(2010) 08 CAL CK 0021

Calcutta High Court

Case No: C.R.A. No. 720 of 2006

Bidyan Pramanik and Others		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: Aug. 20, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 216, 222(2), 311, 313, 464
- Evidence Act, 1872 - Section 106
- Penal Code, 1860 (IPC) - Section 302, 306, 34, 498A

Citation: (2010) 4 CALLT 156 : (2011) 1 DMC 469

Hon'ble Judges: Raghunath Ray, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Y. Dastoor, Prabir Majumdar and Rupa Bandopadhyay, for the Appellant; Minati Gomes, for the Respondent

Final Decision: Allowed

Judgement

Raghunath Ray, J.

Appellants Bidyan Pramanik (in short Al) and his parents namely Ranjan Pramanik (in short A2) and Laxmi Pramanik (in short A3) stood convicted under Sections 498A/302/34, IPC. They were sentenced to suffer S.I. for three years each and to Day a fine of Rs. 2,000 each, in default, S.I. for six months each more for the offence punishable u/s 498A, IPC. All of them were further sentenced to suffer imprisonment for life and also to pay a fine of Rs. 5,000 each in default, R.I. for six months each for the offence punishable u/s 302, IPC, vide impugned judgment and order dated 26.9.2006 and 27.9.2006. passed by the learned Additional Session Judge, 2nd Court, Nadia at Krishnanagar in Sessions Trial No. v. (December 05). Both the sentences were to run concurrently.

2. Appellants were found to perpetrate physical and mental torture upon Abha, the wife of Al. They were found guilty of assaulting the victim on her head and after

causing her death in such a fashion they hanged her on 19.7.1997.

3. Appellants were charged under Sections 498A/306, IPC, on 21.6.2005 by the learned Trial Court and they pleaded not guilty to the said charge and claimed to be tried. Subsequently, on 5.9.2005 all the Appellants were, however, further, charged under Sections 302/34, IPC, separately as per written prayer of the learned Public Prosecutor in-charge of S.T. No. v. (December 05). They again pleaded not guilty to the added charge. Accordingly they were put on trial.

4. The defence case as unfolded through cross-examination in course of trial is that the victim committed suicide out of grief, mental agony and in desperation since her husband, who was a mad man, was not to her liking. During their examination under Sections 313, Code of Criminal Procedure Appellants simply pleaded their innocence. The defence, however, did not endeavour to substantiate its case by adducing evidence either oral or documentary.

5. Appellants'' conviction is founded mainly on corroborative testimony of victims'' parents, and her elder brother i.e. PWs 1, 2 and 3 coupled with medical evidence adduced through Dr. Sunil Kumar Mondal (PW 7) who conducted the post mortem examination of the victim as also the testimony of Md. Amannalia I.O. (PW 12) of this case. The neighbours of Appellants i.e. PWs 4, 6, 8, 9 have, however, turned hostile.

6. As already noted earlier the Appellants hereinabove faced their trial in respect of charge under Sections 498A/306, IPC, which may be reproduced as under:

First--That you, on or about from eight years back till 19th day of July, 1997 at Naserapara (house of Bidyan Pramanick), P.S. Karimpur, District Nadia, subjected Abha Pramanick to cruelty by various manners and harassed her which is of such a nature as is likely to drive the said woman to commit suicide and thereby committed an offence punishable u/s 498A of the Indian Penal Code, and within my cognizance.

Secondly --That you on or about the 19th day of July, 1997 in the evening at Naserapara (house of Bidyan Pramanick), P.S. Karimpur, District Nadia, one Abha Pramanick committed suicide and that you abetted its commission by various manners and harassed her which is of such a nature as is likely to drive the said woman to commit suicide and thereby committed an offence punishable u/s 306 of the India Penal Code, and within my cognizance.

7. However, on subsequent addition of charge under Sections 302/34, IPC, at the instance of the prosecution as permissible under Sections 216, Code of Criminal Procedure Appellants faced their trial in respect of all the three counts of charges accordingly.

