

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 178 of 2006

Tarak Chandra Mondal & Ors.

Versus

The State of West Bengal

For the appellants : Mr. Anirban Mitra
: Mr. Chandra Bhanu Sinha
: Mr. Amit Halder
: Ms. Madhumita Sadhukhan

For the State : Ms. Faria Hossain, Ld. APP
: Ms. Sujata Das

Hearing
concluded on : May 01, 2024

Judgment
Delivered on : May 21, 2024

Md. ShabbarRashidi, J.:

1. The instant appeal is in assailment of the judgment of conviction dated February 22, 2006 and order of sentence dated February 23, 2006 passed by learned additional District and Sessions Judge, Durgapur in Sessions Case No. 01 of 2003.
2. By the impugned judgment and order, the appellants were convicted for the offences punishable under Section 498A/ 304B/ 34 of the Indian Penal Code. The appellant Tarak Chandra Mondal was sentenced with imprisonment for two years and fine of Rs. 5,000/- for the offences punishable under Section 498 of the Indian Penal Code and in default of payment of fine, he was sentenced for another six months. The said appellant was also sentenced for rigorous imprisonment of ten years for the offences punishable under Section 304B of the Indian Penal Code.
3. The appellant DulalMondal was sentenced to simple imprisonment for two years with a fine of Rs. 5,000/- for the offences punishable under Section 498A of the Indian

Penal Code and in default of payment of fine; he was sentenced to undergo simple imprisonment for another six months.

4. The appellant Dulal Mondal was also sentenced to seven years imprisonment for the offences punishable under Section 304B of the Indian Penal Code. Hemlata Mondal was sentenced to simple imprisonment for two years for offences punishable under Section 498A of the Indian Penal Code and simple imprisonment for seven years for the offences punishable under Section 304B. All the sentences were directed to run concurrently.

5. AppellantNo. 2, Dulal Mondal expired during the pendency of the appeal and the appeal was directed to have been abated as against him by order dated December 12, 2023.

6. The case was initiated on the basis of written complaint lodged by one Narayan Chandra Mondal on June 16, 1998. The de facto complainant stated that at the relevant point of time, he was residing at Jabbalpur, Madhya Pradesh, in connection with his job in

the Jabbalpur Diesel Factory. He further stated that his third daughter i.e. the victim was married to the appellant Tarak Chandra Mondal on April 17, 1998. The marriage was solemnized at the house of brother-in-law of the de facto complainant at Kanchan Nagar within Burdwan P.S. The de facto complainant returned to his place of work after the solemnization of marriage and his victim daughter went to her matrimonial house and started residing in matrimony with the appellants.

- 7.** The de facto complainant also stated that he had written several letters to the father-in-law of his daughter but the said letters were never responded to by the father-in-law or the husband of the victim. Thereafter, the second son-in-law and one cousin of the de facto complainant visited the matrimonial house of the victim on the day of Jamai Sasthi when they stayed there for three days. At that time, they came to know that the victim was subjected to physical and mental torture by her husband and parents-in-law since after her marriage. The victim also requested the aforesaid persons to inform the de

facto complainant. The cousin of the de facto complainant namely Khokon Roy informed the de facto complainant that tortures were being inflicted upon the victim by her in-laws. Hearing this, the de facto complainant decided to visit the matrimonial house of the victim in the month of June.

- 8.** The written complaint also disclosed that on June 14, at about 3.45 p.m., one Subhankar Halder informed him over telephone that the victim had suddenly died at her matrimonial house. The de facto complainant and his brother took a train from Jabalpur on June 14, 1998 at about 11.40 p.m. and after getting down at Bardhaman station on June 16, 1998 at 7 a.m., they immediately rushed to the matrimonial house of the victim and met the said Subhankar Halder. He came to know that the victim consumed poison on June 14, at her matrimonial house. She was taken to hospital at about 8/8.30 hrs. and she died shortly thereafter. The dead body was then sent to Durgapur Sub-Divisional Hospital. The de facto complainant also stated in the

written complaint that the marriage of the victim was solemnized two months prior to the incident. She was subjected to torture by her husband and parents-in-law and she was even abetted to commit suicide. According to the written complaint, magnitude of such torture was of such a nature that drove the victim to commit suicide.

