

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 554 of 2010

Mohidul Mallick & Ors.

-Versus-

The State of West Bengal

For the Appellant : **Mr. Satadru Lahiri, Adv.
Mr. Safdar Azam, Adv.
Mr. P.Dey, Adv.**

For the State : **Mr. Debabrata Chatterjee, Adv.
Ms. Suchismita Dutta, Adv.**

Hearing concluded on : **10.06.2025**

Judgment On : **28.08.2025**

Prasenjit Biswas, J:-

1. This appeal is directed against the impugned judgment and order of conviction dated 08.07.2010 passed by the learned Additional Sessions

Judge, Kalna in connection with Sessions Trial No. 28/06 arising out of the Sessions Case No. 122/05 at the behest of the appellants.

2. By passing the impugned judgment and order this appellants were found guilty for commission of offence punishable under Section 498A/34 of the Indian Penal Code and they were sentenced to suffer rigorous imprisonment for two years each and with a fine of Rs. 2000/- each, in default of payment a fine to undergo further rigorous imprisonment for two months each.
3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction passed by the learned Trial Court, the present appeal is preferred on behalf of the appellants-convicts.
4. The facts and circumstances giving rise to this appeal are that:

“One Sukur Ali Sheikh lodged a complaint before Monteswar P.S. on 27.09.2004 stating, inter alia, that his daughter Sukruna Bibi (victim) was married to the accused Mahidul Mallick in the month of ‘Jaistha’ (B.S.) 1409 as per Muslim rites and ceremonies. It is stated in the complaint that after their marriage the victim was subjected to physical and mental torture by these appellants on demand of money from this defacto complainant. It is said in the written complaint that the husband of the victim, namely Mahidul Mallick (one of the appellants/convicts) was addicted to gambling and lost the money therein. The matter was tried to be settled in the village

‘salish’ but there was no effect. On 26.09.2004 at about 6 P.M. the victim Sukruna Bibi consumed poisonous oil like Semidon and expired due to such unbelievable torture allegedly inflicted by these appellants.”

5. Over this complainant a case being Monteswar P.S. Case No. 19/04 dated 27.09.2004 under Sections 498A/304B/34 of the Indian Penal Code was started. After completion of investigation charge-sheet was submitted by the prosecuting agency against these appellants under Sections 498A/304B/34 of the Indian Penal Code.
6. On the basis of materials on record, charge was framed by the Trial Court against these appellants under Sections 498A/304B/34 of the Indian Penal Code.
7. In this case, 15 (fifteen) witnesses were cited by the side of the prosecution and documents and seized articles were marked as Exhibits 1 to 8 and MAT Exhibits I and I/I on its behalf. Neither any oral, nor any documentary evidence was adduced on behalf of the defence.
8. Mr. Satadru Lahiri, learned Advocate for the appellants said that the learned Trial Court did not appreciate that the prosecution witnesses and failed to bring compact, cogent, believable and trustworthy evidence, although it is the settled principle of law that the onus of bringing charge against the accused in a criminal trial lies solely upon the prosecution. The learned Trial Court failed to appreciate that there was previous love

affairs between the victim and her husband and there was no question of demand of dowry at the time of marriage. It is said by the learned Advocate that the Trial Court did not at all consider the evidence of PW1, wherein he has stated that the cash of Rs. 10,000/- was handed over during the marriage to the Moulana but no such document has been produced before the Court by the prosecution. It is further said that although the prosecution witnesses have stated in their evidences that 10 cottahs of land was given to the bride groom by the defacto complainant but no document has been produced before the Court in respect of the alleged transfer of land.

9. Mr. Lahiri further contended that in absence of relevant information/details including name of the appellants in the inquest in spite of the same being disclosed in the FIR which precedes the inquest is fatal to the prosecution case and raises sufficient doubt on its veracity. It is said that consequent to the alleged incident the FIR was lodged by the father of the deceased (PW1) against all the appellants regarding alleged torture upon the victim owing to her alleged failure to bring money from him. The police inquest (exhibit 2) was conducted on 22nd September, 2004 at 8 A.M. at the matrimonial home of the deceased and the magisterial inquest (exhibit-3) was conducted on the same date at the morgue of S.D. Hospital, Kalna at around 1:15 P.M. PW1, PW2, PW5, PW6, and PW13 are the respective witnesses to the inquest conducted in

connection with this case. But all these witnesses are relative to the deceased. It is said by the learned Advocate that surprisingly no witness during inquest alleged anything about demand of dowry or torture. Other persons namely, Midda, Atim Sheikh and Chhmat Seikh were the witnesses to those inquests but they were not cited as witnesses to the case and no explanation was given for non-citing them as witness in this case by the prosecution. The attention of this Court is drawn by Mr. Lahiri that inquest reports and post-mortem reports which are exhibited in this case do not record any mark of injury and there is nothing to substantiate physical assault/torture as alleged by the prosecution. It is said by the learned Advocate that non-disclosure of allegation at the time of inquest is relevant while inquest and FIR is drawn simultaneously and in close proximity. The learned Advocate has relied upon the decision on this point rendered by this Court as well as Hon'ble Apex Court in the case of **Mobarak Sk. -vs- State of West Bengal**¹ and in **Jagdishraj Khatta -vs- State of Himachal Pradesh**².

10. Mr. Lahiri, the learned Advocate for the appellant further assailed that the allegation of demand of dowry and/or giving the same at the time of marriage is an impossible allegation. It is said that the marriage between

¹ **2011 SCC OnLine Cal 190**

² **(2019) 9 SCC 248**

the victim and her husband was a love marriage and not a negotiated one and as such, there was no scope of discussion and/or any demand of dowry at the time of marriage and as such, the allegation of giving dowry is a concocted story introduced for manufacturing cause of action to initiate the subject prosecution. As per submission of the learned Advocate that there is no iota of evidence or materials on record from which any inference as to the alleged incident of demanding and giving dowry can be inferred. The Investigating Agency did not seize any document indicating transfer of land allegedly given as dowry to the appellant no. 1. Rather there are admissions that no such deed was ever executed. It is contended by the learned Advocate that PW3 and PW13 introduced an afterthought story of negotiations amongst the parties, regarding marriage and dowry to be given in marriage, which has negated the version of other witnesses. Reliance has been made upon the decisions rendered by the Hon'ble Apex Court in the case of **Narayanamurthy -vs- State of Karnataka**³ and in **Rohtash -vs- State of Haryana**⁴. It is said by the learned Advocate that in those reports Hon'ble Apex Court has held that all the gifts which were given by the father of the victim to his daughter may not necessarily be a

³ (2008) 16 SCC 512

⁴ (2012) 6 SCC 589

dowry and more so if such demand was there, it may not necessarily come within the purview of dowry demand.

