

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1537 of 2006

Pradip Majhi & Anr.

-Vs-

The State of West Bengal

For the Petitioners : Mr. Navanil De
Mr. Rajeshwar Chakraborty
Ms. Monami Mukherjee

For the State : Ms. Faria Hossain
Mr. AnandKeshari

Heard on : 12.09.2023, 06.10.2023, 12.10.2023, 14.12.2023,
22.01.2024

Judgment on : 21.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners against the judgment and order of conviction and sentence dated 28.04.2006 passed by the Learned Additional Sessions Judge, First Fast Track Court, Hooghly, in Criminal Appeal No. 32 of 2005, thereby allowing the criminal appeal and setting aside the order of conviction and sentence dated 29.04.2005 passed by the Learned 1st Assistant Sessions Judge, Hooghly in S.T. Case No. 225 of 2001 and thereby remanding the said case for retrial and convicting the petitioners of the charge for commission of an offence punishable under

Section 498A of the Indian Penal Code and sentencing then to suffer rigorous imprisonment for 2 years each.

2. The prosecution case in a nutshell was that the victim lady was given in marriage with the Petitioner No. 1 on August 13, 1999 according to Hindu rites and customs. Soon thereafter, the victim lady was subjected to physical and mental torture by the accused persons. It had been alleged that the victim lady disclosed such assault before her parents and other family members whenever she used to visit her parental home. Upon hearing such incident of assault, the family members of the victim lady used to console her and send her back to her matrimonial home.

Furthermore, it had been alleged that the Petitioner No. 1 had an illicit relationship with the sister-in-law of Habul and for such reason torture upon the victim lay increased. On January 22, 2000 at around 9:30 A.M., uncle of Petitioner No. 1 namely Krishna Chandra Majhi informed to the complainant that the victim lady committed suicide by consuming poison.

3. Dadpur Police Station Case No. 3 dated 21.01.2000 was registered on the basis of a complaint lodged by one Haradhan Ghosh with the Officer-in-Charge of Dadpur Police Station therein alleging inter alia to the effect that the sister of the complainant namely Malati Majhi (since deceased) was married to the petitioner no. 1 on 03.08.99 and within a few days of the said marriage, she was subjected to torture, both mental and physical, by her husband and other family members. It was also alleged that the petitioner no. 1 had an illicit relationship with the sister-in-law of one Habul for which

Malati was also tortured and finally on 21.02.2000, she committed suicide by consuming poison.

4. After completion of statutory formalities, the case was committed to the Court of Session and the Learned Sessions Judge, Howrah was pleased to transfer the case to the Court of the Learned 1st Assistant Sessions Judge, Hooghly for trial.
5. Subsequently the Learned Trial Court was pleased to frame charges under Sections 498A/306 of the Indian Penal Code against the petitioners and four other accused persons, to which they pleaded not guilty and claimed to be tried. On the basis thereof Sessions Trial Case No. 225 of 2001 was registered for trial.
6. In order to prove its case, the prosecution has examined as many as 18 witnesses and exhibited certain documents.
7. After considering the evidence on record and hearing the arguments advanced by the prosecution and defence, the Learned 1st Assistant Sessions Judge, Hooghly was pleased by his judgment and order dated 29.04.2005 passed in S.T. Case No. 225 of 2001 to convict the petitioners of the charge under Section 498A of the Indian Penal Code. The remaining 4 co-accused persons were acquitted of the charge for the offence under Sections 498A/306 of the Indian Penal Code and the petitioners were also acquitted of the charge for commission of the offence punishable under Section 306 of the Indian Penal Code. The petitioners, in such circumstances, were sentenced to suffer rigorous imprisonment for 2 years each for the conviction under Section 498A of the Indian Penal Code by the Learned Trial Court.

8. The Learned Additional Sessions Judge, 1st Track Court, Hooghly after hearing the Learned Advocates appearing on behalf of the petitioner and the State, was thereafter passed by his order dated 28.04.2006 to allow the appeal and set aside the order of conviction and sentence impugned therein. However, by the same order the Learned Judge was pleased to set aside the order of acquittal passed in respect of the other 4 persons, who had faced trial in S.T. Case No. 225 of 2001, though the said acquitted persons were not parties to the said appeal. The Learned Judge was further pleased to remand S.T. Case No. 225 of 2001 for retrial with a direction upon the Learned Trial Court to give proper scope to the prosecution to produce evidence of the Post-Mortem Doctor and thereafter close the prosecution case and examine the accused persons under Section 313 of the Code of Criminal Procedure and after giving the defence full scope to adduce evidence, if any, on its behalf, to pass the final verdict.

9. The Learned Advocate for the petitioners submitted that –

- a) As many as 6 accused persons including the petitioners namely Pradip Majhi (Husband) and Padma Rani Majhi (Mother-in-Law), Bholanath Majhi (Father-in-Law) expired, Binapani Majhi (sister of Bholanath Majhi) expired, Chandana Majhi (Boudi of Petitioner No. 1) and Kashinath Majhi (Uncle of Petitioner No. 1) - expired faced trial under Sections 498A/306 IPC before the Learned Assistant Sessions judge, Hooghly being S.T. Case No. 225/2001.

b) The Learned Assistant Sessions Judge, Hooghly by Judgment and Order dated April 29, 2005 acquitted all the 6 accused persons from the charge under Section 306 IPC and acquitted 4 accused persons namely Bholanath Majhi (Father-in-Law)-expired, Binapani Majhi (sister of Bholanath Majhi) expired, Chandana Majhi (Boudi of Petitioner No. 1) and Kashinath Majhi (Uncle of Petitioner No. 1) expired, from the charge under Section 498A of IPC but was pleased to convict the petitioners namely the husband and the mother-in-law under Section 498A IPC and sentenced them to suffer R.I. for 2 years. The Learned Assistant Sessions Judge, Hooghly was pleased to acquit all the 6 accused persons from the charge under Section 306 IPC on the following grounds -

“In order to substantiate the allegation ascribed in the F.I.R., against the accused persons under Section 306 I.P.C. the prosecution has failed to examine the Medical Officer more so, who conducted the post mortem and post mortem report has not been exhibited. From the inquest report death is proved but cause of death remain uncertain. Mere existence of phorate in the viscera of the victim as in ext.7 proved by P.W.14 does not ipso facto proved the cause of death as suicidal. There is no cogent evidence against the accused instigating the victim to commit suicide on the date of committing suicide. Considering the discussion made above I am of the view that the

prosecution has not been able to prove the allegation ascribed in the F.I.R. against the accused persons which comes under the mischief of Section 306 I.P.C.”

