

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A. 348 of 2019

Smt. Ava Biswas.
versus
The State of West Bengal & Ors.

For the Appellant : Mr. Pradip Kumar Roy,
Mr. Tirthajit Roy Choudhury.

For the Opposite Party no.2 : Mr. Amajit De.

For the State : Mr. Prasun Kumar Dutta,
Mr. Anindya Sundar Chatterjee.

Reserved On : 03.10.2024.

Judgement On : **19.11.2024.**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of acquittal dated 07.07.2018 passed by the learned Judicial Magistrate, 2nd Court, Serampore, Hooghly in connection with G.R. No. 523 of 96 arising out of Serampore Police Station case no. 211/1996 under Section 498A of the Indian Penal Code.

Serampore Police Station case no. 211/1996 was registered on the basis of a letter of complaint addressed to the Officer-in-charge of Serampore

Police Station by one Ava Biswas. The complainant informed that she was married 10 years ago with Pradip Kumar Biswas and has been subsequently tortured, oppressed and abandoned. She alleged that her husband, mother-in-law and brother-in-law were greedy and misappropriated her precious gold jewellery and valuable items and demanded further dowry for which she was physically and mentally tortured. It was further alleged that her husband had a secret affair with a close relative's unmarried daughter namely, Sunita, and even after marriage, he shamelessly continued the relationship. When the complainant objected, her husband without amending himself tortured her and continued to claim more dowry, as a consequence of which she was forced to leave her matrimonial home after 8-10 months of marriage. Her husband is an employee of Railways and his Office is situated at Fairlee Place, Kolkata. The complainant contended that after marriage, she was humiliated and driven out by her husband as her father could not satisfy his demands and subsequently after mediation, her husband took her to a rented accommodation at Serampore and started staying there. However, he did not snap his secret relationship with the lady and continued with his relationship. In the meantime, the complainant was pregnant and gave birth to a girl child who is presently a student of Class II in Serampore Evergreen School. She complained that her husband in order to leave her after marriage and for giving recognition to his secret relationship intended to convert his religion. She came across certain communications/letters between her husband and the said lady Sunita and brought them at her paternal house. After coming to

know the same, her husband pleaded for returning those letters along with an affidavit wherein he intended to convert his religion. She further alleged that as her father could not satisfy the additional demands and claim, her husband kicked her, punched her on various occasions and stopped purchasing regular essentials of life and used to torture her mercilessly for few years. Her husband had no affection for her child and on or about September 1990, she along with her daughter were driven out of the house and the rented accommodation was kept under lock and key. As she was unable to bear the pain and torture inflicted by her husband and did not have any source of income she instituted maintenance case No. M.C. 116/19 and also a criminal case being GR Case No. 762/19. However, hoping that her husband would forget the past and amend himself she settled the aforesaid two cases on 15.05.1993 and returned back to her husband. Her husband had an ill motive, so he started residing with her and her daughter in a rented accommodation in one of his relative's house situated at Serampore and behaved very well for few months and thereafter became ferocious. He resumed his original character and started visiting the lady by representing that he would go to his father's house and spent the night there. Coming to know regarding her husband's conduct she protested when she was again tortured physically with fists, blows and kicks. After some time her brother-in-law came and started instigating her husband for further demand of valuables and the same being not possible for her father to satisfy, both of them abused and assaulted her brutally. The owner of the house being a relation of the in-laws never opposed the behaviour

of her husband who continued to abuse, inflict physical torture and even stopped providing her food. The complainant had to stay for a substantial period of two and a half years under such circumstances at the rented home of her husband, when suddenly one day both the brother-in-law and her mother-in-law approached her and pressurized her for a refrigerator. As by that time her father died and it was not possible for her widow mother to fulfil such demand she was abused in filthy language and her husband was asked to leave her. The complainant summarized her allegations by contending that from the inception of her conjugal life she faced torture and neglect and when she was pregnant all the inmates of her matrimonial home were behaving with her like an enemy, as such she had to stay at her husband's house like an object of torture, oppression and neglect. On or about 19.04.1996 when she demanded some money for purchasing books of her daughter and for paying her admission fees for her new class, her husband assaulted her and left her along with her daughter by saying that she would not be able to continue her education. From then onwards she was in a miserable condition as he had stopped providing any financial assistance to both of them. Her husband was presently staying at a different place and is neglecting and ignoring them, as such she is compelled to lodge a complaint for taking appropriate steps against him who has tortured, oppressed, caused physical injury upon her and abandoned her.

