

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE
CRA No. 510 of 2009
With
CRAN 1 of 2009 (Old CRAN 2737 of 2009)

Krishna Tewari
Vs.
The State of West Bengal

Before: The Hon'ble Justice Rajarshi Bharadwaj
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Subir Banerjee, Adv.
Mr. Sandip Bandyopadhyay, Adv.
Ms. R. Basu Roy, Adv.

For the State : Mr. Madhusudan Sur, Ld. APP
Mr. Manoranjan Mahata, Adv.

CAV On : 30.04.2025

Judgment On : 23.05.2025

Apurba Sinha Ray, J. :-

1. The judgment and order of conviction dated 25.05.2009 under sections 498A/302/201 of IPC passed by the Learned Additional Sessions Judge, Fast Track, 1st Court, Siliguri was under challenge at the instance of the appellant/convict on the grounds, inter alia, that though the written

complaint was scribed by one Baneswar Dasgupta, the PW6 being the defacto-complainant deposed that the said FIR was scribed by Praneshwar Das. The Scribe was not examined. Furthermore, in the written complaint there is no endorsement that the said complaint was read over and explained to the defacto-complainant after writing the same. Neither the scribe nor the defacto-complainant i.e. the PW6 was examined under Section 161 of the Code of Criminal Procedure, 1973. The signature or thumb impression of the FIR maker on the Formal FIR was not taken as per the provisions of law. Though the PW-6 and PW-7 deposed that FIR was lodged at 9:30 A.M. in the morning but the FIR shows that it was recorded at 2:35 P.M. From the evidence and materials on record the ingredients of offences punishable under Section 498A of IPC were not proved. There was no material showing that the accused demanded dowry or money from the relatives of the victim during her lifetime. No witness had seen the accused to inflict torture upon the victim. Therefore, offence punishable under Section 498A IPC is not proved. The prosecution has further failed to prove the ingredients of offence punishable under Section 201 of IPC but in spite of that the appellant was convicted under section 201 IPC.

2. Learned counsel Mr. Banerjee has further submitted that the offences punishable under section 302 IPC was not proved. The PWs 2, 3 and 4 did not say that they saw the appellant to commit the murder of his wife. Nobody saw the convict committing such a heinous offence. It is further

submitted that though the PW11 who held inquest has stated in his report that from primary investigation he came to know that the appellant physically assaulted the deceased which resulted her unnatural death, but, on the other hand, PW4, PW6 or PW7 did not state that they disclosed the cause of death of the victim to PW11. No rough sketch map was prepared by the I.O. and no place was marked pointing as the place of occurrence where the victim died. During investigation, the I.O. did not ascertain as to how the victim died or if any weapon was used to cause the murder. The medical evidence which is relied upon by the prosecution cannot be sacrosanct evidence. At best the same may be the opinion of an expert. No weapon of offence was recovered though the appellant was arrested on 02.07.2001. It was the specific defence of the accused/convict/appellant that the victim died in a delivery case, further the victim was suffering from asthma who died after the delivery of a child due to weakness or sickness. The doctor who held the post mortem report did not mention that the death was caused due to multiple injuries. The doctor did not find any cut injury. The victim gave birth to a child just three days before her death. The inquest maker noticed that the stomach of the deceased was swallowed in his report but it did not mention that the victim gave birth to a child before her death. According to the learned counsel, if the doctor actually did the post mortem examination in a proper manner, he could have found that the victim sustained the injuries at the time of delivery of the child. It is not correct application of mind that the appellant was under an obligation to prove as to

how Kusum died. The prosecution has failed to show that appellant/convict was in the precincts of the place of occurrence at the time of incident. Examination of the accused under Section 313 Cr.P.C. is a matter of vital importance but the Learned Trial Judge did not record the examination of the accused under the above section in proper perspective. No question was put to the accused that as per prosecution evidence the accused was in the room and he alone caused the death by blunt weapon.

