

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 957 of 2013

Mubarak Ansari & Anr.

-Versus-

The State of West Bengal

For the Appellant : **Mr. Niladri Sekhar Ghosh,
Mr. Shaharayar Alam.**

For the State : **Mr. Arindam Sen,
Mr. Imran Ali.**

Hearing concluded on : **07.05.2025**

Judgment On : **25.06.2025**

Prasenjit Biswas, J:-

1. This appeal is directed against the judgment of the learned Additional Sessions Judge, Fast Track 2nd Court, Islampur, Uttar Dinajpur in connection with Sessions Case No. 137 of 2011 (Sessions Trial No. 5 of 2012) corresponding to G.R. Case No. 475 of 2010, whereby the appellants-A1 and A2 were convicted for the offences punishable under

Section 304B and 498A of the Indian Penal Code and each of them was sentenced to undergo imprisonment for a period of seven years for the offence under Section 304B of Indian Penal Code; imprisonment for one year and a fine of Rs. 1000/- i.d. further S.I. for six months for offence punishable under Section 498A of Indian Penal Code.

2. Factual matrix of the case is that-

“On 26.05.2007 the father of the victim namely, Jafir Ansari lodged a complaint before the Chakulia Police Station against the four accused persons stating, interalia, that his younger daughter Rohimunnesea was married to the accused Mubarak Ansari as per Muslim Rites and Customs. At the time of marriage Mubarak was a student of high school and it was made clear that after the marriage of his daughter he would have to bear the cost of his son in law’s studies and his daughter would also work as labour and gift her earning to Mubarak to meet his cost of study. Father-in-law and mother-in-law of his daughter used to assault her and often said that she was not fit for their son. One year ago the father-in-law of the deceased assaulted her brutally causing injury on her head and body. This de-facto complainant lodged a complaint before the Kanki outpost and a ‘salish’ was held. This de-facto complainant had at that time given dowry for the sake of his daughter. On 26.05.2007 this complainant came to know that his daughter had died by

hanging in her maternal house and when went there by seeing the attitude of his daughter's in laws he believed that they were behind his daughter's death."

3. Over the complaint lodged by the de-facto complainant, the aforesaid police case was started against four accused persons. Police took up investigation and after completion of investigation charge-sheet was submitted against the accused persons under Sections 498A/304B/34 of the Indian Penal Code.
4. The charge was framed by the learned Trial Court against four accused persons under Sections 498A/304B/34 of the Indian Penal Code which was read over and explained to them, to which they pleaded not guilty and claimed to be tried.
5. The prosecution in order to prove his case against the accused persons examined fifteen witnesses and exhibited the documents. Neither any oral, nor any documentary evidence was adduced by the side of the defence.
6. The learned counsel for the appellants Mr. Niladri Sekhar Ghosh mainly contended that the evidence led by the prosecution does not inspire confidence that the appellants committed the alleged offences. According to him, there is absolutely no evidence so far as these appellants are concerned and as such, the Trial Court ought to have acquitted them for the charges framed against them. According to the learned counsel, the alleged offences do not satisfy the requirement of Section 498A and 304B of Indian Penal Code in view of the evidence that the post mortem report and the surothal (inquest) report clearly indicated that it is a case of

suicide and there is no other bodily injury in the person of the deceased. There is no such evidence brought by the prosecution that soon before her death, she was subjected to any physical torture to meet the ingredients of Section 304-B of the Indian Penal Code. It is contended by the learned Advocate that the gift given at the time of marriage will not come under the definition of dowry and the first part of the First Information Report would not come under the definition of dowry. Mr. Ghosh further said that the de-facto complainant who was examined as PW10 in his complaint claimed that on demand of dowry his wife sent 30 bhoris of silver bala and 10 bhoris of silver payel, but PW4 (the mother of the deceased), PW12 (brother of the deceased, PW2 (uncle of the deceased) never claimed about such incident in their deposition. The deposition of PW10/de-facto complainant did not get any corroboration by any of the witnesses and therefore, the allegation of demand of dowry has not been proved during trial and the prosecution failed to attract the ingredients of explanation (b) of Section 498A of the Indian Penal Code.

