

IN THE HIGH COURT AT CALCUTTA

Criminal Application

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 106 of 2022

Md. Alal Sk

Versus

The State of West Bengal

For the appellant : Md. Ashraf Ali, Adv.
: Mr. Rafikul Islam Sardar, Adv.
: Ms. Sabnam Laskar, Adv.
For the State : Mr. Bibaswan Bhattacharya, Adv.

Hearing concluded on : February 22, 2023

Judgment on : March 17, 2023

Md. Shabbar Rashidi, J.

1. The appeal is directed against the judgment of conviction dated May 13, 2022 and order of sentence dated

May 18, 2022 passed by learned Additional Sessions Judge, Rampurhat, Birbhum, in connection with Sessions Trial No. 39 (June) of 2013 arising out of Sessions Case No. 73 of 2013.

2. On July 1, 2012, one Mujibar Rahaman lodged a written complaint with the officer-in-charge, Margram Police Station. It was stated that his sister, Golenur Bibi was married to the appellant as per Muslim sharia law. The de facto complainant gifted ₹ 70,000 cash, three bhoris of gold ornaments and furniture in the aforesaid marriage. After the said marriage, the sister of the de facto complainant started residing with her husband and other in-laws. One girl child was born out of the aforesaid wedlock, who was seven years old at the time of lodging of the written complaint. It was further stated in the written complaint that the appellant started demanding ₹ 50,000 as dowry for the purchase of machine driven trolley after the birth of the daughter. The accused persons started inflicting torture upon his sister for not fulfilling the demand.

- 3.** The de facto complainant further stated in his written complaint that Gulenur Bibi was the second wife of the appellant. His first wife also has died by committing suicide about three years ago due to unbearable torture by the appellant. At the time of the marriage, the appellant had three children out of his previous wedlock. It was further stated that having failed to bear the torture inflicted upon her, the sister of the de facto complainant was forced to consume poison at about 2 p.m. in the afternoon of June 24, 2012. The de facto complainant received information at about 4 p.m. and found his sister crying in pain of death after coming to Rampurhat Subdivisional Hospital. He further stated that there was no one present from the accused side. His sister ultimately died on June 28, 2022 at about 11 a.m.
- 4.** On the basis of such written complaint, Margram Police Station Case No. 86/12 dated July 1, 2012 under Sections 498A/304(B)/306/34 of the Indian Penal Code read with Sections 3/4 of the Dowry Prohibition Act was started against the five accused persons.

- 5.** The police after investigating the case, submitted the charge sheet on November 16, 2012 under Sections 498A/304B/306/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, against the five accused persons. Charges under Sections 498A/304B/306/34 of the Indian Penal Code and alternatively, under Section 302 of the said Code read with Sections 3/4 of the Dowry Prohibition Act, were framed against the five accused persons on June 28, 2013. The accused persons pleaded not guilty of the charges and claimed to be tried.
- 6.** In order to bring home the charges leveled against the accused persons, the prosecution examined as many as 16 witnesses. In addition, the prosecution also relied upon certain documentary as well as material evidences.
- 7.** Upon conclusion of the trial, in consideration of the evidence on record and examination of the accused persons, all the accused persons were held not guilty of the offences punishable under Sections 498A/304B/306/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act,

and were acquitted of the charges. The appellant was also found not guilty by the learned Trial Court of the offences punishable under Sections 498A/306/34 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act.

8. The appellant was, however, convicted for the offence under section 304B of the Indian Penal Code and was sentenced to undergo Rigorous Imprisonment for eight years.

9. It is this judgment of conviction and order of sentence, which has been assailed by the appellant in the present appeal.

10. At the time of advancing argument, learned advocate for the appellant has pointed out the first information report in the case, which was lodged after a delay of about eight days and the prosecution has not come up with any explanation regarding such delay in lodging the FIR.

11. Learned advocate for the appellant has also contended that the prosecution witnesses specially the relative witnesses have stated that the appellant and the other accused persons used to inflict torture upon the deceased on demand of

further dowry. However, none of the aforesaid witnesses have been able to give the exact details on the date and time of such dowry demand. It was further stated that the story of demanding dowry of ₹ 50,000 was disclosed for the first time in the first information report. The witnesses in whose presence, an inquest was conducted on the dead body of the victim, did not disclose such facts at the time of the inquest. As such, learned advocate for the appellant submits that testimony of such witnesses is not at all reliable and trustworthy.

