
(2006) 03 GAU CK 0057
In the Gauhati High Court
Case No : Criminal Appeal No. 31 of 1998

Nidhan Biswas and Others

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 174(3), 176, 176(4), 313
Dowry Prohibition Act, 1961 — Section 3
Evidence Act, 1872 — Section 113A, 32, 32(1)
Penal Code, 1860 (IPC) — Section 206, 304B, 306, 498A

Citation : (2006) CriLJ 2429 : (2007) 1 DMC 313 : (2006) 2 GLT 202

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : A.C. Bowmik, D.C. Roy and R. Dutta, for the Appellant; R.C. Debnath, Spl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—A young bride committed suicide in her nuptial home within a period of seven months from her marriage after having failed to bear the humiliation and torture in the hands of her in-laws. The investigation and trial that followed her death found her husband, mother-in-law and husband's elder brother guilty of offence punishable under Sections 306 and 498-A of the Indian Penal Code (for short, "IPC"). They have been convicted accordingly with sentence of imprisonment and fine by the learned Addl. Sessions Judge, South Tripura, Belonia in his judgment dated 19 3-1998 in Sessions Trial No. 56 (ST/B) of 1997 which has been put under challenge in the present appeal.

2. The first appellant herein, Sri Nidhan Biswas was the husband of the deceased-bride, the second appellant, Sri Sadhan Biswas and the third appellant Smt. Jyotibala Biswas are the elder brother and mother respectively of the first appellant. The prosecution version is that the de-ceased-Jharna, the daughter of Jatindra Kumar Majumdar (P.W. 1) was given in marriage to Nidhan Biswas (first appellant) in 1993. Before the marriage it was negotiated and settled that Rs.

19,000/- would be the cash dowry to be paid by bride's father apart from ornaments and other accessories. Accordingly, Jatindra paid Rs. 16,000/- at the time of marriage with assurance to pay the rest within a year. But, soon after the marriage, the bride was subjected to humiliation for non-payment by her father of the balance amount of Rs. 3,000/-. The deceased informed her father that she was being ill-treated by her brother-in-law and mother-in-law for the said amount. Her father visited the house of her in-laws and came to know from the deceased that her husband Nidhan, brother-in-law Sadhan, mother-in-law Jyotibala and another brother-in-law Bidhan had assaulted and tortured her for the said amount of dowry. P.W. 1 was also insulted and abused for his failure to pay the balance amount. On 17-8-1993, after a period of 7 months from the date of marriage, the bride committed suicide by hanging. The father and brother of the deceased after getting intimation about her death rushed to the house of the in-laws, but they alleged that they were not allowed to see the dead body. The in-laws confined them in the house of their neighbour Dabendra Biswas (P.W. 2). They were, however, released on the following day and the father of the deceased was not even allowed by Sadhan, Bidhan and Nidhan to proceed to Bikhora Police Station to lodge an information. However, P.W. 1 claimed that after two days, he sent a complaint petition to the police station which was not acted upon. The Bikhora Police Station, however, received intimation about the unnatural death of the deceased and after registering a case accordingly to ascertain the cause of the death proceeded u/s 174 of the Code of Criminal Procedure (for short, "Cr. P.C."). According to the post-mortem report, the death was due to hanging being suicidal in nature. No external injury was found on the body of the deceased. Dissatisfied with the Police action in the enquiry done u/s 174, Cr. P.C., the father of the deceased filed a complaint petition in the Court of learned Sub-Divisional Judicial Magistrate (SDJM), Belonia on 18-10-1993 after a period of two months from the date of occurrence. The said complaint petition was forwarded by the learned SDJM to the Bikhora Police Station who registered the case only on 9-11-1993 and proceeded to conduct a regular investigation. Though the appellants along with the inmates were initially booked under Sections 302 and 498-A of I.P.C., finally only the three appellants herein were charged under Sections 306 and 498-A of IPC.

3. The defence version with regard to dowry is of admission that as per their demand, it was settled that the father of the bride would pay Rs. 19,000/- dowry out of which at the time of marriage, Rs. 16,000/- was paid. But they denied the allegation that there was any sort of mental or physical torture or humiliation upon the deceased for non-payment of the remaining amount of Rs. 3,000/- by her father. It is the case of the convict-appellants that she was suffering from certain mental disorder since before her marriage and she committed suicide for reasons not known to them. It is asserted that on their part, there had never been any provocation to her for committing suicide.