Learned Assistant Sessions Judge, Hooghly acquitted 4 accused persons from the charge under Section 498A IPC but convicted the petitioners under Section 498A IPC on the following grounds -

“PW-1 has stated on oath that his sister used to disclose her plight during her visit to their house. It further appears from the evidence that the husband of the victim had an illicit relationship on the sister- in-law of Habul. Onus lies upon the defence to tender this sister-in- law and Habul but this onus has not been discharged, PW-5 found a bum injury on her cheek and on being asked he told him that her husband Pradip pressed butts of cigarette there. This fact also gather assurance from the evidence of P.W.81 am quoting the relevant portion of evidence of P.W.8 “I came to know Malati was subjected to torture by her husband Pradip Majhi in particular and also by other inmates of her matrimonial home who used to press but of cigarette of her person”. P.W.11 also relays that her daughter was subjected to torture in her matrimonial home. I am quoting the relevant portion of evidence of P.W.11 “She was not provided with proper food, she was physically assaulted and even she was kept confined in a room.” It also appears from the

evidence of this witness that the victim disclosed her plight to him during her visit to his house. PW-12 corroborates this torture and lodging of the G. D. Ext. A. He also proved that her sister told her that she was physically assaulted by Pradip and his mother on the allegation that she poured salt in disproportionate measure while preparing food. I find corroboration of the oral testimony in the documentary evidence i.e., the only letter, written by the victim to his father i.e., Ext.6. Considering the discussion made above I am of the view that the prosecution has been able to prove that the victim was subjected to mental and physical torture by her husband and mother-in-law which will come under the mischief of Section 498A I.P.C.”

- c) The said 2 convicted persons namely Pradip Majhi and Padma Rani Majhi being aggrieved and dissatisfied with the Judgment and Order dated April 29, 2005 passed by the Learned Assistant Sessions Judge, Hooghly preferred an appeal before the Learned Additional Sessions Judge, Hooghly.
- d) The Learned Additional Sessions Judge, Hooghly by Judgment and Order dated April 28, 2006 allowed the Criminal Appeal No. 32/2005 on contest and was further pleased to observe –
“The impugned order of conviction and sentence as passed by the Trial Court in S.T. case No.225/01 convicting the appellants

on the charge u/s 498A of I.P.C and sentencing them to R.I. for two years each is hereby set aside. The order of acquittal also dt.29.4.05 in respect of accused Bholanath Majhi, Kashinath Majhi and Bani @ Binapani Majhi, Chandana Majhi and the present two appellants on the charge u/s 306 of I.P.C is also set aside. The order of acquittal dt.29.4.05 of accused Bholanath Majhi, Kashinath Majhi, Binapani Majhi and Chandana Majhi on the charge u/s 498A of I.P.C is also set aside. The order No.15 & dt.9.2.05 and Order No. 16 dt.2.3.05 by which the Trial court had closed the prosecution case and examined the present appellants only u/s 313 of Cr.P.C., are also set aside. The S.T. case No.225/01 is sent back on remand for retrial with the direction upon the Trial court to give proper scope to the prosecution to procure attendance of the post mortem doctor and after examining the doctor and thereafter, on closure of the prosecution case, would examine the accused persons u/s 313 of Cr.P.C., if the situation warrants and then after giving the defence full scope to adduce evidence, if any, on its to shall behalf, pass the final verdict.”

- e) The Learned Additional Sessions Judge, Hooghly was pleased to set aside the Order of conviction as well as the Order of acquittal and remanded back the case for retrial with the direction upon the Trial Court to procure attendance of the Post-Mortem Doctor for proper appreciation of the case and

further directed the Trial Court to examine all the accused persons under Section 313 Cr.P.C., on the following grounds –

“These witnesses P.W. 1, 5, 11 and 12 were cross examined at length but what I found from the judgement that the Trial Court had made no discussion of the material evidence revealed from these witnesses in coming to its decision of acquitting the accused from the charge u/s 306 of I.P.C.”

“There was sufficient material before the Trial Court, produced by the prosecution, regarding causing of death of the deceased victim by consuming poison but the Trial Court as it appears from its order dated 20.01.05 that it fixed the next date for examination of the doctor with an ultimatum to close the prosecution case by examining the accused u/s 313 of Cr.P.C., in the event of failure of the prosecution to produce the doctor. On the next date, that was, on 9.2.05 the doctor was not present and the Trial Court closed the prosecution case but refrained from examining the accused u/s 313 Cr.P.C., as pre-scheduled. The Trial Court was holding a sessions trial and it should not have closed the prosecution case in such haste but ought to make endeavour to procure the attendance of the post mortem doctor for his examination. It appears that no prayer for adjournment was forwarded on 9.2.05 by the prosecution but that never means that the Trial court lost its jurisdiction or authority to secure the attendance of the Post Mortem Doctor,

one of the vital witnesses of the case. The most interesting as well as alarming feature of the trial, as held by the Ld. court below, is that the Trial court, as it appears from the Lower Court Record, had examined the appellants only u/s 313 of Cr. P.C but it did not examine the other four acquitted accused under that mandatory provision of the Code. Careful scrutiny of the L.C.R reveals that it carries with it only two sheets of 313-examination form and from the brief copy the same feature appears. The order No. 16 on 02.03.05 shows examination of all accused u/s 313 of Cr.P.C., and it further appears that on 2.3.05 hazira of all these accused, facing the trial, were filed. I have discussed beforehand in this judgement that there exists sufficient incriminating against all this accused in respect of the charge u/s 306 of I.P.C but the Trial Court has violated the mandatory - provision of law by not putting those incriminating materials to the acquitted accused persons for the purpose of securing their rightful defence in that connection. From the examination of the appellants u/s 313 of Cr.P.C, as made by the Trial court it also appears that the appellants were also not confronted with Letter the Exbt. - E and Exbt. - 6, the two vital documents bearing sufficient incriminating materials. In this way a vital part of the trial was completely vitiated.”

“It is also to be noted that the Trial Court was not devoid of exercising its power in acquitting the acquitted accused u/s

232 of Cr.P.C., without examining those accused u/s 313 of Cr.P.C. But it has not appeared from the Lower Court Record that the Trial court has taken recourse of that provision of procedural law. Had the Trial Court found nothing incriminating from the evidence on record to examine the acquitted accused u/s 313 of Cr.P.C., the Trial Court was supposed to acquitted the accused on the very date on 28.4.06 of holding the examination of the present appellants u/s 313 of Cr.P.C but that has not reflected from the L.C.R. The Trial court had waited long two months in pronouncing the judgement finally on 29.4.05 but still that final order dt. 29.4.05 does not disclose that the other accused were acquitted w/s 232 of Cr.P.C. It shows the Ld. Trial Judge had made up his mind beforehand to examine the present appellants only to inflict a conviction u/s 498A of I.P.C and thus the total failure of justice appears conspicuous.”

