

(2012) 06 GAU CK 0057
In the Gauhati High Court
Case No : Criminal Application No. 10 of 2004

Sri Billal Miah and Others

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 06-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 374(2)

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 109, 149, 306, 307, 324

Citation : (2012) 3 GLD 560

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Advocate : A.K. Bhowmik and Mr. R. Datta, for the Appellant; P. Bhattacharjee, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. By this appeal filed u/s 374(2) of the Code of Criminal Procedure, 1973, for short Cr.P.C., the judgment and order of conviction and sentence dated 07.01.2004 as passed by the learned Astt. Sessions Judge, South Tripura, Udaipur, in Sessions Trial No.107(ST/U)2002 whereby the appellants have been convicted u/s 498A of IPC and sentenced to suffer rigorous imprisonment for two years and the appellant No.1 was sentenced to suffer further rigorous imprisonment for eight years u/s 307 of IPC has been put under challenge. It is also directed by the impugned order of sentence that so far the sentences of appellant No.1 is concerned, those would run concurrently. Essential facts, those are required to be appreciated, may be briefly noticed.

On 04.06.2002, one Rasana Bibi, wife of the appellant No.1 filed a written complaint in the court of the Chief Judicial Magistrate, South Tripura, Udaipur, against all the appellants alleging that on 19.09.2001, corresponding to 2nd Aswin, 1408 B.S. she was married to the appellant No.1 according to the Shariat law. Her father gave a cash of Rs.10,000/- to satisfy the demand of the appellant

No.1 and in addition thereto two bharis of golden ornaments, wooden cot, alna etc. were also given. The marriage was also solemnised after fixing the Mahr. After the marriage, the complainant started conjugal life with the appellant No.1 in her marital home. She was happy for 3/4 months and after that the appellant No.1 and other appellants started insulting the complainant to bring Rs.10,000/- as well as share of her properties from her father. On such demand, the appellant started physical and mental torture on her. In the month of Falguna, 1408 all the appellants jointly assaulted the complainant and ousted her from their residence. Finding no other way, she left for her father's house and took shelter there. Her father intimated the matter to the elderly people of Horijala village. Upa-pradhan of the said village namely, Sri Dipu Dey arranged a village baithak to find conciliation. In that meeting, decision was taken that her husband would take the complainant giving back due regard as wife. On 5th Baisakh, 1409 B.S. she was taken to her husband's house. A few days later, the appellants again started assaulting her to bring money from her father's house. On 08.05.2002 at about 11.30 pm, the appellants assaulted her severely. The appellant No.1 with intention to kill her inflicted a knife blow on her neck causing bleeding injury. At her shouting, neighbouring people came and she was taken to Kakraban Primary Health Centre. Then she was shifted to Udaipur hospital and thereafter to the GB Hospital, where she was treated. The learned Chief Judicial Magistrate, South Tripura, Udaipur, without taking cognizance u/s 190 of Cr.P.C., directed the police to investigate the allegations of complaint u/s 156(3) of Cr.P.C. and accordingly the Officer Incharge, R.K. Pur Police Station, on 06.06.2002, on receipt of the complaint, registered R.K. Pur P.S. Case No.141/2002 under Sections 498A/109 of IPC. After investigation was completed and finding a prima facie case had emerged, the Investigating Officer filed the charge sheet against the appellants under Sections 498A/324/307 of IPC.

2. Since the offence u/s 307 IPC is exclusively triable by the court of Sessions, the case, after taking cognizance, committed to the court of Sessions. The case thereafter was transferred to the file of the learned Astd. Sessions Judge, South Tripura, Udaipur, for trial. On examination of the materials as made available in the charge sheet, the following charges were framed against the appellants :

That you Billal Miah being the husband and others being the father, mother, brother and sister of the Billal Miah, subjected a woman Rasana Bibi to harassment and physical torture during the period from 19.9.01 to 8.5.02 in several dates and time at Hurijala (Kakraban) under P.S.- R.K. Pur, the said woman with a view to coerce her or any other person related to her to meet the unlawful demand of payment of money of Rs.10,000/- and you have thereby committed an offence punishable U/s 498(A) of IPC and within my cognizance of this court.

