SUPREME COURT OF INDIA

ARVIND SINGH

Vs.

STATE OF BIHAR

26/04/2001

(Umesh C. Banerjee & K.G. Balakrishnan)

Appeal (crl.) 887 of 1998

JUDGMENT

BANERJEE,J

The appeal in question tell the tale of a young girl dying out of burn injuries. Whereas the learned Sessions Judge convicted each of the accused being the husband, the father-in-law, the mother-in-law and the brother-in-law under Section 304 B of the Indian Penal Code and 498A/34 together with 120B of the Indian Penal Code and sentenced each of them to undergo imprisonment for life under 304B IPC and a further sentence of 3 years to each of the accused for an offence under 498A IPC and in view of the sentences passed, no need was felt to pass any sentence under Section 120 B IPC. The appeal taken to the High Court stands allowed so far as the appellant Nos.1,2 and 4 are concerned upon taking into consideration of the facts under Section 304 B read with Section 34 of the Indian Penal Code as also under Section 120B of the Code though, however, the conviction under Section 498A read with Section 34 of the Code was confirmed. Arvind Singh, the husband was however, found guilty for murder of the wife Minta Devi and his conviction under 304 B was converted to Section 302 IPC and was sentenced to undergo imprisonment for life besides maintaining the conviction under Section 498A IPC. It is this conviction and sentence which stands challenged in this appeal.

Before adverting to the contentions as raised by the appellant the case of the prosecution can be briefly stated to be as below: On the basis of the fardbeyan of the informant Phulamati the mother of the deceased, that the appellant alongwith other members of the family on the night of 6/7 March, 1991 had set her daughter on fire and on having such information the informant alongwith PWs 3,4 and 7 reached the Muhalla and found that the daughter was lying injured due to burn injuries. The First Information Report recorded that the daughter of the informant disclosed that her husband, father-in-law, mother-in-law and other family members forcibly poured kerosene oil on her body and lighted, on account of which her entire body was burnt. The FIR discloses that all the persuasions for removal to a hospital by reason of the severe burn injuries were negatived by the in-laws and having failed to persuade the in-laws, the parents family themselves wanted to take her back to the hospital but the attempt was not successful since the deceased succumbed to her injuries.

Incidentally, it may be noted that two specific cases have been made out in the FIR, firstly, the girl was ugly looking (though some of the witnesses have stated that she has been a really good looking girl) and secondly this is a case of bride torture and demand of dowry to the extent of Rs.10,000 and

a gold ring and since demands could not be fulfilled the accused persons conspired together and committed the offence which has resulted in the death of the girl.

The factual disputes there are not many since the factum of the death and the cause of death being burn injuries are admitted. As regards the dowry death a specific submission was made before the High Court to the effect as below:-

Mr. Verma, learned counsel appearing for the appellants firstly contended that from a bare reference to the FIR it would appear that the Investigating Officer by making interpolation has added the allegation with regard to demand of dowry. Because the main reason for such an occurrence was that Minta Devi was an ugly lady and, therefore, accused persons used to torture her and ultimately committed her murder. The allegation with regard to demand of dowry etc. was virtually inserted in different hand writing at the end of the fact from which interpolation is apparent. Learned counsel appearing for the State contended that true it is that the allegation with regard to demand of dowry was inserted subsequently, but it cannot be alleged that such an allegation was made after interpolation.

The High Court also in no uncertain terms recorded that the statement of Mr. Verma stands justified by reason of interpolation on the First Information Report. The High Court also came to the conclusion that there is no evidence whatsoever that prior to the date of occurrence, there was any demand for dowry by the accused persons and it is on the basis of the aforesaid the High Court set aside the conviction and sentence of Janardan Singh, Lilawati Devi and Navin Kumar Singh under Section 304 B read with 34 of the Indian Penal Code as also under 120B of the Indian Penal Code. The conviction of 498A however, read with Section 34 was confirmed and the bail bonds granted in favour of the three accused noticed above were directed to be cancelled and they were ordered to be taken into custody forthwith for serving out the remaining sentences. As regards Arvind Singh the husband, the High Court came to the conclusion that his conviction ought to be converted from Section 304B to 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life besides the conviction and sentence of 3 years under Section 498A of the IPC. In the result the criminal appeal was partly allowed so far as the appellant Nos. 1,2 and 4 were concerned but appellant No.3 being the husband (Arvind Singh) subject to the modification of conviction was dismissed and hence the appeal before this Court by the grant of special leave.