- 12.** Learned advocate for the appellant has also submitted that the witnesses for the prosecution has stated about the demand of dowry and that torture was meted out upon the deceased victim in furtherance of such demand of dowry. However, the aforesaid witnesses have not claimed to have visited the matrimonial house of the de facto complainant at the relevant point of time nor it has been stated by the prosecution witnesses that they were reported about the demand of dowry and torture by the victim herself. Therefore,

according to the learned advocate for the appellant, since the source of information regarding the demand of dowry and torture by the appellant and other accused persons have not been established, the testimony of such witnesses on such facts cannot be safely relied upon.

13. It has been submitted by the learned advocate for the appellant that the testimony of the prosecution witnesses is not reliable and as such a conviction on the basis of such untrustworthy evidence cannot be sustained.

14. Learned advocate for the appellant also submitted that the appellant has been acquitted of the charge for the offence punishable under Sections 498A/306 of the Indian Penal Code as well as Section 4 of Dowry Prohibition Act. Since, the prosecution has failed to establish the allegations of the demand of dowry, no conviction for the offence punishable under Section 304B of the Indian Penal Code can be sustained.

15. On the other hand, learned advocate for the State submitted that although there are no eyewitnesses to the

incident, the prosecution witnesses particularly PW1, 2, 3, 4, 9 and 11 have supported the case of the prosecution. It is submitted that the aforesaid witnesses are closely related to the victim and whenever the victim visited her father's house, she used to divulge before them the kind of behavior and torture meted out by the appellant and other accused persons at her matrimonial house soon before her death on demand of a dowry of ₹ 50,000.

16. Learned advocate for the State also submitted that the greenness of torture inflicted upon the victim was of such magnitude that the victim was left with no other alternative but to end her life.

17. Learned advocate for the State also contended that the prosecution witnesses have also established that the appellant was a habitual offender. His previous wife also met a similar fate.

18. Learned advocate for the State submits that the prosecution has been able to prove the necessary ingredients for constituting an offence punishable under Section 304B of

the Indian Penal Code and as such, learned trial court was quite justified in convicting the appellant for such offence. For the aforesaid reason, the impugned judgment of conviction and order of sentence does not warrant any interference.

19. Learned advocate for the State also submitted that the learned advocate for the appellant is not justified in his contention to the effect that since the appellant has been acquitted of the charges under Section 498A of the Indian Penal Code, a charge under Section 304B cannot be sustained. It is submitted that the two offences are separate and distinct. In support of such contention, learned advocate for the State relied upon the case of **Gurmeet Singh V State of Punjab** reported in **(2021) 6 SCC 108**.

20. The de facto complainant himself deposed as PW1. He stated that Gulenur Bibi was his sister and was married to the appellant. After such marriage, she gave birth to a female child out of the aforesaid wedlock. He further stated that his sister consumed poison on June 20 for 2012 and died after

about 1 ½ years of her marriage. PW1 further stated that his sister was tortured by the appellant and his relatives. She was the second wife of the appellant. The first wife of the appellant also died by committing suicide.

21. He has stated that after the incident, his sister was taken to rumple SD hospital where she died. On her death, police and executive magistrate conducted an inquest on the dead body of his sister at the hospital in which he signed. He proved his signature on such inquest reports (Exhibit 2 and Exhibit 3).

22. PW1 also stated that after the death of his sister, he lodged the written complaint with the officer-in-charge of Margram PS. PW 1 proved the written complaint lodged by him which was marked as Exhibit 1 and his signature thereon was marked as Exhibit 1/1. He identified the accused persons in Court. PW1 also proved his signature on the seizure list through which he handed over the proof of the marriage of his sister with the appellant (Exhibit 4).

23. PW1 also stated that his sister was the second wife of the appellant and the first wife of the appellant also died after consuming poison. He also stated that after the birth of the daughter, the appellant used to inflict torture upon his sister. He stated that his sister used to visit her paternal house and disclosed the story of torture by her husband. The amount of torture increased day by day. He used to pacify his sister. The relatives of the appellant including his first wife who used to visit the house of the appellant also inflicted torture upon the sister of PW1.

