

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 445 OF 2009

BIKASH CHANDRA PAUL

VS

THE STATE OF WEST BENGAL

For the Petitioner : **Mr. Soumyajit Das Mahapatra, Adv.**
Mr. Somnath Adhikary, Adv.
Ms. Madhurai Sinha, Adv.
Ms. Upasana Banerjee, Adv.

For the State : **Mr. P.K. Datta, Adv.**
Mr. Asraf Mandal, Adv.

Last heard on : **04.02.2026**

Judgement on : **05.05.2026**

Uploaded on : **05.05.2026**

CHAITALI CHATTERJEE DAS:-

1. This appeal has been filed against the judgement and order of conviction dated June 06,09 and June10,09 passed by the Additional Sessions Judge1st Track Fast Court at Berhampore ,Murshidabad, convicting the appellant under Sections 498A/306/34 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for three years and pay a fine of Rs. 3000 in default to suffer further rigorous imprisonment for three months for commission of

offence punishable under Section 498A of the Indian Penal Code and to suffer rigorous imprisonment for a further period of 7 years and to pay a fine of Rs. 6000 in default to suffer further rigorous imprisonment for another six months for commission of offence punishable under section 306 of the Indian Penal Code.

Summary of the case

2. A complaint was lodged by the brother of the victim lady before the Inspector in-charge, Berhampore Police Station on 20.10.1994 against the present appellant alleging doubt over the husband and his sister to kill the elder sister of the de facto complainant. It was the case of the de facto complainant that his is elder sister; Smt. Swarna Paul got married with Bikash Chanderpaul in the year 1982, who was an employee of West Bengal Government working in the office of information and publicity Department, Government of West Bengal at Berhampore. Since after marriage he and his sister inflicted physical and mental torture upon his elder sister who intimated the matter frequently to the complainant along with other relatives and they also tried to convince Bikash but he did not pay any heed and restrained the family members to visit his house. The local people were aware of such torture and they too raised protest but were insulted. On 20.10.94 such torture crossed beyond all limits and his elder sister was assaulted mercilessly in presence of the niece of the de facto complainant and the sister of Bikash, Bhanumoti Pal also engaged in such torture upon her and hence he doubted that both the appellants killed his elder sister and hanged her.

3. Over the said complaint Berhampore police Station Case No. 369/94 dated 20.10.94 started under Section 498A/306 IPC started and on completion of investigation the charge sheet was submitted under the above-mentioned section and those charges being exclusively triable by a session court the matter was transferred before the Additional Session Judge FTC(1) Berhampore, Murshidabad and the learned court considering the materials available, framed the charges against the present appellants which was read over and explained to them, to which they pleaded not guilty and claimed to be tried. Hence the trial commenced. The learned court after assessing the evidences adduced before the court and the argument advanced by the prosecution as well as the defence Counsel passed the order of conviction against the appellant. Being aggrieved thereby this appeal has been filed.

Submissions

4. The learned advocate representing the appellant argued that after the order of conviction the sister was released on Probation of Offenders Act on executing a bond with two sureties. It is submitted that the complaint was made on the basis of an apprehension that the appellants killed the victim lady and hanged her. Attention is drawn to the inquest report which was done at 12:50 hours and the body was recovered from the roof made of the bamboo on the upstairs chamber. Excepting half-moon sized bruised mark no other injuries was found in the body of the deceased. It is submitted further that the marriage is of 1982 and the incident happened in the year 1994 and during this long period of time, no complaint was lodged against any of the appellant before any forum. Though de facto complainant was aware about the torture inflicted

upon his sister who reported the same to him he did not inform or report to any authority and even after this incident he did not disclose the fact to anybody before deposing in the trial Court. P.W. 4 never visited the house of the appellant and whatever he said was of hearsay evidence and has no credibility. No 5 also deposed about the mental sufferings faced by her daughter by the appellant and heard about the torture from her husband she did not inform to anybody. She was not aware about the details of her granddaughter and her evidence cannot be relied upon for passing an order of conviction. It is further argued that the elder sister heard the incident from local people about torture on 20.10.94. P.W. 7 the uncle of the deceased did not witness any incident of assault and take no steps against the appellant though claimed to be informed by the deceased about the torture. P.8 has turned hostile and P.W. 10 is the autopsy surgeon and according to his report the death was suicidal and ante mortem in nature.