Burn injuries are normally classified into three degrees. The first being reddening and blistering of the skin only; second being charring and destruction of the full thickness of the skin; third being charring of the tissues beneath the skin, e.g. fat, muscle and bone.

Be it noted here that if the burn is of a distinctive shape a corresponding hot object may be identified being applied to the skin and thus abrasions will have distinctive patterns but in the event burn injury is a cause of death 60% cases of septicaemia and 34% cases are of bronchopneumonia. Where infection was by Pseudomonas pyocyanea, spread to unburnt skin with ulceration may occur, and internal infection by this organism is especially liable to damage the walls of blood vessels. Gram-negative shock may also occur. The external examination in the normal cases are found in the body being removed from a burnt building and in the event of so removal the cause of death would be inhalation of fumes rather than septicaemia as noticed above. In the event the body is not removed from the room and the same remains in situ an examination of the scene must be attempted, as with any other scene of suspicious death, note being taken as regards the position of the body, clothes remaining if any and identifiable objects in the room and so on. The examination of the burns is also directed to ascertain their position and depth, as to whether they were sustained

in life or not, and whether their situation gives any indication of the path taken by the flames or the position of the body when the fire started if the body is very severely burnt then all the skin surface may be destroyed, even sometimes make it rather difficult for identification of the body. A body that is badly burnt assume the appearance known as pulgilistic attitude and this is due to heat stiffening and contraction of the muscles, causing the arms to become flexed at the elbows and the hands clenched, the head slightly extended and the knees bent. The appearance resembles the position adopted by a person engaged in a fight and has led on occasion to suspicion that death has occurred during some violent crime. In fact, of course, the body will assume this position when the fire started. The other aspect of the burn injury is the heat ruptures may be produced. These are splits of the skin, caused by contraction of the heated and coagulated tissues, and the resultant breaches look like lacerated wounds. They are usually only a few inches, but may be upto 1 or 2 ft in length. Normally they lead to no difficulty in interpretation, since they only occur in areas of severe burning, and normally over fleshy areas of the body, like calves and thighs, where lacerations are uncommon. However, when they occur in the scalp they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt, by their appearance, position in areas of maximum burning and on fleshy areas, and by the associated findings on internal examination. (See in this context Taylors Medical Jurisprudence)

Although shock due to extensive burns is the usual cause of death, delayed death may be due to inflammation of the respiratory tract caused by the inhalation of smoke. Severe damage, at least to the extent of blistering of the tongue and upper respiratory tract, can follow the inhalation of smoke.

Prosecutions definite case in the matter under reference is kerosene was poured in all round and thereafter with lighted match stick the girl was burnt to death alive. The FIR depicts the case of torture in order to attract Section 498A together with ingredients of charge under Section 304B which stands disbelieved by the High Court and we in the contextual facts accept the observations of the High Court pertaining thereto having regard to the fact that the High Court itself has looked into the original FIR and found it to be so interpolated as contended and it is on this score that the High Court acquitted the accused persons under Section 304B: No exception thus can be taken to the order of acquittal of the charge above and we also record our concurrence therewith.

The High Court however, has not delved into the issue of non-examination of Investigating Officer. We are at a loss to find such an omission on the part of the High Court on such a vital issue.

