

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 12 of 2011

Debabrata Giri

Vs.

The State of West Bengal

Amicus Curiae

: Mr. Palash Chandra Majhi.

For the State

: Mr. Binay Panda,
: Mr. Subham Bhakat.

Hearing concluded on: 19/04/2023

Judgment on: 29/11/2023

Rai Chattopadhyay, J.

1. In this appeal the sole appellant/convict has challenged the judgment of conviction and order of sentence dated July 29, 2009 and July 30, 2009 respectively, passed by the Additional District & Sessions Judge, 3rd Fast Track Court, Contai, Purba Medinipur, in Sessions Trial No.10/December/2007. The appellant faced trial before the Court after having been charged for offences punishable under Sections 498A and 304 IPC and has ultimately being found guilty, was convicted and imposed with the sentence to suffer rigorous imprisonment for seven years and to pay fine of Rs. 10,000/-, in default, of which he was to suffer six months of simple imprisonment.
2. In this appeal the appellant has pleaded the grounds that the impugned judgment of the trial Court is dehors due considerations as

regards the evidence on record and also in contravention of the settled laws, in so far as the provisions under which he has been punished. He has prayed for setting aside of the judgment of conviction and sentence of the trial Court, as mentioned above.

3. The prosecution case started with filing of the FIR by the informant namely, Sri Sasadhar Jana, dated May 30, 2007. The informant has reported therein regarding alleged homicidal death of his sister on May 27, 2007 at about 6.30 p.m. The present appellant has been described as the husband of the victim with whom the victim was married in 1986. Transaction of valuable marital gifts took part at the time of marriage to fulfill the demands for the same made by the appellant and his family. Allegedly, even thereafter the victim was subjected to undue pressure, force and torture on demand of more money, at her in-laws house, by the appellant and her other in-laws. At one point of time due to non-fulfillment of such inordinate demands of the appellant and his family members, the victim was driven out from her matrimonial home after being subjected to physical torture. That caused her to lodge a police case being Ramnagar P.S. Case No. 64/1999 dated 01.09.1999, under Sections 498A, 323 IPC. Allegedly, the appellant had put up a show of bonafide and innocence in disguise, when during pendency of the trial pursuant to the FIR as mentioned above, he called the victim at the place namely, Beteswar Bazar on May 27, 2007 at around 6.30 p.m., for compromising the said criminal case. There allegedly when the victim met with the appellant, he assaulted her with a heavy and blunt stone made instrument namely 'Mugur'. Allegedly the appellant assaulted the victim on head and other vital parts of her body indiscriminately and mercilessly. Resulting there to the victim suffered severe bleeding and grave and fatal injuries, on the vital parts of the body. The informant has stated that the victim was taken to Bararankua hospital where she breathed her last on May 28, 2007, in the midnight at 12.17 a.m. The informant has also said in the FIR

that the unscrupulous in-laws of the victim visited the place of occurrence after receiving the news to witness successful implementation of the dreadful plan of murdering his sister. The informant has also explained in the FIR the reason for which he lodged the FIR belatedly after two days from the date of occurrence.

4. Pursuant to the said FIR investigation was initiated and culminated into filing of charge sheet by police, against the present appellant. The trial Court has framed charges on September 3, 2008, against the appellant under Section 498A, 304 IPC and thus the trial commenced.
5. Now before dwelling on the evidence of prosecution in the trial, I find it proper to mention about report of the Superintendent Medinipur Central Correctional Home dated March 24, 2023, which has been handed over to the Court by Ld. Counsel representing the State and kept with the record. It reveals that the sentence of the appellant has been remitted and he has been released from Correctional Home after such remission of his sentence on August 6, 2009.
6. In this appeal since no one has appeared to represent the appellant. The Court appointed Mr. Palash Chandra Majhi as Amicus Curiae, to assist the Court in this appeal. The State has been represented.
7. Ld. Amicus Curiae has put up before the Court certain points after scrutinizing the evidence on record, which are as follows:-
 - (i) The case is based on hearsay evidence. There is no eye witness to the incident of unnatural death of the victim lady.
 - (ii) The chain of circumstances is not complete and circumstances are inconsistent and inconclusive in nature in the instant case which clearly show that within all human probability that act must not have been done by the appellant.

