

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A. 733 of 2019

Bholanath Mondal @ Bhola & Anr.
versus
The State of West Bengal.

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

For the State : Mr. Partha Pratim Das,
Ms. Manasi Roy.

Reserved On : 02.09.2024.

Judgement On : **25.09.2024.**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 18.04.2019 and 22.04.2019 passed by the learned Additional Sessions Judge, Fast Track Court-I, Lalbagh in Sessions Trial No. 1(April)2015 arising out of Sessions Sl. No. 11 of 2015, wherein the learned Trial Court was pleased to convict the appellants Bholanath Mondal and Jayanti Mondal for commission of offences under Sections 498A/304B/34 of the Indian Penal Code and sentenced them as follows:

- (i) For the offences punishable under Sections 498A/34 of IPC – to suffer Simple Imprisonment for 6 (six) months each and fine of

Rs.500/- each, i.d. to suffer further Simple Imprisonment for 1 (one) month each;

(ii) For the offences punishable under Sections 304B/34 of IPC – Rigorous Imprisonment for 7 (seven) years each.

Raninagar Police Station case no. 497/12 dated 03.09.2012 was registered for investigation on the basis of an information submitted by Biswanath Mondal with the Officer-in-charge, Raninagar Police Station on or about 03.09.2012. The allegations made in the written complaint were to the effect that about four years ago the informant's daughter was married to Bholanath Mondal (appellant no.1) and at the time of marriage he gave Rs.50,000/- in cash, a pair of gold ear ring, gold ring and Hero Cycle as dowry. After marriage his daughter was tortured by her husband and in-laws for further demand of dowry to the extent of Rs.20,000/- to be paid in cash. The deceased was some time violently assaulted and threatened of being killed. On 02.09.2012 the deceased was mercilessly assaulted and unable to bear such torture hung herself with cloth. The neighbours of the deceased informed the complainant so he reached their house and found that her daughter was lying dead on the verandah of the house. The accused persons being the husband, the mother-in-law and aunt-in-law at that time were not traceable. As such the informant/complainant requested the police authorities to take legal action for punishing the offenders.

On the basis of the aforesaid information a criminal case was registered under Sections 498A/304B/34 of the Indian Penal Code against Bholanath Mondal, Surabala Mondal and Jayanti Mondal. The case was endorsed to PW17 i.e. Sub-inspector Milon Mallick who conducted part of the investigation and was transferred. The investigation thereafter was assigned to PW19 i.e. Sub-inspector Susanta Ghosh, who on completion of investigation submitted charge-sheet under Sections 498A/304B/34 of the Indian Penal Code against the three accused persons. The case was thereafter committed to the Court of Sessions and record of the proceedings were finally transmitted to the learned Additional Sessions Judge, Fast Track Court-I, Lalbagh, Murshidabad. Charges were framed against the three accused persons under Sections 498A/304B/34 of IPC. The contents of the charge were read over to the accused persons to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 19 witnesses which included PW1, Biswanath Mondal, complainant and father of the deceased; PW2, Manik Tribedi, priest who solemnized the marriage; PW3, Sarbeswar Mondal, co-villager; PW4, Sudhir Mondal, an acquaintance of the complainant; PW5, Gonen Mondal, co-villager; PW6, Ananta Mondal, distant relation of the complainant; PW7, Ashim Kr. Mondal, a resident of the locality (matrimonial home of the deceased); PW8, Arun Mondal, co-villager; PW9, Swetboroni Mondal, an acquaintance of the accused; PW10, Shrabani Ghosh, Constable who took photographs of the dead body; PW11, Dr. Kapil Roy, Post-mortem doctor; PW12, Kalipada Shil, barber who was present along with

priest/PW2 at the time of marriage; PW13, Tapas Baran Dutta, Constable who was signatory to the seizure list by which the wearing apparels were seized after post-mortem; PW14, Santosh Mondal, rickshaw puller who carried the dead body of the deceased; PW15, Md. Ali, ASI of Police and seizure list witness in respect of wearing apparels of the deceased; PW16, Soumitra Hor, Executive Magistrate who conducted the inquest; PW17, Sub-Inspector Milon Mallick, first investigating officer of the case; PW18, Ashok Kr. Chowdhury, Constable who carried the dead body after issuing dead body challan; PW19, Sub-inspector Susanta Ghosh, second investigating officer of the case.

