

(2011) 03 GAU CK 0106
In the Gauhati High Court
Case No : Criminal Appeal No. 37 of 2003

The State of Tripura

APPELLANT

Vs

Shri Apu Pal

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 378(4)
Evidence Act, 1872 — Section 113, 113A, 32
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2011) 2 DMC 489 : (2011) 3 GLR 776 : (2011) 2 GLT 240

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : D. Sarkar, Public Prosecutor and R.C. Debnath, for the Appellant;
A.K. Bhowmik and R. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

U.B. Saha, J.—In the instant appeal, challenge is to the judgment dated 27.1.2003 in Criminal Appeal No. 15(1)/2002 passed by the learned Additional Sessions Judge, Court No. 2, West Tripura, Agartala whereby and where under the learned Addl. Sessions Judge acquitted the accused Shri Apu Pal, Respondent herein setting aside the judgment of his conviction u/s 498A of the Indian Penal Code (for short "the Code") and order of sentence of simple imprisonment for a term of one year dated 15.2.2002 passed by the learned Judicial Magistrate Ist Class, Agartala, West Tripura in G.R. 645 of 1997.

2. Heard Mr. D. Sarkar, learned Public Prosecutor, assisted by Mr. RC Debnath, learned Counsel for the State Appellant and Mr. AK Bhowmik, learned senior counsel, assisted by Mr. R. Dutta, learned Counsel for the accused-Respondent.

3. The prosecution story before the learned trial court was, inter alia, as follows:

Mrs. Manika Pal (Roy), P.W.1, lodged a written complaint before the Officer-in-Charge, West Agartala Police Station against three accused persons namely, Apu

Pal, Respondent herein, husband of the informant the then and Nagendra Pal and Anita Pal, parents in-law alleging, inter alia, that she was physically and mentally tortured by the named accused. In her complaint, the informant wife also stated that on 24.1.1996 her marriage was solemnized with the accused-Respondent according to Hindu rites and customs who was residing as a tenant at the relevant time in the house of one Suprasanna Sarkar at Mantribari Road, Agartala, West Tripura and since 1996 her parents-in-law started physical and mental torture upon her and further that her husband, the then, Respondent herein, had unusual relationship and affinity towards one Sarmistha Sarkar, daughter of the said landlord Suprasanna Sarkar. It is also stated that her husband, accused-Respondent also used to torture her physically and mentally and further that she fell sick on 17.5.1997 due to assault by her husband, accused-Respondent and then she left her matrimonial home on 22.5.1997 and started residing in her parental house. While she was sick on 17.5.1997, she received treatment till middle of July 1997 and further there was a meeting held on 9.8.1997 in presence of the relatives and the others wherein it was decided that the husband Respondent would take a rented house at proper Agartala between the house of said landlord Suprasanna Sarkar and that of her father, but he did not agree to such separate accommodation leaving his parents.

4. On completion of the investigation, the investigating agency filed charge sheet against the aforesaid three persons and the learned Judicial Magistrate, Ist Class being the trial court framed charge against all the three persons including the present accused Respondent u/s 498A of the Code.

5. The prosecution examined as many as eleven witnesses including the official witnesses. The case of the defense before the learned trial court was of total denial and they have not examined any witness in support of their case. On examination of the witnesses and recording the statement of the accused persons u/s 313 of the Code of Criminal Procedure, the learned trial court did not find any merit so far the allegation against the accused Nagendra Pal and Smt. Anita Pal, father-in-law and mother-in-law respectively and thus the charge framed against those two persons stood failed and they were acquitted from the charge leveled against them. But on the basis of the evidence on record, the learned Judicial Magistrate Ist Class, the trial court, came to the conclusion that the prosecution has become successful to establish the charge punishable u/s 498(A) of the Code against the accused Respondent Apu Pal, i.e. the husband the then beyond all reasonable shadow of doubt and on conviction u/s 498A of the Code he was sentenced to suffer simple imprisonment for one year.

