Gauhati High Court
Nirode Ranjan Acharjee vs State Of Tripura on 21 June, 2006
Equivalent citations: (2007) 2 GLR 103
Author: I Ansari
Bench: I Ansari
JUDGMENT I.A. Ansari, J.

1. Dowry is a social evil. No wonder, therefore, that the Legislature has made stringent laws to deal with the devilish acts of dowry by enacting the Dowry Prohibition Act, 1961 and incorporating, in the Indian Penal Code too, Sections 498A and 304B. Though the menace of dowry still survives, what needs to be borne in mind is that howsoever serious a charge may be against an accused, the offence, alleged to have been committed by him, must be proved in accordance with law. Gravity of an offence cannot make admissible a piece of evidence, which is, otherwise, inadmissible. It is the duty of the court to ensure that every piece of evidence, which it considered against an accused, is admissible in law, for, howsoever grave the charge against the accused may be he can be convicted only when, we must remember, he is proved guilty in accordance with law.

2. By the impugned judgment and order, dated 1.2.1999, passed in Case No. S.T. 117 (WT/A) 96, by the learned Additional Sessions Judge (No. 2), West Tripura, Agartala, the accused-appellant stands convicted under Section 498A of the IPC and sentenced to suffer rigorous imprisonment for two years and fine of Rs. 2,000 and, in default, rigorous imprisonment for a further period of 6 months.

3. The case against the accused-appellant, as unfolded at the trial, may, in brief, be described as follows:

The accused-appellant's son, Arjun Acharjee, was the husband of deceased, Chinu Rani Acharjee, their marriage having been solemnized, on 13.3.1994, at the paternal house of the said deceased. At the time when the marriage alliance was negotiated and settled, the accused-appellant demanded a sum of Rs. 20,000 in cash, some gold ornaments, wooden furniture, etc., as dowry. Out of the demand so raised, deceased Chinu Rani Acharjee's father, namely, Tarani Mohan Acharjee paid Rs. 15,000, some gold ornaments and wooden furniture at the time of marriage and assured the accused-appellant, Nirode Ranjan Acharjee, that he would be paid the balance amount of Rs. 5,000 within a period of one year. The husband and, the father-in-law of Chinu Rani Acharjee, however, started torturing her both physically and mentally for non-payment of the said unpaid amount of Rs. 5,000. At a later stage, though a sum of Rs. 3,000 was paid, in cash, to the present accused-appellant, the balance amount of Rs. 2,000 still remained unpaid. As the entire amount had not been paid as promised, Arjun Acharjee, (i.e., the husband of the said deceased) did not attend the ceremonial function, known as 'Jamaisashti', at the parental house of the said deceased. Apart from the fact that the said deceased, while alive, ceased to be cheerful and looked depressed, she wrote a letter, on 18.5.1994, to her father requesting him to meet the pending demands raised by her in-laws. During investigation, police seized, inter alia, the letter aforementioned of the said deceased. On the intervening night of 29th and 30th of June, 1994, Chinu Rani was admitted to IGM hospital, Agartala, with history of diarrhea and within hours of her admission, she died there. On her death, her brother, Shri Khogendra Acharjee, lodged a First Information Report with the police

at East Agartala Police Station, on 30.6.1994, alleging, inter alia, that deceased Chinu Rani had been subjected to cruelty since her marriage for the reasons of dowry and that the informant suspected some foul play behind the death of his sister. Based on the First Information Report, so lodged. East Agartala P.S. Case No. 98/1994 was registered under Section 498A/304B/34, IPC against the present accused appellant and his said son, Arjun Acharjee. The post mortem report failed to reveal signs of any external injury or cause of death. The viscera of the deceased, however, on chemical analysis, at the Forensic Science Laboratory, Calcutta, revealed that her death was caused by consumption of carbonate poison, which is an insecticide poison. A death certificate was accordingly issued by the IGM Hospital, Agartala. On completion of the investigation, police laid charge sheet against the present accused-appellant and his son. Arjun Acharjee, under Section 498A/304B/306, IPC.