9. On the basis of such written complaint, Budbud P.S. Case No. 50/98 dated June 2016, 1998 under Section 498A/ 304B/ 34 of the Indian Penal Code was started against the three appellants. The police, after conducting an investigation, submitted charge-sheet against all the three accused persons named in the First Information Report.

10. Accordingly, on the basis of material in the CD charges under section 498A/304B of the Indian Penal Code were framed against all the three appellants on December 02, 2003 to which the appellants pleaded not guilty and claimed to be tried.

11. It has been submitted by learned advocate for the appellants that the prosecution has not been able to

prove the charges levelled against the appellants with the help of convincing evidence.

12. Learned advocate for the appellants also submits that the cause of death was not established in the postmortem report. The viscera of the victim were sent for chemical examination and the opinion as to the cause death of the victim was kept reserved awaiting such report. No such report has been brought on record on behalf of the prosecution to establish the conclusive cause of the death of the victim.

13. Learned advocate for the appellants also submits that the evidence adduced on behalf prosecution as well as the written complaint lodged by the de facto complainant, does not disclose that the victim was subjected to torture on demand of dowry. None of the witnesses examined on behalf of the prosecutions have supported the case of demand of dowry. In that view of the facts, a conviction under Section 498A of the Indian Penal Code cannot be sustained.

14. Relying upon the decision reported in **(2006) 1 Supreme Court Cases (Cri) 417 (Harjit Singh Vs. State of Punjab)** learned advocate for the appellants submit that the prosecution has not been able to establish that the victim was subjected to any kind of cruelty by the appellants soon before her death and as such a presumption of dowry death or abetment of death, cannot be drawn against the appellants. Learned advocate for the appellants also relied upon **2005 Supreme Court Cases (Cri) 218 (State of Rajasthan Vs. Teg Bahadur and Others)** on a similar proposition of law.
15. Learned advocate for the appellants also cited the decisions reported in **(2019) 7 Supreme Court Cases 435 (Wasim Vs. State (NCT of Delhi)** and **2001 Supreme Court Cases (Cri) 1148 (Arvind Singh Vs. State of Bihar)** in support of the proposition that since the evidence adduced on behalf of the prosecution is devoid of any allegation, whatsoever, of subjecting the victim to harassment or torture on demand of dowry, a

conviction for the offence punishable under Section 498A of the Indian Penal Code is not justified.

16. Learned advocate for the appellant also submits that since the prosecution has not been able to prove that the victim was subjected to cruelty on demand of dowry as defined under Section 498A of the Indian Penal Code, 1860, no presumption under Section 113A of the Indian Evidence Act, 1872 can be attracted. For the aforesaid reason, a conviction under section 304B of the Indian Penal Code is liable to be set aside.

17. On the other hand, learned advocate appearing for the state of West Bengal has submitted that the witnesses examined on behalf of the prosecution have fully supported the case of the prosecution as made out in the written complaint. The prosecution has been able to bring home the charges under Section 498A/304B of the Indian Penal Code on the basis of such evidence. As such the impugned judgment and order is liable to be upheld.

18. In order to substantiate the charges, prosecution examined as many as ten witnesses. In addition, prosecution also relied upon certain documentary and material evidence.

19. The de facto complainant i.e. father of the victim himself deposed as PW1. He stated in his deposition that the victim was his daughter. She was given in marriage with the appellant Tarak Mondal on April 17, 1998. He gave ornaments and other gifts in such marriage. He also stated that after two months of her marriage, the daughter of PW1 died at her matrimonial house. He however cannot say as to why she died. He wrote a written complaint against his son-in-law and his parents. PW1 also stated that the victim committed suicide at her matrimonial house but PW1 could not say the reason behind such suicide. PW1 also stated that the brother of his wife reported about the incident to him over telephone. Upon receipt of such information, he came on June 16, 1998 and went to lodge a written complaint at the police station. At that time, his mental condition was

not good. PW1 proved his signature on the written complaint.

20. PW1 was declared hostile by the prosecution and in his cross-examination on behalf of the prosecution; he denied having made any statement before the police. In his cross-examination on behalf of the appellants, PW1 stated that his victim daughter was happy at her matrimonial house.