5. It is further his case that the order of conviction is passed relying upon the cross-examination by the prosecution of P.W. 12, the daughter of the deceased who was declared hostile, and the evidentiary value of her testimony cannot be the role grounded of passing order of conviction. It is further argued that in this case the appellant denied that no incident took place and cited witnesses. D.W. 2 who disclose about the cordial relation existed between the husband and wife. It is further argued that no materials to constitute an offence under Section 498A IPC was found and no witness supported the case of the prosecution excepting the niece P.W. 121 who was minor at the time of incident. The learned relied upon the decision of **Neeraj Dutta versus State**,

(Government of NCT of Delhi)¹. It is further argued that the daughter is an unfavourable witness not hostile witness and in regard relied upon the decision reported in **Mamfru Chowdhury & Ors versus King Emperor**² where it was held that conviction should be based on affirmative proof by prosecution and not on of accused's explanation. Further relied upon the case of **Naresh Kumar versus State of Haryana**³ where it was held that in order to attract section 306 of I.P.C there must be ingredients of offence of section 107 of the Indian Penal Code. Conviction under section 306 by raising presumption under section 113A of Evidence Act is and not permissible in absence of necessary ingredients of Section 306 and produce evidence of harassment or Cruelty.

6. The learned prosecution on the other hand submits that in order to prove the charges the prosecution adduced 12 witnesses and moved the document which supports the case of the prosecution that the appellants were responsible for the suicide committed by the deceased victim. It is further argued that from the evidence of all the witnesses it has been established that she was subjected to physical and mental torture and such torture became so intolerable that she had to commit suicide. It is further argued that the evidence of the daughter of the victim deceased during her cross-examination by prosecution reveals how the victim was tortured and in what manner she died.

¹ (2023) 4 SCC 731

² A.I.R 1924 Calcutta 323

³ (2024) 3 SCC 573

Analysis

- 7.** Heard the submissions. On careful perusal of the materials on record and on the basis of the argument advanced by both the learned defence counsel as well as the prosecution the moot question now falls for consideration as to whether the learned judge considered the ingredients under Section 107 of in the Indian Penal Code before passing the judgement and order of conviction or whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt
- 8.** Before delving deep into the bottom of the case it is necessary to scan the complaint lodged by the brother of the deceased victim on the basis of which the entire proceeding was initiated.
- 9.** The content of the written complaint failed to canvases when the complainant and/or his family members came to learn about the unfortunate incident and how they found the body of his beloved sister, the time when they reached at the place of occurrence on whether they found the present appellants at the place of occurrence or not. It only mentioned about an application or doubt that on that day his sister was killed and hanged. From the medical document apparently it suggests that the deceased died because of hanging and it was suicidal in nature. The inquest report was exhibited as Exhibit 5 which was held in connection with as U.D case No. 485/94 and the inquest held at 12.50 p.m. on 20.10.94. From the inquest report it is seen that the body was recovered from the roof of bamboo the upstairs chamber in a hanging position.

The face of the deceased was pointing towards the staircase. One bruises mark (half-moon size) presented on that throat of the deceased and in presence of the brother at the point of time when it was found that there is no other external injuries. The inquest report was signed by the de facto complainant and the present appellant. Therefore fact remains that the body was found from the matrimonial house of the victim deceased. The post-mortem report was exhibited and proved by the doctor P.W 10. He was attached to the Berhampore hospital on that day and he performed P .M examination over the dead body of Swarna Paul aged about 36 years. On examination he found 1/2'x1/2'x1/2' crescentic mark located on the neck above the thyroid cartilage. The mark extended from left side below the left ear of the victim and extended below right ear.. The knot was located on the right side. Both one of hyoid bone fractured. According to the doctor the death was caused due to severe suffocation of hanging which is ante mortem and suicidal in nature.

