
(2015) 08 CAL CK 0047
In the Calcutta High Court
Case No : C.R.A. 109 of 2014

Sikha Kar (Baidya)

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2(wa), 372, 386 (a), 386(a), 386(b)
Penal Code, 1860 (IPC) — Section 498A, 498-A

Citation : (2015) 08 CAL CK 0047

Hon'ble Judges : Shib Sadhan Sadhu, J

Bench : Single Bench

Advocate : Sandipan Ganguly, Ranabir Roy Chowdhury and M. Gupta, for the Appellant; Manjit Singh and Pawan Kumar Gupta, Advocates for the Respondent

Judgement

Shib Sadhan Sadhu, J—This appeal has been filed against the impugned judgment dated 17th January, 2014 passed by the Learned Additional Sessions Judge, 8th Court, Alipore, South 24-Parganas in Criminal Appeal No. 15 of 2011.

2. The facts have been set out in great detail in the impugned judgment and hence I am not repeating the same here except wherever necessary.

3. It appears that on 05.05.2001 the present appellant lodged a written complaint before the Officer-in-Charge, Sonarpur Police Station, District: 24 Parganas (South) alleging ill treatment and infliction of physical as well as mental cruelty upon her by her husband (respondent No. 2 herein) and his relations during her stay in her matrimonial home at Kustia, P.S. Sonarpur, District South 24-Parganas. On the basis of such complaint Sonarpur P.S. Case NO.99 dated 05.05.2001 under Section 498A of the Indian Penal Code was registered. That case after investigation culminated into submission of charge-sheet against the respondent No. 2 and three others under Section 498A IPC.

4. The Trial Court framed charge under Section 498A IPC against all the four accused persons and proceeded with the trial. The prosecution examined seven

witnesses in all. No evidence was however adduced on behalf of the defence. The Trial Court found the present respondent No. 2 guilty of the charge under Section 498A IPC and convicted him and sentenced him to suffer Rigorous Imprisonment for two years and also to pay fine of Rs. 5,000/- and acquitted the rest three accused persons. The convicted respondent No. 2 preferred appeal and the Learned Appellate Court reversed that judgment and acquitted him by passing the impugned judgment dated 17th January, 2014. Hence the appeal.

5. I have heard Mr. Sandipan Ganguly, Learned Counsel appearing on behalf of the appellant and Mr. Asish Kumar Sanyal, Learned Counsel appearing on behalf of the respondent No. 2. I have also heard Mr. Manjit Singh, Learned Public Prosecutor representing the State. I have perused the entire materials available on record. I have also given a meticulous look into the written notes of argument submitted by the Learned Counsel of both sides.

6. Mr. Sandipan Ganguly, Learned Counsel appearing on behalf of the appellant submitted that the Learned Magistrate who conducted the trial, after appreciating the evidence on record came to the finding that the charge under Section 498A IPC was established against the respondent No. 2 beyond doubt and accordingly recorded the conviction and order of sentence. But at the same time since the charge was not established beyond doubt against the other accused she acquitted them. He further contended that the Learned Appellate Court failed to consider the evidence in its proper perspective especially the unimpeachable evidence of P.W.2 (appellant herein) and has taken a contrary view and acquitted the respondent No. 2. Mr. Ganguly contended yet further that the Learned Appellate Court ought to have considered the reasons on which the Learned Trial Court based the conviction but he has not done so. He totally misread the evidence and misdirected himself in the process of evaluation of the evidence and thereby the ultimate conclusion is vitiated. The Learned Counsel argued further that this having rendered the order of acquittal unsustainable in law, the impugned judgment and order as a whole warrants interference in the interest of justice.

