choudhary on subjecting her to cruelty in connection with the demand of dowry of Rs. 20,000/- and thereby committed an offence punishable U/S. 304-B of IPC and within the cognizance of this Court of Sessions.

And I hereby direct that you be tried on the aforesaid charges.

6. The accused appellant and his mother pleaded total innocence and claimed to be tried.

7. To establish the charge, the prosecution has examined as many as 21 witnesses including the official witnesses and has also exhibited some documents like seizure list, inquest report, post mortem report, etc.

8. On completion of recording of the evidence, the accused appellant husband of the deceased Soma and her mother in law, Priyabala were examined u/s 313 Cr.P.C. for having their response on the incriminating materials arising from the evidence as laid by the prosecution.

9. Both the accused mother and his son, i.e., the mother in law and husband of the deceased Soma denied the veracity of such materials and in their defence,

they have stated nothing.

10. After perusal of the evidence on record, the learned Additional Sessions Judge roped the accused appellants convicting under Sections 498A and 304-B IPC as stated supra and acquitted the accused Priyabala, the mother in law of the deceased Soma from the charges leveled against her.

11. The learned Additional Sessions Judge while roping the accused appellant u/s 498A of IPC and acquitting the accused Priyabala, the mother in law of the deceased Soma has given reasons for acquitting her, inter alia, that P.W. 2, the informant and the father of the deceased Soma, in her evidence though implicated the accused Priyabala, mother-in-law of the deceased Soma, regarding the demand of Rs. 20,000/-, but not implicated for subsequent assault and further demand for money and his evidence was not corroborated by other witnesses. None of the other witnesses corroborated the said statement of P.W. 2 so far the accused Priyabala is concerned. According to the learned Additional Sessions Judge, ample evidence is available against the accused appellant that he has not only demanded Rs. 20,000/-, but also tortured upon the deceased Soma for bringing money from her father. He has recorded his findings as under:

17. From the discussion made above, it is established beyond any doubt that a month after the marriage of Soma, her husband started demanding money from her and the demand and consequent torture to extort the money and the property continued till her death. The ingredients of section 498-A explanation-(b) is thus clearly proved.

18. Now, coming to the charge under sec. 304-B of IPC, it is not in dispute that Soma died in the house of her husband sustaining severe burn injury and that it took place within seven years of her marriage. It is proved from the above that accused Dilip Muhuri subjected her to cruelty and harassment starting about a month after the marriage pertaining to demand of dowry in the form of cash money and property which continued till her death and that Soma lastly reported about this to her father two days prior to her death.

At this stage, it is considered appropriate to refer to section 113-B of the Indian Evidence Act which runs as follows:-

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 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 304B of the Indian Penal Code (45 of 1860).

19. In the circumstances aforesaid and in view of the provision of law just quoted, this court is under the mandate of the legislature to draw the presumption that Dilip Muhuri caused the dowry death of his wife Soma and the

presumption is accordingly drawn. Consequently, he is convicted under sec. 498-A and 304-B of IPC. For the reasons already stated, Smt. Priyabala Muhuri is acquitted of the charges framed against her and she is set at liberty. Her bail bond is cancelled and the surety is discharged.

20. Now, coming to the absconding factor, apart from Swapan Ch. Dey Vs. State of Tripura, cited by the defence, the Apex Court in 2010 AIR SCW 4470 and in many other judgments has held that absconding by a person against whom FIR has been lodged having apprehension of being apprehended by police cannot be said to be unnatural and that absconding by itself is not conclusive either of guilt conscience.

Guilt of Dilip Muhuri having been established independent of the absconding factor, it can now be said that it was unnatural of him to leave his wife, burnt to death if that happened for no fault of his and if he had any love and respect towards her. Another unanswered question is, the unfortunate lady obviously did not breathe her last the moment the fire engulfed her. It takes some time in such cases for the last breath to come out. The question is why the husband was an on looker and made no effort to shift her to the hospital. I do not want to lengthen my judgment by quoting too many lines of the judgment of the Apex Court reported as State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, . So I will quote only a portion of Para-22 of the judgment which is as follows:-

Where an accused is alleged to have committed the murder or his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resides, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstances which indicates that he is responsible for commission of the crime.

21. Going back to the absconding factor, definitely, he absconded because of his guilty mind that he had caused the death of his wife.

This is of course not a case where it is worth taking into consideration whether the convict can be given the benefit of section 4 of the Probation of Offenders Act, let alone giving the benefit. So, he is heard on the question of sentence.

The convict prays for mercy and leniency of the court and also prays for imposition of lesser sentence on the ground that he has his aged mother and his daughter to look after. It is there in the cross examination of P.W. 2 that convict has two brothers. So, the plea of imposition of lesser sentence on the ground taken by the convict is not acceptable. Considering the circumstances of the case, conduct of the convict immediately after the incident and the fact of his absconding thereafter thereby derailing the trial, in my considered opinion no leniency should be shown to him. So, he is sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs. 3000/-, in

default, to suffer rigorous imprisonment for another period of three months for the offence committed under sec. 498-A of IPC and he is sentenced to suffer imprisonment for life for his conviction under sec. 304-B of IPC.

