

**IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No.720 of 2012

***Basudeb Das & Anr.
Vs.
State of West Bengal & Anr.***

For the Appellants : Mr. Arnab Chatterjee,
: Ms. Dhanasree Biswas.

For the State : Mr. Pravas Bhattacharya,
: Ms. Ayantika Bose.

Hearing concluded on : 16/11/2022

Judgment on : 03/01/2023

Rai Chattopadhyay,J.

(1) Appellants are the son and his mother respectively who are convicted and sentenced to suffer imprisonment by the Trial Court for the offence under sections 498A and 306 of the Indian Penal Code. The appellants are aggrieved with the judgment and order of the Trial Court dated 27th September 2012 and 28th September 2012 respectively and they challenge the said judgment in this appeal.

(2) Appellants faced trial in Sessions Trial No. 3(11) of 2004 arising out of Sessions Case No. 27(6) of 2004. The unfortunate suicidal death of the wife of the Appellant No.1 prompted initiation of the criminal case against both the appellants. The death occurred on 1st January 2000. FIR was lodged on 2nd January 2000 by the mother of the deceased. The complainant narrated in the FIR that her daughter Shila Mullick was married to the appellant No.1 on 1st May 1999. That the marriage was never a happy one. Her daughter has always been subjected to mental and physical cruelty and torture perpetrated by the appellant No.1. She was subjected to physical assault. Dowry was provided to the appellant No 1 and his family as per their demand, comprising of cash and gold ornaments, though however the appellants were not satisfied with that. The victim during her lifetime and in her matrimonial life was constantly pressurized to bring more money from her paternal house. 20 days before her death an amount of Rs.10,000/- was provided by the complainant to the appellant and his family on their demand. In spite of every endeavor made by the complainant to satisfy the demand of the appellant and his family, they did not cease torturing the victim. The complainant has stated that due to such continuous and

incessant mental torture and physical assault perpetrated by the appellant No.1, the victim was forced to commit suicide by taking poison.

- (3)** On the basis of the FIR as mentioned above, a police case was registered being Bagda Police Station Case No. 4/2000 dated 2.1.2000, under sections 498A and 306 IPC. Investigation was done and the same ultimately culminated into filing of charge sheet by police against both the appellants under the afore stated provisions of law. Case was committed to the Sessions Judge by the Magistrate and upon framing of charge on 24th November 2004, the trial commenced. Charges were framed against both the appellants under sections 498A IPC and 304B alternatively 306 IPC.
- (4)** In trial, the Prosecution cited 15 witnesses. Witnesses may be categorized as mentioned here in bellow:

Witnesses No. 1 & 6	Relations of the victim, including the complainant mother.
Witness No. 13	Relation of the appellants.
Witnesses No. 3 and 5	Police personnel.
Witnesses No. 4, 7, 8 to 12, 14 and 15	Neighbours and co villagers (Nos. 8 and 9 were declared as hostile)

- (5)** Documents and signatures exhibited in trial court may be categorized as here in bellow :

Exhibit 1/1	Written Complaint.
Exhibit 2/1	Carbon copy of dead body challan.
Exhibit 3	Inquest Report.
Exhibits 1, 2 and 4	Signatures of the complainant in the FIR (Ext-1), of the constable on dead body challan (Ext-2) and of the witness in seizure list (Ext-4), respectively.

- (6) The Trial Court scrutinized the evidence on record, examined the appellants under section 313 Cr.P.C and ultimately has come to the finding that the prosecution in this trial has been able to prove the charges against both the appellants under sections 498A and 306 IPC. Upon such finding the Trial Court has convicted the present appellants and sentenced them to suffer rigorous imprisonment for five years and fine of Rs.4000/-. It was also stipulated that in default of payment of fine they would undergo a further period of six months of rigorous imprisonment.
- (7) Being aggrieved with the said judgment and order of conviction and sentence passed by the Trial Court, the appellants are now before this court, to challenge the same in this appeal.
- (8) Mr. Arnab Chatterjee, who is defending the appellants in this appeal has taken up the first point for his clients that non examination of the vital witnesses like the autopsy surgeon or

the investigating officer would be fatal for the prosecution case. Prosecution did not cite those witnesses in this trial therefore depriving the appellants of their vital right to cross examine those witnesses. According to him this ground alone would render the trial vitiated. He submits that the trial court has erred and failed to appreciate this point.