7. It is specifically stated by the learned counsel that there is no evidence brought by the prosecution that soon before the death of the victim she was subjected to any physical torture. According to the learned Advocate, the words used in Section 304B of the Indian Penal Code are that “soon before her death”, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband. It is said that PW10 clearly said that the victim was at her parental house and she came back the maternal house on 25.05.2007 and died on 26.05.2007 and as such, there

is no evidence that in between 25.05.2007 and 26.05.2007 the victim was subjected to torture by the appellants. Moreover, since she was at her parental house soon before her death, the question of torture by the appellants soon before her death does not arise at all.

- 8.** Mr. Ghosh further assailed that no witnesses have claimed during examination on which date the appellant no. 2 Khalil Ansari hit on the head of the deceased and she received head injury. There is no medical evidence on record to show that the victim ever received any head injury which falsifies the claim that one year prior to her death she was subjected to assault. The attention of this Court is drawn by the learned Advocate at the time of hearing to page no. 100 of the paper book regarding observation of this Court at the time of allowing the prayer of the appellants for suspension of sentence. In that order this Court observed that evidence on record shows that the victim house wife was assaulted by the appellant no. 2 a year prior to her death and the allegations with regard to assault on the victim soon before her death is not supported by medical evidence. It is said by the learned Advocate that PW8 who treated the deceased victim one year prior to her death has not stated anything that the deceased was assaulted by the appellants. The attention of this Court is further drawn to the examination of the appellant no. 1 under Section 313 of the Code of Criminal Procedure wherein he answered to the question put by the Trial Court that the victim was ill at that point of time and he took her to the doctor for treatment. Therefore, the learned counsel contended that the appellants/accused persons are not liable to be

convicted either under Section 304B or Section 498A of the Indian Penal Code. In respect of charge for dowry harassment, the learned Advocate contented that there is no clinching evidence which would establish that there was any harassment by the accused persons for dowry. Therefore, both the appellants are liable to be acquitted from the charges framed under Section 498A and 304B of the Indian Penal Code.

- 9.** On the contrary, Mr. Arindam Sen, learned Advocate appearing for the State contended that the evidences brought on record by the prosecution would clinchingly establish the case against the appellants and the Trial Court is justified in convicting and sentencing the appellants for the charges framed against them. He also pointed out that according to Section 304B of the Indian Penal Code if a woman commits suicide within seven years of her marriage, a presumption under Section 113-B of the Evidence Act has to be drawn and even as spoken to by the prosecution witnesses are taken into consideration, it clearly satisfies that ingredients of Section 304B and Section 498A of the Indian Penal Code and thus, justifies the conviction and sentence imposed by the Trial Court.
- 10.** I have considered the rival submissions advanced by both the parties on this criminal appeal.
- 11.** From perusal of the evidences on record, it is no doubt that the victim Rohimunnesa faced an unnatural death but the question is whether these appellants are responsible for the said unfortunate death of the victim.
- 12.** In order to convict an accused for an offence under Section 304B of the Indian Penal Code, the following essentials must be satisfied;

1. The death of woman must have been caused by burns or bodily injury or otherwise that under normal circumstances;
2. Such death must have occurred within seven years of marriage;
3. Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
4. Such cruelty or harassment must be for or in connection with demand of dowry.

13. It is only when the aforementioned ingredients are established by acceptable evidence such death shall be called “dowry death” and such husband or his relative shall be deemed to have caused her death. In a criminal case normally an accused can be punished for an offence of establishment of the commission of offence on the basis of evidence may be direct or circumstantial or both but a case under Section 304B of Indian Penal Code an exception is made by demanding provision as the nature of death of “dowry death” and the husband or his relative as the case may be is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of an ingredient of the said offence by convincing evidence. So, there is need for care and caution in scrutinising the evidence and in arriving at the conclusion as to whether all the above ingredients of the offence are put by the prosecution. In the present case, the learned counsel for the appellants could not dispute that the first two ingredients mentioned

above are satisfied. I have now to see whether the remaining two ingredients are also satisfied looking to the evidence on record.