PW1, Biswanath Mondal is the complainant and father of the deceased who deposed that his daughter was married to the appellant no.1, Bholanath Mondal and at the time of marriage he gave Rs.50,000/- in cash, one bicycle, gold finger ring and ear ring. After about one year three months of marriage a female child was born to the couple and after giving birth to the child his daughter was subjected to torture. The complainant came to know from his daughter that her husband- Bholanath Mondal, her mother-in-law- Jayanti Mondal and aunt-in-law - Surabala Mondal created pressure upon her so that she could bring further sum of Rs.20,000/-. His daughter was assaulted and ousted from her matrimonial home by the accused persons and she was forced to take shelter at his house. The complainant with the intention of settling the matter after six days agreed to pay sum of Rs.10,000/- and handed over the same to his daughter and with that money she returned to her matrimonial home and handed over the same to them, but the in-laws family members were

not satisfied with that amount and they heavily insisted to bring further sum of Rs.10,000/- from her father. To get this further sum of Rs.10,000/- the complainant's daughter was assaulted and the torture continued for further period of six days, as a result of which his daughter was killed. He came to know the incident of his daughter being killed at about 8.00 am morning from one Gopal Mondal, a neighbour of the matrimonial home of his daughter as he was informed over phone. After getting such information the complainant along with Sarbeswar, Sudhir Mondal and Ananta Mondal rushed to the in-laws house of his daughter where he found his daughter was lying dead at the verandah and none of the members of the in-laws family were traceable. Complainant deposed that he noticed marks of torture and assault all over the body of her daughter including bruise mark at her neck. He therefore informed Raninagar Police Station and after police arrived there a document was prepared where he appended his LTI and thereafter the dead body was taken to the police station. At the police station BDO, Raninagar arrived and inspected the dead body and another document was prepared where he also inserted his LTI. Thereafter police arranged for post-mortem examination at Lalbagh SD Hospital and after post-mortem examination he made arrangements for cremation of the body of his daughter. Before sending the dead body of his daughter for post-mortem he lodged a complaint at the police station stating the incident which happened with his daughter and since he is illiterate the complaint was drafted by Sudhir Mondal as per his instruction. It was read over to him and thereafter he appended his LTI. He identified all the

accused persons in Court and subsequently he was examined by the police authorities in course of investigation of the case. In cross-examination the witness stated that Surabala Mondal was married with Niranjan of his village about 20 years back and was residing with her husband at their village only. On a specific query he stated that the accused Bholanath used to stay almost whole of the day outside and he was not aware whether Bholanath was under treatment by a doctor. The witness was confronted with a suggestion that his daughter had a relation with another Bhabesh which was denied by the witness. The witness also denied that he has falsely deposed for implicating the accused persons.

PW2, Manik Tribedi is the priest who solemnized the marriage of Bholanath and Madhabi. The witness deposed that the marriage was solemnized according to Hindu rituals and so far as his memory goes the marriage was solemnized on or about 27.08.2008. He identified the accused Bholanath and his mother Jayanti but could not identify the other accused Surabala. In cross-examination he replied that the police authorities of Raninagar Police Station had been to his house and asked him for the marriage register, the same was inspected by them and thereafter returned.

PW3 is Sarbeswar Mondal, a co-villager who identified all the accused persons in Court. He deposed that three years ago PW1 asked him to accompany him as his daughter Madhabi died. As such he accompanied him to the in-laws house of his daughter. He deposed that the deceased was lying

dead at the verandah of her in-laws house but he could not ascertain what was the reason of her death. He further stated before the Court that prior to her death, Madhabi was tortured and assaulted by the accused persons over demand of further dowry and on the date of the incident after they reached the in-laws house, police subsequently arrived and inspected the dead body, thereafter they prepared a document where he signed. He identified his signature which was admitted in evidence. He further stated that on assessing the circumstances and situation prevailing at the matrimonial home of the deceased he presumed that the deceased Madhabi was killed by her husband and in-laws. In cross-examination he denied PW1 never stated to him about any torture or assault having been inflicted upon deceased by her husband and in-laws.

