

MANU/WB/1051/2018

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## IN THE HIGH COURT OF CALCUTTA

C.R.A. No. 608 of 2013 (renumbered as C.R.A. No. 68 of 2017) and C.R.A. No. 765 of 2013

Decided On: 22.06.2018

Appellants: **Somenath Jana and Ors.**  
**Vs.**

Respondent: **State of West Bengal and Ors.**

### Hon'ble Judges/Coram:

*Joymalya Bagchi and Ravi Krishan Kapur, JJ.*

### Counsels:

*For Appellant/Petitioner/Plaintiff: Milon Mukherjee, Sr. Adv. and Biswajit Manna*

*For Respondents/Defendant: Saswata Gopal Mukherjee, Ld. P.P., Saryati Datta and Ranabir Roy Chowdhury*

## JUDGMENT

### Ravi Krishan Kapur, J.

**1.** Both these appeals arise from the same order and are taken up for hearing in terms of the earlier orders passed by this Hon'ble Court. These appeals are directed against the judgment and order dated 20 July, 2013 passed by the Learned Additional Sessions Judge, Second Court, Barasat, North 24 Parganas in Sessions Trial No. 05(07)/2011 arising out of Sessions Case No. 07(01)/2011. In CRA 608 of 2013, the appeal is preferred against the conviction of the appellant husband, Somenath Jana under section 498A/304B of the Indian Penal Code. The connected appeal being CRA No. 765 of 2013 has been preferred against the same judgment and order insofar as it acquits the other accused persons i.e. the in-laws of the deceased daughter-in-law. By the impugned order the appellant husband has been convicted of offences punishable under sections 498A and 304B of the Indian Penal Code and has been directed to undergo rigorous imprisonment for 3 years for the offence under section 498A and to pay a fine of Rs. 2000, in default of payment of fine to suffer rigorous imprisonment for 3 months. The appellant husband has also been sentenced to rigorous imprisonment for 7 years and has been directed to pay a fine of Rs. 5000, in default to suffer further rigorous imprisonment for 6 months of the offence punishable under section 304B Indian Penal Code. Both the sentences have been directed to run concurrently.

**2.** Shorn of details, the case of the prosecution against the appellant husband and the other accused persons being his parents Namita Jana and Kanailal Jana i.e. mother-in-law and father-in-law of the deceased respectively is to the effect that the appellant husband was married to one Minakshi and she was subjected to cruelty and dowry demand by her husband and her in-laws. It is alleged that as a result of torture she died and her death was caused by hanging amounting to dowry death for which all three accused persons have been charged under section 498A and 304B of the Indian Penal Code (IPC).

**3.** On 14 October, 2010, Bijay Krishna Chowdhury, father of the deceased Minakshi

lodged a complaint with Barasat P.S. on the basis of which the First Information Report was drawn up and Barasat P.S. Case No. 1848 dated 14 October, 2010 was registered. In the written complaint filed by Bijay Krishna Chowdhury it was alleged that his daughter was married to the appellant husband and out of their wedlock two sons were born. After six months of their marriage Minakshi was subjected to torture, cruelty and dowry demands. The specific allegation in the complaint is that Minakshi was subjected to mental torture by her parents-in-law and Somenath never protested the torture by his parents. Minakshi would on occasions visit the complainant and his family. On 14 October, 2010 at 6.00 pm, the complainant was informed by the appellant husband that Minakshi has died due to hanging and he immediately rushed to the matrimonial house. On arrival, the complainant found Minakshi lying in the bed and a piece of curtain cloth was hanging on the ceiling fan. It is also alleged in the complaint that certain gold articles, furniture and cash etc., were given to the accused persons. It is an admitted fact and this would also be borne out inter alia from the post-mortem report that Minakshi had committed suicide and her death was caused due to hanging.

**4.** Upon receipt of the complaint the police investigated the case and submitted a charge-sheet against the three accused persons. The case was committed to the Court of Sessions, North 24 Parganas and thereafter transferred to the Additional Sessions Judge, Second Court, Barasat for trial and disposal. Thereafter, charges were framed under sections 304B and 498A of the IPC. All the accused persons pleaded not guilty and claimed to be tried.

**5.** In the course of trial, the prosecution examined 12 witnesses and a number of documents had been proved as exhibits. The defence did not adduce any evidence. The defence of the accused persons was one of innocence and false implication. In examination under section 313 of the Cr.P.C., after recording of examination was over the accused persons reiterated that they were innocent and they have been falsely implicated by the father of the deceased. In conclusion of the trial, the Trial Judge by a judgment and order dated 20th July, 2013 convicted and sentenced the appellant husband as morefully stated hereinabove. The other accused persons being the in-laws of the deceased were acquitted of the charges levelled against them.