2ndly : That you & Rajjab Ali, Smti. Shalina Begam, Smti. Nurjahan Bibi and Sri Aliwalla Miah, relatives of Billal Miah abetted Billal Miah, in commission of the aforesaid offence U/s- 498(A) IPC and you were present at the time of

commission of offence and in pursuance of your abetment the aforesaid offence was committed in consequence of your abetment and you thereby committed an offence punishable U/s 109 of IPC and within my cognizance.

3rdly : That all of you on 08.05.2002 at about 1130 Hours at Village- Kakraban in the house of Billal Miah, under P.S.- R.K. Pur, were a member of unlawful assembly and did in - Prosecution of the common object of the said assembly voluntarily caused grievous hurt to Rosana Begam by sharp cutting knife on her neck and with such intention Rosana Begam was admitted in the G.B. Hospital on 9.5.02 to 14.5.02 and under such circumstances that if by that act you have caused the death of Rosana Begam and you would have been guilty of murder and you thereby committed an offence punishable U/s 307 I.P.C. and within my cognizance.

All the appellants pleaded not guilty and claimed to be tried on the charge levelled against them.

3. The prosecution examined as many as eight witnesses to drive the charge home against the appellants and also admitted a few documents such as injury report, seizure list, hank-sketch map with index etc.

4. One Dipu Chandra Dey, Upa-Pradhan of Horijala Gaon Sabha was examined as PW.1 by the prosecution, who stated that Rasana Bibi, the complainant was known to him. Her husband, father-in-law and mother-inlaw were also known to him. He knew that the appellant and the complainant was married socially. After five months of their marriage, the complainant approached the Gaon Panchayat alleging that her husband, the appellant No.1 tortured her for handing over her necklace to him for sale. Then the Panchayat members of both the Gaon Sabha assembled and mitigated the dispute for the time being. The father of the complainant alleged that the appellant No.1 inflicted blow on the neck of Rasana Bibi causing injury. Police seized the knife (Ext.-M.O.1) in their presence. The PW.1 was also the witness to the seizure list (Exbt.-1). In the crossexamination, PW.1 stated that the father of the complainant alleged to them that the appellant No.1 tortured the complainant for handing over the necklace for sale and he stated such statement to the Sub-Divisional Police Officer but the Sub-Divisional Police Officer was not the Investigating Officer in that case.

At this juncture, this court is also required to look at the Exbt.- 1 document to find the place of seizure. It appears from Exbt.-1 that the place of seizure is the house of one Abdul Rahman.

5. PW.2 namely Sri Mani Bhusan Majumder, an Advocate's Clerk was examined by the prosecution. He stated that while he was discharging his duties as the Advocate's Clerk, one Rasana Bibi of Horijala village came to him and narrated the incident and accordingly he wrote the ejahar narrated by her. PW.2 exhibited the ejahar as Exbt.-2. He further stated that he read over the content of the ejahar to her and thereafter the complainant put her thumb impression. He also identified the thumb impression of the complainant (Exbt.-3 series).

6. The complainant namely, Smt. Rasana Bibi was examined by the prosecution as PW.3. She was married to the appellant No.1 as per the Islamic Rites, Rules and Shariat. At her marriage, a dower cash of Rs.10,000/-, wooden furniture, two bharis gold were given by her husband. Thereafter, the Mahr was fixed at Rs.50,000/- and that has not yet been paid by the appellant No.1. She started conjugal life with the appellant No.1 staying in his family. After 3/4 months the accused persons started assaulting her for bringing Rs.10,000/- from her father. After assaulting, they forced her to go to her father's house and to satisfy their demand. Her father intimated the matter to the Gaon Panchayat and the Panchayat took up the dispute for a negotiated settlement. In the baithak that was held in the month of Baisakh, 1409 a decision was taken for taking the complainant back by the appellant No.1 but after joining the marital home the complainant was again subjected to assault for bringing more Rs.10,000/- from her father's house. PW.3 stated that 11/2 years ago at about 11.00 pm her husband Billal Miah inflicted knife blow on her neck causing bleeding injury. On the next day, at about 10.00 am, her mother-in-law shifted her to the Kakrabon Primary Health Centre, from there to the Udaipur hospital and thereafter to the G.B. Hospital, Agartala. PW.3 identified the knife as Exbt.- MO.1. She stated further that after infliction of the injury she was not able to speak as earlier. After her return from the G.B. Hospital, the Investigating Officer brought the knife from her and seized the same in presence of Upa- Pradhan Sri Dipu Dey (PW.1). She stated further that she was in the hospital for about six days. In the cross-examination, PW.3 stated that she was brought to the Kakrabon Primary Health Centre by her mother-in-law where the doctor refused to admit her. Then her mother-in-law took her back to the house and then with the help of one Swapan Dutta, her motherin- law brought her to the Udaipur hospital. One interesting revelation has been made apart the denial of the suggestion as made by the defence to dislodge the case of the complainant is as under :

After being released from G.B. Hospital I straight went to my father's house. Still I am there.

