

**HIGH COURT OF TRIPURA  
A\_G\_A\_R\_T\_A\_L\_A**

**Crl. A(J) No. 53 of 2019**

1. Sri Madan Debnath, son of late Haripada Debnath, resident of Naraura, P.S. Bishalgarh, District: Sepahijala, Tripura.
2. Smt. Laxmi Rani Debnath, wife of late Haripada Debnath, resident of Naraura, P.S. Bishalgarh, District: Sepahijala, Tripura.
3. Sri Arun Debnath, son of late Haripada Debnath, resident of Naraura, P.S. Bishalgarh, District: Sepahijala, Tripura.
4. Sri Gopal Debnath, son of late Haripada Debnath, resident of Naraura, P.S. Bishalgarh, District: Sepahijala, Tripura.
5. Sri Ratan Debnath, son of late Haripada Debnath, resident of Naraura, P.S. Bishalgarh, District: Sepahijala, Tripura.

*.....Appellants*

**-VERSUS-**

The State of Tripura.

*..... Respondent.*

**B\_E\_F\_O\_R\_E**

**HON'BLE MR. JUSTICE T. AMARNATH GOUD  
HON'BLE MR. JUSTICE ARINDAM LODH**

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For Appellant(s)	:	Mr. P. K. Biswas, Sr. Advocate. Mr. P. Majumder, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of hearing	:	<b>01.12.2021</b>
Date of delivery of judgment and order	:	<b>22.12.2021</b>
Whether fit for reporting	:	<b>YES</b>

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**JUDGMENT & ORDER**

**[T. Amarnath Goud, JJ]**

Heard Mr. P. K. Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the appellants. Also heard Mr. S. Ghosh, learned Additional Public Prosecutor appearing for the State-respondent.

[2] This criminal appeal under Section-374 of the Code of Criminal Procedure is directed against the judgment and order of conviction dated 20.08.2019, passed by the learned Additional Sessions Judge, Sepahijala District, Bishalgarh, in connection with case No. S.T.(T-1) 32 of 2014, whereby and whereunder, the appellants have been convicted and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default to suffer further imprisonment of 6 months, for committing offence punishable under Section-302 read with Section-34 of IPC and also to suffer rigorous imprisonment for 3 years with fine of Rs. 5,000/- each for committing offence under Section-498A of IPC, with default stipulations. Both the sentences shall run concurrently.

[3] The factual background of the prosecution case is that one Kajal Kanti Debnath (PW-1), the father of the deceased, lodged a written complaint with the Officer-in-charge of Bishalgarh police station on 31.12.2012 at 1415 hours stating inter alia, that his daughter Bina Debnath (deceased herein) was married with one Madan Debnath as per Hindu rites and customs and they had been leading their life as husband and wife in a peaceful manner. Thereafter, after elapse of certain periods, accused persons, namely, Laxmi Rani Debnath, the mother in law of the deceased, the brother in laws, namely, Arun Debnath, Ratan Debnath and Gopal

Debnath along with her husband, Madan Debnath started physical and mental torture upon her daughter and on and often they used to demand Rs.1,00,000/- to be brought by the deceased from her parental house, but, they could not meet the demand due to their financial stringencies and in that event, the daughter of the complainant was assaulted holding her hair by the accused-persons. As a result of such torture, Rs.50,000/- was paid by the complainant so that she can live happily in her matrimonial home. Despite such fulfillment of money, torture upon his deceased-daughter was not decreased. After four years of their marriage, a female child was born out of their wedlock. It reveals that on the issue of giving birth to a female child, the accused-persons started physical and mental torture upon her on regular basis. On 22.12.2012, the accused-husband and other accused-persons subjected her to severe physical torture to fulfill their demand of Rs.1,00,000/- and thereafter, the victim came back to her parental house and told the complainant, the father of the deceased about the incident. On 26.12.2012, the victim was taken to her matrimonial house by her father and her father requested her in laws not to commit torture on her. But, the accused-persons continually tortured on her. On 30.12.2012, in the night at about 11.00pm all the accused-persons after committing severe torture on the deceased, set her ablaze by pouring kerosene oil. She sustained severe burn injuries on her persons and thereafter she was taken to Bishalgarh Hospital and thereafter, to GBP Hospital, Agartala, where she succumbed to her injuries on 03.01.2013.