14. PW10, Jafir Ansari who happens to be the father of the deceased in his evidence has stated that after his daughter's marriage she was well at her in law's house for one and half years. Thereafter, the accused persons began to create trouble for want of more dowry and the accused persons would not give her sufficient food and would give food not fit for human consumption. This witness further said that these appellants would demand more money from him through his daughter but the written complaint does not contain such statements as made by PW10. This PW10 further said that the accused Ruma @ Islam Ansari who is acquitted from this case would provoke to Mubarak and his father by saying "kill the woman", put her in sack and throw her in the pond cover with 'kochuripana' but it is not corroborated/said by any of the witnesses and PW10 stated first time in the Court. This PW10 further said that Ruma @ Islam Ansari used to provoke Mubarak and his father saying "this woman/ Rohimunnesa is illiterate" and if they give their son marriage at other place they would give them motorcycle. This statement is also not stated in the written complaint. At the time of giving deposition this PW10 further deposed that one day a person known to him gave news that his daughter had been seriously assaulted on her head and she was lying in injured unattended condition and then and then this witness went there by rickshaw and saw his daughter in injured condition at a distance of about 100 meter away from her in law's house and he took her to Kanki Hospital

for treatment and she was admitted there for treatment for 2/3 days. But this witness failed to mention any date on which the said alleged incident took place and no medical document were brought on record by the prosecution for the treatment of the victim in Kanki Hospital. In course of deposition this PW10 said 'salish' was held regarding the said alleged assault and as per decision of the 'salish' the victim was sent back to her in law's house giving 40 bhoris of silver ornaments. In the FIR, it is said by this de-facto complainant that 30 bhoris of silver bala and 10 bhoris of silver payel was given to the victim but there is no document to show regarding purchase of 40 bhoris of silver ornaments. Moreover, PW2, Hannan Ansari (uncle of the victim) and PW4, Basirunnisa (mother of the victim) never stated that as per decision of 'salish' the victim was sent back to her in law's house after giving 40 bhoris of silver ornaments.

15. It is further said by this witness (P.W. 10) that he sent his son to reach his daughter at her in law's house on 25.07.2007 and on 26.05.2007 at around 12 P.M. this witness got news that his daughter had died. So, it appears that on 25.07.2007 the victim was in his parental house and the alleged incident was happened on 26.05.2007. So, there is no scope of torture soon before her death. It is said by PW10 that he saw that his daughter's dead body was lying on wooden cot (chauki) and her left arm was broken and there were other injuries on her body and her hair of the head was removed from place to place. But it would appear from post mortem report that there is no indication of the injury sustained by the victim and inquest report is also silent to that effect. So, the deposition

made by this witness regarding injuries sustained by the victim is not supported by any medical document. It is said by this witness that in order to meet the demand raised by the appellants/convicts he gave sometimes Rs. 1000/- and sometime Rs. 700/- or sometime even Rs. 500/- as per capacity but it is not stated in the written complaint. This witness stated about giving of money to the victim on several occasions for the first time in the Court. Moreover, this witness stated that on the relevant date and time he saw his daughter in injured condition lying at a distance of 100 meters away from her in law's house but in fact, the dead body was within the house of the appellants and the other witnesses also said so. It is said by this PW10 that he intimated before the Police Out Post about alleged torture upon his daughter by the members of her in law's family for demand of dowry but it is only intimated and no written complaint was made before that Police Out Post regarding the alleged torture upon her by the in laws of the victim.

- 16.** PW4, Basirunnesa (mother of the victim) in his evidence has stated that before one year of death of her daughter, the father- in- law inflicted cut injury on her (victim) head and drove her by catching her hair up to one kilometre and left her in an abandoned place but this incident was happened one year back and not immediate before death of the victim. Moreover, this incident is not supported by any document and no complaint was lodged before any authority regarding the said incident as stated by this witness. In cross-examination, this witness stated that over the incident a 'salish' was held at the police station wherein the victim

wrote in a paper stating that she would talk and behave with her father in law and mother in law in good manner and respectfully. But this writing does not attract the ingredients of Section 498A of Indian Penal Code. This witness did not say anything about any demand of dowry made by the appellants as stated in the written complaint.

