Supreme Court of India
State Of West Bengal vs Orilal Jaiswal And Another on 25 September, 1993
Equivalent citations: AIR 1994 SC 1418, 1994 (1) ALT Cri 193, 1994 (1) BLJR 267, 1994 CriLJ 2104, I (1994) DMC 138 SC, JT 1993 (6) SC 69, 1993 (3) SCALE 845, (1994) 1 SCC 73, 1993 Supp 2 SCR 461
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Bench: K J Reddy, G Ray
ORDER G.N. Ray, J.

1. This appeal has been preferred by the State of West Bengal against the judgment of acquittal dated May 14, 1990 passed by the Division Bench of the Calcutta High Court in Criminal Appeal No. 195 of 1990. By the aforesaid judgment, the conviction and sentences against the accused, Sri Orilal Jaiswal and his mother, Smt. Gujarati Debi Jaiswal, passed by the learned Sessions Judge, 12th Bench of the City Sessions Court, Calcutta on February 29, 1990 in Sessions Trial No. 1 of 1990 was set aside by the High Court and the accused were acquitted of the conviction under Section 306 read with Section 34 I.P.C. and sentence of 5 years' rigorous imprisonment and fine of Rs. 1000 in default simple imprisonment for 3 months and conviction under Section 498 read with Section 34 I.P.C. an sentence of one year rigorous imprisonment and a fine of Rs. 1000 in default to suffer simple imprisonment for three months.

2. The prosecution case in short is that Usha Jaiswal had committed suicide by hanging on April 19, 1986 in the house of her husband and the in-laws within a year from the date of marriage which was solemnised between Usha Jaiswal and accused No. 1, Orilal Jaiswal on May 31, 1985. It is the case of the prosecution that it was a negotiated marriage and according to the demand of the accused persons and other members of the family of in-laws sufficient dowry including colour T.V., motor cycle, gold ornaments etc. had been given at the time of marriage. The prosecution case is that the deceased, Usha Jaiswal, who was only 20 years old had been treated cruelly and had been tortured both mentally and physically by the accused. It has been alleged that within a few days after the marriage, the father-in-law of the accused No. 2 had died and the accused No. 2 had treated the deceased cruelly by telling her that she was a woman of evil luck (alakshmi) and because of her evil luck, the father-in-law had died shortly after the marriage. It has also been alleged that after the marriage, the deceased, Usha Jaiswal, had conceived but there had been an abortion after being admitted in the hospital. The accused No. 2, the mother-in-law of Usha Jaiswal caused severe mental pain by telling her in the hospital itself she was a woman of evil luck and that she had swallowed her baby and she should commit suicide. It has also been alleged that the accused No. 1 the husband of the deceased often used to come home drunk and physically assault the deceased. Both the husband and his mother had also caused severe mental torture to the deceased by telling that she had brought bridal presents of sub-standard quality and such articles should be taken back and dowry gifts of good quality should be brought. It has been alleged by the prosecution that as a result of such physical and mental torture by the accused persons, the deceased became unhappy and on several occasions when she had come to her father's house, she complained that she had been maltreated and tortured both physically and mentally with cruelty by the husband and mother-in-law in the manner aforesaid. It has also been alleged that even on the day when the deceased had committed suicide, namely, on April 19, 1986, the accused No. 1, Orilal Jaiswal, came to the parental house of the deceased at about 10.00 a.m. and informed the mother of the deceased

that his wife and mother had been quarrelling and she should go to his house for settlement but the mother of the deceased then informed the accused No. 1 that she would send her son the next day to the house of the accused but shortly thereafter, a brother of the deceased came to the house and informed the other brother and the mother that something had happened to his elder sister, namely, the deceased and she had been taken to the hospital. The elder brother and thereafter parents and other relations of the deceased rushed to the hospital when they were informed that the deceased Usha Jaiswal had committed suicide.

3. The brother of the deceased, Om Prakash, however, made a statement in the police station that his sister had been murdered but his statement was not treated as F.I.R. The next day, namely, on April 20, 1986 the mother of the deceased made a statement before the police which was recorded and treated as F.I.R.

4. It transpires from the post mortem report that sign of death by hanging were present and according to the doctor conducting the post mortem examination the deceased had died due to hanging. The doctor also noted a few marks of abrasions on the cheek and also on the other parts of the body which according to the doctor were ante mortem in nature. On being questioned at the time of deposition the doctor had also stated that the mark of injury on the cheek of the deceased was likely to be caused by a slap and other injuries were also likely to be caused by fist and blows. The doctor, however, stated on being cross-examined that such injuries could also be caused if the deceased had dashed against a hard substance and the injury on the neck could be caused by the friction of the nylon rope.

