

Form No. J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Rai Chattopadhyay**

CRA 669 of 2017

Swapan Kumar Pramanick

-Versus-

Samir Das and Ors.

For the Appellant/de facto complainant: Mr. Sudipto Moitra, Ld. Sr. Advocate

Mr. Vijay Verma

Mr. Dwaipayan Biswas

Mr. Anik Bhattacharya

For the State:

Mr. Kallol Mondal, Ld. P.P

Dr. Pradip Banerjee, Ld. APP

Mr. A. Banerjee

For the Respondent nos. 1-5 /Accused Persons: Mr. Abhijit Ganguly

Mr. Ayan Pramanik

Judgment reserved on:- 14th July, 2026

Judgment pronounced on:- 16th July, 2026

RAJASEKHAR MANTHA, J:-

1. The subject appeal is directed against the judgment and order of acquittal dated March 30th, 2017 passed by the Additional District and Session

Judge Fast Track Court- 1, Diamond Harbour, South 24 Parganas in Sessions Trial no. 02(07)2010 arising out of Sessions Case no. 01(03)07. The said judgment and order of acquittal acquitted the accused persons/respondent nos. 1-5 of the charge under section 498A, 306, 302/34 of the IPC. The de facto complainant has filed the subject appeal.

THE PROSECUTION CASE

2. The victim/wife was beaten and thereafter poisoned to death by the accused persons/respondents. In the night of June 6th, 2026, Samir Das, the husband of the victim, assaulted and administered poison to the victim. He was assisted by the other accused persons namely, Sabita Das, Samar Das, Jharna Pramanik, Sankar Pramanik and Sanjay Pramanik. They were present at the matrimonial house of the victim. Sankar Pramanik died after passing of the judgment of acquittal.
3. Samir Das assaulted the victim and the victim fell on the floor of the PO. Sabita Das and Samar Das arrived at the PO. The victim was lying moribund. The victim asked for some water. Sabita Das left the PO and instead came back with a bottle of poison and gave it to Samir Das.
4. Samir pressed his leg on the throat of the victim and poured the poison in her mouth. She tried to vomit. Samir Das, however, covered the mouth of the victim and she was forced to swallow the poison. Jharna Pramanik and Sankar Pramanik changed the saree of the victim and dressed her with a new and fresh saree. The said events were witnessed by PW-3 who was the son of the victim, hiding under the bed.

5. The defense version was that the victim was being taken to a local PHC of Dr. Golam Mosur. The Doctor advised the victim to be shifted to Diamond harbour SD Hospital for better treatment. On the way to the Hospital, accused Samar Das allegedly found that the victim's body turned cold. He then returned back home with the body of the victim, without going to the Diamond SD Hospital.
6. Samar Das, the brother of the victim was informed by the accused Samir Das at around 1:00 AM on the night of July 6th, 2006, that the victim had tried to commit suicide by consuming poison and she had been admitted to a nursing home.
7. Accordingly, PW 1, 6, 8, 9, Swapan Pramanik, Tapan Kumar Pramanik, Shyamal Ray, Partha Pratim Pramanik, respectively, hired a Tata Sumo and arrived at the matrimonial home of the victim at Nainan from their residence under Serampore PS. They found the body of the victim lying on the veranda covered with a white cloth. They removed the cloth on the face of the victim and found that froth was coming out from her mouth.
8. PW 1 touched body of the victim and sensed temperature therein, showing signs of life. PW 1, 6, 8, and 9 tried shift the victim to a hospital, but were resisted by accused, Sanjay, Sankar and Jharna. They overcame the resistance and took the victim to Diamond Harbour SD Hospital. The victim was declared brought dead thereat.

9. **PW 1, Swapan Pramanik**, lodged the complaint dated July 7th, 2006 with Usthi PS. Usthi PS case cum FIR no. 69 of 2006 dated July 7th, 2006 was lodged by the said PS under Sections 498A/306/34, IPC.
10. Inquest was conducted on July 7th, 2006, against the UD case no. 145 of 2006 upon being informed by the hospital. He found no signs of injury or cut on the body of the victim except scratch marks on her face. The postmortem was conducted on July 7th, 2006. The postmortem doctor noted that the victim has died due to poisoning. The postmortem doctor found external injuries on the person of the victim, discussed herein below.
11. Investigation was completed and charge sheet filed. Initially, charges were framed under Section 498A, and 306/34, IPC against the respondents/accused persons on July 28th, 2010. The charge under Section 302 of the Indian Penal Code was later framed on February 14th, 2014. Trial Commenced.

THE TRIAL AND EVIDENCE

12. **PW 1 Swapan Pramanik, was the de facto complainant and elder brother of the victim.** He lodged the complaint dated June 7th 2006 with the Usthi PS. He has deposed that initially the victim and accused husband Samir Das led a happy married life. It lasted for four years from the date of marriage.
13. PW 1 deposed that the accused husband/Samir was a farmer. His income was not substantial. Hence, he used to compel the victim to bring money from her paternal home. Lastly, on the Jamaishasthi of 2006, the

accused husband sent the victim to her paternal house for bringing a sum of Rs 50,000, which could not be paid by the family of the victim.

14. PW 1 has deposed at around 1 AM in the night of July 6th, 2006, **Samar Das, the co-accused and elder brother of the accused husband Samir Das**, telephoned PW 1 and informed that the victim has consumed poison and is admitted to a nursing home. PW 1 immediately hired a car and arrived at the PO. The paternal family of the victim was residing in Sonarpur.
15. PW 1 has deposed that at the PO, he found the victim lying on the veranda of her matrimonial home. Her body was covered with a white cloth. He removed the said cloth and found that froth and foam is emanating out from her mouth. He touched her body and sensed some temperature therein. He decided to shift her to a nearby hospital.
16. PW 1, 6, 8, 9 were, however, resisted by Sanjay Pramanik, Sankar Pramanik, and Jharna Pramanik. Ultimately, the said PWs were successful in taking the victim to the Diamond Harbor SD Hospital. The treating doctor there declared the victim brought dead.
17. The next morning of July 7th 2006, PW 1 went to the Usthi PS and lodged a written complaint against the accused persons. PW 1 was a witness to the inquest report.
18. During cross-examination, the defense suggested to PW 1 that the other three sisters of the victim namely Dipali, Shyamali, and Tapati are having their respective matrimonial homes in Sonarpur. The paternal home of the

victim is in Sonarpur. Thus, the victim was persisting with the accused husband to purchase a house at Sonarpur and settle thereat. The accused husband could not make the said purchase and thus the victim committed suicide. The said suggestion was denied by PW 1.

