

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

Before :

The Hon'ble Mr. Justice Bibek Chaudhuri.

C.R.A./524/2017

Tapan Maity & Ors.
Vs.
State of West Bengal

For the appellant : Mr. Swapan Kumar Mallick, Adv.
Mr. Majahar Hossain Choudhury, Adv

For the State : Mr. Sasswata Gopal Mukherjee, Ld.P.P,
Mr. Ranabir Ray Chowdhury, Adv.
Mrs. Faria Hossain, Adv.

Heard on : 15.01.2021, 27.01.2021 &
04.03.2021.

Judgment on : 04.03.2021

Bibek Chaudhuri, J. :

The appellants, being the husband, mother-in-law, father-in-law and brother-in-law of a deceased married woman have assailed the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 1st Court at Contai, Purba Medinipur holding the appellants guilty for committing offence under Section 498A/304B of the Indian Penal Code and convicting and sentencing them to suffer rigorous imprisonment for two years with fine of Rs.3,000/- each, in default, to suffer simple imprisonment for another three months for offence under Section 498A I.P.C. and also to suffer rigorous

imprisonment for seven years each for committing offence under Section 304B of the Indian Penal Code.

Marriage of Durgarani Maity (since deceased) was solemnized with Tapan Maity sometimes in 2005. After marriage she went to her matrimonial home and started her marital life with her husband. There were other matrimonial relations being appellant Nos.2 to 4 residing jointly with Tapan Maity. The said Durgarani Maity had met with an unnatural death on 19th June, 2010 consuming poison. The father of Durgarani Maity, Saktipada Sahoo by name, lodged a written complaint before the Officer-in-Charge at Marishda Police Station in the District of Purba Medinipur, alleging, inter alia, that since after marriage till the date of her death, Durgarani was subjected to physical and mental torture by the appellants on demand of dowry. In spite of such torture, the victim continued to live in her in-laws house with the appellants. On 19th June, 2010 in the morning, the appellants tried to drive her out from their house after torturing her. Durgarani informed the matter to the elected member of the local Gram Panchayat. The member of the Panchayat advised her to stay at her matrimonial home. When she returned her matrimonial home, she was again subjected to physical and mental torture. The appellants also threatened to kill her. On 20th June, 2010 in the afternoon, the son-in-law of the de facto complainant informed him over phone that his daughter had consumed poison. He immediately went to the member of Panchayat and came to know that his daughter died at Contai Sub-divisional Hospital.

On the basis of the said complaint, police registered Marishda Police Station Case No.69 of 2010 dated 21st June, 2010 under Section

498A/304B/34 of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act against the F.I.R. named accused persons and took up the case for information.

The investigation culminated by filing charge-sheet against the accused/appellants under Section 498A/304B of the Indian Penal Code.

The appellants duly appeared before the learned Trial Judge to face trial, charge was framed against them on two separate heads namely, Section 498A and Section 304B of the Indian Penal Code. As the appellants pleaded not guilty, trial of the case commenced. During trial, prosecution examined as many as 16 witnesses. Series of documents were marked paper exhibits, which I propose to refer subsequently in the body of the judgment.

The accused/appellants were examined under Section 313 of the Code of Criminal Procedure. They however, did not lead any defence witness. On conclusion of trial, the learned Trial Judge by passing the impugned judgment held the appellants guilty for committing offence under Section 498A/304B IPC and convicted and sentenced them accordingly.

The learned Advocate for the appellants challenges the impugned judgement on the following grounds:-

It is submitted by him that the F.I.R. was vague. According to him, the FIR must contain the date of occurrence of offence. In Column No.3 of the formal FIR, it is written that the incident took place since after marriage about five years ago to 20th June, 2010. It is contended by the learned Advocate for the appellants that from the evidence of the de facto complainant marriage of the deceased with

Tapan was solemnized on 20th Jaistha, 2012 B.S. corresponding to 5th/6th June, 2005. The de facto complainant stated that the victim was allegedly tortured for a continuous period of 5 years for a sum of Rs.10,000/-. Except one date, i.e. on 19th June, 2010, the de facto complainant did not specify any date when the victim was physically or mentally tortured by the appellants. Therefore, the formal FIR was vague and the investigation carried out on the basis of the said FIR was indeed perfunctory.