5. After considering the evidences adduced in the case and other materials on record the learned Sessions Judge held that the case was not properly investigated by police officer in charge and there were lapses on the part of the Investigating Officer and witnesses for prosecution had not been examined by the Police at an early date. The learned Sessions Judge commented on the performance of P.W. 14 Sri Bimal Chander Biswas, a Sub-Inspector of Calcutta Police who was the Investigation Officer in the case. The learned Session Judge observed that the Investigation Officer had deviated from his normal duties of investigation in a serious case and most of his statement which was given out at the time of cross-examination could not be treated as a substantive statement either for the prosecution or for the defence. P.W.2, Kamla Jaiswal, the mother of the deceased, stated that on May 31,1985, the deceased was given in marriage with the accused No. 1, Orilal Jaiswal and sufficient dowry had been given at the time of marriage as per demands of the parents of Orilal. P.W.2 further stated in her deposition that after one month of the marriage, the deceased, Usha Jaiswal, came to their residence but she had noticed her daughter in anxiety and she had been crying all the time. She has enquired about the reason and then she was told by the deceased that since the father-in-law of her mother-in-law had died after three-four days of the marriage, the mother-in-law had abused her by telling that she was 'alakshmi' and brought misfortune. On other occasions also the deceased had stated that her husband used to come drunk and abuse her and he had maltreated her and even assaulted her physically and had been telling her to take back all the bridal presents as the same were of inferior quality and bring goods of better quality. P.W.2 Kamla had also stated that her youngest daughter used to visit the matrimonial home of the deceased and having came to learn from her that the deceased had not been keeping well, she was brought to their

house and thereafter she was admitted to the hospital where she had delivered a dead child. The mother-in-law of the deceased came to the hospital to see the deceased and she told the deceased that she was a woman of bad omen and vile even to the extent of swallowing her baby. The mother-in-law had also told to her daughter that she should commit suicide. In her deposition, the mother of the deceased also stated that the in-laws also demanded fresh dowries of articles such as Fridge etc. She also stated that a few days before the occurrence, the deceased had come to her residence and was telling that she would not go to her husband's place since the husband and mother-in-law had been treating her cruelly. She also stated that on the day of committing suicide the accused, Orilal Jaiswal, came to her house at about 10.00 A.M. and told her to go to their house since her daughter had been quarrelling with his mother. When she requested Orilal Jaiswal to convince her mother Orilal replied that he was unable to say anything to her mother. P.W.2 Kamla told Orilal Jaiswal that on the next day she would sent her son to their house. Shortly thereafter, in between 12.00 P.M., she had received the information that there had been something with her daughter who had been taken to the hospital. Immediately his son, Om Prakash, went to the hospital and thereafter she and other members of the family went to the hospital where she was told that her daughter had killed herself by hanging. She stated in her deposition that she became shocked on hearing the news of death of her daughter and was not in a position to make any statement. She was taken to home and she also became unconscious. Next day, she requested her husband to take her to the police station to make a statement. Accordingly, on the next day she had been taken to the police station and she made statement which was written in Bengali and such statement was treated as F.I.R. by the Police.

6. Kumari Asha Jaiswal the youngest sister of the deceased was also examined as P.W. 5, and she had also stated that the mother-in- law of her deceased sister had maltreated her and used to tell her that she was the reason for the death of her father-in-law and she used to describe he as a woman of evil luck and that she should not live. She also stated that on the day when her sister had committed suicide, Orilal Jaiswal came at about 10.00 A.M. to their house and told her mother that her deceased sister and her. mother-in-law were quarrelling and Orilal Jaiswal requested her mother-in-law to go to their residence. The mother expressed her inability to go but that she would send her eldest son, Om Prakash, to the house of the accused on the next day. At about 12 noon, on the very same day they got the information that something had happened to her sister. Therefore they had been to the hospital where they got the information that the sister had died by hanging. She has stated that she had told the Police that the accused, Orilal Jaiswal, under the influence of liquor used to tell her deceased sister to take back the bridal presents because such articles were of bad quality and he also used to beat her. The elder brother of the deceased Om Prakash was also examined as a prosecution witness (P.W.6). He had also stated that his deceased sister was subjected to physical and mental cruelty by the accused. It appears that besides the elder brother of the deceased Om Prakash P.W.6, other relations of the deceased were also examined by the prosecution but since such persons were not examined at an early date it was suggested by the defence that their evidence should not be taken into consideration.

