

(2009) 03 P&H CK 0303

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 353-SB of 1998

Tarsem Lal and Others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: March 4, 2009**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 306, 498A

Citation: (2009) 29 CriminalCC 205 : (2009) 2 RCR(Criminal) 823**Hon'ble Judges:** Harbans Lal, J**Bench:** Single Bench**Advocate:** H.S. Gill, with Mr. Vivek Goel, for the Appellant; T.S. Salana, DAG Punjab, for the Respondent**Final Decision:** Allowed

Judgement

Harbans Lal, J.

This appeal is directed against the judgment order of sentence dated 07.03.1998 passed by the Court of learned Additional Sessions Judge, Jalandhar whereby he convicted and sentenced the accused Tarsem Lal, Hira, Mohan Lal, Shakuntla and Baldev to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 1,000/- each u/s 498A of IPC and in default of payment thereof, the defaulter was to further undergo rigorous imprisonment for 3 months and also sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.500/- each u/s 306 of IPC and in default of payment of fine, the defaulter was to further undergo rigorous imprisonment for one month, with a further direction that the substantive sentences shall run concurrently.

2. Succinctly put, the facts of the prosecution case are that the marriage of Kamlesh deceased was solemnised with the accused Tarsem Lal about 2 years prior to her death, which took place on 11.10.1995. The harassment and ill-treatment meted out by her husband, her husband's brothers and mother-in-law, forced her to douse her

body in kerosene oil and set ablaze on 27.09.1995. Shortly thereafter, she was removed to the Civil Hospital, Phillaur, where her statement was recorded by Sub Inspector Harbhajan Singh. On the dint of the same, the FIR was registered. She was referred to DMC and Hospital Ludhiana, where she remained hospitalised till 11.10.1995 and ultimately she succumbed to the burn injuries. Another dying declaration of her was recorded by Mr. S.K. Sachdeva, Judicial Magistrate 1st Class, Ludhiana. In her such dying declaration, she reiterated that the accused used to pick up quarrel with her and taunt her of her living with her husband's father's younger brother. After death, her dead body was brought to Civil Hospital, Phillaur, where the same was subjected to post mortem examination. In due course, the accused were put under arrest. After completion of investigation, the charge-sheet was laid in the Court of learned Ilaqa Magistrate, who committed the same to the Court of Sessions for trial of the accused.

3. On commitment, all the accused were charged under Sections 498A/306 of IPC to which they did not plead guilty and claimed trial. To bring home guilt against the accused, the prosecution examined PW1 Dr. Ram Parshad, PW2 Dr. Jagjit Singh, PW3 Ratto, PW4 ASI Prit Kanwal Jit Singh, PW5 Prithipal Singh MHC, PW6 Constable Gurmukh Singh, PW7 ASI Jagdish Ram, PW8 Iqbal Singh, PW9 Jagdish Lal, Head Clerk, PW10 SI Harbhajan Singh Investigator and closed its evidence.

4. When examined u/s 313 of Cr.P.C. all the accused denied the incriminating circumstances appearing in the prosecution evidence against them and pleaded innocence. Tarsem Lal accused has put forth as under:-

"I am innocent. After about one month of my marriage, I went back to Saudi Arabia where from I had come for the purpose of marriage as I had been there for the livelihood since 1988. I came back at Delhi on 24.09.1995 and reached my village on that night. My luggage while coming to India had been booked in separate Cargo which was not given to me and on 27.09.1995 early in the morning I and my younger brother Mohan Lal had gone to Delhi to take the luggage but it was not traceable and we both came back to our village on the evening of 28.09.1995 and came to know about this episode. Then, we both the brothers went to DMC Ludhiana, where my wife Kamlesh had been under treatment due to burn injuries. I and my father had spent about 20,000/- Rupees on the medicines, which the doctors prescribed for her. The receipts regarding the purchase of medicines are with me. I had great love and affection with my wife and from my earnings, I had provided her with all the facilities like colour TV, Fridge, VCR, deck, clothes and ornaments etc. In the month of June 1995, I was informed that my wife had appendicitis and I had informed my parents to get her admitted in the hospital for treatment and consequently, she was admitted in Jyoti Nursing home on 15.06.1994 and about Rs. 10,000/- had been spent for her treatment. The doctor of the said nursing home namely Gurbir Kaur Bath after thoroughly examining my wife, had also informed that there was a tumor in Bachedani and she used to remain dismayed on account