21. The brother of victim's mother deposed as PW2. He stated that the victim committed suicide by consuming poison. He was however ignorant of the reasons behind consumption of poison by the victim within two months of her marriage. PW2 also stated that the marriage ceremony of the victim was solemnized at his house. After getting information of the death of the victim, he rushed to her matrimonial house and on arrival of the father of the victim, he came back. This witness was also declared hostile by the prosecution and in his cross-examination on behalf of the prosecution; he denied having made any statements before the police.

22. A villager was examined as PW3. PW3 is a hearsay witness. He came to know about the incident after he returned from his work. He also acknowledged having signed on a document prepared by police. This witness was also declared hostile by the prosecution. He denied having made any statements before the Police in his cross-examination on behalf of the prosecution.

23. The rickshaw puller deposed as PW4. He stated that on June 14, 1998, he was called by the appellant Tarak from rickshaw station. He carried the appellant husband and the victim along with appellant's parents by his rickshaw to Mankar Rural Hospital. He also stated that the wife of appellant Tarak was not in a position to speak at that time.

24. A police personnel, was examined as PW5. He carried the dead body of the victim to the Sub-Divisional Hospital, Durgapur on June 14, 1998. PW5 proved his signature on the seizure list through which bedhead ticket of the victim was seized by the Investigating

Officer. He also proved the dead body challan. He identified the dead body before the doctor.

25. The person who is alleged to have informed de facto complainant i.e. Subhankar Halder deposed as PW6. He stated that on June 14, 1998, he was at Mankar Colony. He knew the victim as well as the appellants. He identified the appellants in Court. He further stated that the victim was married to the appellant Tarak in the month of March/April, 1998. PW6 also stated that the victim committed suicide but he cannot say the reason why she committed suicide. He further stated that after consuming poison, the victim was taken to Mankar rural hospital where she was declared dead. Thereafter, police visited the spot. PW1 also stated that he informed the relatives of the victim who were residents of Jabalpur, Madhya Pradesh. PW6 also proved his signature on the seizure list.

26. PW6 was also declared hostile by the prosecution. In his cross-examination on behalf of the prosecution, PW6 denied having made any statement before the police.

27. The medical officer of the rural hospital deposed as PW7. He stated that on June 14, 1998, a patient was brought to him by the appellant husband and his father with a case of organo-phosphorous poisoning. PW7 admitted the patient at 8.30 am and at 8.40 am, he declared her dead. PW7 proved the report prepared in his pen and signature (Exhibit-5). He also informed the police.

28. PW8 is another medical officer. He stated that the postmortem examination of the victim was done by one doctor Swapan Kumar Saha in his presence. He also signed the post mortem report which was prepared by Doctor Swapan Kumar Saha. He proved the said report.

29. The recording officer deposed as PW9. He stated that on June 16, 1998, he received a written complaint from Narayan Chandra Mondal at Budbud PS and started Budbud PS Case No. 50 of 1998 dated June 16, 1998 under section 498A/ 304B/34 of the Indian Penal Code. He endorsed the case to Sub-inspector A.S.Mondal for investigation. PW9 proved the Formal First

Information Report filled up in his pen and signature (Exhibit-8). He also proved the endorsement of receipt on the written complaint (Exhibit 1/1).

30. The investigating officer deposed as PW10. He stated that on June 16, 1998, he was endorsed with the investigation of Budbud PS case No. 50 of 1998. Prior to such investigation, he was also directed to follow Budbud PS UD case no. 13 of 1998 dated June 14, 1998. He had accompanied the Block Development Officer for holding inquest over the dead body of the victim. PW10 proved his signature on such inquest report. He further stated that in course of investigation, he visited the place of occurrence, prepared rough sketch map thereof, and arrested the two male accused persons whom he identified in court. He also recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure, collected the viscera and sent the same for medical examination. He also seized the 'Bed Head Ticket' of the victim and sent her dead body for postmortem examination. Thereafter, with the permission

of the superiors, he submitted charge-sheet against the three appellants.

