**HIGH COURT OF TRIPURA**
**AGARTALA**

**CRL.A(J) 41 of 2015**

Sri Saptam Sarkar,
son of Sri Jatindra Sarkar,
resident of village: Kalikamura,
PS: Sidhai, District: West Tripura,

**----Appellant(s)**

***Versus***

1. Smti. Sita Sarkar (Das)
wife of Sri Saptam Sarkar,
daughter of late Raj Mohan Das,
resident of North Ramnagar,
P.S: Airport, Dist: West Tripura

2. The State of Tripura,
represented by the Secretary, Home
Government of Tripura,
Agartala.

**---- Respondent(s)**

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|---|---|
| For Appellant(s) | : Mr. A. Acharjee, Adv. |
| For Respondent(s) | : Mr. S. Ghosh, Addl. PP |
| | : Mr. B. Majumder, Adv. |
| Date of hearing | : 03.03.2020 |
| Date of pronouncement | : 15.09.2020 |
| Whether fit for reporting | : YES |

**HON'BLE MR. JUSTICE S. TALAPATRA**

**Judgment & Order**

By means of this appeal, the convict, hereinafter referred to as the appellant, has questioned the legality of the judgment dated 28.11.2014 delivered in Criminal Appeal No.13 of 2014 by the Sessions Judge, West Tripura, Agartala. By the said judgment, the judgment and order of acquittal dated 10.12.2013

delivered in Case No.GR564 of 2008 by the Judicial Magistrate, West Tripura, Agartala (Court No.5) has been reversed and the appellant has been convicted for committing the offence punishable under Section 498A of the IPC. As consequence of the conviction as afrorestated, the appellant has been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.10,000/- with default stipulation.

**[2]** The genesis of the prosecution case can be located in the complaint (Exbt-1 series) filed by the wife of the appellant namely Sita Sarkar (PW-1) in the court of the Chief Judicial Magistrate West Tripura, Agartala being CR Case No. 55 of 2008. It appears that the Chief Judicial Magistrate did not take cognizance of the said complaint, instead he had directed the police to investigate the matter under Section 156(3) of the CrPC. In compliance thereof, Sidhai PS case No. 53/08 under Section 498A/34 of the IPC was registered and taken up for investigation.

**[3]** Having completed the investigation, the final police report under section 173(2) of the CrPC was submitted in the court of the Chief Judicial Magistrate, Agartala. Thereafter, the case was transferred to the court of Judicial Magistrate 1$^{st}$ Class (Court No.5) hereinafter referred to as the trial court for purpose of trial. Due cognizance was taken of the police report and the charge was framed against the appellant and his parents namely

Shri Jatindra Sarakr and Smt. Lalita Sarkar under Section 498A read with section 34 of the IPC for subjecting the complaint to cruelty in furtherance of the common intention of realizing unlawful demand of Rs.1,0,000/- as additional dowry. The appellant and the other co-accused pleaded innocence and claimed to be tried in accordance with law.

**[4]** In the complaint, PW-1 stated that her marriage with the appellant was solemnized on 12.08.2004 observing the Hindu rites and customs. At the time of marriage, the appellant and 'the other co-accused' were given motorbike, colour TV, gold ornaments, wooden furnitures and cash of Rs.10,000/-. The complainant lost her father when she was aged about 3 months. She was raised by her mother, Smt. Sandhya Rani Das (PW-7) who was a Group D employee being posted as Peon in the Police Training College, Narsingarh, Agartala. Initially, the accused persons started demanding a cash of Rs.10,000/- after elapse of three months of their marriage. But, her mother for serious financial stringency could not fulfil that demand. The parents of the appellant used to instigate the appellant in advancing the unlawful demand. Further, they used to tell her that their son would remarry unless the demands was fulfilled. The burning mosquito coil was pushed on various parts of her body. Even, in the winter night, she was compelled to take bath in cold water.

During the time of torture, her mouth used to gagged by towel so that she could not cry out to attract attention of anyone. The complainant was compelled to leave the matrimonial home on 23.04.2007. She informed the occurrence to the local elders but, the accused persons suppressing their real motive could persuade the complainant to rejoin the matrimonial home. The accused persons had assured that time that the complainant would not be treated with cruelty in future. The complainant had believed that assurance which turned out to be false within a short while when the accused persons again raised a demand of Rs.10,000/-. That time, she was refrained from going to her paternal home or meeting her mother and other relatives.

**[5]** On 28.12.2007, the complainant left the house of the accused persons on failing to bear the torture upon her. The appellant is a Tripura State Rifle (TSR) personnel and at the relevant time, according to the complainant, he was posted as Kachuchara TSR Camp. The complainant has also alleged in the complaint that the appellant used to warn that no complaint should be filed against him. On 02.01.2008 about 7 pm, the appellant entered inside the rented house of her mother and dealt her with a dao blow. Her mother was grievously injured. Immediately, a complaint was filed by the complainant in the Airport Police Station and a specific case was registered against

the appellant being Airport PS Case No. 01 of 2008 under Section 326/34 of the IPC. At the time hearing, the judgment and order dated 14.09.2008 delivered in CRL. REV.P 42 of 2015 was placed before this court by the counsel for the appellant without any objection from the counsel of the respondents. From the said judgment, it appears that the FIR that was filed by the complainant was registered being Sidhai PS case NO. 01 of 2008 under Section 326/34 of the IPC corresponding to case No.GR03 of 2014. After trial, the appellant was convicted under Section 324 of the IPC and he was sentenced to surfer rigorous imprisonment for a period of six months and to pay fine of Rs.2000/- with default stipulation. Even in the appeal by the appellant being Criminal Appeal No.31 of 2014 was dismissed upholding the said judgment and order of conviction and sentence returned by the Judicial Magistrate (1st Class), Court No.4 Agartala, West Tripura.

**[6]** The appellant had thereafter preferred a criminal revision petition under section 401 read with section 397 of the CrPC against the judgment dated 20.02.2015 delivered in Criminal Appeal No.31 of 2014 by the Sessions Judge, West Tripura, Agartala (the appellate court). This court without disturbing the finding of conviction had interfered with the sentence by converting it only to fine of Rs.15,000/- with direction to pay the fine money to the victim as compensation. Failure to deposit the

said fine would restore the sentence as awarded by the judgment dated 20.03.2014 by the appellate court.