4. To the charges framed under Sections 498A, 304B and 306 IPC, both the accused-appellants pleaded not guilty. In support of their case, prosecution examined as many as 17 witnesses. The accused were, then, examined under Section 313 Cr.P.C. and in their examinations aforementioned, the accused denied that they had committed the offences alleged to have been committed by them, the case of the defence being that of total denial. The defence also adduced evidence by examining two witnesses. On completion of the trial, the learned trial court found the accused appellant's son, Arjun Acharjee, not guilty of any of the charges framed against him and acquitted him accordingly. The accused-appellant too was found not guilty of offences under Sections 304B and 306 of the IPC and was acquitted of the said charges accordingly; but the accused-appellant was found guilty of the charge framed against him under Section 498A, the accused appellant was convicted accordingly and sentence, as mentioned hereinabove, was passed against him. Aggrieved by his conviction and the sentence passed against him, the accused-appellant is before this court with the present appeal.

5. I have heard Mr. A.K. Bhowmik, learned senior counsel, for the accused appellant and Mr. D. Sarkar, learned Public Prosecutor, Tripura, appearing on behalf of the State respondents. I have also heard Mr. S. Deb, learned senior counsel, appearing as amicus curiae.

6. Before entering into the merit of the present appeal, what needs to be pointed out, at the very outset, is that against the findings of acquittal, reached by the learned trial court, no appeal has been preferred.

7. In the backdrop of the fact that the accused-appellant stands acquitted of the charges framed against him under Sections 304B and 306 of the IPC, I am, now, required to determine if the conviction of the accused-appellant under Section 498A, IPC can be sustained ? While considering this aspect of the matter, what needs to be borne in mind is that as against the charge framed against the accused-appellant under Section 498A, IPC, there are, broadly speaking, six distinct circumstances, which the prosecution relied upon in order to seek conviction of the accused-appellant. The prominent circumstance, as transpires from the evidence on record, is that at the time, when the marriage was settled, the accused-appellant had allegedly raised demand for dowry, namely, a sum of Rs. 20,000 in cash, some gold ornaments and wooden furniture. The second incriminating circumstance relied upon, is that though with great difficulties and having sold his landed property, Chinu Rani's father had paid Rs. 15,000 as against the demand of Rs. 20,000

raised in this regard, the accused-appellant started torturing Chinu Rani in various ways for non-payment of the balance amount of Rs. 5,000 and when Chinu Rani's father, Torani Mohan Acharjee went to the house of the accused-appellant to bring his daughter, Chinu Rani, to her matrimonial house as is customary, the demand for dowry was raised by the accused-appellant. The third incriminating circumstance is that Chinu Rani allegedly reported to her father at her matrimonial house and, on reaching her paternal house, to her brother, her other relatives and neighbours that she was being tortured by the present accused-appellant for non-payment of the dowry. The fourth incriminating circumstance I relied upon, is that Chinu Rani's father too reported to his sons as to how the accused-appellant had misbehaved with him and had raised demand for payment of the remaining amount of money. The fifth circumstance is that out of the balance amount of Rs. 5,000 though a sum of Rs. 3,000 was, somehow, paid by Chinu Rani's father to the accused-appellant, the accused-appellant still remained dissatisfied and torture on Chinu Rani by him continued, which resulted into writing of a letter, dated 18.5.1994, by Chinu Rani to her father asking him to meet the demands of her in-laws and the last circumstance, i.e., the sixth incriminating circumstance, is the claim that Chinu Rani's death was not natural, but caused either by self-consumption or administration of carbonate poison.

8. Bearing in mind the incriminating circumstances appearing against the accused-appellant as pointed out hereinabove, when I closely scrutinize the evidence on record. I notice that there is clear evidence on record given by PWs 1 and 3, both of whom are brothers of the said deceased, and PWs 2 and 4, who are neighbours of the said deceased, that the accused-appellant at the time of settlement of the marriage alliance had raised, not only a demand for gold ornaments and furniture, but also for a sum of Rs. 20,000, in cash, and that against the accused appellant's demand for cash so raised, deceased Chinu Rani's father had paid Rs. 15,000 and out of the balance amount of Rs. 5,000 too, a sum of Rs. 3,000 was paid by him and, thus, a balance amount of Rs. 2,000 remained unpaid.