31. As per the case of the prosecution, the victim died at her matrimonial house within two months of her marriage. Her marriage with the appellant was solemnized in the month of April, 1998. According to prosecution case, she died of poisoning. She was instantly taken to hospital by the appellants where she died shortly. After the death of the victim occurred, the matter was reported to the police. An Unnatural Death case was started by the police and the dead body was sent for post mortem examination. The post mortem report (Exhibit 7) noted that no external injury was noticed on the body of the victim. However, viscera was collected and sent for chemical examination, the report of which was never received. No opinion as to the cause of death of the victim was expressed in Exhibit 7. It was kept pending by the autopsy surgeon awaiting chemical report of the viscera.

32. The evidence of the attending medical officer PW7 discloses that the victim was brought to the hospital by her husband on June 14, 1998 at about 8.30 am with a history oforgano-phosphorus poisoning. She was admitted in the hospital and expired at about 8.40 am. The testimony of PW7 together with that of the entries made in the 'Bead Head Ticket' (Exhibit 5) apparently establishes that the victim died an unnatural death. According to Exhibit 5, the probable cause of death of the victim wasorgano-phosphorus poisoning.

33. The fact whether such poison was forcefully or otherwise administered to the victim by the appellants or the appellants subjected the victim to any kind of cruelty, harassment or produced such circumstances which drove the victim to consume poison, is to be ascertained from the evidence adduced on behalf of the prosecution.

34. The case made out in the First Information Report discloses that the de facto complainant came to know from his cousin brother Khokan Roy and his son-in-law Dilip Roy that the victim was subjected to torture by her

in-laws over minimal faults in the household works and was abetted to commit suicide. They had visited the matrimonial house of the victim when they were informed by the victim of such torture. Hearing this, the de facto complainant decided to visit the matrimonial house of his victim daughter in the month of June, 1998. However, before he could visit, as planned, the victim died.

35. The aforesaidcousin brother Khokan Roy and son-in-law Dilip Roy were never examined on behalf of the prosecution. They did not come forth to support the case of the prosecution to the effect that the victim was subjected to torture by the appellants. In his deposition the de facto complainant (PW1) also retracted from his statement in the written complaint. In his cross examination he stated that he was not in a position to state whether his brother-in-law visited the matrimonial house of his daughter. Not only that, PW1 further admitted that his daughter i.e. the victim was happy at her matrimonial house after her marriage and he had

voluntarily gifted some items in the marriage. There was no demand of dowry from the appellants.

36. The de facto complainant also stated in his written complaint that after marriage of the victim, he returned to the place of his work at Jabalpur. He had made an allegation that he wrote several letters to the appellants but the same were never responded. In his deposition, however, PW1 did not reiterate such allegations. He also failed to give the details and timings of such letters. No contemporary complaint regarding alleged torture or cruelty has been brought forth on behalf of the prosecution to justify that the victim was subjected to torture by the appellants.

37. By the impugned judgment, the appellants were convicted for the offence of subjecting the victim to cruelty punishable under Section 498A of the Indian Penal Code.

38. Apparently, the evidence adduced on behalf of the prosecution suffers from lack of any allegation with regard to demand of dowry at the time of marriage of the

victim or at anytime thereafter. On the contrary there is candid evidence of PW1 that whatever gifts given in the marriage of his victim daughter were given voluntarily out of his own volition and not on the demand of the appellants. No other witness on behalf of the prosecution has supported the case that the victim was subjected to torture by the appellant on demand of dowry. In fact, the written complaint itself is devoid of any allegation regarding demand of dowry.

39. The offence of subjecting a woman to cruelty has been defined under Section 498A of the Indian Penal Code, 1860, which runs as follows:

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

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

(a) any willful 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.

40. In the written complaint (Exhibit 1) though, there are allegations of subjecting the victim to cruelty by the appellants on trivial family matters but the same largely remains uncorroborated. As noted, the de facto complainant himself did not support the case made out in the written complaint. The persons who allegedly heard about the torture from the victim and reported the same to PW1 did not depose in the case. Subjecting the victim to cruelty on faults in household jobs as made out in the written complaint does not seem to be of a

magnitude so as to drive the victim to commit suicide or to cause grave injury or danger to life, limb or mental or physical health of the victim.