7. The learned Sessions Judge inter alia came to the finding that there was no unreasonable delay in lodging the F.I.R. by the mother of the deceased. It appears that the learned Sessions Judge has accepted the explanation of the mother of the deceased that on hearing the news of death of her

daughter by committing suicide, she became unwell and was not in a position to make any statement on 19th but on the next day she made a statement to the police and such statement to the police was treated as F.I.R. The learned Sessions Judge has also noted that the brother of the deceased on the very same day made statement before the police wherein he stated that his sister had been treated cruelly by the accused persons ever since the marriage. The learned Sessions Judge has also noted that the injuries by way of abrasion noted on the person of the deceased by the doctor conducting post mortem examination was likely to be caused by slaps and fists. The learned Sessions Judge has observed that although in the cross-examination, the doctor conducting the post mortem examination had stated in answer to the suggestion given by the learned Counsel for the accused that such injuries were also possible due to impact against a hard substance and the abrasion noted on the neck of the deceased could be caused by a friction from a nylon rope which was a rough substance, such injuries were ante mortem in nature it was not likely that the said injuries would be caused on the person of the deceased by hitting against wall or other hard object after she had committed suicide. The learned Sessions Judge was of the view that there was a positive evidence from the side of the prosecution that shortly after the marriage, the deceased has been treated cruelly and mother-in-law had described her as a woman of evil luck and held her responsible for the death of her father-in-law. The mother-in-law had also abused the deceased when she had lost her child by saying that she was a woman of evil luck who had even swallowed her own baby and she should commit suicide. The learned Session Judge was of the view that there were evidences to the effect that the deceased had been subjected to physical and mental torture by the accused and she was asked to take back the bridal presents by indicating that the articles were of sub-standard quality. The learned Sessions judge has noted although the evidences about the cruelty have been given by very close relations of the deceased but simply on that score the same were no liable to be discarded. The learned Sessions Judge has also noted that under Section 113A of the Indian Evidence Act there was legal presumption that the accused had abetted the commission of suicide and such presumption has not been rebutted by any reliable evidence adduced on behalf of the accused persons. The learned Sessions Judge has also noted that the deceased had committed suicide within a year from the date of her marriage and in view of the evidence that the deceased had been subjected to cruelty and mental and physical torture the provision of Section 498A I.P.C. was also attracted in the case.

8. The learned Sessions Judge therefore came to the finding that even if the evidences of P.W.5 to were left out of consideration, there was no reason to doubt the veracity of the evidences of the mother, P.W.2 regarding the complicity of the accused persons and from such evidence it transpired that the accused persons had systematically abused deceased Usha Jaiswal sometime by calling her as a woman of bad omen and sometime asking for taking back bridal presents of inferior quality and she was also abused for the failure to bring further dowry from her parental house. It was due to such systematic abuses caused on the deceased that she had silted from her normal mental frame and she was forced to end her life by hanging. In that view of the matter, the learned Session Judge held that both the accused persons were guilty of the offences under Section 306 read with Section 34 I.P.C. and under Section 498A read with Section 34 I.P.C. and accordingly he passed the order of conviction and sentence as indicated hereinbefore.