24. In his cross-examination, PW1 stated that he did not state before the Investigating Officer the exact date and time when his sister was subjected to torture. Such incident was never reported to police in spite of their home having been situated near the police station. He also stated that his sister was married for the second time with the appellant. In his cross-examination, PW1 admitted that he signed on both the inquest reports as per instruction of the police officer and the magistrate.

25. The uncle of the victim deposed as PW 2. He stated that Gulenur Bibi was married to the appellant and there was a female child out of the aforesaid wedlock, who was presently residing at the house of the appellant. He further stated that Gulenur Bibi died after two years of her marriage by consuming poison on June 24, 2012. She died on June 28, 2012. PW 2 has further stated that after the birth of the female child of Gulenur Bibi, her husband, the appellant demanded ₹ 50,000 as further dowry which her father's house could not satisfy. Thereafter, she was subjected to torture both mentally and physically. Gulenur Bibi failed to bear such torture inflicted by her husband and thereby she consumed poison. He also stated that after her death, the brother of Gulenur Bibi lodged a written complaint with the police. He has also proved his signature on the two inquest reports (Exhibit 2/1 and Exhibit 3/1). PW 2 identified the accused persons in court.

26. In his cross-examination, PW2 stated that he never visited the house of the appellant. He also could not say the

date and time of the demand of ₹ 50,000 by the appellant nor did he disclose such date and time to the Investigating Officer in cross-examination. PW2 denied a suggestion to the effect that the appellant took the victim to rumple SD hospital, but he could not say who brought her to the hospital.

27. The brother-in-law of PW1 deposed as PW3. He also testified that Gulenur Bibi was married to the appellant and she had a girl child out of the aforesaid wedlock. He further stated that since Gulenur Bibi gave birth to a female child, she was tortured. After the birth of the girl child, the appellant demanded ₹ 50,000 from the brother of Gulenur Bibi which he failed to satisfy. PW3 also stated that Gulenur Bibi was subjected to torture by the appellant and the accused persons for which she consumed poison on June 24, 2012. She was admitted at Rampurhat SD hospital where she died on June 28, 2012. He also identified the accused persons in Court.

28. In his cross-examination, PW3 stated that the appellant pressed upon PW1 to pay ₹ 50,000 as further dowry. He

claimed to have stated before the Investigating Officer that just after the birth of the female child, torture upon Gulenur Bibi started. He, however, could not say the exact date and time when he visited the house of Gulenur Bibi. PW3 also stated that he made a statement before the Investigating Officer that the neighbors of Gulenur Bibi took her to the hospital and that he came to know that she consumed poison.

- 29.** The mother of the victim was examined as PW 4. She also testified that Gulenur Bibi was married to the appellant and she gave birth to a female child out of the aforesaid wedlock. She further stated that her daughter died of consuming poison. PW 4 has stated that after six months of the birth of the female child, the appellant demanded ₹ 50,000, and in order to get the demand fulfilled, the appellant started torturing upon her daughter. She also stated that due to such torture, Gulenur Bibi consumed poison on 9th day of Asarh. Thereafter, on 12th Asarh, she died at Srirampur SD hospital and that she died within two years of her marriage.

She identified the appellant and the other accused persons in Court.

30. In her cross-examination, she stated that she was never interrogated by the Investigating Officer of this case. She admitted that she, for the first time disclosed before the Court that the appellant demanded ₹ 50,000. She also could not say who brought his daughter to the hospital.

31. One co-villager was examined as PW 5. He has stated that Gulenur Bibi was married to the appellant and she had a girl child out of the aforesaid wedlock. She died after consuming poison. PW5 also stated that after the birth of the female child, Gulenur Bibi was asked to bring ₹ 50,000 from her father's house but she failed. As a result, she was subjected to torture at her in-laws' house. He also stated that Gulenur Bibi died on June 28, 2012. He claimed to be present during the marriage of Gulenur Bibi and signed on the marriage certificate. PW5 proved his signature on such certificate (Exhibit 5). He identified the accused persons present in the Court.