12. Mr. Dasgupta, learned counsel appearing for the appellant submits that on proper scrutiny of the evidence of the witnesses it would be evident that no ingredients of Section 498A is available against the accused appellant and not only that, the ingredient u/s 304B is that the deceased must have been subjected to cruelty or harassment in connection with any demand of dowry and in this case, the prosecution has failed to prove that the deceased was subjected to cruelty or harassment by the appellant in connection with the demand of dowry. He further submits that the statement of P.W. 2, P.W. 5, and P.W. 7 cannot be relied upon for the purpose of conviction as their statement is totally based on the information allegedly given by the deceased Soma, particularly, when such information is not relating to immediate her death.

13. Mr. Dasgupta while urging for setting aside the judgment impugned and for acquitting the appellant submits that there is no direct evidence in this case that the appellant was in his residence at the time of burning of his deceased wife which led her to succumb to death except Madan Choudhary (P.W. 4) who has also not stated that the appellant was in the house at the time of alleged incident. Thus, the presumption u/s 113(B) of the Evidence Act cannot be taken against the accused appellant. He further submits that though some allegations are that P.W. 2 through the victim deceased Soma sent Rs. 20,000/- to the appellant, but there is no evidence that the appellant demanded any amount from the informant. He has also contended that the charge was framed against the appellant u/s 498A of the IPC for committing cruelty both physically and mentally demanding Rs. 20,000/- from his wife deceased Soma, but no charge has been framed against him for alleged demand of dowry of Rs. 15,000/- or the half of the landed property. Thus, the entire trial based on the aforesaid fact was beyond charge. His another contention before us was that the learned trial Court failed to consider the fact that though the alleged burn injury was caused on 31.5.2008, but the FIR was lodged on 1.6.2008 without explaining the delay and for which itself the learned trial Court should have come to the conclusion that the entire prosecution story is an afterthought and concocted one. He has also contended that the contention in the FIR inter alia, that for the last one month, the accused persons have been continuously creating pressure upon the informant for giving a portion of his residence or a plot of his house in the name of the accused appellant and on 29.5.2008 when his daughter went to her husband's house from his house for the last time, she had told him that the accused would kill her if he did not give the portion of land in his name in writing which was not initially in the FIR, but subsequently that was inserted by the informant fraudulently to rope the appellant in the instant case, as P.W. 15, the scribe of the FIR himself admitted in his cross that the paragraph in the 3rd page of the complaint in between particulars of the accused persons and his signature was not written by him and for such fraudulent action of the informant itself is a

ground for quashing/setting aside the judgment and order of sentence passed by the learned trial Court. In support of his aforesaid contention, he has placed reliance on a decision of the Apex Court in Smt. Charanjit Kaur Vs. Union of India and others, and United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, He has further contended that the evidence of witnesses to which the learned trial Court relied upon are the evidence of interested witnesses. Thus, the same has to be disbelieved and the appellant has to be acquitted setting aside the order of conviction and sentence.

14. He has also contended that when the learned trial Court disbelieved the story that the mother of the appellant did not demand Rs. 20,000/- as allegedly sent by the informant to the appellant through his daughter, then the learned trial Court should have disbelieved the story of sending the aforesaid amount to the appellant also.

15. He finally submits that the learned trial Court's judgment suffers from legal infirmities as the same is based upon the conjecture and surmises without any legal sanction, thus, liable to be set aside.

16. Mr. Debnath, learned Addl. P.P. while supporting the impugned judgment would contend that the prosecution by way of adducing evidence established the continuous demand of money by the accused appellant from the deceased Soma after their marriage and for fulfillment of the said demand, she was mentally and physically tortured which continued even before her death. Not only that the prosecution also proved that Soma was tortured and harassed on various occasions and even before two days ahead of her death which will be evident from the evidence of P.W. 2, father of the deceased Soma, P.W. 3, uncle of the deceased, P.W. 5, mother of the deceased, P.W. 7, aunt of the deceased and also from the evidence of the P.W. 8 and 9, to whom the informant disclosed the fact relating to demand of money from Soma by the accused appellant.

17. He further contended that it is the admitted position that the death of Soma was caused due to burn injury inside the matrimonial home within three years from her marriage with the accused appellant and as the cause of death is not in normal circumstances, rather the result of cruelty and harassment soon before her death, the learned trial Court rightly convicted the accused appellant u/s 498A as well as 304B IPC taking the aid of Section 113B of the Evidence Act. To substantiate his aforesaid contention, he has placed reliance on the decision of the Apex Court in Kans Raj Vs. State of Punjab and Others, wherein the Apex Court considered almost similar nature of evidence and ultimately, affirmed the judgment of the Addl. Sessions Judge, Gurdaspur who has convicted the accused Rakesh Kumar, husband of Sunita victim deceased of that case under Sections 304B and 306 and 498-A IPC and sentenced thereunder, setting aside the order of acquittal passed by the Punjab & Haryana High Court, particularly, para. 6, 7, 8 and 9 which are as under:

6. We, however, find that there is reliable legal and cogent evidence on record to

connect Rakesh Kumar, respondent No. 2 with the commission of the crime. There is evidence showing that immediately after his marriage with the deceased the respondent-husband started harassing her for the demand of dowry. We do not find substance in the submission of the learned defence counsel that the statements made before her death by the deceased were not admissible in evidence u/s 32(1) of the Evidence Act and even if such statements were admissible, there does not allegedly exist any circumstance which could be shown to prove that the deceased was subjected to cruelty or harassment by her husband for or in connection with any demand of dowry soon before her death. It is contended that the words "soon before her death" appearing in Section 304B has a relation of time between the demand or harassment and the date of actual death. It is contended that the demand and harassment must be proximately close for the purposes of drawing inference against the accused persons.

7. The offence of "dowry death" was incorporated in the Indian Penal Code and corresponding amendment made in the Evidence Act by way of insertion of Section 113B vide Act 43 of 1986. In fact the Dowry Prohibition Act, 1961 being Act 28 of 1961 was enacted on 20.5.1961 with an object to prohibit giving or taking dowry. The insertion of Section 304B of the Indian Penal Code and Section 113B in the Evidence Act besides other circumstances was also referable to the 91st Report dated 10.8.1983 of the Law Commission. In the Statement of Objects and Reasons to Act 28 of 1961 it was stated:

The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament, Hence, the present Bill.

8. Realising the ever increasing and disturbing proportions of the evil of dowry system, the Act was again amended by Act 63 of 1984 taking note of the observations of the Committee on Status of Women in India and with a view to making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity, the Government referred the whole matter for consideration by a Joint Committee of both the Houses of Parliament. The Committee went into the whole matter in great depth in its proceedings and after noting the observations of Pt. Jawaharlal Nehru, recommended to examine the working of Act 28 of 1961 and after considering the comments received on the Report from the State Governments, Union Territories, Administrations and different administrative Ministries of the Union concerned with the matter, decided to modify the original definition of "dowry" with consequential

amendment in the Act. Again finding that the Dowry Prohibition Act, 1961 has not been so deterrent, as it was expected to be, the Parliament made amendments in the Act vide Act 43 of 1986. In the Statement of Objects and Reasons of the said Act it was stated:

The Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act 1984 to give effect to certain recommendations of the Joint Committee of the House of Parliament to examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organisations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. The salient features of the Bill are:

(a) The minimum punishment for taking or abetting the taking of dowry u/s 3 of the Act has been raised to five years and a fine of rupees fifteen thousand.

(b) The burden of proving that there was no demand for dowry will be on the person who takes or abets the taking of dowry.

(c) The statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.

(d) Any advertisement in any newspaper, periodical journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine up to fifteen thousand rupees.

(e) Offences under the Act are proposed to be made non-bailable.

(f) Provisions has also been made for appointment of Dowry Prohibition Officers by the State Governments for the effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Boards consisting of not more than five social welfare workers (out of whom at least two shall be women).

(g) A new offence of "dowry death" is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973 and in the Indian Evidence Act, 1872 have also been proposed.

3. The Bill seeks to achieve the aforesaid objects.

9. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal

circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable u/s 304B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) to such cruelty or harassment the deceased should have been subjected to soon before her death.

18. He has again contended that in a case of dowry death, prosecution is to establish that there has been persistent demand of dowry by the accused and because of non-fulfillment of the said demand, there was harassment and humiliation and continuous beating of the deceased by the accused and in the instant case, such fact of continuous harassment and humiliation as well as beating to the deceased victim is proved and thus, the learned trial Court did not commit any wrong relying the evidence of the prosecution witnesses. In support of his aforesaid contention, he has also placed reliance on Ram Badan Sharma Vs. State of Bihar, particularly, paragraph 32, 33 and 34 of the said judgment, which are as under:

32. When the evidence of the instant case is closely examined, then the conclusion regarding the guilt of the accused persons becomes irresistible. There is an overwhelming evidence to establish that there has been persistent demand of dowry and because of non-fulfillment of the said demand, there was harassment, humiliation and continuous beating of the deceased by the accused persons. In the instant case, as late as on 17.11.1993, Ramakant Chaudhary, PW 1, at the instance of his mother-in-law PW 5, had visited the deceased to enquire about her welfare. When he reached the house of the deceased initially the accused persons did not even permit him to meet the deceased on the ground that until their demands for dowry were fulfilled, they would not permit any one to meet the deceased. On persuasion, Ramakant Chaudhary, PW 1, was ultimately allowed to meet the deceased. The deceased narrated to her brother-in-law, PW 1, that she was being harassed because the demands of dowry were not fulfilled. Immediately thereafter, PW 1 went and narrated the entire story to the brother and mother of the deceased. It is extremely significant that within a few hours, poison was administered to the deceased in the Prasad and she died on the intervening night of 17/18.11.1993. According to the statement of PW 1,

the deceased died after eating the "Prasad" and thereafter she was neither taken to any doctor nor any treatment was given to her. The most suspicious circumstance which supported the story of the prosecution was that the news of the death of the deceased was not sent to the parents of the deceased who were living only a few miles away from the village of the accused. The accused persons clandestinely, secretly and hurriedly cremated the deceased without informing the factum of death to the parents of the deceased. This circumstance strongly proved and lent immense credibility to the prosecution version. Only from a Barber, on 20.11.1993 (after three days), the parents of the deceased learnt that Sanju Kumari was killed by administering the poison to her. The deceased's brother and other relatives rushed to the village where they learnt that the deceased was killed by administering the poison.