- f) The petitioners have specifically preferred an appeal against the Order of conviction and sentence under Section 498A IPC and all the accused persons were acquitted from the charge under Section 306 IPC, but the Learned Appellate Court ought or not to have sent the whole case back for retrial. The State did not prefer an appeal against the Order of acquittal under Section 306 IPC and therefore, remanding the case back under Section 306 IPC suffers from serious illegality and

infirmity as also without jurisdiction. The observation of the Learned Assistant Judge, Hooghly and Internal that there is no cogent evidence of instigating the victim was also relevant.

“Section 386 (b)(i) reads as follows -

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re- tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same”

6A) The Hon'ble Apex Court in the case of Ajay Kumar Ghoshal V. State of Bihar - (2017) 12 SCC 699 was pleased to hold in Paragraph 18:

“As discussed earlier, the High Court has not shown as to how the alleged lapses pointed out by the High court have resulted in miscarriage of justice. When the accused prefers an appeal against their conviction and sentence, the appellate court is duty-bound to consider the evidence on record and independently arrive at a conclusion. In our considered view, the High Court erred in remitting the matter back to the trial

court for fresh trial and the impugned order cannot be sustained.”

g) The petitioners state that the Learned Assistant Sessions Judge, Hooghly specifically observed that there is no iota of evidence against the accused persons instigating the victim to commit suicide and thereby the Learned Additional Sessions Judge, Hooghly erred in setting aside the Order of acquittal under Section 306 IPC against all the accused persons and remanding back the case for retrial, when the petitioners had specifically preferred an appeal against conviction.

h) The petitioners submit that there exists no cogent evidence against the accused persons that they have instigated the victim lady to commit suicide during the victim lady's lifetime.

- In view of Judgment of the Supreme Court in **Sanju V. State of M.P.**, (2002) 5 SCC 371 observed in Paragraph 10 and 11-

“10) This Court, considering the definition of "abetment" under Section 107 IPC, found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment of the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11) In Ramesh Kumar v. State of Chhattisgarh ((2001) 9 SCC 618] this Court was considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set herself on fire. Acquitting the accused this Court said: (SCC p. 620)

“A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty.”

12) Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25-7-1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased "to go and die". For this, courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C., when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C., is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him "to go and die". Even if we accept the prosecution story that the appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the

spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25-7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased on 27-7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998. The fact that the deceased committed suicide on 27-7-1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25-7-1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.”

- i. The petitioners further stated that the purported letter being Exhibit-6 allegedly written by the victim lady was produced by the elder brother of the deceased before the Investigating Officer (P.W.16) only on January 30, 2000 i.e., after 8 days from the date of incident. Furthermore, the Investigating

Officer also did not seize the handwriting of the victim in the course of investigation. Thus, whether the letter was manufactured or not could not be ascertained. She committed suicide on January 22, 2000 and the purported letter was allegedly written on January 20, 2000 and therefore, in the view of Sanju's case, suicide after 2 days is not proximate to the cause of death.

- j. Another relevant fact is that the Investigating Officer also went to the parental house of the deceased on January 24, 2000 and seized a copy of the General Diary dated January 17, 2000 being Exhibit- A along with certain other documents. Investigating Officer particularly stated in this cross-examination that the contents of the General Diary did not constitute any cognizable offence. These circumstances altogether strike a blow at the very root of the prosecution case upon which it stands and poses a serious question as to whether at all cruelty was inflicted upon the victim lady or not.

- The Hon'ble Supreme Court in ***Netai Dutta V. State of W.B.*** (2005) 2 SCC 659 was pleased to observe in Paragraph 5 and 6:

“5) There is absolutely no averment in the alleged suicide note that the present appellant had caused any harm to him or was in any way responsible for delay in

paying salary to deceased Pranab Kumar Nag. It seems that the deceased was very much dissatisfied with the working conditions at the workplace. But, it may also be noticed that the deceased after his transfer in 1999 had never joined the office at 160, B.L. Saha Road, Kolkata and had absented himself for a period of two years and that the suicide took place on 16-2- 2001. It cannot be said that the present appellant had in any way instigated the deceased to commit suicide or he was responsible for the suicide of Pranab Kumar Nag. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The parameters of "abetment" have been stated in Section 107 of the Penal Code, 1860.

6) In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.”

10. The Honb'le Apex Court in the case of **Gangula Mohan Reddy V. State of A.P.** (2010) 1 SCC 750 observed in Paragraph 13 -

“13) In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73: 1994 SCC (Cri) 107) this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

11. The petitioners stated that the Learned Assistant Sessions Judge, Hooghly erred in convicting the petitioners under section 498A as none of the witnesses i.e., P.W. 1, 5, 8, 11 and 12 stated or assigned any specific role to the accused persons. The allegations are purely omnibus and general in character. Moreover P.W.11, being the father of the deceased, in his

examination-in-chief stated that he did not see any burn injury on the person of the victim lady. The Investigating Officer (P.W. 16) also corroborates the same. This shows that torture was not inflicted upon the victim lady. Also the Post Mortem was not examined who would have been the best person to state about the external injuries present on the person of the victim lady.

12. Therefore, the prosecution case could not be proved beyond reasonable doubt by the prosecution and as such the petitioners should get the benefit of doubt. The prosecution failed to establish the mode and manner in which the victim lady was tortured and the prosecution witnesses differed from each other in their versions as to what specific role was played by any of the petitioners during the assault and how and in what way was the victim lady tortured. There is nothing to show the particulars of the offence committed by each and every accused and the role played by each and every accused in committing the offence. The specific role, mode and fashion of torture have not been specified by any of the evidences on record.
13. The Hon'ble apex Court in the case of **Neelu Chopra v. Bharti**, (2009) 10 SCC 184 - Paragraph 9.

“9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.”

14. The Hon'ble Supreme Court in the case of **Preeti Gupta V. State of Jharkhand**, (2010) 7 SCC 667-Paragraph 28

“28. We have very carefully considered the averments of the complaint and the statements of all the witnesses recorded at the time of the filing of the complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants.”

