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Calcutta High Court

Case No: C.R.A. No. 18 of 2010

Haripada Parui — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision: Sept. 26, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 428
- Evidence Act, 1872 - Section 113A
- Penal Code, 1860 (IPC) - Section 304B, 306, 34, 498A

Citation: (2015) 1 Crimes 348 : (2015) 1 Crimes 258

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Milon Mukherjee, Biswajit Manna and Meenal Sinha, Advocate for the Appellant; Sabyasachi Banerjee, Advocate for the Respondent

Judgement

Joymalya Bagchi, J.
The appeal is directed against judgment and order dated 22nd/23rd December, 2009 passed by Ld. Additional Sessions Judge, Fast Track Court-11, Uluberia, Howrah convicting the appellants for commission of offence punishable u/s 304B/498A/34 of the Indian Penal Code and sentencing appellant No. 1 to suffer rigorous imprisonment for 7 years for the offence punishable u/s 304B/34 of the Indian Penal Code and to suffer rigorous imprisonment for 2 years and to pay a fine of a sum of Rs. 500/- in default to suffer simple imprisonment of 1 month u/s 498A/34 of the Indian Penal Code and other appellants to suffer rigorous imprisonment for 5 years for the offence punishable u/s 304B/34 of the Indian Penal Code and to suffer rigorous imprisonment for 2 years and to pay a fine of Rs. 500/- in default to suffer simple imprisonment for 1 month for the offence punishable u/s 498A/34 of the Indian Penal Code, both the sentences to run concurrently.

2. Prosecution case, as alleged, against the appellants is as follows:

One Neoti Maity (PW 1) lodged complaint before Shyampur Police Station alleging that his daughter, Pratima, the victim herein, was married to appellant No. 1 two years ago. After 6 months of marriage the appellants being the husband, father in law, mother in law and brother in law of the victim subjected her to mental and physical torture on further demands of dowry to the tune of Rs. 20,000/-. Her daughter complained of such torture to her and she left her daughter at her matrimonial home requesting the appellants not to torture her. On 28.07.2007 at about 11 p.m. she got information from a person that her daughter was ill and she and her family members rushed to the matrimonial home of her daughter and came to know that her daughter had been assaulted on that night by the appellants and the latter after killing her daughter had hanged her. On the basis of her complaint, Shyampur Police Station case No. 115, dated 29/07/2007 under sections 498A/304B/34 of the Indian Penal code was registered against the appellants. In conclusion of investigation, charge sheet under sections 498A/304B/34 of the Indian Penal Code was filed against the appellants.

3. The case, being a sessions triable one, was committed to the Court of the Additional Sessions Judge, Uluberia, Howrah and transferred to the Court of the Additional Sessions Judge, First Track Court-11 Uluberia, Howrah for trial and disposal. Charges were framed u/s 498A/304B/34 of the Indian Penal Code against the appellants. The appellants pleaded "not guilty" and claimed to be tried. In the course of trial, prosecution examined as many as 13 witnesses and exhibited a number of documents. The defence of the appellants was one of innocence and false implication. It was the specific defence of the appellants that victim was suffering from depression due to various ailments like asthma and gynaecological problems and resultantly she committed suicide. Defence examined 6 witnesses including appellant No. 1 and exhibited a prescription of one Dipak Guria, exhibit A in support of its plea.

4. In conclusion of trial, the trial Court by judgment and order dated 22nd/23rd December, 2009 convicted the appellants for commission of offence punishable u/s 304B/498A/34 of Indian Penal Code and sentenced appellant No. 1 to suffer rigorous imprisonment for 7 years for the offence punishable u/s 304B/34 of the Indian Penal Code and to suffer rigorous imprisonment of 2 years and to pay a fine of sum of Rs. 500/- in default to suffer simple imprisonment of 1 month u/s 498A/34 of the Indian Penal Code and other appellants to suffer rigorous imprisonment for 5 years for the offence punishable u/s 304B/34 of the Indian Penal Code and to suffer rigorous imprisonment for 2 years and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for 1 month for the offence punishable u/s 498A/34 of the Indian Penal Code, both the sentences to run concurrently.