PW4, Sudhir Mondal was an acquaintance of the complainant who narrated the aspect of marriage of Madhabi with the appellant no.1 in the same manner as PW1 and thereafter proceeded to state that he learnt Madhabi committed suicide by hanging at her in-laws house, as a dispute cropped up over which she was tortured for bringing further sum of Rs.20,000/-. He further narrated that in order to resolve such dispute a salish was held at least on two occasions at the house of PW1 and on further two occasions at the house of appellant no.1. In all such salish/settlement he was present. He further asserted that the deceased informed him over phone in respect of the torture which was inflicted upon her and he also gathered knowledge from Arun Mondal of the said area. In the salish so convened it was persuaded upon

the members of the in-law's family that as PW1 did not have the capacity to pay such an amount they should not inflict torture upon Madhabi for further demand of dowry. However, after six months from the last salish Madhabi died by hanging at her in-law's house and on the relevant day in the morning about 7.00 am he was informed by PW1 over phone. As such he rushed to the house of Bholanath being accompanied by PW1 along with others. After reaching at the matrimonial house of Madhabi he observed her dead body lying covered on the floor in the room of the appellant no.1. None of the family members were traceable. Police arrived after sometime, took the dead body to Godhanpara BPHC. They also accompanied the Police authorities. A document was prepared where he signed. He identified his signature on the said document being the inquest report which was admitted in evidence. He was also examined by the police authorities subsequently. In cross-examination he replied that he met police twice over the incident first at Godhanpara BPHC and second time at the police station on the very day. The witness in cross-examination reiterated the incident regarding the torture being inflicted upon the deceased for a further demand of Rs.20,000/- and also the incident relating to salish being held. So far as the incident of torture is concerned in cross-examination he replied that he knew such incident of torture from the deceased Madhabi herself who informed him over phone. The witness denied in cross-examination that he had falsely implicated any of the persons at the instance of PW1.

PW5 is Gonen Mondal, a co-villager who identified the accused persons in Court and narrated the incident of marriage, the birth of child, the incident relating to demand of dowry, the salish being convened over the issue of torture in the same manner as PW1 and PW4. In cross-examination he replied that the police authorities examined him on the day of the death of Madhabi and also narrated that he stated to the police that three months prior to the incident he had been to the house of the in-laws because of torture being inflicted upon the deceased. He denied that he falsely implicated the accused persons at the instance of the complainant.

PW6 is Ananta Mondal, a distant relation who identified the accused/appellant no.1 in Court and stated that he could have identified the other accused persons if they were present in Court. He narrated that prior to death of Madhabi a discord in relationship cropped up, as he learnt from the deceased that she was subjected to torture by her husband and in-laws over demand of further dowry and subsequently a salish was held which was presided by him as he was elected member of the local Gram Panchayat. He stated that he cannot recollect the date of salish but it could be about a month prior to the death of Madhabi. According to him it was settled in the salish that the accused persons being the husband and the in-laws will not torture upon the deceased Madhabi further, for pursuing peaceful conjugal life. The witness also stated that it is only in the salish she came to learn that the deceased was subjected to torture for further demand of dowry from her father. On the date of incident he received a phone call from Biswanath who requested him to

accompany him, accordingly he accompanied PW1 to the in-law's house of Madhabi where after reaching he noticed the dead body of Madhabi was lying at the verandah and none of the in-laws were present there. It was learnt by him from the assembled co-villagers that Madhabi died by way of hanging. Police arrived at the spot after sometime and inspected the dead body of Madhabi and thereafter took the dead body of Madhabi at the police station. A document was prepared where he signed on the same. He identified his signature in Court on the document which was admitted in evidence. He also identified the Sari which he noticed hanging on the ceiling seized by the police, the same was marked as material exhibit. The witness also stated that he came to know from the co-villager of the in-laws house of Madhabi that Madhabi was compelled to commit suicide because of the torture being inflicted by the in-laws over the issue of further demand of dowry. In cross-examination he accepted the fact that when the police examined him he did not state to the police authorities that he was an elected Panchayat member of the locality. He denied in cross-examination that it would not be correct to say that he did not learn from the co-villagers that Madhabi committed suicide due to the torture inflicted on the issue of further demand of dowry in the matrimonial home.