10. In this backdrop it is necessary to scrutinise the evidences adduced by the prosecution witnesses in order to dig out the truth. P.W. 1 deposed that he formerly knew Bikash as his neighbour but he had no speaking term with both Bikash and his wife Swarna who was not known to this witness. He said that the occurrence took place in the year 1994 but he could not say how she died. He heard that she committed suicide by hanging with the rope in her husband's house. This witness deposed that on the way to his own tube well to wash his face, he found Bikash catching hold of the hair of his wife forcibly tried to oust her from his house and attempted to drive her from his house and her female child was also crying clasping her mother. He instantly rushed to

his house and raised objection against act of Bikash and he was abused with filthy languages by Bikash. After that Bikash forcibly pushed his daughter inside his house and his wife out of his house. This witness requested the wife to come to his house but she expressed that it has become a daily occurrence but refused to come to his house and was crying standing outside the house of the appellant and then this witness left the place. He did not visit the house of appellant after getting the news of suicide.

It could be gathered from his evidence that he used to reside at Indraprastha and visited in the last part of June, 1994 at Berhampore. He could not say whether any other person was present when the appellant was dragging his wife but the incident happened for 10 to 15 minutes. He did not report or informed the above incident to any of his close neighbours or to anybody prior to deposing before the court as he failed to reach not necessary to disclose age to anybody. He did not think that it was his duty to report the incident to anybody else. He did not see any other incident prior to such incident. In fact he did not know the name of either Bikash or his wife prior to such of occurrence and came to learn from the nameplate pasted on the main gate of their house.

11. P.W 2 Subodh Talukadar heard that the wife of appellant has committed suicide by hanging but he did not go nor visited the house of the appellant and he was not aware as to why she committed suicide. From his evidence it can be found that the elder sister used to resides in a different locality almost 1 to 1.5 km away from the house of the appellant and she is a school teacher.

12. P.W. 5 is the mother of the deceased victim and according to her testimony her daughter was mentally suffering because of the cruelty inflicted upon her by the husband and his eldest sister and they used to assault her and demanded dowry. The witness further deposed that she used to go to the house of her daughter at Indraprastha and she heard from her daughter about the cruelty. She also said that in the previous night of the fateful day her daughter was subjected to assault as well as torture and she committed suicide by hanging because of such unbearable torture. In fact it has come from her evidence that when her daughter along with her child went to her aunt's house for Bijoya greetings she had to give explanation about such visit and for that reason she was subjected to torture. From the nature of her evidence it is evident that she has no connection with her granddaughter and she admitted that after death of her daughter she had no family connection or any other connection with her granddaughter. She could not confirm whether she stated to the police that there was dowry demand for which her daughter was subjected to torture. They did not report any incident of torture before the Domkol Police Station or before the Berhampore Police Station. She candidly stated before the Court that they were maintaining the grudge against the appellant till she deposed before the court as her daughter committed suicide and they developed dissatisfaction against the appellant and his sister and for that reason the complaint was lodged against them. She also stated that after hearing the news of her daughter when visited to Berhampore and saw the body of her daughter, no mark of injury was found save and excepting the ligature mark at the neck of her daughter.

13. The younger brother of the deceased victim deposed as P.W.6 and reiterated that she was tortured both physically and mentally by her husband. He also said that the appellant is a man of short temper and often he used to assault his elder sister at her matrimonial house. On 20.10.94 the accused assaulted his elder sister in front of her matrimonial home on the public road and after some time she was found hanging in the staircase room of her matrimonial home. On the last night of the fateful day his sister went to the house of their uncle (pishemoshai) to pay respect on the occasion of Bijoya Dashami and on return from that house she was assaulted by her husband as she did not obtain any permission to go there. She also deposed that the deceased victim used to narrate all the incident of assault and torture meted out to her by her husband, to them. This witness lodged the written complaint and he proved the written complaint signed by him.

