

(2010) 03 GAU CK 0020
In the Gauhati High Court
Case No : Criminal Appeal No. 1 of 2008

Sri Billal Mia and Another

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 20-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 313

Evidence Act, 1872 — Section 145, 27, 32(1)

Penal Code, 1860 (IPC) — Section 107, 302, 304B, 306, 34

Citation : (2010) 2 GLD 307 : (2010) 2 GLT 736

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : A.K. Bhowmik and S. Ghosh, for the Appellant; R.C. Debnath, Special PP, for the Respondent

Final Decision : Allowed

Judgement

C.R. Sarma, J.—This appeal is directed against the judgment and order, dated 12.10.2007, passed by the learned Additional Sessions Judge, Sonamura, West Tripura in ST 16(WT/S) of 2007. By the impugned judgment and order aforesaid, the learned trial Judge convicted the appellants under Sections 498A and 306 of the Indian Penal Code (hereinafter referred to three years and to pay a fine of Rs. 1,000/- each, in default, to suffer imprisonment for another period of one month each for the offence u/s 498A, IPC. The appellants were also sentenced to suffer rigorous imprisonment for seven years for the offence u/s 302, IPC and to pay a fine of Rs. 3,000/- each, in default, to suffer rigorous imprisonment for a further three months each. It was directed that both the sentences shall run concurrently. Being aggrieved by the said order of conviction and sentence, the appellants have come up with this appeal.

2. The prosecution case, as revealed at the trial, in brief, may be stated as follows:

Smt. Sirja Begam (hereinafter called "the deceased") was given in marriage with

the appellant Mr. Billal Mia the deceased used to live in her marital home along with her said husband, her mother- in-law, namely, Smt. Rukhiya Begum (hereinafter called "the appellant") and her brother-in-law Md. Idris Mia (since acquitted). After about a month from the said marriage, the appellants and other members of the family started torturing the deceased demanding her to bring money and grocery articles from her parents. Being unable to bear such physical and mental torture, meted out to her, the deceased on 28.10.2005 committed suicide by consuming poison. Accordingly, Md. Firoj Mia (PW 1) i.e. the brother of the deceased lodged an FIR with the police at Sonamura Police Station, West Tripura. On receipt of the said FIR, police registered a case and launched investigation into the matter. At the close of the investigation, police submitted charge-sheet under Sections 498A/304B read with Section 34, IPC against the appellants and Md. Idris Mia. The offences being exclusively triable by the Court of Sessions, the learned Additional Sessions Judge, Sonamura, West Tripura framed charges against the appellants and Md. Idris Mia under Sections 498A and 306, IPC, to which the accused persons pleaded not guilty and claimed to be tried. To bring home to the guilt to the accused persons, the prosecution examined as many as 17 witnesses including the medical officer, who performed the autopsy in respect of the dead body of the deceased and the Investigating Police Officer. The prosecution also exhibited certain documents including the inquest report, the seizure list, the post-mortem report, the hand-sketch map etc. At the close of the evidence for the prosecution, the accused persons were examined u/s 313, Code of Criminal Procedure. They denied the allegations brought against them and declined to adduce defence evidence. The learned Additional Sessions Judge, considering the evidence on record, held the appellants guilty of the offences under Sections 498A and 306, IPC and accordingly, recorded the conviction as aforesaid. The other accused, namely, Mr. Idris Mia was acquitted for want of evidence. Hence, the present appellants, by this appeal, have challenged the legality and correctness of the impugned judgment and order of conviction aforesaid.

3. I have heard Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. S. Ghosh, learned Counsel appearing on behalf of the appellants. I have also heard Mr. R.C. Debnath, learned Special Public Prosecutor appearing on behalf of the State respondent.

4. The learned senior counsel, appearing for the appellants, referring the Sections 498A and 306, IPC has submitted that the prosecution failed to establish the ingredients of the offences under Sections 498A and 306, IPC and as such the conviction recorded by the learned trial Judge was bad in the eye of law. The learned senior counsel further submitted that the prosecution miserably failed to prove, beyond reasonable doubt, that the deceased was treated in such a manner which was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health or that there was any harassment with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security. It is also submitted that there is

not an iota of evidence to show that any abetment to commit suicide. In support of his contention, the learned Counsel relied on the decision held in the case of Girdhar Shankar Tawade Vs. State of Maharashtra, ; Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, ; Sohan Raj Sharma Vs. State of Haryana, ; Sonti Rama Krishna Vs. Sonti Shanti Sree and Another, ; Paparambaka Rosamma and Others Vs. State of Andhra Pradesh,

5. Refuting the said argument, the learned Special Public Prosecutor has submitted that there is sufficient evidence to show that the appellants treated the deceased with cruelty due to her failure to meet the demand of money and other articles and that such cruelty compelled her to commit suicide. The learned Special Public Prosecutor further submitted that the fact that the deceased, being the wife of Mr. Billal Mia, committed suicide in her marital home leaving her child was sufficient to presume that she was treated with cruelty compelling her to commit suicide. In support of his contention, the learned Special Public Prosecutor relied on the decisions held in the cases of Kali Lakhmanbhai Chanabhai v. State of Gujarat reported in AIR 2000 SC 210; Jakki alias Selvaraj and Anr. v. State reported in AIR 2007 SCW 1327.

