HIGH COURT OF TRIPURA
AGARTALA

CRL. A. No.14 of 2018

Smt. Priyanka Rani Das,
wife of Sri Pijush Kanti Das,
daughter of Sri Dulal Chandra Das,
resident of village: Madhya Laxmibil,
P.S. Bishalgarh, District: Sepahijala, Tripura

----Appellant(s)

Versus

1. **Shri Pijush Kanti Das,**
   son of Mrinal Kanti Das

2. **Smt. Jiban Rani Das,**
   wife of Sri Mrinal Kanti Das

3. **Sri Mrinal Kanti Das,**
   son of late Jatindra Das

   -all are residents of Ramcherra,
   P.S. Bishalgarh, District: Sepahijala

---- Respondent(s)

The State of Tripura

---- Proforma-Respondent(s)

For Appellant(s) : Mr. S. B. Deb, Advocate

For Respondent(s) : Mr. Debajit Biswas, Adv.
Mr. P. Majumder, Adv.

Date of hearing : 13.05.2019

Date of delivery of Judgment : **29.06.2019**

Whether fit for reporting : **YES**

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

This is an appeal by the victim under proviso to section 372 of the Cr.P.C. against the judgment and order of acquittal dated 18.07.2018 delivered in ST(T-2)16/2016 by the Addl. Sessions Judge, West Tripura, Agartala, Court No.5. The accused-respondents were

charged under Section 498A of the IPC for causing cruelty whereas the accused-respondent No.1 was charged under Section 307 of the IPC for making an attempt to kill the victim.

[02] The genesis of the prosecution is located in the complaint made to the Officer-in-Charge, Bishalgarh police station by one Dulal Chandra Das on 01.10.2012 at 09.45 a.m [Exbt.1] revealing that the victim was married to one Pijush Kanti Das, the accused-respondent No.1. After marriage she passed her conjugal life happily for two/three months. Thereafter, the accused persons started torturing her both physically and mentally. Dulal Chandra Das [PW-1] has alleged in the complaint that her daughter [the victim, PW-2] was pressurized to bring Rs.2,00,000/- from her parents for constructing house. When the victim told that her parents would not be able to give the amount as asked for, she was subjected to physical and mental torture. When the victim was three months pregnant, the accused-person denied to treat her properly. It made the situation the state vernarable in the context of growth of fetus in the victim's womb. The accused person even tried to get the pregnancy aborted. The dispute was taken to the local panchayat and they made attempts for reconciliation. In the conciliation meeting, the accused-respondents assured that they would not torture the informant's daughter any more. But after some days again they started torturing her. When the said complaint [Exbt.1] was lodged in the police station, the victim had nine months old male child. On 30.09.2012, as stated by the informant, the accused-respondent No.1 came to his shop and requested him to visit his daughter's home. When the informant asked what had happened then the respondent No.1 had stated that his daughter had consumed poison. When the informant

rushed to his daughte's matrimonial home he was informed that his daughter had been taken to Bishalgarh hospital. His daughter [the victim] was taken from Bishalgarh hospital to Hapania hospital. When the information was lodged, according to the informant, she was struggling for her life and the doctors attending her asked him to wait for 72 hours. Based on the said complaint, Bishalgarh P.S. Case No.207 of 2012 under Section 498A of the IPC was registered and taken up for investigation.

[03] Having the investigation completed, the police report was filed and as the offence punishable under Section 307 is exclusively triable by the court of the Sessions Judge, the police papers were committed to the court of the Sessions Judge, West Tripura, Agartala. In the due course, the said case was transferred to the court of the Addl. Sessions Judge, Agartala, Court No.5. The Addl. Sessions Judge, West Tripura, Agartala hereinafter referred to as the trial judge framed the common and the separate charge against the accused-persons. As stated earlier, against the accused-respondent No.1, the trial judge framed the charge under Section 307 of the IPC for attempt to kill Priyanka Rani Das [PW-2] by administering poison with her drink on 30.09.2012 at about 12 hours at Ramcherra under Bishalgarh police station. The common charge that was framed under Section 498A of the IPC for committing cruelty under the same transaction against all the accused-respondents [the respondents No.1-3]. The accused-respondents denied the charge and claimed for trial.