41. Similarly, the appellants were also convicted for causing dowry death of the victim punishable under Section 304B of the Indian Penal Code.

42. Dowry death has been defined 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.

Explanation.—For the purposes of this sub-section, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

43. In the case at hand, the death of the victim occurred in circumstances which were otherwise than normal. She certainly died within seven years of her marriage, more specifically within two months of her marriage. Based on such facts, the learned trial court went on to convict the appellants for the offence punishable under Section 304B of the Indian Penal Code. There appears no definite finding in the impugned judgment 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. Factually, such case was negated by the de facto complainant (PW1) himself.

44. In the case of **Harjit Singh (Supra)** the Hon'ble Supreme Court was pleased to lay down that:

16. A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative

shall be deemed to have caused her death. Parliament has also inserted Section 113-B of the Evidence Act by Act 43 of 1986 with effect from 1-5-1986 which reads as under:

“113-B. 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.

Explanation.—For the purpose of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Penal Code, 1860.”

45. In the said case, it was also held by Supreme Court that :

“17. From a conjoint reading of Section 304-B of the Penal Code and Section 113-B of the Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Penal Code.

18. The ingredients of the aforementioned provisions are:

(1) That the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal; (2) such death occurs within 7 years from the date of her marriage; (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) such cruelty or harassment should be for or in connection with the demand of dowry; and (5) it is established that such cruelty and harassment was made soon before her death.

46. Similar principles were laid down in the case of **Teg Bahadur (Supra)** in the following terms:

“18. Our attention was drawn to Section 113-B of the Evidence Act and Section 304-B of the Penal Code, 1860 by the learned counsel appearing for the accused. A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B of the Penal Code, 1860 shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. For the above proposition, learned counsel appearing for the accused, cited the judgment of this Court in the case of Hira Lal v. State (Govt. of NCT), Delhi [(2003) 8 SCC 80 :

2003 SCC (Cri) 2016] . In that case this Court observed thus: (SCC pp. 86-87, para 9)

“The expression ‘soon before’ is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. ‘Soon before’ is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression ‘soon before her death’ used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression ‘soon before’ is not defined. A reference to the expression ‘soon before’ used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods ‘soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession’. The

determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

24. A reading of the judgment of the trial court clearly shows that the Sessions Judge proceeded as if prosecution is available against the accused merely because an allegation of death within seven years of marriage was made without even the prosecution having proved the required preliminary fact. Having so shifted the onus, the court then proceeded to hold that the accused had not discharged the said onus and hence convicted the accused primarily based on the presumption under Section 113-B of the Evidence Act. The approach by the Sessions Court is not correct."

46. On perusal of the impugned judgment, it transpires that the learned trial did not find the necessary

ingredients to constitute an offence punishable under Section 304B of Indian Penal Code, with reference to torture, soon before the death of the victim, as envisaged under the aforesaid Section of law.

47. Not only that, in the impugned judgment the trial court seems confused with the manner of death of the victim that's to say if it was suicidal or homicidal. In awarding a conviction under Section 304B of the Indian Penal Code, the learned trial court appears to have resorted to a presumption under Section 113A of the Indian Evidence Act, 1872 which exclusively deals with presumption as to abetment of suicide by a married woman.

48. Section 113 A of the Indian Evidence Act lays down that,

113A. Presumption as to abetment of suicide by a married woman. —When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a

period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. — For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

49. Therefore, if the Trial Court was convinced that the victim died of committing suicide, appellants could not have been convicted for the offence punishable under Section 304B of the Indian Penal Code. Even if it is assumed that the victim committed suicide, as was actually done in the present case, in terms of the provisions contained in Section 113A of the Indian Evidence Act, the prosecution was under obligation to prove that her husband or relative of her husband had

subjected her to cruelty. The prosecution evidence is lacking on the point that the victim was subjected to such cruelty.

50. As laid down in the case of **Harjit Sing (Supra)**:

“26. Before invoking the provisions of Section 306 IPC, it is necessary to establish that: (i) the deceased committed suicide, and (ii) she had been subjected to cruelty within the meaning of Section 498-A IPC.”