7. One Milan Chandra Dutta, who was the In-charge of the R.K. Pur Police Station on 06.06.2002 was examined by the prosecution as PW.4. He stated that he received the ejahar of one Rosana Bibi, which was forwarded by the Chief Judicial Magistrate, South Tripura, Udaipur and on receipt of the same he made the necessary endorsement in the ejahar (Exbt.-5). Thereafter he filled the FIR form and endorsed the same to one Pranab Debnath for investigation. He admitted that he registered the R.K. Pur P.S. Case No.141/2002 u/s 498A/109 of IPC.

8. One Swapan Dutta, who reportedly took the complainant to the Udaipur hospital, was examined by the prosecution as PW.5. He stated that he knew the complainant and the appellants. The complainant was married to the appellant No.1. Around 15/16 of last Baisakh, in the morning on being informed by one Rajjab Ali, he went to the house and saw bleeding injury in the throat of Rosana

Bibi. He advised them to shift her to the Kakrabon PHC. They did so but after sometime they came back since the Kakrabon PHC referred her to the Udaipur hospital. Thereafter, PW.5 arranged and brought Rosana Bibi to the Udaipur hospital, wherefrom she was referred to the G.B. hospital, Agartala. He admitted that he accompanied the complainant to the G.B. hospital, Agartala. The PW.5 further stated that on the last "Id", Rosana Bibi left for her father's house and regarding this a social meeting was arranged. In the meeting the dispute that the appellant No.1 used to torture the complainant was to some extent settled. In cross-examination, PW.5 revealed that the appellant No.1 used to stay in a separate mess. He further stated that in the next morning he did not find Billal Miah in the house. The torn golden chain of Rosana Bibi, the complainant, was in the custody of the Horijala Panchayat Office. He denied the suggestion that Billal Miah never tortured Rosana Bibi.

9. One Smt. Sukanya Choudhury, a Medical Officer then posted at the Udaipur hospital, was examined as PW.6. She stated that she had Diploma in ENT and joined the Tripura Health Service in the year 1993. On 09.05.2002, the complainant was examined by her in the Tripura Sundari District Hospital, Udaipur and then she referred the complainant to the G.B. Hospital, Agartala. On examination, she found linear cut injury in the front of the neck, 3/4 inches in length (skin cut) with respiratory distress. PW.6 identified her said report, marked as Exbt.-7. In the examination report, the cause and symptom as reported runs as under :

Stab wound anterior neck (midline) transversely placed between hyoid bone and thyroid cartilage (2cm x 1cm x 1/2cm).

The nature of injury has been categorised as simple, created by a sharp weapon.

10. Dr. Tarun Guha was examined by the prosecution as PW.7, who treated the complainant in the G.B. Hospital on 09.05.2002. He stated that he found one stab wound on the anterior neck in midline transversely placed between the hyoid bone and thyroid cartilage. The size of the wound was 2cm x 1cm x 1/2cm and the wound was sutured stitched. He identified the report, which is marked as Exbt.-8. In cross examination, PW.7 stated that such injury may occur by sharp pointed aimed by bamboo.

11. Sri Pranab Debnath, the Investigating Officer was examined as PW.8, who narrated how after having been endorsed to investigate the case he conducted the investigation. He stated that he visited the place of occurrence, examined the victim and other witnesses and seized one knife as the weapon of offence by preparing seizure list in presence of the witnesses. He prepared the hand-sketch map and index and after obtaining the medical reports and finding prima facie case, he submitted the charge sheet against the appellants. In the cross examination he stated that though there were several neighbouring huts but he did not examine the residents of those huts for purpose of unearthing the truth on consideration that they were closely related to the accused persons.