33. In the instant case, the appellants were convicted under Sections 304-B and 201 IPC. Section 304-B IPC reads as follows:

S. 304-B. 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 purposes of this sub-section, "dowry" shall have the same meaning as in s. 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.

This Section was inserted in the Indian Penal Code by an Act 43 of 1986 on 19.11.1986.

34. There are three main ingredients of this offence; (a) that, there is a demand of dowry and harassment by the accused on that count; (b) that, the deceased died; and (c) that, the death is under unnatural circumstances within seven years of the marriage. When these factors were proved by reliable and cogent evidence, then the presumption of dowry death u/s 113-B of the Evidence Act clearly arose. The aforementioned ingredients necessarily attract Section 304-B IPC. Section 304-B is a special provision which was inserted by an amendment of 1986 to deal with a large number of dowry deaths taking place in the country. In the instant case, if the circumstances of the case are analyzed on the touchstone of Section 304-B IPC, all the three basic ingredients of Section 304-B I.P.C. are present in the instant case. There has been persistent demand of dowry and harassment, humiliation and physical violence and beating by the husband and her in-laws. The deceased died under unnatural circumstances within seven years of the marriage.

19. To appreciate the argument of the learned counsel appearing for the parties, it would be proper for this court to consider the meaning of cruelty as well as definition of the dowry.

Cruelty"- By explanation (a) and (b) of Section 498A of IPC cruelty has been defined as:

(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 women where such harassment is with a view of 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.

"Dowry"- Dos muliers. Lat" otherwise called maritagium, or marriage goods, that which the wife brings to the husband in marriage. This word should not be founded with dower- Co. Litt 31. Wharton's Law Lexicon.

The definition of "dowry" will also be available in Section 2 of the Dowry (Prohibition) Act, 1961. In common parlance, dowry means where the husband or his relations demand valuable security from the parents and other relations of the wife after the marriage.

20. In *Kans Raj* (supra), the Apex court discussed in detail regarding the offence of dowry death as well as object behind insertion of Section 113(B) of the Indian Evidence Act which has already been extracted in the foregoing paragraph of this judgment. Therefore, it is not necessary on our part to go for detailed discussion on the said aspect.

21. Now let us discuss as to whether the ingredients of cruelty as well as dowry are present in the evidence on record as adduced by the witnesses of the prosecution or not. As the prosecution case is mainly based on evidence of P.W. 2, 3, 4, 5, 7, 8 and 9, it would be proper on our part to extract the salient portion of the evidence of those witnesses.

22. P.W. 2, the informant, father of the deceased Soma in his evidence stated that after the marriage between the accused appellant and the deceased Soma, the relation between them was normal for about a month and thereafter, one day, the deceased Soma came to his house and informed that her husband and her mother-in-law, Priyabala, had asked her to bring Rs. 20,000/- from him. Considering the welfare of his daughter, he arranged and paid Rs. 20,000/- to his daughter and accordingly, his daughter returned to her matrimonial home and paid the said money to her husband, the accused appellant. On 11.10.2007, his daughter, Soma, gave birth of a girl child and after about two months, she again came to his house and informed him that her husband again demanded an amount of Rs. 15,000/- and half of his landed property which should be registered in his name. This witness also deposed that 2/3 days before counting

of votes for the Assembly election in the year 2008, the deceased Soma came to his house and informed that her husband has been pressurizing her for the aforesaid amount of money and the landed property. The accused appellant also came to his house and at that time, in his presence, he exerted pressure on his daughter to get the property and even assaulted her in presence of them as the demand was not fulfilled. It is further deposed that while protecting her daughter, his wife Namita Choudhary (P.W. 5) sustained injury. He further stated that on 29.5.2008, her daughter again came to his house in injured condition and stated that her husband, the accused appellant, had kicked at her lower belly. Knowing that, he had arranged for her treatment and after treatment, he sent her back to her matrimonial home and on 31.5.2008, at about 7 a.m., P.W. 4 Madan Choudhary, a neighbour of the accused appellant came to his house and informed him that his daughter had fallen ill and was shifted to Barpathari PHC. Accordingly, he along with his wife (P.W. 5) and his brother Satya Ranjan Choudhary (P.W. 3) went to Barpathari PHC and not finding his daughter there, they went to the matrimonial home of his daughter where he found his daughter lying dead in the kitchen with burn injury. After about 15 minutes, the police arrived and took the dead body. It is explained that due to his mental condition, delay occurred in lodging the FIR till next date. He further deposed that on 13.11.2008, Sridhan of Soma was seized and was handed over to him. On 21.11.2008, he found a letter from among those articles delivered to him which was written by Soma and accordingly, he reported the matter to SDPO, Belonia, who came to his house and seized the letter. This witness has also deposed that the nick name of his daughter Soma was Buri and accordingly he identified the letter and the signature of her deceased daughter thereupon. In his cross-examination, only contradiction recorded is that he did not state in the complaint that nick name of Soma was Buri though in cross, defence's case as mentioned above was sought to be established but the positive evidence of the informant on the dowry demand and torture of the victim could not be shaken.