6. Being aggrieved by the judgment of conviction and order of sentence passed by the learned Judicial Magistrate Ist Class, the accused, Respondent herein preferred an appeal being Criminal Appeal No. 15 (1)/2002 before the learned Sessions Judge, West Tripura, Agartala, but the State did not prefer any appeal against the order of acquittal of Nagendra Pal and Smt. Anita Pal. The appeal preferred by the accused-Respondent husband was subsequently transferred to

the court of learned Addl. Sessions Judge, West Tripura, Agartala. On being heard the learned Counsel for the parties and on going through the evidence, the learned appellate court in para 12 of the impugned judgment stated thus -

12. The essential ingredients of Section 498(A) of the Indian Penal Code is that woman is subjected to cruelty and the cruelty means (a) any willful 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 is on account of failure by her or any person related to her to meet such demand.

In para 13 of the impugned judgment, the learned appellate court further stated, *inter alia* -

In the written petition of complaint filed by the complainant in the P.S. also I find she has not stated that her husband and her father-in-law, the mother-in-law subjected her to cruelty or harassment for or in connection with demand for dowry. Therefore in my opinion there is no *prima facie* ingredient of Section 498(A) of the Indian Penal Code in the charge leveled against convict Appellant. So also the prosecution side has not made out the case u/s 498(A) of the Indian Penal Code against the convict Appellant. The impugned judgment and order of conviction dated 15.2.02 passed by learned Judicial Magistrate Ist Class, Sri M.L. Chakraborty, Agartala, West Tripura in case No. GR 645/97 is liable to be set aside.

In the result, the learned Addl. Sessions Judge set aside the judgment of the learned Judicial Magistrate Ist Class and allowed the appeal preferred by the accused-Respondent.

7. Being unhappy and aggrieved by the judgment of the learned appellate court dated 27.1.2003, the State preferred the present appeal as stated *supra* against the order of acquittal on the ground that the learned appellate court failed to appreciate the evidence on record and did not take note of explanation (a) of Section 498(A) of the Code.

8. In support of the grounds taken in the instant appeal, Mr. Sarkar, learned Public Prosecutor mainly harped on Clause (a) of the explanation to Section 498A of the Code and contended that the learned appellate court while setting aside the order of conviction did not take note of the fact that even without the demand for dowry there can also be a cruelty subject to the willful conduct of husband or the relatives of the husband of a woman is of such nature as is likely to drive the said woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman. The learned appellate court only considering the fact that there was no demand for dowry acquitted the accused-Respondent from the charge leveled against him. The said findings of the learned appellate court can be considered as correct if the

prosecution case is based on Clause (b) of the explanations to Section 498(A) of the Code, which is not the case herein. Mr. Sarkar referring the case of Smt Shanti and Another Vs. State of Haryana, would contend that demand of dowry is always not sine quo non for an offence u/s 498A of the Code. Even the cruelty as stated under Clause (a) of explanation to Section 498A of the Code by itself amounts to an offence u/s 498A of the Code, which is also punishable. He submitted that the statement of objects and reasons for enacting Criminal Law (Second Amendment) Act No. 46 of 1983 has been done by the legislature taking note of incensement of number of dowry death and that was done by the legislature only to curb the vice of cruelty to the married women by their husbands or the relatives of their husbands which may culminate in suicide by or murder of the helpless woman concerned and not only that the legislature also considered that the court in such a case should take a presumption u/s 113A of the Evidence Act against the husband or relatives of the husband when there is an allegation of abetment of suicide by a married woman within a period of seven years of her marriage if she has been treated with cruelty by her husband or such a relation in order to coerce her to fetch more dowry or on her refusal to do so. Therefore, it can be easily said that the definition of the word "cruelty" in Section 498A of the Code is not vague at all.

9. To support his contention and the grounds taken in the appeal, he mainly referred the evidence of P.W.1, Smt. Manika Pal (Roy), the informant wife, P.W.2, Kamal Krishna Roy, the father of P.W.1, P.W.3, Shri Paritosh Ch. Mukherjee, a close neighbor of P.W.2, P.W.4, Shri Kanu Ghosh, P.W.5, Shri Ranjit Kr. Deb, P.W.6, Dr. Jyotish Chandra Chakraborty who allegedly treated the informant and P.W.7, Smt. Mili Ghosh, aunt of the informant (sister of mother).