12. The prosecution did not try to take any explanation from the PW.8 about the statement made by the PW.3, the complainant, that the Investigating Officer brought the knife from her and seized it when the Upapradhan, Sri Dipu Dey was present.

It appears from the seizure list (Exbt.-1), the purported knife was seized on 08.06.2002 whereas the alleged offence occurred according to the complainant on 08.05.2002. From 09.05.2002 the complainant was hospitalised continuously for six days and thereafter, according to her deposition as made before the Court, after being released from the G.B. Hospital, she never returned to the house of the appellant No.1 or other appellants. Therefore, the seizure of the knife was made from the complainant. There has been no attempt for serological examination of the said knife to establish whether the said knife was used in the alleged offence.

13. Mr. A.K. Bhowmik, learned senior counsel appearing for the appellants submitted that there is unexplained delay in lodging the complaint. The complaint was lodged on 04.06.2002 in the Court of the Chief Judicial Magistrate, South Tripura, Udaipur whereas the alleged occurrence occurred on 08.05.2002 i.e. almost after a month and only for six days the complainant was detained for treatment in the hospital. No explanation whatsoever has been given either by the complainant or by the prosecution in this regard and as such the allegations as made in the complaint are result of afterthought and concoction. In this regard, Mr. Bhowmik, learned senior counsel for the appellants relied on few decisions of the Apex Court and different High Courts.

14. In *Om Prakash Vs. State of Haryana*, as reported in (2006) 2 SCC 250, the Apex Court held that while no explanation was given the prosecution case suffers irreparable set back as it only strengthens the defence story as the burden of explaining the delay always lies on the prosecution as to why the FIR was not lodged in the earliest of the opportunities.

15. The Allahabad High Court in *Dhan Prasad and Others (in Jail) Vs. State of U.P.*, held :

8. We form the opinion that prosecution case, as projected, suffers from inherent improbabilities and weaknesses, which render it impossible to sustain the conviction. We may relate them one by one to make our meaning clear. It has first to be noted I that the F.I.R. of the incident is inordinately delayed one. The incident occurred on 12-4-1980 at about 5.30 pm. Though the distance of the police station from the place of occurrence was only six kms. the report was lodged the next day on 13-4-1980 at 7.15 a.m. by the deceased's father Gumna P.W. 1 who himself claimed to be an eye-witness of the incident. The stock explanation that he could not go to lodge the F.I.R. in the night is "not plausible. As he says he had seen the ghastly murder of his son with his own eyes. Not only this, Bhagirath P.W. 3 and his own relative Umrao had also reached the spot and seen the occurrence. He should have gone to lodge the F.I.R. with them. He

did not do anything of the kind in the night and allowed time to pass away lodging the F.I.R. in the following day at 7.15 a.m. by oral narration. Obviously there was inordinate unexplained delay in the lodging of the F.I.R leaving much time for concoction and deliberation. It has to be pointed out that as per the G.D. concerning the registering of the case, he had gone to police station all alone in the morning to lodge the F.I.R. If an element of fear was deterring him from going to the police station in the night to lodge the F.I.R. he would have at least taken some one with him in the morning when he went to lodge the F.I.R. The factum of his going to lodge the F.I.R. the following day all alone militates against his explanation of being not able to go to the police station immediately after the incident out of fear. So, having regard to the facts and circumstances of the present case, the inordinate delay in lodging that F.I.R. gives a serious jerk to the prosecution case.

16. In *Mukteshwar and Another Vs. The State*, , the Allahabad High Court considered the consequence of lodging of the FIR belatedly. It was held :