[4] On the basis of the aforesaid complaint dated 31.12.2012, the Officer-in-charge of Bishalgarh Police Station treating the said complaint as FIR, registered Bishalgarh P.S. Case No. 267 of 2012 under Sections-498A/326/307 of IPC against the accused-persons. On completion of the investigation, the investigating officer submitted charge-sheet against the

accused-persons, for commission offence punishable under Sections-498A/302 of IPC. Subsequently, as the case was exclusively triable by the Court of Sessions, the case was committed to the Court of learned Sessions Judge, West Tripura, Agartala and ultimately, transferred to the Court of learned Additional Sessions Judge, Court No.5, West Tripura, Agartala for disposal, in accordance with law. Subsequently, the case was transferred to the Court of learned Additional Sessions Judge, Sepahijala District, Bishalgarh.

[5] After hearing both sides and on perusal of the documents submitted by the prosecution, the learned Additional Sessions Judge, Sepahijala District, Bishalgarh, framed Charge against the above named accused-persons, the appellants herein, under Sections-498A/302 read with Section-34 of IPC, to which the appellants pleaded not guilty and claimed to be tried.

[6] To substantiate the charge, the prosecution adduced as many as 16 [sixteen] witnesses including the complainant and also exhibited certain relevant documents and materials [Exbts.1 to 11/1 & Exbt. A to G] including the inquest report.

[7] On closure of prosecution evidence, the accused-persons were examined separately under Section-313 of Cr.P.C. for having their response in respect of the incriminating materials surfaced in the evidence, as adduced by the prosecution, wherein, the accused-persons expressed willingness to adduce evidence in support of their defence. Thereafter, on appreciation of the evidence and materials on record, the learned Additional Sessions Judge passed the judgment and order of conviction and sentence dated 20.08.2019 against all the above named accused-persons.

[8] Being aggrieved by and dis-satisfied with the said judgment and order of conviction dated 20.08.2019, passed by the learned Additional Sessions Judge, Sepahijala Deistrict, Bishalgarh, in Case No. S.T. (T-1) 32 of 2017, the appellants herein have preferred this appeal before this Court.

[9] Mr. P. K. Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the appellants to buttress the case of the appellants has submitted that the learned trial court failed to appreciate the evidence on record in its proper perspective and thereby caused serious prejudice to the appellants. He has further submitted that the evidence on record do not constitute any offence punishable under Sections-302/34 of IPC.

[10] It has been contended by Mr. Biswas, learned senior counsel that the appellants were convicted under Sections-302 read with Section-34 of IPC though, there is no iota of evidence against the appellants No. 2, 3, 4 and 5 to connect them with the case of murder of the deceased and it is the admitted fact that there is no eye witness in the present case and the case only rests upon the sole statement of the deceased i.e. the dying declaration (Exbt.10), recorded by the Executive Magistrate. The dying declaration only implicate the appellant No.1, the husband of the deceased in which it has been stated that *"On Sunday at night at about 10.30pm, my husband set fire on my person. Thereafter, I was brought to Bishalgarh thereafter, to GBP hospital. My husband is responsible for my present condition"*. But, the learned trial court has failed to refer the said statement and also to appreciate the said statement, which do not include any other appellants in the present case.

[11] Mr. Biswas, learned senior counsel has averred that the learned trial Court convicted the appellants on the basis of the statement

made by the PWs. No. 1, 3 and 4. But in the evidence of PW-1, the father of the deceased deposed that on being asked his daughter told him that her husband, Madan Debnath, the accused herein, set her ablaze and the other appellants are also present in the said house but living in the separate dwelling huts. But in the cross-examination PW-1 stated that her daughter told him that the accused-appellant No.1 put her on fire. Mr. Biswas, learned senior counsel has further stated that PWs.2, 3, 4 and 5 had deposed in same line like that of the PW-1 that the deceased told them that her husband set her ablaze by pouring kerosene oil.