(9) He has further pointed out to the fact that materials and witnesses in this case have not indicated about any involvement of the appellant No 2. He has referred to the FIR and also to the relevant portion of the disposition of the witnesses, which shall be discussed later, to submit that allegations if any are only directed against the appellant No.1 husband and not against the other appellant. According to him while delivering judgment the trial court has also failed to notice this fact.

(10) He has also disputed the findings of the trial court regarding involvement of the appellant No.1 husband by referring to certain documents exhibited in trial and submitting on the basis of the same that the mala fide or culpable intention of the husband is absent in this case. He submits that according to the records exhibited by the prosecution in this case the husband all alone attended the victim after her death, which

would have been otherwise, had the husband any culpability in his mind and had he been actually involved in the offence alleged against him to have been committed by him. According to him non consideration of such a fact is also an error on part of the Trial Court.

(11) He further says that the Trial Court misled itself in considering the evidence on record in its proper perspective. He says that the co-villagers who have been cited by the prosecution as the independent witnesses have turned to be hostile during trial. He also says that the relations of the victim who have been cited as witnesses are interested witnesses and no credibility should have been attributed to their versions. The appellants have made out a case that by relying on the disposition of the interested witnesses the Trial Court has committed error and ultimately reached to a wrong finding as regards the guilt of the accused persons.

(12) While arguing the case for the appellants Mr. Arnab Chatterjee has relied on the following judgments :

(13) ***Gurcharan Singh vs State of Punjab reported in (2020) 10 Supreme Court Cases 200 on the proposition and as held by the Hon'ble Supreme Court in that case "As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under***

section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant here in had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.”

(14) *Sujit Biswas vs State of Assam reported in (2013) 12 Supreme Court Cases 406* on the proposition that the circumstances which are not put to the accused in his examination under section 313 CrPC, cannot be used against him.

(15) Mr. Chatterjee has also made out an alternative argument that so far as the appellant No. 2 is concerned, keeping in mind her matured age, the Court can take a lenient view in her case. On this point he has relied on the following judgment :

Meera vs. State reported in (2022) 3 Supreme Court Cases 93.

(16) Appellants have prayed that the impugned judgment and order of sentence may be set aside.

(17) Mr. Pravas Bhattacharya along with Ms. Ayantika Bose, on behalf of the State has however strongly resisted these arguments and submissions by the appellants. According to him evidence of the witnesses are unblemished and sacrosanct.

Those are sufficient to infer guilt of the accused persons of the said offences, which the trial court has rightly determined and has held them convicted. He urges that no interference of this Appeal Court would be warranted as to the said impugned judgment and order of sentence. State has prayed that the appeal may be dismissed.

- (18) Penalty has been provided under section 306 IPC for a person whoever abets commission of suicide by any other person. 'Abetment of a thing' is provided under **section 107 IPC** which reads as follows :

"A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—

Illustration

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Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

- (19) In the judgment of **Gurcharan Singh**, as referred to on behalf of the appellants and mentioned above, the Hon'ble Apex Court was adjudicating an appeal involving offence under section 306

IPC. In doing so the Court laid down as to what would be the ingredients of offence under section 306 IPC. The Court held :

“15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the trial court as well as the High Court never examined whether the appellant had the mens rea for the crime he is held to have committed. The conviction of the appellant by the trial court as well as the High Court on the theory that the woman with two young kids might have committed suicide possibly because of the harassment faced by her in the matrimonial house is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.”

(20) In the said case the Hon’ble Supreme Court has referred to two other judgments, which may profitably be relied on in this case too.

(21) In the case of ***S.S.Cheena vs Vijay Kumar Mahajan reported in (2010) 12 SCC 190***, the Hon’ble Court held :

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

(22) The other case is of ***Amalendu Pal vs. State of West Bengal*** reported in (2010) 1 SCC 707, where the Hon'ble Court held that :

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

(23) There are a plethora of judgments by the Apex Court and different High Courts of the country, delineating principles of law to be followed in these kind of cases and the judgments mentioned above encompass those principles.