17. The occurrence as alleged by the prosecution and stated by Chandra Shekhar (P.W. 1), Purusottam (P.W. 3) and Ram Badai (P.W. 4) took place at about 11.00 p.m. The report of the occurrence was lodged at 11.15 a.m. on the next day. The distance of police station was only seven kilometers. Thus, the report was lodged after 12 hours 15 minutes. The informant Chandra Shekhar (P.W. 1) tried to explain the above delay in lodging the report and stated that he could not come to police station during night due to fear and that in the morning he got prepared report from Jai Prakash Pandey. In his cross-examination he admitted that the police station is situated at the distance of six miles from his village. Up to a distance of one mile there was kachchl road and he travelled above distance on foot. Thereafter he took a rickshaw and proceeded on it. The rickshaw got punctured in the way and, therefore, he was delayed in reaching the police station. Purusottam (P.W. 3) stated In his cross-examination that his uncle Chandra Shekhar left the spot and went to the house at 6.00 to 6.30 a.m. In the FIR Ext. Ka-1 there is no explanation for delay in lodging the report. In his evidence Chandra Shekhar (P.W. 1) had also not given any explanation. In his cross-examination he offered the above explanation. He also admitted that he had not mentioned the above explanation in the FIR, nor had stated before the I.O. It appears that when specifically asked about the delay the witness gave a false excuse in lodging the report with delay and introduced a theory that rickshaw on which he was going to police station got punctured in the way. This explanation was subsequently developed and is not convincing. The delay in lodging the report in the facts and circumstances of the case leads to infer that the dead body of the deceased was noticed for the first time in the morning as stated by Ram Naresh Pandey (D.W.1), Pradhan of the village and thereafter Chandra Shekhar was called from his house and then he went to the police station. Had it not been so and the informant and other witnesses had seen the occurrence In the night at about 11.00 p.m. and the name of the assailant was known the report in all probabilities would have been lodged at 6.00 or 7.00 a.m.

if not earlier to it. The delay in lodging the report again suggests that deliberations were going on as to who should be made accused.

17. This High Court also on several occasions considered that aspect of the matter. In *The Doom Dooma Town Committee & Anr. Vs. The State of Assam & Ors.*, as reported in (1990) 1 GLR (NOC) 24, it has been held :

FIR and facts stated therein are not substantive piece of evidence. It can be used to confront and contradict the maker at the trial. But FIR is very important document in criminal case, particularly in a murder case. Again it is of great significance and important when it is lodged after keeping the incident thoroughly and abnormally delayed. In a case of this nature, when FIR was lodged after 6 days, important material facts with names of witnesses to the occurrence must have been disclosed so that the court may rely the prosecution disclosed to police and before the court. This was missing in the present case as discussed above.

18. Mr. A.K. Bhowmik, learned senior counsel appearing for the appellants strenuously argued that there is no ingredient of Section 498A of IPC against the appellant. From a wholesome appreciation of the evidence as led by the prosecution it would be established that the allegations as lodged by the complainant suffer from contradictions vis-?-vis the evidence of the other witnesses.

PW.1 while stating that the dispute started with parting with the necklace of the complainant but the complainant (PW.3) stated that it was on the demand of Rs.10,000/- cash from her father. PW.1 is an independent and dispassionate witness, moreover the complaint was made at the instance of the PW.3 in the Panchayat of which the PW.1 was the Upa-Pradhan. These two vital contradictions have never been demonstrated to have reconciled by any other witnesses or by the prosecution and the allegations of parting with the necklace for sale is targeted only against the appellant No.1.

19. Mr. Bhowmik relied on a decision as rendered by the Apex Court in *Girdhar Shankar Tawade Vs. State of Maharashtra*, , where the Apex Court held that the basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures : 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 498(A) of IPC.

It has been further deliberated in Girdhar Shankar Tawade (supra) at paragraph Nos. 16,17 and 18, which are profitably reproduced hereinbelow :

16. We have already noted Section 498A hereinbefore in this judgment and as such we need not delve upon the same in greater detail herein excepting recording that the same stands attributed only in the event of proof of cruelty by the husband or the relatives of the husband of the woman. Admittedly, the finding of the trial Court as regards the death negated suicide with a positive finding of accidental death. If suicide is ruled out then in that event applicability of Section 498A can be had only in terms of explanation (b) thereto which in no uncertain terms records harassment of the woman and the Statute itself thereafter clarifies it to the effect that it is not every such harassment but only in the event of such a harassment being with a view to coerce 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 -- there is total absence of any of the requirements of the Statute in terms of Section 498A. The three letters said to have been written and as noticed earlier cannot possibly lend any credence to the requirement of the Statute or even a simple demand for dowry.

17. As regards the core issue as to whether charges under Sections 306 and 498A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further deletion is not necessary neither we are inclined to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon - the documentary evidence (namely, those three letters), in our view, falls short of the requirement of the Statute : Even on an assumption of the fact that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in-laws place and requests the husband to treat her well -- at best some torture and a request to treat her well. This by itself would not bring home the charge u/s 498A. Demand for dowry has not seen the light of the day.