of this and had been telling to my mother that would she be able to bear a child. I and my mother had been consoling her that her proper treatment would be got arranged and she would be all right and almighty would prove all type of pleasure to us. I never rebuked her nor I ill-treated her nor harassed her on any count. I am also astonishing as to why she had committed suicide. She had after my departure to Saudi Arabia shifted in the house of my real uncle Chaman Lal who is doing Karyana shop in the village. But on the request of my mother-in-law, to my father, Kamlesh came to the house of my parents only 3 months prior to my arrival in India. My uncle Chaman Lal had kept some of her ornaments which were not given back to her and she was also very much disturbed on the non-delivery of the ornaments by my uncle. The panchayat sarpanches and other respectables of village Garha i.e., my in-laws village and of my village Rasulpur, made request to the investigating agency that I and my other family members were innocent and they should not be challaned but even then we have been challaned by the police. I am innocent."

Accused Bhira has set forth in the following terms:-

"I am innocent. On the day of occurrence, i.e. 27.09.1995,¹ and my mother Shakuntla along with other villagers had gone to pay homage to the shrine of Chint Purni and Jwala Ji and came back on 28.09.1995 evening and heard about this incident. I used to do labour and go for labour purposes from the house early in the morning and come back late at night. I had full regard for my sister-in-law Kamlesh deceased and never had any quarrel with her. I am innocent and have been falsely implicated in this case."

Accused Mohan Lal has stated as under:-

"I am innocent. On 27.09.1995, early in the morning I and my brother Tarsem Lal had gone to Delhi Airport to take luggage, which my brother had brought from abroad but that was not traceable and stayed in the night at Delhi. In the next evening of 28.09.1995,¹ and Tarsem Lal came back to the village and heard about the sad episode. We both rushed to DMC Ludhiana, where my sister-in-law Kamlesh was admitted for her treatment I always treated her as my mother being elder sister-in-law and never picked up any quarrel with her. I have been falsely implicated in this case."

Accused Shakuntla has taken up the following plea:-

"I am innocent. After the marriage of my son with Kamlesh, my son went to Saudi Arabia after one month of the marriage. I treated Kamlesh just as my daughter and not as daughter-in-law. There had been no conflict between us. She had developed appendicitis and her treatment was obtained in Jyoti Nursing Home, Phillaur, and about Rs. 10,000/- had been spent. She remained admitted in the hospital for 10 days and I had been nursing her like mother. On the instigation of her mother Ratto, she had gone to the house of my brother-in-law Chaman Lal in the same village after about 1-1/2 months of the marriage, and when letter from my son Tarsem Lal

was received that he was coming back to India, her mother Ratto and Kamlesh came to our house and begged pardon for their folly for leaving the house and my husband Mohinder Pal forgave them and allowed to live in our house. I and my son Bhira and other co-villagers for about 40 in number had gone to pay homage to Chint Purni and Jwalaji on the day of occurrence on the truck of Hansa our co-villager and had come back to the village on 28.7.1995 and heard about the sad episode. Kamlesh used to remain dismayed as the doctor had told her that there was tumor on her ovary and she was apprehending, if she would be able to bear a child or not. We never gave any type of maltreatment nor made any demand of dowry from her and I have been falsely implicated in this case.

Accused Baldev has stated as under:-

"I am innocent and do agriculture labour in the fields of a landlord known as Tehsildar in village Rurka. I occasionally come to my home once in a week and on the day of occurrence, I was not present at the house. I had been informed by one Darshan Singh of my village about the said incident. I had full respect for my sister-in-law Kamlesh deceased. I had no quarrel with her on any occasion. I have been falsely implicated in this case."

5. In their defence, they examined DW1 Gurdas Singh, DW2 Piare Lal and DW3 Mohinder Lal.

6. After hearing the learned Additional Public Prosecutor for the State, the learned defence counsel and examining the evidence on record, the learned trial Court convicted and sentenced all the accused as noticed at the outset. Feeling aggrieved with their conviction/sentence, they have preferred this appeal.