19. PW 1 has deposed that PW 3, the minor son of the victim and accused husband, was handed over to them in the Usthi PS. At the time of handover, the accused husband was in the custody of police.

20. **PW 2, Santosh Kumar Pramanik, was the father of the victim.** He has deposed that the victim was treated well in her matrimonial home till the birth of her son. The accused husband used to send the victim to her paternal home to demand money on behalf of her husband. Pursuant to such demands, PW 2 provided rupees five to six thousand in two to three installments to the victim.

21. PW 2 has deposed that that in the Jamaishashti of 2006 (the occasion when the son-in-law is fed and presented gifts by the girl's family), the accused husband sent the victim to her parental home with a demand of rupees fifty thousand. PW 2 could not pay the same. Sabita, Samar, and Samir thereafter snatched all the gold ornaments of the victim.

22. PW 2 has confirmed that the accused Samar Das telephoned PW 1 and informed that the victim has consumed poison and is admitted to a nursing home. He has confirmed that PW 1, 6, 8 and 9 went to the matrimonial home of the victim and found that the dead body of the victim is lying on the verandah of the matrimonial home. The dead body was covered with a

cloth. Froth was coming out from the mouth of the victim. He confirmed that PW 1, 6, 8 and 9 faced vehement resistance from the accused persons when they made an attempt to take the body of the victim from the matrimonial home to the hospital for treatment.

23. PW 2 has confirmed that he has given a statement under section 164 of the CrPC. He has identified the said statement before the trial Court. The evidence of PW 2 relating to the events in the PO is however hearsay since he was not present at the place of occurrence. His evidence relating to the demand of dowry qualifies to be direct piece of evidence.
24. During cross examination, PW 2 has deposed that the financial condition of the accused husband was good. He confirmed that the accused husband has some tracts of land. He deposed that in the initial years of marriage, the accused husband used to visit the parental house of the victim on the occasion of Jamaishashti and used to stay there for the entire day. He, however, reduced the said period of stay on the said occasion in the later years of marriage.
25. PW 2 has confirmed that he has not stated to the police that he has given rupees five to six thousand to the accused husband in two to three installments. He offered an explanation that he was unwell when the police visited their house and thus was unable to talk with the police.
26. PW 2 has confirmed that his other two son-in-law (s) have built houses in Sonarpur. He however denied that the victim had the intention to settle

in Sonarpur. He denied victim pressurized the accused husband to purchase a house in Sonarpur.

27. **PW 3, Soumyadip Das, was the minor son of the victim and the accused husband Samir Das.** At the time of the trial, PW 3, was aged about 12 to 13 years. The Ld. Trial Judge put questions to PW 3 to assess whether he is capable of deposing before the Court.
28. The Ld. Trial Judge put the following questions to PW 3- what is the shape of the earth to which, PW 3 said that the earth is round. His answer further distinguished the shape of the earth from that of an apple. He answered name of the river that flows beside the Diamond Harbor. He distinguished that the sun is not a planet but a star. PW 3 was thus capable of deposing before the Court.
29. PW 3 has deposed that the victim was assaulted by the accused persons, Samar Das, Samir Das, and Sabita Das. Samir Das forcefully administered poison to the victim. He has described in detail the events of the said fateful night. He deposed that he hid under the bed after seeing his mother beaten by his father and other accused persons
30. PW 3 has deposed that on July 6th, 2006 at around 12:00 a.m., he was sleeping with his mother in the PO. His mother was not feeling well. The door was locked from inside. They woke up hearing the shouting and kicking on the said door by the accused husband. He was drunk. The victim opened the door. The accused husband barged into the room and started beating the victim. Samar Das and Sabita Das, the brother and sister-in-

law of the accused husband, arrived at the PO and joined the accused husband. Samar and Sabita were present in the matrimonial home since morning of the fateful day.

31. PW 3 has deposed that when his mother had passed stool and discharged bodily fluids as a result of the beating. She was gasping for breath and crying and asked for water. PW 3 has specifically related the role of Sabita Das from that moment. Sabita Das rushed outside the PO and returned with a can of poison. She handed it over to the accused husband. The latter put his leg on the throat of the victim and forcefully poured the poison in the mouth of the victim. Sabita and Samar were present at that time. The victim to get rid of the poison tried to vomit it out. The accused husband covered the mouth of the victim.
32. PW 3 has thereafter narrated the role of Sankar Pramanik and Jharna Pramanik. They changed the saree of the victim, which she was wearing at the time of assault and forceful administration of poison, and dressed her in a fresh saree.
33. PW 3 has deposed the victim was taken to a hospital by Maruti van. The victim was treated by Dr. Golam Masur. She was given an injection. The doctor advised the victim to be taken to a proper hospital. However, on the way to the Diamond Harbour Hospital, Sankar Pramanik touched the body of the victim and sensed that the body of the victim. He said that the victim's body was cold thus there was no use of taking her to the Hospital. He turned the car back to the matrimonial home of the victim.

34. PW 3 has deposed the dead body of the victim was put on a mat in the veranda of the house. Sabita Das and one girl named Ivy put PW 3 to sleep. On the next morning, Sabita Das and Ivy asked him to hand over the diary of the victim, which was handed over by PW 3 to them.
35. PW 3 has deposed that Samar Das and Sabita Das took him to Sabita's paternal house and later to an unknown house. He stayed there for a few days.
36. PW 3 has confirmed the version of PW 1 and 2 that the said Samar and Sabita Das brought him to Usti Police Station. His maternal uncles were present at the said police station. PW 3 started residing with his maternal uncles.
37. PW 3 has confirmed he has given a statement before the judicial Magistrate under section 164 of the Criminal Procedure Code. He has identified the accused persons in the court.
38. During cross-examination, PW 3 has deposed that the police did not meet him during his stay with Samar Das and Sabita Das. The police met him for the first time in the house of his maternal uncle. He has deposed that the accused husband and victim frequently used to enter into a heated altercation. He denied that his mother has committed suicide.
39. The defense suggested to PW 3 that since his mother came to learn that the accused husband is a dacoit, she committed suicide. The said suggestion was denied by PW 3. PW 3 has firmly confirmed the entire case of the prosecution.