**[7]** To substantiate the charge as framed under Section 498A/34 of the IPC, the prosecution adduced as many as 11 witnesses (PWs 1 to 11) including the complainant (PW-1) and her mother Sandhya Rani Das (PW-7). The prosecution has admitted in the evidence 7 documentary evidence (Exbts 1 to 4) and Exbts P1 to P3. Exbts P1 to P3 are excerpts of the statement recorded by the investigating officer under Section 161 of the CrPC in respect of PWs-8, 9 and 10 who did not support the prosecution case in the trial. After the prosecution evidence was recorded, the accused persons including the appellant were separately examined under Section 313(1)(b) of the CrPC when the accused persons reiterated their plea of innocence by stating that the complainant had filed the complaint falsely as she wanted the appellant to stay with her in her parent's house. On appreciation of the evidence, the trial court by the judgment dated 10.12.2013 delivered in the case No.GR 564 of 2008 acquitted the accused persons, the appellant and his parents, from the charge as aforestated on benefit of doubt having observed as follows:

> **"It is needless to mention that the burden of proving the guilt of accused rests in the context of section 498, IPC upon the prosecution and failure to discharge the onus of proof beyond the reasonable suspicion, it goes in favour of the accused person as per prevalent principles of Indian criminal laws. It appears from the evidence of PW-1 that the accused husband is a salaried person**

**serving in Tripura State Rifles (TSR) security force. So it raises reasonable doubt regarding the allegation of tortures and alleged consequence thereof for only demand of Rs.10,000/- by the accused in absence of cogent, consistent and adequate reliable evidence. Therefore, taking into account of the attending facts and circumstances of the instant case at hand including the above appreciation of evidence and discussions, this Court is of the considered opinion that the accused persons are entitled to the benefit of doubt. Accordingly, point no.(i) is decided in favour of prosecution and another point no.(ii) stands decided against the prosecution."**

**[8]** The said judgment has been reversed in the appeal filed by the victim (PW-1) under proviso to Section 372 of the CrPC being Criminal Appeal No. 13 of 2014 by the judgment dated 28.11.2014. The appellate court while returning the finding of conviction has observed that the method followed to record the contradiction is grossly defective as there is no note that attention of the witness particularly of PW-1 was drawn to the previous statement as recorded under Section 161 of the CrPC. In that context, the appellate court has observed that 'the first contraction' as recorded is that the victim did not state in her previous statement that her husband physically or mentally tortured her on demand of dowry. The contradiction not being properly recorded, it has been observed by the appellate court that it is difficult to say in fact such statement *"did not exist in the previous statement"*. However, the very complaint itself is based on such allegation. It has been also observed that after perusal of the entire evidence of PW-1, it reveals that except the first of two is contradiction by omission and the remaining contradiction is

confined to denial only. It has been observed by the appellate court as follows:

> **First of the two apparent contradictions is already mentioned, the second is that she did not state to the I.O that if she could not meet the demand of the accused, parents of the accused would marry him with another lady. The second apparent contradiction thus relates to accused Jatindra Sakar and Lalita Sarkar. Victim has specifically deposed that after about three months of the marriage her husband under the instigation of his parents tortured her physically and mentally for additional dowry. She has also specifically deposed that he used to torture her in presence of his parents and on several occasions and he put burning mosquito coil on her body and kept her under cold water in the pond situated near the house. This compelled her to leave the matrimonial home and take shelter in the house of her mother. She has deposed that on 23.07.2007, her husband, his parents and local people brought her back in the matrimonial home with assurance of the accused persons that they would not torture her again. But after few days, her husband and parents again started torturing her on the demand of Rs.10,000/-. This compelled her to leave the matrimonial home lastly on 28.12.2007. All these specific depositions could not be shaken in the cross examination. Undertaking the discussion of the depositions of PW7 learned Court below at para 7 has observed that PW7 in her deposition by stating that her daughter went back to her matrimonial home twice made an exaggeration and embellishment because PW-1 herself has stated that she went back only on 23.07.2006. In this regard, it is to be stated that the Court was required to examine whether there was corroboration of the deposition of the victim and whether she exaggerated anything. Some exaggerations of allegation by a witness cannot be over emphasized."**

**[9]** The appellate court did not approve 'adverse inference' as drawn on applying provision of Sections 114(g) of the Indian Evidence Act. Even the appellate court did not approve of discarding the evidence of PW7, the mother of the victim, on the ground that her statement was mostly improved in the trial. It has been observed that on perusal of deposition of PW7 as a whole, it would reveal that Habul Sarkrar, a Panchayet member had knowledge of the dispute and torture on the victim, Habul Sarkar

(PW-8) had turned hostile to the prosecution case. Even PWs 5, 6, 8, 9 and 10, the independent witnesses for the prosecution, turned hostile. In that backdrop, the observation of the trial court that the prosecution case was finally based on "interested witnesses and such witnesses cannot be believed". The appellate court disapproved the reason provided by the trial court to disbelieve the evidence of the victim, her mother and her uncles being related to each other, inasmuch as their evidence was not supported by PWs 5, 6, 8, 9 and 10, the independent witnesses. Thereafter, the appellate court on discussing the testimonies of hostile witnesses has observed that their evidence cannot be given weightage out of the proportion. Thereafter, the appellate court has inferred as follows:

> **Cumulative question now is whether non examination of the maternal uncle of the victim by the prosecution and lack of interest of PWs 5, 6, 8, 9 and 10 in the incident can be a ground to disbelieve the deposition of the victim, her mother and her two niece. More so, when PW2 Smt. Kalapana Sarkar, also an elected Panchayet Pradhan has deposed that one day, during night, Smt. Sita Sarkar along with her mother came to her residence along with other local people and informed that there was some disputes between Sita Sakar and her husband and hearing this, she instructed them to approach the elected Panchayet Pradhan of the Ward where the accused husband resided. It also cannot be lost sight of that PW8 though a Panchayet Member of the area of the accused husband, PW9 a next door neighbour of the husband and PW-10 a well acquaintance of the husband had no knowledge that the victim left the house of her husband on the issue of the husband disagreeing to stay in the house of his in laws."**