**6.** Hence, the present appeals.

**7.** Mr. Milon Mukherjee, Senior Advocate appearing for the appellant in CRA 608 of 2013 strenuously argued that in convicting the appellant husband the Trial Court primarily held that the appellant was guilty of the offence under section 304B of the IPC. He further contended that there is nothing in the FIR to implicate the appellant husband. The only allegation against the appellant husband is that the appellant husband was a mute spectator to the alleged cruelty inflicted upon Minakshi. He further contended that the FIR is completely silent about the alleged demand of Rs. 50,000 in cash by the appellant husband or his family members. The entire story of the alleged demand, according to him, was belated and an afterthought. He further contended that the entire evidence of Debasish Bhattacharyya (PW-3) was neither credible nor believable. In particular, PW-3 had spoken about the demand for a four-wheeler car which was not even mentioned by the complainant, father of the deceased (PW-1). Similarly, the evidence of Sanjoy Chakraborty (PW-4) was also not credible. Significantly, PW-4 had deposed of a Salish (mediation) being held which was not a fact stated by the father of the deceased PW-1, either in the evidence or in the FIR. Mr. Mukherjee further contended that the evidence of all the witnesses in the locality was hearsay. Mr. Mukherjee laid much emphasis on the cross-examination of PW-3 (Debasish Bhattacharyya) who had stated that "our locality is known as Chakrabortypara. Myself and the men of the locality were annoyed with the accused

persons all along. We considered them as inferior class of people'. Mr. Mukherjee also contended that the entire evidence of all the local residents being PW-3, PW-4, PW-7, PW-8 and PW-10 respectively was neither credible nor convincing and should not have been given any weight. There is no case made out either in the FIR or the evidence of any demand for dowry or cruelty. There are no circumstances relating to torture and the entire case made out for dowry is weak, unconvincing and nebulous. According to Mr. Mukherjee, the Trial Court failed to appreciate that there was any incident of dowry demand or cruelty and the entire evidence in this regard is vague, bereft of particulars, based on surmises and conjectures. There was no case of torture, leave alone a continuous case of torture which was been made out either in the FIR or in the evidence of any of the witnesses.

**8.** Mr. Shiladitya Sanyal, Senior Advocate appearing for the appellant in CRA 765 of 2013 argued that the Trial Court erred in acquitting the in-laws i.e. Namita Jana and Kanailal Jana of the deceased. He submitted that there was sufficient evidence before the Trial Court to convict the in-laws of the deceased. He further submitted that both in the FIR and the evidence there was overwhelming evidence to convict the in-laws. He placed reliance on the FIR and the evidence to show that there were specific allegations of cruelty, torture and dowry demand made out against both the in-laws. He further submitted that his appeal should be allowed and the in-laws should also be convicted of the offences Under section 304B and section 498A.

**9 .** Before addressing the rival contentions of the parties I think it is vital to appreciate the evidence of the witnesses in this proceeding.

PW-1 (Bijay Krishna Chowdhury), is the father of the deceased Minakshi Jana and the de facto complainant in this case. He deposed that his daughter was married to the appellant on 19.01.2006. After her marriage she resided in matrimonial home with her husband and his parents i.e. Kanai Lal Jana and Namita Jana. Two sons were born to her out of wedlock. For the first six months, Minakshi and her husband were very happy and lived peacefully in the matrimonial home. He deposed that with the passage of time the accused persons namely Kainailal Jana and Namita Jana used to inflict cruelty on his daughter Minakshi Jana. In particular reference to the appellant husband, this witness further deposed that, the appellant husband did not protest to such torture, on the contrary, he followed their advise. He further deposed that, the accused persons used to ask his deceased daughter to bring some cash from her father's house. The accused persons on one occasion forcibly took cash of Rs. 50,000 from this witness. He further deposed that on 14 October, 2010 i.e. within four years ten months of their marriage he was informed by the appellant husband that Minakshi had hanged herself. He along with others went to the matrimonial house of Minakshi and found his daughter lying on the bed and a short cloth of curtain hanging from the ceiling. He lodged a complaint with the Barasat Police Station. He identified the signature on the FIR (Ext. 1), the police made an inquest over the dead body which was signed by him. He was interrogated by the police. In cross-examination, he deposed that he had not stated in the FIR the reason why any of the accused persons inflicted torture on the deceased. He had also not stated in the FIR that he had given Rs. 50,000 in cash to the appellant husband. He further stated that he had not complained to any authority or police station or any other social organisation of the infliction of torture or cruelty on his daughter by any of the accused persons. He further stated that he had not shown any kind of fear or threats the accused persons with the help of political leaders. He stated that the marriage between the appellant husband and Minakshi was negotiated and arranged with his permission. He further deposed that he was in regular touch with his daughter and she would visit him during the Puja holidays. He stated that his daughter last visited him during Puja vacations in 2010. He stated that his grand sons are now residing with him.