Secondly, it is submitted by the learned Advocate for the appellants that charge against the accused persons was not framed in terms of Section 212 and 213 of the Code of Criminal Procedure. Under Section 212 of the Code of Criminal Procedure, every charge shall contain the particulars as to the time and place of the alleged offence, and the persons against whom, or the thing in respect of which, such offence was committed. Section 213 imposes an obligation upon the Trial Court to describe the manner of committing offence when the nature of the case is such that the particulars mentioned in Sections 211 and 212 of the Code of Criminal Procedure do not give the accused sufficient notice of the matter with which he/they is/are charged.

Coming to the instant case, it is urged by the learned Counsel for the appellant that the charge against the accused persons in two heads were framed in the following words:

“First – That you on from the date of marriage of Durgarani Maity and on 20.06.2010 at village Chunpara under Police Station Marishda being the husband and relatives of the husband subjected Durgarani Maity, wife of Tapan Maity to cruelty by inflicting physical

and mental torture upon her demanding dowry and such torture drove her to end her life.

and thereby committed an offence punishable under Section 498A of the Indian Penal Code and within my cognizance.

Secondly – That you on 20.06.2010 at village Chunpara under Police Station Marishda committed dowry death by causing death of Durgarani Maity wife of Tapan Maity.

and thereby committed an offence punishable under Section 304B of Indian Penal Code and within my cognizance.”

The learned Counsel submits that no charge can be framed without mentioning the date of occurrence of the offence. The learned Trial Judge framed charge stating, “from the date of marriage of Durgarani Maity and on 20th June, 2010 it was bounden duty of the learned Judge to specify the dates on which the accused persons inflicted physical and mental cruelty upon the deceased.

It is also submitted by the learned Counsel for the appellants that while framing charge under Section 304B of the Indian Penal Code, the charge must contain the ingredients of offence. It is not sufficient to state that the accused persons committed dowry death by causing death of Durgarani Maity.

Thus, the charge being vague, trial is vitiated and bad in law. On the basis of such trial, the appellants cannot be held guilty for committing offence under Section 498A /304B of the Indian Penal Code.

Thirdly, the learned Counsel for the appellants draws my attention to the evidence adduced by the witnesses on behalf of the prosecution.

It is submitted by him that the de facto complainant deposed during trial of the case as P.W.1. From his evidence, it is ascertained that he gave some cash money, ornaments, furniture and other articles at the time of her marriage of his daughter with Tapan Maity as Nuptial Gift. When P.W.1 stated in unequivocal terms that at the time of marriage some cash money, ornaments and other articles were given as nuptial gift, question of demand or delivery of dowry by P.W.1 does not arise at all. It is also pointed out by the learned advocate for the appellants that the prosecution as case disclosed from the FIR as well as the evidence of the witnesses is that after few days of marriage, the appellants subjected the victim with cruelty on demand of dowry. According to him, this is a cock and bull story that demand of a sum of Rs.10,000/- was made and continued for a period of five years till the date of unnatural death of his daughter. He has raised a pertinent question as to why no complaint was lodged during the lifetime of Durgarani in spite of torture being perpetrated upon her for a long period of five years. It is also pointed out by the learned Counsel that in the FIR, P.W.1 stated that he had received the information that his daughter consumed poison from his son-in-law and in the evidence he stated that he received such information from his elder brother.

The learned advocate for the appellants submits that P.W.4 Tarapada Maity, P.W.5 Soubhagya Giri, P.W.8 Arup Kr. Giri, P.W.9 Kalipada Sahoo are the close relatives of the de facto complainant and they are interested witnesses. Therefore, their evidence should be scanned with due care and caution and thereafter be accepted.