17. PW2 Hannan Ansari (uncle of the deceased) in his evidence has stated that after marriage the deceased Rohimunnesa was well at in law's house for sometimes. This witness further said that on several times 'salish' was held at the police station and police station took responsibility of both of them to maintain peace between themselves and one day deceased and the appellant no. 1 Mubarak Ansari came at Police Station then police asked how they were and in reply the deceased answered good and bad. This witness further said as on reaching in her in laws house she was assaulted brutally by Mubarak and 'salish' was held but this witness failed to mention the date on which this said 'salish' was held. This witness further said that one day father-in-law of the deceased assaulted the victim and dragged her by catching her hair and dropped her in a jungle, 100 meters away from house and thereafter, they brought the victim by van and got her admitted at Kanki Hospital. This witness failed to state the date on which the said incident took place and the prosecution also failed to submit any document regarding treatment of the deceased in the hospital after the alleged torture made by the father-in-law. In cross-examination, this witness stated that he did not see the victim's father-in-law assaulted her. This witness stated that he made statement before

police that PW10 (father of the deceased) used to give study cost of Mubarak, as on the relevant point of time Mubarak was a school student but giving study cost by the father of the victim to the appellant no. 1 cannot be said to be as dowry. It is said by this witness in cross-examination that over the alleged assault made by the father-in-law upon the victim was solved in a 'salish' which was held two years ago of the death of the victim.

18. PW12, Rajaul Ansari (brother of the victim) stated in his evidence that one day the father-in-law of the deceased (appellant no.2) hit on his sister's forehead in presence of her husband and dragged her at a distance of 100 meters away from the house catching her hair and left. But this incident was happened one year back and not soon before the death of the victim, This witness said that he went at in law's house of the victim and saw his sister's dead body which is contrary to the statement of PW10, wherein PW10 stated that before the death the victim was in her parental house and this PW12 was sent by PW10 to reach her daughter at her in law's house on 25.07.2007 and the incident was happened on the next date i.e. on 26.07.2007.
19. The de-facto complainant who was examined as PW10 in his complaint has stated that on demand of dowry his wife sent 30 bhoris of silver bala and 10 bhoris of silver payel but PW4 (wife of PW10), PW12 (brother of the deceased) and PW2 (uncle of the deceased) never claimed that PW10 called for his daughter and son-in-law and by understanding his wife sent them by giving 30 vori of silver bala and 10 vori of silver payel of her own. So,

the statement of the de-facto complainant does not get any corroboration from any of the witnesses.

- 20.** PW8, who treated the deceased victim one year before her death has not stated anything about any assault allegedly inflicted upon the victim by the appellants and this witness, treated the victim for the symptoms of pain over her body but not for pain out of assault. At the time of giving reply to the question put by the Court under Section 313 of the Cr.P.C. the appellant no. 1 replied that Rohimunnesa had personal problem and she was taken by him before the doctor.
- 21.** PW13, is an autopsy surgeon who stated that no external injury was found over the dead body of the victim and the opinion may be obtained for causing of death of the victim after receiving chemical examination of viscera.
- 22.** PW11, Khursid Ansari in his evidence has stated that a 'salish' was held near Kanki Station on 12.06.2006 wherein father-in-law of the victim admitted that he caused injury on the head of the deceased and this witness was present in that 'salish' held at police station but this incident was happened one year back of the death of the victim and not soon before the incident. This witness was not examined by the police during investigation and he was called in the Court and whatever he said that was made first time at the time of giving deposition. In cross-examination, this witness admitted that PW10, the de-facto complainant is his father-in-law. So, this witness is an interested witness and cannot be relied upon solely.