6. In order to appreciate the arguments advanced by the learned Counsels appearing on behalf of the parties and to examine the correctness of the impugned judgment and order, I feel it appropriate to make a brief scrutiny of the evidence on record as follows:

Mr. Firoj Mia, who was the informant, deposing as PW 1, stated that the deceased was his sister and that after her marriage, her husband used to assault her requiring her to bring grocery articles to meet the day-to-day requirement. According to this witness, the matter was informed to the Panchayat, but the Panchayat expressed its inability to do anything. He further stated that the deceased also informed the Women Commission, Agratola and that though the Women Commission held a meeting with the husband of the deceased, the problem continued. This witness exhibited the FIR lodged by him as Ext.-1. He also exhibited his signature on the inquest report, prepared by the police in respect of the dead body. PW 1 further stated that the husband of the deceased demanded Rs. 4,000/- to Rs. 5,000/- from her and that her brother-in-law Md. Idris Mia and the mother-in-law Smt. Rukhiya Begam also assaulted her. Though this witness stated that the appellants assaulted the deceased demanding grocery items and Rs. 4,000/- to Rs. 5,000/-, he did not state the nature and extent of assault so as to ascertain, if the said assault could be deemed to be a cruelty as defined u/s 498A, IPC and sufficient circumstance to compel to commit suicide. PW 2 Mr. Ali Hussain, who was a neighbour of the appellants, stated that the husband of the deceased used to assault her demanding money. According to this witness, the deceased informed him that her husband demanded money for the purpose of opening a shop and that due to her failure to bring money she was assaulted by her husband, her brother-in-law Md. Idris Mia and her mother-in-law Smt. Rukhiya Begam. According to this witness, once he saw the accused

Mr. Billal Mia assaulting the deceased and went to the house of Mr. Billal Mia to intervene but he was asked by the latter to leave his house. On the same evening, he heard about the death of the deceased. From the cross-examination of this witness, it is further found that the houses of Mofiz Mia, Chadek Mia, Sattar Mia, Khalek Mia and Jahangir Alam were adjacent to the house of the appellant. None of the said witnesses have been examined in this case. He denied the suggestion that he did not see the accused Mr. Billal Mia assaulting the deceased, Of course, he, in his cross-examination, admitted that the appellant Smt. Rukhiya Begum filed two cases against him, which were ultimately disposed of, and that his sister Suriya Khatoon lost the Panchayat election against the appellant Rukhiya Begam. He denied the suggestion that due to the said enmity he had falsely deposed against the accused persons. He also denied the suggestion that the deceased used to live in her father's house due to the poverty of her husband. From the evidence of the said witness it appears that he nowhere mentioned the amount, if any; demanded by the appellant and the nature and extent of torture/assault committed on the deceased. From his own admission, it is found that his sister had lost election against the appellant Smt. Rukhiya Begum and the latter filed two cases against him. Therefore, it appears that this witness had no good relation with the appellants and as such his evidence that he was reported by the deceased regarding torture and that he had seen the appellant Billal Mia assaulting the deceased cannot be safely accepted without corroboration. Ms. Sundar Ali, who was also one of the neighbours of the deceased, deposing as PW 3 stated that the deceased complained him that quarrel took place between the couple regarding their daily food and that her husband used to assault her. This witness stated, that after few months from her marriage, the deceased had left for her father's house and returned to her marital home after about one year. He expressed his ignorance regarding the reason for committing suicide by the deceased. This witness was declared hostile and cross-examined by the prosecution. He denied the suggestion that he had told the police that he saw the accused persons assaulting the deceased. The statements made by this witness before the police has been exhibited as Ext.-4. He further stated that accused Mr. Billal Mia assaulted the deceased and the deceased also reported him about the said assault. In his cross-examination this witness stated that the husband of the deceased was unable to arrange their food and as such due to the said poverty, quarrel used to take place between them. Though this witness was declared hostile and cross-examined on behalf of the prosecution, no evidence regarding any demand for dowry or committing physical assault amounting to cruelty could be elicited. What he stated was that due to poverty quarrel used to take place between the said couple and that her husband assaulted the deceased. Smt. Ambia Khatoon, the mother of the deceased, deposing as PW 4, stated that Sri Billal Mia, i.e. the husband of the deceased assaulted his wife demanding money. She further stated that the deceased had informed her that her husband, brother-in-law and mother-in-law demanded money from the deceased and that due to her failure to pay the money, the deceased was assaulted by her in-laws.