It is also pointed out by the learned advocate for the appellants

that P.W.2 Mukul Giri is the husband of P.W.3, Smt. Debirani Giri. P.W.3 is the local Gram Panchayat Member. P.W.2 practically performs all the duties of an elected member of Gram Panchayat on behalf of his wife. He refers to the relevant portion of the evidence of P.W.2 where he stated that he heard that Tapan Maity and his family members did not like the nuptial gift given by the father of Durgarani and as a result, there was a dispute and quarrel between Durgarani and her husband and in-laws. According to the learned counsel, the evidence of P.W.2 cannot be taken into consideration as his evidence is in the nature of hearsay.

It is further submitted by him that P.W.2 and P.W.3 deposed against the appellants due to political rivalry. According to the said witnesses, a village salish was held in the month of May, 2010 over the incident of torture inflicted by the appellants upon Durgarani and it was alleged that the appellants would not treat the daughter of the de facto complainant with cruelty and the de facto complainant would pay Rs. 10,000/- by installments. It is vehemently argued by the learned advocate for the appellants that no 'salishnama' of the said meeting was prepared. On the basis of the oral evidence and in absence of any document in support of amicable settlement of the dispute between the parties under the intervention of Panchayet Member, the Court had no other alternative but to hold that such story was concocted after institution of the case because in the FIR also the de facto complainant did not utter a single word about holding a meeting to settle the dispute between Durgarani and Tapan Maity and his family members. The de facto complainant stated that on 19th June, 2010, the deceased went to the member of local Gram Panchayat (P.W.3) and intimated

that she was being tortured by the appellants. But P.W.3 did not take any legal action against the appellants. On the contrary, she advised her to stay back in her matrimonial home. This part of statement in the F.I.R. and specific act and conduct of P.W.3 suggested that the deceased might be on the wrong side of the incident and therefore, she was advised to stay at her matrimonial home. Had there really been any torture, she might not have been advised by P.W.3 to stay back at her matrimonial home.

Lastly, the learned advocate for the appellants submits that the prosecution failed to prove the essential ingredients of offence under Section 304B of the Indian Penal Code that soon before her death, the deceased was subjected to torture by the appellants on demand of dowry. On the contrary, the evidence on record shows that Durgarani was allegedly treated with cruelty by the appellants. It is also in the evidence that on 19th June, 2010 she was not offered with food by the appellants. But there was no evidence that on 19th June, 2010 or before 19th June, 2010, there is close proximity between the date of torture and unnatural death of the victim. She was subjected to torture on demand of dowry.

On the aforesaid grounds, the learned advocate for the appellants has alleged that the judgment and order of conviction and sentence cannot be sustained and the accused person should be acquitted from the charge.

Mr. Ray Chowdhury, learned advocate for the State Respondent, on the other hand submits that factual aspect of the matter is not disputed. The F.I.R. stated that the appellants started torture to the deceased on demand of dowry since after few days of marriage till 19th

June, 2010. She had met with an unnatural death consuming poison while she was staying at her matrimonial home. Her dead body was found on a field in front of the matrimonial home of the appellants. Therefore, it was the primary duty of the accused persons to state under what circumstances the victim had met with an unnatural death.

Mr. Ray Chowdhury invites attention of this Court to consider that both the de facto complainant and the appellants are from terminally poor strata of the deceased; they have little education. Under the backdrop of unfortunate death of a 25-year-old married daughter of the de facto complainant, it might happen that he did not state the date of marriage of the deceased with the appellant No. 1. For this reason, the F.I.R. cannot be treated as vague. It is also submitted by him that F.I.R. is not an encyclopaedia of the incident and minor omission and contradiction are bound to occur when a father had to lodge complaint one day after the death of his young daughter. It is not a great contradiction that in the F.I.R., he stated that his son-in-law informed about consumption of poison of his daughter and in the evidence P.W.1 stated that he was informed about the death of his daughter from his brother. The contradictions that touched the root of the prosecution case resulting in offering benefit of doubt to the appellants, are material contradictions, which go against the prosecution. In the instant case, there is no such material contradiction.