7. Mr. Asish Kumar Sanyal, Learned Counsel appearing on behalf of the respondent No. 2 contended that the Proviso of Section 372 of the Criminal Procedure Code which has been incorporated by the Code of Criminal Procedure (Amendment) Act, 2008 confers a right of appeal upon the victim to prefer appeal only for a limited purpose of determination of compensation if the Appellate Court finds that the victim has incurred loss by the act or omission of the accused persons. According to him unlike the Civil Procedure Code there is no scope in the Criminal Procedure Code for any second appeal against the order and judgment of the First Appellate Court. He contended further that an appeal is continuation of trial and the Appellate Court has ample power to review and re-appreciate the entire evidence on record. Therefore, when the Appellate Court by exercising such power has set aside the judgment and order of conviction passed by the Trial Court and passed the order of acquittal then such order of acquittal

will be deemed to be an order of acquittal passed by the Court of original jurisdiction by virtue of Section 386(b) of the Cr.P.C. by way of legal fiction. Accordingly, the presumption of innocence is affirmed by such order of acquittal and the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court if two reasonable conclusions are possible on the basis of the evidence on record. Mr. Sanyal would contend further that in order to attract the ingredients of Section 498A IPC the element of cruelty has to be established in terms of the explanation to Section 498A IPC and it must be established that the cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide or that the harassment was to compel her to fulfil illegal demand for dowry. He continued to contend that the conduct of the husband or the relatives of the husband must be wilful of which mens rea is the basic pre-requisite. But in the instant case there is no such evidence to satisfy the ingredients of Section 498A IPC. According to him occurrence of domestic quarrel and dispute or difference over family matters can by no stretch of imagination would lead to the inference of cruelty within the meaning of Section 498A IPC. Mr. Sanyal further pointed out that the evidence of P.W.2 considered in its entirety reflects that she and her husband are from two different socio economic condition and their marriage did not work not because of persistent deliberate torture or any demand of dowry or valuable security by the respondent No. 2 but because of temperamental incompatibility, cultural differences and maladjustment between the parties and more so the hyper active and impulsive attitude of the wife over the trivial domestic issues for which the respondent/husband should not be held liable for the offence under Section 498A of IPC.

8. Summing up all these, Mr. Sanyal concluded by submitting that the view taken by the Learned Appellate Court is not only a possible view but is the only correct view in the light of the facts and circumstances of the instant case and urged that it should not be interfered with and emphasized on dismissal of the appeal. He relied on the decisions reported in *Murugesan and Others Vs. State through Inspector of Police*, AIR 2013 SC 274 : (2013) 1 JCC 118 : (2013) 1 RCR(Criminal) 791 : (2012) 10 SCALE 378 : (2012) 10 SCC 383 : (2012) AIRSCW 5627 , *Muralidhar @ Gidda and Another Vs. State of Karnataka*, AIR 2014 SC 2200 : (2014) AIRSCW 2278 : (2014) CriLJ 2365 : (2014) 4 SCALE 693 : (2014) 5 SCC 730 and *Manju Ram Kalita Vs. State of Assam*, (2009) 2 DMC 471 : (2009) 7 JT 485 : (2009) 8 SCALE 794 : (2009) 13 SCC 330 : (2009) 9 SCR 902 in support of his contention.

9. Having regard to the rival contentions advanced by the Learned Counsel appearing for the parties in the light of the decisions placed, I would like to say at the very outset that the Scheme envisaged by the Code of Criminal Procedure makes no distinction between power of the Appellate Court while dealing with an appeal arising out of an order of conviction or an order of acquittal. The procedure which governs and regulates the hearing of appeal both against conviction and acquittal are identical and the power of the Appellate Court in

dealing with both such appeals in essence are also same. Section 386(a) Cr.P.C. states that the Appellate Court may:

"In an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law".

A perusal of Section 386 (a) Cr.P.C. shows that no restrictions have been placed by the statute on the power of the Appellate Court to reverse an order of acquittal and to convict the accused.