9. The High Court, however, came to the finding inter alia that there was no convincing evidence of systematic cruelty or physical or mental torture of the deceased by the accused persons. The High Court has noted that although prosecution has examined 19 witnesses but the conviction was based upon the evidences of P.W.2 and P.W.6 namely the mother and elder brother of the deceased. The High Court has held that only allegation made in the F.I.R. was that the accused No. 2, mother-in-law of the deceased had tortured her mentally by calling her woman of evil luck and the deceased was mentally torture by telling that the marriage gifts were of sub-standard quality and the same should be returned. The High Court has not also accepted the prosecution case that Usha had committed suicide because of such mental torture. The High Court has not also accepted the explanation given by the mother of the deceased, P.W.2, for not making the F.I.R. on the day of occurrence. It has been held by the learned judges of the High Court that if the mother had become unconscious, one of her sons could have gone to the police station to file a written complaint and it is not known why the father of the victim and other grown up sons of P.W.2 did not go to the police station to make the F.I.R. A decision of this Court in the case of Ganesh Patel v. State of Maharashtra AIR (1971) SC 135 has been referred to by the learned Judges of the High Court for holding that the delay in recording the statement of material witnesses caused a cloud of suspicion and the credibility of the entire warn and woof of the prosecution story. The High Court has also held that from the F.I.R. it transpired that the accused No. 2, Smt. Gujarati Debi, had tortured the deceased mentally by saying 'alakshmi' but such description of the deceased had been made on two occasion only. There is no allegation against the accused No. 1 that he had ever induced her commit suicide. Hence, there was no case under Section 306 of the I.P.C. against accused No. 1, Orilal Jaiswal. The High Court has also held that although the mother of the deceased, P.W.2, had stated in her deposition that a demand was made for fresh articles such as fridge etc. such case was not indicated in the F.I.R. and P.W.2 had also not stated such fact to the Investigating Officer about demand of further dowry. The High Court has also held that although allegation had been made against the accused No. 1 that he used to come home intoxicated and used to physically torture Usha Jaiswal but there is no independent and reliable evidence that Orilal Jaiswal came drunk and tortured her physically and no circumstantial evidence to that effect can be found. The High Court has also held that the evidence of P.W.6, Om Prakash, about the ill-treatment meted out to the deceased should not be accepted because he had not heard any thing directly from the deceased but only heard such allegations from her mother. Hence, deposition of P.W.6 Om Prakash was only hearsay evidence and no reliance should be placed on that. The High Court has also drawn an adverse inference against the prosecution case for not examining the father of the deceased. It has been indicated by the High Court that although a medical certificate has been produced to indicate that the father was cancer patient when the trial had started but there is no evidence to indicate whether the condition of the father had deteriorated between the date of occurrence and the date of trial. The High Court has noted as a matter of fact, the father has accompanied P.W.2 and P.W.6 at Muchipara Police Station at the time of lodging the F.I.R. Hence, he was able to move at that time. The High Court has noted that there is no evidence as to how and in what manner the victim had received injuries noted by the doctor holding post mortem examination. The High Court has held that there is no evidence as to who has caused such injuries. On the contrary, there is evidence that such injuries could have been caused by hitting against a hard substance. The High Court has come to the finding that the prosecution had failed to establish the charges against the appellants and the cruelty as enumerated in Section 498A I.P.C. had not been established and if such cruelty had not

been established, the presumption under Section 113A of the Indian Evidence Act can not be pressed into service. Accordingly, Section 306 I.P.C. also can not be invoked. Since there is no independent evidence of inducement to commit suicide either by the mother-in-law or by the husband of the deceased the conviction of the accused persons was unwarranted. In that view of the matter the High Court set aside the conviction and sentences and passed the order of acquittal in favour of both the accused.

10. The learned Counsel for the appellant submits that the High Court has taken a very unreasonable view completely overlooking the clinching evidences about the complicity of both the accused for the offences charged against them. It has been contended by the learned Counsel for the appellant that on 19th April itself the elder brother of the deceased Om Parkash Jaiswal apprehending that the accused had murdered his sister reported to the police station about such offence. A written complaint was filed in the Muchipara Police Station which was acknowledged by a receipt granted by the police officer. Such complaint was simply ignored and it is stated that such report was sent to the Assistant Commissioner of Police at the Police Head Quarters at Lalbazar. It has transpired from the evidence of P.W.6 Om Parkash that later on at the request of police authorities zeroed copy of the said complaint was supplied by Om Parkash. The mother of the deceased Kamla Jaiswal P.W.2 made a statement before the police officer in Muchipara Police Station next day. Such statement was reduced to writing by the police officer and was treated as F.I.R. Om Parkash was also examined by the police on 20th April. By that time, Om Parkash came to learn that his sister was not murdered by the accused but she had ended her life by committing suicide. Hence, he made statement to the effect. It is apparent from the F.I.R. and also from the statement of Om Parkash to the Police that the husband and mother-in-law of the deceased namely both the accused had treated the deceased with cruelty almost form the very beginning of her married life and she was subjected to both physical and mental torture by various acts like abusing her as woman of evil luck and suggesting that she should better end her live by committing suicide. Such abuse was not just made once in the beginning but when there was miscarriage of first pregnancy in the hospital the accused No. 2 again abused the unfortunate daughter-in-law by calling her vile woman of evil luck (alakshmi) who even swallowed her own child and suggested that she should end her life by committing suicide. The poor daughter-in-law was humiliated by telling her that the bridal presents were of inferior quality and should be taken back. She was oppressed by making further dowry demands for Fridge, V.C.R., etc. It is the positive case made in F.I.R. and in the statement of Om Parkash to the Police that the deceased Usha became unhappy from the very beginning of her married life and she was being abused, humiliated and subjected to mental cruelty and physical assault till she had ended her life. Even shortly before she has committed suicide, there was quarrel between the deceased and the accused No. 2. The doctor conducting post mortem examination had noted there was injuries on her person which according to the doctor were anti mortem in nature. During his examination the doctor has stated that such injuries were likely to be caused by slap and fist and blow. Although in the cross examination, the doctor has stated that such injuries are also likely to be caused by dashing against hard object and the injury on the neck could be caused by a friction with rough nylon rope, the learned Session Judge has given a very cogent reason as to why the possibility of sustaining such injuries, which were anti mortem in nature, by dashing against hard object should be discarded. It is only unfortunate that the High Court has not considered such reasonings of the learned Sessions Judge in their proper perspective. The learned