7. I have heard the learned counsel for the parties and perused the record with due care and circumspection.

8. Mr. H.S. Gill, learned Senior Advocate appearing on behalf of the appellants urged with great vigour that the First Information Report in the instant case was recorded on the statement of Kamlesh deceased, when she had been removed to the Civil Hospital at Phillaur, after she had received burn injuries. In this statement, she had alleged that the accused persons used to quarrel with her and she had poured kerosene oil on her and set herself afire and was removed to the Civil Hospital, Phillaur by her father-in-law, from where she was referred to Daya Nand Medical College and Hospital, Ludhiana, where her statement was recorded by a Magistrate in which she stated that all her in laws family members used to say that she was bad with her father-in-law's brother and that she will die and then she set herself on fire. From this dying declaration, no inference of abetment of suicide can be drawn, nor any offence u/s 498A of IPC can be said to have been committed. In fact, the only witness produced regarding the alleged harassment was her mother Ratto PW3 and even she did not give any reason or motive for the alleged treatment. A perusal of her statement clearly indicates that a false story was created after unfortunate

death of her daughter Kamlesh. Indeed, Ratto PW has also admitted that Tarsem Lal appellant had gone to Saudi Arabia only one or one and a half months after the marriage and returned only on 24.09.1995. Actually, on 25.09.1995, Tarsem Lal had again gone to Delhi to collect his luggage, which had been booked by a separate Cargo. He came back on 28.09.1995 to his village and before that the incident had occurred. The learned trial Court has failed to appreciate the conduct of the accused persons that it was Mohinder Lai, father-in-law of the deceased who had removed her to Civil Hospital, Phillaur and then to DMC and Hospital, Ludhiana, where she expired on 11.10.1995, i.e., after 14 days of the alleged occurrence. During this interregnum, more than Rs.20,000/- were spent by the husband of the deceased on her treatment. Ratto PW has also admitted that her son-in-law Tarsem Lal after the marriage had provided amenities like Television, Fridge, gold ornaments etc. to the deceased. There was no complaint made by Ratto either to the police or to any Panchayat of the Village, which also shows that a false story was coined with an ulterior motive.

9. As emanates from the defence evidence, on the date of occurrence, only Mohinder Lal, father-in-law of the deceased was in the house and he had extinguished the fire. He himself had also received injuries and got her admitted in Civil Hospital, Phillaur. Neither accused was present in the house at the time of occurrence. In fact, the deceased used to remain depressed, because when about an year earlier, she was operated upon for appendicitis, a tumor was also removed from her Uterus. She had a feeling that she will not be able to bear a child. She was ashamed of her own follies. In these premises, the charged offence is not established against either appellant.

10. To buttress these stances, he has sought to place abundant reliance upon *Hans Raj v. State of Haryana*, 2004 (2) CCC 351 (S.C.) : 2004 ACJ 701 (S.C.) : 2004(2) AC 476; *Mahendra Singh & Am. v. State of M.P.*, 1996 CLJ 894 and *State of Haryana v. Ravi Kumar*, 2005(3) CCC 357 (P&H) : 2005(2) RCR(Criminal) 237.

11. To overcome these submissions, Mr. T.S. Salana, Deputy Advocate General, Punjab appearing on behalf of the State argued that the dying declaration Ex.PX coupled with the subsequent dying declaration Ex.PB speaks volumes of the fact that the conduct of the appellants had brought about the situation to such a boil, which forced her to commit suicide.