10. By amending Section 372 of the Code of Criminal Procedure, with effect from December 31, 2009 by the Code of Criminal Procedure (Amendment) Act, 2008, a substantive right of appeal against an order of acquittal has been conferred on a victim and thus all future controversy over the selfsame question may be avoided. By virtue of the aforesaid amendment now a "victim" defined in Section 2(wa) of the Code can challenge the order of acquittal before a High Court when such order of acquittal has been passed by a Court of Sessions and before a Court of Sessions when such order is passed by any Judicial Magistrate. The provisions of obtaining leave to appeal before filing of substantive appeal in case of a Victim has been dispensed with by the aforesaid amendment.

11. Before entering into the merits of the appeal I think it appropriate to refer to some decisions of the Hon''ble Supreme Court laying down the principle to be followed by the First Appellate Court including the High Court while considering an appeal from the judgment of the Trial Court.

12. In the case of Devatha Venkataswamy @ Rangaiah Vs. Public Prosecutor, High Court of A.P., AIR 2003 SC 3217 : (2003) CriLJ 4332 : (2003) 1 JT 92 Supp : (2003) 7 SCALE 292 : (2003) 10 SCC 700 : (2003) AIRSCW 4583 : (2003) 7 Supreme 101 the Hon''ble Supreme Court held:

"5. It is a well-settled principle in law that though the first appellate Court like the High Court in this case sits as a court of appeal on facts also while considering an appeal from the judgment of the trial Court and in that process it can re-appreciate the evidence on record to arrive at a just conclusion, this Court in more than one case has held that while so re-appreciating the evidence, the appellate Court should first analyse the finding of the trial Court and then for valid reasons to be recorded the appellate Court can reverse such finding of the trial Court. The said decisions also hold that the appellate Court while sitting as a court of appeal should not substitute the finding of the trial Court merely because another view is possible to be taken on the same sets of facts. (See Rajendra Prasad Vs. State of Bihar, AIR 1977 SC 1059 : (1977) CriLJ 613 : (1977) 2 SCC 205 : (1977) 3 SCR 68 : (1977) 9 UJ 276 , Harisingh M. Vasava Vs. State of Gujarat, AIR 2002 SC 1212 : (2002) CriLJ 1771 : (2002) 2 Crimes 73 : (2002) 2 JT 333 : (2002) 2 SCALE 324 : (2002) 3 SCC 475 : (2002) 2 SCR 57 : (2002) 1 UJ 744 : (2002) AIRSCW 994 : (2002) 2 Supreme 111) and Joseph Vs. State of Kerala, AIR 2003 SC 507 : (2003) CriLJ 813 : (2002) 10 JT

12 : (2003) 1 SCC 465 ."

13. In Vijayendra Kumar Vs. State of Bihar and Another, (2004) 10 JT 470 : (2004) 10 SCALE 85 : (2005) 9 SCC 252 : (2004) AIRSCW 7098 : (2004) 8 Supreme 654 the Hon"ble Supreme Court observed that an appeal against an order of conviction preferred by an accused, must be considered by the Appellate Court, both on questions of law and questions of fact.

14. In yet another case reported in State of Uttar Pradesh Vs. Pappu alias Yunus and Another, (2005) CriLJ 331 : (2005) 1 JT 153 : (2004) 10 SCALE 147 : (2005) 3 SCC 594 : (2004) AIRSCW 6563 : (2004) 8 Supreme 656 the Hon"ble Supreme Court held that without indicating reasons or basis the Appellate Court should not interfere with the findings recorded by the Trial Court. It is incumbent upon the Appellate Court, if it takes a contrary view, to analyse the evidence and to record its own conclusions.

15. In the case of Manju Ram Kalita V. State of Assam (supra) the Hon"ble Supreme Court reiterating the observation made in the case of Mohd. Hoshan and Another Vs. State of A.P., AIR 2002 SC 3270 : (2002) CriLJ 4124 : (2002) 2 DMC 594 : (2002) 7 JT 238 : (2002) 6 SCALE 488 : (2002) 7 SCC 414 : (2002) 2 SCR 408 Supp held - " whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education, etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not." It was further held by Their Lordships that "cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty."