The learned counsel for the respondent specially refers to the evidence of P.W.2 and P.W.3 with that of P.W.1. P.W.3 is the member of local Gram Panchayet and P.W.2 is her husband. It is pointed out by the learned counsel that the defence did not even suggest that due to

political rivalry the above named two witnesses deposed falsely. In absence of such suggestion, there is no reason to disbelieve their evidence.

Next, he refers to the evidence of P.W.7 Bhawani Maity and P.W.10 Smt. Arati Maity. They are the neighbours of the accused person. From their evidence, it is ascertained that Durgarani was subjected to physical and mental torture by the accused persons. They protested against such act of the accused person but they did not care to obey the words of P.W.7 and P.W.10 stating, inter alia, that it was their personal matter. Therefore, it is submitted by the learned advocate for the State Respondent that the prosecution has been able to prove that the deceased was subjected to torture consistently by the appellants. The learned advocate for the respondent submits that Durgarani died in abnormal circumstances consuming poison. Secondly, she died within 7 years of her marriage. Thirdly, it is amply proved by the evidence of independent witnesses that she was subjected to cruelty or harassment by the appellants. Fourthly, such cruelty or harassment was made in connection with demand of a sum of Rs. 10,000/-. Fifthly, such torture was lastly made on 19th June, 2010. The deceased was driven out from her matrimonial home. When she returned to her matrimonial home on the advice of P.W.3, she was not offered with food and on the next day, her dead body was found on the field in front of her matrimonial home. The Post Mortem Report proves that she died after consuming poison. All the facts and circumstances are taken into consideration together, there cannot be any escape but to hold that there is no reason to interfere with the judgment and order of conviction passed by the learned trial Judge.

Now, let me first consider as to whether the FIR and the charge framed against the appellants by the learned trial Judge suffer from vagueness or not.

It is already pointed out that the de facto complainant is almost uneducated. The complaint was written by one Biswajit. In the written complaint there is no certification that it was recorded under the instruction of the de facto complainant or that the contents of the written complaint was read over and explained to him. It is also pointed out by the learned counsel for the appellants that the de facto complainant did not state the date of marriage of the deceased with the appellant No.1 or the date when she was allegedly tortured for the first time. On this count the formal F.I.R. was vague because the date of occurrence has not been stated in the formal F.I.R.

I have already stated that in column No.3 (A) of the formal F.I.R. date of occurrence of the offence was recorded as "soon after marriage about five years ago to 20th June, 2010." From the evidence on record it is found that the victim committed suicide on 20th June, 2010. It is the allegation of the prosecution that the victim committed suicide failing to bear torture inflicted by the appellants to her. Therefore, column 3(A) of the F.I.R. at least discloses the last date of occurrence on the basis of which the Marishda P.S. Case No.69 of 2010 was started.

For the reasons stated above, this Court is of the view that the F.I.R. is not vague and does not suffer from any irregularity that affects the root of the prosecution case.

Learned counsel for the appellants does not raise any objection with regard to framing of charge under Section 498A of the Indian Penal Code. However, his objection is against the charge under Section 304B of the Indian Penal Code. According to him, the charge framed under Section 304B of the Indian Penal Code does not contain essential ingredients of offence under Section 304B of the Indian Penal Code and accordingly, the charge is bad for non-compliance of the provision of Sections 212 and 213 of the Code of Criminal Procedure.

Chapter XVII of the Code deals with the framing of charge. Section 211 states about the contents of charge. Section 212 (1) states, "(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged."

In respect of the charge under Section 304B of the Indian Penal Code the learned Judge did not state the time of commission of offence. It is bounden duty of the learned trial Judge to state such particulars of the manner in which the alleged offence was committed if the nature of the case is such that the particulars mentioned in Section 211 and 212 do not give the accused sufficient notice of the matter with which he is charged. According to him, the charge under Section 304B must contain in brief the allegation of torture upon the deceased by the appellant and the cause of death is due to such torture and the torture was for demand of dowry. Nothing has been stated in the charge under Section 304B of the Indian Penal Code.