Counsel for the appellant has submitted that completely overlooking the fact that the brother Om Parkash made a written complaint in the police station on the date of incident itself, the High Court drew an adverse inference against the case of the prosecution on the ground that even if mother became unwell after hearing the death news of the daughter and could not make statement, father, brother or other elder member of the family ought to have lodged F.I.R. without any delay and there was no reason for lodging the F.I.R. by the mother the next day. He has submitted that the family of the deceased was under a great shock because of the tragic end of Usha within about ten months of her marriage. It is quite natural that the mother had suffered great mental shock and as such she was not in a position to make any statement to the police on the date of incident. There was nothing unnatural in her conduct. The learned Sessions Judge has rightly held that there was a very reasonable explanation for the mother making statement to the Police on the next day. It has been contended by the learned Counsel for the appellant that Usha lived only for about ten months after her marriage. During such a short period, she had been abuse and mentally and physically tortured all the time. The High Court was not at all justified in holding that there was no evidence of cruelty and abuse from the husband and evidence of abuse from the mother-in-law related to two occasions only. The High Court has ignored the positive evidence that she was subjected to physical and mental torture all throughout her wedded life and several instances of abuse and torture were mentioned. The learned Counsel for the appellant has submitted that the deceased was expected to tell to her mother and other close relations about her unfortunate experience in the house of in-laws. Necessarily, mother and close relations would be witnesses of the cruel treatment meted out to the deceased. Despite clear and unambiguous evidences about cruelty the High Court unjustly and on flimsy grounds did not accept the prosecution case and set aside the well reasoned judgment of the learned Sessions Judge. The learned Counsel for the appellant has submitted that the reasonings of the High Court in basing its finding are strained and against the clinching evidences adduced in the case. The impugned judgment has resulted in gross failure of justice and should be set aside and the conviction and sentences imposed by the learned Sessions Judge should be upheld by this Court.

11. The learned Counsel appearing for the accused Respondents, however, disputed the aforesaid contentions. It has been submitted by the learned Counsel for the Respondents that in a criminal trial, the offence charged against the accused must be proved beyond any reasonable doubt. However grave and intriguing may be the circumstances, the court should ensure that the burden of strict proof on the prosecution is not covertly substituted by surmise and conjecture. Drawing our attention to the findings of the High Court and the reasonings given therefor, the learned Counsel for the Respondents has submitted that it is unfortunate that Usha ended her life within a year of her marriage but such incident, however lamentable, should not outweigh the proper analysis of the facts established in the case. It has been submitted that against the husband, there is no evidence that he had even induced or suggested that the deceased should end her life. Allegation of physical and mental torture by the husband are only wild allegations. It has not been established by any convincing evidence by disinterested persons that the husband used to come home drunk and then abuse and assault the wife. Such incident would have been noticed in a tenanted house having common passage as the High Court has rightly pointed out. Demand for a further dowry was not indicated by the mother in F.I.R. and such case was in embellishment at a later stage so as to bring the prosecution case within the provision of Section 498A I.P.C. The High Court has rightly not accepted such false allegation by giving cogent reasons and no exception should be made to the