51. Moreover, the impugned judgment demonstrates that the learned trial court proceeded to convict the appellants on a presumption of culpability as the appellants did not inform the de facto complainant of the death of the victim. However, the trial court did not consider the conduct of the appellants. It was the appellants who took the victim to hospital for treatment. PW1 has stated that he was informed of the death of the victim by his brother-in-law (PW2). In turn, PW2 stated that he got information of death of the victim. He has not disclosed as to how he could gather information of such

death. Moreso, soon after the death of the victim the attending medical officer sent information of unnatural death to the local police. There is no case of the prosecution that the appellants absconded after the incident.

52. Therefore, in consideration of the manner of death as suicidal death and in absence of evidence as to subjecting the victim to cruelty as contemplated under Section 304B of the Indian Penal Code, the conviction of the appellants under the aforesaid Section seems to be based on conjectures and cannot be sustained.

53. As regards conviction under Section 498A of the Indian Penal Code, the Hon'ble Supreme Court in the case of **Arvind Singh (Supra)** was pleased to hold that,

“25. Coming back to Section 498-A the requirement of the statute is acts of cruelty by the husband of a woman or any relative of the husband. The word “cruelty” in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent thus is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by

any relative of the husband which can be attributed to be painful or distressing, the same would be within the meaning of the section. In the instant case there is no evidence whatsoever. It is on this score Mr Verma contended that there is no sufficient evidence for even the dowry demand far less the evidence of cruelty available on record. No outside person has been called to give evidence and even the witnesses being in the category of interested witnesses also restricted their version to sufferings of burn injury and the purported dying declarations to the matter as noticed hereinbefore — apart therefrom nothing more is available on record to attribute any act or acts on the part of the husband or on the part of the husband's relatives — is that evidence sufficient to bring home the charge under Section 498-A? The answer obviously cannot be in the affirmative having regard to the non-availability of any evidence in the matter.

26. Significantly however, upon recording of the fact of no dowry demand prior to the date of occurrence the High Court thought it fit to record that charge under Section 498-A stands proved and as such passed the sentence. We are however unable to record our concurrence therewith — torture is a question of fact — there must be proper effort to prove that aspect of the matter, but unfortunately not even an attempt has been made nor any evidence tendered to suggest the same excepting the bold

interpolated allegations which stand disbelieved and ignored by the High Court, and in our view rightly.”

54. Similarly, in the case of **Wasim (Supra)**, Supreme Court held that,

“12. Conviction under Section 498-A IPC is for subjecting a woman to cruelty. Cruelty is explained as any wilful conduct which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Harassment of a woman by unlawful demand of dowry also partakes the character of “cruelty”. It is clear from a plain reading of Section 498-A that conviction for an offence under Section 498-A IPC can be for wilful conduct which is likely to drive a woman to commit suicide OR for dowry demand. Having held that there is no evidence of dowry demand, the trial court convicted the appellant under Section 498-A IPC for his wilful conduct which drove the deceased to commit suicide. The appellant was also convicted under Section 306 IPC as the trial court found him to have abetted the suicide by the deceased.”

55. In the instant case, however, no allegation has been made out that any dowry was ever demanded by the appellants. There also no evidence that the victim was subjected to cruelty on demand of dowry.

56. Therefore, in the light of discussions made hereinbefore, we are of the opinion that the conviction of the appellants for the offence punishable under Section 498A of the Indian Penal is unfounded.

57. In the result, thus, the appeal succeeds. The judgment of conviction dated February 22, 2006 and order of sentence dated February 23, 2006 passed by learned Additional District and Sessions Judge, Durgapur in Sessions Case No. 01 of 2003 are hereby set aside.

58. Accordingly, the instant appeal being **CRA No. 178 of 2006** is hereby allowed. The appellant be set at liberty forthwith, if not wanted in connection with any other case, subject to execution of a bond to the satisfaction of the learned Trial Court which shall remain in force for a

period of six months in terms of Section 437A of the Code of Criminal Procedure.

59. In view of the disposal of the appeal, no interlocutory application survives. Consequently, connected applications, if any, shall stand dismissed.

60. Trial Court records along with a copy of this judgment and order be sent transmitted, at once, to the learned Trial Court for necessary action.

61. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

62. I agree.

[DEBANGSU BASAK, J.]