4. As usually happens in such cases of in-house or bedroom violence, no direct evidence of torture winced to the fore in this case, the victim being no more to

tell us her story. The circumstantial evidence coupled with what the deceased had told to the witnesses have constituted the basic foundation for the prosecution case. Ten prosecution witnesses in all have been examined by the learned trial Court, of whom Jatindra (P.W. 1) and Sridam (P.W. 3) are the father and brother respectively of the deceased who claimed that the deceased had complained to them often and on that she was being tortured by her in-laws for non-payment of the remaining amount of dowry. The second category of witnesses consists of Dabendra Biswas (P.W. 2), who is a close relative of the appellants herein, Kanu Sen (P.W. 6) and Jnan Datta (P.W. 7) who are neighbours of P.W. 1, Haran Chandra Vaidya (P.W. 4), an advocate who prepared the complaint as per the statement given by Jatindra (P.W. 1), Sudhangshu Bal (P.W. 5), a Constable, Dr. Makhan Lal Vaidya (P.W. 8), the Medical Officer who conducted the postmortem examination. The third category includes Swapan Kumar Dey (PW-9) the Police Officer who recorded the information about unnatural death of the deceased furnished by one Chimoy Biswas, another brother-in-law of the deceased. He also registered the First Information Report (FIR) lodged by Jatindra (PW-1). Sukesh Deb (PW-10) is the other Police Officer who conducted the investigation. A closer examination of the statements of above witnesses would show that according to the PWs-1 and 3 (the father and brother of the deceased), the root of the torture and humiliation by the in-laws upon the deceased was failure of PW-1 to pay the balance amount of Rs. 3,000/- of the dowry. PW-1 claimed that his daughter told him during his visit to her nuptial house that her husband Nidhan, brother-in-law Sadhan, mother-in-law Jyotibala and another brother-in-law Bidhan had assaulted and tortured her, though he could not tell the approximate date and time of such a torture before the death of his daughter. He alleged that he was also insulted by the said accused persons for the same reasons. But his son Sridam (PW-3) stated in his deposition that his sister told him that Sadhan, Bidhan and Jyotibala had assaulted her. Nidhan, her husband, was not named as one of her tormentors. He claimed that he had witnessed one such incident and he himself was also assaulted by Sadhan, one of the appellants herein. Thus, according to him, his sister did not implicate her husband Nidhan in the alleged assault upon her. As noticed above, Bidhan has not been charged and consequently he did not face the trial. It is seen from above that the statements of the deceased to her father and brother are at variance inasmuch as the two witnesses failed to corroborate each other on the question of involvement of Nidhan Biswas. The question which, therefore, casts a shadow is why the deceased failed to tell her brother, the name of her husband Nidhan if really he was also responsible for perpetrating torture upon her. None of these two witnesses could state approximate date and time of the alleged torture as disclosed to them by the deceased in order to enable the Court to examine the test of proximity vis-a-vis admissibility of such statements u/s 32 of the Evidence Act. The other discrepancy in the deposition of these two witnesses may also be noticed with regard to the dead body of the deceased which, according to PW-1, he and his son (PW-3) were not allowed to see. But PW-3 stated that he had seen the dead body in the hospital with injuries

on her head and hands. The story of confinement of PWs-1 and 3 by the appellants in the house of PW-2 as alleged by PW-1 did not find place in the deposition of PW-3. Again, the post-mortem report does not corroborate the statement of PW-3 that there was any injury on the head or hands of the deceased. According to said report, there was absolutely no external injury. No doubt, there is sometimes a tendency in the close relatives of the victim to make exaggeration which is present in the deposition of the father and the brother as seen above. But such exaggeration cannot be a ground to disbelieve the material part of their statements relating to the cause of the death of the deceased and the attending circumstances leading to the same.

5. Dabendra Biswas (PW-2) stated that the accused persons were his cousin brothers. According to him, the father of the deceased paid Rs. 16,000/- as a consideration of marriage to the appellants. At the time of occurrence, Jharna and her husband were living in a mess separate from her other in-laws which fact would indicate that torture upon her by other in-laws on ground of dowry was very much unlikely. He pleaded ignorance about the torture and assault upon the deceased by any of her in-laws. In cross, he stated that after the death of Jharna, PW-1 approached him for return of the dowry and other articles given in the marriage and accordingly at his request a village meeting was arranged in which the dispute was settled. The in-laws of the deceased returned Rs. 10,000/- to PW-1 and all other gifts presented by him at the time of his daughter's marriage. This witness stated nothing about the allegation of PW-1 that he and his son were confined in the house of PW-2 when they had gone to the house of the appellants after knowing about alleged suicide of the deceased.