PW-2 (Lakshan Tripathi), was the Assistant Sub-Inspector. At the relevant point of time he was posted at Barasat P.S. He deposed that he received a complaint from Bijay Krishna Chowdhury and started Barasat P.S. Case No. 1848 dated 14.10.2010. He had filed the formal FIR (Ext. 1). He had performed the inquest over the dead body of the deceased Minakshi Jana. He identified the inquest report (Ext. 3). In cross-examination, he deposed, that he had no personal knowledge about the facts and circumstances of the instant case but knew the meaning of dowry.

PW-3 (Debasish Bhattacharyya), is a local resident of 'Chakrabortypara' where the deceased and the appellant were residing. He deposed that he knew Minakshi Jana. He deposed that Minakshi came to the matrimonial house which was near his house. He further deposed that Minakshi was not happy in her matrimonial house and was debarred from mixing with others by the accused persons. He deposed that he had heard sounds of crying of Minakshi Jana at night. He deposed that the accused persons used to ask her bring cash from her father's house. He deposed that the father of Minakshi had given a four wheeler car to the accused. He deposed that on the date of the incident he had come to know at night that Minakshi had hanged herself. He had identified all the accused persons in the dock. In cross-examination, he deposed that he came to know Bijay Krishna Chowdhury the father of the deceased on the date of the death of Minakshi Jana. He deposed that he had never threatened the accused persons nor made any financial demand on any of the accused persons. He deposed that the accused persons had come to the locality after purchasing their house. He deposed that his locality is commonly known as 'Chakrabortypara' and he and the other residents of the locality were annoyed with the accused persons all along after they shifted into 'Chakrabortypara'. He stated that "we considered them as an inferior class of people". He deposed that he had never filed any complaint nor gone to any authority in respect of torture or cruelty meted out to the deceased or the fact that she had been debarred from mixing with others by the accused persons. He further stated that he had not invited to the marriage of Minakshi and Somenath.

PW-4 (Sanjoy Chakraborty), is also a local resident and neighbour living in the same locality as the accused persons. He identified all the accused persons. He stated that he knew all the accused persons. He stated that he also knew the deceased Minakshi Jana. He stated that he had heard that Minakshi had committed suicide. He stated that the accused persons would torture Minakshi and demand cash and dowry. He stated that several salish (mediation) meetings were held in the locality over the issue of cruelty and dowry meted out to Minakshi on diverse occasions. He stated that he had tried to convince the accused persons not to commit any act of atrocities or make any demand cash or dowry upon Minakshi at such salishes. He stated that he had heard from the father of Minakshi that he had given cash to the accused. In cross-examination, he stated that, he had never told the police that he had heard from the father of Minakshi that he gave cash to the accused. He said that he was not the head man of his village. He stated he had not lodged any complaint in respect of the demands made out of Minakshi before any police station or any authority. He stated that he had been trying to evict the accused persons from the locality for a long time.

PW-5 (Pallab Chakraborty), is a colleague of Bijay Krishna Chowdhury and a signatory to the inquest report. He identified his signature on the inquest report.

PW-6 (Santanu Chowdhury), is a cousin of the deceased. He stated that Minakshi had been murdered by the members of her matrimonial house and he reiterated the case made out in the FIR.

PW-7 (Pinku Chakraborty), is a resident of the locality. He deposed that he knew Minakshi. He stated that he had heard that there was dispute between the deceased and Somenath which was due to the demand for money. He identified all the accused persons. In cross-examination, he stated that he was involved in an altercation on two or three occasions with the appellant husband in the locality.