PW7, Ashim Kr. Mondal is a resident of the locality where the matrimonial home of the deceased was situated. The witness resiled from his earlier statement and as such he was declared hostile.

PW8 is Arun Mondal, a co-villager who identified all the accused persons in Court. He stated regarding the marriage of Madhabi and Bholanath and the fact that Madhabi died at the house of Bholanath. He accepted that the facts were not known to him personally but he learnt from the neighbours/co-villagers that due to torture inflicted upon Madhabi by Bholanath, Madhabi committed suicide. In cross-examination he stated that there was discord in the relationship of Madhabi and Bholanath and a meeting was held and he was present in the meeting. In the said meeting Madhabi refused to go back to her in-laws house and for that reason her parents assaulted her. It was further stated that in their meeting Madhabi expressed that she likes Bhabesh much more than Bholanath. Madhabi expressed if she is not allowed to marry Bhabesh then she will sacrifice her life soon. However, he further replied in cross-examination that it is not a fact that Bholanath did not inflict any torture upon the deceased Madhabi.

PW9, Swetboroni Mondal is an acquaintance of the deceased who identified the accused persons in Court. She asserted that after coming to know regarding the death of Bholanath's wife she had been to their house and noticed that the dead body was lying there. She learnt that Bholanath's wife committed suicide due to torture inflicted upon her by Bholanath. In cross-examination she stated that Bholanath was suffering from mental disability for which Madhabi took Bholanath before doctor for his treatment and in spite of treatment Bholanath did not recover from the ailment. She replied in cross-examination that Bhabesh is the brother of Bholanath who used to accompany

Madhabi in her need and Madhabi often visited her house and used to express that Bholanath was not her choice and she liked Bhabesh and she would be happy if she got married with Bhabesh. Such fact was conveyed to the father of Madhabi for her peace but her father took no step and being frustrated the deceased expressed to the witness that she would commit suicide if she was not allowed to marry Bhabesh. In cross-examination she further stated that the parents of Madhabi forced her to go back to Bholanath's house to lead her conjugal life with Bholanath and as a result of which Madhabi committed suicide.

PW10, Shrabani Ghosh, a constable who took photographs of the dead body at Godhanpara BPHC. The said photographs which she took using her mobile was printed and handed over to the investigating officer of the case. Photograph was pasted with the description, as she mentioned and the same bears her signature as such the same was admitted in evidence.

PW11, Kapil Roy is Post-mortem doctor and medical officer attached with Lalbagh Sub-divisional Hospital, who deposed that he conducted the post-mortem examination over the dead body of Madhabi Mondal in connection with Raninagar Police Station UD case no. 16/12 dated 03.09.2012. The witness identified the post mortem report which was prepared in his own hand writing and observed from the report as follows:

- (i) *"There was blackening skin and multiple small blister over the upper chest as well as both of her upper arms.*

(ii) Further a ligature mark I found present at the neck which was 1½ in breadth, encircling the neck which starts from the angle of the mandible of right side and passing downwards over the thyroid cartilage. Then passing upward behind the left mastoid process and ends at the nape of the neck and the knot was present over the left side of the neck.

No further injury I noticed.

On desertion of the neck, parameterization was found present.”

Lastly the witness stated that as per the opinion in the report he stated that the probable cause of death was due to asphyxia following hanging by neck which was suicidal in nature and ante-mortem.

PW12, Kalipada Shil is a barber by profession who accompanied the priest who solemnized the marriage of Bholanath and Madhabi.