10. While relying upon the evidence of the aforesaid P. Ws., Mr. Sarkar submitted that from the evidence of P.W.6, the doctor it appears that the informant (PW 1) was tortured by the accused persons though she could not tell the story to anybody except P.W.7, her aunt prior to lodging the complaint. He further submitted that the learned appellate court failed to take note of the evidence of P.W.3, Shri Paritosh Ghosh who stated that he saw the informant (PW 1) in ill condition and also provided her medical treatment in her father's house and he was told by the informant that her husband had been maintaining unusual relation with the daughter of the landlord and it was noticed to her knowledge during her stay in that house. By way of placing such evidence, Mr. Sarkar tried to convince this Court that maintaining relation by a man with another woman having his own wife also creates mental torture to the wife of that man. In the instant case also such torturing was there, which comes within the purview of Clause (a) of explanation to Section 498A of the Code. He submitted that from the evidence of P.W.3, Shri Paritosh Ch. Mukherjee it is clear that the accused persons received dowry of Rs. 60,000/- at the time of marriage. He finally submitted that on perusal of the evidence of P.W.2, the father of the informant and P.W.7, aunt of the informant a reasonable man would come to a conclusion that there was heavy mental and physical torture upon the informant wife by her

husband and his family members which is sufficient to cause grave injury or danger to her body.

11. While refuting the contentions of Mr. Sarkar, Mr. Bhowmik, learned senior counsel appearing for the accused-Respondent would contend that the learned appellate court rightly set aside the order of conviction and acquitted the accused-Respondent husband who by this time has married on divorce and has minor children.

12. While responding to the contention of Mr. Sarkar relating to Clause (a) of explanation to Section 498A of the Code, Mr. Bhowmik would contend that the conduct of the husband or his family members has to be willful and of such nature as is likely 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, but here in this case the prosecution failed to prove that the accused Respondent willfully conducted torture upon the informant wife for driving her from his house or to cause grave injury either bodily or mentally, rather the informant herself stated that she left her matrimonial house and she in her complaint nowhere mentioned that she get letters, pictures and greeting cards in the book of the accused-Respondent and she handed over those to her father and/or brought those while she came to her father's house and not only that she also did not mention specifically that her husband assaulted her several times before 17.5.1997 though she stated that her husband used to torture her physically and mentally. According to Mr. Bhowmik, mere mentioning of word "torture" physical and/or mental would not be enough to prove an offence u/s 498A of the Code unless the same is corroborated by the independent witnesses. He contended that though the accused Respondent denied the allegation of extra-marital relation with Sarmistha Sarkar, daughter of the landlord Suprasanna Sarkar, but even if for argument sake it is admitted then also the said relation cannot come within the purview of Section 498A of the Code. To deny the allegation as raised by the informant (P.W.1) before the court regarding Sarmistha, he submitted that neither the landlord nor the alleged girl Sarmistha nor other tenants of the landlord were examined by the prosecution to prove the allegation of torture either physical or mental and in absence of such evidence a court cannot convict a person only on the basis of surmise and presumption even if taking the benefit of Section 113 of the Evidence Act.

13. Mr. Bhowmik while taking this Court to para 11 of the impugned judgment wherein the appellate court stated, inter alia, "...during her stay in the house of her husband her parents in law did not allow her to talk or mix with her relatives from the side of her father. That on 17.5.97 her husband had severely beaten her and she became very much ill. Before 17.5.97 her husband has beaten her in several times in the rented house. That her father after knowing serious illness of her sent her uncle Narayan Das, Anil Karmakar and Kanu Ghosh and his wife to bring her from the house of her husband on 22.5.97 and on that day she went to her father's house along with them" submitted that though the learned Addl.

Sessions Judge somewhere in his judgment stated that he found that the informant had been beaten by the accused-Respondent on 17.5.1997, but there is no corroborative evidence except the evidence of P. Ws. 1 and 2 and those pieces of evidence are very weak evidence on the basis of which a person cannot be convicted. He contended that a faint attempt has been made by the prosecution that explanation (a) to Section 498A of the Code stands attracted in the present case and as such no fault can be attributed to the judgment of the learned trial court and when the said findings of the learned trial court was ignored by the learned appellate court, the impugned judgment of the learned appellate court is liable to be set aside. In support of his aforesaid contention, Mr. Bhowmik referred to the case of Girdhar Shankar Tawade Vs. State of Maharashtra, , particularly paras 3 and 18 wherein the Apex Court while dealing with Section 498A of the Code held thus -

3. 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 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 498A.

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 themselves though may depict a reprehensible against the accused. Acquittal or a charge u/s 306, as notice 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.