6. Kanu Sen (PW-6) is a neighbour who supported the prosecution case that Rs. 19,000/- was the agreed amount of dowry PW-1 was required to pay, out of which he could pay Rs. 16,000/- at the time of marriage. He made one important revelation in support of the prosecution case that once before her death when she visited her father's house she told this witness that her brother-in-laws, Sadhan Biswas, one of the appellants herein, and her sister-in-law had maltreated her for non-payment of the rest amount of dowry by her father. To this witness, she made no complaint against her husband or mother-in-law.

7. The other neighbour is Jnan Dutta (PW-7) who stated in the same breath that Rs. 19,000/- was the agreed amount of dowry out of which Rs. 16,000/- was paid and non-payment of remaining Rs. 3,000/- proved to be the reason for torture upon her. He happened to visit once the house of the appellants to see the deceased. She requested him to tell her father (PW-1) to pay the rest amount of Rs. 3,000/- and alleged that only for that reason her brother-in-law Sadhan Biswas and her mother-in-law Jyotibala Biswas, the two of the appellants herein, had been maltreating her. After a few months of the marriage, he came to know from PW-1 that his daughter had expired.

8. The other witnesses are all formal as they played their respective role in drafting the complaint and investigating the alleged offence. There being no

dispute about the fact that the deceased had committed suicide within seven months from the date of her marriage and no external injury was found by the Medical Officer (PW-8) while doing the post-mortem examination, it is not necessary to go into the detailed discussion of the post-mortem report for deciding the cause of the death.

9. The appellants were examined u/s 313, Cr. P.C. and all of them admitted that Rs. 19,000/- was fixed to be the dowry as agreed to by the parties out of which the father of the deceased had paid Rs. 16,000/-. They, however, denied the allegation of any torture or humiliation on their part upon the deceased. As the charge was under Sections 306 and 498-A of the IPC, they examined four witnesses in support of their plea of innocence. Narayan Sen (DW-1) stated that on the day following the death of the bride her father Majumder (PW-1) met him in his garden and told him that he paid Rs. 16,000/- to the in-laws of his daughter at the time of her marriage. But that could not buy her peace and she could not ultimately survive. As she had failed to survive, he wanted to get back the money and other articles given by him at the time of marriage. Accordingly, this witness approached the appellants and after negotiation, the amount was brought down to Rs. 10,000/- which was returned to PW-1. A document (Exbt. A/1) was executed by PW-1 on 1-5-1400 B.S. But it is seen that this document states nothing about payment of Rs. 10,000/-. On the contrary, it is a declaration by PW-1 that his daughter had lost mental balance and her in-laws were not responsible for her death. PW-1, however, in his statement clarified that he was forced by the in-laws of his daughter to sign certain papers which had been later converted into certain documents. This DW-1 has stated nothing in his deposition as to the circumstances leading to the death of the bride.

10. DW-2, Makhan Debnath, also speaks of a meeting held in Jolaibari market after the death of the bride and he had written a document (Exbt. A/1). DW-3 Nathan Pal stated that he had no knowledge why Jharna had committed suicide. After her death her father (PW-1) approached him for recovery of the money and articles given by him to the appellants. The accused persons accordingly agreed to give Rs. 10,000/- and other articles which was finally given. A document was prepared on which he put his signature and marked as Exbt. A/4. As noticed above, the said document speaks nothing about the payment of Rs. 10,000/- or other articles. DW-4 Mahindra Kumar Sen is the last witness for the appellants who had taken the money from the appellant-Sadhan and gave the same to Jatindra (PW-1). Thus, none of the 4 witnesses stated anything about the cause of death of the deceased or the circumstances leading thereto.

11. Upon consideration of the materials discussed above, the learned trial Court unhesitatingly held that as Nidhan Biswas, the husband of the deceased, was named by her to PW-1 as one of her tormentors though his name did not figure in the statements of PWs-3, 6 and 7 to whom the deceased had spoken from her death, he must be held liable for abetting her to death by torture and humiliation. The factum of dowry being well proved both from the prosecution