[12] Mr. Biswas, learned senior counsel emphasized on the evidence of PW-10, the doctor who gave certificate regarding the fitness of the deceased-victim. He has specifically stated in his cross-examination that the medicines which were prescribed during the treatment are mentioned in the bed-head ticket and it is also admitted that in between the recorded statement and the signature of the said doctor and the Executive Magistrate, there was a big gap i.e. blank and the LTI of the deceased was also obtained after the signature of the Magistrate and the doctor. He has further submitted that in the cross-examination PW-10 admitted that he would not have put signature keeping any blank space in between the dying declaration and he also has admitted that the dying declaration was not read over to the victim and he also stated that there was no endorsement that the dying declaration was recorded in his presence and the Executive Magistrate also did not mention the time of recording the statement. The doctor has further stated that the 'phenargon and pethadin injections' were being administered for reducing pain and consequently the patient sometime go on sleep and when the BP is very low, it is considered that the condition of the patient is serious and will not be in a position to give statement. Mr. Biswas, learned senior counsel further stated that on

31.12.2012, the deceased was administered injection, namely, Phenargan with Fortwin and the certified copy of the doctors prescribing medicine dated 01.01.2013 including one injection namely Phenargan. It is admitted that that Phenargan injection with Fortwin was administered to prevent vomiting tendency and the effect of Fortwin injection is that the patient will go on sleep with drowsiness etc. As per doctor's report dated 01.01.2013 (Exbt. C & D), the condition of the patient was poor due to dehydration and, as such, the learned trial court should have held that the victim was not in a fit state of mind to give statement.

[13] He has further submitted that the dying declaration (Exbt.6) only gives suspicion regarding the involvement of the appellant No.1. There is no iota of evidence to implicate other appellants or suspect the other appellants to kill the deceased. As such, the learned trial court has committed serious error and illegality by convicting the appellants' No. 2 to 5 under Sections-302/34 of IPC. It has been admitted by the prosecution witnesses i.e. by the parents that they did not make any allegation of torture prior to the date of sustaining fire injury and as such, no charge for the offence under Section-498A is proved against the accused-appellants No. 2 to 5 and as such, the order of conviction and sentence passed by the learned trial court is liable to be set aside and quashed against them.

[14] Mr. Biswas, learned senior counsel has further stated that the appellant No.2 is an old aged lady and more than 80 years and the other appellants are also in no way involved with the alleged murder. The case only rests on the alleged dying declaration, which clearly shows that the victim only implicated her husband i.e. the husband-appellant No.1 herein.

[15] Mr. Biswas, learned senior counsel has placed reliance upon a decision of the Apex Court in *(1) State (Delhi Administration) v. Laxman*

**Kumar and Others and (2) Indian Federation of Women Lawyers and Others v. Smt. Shakuntala and Others**, reported in **AIR (1986) SC 250**, wherein, in para-26 of the judgment, the Apex Court has held thus:

“26. The summary of History Sheet, Ext. PW.17/0 indicates that a pethidine injection was given to Sudha at 10 P.M. and the doctor prescribed repetition of it every 8 hours. Judicial notice can be taken of the fact that after pethidine is given the patient would not have normal alertness. Appropriate care was not taken at the trial stage to cross examine DW.1 with reference to this aspect. We are inclined to agree with counsel for the appellants that the certificate of DW. 1 that Sudha was in a fit condition to make a declaration cannot be given full credit. This Court pointed out in *Khushal Rao v. State of Bombay* A.I.R. [1958] S.C. 22, that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration (Exbt.10) which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and that 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 of remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

[16] Another case in **Gaffar Badshaha Pathan v. State of Maharashtra**, reported in **(2004) 10 SCC 589**, in paragraphs 3 and 6, the Apex Court has held thus:

“3. The prosecution relied upon the following circumstances:

“(a) Motive — ill-treatment to the deceased to extract money from her and illicit intimacy. Statement of Paulad (PW 5) that 4-5 months prior to the incident while passing on the road, he had seen the accused catching the deceased Akhtarbanu and taking her inside the house.

(b) Door of the house of the deceased was found closed from inside and when it was broke open, the accused was seen in the company of the deceased and the deceased was found engulfed in flames.



(c) Kerosene tin and matchbox were lying on the floor of the kitchen and the floor was smelling of kerosene.

(d) Residue of kerosene was found on chemical analysis of the clothes of the deceased.

(e) Burn injuries on the hand of the accused speak for his presence at the scene of offence.

(f) The accused had not opened the door though it was knocked by the persons who came to extinguish the fire. He had not raised hue and cry, nor he took any steps to give medical aid to the deceased.