- (iii) Allegations is that on May 27, 2007 at about 6:30 P.M. when the victim lady, i.e, Sonali @ Sefali Giri prayed for mercy by touching the feet of her husband, then he hit, on her head with the help of "Mugur".
- (iv) PW-1 Sasadhar Jana, i.e, the bother of the deceased came to know about the incident at 10 P.M. on 27.05.2007 and reached the place of occurrence at about 12 o'clock. Then he went to Ramnagar Police Station about 4./4.30 A.M on 28.05.2007. He stayed there for 30 minutes. Despite that he did not lodge any complaint in the local Police Station. Again he reached the Ramnagar Police Station at about 10/10:30 A.M. He stayed there till 1/1.30 P.M. on 28.05.2007. Still he did not lodge any complaint in the police station regarding the incident. He did not give any proper explanation for such inaction. At last FIR was lodged at about 8/8.30 P.M. on 30.05.2007. Thus, he says that the whole prosecution story is nothing but an afterthought.
- (v) In the instant case, the FIR was lodged by the complainant, i.e, the brother of the deceased after an inordinate delay at the Police Station which renders the FIR in this case wholly unreliable. The delay in lodging the FIR corrodes the credibility of the prosecution story. The Hon'ble Supreme Court in several cases held that delay in lodging the FIR create doubts if the said delay is not properly explained.
- (vi) There is clear contradiction between the medical and the ocular evidence. It is stated that severe contradictions in the oral evidence and clear latches in the investigation necessitates that the benefit of doubt goes in favour of the accused.

(vii) In the instant case FIR was lodged under Sections 498A/304 IPC. Charge sheet was submitted under Sections 498A/304 IPC also but the trial Court acquitted the appellant of the charge under Section 498A IPC. So the story of mental and physical torture brought by the PW 1 Sasadhar Jana, i.e, brother of the deceased and PW 11 deceased Pratap Jana, i.e, father of the deceased is concocted, fabricated and frivolous. There is no history of mental and physical torture upon the deceased by the appellant. In the instant case there was hot altercation between the deceased and her husband, i.e, the appellant Debabrata Giri immediately before the incident which could induce the appellant to cause such assault upon the victim Sefali Giri.

(viii) If the motive is proved that would definitely supply a link in the chain of circumstances but the absence of motive can be a ground to reject the entire prosecution case when the circumstances are inconclusive and inconsistent in nature and witnesses did not corroborate one another and support the prosecution case.

8. Ld. Amicus Curiae has also referred to certain judgments in support of his argument which may be mentioned as below:-

- (i) ***Balwinder Singh vs. State of Punjab*** reported in ***(1995) SCC Supl. (4) 259***,
- (ii) ***Mohan Singh vs. Prem Singh & Anr.*** reported in ***(2002) 10 SCC 236***,
- (iii) ***Krishnegowda & Ors. vs. State of Karnataka by Arkalgud Police*** reported in ***(2017) 13 SCC 98***,
- (iv) ***Shivaji Chintappa Patil vs. State of Maharashtra*** reported in ***(2021) 5 SCC 626***.

9. As a whole from the submissions made by ld. Amicus Curiae, it appears that he has pointed out to certain probable flaws in the prosecution case, for which, it is submitted that might have gone into

the favour of the present appellant. The State on the other hand, has supported the impugned judgment, on the ground that by oral and duly supportive medical evidence appellant's guilt has been proved beyond all reasonable doubt. And also for this reason, the trial Court's judgment is proper and may not be interfered with by this Court. Now it is incumbent for this Court to relook to the evidence to find if that leaves scope for doubt as far as proof of guilt of the accused person is concerned or that discrepancies if any, are minor not to have a force to dislodge the otherwise consistent and coherent prosecution evidence.