- 23.** PW6, Abdul Kayan Ansari and PW7, Subodh Kumar Byne, were declared hostile by the prosecution but nothing has been elicited from their cross-examinations which may support the case of the prosecution. PW7 did not say anything about demand of dowry by the appellant and only said about the 'salish'. In cross-examination, by the defence he stated that a 'salishnama' of dated 09.05.2007 was prepared, wherein it was written that both the victim and her husband would live together.
- 24.** PW15 is the Investigating Officer of the case and after completion of the investigation he submitted charge-sheet. This witness also did inquest and prepared report. It is said by this witness that he collected post mortem report and sent viscera to forensic lab for examination but he failed to collect the report. In cross-examination, this witness stated that in his preliminary enquiry in U.D. case it did not come to him that the victim was subjected to torture for demand of dowry. So, initially there was no allegation of torture for demand of dowry of the appellant.
- 25.** So far as the subjecting the deceased to cruelty or torture over the dowry demand by the appellants soon before her death is concerned, the prosecution witnesses have stated that the accused persons used to torment the deceased over the dowry demand but they have not stated about the time of tormenting the deceased for the aforesaid demand in the marital house. On a plain reading of the language used in Section 304B Indian Penal Code it is clear that in order to attract provision of Section 304B, the deceased must have been subjected to harassment of cruelty "soon before her death". In other words, there should be a perceptible

nexus between her death and dowry related harassment. It is never that harassment or cruelty was caused to the woman with a demand for at sometime if Section 304B is to be invoked, but it should happen soon before her death. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. Thus, having regard to the interpretation of the words “soon before her death” occurring in Section 304B Indian Penal Code it must be seen whether the death of the deceased in this case is only for the cruelty or harassment. It is said by the de-facto complainant (PW10) that the victim was at her parental house with the de-facto complainant and she came back to the matrimonial house on 25.05.2007 and died on 26.07.2007. There is no evidence brought by the prosecution that in between 25.07.2007 and 26.05.2007 the victim was subjected to torture by the appellants and moreover soon before her death she was at her parental house and the question of torture by the appellants soon before her death does not arise at all.

- 26.** There is no evidence on record to show that the victim was assaulted by the appellant no. 2 prior to her death and the allegation with regard to assault of the victim soon before her death is not supported by any medical evidence.
- 27.** I have already said that the de-facto complainant (PW10) stated in the written complaint that in order to meet the demand, made by the appellants his wife sent 30 bhoris of silver bala and 10 bhoris of silver payel but this statement is not corroborated by the mother of the victim (PW4),

the brother of the victim (PW12) and the uncle of the victim (PW2). It is stated by PW10/de-facto complainant in the written complaint that since from the marriage of his daughter he was giving the expenditure of education of the appellant no. 1 who was a student at that point of time and his daughter also bore the expenditure of the education of Mubarak by working as a labour in the field but education cost given by the PW10 or by the deceased cannot be said to be a dowry. The bald allegation by the de-facto complainant about demand of dowry and cruelty are hard to believe. To convict a person under Section 498A of the Indian Penal Code there seems to be evidence of proving that wilful conduct of a person lead a woman to commit suicide or to cause injury or danger to life or limb (mental or physical). Absolutely there is no evidence in this case to prove that the victim suffered any of these due to wilful conduct of the appellants. Similarly, there is no convincing evidence to prove that the appellants demanded dowry from PW10/de-facto complainant. This Court is of considered view that there is no legally acceptable evidence available to convict the appellants for their offence under Section 498A of Indian Penal Code.

- 28.** The Supreme Court in case of **Rajesh Chaddha Vs State of Uttar Pradesh**¹ has cautioned against the 'cruel misuse' of Section 498A IPC (cruelty cases) against husband and in-laws by the wife and her relatives,

¹ **2025 SCC OnLine SC 1094**

without concrete evidence. It has been observed by the Apex Court in the said report interalia that –

“14. The term “cruelty” is subject to rather cruel misuse by the parties, and cannot be established simpliciter without specific instances, to say the least. The tendency of roping these sections, without mentioning any specific dates, time or incident, weakens the case of the prosecutions, and casts serious suspicion on the viability of the version of a Complainant. We cannot ignore the missing specifics in a criminal complaint, which is the premise of invoking criminal machinery of the State. Be that as it may, we are informed that the marriage of the Appellant has already been dissolved and the divorce decree has attained finality, hence any further prosecution of the Appellant will only tantamount to an abuse of process of law.”