- 11.** Mr. Lahiri further assailed that the prosecution has failed to prove the material cruelty as alleged in connection with the instant case against any of the appellants. It is said by the learned Advocate that all the allegations as made by the prosecution are baseless, unfounded, general and omnibus allegations of torture and there is no actual and real torture or harassment allegedly inflicted by these appellants upon the victim. No details have been provided of subsequent demand of dowry and/or inflicting any torture upon failure to fulfil demand. It is said by the learned Advocate that one or two stray incidents that too without necessary details failed to ascribe instances of continuous harassment or torture upon the victim and does not bring home the charge levelled against the appellants. It is submitted by the learned Advocate that subjecting the deceased for abhorrent, coercive and extortionate demand of dowry in close proximity of her unnatural death i.e. the extraneous circumstances of incitement and instigation, proximate and immediate on the part of the appellants to have provoked the victim to commit suicide in despair and dismay are absent in the present case. Moreover, these appellants were acquitted from the charge under Section 304B of the Indian Penal Code and no appeal has been preferred which establishes the arguments of the appellants as more sustainable in the eye of law. It is said that the prosecution has failed to

prove involvement of the appellants of commission of any act which is punishable under Section 498A of the Indian Penal code. In support of his contention, on this point learned Advocate cited two decisions of the Hon'ble Apex Court i.e. **Atmaram -vs- State of Maharashtra**⁵ and **Sakharam & Anr. -vs- State of Maharashtra**⁶.

12. Mr. Lahiri further contended that improved, embellished, contradictory and uncorroborated testimony of the witnesses coupled with their unnatural conduct render version of said witnesses are unworthy of credit for convicting the appellants. It is said by the learned Advocate that the witnesses have improved their version during their depositions for introducing a completely new story of demand of dowry and torture upon the deceased, which is conspicuously missing in the FIR lodged by PW1/defacto complainant. It is said that evidences of PW3 (Gani Sk)/brother-in-law of PW1) and PW13, Megha Sk. (cousin of deceased) are contrary to the basic tenor of the prosecution case and probablises existence of more than one prosecution version, which is extremely fatal. The attention of this Court is further drawn by the learned Advocate regarding the evidences of PW3, 4, 5, 6, 7 and 13 which established that their depositions are extremely contradictory to each other on certain

⁵ (2013) 12 SCC 286

⁶ (2003) 12 SCC 368

material issues e.g. alleged demand of dowry and payment thereof, nature of the marriage of the couple, relationship between the two families, prior information as to the alleged torture of the deceased which negates their knowledge about the alleged incident. It is said by the learned Advocate that if the depositions of the prosecution witnesses are found hearsay and severing sheer contradictions, embellishment and improved, then no reliance can be placed on the same. To buttress his submission on this point learned Advocate placed reliance upon the decisions rendered by the Hon'ble Apex Court in the case of **Vijender-vs- State of Delhi**⁷ and in the case of **Anil Phukan-vs- State of Assam**⁸.

13. Mr. Lahiri submitted that unexplained withholding of best evidence by prosecution is bound to have an adverse inference against prosecution and render the prosecution case non-est in the teeth of celebrated principle of 'Best Evidence and Rule of Law'. It is said by the learned Advocate that not a single witness from the locality who are neighbours to the matrimonial home of the deceased was cited by the prosecution in this case. It is said that witnesses to the inquest i.e. Edam Sk, Atim Sheikh and Chhmat Seikh were also not cited as witnesses to the prosecution and no explanation was given by the side of the prosecution in their non-

⁷ (1997) 6 SCC 171

⁸ (1993) 3 SCC 282

examination. Reliance has been placed by the learned Advocate upon a decision rendered by the Hon'ble Apex Court on this point in case of **Gadadhar Chandra-vs- State of West Bengal**⁹.

14. It is said by the learned Advocate for the appellants that no question pertaining to deposition of PW2, PW5, PW6, PW8 and PW9 to PW15 have been put during examination of the accused persons under Section 313 of Cr.P.C. and as such, no reliance may be placed on the same. It is said by the learned Advocate that cryptic and half-hearted compliance of the mandatory provisions of Section 313 of the Code of Criminal Procedure caused sufficient prejudice to the appellants and as such a case for acquittal has been made out on this score also. Reliance has been placed by the learned Advocate on this point upon the decisions rendered by the Hon'ble Apex Court in the case of **Nababuddin @ Mallu @ Abhimanyu – vs- State of Haryana**¹⁰ and in the case of **Raj Kumar Alias Suman -vs- State (NCT of Delhi)**¹¹.
15. Lastly, the learned Advocate pointed out that all the evidences brought on record by the prosecution unerringly would reveal that they were no specific allegations against either of the appellants as to how and in which

⁹ (2022)6 SCC 576

¹⁰ Criminal Appeal No. 2333 of 2010

¹¹ (2023) 17 SCC 95

manner the appellants tortured the deceased on the claim of further dowry and the specific allegation comprised of the manner and the reason as to why the victim was tortured by the appellants were absent. It is said that mere giving any bald allegations that the accused persons used to torture the victim both physically and mentally would not be sufficient to convict them for commission of the alleged offence. So, it is said that the impugned judgment and order of conviction passed by the learned Trial Court may be set aside and these appellants may be acquitted from all the charges levelled against them in connection with the impugned criminal prosecution.

- 16.** Mr. Debabrata Chatterjee, learned Advocate for the State said that there is no illegality or irregularity in the impugned judgment and order of conviction passed by the learned Trial Court. It is said by the learned Advocate that it would be revealed from the inquest report that since after the marriage of the victim there was discord in the family and the husband of the deceased used to waste money by playing card (gambling) and the victim was not provided with food properly. It is said that PW1, father of the victim has categorically stated in his evidence that he reported the incident of torture upon his daughter (victim) to panchayat member but he did not inform police initially about the alleged torture to avoid friction between the two families. The attention of this Court is drawn to the evidence of PW6 (Hira Sk.) wherein this witness stated that PW1 told him

that he had given cash of Rs. 10,000/- and 10 cottahs of land on the occasion of marriage of his daughter. In cross-examination this PW6 has stated that payment of money had been made to the appellants. It is further contended by the learned Advocate that PW7 has said in his evidence that this witness heard from the victim about her physical and mental torture and assault by the accused persons and even ten days prior to her death this witness heard from her about such torture. So, it is said by the learned Advocate that the evidence of PW7 corroborates evidence of PW6 in this case. Moreover, PW6 was the witness to the inquest over the dead body of the victim.

