

MANU/WB/0715/2015

**IN THE HIGH COURT OF CALCUTTA**

CRA No. 627 of 2014

Decided On: 21.08.2015

Appellants: **Kaushik Sadhukhan and Ors.**  
**Vs.**  
Respondent: **The State of West Bengal**

**Hon'ble Judges/Coram:**

*Nadira Patherya and Indrajit Chatterjee, JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Bikash Ranjan Bhattacharya, Sr. Adv., Rahul Sarkar and Tatini Sengupta*

*For Respondents/Defendant: Manjit Singh, Learned P.P. and Pawan Kumar Gupta*

**JUDGMENT**

**Indrajit Chatterjee, J.**

**1.** This appeal has been directed as against the judgment and order of conviction passed by the learned Additional District and Sessions Judge, Second Court, Serampore, Hooghly, in Sessions Case No. 99 of 2007 (Sessions Trial No. 25 of 2007) arising out of G.R case No. 78 of 2005 which arose out of Serampore P.S Case No. 19 of 2005 dated 22.01.2005 under Sections 498A, 304B and 406 of the Indian Penal Code (Code) in which the present appellants were convicted on 26.08.2014 and sentenced to suffer life imprisonment for the offence punishable under Section 304B read with Section 34 along with Section 498A of the Code. The accused appellant Kaushik Sadhukhan was further sentenced to suffer imprisonment for two years in respect of the offence punishable under Section 406 of the said Code. The Trial Court further directed that the sentences will run concurrently. Thus, even though the present appellants were convicted in respect of the charge punishable under Section 498A of the Code, the learned trial court did not pass any separate sentence threats. The trial court also ordered set off under Section 428 of the Code of Criminal Procedure, 1973.

**2.** The case before the trial court as we get from the evidence both oral and documentary can be stated in brief thus, there was love affair between the victim of this case Roshni Sadhukhan @ Tuli with the first appellant Kaushik Sadhukhan @ Gopal. There was a registry marriage on 30th August, 2002 (Exhibit 8) and the social marriage took place on 09.12.2002. There was payment of dowry to the tune of Rs. 1,50,000/- in cash, fifty bhories of gold ornaments, cot, bedding, almirah, dressing table etc. After such marriage Roshni went to stay at her matrimonial home.

**3.** It is the further case of the prosecution as made out that since the date of "phoolsajya" the relatives of the accused appellant No. 1 expressed their displeasure regarding the articles of dowry and started torturing the victim. The matter was tried to be settled by the father of the victim and his other relatives.

**4.** It was the further case of the prosecution that the accused persons demanded more money and other articles and that the victim was not given proper food and treatment. It further revealed during the trial that the victim disclosed to her father

that the accused persons demanded a further sum of Rs. 50,000 and her father could give a sum of Rs. 25,000 only to the appellant No. 2, Krishna Chandra Sadhukhan by savings rupees one thousand, two thousand etc. unfortunately, the torture continued. It was also the case that the accused persons continued the torture upon the victim and they disclosed that Gopal wanted to open a shop at Singur and the father of the victim will have to incur the money for the same. The father of the victim did not provide any more money for opening the shop room at Singur.

**5.** It is, however, there in the FIR that the appellant No. 1 demanded one shop room at Singur (emphasis laid) and it was further disclosed in the FIR that as he refused to give such shop room so the victim was murdered by the accused persons. It was however claimed by PW-1 on oath that the accused No. 1 demanded money for his business to which he did not agree. It was also the case that the accused persons namely the parents of the appellant No. 1, the appellant No. 1 himself and the elder sister in law of the victim started beating the victim regularly and one week before her death the victim informed her father over telephone that since he had refused to give a shop at Singur to the accused appellant No. 1 they would not allow her to stay there but would rather kill her.

**6.** It is pertinent to mention here that on the night of 21.01.2005, the victim informed her father to take effective steps so that she could stay there without any torture. It also revealed during the trial that in the afternoon of 22.01.2005 at about 4 p.m. the appellant No. 2 that is the father in law of the victim reported to her father over telephone that the victim was seriously ill for which he requested him to come to his residence and on getting such information he along with his son (PW 10) went to the house of the accused appellants and found the victim lying dead on her bed. It may be noted that the accused persons did not abscond.

**7.** The FIR was lodged by Kinkar Sadhukhan, the father of the victim on that very date i.e. (22.05.2005 at about 19.45 hours) for which the above noted Serampore P.S was started under Section 498A, 304B and 406 I.P.C against the appellants and others including the mother of the appellant No. 1. The case was investigated by the Investigating Officer. During the course of investigation an inquest was made, so also post mortem done on the dead body of the victim and both the said reports were collected. An inquest was also made by the Executive Magistrate. 48 numbers of articles of marriage were seized as per seizure list dated 22.01.2005 vide exhibit 6/2 being the articles of marriage but unfortunately no gold item was seized.