9. Since the charges under Sections 304B and 306 of the IPC have not been proved against the accused-appellant's son, Arjun Acharjee, and the accused-appellant too stands acquitted of both the said charges, namely, charges under Section 304B as well as Section 306 of the IPC, I keep myself confined to the evidence appearing against the accused-appellant vis-a-vis the charge under Section 498A.

10. Keeping in the mind the fact that the accused-appellant stands convicted only under Section 498A, IPC, when I scan the evidence on record what I notice is that the informant, namely, PW1, who is brother of deceased Chinu Rani, has also deposed that after the marriage, Chinu Rani and her husband, Arjun Acharjee, came to their house on the occasion of 'Dwiregaman' (i.e., first visit of the couple to the house of the bride after marriage) and, thereafter, his father went to Chinu Rani's husband's house to bring Chinu Rani to her parental house as is customary and Chinu's husband was to come and take her back to her matrimonial house.

11. It is also in the evidence of PW1 that when his father went to bring Chinu to their house, the accused-appellant told him that until and unless payment of the balance amount of Rs. 3,000 was made, Chinu Rani's husband, Arjun, would not visit the house of his in-laws. Makes it clear PW1, in

his evidence, by deposing that this fact had been disclosed to him by his father. Since the accusation made against the accused-appellant by PW1 to the effect that the accused-appellant had told his (informant's) father that his son, Arjun, would not visit the house of his- in-laws until complete payment of Rs. 5,000 was made, it clearly follows that the evidence given by PW1 as to what his father had been told by the accused-appellant is nothing but hearsay, for, the informant's father, namely, Taroni Mohan Acharjee, has not been examined at the trial as a witness and PW1 has no personal knowledge if the accused-appellant had really told the father of PW1 that the accused-appellant's son would not be visiting his in-laws house until payment of the balance amount of Rs. 2,000 was made to the accused-appellant.

12. Truly speaking, therefore, what conversation took place between the accused-appellant, on the one hand, and the informant's father on the other, has not been proved on record. What has, however, remained in the evidence of PW1 is that his father arranged, with great difficulties, Rs. 3,000 and took the same to the house of Chinu's husband, Arjun Acharjee, and made payment of Rs. 3,000. It is also in the evidence of PW1 that the accused-appellant, thereafter, put pressure for payment of the balance amount of Rs. 2,000 and also threatened the father of PW1 of dire consequences. Since PW1 was not a witness to the alleged payment of Rs. 3,000 made by the father of PW1 to the accused-appellant nor was he (PW1) a witness to what had transpired between the accused-appellant and the father of PW1, the evidence given by PW1 that his father had made payment of Rs. 3,000 to the accused-appellant and/or that the accused-appellant had given threats are also inadmissible evidence as hearsay, for, as already indicated hereinabove, the father of PW1 has not been examined and what transpired between him (i.e., the father of PW1) and the accused-appellant remained really unproved.

13. It needs to be carefully noted that while dealing with a piece of evidence, which is regarded as hearsay, the courts must bear in mind that there is a difference between factum of an information and truthfulness or veracity of such information. In a given case, if the object is to merely establish that a statement was made, it may not be hearsay; but if the object is to prove that what was started was true, then, it may become hearsay. Thus, when 'X', an eye witness of an occurrence of murder, comes to a police station and reports the occurrence to a police officer, the evidence given by, the police officer, at the trial, that he was given such an information is not hearsay if the object is merely to prove that such a report was, indeed, received by the police officer; but if the object is to prove that what the police officer was reported was true, then, the police officer's evidence as to what he was reported by 'X' would be hearsay unless 'X' appears as a witness at the trial and deposes not only that he had so reported the occurrence to the police officer, but also that what he had reported was true as he had witnessed the occurrence himself. Reference may be made in this regard to (SO and Bisheswar Baori @ Khetrapal v. State of Assam (2002) 2 GLT 405.