- 32.** In his cross-examination, he admitted that he did not state before the Investigating Officer that the accused persons demanded ₹ 50,000 as dowry after the birth of the girl child. He admitted that he did not see Gulenur Bibi consuming poison.
- 33.** The Kazi who performed the marriage of Gulenur Bibi with the appellant, deposed as PW6. He proved his signature on the marriage certificate (Exhibit 5/1).
- 34.** Another villager was examined as PW7. He stated that Gulenur Bibi was married to the appellant and they had a girl child out of the aforesaid wedlock. Gulenur Bibi died 15/16 months ago at Rampurhat SD hospital after consuming poison. He further stated that she consumed poison as the appellant used to inflict torture upon her. PW7 also stated that after the birth of the girl child, the appellant demanded Rs. 50,000/- which the mother of Gulenur Bibi failed to satisfy and for that reason, she was subjected to torture by the appellant. Later, she consumed poison and died. PW7 proved his signature on the marriage certificate of Gulenur

Bibi with the appellant (Exhibit 5/2). In his cross-examination, PW7 could not say the exact date, month and year of the demand of dowry of ₹ 50,000. In his cross examination, PW7 has stated that Gulenur Bibi died on 4th of Asarh and he heard about such death from his wife.

35. An assistant sub- inspector of police who conducted inquest over the dead body of Gulenur Bibi has been examined as PW8. He stated that he conducted inquest over the dead body of Gulenur Bibi in connection with Rampurhat PS UD case No. 275/2012 dated June 28, 2012 at Rampurhat SD hospital. He prepared an inquest report which he tendered in evidence and marked as Exhibit 2/2. He also prepared a dead body Chalan and sent the dead body to a police constable for post-mortem examination. The dead body Chalan was tendered and marked as Exhibit 6.

36. Another brother of the deceased victim deposed as PW9. He stated that Gulenur Bibi was married to the appellant and a girl child was born out of the aforesaid wedlock. He further stated that Gulenur Bibi committed suicide by consuming

poison. She was subjected to torture after the birth of the child. She was asked to bring ₹ 50,000 from her elder brothers and mother after the birth of girl child. As they failed to fulfill the demand, Gulenur was subjected to torture by the appellant. For this reason Gulenur Bibi consumed poison and committed suicide. She was taken to Rampurhat SD hospital where she died. PW9 also stated that his elder brother lodged a written complaint with the police after the incident.

37. In his cross-examination, PW9 stated that the daughter of his sister was being brought up at her maternal house. He candidly stated that he could not say as to when the appellant asked his sister to bring dowry from his house. He also could not say the exact date and time of the torture inflicted upon the sister and that he did not see his sister consuming poison.

38. The police constable who carried the dead body of the victim was examined as PW 10. He stated that on June 29, 2012, he signed on the inquest report prepared by the executive magistrate. He proved his signature (Exhibit 3/2).

He further stated that he carried the dead body of the deceased to the hospital morgue for post-mortem examination under a dead body Chalan. He proved his signature on the Chalan (Exhibit 6/1).

39. Wife of PW1 deposed as PW 11. She also stated that Gulenur Bibi was married to the appellant and she had a female child out of the aforesaid wedlock. She further stated that Gulenur Bibi committed suicide by taking poison on June 24, 2012 and she died on June 28, 2012 at Rampurhat SD hospital. She stated that she consumed poison and her husband and other in-laws were responsible for the suicide. She further stated that the appellant and his brothers demanded ₹ 50,000 after the birth of the girl child and Gulenur Bibi disclosed the fact of such demand. She was driven out from her matrimonial house one month prior to her death. PW 11 also stated that she went to leave Gulenur Bibi at her matrimonial house. She was also driven out by holding her neck. At the same time, Gulenur was also driven out but PW 11 did not bring her back. PW 11 also stated that

Gulenur Bibi was admitted at Rampurhat SD hospital after consuming poison. After getting information, PW 11 went there and found Gulenur lying alone. The family members of her in-laws' house were not present in the hospital. She also proved her signature on the inquest report (Exhibit 3/2).