40. **PW 4, Arun Pramanik, was the cousin brother of the male accused persons.** He has deposed that he had no knowledge of the murder of the victim. He was declared hostile by the prosecution. During cross-examination by the prosecution, he denied the entire prosecution case. However, he revealed that he has good relations with the accused persons.
41. **PW 5, Goutam Das, was the neighbor of the accused persons.** He has deposed that the police did not interrogate him. He has denied the entire case of the prosecution. He was declared hostile by the prosecution. During cross-examination, he has deposed that he has good relations with the accused persons. He has, however, clarified that he is not deposing falsely because of such good relations.
42. He was also cross-examined by the defense. He has deposed that in 2006, when the fateful incident took place, facility of private vehicle transport did not start in the village.
43. He deposed that a person cannot be taken to any nursing home by Tata Sumo or Maruti car since none of the villagers had one. A person has to undertake a break journey to reach the hospital. First, one has to reach Usti by a hand pulled rickshaw van. Thereafter, one has to hire Tata Sumo or Maruti car to reach the hospital.
44. PW 5 deposed that Sankar and Jharna, did not live in the matrimonial home of the victim. They lived at Belpukur under Sonarpur PS, 30 Kms from the matrimonial village of the victim. He has deposed that Sanjay was

not a regular relative of Samir i.e. Sanjay and Samir were not related to each other by blood.

45. **PW 6, Tapan Kumar Pramanik, was another elder brother of the victim.** He has described the relations amongst the accused persons. Samir Das was the husband of the victim. Samar Das was the elder brother of Samir. Sabita Das was the wife of Samar Das. Sankar Pramanik was the cousin brother of Samir Das. Jharna Pramanik was the wife of Sankar Pramanik. Sanjay Pramanik was the son of the paternal aunt of Samir.
46. PW 6 has confirmed the version of PW 1, 2, 6, 8, and 9. He has deposed that he, Swapan Pramanik, Partha Pratim Pramanik, and Shyamal Roy, who was the husband of the sister of the Pramaniks, arranged a car and came to Nainan after receiving information, from Samir, that the victim has consumed poison and is admitted to a nursing home.
47. In addition to PW 1 and 2, PW 6 also saw the victim lying on the veranda of her matrimonial home and her body was covered with a piece of white cloth. They removed the cloth from the face of the victim and saw froth and foam coming therefrom. They did not find Samir, Samar, and Sabita at the PO. They also did not find PW 3 at the PO. He found Sankar, Sanjay, and Jharna at the PO.
48. PW 6 asked the whereabouts of the Samir, Samar, and Sabita to Sankar, Sanjay, and Jharna. The latter(s) however could not give any answer. PW 6, 1, 8 and 9 made an attempt to take the body of the victim to the nearest hospital. They were, however, resisted by Sankar, Jharna, and Sanjay. PW-

6, PW-1, and PW 8 and PW 9 were, in fact, assaulted by lathi and broomstick by the said accused persons.

49. PW 6 confirmed the version of PW-1 and 2 that they managed to take the body of the victim to the Diamond Harbour SD Hospital, where she was declared brought dead.

50. The accused Sanjay who some time ago was resisting PW 1, 6, 8, and 9, now informed them that the victim was first taken to the nursing home of Dr. Golam Masur. Sanjay further informed them that Samir, Samar and Sabita were assaulting the victim since the morning of July 6th, 2007.

51. During cross-examination, PW 6 reaffirmed the entire prosecution case. He added that Samir was not poor. The accused husband did not live in penury. PW 6 reaffirmed that the victim has not committed suicide. PW 6 was suggested that due to the difficult financial condition of the accused husband, the victim has committed suicide. He denied the same.

52. **PW 7, Subrata Halder, was the neighbor of the accused persons.** He has deposed that he is not the relative of the accused persons. He has denied the entire prosecution case. He was declared hostile by the prosecution.

53. **PW 8, Shyamal Ray, was the brother-in-law of the victim and the scribe of the FIR.** He was married to one sister of the victim. He has deposed that on July 6th, 2006, at about 12:10 to 12:50 AM at night, Swapan Pramanik, PW 1, informed him that the accused Samar Das has informed PW 1 that the victim has committed suicide by consuming poison

and is admitted to a nursing home. He has confirmed the version of P.W. 1, 2, and PW 6 that they reached at the P.O. by hiring a Tata Sumo car.

54. PW 8 has deposed that Sankar, Sanjay and Jharna, the accused persons, were standing on the veranda where the body of the victim was kept. He has deposed that they, however, did not find Samir, Samar, Sabita and the minor son of the victim at the PO. PW 8 asked Sankar the whereabouts of Samir, Samar and Sabita. Shankar, however, could not give any answer.

55. On the lines of P.W. 1, 2 and PW 6, PW 8 has deposed that the victim's body was covered with a white cloth. Upon removing the cloth, froth and foam was seen to be coming out from her mouth. He also deposed that Shankar, Sanjay and Jharna resisted them when they made an attempt to take the body of the victim to a nearby hospital.

56. PW 8 has deposed along the lines of PW 6 that Sanjay told them that since the morning of the fateful day, Sabita, Samir, Samar, Sankar and Jharna were torturing the victim. Sanjay informed PW 8 that the victim got senseless during such assault and torture. Sanjay further informed that the victim came to her senses at night and asked for a glass of water. Sabita brought a can of poison and Samir rammed it into the mouth of the victim.

57. PW 8 has deposed that Sanjay has revealed to them that the victim was taken to the nursing home of one Dr. Golam Masur, who declared the victim dead. Sanjay, however, did not mention any administration of an injection on the victim.

58. PW 8 has identified his signature in the FIR. He was also an inquest witness. He was also a witness to the seizure list. He has deposed that, they were searching for the son of the victim. The son of the victim was brought to the Usti Police Station. From there, he started residing with Swapan Pramanik.
59. During cross-examination, PW 8 has deposed that the financial condition of the accused husband Samir was good. PW 8 was suggested that the victim had committed suicide due to the financial stringencies in the family of Samir. PW 8 denied the said suggestion.
60. PW 8 has deposed that he first went to the Diamond Harbor Police Station and informed that the victim has been murdered in her matrimonial home. He was advised by the Diamond Harbor PS to report the matter to the Usti PS.
61. PW 8 has deposed that Sonarpur to Nainan is not connected by any bus route. He has deposed that to reach Nainan, one has to travel via the train. He has deposed that he has no land phone.
62. **PW 9, Partha Pratim Pramanik, was another brother of the victim.** He has deposed that the victim told him that the accused persons used to torture her. The accused husband used to pressurize the victim to bring a sum of Rupees 50,000 from her paternal home. He came to learn from PW 3 that on July 6th, 2006, the victim was again assaulted and tortured in her matrimonial home.