4. Before we examine the aforesaid circumstances which have been held to be proved by the prosecution and the conviction of the appellant based thereupon, it would be appropriate to first deal with the aspect of the dying declaration above-referred. The dying declaration recorded by DW 1 reads as under:

“Date: 18-11-1980

I, Akhtarbanu, w/o Babubhai Pathan, age 32, r/o Shrirampur, near government godown state that I am residing at the abovementioned place. I have total five issues, out of them three are daughters and two sons. My husband is serving at Dubai since 4 months. My elder brother Ekbal Babakhan is residing with me since about 6 months.

Today on 18-11-1980 at about 14.00 hours in the noon all my children went to the school. I was alone in the house. For preparing tea I ignited the brass stove and put the tea vessel on the stove. After the tea was ready, I was removing the vessel with the edge of my sari when that part fell on the stove and the synthetic sari suddenly caught fire. I shouted, then the persons residing in neighbourhood Palad Sheth, his wife and other people rushed and extinguished my burning sari. And those persons brought me in St. Luke's Hospital for medical treatment. I was burnt from chest to legs and up to both hands. There is no reason except this. I can sign, but now I cannot sign due to burning. I am giving thumb impression. I have no complaint of any type.

This statement has been made while in a conscious state.”

[17] Another case in *Sampat Babso Kale and Another v. State of Maharashtra*, reported in (2019) 4 SCC 739, wherein, in paragraph-12 of the judgment, the Apex Court has held thus:

“12. The other important witness is Mr. Kamlakar Adhav (PW2), who was Special Judicial Magistrate, Pune. According to him, he was asked by the police to record the statement of Sharada Sampat Kale and thereafter he went to Ward No.27 in Sassoon Hospital, Pune. He was told by PW5 that the female patient was fit and fully conscious to make the dying declaration. On his asking, the deceased told him that her name was Sharada Sampat Kale, aged 25 years and she gave her complete address. She was conscious and told him that she was voluntarily making the statement. The dying declaration which this witness has proved reads as follows:

“Q.1: Whether you are fully conscious?

A Yes.

Q.2: I am Spl. Judicial Magistrate, Do you understood this?

A: Yes.

Q.3: How you sustained burns?

A. Today on 8.7.89 at night at about 1.30 hrs. at my residence my husband Sampat Babasaheb Kale and my sister in law Tarabai Dhanaji Dhaigude poured kerosene on my person and set me on fire and I sustained burn injuries. Quarrels used to take place between we both husband and wife and he also used to quarrel with me that I could not give birth to child and used to ill treat me. Yesterday at night due to above reason both of them poured kerosene on me and set me on fire and I sustained burns.”

[18] To counter the submissions of the learned senior counsel appearing for the accused-persons, Mr. S. Ghosh, learned Addl. P.P. appearing for the respondent-State strongly defended the findings arrived at by the learned Addl. Sessions Judge and has placed reliance upon a decision of the Apex Court in ***Ravi Chander and Others v. State of Punjab***, reported in (1998) 9 SCC 303, wherein, in para-6 of the judgment, the Apex Court has observed as under:

“6. After giving our anxious consideration to the facts and circumstances of the case and the evidences adduced and also after taking into consideration the two recorded dying declarations, namely, the first one recorded by the ASI and the second one recorded by the Executive Magistrate and also after taking into consideration the oral dying declaration said to have been made by the deceased to PW 4, Prem Chand, it appears to us that the first dying declaration which was recorded by the ASI cannot be accepted. The deposition of PW 4 Prem Chand appears to be reliable and his deposition also gets support from the post-mortem report. Prem Chand has deposed that his sister stated to him that previously in the hospital under threat her signature was taken on a paper by the police and she had not made any such statement. PW 4 also deposed that in the previous evening the mother-in-law hit the deceased on the head with the rolling pin. From the post-mortem report it transpires that a lacerated injury was found in the parietal region. Such injury on the head fits in with the case of hitting the deceased with a rolling pin (belna) as alleged by the deceased. We have carefully looked into the dying declaration recorded by the Executive Magistrate and it appears to us that there is no occasion to hold that such dying declaration was not taken properly by the Executive Magistrate. Correction made in the first leaf in respect of Question No. 7 and the answer given to such question is only in respect of describing whether it was the question or the answer. The statements given by the deceased have been recorded without any overwriting or without any interpolation. Initials have been put by the Executive Magistrate at the bottom of the first leaf and only a part of the signature has touched some writing in respect of Question No. 8 for which no doubt can be entertained about the correctness of recording. So far as the flow of writing is concerned, it also appears that all the questions and answers have been recorded in the same flow. We have also looked at the reverse side of the page and considering the same it does not appear to us that there is any occasion to doubt that such writing was subsequently made by the Executive Magistrate. The Executive Magistrate has also deposed in the case and he has specifically deposed that he recorded the dying declaration in question and answer form. He has denied the suggestion in