Therefore, the charge being bad in law, entire trial is vitiated.

In reply, the learned advocate for the State Respondents refers to the provision of Section 215 of the Code.

Section 215 runs thus:-

“No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.”

He also refers to Section 464(1) of the Code. The said provision is quoted below:-

“464. Effect of omission to frame, or absence of, or error in, charge.-(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.”

Thus, it is submitted by the learned Advocate for the State that even assuming that there was error in charge, such error or omission to state the offence in particular shall not be treated as illegality and for this reason trial cannot be vitiated unless the accused was in fact misled by such error or omission or it has caused a failure of justice.

Section 464 of the Code goes further to state that even omission to frame charge or the irregularity in charge shall not be treated to be fatal unless a failure of justice has in fact been occasioned thereby.

The effect of error or omission to frame charge was first considered by a Five Judges Bench of the Hon'ble Supreme Court in the Case of ***Willie (William) Slaney Versus The State of Madhya Pradesh*** reported in ***AIR 1956 SC 116***. Hon'ble Justice Vivian Bose speaking for the Bench observed as follows:-

"44. In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; but if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature of the charge, or a total want of one, was taken at an early stage. If it was not, and particularly where the accused is defended by counsel (*Atta Mohammad v. King-Emperor*) it may in a given case be proper to conclude that the accused was satisfied and knew just what he was being tried for and knew what was being alleged against him and wanted no further particulars, provided it is always borne in mind that "no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused" (*Abdul Rahman V. King-Emperor*). But

these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases "however" alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if there were."

The said decision was subsequently considered with approval in the case of ***Esher Singh Vs. State of A.P.*** reported in **2004 (11) SCC 585**. In ***Esher Singh*** (supra), the Hon'ble Supreme Court held: -

"20. Section 2(b) of the Code of Criminal Procedure, 1973 defines "charge" as follows:-

"2.(b) 'charge' includes any head of charge when the charge contains more heads than one,"

The Code does not define what a charge is. It is the precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. A charge is not an accusation made or information given in the abstract, but an accusation made against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him.

Main purpose for framing a charge is to make the accused aware of the accusation made against him for which he would be tried so that

the accused can get an opportunity to defend himself. In the instant case, during trial the appellants did not come up with any allegation that they were misled or prejudiced due to the omission to state the manner in which the offence under Section 304B was allegedly committed. Trial was conducted in presence of the accused. They cross-examined the witnesses and took specific defence to get rid of the charge. Therefore, it cannot be held that the trial of the case was vitiated for failure to frame charge under Section 304B of the Indian Penal Code in terms of the requirement of Section 213 of the Code of Criminal Procedure.

Thus, the technical objection against the impugned judgment has been taken care of by this Court and decided against the appellants.

Now let me apprise the evidence on record afresh to consider as to whether charge under Section 498A/304B IPC has been proved or not. In other words, whether the learned Trial Judge was justified in holding the accused guilty for committing offence under Section 498A/304B of the Indian Penal Code.

Learned Advocate for the appellants with usual fairness and frankness submits that evidence on record is galore to prove charge under Section 498A of the Indian Penal Code.

The marriage of the deceased victim with the accused was solemnized sometimes on 5th/6th June, 2005. The parents of the deceased as well as the neighbours of the accused persons stated that she was subjected to torture by the appellants. Their evidence could

not be shaken through cross-examination. Therefore, according to the learned Advocate for the appellants, the finding of the learned Trial Judge in support of the charge under Section 498A IPC is justified and he has not advanced any argument challenging the findings of the learned Trial Judge under Section 498A IPC.