63. During cross-examination, PW 9 has deposed that the accused Sanjoy Pramanik has told him that the victim was first taken to the doctor Golam Masur for treatment. He confirmed that Samar Das has constructed a house at Sonarpur. He confirmed that PW 3, the minor son of the victim, was taken to his house from the Usti police station. PW 3 did not have any personal articles with him when he was handed over to PW 9 in the police station.
64. **PW 10, Ramendra Nath Mitra**, was the investigating officer of the case. PW 10 has deposed that Arun Pramanik, Gautam Das, Subrata Halder and Shyamal Roy have stated before him that the accused husband used to torture the victim. The victim was pressurized to bring a sum of rupees 50,000 only from her parental home.
65. Samar Das, Sankar Pramanik (since deceased), Jharna Pramanik and Sanjay Pramanik also used to abuse and torture the victim. The said witnesses have told PW 10 that on the fateful day, the said accused persons were torturing the victim since morning. The victim committed suicide by consuming poison upon being unable to bear any further torture.
66. PW 10 has deposed that he seized two pages from one diary from the house of Swapan Pramanik at Sonarpur. He confirmed that he has not examined Dr. Golam Masur, who is stated to have initially treated the victim.
67. During cross-examination, PW 10 has deposed that PW 2, Santosh Pramanik, the father of the victim, has not informed him that the accused

husband created pressure on the victim for bringing money from her paternal home. PW 2 did not reveal to the said I.O. that he paid a sum of rupees five to six thousand to the accused husband. He also did not inform the I.O. that the accused husband sent the victim wife to collect a sum of 50,000 only from her parental home.

68. During cross-examination, PW 10 has deposed that the PW 3, the minor son of the victim, did not inform the IO that Sabita left the PO and brought with her a can of poison and handed it over to Samir. PW 3 did not inform the IO that Jharna and Sankar undressed the victim and dressed her with a new saree.

69. PW 10 has deposed that he did not find any blood or stool or urine at the PO. PW 10 has, however, confirmed that PW 3 has informed him that the said Sabita and Ivy demanded the diary of the victim from PW 3, which was handed over by PW 3 to them.

70. PW 10 has deposed that Shri Arun Pramanik, PW 4, has informed him that the accused husband Samir was a farmer. He used to consume alcohol. Upon returning home at night under the spell of alcohol, he used to torture and beat his wife/ victim. Shri Arun Pramanik further informed the IO that Samir sent the victim to bring rupees fifty thousand from her paternal house. The said money was demanded to start a business.

71. PW 4 has informed the I.O. that Samir and Sabita were visiting matrimonial home of the victim on the fateful day. The victim was beaten in the morning by Samir. The victim was thereafter again beaten by Samir,

Sabita, Jharna and Sankar in the evening. The victim became senseless after being assaulted in the evening. She sought for a glass of water. Sabita handed over poison instead in the hands of Samir, who rammed the poison in the mouth of the victim.

72. PW 4 has informed the I.O. that the victim was first taken to a nursing home. Thereafter, she was brought back to her matrimonial home. The decision to bring her back to the matrimonial home and not to take her to the Diamond Harbour Sub-Divisional Hospital was taken at the instance the deceased accused Sankar Pramanik. He found that the victim's body has no temperature.

73. The accused persons were examined under section 313 of the CrPC. They claimed to be innocent and were falsely implicated. Based on the evidence on record, the Ld. trial Judge held that the evidence of PWs are inconsistent with each other. Some of the PWs have deposed that the accused husband and family demanded dowry. Some of them, however, have not mentioned about the demand of dowry.

74. The Ld. trial Court held that eyewitness account of PW 3 is not consistent with the medical evidence flowing from the postmortem report. The trial judge therefore acquitted the said accused person.

75. The de facto complainant PW 1 preferred an application for special leave to appeal C.R.M.S.P.L. 59 of 2017 under section 378(4) of the Code of Criminal Procedure against the said judgment and order of acquittal. By order dated November 10th, 2017, a coordinate Bench granted special leave

to prefer an appeal. By order dated December 15th, 2017, the appeal C.R.A. 669 of 2017, being the subject appeal, was admitted.

ANALYSIS OF THIS COURT

76. The prosecution has relied on the eyewitness account of PW 3, the minor son of the victim wife and accused husband, to establish the guilt and role of the accused persons in the death of the victim. PW 3 has witnessed the murder of his mother.
77. In addition to the above, the prosecution has also relied on the eye witness account of the PW 1, 6, 8 and 9. The said PWs have witnessed the events at the PO and conduct of the accused persons thereat, after commission of the crime. The accused Samar Das informed PW 1 that the victim has been admitted to a nursing home after she tried to commit suicide by consuming poison. PW 1 in turn informed PW 6, 8, and 9 about it.
78. The evidence of PW 3 needs to be discussed first, given that he was an eye-witness to the events that took place in night of July 6th and early morning of July 7th, 2006. PW 3 was a minor. His ability to depose before the Court has been assessed by the Ld. trial Judge. Upon perusal of the questions put to him and answers given by PW3, we are satisfied that PW 3 was capable of deposing before the Court.
79. PW 3 understood the importance of the occasion in which he was called on to depose. He was aware that he was narrating the facts and circumstances relating to the death of his mother at the hands of his own

people, namely, his father and the brothers and sisters of his father. This is evident from his detailed evidence tendered before the Court.

80. The Ld. trial Judge has, however, discarded the evidence of PW 3 on the ground that the inquest and the postmortem report have not found any injuries in the person of the victim. PW 3, however, has deposed that the victim was assaulted by the accused persons since the morning of the fateful day. He has deposed that his father has put his leg on the throat of the victim while ramming poison in her mouth. The victim tried to vomit out the poison. The accused husband covered the mouth of the victim.

81. The Ld. Trial judge held that in absence of the injuries in the inquest and postmortem report, it cannot be held that the victim has been assaulted by the accused persons. The PW3's evidence in this regard was held completely unreliable.

82. The aforesaid finding of the Trial judge is contrary to the post mortem report. The said finding is therefore perverse in terms of the dicta in **H.D. Sundara v. State of Karnataka, reported in (2023) 9 SCC 581**. It was held that a perverse finding leading to an acquittal deserves to be set aside.