According to this witness, a complainant regarding torture was lodged with the Women Commission and accordingly, Sri Billal Mia on being summoned by the Women Commission had appeared before the Commission and assured the Commission not to make any further torture. This witness also stated that, in spite of the said assurance given by her husband, the torture on the deceased continued for which she committed suicide. In her cross- examination, she stated that no medical treatment was ever given to her deceased daughter in connection with the alleged assault. She denied the suggestion that due to poverty of her husband, the deceased, failing to adjust herself and out of frustration, committed suicide. This witness also did not mention any specific amount alleged to be demanded by the appellant.

Sri Prafulla Biswas, who was examined as PW 5, stated nothing against the accused persons. He was declared hostile and his statement made before the Investigating Officer u/s 161, Code of Criminal Procedure, which he denied to have made, was exhibited as Ext.- 5. PW 6 Sri Chandan Laskhar was the scribe of the FIR. Exhibiting the same as Ext.-I, he stated that the FIR was written by him on being asked by Sri Firoj Mia (PW 1). Sri Momin Mia, the then "Upa Pradhan" of the Goan Sabha, deposing as PW 7 stated that the deceased and the appellants were known to him for the last five years. He stated that there was some problem between the deceased and her husband's family and that on the date of death of the deceased, he was informed by his wife that the deceased had visited their house prior to her death. In his cross- examination, this witness stated that the mother of Mr. Billal Mia had informed him that the deceased did not listen to them regarding family matters. From the evidence of this witness, it appears that the deceased, on the date of committing suicide, visited the house of PW 7 and met the latter's wife. It appears that after visiting the house of the PW 7, the deceased had committed suicide. There is no evidence to show that the deceased had informed the wife of the PW 7 regarding any torture or demand for money. If there was any torture or demand for money, then it was natural for the deceased to inform the wife of the PW 7 on her last meeting with the said neighbour. The silence of the prosecution in this regard throws doubt. Sri Pradip das, who was the "Pradhan" of the Gaon Sabha, deposed as PW 8. From the evidence of PW 8, it appears that PW 15 i.e. brother of the deceased had informed him that the husband of the deceased asked the deceased to bring money after selling her mother's land and that due to her failure to do so, the deceased was assaulted by her husband. A careful reading of the evidence of the PW 8 lead to find that it was only the husband of the deceased who had demanded money and tortured her to the exclusion of the other appellant, because if. If the other appellants had also joined the husband of the deceased, there was no reason not to disclose the roles, if any, played by the appellants. But the PW 1, contradicting the statement of PW 8 stated that all the appellants had demanded money and assaulted the deceased. He even stated that Rs. 4,000/- to Rs. 5,000/-was demanded by the appellants. PW 1 nowhere stated that the husband of the deceased had asked her to bring money by selling her

mother's land. The contradictory statements given by the PW 1 and PW 8 raise doubt about the veracity of the prosecution story itself. As indicated above, there is no corroboration in the evidence of PW 1 and PW 8 on material point. Even the mother of the deceased, who deposed as PW 4, did not state that the appellants had asked the deceased to bring money by selling her mother's land. Therefore, the evidence of PW 8 lacks corroboration on material point. Mr. Ruhul Amin, another neighbourer of the appellants deposing as PW 9, stated that there used to be altercations among the deceased and the appellants and that the deceased was assaulted by her husband and the mother-in-law. According to this witness, hearing the cries of the deceased, he went to the house of the appellants and suggested them to get the matter settled through elderly people of the village but he was abused by Sri Billal Mia. He further stated that, on 26.10.2005, the deceased had informed him that she was assaulted requiring her to bring money from her father's house and by selling the landed property of her mother and that her husband used to rebuke her regarding cooking of meat. According to this witness, he heard the appellant Smt. Rukhiya Begam abusing the deceased while Mr. Billal Mia was asking his wife as to whether she had consumed any medicine as he could get some smell of medicine. The PW 9 further stated that, though he advised Mr. Billal Mia to hospitalise the deceased, Smt. Rukhiya Begum told that it was not necessary to do so because her daughter-in-law should die. In his cross-examination, this witness stated that Smt. Rukhiya Begum had filed a case against him and his brother Nurul Amin. He stated that PW 2 Ali Hussain was his brother-in-law. In view of the filing of the said cases, it can be believed that the PW 9 also did not have good relation with the appellants. Therefore, it is not believable that he had visited the house of the appellants to suggest shifting of the deceased to the hospital. Though this witness stated regarding demand for bringing money by selling the land belonging to the mother of the deceased, the PW 1 and PW 4 being the brother (informant) and the mother respectively of the deceased were the best persons to know about such demand, if any, But neither the PW 1 nor the PW 4 did state anything regarding such demand. Therefore, the evidence of PW 9, who did not have any friendly relation with the appellants appears to have exaggerated by saying about the selling of the land. Hence, his evidence, cannot be believed for want of corroboration. Sri Sultan Mia, deposing as PW 10, who was one of the neighbourers of the appellants, expressed his ignorance about the occurrence. This witness was declared hostile. The statement made by this witness, before the police u/s 161, Code of Criminal Procedure, was exhibited as Ext.-6. In his cross-examination, this witness stated that the houses of Mr. Ali Hussain (PW 2) and Mr. Billal Mia were situated at a distance of about 15 cubits. He further stated that relation between Mr. Billal Mia and his deceased wife was good and that they stayed in the house of the father of the deceased for one year.