14. Mr. Bhowmik again contended that the whole allegation of the informant against the accused-Respondent is that though he agreed in the meeting for living separately with her except his parents in a rented house, he failed to keep his promise and that is the reason for filing the complaint on 12.8.1997 and on that day itself police arrested the present accused-Respondent and his parents at about 10.35 p.m. from his residence. Had there been any torture on 17.5.1997 as alleged then the informant and her parents who were residing even within the distance of half km. of a police station could have informed the said incident to the police and such no information itself is a ground for doubting the evidence of P.W.1. In support of his aforesaid contention he relied upon the decision of the Apex Court in Smt. Sarla Prabhakar Waghmare Vs. State of Maharashtra and others, particularly para 3 wherein the learned Single Judge of Bombay High Court while dealing with an offence relating to provisions of Section 498A of the Code observed, *inter alia*, thus -

After going through her evidence it does not appear that she has conclusively established that the beating and harassment was with a view to force her to commit suicide or to fulfill the illegal demands of the non-applicants. The trial Court has discussed this aspect at some length and has recorded a finding that offence u/s 498A, Indian Penal Code, is not established. I do not see any reason to interfere with the same in my revisional jurisdiction at the instance of the complainant, particularly when the State has not challenged the impugned order.

He also placed reliance on a decision of the Orissa High Court in Nilakantha Pati Vs. State of Orissa, wherein the learned Single Judge of the said High Court noted, *inter alia*, The physical and mental torture that allegedly took place on the Kumarpurnima day and shortly thereafter has not been believed by this Court. It has of course been found that the prosecution has been able to prove beyond reasonable doubt that in the morning of the date of the alleged occurrence prior to her death, the deceased had been assaulted by the accused. But regard being had to the nature and location of the injuries it can scarcely be said that the willful conduct of the accused i.e. in assaulting the deceased was of such a nature as was likely to drive the deceased to commit suicide or to cause grave injury or danger to her life limb or health (whether mental or physical). It follows, therefore, that the conviction of the Appellant u/s 498A, I.P.C. cannot also be sustained in law."

Mr. Bhowmik further placed reliance on the decision of the Andhra Pradesh High Court in G.M. Ravi alias G. Purushotham Vs. State of A.P., particularly para 7 of that judgment wherein the Apex Court held thus -

7. All the witnesses in the present case, who have deposed, have only stated what according to them was told by the deceased to them with respect to the harassment meted out to her by her husband. None of these statements comes within the purview of Section 32 of the Evidence Act. Therefore, these

statements in view of the judgment of the Supreme Court referred to above, are not at all admissible in evidence. There is not a single witness who has stated that he/she had personal knowledge of the harassment of the deceased by the Appellant. Even the father of the deceased, who stated that the accused had demanded Rs. 10,000/- for the purpose of filing an appeal in the High Court, did not state that a demand for money was made to him by the accused. He stated that the demand was made on telephone by his own daughter, the deceased. According to him, the accused had asked his wife, that is the deceased, to demand money from him. Again this evidence is not admissible u/s 32 of the Evidence Act. Therefore, conviction u/s 498A, IPC also cannot sustain and is set aside.

Learned senior counsel also placed reliance on the decision of the Apex Court in *U. Suvetha Vs. State by Insp. of Police and Another*, particularly para 9 wherein the Apex Court explained and interpreted the word "cruelty" and held that living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same would not attract the wrath of Section 498A of the Code. An offence in terms of the said provision is committed by the persons specified therein.

Mr. Bhowmik finally placed reliance on the decision of a Division Bench of this Court in *State of Tripura v. Haradhan Majumder and Ors.*, reported in (2010) 6 GLR 134, particularly paras 22, 23 and 26, in which I was a party and contended that the High Court being the court of first appeal has obviously the power to review the evidence recorded by the learned trial court, but at the same time, the court has to consider that whether the order of acquittal passed by the learned trial court or appellate court has caused any miscarriage of justice and it has to act with great circumspection and utmost care before ordering reversal of an acquittal. He submitted that an order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by his acquittal. It would be profitable to reproduce the aforesaid paragraphs of *Haradhan Majumder (supra)*. Accordingly, same are reproduced herein under:

22. In *Vazir Hakki (supra)* as relied by Mr. Saha, learned Counsel for the Respondents, the Apex Court laid down the cardinal rules required to be followed in a case of appeal against the acquittal, i.e. (a) a presumption of innocence in favour of the accused which has been strengthened by the acquittal of the accused by the trial Court, (b) if two views are possible, a view favorable to the accused should be taken, (c) that the trial Judge had the advantage of looking at the demeanor of the witnesses, and (d) the accused is entitled to a reasonable benefit of doubt, a doubt which a thinking man will reasonably, honestly and consciously entertain.