On the basis of the aforesaid complaint as stated above Serampore Police Station case no. 211 of 1996 was registered for investigation under

Section 498A of the Indian Penal Code and the investigating officer on conclusion of investigation submitted charge-sheet under the same Section. The learned Magistrate was pleased to take cognizance of the offence and thereafter the case was transferred for trial and disposal to the learned Judicial Magistrate, 2nd Court, Serampore, Hooghly, who on 03.04.2000 was pleased to frame charges under Section 498A of the Indian Penal Code. The contents of the charges were read over and explained to the accused person who pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 7 witnesses which included PW1, Ava Biswas, complainant; PW2, Tapan Kumar Sil, brother of the complainant; PW3, Santi Ranjan Dey, an acquaintance of the complainant; PW4, Gouri Rani Sil, mother of the complainant; PW5, Reba Sil, sister of the complainant; PW6, Swapan Kumar Sil, elder brother of the complainant; PW7, Samerash Mitra, investigating officer of the case.

PW1, Ava Biswas in her deposition reiterated her allegations made in the letter of complaint and also relied upon the documents which included letters which were written by her husband to Sunita, as also an affidavit which reflected that he abandoned Hinduism and converted himself to Islam for marrying the lady Sunita Das. Both the documents were admitted in evidence. In her deposition, she narrated regarding the incidents of torture being inflicted upon her after 8-10 months of marriage and she being driven out from her matrimonial home and she was compelled to take shelter at her parental

house. She also, in her deposition, raised issues relating to neglect, assault, illicit relationship with the lady Sunita and the subsequent fact of she being driven out with her minor daughter Shatabdi Biswas. She alleged in her deposition regarding demand of further dowry and being subjected to torture on the same being unable to be fulfilled by her parents. In her cross-examination, she replied that in the year 1990, she filed a case, being Serampore Police Station case no. 241 dated 17.09.1990 under Section 498A/406 of the Indian Penal Code, where the police authorities investigated the case and submitted charge-sheet and the said P.S. case was also for inflicting physical and mental torture upon her as well as the illicit relationship of her husband with his cousin, namely Sunita Das.

PW1, complainant was recalled on 05.06.2018 and in her examination-in-chief she deposed that her husband filed a divorce case against her being No 521 of 2003. However, her husband was not granted divorce in that case. The certified copy relating to the said case was produced and admitted in evidence. In cross-examination she replied that her husband filed a case under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. However, she denied the fact that matrimonial suit for restitution of conjugal rights was pending.

PW2, Tapan Kumar Sil, is the elder brother of PW1, who deposed that at the time of marriage they had given cash, gold ornaments, furniture, however, he admitted that he did not know what were the torture which was faced by

her sister at her matrimonial home. He admitted that his sister had a daughter named Shatabdi Biswas, who was residing with them and his sister was staying since trouble started between the couple for past around 10 years. In cross-examination, he replied that he was unaware whether his sister was staying at another rental room of Ramprasad Dey after they left the house of Gobindo Adhikary. The witness also expressed his inability to state that how many cases were filed by her sister against her husband. He admitted that since 1987 his sister was residing at Serampore and admitted that he heard regarding the torture upon his sister and also witnessed the same. He however denied that he had no knowledge as to whether his brother Swapan Sil assaulted her sister's husband Pradip Biswas and so he left Serampore.

PW3, Shanti Ranjan Dey, an acquaintance, who deposed that he had no knowledge with whom Abha Biswas was married. However, she resided at her father's home and he was not also aware relating to the reason for which she is residing at her father's house. He also stated that he had no knowledge regarding any dispute between the complainant and her husband.

PW4, Gouri Rani Sil, is the mother of the complainant who deposed that her daughter was married to Pradip Biswas. However, her daughter was residing with her after her marriage and she heard from her daughter that her husband and in-laws inflicted torture upon her at her matrimonial home. She also stated that she heard that her son-in-law did not possess good character and they tried their best to settle the issues of dispute but the same was

unsuccessful. She identified her son-in-law Pradip Biswas and his brother Pratik Biswas in Court. She also stated that her daughter brought all her stridhan articles with her. In cross-examination, she stated that the matrimonial home of her daughter is situated at Bhat Para, Naihati, however, her daughter used to reside at a rental house with her husband. In cross-examination, she further stated that she has deposed in Court on the basis of what she has heard from her daughter.