16. In the case of Sarojakshan Shankaran Nayar and others Vs. State of Maharashtra, (1995) 2 BomCR 47 : (1995) 97 BOMLR 859 : (1995) CriLJ 340 : (1995) 2 DMC 146 : (1995) 2 MhLj 113 the Hon"ble Division Bench of Bombay High Court held:

" "Cruelty" as defined in Section 498A means "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb, or health whether mental or physical of the woman,

or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand, for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." The expression "cruelty" takes within its sweep both mental and physical agony and torture. The concept of cruelty varies from place to place and individual to individual and according to the social and economic status of the person involved. The question whether the act complained of was an act of cruelty has to be determined from the whole fact and relationship between the parties. The cultural and temperamental state of life among them are factors from where the cruelty has to be inferred and will depend on the facts of each case. The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. Therefore, to decide the question of cruelty the relevant factors are the matrimonial relationship between the husband and wife, their cultural and temperament status in life, state of health, their interaction in their daily life which dominate the aspect of cruelty."

17. In the case of *Indrasingh M. Raol V. State of Gujarat* 1999 (4) Crimes 468 the Hon'ble Gujarat High Court held:

"The expression "cruelty" means and implies harsh and harmful conduct of certain intensity and persistence. It, therefore, covers the acts causing both physical and mental agony and torture, or tyranny and harm as well as unending accusations and recriminations reflecting bitterness putting the victim thereof to intense miseries and woes strongly stirring up her feeling that life is not now worth living and she should die, being the only option left. The provision of Section 498A, therefore, envisages the intention to drag or force the woman to commit suicide by unabated, persistent and grave cruelty. In one case, therefore, the facts on record may constitute the cruelty showing required intention and in another case, it may not. The concept of cruelty, therefore, is found different, diversifying from place to place, individual to individual, and also according to social and economical status of the person and several other factors. The Court, has therefore, to become more heedful, chary and wary, exert and ascertain the cruelty and required intention on the basis of materials on record and also on the basis of the culture, ordinary sentimentality or sensitivity, capacity to tolerate, temperament, tendency, inter-se honour, matrimonial relationships, state of health, dissension, interaction or conflicting ideology, will to dominate, utter disregard of one's own obligation or intractability or habits as well as customs and traditions governing the parties and other governing forces, provided necessary acceptable evidence in this regard is available on record."

18. In this background of the legal position let me now proceed to examine the evidence on record in order to see whether the Learned Appellate Court followed such principles while converting the finding of conviction into a finding of acquittal and also to satisfy myself in regard to the correctness of the judgment of the Learned Appellate Court.