PW13 is Tapas Baran Dutta, a constable who deposed that another constable namely Ashoke Choudhury of the police station brought some wearing apparels from the morgue after the post-mortem examination was held over the body of the female which was handed over to the investigating officer of the case namely SI Milan Mallick who seized the same and prepared a document when he was present. He witnessed the same and signed on the seizure list. He identified his signature on the seizure list which was admitted in evidence.

PW14, Santosh Mondal is a rickshaw puller who was called by an officer of Raninagar Police station for carrying the dead body. The witness stated he carried the dead body as per the direction of the police and had been to the house of Bholanath and the dead body was thereafter taken to the police where a document was prepared and his signature was obtained. He identified his signature. However, he was declared hostile as he denied that he ever met any police personnel in respect of the aforesaid incident.

PW15 is Md. Ali, ASI of police who was a seizure list witness in respect of the wearing apparels of the deceased which was seized by the investigating officer, so he signed on the seizure list and identified his signature in Court which was admitted in evidence.

PW16 is Soumitra Hor, Executive Magistrate who conducted the inquest. He deposed that on 04.09.2012 he was serving as Depute Magistrate and Deputy Collector at Domkal Sub-division, Murshidabad. He was requested by the SDO of Domkal and accordingly he performed inquest over the dead body of Madhabi Mondal in connection with Raninagar police station UD case no. 16/12 dated 03.09.2012. A report was prepared by him, he identified the report along with his signature with official seal which was admitted in evidence. He also stated that after the inquest was performed he referred the dead body to the Civil Surgeon for performing post-mortem examination.

PW17 is Milon Mallick, Sub-Inspector of Police and first investigating officer of the case who deposed that on 03.09.2012 he was assigned by the

Officer-in-charge for conducting the investigation. He identified the signature which was made by the ASI Prosanta Das who filed up the formal FIR of Raninagar Police Station case no. 497 of 2012 and also the signature on the endorsement, the same were admitted in evidence. He deposed that after taking charge of investigation he went through the contents of the FIR and submitted a prayer before the SDO, Domkal for holding inquest. He visited the place of occurrence, prepared rough sketch map with index of the place of occurrence. He further seized the yellow printed sari and prepared a seizure list. The seizure list was admitted in evidence. He recorded the statement of the witness, arrested the accused persons and also conducted the seizure of the wearing apparels of the deceased after post-mortem examination and the document was admitted in evidence. He also collected the post-mortem report from the hospital and thereafter he was transferred from the police station, as such he handed over the case records to the Officer-in-charge.

PW18, Ashok Kr. Chowdhury is a constable who carried the dead body after issuing the dead body challan. The witness deposed the he carried the female dead body of Madhabi Mondal for post-mortem by issuing a dead body challan. The post-mortem was held at Lalbagh Sub-divisional Hospital. He identified the dead body challan along with his signature. After post-mortem the wearing apparels were handed over to him by the post-mortem doctor. He identified his signature on the seizure list prepared by the investigating officer dated 04.09.2012 the same as such was admitted in evidence. In cross-examination he denied the suggestion which were made to him for not seizing

the wearing apparels which was handed over by him to the investigating officer of the case.

PW19 is Sub-inspector Susanta Ghosh, second investigating officer of the case. He deposed that on 13.12.2012 he was entrusted with the investigation of Raninagar Police station case no. 497 of 2012 and was handed over with the case. He after perusing the Case Diary examined the seizure list witnesses, who were involved with the seizure of the wearing apparels of the deceased. He further examined and recorded the statements of Sudhir Mondal, Gonen Mondal and Kalipada Shil. He identified the written information, and also revealed that no document relating to marriage of Madhabi and Bholanath was made available to him. He thereafter completed the investigation and submitted charge-sheet on 08.03.2013. In cross-examination he replied as follows:

“Gonen Mondal/PW-5 did not state before me that Madhabi, 3 months prior to the incident, due to causing torture upon her by her in-laws members, she had been to her father's house and that a Salish was convened over the issue, at the house of Biswanath and that in the said Salish, they persuaded to take Madhabi back and they allowed Bholanath on undertaking that they will not cause any further torture upon her.

