

S. C. 256 of 2013 (737/14).

**In the Court of Additional Sessions Judge,
4th Court, Jalpaiguri.**

Present :- Shri. Somnath Chakrabarti,
Additional Sessions Judge ,
4th Court, Jalpaiguri.

Sessions Case No. 256 of 2013 [S.T No.05(03)/2014].
(C.I.S No.737/2014)

Corresponding to G. R. Case no. 1324/1998 arising out of
Bhaktinagar P.S case No.187/2098, dt. 10.09.2098, u/s.498A I.P.C.
Charge u/s. 498A/306/34 of I.P.C.
C.N.R No.WBJP01-00-5186-2013.

State

Vs.

1) Nayan Roy, 2) Kajal Roy, 3) Nidhan Roy, 4) Jhunu Roy, 5) Mistu
Roy, 6) Laxmi Roy & 7) Sudhan Roy..... Accused persons.

Arguments heard on :- 03.02.2026.

In presence of

Sri.Ld. Public Prosecutor-in-Charge.

And

Sri. Shankar Chandra DeLd. Advocate for the
defence.

Judgment delivered on 16.06.2026.

JUDGMENT

The gravamen of the prosecution case as rolled out from a
petition of complaint, lodged by one Ganesh Mondal to the effect that
marriage ceremony of his sister, Saraswati Mondal on 12.08.1998 was

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solemnized with one Nidhan Roy according to Hindu rites and customs and at the time of marriage, it was decided that out of Rs.10,000/- as dowry, Rs.5000/- will be paid before marriage and rest amount will be paid in the month of Aghrayan. At the time of marriage, gold ornaments and furnitures were given as dowry. But after few days, said Nidhan Roy along with other accd. persons pressurized his sister to bring the rest amount of dowry and due to such reason, they started to inflict torture upon his sister both physically and mentally and his sister informed them about the said fact in person. The specific allegation of the complainant is that he and his father on several times requested the accd. persons not to do such torture and in the last year on the occasion of Laxmi puja, he went to his sister's matrimonial house to bring her home but he saw accd. persons inflicting torture upon his sister and after returning back, he informed the said fact to his family members. On 09.10.2018 at about 3 p.m, one of neighbours of the accd. informed them about the illness of his sister and he along with his other relatives came to the house of accd. persons and found his sister hanging in her bedroom and accd. persons instigated her to commit suicide. Hence, the instant case.

On the basis of such information, Bhaktinagar P.S case no.

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187/1998, dt. 10.09.1998, u/s.498A of I.P.C was initiated against the accd. persons. Police took up investigation and after it's completion, I.O submitted charge sheet, u/s.498A/306 of I.P.C on 498A/306 I.P.C against all the accused persons. The case was then committed to the court of Sessions on 11.05.2013 and the Ld. Sessions Judge in turn transferred this case to this Court for trial and disposal.

Charge was framed against the above-named four accused persons on 24.03.2014, u/s. 498A/306/34 of I.P.C, to which they pleaded 'not guilty' and claimed to be tried in Open Court.

Prosecution witnesses were thereafter examined and after closure of prosecution evidence, the above-named accused persons were examined, u/s.313 Cr.P.C, where notion of the accused persons was only denial and plea of innocence.

/Point for consideration/

Now, let this Ld. Court consider :-

- 1) Whether the accused persons with common intention committed offence punishable, u/s.498A/306/34 of I.P.C?
- 2) Whether the prosecution has been able to prove it's case beyond all sorts of reasonable doubt?

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The prosecution case was set rolling by examining C.S.W.s.1 to 10.