8. We would, therefore, be required to see in this appeal as to whether the prosecution has succeeded in establishing the charge under Sections 498A/306 IPC, framed earlier on the basis of charge-sheet submitted under Sections 498A/306, IPC, or added charge under Sections 302/34, IPC, has been proved by the prosecution

after bringing sufficient evidence and circumstances on record.

9. Relying mainly on medical evidence brought on record by the prosecution during trial the learned Court below observed as under:

...it is a clear case of murder and there is no explanation on the part of the accused persons how said Ava got head injury on her head and I think after assaulting her on her head she was killed and, thereafter, they hanged her. Further more, I do not find any instigation by the accused persons driving the victim to commit suicide by hanging as I have already stated earlier that it is a case of murder.

10. It is, therefore, held by the learned Trial Judge that the charge levelled against the accused persons under Sections 306, IPC has not been established but the charge under Sections 302 has been well-established against the accused persons. Learned Trial Judge further held that the husband Bidyan and his parents namely Laxmi and Bhanja also caused physical and mental torture upon Abha. Therefore, Appellants were also found guilty u/s 498A, IPC.

11. Assailing the aforementioned order of conviction under Sections 498A/302, IPC, and sentence thereunder it is argued by Mr. Y.K. Dastur, learned Advocate for the Appellants that the allegation of such a serious crime should be more specific making it clear, as a matter of fact, who participated in commission of such a heinous crime as also the nature of participation, etc., if the charge u/s 302, IPC, is to be established. It is further argued by him that none of the witnesses so examined by the prosecution has indicated any involvement of the Appellants in commission of a crime of murder. On the contrary, evidence of witnesses was to the effect that the victim committed suicide and accordingly her parents were also informed about such suicide. Learned Trial Judge thus proceeded to make out a third case totally ignoring the entire evidence and circumstances on record. Learned Trial Judge''s finding to the effect that to cover up the murder of the victim, she was shown hanging after her murder is not justifiable.

12. His further grievance is that examination of Appellants in terms of Section 313, Code of Criminal Procedure is in the form of accusation which is not permissible under the relevant provisions of law. According to him, Appellants'' examination Section 311, Code of Criminal Procedure in this fashion has caused a serious prejudice to them since they could not answer such doubly loaded questions in an effective and meaningful manner.

13. It is further submitted by him that no conclusive opinion about the nature of death is also available either from the PM Examination Report (Exhibit 2) itself or form the medical evidence so adduced by the doctor himself as PW 7. According to him, as per doctor''s opinion the nature of death whether homicidal or suicidal is to be ascertained from circumstantial evidence. In such a fact situtation, conviction under Sections 302/34, IPC is not sustainable in any manner. It is however, frankly submitted by Mr. Dastoor in his usual fairness that there are ample materials on

record to establish the charge u/s 498A, IPC.

14. Per contra, it is vehemently argued by Mr. Ghosal, learned Counsel for the State that on the basis of medical evidence alone Appellants'' conviction under Sections 302/34, IPC, can be secured. In support of the impugned judgment, it is further argued by him that whenever factum of head injury on the victim is established from the PM Examination Report, a duty is cast upon the Appellants to explain how the victim who was in her matrimonial home along with her husband and in-laws at the material point of time sustained such injuries. Learned State Counsel also points out that neither in the form of defence suggestion nor during their examination Section 313, Code of Criminal Procedure any one of them cared to offer any explanation for the victim''s head injuries. It is, therefore, submitted by him that the learned Court below has rightly convicted the Appellant under Sections 498A/302/34, IPC. Therefore, the order of conviction and sentence impugned should be maintained.

15. There is no doubt that the victim died an unnatural death. Admittedly, there is no direct proof that the Appellant actually committed the crime as alleged. Normally either in cases of murder or abetment to commission of suicide there is seldom an eye witness to prove the guilt of the perpetrators of crime. Consequently, such acts have to be ''circumstantially proved''. Circumstantial proof in its nature ''proof by inference''. Such circumstantial evidence is also, however, the result of human testimony and an inference is to be founded on the facts deposed by witnesses.