23. P.W. 3 Sri Satya Ranjan Choudhary, brother of the informant, in his deposition corroborated the evidence of P.W. 2 regarding marriage of the deceased Soma, his niece with the accused appellant and the fact relating to the demand of Rs. 20,000/- from her and the torture upon her by the accused appellant. This witness also stated that despite of payment of Rs. 20,000/- as demanded, the appellant did not stop torture upon Soma which Soma informed him. It is also stated that Soma last visited her parental house on 29.5.2008 and 31.5.2008, at about 8.30 a.m. and being informed that Soma sustained injury, he along with his brother P.W. 2, his sister in law, P.W. 5 went to the parental house of Soma and found her dead. In cross, the defence first tried to establish the defence case and in that attempt, it is recorded that this witness did not like settlement of marriage of Soma with the accused appellant. It is further recorded that he did not like his behavior for which he requested his brother not to settle the marriage. This witness denied the suggestion made to him, inter alia, that Soma was adamant in nature and his statement to that effect was recorded u/s

161 Cr.P.C. which was marked as Ext. A, but confirmation in this regard has not been taken by P.W. 17, the I.O. Rajib Debnath who recorded the statement of this witness u/s 161 Cr.P.C. Thus, the same does not come to any use of the defence.

24. P.W. 4 Sri Madan Choudhary did not say anything implicating the accused appellant or his mother who was acquitted by the trial Court though he was the eye witness relating to burn of the deceased Soma in the kitchen and being Upapradhan of the locality, he sent information to P.R. Bari police station through a person whose name he did not remember and he personally went to the house of P.W. 2 to inform about the incident.

25. P.W. 5, Smt. Namita Datta Choudhary, mother of Soma, corroborated the statement of P.W. 2 regarding the demand of Rs. 20,000/- from her daughter. She also stated that considering the welfare of their daughter, they have paid Rs. 20,000/- to their daughter Soma who handed over the same to her matrimonial home. Thereafter, the things were normal for some time and after about five months, Soma again came to their house with pregnancy and she was taken to doctor by P.W. 2 and after consultation, they sent her back to her matrimonial home and in due time, Soma gave birth a daughter. After the birth of the daughter, torture upon Soma by her husband, the accused appellant and mother in law was increased which she learned from Soma as she had disclosed the same to her. She also stated that 2/3 days before counting of votes in the Assembly election, deceased Soma and her husband, the accused appellant came to their house and at that time Soma informed them that her husband demanded Rs. 15,000/- and he had also demanded that half of her father's landed property should be registered in his name and in this regard, his mother instigated him. This witness also stated that in her presence, Soma protested about the demand of money, when the accused appellant assaulted Soma and threatened to kill her by burning. She again stated that in her presence, the accused appellant was taking Soma towards Chula (earthen oven) by pulling her hair and seeing this, she went to rescue her daughter when the accused appellant pushed her away and in the process, she sustained injury on her left wrist. On the following morning, she was taken to P.W. 10, Dr. Sanakr Chakraborty who ultimately treated her. In her cross, it is also recorded that this witness informed about the demand of money of Rs. 20,000/- and Rs. 15,000/- assault upon Soma in this regard and about sustaining injury by her to her neighbours. Omission was recorded to the effect that this witness did not state on being examined by the I.O. that the nick name of Soma was Buri and remaining part of evidence in her cross is nothing but denial of suggestion given to her.

26. P.W. 7, Smt. Mamata DasChoudhary, the wife of P.W. 3 deposed in the same line of the evidence adduced by the other witnesses and confirmed relating to the fact regarding payment of Rs. 20,000/- and thereafter, subsequent demand of Rs. 15,000/- as well as the demand for half of the house-hold property. She also corroborated that on the day when Soma came and informed regarding

demand of Rs. 15,000/-, the accused appellant also came to their house and asked Soma in this regard. As Soma refused to make the demand to her father, she was assaulted by the accused appellant in their presence. Seeing such incident, P.W. 5, mother of Soma tried to save her and in the process she sustained injury. In cross, contradiction was recorded to the effect that before the I.O. this witness did not tell that the mother of Soma sustained injuries. Except this, nothing could be shaken by the defence so far chief is concerned.

27. P.W. 8 and 9, the neighbour of P.W. 2 in their statement stated that the accused appellant was demanding money from Soma and that P.W. 2 had paid Rs. 20,000/- to Soma. They also learnt from P.W. 2 that the accused appellant demanded a further amount of Rs. 15,000/- and half of his landed property. These witnesses further deposed that they learnt from P.W. 2 that his wife had sustained injury while trying to save Soma. In cross, the defence failed to shake any part of the evidence of these witnesses.