- 17.** It is said by the learned Advocate that PW1, father of the victim gave cash of Rs. 10,000/- and 10 cottahs of land to the husband of the victim and the victim was tortured and beaten up in her matrimonial home to pressurise her in order to bring more money from her maternal home. So, it is said by the learned Advocate that physical and mental torture inflicted upon the victim by the appellants are proved by the prosecution. All the witnesses cited by the prosecution have stated in the same voice that there was demand of dowry by these appellants and failure to fulfil the said demand, these accused persons used to torture upon her. It is said that due to unbearable torture inflicted by the appellants upon the victim she faced an unnatural death.

- 18.** It is said by the learned Advocate that there is nothing material in this case record for which the depositions of the witnesses supporting the case of the prosecution can be disbelieved. So, it is said that the instant appeal may be dismissed outright and the judgment and order of conviction passed by the learned Trial Court may be affirmed.
- 19.** I have considered the rival submissions advanced by the learned counsels for the parties and perused the record.
- 20.** It is well-settled of criminal jurisprudence that the offence under Section 498-A of the Indian Penal Code requires the prosecution to establish, beyond reasonable doubt, that the victim was subjected to cruelty or harassment of such a nature which was either (i) with a view to coerce her or her relatives to meet any unlawful demand of dowry, (ii) was of such intensity so as to drive her to commit suicide or cause grave injury or danger to life, limb, or health. Mere trivial disagreements, domestic squabbles, or normal wear and tear of matrimonial life cannot be brought within the fold of Section 498-A IPC.
- 21.** Admittedly, in this case the marriage between the victim and the appellant no. 1 was a love marriage and not negotiated one. PW1, Sukur Sk., defacto complainant/father of the victim has stated in his evidence that the marriage in between her daughter (victim) and the appellant no.1 was an outcome of love, but he gave cash of Rs. 10,000/- and 10 cottahs of land on the occasion of marriage. It is stated by this witness that the marriage

life of her daughter was full of torture and harassment and the appellant no.1 (husband of the victim) was fond of gamble and for that reason he used to pressurise the victim to bring more money from paternal home. This witness is the witness to the inquest report but at the time of inquest he did not disclose any kind of torture allegedly inflicted by the appellants upon her daughter. In cross-examination, this witness has said that he reported the incident of torture upon her daughter to Panchayat member, Kala Babu but he did not inform police initially about the torture to avoid friction between the two families. But no document regarding the alleged torture upon the daughter as fallen before the Panchayat member was not brought on record and the said Kala Babu was not cited as witness to this case. This PW1 has stated in his evidence that cash of Rs. 10,000/- was handed over in the marriage to the Moulana who conducted the marriage for giving it to the accused persons but no document in respect of payment of cash money of Rs. 10,000/- was brought on record. But the said payment of cash money of Rs. 10,000/- if it was at all paid cannot be termed as demand of dowry. In this case, no details have been provided for subsequent demand of dowry and/or inflicting any torture upon the victim upon failure to fulfil the said demand. Moreover, this witness (PW1) was not interrogated by the Investigating Officer.

- 22.** PW3, Gani Sk. (brother-in-law of PW1) has stated in his evidence that on the occasion of marriage PW1 gave cash of Rs. 10,000/-, 10 cottahs of

land and other articles to the couple. It is said by this witness that the victim died on the way to the village doctor; this witness is one of the witnesses to the inquest held by the police. The said inquest report revealed that the deceased was taken to Putsuri village to doctor for treatment and thereafter, she was brought back to the Tentulia village by a rickshaw van and she died on the way at about 8 P.M. So, the statement of this witness that the victim breathed her last on the way to village doctor is contrary to the version of inquest. In cross-examination, this witness has said negotiation marriage was held in between the heads of the family of two sides wherein the marriage was a love marriage. This witness has further said in his cross-examination that cash money was given by the head of the family of the bride to the head of the family of the bridegroom which is contrary to the version of PW1, as PW1 stated in his cross-examination that the said cash amount of Rs. 10,000/- was handed over in the marriage to the Moulana who conducted the marriage. This witness further said that he was a member of the 'Majlis' wherein cash amount was given to the head of the bridegroom by the head of the bride party which is also contrary to the deposition of PW1 (defacto complainant).

- 23.** In cross-examination, this witness said that he had talking terms with the father of the appellant no.1. In the same cross-examination, this witness has said that he had no talk with the family members of Santosh regarding the torture of the victim of the accused person because the

family of Santosh did not come to hold any talk regarding the settlement of the dispute.

- 24.** PW4, Sahajamal Sk. (cousin of the deceased) has stated in his evidence that cash of Rs. 10,000/- and 10 cottahs of land were given to the groom on the occasion of marriage. It is said by this witness that the victim was taken to the doctor but she died on the way and again it is contrary to the inquest of the victim. I have already said that when the victim was brought back to Tentulia by rickshaw van she died on the way. In cross-examination, this witness has said that the marriage between the victim and the appellant no. 1 was an outcome of love affairs and then voluntarily said that there was 'anusthan' (ceremony). In cross-examination, this PW4 has said that no talk regarding demand of money was held prior to the marriage which is contradictory to the statements made by the other witnesses. So, as per the statement of this witness there was no demand of money before the marriage of the victim with the appellant no. 1. It is further said by this witness that a paper was made in respect of payment of money in presence of 3/4 persons of the two families and 10/12 outsiders and the said paper was available in the Masjid and the same was prepared at the Masjid and the marriage was solemnized therein. But that paper in respect of payment of money was not seized by the investigating officer.