23. The same principle is echoed again by the Apex Court in the case of *State of Haryana v. Shibu alias Shiv Narain & Ors.* AIR 2008 SCW 5400 wherein it is stated that there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal

against acquittal, the High court as the Court of first appeal is obliged to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though it has to act with great circumspection and utmost care before ordering the reversal of an acquittal. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favorable to the accused should be adopted. The paramount consideration of the Court is to ensure that the miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

26. In Venkata Subbarao v. State represented by Inspector of Police A.P. 2007 CrL. L.J 754 also observed in para 30 as follows:

30. In Kalyan Singh Vs. State of Madhya Pradesh th. Secy. (Home), this Court has held:

The High Court while dealing with the matter, in our considered opinion, failed to apply the proper tests in deciding a case where a judgment of acquittal has been recorded. The views of the learned Trial Judge cannot be said to be wholly unsustainable. It is now well-known that if two views are possible, the appellate court shall not ordinarily interfere with the judgment of acquittal. We do not, however, mean to lay down the law that the High Court, in a case where a judgment of acquittal is in question, would not go into the evidence brought on records by the prosecution or by the State but we would like to point out that even if the High Court reversed the judgment of acquittal recorded by the trial court, it is incumbent on the High Court to arrive at the conclusion that no two views are possible.

15. Having heard the learned Counsel for the parties and on perusal of the evidence on record as well as the judgment impugned it appears that P.W.1 though in her deposition stated about the mental and physical torture by the accused-Respondent husband and his parents, but at no point of time lodged complaint with the police. Even on 17.5.1997 she neither went to her parental house nor went to the police station though both the places are near to the rental accommodation wherein she was staying and not only that what she stated in her deposition before the court that was not in her complaint and even after filing of the complaint she only came to know about the payment of Rs. 45,000/- allegedly given to the family of the accused family and in her cross she stated that she did not mention in the complaint that she got pictures, greeting cards in the book of her husband and even in her complaint she did not mention specifically that her husband assaulted her several times before 17.5.1997. In her cross she further stated that she did not mention in her complaint that on 17.5.1997 when her husband assaulted her she could not shout due to threat of her husband and she did not disclose the same to anybody in that house on that

day or thereafter. In her cross she again stated that the other persons residing in the house could easily realize that she was tortured by the accused persons though she could not tell them. But none of those inmates of the house were examined by the prosecution which creates a doubt about the prosecution case.

P.W. 2, father while stating so many things in his chief specifically stated in his cross that he did not tell to Darogababu that in his absence or in absence of any male member of his house the accused persons came to his house and tried to take back Manika and she refused to go with them. He also did not say to Darogababu that the documents of his daughter and other goods as well as ornaments and cash were not returned to him by the accused persons.

P.W. 4 is a hearsay witness and what he stated in the court, a major portion of that statement is absent in his 161 statement. Therefore, the statement of this witness cannot be believed for convicting the accused persons being those statements are approved version, i.e. first time before the court.

P.W. 6 doctor though examined the informant Manika (P.W.1), but he did not disclose in his prescription what was the disease and for what purpose she was examined by him. In his chief he stated that on first occasion he found from prescription and presumed that she was suffering from pain in body with neurosis and while she was examined for the second time on 5.6.1997 at that time she was suffering from gastric pain with neurosis (mental) and in cross he stated that he prescribed medicine for toothache and rheumatic pain. Therefore, it cannot be said that the said doctor was aware about any incident of torture and he treated the injury of P.W.1 caused due to torture by the accused persons.

P.W. 7, the aunt of P.W.1 though in her chief stated that she was told by P.W.1 on several times that she could not tolerate the torture and she could commit suicide in future, but in her cross this witness stated that she told to Darogababu that after seeing her (P.W.1) appearance she (P.W.7) presumed that she (P.W.1) was not happy and she did not speak freely due to watch by the accused persons upon her, but no statement is found in her statement recorded by the I.O. u/s 161 Code of Criminal Procedure during investigation. The statement of this witness is almost the approved version before the court.