12. On a careful consideration of the rival contentions, the view I am disposed to take is that the contentions raised on behalf of the appellants outweigh the submissions made by Mr. Salana for the reasons to be recorded hereinafter. The sheet-anchor of the prosecution is the dying declaration Ex.PB recorded by Harbahajan Singh Sub-Inspector, investigator followed by another dying declaration Ex.PX taken down by Mr. S.K. Sachdeva, Judicial Magistrate First Class, Ludhiana. The sum and substance of the Ex.P3 is that "my (referring to the deceased) husband Tarsem Lal son of Mohinder Lal and my mother-in-law Shakuntla and my Deor Deba,

Bhabbar and Mohan used to pick up quarrels with me and my husband Tarsem Lal son of Mohinder Lal was saying that I will be finished off. Thereafter, by going into the kitchen, I poured kerosene oil and set myself ablaze. The fire was put off by my father-in-law Mohinder Lal." It is in the evidence of Dr. Ram Parshad PW1 that "Hair of the body singed and bums were 100%" It is also in his cross-examination that "the injured had 100% burn injuries, when she was brought to Civil Hospital, Phillaur. It is correct that on Ex.PB, I did not give any starting certificate nor at the end of statement of Smt. Kamlesh that she remained fit throughout, when her statement was got recorded by the Sub Inspector in my presence." The question arises if she had 100% burn injuries on her body, could she be able to make a comprehensive statement Ex.PB. It is crystal clear from the above extracted cross-examination of this Doctor that neither at the start nor on conclusion of dying declaration, he certified that she was in a fit state of mind to make statement and remained fit throughout, when her statement was being recorded. Ex.PB is not in question/ answer form. The degree of burns ipso-facto gives rise to the presumption that in such a critical condition, she could not give such a statement. The absence of certification by the Doctor regarding fitness of the patient on both the stages, further raises dimensions of suspicion. Thus, the authenticity of Ex.PB is rendered highly doubtful. The investigator has not assigned any reason worth mention as to why he did not approach the Ilaqa Magistrate at Phillaur where undeniably Judicial Courts are situated. It is not in his evidence that the condition of the patient was deteriorating and feeling that she may die before he approached the Ilaqa Magistrate, he proceeded to record her statement. She survived for about 14 days. He went on to say that on conclusion of the dying declaration, it was attested by the Doctor, whereas PW1 Dr. Ram Parshad has denied this fact. A close examination of Ex.PB would reveal that it does not bear the opinion of the Doctor that she was in a fit state of mind to make statement and continued to be so, while she was under examination. The statements 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 are themselves relevant facts and admissible in evidence u/s 32(1) of the Indian Evidence Act in case in which the cause of that person's death comes into question. A statement commonly known as "dying declaration" constitutes such an important evidence in criminal cases. It is thus necessary that a Court trying the case should have before it a correct and faithful record of the statement made by the dead person, as ruled [Khushal Rao Vs. The State of Bombay](#), followed in [Harbans Singh and Another Vs. State of Punjab](#), . Chapter 13A of the Rules and Orders of Punjab and Haryana High Court, Volume 3 contemplates that where a person whose evidence is essential to the prosecution of a criminal charge or to the proper investigation of an alleged crime, is in danger of dying before the enquiry proceedings or the trial of the case commences, his statement, if possible, be got recorded by a Judicial Magistrate. When the police officer concerned with the investigation of the case or the medical officer attending upon such person apprehends that such person is in the danger of dying before the case is put in

court, he may apply to the Chief Judicial Magistrate, and, in his absence, to the senior most Judicial Magistrate present at the headquarters, for recording the dying declaration. On receiving such application, the senior most Judicial Magistrate shall at once either himself proceed, or depute some other Judicial Magistrate to record the dying declaration. Before proceeding to record the dying declaration, the Judicial Magistrate shall satisfy himself that the declarant is in a fit condition to make a statement, and if the medical officer is present, or his attendance can be secured without loss of time, his certificate as to the fitness of the declarant to make a statement should be obtained. If however, the circumstances do not permit waiting for the attendance of the Medical Officer, the Judicial Magistrate may in such cases proceed forthwith to record the dying declaration, but he should note down why he considered it impracticable or inadvisable to wait for a doctor's attendance. The statement, whether made on oath or otherwise, shall be taken down by the Judicial Magistrate in the form of a simple narrative. This, however, will not prevent the Judicial Magistrate from clearing up any ambiguity, or asking the declarant to disclose the cause of his apprehended death or the circumstances of the transaction in which he sustained the injuries. If any occasion arises for putting question to the dying man, the Judicial Magistrate should record the questions as also the answers which he receives. The actual words of the declarant should be taken down and not merely their substance. As far as possible, the statement should be recorded in the language of the declarant or the court language. At the conclusion of the statement, the Judicial Magistrate shall read out the same to the declarant and obtain his signature or thumb impression in token of its correctness, unless it is not possible to do so. The dying declaration shall then be placed in a sealed cover and transmitted to the Judicial Magistrate having jurisdiction to deal with the case to which it relates. Where in an emergency a dying declaration has to be recorded at a place away from the District Headquarters, the investigating officer or the medical officer attending upon the dying man shall apply to the nearest Judicial Magistrate to record the dying declaration and such Judicial Magistrate shall immediately proceed to the spot and take down the statement of the dying man. This, however, would not prevent the medical officer or the police officer connected with the investigation of the case from recording the dying declaration, if he is of the opinion that death is imminent and there is no time to call a Judicial Magistrate. In such cases, the police or the medical officer concerned must note down why it was not considered expedient to apply to a Judicial Magistrate for recording the dying declaration or to wait for his arrival. Where a dying declaration is recorded by a police officer or a medical officer, it shall, so far as possible, be got attested by one or more out of the persons who happen to be present at the time.