(24) Abetment of suicide would be doing certain act or playing an active role by instigating that is to say, facilitating or pushing forward the other person to commit suicide. As held and discussed above, the state of mind of the offender to instigate the other person to do that particular act is the precondition upon which finding of guilt of the accused person should be based. Object of the guilty should be to make the other person commit suicide. A conscious effort on his part with the definite

intention to make the other person to do a particular act would determine if the person has abated doing that act. Not only the allegations of harassment or torture would suffice to bring home the charges against the accused person in such a case unless direct or indirect acts of incitement by him to the commission of suicide can be proved. It is required to be surfaced by the evidence that the victim was left with no other alternative than to put an end to her life. A clear and definite mens rea and also an overt positive action that too proximate to the time of occurrence would constitute an offence under section 306 IPC.

- (25)** Section 498A IPC was added in the statute by Act 46 of 1983, with the view to punish the husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. Subjecting the wife to cruelty by the husband or his relatives would be the constituent ingredients for an offence under the afore stated provision of law. What the word cruelty occurring in the said section shall mean, has been enumerated under the 'Explanation' appended to the said section, which is as below :

“Explanation.—For the purposes of this section, "cruelty means"—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

(26) Now, in this appeal this court shall consider first as to whether the prosecution has been able to prove by evidence, the aforestated necessary ingredients, to prove the offence with which the appellants have been charged in this trial. Secondly, whether non examination of the autopsy surgeon and the investigating officer in the trial should be fatal to the prosecution case or not. Next is whether the trial court is right and proper in finding guilt of the appellants in the impugned judgment. And finally, whether the impugned judgment shall be set aside as prayed for by the appellants or shall it be upheld being just and proper.

(27) PW 1 and 6 are the complainant/mother of the deceased and her other relation respectively. Upon scrutinising their evidence, the following facts emerge. **PW. 1**/mother, namely Bina, says that after marriage, Shila went to her matrimonial house for leading a conjugal life with the appellant No. 1 but could not live peacefully there. She was subjected to ill

treatment and torture by her in-laws. She was not maintained properly, was deprived of proper and regular food and was subjected to physical torture. There are incidents of driving her out from her matrimonial house too. There was a constant demand by the in-laws for more dowry as, that provided at the time of marriage was not satisfactory. PW.1 says that such an information was first transmitted to her by a friend of her son-in-law Shambhu, i.e, PW.6 in this trial. The said friend is not named by the witness. The said friend advised to provide more dowry to Shila's in-laws for the sake of her peaceful living in her matrimonial house. Later on this witness says to have gathered information of torture made by her in-laws upon her, from the deceased herself. Shila informed regarding threat to her life unless dowry demands of the appellants are fulfilled. Witness says that her deceased daughter also suggested sometimes that in case something untoward would happen to her, the present appellants should not be let scot free. PW.1 has deposed about informing the entire matter to the local Gram Panchayat and commissioning of a meeting by the Panchayat over the issue of dowry demand. Following the meeting, a sum of Rs.10,000/- was remitted to the appellants by the parents of Shila. On 1 January, 2000, the witness was informed by her sister's son-in-

law about Shila's hospitalisation in a serious condition. She went to the hospital along with PW.6 and found Shila's dead body lying there unattended. On the next day FIR was lodged. PW.6 scribed the same as per PW.1's instructions. PW.1 signed the FIR and identified her signature on FIR (her signature on FIR was marked as Exhibit-1).