PW-8 (Tapan Roy), is a local resident. He deposed that he knew Minakshi Jana as she belonged to the locality. He was present at the time of marriage. He came to know about the death of Minakshi "on the day of Saptami Puja in 2010". He deposed that he had heard that Minakshi had reported to the local club that she had been tortured on many occasions. He also deposed that he heard that her in laws used to pressurize Minakshi to bring money. He identified all the accused persons present in the Court. In cross-examination, he stated that he had a truck and coal business and he remained busy throughout the day.

PW-9 (Dr. Supriti Garai), is the doctor who was posted at Barasat District Hospital at the relevant point of time and conducted the postmortem on the dead body of Minakshi. She had deposed that the death had been caused due to hanging as stated in the post-mortem. She deposed that she had prepared the post-mortem report and identified the same (Ext. 7).

PW-10 (Ajoy Gopal Nag), is a local resident and was present at the morgue when the inquest was conducted. He had signed as the witness to the inquest report. He identified his signature in the inquest report.

PW-11 (Uttam Ghosh), was a police constable associated with the Barasat P.S and had carried the dead body of Minakshi to the morgue. He identified the dead body to the doctor for post-mortem examination.

PW-12 (Shib Sankar Singha), is the Sub-Inspector of police who was posted with the Barasat P.S at the relevant point of time. He had carried on the investigation in the case being Barasat P.S. case No. 1848 dated 14.10.2010. He had gone to the place of occurrence of death on 14.10.2010 and recorded the statements of the available witnesses on that day. He prepared a rough sketch map (Ext. 8). He had also seized a number of articles (Ext. 4 & 5). He arrested all the accused persons and had received all the documentation in connection with the case. He had recorded all the statements of the witnesses and conducted the investigation.

In the light of the aforesaid evidence and by a pain staking judgment the Trial Judge held that in the light of the evidence of PW-1, the father of the deceased duly corroborated by the evidence of the local residents being PWs-3, 4, 7 and 8, the charges under section 304B and section 498A of the IPC were proved against the appellant husband. Accordingly, the Trial Judge held the appellant husband guilty of the offences under section 304B and 498A.

**10.** At the outset, the relevant provisions of law for reference which arise for consideration in this case are extracted hereunder: section 304B, section 306, section 498A of the IPC, section 2 of the Dowry Prohibition Act, 1961 and section 113A and 113B of the Evidence Act, 1872.

S. 304B. Dowry death. - (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.

Explanation.- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961, (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall, not be less than seven years but which may extend to imprisonment for life.

**306.** Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

S. 498A. 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 purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

S. 2 Definition of 'Dowry'. In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage;

or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies.

S. 113A. Presumption as to abetment of suicide by a married woman. -When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

S. 113B. 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 has 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

**11.** In order to attract the provisions of section 304B of the IPC, commonly known as dowry death the main ingredients of the offence to be established are (a) that soon before the death the deceased she was subjected to cruelty and harassment in connection with the demand of dowry, (b) the death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal, (c) such death occurs within seven years from the date of her marriage, (d) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband, (e) such cruelty or harassment should be for or in connection with demand of dowry, and (f) it should be established that such cruelty and harassment was made soon before her death. *Kashmir Kaur v. State of Punjab*, MANU/SC/1092/2012 : AIR 2013 SC 1039. Therefore, in each case the Court has to analyse the facts and circumstances leading to the death of the victim and decide whether there is any proximate connection between the demand of dowry, the act of cruelty or harassment and the death. Similarly, to attract the ingredients of section 306 the basic constituents thereof are suicidal death and abetment thereof.

**12.** Furthermore, in making out a case under section 498A it is essential that a woman is subjected to cruelty which would include as defined in the Explanation (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

**13.** It is also well settled that in order for the presumption under section 113A of the Indian Evidence Act, 1872 to apply it must be shown that the husband or any of the relatives had subjected the deceased to cruelty soon before her unnatural death within 7 years of marriage. Similarly, for the applicability of section 113B the presumption shall only be raised on the proof of the following essentials requirements: (1) The question before the court must be whether the accused has committed dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under section 304B IPC). (2) The woman was subjected to cruelty or harassment by her husband or his relatives. (3) Such cruelty or harassment was for, or in connection with, any demand for dowry. (4) Such cruelty or harassment was soon before her death *Per Sinha, J. Tarsem Singh v. State of Punjab*, MANU/SC/8397/2008 : (2008)16 SCC 155 at paragraph 17.