15. PW-5, PW-11 and PW-12 have been relied upon by the Learned Appellate Court but it is found from the evidence of PW-5, PW-11 and PW-12 that they are deposing for the first time in Court.

The Hon'ble Supreme Court in the case of **Tarun @ Gautam Mukherjee** reported in (2001) 10 SCC 754 in Paragraph 4 was pleased to observe that the maid servant deposed in her evidence about the fact that the accused used to assault the deceased almost daily but, she did not state so in her statement to the police recorded under Section 161 Cr.P.C., and such material omission would discredit her version in Court. Therefore, the high Court was erred in convicting the appellant under Section 498A of the Indian Penal Code.

16. In **Kali Ram V. State of H.P.** (1973) 2 SCC 808, the Apex Court observed in Paragraphs 25 and 26 that if two views are possible on the evidence adduced in the case, on pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

17. It was a case of 2000 and after 23 years, no fruitful purpose could be served in remanding the case to the Learned Assistant Sessions Judge when the Post Mortem Doctor has either retired or expired. When the chance of conviction is bleak, the continuation of the proceedings is a gross abuse of the process of the Court.
18. The Hon'ble Apex Court in the case of **Madhavrao Jiware and Ors. V. Sambhajirao Chandojirao Angre and Ors.** (1988) 1 SCC 692 was pleased to hold in Paragraph 7:

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

19. The petitioners state that the case was started in the year 2000 and 23 years have gone by and as such fair, just and reasonable procedure implicit

in Article 21 of the Constitution which creates a right on the accused to be tried speedily has been infringed in this case. Thereby keeping in mind the mental agony the petitioners had to go through all these years and the undue delay which have resulted in impairment of the ability of the petitioners to defend themselves, whether on account of death, disappearance or non-availability of witnesses, the Judgment and Order dated April 28, 2006 is liable to be set aside by this Hon'ble Court.

20. The Hon'ble Supreme Court in the case of **Abdul Rehman Antulay Vs. R.S. Nayak** Paragraph 86: (1992) 1 SCC 225 was pleased to hold in -

*“86)(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.(2) **Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial.**”* That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.”

Petitioners state that they have been convicted under Section 498A IPC and sentenced to suffer R.I. for 2 years. But the findings of the Learnd Assistant Sessions Judge, Hooghly is totally erroneous in view of the evidence on record. The Learned Trial Court has relied upon the evidences of P.W.1, 5, 8, 11 and 12, but, if the evidences are properly analysed, it will appear that the above-mentioned witnesses cannot be relied upon -

- a) P.W.1, the de-facto complainant as well the elder brother of the victim lady stated in his examination-in-chief that after marriage, his sister was subjected to physical torture in her matrimonial home. Again P.W.1 states in his examination-in-chief that his sister used to disclose her plight during her visit to their house. However, the allegations of torture appear to be general and

omnibus in nature and no specific names and role have been stated as to who used to inflict torture upon the victim lady. He also states in his examination-in-chief that Pradip Majhi had an illicit relationship with sister-in-law of Habul. However, neither the Investigating Officer (P.W.16) nor the Learned Trial Court could find any evidence from four comers to support such statement. Surprisingly, P.W.1 neither stated about the G.D. Entry dated January 17, 2000 in the F.I.R., or about the self-written letter of the victim lady addressed to her father dated January 20, 2000 which were vital documents to secure the conviction of the petitioners. P.W.1's version was not supported by any witnesses.

- b) PW-8, neighbour of PW-1 and a seizure witness, stated in his examination-in-chief that he has gathered knowledge from being told by P.W.1 and P.W.12 that their sister was subjected to torture in her matrimonial home. This shows that he is a HEARSAY WITNESS and therefore, conviction based on the evidence of PW-8 is to be set aside by This Hon'ble Court.
- c) PW-5, Jamaibabu of the victim lady as well the brother-in-law of PW-1 stated in his examination-in-chief that once during victim's visit to his house, he found a burn injury on her cheeks and on being asked she said that her husband has pressed butts of cigarette. However, PW-11 clearly denied having seen any burn injury on the person of victim lady. PW-5 also stated that the

victim was subjected to torture by her husband. However, he never lodged any complaint for the same and whether the victim lady was subjected to torture soon before death was also not stated anywhere. He further stated in his examination-in- chief that the victim lady died on January 21, 2000. But the victim lady died on January 22, 2000. He also stated that he did not know the reason of consuming poison. This statement clearly shows that he was not aware of the exact reason for which the victim lady consumed poison whether it was really because of torture meted out to her or it was by mistake. In his examination-in-chief he stated that he was interrogated by police. However, in his cross-examination he stated totally opposite that he was not interrogated by police. And further states that his evidence is his maiden statement regarding death of the victim lady. Surprisingly, P.W.5 also neither stated about the G.D. Entry dated January 17, 2000 nor about the self-written letter of the victim lady addressed to her father dated January 20, 2000 which were vital documents to secure the conviction of the petitioners.

- d) PW-11, the father of the victim lady stated in his examination-in-chief that his daughter was subjected to torture in her matrimonial home by the accused persons. She was not provided with proper food and was kept confined in a room. His daughter used to disclose about such plight on her visit to parental house.

However, the allegations of torture appear to be general and omnibus in nature and no specific names and role have been stated as to who used to inflict torture upon the victim lady. PW-11 also stated in his examination-in-chief about the lodging of the General Diary but did not say the date. PW-11 for the first time stated about the GD Entry. He further deposed that he for the first time disclosed before this Court that his daughter was not provided with proper food and was kept confined in a room. He also specifically states that he did not see any burn injury on the person of victim lady which is contradictory to the statement of PW-5. Again in his cross-examination he stated that he deposed for the first time in Court that his daughter used to disclose about her plight on her visit to parental house.

- e) PW-12, elder brother of the victim lady stated that on January 20, 2000 when he visited the matrimonial house of victim lady, his sister told him that she was physically assaulted by her husband and mother-in-law that she poured salt in disproportionate measure while cooking food. However, he states in his cross-examination that he never disclosed the fact that victim was tortured by the accused persons before police. He further stated that the victim lady handed him a letter addressed to his father wherein she disclosed her plight in her matrimonial home. The Investigating Officer first seized certain documents on January 24, 2000 but did not seize the Letter. Such Letter from

the parental house of the victim lady was seized only on January 30, 2000 i.e., 8 days after the date of incident. It was not ascertained as to whether the purported letter was actually written by victim or not.