5. Let me examine the evidence led by the parties in the instant case. PW 1, Neoti Maity, is the mother of the victim and first informant in the instant case. She stated that the victim was married to appellant No. 1. Six months after the marriage appellant No. 1 demanded Rs. 20,000/- in cash. They were unable to pay the money. As a result, the appellants assaulted the victim. She took her daughter back to the matrimonial home and

requested them not to subject her to torture. This happened 3-4 times. Finally her daughter died due to assault. Appellant No. 1 informed them about the illness of her daughter in the dead of night. They went to the matrimonial home and found her daughter lying on the floor. They were informed by local people that her daughter was hanged after being killed. She went to Police Station and stated the facts to Police. One Sanaton wrote the complaint and she put her L.T.I. on the complaint. In cross examination, she stated that she came to know of the information at 2-.30 A.M. She went to Police Station on the next day between 7-8 A.M. She stated that the marriage was a negotiated one. She stated that they were on visiting terms with the family of the appellants. She denied the suggestion that there was no chance of the victim conceiving due to gynaecological problems. She denied that her daughter was suffering from asthma. She stated that her daughter had no illness. She stated that during the lifetime of her daughter they gave gifts to the appellants during festivals and during Puja. Appellant No. 1 attended "Jamaisasthi" before the death of her daughter. They attended Mahotsav in the village of the appellants. She stated that the complaint was written at the Police Station and Sanaton wrote it by pen.

6. PW 2, Dayamay Maity, is the father of the victim. He stated that at the time of marriage there was talk of giving gold ornaments and money to the tune of Rs. 70,000/-. He gave gold ornaments with belongings amounting to Rs. 50,000/-. There was a due of Rs. 20,000/-. After the marriage, the victim resided happily for 6 months. There after disputes started over dues. The appellants assaulted her. He went to the matrimonial home and left his daughter there after compromise with the appellants. On the fateful day, they were informed over telephone which was received by one of his daughters that victim was ill. They received such information at 2-2.30 a.m. in the night. They went to her matrimonial house by hiring a car. They found that the victim was lying on the floor. Next day they went to Shyampur Police Station and informed the incident. The complaint was typed by Sanaton and lodged at the Police Station. Post mortem was conducted over the body. Thereafter the victim was cremated. Wearing apparels of the victim, which were seized, were produced in Court and identified. In cross examination, he denied the suggestion that the victim was treated at Tamluk. He admitted that they were invited on the occasion of Mahotsab to the house of the appellants. He admitted that appellant No. 1 had come for jamaisasthi and invited the brother of the victim to "Vatriditia". PW 3 (Ratikanta Maity) is the brother of the victim. He stated that the victim resided at the matrimonial home happily for 6 months. Thereafter she was subjected to torture by the appellants on demand of Rs. 20,000/-. One of the sisters, received phone call that victim was ill. They went to the matrimonial home of the victim and found her lying on the floor. They were informed by local people that she was assaulted before the incident. They went to Shyampur Police Station on the next day. BDO conducted inquest. He put his signature on the inquest report. In cross examination, he stated that he narrated the facts to BDO. He did not inform the incident to anybody. It is his first statement before the Court. He admitted the appellant No. 1 had come to their house to attend Jamaisasthi. PW 4 (Sudarshan Maity) is another brother of the victim. He stated at the time of marriage they