Beside oral evidence, some documents are marked as Exbts, which are as follows :-

- 1) Exbt.1 – Written complaint,
- 2) Exbt. 1/1 – Signature of P.W.1 in the written complaint,
- 3) Exbt.1/2 – Endorsement on the written complaint,
- 4) Exbt.2 – Inquest Report by B.D.O,
- 5) Exbt.2/1 – Signature of P.W.4 on Inquest Report conducted by B.D.O,
- 6) Exbt.3 – Inquest Report by Police officer,
- 7) Exbt.3/1 – Signature of P.W.4 on police Inquest Report,
- 8) Exbt.4 – Seizure list,
- 9) Exbt.4/1 – Signature of P.W.4 in the said seizure list,
- 10) Exbt.5 – Seizure list, dt. 09.10.1998,
- 11) Exbt.6 – Dead body challan,
- 12) Exbt.7 – Formal F.I.R,
- 13) Exbt.8 – Rough sketch map,
- 14) Exbt.8/1 – Index of the rough sketch map,
- 15) Exbt.9 – Seizure list, dt. 13.10.1998

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16) Exbt.10 – Photocopy of P.M report.

/Decision with reason/

To delve deep into this case, it is obvious that the prosecution witnesses have to be scanned to come to a just and definite conclusion.

This is the basic principle that the prosecution must prove its case beyond any reasonable doubt and no innocent person should be convicted merely on the basis of suspicion, however, strong suspicion may be. Suspicion cannot take the place of proof. Now, let us consider the submission of Ld. P.P-in-charge and Ld. Defence counsel. Ld. P.P-in-charge has contended that the evidence garnered on record by the prosecution is cogent, consistent and all the evidence adduced by the prosecution clearly shows that the accd. persons are liable for committing offence, which were labeled against them. On the other hand, Ld. Defence Counsel contended that the accd. persons have falsely been implicated in this case and there are major discrepancies in the evidence of prosecution witnesses. The subnum bonum of his argument is that the prosecution case suffers from want from proper and adequate evidence. Ld. Defence Counsel also submitted that court must assess the fact of this case dispassionately and objectively and without being influenced by the gravity of the offence.

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In a criminal case, appreciation of evidence is one of the first and foremost tests to consider the credibility and reliability of the prosecution case both oral and documentary. The finding of the facts, the question of Law and the conclusion of the judgement in a criminal case mainly based on the appreciation of evidence. Therefore, appreciation of evidence is the heart and soul of the dispensation of justice delivery system in criminal case. Criminal case involves life and death problems of a citizen and the destiny of the citizen is to be decided by carefully analyzing and scrutinizing the evidence adduced by the prosecution. *The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in this case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted.* The paramount consideration of the court is to ensure the prevention of miscarriage of justice.

Now, let us consider the evidence of P.W.1/Ganesh Mondal, who is the complainant of the present case. P.W.1 stated in his examination-in-chief that Saraswati Mondal was his sister but now she is no more. She was married with the accd. Nidhan Roy before 16 years before this day and their marriage was solemnized according to Hindu rites and custom and after

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marriage, her sister went to her matrimonial house and started residing there with all the accd. persons against whom, the present case was instituted. It was settled that they would give Rs.10,000/- to bride groom and other gold ornaments but they gave a sum of Rs.5000/- to the accd. persons and they assured to pay remaining Rs.5000/- by the succeeding month of Aghrayan. After marriage, on the occasion of her visit to their house, Saraswati used to tell them that the accd. persons were demanding more money from her and started to inflict torture and assaulting her for such demand of dowry and told them that as the remaining Rs.5000/- was not paid, they used to torture and assault her in her matrimonial house. On the occasion of Laxmi Puja succeeding to the marriage of Saraswati in the same year, P.W.1 went to the matrimonial house of his sister to take her and her husband to their house but at that time, her sister told him that till he would pay the remaining amount of Rs.5000/- to the accd. persons, they would not allow her to come to her house and for this reason, he had to return to their house and her sister was not allowed to come with her. He further stated that after two days, someone from locality of the accd. persons informed him that his sister was ill and told him to go to her matrimonial house and such information was sent to him after 58 days of marriage of

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Saraswati and after receiving such information, he along with his parents rushed to the matrimonial house of Saraswati and saw her hanging by a sari in her bedroom. Thereafter, he lodged complaint and proved his signature in the complaint, which was marked as Exbt.1/1.