Mr. Verma, the learned senior counsel appearing in support of the appeal contended that conversion of charge under Section 304B to 302, cannot by stretch be maintained. It has been contended that the Court having recorded a finding that the demand for dowry was interpolated and inserted in the FIR, virtually in a different handwriting, which was done subsequently it is submitted that, it is unsafe to rely on the informant PW5 and the Prosecution case is fit to be rejected outright, more so, when the Investigating Officer has been kept out of court. Mr. Verma contended that since the prosecution failed to prove the charges against any of the accused and that the conviction and sentence under the aforesaid charges including that of the appellant having been set aside, the conviction of the appellant under Section 302 IPC is bad in law and untenable. The charge under Section 302 IPC is a major charge and it entails more severe and greater sentence, being death or imprisonment for life and fine, whereas in a charge under Section 304B, there is imprisonment for 7 years which may extend upto life imprisonment and in that case the court having set aside the conviction under Section 304B read with 34 and 120B IPC, it is neither open nor permissible to punish the accused under Section 302 IPC which in all material particular amounts to enhancement of sentence and inflicting greater punishment unless the petitioner is given an opportunity to show

cause without which the court shall not inflict greater punishment [refer to Section385 Cr.P.C.]. Mr. Verma contended here again when a distinct offence under Section 302 IPC is made out, charge should have been framed and read out to the accused appellant [refer Section 216 Cr.P.C.] to avoid prejudice and in that case the circumstances brought in evidence should be put to accused in his examination under Section 313 of the Cr.P.C. which has not been done causing serious prejudice in defence. In any event Mr. Verma contended that the evidence on record does not justify such a conversion of charge There is therefore neither any legal nor even any evidentiary support to such a conversion. The High Court in introducing Section 302 in place of Section 304B, it has been submitted not only committed a grave error of law but proceeded totally against even the entire tenor of the evidence on record. Criminal jurisprudence does not warrant such a conversion on facts of the matter under consideration.

Turning attention on to the dying declaration be it noticed at this juncture that the deceased was supposed to have spoken to the mother that there was a conjoint effort of all the accused to pour kerosene on all her body and lit the fire The burn injury resulting therefrom has caused her life to death. Prosecution thus treated the same as a dying declaration.

Though the earlier view of this Court in Ramnaths case [Ram Nath Madhoprasad & Ors. v. State of Madhya Pradesh: AIR 1953 SC 420] stands overruled by a five-Judges judgment in the case of Tarachand Damu Sutar v. State of Maharashtra [AIR 1962 SC 130] but there is no denial of the fact that dying declaration ought to be treated with care and caution since the maker of the statement cannot be subjected to any cross-examination. The same is the view taken in a case reported in AIR 1976 SC 2199 [Munnu Raja and Another v. State of Madhya Pradesh] wherein this Court stated:

It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subjected to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. Thus Court must not look out for corroboration unless it comes to the conclusion that the dying declaration suffered from any infirmity by reason of which it was necessary to look out for corroboration.

In the same year this Court in the case of K. Ramachandra Reddy & Anr. V. The Public Prosecutor [AIR 1976 SC 1994] observed:

The dying declaration is undoubtedly admissible under Section 32 and not being a statement on oath so that its truth could be tested by cross- examination, the Courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring prompting or a product of his imagination. The Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration.

A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of question and answer and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral

testimony which may suffer from all the infirmities of human memory and human character. In order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties AIR 1958 SC 22: Rel. on.

Be it noted that the dying declaration herein has not been effected before any Doctor or any independent witness but to the mother who is said to have arrived at the place only in the morning the mother admittedly is an interested witness: though that by itself would not discredit the evidence tendered in Court but the fact remains the Doctors evidence considering the nature of the burn posed a considerable doubt as to whether such a statement could be made half an hour before the death of the accused. It is not that the statement of the unfortunate girl was otherwise not clear or there was existing some doubt as to the exact words on the contrary the definite evidence tendered is that there is clear unequivocal statement from the daughter of the family that the conjoint efforts of putting kerosene thereafter with lighted match stick has resulted the burn injury. The severity of the burn injury and its impact on the body speaks volume by reason of the death of the deceased. It is the reliance on such a dying declaration by the High Court shall thus have to be scrutinised with certain degree of caution.