[04] In order to substantiate the charge, the prosecution adduced as many as nine witnesses including the victim [PW-2], Dr. Avik Chakraborty [PW-7] who treated the victim and Smt. Manidipa

Das [PW-9], the investigating officer. That apart, prosecution introduced three documentary evidence including the complaint [Exbt.2]. But no medical report of the victim was furnished. From the defence, no evidence was introduced. After the evidence led by the prosecution was recorded, the accused-respondents were examined separately under Section 313 of the Cr.P.C. when they raised the plea of innocence by stating that the incriminating evidence is concocted.

[05] Having appreciated the evidence led by the prosecution, by the judgment and order dated 18.07.2018 [signed on 18.08.2018] the accused-respondents were acquitted from the charge. For returning this finding of acquittal, the trial court has observed that the central point of the dispute was that Priyanka (the victim) was carrying an illicit baby. PW-5 remained silent on that question of demand of money for construction of house followed by torture. Similarly, the evidence as a whole, is also silent about the date, time and manner of torture allegedly meted out to the victim by her in laws. PW-1 deposed in the trial that after two months of the incident as recorded in the complaint, the victim recovered and narrated the fact of harassment. Then, the trial judge had questioned to the effect that if the entire fact was narrated to the informant by the victim after two months of the incident then how the complaint was lodged on 01.10.2012 on the next day of the incident. During the cross-examination, PW-1 (the informant) admitted that after about 8/10 days of the incident, he came to learn from his daughter that Pijush, the accused-respondent No.1 and his father, the accused-respondent No.3 had administered poison to her. If the information relating to administration of poison was known after about 8/10 days of the incident, then how the complaint was lodged on the very next day of

the incident. The prosecution has not given any explanation of that discrepancy. The victim [PW-2] in her cross-examination has admitted that after discussion with the attending doctor she lost her sense and before she was discharged from the hospital after recovery, she did not disclose anything to any person. She has admitted that she was not aware as to how her father came to know the facts to lodge the complaint on the following day of the incident. The trial judge therefore has observed as under:

> **"All these facts, clearly indicates that either victim is telling lie or the informant (father of victim) is telling lie and in this situation testimony of both these witnesses are not reliable. PW.1, PW.2, PW.3, PW.4, PW.5 and PW.6 spoke about Panchayat meeting to solve out their family problem. But surprisingly, from the evidence of IO it transpires that she did not examine the village Pradhan of Madhya Laxmi Bil and Ramcherra Village Panchayat. Even IO in her cross examination admitted that during investigation she did not visit Madhya Laxmi Bil village Panchayat where the parents house of the victim is situated. From the evidence of prosecution witnesses it further reveals that no written resolution was taken in the alleged panchayat meetings. Therefore, in absence of the evidence of village pradhans and the written resolution, if any, of panchayat meetings such evidence does not inspire confidence upon this court. Mr. Debnath rightly pointed out that several cases are pending on matrimonial disputes between the parties. Victim in her cross examination admitted that she filed a petition for divorce and that was duly contested by the husband and was dismissed. She further admits that family court arranged conciliation and tried to send back her to Matrimonial home but she denied. She also admits that her husband filed a case for restoration of conjugal right but she refused to go with her husband. All these conducts indicates that there was long standing matrimonial dispute in between husband and wife and the lodging of present complaint was the proactive decision of the complainant on the matrimonial issue. As pointed out [by] Mr. Debnath some of the cited prosecution witnesses including a vital witness namely Sri Ajit Lal Saha was not examined by the prosecution and for non examination of vital witness adverse presumption can be drawn against the prosecution holding that if those witnesses were examined they would not have support [ed] the prosecution case. It was the case of the defence that victim always tried to maintain relation with Ajit Lal Saha and that's why she was creating disturbance and was not willing to continue the marriage tie up with her husband. It is true that where two views are possible the view favourable to the accused needs to be accepted. Here in this case one view is that victim left her matrimonial home due to torture by the accused persons and the another view is that she voluntarily left her matrimonial home as not willing to continue marital tie up with her husband and lodged the complaint purposefully. So, the view favorable to the accused is to be accepted."**