28. Now being the cause of death of Soma is due to burn injury, it would be proper on our part to discuss about the evidence of Dr. Rajib Sarkar (P.W. 14) who has conducted the autopsy upon the dead body of Soma. This witness stated that on 1.6.2008, he was discharging as M.O. at Niharnagar PHC. He along with one Dr. Arup Datta and Dr. Susanta Saha, as a team conducted post mortem on the dead body of the deceased Soma and it was a burnt dead body having no external injury and according to them, the cause of death was due to burn injury leading to cardiorespiratory failure and this witness also proved the post mortem report. In post mortem report, it is stated that whole body area is burnt with slight kerosene smell and skin peeled off in many parts which indicates high degree burn and also absence of blisters which might have rapture during transportation. In the post mortem report, it is also stated that the cause of death is burn which is anti mortem in nature leading to cardiorespiratory failure.

29. We have gone through the Charanjit Kaur (supra) and United India Insurance Co. Ltd. (supra), as referred by Mr. Dasgupta. The case of Charanjit Kaur (supra) is relating to the death of her husband, an army officer, while in service in mysterious circumstances. In that case, no proper investigation has been made to find out the cause of death of her husband and the Court considering the entire facts and circumstances of that case held that the petitioner of that case is entitled to a compensation amounting to Rs. 6 lakhs as well as Special Family Pension and Children Allowance as per relevant Rules and the case of United India Insurance Co. Ltd. (supra) is relating to a claim petition filed by the respondent Rajendra Singh and son for awarding compensation relating to vehicular accident which was happened on 9.11.1993 and ultimately, the matter went to the Apex Court as in an appeal preferred by the Insurance Company and the Insurance company impugned the order as the High Court has said that it has no power even to consider the contention that awards secured are the by-products of stark fraud played on a Tribunal and the Apex Court while dealing

with the matter noted that it is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

30. The Apex Court also noted that it has no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convicted that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

31. In the instant case, we are unable to except the submission of Mr. Dasgupta that the informant committed any fraud either at the time of filing of FIR or relating to 3rd page of complaint wherein it is narrated that on Thursday last (29.5.2008) when his daughter went to her husband's house from the house of the informant for the last time, she had told him that the accused appellant would kill her if he did not give portion of land in his name in writing. Even if we disbelieve the said portion of the FIR, then also according to us, a cognizable offence is made out from the first part of the FIR. An FIR is not the substantive evidence, rather the FIR helps the investigating agency for launching a case and investigating the same and thus the aforesaid case laws as referred by Mr. Dasgupta is in no way help the appellant. We are of the further opinion that when a daughter succumbed due to burn injury, at that stage, a father would be normally shocked and mentally broken down and for such a reason, there may be some delay in filing FIR and such delay itself would not prejudice the accused subject to other evidences adduced by the prosecution are trustworthy. In the instant case, even if we consider that the demand of Rs. 20,000/- at the first time would not come within the purview of dowry as the said demand was made only to repay the loan amount not as a condition of marriage. But subsequent demand and soon before her death, torture to deceased Soma obviously come within the purview of cruelty as well as dowry.

32. On scrutiny of the evidence, we find that the prosecution has proved beyond reasonable doubt that the deceased Soma died due to burn injury in her matrimonial home within seven years from the date of her marriage and not only that, she came several times in her parental house and disclosed regarding the demand of the accused appellant and initially an amount of Rs. 20,000/- was paid to her by P.W. 2 which was handed over by her to the accused appellant and not only that even she was tortured in her parental house in presence of P.W. 2, P.W. 3, P.W. 5 and P.W. 7 and in presence of those witnesses, the accused

appellant also asked deceased Soma to take Rs. 15,000/- and half of the landed property which she refused and as a result, she was subjected to cruelty.

33. Now question is this as to whether her (Soma) statement immediate before her death to P.W. 2, P.W. 3, P.W. 5 and P.W. 7 is relating to her cause of death and can be admissible u/s 32(1) of the Indian Evidence Act. In Clause (1) of Section 32 of the Indian Evidence Act provides that the statements made by a person as to the cause of his death or as to any of the circumstances which resulted in his death, in cases in which the cause of that person's death comes into question, are themselves relevant facts. In the present case, the cause of death of the deceased was a question to be decided and the statements made by the deceased Soma before P.W. 2, P.W. 5 and P.W. 7 that the accused appellant used to torture her in connection with the demand of Rs. 15,000/- and half of the landed property just soon before her death are the statements within the meaning of Section 32(1) of the Indian Evidence Act.

34. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, the Apex Court held that Section 32 of the Indian Evidence Act is an exception to the rule of hearsay evidence and makes admissible statement of a person who dies, provided the statement related to the cause of death or exhibits circumstances leading to the death. In the said case, their lordship also held that where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statements would clearly fall within the four corners of Section 32 and, therefore, admissible and the distance of time alone in such cases would not make the statements irrelevant.