- 25.** PW5, Yusuf Sk. (cousin of the deceased) has stated in his evidence that he was not present at the time of marriage ceremony of the parties and father of the victim gave cash of Rs. 10,000/- and 10 cottahs of land to the appellant no.1. So, this witness had no personal knowledge of giving cash money and land to the husband of the victim. This witness said that the husband of the victim (appellant no.1) had given pesticide to the victim and by saying this he introduced a new case which is contrary to the contentions of the written complaint as well as the statement of the defacto complainant (PW1). This witness (PW5) was a signatory to the inquest held by the Magistrate but nothing has been said by this witness at the time of the inquest regarding alleged torture allegedly inflicted by the appellants and regarding giving cash money of Rs. 10,000/- and 10 cottahs of land to the husband of the victim. In cross-examination, this witness has stated that registration of the land was not done. Moreover, no document in respect of giving 10 cottahs of land in favour of the appellant no.1 (husband of the victim) is brought on record.
- 26.** PW6, Hira Sk. is one of the witnesses to the inquest held by the police. Although, in his evidence this witness has stated that PW1, Sukur Ali told him that he had given a cash of Rs. 10,000/- and 10 cottahs of land on the occasion of marriage of his daughter and she was beaten up for extorting more money from her father but it was not disclosed at the time of inquest held by the police. In cross-examination, this witness has said

that he had talking terms with the appellant no. 2 Chhonehar Bibi and once he had talked with this appellant no.2 in the party office and the talk was regarding settlement of dispute after the death of the victim. It is further revealed by this witness in cross-examination that three months before the death of the victim there had been a meeting in the party office over the dispute but no settlement could be arrived. Not a single scrap of paper was produced by the prosecution to support contentions as made by this witness. This witness in his cross-examination has further said that he had meeting with the victim one day prior to her death and the talks were held by the side of a 'doba' near her matrimonial house, but neither in the written complaint nor any of the witnesses has said about that. So, a new fact was introduced by this PW in this case. This PW6 has stated that he did not divulge to anyone regarding the said talk.

- 27.** PW7, Sahar Ali Sk. (cousin of the deceased) has stated in his evidence that PW1 (father of the victim) gave 10 cottahs of land and cash of Rs. 10,000/- on the occasion of her marriage to the bridegroom party which is contrary to the statements made by the other witnesses. It is said by this witness in cross-examination that PW1 is not related to him and he was not a visitor either to the house of PW1 or Tagar Ali. So, it is quite doubtful that how he came to know regarding demand of dowry and the alleged torture inflicted by the appellants. It is further said by this witness that marriage of the appellant no. 1 was held in his house, whereas one of the witnesses

of the prosecution has said that the marriage in between the victim and the appellant no.1 was held at 'Masjid'. So, the version of this witness is contrary to the other witnesses regarding place of marriage held in between the victim and the appellant no.1. Moreover, this witness has said that he was not present on the date of marriage and he was at home on the date of death of the victim Sukaruna.

- 28.** PW8, Noor Ali Middya is declared hostile by the prosecution and he was cross-examined by the prosecution as well as by the defence. In cross-examination by the defence he has said that he heard from the co-villagers that the victim Sukaruna consumed poison and was taken to the doctor in the evening and this witness accompanied the villagers when the victim was taken to the village doctor. It is said by this witness in such cross-examination that the victim was in sense for about one year. If the statement made by this witness is taken as believable facts then why the victim did not say anything regarding torture as allegedly inflicted by the appellants while she was in sense after taking poison. It appears from the contentions made in the inquest report that the victim was brought back to Tentulia village by a rickshaw van but astonishingly the said rickshaw was not sought in the case of the prosecution.
- 29.** PW9, Sirajul Haque Middya who is a moulabi of a Masjid has stated in his evidence that he caused the solemnization of marriage between the victim and the appellant no.1 but he failed to recollect the date and year of the

marriage. These witnesses said that a document was made in respect of payment of Rs. 10000/- and Rs. 15000/- for 10 cottahs of land. This witness said that the matrimonial life of the victim was inhabited and she was tortured and beaten up by the appellants. But there is nothing in his evidence that he disclosed to anybody about the alleged torture upon the victim inflicted by the appellants. This witness further said that when he heard of the incident of consuming poison by the victim, he rushed to her matrimonial home where the victim told this witness that her husband had purchased pesticide and she was forced to consume the same by the inmates of the appellant no. Mahidul's family. PW1/defacto complainant is silent in respect of this evidence as stated by this PW6 during evidence taking process.

- 30.** PW14, Dr. Jayanta Biswas (autopsy surgeon) who held the post-mortem examination over the dead body of the deceased. The said post-mortem was marked as exhibit 7 in this case and the opinion as to the cause of death was kept reserved till the receipt of the report of chemical analysis.
- 31.** PW15, Paritosh Singh, S.I. of Police and I.O. of this case has stated that he sent the viscera for FSL examination but he could not get the report. As there is no FSL report the reason of the death of the victim was not established. It appears from the sketch map that the house of one Edam Sk. is situated continuous not to the matrimonial house of the victim but this PW15 has said that the said Edam Sk. was not cited as a witness in

the charge-sheet. This PW15 has said in his cross-examination that he learned from the statement of PW9 (Moulabi) who caused the solemnization of the marriage between the couple that an agreement had been entered in between the parties for payment of dowry and at the time of making such agreement Moulabi (PW9), Sukur Ali (PW1) and Tagar Mallick (father of the appellant no.1) were present. It is said by this witness that the said agreement was made on the date of marriage in the Masjid of the village but the said document was not seized by the Investigating Officer or produced before the Court.

- 32.** In the present case, upon a careful scrutiny of the testimonies of the prosecution witnesses, it is manifest that the allegations of cruelty remain general, omnibus and uncorroborated. No specific instance of unlawful demand of dowry or overt act of cruelty has been substantiated. The depositions of the material witnesses do not disclose consistent or cogent details regarding the alleged acts of harassment. Significantly, the defacto complainant and the other witnesses i.e. PW3, PW4, PW5, PW6, PW7 and PW13 who are the relations of the victim and the defacto complainant have made broad allegations without indicating dates, occasions, or the exact nature of such alleged cruelty. Moreover, PW3, PW4, PW5, PW6, PW7 and PW13 are the respective witnesses to the inquest conducted in this case and they are the relations of the deceased and the defacto complainant. Other witnesses whose names are appeared in the inquest held by the

police and the Magistrate are one Midda and one Atim Sheikh and one Chhmat Seikh were not cited as a witness to the prosecution and no explanation has been given by the side of the prosecution for non-citing them as witness on its behalf. I have already said that one Edam Sk. whose house is situated just contiguous North of the matrimonial house of the victim was not examined by the side of the prosecution and it was admitted by the Investigating Officer (PW15) at the time of giving deposition. Most of the witnesses as cited by the prosecution are the relations of the victim and the defacto complainant and the prosecution has failed to produce any independent witness from the matrimonial neighbourhood who could have supported the version of cruelty.