**8.** Those articles were returned to the de facto complainant (PW 1) as per his petition and he did not claim before the learned ACJM, Serampore, expressing his grievance for non-seizure of any other articles of marriage including gold ornaments. The doctor who conducted the P.M examination opined that the cause of death was Asphyxia due to anti mortem and hanging. The viscera was preserved which was forwarded for FSL examination in which no poison could be detected. Thus, it was a clear case of suicide by hanging.

**9.** Charge sheet was submitted against all the seven FIR named accused persons and charge was framed against them under Sections 498A, 304B read with Sections 34 and 406 of the Code. The prosecution examined in all seventeen witnesses and marked several documents as exhibits. On behalf of the defence three witnesses were examined and some documents were marked as material exhibits. Those documents are receipts of Life Insurance Corporation of India and Peerless showing payments of premium in the name of the Victim. On behalf of the prosecution some photographs and some receipts showing purchase of jewelleryes, wrist watch, sarees and furniture were also marked as material exhibits.

**10.** It was submitted by Mr. Bikash Ranjan Bhattacharya learned Senior Advocate appearing on behalf of the appellants that the Trial Court erred in convicting the two appellants in respect of the charge. He further submitted that the Court will appreciate the total evidence, prevailing relationship between the couple vis-à-vis the other family members of the in-laws house of the victim, acceptability of the story of payment of dowry, whether the prosecution discharged the initial burden by preponderance of probabilities, that it must be proved by preponderance of probabilities that the deceased wife was treated with cruelty based on dowry demand by the appellants "soon before her death" and only if it is proved then the burden of proving of innocence will be shifted to the accused/appellants, that clause "soon before her death" cast a duty on the prosecution to prove that there must be live link and proximity between the cruelty emanating from dowry demands and death of the victim, that the demand of dowry should not be stale or an aberration of the past but should be a continuing cause for the death of the victim, that on the same evidence the trial court acquitted five other accused persons who jointly faced the trial and thus, he tried to convince us that in this case the Trial Court ought not to have convicted the present appellants in respect of the charge framed.

**11.** Mr. Bhattacharya cited the following decisions of the Apex Court as reported in;  
(1) MANU/SC/7815/2007 : 2007 (10) SCC 797 (Kishorilal v. the State of M.P.) wherein the Apex Court held that in a case of alleged abetment of suicide there must be proof direct or indirect acts of incitement. The said decision will not apply in the facts of the instant case as the offence in the reported decision was under Section 306 IPC and in the present case under Section 304B of the Code where there is a separate presumption under Section 113B of the Evidence Act.

(2) MANU/SC/7892/2007 : 2007 (12) SCC 443 (Srinivasalu v. the State of A.P.) wherein in a case based on three letters of the deceased the Apex Court reversed the judgment of the High Court on the ground that the main grievance of the victim was that she was forced to marry against her will and that she stated that her husband used to take due care. In that case the Apex Court took into consideration that the High Court did not consider the three letters in their true spirit and had picked up from one line from one letter and fixed it with the other letter, and

(3) MANU/SC/0022/2015 : 2015 (3) SCC 724 (Sher Singh v. the State of Haryana) the case was decided on January 9, 2015, wherein the Apex Court illustrated the words "shown" and "deemed" to come to the this finding that "Shown" should be read as proved and "deemed" should be read as "presumed". The Apex Court further held that it is true that in a case under Section 304B of the Code the initial burden is on the prosecution to prove by preponderance of probabilities the ingredients of Section 304B of the Code and it further held that requiring the prosecution to prove these ingredients beyond reasonable doubt would defeat the purpose of Section 304B but once such initial burden is discharged by the prosecution, initial presumption of innocence of accused would get repealed by deemed presumption of guilt of accused and only then the burden would be shifted on accused to rebut that deemed presumption of guilt by proving beyond reasonable doubt. In that decision the Apex Court also illustrated the clause "soon before her death" in Section 304B to say that there must be a live link and proximity between cruelty emanating from dowry demand and death of woman, the demand of dowry should not be stale or an aberration of the past but should be a continuing cause for her death.

**12.** The word "soon" used in Section 304B was also illustrated in this decision wherein the Apex Court held that it would prefer to interpret its use not in terms of days or months or years.