83. The post mortem report has found the following injuries in the person of the victim:-

- A) Multiple bruises over the face, neck, chest, trunk, wrists, and limbs;
- B) Nail scratch abrasion on the left side of the face;

C) Extravasation of blood in the occipital (back of head), parietal (side of head), and orbital (around the eye) regions; and

D) Bruises on the wrists.

84. The first set of injuries are ordinarily a result fist blows and kicks. The said injuries have been found on the person of the victim. This indicates repeated assault on the victim. The involvement of multiple persons in the death of victim/wife, therefore, is established.

85. The next set of injuries are fingernail scratches. The said scratch marks may have been caused by the assailant while overpowering the victim. This is ordinarily caused when the victim attempts to remove a hand forced upon her face or neck. This is consistent with the accused husband putting his hand on the mouth of the victim when the latter attempted to vomit out the poison so administered.

86. The third set of injuries are blunt force trauma inflicted on the head. Such injuries ordinarily result from punches or kicks. Bruising around the wrists is often suggestive of gripping, restraint, or forceful holding. This supports an inference that the victim was restrained during the commission of the crime.

87. The aforesaid injuries are consistent with the assault committed upon the victim. It is specifically consistent with the evidence of PW 3 that the husband accused put his leg on the throat of the victim.

88. Learned Counsel for the accused persons/respondent nos. 1 to 5 has submitted that the PM Doctor was not examined by the prosecution during

the course of the trial. Therefore, the post mortem report cannot be admitted in evidence.

89. Section 294(3) of the CrPC states that when the genuineness of the document has not been questioned in the trial by the rival party, the Court may read the said document in evidence. Admittedly, the defense has not disputed the genuineness of the PM Report. Therefore, the said report should have been accepted by the Trial Court. In fact, the trial Judge has considered the PM report and did not find any injuries recorded in the said report. This finding of the Ld. Trial Judge is palpably erroneous as discussed above.

90. The Ld. Trial Court has further doubted PW 3 in that he deposed that he and the victim were sleeping in the room when at 12:00 midnight, the accused husband aggressively knocked and kicked on the door. The door was locked from the inside. The victim opened the door, and the accused husband started assaulting her. The Ld. trial Judge reasoned that a minor child would not be awake until 12:00 midnight. If PW 3 was indeed awake, the accused persons would not have assaulted and administered poison to the victim in front of him.

91. Admittedly the accused husband aggressively knocked and kicked on the door of the room where the victim and PW-3 were sleeping. This would have awakened PW 3 as has admittedly awoken the victim. PW-3 hid under the bed terrified after seeing his mother assaulted, which is quite natural. Accused Samir may not have given credence to the same as he was drunk

and inebriated. The other accused were busy ensuring the death of the victim. The Ld. Trial judge, therefore, misread, misunderstood and misplaced this vital piece of evidence.

92. The Ld. trial Judge held that PW 3 did not explain why his uncle Samar and Sabita joined his father when the latter was assaulting the victim. A witness is not called upon to explain and justify the reason for the happening of an event. The same amounts seeking opinion from the witness. Samar and Sabita were alerted by the assault of the wife at the hands of the accused husband. The victim definitely would have raised a hue and cry during such an assault. The presence of Samar and Sabita is not out of the ordinary.

93. The Ld. Trial Judge thus has failed to see the irresistible inference flowing from the evidence on record that the Sabita and Samar were alerted by the hue and cry of the victim. The Ld. Trial judge has further committed a fundamental error by failing to note that a witness states the event, but not its cause. The Ld. Trial Court has insisted for the cause/justification of the event from PW 3.

94. The Ld. trial Judge disbelieved the version of PW3 that the accused, Sankar and Jharna, removed the saree of the victim and dressed her in a fresh and new saree. It was held that PW3 deposed that the accused husband placed his leg on the throat of the victim and forcefully administered poison. The poison, therefore, would have spilled over on the

floor of the PO. No remains of poison were however found at the PO during investigation.

95. The Ld. Trial Judge held that it was deposed that the victim was laid down on the floor, tortured, and poisoned. The said acts would leave marks of struggle on the floor of the PO. Neither the inquest report nor the post-mortem report indicated any defecation by the victim. The inquest report did not mention the presence of poison on the floor of the PO.

96. The victim was assaulted when she was in a saree. The victim suffered injuries on her person. This is established by the post mortem report. The injuries discussed hereinabove indicates that the victim was assaulted by multiple persons. She also offered resistance to them. The saree worn by the victim at the time of assault therefore may have torn or soiled by body waste and discharge. Thus, the accused persons had to change the saree in question.

97. Poison was forcefully administered to the victim. The victim tried to vomit it out. The saree thus will contain remains of the poison. The saree would bear testimony to poison administered to the victim. The accused persons thus changed the saree so also have cleaned the floor of the PO.

98. The victim was first taken to a nursing home. On the way from the nursing home to Diamond harbour SD Hospital, the accused person Sankar checked the body temperature of the victim and announced that the victim had died. This is clearly a part of the plan of the accused husband not to take the victim to the Hospital and let her die. The victim was thereafter

brought to the matrimonial home and was laid down on the veranda. PW-3 has deposed this.

99. Upon arrival at the PO, PW 1, 6, 8 and 9 found that the body of the victim is kept on the verandah. They however found that the victim's body has some temperature, indicating signs of life. The Ld. trial Judge therefore held that the evidence of PW 1, 6, 8, and 9 is inconsistent with that of PW-3 since PW 3 has not deposed about any signs of life in the victim after the latter was brought to her matrimonial home. The Ld Trial Judge failed to notice that if the body of the victim was warm at the matrimonial house, she could have survived if taken to the Diamond Harbour SD Hospital from Dr Mosur's Nursing home.

100. The said checkup of the body temperature of the victim was done by laymen. Therefore, the evidence of PW 3 should not be discarded by placing reliance on the medical opinion of the layperson as to when the victim died. This is one of the many fundamental errors of law in the impugned judgment

101. The conduct of the accused persons in first taking the body of the victim to a private nursing home, thereafter bringing it back to her matrimonial home on finding that her body has no temperature exposes the guilt of the accused person. It must be held that if at all the accused persons had taken the victim to the private nursing home upon finding that she has tried commit suicide, the accused persons ought to have cited the said doctor of the private nursing home as a witness. It true that the prosecution should

prove its case. At the same time, an adverse inference would be drawn against the accused persons when they seek to reply on an event, but insist the prosecution to prove it by adducing evidence.

102. The victim being taken to the said private nursing home, if at all taken, was under the direct, special and singular knowledge of the accused persons. They therefore ought to have adduced evidence of this event in the trial, if at all they took the victim thereat.