[06] While acquitting the accused-respondent No.1 from the charge under Section 307, the trial judge has observed as follows:

> **"Victim herself in her cross examination admitted that when the attending doctor tried to wash her stomach she disclosed that she did not take any poison. Mr. Debnath is correct on the point that as no such forceful administration of poison took place [sic] that's why prosecution failed to furnish any medical report during trial. Not producing the injury [report] where the victim had allegedly undergone treatment for a considerable period as an indoor patient in government hospital definitely destroy the prosecution case so far in respect of charge under section 307 of the IPC [sic]. I have no other alternative but to part with record holding that no such incident of forceful administration of poison took place for which charge under section 307 IPC bound to fail."**

[07] Mr. S. B. Deb, learned counsel appearing for the appellant has submitted that primarily for the lapse of prosecution the trial judge came to the inference as stated. That apart, the evidence was not properly appreciated else the finding of acquittal would not have been returned. According to Mr. Deb, learned counsel that the trial judge had responsibility to call for the witnesses to give the justice a chance, but he has not made any initiative to call those witnesses which were not produced. He has succinctly submitted that the Panchayat Pradhan ought to have been investigated but neither the investigating officer [PW-9] nor the trial judge had made any initiative to examine the Panchayat Pradhan who was present in the conciliation meeting. But Mr. Deb, learned counsel has submitted that the prosecution has well proved that on unlawful demand of Rs.2,00,000/- from the parents of the victim, for construction of house and for not fulfillment of the said demand, the victim was subjected to physical and mental torture. In this regard, PW-4 was not at all relied by the trial judge most irregularly. Thus, Mr. Deb, learned counsel has asserted that sufficient evidence in proof of the charge under Section 498A of the IPC has been laid. However, Mr. Deb, learned counsel has submitted further that since there is lapse

in the investigation, the matter may be remanded for retrial. In this regard, he has submitted that the appeal under proviso to section 372 of the Cr.P.C. has to be treated at par with an appeal under Section 378 of the Cr.P.C. and as such for disposal of the appeal the procedure laid down in Section 386 of the Cr.P.C. would be available to this court. Section 386 of the Cr.P.C. provides that in an appeal from an order of acquittal, the appellate court may reverse such order and direct that the further inquiry may be made or that the accused may be re-tried or committed for trial, as the case may be, or may find him guilty and pass such sentence on him according to law. In support of that contention Mr. Deb, learned counsel has relied on a few decisions of the apex court as regards exercising the discretion as provided under Section 386 of the Cr.P.C. In **Issac alias Kishore vs. Ronald Cheriyan and Others** reported in **(2018) 2 SCC 278** the apex court has observed that under Sections 386(a) and (b)(i) of the Cr.P.C. the appellate court has the power to direct retrial, when it deals either with an appeal against the judgment of conviction or an appeal against acquittal. There is difference between the powers under clauses (a) and (b). Under clause (b), the court is required to test the finding and sentence, but under clause (a), the court may reverse the order of acquittal and direct further investigation or the accused may be directed to retried or may find him guilty and pass sentence on him according to law. But the apex court in **Issac** (supra) has observed as well, as under:

> **"11. Normally, retrial should not be ordered when there is some infirmity rendering the trial defective. A retrial may be ordered when the original trial has not been satisfactory for particular reasons like..., appropriate charge not framed, evidence wrongly rejected which could have been admitted or evidence admitted which could have been rejected etc. <u>Retrial cannot be ordered when there is a mere irregularity or where it does not cause any prejudice, the Appellate Court may not direct retrial. The</u>**