**13.** He also submitted by taking us to the evidence of PWs 1, 2, 3, 5, 10 and 15 to convince us that PW-1 had no capacity to pay such a huge dowry to the tune of rupees six to seven lakh including 48 bhories of gold ornaments, that he had no capacity to pay further dowry, that the relationship between the couple was good, that the story of demand of dowry through one shop room at Singur is a myth, that there was no mark of injury on the dead body of the victim, the pregnancy of the victim cannot be considered to be a special circumstance against the appellants and the evidence of the woman will go to show that the relationship between the appellant No. 1 and the victim was good, cordial and normal.

**14.** On behalf of the prosecution it was argued by Mr. Pawan Kumar Gupta that there was consistent torture on the victim to extract more dowry in the form of shop room which was in the name of her father at Singur and on which the appellant No. 1 had set his eyes to start a new business. He abandoned the claim of any other form of torture inflicted on the victim by the appellants and only concentrated regarding on the induced of torture for that shop room. He submitted that regarding the charge under Section 406 of the Code the Trial Court arrived at a wrong conclusion while convicting the appellant No. 1. It was the submission of Mr. Gupta that the order of conviction and sentence under Section 406 of the Code be set aside as the prosecution is not supporting that conviction.

**15.** Thus, he concentrated his argument with regard to the shop room and abandoned cash or further articles of marriage. The death of the victim took place in the matrimonial abode within just above two years of her marriage and that she was pregnant. It was submitted by him that a woman with a baby in her womb will think several times before taking a vital decision to suicide. He cited the decisions of the Apex Court reported in:

"MANU/SC/0296/2000 : (2000) 5 SCC 207 (Kans Raj v. State of Punjab) wherein the Apex Court held that proximate or live link must be shown to exist between the course of conduct relating to cruelty or harassment in connection with dowry demand and consequential death but at the same time the Apex Court illustrated it further by saying that mere lapse of time by itself would not provide the accused defence that cruelty or harassment was not "soon before her death".

MANU/SC/0051/2011 : AIR 2011 SC 691 (Bansilal v. State of Haryana), wherein the Apex Court held that in view of the presumption under Section 113B of the Evidence Act relating to Section 304B of the Code the onus to prove shifts heavily on the accused and failure of the accused to discharge the onus will result in his conviction.

MANU/SC/0595/2005 : AIR 2005 SC 3501 (Devinder Singh and another v. State of Punjab) wherein the Apex Court upheld the conviction of the accused in a case when there was evidence by the father and panchayat that about a month before the incident the deceased was turned out of the house to bring the demanded articles. The Apex Court also took into consideration the fact that the victim left behind a child aged about 15 months and another in her womb.

MANU/SC/0471/2010 : (2010) 7 SCC 518 (Uday Chakraborty and Others v. State of West Bengal) wherein the Apex Court in a case of dowry death directed that as expression "soon before her death" in Section 304B was not specified by the legislature the Court is to give it due meaning and the concept of reasonable time would be applicable.

MANU/SC/0104/1998 : (1998) 3 SCC 309 (Pawan Kumar and Others v. State of Haryana) wherein the Apex Court confirmed the conviction as there was a consistent demand for scooter and fridge made "soon after the marriage" by the husband and his relatives and failure to meet the demand leading to repeated taunts, maltreatment, quarrel, taking place between husband and wife at her sister's house one day before the occurrence while going back to her husband's home wife regretting that it would be difficult to see her face in future. The Apex Court held that cruelty and harassment in connection with dowry fee demand was proved.

MANU/SC/1180/2013 : (2014) 4 SCC 129 (Surinder Singh v. State of Haryana) here in the case before the Apex Court the deceased died within 94 days of the marriage out of burn injuries otherwise than in normal circumstances. The appellant husband could not be given benefit of acquittal, since, the allegation against him were clear, specific and fully establish."

**16.** Thus, it was the submission of Mr. Gupta that the learned Trial Court rightly convicted the appellants in respect of the charge punishable under Section 304B read with Section 34 as well as under Section 498A of the Code which may be maintained by this Court.

**17.** We have already mentioned that the learned Trial Court did not impose any separate sentence while convicting the present appellants under Section 498A of the Code. This Appellate Court can cure this defect by imposing separate sentence as appeal is the continuation of the original trial as contemplated under Section 386 of the Criminal Procedure Code.

**18.** Thus, in this appeal we are to judge whether the learned Trial Court was right to held the appellants, being the husband and father in law of the victim, guilty in respect of dowry death, a charge under Section 304B of the Code and also for causing mental and physical cruelty on the victim an offence punishable under Section 498A of the Code. It may be mentioned that the learned prosecutor has abandoned the charge and order of conviction under Section 406 of the Code against the appellant No. 1.