**[10]** Fundamentally, based on the reasons and disagreements, as noted above, the appellate court allowed the

appeal by reversing the judgment and order of acquittal as returned by the trial court. The appellate court has observed that a duty is cast upon the appellate court in an appeal even from the judgment and order of acquittal to re-appreciate the evidence in order to find out whether there are evidence to show that the accused "really committed any offence or not." Interference in the appeal against the order of acquittal is permissible only when there are compelling and substantial reason for doing so. However, the acquittal of the parents of the appellant has not been disturbed by the appellate court on observing that those accused persons had sufficiently explained in the course of examination under Section 313(1)(b) of the CrPC *"How their case is totally separate from that of their son. Interestingly, they did not make any statement that their daughter in law wanted her husband to stay at her father's house and denial of this by their son resulted in filing the case against them. However, their acquittal by the learned Court below cannot be questioned and this is not also stressed in the appeal."*

**[11]** Mr. A. Acharjee, learned counsel appearing for the appellant has submitted while criticizing the judgment and order of conviction that the reasoning of the appellate court is grossly untenable inasmuch as there is no evidence that the appellant ever treated PW-1 with cruelty as defined in Section 498A of the

IPC. According to Mr. Acharjee, learned counsel that the appellate court has failed to find out any material which satisfy the requirement of two explanations provided below Section 498A of the IPC. Moreover, the appellate court without providing any reason discarded the plea of the defence that when the appellant being a rifle man of Tripura State Rifles (TSR) was posted at a far-flung area, how he could indulge in such act of cruelty regularly. Unless that is so, when PW-1 was treated with cruelty by the appellant has to be proved by the prosecution to the hilt. While discarding the finding of the trial court in this regard, the appellate court has failed to provide an overwhelming reason. That apart, no independent witness has supported the case of the prosecution, even though the prosecution has claimed of their role.

**[12]** Mr. Acharjee, learned counsel has contended that the essential ingredients of the offence that the victim was subjected to cruelty has not been proved inasmuch any willful conduct could be attributed to the appellant. In support of his contention, Mr. Acharjee, learned counsel has relied on a few decisions of the apex court. In **Sakatar Singh and Others vs. State of Haryana** reported in **(2004) 11 SCC 291** the apex court has observed that when there arises contradiction between the two witnesses and the nature of the contradiction is not trivial, such contradiction

strikes at the root of the prosecution case. Mr. Acharjee, learned counsel has submitted that from the close reading of testimonies of PWs 1, 3, 4 and 7, it would be apparent that their statements are not congruous rather is smudged by apparently inconsistent statements. In **Girdhar Shankar Tawade vs. State of Maharashtra** reported in **(2002) 5 SCC 177** apex court has dwelled onto the nature of proof required for establishing cruelty under Section 498A of the IPC. It has been observed therein if suicide is ruled out, then in that event, applicability of Section 498A can be had only in terms of Explanation (b) thereto which in no uncertain terms requires existence of harassment of the woman and the statute itself thereafter clarifies that it is not every such harassment but only such harassment where cruelty has occurred for failure to meet any unlawful demand or transfer of any valuable property or valuable security, or on account of failure by her or any person related to her to meet such demand is material. If there is total absence of any of the requirements of the statute in terms of Section 498A, no judgment of conviction can be returned for committing offence punishable under the said section.

**[13]** Having considered the relevance in the context, the following passage from **Girdhar Shankar Tawade** (supra) is extracted hereunder:

> **"18. A faint attempt has been made during the course of submissions that explanation (a) to the Section stands attracted and as such no fault can be attributed to the judgment. This, in our view, is a wholly fallacious approach to the matter by reason of the specific finding of the trial Court and the High Court concurred therewith that the death unfortunately was an accidental death and not suicide. If suicide is left out, then in that event question of applicability of explanation (a) would not arise - neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the willful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498- A and not dehors 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 a 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 306, 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. Presently, we have no such evidence available on record."**
>
> **[Emphasis added]**

**[14]** Mr. Acharjee, learned counsel has relied on a decision of the apex court in **Mohanlal Gangaram Gehani vs. State of Maharashtra** reported in **AIR 1982 SC 839** in respect of bringing out contradiction or on drawing inference on the proved contradiction under Section 145 of the Indian Evidence Act. Even though the said report it is remotely connected with the contention of Mr. Acharjee, but the law as laid down has some ramification in the present case. It has been observed in **Mohanlal Gangaram Gehani** as under:

> **"13. It is obvious from a perusal of Section 145 that it applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding. If the maker of a statement is sought to be contradicted, his attention**

> **should be drawn to his previous statement under Section 145. In other words, where the statement made by a person or witness is contradicted not by his own statement but by the statement of another prosecution witness, the question of the application of Section 145 does not arise. To illustrate, we might give an instance- suppose A, a prosecution witness, makes a particular statement regarding the part played by an accused but another witness B makes a statement which is inconsistent with the statement made by A, in such a case Section 145 of the Evidence Act is not at all attracted. Indeed, if the interpretation placed by the High Court is accepted, then it will be extremely difficult for an accused or a party to rely on the inter-se contradiction of various witnesses and every time when the contradiction is made, the previous witness would have to be recalled for the purpose of contradiction. This was neither the purport nor the object of Section 145 of the Evidence Act."**

**[15]** On the aspect of granting benefit of doubt when from the evidence as placed by the prosecution, two views can be culled out, the view which favours the accused should be taken, Mr. Acharjee, learned counsel has placed his reliance on **Upendra Pradhan vs. State of Orissa** reported in **(2015) 11 SCC 124** where the apex court has observed having taken note of the impact of such emergence in an appeal from the order of acquittal, as under:

> **"14. Taking the first question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P. : (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:**
>
> > **"30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.**
> >
> > **31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. <u>Presumption of innocence is a human right. Such presumption gets stronger when</u>**

**a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of M.P.: (1996) 10 SCC 79, Mahabir Singh v. State of Haryana : (2001) 7 SCC 148, and Shailendra Pratap v. State of U.P. : (2003) 1 SCC 761) which had not been adhered to by the High Court.**