the cross-examination that there was any antedating or fabrication on his part in recording the dying declaration. The Executive Magistrate is a disinterested witness and is a responsible officer. There is no circumstance or any material on record to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration. The dying declaration recorded by him tallies substantially with the dying declaration said to have been made orally to the brother Prem Chand PW 4. Simply because the offence under Sections 498A and 304B IPC could not be established beyond doubt by the prosecution for which the accused were acquitted of the said charges, it cannot be held that the accused had no motive for committing the said murder. Although the dying declaration recorded by the Executive Magistrate was sent to the Investigating Officer after about a fortnight, we do not think that for such delay, genuineness of the said dying declaration recorded by the Executive Magistrate is to be doubted. There is an entry in the despatch register by which the said statement was sent to the DSP (H) Ludhiana by the Head Constable of the police post. Mr Roy has contended that the doctor who countersigned the first dying declaration recorded by the ASI has not been examined by the prosecution. In our view, for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made to Prem Chand, PW 4, need not be doubted. Moreover, it was open to the accused to examine the doctor alleged to have countersigned the dying declaration recorded by the ASI if the accused had intended to rely on such dying declaration.

[19] In view of the above submissions and observations, let us examine the evidence of Sri Kajal Kanti Debnath (PW-1), the father of the deceased, which is very important for determining the case in hand. PW-1, in his deposition has stated that in the month of July, 2004 he gave his daughter marriage with accused Madan Debnath, the accused-appellant No.1. After certain period of time her husband, along with his family members started physical torture upon her to bring Rs.1,00,000/- and his daughter told him about the incident. He deposed that the accused persons brought allegation that his daughter has black complexion and she cannot become a mother. He further deposed that in the year 2009 she gave birth to a female child. He has deposed that he gave Rs.50,000/- to his daughter to give the same to her husband. But even then, the accused-persons were not happy and her husband used to beat her and her brother in laws also beaten her and there was instigation from the other accused-persons to commit physical torture on her. Further he deposed that on 22.12.2012, her

husband and other family members beaten her on demand of Rs. 1,00,000/. Thereafter, his daughter came to his house and told the incident. Subsequently, PW-1 took her back to her matrimonial home and requested all the accused-persons not to torture his daughter.

[20] Dr. Niladri Sengupta, PW-10, has deposed that on 01.01.2013 he was posted in the AGMC and GBP Hospital as Junior resident in the department of surgery, Unit No.3. On that day, one Bina Debnath, wife of Sri Madan Debnath was admitted in FS-1 ward with 85% burn injury. He examined her on that day at about 1.15pm. On examination he found her in sound state of mind for giving her statement. He further stated that he examined the deceased on requisition of the Executive Magistrate Smti. Reshmi Das, PW-15 and on examination he issued a certificate (Exbt.6). On identification of the same is marked as Exbt.6. PW-10 further stated that after giving certificate, PW-15 recorded the dying declaration (Exbt.10) in his presence and after recording her statement the same was read over to the victim and thereafter obtained thumb impression of the victim, Bina Debnath (deceased) in his presence.

[21] In cross, PW-10 has further stated that he gave treatment to the victim prescribing medicines which were given during her treatment. He has stated that he did not mention in the certificate at what time he had issued the same. In the cross examination he has categorically stated that after recording statement, LTI was obtained and thereafter Magistrate put her signature and he also put his signature just below the writing. He further stated that he did not put his signature keeping any blank space in between the dying declaration (Exbt.10).