During cross-examination, this witness stated that after the bridal night, his sister came to their house on 'Dwiragaman' and she returned to her matrimonial house and thereafter, she came to their house to pass the month of Bhadra as a custom. He admitted that during Durga Puja, Saraswati and her husband came to their house and stayed there for 2 days and during those two days, they visited different Durga idols in their locality. He further stated that it was not stated in his F.I.R that the accd. persons demanded more money from Saraswati and she told him that on the relevant days, she would not be allowed to come to their house, if the remaining amount of Rs.5000/- was not paid by them. She did not make any formal complaint to any person, or any local authority about the alleged torture upon his sister by the accd.

P.W.2/Charu Mondal is the mother of the deceased, who stated in her examination-in-chief that Saraswati Mondal was her daughter but now she is no more. She was married with the accd. Nidhan Roy before 16 years

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before this day and their marriage was solemnized according to Hindu rites and custom and after marriage, her daughter went to her matrimonial house and started residing there with all the accd. persons against whom, the present case was instituted. She further stated that during Durga Puja in the year of marriage of Saraswati, she and her husband came to their house and during that period, Saraswati and her husband made quarrel with each other and her husband took Saraswati to her matrimonial house and they stayed only one night. Thereafter, P.W.1 went to matrimonial house of Saraswati to bring her back to their house. Returning back from her matrimonial house, P.W.1 told her that inmates of her matrimonial house, particularly her mother-in-law did not allow Saraswati to come to her house for Laxmi puja and about 3 – 4 days thereafter, P.W.1 went to matrimonial house of Saraswati with sweets. But reaching there, P.W.1 found that Saraswati was sitting in the courtyard of her matrimonial house and told him that she would not come to their house on Thursday and subsequent to that day, when P.W.1 went to her matrimonial house with sweets but she did not come to her house and at about 3 p.m on that very Thursday, a boy came to their house and told them that Saraswati had become seriously ill and told them to go to the matrimonial house of

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Saraswati. Receiving such information, she herself along with her husband, son, relatives rushed to the matrimonial house of Saraswati and found dead body of her daughter through window of her bedroom and saw that door of her bedroom was locked from outside. According to her, Saraswati was tortured by her in-laws due to remaining amount of Rs.5000/-, which they promised to pay at the time of marriage.

During her cross-examination, this witness stated that on the occasion of Laxmi Puja, when Ganesh went to take Saraswati back to their house, then her in-laws told that as there was Laxmi puja in their house, so they would not allow Saraswati to come to their house.

P.W.3/Gour Mondal is the father of the deceased, who stated in his examination-in-chief that Saraswati Mondal was his daughter but now she is no more. She was married with the accd. Nidhan Roy before 16 years before this day and their marriage was solemnized according to Hindu rites and custom and after marriage, her daughter went to her matrimonial house and started residing there with all the accd. persons against whom, the present case was instituted. It was settled that they would give Rs.10,000/- to bride groom and other gold ornaments but they gave a sum of Rs.5000/- to the accd. persons and they assured to pay remaining Rs.5000/-

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by the succeeding month of Aghrayan. After marriage, as per custom, his daughter was taken to their house to pass the month of Bhadra. However, after 14 days, the accd. persons started torturing his daughter on account of remaining Rs.5000/- and on the previous date of Laxmi puja in the same year, his son, Ganesh went to matrimonial house of Saraswati to bring her to his house for the occasion of Laxmi puja but his daughter told him that she would not be allowed by the accd. persons to visit his house unless and until the remaining amount of Rs.5000/- was paid to them. Ganesh told them after returning about the said fact and after one day of Laxmi puja, his wife went to matrimonial house of Saraswati with sweets, prepared from the milk of their cows and Saraswati assured her that she would visit their house on the following Thursday but after 1 – 2 days, a boy came to their house and told that his daughter was seriously ill and after hearing the news, he along with his family members went to the matrimonial house of his daughter and found her hanging by a sari in her bed room.