19. On a perusal of the testimony of P.W.2 Smt. Sikha Kar (Baidya), the appellant, it transpires that she had deposed about the ill treatment meted out to her by the respondent No. 2 and his relations, not only because of her refusal to bring all the papers relating to her personal savings, testimonials etc. but also did arise from the persistent demands for money by them. The evidence of P.W.2 further discloses in categorical terms that she was at her in-law's house from 14.12.1998 to 05.05.2001 and that after four days of marriage her husband wanted to know how many bank balance she had in her bank account and he asked her to bring all the saving related papers from her paternal house and on her refusal her husband struck her at her cheek. She was so shocked that she decided to put an end to her life and entered into the bathroom with a napkin (Gamcha) and tried to commit suicide and all her in-laws intervened and she came out from the bathroom. She further disclosed that after marriage they went to Digha where her husband asked her whether she had any relation with any other man before marriage and whether such relation was continuing. She replied in the negative. It is her further evidence that she used to draw Rs. 7,000/- per month as salary out of which she had to give Rs. 6,000/- to the accused person and she was left with Rs. 1,000/- only for her daily expenses. But the accused person used to take away even that amount of Rs. 1,000/- from her. They also demanded Rs. 80,000/- and asked her to bring that amount from her father and gave out that on her failure to bring such money she would have to commit suicide or she would be driven out. She further stated that since her father-in-law's place was at a distant place from her office in Kolkata, she was advised by her husband and father-in-law to attend office from the house of her elder sister-in-law at Ballygunge, Kolkata. She protested because her husband did not stay with her. She attended her office therefrom for more than 15 days and she became mentally exhausted. Then her husband told her to pay Rs. 80,000/- so that an auto-rickshaw would be purchased and she will go to Sonarpur by that auto-rickshaw. After three months of their marriage her husband pressed her to bring that money and he throttled her for non-payment and beat her. She became disheartened and tried to commit suicide and she was restrained. Thereafter her elder brother, elder brother's wife came and tried to convince her husband and decided that her elder brother would give him the sum of Rs. 80,000/- for purchasing an auto by taking loan. She then told that the auto should be purchased in her name and also in the name of her husband. But all the family members of her in-law's house told that the auto would be bought in the name of her husband. She opposed and for her objection the auto was not purchased. She stated further that she attempted to commit suicide for four times, - on the 9th day of her marriage for the first time, within three months of her marriage for the second time, within seven months of her marriage for the third time and after the death of her baby for the last time she attempted to commit suicide. Torturing had started from the 9th day of her marriage mainly by beating and using abusive and filthy languages. They used to abuse her mentioning as prostitute.

In course of further evidence she disclosed that after seven months of her marriage she became pregnant. After her pregnancy her mother-in-law and father-in-law asked her clearly to consult with her husband whether that child would be carrying or aborted. She then informed her mother. After going to her paternal house she began to weep and told them that conspiracy was going on to destroy her child. Then her mother consulted with her mother-in-law over phone. Her mother-in-law told that her son is the only authority to decide over the matter. Then P.W.2 asked her husband who told that the matter needed further consultation. Thereafter her husband's sister came and declared the decision regarding abortion of the child. Hearing that she became angry and lost her cool and decided to commit suicide and went out but her husband restrained her and brought her back and thereafter the torture was going on. She stated yet further that her in-laws did not care for her eating and drinking. She could not tolerate the torture and she came back to her paternal house and began to attend her office therefrom. None of her in-laws came to meet her. She delivered a child at NRS Hospital, Kolkata on 16.02.2000. After three days of the delivery of the child her in-laws brought her to her husband's house on 18.02.2000. They were asking why she had given birth to a female child and they tried to snatch the child from her. The child did not take the milk and sufficient food was also not given to her. Thereafter, she called her elder brother's wife who came and brought her to her father's house on 23.02.2000. Due to torture upon her and her child, the child fell ill and ultimately died on 23.02.2000. After that on 05.05.2001 she went to her in-laws house along with her elder sister and on that very date in the evening her in-laws had driven her out and she had filed the written complaint in Sonarpur Police Station.

20. P.W.1 Rabindra Nath Kar is the elder brother of P.W.2. He has deposed that P.W.2 is his sister. She was married to Samir Baidya. She further deposed that his sister was tortured and assaulted by the accused person to such an extent that she was driven to commit suicide four times and she was driven out from her matrimonial home by the accused. He further stated that she was slapped by the accused often and even they tried to assault her in his presence. The accused demanded that she must hand over the whole remuneration which she earned out of her job in Calcutta High Court. In cross-examination he denied that her sister had visited Shilong and several parts of North-East India on a number of occasions without informing any one of her home and her in-laws. He was also suggested that the de-facto complainant used to pay visit to her sister's husband Purnababu's house without any reason and without informing her in-laws, which he denied. P.W.1 was also put a suggestion that his sister P.W.2 was not willing to stay in the village with her husband in the joint family and for that she created pressure for divorce and she attempted to commit suicide, which was also denied by him.