- f) Therefore, in its entirety the Learned Appellate Court below was totally erroneous in the eye of law in sending back the case for examination of the Post Mortem Doctor and examination of the accused persons under Section 313 of the Code of Criminal Procedure after a lapse of 23 years when the chance of conviction is totally bleak and the petitioner has so long suffered mental agony and anxiety for the last 23 years when the ingredients of the offence under Section 306 and 498A IPC are totally lacking.

21. The Learned Courts have relied upon P.W. 1, 5, 8, 11 and 12 who have not stated or assigned any specific role to the accused persons. The allegations are purely omnibus and general in character. Moreover P.W.11, being the father of the deceased, in his examination-in-chief stated that he did not see any burn injury on the person of the victim lady. The Investigating Officer (P.W. 16) also corroborates the same. This shows that torture was not inflicted upon the victim lady. Also the Post Mortem was not examined who would have been the best person to state about the external injuries present on the person of the victim lady. Therefore, the prosecution case could not be proved beyond reasonable doubt by the prosecution and as such the petitioners should get the benefit of doubt. The prosecution failed to establish the mode and manner

in which the victim lady was tortured and the prosecution witnesses differed from each other in their versions as to what specific role was played by any of the petitioners during the assault and how and in what way was the victim lady tortured. There is nothing to show the particulars of the offence committed by each and every accused and the role played by each and every accused in committing the offence. The specific role, mode and fashion of torture have not been specified by any of the evidences on record.

The petitioners have relied upon the following references of the Apex Court:

(a) Neelu Chopra v. Bharti, (2009) 10 SCC 184- Paragraphs 9 and 10

(b) Preeti Gupta V. State of Jharkhand, (2010) 7 SCC 667- Paragraph 28

(c) Geeta Mehrotra and Anr. V. State of Uttar Pradesh and Anr.(2012) 10 SCC 741-Paragraph 20 and 25

(d) Smt. Shyama Devi and etc. V. State of West Bengal and etc.- (1987) SCC Online Cal 38-Paragraph 22, 23, 34,37

22. P.W. 5, 11 and 12 have been relied upon by the Learned Appellate Court but it is found from the evidence of P.W. 5, 11 and 12 that they are deposing for the first time in Court.

The Hon'ble Supreme Court in the case of Tarun @ Gautam Mukherjee reported in (2001) 10 SCC 754 in Paragraph 4 was pleased to observe that the maid servant deposed in her evidence about the fact that the accused used to assault the deceased almost

daily but, she did not state so in her statement to the police recorded under Section 161 CrPC and such material omission would discredit her version in Court. Therefore, the high Court was erred in convicting the appellant under Section 498A of the Indian Penal Code.

23. In Kali Ram V. State of H.P. (1973) 2 SCC 808, the Apex Court observed in Paragraphs 25 and 26 that if two views are possible on the evidence adduced in the case, on pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.
24. That it was a case of 2000 and after 23 years, no fruitful purpose could be served in remanding the case to the Learned Assistant Sessions Judge when the Post Mortem Doctor has either retired or expired. When the chance of conviction is bleak, the continuation of the proceedings is a gross abuse of the process of the Court.
25. The Hon'ble Apex Court in the case of MadhavraoJiwajiraoScindia and Ors. V. Sambhajirao Chandrojirao Angre and Ors.(1988) 1 SCC 692 was pleased to hold in Paragraph 7:

“7.The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a

prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

26. The petitioners state that the case was started in the year 2000 and 23 years have gone by and as such fair, just and reasonable procedure implicit in Article 21 of the Constitution which creates a right on the accused to be tried speedily has been infringed in this case. Thereby keeping in mind the mental agony the petitioners had to go through all these years and the undue delay which have resulted in impairment of the ability of the petitioners to defend themselves, whether on account of death, disappearance or non-availability of witnesses, the Judgment and Order dated April 28, 2006 is liable to be set aside by this Hon'ble Court.

27. The Hon'ble Supreme Court in the case of **Abdul Rehman Antulay V.**

R.S. Nayak (1992) 1 SCC 225 was pleased to hold in Paragraph 86:

“86.(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of

all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise."

28. Heard the submission of the Learned Advocate for the State. The Learned Advocate for the State submitted that the evidence of the related witnesses could not be discarded since they were the primary and immediate persons to know about the facts and circumstances of the case and would not necessarily implicate the husband and the family members of the victim without reason. The Letter marked Exhibit A aptly proved the metal

condition of the victim to have suffered the torture inflicted by the appellants. The prosecution was able to prove its case successfully and the appeal shall be dismissed.

29. A circumspection of the evidence of prosecution witnesses reveals as follows:-

- i. PW-1 the brother of the victim deposed the appellant no. 1 to be in an illicit relationship with the sister-in-law of his cousin, Habul. The victim had disclosed her plight during her visit to their house. It was further deposed that the victim since her marriage was subjected to physical torture and PW-1 along with his wife and father tried to mitigate the problem but in vain. PW-1 did not mention that the victim was subjected to physical and mental torture for demand of dowry. He further stated that his sister consumed poison and committed suicide being tortured by her husband and others. PW-1 did not specifically state the overt act of the appellants in inflicting the aforesaid torture upon the victim. He further stated that he did not inform any of the neighbours of appellant no. 1 that his sister was subjected to torture by the appellant. He further stated that the sister-in-law of Habul as aforesaid was presently married but was unmarried at the relevant point of time. He further stated that he was unaware of Sailen. Bholanath and Kashinath resided separately.
- ii. PW-2 was the scribe who did not have direct knowledge about the incident.

- iii. PW-3 identified his signature on the carbon impression of the inquest report.
- iv. PW-4 was ignorant about the incident.
- v. PW-5 was the brother-in-law of the victim who controverted himself during his cross-examination stating that he did not state to the police that the victim had told him that she was injured by the appellants pressing the butt of a cigarette on her cheek. He further stated his ignorance of the reason for the victim consuming poison. During his cross-examination PW-5 stated for the first time that he had advised the brother of the victim to inform the police.
- vi. PW-6 was declared hostile by the prosecution.
- vii. PW-8 was the neighbour of the victim's parental house. His evidence was based on hearsay with regard to the torture inflicted upon the victim by the appellants.
- viii. PW-9 was a seizure list witness to the document marked Exhibit-3C stating to have signed the same being dictated by the police.
- ix. PW-10 had been the seizure list witness to the seizure of wearing apparels of the victim vide seizure list marked Exhibit-5A and MAT Exhibit-1 collectively. PW-10 was the brother-in-law of the victim Malati who did not state that the victim was subjected to torture by the appellants.
- x. PW-11 had been the father of the victim who deposed to have given a sum of Rs.60,000/- in cash, gold ornaments and other furniture during marriage of the victim on demand of the father of the