14. It is also in the evidence of PW1 that even his sister, Chinu Rani, told him that for non-payment of the balance amount of Rs. 5,000, her father-in-law, quite often, subjected her to cruelty both physically as well as mentally. The evidence, so given, by PW1 as to what his sister, Chinu Rani, had reported to him would have to be discarded as hearsay unless it can be shown to be admissible in evidence against the accused-appellant under the Evidence Act.

15. While considering the question posed above, what needs to be noted is that oral evidence shall, in all cases, be direct under Section 60 of the Evidence Act. Section 60 of the Evidence Act reads as follows:

60. Oral evidence must be direct. - Oral evidence must, in all cases whatever, be direct; that is to say -

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

16. Section 32 of the Evidence Act, however, makes certain statements made by the person, who cannot be called as a witness, admissible. One of such statements, written or verbal, is, as we all know, dying declaration under Section 32(1). Sub-section (1) of Section 32, in effect, provides as follows:

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases:

(1) When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

17. A careful reading of Sub-section (1) of Section 32 makes it clear that a statement, oral or written, of a person, who is dead, can be admitted into evidence, when the statement made by him is with regard to the cause of death or as to any of the circumstances of the transaction, which resulted in his death, in the cases in which the cause of that person's death comes into question. As a corollary, therefore, when a statement does not relate to the cause of death or as to any of the circumstance of the transaction, which resulted in the death of the deceased, such a statement, written or verbal, would not be admissible in evidences.

18. In the case at hand, the evidence given by PW1 to the effect that his sister had disclosed to him when she had come to her matrimonial house to attend the function of 'Jamaishasthi', that her father-in-law subjected her to cruelty both physically and mentally and asked her to better die if her

father was not in a position to make the payment of the balance amount of money does not relate to the cause of death or the circumstance of the transaction, which resulted into the death. This apart, these statements were made long before Chinu Rani died. Moreover, then the charges under Sections 304B and 306, IPC have not been proved against the accused-appellant, can the statement of the said deceased, which PW1 claims to have been made by the said deceased, be admissible for the purpose of determining the guilt or otherwise of the accused-appellant vis-a-vis the charge under Section 498A, IPC or should such evidence be discarded as wholly hearsay the answer to this question can be found in Gananath Patnaik v. State of Orissa , wherein the Supreme Court, at para 10 observed, thus:

10. Another circumstance of cruelty is with respect to taking away of the child from the deceased. To arrive at such a conclusion, the trial court has referred to the statement of PW5, who is the sister of the deceased. In her deposition recorded in the court on 4.5.1990 PW 5 had stated:

Whenever I had gone to my sister, all the times she was complaining that she is nor well treated by her husband and in-laws for non-fulfilment of balance dowry amount of a scooter and a two-in-one.

On 3.6.1987 for the last time I had been to the house of the deceased, i.e., to her separate residence. Swarna, Snigdha, Sima Apa, Baby Apa accompanied me to her house on that day. At that time the deceased complained before us as usual and added to that she said that she is being assaulted by the accused now-a-days. She further complained before us that the accused is taking away the child from her, and that her mother-in-law has come and some conspiracy is going against her (the deceased). She further told that 'mate au banchei debenahin'.

Such a statement appears to have been taken on record with the aid of Section 32 of the Indian Evidence Act at a time when the appellant was being tried for the offence under Section 304B and such statement was admissible under Clause (1) of the said section as it related to the cause of death of the deceased and the circumstances of the transaction which resulted in her death. Such a statement is not admissible in evidence for the offence punishable under Section 498A of the Indian Penal Code and has to be termed as being only hearsay evidence. Section 32 is an exception to the hearsay rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the hearsay rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused.

(emphasis supplied)

19. In the case at hand too, when the charges under Section 304B and 306 of the IPC have failed, the statement attributed to the said deceased by PW1 to the effect that the accused-appellant, as her father-in-law, had subjected her to cruelty is nothing, but hearsay and ought not to have been treated as admissible evidence against the accused-appellant by the learned trial court, while determining the guilt of the accused-appellant on a charge framed under Section 498A, IPC.