> **power to order retrial should be exercised only in exceptional cases."**

[08] Mr. Deb, learned counsel has referred a decision of the apex court in **Banwari Ram and Others vs. State of U.P.** reported in **(1998) 9 SCC 3** where the apex court had occasion to observe that it is now well settled that under the Criminal Procedure Code there is no difference so far as the power of the appellate court is concerned to deal with an appeal from a conviction and that from an appeal against an order of acquittal excepting that an appeal against conviction is as of right and lies to courts of different jurisdictions depending on the nature of sentence and kind of trial and the court in which the trial was held, whereas an appeal against an order of acquittal can be made only to the High Court with the leave of the court. [It may be noted that when the said decision was made, the amendment by inserting proviso to Section 372 of the Cr.P.C. was not brought about. The procedure for dealing with two kinds of appeals is identical and the powers of the appellate court in disposing of the appeals are in essence the same. The High Court, therefore, has full power while hearing an appeal against an order of acquittal to re-appreciate the evidence and to come to a conclusion whether the order of acquittal passed by the Sessions Judge was per se bad or not. If, however, from the evidence two views are reasonably possible, one supporting acquittal and the other indicating conviction, then the High Court would not be justified in interfering with an order of acquittal merely because it takes the view that it would have been taken. Hence the high court while reversing an order of acquittal must apply its mind to the reasons given by the trial court and find out whether such reasons are at all sustainable or not. But on examining the reasons advanced by the trial court as well

as on re-appreciating the evidence on record, if the High Court is satisfied that the appreciation of evidence made by the trial court is per se bad then there would be no limitation on the power of the High Court to set aside an order of acquittal.

[09] In **Sambasivan and Others vs. State of Kerala** reported in **(1998) 5 SCC 412** where the apex court has observed that the appellate court should satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions as arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so the appellate may hold that the trial court judgment warranted interference.

[10] Finally Mr. Deb, learned counsel has contended that justice cannot be blind-folded. In this regard, he has referred a decision in **Zahira Habibulla H. Sheikh and Another vs. State of Gujrat and Others** reported in **(2004) 4 SCC 158** where the apex court has eminently observed that the courts have to ensure that guilty persons are punished and that the might or the authority of the state is not used to shield the guilty or its men. It should be ensured that they do not wield such powers which under the constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil, trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice does not unleash. The apex court had occasion to observe in

Zahira Habibulla H. Sheikh (supra) that it is obligatory for the Court to find out as to what is the correct stand and real truth which could have been decided and examined by accepting the prayer for additional evidence. Mr. Deb, learned counsel has asked for collecting the additional evidence through further investigation but not indicated any specific probable evidence. In **Zahira Habibulla H. Sheikh** (supra) the apex court has attached serious importance to the power of the courts and Section 165 of the Evidence Act which is, in a way supplementary to its power under Section 311 of the Cr.P.C. Section 165 consists of two parts viz. (i) providing discretion to the court to examine the witness at any stage and (ii) the mandatory part which compels the court to examine a witness if his evidence appears to be essential for the just decision. The law should not be seen to sit limpily, while those who defy it go free and, those who seek its protection lose hope and as such Mr. Deb, learned counsel has further urged this court that since the deficiency in the investigation and in the prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, the court has to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that the full and material facts are brought on record to avert miscarriage of justice [the apex court in **Shakila Abdul Gafar Khan vs. Vasant Raghunath Dhoble** reported in **(2003) 7 SCC 749**].

[11] From the other side, Mr. D. Biswas, learned counsel appearing for the accused-respondents has submitted that the deficiency is imaginary and no reality was required unveiled the prosecution neither is required to be lifted for purpose of ensuring

justice. The trial judge has taken all sorts of care in arriving at the finding of acquittal and hence no interference by this court in view of the settled position of law is warranted. In this regard, Mr. Biswas, learned counsel has relied on a larger bench decision of the apex court in **Ukha Kolhe vs. The State of Maharashtra** reported in **1963 CriLJ 418**. In that case the procedure laid down in Section 129A of the Bombay Prohibition Act, 1949 was not followed for testing blood that was taken at 6 a.m. The apex court has held that in such circumstances prosecution cannot get the benefit of Section 66(2) for rash and negligent driving when the accused was under influence of liquor. On the same plea, the Sessions Judge in the appeal, remanded the matter to the magistrate for retrial giving the prosecution an opportunity to adduce evidence regarding examination of blood taken at 6 a.m. In that circumstances, the apex court has observed in **Ukha Kolhe** (supra) as follows:

> **"For all these reasons, I have come to the conclusion that as admittedly the procedure laid down in s. 129A was not followed for testing of the blood that was taken at 6 a.m., the prosecution cannot get the benefit of s. 66(2) of the Prohibition Act. There is no justification, therefore, for the order made by the Sessions judge, sending the case back to the Magistrate for re-trial in order to give the prosecution an opportunity of adducing evidence as regards the examination of the blood taken at 6 a.m. on April 3, 1961."**