40. In her cross-examination, PW 11 stated that she made a statement before the Investigating Officer that the appellant and others took the victim to Rampurhat SD hospital. She also claimed to have stated before the Investigating Officer that she was reported by the victim about the demand of dowry of ₹ 50,000 and that she was driven out from her matrimonial house one month prior to her death.

41. A co-villager of the de facto complainant was examined as PW 12. This witness was declared hostile by the prosecution. He stated to have made a statement before the Investigating Officer that Gulenur Bibi was married to the appellant two years ago. He, however, denied having stated that the accused persons created pressure upon Gulenur Bibi to bring ₹ 50,000 from her father's house for the purpose of

purchasing China trolley and that Gulenur Bibi was subjected to torture by the appellant and other in-laws for not meeting the demand.

42. The Medical Officer of Rampurhat SD hospital deposed as PW 13. He stated that on June 24, 2012, Gulenur Bibi was admitted in the hospital under his treatment. On examination, PW 13 found that she had consumed pesticide and the patient was drowsy with frothing from the mouth. She died at about 12. 15 p.m. on June 28, 2012. PW 13 tendered the bed head ticket and treatment sheet of the victim (Exhibit 7).

43. The autopsy surgeon deposed as PW 14. He stated that on June 29, 2012, he conducted post mortem over the dead body of Gulenur Bibi in connection with Rampurhat PS UD Case No. 275/2012 dated June 28, 2012. Upon examination, PW 14 stated that no external or internal injuries could be detected after careful dissection and examination. On further examination, her larynx and trachea were found intact and congested. He also found 06 ounces of yellow colored liquid

with the peculiar smell. PW 14 opined that the death of the victim was due to the effects of poisoning which was ante-mortem in nature. He tendered the post-mortem report prepared in his pen and signature (Exhibit 8).

44. A law clerk was examined as PW 15. He scribed the written complaint under the direction of PW1 on June 28, 2012 which he read over and explained to PW1. PW 15 proved his signature on such written complaint (Exhibit 1/2).

45. The Investigating Officer of the case was examined as PW 16. He has stated that one written complaint from PW1 was received by SI Kartick Chandra Roy of Margram PS and started Margram PS Case No. 86/2012 dated July 1, 2012 under Sections 498A/304B/306/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. PW 16 proved the endorsement of receipt of the written complaint (Exhibit 1/3) and the Formal First Information Report (Exhibit 9). PW 16 was endorsed with the investigation of the said case.

46. In course of investigation, PW 16 visited the place of occurrence and prepared rough sketch map with index

(Exhibit 10 collectively), examined available witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. He also seized the marriage certificate under the seizure list (Exhibit 4/1) and collected the post-mortem report, injury report as well as the inquest reports. On completion of investigation, PW 16 submitted the charge sheet on November 16, 2012 under Sections 498A/304B/306/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. PW 16 was cross-examined on behalf of the appellant.

47. Upon completion of the evidence on behalf of the prosecution, the accused persons including the appellant were examined under Section 313 of the code of criminal procedure. The appellants pleaded innocence at such examination. It was also pleaded that he was falsely implicated in a false case. The appellant, however, declined to adduce any defense witness.

48. We have noted here that although the appellant was charged of the offences punishable under Sections

498A/304B/306/34 of the Indian penal code, but he was convicted for the offence of dowry death punishable under Section 304B of the Indian penal code. He was acquitted of the charges under Sections 498A/306/34 of the Indian penal code.

- 49.** The offence of dowry death has been defined under Section 304B of the Indian penal code which runs as follows:–

“304B. 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.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

50. The offence punishable under Section 304B of the Indian penal code has been emboldened with a presumption provided under Section 113B of the Indian Evidence Act.

“113B. Presumption as to dowry death. —When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.”

51. It is the case of the prosecution that the victim was married to the appellant some two years prior to the incident. She gave birth to a girl child after one year of marriage and she died by consuming poison. The story is set out from the first information report as well as from the evidence on record, it has been stated that the victim committed suicide by consuming poison having not been able to bear the torture inflicted upon her.

52. The victim was admitted in the hospital after consuming poison. The Doctor i.e. PW 13 who treated the victim at a Rampurhat SD hospital, has stated that on June 24, 2012, the victim was admitted under him and on examination, he found that she had consumed pesticide.