35. In *Rattan Singh Vs. State of Himachal Pradesh*, the Apex Court has noted that even if the deceased made a statement which is nowhere near expectation of death, then also her statement would become admissible u/s 32(1) of the Indian Evidence Act though not as a dying declaration as such subject to such statement satisfies one of the two conditions set forth in the Sub-section (1) of Section 32. Thus, according to us, the submission of Mr. Dasgupta that the statement of deceased Soma before P.W. 2, P.W. 3, P.W. 5 and P.W. 7 are some hearsay evidence and are also not admissible, not only misconceived, but also unacceptable. In the instant case, the deceased Soma has faced torture on completion of one month and for some time that was stopped, but ultimately after the birth of her girl child, again torture upon her was started and as a result of such torture, she succumb to death.

36. It is also admitted as stated supra that the deceased was succumb to death due to burn injury in her matrimonial home and soon before her death, she made statement to her parents as well as near relation wherein she specifically mentioned that if the demand of the accused appellant is not satisfied, then she will be killed by way of burning.

37. In *Kans Raj (supra)*, the Apex Court while dealing with Section 32(1) of the

Evidence Act noted as under:

12. The death referred to in Section 32(1) of the Evidence Act includes suicidal besides homicidal death. Fazal Ali, J. in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, after referring to the decisions of this Court in *Hanumant Vs. The State of Madhya Pradesh*, *Dharambir Singh v. State of Punjab* (Criminal Appeal No. 98 of 1958, decided on November 4, 1958), *Ratan Gond Vs. The State of Bihar*, AIR 1939 47 (Privy Council) *Shiv Kumar v. State of Uttar Pradesh* [Criminal Appeal No. 55 of 1966, decided on July 29, 1966], *Manohar Lal and Others Vs. The State of Punjab*, and other cases held:

12. We fully agree with the above observations made by the learned Judges. In *Protima Dutta and Another Vs. The State*, while relying on *Hanumant Vs. The State of Madhya Pradesh*, the Calcutta High Court has clearly pointed out the nature and limits of the doctrine of proximity and has observed that in some cases where there is a sustained cruelty, the proximity may extend even to a period of three years. In this connection, the high Court observed thus:

The "transaction" in this case is systematic ill-treatment for years since the marriage of Sumana with incitement to end her life. Circumstances of the transaction include evidence of cruelty which produces a state of mind favourable to suicide. Although that would not by itself be sufficient unless there was evidence of incitement to end her life it would be relevant as evidence.

* * * * *

This observation taken as a whole would, in my view, imply that the time factor is not always a criterion in determining whether the piece of evidence is properly included within "circumstances of transaction"... "In that case the allegation was that there was sustained cruelty extending over a period of three years interspersed with exhortation to the victim to end her life". His Lordship further observed and held that the evidence of cruelty was one continuous chain, several links of which were touched up by the exhortations to die. "Thus evidence of cruelty, ill-treatment and exhortation to end her life adduced in the case must be held admissible, together with the statement of Nilima (who committed suicide) in that regard which related to circumstances terminating in suicide".

13. Similarly, in *Onkar Vs. State of Madhya Pradesh*, while following the decision of the Privy Council in AIR 1939 47 (Privy Council) the Madhya Pradesh High Court has explained the nature of the circumstances contemplated by Section 32 of the Evidence Act thus:

The circumstances must have some proximate relation to the actual occurrence and they can only include the acts done when and where the death was caused.... Thus a statement merely suggesting motive for a crime cannot be admitted in evidence unless it is so intimately connected with the transaction itself as to be a circumstance of the transaction. In the instant case evidence has been led about statements made by the deceased long before this incident which

may suggest motive for the crime.

14. In *Allijan Munshi Vs. State*, the Bombay High Court has taken a similar view.

15. In *Chinnavalayan v. State of Madras*, (1959) 1 Mad. L.J. 246) two eminent Judges of the Madras High Court while dealing with the connotation of the word "circumstances" observed thus:

The special circumstances permitted to transgress the time factor is, for example, a case of prolonged poisoning, while the special circumstances permitted to transgress the distance factor is, for example, a case of decoying with intent to murder. This is because the natural meaning of the words, according to their Lordships, do not convey any of the limitations such as (1) that the statement must be made after the transaction has taken place, (2) that the person making it must be at any rate near death, (3) that the circumstances can only include acts done when and where the death was caused. But the circumstances must be circumstances of the transaction and they must have some proximate relation to the actual occurrence.

* * * * *

18. Before closing this chapter we might state that the Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English Law where only the statements which directly relate to the cause of death are admissible. The second part of clause (1) of Section 32, viz., "the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question" is not to be found in the English Law. This distinction has been clearly pointed out in the case of *Rajindra Kumar Vs. The State*, where the following observations were made:

Clause (1) of Section 32 of the Indian 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 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... It is well settled by now that there is difference between the Indian Rule 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 a dying declaration that the deceased at the time of making it should have been under the expectation of death.

* * *

21. Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:

(1) Section 32 is an exception of the rule of hearsay and makes admissible the

statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible u/s 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant.