14. P.W.7 Biswanath Pal a resident of Nabadwip is a hearsay witness who heard from the local people that she was compelled to commit suicide being tortured by her husband, and that Bikash was ill tempered and used to assault her frequently. He never witnessed any incident of assault meted out to the deceased. He had no discussion with appellant about such torture. The inquest was prepared in his presence and he put signature and admitted that he did not complain of any incident of torture meted out to the deceased at the time of inquest. .In this case the most vital witness is the P.W 12, Nibediata Pal , the daughter of the deceased Swarna Pal . She said that her mother committed suicide by way of hanging with the rope and the relation between her parents was cordial. At this stage and the prayer of the prosecution this

witness was declared hostile. The cross-examination by prosecution of this witness has been heavily relied upon by the learned trial court where this witness deposed that she was aged about 10 years and was tutored by her maternal uncle and the I.O concerned to give statement before the learned Magistrate and was also threatened by them. She was accompanied by her maternal uncle, the de facto complainant and the I.O concerned .At the relevant point of time her uncle was unemployed and he used to ask for money from her mother and her mother gave money to her maternal uncle on several occasions on being demanded by him. She also stated that the relation between her maternal uncle and her mother became strained over the issue of demand of money from her mother. Her mother was suffering from depression due to pressure and threatening over the issue of demand of money. On the contrary she found the relation between her parents was cordial and prior to the death of her mother her uncle forcibly took away all the gold ornaments of her mother from their possession. The judicial officer who recorded the statement of the daughter deposed as P.W.3. The age of the minor daughter was then about 10 years who proved the statement as exhibit 1.

15. So if the version of Nibediata, made during her cross examination is kept aside for a moment the narrative if combined together would reveal a specific incident when the victim visited the house of P.W. 7 on the previous day of incident without taking the permission from her husband and returned on the same evening and on the next morning she was dragged out from her matrimonial home by her husband and also assaulted because of her said visit and then she committed suicide. P.W. 1 is the alleged sole eyewitness to such

occurrence who did not inform any person incident nor said the time or date when he witnessed such incident. Admittedly the victim visited the house of P.W. 7 in the evening as corroborated by P.W. 7 .So even if it is considered that the husband became furious it would have been usual not to allow her to enter into his house or abused her in the evening but according to the version of the witness he tried to oust her in the morning, of the fateful date. All the other witnesses heard from local people about such incident but never divulge any name from whom they came to learn. P.W. 1 did not inform such incident to anybody and no other witness was cited who was present at the time of occurrence. The P.W. 1 was also not examined by the I.O. and the entire facts were narrated before the court for the first time. Nothing can be found as to how the said incident came to the knowledge of the other witnesses. Only the minor daughter was with the victim at the time of occurrence so her testimony would have thereon a light on this issue.

16. In the decision as relied upon by the learned advocate representing the petitioner in **Naresh Kumar (supra)** the wife committed suicide by consuming poison within 18 – 19 months of her marriage because of demand of money for starting a ration shop. It was held by the Hon'ble Supreme Court that the basic ingredients to constitute an offence under Section 306 are suicidal deaths and abetment thereof. Abetment involves also mental process of instigating a person or intentionally aiding a person in doing of a thing. It was further held that without a positive act on the part of the accused to instigate or change in committing suicide, conviction cannot be sustained. Thus in order to convict a person under section 306 there has to be a clear mens rea to

commit the offence and mere harassment, held, cannot be sufficient to hold an accused guilty of abating the commission of suicide.

17. Taking reference to the case of ***Kashibai and others versus State of court Karnataka***⁴ it was observed that to bring the case within the purview of abetment under section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose the charge under section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate to drive person to commit suicide.