PW5 is Reva Sil, sister of the complainant, who deposed that her sister was married to Pradip Biswas, however, she returned back as she was subjected to torture by her husband who assaulted her and also did not provide her sufficient food. She further stated that her father tried to settle the dispute on several occasions and she had been sent back to her matrimonial home once when she was physically assaulted and again not provided food at her matrimonial home. She further stated that as her father used to look after the case, she was not aware regarding the reason of dispute. However, when her sister returned for the first time, there was plea of torture upon her when she was residing at her matrimonial home at Naihati. Subsequently, when she again came back from her matrimonial home with the same plea of torture and not being provided with food, her father told her to lead a separate marital life and then she started residing at a rented house at Serampore with her husband. When her sister's child was born, her husband had abandoned her and from the rented accommodation she returned to her parental home. She identified the accused in Court and stated that she was not aware who are the

other accused persons. In cross-examination, she stated that she was not interrogated by the police authorities or she had ever been to the police station and whatever she narrated in the Court was on the basis of which she had heard from her sister.

PW6, Swapan Kumar Sil is brother of the complainant, who deposed that his sister was married to Pradip Biswas in 1987 as per Hindu Rites and Customs. After marriage, she went to her matrimonial home at Naihati. He further stated that she was residing at Serampore with her daughter and he heard from the complainant that there was some misunderstanding between her and her husband and his family. He further stated before the Court that he did not take any initiative to settle the dispute, neither did he know whether any family members took any initiative or not. He identified his sister's husband and his brother in Court and stated that he heard from his sister that she filed a case against her husband and his family members. In cross-examination, he stated that he did not have any personal knowledge about the case and any incident as he resides separately in the same house. He further stated that at the time of filing of the case, he resided at Serampore Water Works. He also replied in cross-examination that he did not know the date, month and year, about any incident relating to the case.

PW7 is Samoresh Mitra, Sub-Inspector of Police attached to Serampore Police Station, who deposed that on 19.04.1996, he received a complaint from

Ava Biswas. On the basis of the complaint, Serampore Police Station Case No. 211/1996 was registered for investigation under Section 498A of I.P.C. against Pradip Kumar Biswas and Pratik Kumar Biswas. He further stated that the case was entrusted to him by the then Inspector-in-Charge of Serampore Police Station and in course of investigation he visited the place of occurrence, examined the de facto complainant and other available witnesses and seized eight articles from the complainant. He identified the seizure list which was prepared by him and was admitted in evidence. He also deposed that he arrested both the accused persons on 26.09.1996 and after completion of investigation he submitted charge-sheet under Section 498A of I.P.C. In cross-examination he replied that he was unaware whether the de facto complainant of the case resided at Serampore in the year 1991 and admitted that he did not examine the landlord of the de facto complainant of the case. In course of investigation, the witness also stated that he did not check the authenticity regarding the article which was seized from the de facto complainant, neither did he check the stamp vendor and as to who purchased the stamp paper. He also admitted that he did not send the said affidavit or the agreement which was prepared, for being examined by the handwriting expert. The investigating officer also admitted that he also did not examine the witnesses who signed on such agreement paper. The investigating officer accepted the fact that he did not interrogate any witness at Bhatpara Naihati or ascertained whether there existed any person by the name of Sunita Das. He also admitted that the seizure list was prepared at Serampore Police Station and all the documents

were produced by the complainant. The letters which were handed over were also not sent to the handwriting expert for ascertaining its genuineness. The witness/investigating officer admitted that in course of investigation he came to know that there was another case under Section 498A of the Indian Penal Code with same allegations which was filed but was subsequently amicably settled between the parties. The witness/investigating officer admitted that he did not send the said affidavit for being examined in support of its genuineness.