21. P.W.3 Smt. Champa Kar is the mother of P.W.2. She has also deposed corroborating P.W.2 and stated that just after four days of marriage the accused used to want money and accounts of her service and used to torture her

daughter for that. They also used to assault her daughter. In cross-examination she stated that she had seen her son-in-law to assault her daughter in the matrimonial home and also in front of her. She denied the suggestion that her daughter is unrestricted girl.

22. P.W.4 Smt. Sandhya Guria is the elder sister of P.W.2. She also lent support to P.W.2 and stated that P.W.2 had been residing in her father's house for 6/7 years because her in-laws had assaulted and expelled her out of matrimonial abode. She further stated that the accused used to claim money from P.W.2 and they used to assault her due to not satisfaction of the claim and they had expelled her by torture. In cross-examination she stated that on 05.05.2001 she went to keep her sister at her matrimonial abode from paternal abode but her husband, father-in-law, Devar, Nanad and Nandai had expelled her sister out of home and at that time she was slapped for four times. She further disclosed that the accused persons demanded Rs. 80,000/- (Eighty thousand) and as they did not receive such money they had expelled her sister. She stated further that she went to her sister's matrimonial home in the afternoon and came back in the evening. She was there for about three hours. At that time all the accused persons were at home. Then her sister's father-in-law told - "Samir, see that the pros (Prostitute) has come." The accused were standing and they were sitting on the bench outside. She requested her Bhagnipati (sister's husband) by holding his legs when he slapped her sister.

23. P.W.5 Biswa Nath Baidya who is a co-villager of the accused was declared hostile by the prosecution. P.W.6 Janab Ali Chowdhury was the sub-Inspector of Police attached to Sonarpur Police Station who registered the case on receipt of the complaint. P.W.7 was the Sub-Inspector of police attached to Sonarpur Police Station who registered the case on receipt of the complaint. P.W.7 was the Sub-Inspector of police attached to Sonarpur Police Station who investigated the case.

24. The veracity of the evidence of the witnesses referred to above has not been shattered in the cross-examination. On the contrary, P.W.2 has given the aforesaid vivid account of the trauma in which she was living ever since her marriage to respondent No. 2 in her cross-examination in reply to the question - "what type of torture you received from your in-laws house? Tell us." Therefore, I am inclined to place implicit reliance on their testimony with regard to the mental torture and humiliation in which the victim/appellant P.W.2 was made to live in the company of the respondent No. 2. The evidence adduced by the aforesaid P.W.s. go to prove and establish beyond the realm of doubt that the respondent No. 2 had made life difficult for the victim/appellant by deliberately demeaning her, insulting her, calling her prostitute, suspecting her character and that she was not being given any respect at home. The mindset of the respondent No. 2 and his relatives as is exposed from the suggestions put to P.W.1 amounts to cruelty by false attacks on her chastity. Also the query made by the respondent No. 2 to P.W.2 as to whether she had any premarital relation and whether it was still continuing goes to show that he was suspicious of the character of his wife

without any basis and that also tantamounts to cruelty within the meaning of Section 498A IPC. Similarly the decision taken by the respondent No. 2 and his relatives for premature termination of pregnancy of P.W.2 and their non-acceptance of the baby girl are kinds of cruelty covered under the Section 498A IPC. It is evident that P.W.2 was also deprived and denied respectable living and other comforts at home which a married woman expects in the house of her husband. She belongs to a conservative and educated middle class family and had on several times thought to free herself from this bondage. It was on account of the persuasion of her parents that she was trying to make the marriage work but to her dismay and frustration she could not stand humiliation and agony meted out to her by her husband and in frustration and disgust she attempted to commit suicide on repeated occasions. The social, religious and cultural background of a conservative lady is relevant factor which is to be kept in mind in deciding the aspect of cruelty and its magnitude. The physical as well as mental torture surely must have reached to such a pass that she being an emotional lady cherishing values of marriage thought to put an end to her life rather than to suffer harassment and humiliation.