appellant no. 1. PW-11, inter alia, stated that his daughter was subjected to torture in her matrimonial home by the appellants. She was not provided with proper food, she was physically assaulted and even she was kept confined in a room. His daughter disclosed her plight to him during her visit to his house. On receipt of such information, his eldest son Haradhan and third son Narayan lodged diary with the police. PW-11's daughter also accompanied them but the degree of torture upon his daughter was not reduced rather it increased to a great extent. Thereafter his daughter committed suicide by consuming poison as she failed to endure torture any more. PW-11 did not have any talk with police after the death of his daughter. During his cross-examination, he stated that during his daughter's life time after marriage, his daughter visited his house thrice but he could not recollect the dates. His daughter was loved by all in his family. His daughter was not an emotional lady she was not captious. She was very simple in nature and she liked to remain calm and quite. She was not a talkative. For the first time, he disclosed before the Court that his daughter was not provided with proper food and she was kept confined in a room in her matrimonial home. Motilal Ghosh was his neighbour, his house was intervened by three houses from the house of PW-11. Marriage of Malati was solemnized rather in a hottest. It was incorrect to say that Malati used to depict Motilal in the public as her husband. It was false to say that as Malati was given marriage with Motilal, they arranged her marriage

with Pradip in a hottest. It was not for her marriage against her will but for the torture inflicted upon her Malati was very sad and she was not willing to talk to anyone because of the torture upon her, Malati used to treat her matrimonial home much safer than that of their house. Malati along with her two brothers went to lodge diary on 20th. She went to lodge diary against the inmates of her matrimonial home. However, PW-11 did not take any step to bring back of his daughter from her matrimonial home. PW-11 voluntarily stated that he pressed butt of cigarette on the person of his daughter. He did not see any burn injury on the person of his daughter. Not a fact that Malati was suffering due to their ill behaviour towards her. PW-11 did not tell the police that as per demand of Bhala Majhi, he gave a sum of Rs.60,000/-, gold ornaments and other furniture during the marriage of his daughter. For the first time, he disclosed in the Court that his daughter informed him about her plight in her matrimonial home.

- xi. PW-12, inter alia, stated that his sister was subjected to physical torture by the appellants. As his sister voiced her objection after she became aware of the extra marital relation with Pradip with Archana the sister of Channa. His sister told him about her plight in marital life whenever he visited her house or whenever she came to their house from her matrimonial home. On 17.01.2000 they lodged a diary with police after becoming aware of such torture upon his sister. His sister Malati was the informant of the said G.D. but the

G.D. had backfire and the degree of torture was increased. On that day, i.e. on 17th, they took their sister out of her matrimonial home on the pretext of shopping and after lodging diary they took her to her matrimonial home. On 20th January, PW-12 went to the house of the appellants with the gift of winter "Siter Totto". On that day also, his sister told him that she was physically assaulted by Pradip and his mother on the allegation that she poured salt in disproportionate measure while preparing food. His sister also gave him a letter addressing his father wherein she disclosed her plight in the matrimonial home. On 22.01.2000 Kesto Mati the maternal uncle of Pradip informed them that his sister consumed poison. As his sister could not endure the torture inflicted upon her by the inmates of her matrimonial home, she committed suicide. Husband of Malati and other appellants were present in Court that day. Police seized the said letter written by Malati addressing his father along with three photographs of his sister's marriage from their house. The signature of PW-12 on the seizure list was marked as Exhibit-4/b. The letter written by his sister bore the signature of his sister marked Exhibit-6. PW-12 was interrogated by police. His sister wrote the letter during her life time after her marriage. His sister had no friends in his neighbourhood. He was literate, he could read English. His sister did not give him her letter in envelope. He was not aware of the contents of the letter unless he reached home. After he made over the letter to his father, they all read the same and became aware of the contents

of the said letter. Even after reading of the letter they did not take any step to bring his sister back to their house from her matrimonial home. After going through the said letter, they realised that his sister was not saved in her matrimonial home. They did not take any step to bring their sister back to their house but they informed their friends, well-wishers, relatives about the contents of the letter and his sister anguish. Books and exercise books of his sister were not lying in their house at that time. Only the letter was available in their house written by his sister. It would be black and white to say his sister was not able to read and write. It would be black and white to say that the letter was manufactured after the death of his sister. Their family jointly took part in marketing and other necessary works to celebrate the marriage ceremony of his sister. PW-12 told police during interrogation that they presented eight voris of gold ornaments at the time of marriage. They did not give any receipt to show that they purchased the ornaments. PW-12 visited the house of his sister 6/7 times but he could not say the exact dates. His sister visited their house four times. Ten days after her marriage, his sister told him about her torture in her matrimonial home. They notified their father of anything that happened in their family. They did not take any step so that his sister did not state with her husband on the contrary they tried their best to make the situation favourable for his sister to stay in her matrimonial home. They approached the parents, paternal uncle and other family of Pradip to make them understand.

They did not have any copy of the said G.D. entry lodged by his sister. He did not tell the police that he had been to the house of his sister on 20.01.2000 with the present of winter. He did not tell police about the episode of pouring salt by his sister and for that she was tortured. He did not go to the P.S. on 20.01.2000 on receipt of such information of torture from his sister. The accused persons were financially in better position than that of their family. He did not tell the police that while visiting his house, his sister disclosed that she was tortured by the accused persons. Kashi Majhi and Bhala Majhi did not reside in the same family. He did not tell the police that there existed a wall between the house of Bhala Majhi and Kashi Majhi.