53. The doctor i.e. PW 14 who conducted post mortem over the dead body of the victim, had opined that the death of the victim was caused due to the effects of poisoning which was ante-mortem in nature. Such opinion of PW 14 is explicit from Exhibit 8.

54. In consideration of the testimony of the prosecution witnesses including PW 13 and PW 14 together with that of Exhibit 8, it can be safely held that the victim died of poisoning and that such poison was consumed by the victim herself. This goes to establish that the victim died in the circumstances which was anything other than the natural circumstances as contemplated under Section 304B of the Indian penal code.

55. The evidence on record also establishes that the death of the victim occurred within seven years of her marriage with the appellant.

56. In order to attract the provisions of Section 304B of the Indian Penal Code, the evidence on record is to be looked into whether the prosecution has been able to establish 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.

57. According to the case narrated in the first information report, the appellant started demanding ₹ 50,000 as dowry since after the birth of the girl child. The evidence on record goes to establish that the matrimonial life of the victim with the appellant continued for about 1 ½ years/2 years. The girl child was born after about a year of the marriage. It has been claimed that a sum of ₹ 70,000, three bhoris of gold ornaments and furniture were given in the marriage of the victim with the appellant. However, no documentary or other evidence whatsoever has been

produced on behalf of the prosecution in support of such contention. The testimony of prosecution witnesses, have also not been consistent with regard to the claim of payment of such dowry at the time of marriage. In fact, although PW1 stated in the written complaint of such dowry given in the marriage of his sister, however, the said statement was not supported by PW1 in his deposition. The other witnesses have also not supported the story of payment of the dowry at the time of marriage of the victim. Even the mother of the victim PW 4 also did not state anything about the dowry given at the time of marriage of her daughter. PW5 and PW7 were present in the marriage of the victim with the appellant. PW6 acted as the Kazi in the marriage of the victim with the appellant. The aforesaid witnesses have also not supported the case of the prosecution regarding payment of dowry at the time of marriage of the victim with the appellant. Moreover, PW1 has stated in his cross-examination that he was a labourer and very small portion of land and properties were left by his father for the three brothers. Apart from that, admittedly, the

victim was the second wife of the appellant who had three children out of his first wedlock. Not only that, marriage of the victim and the appellant was not the first marriage of the victim as well. She was earlier married to some other person and her marriage to the appellant was her second marriage. In that view of the facts, the case set out by the prosecution regarding payment of ₹ 70,000, three bhoris of gold ornaments and furniture's at the time of marriage of the victim with the appellant does not seem to be convincing and trustworthy. Besides that, considering the avocation of the brothers of the victim and the financial condition of her family, it is hard to believe their financial stability able to pay a sum of ₹ 70,000, three bhoris of gold ornaments and furniture in the marriage of the victim.

58. PW1 has stated in his deposition that the appellant started demanding ₹ 50,000 after the birth of the girl child of the victim. However, in his cross-examination, PW1 admitted that he never disclosed before the Investigating Officer anything about the specific date, time and month of the

torture inflicted upon the victim. Such case of demand of a further dowry of ₹ 50,000 has been supported by PW 2. He also admitted in his cross-examination that he could not give the exact date of torture inflicted upon the victim by the appellant. Similarly PW3 and PW 4 also could not give the detailed description of the demand of further dowry or the date and time of torture upon the victim. PW5 admitted in his cross-examination that he did not make any statement before the Investigating Officer to the effect that the appellant demanded ₹ 50,000 as dowry. Furthermore, considering the fact that the marriage of the victim with the appellant was not the first marriage of either of the two and the appellant had three well grown up children out of his first marriage, the possibility of the demand of dowry in such a relationship does not seem to be very conducive and convincing.

59. We have noted herein before that at the trial, all the accused persons were acquitted of the charges under Sections 498A/304B/306 of the Indian Penal Code. They were also acquitted of the charges under Sections 3/4 of the

Dowry Prohibition Act. In fact, the appellant was also acquitted of the offences punishable under Sections 498A/306/34 of the Indian penal code as well as under Sections 3/4 of the Dowry Prohibition Act. The learned Trial Court, upon consideration of the evidence adduced on behalf of the prosecution, has come to a conclusion that there was no demand for dowry at the time of marriage of the victim with the appellant. Learned Court held that the evidence of the prosecution was not able to prove that the victim was subjected to torture on demand of further dowry. The state or the de facto complainant has not preferred any appeal against such acquittal.