During his cross-examination, he stated that he did not go to matrimonial house of Saraswati on any occasion during his life-time and at the time of negotiation of marriage, members of both family and para-people are present and after proper enquiry, marriage was arranged. During the

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life-time of Saraswati, she told about the alleged torture upon his daughter to his neighbour, Sudhir Bapari but he did not lodge any written complaint to local authority about such alleged torture upon her.

P.W.4/Sudhir Ch. Bapari stated in his evidence that he knows the defacto complainant as he is local person in his area and deceased was the younger sister of Ganesh Mondal. She was married to the accd. Nidhan Roy and died 2 – 3 months of her marriage by hanging at her matrimonial house. He further stated that after marriage, Saraswati used to reside at her matrimonial home but he had no personal knowledge regarding the matrimonial life of Saraswati. He also stated that after getting the news of death of Saraswati, he went to the in-laws house of Saraswati and reaching there, saw that Saraswati was hanging by means of a battam fixed on the ceiling of the room. He proved his signature in the inquest report, conducted by Magistrate and police, which were marked as Exbts.2/1 & 3/1. He also proved his signature on the seizure list, which was marked as Exbt.4/1.

During his cross-examination, this witness stated that the distance between in-laws' house of Saraswati and his house is maximum 2 k.m and marriage of Saraswati and Nidhan was a social marriage and he was involved in the said marriage right from the alliance of the marriage till the

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completion of the same.

P.W.5/Ratan Sarkar stated that he knows the defacto complainant of the present case and his sister, Saraswati. He further stated that she was married before 20 – 22 years back and heard Saraswati died by hanging at her matrimonial house after 2 – 3 months of marriage but could not say the cause of such hanging.

During her cross-examination, this witness stated that he had no personal knowledge regarding the matrimonial life of Saraswati.

P.W.6/Manju Rajbangshi stated in her evidence that she knew Saraswati of her locality, who died 20 – 23 years back at her in-laws' house and she was married to Nidhan Roy and on the date of incident, she was present at her father's house, which was adjacent to the house of the accd. and she saw from the window that Saraswati was hanging from roof-frame and the room was locked from inside.

During her cross-examination, this witness stated that Saraswati usually used to remain in her room closing the doors and it is fact that marriage of Saraswati was done against her will.

P.W.7/Manatosh Rajbangshi stated in his evidence that Saraswati was married with Nidhan Roy and she committed suicide by hanging at her

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husband's house. This witness further stated that on the date of incident at about 3.00 – 3.30 p.m, when he came for lunch, he heard shouting from the house of the accd. and reaching there, he saw that the room of Saraswati was closed from inside and she was found hanging from roof frame and after breaking open the door of the said room, police took the dead body of Saraswati. But this witness stated that he did not know the reasons for such suicide.

P.W.8/Prabha Mondal, who is the relative of prime accd. Nidhan Roy stated in his evidence that Saraswati committed suicide by hanging about 22 – 23 years back at her husband's house but he does not know the reason of her committing suicide.

P.W.9/Bidhan Ch. Chakraborty/Retd. S.I of police conducted inquest over the dead body of the deceased and he stated that he prepared the Inquest Report, which was marked as Exbt.3 and he went to P.O for investigation on the basis of U/D case and sent message for deputing one Executive Magistrate for holding inquest. He prepared seizure list in presence of available witnesses and proved the same, which was marked as Exbt.5. This witness also proved the dead body challan, which was marked as Exbt.6.

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During cross-examination, this witness stated that he had no personal knowledge about the incident and did not find any mark of injury over the dead body of the deceased and no one complained him regarding cause of death of the deceased.

P.W.10/Satish Ch. Kundu/I.O of the present case stated in his evidence that on the relevant date of incident, he was posted at Bhaktinagar P.S as S.I of police and stated that one Ganesh Mondal lodged complaint and it was endorsed by the then O.C of the said P.S. This witness also proved the formal F.I.R, which was marked as Exbt.7 and complaint petition was marked as Exbt.1. He further stated that during investigation, he visited P.O, prepared rough sketch map along with index, which were marked as Exbts.8 & 8/1, examined the available witnesses and seized one photograph. Thereafter, he collected P.M report, which was marked as Exbt.10 and submitted charge sheet against 8 accd. persons.