However, with regard to the offence under Section 304B of the Indian Penal Code, it is submitted by the learned Counsel for the appellants that the prosecution was under obligation to prove the following ingredients to bring home a charge under Section 304B of the Indian Penal Code:

- i. that the death of a woman has been caused in abnormal circumstances by her having burnt or having been bodily injured.
- ii. Within 7 years of her marriage;
- iii. That she was subjected to cruelty or harassment by her husband or any relative of her husband;
- iv. In connection with any demand of dowry; and
- v. That the cruelty or harassment meted out to her continued to have a causal connection or live link with the demand of dowry.

In other words torture for the demand of dowry and unnatural death of the victim should happen in such proximity that the Court will have no other alternative but to presume that the death was due to the causal effect of torture on demand of dowry. According to the learned Counsel for the appellants the prosecution failed to prove ingredients (iv) and (v) of Section 304B of the Indian Penal Code.

In order to substantiate his contention he refers to the evidence of the witnesses. It is submitted by him that the prosecution came up with a story to the effect that the victim was subjected to torture, both physically and mentally, for a long period of 5 years on demand of Rs.10,000/-. According to him, the story of dowry demand is mixed up not only with a grain of salt but lump of salt. If a girl is consistently tortured for 5 years for a sum of Rs.10,000/-, it is absolutely unbelievable that the parents of the deceased did not lodge any complaint during her lifetime. It is also pointed out by the learned Advocate for the appellants that the prosecution failed hopelessly to prove that immediately before commission of suicide by the deceased she was subjected to torture on demand of dowry. On the other hand, from the evidence of P.W.2 and P.W.3 whom the prosecution has relied as star witnesses, stated in their evidence that on 19th June, 2010, the victim was tortured and driven out from her matrimonial home. She informed the matter to the member of local Gram Panchayat and members advised her to stay back to her matrimonial home. She went there but was not provided with food and on the next day she committed suicide. Therefore, if at all the prosecution case is believed, the deceased was tortured for any purpose other than demand of dowry. She might commit suicide when her matrimonial relations denied to give her food on 19th June, 2010. The learned Trial Judge failed to consider that there was absolutely no evidence or, in other words, the prosecution failed to prove the cause of unnatural death of the deceased.

Learned P.P.-in-Charge, on the other hand, draws my attention

to Paragraph 8 of the decision of the Hon'ble Supreme Court in the case of ***Sher Singh alias Partapa Versus State of Haryana*** reported in **(2015) 3 SCC 724**. Paragraph 8 runs thus:-

“8. Within the short span of three years, Parliament realised the necessity to make the law more stringent and effective by introducing amendments to the Dowry Act, as well as IPC by enacting Act 43 of 1986. These amendments, inter alia, made the offences dealt with in the Dowry Act cognizable for certain purposes and also made them non-bailable as well as non-compoundable. By the introduction of Section 8-A of the Dowry Act the burden of proof was reversed in respect of prosecutions for taking or abetting the taking or demanding of any dowry by making the person concerned responsible for proving that he had not committed any such offence. Contemporaneously, Section 304-B was inserted into IPC. The newly added section stipulates that:

“304-B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.”

Sub-section(2) makes this offence punishable with imprisonment

for a term which shall not be less than seven years and which may extend to imprisonment for life. Section 113-B was further incorporated into the Evidence Act; (yet again ignoring the futility, if not ignominy, of retaining the withered appendage in the form of the existing Section 113, and further perpetuating an anachronism). Be that as may be, the newly introduced Section 113-B states that when the question is whether a person has committed the death of a married woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment or in connection with any demand for dowry, the court shall presume that such person has caused dowry death. The Explanation harks back to the simultaneously added Section 304-B IPC for the definition of dowry death, clarifying thereby that the person alluded to in this section is her husband or any relative of her husband. It is noteworthy that whilst Section 113-A of the Evidence Act reposes discretion in the court to draw a presumption so far as the husband's abetment in his wife's suicide, Parliament has mandated the court to draw at least an adverse inference under Section 113-B in the event of a dowry death. It seems to us that where a wife is driven to the extreme step of suicide it would be reasonable to assume an active role of her husband, rather than leaving it to the discretion of the court."