Dying declaration in the instant matter thus we must confess raised certain amount of eyebrows and Mr. Verma also with his usual eloquence did put a strong protest in regard thereto. The evidence of this declaration depicts that just before a few minutes of her death, the deceased would make a declaration quietly to the mother naming therein all the three relations along with the husband who poured kerosene to burn her alive. This is not acceptable, more so having regard to the declaration being made to the mother only. In any event, is it conceivable that the husband along with the father-in-law, mother-in-law, brother-in-law would start pouring kerosene together on to the girl as if each was prepared with a can of kerosene to pour simultaneously This not only would lead to an absurdity but reliance on such a vague statement would be opposed to the basic tenets of law. Further it is in evidence that the deceased had an extensive burn including her mouth, nose and lips if any credence is to be allowed to the same, then and in that event, the evidence of the mother about the confession stands belied by itself. Significantly, the doctors evidence as is available on record would also go a long way in the unacceptability of the evidence of the mother as regards confession. In no uncertain terms the doctor, P.W.8 stated that the death may take place at once and within ten seconds by reason of the extensive nature of the burn and the deceased cannot have survived beyond 10 minutes. Another redeeming feature that the declaration of the deceased was made only to the mother but before the arrival of the mother, the incident was made known to the Police authorities and, in fact, the Police was present when the mother and the brother arrived. It is highly unlikely that the Police will not make any attempt to have a statement by the deceased but if it was otherwise possible immediately on its arrival rather than wait for the mother to arrive. Two recent decisions of this Court may be of some assistance the first in point of time is the decision of a three judge Bench of this Court in the case of Paparambaka Rosamma and Others v. State of A.P. (1999 (7) SCC 695) wherein this Court in no uncertain terms observed that there ought not to be any hesitancy in the mind of the Court in regard to the truthfulness and voluntary nature of disclosure of the incident. In Rosammas case one Dr. K. Vishnupriya Devi has stated in the Court that the injured was conscious but she has not deposed that the injured was in a fit state of mind to make a statement. It did come on record that the girl has sustained 90% burn injuries and it is in that perspective, this Court held

that in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration the medical certification, therefore, was felt to be a primary element in the matter of dying declaration unfortunately we do not have any certification of whatsoever nature, it is only the uncorroborated testimony of the mother to whom the deceased was supposed to have made the declaration as noticed above. In paragraph 9 of the Report in Rosammas case (supra) however, this Court had the following to state:

9. It is true that the medical officer Dr. K.Vishnupriya Devi (PW 10) at the end of the dying declaration had certified patient is conscious while recording the statement. It has come on record that the injured Smt. Venkata Ramana had sustained extensive burn injuries on her person. Dr. P. Koteswara Rao (PW 9) who performed the post-mortem stated that the injured had sustained 90% burn injuries. In this case as stated earlier, the prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration as being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K. Vishnupriya Devi (PW 10) did not comply with the requirement in as much as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that patient is conscious while recording the statement. In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and as made when the injured was in a fit state of mind. From the judgments of the courts below, it appears that this aspect was not kept in mind and resultantly they erred in accepting the said dying declaration (Ex.P-14) as true, genuine and as made when the injured was in a fit state of mind. In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below.

In the similar vein, another three judge Bench of this Court in Koli Chunilal Savji and another v. State of Gujarat (1999 (9) SCC 562) observed that in the absence of the Doctor while recording a dying declaration, the same loses its value and cannot be accepted. In paragraphs 6 and 7 of the Report, this Court observed:

6. In view of the rival submissions made at the Bar, two questions really arise for our consideration:

(1) Whether the two dying declarations can be held to be true and voluntary and can be relied upon or can be excluded from consideration for the infirmities pointed out by Mr. Keswani, appearing for the appellants.

(2) Whether the High Court exceeded its jurisdiction in interfering with the order of acquittal, recorded by the learned Sessions Judge.