3. Learned counsel for the accused /appellant has further submitted that assuming and not admitting, the appellant assaulted his wife, then such assault was made upon the victim by lathi or fist. There was no intention to cause death. In the event this court finds that the present appellant committed the crime of culpable homicide upon the wife on the relevant date, such act should not be viewed within the scope of section 302 of IPC. At least the same should be treated as an offence punishable under section 304 Part-II of IPC. The learned counsel has relied upon the following judgments:-

- i) Mayur Panabhai Shah -vs- State of Gujarat reported in (1982) 2 Supreme Court Cases 396.
- ii) Joydeb Patra & Ors. -vs- State of West Bengal, reported in (2013) 2, C Cr.LR (SC)1
- iii) Bablu Chandra Dey @ Babul -vs- State of West Bengal, Criminal Appeal No. 306 of 2009, decided on 12.09.2022.

iv) Matalu Oraon -vs- State of West Bengal, Criminal Appeal No. 167 of 2009, decided on 19.04.2022 (Para-18) which held "I note appellant does not have any criminal antecedent. Motive for commission of crime has not been proved. In view of the aforesaid facts, in the event appellant makes an application for remission of sentence upon completion of 14 years of actual imprisonment in terms of Section 433A of the Code of Criminal Procedure, the appropriate authority shall consider the same keeping in mind the aforesaid circumstances and other relevant factors including his conduct in the correctional home."

4. The learned counsel for the State Mr. Sur has opposed the submission of the learned counsel of the appellant. According to him, there are sufficient incriminating materials including the post mortem report wherefrom it appears that the victim was murdered and it was ante-mortem and homicidal in nature.

5. P.W.2 Dilip Mahato is an independent witness. He went and saw the victim was dead and he also found that Krishna (the husband of the victim) was trying to cremate her by the side of the river by collecting bamboo. The para people raised objections and did not allow him to do so.

6. In cross examination, he has deposed that 3/4 days prior to the incident she had given birth to a male child and has also stated that

Krishna was making arrangements to take the dead body of Kusum for cremation.

7. P.W.3 Chotelal Sharma has stated that Krishna had tried to cremate the dead body of Kusum in the night.

8. P.W. 6 Abdhesh Pandey stated that he saw black mark on the back of the dead body and clotted blood in her nose and ear, which suggests that she was assaulted. P.W. 6 further stated that when police came, all the accused persons fled away. He also stated that his sister used to come to their house once or twice a week after "Jhamela" with her husband.

9. P.W. 7 Subash Pandey has stated that since after one year of marriage, Krishna assaulted his sister and his sister used to inform him about such torture upon he, whenever she used to visit their house.

10. According to Mr. Sur, from the evidence of the aforesaid witnesses it is evident that appellant Krishna Tewari used to inflict torture upon his wife and as a result deceased victim died in her husband's house. So, onus obviously is upon the appellant Krishna as to how his wife died and the appellant has failed to give any satisfactory explanation regarding the suspicious death of his wife in his house. No explanation is forthcoming from the side of the appellant to rebut the adverse inference against him.

There is also evidence that the appellant tried to cause disappearance of evidence either by cremation of the dead body or by throwing it into the river for the purpose of screening himself from the offence.

11. The burden of proof lies upon the appellant as per provision of Section 106 of the Indian Evidence Act. The incident of murder took place inside the house of the appellant, Krishna at the time when he was present. The bedroom was shared by the couple, and Kusum Tewari being the wife died within a period of two and half years of her marriage in her matrimonial house, and as such only the appellant knew what exactly happened on that day. In view of the evidence led in the trial court, it appears that no case has been made out by the appellant for acquittal and, therefore, this appeal is liable to be dismissed in view of the evidence on record.