16. As there is no direct allegation that the accused-Respondent or his family members demanded any articles as a price of marriage, it cannot be said that there was any demand of dowry and Mr. Sarkar also fairly submitted that the case of the prosecution is not based on Clause (b) of explanation to Section 498A of the Code, rather the same is based on Clause (a) of explanation to Section 498A of the Code.

17. In various decisions this Court referred the decision of the Apex Court in Ram Das Vs. State of Maharashtra, wherein the Apex Court noted that if two inferences are possible, the Court should accept the one which favours the accused. In S. Rama Krishna v. S. Rami Reddy (deceased by L.Rs.) and Ors. AIR 2008 SCW 2824, their lordships considered the scope of appeal against acquittal

and also reiterated the principle where two inferences are possible what should be the duty of the Court while deciding those issues. In paragraph 11 and 12 their Lordships discussed about the power of the High Court relating to Sub-section (4) of Section 378 of the Code of Criminal Procedure. These paragraphs are reproduced herein under:

11. The High Court was exercising its jurisdiction under Sub-section (4) of Section 378 of the Code of Criminal Procedure. The appeal preferred by the Respondents was against a judgment of acquittal. The High Court should have, therefore, exercised its jurisdiction keeping in view the limited role it had to play in the matter.

12. The High Court itself had come to the finding that the Respondents were not interested in getting the matter prosecuted. Despite the same, it allowed their appeal, opining that any lis between the parties should be decided on merits rather than on technicalities. On what basis such a statement of law was made is not known. No precedent was cited; no reason has been assigned.

The High Court failed to take into consideration the fact that it was dealing with an order of acquittal and, thus, the principle of law which was required to be applied was that, if two views are possible, a judgment of acquittal should not ordinarily be interfered with.

There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent court of law as also the provisions of Code of Criminal Procedure must be construed having regard to the Constitutional scheme and the legal principles in mind.

18. The Apex Court also considered the scope of appeal against the order of acquittal in *State of Haryana v. Shibu alias Shiv Narain and Ors.* AIR 2008 SCW 5400. As the case of the prosecution is wholly based on Clause (a) of Section 498A of the Code, it would be proper for this Court to deal with the said provision also. According to this Court, the conduct of the husband or the relatives of the husband of a woman for an offence u/s 498A of the Code, particularly Clause (a) of explanation to that section should be of such nature which is likely to drive the woman to commit suicide or to cause grave injury or danger to life and not only that the conduct should be willful one. Here in the instant case, prosecution failed to show any evidence that the conduct of the accused-Respondent was willful one which caused a grave injury or danger to the life of the informant even to commit suicide. From the medical evidence, it appears that even there was no bodily injury of the informant. So far the mental injury is concerned, it has to be considered from the entire facts and circumstances of a case. In the instant case, the allegation against the accused husband is that he was maintaining a relation with one Smt. Sarmistha Sarkar, daughter of the landlord Suprasanna Sarkar, but neither the landlord nor the said girl was examined by the prosecution. Moreso, the Supreme Court in *U. Suvetha* (supra) specifically stated that living with another woman may be an act of cruelty on the part of the

husband for the purpose of judicial separation or dissolution of marriage but the same would not attract the wrath of Section 498A of the Code. Therefore, the aforesaid allegation of the informant also does not fulfill the ingredients as required for establishing an offence punishable u/s 498A of the Code. Furthermore, except the alleged physical torture on the informant by the accused-Respondent husband on 17.5.1997, the prosecution failed to bring the fact of other incidents by way of adducing evidence in the instant case. For argument sake, if it is considered that on 17.5.1997 there was some physical torture on the informant then also that one stray incident of torture which did not cause grave injury or danger to life to the informant, cannot be treated as "cruelty" as mentioned in explanation (a) to Section 498A of the Code.

19. For the foregoing discussions and observations, this Court is of the considered opinion that the judgment of the learned appellate court, which is impugned herein, is not illegal or unjustified as alleged by the State Appellant and not calls for any interference.

20. In the result, this appeal fails being devoid of merit. Accordingly, it is dismissed.

Registry is directed to send back the lower court records.