7. Coming to the first question, the answer to the same would depend upon the correctness of the submission of Mr. Keswani, that in the absence of the doctor while recording the dying declaration, the said declaration loses its value and cannot be accepted. Mr. Keswani in this connection relies upon the decision of this Court in the case of Maniram v. State of M.P. (1994 Supp (2) SCC 539). In the aforesaid case, no doubt this Court has held that when the declarant was in the hospital itself, it was the duty of the person who recorded the dying declaration to do so in the presence of the doctor and after being duly certified by the doctor that the declarant was conscious and in his senses and

was in a fit condition to make the declaration. In the said case the Court also thought it unsafe to rely upon the dying declaration on account of the aforesaid infirmity and interfered with the judgment of the High Court. But the aforesaid requirements are a mere rule of prudence and the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It is no doubt true that before recording the declaration, the officer concerned must find that the declarant was in a fit condition to make the statement in question. In Ravi Chander v. State of Punjab (1998 (9) SCC 303) this Court has held that for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Court further observed that that the Executive Magistrate is a disinterested witness and is a responsible officer and there is no circumstance or material on record to suspect that the Executive Magistrate had any animus against the accused or was in any way interested in fabricating the dying declaration and, therefore, the question of genuineness of the dying declaration recorded by the Executive Magistrate to be doubted does not arise. In the case of Harjit Kaur v. State of Punjab (1999 (6) SCC 545) this Court has examined the same question and held:

(SCC p.547, para 5)

As regards the condition of Parminder Kaur, the witness has stated that he had first ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect. Merely because that endorsement was made not on the dying declaration itself but on the application, that would not render the dying declartion suspicious in any manner.

Dying declarations shall have to be dealt with care and caution and corroboration thereof though not essential as such, but is otherwise expedient to have the same in order to strengthen the evidentiary value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of such a statement as trustworthy evidence. In our view question of the dying declaration to the mother is not worth acceptance and the High Court thus clearly fell into an error in such an acceptance. Significantly, the High Court has set aside the conviction and sentence under Section 304 B read with Section 34 and 120 B of the Indian Penal Code so far as the father-in-law, the mother-in-law and the brother-in-law are concerned though maintained the conviction under 498A. So far as the husband is concerned the High Court converted the charge from 304 B to 302 on the ground that the only motive of the murder could be attributed to the husband who must be interested in committing such offence so that he can perform another marriage This is rather a far-fetched assumption without any cogent evidence available on record. Needless to record here that excepting one of the very keenly interested witness, the episode of the applicant being married again does not come from any other witness and the factum of marriage also though stated but devoid of any particulars even as regards the name, the date of marriage etc. It is on record that on arrival of the mother and the brother of the deceased, they found an assembly of large number of mahalla people but none of them were called to even have a corroboration to this part of the evidence of the accused marrying after the death of the deceased: No independent witness was thought of, though the factum of marriage could have been corroborated by an outside agency. The FIR and the other oral evidence available if read together and full credence is attributed to the same but that itself does not and cannot permit the High Court to come to such an assumption. The assumption is faulty and is wholly devoid of any substance. As a matter of fact no special role was even ascribed to the appellant herein for apart leading any evidence thereon. Presumptions and assumptions are not available in criminal jurisprudence and on the wake of the aforesaid we are unable to lend concurrence to the assumptions of the High Court as recorded herein before in this judgment. Significantly, even the dying declaration whatever it is worth, has implicated all the four accused in the manner similar. There is no additional piece of evidence implicating the husband

which would permit the High Court to convert the charge of 304 B to 302 True punishment of life imprisonment is available under 304 B but that is the maximum available under the Section and for Section 302 the same is the minimum available under the Section. Though discretion to a further award minimum cannot be taken away from the Court. Section 302 is a much more heinous offence and unfortunately there is no evidence of such heinous activities attributable to the husband. The factum of the husband, if interested in committing such offence so that he can perform another marriage has not been put to the witnesses and in the absence of which, assumption to that effect, cannot be said to be an acceptable assumption since without any evidentiary support. The assumption by itself in our view is untenable.

Mr. H.L. Agrawal, learned senior Advocate , however, emphatically contended that considering the hour of the day and the factum of the wife being burnt and no other explanation coming forth, question of the husband escaping the liability of murder does not and cannot arise. We are however unable to lend our concurrence to the aforesaid. While it is true that husband being the companion in the bedroom ought to be able to explain as to the circumstances but there exist an obligation on the part of the prosecution to prove the guilt of the accused beyond all reasonable doubt. Criminal jurisprudential system of the country has been to that effect and there is neither any departure nor any escape therefrom.