12. The Learned Trial Judge has convicted the present appellant under Section 498A/302/201 of IPC on the grounds, inter alia, that the incident of murder took place inside the house of the appellant at the time when he was present. The bedroom shared by the couple and the victim died within a period of two and half years of her marriage in her matrimonial house. There is sufficient evidence on record that the accused Krishna Tewari was present in the house, when the incident of murder of his wife had taken place in his house.

13. The Learned Trial Judge has also held that the onus obviously lies upon the accused, Krishna Tewari to prove as to how Kusum died. The accused Krishna Tewari has failed to give any satisfactory explanation regarding the suspicious death of Kusum in his house. The venue of death of Kusum is the house of her husband, Krishna who has to offer an explanation as to how Kusum Tewari died in his house. The Learned Trial Judge did not find any explanation from the side of the accused Krishna and hence, the court drew adverse presumption against him. It is also observed in the judgment “there are also evidences on record that Krishna Tewari has tried to cause disappearance of (evidence for) (emphasis added) screening himself of the offence either by cremation of the dead body or throwing it into the river”. The burden of proof lies upon the accused Krishna in terms of section 106 of Evidence Act but he has failed to discharge his onus and accordingly, the Learned Trial Judge convicted the appellant accused and acquitted the other accused persons as there is confusion whether the other accused persons were present in the house or not at the relevant time.

14. I have considered the rival contentions of the parties, the impugned judgment including the depositions of witnesses, statement of the accused under section 313 Cr.P.C. and also the relevant case laws. Mr. Banerjee in fact, has challenged the judgment of conviction and sentence on several grounds, interalia:-

- i. The prosecution has failed to prove the presence of the appellant/convict in the precincts of the place of occurrence at the time of incident and further nobody saw the convict to commit the murder of his wife.
- ii. The I.O. did not ascertain as to how the victim died or whether any weapon was used to cause the murder.
- iii. The medical evidence relied upon by the prosecution cannot be sacrosanct. At best the medical evidence may be an opinion of an expert.
- iv. The victim died due to her delivery, and further, the victim who was also suffering from asthma died after the delivery of a child due to weakness or sickness.
- v. The doctor who held the post mortem did not mention that the death was caused due to multiple injuries. Further, the doctor did not find any cut injury. If the doctor actually did the post mortem examination in proper manner he could mention that the victim gave delivery of a child a few days prior to her death
- vi. Putting questions to the accused under Section 313 Cr.P.C. was not done in accordance with law. Further, no question was put to the accused that as per prosecution evidence the accused was in the room and he alone caused the death of his wife by using a blunt weapon
- vii. There was no material showing that the accused demanded dowry or money from the relatives of the victim during her lifetime

viii. Though the defacto-complainant deposed that the FIR was scribed by Praneshwar, the said scribe was not examined. Neither the scribe nor the defacto-complainant was examined under section 161 of Code of Criminal Procedure, 1973. The signature of thumb impression of the FIR maker on the formal FIR was not taken as per the provision of law.

15. On the other hand the learned counsel for the State has resisted the appeal on the following grounds:-

- i. There are sufficient incriminating materials including the post mortem report which shows that the victim was murdered and the same was ante-mortem and homicidal in nature. The eye witness said that the appellant was trying to cremate the body of the deceased by the side of the river by collecting bamboo. When the para people raised objections he resisted himself in doing so.
- ii. There are materials on record that appellant used to inflict torture upon his wife and as a result, the victim died in her husband's house on the fateful night.
- iii. Therefore, the onus is upon the appellant, Krishna Tewari to show as to how his wife died.
- iv. The burden of proof lies upon the appellant as per provision of section 106 of the Indian Evidence Act, since the incident of murder has taken place inside the house of the appellant at the time when he was

present.

16. The case law cited by the appellant is required to be discussed. In **(1982) 2 Supreme Court Cases 396 (Mayur Panabhai Shah Vs. State of Gujarat)** Hon'ble Supreme Court has been pleased to hold that there is no irrebuttable presumption that a doctor is always a witness of truth. His evidence is to be appreciated like that of any other witness. It has been specifically held in the above decision that even where a doctor has deposed in the court, his evidence has got to be appreciated like the evidence of any other witness.