60. In the case of **Gurmeet Singh (Supra)**, it was observed by Hon'ble Supreme Court that,

“19. Lastly, the counsel on behalf of the appellant argued that without any charges under Section 498-A IPC a conviction under Section 304-B IPC cannot be sustained. On this aspect this Court in Kamesh Panjiyar v. State of Bihar [Kamesh Panjiyar v. State of Bihar, (2005)

**2 SCC 388 : 2005 SCC (Cri) 511] held as under :
(SCC pp. 394-95, para 12)”**

“12. ... It is to be noted that Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of “cruelty”. In Section 304-B there is no such explanation about the meaning of “cruelty”. But having regard to the common background to these offences it has to be taken that the meaning of “cruelty” or “harassment” is the same as prescribed in the Explanation to Section 498-A under which “cruelty” by itself amounts to an offence. Under Section 304-B it is “dowry death” that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. If the case is established, there can be a conviction under both the sections.” (emphasis supplied)”

“20. Therefore, the argument raised by the counsel on behalf of the appellant cannot be accepted as the offences under Section 498-A and Section 304-B IPC are distinct in nature. Although cruelty is a common thread existing in both the offences, however the ingredients of each offence are distinct and must be proved separately by the prosecution. If a case is made out, there can be a conviction under both the sections.”

61. It was further laid down in the aforementioned case that,

“11. The next important ingredient which needs to be established is the existence of dowry demand “soon before her death”. This Court in a catena of judgments has held that, “soon before” cannot be interpreted to mean “immediately before”, rather the prosecution has to show that there existed a “proximate and live link” between the cruelty and the consequential death of the victim. (See Satbir Singh v. State of Haryana [Satbir Singh v. State of Haryana, (2021) 6 SCC 1] ; Kans Raj v. State of Punjab [Kans Raj v. State of Punjab, (2000) 5 SCC 207 : 2000 SCC (Cri) 935] ; Rajinder Singh

v. State of Punjab [Rajinder Singh v. State of Punjab, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225] .)”

62. In the instant case, however, a proposition has been set up that the victim was subjected to torture by the appellant and other accused persons since after the birth of the girl child and for such torture committed upon her, she was left with no other alternative but to end her life.

63. We have noted that none of the prosecution witnesses including PW1 have been able to give the details of the torture inflicted upon the victim. None of the prosecution witnesses have claimed that the victim reported to them that she was subjected to torture by the appellant or the other accused persons on demand of further dowry.

64. PW1 stated in his deposition that after marriage, husband of his sister i.e. the appellant and the other accused persons used to torture her. However, PW1 neither in his examination in chief or in cross-examination ever disclosed that his sister was subjected to torture by the appellant and

the accused persons on demand of further dowry. Similarly, PW 2 stated that after the birth of the girl child, the appellant demanded ₹ 50,000. As the father's house of the victim failed to meet the aforesaid demand, she was subjected to torture for which she consumed poison. In his cross-examination, PW 2 stated that he never stated before the Investigating Officer the date and time of such torture upon the victim.

65. PW3 stated in his examination in chief that the appellant demanded ₹ 50,000 from the brothers of the victim Gulenur Bibi. In his cross-examination, PW3 stated that the appellant put pressure upon PW1 for bringing ₹ 50,000 as further dowry. PW1 has never said in his deposition that he was pressurized by the appellant for bringing ₹ 50,000 as dowry. Another brother, PW9 has also not supported such statement. He has stated that the appellant demanded ₹ 50,000 from the victim herself to bring the same from her elder brother and mother. The aforesaid witnesses have categorically stated that torture upon the victim Gulenur Bibi on demand of further dowry ₹ 50,000 started just after the

birth of the girl child. To the contrary, PW 4, the mother of the victim stated that the appellant demanded ₹ 50,000 as further dowry and inflicted such torture after six months of the birth of the female child. The other witnesses namely PW5 and PW7 have also stated about the demand of ₹ 50,000 by the appellant but none of them has given the exact date and time of such demand.