**19.** It may be mentioned here that on plain reading of Section 304B of the Code this court is of the view that to attract this section on the relations of the husband of the victim or the husband there was no need to attract Section 34 of the Code as Section 304B covers "cruelty or harassment by her husband or any relative of her husband". Be that as it may this observation has only legal value as regards framing of charge in such a case.

**20.** We are also to quote here Section 498A of the Code which runs thus:--

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

Explanation, - For the purposes of this section, 'cruelty means -

- a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- b) Harassment of the woman where such harassment is with a view



to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet demand.

**21.** Section 113B of the Evidence Act is also to be reckoned which runs thus:-- Presumption as to dowry death.--When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.--For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code, (45 of 1860)

**22.** Section 304B of the Code runs thus : (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

**23.** Therefore, the ingredients of Section 304-B are: (1) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,

(2) within seven years of her marriage,

(3) and that she was subjected to cruelty or harassment by her husband or by any relative of her husband,

(4) in connection with any demand for dowry, and

(5) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.

**24.** We are also to explain the word "soon" as it appears in Section 304B of the Code. We would prefer to interpret its use not in terms of days or months or years but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be a continuing cause for the death under Section 304B or the suicide under Section 306 of the Code. We are also to consider what is meant by "deemed" and "shown" as used in Section 304B of the Code. As per the decision of the Apex Court in Sher Singh (supra) the word "Shown" should be read as "proved" and "deemed" should be read as "presumed".

**25.** This being the last fact finding court, unless the Apex Court exercises its extraordinary jurisdiction, this court of first appeal must consider the evidence on record.

**26.** Let us now travel through the evidence of the PWs to unearth whether the appellants had treated the deceased with cruelty connected with dowry demand or such misdeeds within the definition of Section 498A of the Code. Evidence of PW-1 shows that the torture started from the date of "Phoolsajya" as regards the quality of the articles of marriage and the accused persons demanded more cash and other articles. The victim informed him over telephone as regards the demand of rupees 50 thousand more and he deposed that he paid Rs. 25,000/- to the appellant No. 2 on installments ranging from Rs. 1000 to Rs. 2000 etc. No date, month or year of such

demand was mentioned by PW-1 in his evidence on oath.

**27.** Next come the demand for money at the instance of the appellant No. 1 to open one shop at Singur and that PW-1 was asked to incur money for the same which PW-1 refused and as such the parents of the appellant No. 1, the appellant No. 1 himself and the elder sister-in-law used to assault the victim regularly. One week before her death the victim informed PW 1 over telephone that since he refused the proposal of the accused persons regarding opening of the shop at Singur they would not allow her to stay there and rather they would kill her. He also deposed that in the night of 21.01.2005 the victim also rang him up to ask her father to take some effective steps so that she could stay there without any torture. She ultimately committed suicide by hanging herself in her bed-room at about 4 p.m. on 22nd January, 2005. It may be mentioned that she was carrying fetus of 12 weeks then.

**28.** Thus, it appears from examination in chief of PW 1 that there was demand for money on behalf of the appellants to get a shop at Singur as dowry to start a new business. We are not unmindful of the fact that in cross-examination the defence took two sentences, "Not a fact that Kausik did not demand any shop in his name. Not a fact that Kausik did not say that if he did not get the shop being registered in his name he would kill my daughter". This cross-examination cannot prove the case in favour of the prosecution when in the examination in chief this witness did not depose regarding the demand of shop room by the appellant No. 1 or that if such shop room is not registered then his daughter would be killed. The prosecution must stand on its own feet and should not derive any benefit from unhealthy cross-examination. It is evident from his evidence that the demand was only for money. Now let us see as to the financial position of this PW 1, the vital witness of this case. In his cross-examination he had to admit that he has only a grocery shop at Singur. From that business his yearly income was Rs. 40,000/- only and at the time of marriage of Roshni he used to earn Rs. 75,000/- per year as house rent. But no document was produced in this regard (house rent income) by this witness. He also did not show this house rent income in his income tax return. He declared in open Court that he will be producing those documents to prove that his income from house rent was Rs. 75,000/- per year but unfortunately he did not produce the same. He also did not name the tenants and rent fetched from each room or house.

**29.** He tried to make up his assets at the time of marriage of Roshni by taking a plea that he took house building loan from Indian Bank to the tune of rupees three lakh but no document was produced to prove that aspect. He had to admit in his cross-examination that at the time of marriage of Roshni he had no bank balance to the tune of Rs. 6/7 lakh. Thus, his proved income was Rs. 40,000/- per annum and as such the story of payment of dowry to the tune of Rs. 6/7 lakh in the marriage of Roshni (which was a love marriage and there after converted into a social marriage) cannot be believed. It is also difficult to believe that in such a family 48 or 50 bhories of gold ornaments can be gathered so easily to give as dowry. What has been unearthed from the cross-examination of this witness as regard the financial condition of the appellants is that the appellant No. 1 had a wholesale business of Castrol Mobile and this witness could not deny as to whether the total turnover of the business was Rs. 10 lakh per annum. This witness was totally unaware as regards further studies of the victim and he failed to answer as regards the educational career of Roshni after her marriage particularly whether she was continuing with her studies or not. The story that he received one telephone call from Roshni before one week of her death is not there in the FIR.