10. Before looking into the ocular evidence in this case it is important that the finding of the autopsy surgeon in the post mortem report, i.e, Exhibit no.8 in the trial, be noted, which is as follows:-

“My opinion as to the cause of death in this case is due to the effects of shock and hemorrhage resulting from above mentioned injuries – ante mortem and homicidal in nature. Further opinion may be provided after receipt of the CE's Report”

11. The autopsy surgeon has been examined as P.W.20 in the trial and he has proved his report (Exhibit 8) and the findings there on. Evidence of this witness including his cross-examination has categorically suggested about the injuries sustained by the victim through assault by the nature of weapon which is the incriminating weapon in the instant trial and that her death due to the result of the injuries suffered from assault by such a weapon.
12. Having said so, let the other witness's statements/evidences be scrutinized:- P.W 1 Sasadhar Jana (de facto complainant) who happens to be the elder brother of the victim Sonali @ Sephali categorically stated that the marriage of Sonali @ Sephali took place about 22/23 years ago with the accused person Debabrata Giri and she used to lead a happy conjugal life. Subsequently the accused persons demanded Rs. 10, 000/- for the purpose of his business

which the father of the victim Sonali @ Sephali could not meet and as a result thereof she was driven out from her matrimonial house by the accused person. He also stated that brothers of Debabrata Giri, brother's wife and his mother used to inflict torture upon Sonali as her father could not meet the demand of dowry of Debabrata Giri. P.W. 1 heard all about this when Sonali @ Sephali visited her father's house. Sonali's father lodged a G.D.E. at the local P.S. On 27.05.07 at about 6/6.30 p.m. Sonali went to the accused person's shop at Beteswar Bazar. When she prayed for mercy of her husband, i.e, the accused Debabrata Giri and requested him to accept her, then the accused person assaulted her with a bamboo 'mugoor' on her head and Sonali fall down on the earth. P.W 1 Sasadhar Jana getting the information at 10 p.m. went to the place of occurrence along with his father, son of his uncle and other neighbouring people at 12 O'clock night on the fateful day. Thereafter they went to Ramnagar P.S. and to Bara-Rankuya B.P.H.C. at 5/5.30 a.m. at dawn. P.W 1 saw the dead body of his sister at the gate of the hospital and her face was smashed and disfigured by the assault and severely injured. He proved his signature along with the signatures of his father and Gauranga Barik on the inquest report which has been marked as Ext-1/1, 1/2 and 1/3. The dead body of his sister Sonali was cremated at Tamluk on 29.05.2007 by them after the post mortem. P.W 1 also stated that as he was busy with cremation of the dead body of his sister the complaint was lodged at the local P.S. on 30.05.2007. He proved his signature in the FIR which has been marked as Ext-2/1. The evidence of P.W 1 could not be contradicted on vital points by way of cross-examination and the same corroborates the FIR.

- 13.** P.W 2 Adhir Guchhait and P.W 3 Bamapada Giri did not say anything against the accused person and about the incident. Ultimately both of them have been declared as hostile.

14. P.W 4 Atul Chandra Nayek also did not say anything against the accused person. He narrated a separate story regarding the injury of Sonali @ Sephali and ultimately declared hostile by the prosecution.
15. P.W 5 Jhareswar Samanta stated in his evidence that on the eventful day he was sitting in the shop room of Swapan Patra while repairing a machine and hearing the sound as well as hue and cry he came to know that Debabrata Giri assaulted his wife. He also stated that after going to the P.O. he saw the wife of Debabrata Giri in a pool of blood and she was shivering. He took her to Bara-Rankuya Hospital and Debabrata Giri fled away. P.W 5 may be said to be the eye witness. He also proved his signature in the inquest report of the police. His evidence could not be contradicted by way of cross-examination on vital points and the same has corroboration with the FIR.
16. P.W 6 Umakanta Bhunia did not say anything against the accused person and narrated a separate story regarding the injury of the wife of Debabrata Giri. Ultimately he was declared hostile by the prosecution.
17. P.W 7 Murari Mohan Maity stated in his evidence that on the eventful day he was in his shop beside Beteswar temple. Hearing the sound three times he thought that local people were beating the ox but subsequently seeing the gathering he went to the P.O. and came to know that Debabrata Giri assaulted his wife who was then lying on the earth. He also stated that unveiling the cloth from her face he saw that the face of Sephali @ Sonali has been smashed and disfigured by the assault. Seeing the injury he became senseless. No remarkable contradiction is found in his cross-examination.
18. P.W 8 Swapan Patra stated in his evidence that wife of Debabrata Giri sustained bleeding injury on her head, face, nose and mouth. He also stated that he was present in the 'Salish' held after about two months of the death of Sonali @ Sephali and Debabrata Giri was found guilty for committing the offence.