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**33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimlabai although is shrouded in mystery *but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld."***

**(Emphasis Supplied)**

**15. The decision taken by this Court in the aforementioned case, has been further reiterated in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:**

**"7. ……..Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. *The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent*. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P. : (2002) 4 SCC 85). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.**

**(Emphasis Supplied)**

**16. Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be considered and we discard the opposite view which indicates his guilt.**

**17. We are also of the view that the High Court should not have interfered with the decision taken by the Additional**

**Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Courts revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, that:**

> **"…… <u>In absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on reappreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view.</u>**

**This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge.**

**[Emphasis added]**

**18. The *second* ground pleaded before us by the counsel for the accused appellant, that the testimonies of P.W. 1 and P.W.7 should not have been considered, as they were interested witnesses, holds no teeth. We are of the opinion that the testimonies of interested witnesses are of great importance and weightage. No man would be willing to spare the real culprit and frame an innocent person. This view has been supplemented by the decision of this Court in Mohd. Ishaque v. State of West Bengal, (2013) 14 SCC 581."**

**[16]** Mr. S. Ghosh, learned Addl. PP appearing for the respondent No.2, the state of Tripura, has submitted that there is no illegality or infirmity in the judgment of conviction dated 28.11.2014 and order of sentence dated 02.06.2011 as passed by the Sessions Judge, West Tripura, Agartala. For reversal of the judgment of order of acquittal the Sessions Judge has placed overwhelming reasons showing that appreciation of the evidence by the trial judge was not only improper, but was perverse. Mr. Ghosh, learned Addl. PP has clearly submitted that even though the state did not prefer any appeal against the judgment and

order of acquittal, but it supported the victim's appeal filed under Proviso to Section 372 of the CrPC.

**[17]** Mr. Ghosh, learned Addl. PP has submitted that the presumption of fact cannot over-shadow the fact established by evidence. In order to presume certain facts, the trial judge has unceremoniously discarded the evidence of PWs-1 and 7 in particular. The Sessions Judge by the judgment dated 28.11.2014 has interfered the judgment delivered by the trial court and placed is appreciation of fact in terms of the established canons. Hence, no interference is called for.

**[18]** Mr. B. Debnath, learned counsel appearing for the respondent No.1 has adopted the submission advanced by Mr. Ghosh, learned Addl. PP and contended that the judgment dated 28.11.2014 is well reasoned and hence, no interference is warranted at all. In support of his contention Mr. Debnath, learned counsel has relied on three reports of this High Court and Gauhati High Court. In **Gautam Das and Anr. vs. State of Tripura** reported in **(2011) 6 GLR 671** , the Gauhati High Court while dilating the law of contradiction and omission as referred under Section 162 CrPC has observed that a statement recorded under Section 161 CrPC can be used by the accused keeping in mind the provision of Section 162 CrPC. The investigating officer, while examining a witness is required to take into consideration all relevant materials

to go in favour of or against the accused under the provision of Section 162 of the CrPC. If any witness is called by the prosecution in the inquiry or trial whose statement is reduced into writing any part of the statement if duly proved, may be used by the accused, and with permission of the court, by the prosecution may contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872.

**[19]** Proviso to section 162 of the CrPC enables the accused to use the statement made to the police officer in the course of an investigation and under Chapter 12 of the CrPC only to contradict in the manner as provided by Section 145 of the Evidence Act. His attention must be drawn to the part of the statement made before the police which is contradictory to his statement made before the court on oath. At the time of giving evidence, if he admits his earlier statement, no further proof is required but if he denies his earlier statement then, the particular portion of the statement which is contradictory is to be brought on record with the denial statement made by the witness. For the purpose of taking confirmation when the concerned police officer is examined, he is to be confronted to the veracity of the statement of the witness. The burden of confronting a witness on such contradiction with the previous statement is on the accused. However, the prosecution also can confront a witness in the said manner, with the

permission of the court having regard to the procedure as laid down in Section 154 of the Evidence Act. It is not the duty of the trial judge to record such contradiction. A trial judge's duty is only to record the statement of the witness as regards his previous statement. If the witness denied to have made such statement, attributed to him, the trial judge is required to put the statement to the police officer who claimed to have recorded that statement, and, if the police officer asserts that the such statement was made by the witness to him, then the trial judge shall mark the relevant part of the statement which the police officer asserted to have made by the witness as the document in the record of evidence. Whether the statement which is so marked was or was not made by the witness to the police officer, is a question of fact which has to be decided by the trial judge while appreciating the evidence. It has been further observed in **Gautam Das** (supra) as follows:

> **"15. What follows from the above discussion is that the counsel for the prosecution or the defence, as the case may be, for the purpose of contradicting a witness with his previous statement, is required to bring that portion of the statement, which is sought to be contradicted, to the notice of the witness, inviting his response to such previous statement If he admits his previous statement, no further proof is necessary, if he does not admit, the practice, generally followed, is to admit it subject to proof thereof by the Investigating Officer. <u>If the Investigating Officer, relying on the case diary, asserts that the witness, in question, did make the statement (which is contradictory to the statement made in the Court on oath), the court shall, then, mark the same as an exhibit</u> Similarly, if an omission, on the part of a prosecution witness, is sought to be proved, then, the defence or the prosecution, as the case may be, may suggest to the**

> **concerned witness that he did not make, at the time of giving statement before the Investigating Officer, any such statement, which he has made in the Court Such suggestion, if denied by the witness concerned, is to be proved by asking the Investigating Officer, during his examination, as a witness to the effect as to whether the witness concerned had made such a statement before him or not. If the Investigating Officer relying on the case diary, answers in the negative, then, the statement made by the witness, on oath, in the Court, can be treated as omission."**
>
> **[Emphasis added]**

**[20]** On the same question of law, a decision of this court in **Tukan Sharma and Ors. Vs. The State of Tripura** reported in **(2016) Cri.L.J 4019** has been relied on. Having referred to **Tahsildar Singh and Another vs. State of Uttar Pradesh** reported in **AIR 1959 SC 1012** it has been observed that (i) Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining counsel shall put the part or parts of the statement which is contrary to what is stated in evidence. The trial court should follow the procedure, prescribed by law in recording the 'contradiction' and should not take any easy course to record its observation in respect of interaction while recording the deposition of the witness and (ii) unless the contradiction is proved by putting it to the person, who recorded the statement, it will be of no value unless the witness is specifically questioned about his previous statement and is not given an opportunity to explain such statement, such contradiction cannot be taken note of.