and defence witnesses, a strong incriminating circumstance anchored in the prosecution case which prompted the learned trial Court to believe the statement of PW-1 that his daughter disclosed to him about her humiliation in the hands of the appellants including her own husband. According to prosecution, PWs-1, 3, 6 and 7 were the witnesses to whom the deceased disclosed her plight because of non-payment by her poor father the remaining part of the dowry. But her statement to them as recorded by the learned trial Court are at variance so far involvement of the appellants herein is concerned. While PW-1 stated that the deceased told him that Nidhan, Sadhan, Jyotibala and Bidhan were the offenders in torturing her to death, according to PW-3, the deceased did not disclose to him the name of Nidhan, her husband, though she definitely told him that she was subjected to torture by Sadhan, Bidhan and Jyotibala. The independent witnesses are PWs-6 and 7 who are the neighbours of PW-1. According to PW-6, the deceased told him that Sadhan and sister-in-law of the deceased were responsible for assaulting and maltreating her. PW-7, the other neighbour claimed that the deceased disclosed to him the name of Sadhan and Jyotibala. Thus, Sadhan has figured in the statements of all the 4 witnesses. While Jyotibala has been mentioned by PWs-1, 3 and 7, the other appellant-Nidhan is missing in the statements of PWs-3, 6 and 7. The statements of these 4 witnesses through whom the deceased spoke from her death deserve to be subjected to careful scrutiny. The learned trial Court comfortably came to hold that depending on the statements of PWs-1, 3, 6 and 7, Sadhan could be convicted and similarly, relying on the statements of PWs-1, 3 and 7, Jyotibala could be convicted. As regards Nidhan, learned trial Court observed that he being the husband, without his tacit approval and connivance it would not have been possible for the other members of his family to humiliate her day after day which compelled her to disclose her tragedy even to the neighbours of her father. It has further been observed that being a husband, appellant-Nidhan had the duty to support and stand by her when other members of the family mounted assault on her only for the failure by her father to pay the remaining amount of the dowry. The trial Court rejected the prayer to consider release on Probation of the Offenders" Act u/s 360 of the Criminal Procedure Code (for short, "CRPC") keeping in mind the present disturbing scenario in the society which is smeared with occurrences of torture and humiliation of many brides out of greed for dowry. He has, thus, convicted all of them under Sections 306 and 498-A of IPC and sentenced the appellants-Sadhan and Nidhan to undergo 5 years rigorous imprisonment (R.I.) u/s 306, IPC and 2 years R.I. u/s 498-A of IPC with fine of Rs. 2,000/- and Rs. 1,000/- each respectively with default stipulation. As regards Jyotibala, a lenient view has been taken convicting her under both the provisions but sentencing her to 3 years and 2 years simple imprisonment with fine of Rs. 5,000/- and Rs. 2,000/- respectively with direction that both the sentences would run concurrently.

12. I have heard Mr. A. C. Bhowmik, learned Counsel for the appellants and Mr. R. C. Debnath, learned special PP for the State.

13. It is argued on behalf of the appellants that it was not safe to convict the appellants on the indirect evidence of PWs-1, 3, 6 and 7 who are, as a matter of fact, hearsay evidence only. In the fact that none of them had disclosed the date and time of torture upon the deceased by the appellants herein, the question of proximity remains undecided and the discrepancy in their statements which they made from what they learnt from the deceased had missed due consideration by the learned trial Court. The other submission is that the FIR was lodged after a long period of 63 days which had not been satisfactorily explained. The defence witnesses did not state about any torture or humiliation upon the deceased by the appellants and the written document executed by PW-1, the father of the deceased, exonerating the appellants from any liability of his daughter's death should not have missed out of consideration of the learned trial Court.

14. Learned Special PP, on the other hand, placed an argument that in a case u/s 306, IPC, the provision of 113-A of the Evidence Act comes into play to take a statutory presumption that the death was abetted by the appellants as she died within a period of five months from the date of her marriage and before the death she was subjected to cruelty. Though the appellants examined 4 witnesses, none of them stated anything to rebut such presumption as they failed to focus on the marital relation of Nidhan and deceased during the period of 5 months after their marriage. What all of the defence witnesses stated relating to the question of dowry Rs. 10,000/- being a part of the dowry was returned to the PW-1 following a negotiation at their intervention after the death of the victim. It is his further submission that in the given circumstances, particularly when the factum of dowry has been proved and the poor father of the victim could not pay a part of the same, the complaint of the deceased to her own father that the appellants herein were responsible for treating her with cruelty has no reason to be disbelieved.