gave cash money of Rs. 20,000/-, gold ornaments with other belongings amounting to Rs. 30,000/-. After marriage, victim stayed happily in the in-laws" house for 6 months. Thereafter there was dispute on demands of further money and victim was assaulted by the appellants. They received information that the victim was ill and after reaching the matrimonial home found her lying on the floor. They were told by villagers that the victim was assaulted the day before the incident. In cross examination, he stated that whatever he stated before the Court was his first statement. PW 5 (Smt. Dulurani Kunp) is the married sister of the victim. She has corroborated the evidence of other prosecution witness about torture of the victim on demands of dowry. In cross examination, she stated that she had narrated to the police that the victim was assaulted due to non-payment of further amounts. She had been married 18-19 years back and has 2 children aged about 15 and 16 years respectively. PW 6 (Sukumar Khamrui) is a neighbour of the paternal home of the victim. He has corroborated the evidence of the relations of the victim relating to the torture of the victim on account of dowry demands. PW 7 (Buly Samanta) is another sister of the victim. She has corroborated the evidence of torture on the victim over further demands of dowry to the tune of Rs. 20,000/-. She stated torture began after 6 months of marriage. She also stated that there were talks of compromise on 3 to 4 occasions during the matrimonial life of the victim. Finally on 11th Shrabon they received a telephonic message that the victim was ill. Her parents and brother went to her matrimonial house and found that the victim was lying dead. The members of in laws family informed that she committed suicide by hanging herself whereas the villagers informed that she was assaulted in the night and as a result she died. In cross examination, she stated that she narrated the incident to police on the next day of death. She stated that she told IO that her sister was happy at the in laws house for 6 months and thereafter there was dispute as her father failed to pay Rs. 20,000/-. She stated that she did not state to the IO that her sister left the matrimonial home after assault and informed the incident to her father or there was talk of compromise for 3 to 4 times during her lifetime. She did not state to the IO that the appellants assaulted her sister in the night and she died due to such assault. PW 8 (Ashok Kumar Chakraborty) is the priest of the marriage. He stated that PW 2 had gifted articles to appellant No. 1 at the time of marriage and had informed him that the daughter was tortured for demands of dowry. In cross examination, he stated that he informed the IO that gifts were given at marriage but did not state to police that PW 2 informed him about torture of his daughter. PW 9 (Mongal Manna) is the barber who was present in the marriage of the couple. PW 10 (Sanatan Samanta) is the person who is stated to have prepared the written complaint. He owns a computer unit named and styled as M/s. Samanta Graphics. He did not support the prosecution case and was declared hostile. PW 11 (Sujoy Kumar Sikdar) conducted inquest on the victim. He proved the inquest report. PW 12 (Nurul Islam) was attached to Shyampur Police Station. He carried the dead body of the victim for post mortem examination. He was also a seizure list witness relating to the seizure of the wearing apparels of the victim. PW 13 is the post mortem doctor. He found the following injuries:

"I found one non continuous ligature mark at upper part of her neck and one impression of knot is on the left side below the left mastoid process. Apart from that there was no other injury mark in her body. The uterus was not gravid. Accordingly, I opined that the cause of death was due to asphyxia due to hanging which is anti mortem and suicidal in nature."

7. PW 14 ((Nilkunja Behari Das) is the investigating officer of the case. He proved the formal first information report and the endorsement of the officer in charge thereon. He collected the papers relating to the unnatural death case and filed the charge sheet. In cross examination, he stated that he did not examine Sanaton Samanta. He stated that in the FIR there was no allegation that appellant No. 1 demanded Rs. 20,000/- or that the de facto complainant was unable to pay the said sum. He stated that there was no noting in the case diary that out of the demand of Rs. 70,000/-, Rs. 50,000/- had been paid but Rs. 20,000/- remained unpaid. He stated that PW 3 did not state that the deceased was assaulted by the appellants or after marriage there was demand of Rs. 20,000/- and the appellants tortured her for such money. He stated that Sudarshan Maity (PW 4) did not state to him there was talk of giving Rs. 30,000/- along with gold ornaments. He stated that no statement was made by PW 5 (Dulurani) that victim informed her that due to non-payment of money she was subjected to torture or that she had come to know from her father that Pratima died due to torture. There is no noting in her statement that there was compromise on 3/4 occasions. PW 6 did not say that telephonic message was received relating to illness of the victim or that there was dispute resulting in assault of the victim or that the victim was hanged after being killed.

8. DW 1 is a witness from the village of the appellants. He stated that he knew the victim. She was suffering from asthma and female problems and there was no possibility of her conceiving.