Learned Advocate appearing for the appellant submitted that the learned trial Court failed to appreciate the issues relating to inflicting torture and cruelty upon the prosecution witness No.1/de facto complainant and erroneously arrived at a finding of acquittal. To this aspect, learned advocate submitted that the evidence of PW1 provides details of cruelty and harassment inflicted upon her which were consistent as in her evidence she categorically stated that soon after her marriage due to dissatisfaction relating to dowry demand she was subjected to physical assault, dowry related abuse which continued after a temporary reconciliation in 1993 and eventually she was thrown away from her matrimonial home in the year 1996. Learned advocate also expressed dissatisfaction relating to the observation of the learned trial Court so far as it related to the brother-in-law wherein the learned trial Court observed that since PW1 was staying separately from her in-laws home and lastly since April 1996 she was staying at her parental home it was not possible for her brother-in-law to instigate accused no.1 to inflict torture during the said period. It was further contended on behalf of the appellant that

the observation of the learned trial Court to the extent that it was not clear that there was a constant and continuous unlawful demand of money at the behest of the accused persons are against the evidence which has been brought on record, to that effect it was submitted that the Court refused to accept the verbal testimony which is not only unrealistic but also undermines the experience of the victims in cases of domestic abuse. It was further contended that the learned trial Court concluded that the prosecution failed to produce direct evidence of physical torture inflicted by the accused on PW1 as there was absence of medical reports or police complaints immediately after the incident, to this issue it was pointed out by the appellant that such findings are not only against her evidence as it was consistent version of each of the witnesses regarding torture being inflicted upon her and there was nothing in cross examination which diluted the version of PW1 or negated her version of such physical torture being inflicted upon her. So far as the issue relating to conversion to Islam and an illicit affair, it was pointed out by the appellant that absence of testimony of the lady against whom the accusation has been made and there being other way of dealing with such situations in fact is ignoring the mental torture committed upon the de facto complainant. Lastly it was contended that the learned trial Court gave undue importance to the previous acquittal in respect of the case instituted in the year 1993 as the learned trial Court failed to take into account the reconciliation which took place and the same do not exonerate the accused from his misdeeds which has committed earlier. To substantiate his argument learned advocate for the

appellant relied upon Champaben Govindbhai –Vs. – Popatbhai Manilal, (2009)13 SCC 662 (Criminal Appeal No. 429 of 2002), and relied upon paragraphs 15 to 25 where are set out as follows:

“15.*Also, if two reasonable views are possible on the basis of the evidence on record and one favourable to the accused has been taken by the trial court it ought not to be disturbed by the appellate court (para 44).*

16. *Reference was also made to Bhagwan Singh v. State of M.P. [(2003) 3 SCC 21 : 2003 SCC (Cri) 712] where this Court had held that in an appeal against acquittal, the High Court is competent to reappreciate the evidence to find out whether the trial Judge has misappreciated any part of the evidence or not. If the evidence has been properly appreciated and conclusions drawn from them are reasonable, in that case reversal of the finding of acquittal is not warranted (para 35).*

17. *The counsel for the petitioners on the other hand cited Mahtab Singh v. State of U.P. [(2009) 13 SCC 670 : JT (2009) 5 SC 431] (JT at p. 437, paras 16-18) which reiterated the following view of the Supreme Court laid down in Kalyan Singh v. State of M.P. [(2006) 13 SCC 303 : (2007) 3 SCC (Cri) 173] wherein it has been held: (Kalyan Singh case [(2006) 13 SCC 303 : (2007) 3 SCC (Cri) 173] , SCC p. 305, para 7)*

“7. ... *It is now well known that if two views are possible, the appellate court shall not ordinarily interfere with the judgment of acquittal. We do not, however, mean to lay down the law that the High Court, in a case where a judgment of acquittal is in question, would not go into the evidence brought on record by the prosecution or by the State but we would like to point out that even if the High Court reversed the judgment of acquittal recorded by the trial court, it is incumbent on the*

High Court to arrive at the conclusion that no two views are possible.” (Mahtab Singh case [(2009) 13 SCC 670 : JT (2009) 5 SC 431] , SCC p. 678, para 22)

18. *In dealing with the question of appeal against acquittal, a very balanced view has been struck by a three-Judge Bench of this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033] . In SCC para 6, p. 799 of the Report, Krishna Iyer, J. speaking for the Bench, observed:*

“6. ... The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned author has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that 'a miscarriage of

justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....' In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic."

19. *This Court finds that unfortunately the High Court in this case acted in a very casual manner and has reached certain findings which are perverse. The High Court has held:*

"medical evidence does not disclose that injuries caused on the person of Arun (the deceased) were sufficient in ordinary course of nature to cause death."