15. As regards the delay in lodging the FIR, it is correct to say that no straightway explanation has been offered for the same. As has been noticed above, PW-1 stated that he was not even allowed to see his dead daughter when he rushed to the house of the appellants after knowing that she had committed suicide. He along with his son were confined in the house of PW-2 and only on the following morning, they were released. The brothers-in-laws of the deceased did not even allow PW-1 to go to the police station to lodge the FIR on the same day. He, however, claimed that he had sent a written ejahar by post to the police station two days later though, according to the Police Officers (PWs-9 and 10), no such written complaint was ever received. It is, however, on record that the information about the death of the bride was received by the police from one brother-in-law of the deceased which was accordingly registered and an investigation was taken up u/s 174 of CrPC. The cause of death has been proved by the post-mortem report according to which it was a case of suicide with no external injury on her body. But Section 176 of CrPC clearly provides when a woman commits suicide within seven years of her marriage as provided in Sub-section (3) of Section 174 of CrPC, it is the duty of the nearest Magistrate, so

empowered, to hold an enquiry into the cause of death either instead of or in addition to investigation held by the Police Officer u/s 174 of CrPC. There is nothing on record to show that such an enquiry was at all done and it is not necessary to reiterate here that in every such enquiry it is the duty of the Police Officer as well as the Magistrate to record the statements of witnesses including close relatives of the deceased. Sub-section (4) of Section 176 has a clear direction to inform the relatives of the deceased at the time of enquiry which apparently has not been done in the present case. It is to be placed on record that the Police Officers as well as the Executive Magistrates who have been given powers under Sections 174 and 176, CrPC are not quite conversant with the legal requirement in conducting an enquiry which exactly has happened in the present case. However, this discussion is necessary in order to highlight that it is the general practice that after an enquiry u/s 174 or Section 176, CrPC during which statements are also to be recorded, if evidence and materials are collected to make it a prima facie case of any offence, a regular investigation was to follow even without any formal complaint from anybody. That has not been done in this case. It is also to be noted that the father of the deceased is a poor person who could not pay Rs. 3,000/- of the dowry and as his daughter could not survive he wanted to get back the money of Rs. 16,000/- which he paid to the in-laws of the deceased for buying peace. He might have delayed in lodging the FIR for ensuring return of the money or he might have waited for the result of the enquiry taken up u/s 174 or 176, CrPC. Keeping in mind several compulsions under which our poor rural people are to articulate, it cannot be said that the delay as noted above in the present case has not been satisfactorily explained.

16. In an "in-house" or "bed-room" violence, it is not possible to collect direct evidence of torture and humiliation and, therefore, insistence on such direct evidence in dowry related cases would lead to miscarriage of justice. The question that has surfaced about the statements of PWs-1, 3, 6 and 7 who relied on what they heard from the deceased is whether in the absence of date and time of making the statement by the deceased to these witnesses, a test of proximity u/s 32 of the Indian Evidence Act has been fulfilled. Section 32 is an exception to the rule of hearsay and makes admissible statement of a person who dies, whether the death is homicide or a suicide, provided the statements relates to the cause of death. Section 32(1) provides:

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant -- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1) When it relates to cause of death : When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death

comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

17. It is the definite case of prosecution that the bride committed suicide and the case of her death was torture for non-payment of a part of dowry by her father. True, the date and time of such torture have not been disclosed in the statements of the above 4 witnesses. But it has to be kept in mind that the death had taken place within a period of 7 months from the date of her marriage and the witnesses visited her within this period. Placed in such a situation the question of proximity need not to be hard pressed. Though such a test is in appropriate circumstances always called for, it has also to be kept in mind that a test of proximity cannot be reduced to a cut and dried formula. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, the Apex Court made the following observation on the question of test of proximity:

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait-jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible u/s 32.

18. As I have already discussed above, from the statement of the 4 witnesses, it would be apparent that some cruelty in whatever manner was perpetrated upon the deceased on account of non-payment of a part of the dowry and once it is held that cruelty in any form was present from the appellants before the suicide by the deceased within a period of 5 months from the date of her marriage. Section 113-A of the Evidence Act shifts the burden on the accused appellants to rebut the presumption that the suicide had been abetted by her husband or by such other relatives of her husband. Section 113-A reads:

113-A- 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.