In paragraph 23 it is held that-

“23. Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious levels of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused’s mind.”

18. The learned Advocate tried to put much emphasize on the assessment of evidence while dealing with a criminal case .It is submitted that even when a witness has declared hostile the entire evidence will not be eliminated . He

⁴ 2023) 15 SCC 751

referred the decision of **Mamfru Chowdhury (supra)** in this regard which discusses that the credibility of the witnesses or juror must not be judged from their denomination.

19. In the case of **Neeraj Dutta (supra)** the Hon'ble five Judges Bench discussed the word 'Presumption' and 'May presume', 'Shall presume' and held that May presume leaves it to the discretion of the court to make presumption according to the circumstances of the case but shall presume leaves no option to the court and it is bound to presume the fact as proved until evidence is given to disprove it. It was further held that evidence is not restricted to only oral and documentary evidence but also to other things like material objects, the demeanour of the witness, fact of which judicial notice could be taken, admission of parties, local inspection made and answers given by the accused to question put forth by the Magistrate or Judge under Section 313 Cr.P.C. The Hon'ble Supreme Court in para 52 elucidated the principles of hearsay evidence which is as follows:

"52. Again, oral evidence can be classified as original and hearsay evidence. Original evidence is that which a witness reports himself to have seen or heard through medium of his own senses. Hearsay evidence is also called derivative, transmitted, or second-hand evidence in which a witness is merely reporting not what he himself saw or heard, and not what has come under the immediate observation of his own bodily senses but what he has learnt in respect of the fact through the medium of a third person. Normally, a hearsay witness would be inadmissible, but when it is corroborated by substantive evidence of other

witnesses, it would be admissible vide **Mukhtiar Singh v. State of Punjab, (2017) 8 SCC 136.**

20. Since the order of conviction was passed under section 306 of the Indian Penal Code the learned trial court must have found the ingredients of Section 107 of the IPC which are *sine qua non* to establish a charge under Section 306 IPC. On perusal of the judgement it is seen that the learned Trial Court relied upon the evidence of P.W. 5, 6 and 7 and observed that the victim was tortured by the accused on 20.10.94 and even on the previous day over her visiting to pay greetings in the Bijoya Dashami in the house of P.W. 7. The cause of infliction of torture upon her on that day was considered as a cause of her committing suicide.

21. On close scrutiny of the judgement, no discussion can be found as to how the ingredient to attract 306 IPC was established. In the situation where P.W. 5, the mother specifically deposed in her examination in chief the cause of her committing suicide was, the explanation demanded by the Appellant from her for visiting the house of P.W. 7 and the torture made on her daughter for demand of dowry . During her cross examination said that since her daughter committed suicide they had a mental grudge and dissatisfaction also developed in their mind against the appellant and his elder sister which they were maintaining till she adduced evidence before court and owing to that reason the complaint was lodged . However she could not say any word uttered to instigate her to commit suicide. P.W. 7 to whose house she went never witnessed any assault on her and he further said whenever she used to come to his house used to narrate the torture inflicted on her .So such evidence clearly manifest that she often visited his house and no objection was ever

raise by the appellant prior to that incident. More so how P.W. 7 could learn about an incident happened in morning when excepting P.W. 7 no other witness was there and he did not inform.

22. P.W. 6 is the sister of the deceased victim and she also narrated the same incident. The version of the witnesses being the family members if can be clubbed together would show that despite having knowledge about regular torture inflicted on their daughter/sister none of the family members took any steps to inform any authority or even had any discussion with the appellant. None of the witnesses gave details when such torture was inflicted. The mother did not see any other injury when the inquest was held and at the time of inquest all the family members were present and none of them uttered anything about any torture and the sole witness P.W. 1 did not state anything either to anybody and was not examined by police and state before the court for the first time. So apparently their evidence prima facie appears to be not so clinching in nature that on the basis of the same an order of conviction can be passed.