9. In cross-examination, he stated that he had no talking terms with the victim. He was not able to say the date of death of the victim. He was not present at the time of marriage of the victim. He however admitted that the victim had good physique.

10. DW 2 is another witness from the village of the appellants. He stated that appellant No. 1 informed him that his wife was suffering from female problems and was being examined by a doctor.

11. DW 3 claimed to be a witness from the village of the appellants. He stated that he informed the incident to the parental home of the victim. He stated that he was present at the time of talk of marriage and there was no terms and conditions in the marriage. In cross examination, he stated that he resided at Parulpara, 20 kms away from Shibgunj, the village of the appellants. He claimed to be the matchmaker of the marriage. He however admitted that he did not know the victim. He also admitted that he did not inform the incident of death to the family of the victim. He also admitted that he never attended talks of marriage of appellant No. 1.

12. Appellant No. 1 examined himself as DW 4. He stated that he purchased Kishan Vikash Patras from Shyampur Post Office to the tune of Rs. 22,000/- in the joint name of himself and his wife.

13. DW 5 is from the village of the appellants. She stated that she found the victim morose and the victim told her that she was suffering from asthma and female problems and would be unable to conceive. She claimed to have good relations with the family of the appellants. In cross examination, she admitted that the victim had good physique.

14. DW 6 stated that he was attached to Dr. Rafiqul Rahman as chamber assistant. He is Bachelor of Arts. He is member of a quack association. He stated that he examined the victim and identified a prescription of Dr. Tapan Kr. Khatua which showed she was suffering from vertigo and sleeplessness and problems of menstruation. He has prescribed some medicines. In cross examination, he admitted that he had no degree in medicine. He admitted that the victim was having her menstruation periods. He stated that he prescribed medicines for iron deficiency and indigestion.

15. Mr. Mukherjee, Ld. Senior Counsel appearing for the appellants submitted that the first information report has not been proved in the instant case. PW 1 stated that the first information report was written by pen whereas the same is a computer generated copy. PW 10, Sanatan has not supported the prosecution case that the said first information report was prepared at his computer centre. He accordingly submitted that the foundation of the prosecution case stood demolished. He further submitted that the prosecution has failed to prove torture upon the victim or that such torture was for and/or in connection with dowry. He submitted that apart from PW 2 no prosecution witnesses stated that dowries were paid at the time of marriage. Version of PW 2 is also not supported in his previous statements to the police. He further submitted that the fact that the victim was subjected to torture due to further demands of dowry was also not stated by the witnesses in their previous statement to the police during investigation. Case of dowry has been made out for the first time in Court. He further submitted that the allegation of assault on the day prior to her death is not proved. There is no direct evidence of such fact and the evidence of the relations in that regard are hearsay. He further submitted that such allegation is not supported by medical evidence. He further submitted that the trial Court illegally rejected the defence evidence that the victim was suffering from depression due to asthma and gynaecological problems. He accordingly prayed for acquittal of the appellants. He submitted that evidence of relation witnesses relating to torture ought not to be believed. He relied on Sharad Birdhichand Sarda Vs. State of Maharashtra, He submitted that the case of torture for further demands of dowry is improbalised by the evidence of good relation and visiting terms between two families. Foundational facts to attract statutory presumption have not been proved. He relied on Ramesh Kumar Vs. State of Chhattisgarh, in that regard. He stated that there is no evidence of abatement of suicide. He relied on M. Mohan Vs. The State represented by The Deputy Superintendent of Police, Cyriac Vs. S.I. of Police, Durga Prasad and Another Vs. State of M.P., Amalendu Pal @ Jhantu Vs. State of West Bengal, Kishorilal vs. State of M.P., 2007(3)

SCC (Cri) 701, unreported decision of this Court in CRA 632 of 2007, Fazu Miya vs. State of West Bengal, and Latu Mahto & Anr. vs. State of Bihar (now Jharkhand), (2008) 2 C.Cr.L.R. (SC) 638. Falsity of the defence case cannot be a ground to prove the prosecution case. Reference was made to Mamfru Chowdhury and Others Vs. Emperor, and Shankarlal Gyarasilal Dixit Vs. State of Maharashtra,