**30.** On reading and rereading the FIR (Exhibit 1) it appears that the main grievance of the father of the victim was ill-treatment both mental and physical, non-giving of

proper food and not giving her proper medical assistance at the time of need and that articles of marriage was not up to the choice of the accused appellant and as such more money was demanded. It is true that in the FIR this PW 1 instructed the scribe to write that the parents in law of the victim and the appellant No. 1 used to put pressure on him to get one shop room at Singur in favour of appellant No. 1 so that he (appellant No. 1) could start a business of Castrol Mobil but this de facto complainant did not agree to that. We like to reiterate that in the FIR the alleged demand for that shop room was made not only by the appellants but also the mother of the appellant No. 1. This story of extra dowry in the form of a shop room is not there in the inquest report (exhibit 2/1) which was prepared in the presence of this witness where it is only mentioned that the victim was tortured for further dowry.

**31.** Let us now turn our eyes to the evidence of PW-2, who is the bhagnipati of PW-1 and another important witness of this case. He deposed that at the time of marriage hard cash of Rs. 2 lakh was demanded including other articles of marriage. However, cash was reduced to Rs. 1,50,000 and gold ornaments weighing 50 bhories were given as dowry including other articles of marriage. He also deposed regarding the displeasure shown to the victim regarding the presentations and this witness asked for settlement. He deposed as regards some daily wear and tear in family life like other families including use of telephone etc. by Roshni. This witness exaggerated from the version of PW-1 to say in his evidence in chief that after some days the appellant No. 1 claimed one shop room for starting his business including Rs. 2 lakh as the working capital for which PW-1 took some time. This is the total departure from the evidence of PW-1 as well as the FIR. The FIR is very candid in this regard that the demand for shop room was negated by PW-1 instantly. PW 1 did not depose regarding the demand for shop room except the denial of suggestion in his cross-examination.

**32.** This witness deposed in his cross-examination that such demand for the shop room at Singur for starting the business of the appellant No. 1 was made after one and half year of social marriage. We get flavour of financial solvency of the accused persons from the cross-examination of this witness when he deposed that there were four landline telephones in the house of the accused persons and he had to admit that Roshni had access to such telephones and her relations used to talk to her on her mobile or on the landlines. It is clear from the evidence of this witness that before two months of her death Roshni used to attend her classes and also used to attend her private tutor and during such period she had visited the house of this witness at least seven or eight times during that period that is after the social marriage till her death.

**33.** It is also apparent from his evidence that Roshni used to go to her private tutor alone and her husband (appellant No. 1) used to take her from there by his bicycle and on some occasions the appellant No. 1 used to attend the house of this witness and from there he used to take her to their (appellant No. 1) house and on those occasions this witness used to arrange for light refreshment for the appellant No. 1. It is clear from the evidence of this witness that before one week of her death the victim came to the house of this witness for the last time when she went to the private tutor's house and on that occasion her husband came at his house for the last time. He could not even deny that the relation of Roshni with her husband and other relatives of her father-in-law's house was not cordial.

**34.** Now let us turn our eyes to the evidence of PW-3 who is another bhognipati of PW-1. We are to concentrate regarding the demand of dowry in the form of shop room at Singur. On this point the salient features of the evidence of this witness are that on 20.12.2004 and after two or three days of that Roshni and her husband came



to his house to see him after his discharge from the hospital and at that time Kaushik asked him to arrange for a room so that he could start a business of Castrol at Singur Natun Bazar and he requested him to do the needful and since this witness requested him to wait for some days but to no effect and then Kaushik left his house. It is clear from his evidence that Roshni stayed at his house for some days and thereafter she went back to her father-in-laws house. We like to say that during such stay the victim did not state anything to this witness regarding torture on her and that even if there was merciless torture on her she would not have returned back to her father-in-laws house taking the risk of enduring such torture.