- 19.** P.W 9 Kashinath Patra stated in his evidence that on the following day of the incident he came to know that Debabrata Giri killed his wife Sonali @ Sephali by assault at Beteswar Bazar. He was present in the Salish held regarding this matter.
- 20.** P.W 10 Biswajit Giri, the son of Debabrata Giri state a different story of falling down of his mother Sephali @ Sonali with a bucketful water on the step of the pond which caused her injury. He did not say anything against the accused person and ultimately declared hostile by the prosecution.
- 21.** P.W 11 Pratap Chandra Jana being the father of the victim stated in his evidence the Debabrata Giri demanded cash amount of Rs. 10,000/- which he could not give and for which torture was inflicted upon Sonali by her in laws. He reported the matter to the Panchayat and salish was held. On 15th August, 1999 a complaint was lodged at Ranmangar P.S. for the torture inflicted upon Sonali @ Sephali. He came to know from the neighbouring people about the killing of his daughter by his son-in-law Debabrata Giri. He went to the P.O. accompanied by his son and neighbouring people on the fateful night (12/12.30 a.m.) and seeing the bloodstained earth, Mugoer along with some teeth with gum on the earth he became senseless. On the following day in the morning at 5.30 a.m. he saw the dead body of his daughter at Bara-Rankuya Hospital and her face was completely smashed. His evidence could not be contradicted on vital points so far as it appears from his cross-examination.
- 22.** P.W 12 Pintu pal stated in his evidence that at about 6.30 p.m. in the evening he saw a group of persons at the P.O. and the dead body of the wife of Debabrata Giri under injured condition. Subsequently he came to know that Debabrata Giri killed his wife Sephali @ Sonali. No contradiction was found in his cross-examination.
- 23.** P.W 13 Sripati Chandra Giri stated in his evidence that he was not present at his house on the fateful day and subsequently he came to

know that Debabrata Giri killed his wife by beating. Ultimately he was declared hostile by the prosecution.

- 24.** P.W 14 Gauranga Barik stated in his evidence that on 27th May, 2007, he came to know over telephone that Sephali @ Sonali had died at Beteswar Bazar near the Mandir in front of the shop room of accused Debabrata Giri. He also stated that he along with father and brother of Sephali went to the P.O. at Beteswar Bazar and came to know that Debabrata Giri assaulted Sephali @ Sonali on her face with the help of wooden mugoor. They also saw teeth and one eye of the victim Sephali at the P.O. He also saw that the face of Sonali was smashed and there was deep wound measuring about 2" on her nose on 28.05.2007 at Bara-Rankuya Hospital. He also saw son of Sonali and one Jhareswar Samanta at the P.O. The witness proved his signature on the inquest report which has been marked as Ext-1/3. No remarkable contradiction was found in his cross-examination on vital points and his evidence corroborated the case of the prosecution.
- 25.** P.W 15 constable Snehasis Sinha being the carrier of the dead body is an official and formal witness so far as it appears from his evidence. He proved his signature in the dead body challan which has been marked as Ext-3/1.
- 26.** P.W 16 S.I. Kausik Datta proved his endorsement on the face of the written complaint which has been marked as Ext-2/2 and the formal FIR prepared and signed by him is marked as Ext-4. He also stated about starting of Ramnagar P.S. case no. 64/07 dated 30.05.2007 and Ramnagar P.S. U/D case no. 23/07 dated 28.05.2007. Being the recording officer he may be said to be another official witness.
- 27.** P.W 17 S.I. Sadesh Majumdar being the first I.O. of this case is an important witness. He stated in his evidence that the inquest of the deceased Sonali @ Sephali was held by him and the inquest report was proved and marked as Ext.3. He also stated that the photograph of the deceased was taken by Kalyan Patra of Mahamaya Studio in his

presence which has been marked as Ext-'X' for identification. In course of investigation he visited the P.O., drew rough sketch map with index (Ext-5), recorded the statement of the available witnesses under Section 161 Cr.P.C, collected the P.M. report of the deceased from Tamluk Hospital. He also identified the wearing apparels of the deceased which have been marked as Mat-Ext-I, II, III and IV. He could not complete the investigation as he was transferred from Ramnagar P.S. No remarkable contradiction could be found in his cross-examination on vital points.