- 33.** Admittedly, the marriage was a love marriage in between the victim and the appellant no. 1 and as such, it is quite natural that there was no scope of discussion/demand of any dowry at the time of marriage. It is repeatedly said by the witnesses to the prosecution that at the time of marriage Rs. 10,000/- cash and 10 cottahs of land were given to the bridegroom by the defacto complainant. Neither any document nor any deed showing transfer of land in favour of the appellant no. 1 has been seized, rather there are admissions by the witnesses that no such deed was ever executed. PW3 and PW13 introduced a new story for the prosecution regarding marriage and dowry to be given in marriage which has negated the other versions of the prosecution witness. There is

nothing on record regarding any demand subsequent to the marriage and non-fulfilment of such demand the deceased was tortured by the appellant. In the written complaint lodged by the defacto complainant (PW1) that the appellants just after marriage started mental and physical torture upon her daughter on demand of more money as the appellant no.1 (husband of the victim) used to take part in gambling and he used to lose money, but any of the witnesses did not state anything in the evidence taking process regarding the addiction of the appellant no.1 in the gambling.

- 34.** On a close analysis of the depositions of the prosecution witnesses, this Court finds that their testimonies suffer from serious infirmities, improvements, and contradictions which go to the root of the prosecution case. The law is well settled that conviction cannot rest on shaky and untrustworthy evidence. It is noticed that the witnesses have made material improvements in their testimony before the Court. Such embellishments, afterthoughts, raise a grave doubt as to their veracity. It appears after appreciation of the depositions of the witnesses especially the PW3, PW4, PW5, PW6, PW7 and PW13 that they established that their depositions are extremely contradictory to each other on the material issue of alleged demand of dowry and payment thereof and prior information as to the alleged torture upon the victim. The depositions of these witnesses are riddled with contradictions and inconsistencies. What is alleged by one

witness is denied or not supported by another. These contradictions are not minor but go to the very substratum of the prosecution story, making it unsafe to rely upon them. Moreover, the absence of corroboration further weakens the case. Independent witnesses from the locality of the matrimonial house of the victim who could have shed light on the alleged cruelty or harassment astonishingly were not examined. No complaint was lodged by the defacto complainant or by anybody regarding the alleged torture inflicted by the appellant upon the victim and if such complaints or any document could have produced may give assurance to the oral testimony. In the absence of such corroboration reliance solely on discrepant and self-contradictory statements would be wholly unsafe.

- 35.** It is equally significant about the unnatural conduct of the witnesses. If, as alleged, the victim was subjected to sustain cruelty, the normal human reaction of her parental family would have been to promptly approach lawful authority, register contemporaneous complaints, or seek intervention. Their silence and inaction for a prolonged period is wholly inconsistent with the natural course of human conduct and such type of unnatural conduct on the part of the witnesses reduced their testimony to a level of suspicion.
- 36.** It appears that most of the witnesses cited on behalf of the prosecution suppressed their relations with the deceased and attempted to canvass them as independent witness and suppression of the relation with the

deceased speaks volume against them. PW3 and PW13 represented the entire prosecution version including the story of alleged negotiation of marriage in the manner which runs contrary to the basic tenor of the prosecution case and has given birth of more than one prosecution version which is extremely fatal. The cumulative effect of the above infirmities- namely, improved versions, material contradictions, lack of corroboration, and unnatural behaviour of the witnesses-renders their testimony unworthy of credit. It would be highly unsafe to convict the appellants on such frail and untrustworthy evidence. In criminal jurisprudence, suspicion, however strong, cannot substitute proof. The benefit of doubt must, therefore, enure to the appellants.

- 37.** I have already said that unexplained withholding of best evidence by prosecution is bound to have an adverse inference against the prosecution and render the prosecution case non-est in the eye of law. Perusal of the inquest reports, sketch map and the admission made by the Investigating Officer along with unexplained non-examination of independent material witnesses i.e. Edam Sk., Atim Sk. and Chhmat Sk. in spite of their involvement and participation during inquest and investigation of the subject criminal prosecution compels to draw an adverse inference against the prosecution case. The admission of the Investigating Officer that these persons were indeed present during the inquest proceedings makes the prosecution's omission even more serious, as it clearly demonstrates that

such witnesses were readily available but consciously not brought before the Court. In such circumstances, the Court cannot but conclude that the prosecution withheld their evidence as their testimonies would not have supported the prosecution version, and instead might have weakened it. Accordingly, the cumulative effect of (i) the inquest reports and sketch map indicating the presence of these persons, (ii) the admission of the Investigating Officer about their participation, and (iii) the unexplained failure of the prosecution to examine them, justifies drawing an adverse inference against the prosecution case. This omission, coupled with other infirmities, compels the Court to view the prosecution story with suspicion and undermines the credibility of its version.

- 38.** The Hon'ble Apex Court in the case of **Anil Phukan (supra)** has held that unnatural conduct of the sole eye-witnesses and infirmities in his evidence in respect of other to co-accused, it would be unsafe to rely upon his testimony without seeking independent corroboration and corroboration furnished by the prosecution being negative in character the two accused were entitled to benefit of doubt. So, the exhibit improved, embellished and contradictory depositions of the witnesses or material issues coupled with extremely general, vague and omnibus allegation which is shorn of any details pertaining to the alleged offence rendered version of the said witnesses completely unworthy or credit. Viewed in this light, the stray incident alleged in the present case unaccompanied by essential details or

corroboration, cannot be stretched to mean matrimonial cruelty. The prosecution has not brought on record any evidence of persistent or grave harassment connected with unlawful demand of dowry or such cruelty as defined under law. The solitary and vague instance alleged, being unsupported by contemporaneous complaints or independent evidence, fails to satisfy the essential ingredients of Section 498-A Indian Penal Code. In the absence of specific, consistent, and corroborated evidence, the allegation remains at best a stray discord, falling outside the mischief of the penal provision.

- 39.** In the present case, even if the testimony of the complainant is accepted at its highest value, the allegations, at best, disclose only stray incident of quarrel. Such an isolated occurrence, bereft of any element of unlawful demand, persistent cruelty, or systematic harassment, cannot be elevated to the level of an offence under the relevant penal provisions. The complainant has not narrated any continuous or consistent course of conduct attributable to the accused which would constitute either cruelty or dowry demand in the legal sense. No contemporaneous complaint, medical record, or neighbour's testimony has been brought on record to support the version of the complainant. The omission to provide necessary details itself raises a serious doubt about the truthfulness of the allegation.