Sudhir Mondal/PW-4 did not state before me that while Madhabi, during her matrimonial life at her in-law's house she was subjected to torture on demand of Rs.20,000/- and over that issue a Salish was held in the house of Biswanath two times and in the house of

Bholanath also for two times and that the incident of torture he came to know from Madhabi as she informed him about the same over phone and he also came to know about it from one Arun Mondal of Char Rajapur Paschim Colony and that said Salish it was settled making a persuasion to Bholanath that Biswanath has no capacity to pay amount as demanded and for that it was requested not to cause torture for money upon Madhabi and that while he had been to the house of Bholanath, being informed about the death of Madhabi, they did not notice any in-law's members present there.”

Mr. Arnab Chatterjee, learned advocate appearing for the appellants submitted that the prosecution witnesses have bolstered up the case with a view to ensure that the appellants are convicted although the same is not substantiated, as the version of the prosecution witnesses are contradictory before the Court. Learned Advocate proceeded to argue that from the post-mortem report it would first reveal that the victim committed suicide by hanging, however, the father of the deceased in spite of having knowledge regarding the incident at 8.00 am registered the FIR at 2.55 pm. From the post-mortem report it would be clear that victim committed suicide at night and the sketch map with index would go to show that the deceased committed suicide in a separate room and not in the bed room. So as a necessary corollary it is only the husband who at all can be held responsible, if at all, for commission of the alleged offences and the other relations including the mother-in-law do not come within such purview of either any abatement or for attributing to the unnatural death of Madhabi, the deceased. It was further argued that the father of the deceased alleged that a further sum of

Rs.10,000/- was handed over to the deceased which was just prior to the incident and such factum was first deposed in Court and was not revealed in the FIR. It was also canvassed on behalf of the appellant that the deceased had a relationship with her brother-in-law, Bhabesh and she has expressed that in case she was not allowed to stay or marry Bhabesh she would commit suicide. This according to the appellant dilutes the fact of further demand of dowry which is not supported by cogent materials and it is the prosecution witnesses who have narrated regarding the illicit relationship or the willingness of the deceased to lead a life with Bhabesh and not with the appellant Bholanath. It was also pointed out that Bholanath was suffering from mental ailment which has surfaced in evidence and thus the story of salish being held for further demand of sum of Rs.20,000/- and part of the same being handed over, is not acceptable as these were all afterthought facts introduced to bolster up the case. The factum of suicide according to the appellant can be for any of the reason, as two contradictory situations surfaced in course of prosecution evidence and what led to the deceased to take a decision to end her life is not transparent, thus under such circumstances there is no scope for convicting the appellant either under Section 498A of the Indian Penal Code or Section 304B of the Indian Penal Code. So the judgment and order of conviction and sentence so passed by the learned trial Court, according to the learned advocate calls for interference and the same is liable to be set aside.

On the other hand refuting the contentions advanced on behalf of the appellants Mr. Das, learned advocate appearing on behalf of the State

submitted that the circumstances in the present case clearly point to the guilt of both the appellants as in the FIR it is seen that the torture was inflicted upon the deceased to such an extent that within four years of marriage she had to end her life. It was also pointed out that repeatedly the prosecution witnesses have deposed before the Court the factum of further demand of dowry which resulted in a strained relationship between the deceased and her in-laws family. A number of witnesses have corroborated each other regarding the factum of salish (settlement) having taken place both at the paternal home and matrimonial home of the deceased and it has also surfaced in evidence that in the said settlement it was informed that as the de facto complainant Biswanath Mondal did not have the capacity to pay such an amount, further pressure or torture both physically and mentally may not be committed by the members of the in-laws house upon the deceased Madhabi. It was within a close proximity of time relating to the said salish the unfortunate incident happened. Learned advocate for the State has also drawn the attention of the Court to the post-mortem report which according to him is not only a case of suicide but there were other features in the body of the victim which would go to show that there was physical assault being inflicted upon the deceased prior to her death. Learned advocate for the State therefore submitted that there is no scope for interference in the judgment and order of conviction and sentence so passed by the learned trial Court and the same should be affirmed.