During cross-examination, this witness stated that P.W.2 stated to him that during relevant time of Durga puja, Saraswati and husband stayed in their house for 4 days but did not state to him that Saraswati and her husband made quarrel in between them during their stay. This witness also stated that P.W.s.2 & 3 did not state to him that due to demand of rest

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Rs.5000/- as dowry, the accd. persons used to inflict torture upon the deceased.

In the present case, the sections 498A/306/34 I.P.C are labeled against the accd. persons. It is the duty of the prosecution to prove it's case beyond any reasonable doubt. It has been alleged that the deceased committed suicide due to torture inflicted upon her by the accd. persons. As such, let us have a look to **the essential ingredients, u/s.498A :-**

1) A woman was married; 2) She was subjected to cruelty; 3) Such cruelty consisted in -

i) any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;

ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand;

iii) the woman was subjected to such cruelty by her husband or any relation of her husband.

In the present case, so far the question of regarding torture is concerned, there is a huge discrepancies between the written F.I.R and the

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evidence of the complainant. In the written complaint, complainant stated that due to demand of dowry, accd. persons tortured upon the deceased and ultimately, her sister was compelled to commit suicide. But in the oral evidence, there is no whisper or a single word that due to demand of Rs.5000/-, his sister compelled to commit suicide. In the written complaint, the complainant stated that when he went to the matrimonial house of his sister, then he saw that prime accd. Nidhan torturing his sister but in the oral evidence, there is no single word about such factum of torture. The said discrepancy raises grave doubt regarding the veracity of this witness. P.W.s.1 to 3, who are the brother and parents of the deceased stated in their evidence that accd. persons inflicted torture upon the victim. But the independent witnesses did not corroborate the said fact. In this juncture, I would like to mention that the father of the deceased in his cross-examination stated that during her life-time, he told about the said factum of torture upon his daughter to his neighbour, Sudhir Bapari but said Sudhir Bapari, who was examined as P.W.4 stated in his examination-in-chief that he had no personal knowledge regarding the matrimonial life of Saraswati. P.W.s.5, 6 & 7 are the independent witnesses and neighbours of complainant and the accd. persons. But they did not whisper any single

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word that the accd. persons used to inflict torture upon Saraswati or made assault upon her due to demand of Rs.5000/-.

I have already discussed that P.W.s.1, 2 & 3 are interested witnesses as they are the brother and parents of the deceased. 'Related' is not equivalent to 'interested.' 'Interested' is he, who wants to see a person punished. The term 'interested' postulates that the person concerned must have some direct interest in seeing that the accd. person is somehow, or otherwise convicted because he has some animus with the accd, or for other reason. 'Interested testimony' can be the basis of conviction even without corroboration, if the same is intrinsically reliable and inherently probable. In the present case P.W.s.2 & 3 were making improvement on story in material particulars, which were stated before the court but they did not state the same thing, or otherwise before the I.O after occurrence of the alleged incident. Their evidence was not corroborated by any witnesses. So, their testimonies must be tested in the light of probabilities, previous statements and circumstances.

In the present case, the evidence of P.W.6 is very much relevant, who admitted that it is a fact that marriage of Saraswati with accd. Nidhan was against her will. Court cannot ignore such statement as from the entire

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evidence and materials on record, it came out that deceased stayed in her matrimonial house for just 40 days out of the total span of 60 days (approx) of her matrimonial life during her life-time. P.Ws.4, 5, 6, 7 & 8 are the independent witnesses and neighbours of accd. and complainant. But they stated nothing against the matrimonial dispute of Saraswati and failed to give any light regarding the cause of hanging of Saraswati. Even P.W.6, who is the neighbour of the deceased stated in her evidence that Saraswati generally used to stay in her room in seclusion (closing the door). In case of matrimonial dispute, the evidence of neighbours is very much important as they are watching the day to day life in close proximity. But from their evidence, nothing has come out indicating the fact that the accd. persons used to inflict torture or made any assault upon Saraswati. I do not find any iota of evidence that the accd. persons instigated the deceased to commit suicide. As such, the prosecution by their evidence failed to prove torture upon the deceased, which attracts sec.498A. Apart from this, the scribe of the written complaint has not been examined and presumption goes against the prosecution as he withheld evidence of one of the best witnesses.