16. Keeping in mind the proposition that the case in hand is to be proved circumstantially, we have meticulously analysed ocular evidence of near relations of the victim coupled with medical evidence and other testimony and relevant surrounding circumstances on record. In the present case the Appellants have been charged under Sections 498A/306, IPC and also separately under Sections 302/34, IPC. We, however, do not find any of the close relations of the victim to testify that their daughter was killed by the Appellants. There is, however, consistent and cogent evidence on dowry demand and also severe torture upon the victim by her husband and in-laws for non-fulfilment of such dowry demand. PW 1, the FIR maker has not made any whisper within the four corners of the FIR that his daughter was murdered by the Appellants. Rather, it has specifically been recited in the FIR that on 19.7.1997 in the evening his relative Sri Narayan Mondal (PW 5), of Village Nasirapara, PS Karimpur reported to him that his daughter Abha committed suicide by hanging. It is also contended inter alia in the FIR that...being unable to endure such torture by her husband, father-in-law and mother-in-law she was compelled to commit suicide." He corroborated the contents of FIR (Exhibit 3) in his testimony. PW 2, the mother of the victim and PW 3, the brother of the victim have also not narrated any of the circumstances which led to causing sufficient injuries on the person of the victim on the fateful day.

17. Adverting to a detailed dissection of evidence on record adduced through altogether 12 witnesses, we find that ocular testimony of most of the witnesses stands corroborated with each other on the point of torture and harassment of the victim by the Appellants driving her to commit suicide and also abetment for commission of suicide.

18. Bradrinath Mondal (PW 1), the informant and the father of the victim proved the FIR (Exhibit 3) and deposes that during her stay at her in-law''s house she was subjected to brutal torture and assault now and then and sometimes she was not even allowed to take her meals. She herself reported her miserable plight to her parents and other relatives during their visit to her matrimonial home. His failure to meet further dowry demand amounting to cash of Rs. 20,000 is the root of all trouble and it brought untold miseries for his daughter. Consequent upon their cogent persuasion, the victim tried her level best to adjust herself with her husband and in-laws. But she could not bear such severe torture inflicted upon her for non-fulfilment of dowry demand. Even two days prior to her death he had been to the matrimonial home of her daughter who disclosed everything to him. Subsequently, she was informed of his daughter''s death, by a co-villager of his son-in-law.

19. During cross-examination it was suggested to him that her daughter was given marriage to a mad person and his daughter committed suicide since her husband was mentally disbalanced. Needless to mention, such defence suggestion was categorically denied by the deponent. Suggestion, if plausible is acceptable. But we are afraid such wild suggestion is not backed by materials on record.

20. PW 2, Gangarani Mondal, the mother of the deceased is fully corroborative to her husband''s testimony on the material point of frequent torture and assault upon her by her in-laws and husband on the plea of non-fulfilment of further dowry demand by her parents. She also supported her husband''s version that despite a lot of persuasion from their side to get herself adjusted with the inmates of her matrimonial home, the deceased was not allowed to lead a normal life along with her husband and in-laws and such a tormenting situation ultimately drove their daughter to commit suicide.

21. Similarly, their son, PW 3 also corroborates PWs 1 and 2 by deposing to the effect that the victim was subjected to mental and physical torture by her in-laws since his father was unable to fulfil their additional dowry demand amounting to Rs. 20,000. Such torture was preceded by their extra dowry demand and the same was reported to them by his sister since deceased.

22. During post-mortem examination Dr. Sunil Kr. Mondal (PW 7) found certain injury marks as also no continuous ligature marks on the dead body of the victim. He, however, failed to offer any conclusive medical opinion about the exact cause of death of the victim.