40. In the case of **Jagdishraj Khatta (supra)** the Apex Court held that in that case allegation of cruelty, harassment, mistreatment etc. by the appellant husband which allegedly drove deceased wife to commit suicide, not established at all. There is no such testimony of the family of the deceased or letter written by the deceased shortly before her death and in that situation the acquittal of the accused was restored.
41. It is profitable to quote the observation of the Apex Court in that report at **paragraph 9**, which is as follows:

“9. With respect to the former, we are unable to agree with the reasoning of the High Court in relying on the testimonies of the relatives of the deceased. As highlighted by the trial court, not only were the allegations in the FIR extremely general in nature, but also the same were never raised by the family of the deceased when they were present at the time of preparation of the inquest report or to the investigating officer. In fact, the allegation of cruelty meted out by the appellant against the deceased appears for the first time at the time of filing the FIR, after a delay of nearly one-and-a-half days. Further, the prosecution did not even examine any neighbour of the appellant and the deceased to substantiate the allegation that the appellant ill-treated the deceased. In fact, and as the High Court also recorded. It appears from the evidence on record that the appellant treated the deceased with love and affection and provided for all her needs. In

these circumstances, a reliance on the general oral testimonies of the prosecution witnesses, without any supporting evidence, would be misplaced. Further, as the High Court itself indicated somewhat contradictorily, reliance on the instances testified to by the witnesses would not be appropriate as the said incidents had taken place much before the deceased's death and could not be treated as conduct which drove the deceased to commit suicide."

- 42.** So, non-disclosure of the allegation at the time of inquest of the deceased is fatal to the prosecution when inquest and FIR was drawn simultaneously and in close proximity. In this case, the complaint (Exb.3) was lodged on 22.09.2004 at around 6:25 hrs. alleging the torture inflicted by the appellants upon her daughter owing to her failure to bring money from him. Following registration of First Information Report the police inquest (Exb.2) was conducted on 27th September, 2004 at 8:00 A.M. and the Magisterial inquest (Exb.3) was conducted on 27th September, 2004 at around 1:15 P.M. I have already said hereinabove that PW1, PW3, PW6, PW5 and PW13 were the respective witnesses to the inquest conducted in connection with this case but they were remained silent regarding the alleged demand of dowry and torture allegedly inflicted by the appellants. Allegation in the inquest was restricted to matrimonial bickering amongst the deceased and her husband and mother-in-law.

- 43.** The stray incident alleged being un-particularised, uncorroborated and not connected with any unlawful demand of dowry, wholly fails to ascribe any instance of harassment or torture so as to attract the mischief of Section 498-A IPC. In the absence of consistent, specific and credible evidence, it would be unsafe to convict the appellants on the basis of such vague allegations. The complainant has neither specified the exact date and time of the alleged occurrence nor has he described with clarity the nature of the conduct attributed to the appellants. Such vague assertions, which lack in particulars, fail to inspire confidence in judicial mind.
- 44.** In the case of **Atmaram (supra)** the Hon'ble Apex Court has held that to convict a husband or in relative of the husband of woman or to invoke the presumption of abatement of suicide by a married woman by her husband or any relative of her husband in case of suicide committed by a woman there must first be evidence to establish that such husband or the relative of her husband committed cruelty of the nature described in clause (a) or (b) of the explanation to Section 498-A of Indian Penal Code.
- 45.** Paragraph 10 of the said report is quoted herein below:
- “10. A reading of Section 498-A IPC would show that if the husband or relative of the husband or a woman subjected such woman to cruelty, they shall be liable for the punishment mentioned therein. Moreover, the explanation to Section 498-A IPC defines “cruelty” for the purpose of Section 498-A IPC, to*

mean (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. A reading of Section 113-A of the Evidence Act, 1872 will show that for the purposes of Section 113-A of the Evidence Act, 1872, “cruelty” shall have the same meaning as in Section 498-A IPC. Hence, to convict a husband or any relative of the husband of a woman or to draw up presumption as to abetment of suicide by a married woman by her husband or any relative of her husband in case of suicide committed by a woman within a period of seven years from the date of her marriage, there must first be evidence to establish that such husband or the relative of her husband committed cruelty of the nature described in clauses (a) or (b) of the Explanation to Section 498-A IPC.”

- 46.** In cases arising under Section 498-A of the Indian Penal Code, which specifically deals with cruelty to a married woman by her husband or his relatives, it is a settled principle of law that the prosecution bears the

burden of proving its case by leading cogent, reliable and trustworthy evidence. The mere use of the expression "cruelty" in the complaint or deposition is not sufficient. The law mandates that the prosecution must establish, beyond reasonable doubt, that the accused subjected the victim to such cruelty as is contemplated under the statutory provision. The explanation appended to Section 498-A IPC defines "cruelty" in two distinct limbs. Firstly, cruelty may consist of any wilful conduct of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health, whether mental or physical. Secondly, it may take the form of harassment of the woman with a view to coercing her or her relatives to meet any unlawful demand for property or valuable security, or on account of their failure to meet such unlawful demand. Unless the acts alleged against the accused fall within either of these two categories, the offence under Section 498-A cannot be said to have been made out. It is, therefore, incumbent upon the prosecution to produce clear and specific evidence showing that the victim was either subjected to grave physical or mental injury or was persistently harassed with a demand for dowry or valuable security. General allegations, vague assertions, or stray instances of domestic discord, which are natural wear and tear of marital life, cannot by themselves bring the case within the mischief of Section 498-A IPC. The seriousness of the offence requires

proof of cruelty of a grave and compelling nature, and that conviction cannot rest merely on omnibus allegations or uncorroborated testimony.

- 47.** In the present case, upon careful scrutiny of the material evidences brought on record, it becomes evident that the testimonies of the prosecution witnesses are tainted by inconsistencies, contradictions, and a lack of corroboration on material particulars. Stray allegations have been made without providing specific details of the alleged acts of harassment or cruelty. The prosecution has also failed to establish a continuous chain of conduct that would squarely fall within the mischief of Section 498A IPC. Mere general and omnibus statements about ill-treatment or discord in the matrimonial life, unaccompanied by specific particulars, are insufficient in law to warrant conviction under this penal provision.
- 48.** A perusal of the prosecution case makes it evident that the allegations levelled against the appellants are wholly baseless, unfounded and lacking in substance. The prosecution has merely put forth general and omnibus allegations of torture without furnishing any concrete particulars as to the time, place, nature or manner of the alleged acts of cruelty. In criminal law, vague and sweeping statements are of no avail; the charges must be backed by specific and credible evidence demonstrating actual acts of cruelty or harassment. In the present case, no such specific details are forthcoming. The evidence adduced by the prosecution does not disclose any real or tangible instance of torture inflicted by the appellants upon the

victim. What has been alleged is merely in the nature of broad accusations without corroboration from independent witnesses or contemporaneous records. The Court is mindful that in cases under Section 498A IPC, or related charges, it is incumbent upon the prosecution to establish with clarity that there was a course of conduct amounting to cruelty, either with such severity as to endanger the life or limb of the victim, or directly connected with unlawful demands for dowry. The present allegations fail on both counts.