The next point of argument is dowry death. It has been alleged that the victim committed suicide unable to bear torture upon her inflicted by the

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accd. persons and as she committed suicide within 7 years of marriage, so charge was framed, u/s.306/34 I.P.C. Neither the written F.I.R, nor in examination in chief, the complainant and other witnesses did mention the fact that the accd. persons instigated, provoked the victim directly to commit suicide. The offence 'abetment' is constituted by instigating a person to commit an offence, or by engaging in a conspiracy to commit it, or be intentionally aiding a person to commit it. A person is set to instigate another to an act when he actively suggests or stimulates him to the act by any means of language direct or indirect, whether it takes the form of express solicitation or hints instigation or encouragement. The meaning of word instigate used in sec.107 of I.P.C cannot be restricted to the use of actual word instigating to commit suicide.

In this juncture, I like to refer the decision reported in 2011 Cri. L.J 2012, wherein it was held that in cases of alleged abetment of suicide, there must be a proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide.

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Therefore, what is required is that unless there is any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In this connection, Hon'ble Supreme Court also held in 2010 Cr. L.J that in case of abetment involves mental process of instigation or intentionally aiding person to certain thing, i.e some positive act by the accd, essential to constitute abetment. But after separating chaff from the grain of entire evidence of the prosecution witnesses, it appears that there is no specific positive act on behalf of the accd. persons to constitute abetment of the deceased. Moreover, there is no positive act proximate to the time of occurrence on the part of the accd. which compelled the deceased to commit suicide. In this juncture, I also like to refer another decision reported in (2011)2 SCC (Cri), wherein the Hon'ble Apex Court has held that the abetment involves mental process of instigation or intentionally aiding the person in doing of a thing. There should be clear mens rea to commit offence u/s.306 I.P.C.

Here in this connection, we might take this opportunity to seek wisdom from the precedent reported in **{Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)} 2009 (11) SCALE 24**, wherein the Hon'ble Apex

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Court had an occasion to deal with the aspect of abetment. The Hon'ble Apex court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, the Hon'ble Apex Court found it impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Hon'ble Apex Court expounded that the intention of the Legislature and the ratio of the precedents make it clear that in order to convict a person under section 306 I.P.C, there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that she committed suicide.

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As such, there is no cogent and convincing evidence, which compelled me to say that due to provocation and instigation, the deceased compelled to commit suicide. If we analyze the evidence, it would appear that the none of the prosecution witnesses even whispered anything from which the death of deceased can be related in any manner, which points to the involvement of the accused persons in this case. So, the conduct of the accd. persons do not come under provision of any instigation or did not involve any provocation, which compelled the victim to end her.

Therefore, the prosecution has miserably failed to prove the charge against the accused persons, u/s. 498A/306/34 of I.P.C.

It is ,therefore,

O R D E R E D

that the accused persons viz. 1) Nayan Roy, 2) Kajal Roy, 3) Nidhan Roy, 4) Jhunu Roy, 5) Mistu Roy, 6) Laxmi Roy & 7) Sudhan Roy are found not guilty for commission of offence made punishable under sections 498A/306/34 of I.P.C and accordingly they are acquitted from this case, u/s.235(1) Cr.P.C.

The surety/sureties be discharged from bail bond/bonds.

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The seized alat, if any, be disposed of after the expiry of the period of appeal.

D/C by me.

Additional Sessions Judge,
4th Court, Jalpaiguri.

Additional Sessions Judge,
4th Court, Jalpaiguri.

16.06.2026.

J.O Code – WB00619.