23. Mr. Aminulla (PW 12), S.I., I.O. of this case seized a rope made of jute under a proper seizure list and such list was marked as Exhibit 7. He also collected P.M. examination report and seized the wearing apparels of the deceased under a proper seizure list [Exhibit 7(a)). He further recorded statements of witnesses in course of investigation and on conclusion of investigation he submitted the charge-sheet against the accused under Sections 498A/306, IPC on 10.1.1998.

24. PWs 4,5,6 and 8 who were neighbours/co-villagers of the Appellants did not support the prosecution case in toto. All of them were, therefore, declared hostile.

25. Out of them two hostile witnesses namely Badal Mondal (PW4) and Narayan Mondal (PW5) who were Pisomosai (uncles) of the deceased have deposed in one voice that both of them are close neighbours of the Appellants and further Abha since deceased committed suicide since Appellants inflicted torture upon her. Both of them further corroborated each other by deposing that their house is at the distance of 1500 yards from the house of the Appellants and as soon as they came to know that Ava since deceased committed suicide by hanging, both of them immediately rushed to the house of Appellants and found the dead body of Abha lying on the Varandah.

26. Both of them are thus very categorical in their evidence that they came to know that Abha committed suicide by hanging. Each of them reiterated as under:

I know that she died by hanging as the accused inflicted torture upon her.

27. These two hostile witnesses have, however, specifically denied the defence suggestion that Ava committed suicide as her husband was not to her liking because of his madness. As already indicated earlier PW 1 emphatically denied such suggestion. PWs 2 and 3 also denied similar suggestion. The import of such denial is not that they denied that the victim did not commit suicide but it is denied by them that husband''s alleged madness prompted her to commit suicide. In this context it should be borne in mind that during cross-examination such loaded suggestion is not permissible. Therefore, an equivocal question in the form of defence suggestion to a prosecution witness should be avoided for all practical purposes. In the instant case a question was put to aforementioned witnesses in the form of defence suggestion which in effect, consists of two questions loaded into one being composite in nature. But an answer to one of the questions forming first part cannot be inferred to be also an answer to the second part of the suggestion. Therefore, instead of offering an omnibus suggestion, two questions ought to have been put separately and distinctly in the form of defence suggestion to the witnesses as per requirement of law.

28. Shyamapada Mondal, another hostile witness, a close neighbour of the Appellants as PW 6, also firmly testifies that he knew that Ava since deceased committed suicide by hanging.

29. On the question of reliability of hostile witnesses, reliance can be placed upon Bhagwan Singh v. State of Haryana reported in 1976 Cr LJSC 203, wherein it is ruled that a hostile witness can also be relied upon to the extent to which it supports the prosecution version. Evidence of such a witness cannot be treated as washed off the record altogether. It remains admissible in the trial and there is no legal bar to base conviction upon such testimony, if corroborated by other reliable evidence. However, the evidence of a hostile witness may be totally discarded, if in the light of other evidence on record, the testimony of the. hostile witness stands wholly discredited. In the present case, corroborative evidence of all these hostile witness i.e. PWs. 4, 5 and 6 is to the effect that the victim committed suicide since she was tortured by the Appellants. Such testimony stands fully corroborated by the relations of the victim. In such a fact situation, the testimony of these tree hostile witness cannot be thrown overboard on the sole ground that they have been declared hostile. Therefore, the evidence of hostile witnesses cannot be discarded in toto but so much of the evidence which is corroborated by other evidence can be accepted. Accordingly, we feel inclined to accept the portion of their evidence which corroborates other witnesses'' account that the victim committed suicide as she was subjected to torture by her husband and parents-in-law.

30. Dr. Sushil Kumar Mondal, the then MO attached to Krishnanagar Hospital who conducted the PM Examination over the dead body of Ava Pramanik as PW 7 deposes that the dead body was brought and identified by constable No. 1203, Ramkrishna Barman in connection with Karimpur PS case No. 129/97 dated 19.7.1997 and on examination he found the following injuries:

(i) Occipital region-Haematoma and on opening 4" in diameter, Haemorrhage - positive.