On the self same point Mr. Ray Chowdhury also refers to another decision of the Hon'ble Supreme Court in the case of ***Maya Devi and another Versus State of Haryana*** reported in ***AIR 2016 Supreme Court 125***. It is submitted by Mr. Ray Chowdhury that to attract the provisions of Sections 304B, one of the main ingredients of the offence

which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

Coming to the instant case, it is submitted by Mr. Ray Chowdhury that two independent witnesses namely, P.W.2 and P.W.3 stated that in the month of May, 2010 village 'salish' was held and it was decided that the father of the deceased would pay Rs. 10,000/- to the appellants within six months from the date of 'salish'. It is in evidence that the victim was tortured for bringing the said amount of money from her father. The evidence on record is also clear that the victim was treated with cruelty even on 19th June, 2010 and she

committed suicide on 20th June, 2010. Thus, the prosecution was able to establish the proximity test in order to prove his charge under Section 304B of the Indian Penal Code and there is no reason to interfere with the judgment and order of conviction and sentence passed by the learned trial Judge. Section 2 of the Dowry Prohibition Act, 1961 defines "Dowry". The section runs thus:-

2 Definition of 'dowry'. —In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

*at or before¹ [or any time after the marriage]² [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.³ [***] Explanation II.— The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).*

The plain reading of the aforesaid revision shows that dowry means any property or valuable security given or agreed to be given at or before or any time after marriage in connection with the marriage of the said parties. Even it is assumed that after marriage, the appellants demanded a sum of Rs.10,000/-, is there any evidence on record that such amount was claimed in connection with the marriage. In other words, there is absolutely no evidence to show that the appellants treated the deceased with cruelty for illegal demand of dowry threatening her marriage with the appellant No.1 will be dissolved, if her father failed to pay a sum of Rs.10,000/-. I have carefully perused the evidence. The essential part of the ingredient offence to prove dowry death is absent in the evidence.

As per the definition of dowry death in Section 304B and the wording of Section 113B of the Evidence Act, one of the essential ingredients is that the woman must have been "soon before her death" subjected to cruelty by the harassment for "in connection with demand of dowry". There is nothing on record to show that any demand of dowry was made soon before her death holding 'salish' about one month before the death of the deceased on the issue of payment of a sum of Rs.10,000/- cannot be said to be the proximate cause of the death of the deceased.

Thus, there is nothing on record to show that any demand of dowry was made soon before her death. The cause of action for committing the offence appears to be torture upon the victim by driving her out from her matrimonial home and by not offering her food on 19th June, 2010. All those facts and circumstances have no direct bearing with the charge under Section 304B of the Indian Penal Code. The decision of the Hon'ble Supreme Court in ***T. Singh Vs. State of Punjab***, reported in ***AIR 2009 SC 1454*** may be relied on in this regard.

For the reasons stated above, the instant appeal is allowed in part.

The judgment and order of conviction and sentence under Section 498A of Indian Penal Code passed by the learned Additional Sessions Judge, 1st Court at Contai in Sessions Trial No. 26 (4), 2015 is affirmed.

However, for the reasons stated above, this Court holds that the learned trial Judge committed error in appreciating evidence as well as legal principles while holding the appellants guilty for committing

offence under Section 304B of the Indian Penal Code and convicting and sentencing them.

The order of conviction and sentence passed against the appellants for the offence punishable under Section 304B of the Indian Penal Code is set aside.

Let a copy of the judgment be sent to the learned Court below for information along with Lower Court Records. The learned trial Judge is directed to ascertain as to whether the appellant no. 1 has already served sentence under Section 498A of Indian Penal Code or not. If the appellant served sentence under Section 498A of the Indian Penal Code in full, he shall be released.

The learned trial Judge is further directed to issue warrant of arrest against the remaining appellants to serve sentence under Section 498A IPC, if they are on bail for the remaining part of the sentence for which they are on bail.

All the connected applications are disposed of.

(Bibek Chaudhuri, J.)