Md. Nurul Amin, deposing as PW 11, stated that he was a neighbourer of the appellants and that the deceased was often tortured and assaulted by her husband and the mother-in-law. This witness, who implicated the appellant, Mr.

Billal Mia and his mother Rukhiya Begum did not state anything against the brother-in-law of the deceased. He denied the suggestion that he had falsely deposed due to enmity with the accused persons. This witness was the brother of PW 9, against whom the appellant Smt. Rukhiya Begum had filed a case. Therefore, certainly, he too did not have friendly terms with the appellants. Smt. Sabita Debbarma, who was the member of the Women Commission, Tripura, deposing as PW 12, stated that she received a written complaint from the deceased against her husband and mother-in-law. According to this witness, it was alleged that the deceased was tortured by her in-laws demanding dowry and as such the husband of the deceased was called for counselling. She further stated that the husband of the deceased had agreed to take back his wife and assured not to torture her again. In her cross-examination, the PW 12 denied the suggestion that no counselling, as alleged, had taken place. Sri Farid Mia who deposed as PW 15, was the brother of the deceased. He stated that after about six months from the marriage of his sister, her husband, mother-in-law and brother-in-law used to torture her and that she was not given food properly. He further stated that whenever she complained about food, her husband used to assault her and that he came to know about such behaviour/conduct during the visiting of his sister, to their house. According to this witness, he also visited the marital house of his sister, wherein she reported about such torture. In his cross-examination, this witness denied the suggestions that the deceased was neither tortured nor deprived from food by the accused persons. He further stated that their eldest brother Sri Kashem Miah used to manage and take decisions about the affairs of their house. Sri Kashem Miah has not been examined in this case. This witness, who was also one of the brothers of the deceased, did not state anything regarding demand of money or dowry etc. What he stated was that the deceased was deprived from proper food and that in the event of making any complaint regarding food she was tortured by her husband.

7. PW 7 who was one of the Investigating Officers, stated that, on 28.10.2005, a UD (unnatural death) case was registered with regard to the death of the deceased and that during the investigation, he had prepared the inquest report and forwarded the dead body for post-mortem examination. He stated that on the same day, he received the written complaint regarding the death of the deceased and accordingly, the case was registered for investigation. PW 14 Dr. Ratan Chakraborty, who was the medical officer of Sonamura rural hospital, stated that he conducted the post-mortem examination of the dead body of the deceased and that no external injury in respect of the dead body was noticed. According to the said medical officer, the death was caused by paralysis of respiratory muscles and respiratory failure caused by intake of organophosphorous compound. He opined that the death was suicidal in nature and the time of death was 24 to 28 hours prior to post-mortem examination. He conducted that post-mortem examination on 28.10.2005 and exhibited the report Ext.-9. From the record, it appears that there is no dispute regarding the post-mortem examination of the dead body of the deceased. It is also not