- xii. PW-14 detected the viscera of the victim vide report marked Exhibit-7 stating the same to be the human organ consisting of stomach, portion of liver and kidney.
- xiii. PW-15 S.I. of Police had received the written complaint.
- xiv. PW-16 was the Investigating Officer who conducted a part of the investigation. PW-16 inter alia stated that he did not hold inquest with reference to any U.D. Case No. 4 dated 22.01.2000 was registered consequent to death of Malati Majhi. He performed inquest over the dead body of Malati Majhi. The U.D. case was initiated on the basis of G.D.E. but the extract of such G.D. entry was not available with the C.D. The U.D. case was registered at 12:15 hours of 22.01.2000 and the case was closed at 16:45 hours. In connection with U.D. case, he performed the inquest over the dead body of the

deceased in presence of Laxmirani Patra, Haradhan Ghosh, Laxmikanta Paul. None of the neighbours were present during inquest though he requested them to remain present. He did not mention the name of the person whom he requested to remain present during inquest. He did not give any notice calling upon the neighbours to remain present during inquest of the dead body. He prepared the sketch map in connection with Dadpur P.S. Case No. 3 dated 22.01.2000. The written complaint was received at Dadpur P.S. on 22.01.2000 at about 12:15 hours and the case was registered. In his sketch map, he did not mention the place where the body was lying with the photographs 1, 2 and 3, etc. Exhibit-6 the letter of the deceased was produced before him on 30.01.2000 by the brother of the deceased. Narayan Ghosh on being asked he came to know that Narayan Ghosh as well as his father were aware of the contents of the letter which he seized. He did not ask them as to why they did not bring their sister to their house after receiving the letter. He did not take note of the reason that prompted the de facto complainant or his family members to allow Malati to stay in her matrimonial home. Only one letter was produced before him which he seized. The letter which he seized was not sent by registered post. It was sent through the brother of the deceased. The elder brother of deceased told him that he had been to the house of the accused persons to meet his sister on 20.01.2000. He was not told either of the brother or father of the deceased about the numbers they visited the house of the

accused persons after the marriage of Malati. He did not enquire about the educational qualification of the deceased or the name of the school where she read she was not told about the private tutor of the deceased. He did not mention in his C.D. if any other hand-writing of the deceased was called for by him. He did not enquire about any of the friends of the deceased with whom she used to exchange letter. He perused the letter which he seized. The letter did not contain the name of any of the accused persons. The contents of the letter had already been marked as Exhibit-6 and interpretation of I.O. was uncalled for. The written complaint did not speak of any demand of money or other valuable articles ever made by the accused persons. The F.I.R. did not contain any allegation that Malati was subjected to torture because of non-fulfilment of demand made by the accused persons either at the time of marriage or subsequent thereto. F.I.R. did not contain any specific cause for which Malati was subjected to torture. From the seized articles he did not find any document to show that Pradip had extra marital affair with the sister-in-law of Habul. He did not ascertain the capacity of the father of the victim to pay the money at the time of his daughter's marriage. He did not ascertain the adjoining neighbourers' house of the complainant. PW-16 could not say between the house of Khagen Khenra and the complainant Laxmi Paul was the brother-in-law of the complainant. He did not find any mark of external injury over the dead body of victim. During investigation, he did not find any statement in writing

or any other material suggesting that the accused persons uttered the words 'Mar Mar' to the victim. He did not find any material to suggest that accused persons ever uttered "*Tui morel ei songsare santi hobe and amader omongol dur hobe*". PW-16 did not find anything to suggest that the accused persons handed over the poison to the victim which she swallowed. He did not find any material to show that the accused persons at any point of time told the victim "*Golay dori diye othoba bish kheye othoba rail e matha diye morge ja*". He did not find any such material during investigation to suggest that the accused persons implied one or more persons and hatched conspiracy to make the victim commit suicide. PW-16 seized the G.D. Entry during investigation. He did not ascertain in course of investigation as to wherefrom the informant of the G.D. came and after giving the information where she went from the P.S. The G.D. marked Exhibit-A contained the name of the person who accompanied the informant. He did not examine those persons on the point of their destination after the recording of G.D. He did not find any material to suggest that Malati could speak English. He did not examine Habul or his sister-in-law. He did not seize any letter exchanged between Pradip and that sister-in-law of Habul. He did not ascertain the residential address of that sister-in-law of Habul. He did not try to ascertain the whereabouts of the lady. He examined Indra Ghosh who was residing to the south of house of the accused persons. He examined Ashoke Majhi resident to the east of the house

of the accused persons. He did not examine any person residing to the north of the house of accused Bhola. He did not examine any person residing to the west of the house of the accused persons. He did not examine the Pradhan of the Gram Panchayet and Panchayet member. He did not examine the other inmates of the accused persons. He was not told by witness Khagen Khenry that he gathered knowledge about the plight of Malati from her brothers. Narayan Ghosh did not disclose him about his source of knowledge regarding extra marital relation of Pradip Majhi with Archana. Haradhan Ghosh did not disclose in the complaint that accused Pradip used to press cigarette buds on the person of Malati. He did not tell him even during making statement under Section 161, Cr.P.C. PW-16 further stated that accused Bhola Majhi and Kashi Majhi were living in separate house intervened by boundary wall. Written complaint did not have any reference to the G.D. Exhibit-A. There was no reference to the letter Exhibit-6 in the written complaint. He was not told by Narayan Ghosh that he found the house of the accused persons under lock and key. He told PW-16 about the boundary wall between the house of accused Kashinath and Bhola. PW-16 could not record the statement of the accused persons.

- xv. PW-17 filed the charge-sheet after obtaining the FSL report on 29.03.01.
- xvi. PW-18 had sent the viscera to FSL for medical examination.

30. The evidence of prosecution witnesses nos. 1, 5, 8, 11 and 12 were of such interested witnesses, who were all close relatives of deceased Malati, was bereft of any details regarding the dates or the details regarding the torture which was perpetrated upon Malati. The evidence of the said witnesses were vague in nature and do not inspire.
31. The evidences of the aforesaid vital prosecution witnesses are disclosures made before the Learned Trial Court for the first time. The failure on the part of such vital witnesses to disclose about their knowledge regarding the incident immediately to the police officer clearly raises doubt about the genuineness and veracity of the evidence adduced by them before the Trial Court.
32. The alleged disclosure of prosecution witness No. 5 that Malati had disclosed that she had been burnt by the petitioner no. 1 with a cigarette was controverted by him. In his cross-examination who had categorically stated that he did not state anything to the police at the time of investigation and in fact his entire evidence was a maiden venture before the Learned Trial Court.
33. The knowledge of prosecution witness no. 8, another witness upon whom the Learned Trial Court as also the Learned Appellate Court placed reliance, was entirely hearsay in nature. He also denied having any direct knowledge about the alleged torture committed upon deceased Malati.
34. The evidence of PW-11 and PW-12 were vague in nature and did not in any way provide any details regarding any torture allegedly committed upon the deceased. It was also apparent that the said witnesses had come to know

about the alleged torture committed upon Malati by the petitioners much prior to the death of Malati but preferred not to take any steps whatsoever before any authority or even before the Panchayat. Such complete inaction on the part of such witnesses, who are close relatives of deceased Malati, despite having knowledge about the torture being perpetrated clearly raises doubt about the genuineness of their evidence. The evidence adduced by the prosecution was omnibus in nature.