- 49.** Equally significant is the complete absence of any material to demonstrate a subsequent demand for dowry after marriage. The prosecution has neither specified what particular demand was made, nor the date, nor the occasion when such a demand was allegedly raised. There is also no evidence to suggest that the victim was subjected to any form of harassment or torture as a consequence of failure to fulfill such demand. The absence of such particulars renders the prosecution case inherently weak and unreliable. The settled principle of criminal jurisprudence is that omnibus allegations, bereft of specifics, cannot form the foundation for a conviction. In the instant case, the sweeping assertions made by the prosecution witnesses, unsupported by independent corroboration, cannot be treated as proof of actual torture or harassment.
- 50.** These appellants are acquitted from the charge under Section 304B of the Indian Penal Code against which no appeal has been preferred which

establishes argument of the appellants as more sustainable in the eyes of law. The findings of the Trial Court as regards the death negated dowry death with a positive finding. It is an admitted position on record that the present appellants stand acquitted of the charge under Section 304B of the Indian Penal Code, i.e., the charge of dowry death. The Trial Court, upon a careful consideration of the evidence adduced by the prosecution, categorically came to the conclusion that the essential ingredients of Section 304B IPC were not established in the present case. The findings of the Court below are clear and unequivocal that the death of the victim could not be treated as a "dowry death" within the meaning of law, and accordingly a positive finding was returned in favour of the accused persons, resulting in their acquittal under the said section. What is of greater significance is that against such acquittal, no appeal has been preferred either by the State or by the complainant. The said order of acquittal under Section 304B IPC, therefore, has attained finality in the eyes of law. It is a settled principle that once an acquittal has not been challenged, the findings recorded therein stand binding and conclusive. In the present case, the positive finding of the Trial Court negating dowry death operates as a strong circumstance fortifying the defence version and rendering the prosecution's case inherently weak.

- 51.** The acquittal of the appellants from the graver charge of dowry death lends substantial strength to their argument that the prosecution has

failed to establish a consistent and coherent case against them. When the Trial Court itself, after assessing the entire chain of evidence, rejected the allegation of dowry death, the prosecution cannot at this appellate stage reintroduce or revive that allegation indirectly. The absence of an appeal by the State further confirms that the prosecution also accepted the correctness of the Trial Court's finding in this regard. Therefore, the appellants' contention that their conviction under the lesser charge cannot be sustained in law finds greater force. The findings of the Trial Court as regards the death clearly negate dowry death with a positive finding, and since such finding has not been assailed, the argument advanced by the appellants becomes more sustainable, consistent with the principle that once the main substratum of the prosecution case stands rejected, the ancillary allegations lose much of their force.

- 52.** There is total absence of any of the requirements of the statute in terms of Section 498-A in this case. In order to justify a conviction under Section 498-A there must be available on record some material and cogent evidence. There are two inconsistent versions of the witnesses to the prosecution as such; no credence can be attributed thereon. Even on a presumption of the fact that there is no contradiction in the oral testimony available on record. But those evidences itself would not bring home the charge under Section 498-A. Demand for dowry has not seen the light of the day.

53. A faint attempt has been made during the course of submissions by the State that ingredients of Section 498A stands attracted and as such no fault can be attributed to the judgment. Trial Court found that there is no cogent evidence which suggests that the accused persons forced/compelled the victim to consume poison and as such the death of the victim cannot be said to be homicidal in nature. In any event the wilful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498-A and not de-hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. The legislative intent is clear enough to indicate in particular reference to explanation (b) that there shall have to be a series of acts in order to be harassment within the meaning of explanation (b). The letters by itself though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the accused. Acquittal of a charge under Section 304B, as noticed hereinbefore, though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge of Section 498-A as well, without which the charge cannot be said to be maintained. While Section 304B of I.P.C. deals with cases where the cruelty or harassment is shown to have led to the death of the woman within seven years of marriage in connection with demand for dowry, Section 498-A criminalises the act of cruelty itself, regardless of whether it

culminates in death. However, at the same time, it must be emphasised that a conviction under Section 498-A IPC cannot be sustained in the absence of cogent, reliable, and convincing evidence to establish cruelty as defined under the said provision. The explanation to Section 498-A clearly stipulates that cruelty must either consist of conduct likely to drive a woman to commit suicide or to cause grave injury or danger to her life, limb, or health, or harassment with a view to coercing her or her relatives to meet any unlawful demand for property or valuable security. Therefore, even though an acquittal under Section 304B does not automatically absolve the accused from liability under Section 498-A, the court is duty-bound to examine whether the prosecution has brought sufficient evidence on record to satisfy the ingredients of Section 498-A. In the present case, on a close scrutiny of the evidence adduced by the prosecution, it is manifest that there is a complete absence of cogent and trustworthy material to show that the victim was subjected to cruelty of the kind contemplated under Section 498-A IPC.

- 54.** There is no reliable testimony to prove persistent harassment, unlawful demand, or conduct of such gravity as to cause grave mental or physical injury to the victim. Thus, while the acquittal under Section 304B may not, by itself, lead to an acquittal under Section 498-A, the fact remains that the charge under Section 498-A must independently stand the test of proof beyond reasonable doubt. In the absence of any cogent evidence on

record to establish the ingredients of Section 498-A, the charge cannot be said to be maintained. The present case suffers precisely from such infirmity.

- 55.** On perusal of the depositions of the prosecution witnesses, it is found that their statements are riddled with material contradictions and improvements. The allegations regarding cruelty are made in general terms without specifying any particular dates, occasions, or the nature of harassment. Furthermore, the prosecution witnesses failed to provide corroboration to each other's version, and their conduct appears unnatural and improbable in the given circumstances. Moreover, the prosecution witnesses have failed to corroborate each other on material aspects. Instead of offering a consistent and mutually supporting account, their depositions stand disjointed and unsupported, thereby weakening the substratum of the prosecution case. Their conduct, as projected in evidence, also appears unnatural and improbable when judged in the backdrop of ordinary human behaviour and the surrounding circumstances. Such unnatural conduct further erodes the credibility of their statements. Another striking feature is that no independent witness from the locality has been examined to support the version of harassment, although such evidence would have been readily available if the alleged incidents were true and continuous. The omission to examine neighbours

creates a strong presumption that the prosecution deliberately withheld such evidence, as it would not have supported its case.