**14.** Ordinarily, as a principle of law it is well settled "throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to...the defence of insanity, and subject also to any statutory exception." These are the classic words of Lord Sankey L.C. in *Woolmington v. D.P.P* MANU/UKHL/0004/1935 : 1935 Appeal Cases 462. There is a presumption of innocence in all criminal trials and the onus is on the prosecution to prove beyond reasonable doubt that the accused is guilty of the offence charged. The basic principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt. This principle has stood the test of time and has been repeatedly reiterated and affirmed by all Courts in India as well as the Hon'ble Supreme Court of India as recent as in the decision reported in *Krishnegowda and Others v. State of Karnataka* MANU/SC/0321/2017 : (2017) 13

SCC 98 at para 26. However, the charges in the instant case involve applicability of a reverse burden of proof on the accused in the form of statutory presumptions under section 113A and section 113B of the Evidence Act, 1872.

**15.** In order for the presumptions to apply it is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person or persons charged with the offence soon before her death. The presumption as to dowry death will be only triggered upon proof of the fact that the deceased had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that to in the reasonable continuity of death. Such proof is therefore a legislatively mandated pre-requisite before the statutory presumption of the offence of dowry death by the person charged there with can be activated.

**16.** A conjoint reading of the aforesaid provisions thus stipulates the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to invoke the presumption engrafted under section 113B of the Act against accused. Proof of cruelty or harassment by the husband or his relatives or the person charged with it is thus a sine qua non to inspirit the statutory presumption, to draw the person charged within the ambit thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused either of the aforementioned offences cannot be held guilty by taking refuge of the presumption to cover up the shortfall in proof.

**17.** As has been held in *Bajinath v. State Madhya Pradesh*, MANU/SC/1501/2016 : (2017)1 SCC 101 at paragraph 31 "The legislative premature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overreached to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty."

**18.** "The fundamental and vital question that the Court has to ask itself and find a solid answer to, is whether the evidence even preponderantly proves that the appellant had treated the deceased with cruelty connected with dowry demands. It is only if the answer is in the affirmative will the court have to weigh the evidence produced by the appellant to discharge beyond reasonable doubt, the assumption of his deemed guilt." *Sher Singh v. State of Haryana* at MANU/SC/0022/2015 : (2015)3 SCC 724 at para 25.

**19.** In the aforesaid backdrop, I will now examine the rival contentions of the parties, the evidence and the impugned judgment. It is a fact that in the First Information Report there are only vague and general allegations bereft of any particulars against the accused persons. It is true that as a proposition of law the FIR does not have to be an encyclopaedia of facts nor is it a substantive piece of evidence. However, in the present case the complainant i.e. father-in-law had not mentioned the factum of a cash demand of Rs. 50,000 being made in the FIR. It is a fact that in the FIR the complainant had mentioned that gifts in the form of cash aggregating to Rs. 50,000 had been given. But, this was in the form of National Savings Certificate and not cash. It is only for the first time in the evidence of the complainant (PW-1) that he mentioned that a sum of Rs. 50,000 in cash had been forcibly taken by the accused persons but there are no particulars, date or time of such demand. The other statement of PW-1 that "I used to give cash to my daughter for giving them" is vague and bereft of particulars. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the



death concerned. This ingredient is conspicuously missing in the case of the prosecution.

**20.** The evidence of all the local residents appears to be vague and suspicious and has to be assessed in the background of the fact that the locality where the accused persons used to reside was known as "Chakrabortypara" and the persons in that locality were annoyed with the accused persons all along and they considered them an inferior the class of people. The evidence of the local residents should therefore be looked upon with caution. On the one hand PW-3 deposed that the deceased was not allowed by the accused persons to meet with the local residents. However, in the same breath PW-3 goes on to depose that he had knowledge that the accused persons used to make demands from the deceased to bring cash from her father's house.

**21.** The evidence of the other local residents PWs-3, 4, 7, 8 and 10 is clearly based on hearsay. They all deposed that they had heard from others but not the victim, of the demands of cash being made from the accused persons. PW-3 did give an instance of a demand of a four wheeler car being made from the father of Minakshi but surprisingly this evidence was not corroborated nor substantiated by the complainant himself. Similarly, in the evidence of PW-4 (Sanjoy Chakraborty), a local resident, he deposed that there was several Salish (mediation meetings) held in the locality over the alleged issue of cruelty and dowry demands on several occasions. Ironically, this fact was also not brought out by the complainant either in the FIR or his examination-in-chief. It is to be remembered, that in the normal course, if a woman is being tortured and harassed and mediation meetings were being held in the locality she would not remain reticent of the state of affairs and would necessarily repeatedly inform her family this is especially before she takes the extreme step of taking her own life. This fact was also not substantiated by the complainant. There are several inconsistencies, contradictions and discrepancies with the statements of the complainant and the other witnesses who were primarily local residents where the deceased had her matrimonial house.