35. In **K.V. Prakash Babu v. State of Karnataka**¹, the following was observed by the Hon'ble Supreme Court:-

“10. The said provision came up for consideration in Girdhar Shankar Tawade v. State of Maharashtra [Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177 : 2002 SCC (Cri) 971], where the Court dwelling upon the scope and purport of Section 498-A IPC has held thus : (SCC p. 180, para 3)

“3. The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislatures : whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide, or (ii) to cause grave injury or, (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions

¹(2017) 11 SCC 176

of the statute since the same would also embrace the attributes of “cruelty” in terms of Section 498-A.”

(emphasis supplied)

11. *In Gurnaib Singh v. State of Punjab [Gurnaib Singh v. State of Punjab, (2013) 7 SCC 108 : (2013) 3 SCC (Cri) 49] , while dwelling upon the concept of “cruelty” enshrined under Section 498-A the Court has opined thus : (SCC pp. 118-19, para 18)*

“18. ... Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty.”

36. In the case of **Mahalakshmi v. State of Karnataka**², the Hon’ble

Supreme Court observed the following:-

“12. *Having considered the charge sheet filed, we are of the view that the assertions made therein are very vague and general.⁴ One instance unless portentous, in the absence of any material evidence of interference and involvement in the marital life of the complainant, may not be sufficient to implicate the person as having committed cruelty under section 498A of the IPC. Given that the appellants were not residing at the marital home, and appellant no. 1 was not even living in India, the absence of specific details that constitute cruelty, we would accept the present appeal.”*

37. In the case of **Rajesh Sharma v. State of U.P.**³, the Hon’ble Supreme

Court held the following:-

“14. *Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result*

² 2023 SCC OnLine SC 1622

³(2018) 10 SCC 472

in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression “cruelty” in Section 498-A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. [Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was warranted [Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473] . The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the judgment. The abuse of the provision was also noted in the judgments of this Court referred to earlier. Some High Courts have issued directions to check such abuse. In Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable.”

38. In **Kalicharan v. State of U.P.**⁴, the Hon’ble Supreme Court held the following:-

⁴(2023) 2 SCC 583

“27. Questioning an accused under Section 313CrPC is not an empty formality. The requirement of Section 313CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself.

28. In para 21 of the decision of this Court in *Jai Dev v. State of Punjab* [*Jai Dev v. State of Punjab*, (1963) 3 SCR 489 : AIR 1963 SC 612], it was held thus : (SCC pp. 620-21, para 21)

“21. In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr Anthony has relied on a decision of this Court in *Hate Singh v. State of Madhya Bharat* [*Hate Singh v. State of Madhya Bharat*, 1951 SCC 1060 : AIR 1953 SC 468]. In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the points used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under Section 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the court must take care to

put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material.”

(emphasis supplied)

29. *In para 145 of the well-known decision of this Court in Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487], it was held thus : (SCC p. 182, para 145)*

“145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not

put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration.”

(emphasis supplied)

xxx

31. *Therefore, in the facts of the case, by reason of omission to frame a proper charge in terms of Section 213CrPC, and by reason of not putting important circumstances appearing in the evidence in the statement under Section 313 caused serious prejudice to the accused. The prejudice, in the facts of the case, has occasioned a failure of justice.”*

39. In **Ajay Singh v. State of Maharashtra**⁵, the Hon’ble Supreme Court held the following:-

“11. *So far as the prosecution case that kerosene was found on the accused's dress is concerned, it is to be noted that no question in this regard was put to the accused while he was examined under Section 313 of the Code.*

12. *The purpose of Section 313 of the Code is set out in its opening words — “for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him”. In Hate Singh Bhagat Singh v. State of Madhya Bharat [1951 SCC 1060 : AIR 1953 SC 468] it has been laid down by Bose, J. (AIR p. 469, para 8) that the statements of the accused persons recorded under Section 313 of the Code “are among the most important matters to be considered at the trial”. It was pointed out that : (AIR p. 470, para 8)*

“8. *... The statements of the accused recorded by the committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box [and that] they have to be received*

⁵(2007) 12 SCC 341

in evidence and treated as evidence and be duly considered at the trial.”

This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there.

13. *The object of examination under this section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.*

14. *The word “generally” in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.*

15. *The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed:*

“30. ... it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. ... The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. ... Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.”

40. The related witnesses of the victim apart from general and omnibus allegations did not specifically mention the role of the appellants in inflicting torture upon the victim to be continuous in nature dragged her to an ultimatum of committing suicide. Apart from demand of dowry and element of suspicion was imbibed and imbued in the psyche of the victim that the appellant husband had an illicit relationship with the sister-in-law of his cousin, Habul. The related witnesses further admitted the fact of the marriage being conducted hastily; presumably against the will of the victim. The victim might have been influenced by inexplicable emotions beyond her control. Human nature and psychology are unpredictable and varies from person to person. The related witnesses having known of the torture inflicted upon the victim did not reveal the same to the neighbours or the appropriate authority. None of the neighbours of the locality were cited as witnesses. The G.D. entry was not exhibited which was filed prior to the death of the victim as an exhibit document. The letter allegedly written by the victim did not allude to any cognizable offence being committed by the

appellants nor did the investigating agency endeavour to verify the handwriting of the same to be that of the victim.

41. The prosecution has failed to establish continuous torture inflicted upon the victim to constitute an offence under Section 498A of the Indian Penal Code apart from vague assertions which cannot be relied upon in the context of criminal jurisprudence, statute as well as decisions cited above. Moreover, the questions with regard to the evidence on record were not categorically put to the appellants in the manner it should have been given the opportunity to explain and answer the same. The evasive and cryptic questions put to the appellants under Section 313 of the Code of Criminal Procedure were to their prejudice. Since the elements to convict the appellants under Section 498A of the Indian Penal Code had not been established by the prosecution. Further remand of the case to the Trial Court for reconsidering the process under Section 313 of the Code of Criminal Procedure will not serve the purpose after a lapse of more than two decades.
42. In view of the above discussions, the order of conviction and sentence dated 29.04.2005 passed by the Learned 1st Assistant Sessions Judge, Hooghly in S.T. Case No. 225 of 2001 convicting thereby the petitioners of the charge for commission of an offence punishable under Section 498A of the Indian Penal Code is set aside.
43. The instant criminal revisional application being no. CRR 1537 of 2006 is allowed.
44. Accordingly, CRR 1537 of 2006 stands disposed of.

45. There is no order as to costs.

46. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

47. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(AnanyaBandyopadhyay, J.)