**[21]** Mr. Debnath, learned counsel has contended that the law to record contradiction has not been observed while bringing out the contradiction from the testimonies of PWs 1 and 7. Hence, those contractions cannot be taken as proof. Another decision of this court in **Sukha Ranjan Das vs. State of Tripura** reported in **(2018) 2 TLR 716** has as well been relied on by Mr. Debnath, learned counsel appearing for the respondent No.1 (the victim) where this court had occasion to observe having placed reliance on various reports of the apex court as follows:

> **39. Discrepancies, contradictions, embellishment, and improvements are bound to be there with the long passage of time. How best to appreciate their testimonies stand explained by**
> **the Apex Court in Yogesh Singh (supra) in the following terms:**
>
> > **"29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. <u>It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission.</u> [See Rammi alias Rameshwar v. State of M.P., (1999) 8 SCC 649; Leela Ram (dead) through Duli Chand v. State of Haryana and Another, (1999) 9 SCC 525; Bihari Nath Goswami v. Shiv Kumar Singh & Ors., (2004) 9 SCC 186; Vijay alias Chinee v. State of Madhya Pradesh, (2010) 8 SCC 191; Sampath Kumar v.**

> **Inspector of Police, Krishnagiri, (2012) 4 SCC 124; Shyamal Ghosh v. State of West Bengal, (2012) 7 SCC 646 and Mrittunjoy Biswas v. Pranab alias Kuti Biswas and Anr., (2013) 12 SCC 796)].**
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> ******  *****  ******
>
> **44. In the present case, we do not find any major contradiction either in the evidence of the witnesses or any conflict in medical or ocular evidence which would tilt the balance in favour of the respondents. The minor improvements, embellishments etc., apart from being far yield of human faculties are insignificant and ought to be ignored since the evidence of the witnesses otherwise overwhelmingly corroborate each other in material particulars."**
>
> **40. At this juncture, we may also observe that the alleged acts of cruelty were never reported to the police, but then this, according to us, would again not render the prosecution case to be vulnerable, for we notice the parties to hail from a rural areas, apart from the fact that it was a love marriage and perhaps, prudently, the parents would have wanted the parties to live happily, without much altercation and adjust with the passage of time.**
>
> **41. It is not that in every case, non-disclosure of factum of cruelty to the members of the society, neighbours or relatives who are not close can be fatal. Each case has to be seen in the attending facts and circumstances. [See : Monju Roy and others,(2015) 13 SCC 693 (2 Judge Bench); Union of India v. Sanjeev v. Despande, (2014) 13 SCC 525 (2 Judge Bench)]."**

**[22]** Mr. Debnath, learned counsel has further submitted that merely because the witnesses are related to each other that cannot be ground to lessen the probative value of the statement. It has been observed in **Sukha Ranjan Das** (supra) that the relative witnesses are always interested in ensuring successful completion of trial culminating into conviction, but as per law laid down by the apex court, if it is otherwise found to inspire confidence being consistent with the prosecution case, such testimony is not required to be discarded for the reason that those

have come from interested witnesses. The law is well settled in this regard. It has been further observed in that report as under:

> **"Mere relationship is not sufficient to discredit the witness, more so in the absence of any material, even prima facie indicating the intent of false implication. Relatives do have interest in ensuring successful culmination of trial for after all they are the aggrieved persons but then this in itself cannot be said to be a factor of not accounting for their testimonies which, in any event, has to be appreciated and scrutinized in accordance with the provisions of the Evidence Act. [See: Masalti v. State of Uttar Pradesh, AIR 1965 SC 202 (4 Judge Bench); State of Rajasthan v. Kalki and Anr., (1981) 2 SCC 752(3 Judge Bench); Jitender Kumar(supra); Yogesh Singh (supra); Arjun and Anr. v. State of Chattisgarh,(2017) 3 SCC 247 (2 Judge Bench); Kuna alias Snajaya Behera v. State of Odisha,(2018) 1 SCC 296 (2 Judge Bench)].**
>
> **The Apex Court has used the words <u>"intrinsically reliable or inherently probable" being the essential ingredients for relying upon the testimonies of such witness.</u> [State of Uttar Pradesh v. Ballabh Das and Ors., (1985) 3 SCC 703 (2 Judge Bench)]."**
>
> **[Emphasis added]**

**[23]** Mr. Debnath, learned counsel has emphatically submitted the defence has failed to place the materials to show that there had been intention of PWs- 1 and 7 to falsely implicate the appellant.

**[24]** For purpose of appreciating the rival contentions as projected by the parties, it would be appropriate to make a short survey of the evidence as recorded in the trial. Before embarking on the said exercises, it may be noted that while the judgment and order of acquittal is reversed, the appellate court has to overcome the consolidated presumption of innocence.

**[25]** PW-1, Smt. Sita Sarkar, wife of the appellant lodged the complaint which culminated in registering of Sidhai PS case

No. 53/08 under Section 498A/34 of the IPC. She has stated that she was married on 12.08.2004 with the appellant as per Hindu rites and customs. She has also narrated that at the time of marriage her mother gave away gifts. After marriage, she led a happy married life for a period of three months. Thereafter, at the instigation of her parents-in-law, the appellant started afflicting torture both physical and mental "on several occasion" for "additional dowry". The said demand could not be fulfilled. The appellant used to torture in front of her parents. Even the parents-in-law threatened her that if she failed to bring the amount from her parental home, they would arrange remarriage of the appellant. On several occasions, the appellant tortured her "by means of posting burning coil "on her body and sometimes he kept her under the cold water of the pond situated near the house. The appellant used to gag her mouth by pushing a towel into her mouth so that she could not raise hue and cry . Having failed to bear such torture, PW-1 left the matrimonial home and took shelter in the house of her mother. Thereafter, she has stated as follows in the trial:

> **"Some time kept me under the cold water of the pond situated near by the house. When the accused person used to torture me he used to put the towel inside my mouth to that nobody heard my cry. Due to the unbearable/intolerable torture I compelled to leave the matrimonial home and took the shelter in the house of my mother. Thereafter on last 23.07.07 my parents of my husband along with local people and husband brought me back in the matrimonial home taking the assurance they would not again torture on the basis of the cash money.**

> **But after lapse of few days the accused husband along with the parents of my husband again exercise the torture upon me. ON the basis of a illegal demand of cash money amounting to Rs.10,000/-. In this regard, when I failed to bring the said demanded cash money the accused husband specifically stated me that I would not the given the opportunities when they will be coming in my house. Subsequently finding no any other alternative/intolerable torture I left the matrimonial on 28-12-07 and came back to my mother house. <u>It is a fact my husband used to serve in TSR during that period and he was posted at Kachuchara TSR camp. The accused husband threatened with dire consequence stating that if any criminal case against him he would kill me in a very short time."</u>**
>
> **[Emphasis added]**

**[26]** PW-1 has further testified in the trial that on 02.01.2008 at about 7 pm, the appellant came to their house with another person and assaulted her mother (PW-7) causing grievous injury. On her complaint, a specific case has been registered of which this court has already noted. At her instance the complaint (Exbt-1) and five colour photographs of her marriage (Exbt P1 series) have been admitted in the evidence. In the cross examination which was carried out on a subsequent day, PW-1 has failed to recollect whether the appellant physically and mentally tortured her on the demand of dowry". She has even failed to find out such statement when the previous statement as recorded under section 161 of the CrPC was shown to her. Even she has stated that she could not recollect whether she has stated to the investigating officer or the police officer that she could not fulfil the illegal demand of the appellant or the parents of the appellant told her that they would give remarriage of the appellant with another lady. While the previous statement was shown, she

could not find out such statement as well. She has admitted in the cross examination that she did not state to the investigating officer that her husband tortured by pushing her inside the water of the pond but the witness has volunteered that she has reflected those acts in her complaint. She has further admitted in the cross examination, she did not submit any sort of medical records of her treatment to the investigating officer or before the court. But in the complaint she made the allegation of unlawful demand. The suggestions as put to her, contrary to what she has stated in the examination in chief were all denied.

**[27]** PW-2, Kalpana Sarkar was the Panchayet Pradhan when she deposed in the trial. She vouched about the marriage of the appellant and PW-1. She has stated that on one evening, PW-1 and PW-7 came to her residence with local people. Thereafter, she has stated in the trial as follows:

> **"And informed me that some dispute took place between the informant and her husband. Thereafter I instructed them to approach the elected Panchayet member of the ward when the accused husband used to stay. Subsequently I heard that the dispute resolved with the help of Panchayet member Habul Chakraborty. I further heard that even after the settlement of the dispute the accused husband used to torture upon his wife. Due to the unbearable shelter of the accused. Saptam Sarkar the informant compelled to take shelter in her mother house."**

Even the appellate court has placed serious reliance on the testimony of PW2 for purpose of corroboration, but the defence could not get the opportunity to cross examine her as she

was never produced by the prosecution for the said purpose, after the cross-examination was reserved by the trial court.

**[28]** PW-3, Manoranjan Das, the uncle of PW-1, has vouched the fact of marriage and additionally stated that he had borne all expenditure of the marriage of PW-1. Since the marriage is not in dispute by the defence, the evidence relating to that fact may not be extensively referred. He has stated that for 3-4 months, PW-1 spent happy married life with the appellant. Thereafter, the appellant being instigated by her parents raised a demand for Rs.10,000/- as the additional dowry and subjected PW-1 to both physical and mental torture as the demand was not met. Failing to bear such torture, PW-1 took shelter in her parental home. He was also informed by PW-1 about the violence she faced in the matrimonial home. For poverty, her mother could not fulfill the demand. Thereafter, he has stated that after counseling on intervention of the local people and relative, the matter was resolved. The appellant and his parents gave assurance that they would not torture PW 1 on demand of cash. But after a lull of 3-4 months, again PW-1 was subject to torture, she left the matrimonial home on 28.12.2007 and did never go back. On 02.01.2008, the appellant with two other persons appeared in the rented home of her mother at Narsingarh and attacked her mother. In the assault, her mother received grievous

hurt. On complaint filed by PW-1, a specific case was registered against the appellant. PW3 also witnessed the seizure of photographs of the wedding by the seizure list (Exbt-2) and he admitted such seizure in his presence. He denied the suggestions extended to him to confront his statement in the examination-in-chief, but PW3 has stated in the trial he had stated to the investigating officer that PW-1 took shelter in her mother's home being tortured by the appellant and his parents. When his previous statement was shown, he could not find out any such version. But he has denied that he did not state such fact to the investigating officer. He has further asserted that he has narrated to the investigating officer the fact of counseling but no such statement is found in his previous statement.

**[29]** PW-4, Samir Das is another uncle of PW-1. He has replicated the initial statement made by PW3 in respect of marriage and unlawful demand of additional sum as dowry. He has stated of instigation by the appellant's parents. According to him, PW-1 took shelter in her mother's home. A village meeting was held at the intervention of the local Panchayet member for mitigating the dispute. As the appellant and his parents had assured that they would not torture PW-1, PW-1 returned to her matrimonial home. On the last part of December, 2007, PW-1 again returned to the matrimonial home having been tortured by

the appellant and his parents. After 4-5 days of her return, the appellant raided their home and assaulted her mother with a dao causing grievous injury on her person. A case was registered against the appellant. He was also the witness of seizure of the wedding photographs. He has denied the suggestions put to him contrary to what he had stated in the trial. In order to record the contradiction with his previous statement his attention was drawn but he could not find out such statement. At the intervention of the local Panchayet member, the accused person gave assurance that they would not torture PW-1. But he has denied that he had made false in the trial.