disputed that the deceased was the wife of Mr. Billal Mia and that she committed suicide by consuming poison. The dead body was identified by constable Nishikanta Hazra. He exhibited the report as Ext.-9. PW 16 one of the Investigating Officers stated that he submitted the charge-sheet u/s 498A/304B read with Section 34, IPC against the accused persons. He stated that he had recorded the statements of Sultan Mia (PW 10). He confirmed the Ext.-6. This witness denied that Ext.-6 was not recorded as per version of the witness. PW 17, another Investigating Officer stated that he recorded the statement of Firoj Miah (PW 1) and Sri Farid Miah (PW 14), visited the place of occurrence, prepared the sketch map and arrested the accused persons. He stated that he had handed over the case docket to the SDPO, Sonamura (PW 16) on 19.11.2005. In his cross-examination, he denied the suggestion that Exts.-4 and 5 were not statements of the witnesses. He stated that he recorded the statements of Sundar Ali (PW 3) and Praful-la Biswas (PW 5). He confirmed the statements Exts.-4 and 5. The prosecution by examining the PWs 16 and 17 (Investigating Police Officers) got the statements made by PWs 3, 5 and 10 before the Investigating Officers u/s 161, Code of Criminal Procedure exhibited as Exts.-4, 5 and 6. By getting the said exhibited statements confirmed through the investigating police officers the prosecution tried to establish that the said witnesses made the above exhibited statements. As provided by Section 162, Code of Criminal Procedure, the purpose of recording the statement u/s 161, Cr P is very limited. Such statement, if duly proved can be used by the accused and with the permission of the Court, by the prosecution to contradict such witnesses in the manner as provided u/s 145 of the Indian Evidence Act, 1872. However, this restriction is not applicable to the statements falling within the provisions of Clause (1) of Section 32 and Section 27 of the Indian Evidence Act, 1872. Therefore, except for contradicting the witness, the statements recorded u/s 161, Code of Criminal Procedure cannot be used by the prosecution as substantive evidence. Therefore, the above mentioned statements i.e. Exts.-4, 5 and 6 cannot be used as substantive evidence. In the present case, none of the said witnesses were confronted with their statements made before the IO. The learned trial Judge, during the course of depositions made by the said PWs, recorded that attention of the witnesses was drawn to the statements recorded by the IO u/s 161, Code of Criminal Procedure. The entire statements were marked as exhibits. It is also recorded that the witnesses denied the statement. The IO PW 16 stated that he recorded the statement of Sultan Mia (PW 10). His evidence reads "I recorded the statement of Sultan Mia as stated by him. Ext.-6 is confirmed." Similarly, the other IO (PW 17) who examined PWs 3 and 5 stated that their statements were recorded. His evidence reads, "Exhibits 4 and 5 are confirmed." In the case of Mangal Deb Barma Vs. State of Tripura, it was observed:

The learned trial Court recorded thus:

Attention of the witness to his previous statement recorded by I/O is drawn and such statement is found there. The said statement is marked to be proved by I/O.

(sic) here to say, the outset, that it is not the (sic) attention of the witnesses to any part of (sic) and, then, record that such statement is found or not found. It is the function of the Public Prosecutor to draw attention of the witness to his statement before police and, then, the Court shall record the answer exactly given by the witness. Only thereafter, the relevant portion should be provisionally marked for identification subject to confirmation by the Investigating Officer. Therefore, in our view, the matter should have been recorded in the following manner : the learned Public Prosecutor has drawn the attention of the witness to the portion of his police statement, where he is shown to have claimed that he could identify Gautam Das, Tapan Das, Pradip Das and Asim Bhattacharjee; but the witness has denied to have made such statement as is claimed to have been recorded by the Investigating Officer. The relevant portion, in the police statement of this witness, is provisionally identified subject to confirmation by the Investigating Officer.

If, on his appearance, at the trial, as a witness, the Investigating Officer asserted that the witness, in question, did make the statement put to him, the Court should have, then, taken the statement, in question, as proved and marked the same as an exhibit. As the case diary cannot be handed over to the defence, such statement can be proved by noting down the statement on a piece of paper and marking the same "as proved in original".

I respectfully agree with the view taken by the Hon"ble Division Bench. I am of the considered view that, the counsel for the prosecution or the defence, as the case may be, before marking the relevant portion of the statement, should have brought the particular portion of the statement made by the witnesses before the IO to the notice of the concerned witnesses and confront him with the statement suggesting that in the following manner-"look, before the IO you had stated this, this and this etc." or as the case may be, "look, before the IO, you did not state this, this and etc." The answer given by the witnesses either in positive or negative is to be recorded. If the witness denies such suggestions put to him with regard to his previous statement then relevant portion in the original statement is to be marked and proved/confirmed by the IO. In view of the observation made in the above referred case, the contradictions have not been duly proved and the prosecution failed to draw support from the statements made u/s 161, Code of Criminal Procedure.