findings of the High Court against the mother-in-law namely the accused No. 2, it has been alleged that she had addressed the deceased as woman of evil luck (alakshmi) only on two occasions and on such occasions, suggestion for committing suicide was also given to the deceased. For good reasons High Court has not accepted such case. Om Parkash (P.W.6) firstly alleged that it was case of murder but when he understood that such false allegation would be of no consequence, he made a statement to the police on the next day making various false allegations. The F.I.R. lodged by mother was a belated one and a cool and calculated manner various false allegations were introduced in F.I.R.. Such unjustified delay in lodging F.I.R with consequential cooking up a false case is not countenanced favourably by law courts. The High Court relying on decision of this Court in a case of belated F.I.R. declined to place any reliance on the F.I.R. No tenant or neighbour has deposed that the husband or mother-in-law used to abuse or assault the deceased. There is no evidence from any disinterested witnesses that at 10.00 A.M. or around that time on the date of incident there was any quarrel between the deceased and her mother-in-law or any other member of the family. In the aforesaid circumstances, there was no occasion to assume that marks of simple injuries on the person of the deceased since noted by the doctor holding post mortem examination, has been caused by slap and fist and blow particularly when the doctor has categorically stated that such injuries could be caused by hitting against hard object and on account of friction from a nylon rope. It came out from the evidence of the mother of the deceased Kamla (PW2) that she had not been staying in Calcutta but she used to come to Calcutta on occasions. In such circumstances, it was expected to have some letters written by the deceased to her parents staying outside Calcutta containing allegations of mal-treatment and acts of cruelty. The High Court has rightly noted that excepting depositions by very close relations with embellishments, there is no reliable corroborative evidence. Hence, the prosecution case was not established beyond all reasonable doubts and the accused were entitled to well recognised principle of giving benefit of doubt. The learned Counsel has, therefore, submitted that the judgment of acquittal based on cogent reasons does not warrant any interference by this Court. After giving our anxious consideration to the facts and circumstances of the case and the rival contentions made by the learned Counsel appearing for the parties, it appears to us that the judgment of acquittal passed by the High Court after setting aside the order of conviction and sentences passed by the learned Sessions Judge, City Sessions Court, Calcutta cannot be justified and the same is against the weight of the evidence adduced in the case. We have already indicated the reasonings of the High Court in some detail. We may indicate here that the High Court has summed up the following circumstances for the purpose of holding that a grave doubt has been raised against the prosecution story:

(i) there is no satisfactory explanation of delay in lodging the F.I.R.

(ii) there is no dying declaration or suicidal note.

(iii) there is no letter during the subsistence of marriage.

(iv) there is no letter addressed to the mother who used to live outside Calcutta most of the time.

(v) there is no complaint either by the father or father-in-law of the victim.

(iv) there is no evidence regarding the injuries received by the deceased or the mal-treatment.

(vii) no specific date has been given when the deceased Usha had allegedly told her mother about the demand for dowry of the mal-treatment and no specific date or time has been given for making such demand.

(viii) although the adult members of the family of the deceased consisting of four brothers, sisters and brother-in-law and father are though the residents of Calcutta, the deceased had never complained anything to them.

(ix) the neighbour or tenants have not also been examined.

12. It is, therefore, necessary to consider the correctness of such reasonings. So far as the explanation for the delay in lodging the F.I.R. is concerned, the learned Sessions Judge has held that the mother has give a satisfactory explanation as to why she made statement to the police on the day next to the date of incident in question. It transpires from the evidence of the mother that sometime between 12.00 to 1.00 P.M. the mother and the other family members got the information that something had happened to Usha for which she had been removed to the hospital. The elder brother Om Parkash immediately left for the hospital and thereafter the mother, father and other family members of the deceased rushed to the hospital where they came to learn that their daughter had died by committing suicide in the house of the in-laws. There is no difficulty to imagine that such news had caused a great mental shock to the mother particularly when the deceased had to end her life within 10 months from the date of marriage. If on getting the news of suicide being committing by the daughter, mother becomes unwell and is not in a proper mental frame to made any statement to the police, no exception can be taken to such conduct. It should be borne in mind that the elder brother of the deceased gave a written complaint to the police on the very day of the incident by indicating that there has not been any natural death of his sister and he felt that his sister has been murdered by her in-law. On the very next date, the mother made a statement to the police indicating the plight of her deceased daughter and the physical and mental torture to which she was subjected to by the accused. Such statement of the mother has been treated as an F.I.R. in the case. In the aforesaid circumstances, it cannot be held that there has been unjustified inordinate delay in lodging the F.I.R. and even if the mother had became unwell after hearing the news of the daughter's death other adult members of the family could have lodged the complaint with the Police. It appears to us that the High Court has failed to note that the elder brother of the deceased had in fact made a written complaint on the very same day to the police but the same was not treated as F.I.R. by the police and he also made a statement before the Police on the next day wherein the allegations of cruelty meted out to his sister were clearly indicated. So far as the absence of dying declaration and suicidal note is concerned, we fail to appreciate how there would be a dying declaration when it is nobody's case that Usha was alive so as to make a dying declaration. The absence of suicidal note does not appear to us an important factor in deciding the case. It is evidence in the case that the deceased had been complaining about the cruel treatment meted out to her. There are clinching evidences to support the prosecution case that Usha had been subjected to mental and physical torture and she remained unhappy in the house of in-laws, and acts of cruelty, in ordinary course, were likely to disturb the mental frame of the deceased and cause sufficient

impulses to commit suicide. Coming to the question of absence of exchange of letters between Usha and the members of the parental family during the subsistence of marriage, we may indicate that barring the parents other members of the family were permanent residents of Calcutta itself and although the mother used to leave Calcutta at times, she often used to come to Calcutta and it is the positive case of the mother and also the elder brother of the deceased that on a number of occasions when Usha had come to their house in Calcutta from the house of her in-laws, she had met the mother and the other members of the family. Hence it should not be held that exchange of letters was reasonably expected.