**35.** This witness also deposed that before seven days of her death the victim came to his house again but alone and she disclosed that there was torture on her and that was unbearable. But this witness allowed her to go back to her in laws house without taking up the matter with the police. In his cross-examination he further illustrated regarding that shop room when he deposed "Kaushik wanted to get a room in Singur Natun bazar registered his name and he requested him to take effective steps in this regard. Thus this witness has not supported the prosecution case that the appellants had eyes on the shop room of PW 1. The interest of appellant No. 1 was to purchase one shop room at Singur for his new business and as such he requested PW 3 to look into the matter. This witness also deposed that at Singur Natun Bazar the father of Reshmi had some rooms and he further described that out of those rooms one room was let out, one room was used as godown and another room was used as shop room by the father of Reshmi. Thus, herein also he did not mention that Kaushik had eyes on the said shop room belonging to PW 1.

**36.** Now let us turn our eyes to the evidence of PW-5, who is the niece of PW-1 and as such the victim Roshni was her 'mamato didi'. On the torture point she deposed that she told her that her (the victim) in laws were not satisfied with anything and she had to do all the work in the matrimonial home where she was also subjected to physical torture by her husband. As regards the demand of dowry this witness deposed that the victim complained that her father in law and 'nanad' always demanded money from her father. She also deposed that the victim was not allowed to do anything with the water coming from pump. This witness advised the victim to take up the matter with "Mahila Samity". Similar allegations were levelled by this witness against the members of the in laws house whenever the victim met her.

**37.** In her cross-examination and in chief this witness deposed so many things regarding the victim but her cross-examination shows that she was not very keen regarding the affairs of the victim as she was not aware as to whether Roshni was going to school or private tuition, the name of her school, whether she was going to school from her in laws house etc. However, she had to admit that she was attending her private tuition from her in laws house. She was not aware whether the victim appeared in Class XI or XII class examination.

**38.** Learned lawyer appearing on behalf of the prosecution also banked upon the evidence of PW-10 that is the full brother of the victim. He was examined before the court on oath on 6th July, 2011 that is after a gap of more than three years of the examination of PW-1, his father who was examined on 19th March, 2008. This witness came to prove payment of articles of marriage given at the time of social marriage of the victim, the resentment in the house of the victim's in laws regarding the less amount of cash, gold ornaments being old, the cot was defective and so also the bedding. He also deposed that hearing this his sister was found crying. He deposed regarding the details of such torture but unfortunately most of the details were not stated to the Investigating Officer, Tarakeshwar Mukherjee (PW-15) and as such most of his evidence regarding said cruelty cannot be accepted and can be

treated as embellishment to cover up the story of mental torture, harassment etc. which could not be covered by other witnesses examined earlier. As regards the demand of the shop room the evidence of this witness may be quoted below "I came to know about the demand of said shop room from my sister. Even just before her death my said sister informed to my younger maternal-uncle, Pawan Sadhukhan of Sitalatala at Serampore about their said demand of shop. But my father did not agree to give the said shop room to them. As my father did not agree to give the said shop, my sister has been brutally killed by the members of her matrimonial home".

**39.** This Pawan Sadhukhan was not examined as a prosecution witness. The date, month or year of such demand was not stated by this witness (PW-10). Even in his evidence (PW 1) did not claim that there was any demand for his shop, the evidence of PWs 2 and 3, the two other vital witnesses also remained silent regarding such demand for shop room allegedly made by the accused persons and their evidence in this regard is contradictory, sketchy and cannot secure the confidence of this Court.

**40.** The evidence of this witness is also sketchy as to who actually placed such demand that is whether all the accused persons or the appellant No. 1. He subsequently tried to reconcile the matter to fix up the burden only on the appellant No. 1. This witness also claimed that her sister was assaulted by both the appellants and the mother of the appellant No. 1, however, no medical papers were proved to establish this fanciful claim and in the dead body even there were no marks of injury.

**41.** The claim of the defence that the family of PW-1 and PW-10 were not so much interested regarding the victim came out from the mouth of this witness when he deposed that he was not even aware that his sister took admission to another school leaving Netaji School. This is something unusual for a loving brother. From the evidence of the Investigating Officer it is clear that at the time of her death the victim used to study at Seoraphuly Chara Bagan School in Class XI. Thus, on reading and rereading of evidence of this witness we cannot come to this positive finding that the victim was tortured for the said shop room or that any mental or physical cruelty was perpetrated.

**42.** Now let us turn our eyes to the evidence of the Investigating Officer of this case that is PW-15, wherein the defence took so many contradictions to prove this aspect of embellishment during the trial. It may not be out of place to mention that statement under Section 161 Cr.P.C. is a guard against subsequent embellishment. Let us now say what are those vital contradictions. Regarding the evidence of Ashoke Kumar Sadhukhan (PW-2), this witness deposed that in his statement recorded by him Kaushik demanded Rs. 50,000 but not Rs. 2 lakh (as claimed on oath) and that Kaushik did not demand a shop room at Singur for starting his business and the story of teasing the victim by Kaushik was also not there in the statement.