103. On the evidence of PW-3 a child witness, it was held in **State of M.P. v.**

Ramesh reported in (2011) 4 SCC 78, as follows:-

12.....**A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future.** In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature

Emphasis applied

104. Witnessing the death of one's mother at the hands of one's father, uncles and aunts is indeed an abnormal event in the life of an individual. The same being witnessed by a minor child of seven years old only exacerbates the situation. The evidence of PW 3, therefore, cannot be brushed aside. The evidence describes in detail the events that unfolded on that fateful day. PW 3 had no motive to falsely implicate his own father and the siblings

of his father. In the ***State Of Madhya Pradesh v. Balveer Singh, reported in 2025 INSC 261***, it was held as follows:-

36.It added that a child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness....

Emphasis Applied

105. The Ld. Trial judge has held that PW3 is a doubtful witness, given that his statement under Section 164 of the CrPC was recorded 20 days after commission of the crime. PW3 gave a statement under Section 164 of the CrPC when he was residing in the home of his maternal uncle. Thus, PW 3 was susceptible to tutoring by his maternal uncle, the brother of the victim. This state of affairs, therefore, created a doubt in the mind of the trial Court.

106. After the death of the victim, PW 3 was in the custody of the accused persons, namely, Sabita and Samar. He was handed over to the police seven days thereafter. From the police station, he was taken to his maternal uncle's home. Sufficient explanation, therefore, is on record as to why the statement of PW 3 under Section 164 of the CrPC was recorded 20 days later.

107. PW 3 was a minor, who witnessed the crime against his mother, committed by his own family members, namely, his father, uncle and aunts. Therefore, PW 3 was under trauma, and he was given time to settle and structure as to what he witnessed on the fateful day.

108. In ***Balveer Singh decision (supra)*** on the similar set of facts, the Court held as follows:-

39. Indisputably the police statement of PW6 came to be recorded after 18-days of the incident. Although the police was well aware that she was a vital witness to the entire case and could guide the investigation in the right direction, **yet to mechanically discard her testimony solely on the ground of delay alone was not warranted in the peculiar facts and circumstances of the case, particularly when no question in this regard was put to the IO so as to give him an opportunity to explain the reason for such delay.**

43. Thus, even if the accused had failed in putting a question in regards to delay in examination of PW6, the presiding judge was duty bound to put this question to the IO in exercise of his powers under Section 165 of the Evidence Act. **Since in the present case no question whatsoever was put to the IO to explain the reason for the delay in examination of Rani, PW6, we should not willingly jump to discard the testimony of PW6 on the ground of delay alone, and ought to be circumspect while scrutinizing the effect of such delay.** The court in such a situation would be required to carefully see whether there is anything palpable on the face of it to indicate any malice at the end of the investigating agency in belatedly examining such witness.

45. **One another reason for the High Court to discard the testimony of PW6 on the ground of being tutored was due to the fact that at the time of recording of her statement, PW6 was residing with PW3, the complainant herein who is her maternal uncle and was also at inimical terms with the accused.** However, the High Court appears to have lost sight of the fact **that PW6 at the relevant point of time was only of seven years of age. She had not only lost her mother but had also been abandoned by her father i.e., the respondent accused herein who went absconding. In such circumstances, the only option available to PW6 was to reside with her maternal uncle.** Where else does the High Court expect a child of such tender age in such circumstances to reside? **How could the High Court even possibly expect such child to go to the police station unaccompanied by any adult family member to give her statement?** The testimony of PW6 could not have been discarded solely on the ground that it was recorded in the presence of PW3, an interested witness who is at inimical terms with the accused, especially in view of the facts narrated above. The courts are expected to deal with such cases in a more realistic manner and not discard evidence on account of procedural technicalities, perfunctory considerations or insignificant lacunas.

Emphasis Applied

109. The Court therefore has to examine the evidence of a child witness, who has lost his mother in the hands of his family members, by factoring in his lived realities after death of his mother. The Court should appreciate that the minor child having witnessed the death of his mother, is equally a victim.

110. In the present case, the accused husband was arrested. PW 3 had two choices before him- one to live with the family of the accused father. Second, to live with the family of his deceased mother. PW-3 chose to stay with his maternal family given the fact that he saw his mother killed by the accused persons.

111. PW 3 was taken to the police station and was handed over in presence of the victim's family and family of the accused husband. PW 3 was not compelled to live with his maternal uncle. Instead, the circumstances of the day called upon him to live with the family of the victim since the allegation was that his mother has been killed by his father and family.

112. The Ld. Trial judge has held that PW 3 may be tutored. There is no straight jacket formula to determine whether a witness has been tutored or not. In **Balveer Singh(supra)**, it was held as follows :-

50....., we take this opportunity to explain what is meant by a “tutored testimony” and the test for determining or ascertaining a tutored testimony. Where there has been tutoring of any witness, the same can possibly produce two broad effects in their testimony; **(i) improvisation or (ii) fabrication.**

51. Improvisation refers to instances where the tutored witness in question **adds new details, alters facts, or provides an inconsistent version of events that were not previously stated in their initial statements, such as those given to the police in their statement**

under Section 161 of the Cr.P.C. In such situations, the improvisation by way of tutoring must be eradicated only in the manner envisaged under Section 162 of the Cr.P.C. read with Section 145 of the Evidence Act.

52. However, where the allegation of tutoring pertains to ***fabrication – meaning that certain portions of both the testimony and the previous statement of a particular witness have been doctored or falsified – in such circumstances twin conditions would have to be proved, namely; (i) the possibility or opportunity of the witness being tutored AND (ii) the reasonable likelihood of the tutoring***

53. The first condition, namely the ‘possibility or opportunity of the witness being tutored’ can be established **by demonstrating or laying down certain foundational facts that suggest the probability that a part of the testimony of the witness might have been tutored. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. A mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.**

54. The second condition ‘reasonable likelihood of tutoring’ requires that the foundational facts established in the first step be further proven or cogently substantiated before any portion of the witness’s testimony can be deemed tutored. **This may be done by leading evidence to prove a strong and palpable motive to depose falsely that was imputed to the witness, or by establishing that the delay in recording the statement is not only unexplained but is indicative and suggestive of some unfair practice by the investigating agency for the purpose of falsely supporting the case of the prosecution as held in Ranbir (supra), or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.**

Emphasis applied

113. Improvisation of evidence by a witness is the addition of a new detail or mere modification of a fact stated by him during the investigation.