17. In (2013) 2 C Cr LR (SC) 1 Joydeb Patra & Ors. Vs. State of West Bengal the Hon'ble Supreme Court has dealt with the application of Section 106 of the Indian Evidence Act. According to Hon'ble Supreme Court the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged then the accused could prove any fact within his special knowledge under Section 106 of the Indian Evidence Act to establish that he was not guilty. In the said case law, as the prosecution has not been able to discharge its burden of establishing beyond reasonable doubt that the accused died due to poisoning, the Hon'ble Supreme Court observed that "the Trial Court and the High Court could not have held the appellant's guilty just because the appellant have not been able to explain under what circumstances the deceased died.

18. In placing his alternative pleas the learned counsel of the appellant has relied upon an unreported decision **CRA No. 306 of 2009 (Bablu Chandra Dey @ Babul Vs. State of West Bengal)**, wherein a Learned Single Judge of this Hon'ble Court has been pleased to observe as hereunder:-

“25. Keeping in my mind the proposition of law as enunciated by the Hon'ble Supreme Court, as discussed above and the factual aspects as involved in this appeal, if placed side by side, it appears to us that the evidence of PW2 and PW5 clearly and categorically indicate that the incident of culpable homicide at the instance of the present appellant had occurred all on a sudden and without any premeditation. It is evident to us that the present appellant had not taken any undue advantage or acted in cruel or in any unusual manner while commission of the crime. It is also not the evidence of the prosecution witnesses that during their long marital life there was matrimonial discord between the accused and the victim and in view of such it appears to us that this case must come under the ambit of Section 304 Part II IPC instead of Section 302 IPC.”

19. The learned counsel has also relied upon another unreported decision in **CRA No. 167 of 2009 (Matalu Oraon Vs. State of West Bengal)**, where a Coordinate Bench of this Hon'ble Court has been pleased to observe as hereunder:-

"I note appellant does not have any criminal antecedent. Motive for commission of crime has not been proved. In view of the aforesaid facts, in the event appellant makes an application for remission of sentence upon completion of 14 years of actual imprisonment in terms of Section 433A of the Code of Criminal Procedure, the appropriate authority shall consider the same keeping in mind the aforesaid circumstances and other relevant factors including his conduct in the correctional home."

20. Undoubtedly, the prosecution is under a strict duty to prove the guilt of the accused beyond all sorts of reasonable doubt. This is the golden rule. Let us consider whether in this case prosecution has been able to prove the guilt of the appellant beyond reasonable doubt or not.

21. There are certain offences which usually take place beyond the gaze of any witness. The principle of circumstantial evidence in such cases plays a

vital role in ascertaining the complicity of the accused with the commission of the alleged offences. If the chain of events is intact or is not discontinued by any doubt or element of suspicion, the guilt of the accused can be proved by applying the principle as stated above.

22. Admittedly, the dead body of the deceased was found in her matrimonial home with marks of injury. The appellant's presence in the precincts of the victim's matrimonial home was corroborated by several witnesses. Some witnesses said that after seeing them or the police, the appellant fled away. Another witness said that the appellant was arrested from the road.

23. On a question put by the Court, the PW2 Dilip Mahato says that on one night he heard Krishna had killed his wife. On hearing hue and cry he went and saw Krishna's wife was dead and Krishna was trying to cremate her by the side of the river by collecting bamboo. Then para people raised objections and did not allow him to do so. He also saw the marks of injuries on the dead body. The presence of the appellant in the matrimonial home of the victim as deposed by the PW2 was not challenged nor denied during his cross examination. His statement on oath regarding the arrest of the appellant from his house on the next day of the incident was also not controverted during the cross examination of PW2. In his cross-examination, the PW2 has stated that he found Krishna was making an arrangement to

take the body of Kusum for cremation. He told such facts to the police. No attempt was taken to contradict his statements with the Investigating Officers. No denial of such deposition in court was given by the defence during his cross-examination. The seizure list shows that a bamboo stretcher, by which allegedly the deceased was carried to the river bank, was seized by the investigating officer.