(ii) High up--non continuous ligature mark over left side below angle of maldives. Hyoid bone intact.

(iii) Brain haemorrhage.

31. PW 7, the doctor has opined that the death was due to shock and asphyxia as per above mentioned injuries, hanging and the injuries with head injuries ante mortem and homicidal in nature and that to be confirmed after circumstantial evidence. He has proved post-mortem report which is marked as Exhibit 2. At the outset of his cross-examination it is clarified by him that it cannot be done as confirmed opinion. It is also elicited in his cross-examination that there was half digested rice in the stomach and it was suggested that she consumed rice 2-3 hours prior to her death.

32. A close dissection of the afore-quoted medical evidence tends to show that the medical opinion is cryptic and evasive. In our considered view, it is neither prudent nor safe to come to a positive finding on the exact nature of death of the victim on the basis of such inconclusive and unconfirmed PM Report as is admitted by the

doctor himself in his testimony. It would not, therefore, be sagacious for us to hold that the death of the victim was homicidal. More so, whenever the doctor himself has suggested that his opinion, ante mortem and homicidal in nature, is ''to be confirmed after circumstantial evidence''. The doctor has, however, not spelt out clearly either in his PM report or in his evidence as to the nature of circumstances required for confirmation of the cause and nature of death of the victim. On the other hand, there are sufficiently strong ocular evidence on record to indicate that the unfortunate wife committed suicide and such suicide was preceded by severe torture both physical and mental upon her by her husband and in-laws. As already discussed earlier, even the hostile witnesses PWs 4, 5 and 6, the neighbours of the Appellants came to the witness box to testify emphatically that Ava committed suicide by hanging since Appellants inflicted torture upon her.

33. On proper appreciation and evaluation of entire evidence and circumstances on record it is found that the victim committed suicide because of persistent torture both physical and mental by the Appellants and such torture was stepped up because of failure on the part of the victim''s father to meet the requirement of further dowry of Rs. 20,000 demanded by the Appellants. As a matter of fact, Appellants'' torturous behaviour accompanied by persistent demand for extra dowry created such an intolerable situation that the victim was provoked to take an extreme step of killing herself by hanging. It is clearly established from materials on record that Al, A2 and A3 goaded and incited the deceased to commit suicide.

34. In such view of the matter, we are unable to accept the learned Trial Court''s finding that there was no instigation on the part of Appellants for committing suicide by hanging. Rather, in our considered opinion, the preponderance of evidence unerringly points out that Al, A2 and A3 being her husband and parents-in-law instigated the victim to commit suicide and are thus responsible for the act of abetment. Therefore, we are to opine that the learned Trial Court''s finding that after assaulting the victim on her head she was killed and, thereafter, Appellants hanged her does not find any decisive support either from ocular evidence or from medical evidence. On the contrary overwhelming materials on record indicate that the victim committed suicide by hanging.

35. Viewed in the light of our above finding, it is crystal clear that the learned Trial Court''s approach in this regard is erroneous for the simple reason that the learned Court below failed to take into account the evidence and circumstances on record which showed that Al, A2 and A3 abetted the commission of suicide by the victim because of persistent torture and maltreatment to her, since such abetment to commit suicide is manifestly clear from the materials on record and as such the conviction under Sections 302/34 IPC, is not sustainable.

36. Now the question crops up for consideration as to whether it is legally permissible to alter Appellants conviction from Section 302/34, IPC to Section 306, IPC, especially when they were acquitted of the charge u/s 306, IPC, by the learned