The Apex Court made these observations while acquitting the Appellant-husband of the charges under Section 498A IPC and Section 4 of the Dowry Prohibition Act for allegedly subjecting his wife to cruelty and dowry demands. It is apparent that the allegation of demand of dowry has not been proved during trial and also failed to meet the ingredients of explanation (b) of Section 498A of the Indian Penal Code.

- 29.** The Hon’ble Apex Court in **Major Singh and Anr. –vs- State of Punjab**² has been pleased to rule that when there is no evidence as to demand of

² (2015) 5 SCC 201

dowry or cruelty and that deceased was subjected to dowry harassment “soon before her death” by the appellant-accused the conviction of the appellants under Section 304B cannot be sustained and is liable to be set aside. It has further been pleased to rule that to attract condition under Section 304B Indian Penal Code prosecution who adduced evidence to show that “soon before her death”, the victim was subjected to cruelty or harassment. There must always be a proximate and live link between effects and cruelty based on dowry demand and death concerned.

30. The Hon’ble Apex Court in **Bajnath & Ors. -vs- State of Madhya Pradesh**³ has been pleased to rule that mere factum of unnatural death in matrimonial home within seven years of marriage is not sufficient to convict accused under Sections 304B and 498A, I.P.C. Only when prosecution proves beyond doubt that deceased was subjected to cruelty/harassment in connection with dowry demand soon before her death, presumption under Section 113B can be invoked. Section 113B of the Act enjoins a statutory presumption as to dowry death. Noticeably this presumption as well 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 charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable

³ (2017) 1 SCC 101

contiguity of death. A conjoint reading of these three provisions, thus predicates the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the *sine qua non* to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof. In order to bring home conviction under Section 304B of the IPC, it will not be sufficient to only lead evidence showing that cruelty or harassment had been meted out to the victim, but that such treatment was in connection with the demand for dowry.

- 31.** The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words “soon before her death” is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or

cruelty and her death, the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death.

- 32.** Hon'ble Supreme Court while discussing the object and purpose of Section 304-B I.P.C. and the scope of relevancy and meaning of phrase "soon before death of deceased" contained therein, in **Kans Raj vs. State of Punjab**⁴ has held as under :

" 15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or

⁴ (2000) 5 SCC 207

harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be “soon before death” if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.”

- 33.** In view of the aforesaid facts and circumstances and discussion made above I am constrained to hold that the prosecution has utterly and miserably failed to substantiate that these appellants demanded dowry and subjected the deceased Rohimunnese to torture over the said dowry demand soon before her death by adducing convincing, trustworthy and worth credence evidence. Thus, the prosecution has failed to substantiate the aforesaid important ingredients of Section 304B IPC beyond all reasonable shadow of doubt. Undoubtedly, Section 113B of the Evidence Act, the burden of proof of innocence of the accused persons shift upon them only on establishing the aforesaid ingredients of demand of dowry

and subjecting the deceased to cruelty or torture soon before her death by the accused persons but as the prosecution has utterly and miserably failed to establish the same, hence, in my considered opinion, the aforesaid burden does not stand shifted upon the shoulder of the appellants and the appellants are not bound to establish their innocence.

34. In the aforesaid facts and circumstances of the case and discussion made above in foregoing paragraphs, I find that the prosecution has utterly and miserably failed to bring home the charge levelled against the appellants beyond all reasonable shadow of doubts by adducing convincing cogent consistent and worth evidence ocular and documentary.
35. Hence, the impugned judgement and order of conviction passed by the learned Trial Court dated 27.09.2013 and 30.09.2013 passed in connection with Sessions Case No.137 of 2011 (Sessions trial No. 5 of 2012) corresponding to G.R. Case No. 475 of 2010 is set aside'
36. The appellants are acquitted to charge levelled against them. The appellants are discharged from the liability of the bail bond and set at liberty.
37. Accordingly, the Criminal Appeal being CRA 957 of 2013 is **allowed**.
38. Let a copy of this order along with T.C.R. be sent down to the Trial Court immediately.
39. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)