66. The wife of the de facto complainant, PW 11 has stated about the demand of ₹ 50,000 after the birth of the girl child. She has further stated that the victim Gulenur Bibi disclosed such demand before her and others. Such statement of PW 11 has not been supported by any of the prosecution witnesses. In fact, none of the prosecution witnesses have disclosed as to how they came to know about the demand of ₹ 50,000 and torture upon the victim inflicted by the appellant and others. PW 11 has further stated that the victim was driven out from her matrimonial house one month prior to her death and that she went to leave her at her matrimonial house. She was also driven out along with

the victim. However, she did not bring the victim back. Such statement on the part of PW 11 has not been corroborated by any of the prosecution witnesses.

67. Neither the de facto complainant nor the mother of the victim PW4, not even the other brother of the victim PW9 have stated anything that the victim ever reported to them about the demand of ₹ 50,000 by the appellant or that she was subjected to torture by the appellant and other accused persons on demand of such dowry. Besides PW 11, no other witnesses have stated that the victim was driven out from her matrimonial house one month prior to her death and that PW 11 went to leave her at her matrimonial house when she was also driven out.

68. Although, the prosecution witnesses have come up with the case that the appellant and the other accused persons demanded ₹ 50,000 as further dowry after the birth of the girl child and the victim was subjected to torture by the appellant and the other accused persons on such demand but nothing has been put forth by the prosecution that any

contemporaneous complaint in this regard was ever preferred with any authority whatsoever. There is nothing on the record to show that intervention of the local people or local authorities was ever sought by the de facto complainant or other family members over the issue of demand of further dowry or subjecting the victim to cruelty for such demand.

69. All the witnesses examined on behalf of the prosecution belong to the village where the father's house of the victim is situated. We have already noted that none of the aforesaid witnesses have disclosed the source of the information regarding the demand of dowry and the fact of torture upon the victim. No witness from the neighborhood of the matrimonial house of the victim when she ordinarily resided has been examined.

70. It also transpires from the evidence on record that the prosecution witnesses tried to cover up the fact that the victim was taken to hospital by the appellant and accused persons after she consumed poison.

71. The victim consumed poison on June 24, 2012 and was admitted in the hospital. She breathed her last on June 28, 2012. A UD case was started on the self same day. However, the written complaint was lodged on July 01, 2012. No explanation, whatsoever, has been advanced on behalf of the prosecution regarding delay in lodging the First Information Report or as to what prevented the de-facto complainant from lodging the written complaint on June 28, 2012 itself. Such a delay in lodging the First Information Report surely generates a genuine doubt and leaves space for an afterthought.

72. Therefore, on the basis of discussions hereinbefore, the evidence on record does not inspire enough confidence to hold that the appellant and the other accused persons demanded further dowry or the victim was subjected to cruelty and torture with a view to ensure fulfillment of such demand. Especially, when the evidence on record discloses that the victim used to respect the accused persons and wanted to stay at her matrimonial house in the matrimony of

the appellant. There appears no evidence to establish that soon before her death, the victim had been subjected by the appellant to cruelty or harassment for, or in connection with, any demand for dowry.

73. In that view of the facts, the prosecution seems to have failed in establishing the necessary ingredients to attract the provisions of dowry death as contemplated under Section 304B of the Indian Penal Code or the presumption envisaged under Section 113B of the Indian Evidence Act. We are of the view that the conviction of the appellant for the offence punishable under Section 304 of the Indian Penal Code cannot be sustained and are liable to be set aside.

74. Accordingly, the instant appeal being **CRA (DB) 106 of 2022** is hereby allowed. The impugned judgment of conviction dated May 13, 2022 and order of sentence dated May 18, 2022 passed by learned Additional Sessions Judge, Rampurhat, Birbhum, in connection with Sessions Trial No. 39 (June) of 2013 is set aside.

75. The appellant shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

76. Connected applications, if any, shall stand disposed of.

77. The learned Trial Court records along with a copy of this judgment be sent down at once to the learned Trial Court for necessary action.

78. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

79. I agree.

[DEBANGSU BASAK, J.]