13. In *Rattan Singh Vs. State of Himachal Pradesh*, this Court held that the expression "circumstances of transaction which resulted in his death" mean that there need not necessarily be a direct nexus between the circumstances and death. Even distant circumstance can become admissible if it has nexus with the transaction which resulted in death. Relying upon *Sharad Birdhichand Sarda's* case (supra) the Court held that:

15. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death.

14. In view of this legal position statements of Ms. Sunita made to her parents, brother and other acquaintances, before her death are admissible in evidence u/s 32 of the Evidence Act.

38. Thus, we are of the considered opinion that such statement can be considered u/s 32(1) of the Indian Evidence Act. More so, it also appears from the evidence of P.W. 1, the Headmaster of South Bharat Chandra Nagar H.S. School that the accused appellant was on unauthorised leave from 31.5.2008 to 4.8.2008 and admittedly, he was on absconsion till he surrendered before the Court.

39. Absconsion of an accused itself may not be a ground for holding that the accused appellant is guilty of the offence for which charges levelled against him. The Court is to see the circumstances behind absconsion. In the instant case, though the accused appellant was asked while examining him u/s 313 Cr.P.C. that as to whether he had to say anything about the case, he only stated that he was innocent, but did not give any explanation how Soma sustained burn injury in her matrimonial home and whether he was then inside the house or not. Had he not been in the house at the time of causing burn injury, he could have come with a specific defence, but in the instant case, the appellant without giving any explanation maintained his silence.

40. In Bipin Kumar Mondal Vs. State of West Bengal, the Apex Court taking note of its earlier decision in Matru alias Girish Chandra Vs. The State of Uttar Pradesh, as well as State of Madhya Pradesh and Others Vs. Paltan Mallah and Others etc., noted as under:

Abscondance by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural.

Thus, in view of the above, we do not find any force in the submission made by Shri Bhattacharjee that mere absconding by the appellant after commission of the crime and remaining untraceable for such a long time itself can establish his guilt. Absconding by itself is not conclusive either of guilt or of guilty conscience.

41. We are of the view that the Apex Court though said that the absconsion by itself not conclusive proof of guilt, but did not wipe out the views that the abscondance itself lend weight to other evidence and help the prosecution in establishing the guilt of the accused-abscondance is hardly any evidence of guilt. Once abscondance is established, the onus of proving that the accused did not

abscond lies on him. (See State of Tripura and Another Vs. Ashok Debbarma @ Achak Debbarma and Another,

42. In the instant case, admittedly, the appellant neither informed the police regarding the burn injury of his wife in his own house, particularly in the kitchen, nor informed the P.W. 2 and P.W. 5, the parents of the deceased Soma and he was also shown as absconder in the charge-sheet. Thus, it is he who has to explain where he was just after the incident of burn injury of his wife. There is also no doubt that the accused has right to be silent in a trial unless he wanted to take any particular defence, but if any circumstance goes against him, then for such circumstance, a presumption can be drawn against the accused. In the instant case, his earlier conduct regarding commission of cruelty and his subsequent conduct if taken together, then presumption of his involvement in the offence cannot be ruled out.

43. In such a situation, the Court has to take some inference by way of presumption as to why the appellant did not come with an explanation regarding the incident happened in his own dwelling house. There is no doubt that the pristine rule relating to burden of proof is always with the prosecution to prove the guilt of the accused, but the doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. In a case, when the prosecution succeeded in establishing the afore-narrated circumstances, the Court is to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

44. Vivian Bose, J., in Shambu Nath Mehra Vs. The State of Ajmer, while dealing with Section 106 of the Evidence Act noted inter alia;

This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.

45. As the learned trial Court has discussed about Section 113(B) of the Evidence Act and its consequence, it is not necessary on our part to reiterate the same as we have already extracted the findings of the learned trial Court in the foregoing paragraphs of this judgment.

46. In the instant case, when the burn of the deceased Soma was in the kitchen of her matrimonial home, i.e., in the house of accused appellant and such a fact is obviously within his knowledge, the burden of proving of that fact is cast upon him. Further, demand of money soon before the death of the deceased Soma and torture upon her thereto constitute the cruelty and the absconsion of the accused

appellant subsequent to the incident if taken together, then only logical conclusion is that it is the accused appellant who has caused the death of the deceased Soma. Thus, according to us, the prosecution has fully proved its case against the accused appellant.

47. We have gone through the impugned judgment of the trial Court. According to us, the learned trial Court did not commit any wrong while convicting the accused appellant under Sections 498A and 304-B IPC. However, according to us, it would be proper to modify the sentence passed by the learned trial Court as no direct evidence is available against the accused appellant except the presumption. Accordingly, the order of sentence to suffer R.I. for three years and to pay a fine of Rs. 3000/- in default, to suffer R.I. for another period of three months for commission of offence u/s 498-A IPC is maintained and the sentence to suffer imprisonment for life for commission of offence u/s 304-B IPC is reduced to R.I. for 10 years. Both the sentence will run concurrently. In the result, the appeal is partly allowed. Send down the L.C. records.