18. A faint attempt has been made during the course of submissions that explanation (a) to the Section stands attracted and as such no fault can be attributed to the judgment. This, in our view, is a wholly fallacious approach to the matter by reason of the specific finding of the trial Court and the High Court concurred therewith that the death unfortunately was an accidental death and not suicide. If suicide is left out, then in that event question of applicability of explanation (a) would not arise - neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the willful 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. To have an event sometime back cannot be

termed to be a factum taken note of in the matter of a charge u/s 498A. The legislative intent is clear enough to indicate in 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). The letters by itself though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498A against the accused. Acquittal of a charge u/s 306, as noticed hereinbefore, though not by itself a ground for acquittal u/s 498A, but some cogent evidence is required to bring home the charge of Section 498A as well, without which the charge cannot be said to be maintained. Presently, we have no such evidence available on record.

20. In *Gopa Deb Vs. State of Tripura & Anr.*, as reported in (2009) 1 GLR 307, this Court had occasion to appreciate the provisions of Section 498A of IPC. It has been held that if there is no allegation of illegal demand of dowry, cruelty within the meaning of Explanation(b) of Section 498A IPC cannot be attracted unless it is demonstrated that the mental torture should be of such degree which may drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. So far the Explanation(b) is concerned, it must be shown that 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.

21. Mr. Bhowmik, while questioning the findings of conviction against the appellant No.1 u/s 307 of IPC, quite emphatically submitted that the essential ingredient of the offence is found nowhere in the evidence. There is no legal proof in the evidence as led by the prosecution to show that there is evidence of intention to kill against the appellant No.1 nor was there any attempt with such intention to kill the complainant in the circumstances. To buttress his such contention, Mr. Bhowmik relies on *Ramesh Vs. State of U.P.*, where the Apex Court held :

3. The learned Counsel for appellant has assailed the finding recorded by the High Court and the Trial Judge and has urged that the appellant was implicated due to enmity. He urged that even though the High Court held that in the FIR the main part was specifically assigned to the appellant and one Jagat Singh but in the evidence it was confined to the appellant as the relations between the two were strained. The learned Counsel further urged that the case of the prosecution that the complainant was bitten by Jagat Singh and there being no injury of biting, the High Court committed an error in maintaining the conviction. We are not impressed by the argument. The learned Counsel then urged that the High Court committed an error in convicting the appellant u/s 307, Indian Penal Code. We do not propose to decide it as a matter of law. But we agree with the learned Counsel for the appellant that in peculiar circumstances of the case it being a case of single injury in the back of neck the conviction can be altered to be u/s 324, Indian Penal Code.

22. In Hari Kishan Vs. Sukhbir Singh and Others, , it has been held by the Apex Court in the back ground :

There is no serious dispute with regard to acquittal of Sukhpal Singh and Surat Singh. The prosecution case that they were armed with Barchha has not been proved. There was no incised injury on the victim or any of the prosecution witnesses. Their participation in the commission of crime therefore appears to be doubtful. The High Court was justified in acquitting them.

The Apex Court in para-7 further held :

7. On the first question as to acquittal of the accused u/s 307/149 IPC, some significant aspects may be borne in mind. u/s 307 IPC what the Court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". u/s 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

In this case, two parties in the course of a fight inflicted on each other injuries both serious and minor. The accused though armed with ballam never used the sharp edge of it. They used only the blunt side of it despite they being attacked by the other side. They suffered injuries but not provoked or tempted to use the cutting edge of the weapon. It is very significant. It seems to us that they had no intention to commit murder. They had no motive either. The fight as the High Court has observed, might have been a sudden flare up. Where the fight is accidental owing to a sudden quarrel, the conviction u/s 307 is generally not called for. We, therefore, see no reason to disturb the acquittal of accused u/s 307 IPC.