28. P.W 18 Dr. Pulak Kumar Pattanayek stated in his evidence that on 28.05.2007 he examined Sephali Giri wife of Debabrata Giri. He proved her bed head ticket which has been marked as Ext-6 and also the injury report which has been marked as Ext-7. He categorically stated about the injury of the deceased and also stated that such type of injury may be caused by assaulting with blunt weapon. He also stated unambiguously that Biswajit Giri the son of Sephali stated before him that Sephali was assaulted by Debabrata Giri by lathi at 8 p.m. at the shop (Beteswar). He heard about the same from Nirmal Giri. The evidence of the doctor could not be contradicted on vital points and the same has corroboration with the case of the prosecution.
29. P.W 19 S.I. Madan Mohan Roy being the second I.O. stated in his evidence that in course of investigation he visited the P.O, examined the available witnesses under Section 161 Cr.P.C and collected the copy of FIR of Ramnagar P.S. case no. 64/1999 under Sections 498A, 323 of the IPC and 3 & 4 of the D.P. Act. He also interrogated the accused person Debabrata Giri in jail and recorded his statement under Section 161 Cr.P.C. On completion of investigation he submitted charge sheet against the accused person under Section 304 of the IPC. He also stated that the wearing apparels of the deceased were described in the charge sheet and he identified the same (Mat-Ext-I to IV). In his examination-in -chief as well as the cross-

examination he admitted that no seizure list was prepared for seizing the wearing apparels of the deceased. His evidence corroborated the case of the prosecution and could not be contradicted on vital points by way of cross-examination.

- 30.** This case was being tried to prove the offence of the appellant under Sections 498A, 304 of the IPC. So far as Section 498A IPC is concerned. The trial Court has exonerated the appellant due to non-availability of any evidence against him.
- 31.** Section 304 of the IPC has provided as follows:-

“304. Punishment for culpable homicide not amounting to murder.-

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

- 32.** What is culpable homicide not amounting to murder can be found out from the exceptions narrated under Section 300 of the IPC which are as follows:-

“300. Murder.-

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Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.—*Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.*

Exception 3.—*Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.*

Exception 4.—*Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.*

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—*Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”*

Therefore it is to be seen that if to bring home the charges against the appellant the prosecution has been able to prove a case under the afore stated exceptions of Section 300 of the IPC or not.

- 33.** The trial Court has elaborately dealt with the evidence on record and has found firstly that the offence under Section 498A could not be proved against the present appellant. Thereafter the trial Court has

proceeded to scrutinize the evidence to see if the ingredients of offence under Section 304 of the IPC, would be available against the appellant or not.

- 34.** A previous case being Ramnagar P.S case no. 64/99 dt. 1.9.99 u/s 498-A/323 of the I.P.C was pending between the parties, is a matter on record and would not require formal proof. In the same the present appellant is the accused person. Hence there would be motive of this appellant/accused person in the said case, to persuade or deter the victim who lodged the earlier case against him, to proceed to prosecute him any further in the said case. The next circumstance would be the appellant meeting with the victim at the alleged date, time and place. Evidence of the witnesses in this regard has virtually remained uncontroverted in this trial, in so far as the meeting of the parties has not been denied or disputed in cross examination. Non-recovery of the alleged incriminating weapon would have been a vital point for the defence in this trial. However that would not be substantive so far as the defence case is concerned, particularly in view of the doctor's evidence, as mentioned above. Autopsy surgeon, by his oral evidence, which has been duly supported by the post mortem report prepared by him has proved beyond doubt regarding death of the victim due to the fatal injuries suffered by her on her head and other vital parts of the body, by a heavy blunt weapon. As appellant's presence at the time of death of the victim is uncontroverted and the appellant has not offered any counter statement during his examination under section 313 of the Cr.P.C. regarding how the victim has suffered those injuries, which he should be considered to have 'special knowledge' of, his presence at the time of occurrence having been proved, the statutory presumption would be available against the appellant regarding commission of the crime by him. Also that the pre and post occurrence incidents narrated by the neighboring people too would add vital corroboration to the fact as

above. The relevant portion of the trial Court's verdict may be mentioned as here in bellow :