25. The respondent No. 2 must have been aware that his wife P.W.2 is a sensitive and emotional person and she was forced to lead a depressed and frustrated life and she had made repeated attempts to commit suicide. But even after knowing such mental frame of his wife he did not change his attitude or behaviour towards her. He continued to humiliate and insult her and made her life miserable.

In these circumstances and evidence on record I endorse the reasoning given by the Learned Trial Court to the effect that such humiliation and harassment in presence of mother, brother and sister is sufficient enough to drive a married woman of ordinary prudence to commit suicide particularly when such torture was inflicted by the husband for demand of Rs. 80,000/- and other remuneration which she earns from her job. I also concur with the finding of the Learned Trial Court that the demand of Rs. 80,000/- is no doubt an unlawful demand within the purview of Section 498A IPC.

26. On perusal of the impugned judgment I find that the Learned Appellate Court re-appreciated the evidence on record without analysing the finding of the Learned Trial Court and without recording any valid reasons for reversing the finding of the Trial Court. He has referred to the evidence according to his own choice and recorded his own view substituting the finding of the Trial Court. He held that mere asking by the husband for collecting and fetching of bank papers and service papers by the newly married wife from her paternal residence to her matrimonial residence cannot attract the perpetration of offence as contemplated under Section 498A IPC. He also harboured doubt as to whether the issue of purchase of auto-rickshaw with Rs. 80,000/- from the money of the de-facto complainant as alleged by her at all lends any ground to categorize the approach of the accused person over that issue as dowry demand as contemplated under

Section 498A IPC. This approach of the Learned Appellate Court that to constitute cruelty under this provision of IPC, the offending conduct has to be related to a demand for dowry to constitute cruelty is totally erroneous as any wilful conduct, likely to drive the affected woman to the consequences referred to in the Explanation to Section 498A IPC, even de hors any element for demand of dowry, would still constitute cruelty. Similarly his analysis of the evidence on record on the premise of termination of pregnancy of P.W.2 is absolutely perverse as he failed to take proper note of the evidence adduced by the P.W.2 on this score. She did not allege that she was asked by her sister-in-law in her matrimonial residence as to what she had decided about the termination of her pregnancy and on that ground she had tried to commit suicide but she deposed that her sister-in-law declared the decision regarding abortion of the child. That the Learned Appellate Court had addressed the whole issue in a casual manner is evident from his repeated assertion that the de facto complainant (P.W.2) attempted to commit self-immolation. He also held that there is insufficient evidence to hold that the convict neglected their baby during the course of the baby's short lifespan but surprisingly enough he remained oblivious that the respondent No. 2 and his relatives failed to accept the birth of the female child and they tried to snatch the baby from P.W.2 which was categorically stated by her in her evidence. He should have borne in mind that the kinds of cruelty which come within the purview of Section 498A IPC include cruelty by persistent demand, harassment for non-dowry demand, cruelty by non-acceptance of baby girl and cruelty by false attacks on the chastity of the wife. Therefore, I have no hesitation to find and hold that the impugned judgment and order passed by the Learned Appellate Court stands vitiated in law and I, therefore, consider it appropriate in the interest of justice to interfere with the same.

27. The judgment and order dated 17.01.2014 passed by the Learned Additional Sessions Judge, 8th Court, Alipore, South 24-Parganas in Criminal Appeal No. 15 of 2011 is, therefore, interfered with and is accordingly set aside. The judgment and order dated 11.01.2011 passed by the Learned Trial Court in G.R. Case No. 1497 of 2001 under Section 498A IPC is hereby restored. The respondent No. 2 is directed to surrender before the Learned Trial Court within 21 days in order to serve out the sentence failing which the Learned Trial Court shall take coercive measures to secure his attendance in accordance with law.

28. Let the L.C.R. along with a copy of this judgment be sent down forthwith.

29. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, on top priority basis.