13. A careful delving into Ex.PB would reveal that the Investigator has not noted down as to why it was not considered expedient to apply to the Judicial Magistrate at Phillaur for recording the dying declaration. It too does not bear the attestation of one or more out of the persons who happened to be present at the material time. It

is duty of the person recording a dying declaration to take every possible precaution to ensure the making of a free and spontaneous statement by the declarant without any prompting suggestion or aid from any other person. As ruled by the Apex Court [State of Punjab rep. through Secretary Vs. Raj Kumar and Others](#), the Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailant and was in a fit state to make the declaration. Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. The dying declaration which suffers from infirmity cannot form the basis of conviction. Normally, the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look upto the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. Where there is more than one statement, the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted.

14. As observed in re: Hans Raj (supra), the woman committed suicide within seven years of marriage due to the cruelty by the husband. The allegations against the accused were that he was addicted to consumption of "Bhang" and there were frequent quarrels between the two. Sometimes, she was given beatings. The Apex Court held that this fact alone does not automatically give rise to the presumption that the suicide had been abetted by her husband. The Court should find out that cruelty was of such a nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. In the present one, there are no allegations in either dying declaration that either accused used to give beatings to the deceased. If it is assumed that there used to be quarrels between the deceased and the accused-appellants on account of her putting up in the house of Chaman Lal, nonetheless, in view of Hans Raj case (supra), the offence u/s 306 of IPC is not established. In re Ravi Kumar (supra), the woman committed suicide by setting herself on fire. As per dying declaration, her husband was not of good character and both used to quarrel with each other. The detail of character was not spelt out. On a night preceding suicide, husband gave beatings to her. It was held that offence of abetment u/s 306 of IPC is not made out. Every domestic quarrel between a couple cannot be taken as a ground for abetment to suicide and the behaviour of a normal and not a quarrelsome or high strung individual must be taken as the yard stick. In the instant case, the record is quite barren to show as to what had happened between the deceased and the accused-appellants soon before, she committed suicide. Thus, it is very difficult to say in the factual scenario that the deceased had put an end to her life on being abetted by the accused - appellants.

15. On Ex.PB there are two over-lapping thumb impressions. Of these, one being wholly ink smudged is wholly in-decipherable, whereas the other one, which seems to have been super-imposed partly reveal a few ridge characteristics. For the reasons detailed heretofore, this document is of suspicious nature. Consequently, it has to be excluded from consideration.