20. The question as to whether the evidence given by the parents of a deceased woman that they had been reported by the deceased that she had been subjected to cruelty is or is not admissible in evidence can be viewed from yet another angle. Assume, for a moment, that a woman, 'A', has instituted a complaint case, in a Judicial Magistrate's Court, making accusations that she has been subjected to cruelty by her husband, and a charge, in such a trial, is framed against the accused husband under Section 498A, IPC. If the complainant chooses not to give evidence, the evidence, if any, given by her parents to the effect that they were reported by 'A' that she had been subjected to cruelty would be nothing, but hearsay, if the court is required to determine whether or not 'A' was, as a matter of fact, subjected to cruelty or not. Now, let us assume, for a moment, that after instituting the complaint case. 'A' dies; can the evidence given by her parents to the effect that 'A', when alive, had reported to them that she had been subjected to cruelty by her husband would be admissible in evidence ? The answer to this question has to be an emphatic 'no', for, merely because of the fact that 'A' has died after instituting the complaint case, the evidence, which is, otherwise, hearsay, cannot become admissible in evidence inasmuch as the cause of death of A' is not in question in a trial under Section 498A, IPC. Thus, the statement made by 'A' to her parents as to what was the nature of conduct of her husband or her parents-in-law towards her is nothing, but hearsay if the charge, which the accused-husband faces, is a charge under Section 498A, IPC. Unless, therefore, the cause of death or the circumstances of the transaction, which resulted into death, is in question as envisaged under Section 32(1) of the Evidence Act, the evidence given by any person as to what the deceased woman had reported to him of her would be nothing, but hearsay. Viewed, thus, it is clear that the evidence given, in the present case, claiming as to what deceased Chinu Rani had told her brother, friends or relatives as regards the manner in which she used to be treated by her husband or in-laws would be nothing, but hearsay in a charge under Section 498A, IPC, for, the aid of Section 32(1) of the Evidence Act would not be available to the prosecution to bring such reported statements on record as admissible pieces of evidence, when the charges framed under Sections 306, 304B and/or 302, IPC has failed. It is in this light that the decision in Gananath Patnaik (supra) needs to be read.

21. In short, when the charges under Section 304B as well as 306, IPC have failed, in the present case, the statements attributed to deceased Chinu Rani by the prosecution witnesses, is nothing, but hearsay visa-vis the charge framed against the accused-appellant under Section 498, IPC.

22. Similarly, the evidence given by PW2, a friend of deceased Chinu Rani, that Chinu Rani had complained that for non-payment of dowry, in full, her husband had not attended the ceremonial function of 'Jamaishashthi' is nothing, but hearsay and ought not to have been considered by the learned trial court against the accused appellant. Same is the position of the evidence given by PW3, brother of the said deceased, and PW5, brother-in-law of the said deceased, for, both these witnesses have given evidence to the effect that Chinu Rani had told them that she was being ill-treated by the accused-appellant. None of these witnesses, namely, PW2, PW3, PW4 and/or PW5 have personal knowledge if the accused-appellant had really demanded dowry and/ or had really subjected Chinu Rani to cruelty or not.

23. What emerges from the above discussion of the evidence of PW1, PW2, PW3 and PW5 is that the evidence given by these witnesses as regards the fact that Chinu Rani was subjected to cruelty is

nothing, but hearsay, for, none of these witnesses had any knowledge if Chinu Rani had really been subjected to cruelty or not. The mere fact that PW2 has also deposed that Chinu Rani was in depressed mood can also be of no avail to the prosecution inasmuch as the impression, which PW2 has so derived, does not prove that it was because of the demand for dowry allegedly raised by the accused-appellant and/or her father's inability to meet the demand for dowry that the said deceased was found in depressed mood.

24. What crystallizes from the above discussion is that though there are some evidence on record indicating that demand for dowry was raised by the accused-appellant at the time of settlement of the marriage alliance and also on the occasion of the marriage ceremony of the said deceased, there is no admissible oral evidence on record to show that in consequence of the failure of the father of the said deceased to make payment of the entire demanded amount of Rs. 20,000, Chinu Rani was subjected to cruelty by the accused-appellant.