Improvisation has to be established by confronting the witness in the witness box. Improvisation is not material alteration of a stand of a witness taken pre-trial. During the trial for completeness, a witness may add what he missed to state during the investigation or even for that matter what was not stated under Section 164 of the CrPC.

114. During cross-examination, the Investigating Officer, PW 10, has deposed that certain facts deposed by PW3 during the course of the trial were not stated to him during investigation. In the statement given under Section 164 of the CrPC, PW3 did not state that Sabita left the PO and returned with a can of poison.

115. The said improvisation is, however, not fatal given that the substance of the statements given before the police and Judicial Magistrate by PW3 has all along remained the same. The substance is that the accused husband started assaulting the victim. He was joined by Sabita and Samar. Sabita fetched the poison and handed over the same to the accused husband. The husband forced the poison in the mouth of the victim. Thereafter, the saree of the victim was changed by Jharna Pramanik and Sankar Pramanik. The testimony of PW3 in this regard has remained uncontroverted during the course of the trial.

116. However, fabrication of evidence becomes fatal to the prosecution case. Fabrication of evidence amounts to making false statements before the Court. The same can be proved by a two-fold test: whether the witness has the opportunity to be tutored by a person. If the availability of opportunity

is established, the reasonable likelihood of the witness being tutored has to be further established.

117. In the present case, the maternal uncle of the victim had the opportunity to teach PW 3 to depose before the Court in particular way. PW 3 was residing with him. His motive to falsely implicate the accused person is however not established by the defense. The maternal uncle has lost his sister who was the mother of the victim. This by itself cannot be a ground to impute motive to him.

118. The motive if any to falsely implicate the accused persons was required to be established by cross examining the PW 3. The PW 3 has withstood cross examination. PW 3 was therefore not a tutored witness. He can at best be said to have improvised his version. The said improvisation has not departed away from the substance of the prosecution case. The evidence of PW 3 therefore is believable.

119. Learned Counsel for the accused/respondent nos. 1 to 5 has argued that PW 4 and PW 5 have turned hostile during the course of trial. The prosecution has cross examined them, however was unable to extract any evidence in favor of the prosecution case.

120. This Court, however, notes from the cross examination of the said PWs that they have admitted that they had good relations with the said accused persons. Therefore, it cannot be ruled out that the said accused persons have distanced themselves from deposing the guilt of the accused persons in the course of trial.

121. Learned counsel for the accused has argued that the IO did not examine Dr. Golam Rasul, who initially treated the victim. He was a material witness.
122. PW 5 has deposed that none of villagers of Nainan had any private vehicle. The victim is stated to have been taken to the nursing home by a car. This does not align with the evidence of PW 5 that the village had no private car facility. The victim, therefore, could not be taken to the said nursing home by car. For this reason, the accused persons did not make any prayer for summoning any doctor of the said private nursing home since it cannot be ruled out that the victim may not have been taken to the said nursing home at all, if there any such nursing home. The evidence instead points out that the victim was allowed to die in her matrimonial home.
123. PW 1, 6, 8, and 9 have given eyewitness accounts of the events at the PO, post-commission of the crime. They have deposed the following events:-
- A) The co-accused, Samar Das, informed PW 1 that the victim had consumed poison and was admitted to a nursing home.
 - B) The said PWs arrived at the PO and found the body of the victim covered with a cloth. The body was laid on the ground. Froth and foam was emanating from the mouth of the victim.
 - C) The said PWs found that Jharna, Sankar and Sanjay at the PO. They did not find the PW 3 at the PO, and Samir, Samar, and Sabita thereat.

- D) Jharna, Sankar, and Sanjay feigned ignorance when they were asked the whereabouts of Samir, Samar and Sabita.
- E) The said PWs found life in the body of the victim since the body had a temperature. Jharna, Sankar, and Sanjay resisted the said PWs from taking the body of the victim to the Diamond Harbour SD hospital.
- F) Sanjay Pramanik is stated to have told PW 6 and PW 8 that Samir Das tortured the victim in the morning. Samar and Sabita Das instigated Samir. In the evening, the three of them assaulted the victim. The victim was administered the poison. She was taken to the nursing home. While returning therefrom, the accused Sankar touched the body of the victim and felt that the victim had died. She was taken back to the matrimonial home.

124. The presence of all the accused persons at PO, therefore, has been established. The said accused persons have not denied their presence, and also the presence of PW 3 at the PO. Direct evidence of the crimes committed in a matrimonial home need not always be available to the investigating agency. In **Trimukh Maroti Kirkan v. State of Maharashtra**, reported in (2006) 10 SCC 681, it was held as follows:-

14. *If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as*

noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. **A judge also presides to see that a guilty man does not escape.** Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135].) **The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led.**

15. Where an offence like murder is committed in secrecy inside a house, **the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence.** The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act **there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.**

Emphasis applied

125. In **Balveer Singh (supra)**, it was held as follows :-

22. Where an accused is alleged to have committed the murder of his wife and **the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.**

78. Positive facts must always be proved by the prosecution. **But the same rule cannot always apply to negative facts.** It is not for the prosecution to anticipate and eliminate all possible defenses or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, **it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove** (see Professor Glanville Williams—Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion—para

527 negative averments and para 528 — “require affirmative counter-evidence” at page 438 and foil, of Kenny’s outlines of Criminal Law, 17th Edn. 1958

86. Cases are frequently coming before the Courts where the husbands, due to strained marital relations and doubt as regards the character, have gone to the extent of killing the wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family like in the case on board, even if he is a witness of the crime, would come forward to depose against another family member.

87. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at the time and in the circumstances of its choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused. It is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book. In the case of Trimukh Maroti Kirkan (supra), this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. The Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

Emphasis applied

126. In **State of W.B. v. Mir Mohammad Omar and Ors. reported in (2000)**

8 SCC 382, it was held as follows:-

31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a recognized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, **the offenders in serious offences would be the major beneficiaries and the society would be the casualty.**

Emphasis applied

127. The prosecution has proved that all the accused persons were present at the PO on the fateful day. It has further been established that all the accused persons were aware that the victim had consumed poison. The said accused persons have not denied their presence at the PO. The prosecution has also established that the body of the victim was kept in the matrimonial home of the victim.
128. The prosecution, therefore, has clearly established that the said accused persons shared the said matrimonial home with the victim on the fateful day. Therefore, the accused persons were called upon to answer as to what exactly happened to the victim.
129. The accused persons have faintly taken the plea that the victim had committed suicide after consuming the poison. The said plea was a positive plea advanced by the defense. Therefore, it was incumbent upon the defense to establish that the poison was voluntarily consumed by the victim.
130. The accused persons were further called upon to clear the doubt as to why they had not stopped the victim from consuming the poison in view of their plea that the victim has voluntarily consumed poison. The case of the prosecution against the accused persons, therefore, stands established even if one discounts the evidence of PW3, which, in the present facts of the case, cannot at all be discounted.
131. The prosecution is duty-bound to prove the events at the PO which can be witnessed by the witnesses. When a crime has been committed in the

privacy of a house, before the arrival of the witnesses, the prosecution cannot be called upon to prove the events that took place before the arrival of the witnesses. It was then the accused person who had to prove that they had not committed the crime.