"From the evidence it appears that P.W. 5 Jhareswar Samanta was sitting in the shop room of Swapan Patra while repairing a machine on the eventful evening and he categorically stated that hearing the sound as well as hue and cry he rushed to the P.O. and saw that Debabrata Giri assaulted his wife who was shievering in a pool blood. Thereafter Debabrata fled away and P.W. 5 took Sephali @ Sonali to Bara-Rankuya Hospital with the help of a 'Tata-Sumo' and admitted her there. On the following day in the morning (9-30/10 a.m.) police came to the hospital and inquest was held over the dead body of Sephali @ Sonali and on the inquest report P.W. 5 put his signature as one of the attesting witnesses which is marked as Ext-1/4. The evidence of P.W. 5 could not be contradicted by way of cross-examination and the same supports the case of the prosecution.

P.W 7 Murari Mohan Maity categorically stated in his evidence that on the fateful day he was in his shop beside Beteswar Temple. At the time of coming out of his residence adjacent to the shop room hearing the sound three times he thought that the local people were beating the ox. Thereafter going to the P.O. he came to know that Debabrata Giri assaulted his wife who was lying on the earth. He also stated that Debabrata has a shop at the P.O. He again said that he saw the face of Sephali @ Sonali after the assault unveiling the cloth from her face which has been smashed and disfigured by the assault and seeing the same he did not control himself and become senseless after crying out. This part of evidence of P.W. 7 could not be contradicted so far as it appears from his cross-examination."

- 35.** This Court has found no loopholes in the manner as to how the trial Court has dealt with the evidence to come to a finding that the ingredients of offence under Section 304 IPC are proved and to the standard of beyond scope of all reasonable doubts, through the evidence on record. This Court concurs with the finding of the trial Court as above, in view of the evidence. Accordingly the impugned judgment of the trial Court so far as the finding regarding guilt of the accused person and his conviction, would require no interference. Such finding of the trial Court in the impugned judgment and order of sentence dated July 29, 2009 and July 30, 2009 respectively, in Sessions Trial No.10/December/2007, in the Additional District &

Sessions Judge, 3rd Fast Track Court, Contai, Purba Medinipur, is found just and proper and is upheld.

- 36.** At this stage however, this Court while considering the sentence imposed upon the appellant takes into consideration the report of the Superintendent Medinipur Central Correctional Home dated March 24, 2023, as mentioned above. It is found that the appellant was incarcerated as an under trial prisoner and ultimately has been released on August 6, 2009, after remission of his sentence period by the appropriate authority. That fact as transpires from the said report prompts this Court to interfere into the impugned Judgment and order of sentence dated July 29, 2009 and July 30, 2009 respectively, as regards the sentence imposed upon the appellant. On the basis of the report dated March 24, 2023, it is found proper that the appellant be sentenced for a period already undergone by him in prison.
- 37.** The appeal fails. The judgment and the order of sentence of the trial Court dated July 29, 2009 and July 30, 2009 respectively, finding the appellant guilty of the offence under Section 304 of the IPC and convicting him for the same, is upheld. The sentence imposed be modified with a sentence of imprisonment for the period already undergone by the appellant incarcerated as an under trial prisoner/convict.
- 38.** Before parting, the Court appreciates the able assistance put in by the Ld. Amicus Curie in this case. Let the High Court Legal Services Committee take necessary steps to pay fees to the learned Amicus Curiae in accordance with the scale applicable to “Category-A” lawyer in its panel. The same may be paid within a period of one month from the date. A copy of this order be immediately forwarded to the Secretary, High Court Legal Services Committee, for doing the needful.
- 39.** The appeal being CRA 12 of 2011 is disposed of with the direction as above, along with the connected pending application, if any.

40. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

RAI
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ADHYAY

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(Rai Chattopadhyay, J.)