16. Mr. Banerjee, Ld. Counsel appearing for the State submitted that the evidence of torture on account of dowry is well established. The fact that torture of the victim began six months after her marriage for non-payment of Rs. 20,000/- is reflected in the FIR itself. There may be some variance in the evidence of the prosecution witnesses with regard to the amount and time of demand of dowry but the consistent evidence of the prosecution witnesses is that six months after the marriage the victim was subjected to torture on further demands of dowry. He further submitted that the explanation offered by the appellants for commission of suicide is patently false. On the other hand there is evidence of torture meted out by the appellants on the victim who committed suicide within 2 years of marriage. Hence statutory presumption ought to be drawn against the appellants. He relied on Bhupendra Vs. State of Madhya Pradesh, Karan Singh and Another Vs. State of Haryana, and Gurnaib Singh Vs. State of Punjab, Accordingly, he prayed for dismissal of the appeal.

17. First issue raised by the appellants is with regard to the proof of the first information report in the instant case. It is a fact that preparation of the computer generated copy of the first information report is not supported by PW 10. PW 1 stated that she went to the Police station in the morning of 29th July, 2007 and narrated the incident to the Police officer. PW 2 and PW 3, her husband and son, have also corroborated such version. PW 14, the I.O., has proved the formal first information report drawn up on the basis of written complaint of PW 1. It is therefore clear that within a couple of hours of coming to know of the death of the victim, PW 1 had gone to the police station and narrated the incident to the police officer. On the basis of written complaint submitted by her which bore her left LTI, the first information report was drawn up. There is some confusion as to whether the computer generated complaint was produced from the computer of PW 10 or not. P.W. 1 stated that it was written by pen whereas P.W. 2 stated that it was type written by Sanatan (P.W. 10). Sanaton has not supported such version. I am of the opinion that merely because P.W. 10 has not supported the prosecution case of producing the computer generated copy of the complaint; one cannot hold that the prosecution case is not a genuine one. The contents of the first information report are substantially corroborated by the evidence of PW 1 in her deposition. The written complaint bears her L.T.I. The fact that the written complaint also was prepared as per her instruction is supported by PW 2 and PW 3 who were present with her at the police station. PW 14 stated that there is sufficient evidence on record proving the registration of FIR on the basis of written complaint prepared as per the instructions of PW 1.

18. It has been argued that prosecution solely rests on relation witnesses. There is ample evidence on record coming from the mouths of the relations of the victim namely PW 1, 2,

3, 4, 5 and 7 that six months after the marriage she was subjected to mental and physical torture at her matrimonial home. Such evidence is corroborated by independent witness namely PW 6. Hence, it cannot be said that prosecution solely rests its case on the evidence of relations. Ratio in Sharad Birdhichand Sarda (supra) is therefore distinguishable on such facts.

19. The evidence of the aforesaid witnesses have been criticized on the ground that such evidence are inconsistent with regard to the quantum and the time at which such dowry was demanded and/or paid. While PW 1, 3, 5, 6, 7 are silent with regard to payment of dowry at the time of marriage, PW 2 and 4 have stated that gold ornaments and dowries were partly paid at the time of marriage and dispute arose six months thereafter over non-payment of the remainder amount. The prosecution evidence is however consistent that the appellants subjected the victim to physical and mental torture six months after the marriage over demands of dowry to the tune of Rs. 20,000/-. This fact is disclosed in the first information report itself. I am unable to accede to the submission of Ld. Senior Counsel for the appellants that the evidence of the prosecution witnesses are at variance to their earlier statements recorded during investigation over torture of the victim 6 months after the marriage on demands of dowry. The omission and/or contradictions which are brought out in the course of cross examination of the prosecution witnesses show that there is some variance in their versions as to the time and the quantum of payment of dowry. However, the prosecution case that the appellant subjected the victim to mental and physical torture over further demands of dowry six months after the incident and that the victim was kept at the matrimonial home after requesting the appellants not to torture her remains unshaken in cross examination. The omissions and/or contradictions as elucidated in the cross examination are therefore essentially with regard to minor details and do not militate against the inherent truthfulness of the prosecution case of torture on the victim on further demands of dowry after six months of marriage.