**43.** As regards the evidence of Pradip Sadhukhan (PW-3), we get that this witness did not state that about 50 bhoories of gold ornaments of his sister was given to the victim or that Rs. 50,000/- was given at the time of registration of the marriage or that the victim's sister-in-law had shown her displeasure as to the gold ornaments or that the accused persons were displeased with the gold ornaments. The story made out by that witness (PW-3) on oath that some occasion she was not provided food properly was also missing in the statement made under Section 161 of Cr.P.C. Same is also true that his brother-in-law (PW-1) gave Rs. 25,000/- out of Rs. 50,000/- to them or that prior to seven days of her death the victim stated to the said witness about the causing of torture upon her by the accused.

**44.** Regarding the evidence of Chandana Sadhukhan (PW-5) some contradictions

were also taken wherefrom it is clear that Chandana did not state to the Investigating Officer that when she saw the victim at the time of 'Phollosajya' she saw tears in her eyes, or that she advised the victim to go to Mahila Samity or that the deceased told her about the torture showing the marks on her body or that the victim stated to this witness at the time of Kartik puja that "she was still alive and this was much".

**45.** Regarding the contradictions between the evidence on oath of Abhishek Sadhukhan (PW-10) the Investigating Officer candidly deposed that in 161 Cr.P.C statement the details of such torture were not there and the Investigating Officer specifically deposed that the said witness did not state to him that they had six rooms in the ground floor and the first floor was under construction or that the deceased called him over telephone on 21.03.2005 in the night or that Rs. 50,000 was given to Kaushik, the accused appellant.

**46.** Thus, the evidence on record is not constant to say that there was demand of dowry in the form of a shop room about which the learned prosecutor argued. In the FIR there is mention regarding this shop room as dowry but PW-1, that is the father of the victim, did not utter a single line that the shop room belonging to him was asked as dowry either by appellant No. 1 or by appellant No. 2. Regarding the suggestion given by the defence on this point in his cross-examination has been discussed while discussing the evidence of PW 1 by us. He deposed that some money was asked to be paid by the appellant No. 1 to start a new business. We have also discussed at length the evidence of PWs 2, 3, 5 and 10 regarding alleged claim of dowry. The payment of such huge amount to the tune of Rs. 6 lakh or Rs. 7 lakh as dowry at the time of the social marriage which culminated as such after the marriage was registered before more than four months is hard to believe considering the financial status of PW-1 about which we have discussed at length earlier. There are vital contradictions regarding the source of collection of such huge money. Thus the case started with a falsehood on the lips of the witnesses. Taking the risk of repetition we like to say the marriage was a love marriage, the registration was done long before the social marriage and not a single witness coming from the house of PW 1 could say on oath that after such registration of marriage the victim even stayed at her paternal house. There is no evidence that even after that so-called social marriage she came to live at her paternal house. It is apparent from the evidence on record that even after her marriage she continued her studies from her in laws house and also used to attend her private tuition from that house. Her in laws or her husband did not force her to discontinue her studies even though it was apparent that she was not a good student and they used to meet the cost of her educational expenses.

**47.** Even if for the sake of argument we accept the version of PW-1 that some money was demanded either Rs. 2 lakh or Rs. 1 lakh 50 thousand or Rs. 50 thousand by the appellant No. 1 to start a separate business from a separate shop room this cannot be considered as dowry. We can rely on the decision of the Apex Court as reported in MANU/SC/0483/2012 : (2012) 6 SCC 589 Rohtash v. State of Haryana wherein the Apex Court held that even if any demand was made by the appellant husband for establishment of his tailoring business the same demand cannot be termed as demand of dowry. The Apex Court also viewed with suspicion that only for non-fulfillment of that demand the ill treatment given by the appellant to his wife was not so grave that she had been driven to commit suicide. In the present case, we do not get that the torture on the victim (even if there be one) cannot match with the extreme step of suicide and that too when she was pregnant. The evidence on record shows that the relationship between the couple was more or less normal, the husband used to take her to tuition and used to take her back on some occasion even on his bicycle. The in laws house did not stop her education after her marriage. The

couple visited the relations house of the victim. The life insurance policies were opened in her name.

**48.** It is the tendency of the complainant party in such a case whenever their daughter commits suicide to impute on the family members of the in laws that the suicide was committed out of torture only. There may be several reasons for suicide, which very rarely come before the court. We repeat that there is not a single line in the entire evidence that the victim either with her husband or alone went to her parental house after their marriage. This strengthens the claim of the defence that the paternal house of the victim was not happy with their love marriage and as such their relationship was not good. The evidence of some alleged torture on the victim can be covered with the term "normal rough weather of a marital life." All these are not enough to attract the provisions of dowry death and even such alleged tortures cannot not cover the ingredients of Section 498A of the Code. There is no question of shifting the presumption on the appellants by attracting Section 113B of the Evidence Act. We must say the prosecution has failed to prove that the deceased was subjected to cruelty which was connected with dowry demands.