**22.** As stated by Bentham, "witnesses are the eyes and ears of justice." It is the duty of every court to consider the trustworthiness of evidence on record. In the light of the evidence in the instant case it is apparent. that all the local residents had an animosity or ill feeling towards the accused persons since the locality was commonly known as "Chakrabortypara" and admittedly the accused persons were outsiders to the locality. The evidence of all the local witnesses draws me to the irresistible conclusion that their evidence cannot be a basis to convict the appellant husband. I am of the view that the evidence of the local witnesses is filled with discrepancies, contradictions and improbable versions. As has been held by the Hon'ble Supreme Court of India in State of U.P. v. Anil Singh MANU/SC/0503/1988 : 1988 (Supp) SCC 686 it is not uncommon for witnesses to add embroidery to the prosecution story. There are inconsistencies, exaggerations and embellishments in the evidence of the local residents which makes their evidence unbelievable. Apart from the general allegations in the same tone ingeminated with parrot like similarity there is nothing in the evidence of the prosecution witnesses which substantiates the allegations of cruelty, harassment or dowry demand.

**23.** The Trial Court at internal page No. 20 of the judgment proceeds on the basis as if both the preconditions of cruelty and dowry demand had been satisfied. However, the evidence of the parties does not substantiate either of these conditions. The cumulative consideration of the overall evidence on the facet of dowry and cruelty is conspicuously absent. The prosecution in my view has failed to prove this indispensable component of the offences beyond reasonable doubt. The factum of

unnatural death in the matrimonial house and that to within 7 years of marriage is not ipso facto sufficient to bring home the charge under section 304B or 498A of the IPC against them. The benefit of the deficiency in proof logically would be available to the persons charged. The Trial Court failed to appreciate that there was no evidence brought on record to show that cruelty or harassment or dowry demand had been meted out to Minakshi. There is nothing on record to show that "soon before the occurrence" of her death there was any cruelty or harassment and only in that case the presumption could be made applicable. The Trial Court glossed over the proximity test which is an essential requirement for the sections to apply. I am thus of the view that the conclusions of the Trial Court do not constitute a plausible view on the materials on record and cannot be sustained.

**24.** On overall scrutiny of the evidence as a whole in my view the conviction of the appellant husband on the basis of the materials on record is not justified. To reiterate, the prosecution has failed to prove the crucial ingredients of cruelty, harassment or dowry demand by direct and cogent evidence thereby disentitling itself to the benefit of the statutory presumption available under section 113A or section 113B of the Act. For the aforesaid reasons, the appeal being CRA No. 608 of 2013 is allowed and the impugned order is set aside.

**25.** For the foregoing reasons, I am also of the view that there is no convincing or clear evidence which would implicate the accused persons of the offence under section 304B, 306 or 498A as stated hereinbefore. Needless to mention there is also a complete absence of the ingredient "soon before her death" in the present case. In order to attract the provisions of section 304B one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand of dowry". There is no evidence whatsoever that any of the accused persons had committed any specific act of cruelty or harassment soon before the death of Minakshi. Accordingly, the case made out by the prosecution is neither true nor acceptable.

**26.** In the light of the aforesaid discussion, I set aside the conviction and the sentence imposed on the appellant husband. The appellant husband is acquitted of the charges levelled against him. The appellant shall be released forthwith if he was not involved in any other case.

**27.** The appeal being CRA No. 765 of 2013 preferred against the judgment and order of acquittal is dismissed. For the reasons morefully narrated hereinabove, there is no direct or cogent evidence to implicate either of the in-laws in the death of the deceased. A cumulative consideration of the overall evidence on the facets of cruelty, harassment or dowry vis-À-vis the victim's in-laws leaves me unconvinced about the truthfulness of the charges qua the accused persons. There are no specific allegations of either cruelty or harassment or dowry demands in so far as the in-laws are concerned. As discussed earlier, there is also no proximate or live link between the vague allegations of cruelty, harassment or dowry demand and the death of the victim. This ingredient is conspicuously absent in the case sought to be made out by the prosecution. Both the appeals are accordingly disposed off.

A copy of the judgment along with the Lower Court Record be sent back to the Court below at once. The certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

**Joymalya Bagchi, J.**

I agree.

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