The aforesaid finding is totally contrary to the record, if one looks at the evidence of Dr. Yogeshbhai Jadav, Medical Officer, Civil Hospital, Ahmedabad who did the post-mortem examination on deceased Arun.

20. *Dr. Jadav found the following injuries on the external part of the body:*

(1) 2.5 cm × 1 cm vertical stab wound on left side of chest to midline end. 2 cm inferior to nipple plane margins of wound are out sharply and inverted.

(2) 2 cm × 1 cm × 1 cm incised wound on medial and superior of right elbow directed downward positively.

(3) 4 cm × 11 cm near incised wound limited to skin on right lower chest lateral aspect directed downward.

(4) 2.5 cm transverse linear incised wound limited to skin on lateral end lower abdomen.

(5) 1 cm × 1 cm contusion abrasion on lateral and upper part of left lip 4 cm inferior to Injury 4.

(6) ... × 1 cm transverse contusion abrasion posterior to Injury 5.

Other injuries which were found because of investigation of touch, if any.

Fracture of left 4th and 5th sternochondral area of ribs.

21. *On internal examination, the doctor opined on the chest*

“injury goes deeply posterior upwards and laterally in a way. It cuts skin, tissue, sternochondral area of left 4th and 5th ribs along with fractures, intercostal muscles, pericardium, medial border of it. Verticle, it measures 2 cm then pierces through and through, on posterial wall it measures 1 cm then ultimately ends at lower lobe, upper part of left lung it measures 0.5 cm × 0.5 cm and causing haemopericardium and haemothorax in left thoracic cavity. Blood and clots found about 1800 ml.”

22. *The doctor clearly opined that the cause of death was shock and haemorrhage due to stab injury on the chest. By characterising these injuries as not sufficient in the ordinary course to cause death, the High Court, with respect, fell into a grave error and its appreciation of evidence borders on perversity. In our view this is a glaring infirmity in the judgment of the High Court.*

23. *The other reason given by the High Court in affirming the order of acquittal is that only interested persons are the witnesses and no independent witness has been examined. The other reason given by the High Court to support the judgment of acquittal of the trial court is that much time has elapsed between the occurrence and filing of a complaint.*

24. *The High Court has also come to the finding that the bloodstained clothes and weapons were not examined and this has created a doubt about the veracity of the prosecution case.*

25. *It has been repeatedly pointed out by this Court that just as the witnesses are related to the deceased that is no ground to discard their evidence. In the instant case, there are three eyewitnesses and one of them is an injured witness. Their evidence cannot be discarded just on the ground that they are related to the deceased. It is settled law that if*

the evidence of the witnesses, who are related, is credible and cogent, the fact that they are related is not a ground for discarding such evidence. This Court has held that related witnesses do not normally spare the guilty and implicate innocent persons.”

Lastly, it was contended that an appellate Court is empowered to re-appreciate the evidence for arriving at a finding of guilt in cases where there has been manifest error committed by the learned trial Court for arriving at its conclusion of acquittal.

Mr. Amajit De, learning advocate appearing on behalf of the Opposite Party No. 2, supported the judgement delivered by the learned trial Court and submitted that initially a case was registered being Serampore Police Station being case No. 241 dated 17.09.1990 under Section 498A/406 of the Indian Penal Code wherein the investigating agency on completion of investigation submitted charge-sheet, consequently charges were framed on 30.07.1993. A mutual understanding was arrived at on 17.04.1993 and pursuant to the same the appellant withdrew the case in the year 1994. Again, on 27.05.1996, the present case being Serampore Police Station Case No. 211 of 1996 was registered on the self-same set of allegations by way of a subsequent complaint. Learned advocate appearing for the Opposite Party no.2 drew the attention of the Court to the fact that marriage was solemnized in the year 1987 and from 1987 to 19.04.1996, the appellant and her husband stayed at different rented houses as a tenant and there was no investigation on the issue from any co-tenant or landlord from the rented houses from where it would be