- (28) PW.6** is the husband of PW.1's other daughter and deceased Shila's sister. His name is Shambhu. He corroborated evidence of PW.1 regarding marriage of the deceased, payment of dowry at the time of her marriage and perpetration of mental torture and physical assault inflicted on the deceased by the appellants on demand of more dowry. He says that he derived such information from Shila herself at the time of her visit at paternal home. Regarding payment of money about 20 days prior to the death of Shila, this witness state that Shila procured the same from her paternal house to be given to the appellants for the purpose of banana plantation. He elaborates that he had discussions with his parents-in-law, that is, the parents of Shila, regarding handing over money to Shila for agricultural purposes of the appellants. He was informed by his father-in-law, that is, father of Shila of the fact of giving the

money to her. He further says that Shila's father had sold some trees to collect Rs. 10,000/- as consideration which Shila's mother went to give to the appellants at Shila's matrimonial house, being accompanied by Shila. He also deposed that Shila committed suicide being physically and mentally tortured by the appellants. His further evidence is corroboration of that of the PW.1, regarding date of death, his visit with PW.1 to the hospital after receipt of information, finding the dead body, talking to doctor, lodging FIR on the following day, his scribing the FIR as per instruction of PW.1 etc. (FIR was marked as Exhibit-1/1).

- (29)** It is pertinent to note that this witness has not deposed in his examination in chief regarding any conciliation meeting to be held at the behest of Gram Panchayat between the parties on the issue of demand of dowry.
- (30)** **PW.13** namely Reeta is the sister and daughter respectively of the two appellants, sister-in-law of the deceased and a seizure witness. She has brought in a different set of facts in her evidence. She says, frequent visit of the husband of Shila's sister to her matrimonial house made the appellants to raise objections as to the same. The appellants did not like his visit

to Shila once or twice every week and resisted that. This witness has stated that a Panchayat meeting was held concerning this matter. She concedes to have witnessed seizure of poison oil container by police from the room of the deceased and having signed in the seizure list. She has identified her signature on the seizure list. (Signature of this witness on the seizure list has been marked as Exhibit-4 though objected to by the defence side). This witness has not corroborated evidence of the previous two witnesses, PW.1 and PW.6 regarding infliction of any physical or mental torture by the appellants to the deceased on demand of any dowry. This witness has also not confirmed regarding transaction of any dowry/money either at the time of marriage or at any later stage, as claimed by PW.1 or PW.6 earlier.

- (31)** Therefore it appears that substantive evidence of these three witnesses being relatives of the deceased and the appellants including her mother are full of contradictions on the points whether at all the deceased was subjected to any physical or mental cruelty before her death by the appellants, as to whether any village panchayat meeting was held at all, if so whether it was to conciliate the issue of demand of dowry as alleged or to resolve the issue of frequent visit of the sister's

husband of the deceased to her matrimonial home which was resisted by the appellants. There are differences and discrepancy in deposition of PW2.1 and 6, concerning payment of Rs.10000/- whereas PW.13 has not at all asserted any such fact.

(32) PW 2 is a resident of the village where the complainant resides. He is a barber by profession and performed rituals at the time of marriage of the deceased with the appellant No.1. Whatever minor additions he has made to the prosecution case, can be discarded being hearsay evidence. **PW 4** is also a resident of complainant's village. He was the priest of the marriage between the deceased and the appellant No.1. His information as regards the deceased being subjected to physical and mental torture by the members of his matrimonial house was derived from the parents of the deceased. Thus the same can also be discarded to be accredited in any way in this trial being hearsay evidence.

(33) PW 7, namely Kartick, is the co-villager of the appellants who negotiated for the marriage to happen. This witness was known to the parents of the deceased also. By profession this witness is a businessman supplying spraying machines to be used in cultivation. He has deposed about Shila's marriage with the

appellant No.1, her leading conjugal life with him after such marriage and her suicidal death on 1st January, 2000, by consuming poison. He has deposed that as a neighbour living nearby, he was informed by the deceased during her lifetime about marital discord between her and the appellant No.1 over the issue of demand of more dowry. He deposes about getting information from the parents of the deceased also. He deposes that the appellants were no more desirous to allow Shila to live in their house. This witness has corroborated PW.1 regarding the fact of occurrence of a village conciliation meeting over the issue of demand of dowry and inflation of torture upon the deceased by the appellants. He affirms to have attended the said meeting where he says that the appellants undertook to treat the deceased properly in her matrimonial home. However unlike PW.1, this witness has not stated about settlement in the said village conciliation meeting regarding payment of Rs. 10000/- by the parents of the deceased to the appellants. Instead he has deposed that after the said meeting a fresh demand of Rs. 10000/- was again raised by the appellants and procured the sum from the parents of the deceased, indicating thereby that the appellants had diverted from the terms of settlement made at the village conciliation meeting. He asserts

to have derived this information from the deceased. This witness have stated against appellant No. 2 to have disallowed the deceased to cohabit with appellant No.1, her husband and also to have threatened her to be thrown out from her matrimonial home for the sake of second marriage of the appellant No.1. This witness has categorically asserted that the deceased was subjected to gradually increasing torture by the appellants on demand of more dowry and such torture including physical assault has compelled her to commit suicide by consuming poison.