16. Adverting to Ex.PX, it too reveals that the opinion of the Doctor before start or at the conclusion was not obtained. This also does not bear the certification by the learned Magistrate that the declarant was fit to make a statement and it contained a correct and faithful record of the statement made by her as well as of the questions which were put to her. As its contents proceed, all the members of the family, my mother-in-law, husband, 3 devars, Deba, Mohan and Boga used to quarrel by saying that I was residing with the brother of my father-in-law. There is nothing else in Ex.PX. It is in the cross-examination of Ratto PW, mother of the deceased, that "when Tarsem Lal, husband of the deceased went to Saudi Arabia, she (deceased) started residing with Chaman Lal (brother of her father-in-law). "It is correct that my daughter came back to her in-laws house three months prior to 24.09.1995 on receipt of letter from her husband Tarsem Lal about his proposed visit to his house. I then told Mohinder Lal, father-in-law to forgive my daughter of her mistake. I did not file any complaint either before the Panchayat of Rasulpur or Garha against the maltreatment of my daughter by the accused. It is correct that Chaman Lal's wife had taken the gold necklace of my daughter. I do not know if anybody was present in the house of her in-laws when my daughter was done to death." It is correct that we had not brought the dead body of Kamlesh as we were not in good financial position. I do not know that my daughter was cremated in her in-laws" house and her ashes were immersed at Kiratpur. I do not know, if both the Panchayats supported about the innocence of the accused in this episode before the police. It is correct that my son-in-law demanded the golden necklace from Kamlesh lying with Chaman Lal and I also asked Chaman Lal for return of gold necklace to which he stated that he had no objection to return the same, if the accused return this amount." Ostensibly, this evidence fits in with the plea taken by Tarsem Lal appellant. Ex.PX is silent about the fact that the accused- appellants used to suspect that she had illicit relations with Chaman Lal and on that account, they used to pick up quarrels with her. Ratto PW has not specifically denied that the Panchayats had supported about the innocence of the accused in this episode before the police. Had the Panchayats not supported the version of the accused-appellants, she would have been the last person to give answer to such a material question in an evasive and unambiguous manner. Ratto has not categorically denied the absence of either appellant in the house of in laws of the deceased, when the occurrence took place. It is in the crossexamination of PW10 SI Harbahajan Singh that "I did not record statement of any neighbour of the house of the accused regarding the occurrence nor of any person of Village Garha, where the deceased belonged." He has not apportioned any reason for not examining any neighbour of the accused. Ratto has

also not assigned any reason for not reporting to the Panchayat of Rasulpur or Garha against the alleged maltreatment being meted out to the deceased. If the accused- appellants had been subjecting the deceased to maltreatment or harassment, the deceased or her mother or both would have certainly complained in this behalf to the police or the Panchayat of the aforesaid villages. It is in the cross-examination of SI Harbahajan Singh (sic.) that "Smt. Ratto, mother of the deceased did not give any letter or document regarding ill-treatment of the deceased by the accused. I did not record statement of Chaman Lal at whose house, the deceased lived. When Smt.Kamlesh committed suicide, none of the accused was at home." This witness has not given any reason for not examining Chaman Lal, which according to the alleged prosecution version was a bone of contention. Furthermore, as per his testimony, none of the accused-appellant was present in the house, when the occurrence took place. If the accused party had been bent upon to take the life of the deceased, in that, eventuality, her father-in-law Mohinder Lal DW3, would have not tried to save her by himself engulfing in the flames. There is no gain saying the fact that when he made an endeavour to douse the fire by putting water from the nearby tap on her, he also sustained injuries and he also removed her primarily to Civil Hospital, Phillaur and then to DMC & Hospital, Ludhiana. As per Ex.PX, the accused used to quarrel with the deceased, by saying that she was living in the house of her husband's father-in-law's brother. She has nowhere stated that the accused used to maltreat or put her to harassment on the suspicion that she had illicit relations with Chaman Lal or that she was ever beaten up. Whatsoever has been stated by Ratto (sic) does not find place in Ex.PX. Thus, her ocular evidence cannot be believed. If the deceased had committed suicide being fed up with the behaviour of the accused, in all human probabilities, the dead body would have not been given to them for cremation. The same would have certainly been cremated by her mother alongwith other relatives by taking the same to their own village. There appears to be a substance in the submission of Mr. Gill that the deceased being ashamed of her own follies committed suicide. The other reason may be the non-return of necklace by the wife of Chaman Lal or she being unable to bear the child would have undergone acute mental depression. The evidence let in by the prosecution too falls short of establishing the offence u/s 498 A of IPC.

17. In view of the above discussion, neither any dying declaration nor evidence tendered by Ratto P W can be made the basis for conviction, on any count. Consequently, this appeal is accepted, setting aside the impugned judgment. The accused- appellants are acquitted of the charged offence.