20. It is trite law that minor variations in the evidence of witnesses inter se or in relation to their earlier statements do not shake the veracity of such evidence. Hence I am unable to accept the plea of the appellants that the evidence of the witnesses that the victim was subjected to mental and physical torture on further demands of dowry after 6 months of marriage ought to be disbelieved on the score of minor omissions and/or contradictions in their depositions as claimed by the appellants.

21. Coming to the defence plea that the victim was suffering from depression due to asthma or gynaecological problems and inability to conceive, I am of the opinion that the same is worthy of no credence. No evidence of worth has been adduced in that regard. Evidence of PW 6, a quack doctor, shows that the victim was having menstrual periods and that he had prescribed medicine to the victim for iron deficiency and indigestion. There is no evidence on record that the victim was treated for barreness or asthma. On the other hand, it appears from the evidence that she had good physique. No evidence has been led to prove that she was in capable of child birth. One cannot also lose sight of the fact that the victim had only been married for about 2 years. The suicide occurred at

the matrimonial home and it is within the special knowledge of the appellants as to the circumstances in which the victim committed suicide. Evidence led by the appellants that she committed suicide due to depression owing to illness is patently false. When an accused has special knowledge as to relevant facts, failure of the accused to explain away such facts gives rise to an adverse inference against him. In Mamfru (supra) and Shankarlal (supra) the Courts were not dealing with cases where the accused had special knowledge relating to relevant facts as in the present case. Those were also not cases where there was reverse burden cast upon the accused, as in the present one, for the latter to rebut. In the instant case the housewife committed suicide within 2 years of her marriage at the matrimonial home. Duty is cast upon the appellants to explain away the circumstances under which she committed suicide, which are naturally within their special knowledge. Appellants'' explanation in that regard in the instant case is wholly unbelievable. Hollowness of such explanation exposes the abject failure on their part to rebut the statutory presumption applicable against the appellants in the present case.

22. It has been argued that statutory presumption ought not to be drawn against the appellants as the foundational facts were not established. It has also been argued that there in no evidence that the victim was assaulted the day before commission of suicide and hence the ingredients of the offence u/s 304B of the Indian Penal Code is not established. It has also been argued that during the matrimonial life of the victim the families of victim and the appellants were on visiting terms. Appellant No. 1 had attended Jamaisasthi prior to the death of the victim. Gifts had been given to the family of the appellants during Puja and festivals and the family members of the victim had been invited for Mohatsob in the village of the appellants. It was also argued that appellant No. 1 had purchased KVPs to the tune of Rs. 22,000/- in the joint name of himself and the victim. It was therefore argued that cordial relationship between the families clearly improbalises the fact that the victim was subjected to mental and physical torture on demands of dowry. No presumption ought to be drawn against the appellants in such factual background.

23. It is true that prosecution has failed to adduce evidence that the victim was assaulted the day before her death. Prosecution witnesses stated that they heard of such assault from the villagers. No villager has been examined to corroborate such fact. Hence evidence of prosecution witnesses on such score is hearsay and inadmissible in nature. Medical evidence also does not show any other mark of injury on the victim except the ligature mark. It is therefore clear that prosecution has not been able to prove the case of assault on the victim a day before her death. Torture on the victim "soon before" her death is a sine qua non for establishing the offence u/s 304B of the Indian Penal Code. Prosecution appears to have failed to prove such ingredient of the offence u/s 304B of the Indian Penal Code beyond reasonable doubt.