(34) PW. 10 is also a neighbourhood resident of the appellants. He has disposed about death of the deceased due to consumption of poison and he along with others to have taken her to the hospital. He denied any knowledge about the family life of the deceased or as to why the deceased consumed poison. So did **PW. 11 and 12**, who are also residents of the village where the appellants live.

(35) PW 14 a neighbouring villager of the appellants, has deposed about her knowledge of the trouble, dispute and differences in the matrimonial life of the deceased and the appellant No. 1. She has deposed the dispute was with regard to the frequent visits of husband of the sister of the deceased to her

matrimonial home. However the witness has conceded that she deposed in the court for the first time and was never interrogated by police during investigation. In her case, this assertion of the witness is enough not to attribute any credence to her deposition in this trial. It is also same with the next witness that is **PW. 15** who deposed about illicit relationship with the deceased and her brother in law but his such evidence cannot be taken into consideration due to the fact that he has deposited in court for the first time without being interrogated by police earlier during investigation.

- (36)** Two of the prosecution witnesses have been declared hostile by the prosecution in this trial, that is, **PW 8** and **PW 9**. Both of these witnesses have stated in their examination in chief that the deceased was living in her matrimonial home happily and peacefully. While recording evidence of PW 8, it is recorded that “at this stage Ld. Defence declares this witness hostile”. Unfortunately such recording by the court appears to be erroneous in so far as the defence side would not have an opportunity to declare a prosecution witness as hostile. The prosecution has not cross examined PW.8. This witness, who happened to be the Pradhan of Bagda Gram Panchayat at the relevant point of time, have asserted that a village conciliation

meeting was held to resolve dispute between the deceased and the appellants though he has denied that the same was held concerning the issue of torture alleged to be meted out to the deceased or that she was compelled to commit suicide by consumption of poison due to the torture meted out upon her. In his cross examination this witness have stated that the village conciliation meeting was held to conciliate the dispute which arose pursuant to the illicit relationship of the deceased with her brother-in-law and as the said brother-in-law, that is, PW.6 was threatened by the villagers and resisted to enter into the village.

PW.9, when cross-examined by prosecution has denied about making any statement to the police regarding the deceased being tortured by the present appellants and also that the deceased committed suicide due to such torture. When cross examined by the defense this witness stated that the deceased consumed poison pursuant to her illicit relationship with her brother-in-law Shambhu, that is, PW.6.

(37) Rest witnesses are two police personnel, that is, PW. 3 and 5.

PW.3 is the police constable who removed the dead body from Bagda Rural Hospital Morgue. He identified his signature on the 'dead body challan' (signature of this witness on the dead

body challan has been marked as Exhibit- 2). **PW.5** has done inquest of the dead body and prepared report thereof. He identified the said report and his signature thereon. (Inquest report is marked as Exhibit-3).

- (38)** PWs 1, 6, and 7 have deposed in this trial in support of the prosecution case. All of them have stated about information derived from the deceased about ill treatment and physical and mental cruelty inflicted by the appellants to her on demand of dowry. It is noted that excepting the autopsy report, no other medical document has been exhibited in this trial. No ocular evidence is also forthcoming regarding any assault or treatment thereof of the victim during her lifetime. As already discussed, different reasons for holding the village conciliation meeting are apparent from evidence of different witnesses. Noticeably PW.6 is silent about any meeting held by Panchayat. Instead he submits that the deceased asked for Rs.10,000/- for the purpose of plantation to be done by the appellant No.1. He stated about having discussions regarding this with PW.1 and her husband, that is, his parents-in-law, though PW.1 has kept absolute silence about any such purpose for giving money or having any discussion with PW.6 about this. Recovery of poison container from the room of appellant No.1 has been proved by