Trial Court. It is contextually important to note that the Appellant faced trial in respect both counts of charges i.e. under Sections 306/498A, IPC, as well as under Sections 302/34, IPC. But even if the position was otherwise and the Appellants were not charged u/s 306, IPC and tried only under Sections 302/34, IPC, there would not have been any legal bar in altering the conviction from Section 302/34, IPC to Section 306, IPC. In this context reference can be made to a ruling of the Hon''ble Apex Court reported in : 2007 Cri LJ 1435 SC Birendra Kumar v. State of U.P. It is ruled therein that conviction of accused under Sections 306, IPC was not improper considering provisions of Sections 222(2) and 464, Code of Criminal Procedure since circumstances relatable to Section 306 were clearly put to accused during his examination u/s 313 of Code of Criminal Procedure In the case before us the Appellants were charge-sheeted under Sections 306/498A, IPC, and were also asked to answer charges under Sections 498A/306, IPC. Therefore, the main crux of the matter is whether failure of justice would occasion in the event of such alteration of conviction from Sections 302/34, IPC, to Section 306, IPC. In fact, the Appellants were aware of basic ingredients of offence under Sections 306/498A, IPC, for which they were fried before the learned Court below. In other words, Appellants got a fair chance to defend themselves in respect of charge u/s 306, IPC, during Trial. Therefore, in our considered view, even though the Appellants were convicted under Sections 302/34, IPC, they can now legally be convicted for the offence under Sections 306/498A, IPC, since they were also charged and tried in respect of offence under Sections 306/498A, IPC. In such view of the matter, non-filing of any appeal by the Government against the impugned acquittal of the Appellants in respect of charge Section 306, IPC, is of no consequence for the simple reason that the entire judgment impugned is now being subjected to a strict judicial scrutiny by this Court of appeal. Incidentally it may be mentioned here that basic ingredients of an offence u/s 306, IPC, are hidden in charge u/s 498A, IPC and also motive to commit the murder and the basic ingredients of the offence of abetment of suicide are also the same. At any rate, on the face of record it is manifest that the learned Court below has committed a serious illegality by convicting the Appellants under Sections 302/34, IPC, in the absence of sufficient materials warranting such conviction. In such a fact situation, to prevent a serious miscarriage of justice this Court of appeal without being hypertechnical must interfere. Therefore, Appellants'' conviction under Sections 302/34, IPC, is liable to be altered to Section 306, IPC in the interest of justice.

37. The defence plea of not examining the Appellants strictly in accordance with the provisions of Section 313, Code of Criminal Procedure is also not acceptable since there is nothing on record to indicate that the Appellants'' attention was not drawn to inculpatory materials forthcoming in evidence to enable them to explain the same during their examination u/s 313, Code of Criminal Procedure The Appellants have also failed to point out any serious omission in placing incriminating materials on record before the Appellants occasioning failure of justice in this regard. They

have, also failed to show that any prejudice was caused to them for lack of understanding of questions put to them during their examination u/s 313, Code of Criminal Procedure In this context reliance can be placed upon a ruling of the Hon''ble Apex Court reported in IV (2001) CCR 215 (SC): 2003 SCC (Cri) 1012, State (Delhi Administration) v. Dharampal, wherein it is decided that even in the event of an inculpatory material not having been put to the accused, the Appellate Court can always make good the lapse by calling upon the Counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to them. However, in the case in hand no such specific lapse has been shown to us on behalf of the Appellants for seeking their explanation through their Counsel by this Appellate Court.

38. We are also unable to accept the learned Trial Court''s finding that since "there is no explanation on the part of the accused persons how said Abha got head injury on her head"; the learned Trial Court "should think that alter assaulting her on her head she was killed and thereafter they hanged her".

Presumably, learned Trial Court intended to invoke provisions, under Sections 106 of Indian Evidence Act with a view to shifting the onus, upon the Appellants for proving the fact which is specially within their knowledge. We are afraid, principles of Section 106 of Indian Evidence Act are inapplicable in the facts and circumstances of the present case since the prosecution has miserably failed to discharge its primary burden of establishing the factum of culpable homicide due to external injuries inflicted upon the victim by producing legally admissible evidence on record. It is a settled position of law that where the prosecution has not discharged its initial onus, Section 106 is not applicable for the simple reason that Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. In this context reliance can be placed upon a ruling reported in State of West Bengal Vs. Mir Mohammad Omar and Others etc., etc. Respondents. We are, therefore, of the considered view that Section 106 of Indian Evidence Act is designed to meet certain exceptional cases in which it would not be possible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. Therefore, inference drawn by the learned Trial Court about the Appellants'' guilt under Sections 302/34 IPC, is absolutely unjustified on the face of materials and circumstances on record and the same is also not legally tenable. It is, therefore, reiterated that a critical analysis of entire evidence and circumstances on record reveals that the victim committed suicide because of persistent torture both physical and mental by the Appellants and such torture was stepped up because of failure on the part of the victim''s father to meet further dowry demand of Rs. 20,000 made by the Appellants.