On an assessment of the submissions made by the learned advocate for the appellant as well as for the State and the evidence which has surfaced in

course of the trial it is found that the prosecution by way of corroborating evidence has been able to substantiate a number of factors which included amongst others the deceased and appellant no.1 was married for about 4 years and Madhabi (deceased) died under unnatural circumstances. In the FIR the complainant stated regarding the deceased being physically assaulted and threatened of being killed and also being mercilessly assaulted on several occasions prior to her death. It is evident that at the time of inquest the police officer while preparing the report has recorded that it has come to his knowledge after primary investigation that Madhabi Mondal/deceased was pressurized to bring more money from her paternal house and on such pretext she was harassed both physically and mentally and unable to bear the torture she committed suicide by hanging from the ceiling with Sari. The factum of demand of dowry was also deposed before the learned Trial Court and the same is corroborated by number of witnesses as a salish was held for settling the dispute and which has come in evidence that the husband and the in-laws were given to understand that PW1, Biswanath Mondal/de facto complainant did not have the means to pay the demand which was made by the in-laws family. To this extent PW1 was corroborated by PW3-Sarbeswar Mondal, PW4-Sudhir Mondal, PW5-Gonen Mondal and PW6-Ananta Mondal, although the investigating officer in his cross-examination replied that PW5 did not state to him that Madhabi three months prior to the incident was tortured by her in-laws, so she had been to her father's house and a salish was convened over the issue at the house of Biswanath Mondal and they persuaded Madhabi to

go back on an undertaking that Bholanath will not cause any further torture upon her. The investigating officer also denied that such factum of further demand of dowry and the issue relating to salish was stated to him by PW4, Sudhir Mondal.

I find that, so far as the issue relating to further demand of dowry and the salish is concerned, there were others who corroborated the same and brought it to the notice of the Court. Further there is no specific reply by both the appellants relating to the relationship of the deceased with Bhabesh or that the deceased having stated that she would not return back with Bholanath and insisted on marrying Bhabesh. I have also taken into account the post-mortem report and there were signs of unnatural circumstances under which the victim committed suicide as the post-mortem doctor PW11, apart from referring to the issue relating to suicide also pointed out that from the report it is reflected that there was blackening of skin and multiple small blisters over upper chest as well as both of her upper arms. Considering the circumstances, I am of the view that proper explanation should have been given by the appellants in respect of the allegations relating to physical torture. Mere routine denial cannot be an answer in cases of death which are unnatural and within 4 years of marriage the same having taken place at matrimonial home.

Having considered the evidence which has surfaced in the present case and the consistent version of the prosecution witnesses regarding physical and

mental torture being inflicted upon the victim which resulted in her death, I find that although there are specific accusations against the husband but so far as the mother-in-law is concerned the same is wanting materials for implicating her under Section 304B of the Indian Penal Code.

Accordingly, the judgment and order of conviction and sentence so imposed by the learned trial Court in respect of each of the appellants is altered to the limited extent as follows:

- (i) The appellant no.2, Joyanti @ Jayanti Mondal is acquitted of the charges under Section 304B of the Indian Penal Code;
- (ii) The appellant no.2, Joyanti @ Jayanti Mondal, however is convicted for the offence under Section 498A of the Indian Penal Code. Records reflect that till date she has been in custody for a period of over 20 months during investigation, trial and pendency of the appeal. The period for which she has been in custody would be deemed to be her sentence and as such the sentence so imposed by the learned trial Court in respect of Section 498A of IPC is reduced to the period of detention she has already undergone.
- (iii) No interference is made in respect of the judgment and order of conviction and sentence so passed by the learned trial court against the appellant no.1, Bholanath Mondal, as such

his order of conviction and sentence so imposed under Section 304B of the Indian Penal Code and Section 498A of the Indian Penal Code is hereby confirmed.

Accordingly, CRA 733 of 2019 is partly allowed.

The appellant no.2, Joyanti @ Jayanti Mondal is on bail and as such she is discharged from the bail bonds.

The appellant no.1, Bholanath Mondal is in custody, as such he would serve out the remaining part of the sentences.

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.)