19. The Supreme Court has observed that by introduction of Section 113-A in the Evidence Act, Section 306, IPC has acquired wider dimensions and has become a serious marriage related offence. Under certain conditions, the Court may presume that the suicide had been abetted by the husband or the relative of the husband. These conditions are (i) the victim had committed suicide within a period of 7 years from the date of her marriage and (ii) she was subjected to cruelty by her husband or relatives of the husband. The word "may" makes it discretionary for the Court to take a presumption and, therefore, once such presumption is taken then it is the duty of the accused-appellants to persuade the Court against drawing a presumption adverse to them. In *Shamnsaheb M. Multtani v. State of Karnataka*, (2001) 2 SCC 577 the Supreme Court made the following observation in paras 29 and 30 which reads as follows:

29. At this stage, we may note the difference in the legal position between the said offence and Section 306, IPC which was merely an offence of abatement of suicide earlier. The section remained in the statute-book without any practical use till 1983. But by the introduction of Section 113-A in the Evidence Act the said offence u/s 306, IPC has acquired wider dimensions and has become a serious marriage-related offence. Section 113-A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the Court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the Court may presume the fact, it is discretionary on the part of the Court either to regard such fact as provided or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the Court to act on the presumption the accused can persuade the Court against drawing a presumption adverse to him.

30. But the peculiar situation in respect of an offence u/s 304-B, IPC, as discernible from the distinction pointed out above in respect of the offence u/s 306, IPC is this : Under the former the Court has a statutory compulsion, merely on the establishment of two factual positions enumerated above, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the Court is bound to act on it.

20. As noticed above, the appellants have admitted that they demanded the dowry to the tune of Rs. 19,000/- out of which Rs. 16,000/- was paid though they made no harassment upon the deceased for non-payment for the remaining Rs. 3,000/-. This admission, confirmed by the independent witnesses both in the prosecution and defence side, make out a strong circumstantial evidence that the in-laws of the deceased were greedy people and knowing fully well that the father of the deceased was a poor person they did not hesitate to place a

demand for dowry which came to be settled at Rs. 19,000/-. The demand of dowry itself is an offence u/s 3 of the Dowry Prohibition Act, 1961 which provides that for taking dowry, the imprisonment for a term shall be not less than 5 years with fine which shall not be less than Rs. 15,000/-. The cruel mental set up of the in-laws including the appellants herein have been demonstrated from their demand of dowry which lends strong support to the prosecution case that the bride was subjected to cruelty by her in-laws for non-payment of a part of the dowry. This having been surfaced in the statements of PWs-1, 3, 6 and 7, the Court was free to presume that the appellants were guilty of cruelty and then the accused-appellants were free to persuade the Court to take a different view in their favour. Neither the defence witnesses nor the document allegedly executed by PW-1 throw any light on the particular aspect relating to the relationship between the deceased and her in-laws after her marriage. Thus, the defence witnesses and other materials on their side have failed to discharge the liability to disprove or rebut the presumption statutorily taken by the learned trial Court u/s 113-A of the Evidence Act.

21. It is noticed that in the defence case, there is a whisper about insanity of the deceased which according to the appellants might have led her to commit suicide. Nothing about insanity has come out from the defence witnesses. The document which was allegedly executed by PW-1 is not a reliable one as it has been stated by the PW-1 himself that he was compelled to sign the document under pressure. That apart, this document is not consistent with the statements of the DWs according to whom it was a document regarding return of the dowry amount of Rs. 10,000/-. Thus the defence story of insanity remained unproved failing thereby to dislodge the statutory presumption taken u/s 113-A of the Evidence Act.

22. The discussion made above would go to show that the judgment under challenge does not suffer from any material irregularity or illegality particularly when such a case u/s 306, IPC is considered in the light of the provisions of Section 113-A of the Evidence Act, the introduction of which has widened the dimensions of the offence. But considering the fact that the occurrence had taken place in 1993 and since then 13 years have gone by, the ap-pellant-Jyotibala Biswas, the mother-in-law of the deceased, who has become more aged by now, may be sentenced to undergo six months simple imprisonment (S.I.) u/s 306, IPC and three months S.I. u/s 498-A, IPC with a fine of Rs. 1000/- and Rs. 500/- respectively, in default, to undergo one month and fifteen days SI respectively. Similarly, appellants Sadhan Biswas and Nihan Biswas are also sentenced to a reduced period to undergo rigorous imprisonment (R.I.) for a term of one year u/s 306, IPC and six months R.I. u/s 498-A, IPC with fine of Rs. 3000/- and Rs. 1000/- each respectively, in default, to undergo RI for two months and one month more respectively. All the sentences shall run concurrently.

23. This criminal appeal is accordingly dismissed affirming the conviction but modifying the sentence to the extent indicated above.

24. Send down the lower Court records forthwith. The trial Court shall take necessary steps for procuring detention of the appellants to serve out the period of sentence from which the period already in custody, if any, shall be set off.