24. Therefore, the prosecution was able to prove that the appellant was in his house when the victim died. Even at the cost of repetition, I must say that certain offences including demand of dowry are not usually done in presence of independent witnesses. Even if there is no independent witness to support the prosecution case that the victim was tortured by the appellant for dowry, the interested witnesses like relatives of the deceased can be relied upon if their deposition inspires confidence. However, there are sufficient materials on record showing that the relatives of the victim categorically stated that the appellant used to inflict torture upon the victim for demand of dowry. It is true that there was no document showing that any complaint was lodged over such demand of dowry from the side of the victim or from her relatives but that does not mean that the claim of the said relatives over these issues are baseless. In our socio-economic condition, it is often found that the demand of dowry, although made from the groom's side, no complaint is lodged only to make an effort for survival of the relationship of husband and wife.

25. As the prosecution has been able to show that at the time of her death, the appellant was in his house, it is his duty to explain how his wife died with marks of injury on her body. The appellant had taken diverse grounds on different occasions. Sometimes the defence takes the plea that the victim died due to her weakness/sickness on account of delivery of a child within a few days ago. In other words, according to defence the death of the victim was due to complications arising out of delivering a child. But if that be so there was ample opportunity for the appellant to produce sufficient materials at the relevant time. In his examination under Section 313 Cr.P.C the appellant has also claimed that the victim died due to complications arising out of delivering a child. In that event, he could have produced materials on record that any medical advice was taken or any attempt was taken to treat her medically for such complications. There is no medical evidence in support of his contention. No death certificate is produced to show that death was due to such complications.

26. The defence has also taken a different plea to the effect that the victim died due to falling from her bed. The appellant has also claimed in his examination under Section 313 Cr.P.C. that such a blackish mark was found in the body of the deceased prior to their marriage. No suggestion was given to the relatives of the victim during their cross-examination that such marks present on the body of the deceased existed prior to her marriage with the appellant. However, if we consider the deposition of PW1 Dr. Saibal

Gupta who has categorically mentioned the injuries sustained by the victim were the reason for her death and the injuries are as follows:-

“(1) Dark Red contusion :- a) over both side chest, b) left side arm, c) back of right arm, d) entire left leg, e) right thigh in front.

Contusions were dark red in colour was caused by blunt force weapon.

2) On reflection of skin flap over chest, there was vasculated clotted blood found over both sides chest wall with communicated fractured ribs.

All the injuries mentioned above showed vital reaction.”

27. It is true that doctor’s evidence cannot be sacrosanct. However, in our case it appears that the victim sustained multiple injuries on her person which are unusual in normal cases. There were contusions, clotting of blood and further the doctor has also found communicated fractured ribs meaning ribs were fractured due to use of blunt weapons. It is true that no blunt weapon was recovered but assault by fist and blows by a male person over a body of a sick/weak female due to delivery of a child, might have caused her to sustain injuries. The medical evidence shows that such injuries cannot be caused due to fall from bed or during delivery of a child at the instance of untrained local caregiver (Dhai). Therefore, the presence of such serious injuries which even fractured the ribs of weak and sick wife makes the appellant answerable how such injuries to his wife occurred. The principle of res gestae under Section 6 of Indian evidence Act has lays down:-