[12] Further, it has been argued by Mr. Biswas, learned counsel that there is no evidence in respect of Section 307 of the IPC and the allegation has been cooked up by PW-1. No medical evidence in respect of administering the poison has been placed in the evidence nor there is any specific reference. But as regards the offence punishable under Section 498A of the IPC, Mr. Biswas, learned counsel has quite succinctly submitted that the cruelty within the meaning of Section 498A of the IPC has not been made out, merely some sweeping statements and loose indicators have been

placed for this purpose. The apex court in **State of Andhra Pradesh vs. M. Madhusudhan Rao** reported in **(2008) 15 SCC 582** has significantly observed as follows:

> **"16. In order to appreciate the rival stands, it would be useful to notice the statutory provisions. Section 498-A I.P.C. makes "cruelty" by husband or his relative a punishable offence. The word "cruelty" is defined in the Explanation appended to the said Section. Section 498-A I.P.C. with Explanation reads thus:**
>
> **"498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be [1962] Supp 1 SCR 104 (2004) 13 SCC 174 (2004) 10 SCC 570 (2004) 10 SCC 583 (2007) 3 SCC 755 punished with imprisonment for a term which may extend to three years and shall also be liable to fine.**
> **Explanation-For the purpose of this section, "cruelty" means--**
> **(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or**
> **(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand."**
>
> **17. Thus, providing a new dimension to the concept of "cruelty", clause (a) of Explanation to Section 498-A I.P.C. postulates that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute "cruelty". Such wilful conduct, which is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman would also amount to "cruelty". Clause (b) of the Explanation provides that harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand, would also constitute "cruelty" for the purpose of Section 498-A I.P.C.**
>
> **18. It is plain that as per clause (b) of the Explanation, which, according to learned counsel for the State, is attracted in the instant case, every harassment does not amount to "cruelty" within the meaning of Section 498-A I.P.C. The definition stipulates that the harassment has to be with a definite object of coercing the woman or any person related to her to meet an unlawful demand. In other words, for the purpose of Section 498-A I.P.C. harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property etc., that it amounts to "cruelty" punishable under Section 498-A I.P.C."**

Thus, the basic ingredients which are required to be proved in order to bring home commission of an offence under

Section 498A of the IPC are to be kept in mind while reversing any order of acquittal under the said charge.

[13] Mr. Biswas, learned counsel has quite candidly submitted that there is no legal embargo on the appellate court to review, re-appreciate or reconsider the evidence upon which the order of acquittal is founded. Yet, generally, the order of acquittal is not interfered with because the presumption of innocence, which is otherwise available to an accused under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a court of law, gets further reinforced and strengthened by his acquittal. It is also trite that if two views are possible on the evidence adduced in the case and the one favourable to the accused has been taken by the trial court, it should not be disturbed by the appellate court. Nevertheless, where the approach of the trial court in considering the evidence in the case is vitiated by manifest illegality or the conclusion recorded by the trial court is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to the characterised as perverse, then, to prevent miscarriage of justice, the appellate court is obliged to interfere with otherwise not. In this juncture it may be noted that the principle in respect of interfering with the order of acquittal has been quite succinctly culled out in **Chandrappa vs. State of Karnataka** reported in **(2007) 4 SCC 415**.

[14] In rejoinder, Mr. S. B. Deb, learned counsel has submitted that he has no grievance against the finding of acquittal from the charge under Section 307 of the IPC as the basic documents were not with the records. Even there is a conflicting statements of

the victim and the informant. There would have been the better materials to even prove the charge under Section 498A of the IPC and for that purpose the order of acquittal be set aside and the case may be remanded for retrial by afforded the opportunity to the state for collecting further materials on directing the trial court to record the material witnesses or the documents under their discretionary jurisdiction provided by Section 165 of the Evidence Act and under Section 311 of the Cr.P.C.

[15] For purpose of appreciating the submission made by the learned counsel for the parties, this court would like to carry out a meaningful evaluation of the evidence on records.