exhibiting seizure list showing its recovery and seizure. However this ipso facto cannot be the reason for inferring appellant's overt act of instigation, in absence of any supporting evidence. On the contrary, the appellant No.1 being a cultivator by profession, it would be only natural for him to store adequate materials for cultivation. Evidence in this trial are incoherent more so when there are glaring discrepancies in the evidence of the witnesses regarding remittance of more dowry as discussed above. There is no witness to depose about the bustle and ruckus which might have been created in a village household, if a member thereof is regularly subjected to physical torture since in a normal village life people not only reside very closely in a cluster form, but also are mostly aware of the day to day living conditions of their neighbours. PW.7 of course is an exception. However he has also not stated about noticing any untoward situation to happen in the house of the appellants but only to have gathered knowledge from the deceased. Also that his statement as to the situation leading to payment of Rs.10,000/- to the appellants stands differently from that of PW.1, whereas PW.6 has an absolute different version to tell in this regard as discussed earlier.

(39) Therefore the evidence which support the prosecution case appear to be far away from proving existence of any wilful conduct of the appellants of such a nature as was likely to drive the victim to commit suicide. There may be allegations of harassment and torture. However to prove charges against the appellants there must be proof of direct or indirect acts of incitement to the commission of suicide. It is the settled law that the prosecution has to prove beyond all reasonable doubt that the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. Evidence in this trial as discussed above is far away from reaching this standard. Doubts arise regarding alleged demand of more dowry by the appellants in view of the discrepancies in the deposition of witnesses as discussed above, doubts also arise as to the facts of infliction of physical and mental torture allegedly meted out to the victim and evidence in this trial do not appear to be unimpeachable.

(40) The other point raised by the appellants is of being prejudiced having been deprived of the opportunity to cross-examine the investigating officer as well as the autopsy surgeon in this trial as both of them were not cited as witnesses in this trial. It is true that as a part of fair trial, the investigating officer or the

autopsy surgeon should be examined specially when a serious sessions trial was being held against the appellants. Section 174 CrPC provides for certain duties to be discharged by the police officer upon receipt of information of suicide of any person. That is, informing nearest Executive Magistrate to hold inquest, proceeding to the place of occurrence and conducting investigation, more importantly drawing up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted. He has also the statutory duty of forwarding the dead body to the nearest civil surgeon for examination. Similarly the surgeon, who would examine the dead body is expected to find other marks of injury, if any and other vital signs of the body. In a trial like the present one, where a specific allegation of physical torture has been made, and also witnesses have been declared hostile having departed from their earlier statements given to the investigation officer,- non examination of both these persons have caused prejudice to the appellants, who have been deprived of the opportunity to cross-examine them.

Withstanding cross-examination is as vital as the substantive evidence given in examination-in-chief.

(41) Discussions as made above obviously enable to draw the conclusion that the prosecution has not been able to prove the guilt of the appellants in this trial to the standard of beyond all reasonable doubts. The trial court has failed to note the glaring discrepancies in the evidence of the prosecution witnesses. It has also not considered the prejudice of the appellants being deprived of the opportunity to cross-examine vital witnesses, that is, the autopsy surgeon and the investigating officer. In doing so the trial court has come to a finding which is based on erroneous appreciation of the evidence and other attending facts and circumstances of this trial. In view of this the judgment passed by the trial court and impugned in this appeal is found not to be sustainable. Hence the impugned judgment and order of sentence dated 27 September 2012 and 28 September 2012 respectively passed by the Additional District and Sessions Judge, Fast Track 1st Court at Bongaon, North 24Parghanas, in Sessions Trial No. 3(11) of 2004 is set aside.

- (42)** Consequently the appeal succeeds. In the said Sessions Trial both the appellants are found not guilty of the offence under sections 498A and 306 IPC. Both of the appellants are discharged from the bail bonds.
- (43)** The appeal being C.R.A No. 720 of 2012 is disposed of.
- (44)** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon usual undertaking.

(Rai Chattopadhyay,J.)