**[30]** PW-5, Anita Deb, denied to have any knowledge regarding the case. The similar suit has been followed by PW-6, Minu Deb

**[31]** PW-7, Sandhya Rani Das is the mother of PW-1, the victim. She has stated that her husband had passed away when PW-1 was three month's old. She has also stated during the marriage, valuable articles were gifted. About three months, the appellant and the PW-1 lived happily but after that, the appellant and "other in laws relatives" started torturing her physically and mentally on demand of cash money, but as the said demand could not be fulfilled, they had increased torture on her daughter. Thereafter, she has narrated a story that one day her brother,

who had been living in the neighbourhood of the appellant had informed her over phone that PW-1 was being severely tortured after bolting the door. Having received such information, she and her landlord Anjan Deb rushed to the matrimonial home of PW-1 by a hired vehicle. They had approached the Panchayet Pradhan, Kalpan Sarkar and apprised her of cruelty being faced by PW-1. Kalapana Sarkar advised them to meet Habul Chakraborty, a member of the ward where the house of the appellant is situated. She has also stated by that intervention of the Panchayet member, Habul Chakraborty the dispute was settled. But she did not state that the appellant or his parents assured of not torturing PW-1.

**[32]** After about 5-6 months from such settlement, again for unlawful demand of cash money, PW-1 suffered torture. The appellant put burning coil on her person. The appellant used to keep her in wet condition in cold night. The appellant used to push towel into her mouth while torturing her. Having failed to bear such torture, she took shelter in her home. When her daughter returned, she saw her torn wearing apparel. One uncle of the appellant namely Thakurdhan Sarkar came to mitigate the dispute and admitted that for fault of the appellant, the dispute could take such shape. At the initiative of Habul Chakraborty and Thakurdhan Sarkar, a meeting was arranged where the appellant and her in

laws, relatives admitted their fault and in the course of discussion they gave assurance of not torturing PW-1 again. On the basis of such assurance, her daughter went to the matrimonial home. But the torture did not stop. Finally, her daughter left the matrimonial home and took shelter in her home. One day, the appellant and his brother, Pramode Sarkar appeared folded hand and they gave assurance that no torture would be perpetrated. That time also she allowed to the victim to go with of the appellant [this episode has not been stated by PW-1]. For about 3 months, they were happy but again the torture started and her daughter returned home. She has also stated that on 02.02.2008, Saptam (the appellant) being armed with dao attacked and her mother. Her daughter ran away. In the meanwhile, the appellant dealt with blows by thou on the person of PW-7. She was immediately taken to GBP hospital. A criminal case was registered against the appellant.

**[33]** In the cross examination, she was firm about her statement but admitted that she did not get the victim examined by any doctor for treatment of her daughter. She has denied the facts as suggested by the defence. She has stated in the cross-examination that she could not remember whether she had stated to the investigating officer that her daughter informed her about the whole incident of torture, but denied the suggestion that her

daughter did not inform about any incident of torture. She has admitted that she did not state to the investigating officer that since her daughter could not fulfil the demand of money, the accused had increased the rate of torture on her daughter. She has restated about her visit on one evening to the matrimonial home of PW-1 with her landlord Anjan Deb. All the suggestions put to her were denied.

**[34]** PW-8, Habul Chakraborty the Panchayet member, at his instance it is claimed and reported that the dispute was mitigated, was declared hostile against the prosecution case. With leave of the court, he was cross-examined by the prosecution but he did not make any statement as reflected in the previous statement, but he has admitted during the cross-examination by the defence that he was the member of the gram Panchayet, but he did not attend the marriage of the appellant and the victim.

**[35]** PW-9, Tapan Chakraborty has also turned hostile and with leave of the court he was cross-examined by the prosecution, but without any result.

**[36]** PW-10, Dilip Debnath had turned hostile and with the leave of the court he was cross-examined by the prosecution. Nothing could be extracted from the cross examination of that witness.

**[37]** PW-11, Rakhal Mitra is the investigating officer and he has stated briefly how he had investigated the case. He has admitted the seizure of photographs of the wedding as referred before. He has admitted in the cross-examination that there is no explanation from the complainant why the complaint could not be filed early. He has also admitted that during the investigation he did not check the duty register of TSR Camp of Kachuchara where the appellant was posted at the relevant time. He has identified several houses around the place of occurrence, the house of the appellant. For example, he has stated in the cross-examination that 'D' denotes house of Dhanu Dey and 'E' denotes house of Bhanu Dey whereas 'G' indicates house of Habul Chakraborty, but he did not reflect their names in the index of the hand sketch map. He has admitted that he did not examine Thakurdhan Sarkar, maternal uncle of the appellant who took initiative to reconstruct the marriage of the PW-1. It is apparent that regarding the so-called contradiction, no reference has been made to the investigating officer. As stated before, it is the primary duty of the trial Judge to place the statement of the witness to the investigating officer for his comment, confirmation or denial. But, in case of inadvertence, the defence may draw attention of the trial Judge.

**[38]** It may be noted at the outset of appreciation of the recorded evidence that the victim did not challenge the judgment dated 28.11.2014, whereby acquittal of the co-accused (parents of the appellant) has been affirmed. Thus, the element of instigation or abetment against the co-accused are taken out consideration. This court is of the opinion that the evidence can be appreciated either through the looking glass of the consolidated presumption of innocence or by the ordinary canons of appreciation. It is pertinent to note that there may be some contradiction in the deposition of the witness, but not of substantive nature. We cannot lose sight of the fact that when a witness deposes in the trial after a long gap from the date of occurrence, minor variations to their earlier statement are but natural (see **Ramappa Halappa Pujar and Others vs State of Karnataka** reported in **(2007) 13 SCC 31**). It is equally true that the fact that the witnesses turned hostile by itself does not negate the prosecution case. But when the independent witnesses turned hostile, whether there is any ring of truth in the prosecution case would depend on the remaining gamut of the evidence. Even the testimony of the hostile witness can be used for purpose of corroboration depending on whether part of their of evidence which sought to be relied on flowed naturally. As it is well entrenched in the criminal jurisprudence, there can be of two

categories of hostile witnesses viz, wholly unreliable and party reliable. It would depend on the trial judge to scrutinize the nature of their evidence.