**49.** Regarding the suicide when the victim was pregnant we like to quote a portion of paragraph 26 of the judgment of the Apex Court in Sher Singh (Supra) "We have not lost sight of the fact that the deceased was pregnant at the time of her suicide and that only extraordinary and overwhelming factors would have driven her to take her life along with that of her unborn child. The fact remains that she did so. What motivated or compelled her to take this extreme and horrific step will remain a mystery, as we are not satisfied that the prosecution has proved or even shown that she was treated with such cruelty, connected with dowry demands, as led her to commit suicide....."

**50.** In this case it appears that the registration of marriage took place when the victim was just below 19 years and we have already discussed that the relationship between her and her paternal house was not good. Eighteen years plus or twenty one years (at which age she committed suicide) cannot be said to be the age in which such a girl or woman who has just crossed her teens would know the consequences or burden of marital life. Thus, she did not think about the gravity of the act of suicide.

**51.** In a case of Section 304B the standard of one woman, her age is also to be considered. While convicting one accused in a case under Section 304B or 306 the Court will keep in mind the standards of reasonable and practicable woman as compared to a headstrong and over sensitive one. On this point we can rely upon the judgment of Apex Court as reported in MANU/SC/1578/2011 : (2011) 14 SCC 448 (Asso v. State of M.P). Thus, we are not convinced that the death of the victim Roshni can be termed as dowry death.

**52.** As regards charge under Section 498A of the Code we are also of the considered opinion that hereinalso the prosecution failed to prove the charge lavelled against the appellants. The evidence led before the learned Trial Court on this aspect was very casual and common as in every case under Section 498A of the Code and as such the charge under Section 498A of the Code must fail and it fails. We have already mentioned that the learned Trial Court did not impose any separate sentence for the said offence even though he was pleased to convict the present appellants in respect of the said charge. As we are not accepting the finding of conviction there is no question of imposition of separate sentence.

**53.** We have gone through the judgment of the learned Trial Court and on reading

and rereading the same vis-a-vis the evidence on record we are at one with the learned defence counsel that evidence against some other accused persons, who were acquitted, was more or less same in spite thereof the Trial Court convicted the appellants, being the father-in-law and the husband of the victim, in respect of the charge punishable under Section 498A and 304B read with Section 34 of the Code. The appellant No. 1 husband was booked for the charge under Section 406 of the Code even though the evidence of PWs 1, 2 and 3 will go to show that such demand was made by other accused persons and the entrustment was not exclusive of the appellant No. 1. The charge under Section 406 has been abandoned by the learned prosecutor and need not be looked into by this Court. Another reason for not supporting the order of conviction 48 articles were seized from the in laws house of the victim on 05.06.2005 that is within thirteen days of the registration of the case and without any resistance were returned to PW-1 as per his prayer without any further claim being made.

**54.** It is the settled principle of law that if two views are possible one leading to conviction and the other leading to acquittal the Court must give benefit of doubt in favour of the defence.

It is hereby ordered,

that in view of discussion so long made this Court is of the opinion that the appeal must succeed and it succeeds. The finding of guilt, order of conviction and sentence as imposed by the learned Trial Court as against the appellants be set aside.

**55.** There will be no order as to costs.

**56.** Both the appellants are now in custody. The Additional Chief Judicial Magistrate, Serampore, District Hooghly is directed to issue release order to the concerned Correctional Home so that the appellants may be released forthwith. This being so the CRAN 1055 of 2015 is of no consequence now and is disposed of.

**57.** Criminal section is directed to forward a copy of this judgment to the learned Trial Court that is the court of the Additional District and Sessions Judge, Second Court, Serampore, within the District of Hooghly along with the lower court records by special messenger at the cost of the Court.

**58.** Let an extract of the ordering portion of this order be sent to the learned Additional Chief Judicial Magistrate, Serampore, for immediate compliance. It may be noted that this has reference to Serampore P.S. Case No. 19 of 2005 dated 22.11.2005 and GR Case No. 78 of 2005 of that court.

**59.** The articles seized as per the seizure list dated 05.06.2005 has already been returned to the de facto complainant, who is holding those articles in Jimma. The said return order is hereby confirmed and he is released from the Jimmanama but this portion of the order will be effective after the period of limitation is over.

**60.** Urgent certified copy be supplied to the parties as per rules.

**Nadira Patherya, J.**

I agree.

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