39. As already discussed earlier there is no tangible and convincing evidence on record to come to a definite finding that the victim was put to death by the Appellants. More so, whenever any conclusive medical opinion about the cause of

death of the victim by the Doctor (PW 7) is conspicuous by its absence. As a matter of fact, the learned Trial Court''s finding that after assaulting the victim on her head she was killed and, thereafter, Appellant hanged her does not find any support either from ocular evidence or from medical evidence. On the contrary overwhelming materials on record unequivocally indicate that the victim committed suicide by hanging.

40. Having regard to unimpeachable evidence on record, we are of the view that the learned Court below was absolutely justified in convicting Appellants u/s 498A, IPC. There are sufficient materials on record indicating direct involvement of the Appellants in commission of an offence u/s 498A, IPC. However, there would be travesty of justice, if conviction under Sections 302/34, IPC, is not altered to a conviction u/s 306, IPC, since materials on record do not warrant such conviction under Sections 302/34, IPC, whereas there is clinching and convincing evidence justifying conviction u/s 306, IPC, against the Appellant. Since order of acquittal in respect of charge u/s 306, IPC, is based on improper finding without considering admissible evidence on record and there are cogent and compelling reasons to reverse the same for rendering just justice to the Appellants in this case, such order of acquittal recorded by the learned Trial Judge is required to be set aside at any cost. In our considered view, such interference is absolutely necessitated in the rarest of rare cases wherein the order of acquittal passed by the learned Trial Court is a evil child of miscarriage of justice.

41. In view of such compelling circumstances as indicated hereinabove we feel inclined to hold that conviction from Section 302, IPC, should be altered to 306, IPC, and further the order of conviction u/s 498A, IPC, passed by the learned Trial Court should also be maintained. In the result, Al, A2 and A3 are convicted u/s 306, IPC, instead of 302, IPC. Consequently, the order acquitting them of the charge u/s 306, IPC is hereby set aside. Their conviction u/s 498A, IPC and sentence thereunder stands confirmed accordingly.

42. As for the sentence regarding Appellants'' conviction u/s 306 IPC, we have taken into consideration the background and nature of allegations proved against them. We are of the considered view that Al deserves a reduced dose of sentence. Accordingly he is sentenced to R.I. for seven years and also a fine of Rs. 3,000 in default whereof R.I. for three months for the offence now found proved against them u/s 306, IPC. After taking into account the old age of A2 and A3 we feel inclined to take a lenient view and they are sentenced to R. I. for five years each and also to pay in fine of Rs. 2,000 each in default whereof R.I. for two months. Both the sentences shall run concurrently. Their conviction u/s 302, IPC, and sentence to R.I. for life is thus set aside accordingly.

43. The appeal is thus allowed in-part with the order of modified conviction and sentence as indicated hereinabove.

44. Learned Trial Court is directed to issue a revised imprisonment, warrant accordingly.

45. We direct the learned Additional Sessions Judge, 2nd Court, Nadia. at Krishnanagar to take immediate steps for putting both the convicts (A2 and A3) back in jail for undergoing the remaining portions of the sentence imposed by this judgment.

Let a copy of this judgment and Order along with the LCR be sent down forthwith for information and necessary compliance by the learned Trial Court.

Photostat certified copy of this order, if applied for, be supplied on priority basis.

Ashim Kumar Banerjee, J.

46. I Agree.