13. Coming to the question of absence of complaint either by the father or by the father-in-law of the victim, we have failed to appreciate what was meant by the learned Judges of the High Court by the absence of complaint made by father-in-law of the victim. So far as the complaint by the father is concerned, it may be indicated that it is the evidence of the mother that she had spoken to the accused No. 2 namely the mother-in-law about the mal treatment meted out to her daughter and she also implored before the mother-in-law that the daughter should not be subjected to any abuses or humiliations. It is the prosecution case that mother-in-law abused the daughter-in-law by saying that she was a woman of evil luck and had brought misfortune to the family. It is therefore quite natural that the mother of the deceased had made complaints to her mother-in-law and had requested her not to abuse and humiliate her daughter. Hence, the question of complaint by the father was neither expected nor necessary. Coming to the finding made by the High Court that there is no evidence regarding the injuries received by Usha or the mal treatment made to her, it may be indicated that the mother, elder brother, sister and other relations of the deceased have deposed about the mal-treatment and physical assault of the deceased. The doctor conducting the post mortem has noted some injuries which were anti mortem on the person of the deceased. Where such evidences are to be accepted or not accepted or not and whether the injuries, anti mortem in nature found on the person of the deceased can be explained or not are different considerations but it will not be correct to hold that there is no evidence about mal treatment given to Usha or there is absence of any evidence of injuries sustained by her before death.

14. Coming to the finding that no specific date has been given when the deceased had allegedly told her mother about the demand of dowry and mal-treatment to the deceased it may be indicated that although exact date has not been given, there is positive evidence of the mother and the elder brother of the deceased that when after about a month of the marriage, Usha came to her parental house, she had narrated about cruelty and mental torture suffered by her in the house of the accused. She specifically complained that within a few days after her marriage the father- in-law of the accused No. 2 had died and in view of such death, she was abused and treated with cruelty by the accused No. 2 Thereafter, on other occasions also whenever she had come to the parental house, she had talked about such mal-treatment. Usha was alive only for about 10 months after marriage and it is nobody's case that the deceased complained about the mal treatment given in remote past or only on specific occasions so that exact date was required to be mentioned. Coming to the finding of the High Court that the adult member of the family of the deceased consisting of four brothers, sisters and brothers-in-law and the father were residents of Calcutta but Usha had not complained anything to them and non-complaint to such close relations was not in conformity with the human conduct, we may indicate that there is no basis for such finding and such finding is contrary to the

evidences adduced in the case. We have already pointed out that the deceased had complained to the mother and other members of the family about the mal treatment and the members of the family have deposed to that effect. The prosecution case was not properly investigated by the police for which the learned Sessions Judge has rightly commented on the lapses on the part of the Investigating Officer, Sri Bimal Chandra Biswas, Sub-Inspector of Police. As the Investigating Officer failed and neglected to examine the members of the family of the deceased at an early date, the learned Sessions Judge, in fairness, has not taken into consideration the evidences of the sister and other close relations of the deceased and has mainly relied on the evidence of the mother in basing his finding. Even if it held that the deceased had complained to her mother only about cruel treatment meted out to her, we think that for a newly married woman, her misfortune in the house of in-laws was not expected to be made public and confiding to the mothers was only natural. Coming to the observation of the High Court that the neighbours or the tenants have not been examined, it appears to us that in the facts of the case, no adverse inference can be drawn for such non-examination. The abuse and insult hurled on the daughter-in-law usually are not expected to be made public so that the neighbours may have occasions to criticise the improper conduct of the accused and hold them with disrespect and contempt. The High court has expressed doubts about the genuineness of the case of physical torture and abuses made by the husband and the deceased for the absence of any independent evidence given by the neighbours and cotenants about such physical assault or the abuses hurled on the wife by the accused. We have indicated that ordinarily it is not expected that physical torture or the abuses hurled on the wife by the husband and the mother-in-law should be made in such a way as to be noticed by the tenants living in the adjoining portions of the house. It is also not the case of the prosecution that the deceased was physically assaulted so violently that the neighbours came to know about such assault. It is also not the case that abuses used to be hurled loudly so that the tenants had occasions to hear them. It was therefore not necessary to examine neighbour or tenants to prove the prosecution case. In the instant case, the evidence about physical and mental torture of the deceased has come from the mother, elder brother and other close relations. Such depositions by close relations, who may be interested in the prosecution of the accused, need not be discarded simply on the score of the absence of corroboration by independent witness. Whether the evidence of interested witness is worthy of credence is to be judged in the special facts of the case. In our view, the acts of cruelty by the accused were expected to be known by the very close relations like mother, brother, sister, etc. The evidence of the mother has been accepted by the learned Session Judge as worthy of credence and we do not think that same should be discarded, in the facts of the case.

15. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in the civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498A I.P.C. and Section 113A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubt must depend upon the facts and circumstances of the case and

the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in Eater v. Bater (1950) 2 All ER 458 at p.459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter.

16. In Gurbachan Singh v. Satpal Singh and Ors. , Mr. Justice Sabyasachi Mukharji (as he then was) has very rightly indicated that the conscience of the Court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.

(Emphasis supplied)

17. In the instant case, the learned Sessions Judge has come to the finding that the charges levelled against the accused have been proved by indicating cogent reasons therefor. We have already indicated that the learned Judge of the High Court have entertained a grave doubt about the correctness of the prosecution story for the circumstances indicated hereinbefore. We have analysed those circumstances and in our view the said grounds do not stand scrutiny and they are against the weight of the evidence. We may add here that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. But in the facts and circumstances of the case, there is no material worthy of credence to hold that Usha was hyper-sensitive and that for other reasons and not on account of cruelty she had lost normal frame of mind and being overcome by unusual psychic imbalance, decided to end her life by committing suicide. The evidence adduced in the case has clearly established that Usha was subjected to abuses, humiliation and mental torture from the very beginning of her married life. Within a few days after the marriage when a newly married bride would reasonably expects love and affection from the in-laws, she was abused by the mother-in-law, the accused No. 2 by saying that the deceased was a woman of evil luck only because an elderly member in the family has died after her marriage. According to the evidence given by the mother of the deceased, the accused No. 2 even suggested that being a woman of evil luck (alakshmi) the deceased, should not live and end her life. When Usha conceived for the first time she had the misfortune of abortion. When the unfortunate daughter-in-law would reasonably expect sympathy and consolation from the mother-in-law, the evidence in this case is that the mother-in-law abused the deceased in the hospital by telling that she was a woman of evil luck. The evidence in the case

reveals an act of extreme form of cruelty by telling the unfortunate mother that she was vile enough to swallow her own baby and she should commit suicide. There is also evidence in the case that the husband used to come home drunk and abuse her and also used to assault her on occasions. The bridal presents brought by her were branded as goods of inferior quality and she was asked to take the said articles back to her parental home. Such acts, to say the least, were very unkind and newly married woman is bound to suffer a great mental pain and humiliation. Even if we do not take into consideration the demand for further dowry gifts since the case of such demand had not been indicated in the earlier statement made by the mother which was treated as F.I.R., there is no manner of doubt that the evidence of the mother which has been accepted by the learned Sessions Judge and in our view there is no reason to discard the same, clearly establishes that the deceased had been subjected to physical and mental torture all throughout. It is only unfortunate that the accused No. 1, the husband, instead of giving her solace against the humiliation and abuses hurled by the mother-in-law, either kept silent or expressed his inability to give good counselling to the mother and to protest against act of mental torture and humiliation. On the contrary, he also treated the wife with cruelty by telling her to take the bridal gifts back to her parental home and also by physically assaulting her. Such acts, in our view, were quite likely to destroy the normal frame of mind of the deceased and to drive her to frustration and mental agony and to end her life by committing suicide. Under explanation (a) of Section 498A I.P.C., "cruelty" means - "any wilful conduct which is of such 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."

18. In the aforesaid circumstances, the offence under Section 498A I.P.C. clearly established against both the accused. We therefore allow the appeal in part by setting aside the order of acquittal under Section 498A I.P.C. We convict both the accused namely Orilal Jaiswal and Gujarati Debi under Section 498A I.P.C. but considering the age of Accused No. 2, Gujarati Debi, we impose sentence on he to suffer rigorous imprisonment for 2 years and a fine of Rs. 2,000 in default to suffer further imprisonment for four months. The accused No. 1 Orilal Jaiswal is sentenced to suffer rigorous imprisonment for 3 years and a fine of Rs. 2,000 in default to suffer further rigorous imprisonment of four months under Section 498A I.P.C. Although there are materials on record to indicate that both the accuses were also guilty under Section 306 I.P.C. but we are inclined to give them benefit of doubt so far as the charge under Section 306 I.P.C. is concerned and they are acquitted of the said charge. The impugned judgment of the High Court stands altered to the above extent.