relevant that the accused husband and all his relations have ever inflicted any torture. The accusations relating to an illicit relationship with one Sunita is an exaggerated version as neither Sunita was examined nor any other relation was also examined. The only foundation was a letter written by her husband to Sunita which was without any address and the same was not sent for any opinion of any handwriting expert, further, PW1 failed to explain how she came in possession of the said letter which was handed over to the investigating officer of the case. On behalf of the accused/Opposite Party it was also pointed out that there were two letters which were written by the appellant to her mother and to her elder brother but how she came in possession of those letters which were addressed to her mother and brother was not explained and it is surprising that it was produced before the investigating officer as is reflected from the seizure list. Additionally it was pointed out that PW1 in her cross-examination failed to produce any medical documents regarding the allegations relating to physical torture having been inflicted upon her. Neither she could state any specific date on which such incidents happened. So far as the other witnesses are concerned, according to the accused their evidence was vague and was of hearsay in nature as was divulged by PW1 and the same lacked corroboration. Thus, it was submitted that the essential ingredients of Section 498A of the Indian Penal Code were absent in this case and so far as the emphasis relating to the affidavit is concerned, in the cross-examination the investigating officer replied that the thing was seized from PW1 and neither the document was sent for any expert opinion nor it was verified from the

stamp vendor or the advocate regarding the contents of the document and the genuity of the document. Lastly, it was submitted that since the accused/opposite party has been acquitted of the charges on the basis of findings which are cogent and justified, it would be unwise to interfere with such findings of acquittal by the trial Court.

I have considered the judgment and order of acquittal passed by the learned Judicial Magistrate, 2nd Court, Serampore. The learned trial Court, while assigning reasons for acquittal opined that the documents which were produced before the Court during the trial of the present case was earlier admitted in evidence in connection with G.R. case no. 762/1990 arising out of Serampore police station case no. 241 dated 17.09.1990 wherein the accused was acquitted of the charges after the said documents were taken into account. The learned trial Court thereafter proceeded to limit the time period for alleged criminal offence relating to cruelty, which was limited from 30.07.1993 to 27.05.1996, i.e., the date when the present FIR was registered.

The learned trial Court thereafter proceeded to observe that from the evidence it was clear that the matrimonial home of the de facto complainant/ PW1 was at Naihati and she was residing separately from her in-law's house for a considerable period of time and from 21.04.1996 she was staying at her parents' house. Consequently, the learned trial Court opined and concluded the brother-in-law to be innocent. It was further observed by the learned trial Court that neither the incidents relating to torture were specific in evidence

but PW1, i.e. the de facto complainant nor the spectrum of demand of dowry were such that they could be accepted to be constant or continuous. So far as the issue relating to the affidavit is concerned and/or alleged illicit relationship between the husband of the complainant and another woman is concerned, the same is only restricted to the recovery of a document which is a letter recovered from the possession of the de facto complainant. The same created a doubt so far as its genuity is concerned as such a letter in ordinary course of events should not have been in the custody of PW1 and there was no explanation given by PW1 to the said effect. The learned trial Court, so far as this issue is concerned, additionally pointed out that there are different options under the law to take appropriate action against a person being married and having a separate relationship and for that, the accusations of charges under Section 498A of the Indian Penal Code cannot be considered to be correct. After assigning such reasons the learned trial Court proceeded to acquit the accused persons.

The basic principle of law is that an accused is presumed to be innocent unless proved guilty and the same is fortified by an order of acquittal, to this effect in *Mallappa -Vs. - State of Karnataka*, (2024) 3 SCC 544, the Hon'ble Apex Court was pleased to reiterate the principles in paragraphs 26 and 27 which are as follows:

“26. *No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to*

reappreciate or re-visit the evidence on record. However, the power of the High Court to reappreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

27. *It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The “two-views theory” has been judicially recognised by the courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eye of the law.”*

In this case, what we have seen is that the learned trial Court has meticulously considered the evidence and analysed the same and expressed

her own views. The oral and documentary evidence was also taken into consideration and on analysis of overall facts, the finding of acquittal was arrived at by the learned trial Court. The judgment relied upon by the appellant was based on manifest error on the face of the records as the High Court ignored the medical evidence as a whole, as such the factual circumstances of the present case is distinguishable from the case so relied upon by the appellant.

I am of the view that there was no illegality in the findings of the learned trial Court as the same on facts and law are substantiated by cogent reasons.

Consequently, the judgment and order of acquittal passed by the learned trial Court is hereby affirmed.

Thus, CRA 348 of 2019 is dismissed.

Pending connected applications, if any, are also disposed of.

Department is directed to send back the Trial Court Records immediately. A copy of the judgment be forwarded to the learned Trial court immediately for compliance regarding the directions given above.

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

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

(Tirthankar Ghosh, J.)