23. The daughter of the victim who lost her mother at her tender age after demise of the victim allowed living with the father being the appellant. In this the said daughter adduced evidence as P.W. 12 and she deposed that her mother committed suicide and her mother and father had cordial relations. This witness previously gave her statement before the Learned Magistrate who deposed before the court as P.W 3 and proved such statement. The witness was then aged about 10 years and such statement was recorded as made voluntarily as noted in the report. The prosecution declared P.W 12 as hostile

witness after she mentioned about the cordial relations between her parents. She was also examined by the I.O. In her evidence on cross made by the Learned Defence Counsel stated that previously she was tutored by her maternal uncle and was also threatened and she was accompanied by her maternal uncle qua the de-facto complainant .According to this witness it was the maternal uncle being unemployed used to demand money from her mother and her mother gave him money on several occasions but the relation between them became strained over the issue of demand of money .She also said that her mother was suffering from depression because of continuous demand .She never saw her parents quarrelling .She further narrated that prior to the death of her mother the maternal uncle forcibly took all the jewellerys of her mother the evidentiary value of the testimony of a hostile witness was discussed .In the decision relied upon by the learned advocate of the appellant in **Neeraj Dutta (Supra)** the Hon'ble Supreme Court discussed. In paragraph 87 it was held that-

“87. Therefore, this court cautioned that even if a witness is treated as ‘hostile’ and is cross examined , his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon .It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case .In other words ,the fact that a witness has been declared as “hostile” does not result in an automatic rejection of his evidence .Even the evidence of a ‘hostile witness’ if it finds

corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence”.

24. On perusal of the statement made by P.W 12 before the Magistrate it is found the same fact is tried to be maintained by the family members originated from P.W. 1. The mother of the victim described about their grudge on the appellant and his family members as their daughter committed suicide and all of the family members narrated the same version without providing any specific date, time or description of torture meted out on her by the appellant and his elder sister. The Post mortem report does not suggest any injury on her body excepting the ligature mark and similarly in the inquest report. No body alleged about any torture at the time of inquest when both the appellant and the de-facto complainant were present. P.W. 1 was not examined nor did he state the said fact before any authority so clubbing together it manifest that practically no case could make out about a continuous torture as alleged.

25. In the above backdrop it is now necessary to revisit section 107 of the Indian Penal code as the basic ingredient to attract 306 IPC, the abetment is described there. Section 107 of IPC reads as follows;

“107. Abetment of a thing.—

A person abets the doing of a thing, who—

(First)—Instigates any person to do that thing; or

(Secondly)— Engages with one or more other person or persons in any conspiracy for the doing of that

thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly)— Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.— A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration: A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.— Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

26. The Hon'ble Supreme Court in the case of **Naresh (supra)** took note of the case of **S.S. Chheena vs Vijay Kumar Mahajan**⁵ where it was held that-

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide,

⁵ (2010)12 SCC 190

conviction cannot be sustained .The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

27. In this case there is no direct act or incitement to the commission of suicide can be found from the four corners of the entire materials placed. On the contrary the daughter gave a different narrative which goes against the prosecution story. On behalf of the defence three witnesses were cited. Out of three D.W. 1 is the close relative and his evidence is of no assistance .D.W. 2 is a local resident and he went to the house of the accused on the relevant date in the morning and the deceased victim Swarna offered him tea and after taking tea he and accused went for the market. He never found any dispute between the couple. The appellant in his examination under Section 313 Cr.P.C denied the incriminating evidences made against him and the accused no.2 used to reside in a separate house. In fact P.W. 1 also never took the name of accused no. 2 Therefore after giving an anxious consideration of the entire facts and circumstances this court is of the view that the prosecution failed to prove the basic ingredients necessary to constitute the offence under section 306 IPC and the Learned Session Judge without ascertaining whether the ingredients necessary to attract 306 IPC passed the order of conviction against the appellant under section 306 IPC and hence the same is liable to be set aside.