“S. 6. Relevancy of facts forming part of the same transaction. - Facts which, though not in

issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

28. Soon after the death of the victim, the appellant and others tried to cremate the dead body of the victim in the bank of a river. If the death of the victim was normal then the appellant should have obtained a death certificate. The place of occurrence is within the jurisdiction of the Siliguri Police Station, West Bengal and it is needless to mention that no dead body can be cremated at the scheduled crematorium without the production of proper death certificate issued by a registered medical officer. The attitude of the appellant does not support his innocence. Without taking the dead body of the victim to a scheduled crematorium, he tried to cremate her dead body hurriedly on the bank of the river. This attempt of the appellant does not support his alleged innocence. The PW2, Mr. Dilip Mahato has been able to prove the allegation of the prosecution in this regard and, in fact, there was no denial of such allegation from the side of the defence. Therefore, we think that the prosecution has been able to prove that the death of Kusum Tewari on the relevant date and time was due to multiple injuries caused at the house of the appellant who was at his home at the relevant point of time and therefore, he is under an obligation to discharge his onus under Section 106 of Indian Evidence Act. Unfortunately, the appellant did not discharge his

onus by bringing on record the relevant materials showing that injuries sustained are due to delivery of the child at the instance of a local caregiver (Dhai) or the injuries sustained by the victim were due to fall from bed, or marks of injuries were existed on her body prior to her marriage, or he was not present at the house when the incident occurred. No attempt was made to refute the allegation of the prosecution regarding his complicity. Therefore, the appellant was rightly convicted under Sections 498A/302 of IPC, since, in our view Section 300 of IPC lays down that if the assailant knows that his assault upon the victim, though, in ordinary course may not cause death to such victim but in view of sickness or disability of the victim such degree of assault is sufficient to cause her death, such assault can be categorized as offence of murder. In this regard, illustration (b) of section 300 of IPC is quoted hereunder:-

“A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of

nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.”

29. In this case, the victim was weak and suffering from certain sickness on account of delivery of a child. Knowing that such sickness has made the victim vulnerable and she may not sustain such fractured injuries, the appellant has caused or given the blow of his fist and in that event this is sufficient to show that the appellant intended to cause death of the victim who had become vulnerable due to giving birth of a child, and therefore, he is punishable under Section 302 of IPC as well as under Section 498A IPC. Physical injury to a married woman at the instance of her in-laws, irrespective of demand of dowry, brings the case under Explanation (a) of Section 498A IPC.

30. It is true that the name of the scribe of the FIR was Baneshwar Dasgupta but during examination-in-chief the *de facto* complainant stated the name of the scribe as Praneshwar Das. It is not a very vital defect since the pronunciation of a human being sometimes gives a different connotation. The allegation that scribe was not examined cannot be treated

as a serious defect in the prosecution case since the *de facto* complainant being PW 6 has deposed before the learned Trial Court in tune with the contents of the FIR and, therefore, even if the scribe was not examined before the learned Trial Court the same cannot be treated as a vital flaw in the prosecution case since on oath the de facto complainant stated before the Learned Trial Court the crux of the FIR and therefore, there is no reason to disbelieve the statements of the de facto complainant only because the scribe was not examined. It is also true that the concerned police officer did not take the signature or thumb impression of the FIR maker on the formal FIR. But it goes to show that such a mistake was committed by the concerned police officer and, therefore, we do not think that there is any ground to disbelieve the contents of the FIR merely because the concerned police officer failed to discharge his duties in accordance with law. It is true that the FIR was shown to be recorded at 2:35 pm on the relevant date. However, on several occasions the PW 6 and PW 7 deposed that the FIR was lodged at 9:30 am in the morning. From the deposition of the FIR maker i.e, PW 6 it appears that after arrival at the spot where his sister was found dead, he along with others went to the Siliguri Police Station to inform the matter to the concerned Police Station and it is also found that one general diary being GDE no. 80 dated 02.07.2001 of Siliguri PS was lodged in the morning. After receiving such information, the police personnel came to the place of occurrence and conducted an inquest on the body of the deceased. Thereafter, the body was taken to the concerned hospital. All these go to

show that initially a general diary was lodged. The witnesses being laymen and not conversant with the legal procedure, might have committed some minor mistakes in distinguishing GDE and FIR. Such mistakes on the part of the witnesses did not give a fatal blow to the prosecution case. However, the last lines of the FIR show that after the contents being read over to the defacto complainant, and also after understanding the contents, he signed the FIR. Therefore, it is not correct that the contents of the FIR were not read over and explained to the defacto complainant.