8. From the above evidence on record, it is found that according to PW 1 i.e. one of the brothers of the deceased, who lodged the FIR, the husband of the deceased demanded her Rs. 4,000/- to Rs. 5,000/- apart from asking her to bring the day-today grocery items and due to her failure to comply with such demand, the appellants used to assault her. Except the PW 1, none of the witnesses mentioned the amount of the money and the grocery item demanded by the appellants. If the appellants had demanded such specific amount of money and grocery items from the deceased, who used to frequently visit her paternal house, there was no reason for the other witnesses, more particularly, the PW 4,

i.e. her mother and PW 15, i.e. her another brother not to mention the amount as well as the grocery item demanded. The evidence of the PW 1 in this regard was not supported by either the PW 4 or the PW 15. Therefore, there is no corroboration in the evidence of PW 1 with regard to the demand of Rs. 4,000/- to Rs. 5,000/- and the grocery item. All the witnesses simply stated that the deceased was assaulted. But none of them stated regarding nature and gravity of the assault. Fact remains that the deceased was never required to take any medical treatment for such alleged assault. Therefore, it appears that the nature and gravity of the alleged assault, if any, was not of such a magnitude which required medical treatment. There is no evidence that except the physical assault, any other mental torture was meted out to the deceased. The evidence of PW 1 and PW 4 and other witnesses, regarding demand of money, has been negated by the evidence of PW 15. According to PW 15 who was also one of the brothers of the deceased, the deceased was not given food properly and she was assaulted on the ground of raising complaint for insufficient food. That too, the assault was made her husband. Therefore, according to PW 15, the cause of assault was the complaint regarding insufficient food. If the deceased was assaulted due to failure to bring money or other things then there was no reason to suppress such fact by PW 15 i.e. the brother of the deceased. The silence of the PW 15 regarding demand of money etc. raises serious doubt about the veracity of the evidence of PWs 1, 4 and other witnesses with regard to the allegation of demand for money. That apart, according to the PW 1, there was demand of Rs. 4,000/- to Rs. 5,000/- and grocery items. If there was any demand for Rs. 4,000/5,000/- and grocery items then the PW 4 and PW 15 being the mother and the brother should have supported the PW 1. But their failure to do so, raises doubt about the truthfulness of the evidence of PW 1. According to PW 2, the deceased was asked to bring money for opening a shop by her husband. None of the near relatives i.e. the brothers (PW 1 and PW 15) and the mother (PW 4) of the deceased supported the evidence of PW 2 on this point. Therefore, the evidence of the PW 2 that the deceased was asked to bring money for the purpose of establishing a shop appears to be an exaggerated one. Hence, the said evidence of PW 2, who had inimical relation with the appellants cannot be believed. According to PW 9, against whom also the appellant Smt. Rukhiya Begam had filed a case, the husband of the deceased had asked her to bring money by selling the landed property of her mother. Similarly, PW 8 also stated that he was informed by Sri Farid Mia (PW 15) i.e. the brother of the deceased that the husband had asked her to bring money by selling the landed property of her mother and that the deceased was tortured for not giving money. A careful perusal of the PW 8 will reveal that the cause of assault was failure of the deceased to bring money by selling her mother's property. According to PW 8, his source of information with regard to such assault and demand of money was PW 15 i.e. the brother of the deceased. But PW 15, nowhere stated regarding demand for money and selling of their mother's property. What the PW 15 stated was that the complaint regarding insufficient food was the cause of assault. His evidence belie the entire prosecution version that the deceased was assaulted

demanding her to bring money from her parents. Thus, the evidence of the PWs, more particularly, the evidence of PWs 1, 2, 4, 8 and 9 stood falsified with regard to demand of money. Hence, the PW 8 failed to draw support from his source i.e. the PW 15. None of the brothers and the mother, who maintained contact with the deceased failed to support the evidence of PWs 8 and 9. If the appellants had asked the deceased to bring money by selling land then there was no reason for the PW 1, PW 4 and PW 15 not to mention this demand. Their evidence in this regard indicates that both PWs 8 and 9 had exaggerated by saying so. Their evidence being devoid of corroboration cannot be believed. All the said witnesses gave contradictory evidence on material point. The PW 7 whose house was visited by the deceased on the day of suicide did not tell anything regarding any assault/torture or instigation compelling the deceased to commit suicide. If the deceased was treated with such behaviour, it was natural on her part to disclose about the harassment faced by her to the wife of the PW 7, prior to leaving this world. The silence of PW 7 in this regard raises presumption in favour of the innocence of the appellants.

9. In the *Girdhar Shankar Tawade* (supra), the Hon"ble Supreme Court observed that in any event the wilful act or conduct ought to be the proximate cause in order to bring home the charge u/s 498A and not de hors the same. As observed by the Hon"ble Supreme Court, the legislative intent is clear enough to indicate a particular reference to Explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of Explanation (b). In the above referred case, the Hon"ble Supreme Court further held:

The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the Legislature : whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the Legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498A.

10. In view of the definition prescribed by Section 498A, IPC and the principle laid by the Hon"ble Apex Court in a case of suicide by a married woman, the harassment should be the cause of the suicide. In order to hold a person guilty of the offence u/s 498A, it has to be established that the nature and extent of harassment/assault was of such extent/nature which left the victim with no other option but to commit suicide or that the victim sustained grave injury or that the harassment resulted danger to life, limb or health (whether mental or physical).