[22] After giving our anxious consideration to the facts and circumstances of the case and the evidence adduced and also taking into

consideration the dying declaration (Exbt.10), which is said to have been made by the deceased, it appears to us that except against the accused-husband, there is no specific overt act against the other accused-persons No. 2 to 5. In the dying declaration also she has not spoken anything about these persons and there is no circumstantial evidence to link these persons with the above crime. In view of the same, we are of the view that prosecution has failed to prove the allegations beyond reasonable doubt in respect of the appellants No. 2 to 5. As such, they are entitled for acquittal and accordingly they are acquitted from the charge levelled against them.

[23] After thorough scrutiny of the (Exbt.10) declaration, it has been observed that there is specific allegation by way of dying declaration that appellant No.1, i.e. the husband of the deceased killed her by pouring kerosene oil and the said dying declaration was made before the Executive Magistrate after obtaining approval of the concerned doctor, PW-10, who gave treatment to the deceased. PW-10, the doctor has categorically stated that her health condition was stable and she was in fit state of mind to give dying declaration. The certificate issued by the doctor as Exbt.6. The medical record indicates that her vital parameters were normal like blood pressure 120/80, 110/70, indicates that her health condition was stable.

[24] With regard to the contention raised that she was given injection of 'Phenergan and Pethidine' as a pain relief and for sedation to have a sleep and under the influence of the said drug taking the dying declaration was not proper and the signature was obtained in the white paper at the bottom and thereafter, it has been filled up. This presumption made by the learned counsel for the accused-persons cannot be appreciated since the argument is made without any basis and to this effect there was no evidence in support of this contention made by the learned senior counsel for the accused-persons.

[25] Dr. Niladri Sengupta, PW-10, has categorically stated that since the patient was suffering with burn injuries and the body was covered with

screen and mosquito net and it was not possible to obtain the signature appropriately, so with some difficulties, they obtained the LTI. Keeping in mind of all the health conditions, thumb impression has been obtained as per the convenience of the deceased to avoid further infection to her body.

[26] As per Section-32 of the Indian Evidence Act, the credence is given to the dying declaration which is made by the deceased against her husband stating that he poured kerosene oil and put her ablaze and killed her and the dying declaration is *“On Sunday at night at about 10.30pm, my husband set fire on my person. Thereafter, I was brought to Bishalgarh thereafter, to GBP hospital. My husband is responsible for my present condition”*. There is no reason to disbelieve the version of the deceased since she is none other than the legally wedded wife. However, there were certain disputes amongst them, but it does not mean that the wife has poured kerosene by herself and put herself ablaze and committed suicide.

[27] The contention of the accused-husband that he made an attempt to put off the fire and in the process, his hands and part of his body was burn, cannot be considered since, the same is without any evidence. Further, the deceased has been shifted to the hospital for treatment. She was admitted and there is no reason as to why the accused-persons ran away from the hospital without getting treatment and he had attended some private clinic and got treatment. Dr. Santosh Chakraborty, DW-1 who has been examined in this regard has not placed any evidence before this Court to appreciate the said incident in favour of the accused-persons. We have given our anxious consideration to the dying declaration of the deceased. According to us, the statement made by Bina Debnath (deceased herein) clearly indicates that none other than her husband was responsible for the crime and that too, was given in presence of the Executive Magistrate (PW-15) when she was in fit state of mind. In our considered opinion, there is no shadow of doubt to disbelieve or suspect the statement made by the deceased-Bina Debnath.

[28] In our ultimate analysis of the judgments cited by Mr. Biswas, learned senior counsel appearing for the accused-persons, on the issue of dying declaration, do not support the case of the accused-appellant No.1. Accordingly, on culmination of every aspect of the matter and the entire evidence and materials on record, the accused-appellant No.1, Madan Debnath, is guilty of committing offence punishable under Sections-498A/302/34 of IPC.

[29/A] Hence, the conviction and sentence as held by the learned Addl. Sessions Judge against the accused-appellant No.1, Mr. Madan Debnath stands affirmed.

[29/B] The conviction and sentence passed by the learned Addl. Sessions Judge against the appellants No.2 to 5, namely, Laxmi Rani Debnath, Arun Debnath, Ratan Debnath and Gopal Debnath, stands set aside and quashed.

[30] In the result, the appellants No.2 to 5 shall be released forthwith, if not wanted in connection with any other case. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

**JUDGE**

**JUDGE**

*A.Ghash*