132. The prosecution is duty-bound to establish that the accused persons were present with the victim at the PO. Thereafter, the burden would shift upon the accused, to establish that preponderance of probabilities indicate they were not at the PO, or, if they had been at the PO, they did not commit the crime.

133. The direct evidence of PW 3 against the said accused persons, wherein the role of each accused has been narrated by PW3, read with the evidence of PW 1, PW 6, PW 8, and PW 9, who narrated the events at the PO after the commission of the crime, have clearly established that the said accused persons had the common intention to end the life of the victim.

134. Learned counsel for the accused has argued that the common intention of the accused persons with the accused husband has not been proved. He therefore argued that order of acquittal in favor of the other accused persons therefore, deserves to be upheld.

135. The accused husband could not have poisoned the victim without the assistance of the accused Samar, Sabita, Jharna, and Sankar. Samar and Sabita joined the accused husband when the latter was beating his wife. Sabita fetched the poison for the accused husband to administer it to the victim. Jharna and Sanjay changed the saree of the victim.

136. The accused, Samar and Sabita, had their house in Sonarpur. Their presence at the PO on the fateful day, therefore, was pre-planned. The said Sabita and Samar have not denied their presence at the PO. Similarly, Swapan Pramanik and Jharna Pramanik were also present at the PO, and they have not denied their presence there. They also lived 30 kilometers away from the matrimonial home of the victim. Sankar Pramanik, however, died after passing of the impugned order of acquittal. Thus, the de facto complainant has not preferred any appeal against his acquittal.

137. The role of Sanjay, however, needs to be discussed. Sanjay was present at the PO. He, with Jharna and Sankar, has obstructed PW 1, 6, 8 and 9 from taking the body of the victim to the hospital for treatment. The said Sanjay also happens to be the person who have informed PW 9 that accused Samar, Sabita, Samir, Jharna and Sankar assaulted the victim and the Samir administered poison in her mouth.

138. The clear knowledge of Sanjay about the role of the other accused persons in the murder of the victim and its revelation to PW 9 after unsuccessfully resisting the PW 1, 6, 8, and 9 from taking the body of the victim to the hospital, exposes his mental condition to assist the other accused persons to end the life of the victim. In ***Krishnamurthy alias Gunodu and Ors. vs. State of Karnataka, reported in (2022) 7 SCC 521***, it was held as follows:-

26.....Common intention can be formed just a minute before the actual act happens. ***Common intention is necessarily a psychological fact*** as it requires prior meeting of minds. ***In such cases, direct evidence normally will not be available and in most***

cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the **co-participants or perpetrators at the time and after the occurrence.** The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the coassailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied.....

Emphasis applied

139. The accused, Sanjoy is clearly culpable. He prevented the prosecution witnesses from taking the body of the victim to the hospital. He narrated each event that took place in the incident to PW 9. He therefore was privy to the plan and its execution hatched to end the victim's life. He, however, chose to remain silent. He remained silent by choice, not by compulsion.
140. The presence of Sanjay at the PO is neither denied nor explained by him. Thus, he was not a bystander. When he understood that the prosecution witnesses PW 1, PW 6 PW 8, and PW 9 would not let go off the accused persons and doubted foul play, he revealed and convicted the other accused persons for the charge of killing the victim.
141. The presence of these accused persons at the PO has been established. Their respective roles in assaulting the victim and thereafter wiping out evidence by changing the saree of the victim have been proved beyond reasonable doubt. The demand of dowry by the accused husband has been established. The resistance offered by Jharna Pramanik, Sanjay Pramanik, and Sankar Pramanik has been established beyond reasonable doubt.

142. Therefore, the prosecution has successfully established its case under Section 498A against the accused husband and under Section 302 read with Section 34, IPC against all the accused persons beyond a shadow of reasonable doubt.

CONCLUSION

143. The present case clearly falls outside the scope of abetment to suicide under Section 306 of the IPC in view of the evidence of PW 3 that the victim tried to vomit out the poison rammed in the mouth of the victim by the accused husband. All the accused persons/respondents, therefore, shall stand convicted of the offences under Section 302, read with Section 34 of the IPC, and accused husband also under Sec.498A.

144. The accused husband Samir Das, Samar Das, Sabita Das, Sanjay Pramanik, and Jharna Pramanik are hereby convicted for offence under section 302 of the IPC. They shall mandatorily suffer a rigorous life imprisonment for a period of 24 years for the offence under Sec. 302, IPC from the day they are taken in custody pursuant to this judgment and order.

145. After serving the period of 24 years, the said convicted persons shall be eligible to remission as applicable. The period of detention undergone pre-trial and post-trial shall be set off from the said imprisonment of 24 years. All the convicted persons shall individually pay a fine of Rs 15,000 only to the State, which shall be remitted to the High Court Legal Services

Authority. In the event, the said convicts are unable to pay the fine amount they shall further suffer a simple imprisonment of one (1) year.

146. The accused husband is hereby convicted under Sec. 498A of the IPC and shall suffer a rigorous imprisonment of one (1) year for the offence under Sec. 498A. The convict husband shall pay a fine of Rs 25,000 to the State, which shall be remitted to the High Court Legal Services Authority. In the event, the convict husband fails to pay the aforesaid fine amount he shall further suffer a simple imprisonment of six (6) months.

147. The convicted Accused private respondents shall surrender before the Trial Court within three weeks from date. In default the Trial Judge shall take steps to apprehend them.

148. The State shall take all legal steps for recovering the aforesaid fine.

149. With the aforesaid observations and directions, CRA 669 of 2017 is allowed and disposed of. There shall be no order as to costs. Consequently, all connected applications, if any, shall stand disposed of in terms of this judgment and order.

150. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

I Agree.

(Rai Chattopadhyay, J.)