31. It is further true that the IO did not prepare any rough sketch map of the place of occurrence. Such mistake on the part of the IO cannot be acceptable but as the witnesses have deposed that they saw the dead body in the house of the accused Krishna Tewari and further there is no denial of such deposition of the witnesses on this point during their cross-examination, we do think that such lacunae on the part of the investigating officers do not nullify the prosecution case. It is correct that Dr. Saibal Gupta being PW 1 has deposed that in the post mortem report he did not mention the word “multiple” injuries. But if we peruse the post mortem report we shall find that there are several injuries found on the dead body and, therefore, even the word “multiple” is not specifically mentioned, such omission cannot hit the prosecution case since the post mortem report depicts several injuries found on the body of the deceased. Therefore, though the word “multiple” is not found in the post mortem report, the

number and nature of injuries sustained by the victim are clearly mentioned in the post mortem report. It is true that the Doctor did not indicate that the body of the deceased had signs of giving birth to a child a few days back. There may be some minor lacunae in this regard but in spite of such lacunae there is nothing on record to disbelieve the contents of the post mortem report nor the deposition of the PW 1 Dr. Saibal Gupta. We have also gone through the examination of the accused under Section 313 Cr.PC. Apart from some minor defects we do not find any serious infirmities in putting the questions to the accused which might have caused serious prejudice to the defence.

32. As the appellant has not been able to discharge his obligation under Section 106 of Indian Evidence Act, we find that the conviction under Section 498A/302 of IPC is sustainable in the eye of law. However, in our considered view, the application of Section 201 is a misplaced one since the appellant tried to destroy the evidence but fortunately he could not do so. Therefore, the offence should have been under Section 201/511 of IPC. As the dead body of the victim could not be disposed of, the offence committed by the accused should be under section 201/511 of IPC and not under section 201 of IPC. In view of the above, we do not find any material defect to interfere with the judgment of conviction and sentence excepting the fact that the appellant should have been convicted under Section 498A/302/201/511 of IPC. As the victim is already in imprisonment for

life, and has incarcerated for more than 13 years, I do not find any reason to interfere with the order of sentence, in spite of the fact that he has committed offence punishable under Section 201/511 IPC and not under Section 201 IPC, as discussed above. However, needless to mention that by such commission of offence the appellant not only took the life of his wife but also deprived the new born child from the care, compassion and guidance of his mother throughout his life. **Accordingly, the instant appeal being no. CRA 510 of 2009 is dismissed on contest. No costs.**

The judgment dated 25.05.2009 passed in Sessions Case No. 20(1) of 2002 of the Learned Court of Additional Sessions Judge, Fast Track, 1st Court, Siliguri is affirmed with the modification that conviction of the appellant is under Section 498A/302 & 201/511 IPC. There is no need to interfere with the terms of sentence in the facts and circumstances of the case. The trial court record be returned to the concerned court.

33. It appears from the record that the appellant is already in custody for about 13 years. However, he has been sentenced to suffer life imprisonment. He has no criminal antecedents as per materials on record. In view of the observation of Matalu Oraon's case (supra), we think that he should be given an opportunity to pray for remission on completion of 14 years of imprisonment and the concerned authority may take appropriate decision over such petition for remission, if filed after 14 years of his imprisonment

in accordance with law. The appellant be informed accordingly through the Superintendent of the concerned Correctional Home.

34. Accordingly, CRA 510 of 2009 with CRAN 1 of 2009 (Ola CRAN 2737 of 2009) is disposed of.

35. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(RAJARSHI BHARADWAJ, J.)

(APURBA SINHA RAY, J.)