28. So far the charge under section 498A it has come from the evidence that the appellant was ill-tempered person and the deceased committed suicide in her matrimonial house. Section 498 A IPC has two parts .The first one is torture on demand of dowry and the other part deals with mental or physical torture or cruelty meted out to her to that extent that the deceased compelled to commit suicide. P.W. 1 only disclosed about an incident occurred without specifying the day or time prior to her committing suicide. The evidence of P.W. 1 cannot be said to be a clinching evidence to inspire confidence in the mind of the court. According to P.W. 7 she went to his house in the evening without permission of her husband .This incident was also narrated by the daughter before the Learned Magistrate who subsequently denied about such incident as she was tutored at that time to say those facts. Fact remains the prosecution failed to prove that there was any demand of dowry and no other explanation can be found what prompted the lady to take such drastic decision.

29. The I.O. stated that the P.W. 1 did not disclose these facts before him while recording his statement and divulged for the first time before the court .There are severe inconsistencies in the evidence adduced by the witnesses and the evidence of the daughter who recorded her statement before the Magistrate immediately after the incident later on after 10 years before the court on dock denied such statement being tutored by her maternal uncle which also cannot be totally ignored. But the further version came from her side was not at all corroborated by any of the witness It cannot be ruled out in order to protect the prestige and reputation of her parent's family she will not disclose the

factum of demand of money by her own brother to anybody and probability cannot be ruled out that it became an issue in their daily conjugal life. There is no answer as why a lady who went to his relative's house just the evening before the day and did not complain of any such incident to pay Bijoya greetings committed suicide and did not divulge anything to her pishemoshai about the physical or mental torture suddenly took such a drastic decision to put an end of her life after leading a conjugal life for more than 10 years.

30. In order to bring home the guilt of the accused the prosecution is to establish that the cruelty was perpetrated on the said woman by any wilful conduct of such nature as is likely to drive a woman to commit suicide. The learned Court held that the deceased was subjected to cruelty on the morning of 20.10.1994 which this court is unable to agree with in view of the contradictory versions. The post mortem report suggested it as a case of suicide and no injury was found in the body of the deceased so it establishes there was no physical injury. This Court cannot brush aside the statement made by mother about their grudge against the Appellant due to death of their daughter and have lodged the complaint.

31. The incident occurred in the year 1994 so there has been passage of time of more than 30 years. The minor daughter has attained majority and supported her father being an innocent person. There was no prior complaint against the husband and excepting certain general and omnibus allegation of torture and demand of dowry which were not proved. Additionally the mother of the victim deceased also expressed their grudge on the appellant for which they lodged the complaint. The learned trial court at the time of pronouncing sentence

considered the age of the sister of the appellant and applied Section 360 Cr.P.C but against the appellant so benefit was given and sentenced to suffer R.I. for three years and to pay a fine of Rs. 3000/- .

Conclusion

32. Therefore to sum up, the prosecution failed to establish any ingredients to attract Section 107 IPC which is sine qua non to maintain the charge under Section 306 IPC. The prosecution further fails to establish the essential ingredients to attract Section 489A IPC. The demand of dowry proved no specific torture upon the victim either mental or physical is proved. On the contrary the mother of the victim expresses a grudge maintained by her against the Appellant. The witness to see a flicker torture P.W. 1 never disclosed the incident to anybody not even to the police. There are evident of cordial relation between the victim and her husband but they were declared hostile. Lastly the evidence of daughter gives rise to a different Version than that of the de facto complainant which completely demolishes the prosecution case. Therefore it cannot be said that the case was proved beyond all reasonable doubt.

33. Accordingly this criminal appeal is allowed. All connected applications, if any, stand disposed of.

34. The judgement and order of conviction passed under Section 306/498 IPC is hereby set aside and the appellant be discharged from the said charges and be discharged from the respective bail bond forthwith.

- 35.** Department is directed to forward e-copy of Judgement along with the T.C.R to the concerned Court for information and taking necessary action.
- 36.** Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