[16] PW-1, Dulal Chandra Das lodged the complaint [Exbt.1] and in the trial he has stated that:

> **"I also tried to resolve their family dispute in respect of this child. Subsequently I came to learn that my daughter is mentally harassed on the same issue of aborting the child. The accused persons only alleged that the child is not of my son is law Pijush Kanti Das."**

In the trial very surprisingly he was completely silent about the demand of Rs.2,00,000/- as reflected in the complaint [Exbt.1]. But on recall, when the matter was placed before the jurisdictional court he has stated that the accused person demanded a sum of Rs.2,00,000/- for constructing their house, but as he could not fulfil their demand, they started extreme physical torture on his daughter. Thereafter he has stated about how he was informed of her daughter's consuming poison. In the cross-examination, he has admitted that his grandson has been living with the accused-respondent No.1.

[17] In contrast to the said statement, the victim Priyanka Rani Das [PW-2] has stated that the demand was placed to her for bringing Rs.2,00,000/- from her parents. As she did not bring the

money from her parents she was subjected to torture. But she did not make any reference of suspicion in respect of the parenthood of the fetus she was carrying but she had stated as under:

> **"On 30.09.2012 around 1200 hours my husband forcefully poured something in my mouth. I felt ill. After a while I lost my sense. After about 3/4 days when I regained my sense I found myself at Hapania Hospital. On 08.10.2012 I was discharged from hospital. Then directly I took shelter to my parents house. After complete recovery, I narrated the facts to my father. I was admitted in hospital my father lodged an ejahar at Bishalgarh PS."**

She has admitted in the cross-examination:

> **"I had a talk with attending doctor at hospital.**
> **It is true that my husband and my parents in law brought me in hospital.**
> **It is fact that in hospital while the doctor tried to wash my stomach I disclosed that I did not take poison."**

Further, she has stated in the cross-examination that she cannot say how her father came to know about the facts for lodging the ejahar on the following day of incident. That apart, she has admitted that no written resolution was taken in the joint panchayat meeting. She has also admitted as follows:

> **"It is a fact that Family Court arranged conciliation in several occasion and tried to send back me to my matrimonial home but I denied.**
> **It is fact that I filed a petition for divorce before the Family Court in the month of June, 2014.**
> **It is true that divorce petition was ultimately dismissed as duly contested by my husband."**

Even she has admitted that further attempt of amicable settlement was not possible for her.

[18] PW-3, Sri Kumar Saha is a neighbour of the accused-respondent. He has stated in the trial that a joint panchayat meeting of Lakshibil and Ramcherra village panchayats over the dispute relating to carrying an illicit baby by Priyanka [PW-2] was held. He has however stated that there was another meeting regarding demand of Rs.2,00,000/- for construction of house. The matter was amicably settled in the second meeting. One day in the evening he heard hue and cry from the house of the accused and he came to

know Priyanka was administered poison and subsequently she got admitted in the hospital. In the cross-examination he has admitted as follows:

> **"I also did not state to police that I was present in Panchayet meeting."**

Further he has stated that:

> **"I did not state to police that parents of Pijush demanded Rs.2,00,000/- for making construction of a house.**
> **I have no idea or personal knowledge about such demand of money, About one/one and half months later of second Panchayet meeting one day in the evening I heard that Priyanka consumed poison but I can't recollect from whom I heard about such incident."**

[19] PW-4, Swapan Acharjee is a witness from the neighbourhood. He has stated that PW-1 once told him that the issue of discord was the demand for Rs.2,00,000/- for construction of a house. There was another point of dispute. Allegedly, Priyanka was carrying an illicit baby. But all the disputes were amicably settled. But subsequently he came to know that PW-2 had consumed poison. In the cross-examination he has categorically admitted as follows:

> **"I did not state to police that Priyanka told me that Pijush and her father in law forcefully administered poison to her."**

Even he has admitted that:

> **"No demand of money was placed in my presence at any point of time."**

Further he has admitted as follows:

> **"I did not state to police that in Panchayet meeting when the written resolution was about to be taken mother of Pijush taking the child of Priyanka in her lap told that no resolution is necessary as child of Priyanka is her grandson and invited the parents of Priyanka to their house."**

[20] PW-5, Swapan Kar, another witness from the same village, has clearly stated that after Priyanka got conceived Pijush claimed that the said baby was not from him and on that issue, there was dispute between Pijush and Priyanka. She was physically tortured by Pijush. But on intervention of Madhya Lakshi Bil and Ramcherra

village panchayets, the matter was mitigated on assurance of the parents of the accused-respondent No.1. Later on, one day, father of Priyanka [PW-1] told him that she was administered poison by her husband. He has admitted that only Niloy Das was present in the meeting, but no panchayat member was present in that meeting. He has not raised any issue of unlawful demand.