ThThe defence story of early morning/burst by reason of warming up of milk from the kitchen has not been accepted as true and plausible explanation for the injury by either of the courts but does that mean and imply that necessarily therefore the husband was guilty of murder The answer cannot be in the affirmative. As the experience goes this unfortunate trend has turned out to be a growing menace in the society and does not warrant any sympathy whatsoever but that does not however mean non adherence to even the basics of the law. When the parents arrived the girl was lying on the bed and without there being any evidence as the state of the linen, the cot and the surroundings. Is this an omission without having any impact on the entire prosecution case?

Let us, however, scrutinise the evidence in little more greater detail: the mother was informed about the daughters burn injury at night the parents arrived in the morning finds the daughter in the bed room with excessive burn injuries without however any mention of the impact on the surroundings the deceased supposed to have made a statement to the mother that the in-laws and the husband on a conjoint move poured kerosene on to her and threw a lighted match stick so as to cause burn injuries last of the evidence is that the deceased immediately after such communication passed away without any medical assistance would this evidence be sufficient to prove the charges even under Section 304B and 498A for apart the conversion thereof to 302 by the High Court? We are afraid the evidence is not sufficient enough to reach an irresistible conclusion of the involvement of the husband as the murderer or even being charged with an offence under Section 304B IPC.

We do feel it expedient to record that the conviction and sentence as imposed against the husband-appellant cannot be sustained. The sentence of imprisonment for life thus under Section 302 stands set aside. There is no evidence, convincing, so as to even render the accused appellant suffer such a conviction. There is no challenge by the State as against the order of acquittal of other three accused persons under Section 304B as such we are not inclined to delve into the matter as regards the involvement of the other three persons but the appellants explanation of stove- burst being the cause of the event cannot be brushed aside. It is undoubtedly a social and heinous crime to have the wife burnt to death but without any proper and reliable evidence, the law court can not by itself also justify its conclusion in the matter of involvement of the husband: Direct evidence may not be available but circumstantial evidence with reasonable probity and without a snap in the chain of

events would certainly tantamount to a definite evidence about the involvement but not otherwise. What is the evidence available in the matter To put it shortly, there is none! The factum of burn injury cannot be doubted and the subsequent unfortunate death but that is about all. Why was the Investigating officer not examined No answers are forthcoming even at this stage but why not? Is it a lacuna? We need not dilate thereon but the fact remains there is not a whisper in regard thereto! Coming back to Section 498A the requirement of the statute is acts of cruelty by the husband of a woman or any relative of the husband. The word cruelty in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent thus is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing. The same would be within the meaning of the Section. In the instant case there is no evidence whatsoever. It is on this score Mr. Verma contended that there is no sufficient evidence for even the dowry demand far less the evidence of cruelty available on record. No outside person has been called to give evidence and even the witnesses being in the category of interested witnesses also restricted their version to sufferings of burn injury and the purported dying declarations to the matter as noticed herein before apart therefrom nothing more is available on record to attribute any act or acts on the part of the husband or on the part of husbands relatives is that evidence sufficient to bring home the charge under Section 498A? The answer obviously cannot be in the affirmative having regard to the non-availability of any evidence in the matter. Significantly however, upon recording of the fact of no dowry demand prior to the date of occurrence the High Court thought it fit to record that charge under Section 498A stands proved and as such passed the sentence. We are however unable to record our concurrence therewith - torture is a question of fact there must be proper effort to prove that aspect of the matter, but unfortunately not even an attempt has been made nor any evidence tendered to suggest the same excepting the bold interpolated allegations which stand disbelieved and ignored by the High Court, and in our view rightly.

On the wake of the aforesaid, charge under Section 498A also cannot be sustained! Both the learned Trial Judge and the High Court are clearly wrong in not considering this aspect of the matter and thus fell into a serious and clear error. In that view of the matter the conviction and sentence stand set aside. The appeal stands allowed accordingly. The appellant is acquitted. The appellant be set at liberty forthwith unless required in any other case.