25. There is yet another circumstance, as indicated hereinabove, which has been relied upon by the prosecution and this circumstance is the letter allegedly written by Chinu Rani on 18.5.1994. This Letter has been proved as Ext. (1). In this letter, Chinu is shown to have allegedly asked her father to meet the demands raised by her husband and her in-laws. Are the contents of this letter admissible in evidence is the prime question ? While dealing with this aspect of the matter, what needs to be borne in mind is that an information, as already indicated hereinabove, written or oral, given to a person is inadmissible in evidence to prove the truth of the information made. Unless the person, who is claimed to have made statement, is examined in the court to prove that the statement attributed to him or her was made by him or her and that the statement, so made by him or her, is true and correct.

26. What logically follows is that though the letter Ext. (1) shows that the said deceased had written the letter as indicated hereinabove, the fact remains that the contents of the said letter would be admissible in evidence provided that the contents thereof relate to the cause of the death. In this regard, when the charges under Sections 304B and 306 of the IPC have failed, the information conveyed through the said letter (Ext. 1) is nothing, but hearsay and could not have been considered in evidence against the accused-appellant for the purpose of sustaining the charge framed under Section 498A, IPC, for, in a charge under Section 498A, IPC, cause of death is not in question; what is really in question is the conduct or behaviour of the accused.

27. In short, when the charges framed under Sections 304B and 306, IPC fail, the statement attributed to the deceased, as to what had been the conduct of her husband or the relatives of her husband, cannot be treated as admissible evidence against the accused to sustain a charge under Section 498A, IPC, for, in a charge under Section 498A, IPC, the cause of death is not in question and the aid of Section 32(1) of the Evidence Act being not available, the statement made by the woman as to how she had been treated by her husband or the relatives of her husband would be nothing, but hearsay and inadmissible in evidence. If the conduct of the husband or relative of the husband of a woman is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health (whether mental or physical), the offence under Section 498A, IPC will be made out. Considered, thus, it is clear that the death or suicide of a person

is not a condition precedent for attracting the penal provisions of Section 498A. If the conduct of an accused is wilful and is of such a nature that it is likely to drive the woman to commit suicide, offence under Section 498A, IPC is made out. The question as to whether the woman has or has not committed suicide is not material. What is material is whether the nature of the conduct of the accused is or was such as is likely to drive a woman, ordinarily, to commit suicide. In no way, therefore, cause of death falls for determination in an offence under Section 498A.

28. What crystallizes from the above discussion is that there are some convincing evidence on record indicating that the demand for dowry was raised by the accused-appellant at the time of settlement of the marriage alliance and also at the time of marriage ceremony. There is, however, no evidence that on account of the inability of Chinu Rani's father to meet the demand for dowry said to have been raised by the accused-appellant, Chinu Rani was subjected to cruelty. Though the fact that Chinu Rani met with unnatural death gives rise to suspicion that she died because of inability of her father to meet the demand for dowry, the fact remains that suspicion, howsoever strong, cannot take place of proof.

29. Because of what have been pointed out above, it is transparent that there was no legal evidence enabling the learned trial court to convict the accused-appellant under Section 498A, IPC.

30. What, however, needs to be, now, noted is that the present case commenced with the lodging of the FIR, as already indicated hereinabove, by the brother of the said deceased alleging, inter alia, that demand for dowry by the accused-appellant was raised at the time of settlement of the marriage alliance and also on the occasion of the marriage ceremony, the accusations, so made, against the accused-appellant were consistently adhered to by the prosecution during the trial. In such circumstances, this court would have, ordinarily, ascertained if the evidence on record have proved the fact, beyond reasonable doubt, that demand for dowry, as alleged by prosecution, was really raised by the accused-appellant, for, the demand for dowry is an act punishable under Section 4 of the Dowry Prohibition Act, 1961. In the case at hand, however, for the reasons, which now, assign hereinbelow, I find that it will not be in accordance with law for this court to even attempt to determine, in the present appeal, if offence under Section 4 of the Dowry Prohibition Act, 1961, is proved to have been committed by the accused appellant.