The Explanation (b) of 498A indicates that if the harassment is made with a view to coercing the woman or any person related to her to make any unlawful demand or property or valuable security then the person responsible for such harassment can be held guilty of the offence u/s 498A, IPC.

11. In our present case, it was alleged that the woman concerned was assaulted and that she had committed suicide. Therefore, it is required to be examined whether the conduct of the appellants was of such nature and extent which compelled the deceased to commit suicide. It has been alleged that the deceased was assaulted by the appellants due to her failure to meet the demand of money and grocery items. Except using the word "assault" the witnesses failed to state anything qualifying the act of "assault" so as to indicate that the alleged assault was of such a nature, which was sufficient to compel the woman to commit suicide.

12. The case of Paparambaka Rosamma and Ors. (supra) relates to dying declaration made by the deceased with regard to torture meted out to her by her husband. The statements made in the dying declaration, were not found to be sufficient to substantiate the prosecution case that Venkata Ramana (since deceased) was meted out with ill-treatment.

13. The learned Public Prosecutor relying on the decisions held in the case of Jakki alias Selvaraj and Anr. v. State (supra) and Kali Lakhmanbhai and Chanabhai (supra) submitted that the evidence of PWs 4, 5 and 10 who were declared hostile and cross-examined by the prosecution cannot be discarded totally. The learned Counsel submitted that the evidence of the said witnesses, which supported the prosecution version can be accepted. In the case of Kali Lakhmanbhai and Chanabhai (supra), the Hon"ble Supreme Court held that the evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. The evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base conviction upon his testimony, if corroborated by other reliable evidence. In the case of Jakki alias Selvaraj and Anr. v. State (supra), the Hon"ble Supreme Court observed that it is the duty of the Court to separate the grain from the chaf. As observed by the Hon"ble Apex Court the unscanned part of the testimony of the witness can be accepted if the same is found to be true and reliable. In this regard, the learned Special Public Prosecutor referred the evidence of PWs 3, 5 and 10 who were declared hostile and cross-examined by the prosecution. The learned Special Prosecutor submitted that the statements made by the said three witnesses u/s 161, Code of Criminal Procedure before the Investigating Officer have been exhibited as Exts.-4, 5 and 6 and that the said exhibits are sufficient to indicate that the deceased was treated with cruelty compelling her to commit suicide. Carefully perusing the evidence of the said witnesses, it appears that even after cross-examination by the prosecution, no sufficient material could be elicited to indicate that the deceased was treated with cruelty so as to compel her to commit suicide. None of the said witnesses

stated about the nature and extent of assault, if any, sustained by the deceased.

14. Carefully considering the evidence of the said hostile witnesses (PWs 3, 5 and 10), it appears that none of the said witnesses made any specific statement regarding the nature and extent of the harassment meted out to the deceased. They simply used the word "assault". Therefore, the evidence of the said hostile witnesses does not inspire committed by the deceased. Admittedly, the deceased committed suicide. The learned trial Judge held the appellants guilty of the offences under Sections 498A and 306, IPC. In the case of *Sonti Rama Krishna v. Sonti Shanti Sree and Anr.* (supra), the Hon''ble Apex Court observed that in case of a suicide, a person who abates such commission of suicide is liable to be punished u/s 306, IPC. For the offence u/s 306, IPC, it must be proved that somebody had abated the commission of suicide. The grave man of the offence punishable u/s 306, IPC is abating suicide. Section 107 which reads as follows of IPC defines abatement of doing 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 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.

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 facilitates the commission thereof, is said to aid the doing of that act.

15. The word "instigate" appearing in Section 107, IPC means the active role played by a person with a view to stimulate another person to do the thing. It is the instigation to commission of the offence itself which constitutes the offence i.e. recorded as abatement. The instigation must amount to provoking, inciting, urging or encouraging a person to do a thing. In the case of *Sonti Rama Krishna v. Sonti Shanti Sree and Anr.* (supra), the Hon''ble Apex Court observed that the words uttered in a fit of anger or emotion without any intention cannot be termed as instigation. Therefore, in order to hold a person guilty of abetting, it must be established that he ""had intentionally done something which "" amounted to instigating another to do a thing. In view of the above, in our present case, it was the burden of the prosecution to establish that the appellants had assaulted or treated the deceased in such a manner with the intention that the deceased would be led to commit suicide. In the case of *Sohan Raj Sharma v. State of Haryana* (supra), the Hon''ble Supreme Court observed

that abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve mental process of entering into conspiracy for the doing of that thing. More active role, which can be described as instigating or aiding in the doing of a thing is required to be established before a person can be said to be abetting the commission of offence u/s 306, IPC. As referred by the Hon''ble Supreme Court, in the case of State of West Bengal Vs. Orilal Jaiswal and another, Courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had, in fact, induced her to end her life by committing suicide. It was further observed by the Hon''ble Apex Court that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough. (See Mahinder Singh v. State of M.P. AIR 1995 SCW 4570.