24. However, the prosecution case of torture on the victim after 6 months of marriage on demands of dowry stand fully established by the evidence of prosecution witnesses. It appears from the evidence of the relations of victim that they were trying to placate and

please the appellants so as to desist them from subjecting the victim from torture for further demands of dowry. Judged from this angle, giving gifts to the appellants or inviting son-in-law on various occasions or visiting the house of appellant on Puja or Mahotsav cannot be said to militate against the prosecution case of sustained torture on the victim. They were all acts on the part of the relatives of the victim to appease the appellants so as to ensure good treatment to her at her matrimonial home in the face of their failure to pay further dowry demands which was resulting in the victim being subjected to continuous mental and physical torture. The relatives of the victim could not risk exacerbation of such torture on her by exhibiting hostile attitude towards the appellants. Consequentially, they chose the path of appeasement and went on requesting the appellants not to torture the victim whenever they left her behind at the matrimonial home. In this backdrop, their efforts to placate the husband and in-laws of the victim by giving them gifts or inviting them on religious occasions or attending social functions cannot be construed as circumstances that improbabilises torture on the victim, but has to be construed as desperate efforts of hapless relations of the victim housewife to protect her from being subjected to further torture due to escalation of hostility between the families.

25. The aforesaid facts clearly portray continuous mental and physical torture on the victim by the appellants despite efforts on the part of the relations of the victim to appease the appellants by maintaining good relation on the fond expectation that such behavior would persuade them to mend their ways. Unfortunately such was not to be. The victim ultimately extinguished her life unable to bear the torture meted out to her at her matrimonial home. There is no evidence that the KVPs purchased were in the control or custody of the victim. Such fact therefore does not erode the prosecution case of continuous torture on the victim. The authorities relied upon by the Senior Counsel for the appellant are distinguishable on facts. Foundational facts to draw the statutory presumption u/s 113A of the Indian Evidence Act are clearly established. Plea of the defence that victim committed suicide due to depression over her illness is untrue. There is no other extenuating circumstance in the facts of the case which may dilute the applicability of the statutory presumption to this case. Such presumption remains un-rebutted by the appellants. Ratio in Ramesh Kumar (supra) is inapplicable as the foundational facts in the instant case to attract statutory presumption is established in this case. Evidence on record proves continuous mental and physical torture on the victim. Such torture compelled her to take her own life. Conduct of the appellants, therefore squarely fall within the ambit of abetment to commit suicide, in view of the statutory presumption applicable to this case. Ratio in M. Mohan (supra), Cyriac (supra), Durga Prasad (supra), Amalendu Pal @ Jhantu (supra), Kishorilal (supra) are accordingly of no help to the appellants. In Fazu Mia (supra) there was no allegation of demands of dowry in the FIR. The said authority therefore is distinguishable on facts. There is no defect in examination u/s 313 Cr.P.C. Ratio in Latu Mahato (supra) is accordingly of no help.

26. Accordingly, I hold although the prosecution has not been able to prove the offence u/s 304B of the Indian Penal Code beyond reasonable doubt, there is sufficient evidence

on record to convict the appellants for commission of offence punishable under Sections 498A/306/34 of the Indian Penal Code.

27. Coming to the issue of sentence, I direct that appellant No. 1 to suffer rigorous imprisonment for 5 years for the offence punishable u/s 306/34 of the Indian Penal Code and to suffer rigorous imprisonment for 2 years and to pay fine of Rs. 5,000/-, in default to suffer simple imprisonment for one month more for the offence punishable u/s 498A/34 of the Indian Penal Code. Appellants No. 2, 3, 4 are directed to suffer rigorous imprisonment for 3 years for the offence punishable u/s 306/34 of the Indian Penal Code and to suffer rigorous imprisonment for 2 years and to pay fine of Rs. 5,000/-, in default, to suffer simple imprisonment for 15 days more for the offence punishable u/s 498A/34 of the Indian penal Code, both the sentences to run concurrently. The period of imprisonment already under gone by the appellants shall be set off u/s 428 Cr.P.C. in accordance with law.

28. The appellants are directed to surrender before the Trial Court within a month from date to serve out their sentences failing which the trial Court shall take proper steps for execution of the sentence in accordance with law.

29. Copy of the judgment along with LCR be sent to the Trial Court immediately for intimation and necessary action.