23. Mr. P. Bhattacharjee, learned Addl. Public Prosecutor appearing for the State, submitted that at the first instance when the complainant appeared before the doctor, she categorically stated that the appellant No.1 tried to stab her and the injury that was being treated was a stab injury by a sharp weapon. As such considering the place of injury which is a very vital place for taking someone's life by inflicting injury thereon and the nature of weapon that has been used in the circumstances it cannot be stated that there is no legal evidence to return the finding of conviction u/s 307 of IPC. He quite emphatically submitted that the element of offence u/s 498A of IPC is very much there as there had been a village baithak available from the deposition of PW.1 that the Panchayat members of both the Gao Sabha assembled to mitigate the dispute. As such it cannot be washed away that there is no ingredient of Section 498A against the

appellants.

24. On appreciation of the evidence as led by the prosecution and the rival contentions as advanced before this court, it appears that in the village baithak there was no allegation against the other appellants except the appellant No.1. The allegations against the other appellants are unspecified and absolutely sweeping in nature. Even in the deposition, the complainant (PW.3) did not make any allegation against the other appellants, except the appellant No.1, how they had participated in coercing her to realise the unlawful demand. Though in the charge a period from 19.09.2001 to 08.05.2002 has been mentioned but such period has not been proved by the PW.3. It appears that to retaliate her unhappiness she had implicated all the inmates of the appellant No.1.

25. Now, regarding the appellant No.1, whether there is any proof of cruelty of such nature to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health or such type of harassment to coerce her or any person related to her to meet any unlawful demand for any property or valuable security, what PW.1 stated that the appellant No.1 tortured the complainant for handing over her necklace to him for sale but the PW.3, the complainant had given a different story that the assault started by the appellants for more Rs.10,000/-. This alleged demand was not corroborated by any of the remaining witnesses. Even the father of the complainant, who lodged the complaint in the Panchayat also did not come forward to support the complainant as witness to the prosecution or to corroborate such demand and on the face of such vital contradiction, the prosecution case becomes doubtful.

26. In view of this, the finding of conviction u/s 498A of IPC against the appellant No.1 or any of the remaining appellants cannot be sustained and as such all the appellants are entitled to be acquitted on benefit of doubt.

27. So far the conviction u/s 307 of IPC is concerned, there is no evidence regarding intention to kill the complainant by the appellant No.1. What the PW.3, the complainant, stated in her deposition is definite. She stated "11/2 years ago on a night at about 11 pm my husband Billal Miah inflicted knife blow on my neck causing bleeding injury.

From the attending circumstances of such allegations or from the depositions, nothing can be inferred as to the intention to kill. Apart that, one glaring flaw in the prosecution case that has surfaced is that one knife was seized from PW.3 when she was at her parents house and she has not explained anywhere how that knife was in her custody as on the following day of the incident she was taken by her mother-in-law to nearby hospital and thereafter to the Udaipur hospital, from where she was referred to the GBP Hospital, Agartala and after having been released from the hospital she never returned to the marital home. Therefore, it is obvious that the said knife was not seized from the marital home and the PW.3 even did not give any explanation how she took the knife in her custody if that was at all used for inflicting the injury on her. The police also did

not send the said knife for serological examination to establish the link of weapon to the alleged offence. Apart that, the PW.5, namely Sri Swapan Dutta also did not shed any light how the injury was received by the complainant. Except the statement of the complainant who is admittedly in a hostile relation with the appellant No.1, none has stated anything how the complainant received that injury. It appears that to wreak vengeance against the appellant No.1, injury that has received by the complainant (PW.3) has been levelled as an injury as inflicted by the knife. Moreover, such suspicion turns to a possibility when it is found that the complaint was lodged on 04.06.2002 after a month of the alleged occurrence took place. The occurrence took place on 08.05.2002 as per the allegation. It is also to be considered that the defence also did not come forward to explain how the complainant received the injury to discharge their burden of knowledge u/s 106 of the Evidence Act. However, to make a judicious balance the absence of proving should always be preferred over the failure of giving the explanation particularly in the backdrop of belated filing of the ejahar. As such the appellant No.1 is also entitled to get the benefit of doubt. Accordingly he is acquitted from the charge of Section 307 of IPC on benefit of doubt.

For the reasons as stated above, the impugned judgment of conviction as well as the order of sentence are liable to be set aside and accordingly those are set aside. All the appellants are acquitted from the charges as brought under Sections 498A and the appellant No.1 from the charge u/s 307 of IPC on benefit of doubt. Thus, the appeal stands allowed. Sureties, if any, shall be discharged from their obligation.

Send down the LCRs forthwith.