16. In view of the above principles of law laid down by the Hon''ble Supreme Court and the backdrop of the evidence on record, it is required to be examined whether the appellants committed the offences charged under Sections 498A and 306, IPC. Sections 498A and 306, IPC read as follows:

498A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means:

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

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

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

17. The prosecution version is that due to the assault, on demand of dowry, the deceased, failing to bear such harassment i.e. "assault" was compelled to commit suicide and as such the appellants were guilty of treating the deceased with cruelty and that their conduct amounted to abetment to commit suicide. Charges under Sections 306 and 498A, IPC are independent of each other. In a case in which the woman commits suicide, in order to justify conviction u/s 498A,

there must be sufficient substantive evidence to show that the conduct of the accused was of such nature as is likely to drive the woman to commit suicide, or to cause injury or danger to life or limb or health (whether mental or physical) of the woman or the harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of her failure to bring such property.

18. As discussed earlier, the prosecution failed to establish that there was demand for money or any valuable property and that the deceased was assaulted/tortured due to her failure to meet such demand. In the present case, there is no dispute that deceased, who was the wife of Mr. Billal Mia committed suicide. Therefore, it is to be ascertained if the conduct of the appellants was of such nature which was sufficient to compel the deceased to commit suicide. A careful scrutiny of the evidence on record, more particularly, the evidence of PW 1, PW 4 and PW 15 who were the brothers and the mother of the deceased indicates that the deceased was assaulted by the appellants. According to PW 1 and PW 4, the failure of the deceased, to bring money from her parents was the cause of such assault, whereas according to PW 15, the complaint raised by the deceased for insufficient food was the cause of assault. Fact remains that the appellants and the deceased live in poverty. In view of the above contradiction regarding cause of the assault, coupled with the existence of poverty, it is doubtful if the appellants had really assaulted the deceased in such a manner so as to compel her to commit suicide. There is no convincing and substantive evidence on record to find that the cause of the alleged assault was the failure of the deceased to meet the unlawful demand of money. Hence, there is no substance in the evidence on record to believe that the alleged assault, if any, had any nexus with demand for money. Now, the question is whether the deceased was treated so badly for which she had no other alternative but to commit suicide. From the evidence as discussed above, it appears that the deceased used to frequently visit her paternal house, wherein she could meet her brothers and the mother, (PWs 1, 4 and 15). No evidence has been adduced to show that the nature and gravity of the assault was such that the same was unbearable, for which she had no other alternative but to commit suicide. There is no evidence on record to show as to how and in what manner or in which parts of the body and how frequently the deceased was assaulted by the appellants. There is nothing on record to show that she had sustained any injury on her person. The deceased, during her visit to her paternal house does not appear to have disclosed that the assault, if any, was unbearable and that she had no option but to commit suicide. That apart, at no point of time, the deceased was required to take medical help for such ill-treatment/assault. If the deceased was treated with such cruelty as defined in Section 498A, IPC, the witnesses, more particularly, the mother and the brothers of the deceased should have been able to specifically (sic) state the same. They simply stated that the deceased was assaulted. The word "assault" without indicating the nature and extent of hurt/injury, if any, sustained cannot be sufficient to safely conclude that the alleged

conduct of the appellants falls within the definition of Sections 498A, IPC and 306, IPC. In view of absence of any substantive evidence, it cannot be held that the conduct of the appellants was of such nature which compelled the deceased to commit suicide.

19. In view of the above discussions, it is found that the prosecution failed to substantiate by adducing cogent and reliable evidence to hold that the appellants had treated the deceased with such cruelty as defined by the Section 498A, IPC. That apart, there is nothing on record to show that the appellants had abated the deceased in any manner to commit suicide. Taking the totality of the materials on record and the facts and circumstances of the case into consideration, it leads to the irresistible conclusion that the prosecution failed to prove the offences under Sections 498A and 306, IPC beyond all reasonable doubt. Therefore, the conviction and sentence as recorded by the learned Sessions Judge cannot be sustained.

20. The appeal, therefore, is allowed and the judgment and order dated 12.10.2007 passed by the learned Additional Sessions Judge in ST No. 16(WT/S) of 2007 stands set aside and quashed. The appellants are acquitted of the charges under Sections 498A and 306, IPC. They be set at liberty forthwith, if not required in any other case. Send down the records.