[21] PW-6, Kamal Kanti Rakshit however has stated in the trial that after birth of her child the accused-respondent No.1 blamed that the said child was not of him. He has also stated that they demanded Rs.2,00,000/- for construction of a house. He has given a new fact that Pijush, the respondent No.1, did not appear in the first meeting. Subsequently, when the volume of torture increased, the second panchayet meeting was arranged in a house at Ramcherra village panchayet. In that meeting, on assurance of the accused-person the dispute was mitigated. He came to know from the father of the Priyanka [PW-2] that Priyanka was administered poison by her husband. He has categorically stated in the cross-examination that no written resolution was adopted in the panchayet meeting.

[22] PW-7, Dr. Avik Chakraborty has stated nothing about the treatment as he was not called upon to come with the medical records.

[23] PW-8, Abhiram Paul has stated that in his presence once the mother in law of Priyanka asked Dulal Das [PW-1] to bear the cost of the building construction. Nobody has stated of his presence at any point of time. Even PW-1 did not state so.

[24] PW-9, Manidipa Das investigated the case. She has stated shortly how she conducted the investigation, prepared the site map and filed the chargesheet. She has categorically stated that on

05.10.2012 she examined witnesses namely Niloy Das (Pradhan), Kamal Rakshit and Swapan Kar. On 08.10.2012, she examined the victim and another Ajit Lal Saha and recorded their statement under Section 161 of the Cr.P.C. She has categorically asserted in the cross-examination as follows:

> **"Witness Shri Swapan Acharjee (PW4) did not state to me that he visited hospital after 4/5 days of alleged incident of administering poison and have discussion with Priyanka. Said witness (PW4) in his previous statement also did not state that once mother of Pijush Smt. Jiban Rani Das came to him with complaint that Priyanka is carrying an illicit baby in her womb."**

[25] On appreciation, this court finds that the ingredients of 498A of the IPC is not found in the evidence nor it can be stated that the charge thereof has been proved beyond reasonable doubt. Mr. Deb, learned counsel appearing for the appellant has very strongly urged remand so that the retrial cam take place. But this court finds from the statement of PW-2 that she did not disclose anyone or at least she has not stated in her statement in the trial that her husband administered poison to her. On the contrary, what she has stated that her husband forcefully poured something her mouth and she felt ill. This statement is in contrast to the statement made in the complaint [Exbt.1]. Even the trial judge has correctly recorded about the grave doubt that surfaced from the statement of the victim [PW-2] who has categorically stated that she cannot say how her father came to know about the facts disclosed in the ejahar on the following day of incident. Even she has not stated anywhere that she was administered poison. No piece of the medical paper in respect of consumption of poison has been placed in the evidence. Even the demand of Rs.2,00,000/- is not established. For incongruous statements, the trial judge has correctly observed that PW-5 also did not state that the dispute was centred around the demand of money.

On the contrary, PW-5 has categorically stated that there was serious dispute about the paternity of the baby that was being carried by the victim [PW-2].

[26] Having a cumulative view from the evidentiary materials discussed above, this court finds no ground to disturb the finding of acquittal and to send the case on remand for purpose of retrial. The retrial may be ordered when the original trial has not been satisfactory for reasons like (i) appropriate charge was not framed (ii) important evidence was wrongly rejected and that could have been admitted and (iii) the evidence which is admitted could have been rejected etc. None of the conditions is available in the present case. On the contrary, the procedures as followed are apparently satisfactory and hence the discretionary jurisdiction as provided under Section 386 of the Cr.P.C. cannot be exercised for remanding the case for retrial.

Having observed thus, this appeal stands dismissed.

Send down the LCRs forthwith.

JUDGE

Moumita