31. In the present case, though the accusation that the accused-appellant had demanded dowry was made in the FIR itself, no charge under Section 4 of the Dowry Prohibition Act, 1961, was framed by the learned trial court. Even when a formal charge had not been framed, at the trial, against an accused in respect of an offence, which the evidence on record proves, an accused may be convicted provided that the omission to frame the charge does not cause prejudice to the accused. The law laid down, in this regard, by the Constitution Bench, in Willie (William) Sidney v. State of Madhya Pradesh , has been consistently adhered to by the courts in India. Taking note of what Willie (William) Sidney (supra) lays down, the Supreme Court, in State of West Bengal v. Laisal Hague and Ors., etc., , observed, thus : "In the celebrated case of Willie (William) Sidney v. State of Madhya Pradesh , Vivian Bose, J, speaking for the court after an elaborate discussion observed that in judging a question of prejudice, as a guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused

had a fair trial, whether he knew what he was being tried, for whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. That test is clearly fulfilled in the facts and circumstances of the present case. The principles laid down by that very eminent Judge in Sidney's case have throughout been followed by this court. See K.C. Mathew v. State of Trauancore Cochin, , Gurbachan Singh v. State of Punjab, . Eirichh Bhuian v. State of Bihar, and State of Maharashtra v. Ramdas Shrinivas Nayak .

32. The question, therefore, which this court, in the context of the facts of the present case, has to determine is whether the present accused-appellant can be said to have had full and fair chance to defend himself against the accusation made under Section 4 of the Dowry Prohibition Act, 1961. While considering this aspect of the case, what needs to be borne in mind is that Section 8A of the Dowry Prohibition Act, 1961, lays down that the burden of proving that he has not committed an offence under Section 4 of the Dowry Prohibition Act, 1961, is on the person, who faces prosecution for raising demand for dowry. To put it differently, when a person is accused to have demanded dowry and faces, on such accusation, prosecution, for offence punishable under Section 4 of the Dowry Prohibition Act, 1961, Section 8A of the Dowry Prohibition Act, 1961, places, unlike an ordinary criminal trial, the burden to prove that he had not demanded the dowry and had not committed the offence alleged to have been committed by him under Section 4 of the Dowry Prohibition Act, 1961.

33. In the face of the fact that Section 8A of the Dowry Prohibition Act, 1961, places the burden to prove that he had not demanded dowry on the person, who faces the accusation of having demanded dowry, logical it is to infer that in a case punishable under Section 4 of the Dowry Prohibition Act, the accused cannot be said to have had a fair trial if he was not formally charged for having committed an offence punishable under Section 4 of this Act, for, had he been made aware of such an accusation, his nature of defence might have changed and he might have even given evidence to prove that he had not committed any offence under Section 4 of the Dowry Prohibition Act, 1961. When the burden of proving certain facts is placed on an accused, the accused cannot be, ordinarily, convicted without formally framing a charge against him in respect of such an offence or without explaining to him formally the particulars of such an offence (see Shamnsaheb M Mumani v. State of Karnataka (2001) Crl. L.J. 1075).

34. Because of what have been discussed and pointed out above, I hold that the charge framed against the accused-appellant under Section 498A, IPC has not been proved beyond all reasonable doubt; but as there is prima facie evidence on record attracting the provisions of an offence under Section 4 of the Dowry Prohibition Act, 1961, the accused-appellant needs to be formally charged under Section 4 of the Dowry Prohibition Act, 1961, and be made to face a fair trial in this regard.

35. In the result, and for the reasons discussed above, while the conviction of the accused-appellant under Section 498A, IPC is hereby set aside and the accused-appellant is acquitted of the charge framed against him under Section 498A, IPC, the case is remanded to the learned trial court with direction to frame a charge under Section 4 of the Dowry Prohibition Act, 1961, against the accused-appellant and proceed with his trial in accordance with law. In the trial which may be so

hold, the prosecution as well as the defence shall have the liberty to recall all or any of the witnesses, who have already been examined at the trial of the accused appellant, and/or to adduce such further or other evidence as may be permissible in the law.

36. In order to expedite disposal of the case against the accused-appellant, it is further directed that the accused-appellant shall appear in the court of the Additional Sessions Judge No. 2, West Tripura, Agartala, on 10.7.2006, for further necessary orders.

37. With the above observations and directions, this appeal shall stand disposed of.

38. Send down the LCRs forthwith.