**[39]** In **Chandrappa and Others vs. State of Karnataka** reported in **(2007) 4 SCC 415**, the apex court for appreciation of the evidence in an appeal from the judgment and order of acquittal has observed that while sitting in appeal from the judgment of acquittal, the appellate court is first required to seek an answer to the question whether the finding of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable . If the appellate court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate court hold reasons that the order of acquittal cannot at all be sustained in view of the infirmities, it can reappraise the evidence to arrive at its own conclusion (see also **Ramesh Babulal Doshi vs. State of Gujarat** reported in **(1996) 9 SCC 225)**.

**[40]** Having appreciated a series of precedents, the apex court in **Chandrappa** (supra) has laid down some general principles for the appellate court to be followed while dealing with an appeal against an order of acquittal. Those principles as culled out are as follows:

> **"1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;**
>
> **(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;**
>
> **(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.**
>
> **(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.**
>
> **(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."**
>
> **[Emphasis added]**

**[41]** While paraphrasing the reasons provided in the judgment of the appellate court, it has been noticed by this court that the appellate court has observed that the contradictions were not properly recorded and it is not discernible whether such statement did exist in the previous statement or not. In this regard, this court has scrutinized that the way the contradictions have been recorded by the trial courts is not satisfying. It has been already noted that no part of the contradiction has been

placed for confirmation by the investigating officer (PW-11). Thus, except the admission of omission, no other part can truly be utilized as the legal evidence. For that reason, the admission of PW-3 that he did not state to the investigating officer that after 3-4 months of the marriage, the appellant under instigation of her parents demanded a sum of Rs.10,000/- and on such demand, they tortured PW-1. But the remaining part, where in the cross examination, the defence succeeded to show at least that important statement as made by PW-3 were not available in his previous statement as recorded under Section 161 of the CrPC. That 'contradiction' cannot be treated as contradiction as the said part for its very nature was not shown to the investigating officer for its confirmation. Even the defence did not make any endeavour in that regard.

**[42]** Similarly, the contradiction as sought to be extracted from PW 4, another uncle cannot as well be treated as contradiction for not being confirmed by the investigating officer. But what would be the impact of the statement that PW-1 has made in the cross-examination as reproduced before stating that she could not recollect whether she had stated to the investigating officer that her husband had physically and mentally tortured her on demand of dowry. Such statement was not even found in her statement recorded under Section 161 of the CrPC, but the said

statement was not shown to the investigating officer. The other statement whether she had stated to the investigating officer that as she could not fulfill the illegal demands of the appellant, the parents of the appellant uttered that they would give him in remarriage was not found in her previous statement. Even the said statement was not placed for confirmation by the investigating officer. This fact is only relevant in respect whether the statement was made to the investigating officer or not. But, the statement that she did not state to the investigating officer that torture upon her by pushing her inside the water of the pond is a piece of legal evidence. Even admitted absence of her statement that she did not state to the investigating officer that if she had instituted a criminal case against her husband, he would kill her is a piece of legal evidence. Whereverm the confirmation was required but not taken from the investigating officer, those statements may not be acted on as contradiction.

**[43]** So far PW7 is concerned, the statement that she did not state to the investigating officer while recording, he was recording her statement that as her daughter could not fulfil the demand of money, the appellant and his parents had increased the rate of torture on her daughter is a legal piece of evidence as that was made admittedly for the first time in the trial. The appellate court by considering the testimony of PW-2, who did not

face the cross-examination, has committed a glaring illegality. As shown, except PWs 1, 3, 4 and 7, no witness supported the prosecution case at all even. Those witnesses are respectable citizens.

**[44]** PW-11 has categorically stated that PW1 had not disclosed the reason for delay. It has been already recorded that PW1 did not state that the appellant threatened her with dire consequences if any criminal complaint was filed against him to the police. But such statement has been made in the trial for the first time. It is a pure case of improvement in order to justify the inordinate delay of the complaint. One of the pertinent facts has been noted by this court that on 02.01.2008 PW-1 filed a complaint against the appellant in respect of assault on her mother (PW-7) being Sidhai PS case No.01 of 2008, even though the said complaint was filed in Airport PS. The complaint in the case in hand was filed after more than six months and there is no explanation at all in the complaint and in the evidence. The version that has been sought to be advanced is improved one. Moreover, neither PWs-1, 3, 4 nor PW-7 has given any specific date of torture. Even the maternal uncle who informed PW-7 of the torture has been withheld by the prosecution. The appellate court detested the presumption as drawn under Section 114(g) of the Evidence Act. But according to this court, drawing that

presumption cannot be held wholly unsolicited. There is no evidence to show that the appellant was not attending the duties in his place of posting, which is a far-flung area from his residence. Absence of definite date of torture, atleast a few, as a proof of repeated cruelty, thus has deprived the defence to show that at the relevant point of time, the appellant was at his place of posting. Even the investigating officer has clearly stated that he did not inquire into the fact whether the appellant was attending the duties in his place of posting or not.

**[45]** Having considered all the pieces of evidence cumulatively, the trial judge did not believe the prosecution case. In the considered opinion of this court, this is a possible view even if the other view is possible. In an appeal form the judgment and order of acquittal, the appellate court could not have disturbed the finding of acquittal inasmuch as while deciding an appeal against the acquittal even though the power of appellate court is no less than the power exercised while hearing appeals against conviction and it can proceed to appreciate the evidence afresh, but one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. The appellate court below would not have reserved the decision of the trial court, merely because a different view is

possible. The appellate court is supposed to bear in mind that there is a consolidated presumption of innocence in favour of the accused. The accused is entitled to get benefit of doubt. The said principle is quite pervasive for determining an appeal from the order of acquittal.

**[46]** Having observed thus the judgment and order respectively dated 28.11.2014 and 02.06.2015 are interfered with and set aside. The appellant is therefore entitled to acquittal inasmuch as for quashing the judgment and order of the appellate court below, the judgment and order of the trial court are resurrected. Hence, the appellant is acquitted from the charge under Section 498A of the IPC on benefit of doubt. Since the appellant is on bail by virtue of the order dated 25.02.2016 delivered in IA 151 of 2015 arising out from this appeal, the sureties are discharged from their respective liabilities.

In the result, the appeal stands allowed.

Send down the LCRs forthwith.

**JUDGE**

*Dipak*