56. In this case, the learned Trial Court has failed to appreciate the examination of the appellants under Section 313 of the Cr.P.C. properly and truly which unerringly indicates that the learned Trial Court did not place any question to the appellants during their mandatory examination. In this case, no question pertaining to depositions of PW2, PW3, PW5 and PW8, PW9 PW15 have been put to the appellants/ accused, no question was placed as to the alleged disclosure of inflicting torture upon the deceased as stated by the witnesses. These anomalies and/or withholding of these incriminating circumstances from the appellants in course of their examination under Sections 313 of Cr.P.C. completely rules out the scope of placing reliance on these circumstances by the prosecution for reaching conclusion as to the guilt of the appellants.

57. It is profitable to quote the observation of the Hon'ble Apex Court in the case of **Nababuddin @ Mallu @ Abhimanyu (supra)**. In that report the Hon'ble Apex Court held at paragraph no. 11, interalia, that:

“11. Regarding the importance of the examination of the accused under Section 313 of CR.P.C. we may refer to a judgment of this Court in the case of Raj Kumar –vs- State (NCT of Delhi). In paragraph 17, this Court has summarised the law on the aspect which reads thus:

“17. The law constantly laid down by this Court can be summarised as under:

- (i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;*
- (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;*
- (iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;*
- (iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;*
- (v) If any irregularity in putting the material circumstance to the accused does not result in*

failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

- (vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and*
- (vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of Cr.P.C.*
- (viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.”*

58. In the present case, it is found that the learned Trial Court failed to conduct a proper and meaningful examination of the accused under Section 313 of the Code of Criminal Procedure. The compliance that is reflected in the record is merely cryptic and half-hearted, without putting to the accused the essential incriminating circumstances appearing against them in the prosecution evidence. The object of Section 313 Cr.P.C. is to afford the accused a fair and reasonable opportunity to

explain the circumstances appearing in evidence against them. It is not an empty formality, but a mandatory safeguard flowing from the fundamental principles of natural justice. The law requires that each material and incriminating circumstance, which the Court proposes to use against the accused, must be brought to their notices so that they can furnish explanation or rebuttal. If this opportunity is denied or inadequately given, the accused suffers prejudice in defending themselves, and the trial itself becomes vitiated to that extent. In the instant matter, the questions put to the appellants were perfunctory and omnibus in nature, without reference to the specific incriminating evidence brought on record. The appellants, therefore, were deprived of the opportunity to tender a proper explanation or clarification. Such half-hearted compliance with the mandatory requirement of Section 313 Cr.P.C. has caused manifest prejudice to the defence, particularly in a case where the prosecution evidence itself is weak, contradictory and lacking in corroboration.

- 59.** Admittedly, in this case the marriage was a love marriage and as such there is no scope of discussion or demand of dowry at the time of marriage. PW3 has stated that cash amount was given to the head of the bride groom by the head of the bride party and Sukur Sk. (PW1) gave the cash of Rs. 10,000/- which is contrary to deposition of PW1. PW13 has stated that at the time of marriage, father of the victim gave cash of Rs. 10,000/- and 10 cottahs of land. PW1 has stated in his cross-examination

that cash of Rs. 10,000/- was handed over in the marriage to the Moulana (PW9) who conducted the marriage for giving it to the accused persons. I have already said that no scrap of paper was filed regarding payment of cash money and transfer of land in favour of the Appellant No.1. The law does not countenance allegations which are vague, sweeping, or impossible to prove. Such improbable allegations as being unworthy of credence is to be rejected and no conviction can be sustained on conjectures and surmises. Even if dowry demands are otherwise proved, the particular allegation of demand and giving "at the very time of marriage" without any corroboration is an impossible proposition, and hence, cannot be made the basis of holding the accused guilty. Thus, the allegation itself is of such a nature that it is inherently improbable and impossible to have occurred in the manner alleged.

- 60.** The incidents alleged even if taken at their face value do not specify the legal threshold of cruelty as they neither so a grave danger to the life or limb nor are they connected to any unlawful demand for dowry. In such circumstances, it would be wholly unsafe to uphold the conviction of the appellant. A careful scrutiny of the evidence adduced by the prosecution reveals that the incidents alleged, even if accepted, do not satisfy the legal threshold of "cruelty" as envisaged under the relevant provisions of law. To constitute "cruelty" in the context of matrimonial offences, particularly under Section 498A of the Indian Penal Code, it is incumbent upon the

prosecution to prove that the conduct of the accused was of such a nature as was likely to drive the woman to commit suicide, or to cause grave injury or danger to her life, limb or health, whether mental or physical. Alternatively, the cruelty must have a direct nexus with unlawful demands for dowry so as to attract penal consequences. In the present case, the acts narrated by the witnesses are at best stray instances of discord or occasional quarrels within the matrimonial home. Such acts, even if accepted in entirety, do not rise to the level of grave or continuous harassment so as to endanger the life or limb of the victim nor is there any cogent evidence on record to demonstrate that such conduct was linked to any unlawful demand for dowry. The allegations are conspicuously silent as to any specific demand or persistent harassment flowing from such demand. The allegations neither disclose grave danger to the life or limb of the victim nor establish a connection with unlawful demand for dowry. To hold the appellant guilty in such circumstances would amount to stretching the penal provision beyond its legislative intent, which is impermissible in criminal jurisprudence where strict construction of penal statutes is the rule.

61. In view of the above circumstances and discussion made above I am of the view that the prosecution has hopelessly failed to make out any case for holding these appellants guilty for the commission of alleged offence.
62. Thus, the present appeal be and the same is hereby **allowed**.

63. The impugned judgment and order of conviction passed by the learned Trial Court dated 08.07.2010 in connection with Sessions Trial No. 28/06 arising out of Sessions Case No. 122/05 is hereby set aside.
64. These appellants are on bail; they are discharged from their respective bail bonds and set at liberty if they are not wanted in connection with any other case.
65. In view of provision of Section 437A of Cr.P.C. the appellants shall have to execute bail bonds with sureties and such bail bonds shall be in force for six months.
66. Let a copy of this judgment along with the Trial Court record be sent down to the Trial Court immediately.
67. Urgent Photostat certified copy of this order, if applied for be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)