

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

Present:

The Hon'ble Justice Partha Sarathi Sen

CRA 224 of 1995

**Sri Ajit Kumar Paul @ Ajit Paul
Vs.
The State of West Bengal**

For the appellant : Mr. Tapas Kr. Ghosh
Mr. Tanmay Choudhury

For the State : Mr. Avishek Sinha

Heard on : 04.03.2025

Judgment on : 04.03.2025

PARTHA SARATHI SEN, J.:

1. In this appeal the judgment of conviction and order of sentence both dated 21.08.1995 as passed by the learned Additional Sessions Judge, 1st Court, Hooghly in Sessions Trial No. 165 of 1988 is impugned. By the said judgment learned trial court found accused Ajit Paul guilty under Section 498A IPC and he is thus sentenced to suffer R.I. for one year and to pay fine of Rs. 500/- I.D. to suffer R.I. for three months more.

2. The said convict Ajit Paul felt aggrieved and thus preferred the instant appeal.
3. For effective adjudication of the instant appeal the facts leading to initiation of the aforementioned sessions trial is required to be dealt with in a nutshell.
4. One Radhanath Mondal of Village – Tarahat, P.S.-Goghat, District-Hooghly lodged a written complaint dated 18.10.1986 with the Officer-in-Charge, Goghat P.S. stating *inter alia* that marriage between her sister, Madhabi Paul was solemnized with the present appellant four years back prior to the lodging of the said FIR. It has been averred in the said written complaint that after her marriage the relationship between his said sister and her husband and the relatives of her matrimonial home became strained on account of various trivial issues and as a result whereof the said Ajit Paul being the husband of the said Madhabi Paul and his family members used to inflict torture upon his said sister. It has been stated further in the said written complaint that during her lifetime the said Madhabi Paul conveyed to the members of her paternal family about such torture and ultimately on 18.10.1986 at about 09.00 hrs. she committed suicide since she could not forebear the torture of her husband and the family members of her matrimonial home.

5. On basis of such written complaint Goghat P.S. Case No. 6 dated 18.10.1986 under Sections 498A/306 IPC was started. Investigation was taken up and on conclusion of the same charge-sheet under Sections 498A/306/109 IPC was submitted against the accused persons.
6. After commitment and transfer learned trial court considered the charges against the charge-sheeted accused persons and thus on 12.19.1994 the said Court framed charges against all the charge-sheeted accused persons under Sections 306/498A IPC. Since at the time of framing of charge the accused persons pleaded their innocence and claimed to be tried, the trial before the learned trial court proceeded.
7. On perusal of the Trial Court Record it reveals further that in order to bring home of the charges as against the accused persons the prosecution has examined 10 witnesses in all and some documents and one material were exhibited on their behalf. Before the learned trial court the defence has adduced no evidence. However, from the trend of cross-examination of the prosecution witnesses and the answers given by the accused persons in course of their respective examinations under Section 313 of the Cr.P.C. it appears to this Court that the defence case is based on clear denial and false implication.

8. As stated hereinabove learned trial court after considering the evidence of the prosecution witnesses both oral and documentary acquitted all the accused persons from the charge under Section 306 IPC. By the said judgment the learned trial court also acquitted accused Bijay Paul and Panchanan Paul from the charge under Section 498A IPC. However, the said trial court found the accused Ajit Paul guilty of the offence under Section 498A IPC and he was thus convicted and sentenced in the manner indicated in the foregoing paragraphs.
9. In course of his argument Mr. Ghosh duly assisted by Mr. Chowdhury, learned Advocate for the appellant at the very outset draws attention of this Court to the evidence of P.W. 1 being the informant. It is submitted by Mr. Ghosh that from the evidence of P.W. 1 it would reveal that his testimony with regard to allege torture upon the deceased by the present appellant is omnibus in nature. It is further submitted by Mr. Ghosh that from the cross-examination of P.W. 1 it would reveal further that at that material time the present appellant and his wife, Madhabi Paul were suffering from acute poverty which according to Mr. Ghosh is the actual reason for commission of suicide by the wife of the present appellant.
10. Drawing attention of this Court to the evidence of P.W. 5 *vis-à-vis* to the impugned judgment it is submitted by Mr. Ghosh that

learned trial court failed to visualize the said evidence of P.W. 5 in its proper perspective. It is further submitted by Mr. Ghosh that though P.W. 5 in her examination-in-chief made some unsupported and wild allegation against the present appellant but in her cross-examination she candidly admitted that she was tutored by an S.I. what to depose before this Court. It is thus submitted by Mr. Ghosh that the learned trial court is not at all justified in placing his reliance upon a tutored witness. It is further submitted by Mr. Ghosh that from the evidence of P.W. 7 being the I.O. it would reveal that in course of investigation the Investigating Officer has failed to collect any material for submission of the charge-sheet against the present appellant.

11. Mr. Ghosh thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned judgment of conviction and order of sentence.
12. Per contra, Mr. Sinha, learned Advocate for the State submits before this Court that there cannot be any reason to disbelieve the testimony of P.W. 1. It is further submitted by Mr. Sinha that the learned trial court while passing the impugned judgment has correctly noticed that matrimonial offences are usually committed within the periphery of the matrimonial home where apart from the family members no other persons have any access. It is further submitted by Mr. Sinha that considering the peculiar

nature of the crime learned trial court was very much justified in placing its reliance upon the evidence of P.W.s 1 and 5 in absence of any independent witnesses since in a case of like nature chance of getting independent witnesses is very bleak. Mr. Sinha thus submits that the instant appeal may be dismissed.

13. Since in the impugned judgment learned trial court has elaborately discussed the evidence of all the nine prosecution witnesses this Court considers that discussion of evidence as adduced by the prosecution witnesses all over again is not necessary except to the extent the same is required for effective adjudication of the instant appeal.
14. On perusal of the examination-in-chief of P.W. 1 it reveals to this Court that P.W. 1 testified before the learned trial court that after the marriage of her sister Madhabi she informed him that she was tortured in the house of her father-in-law by her husband, her sister-in-law and mother-in-law. He stated further that on account of such incident talks of settlement were made on several occasions. He further testified that he had suspicion that her sister was murdered. On overall reading of the evidence of P.W. 1 it appears to this Court that the evidence as led by P.W. 1 with regard to the alleged torture upon his sister Madhabi is basically omnibus in nature since the said P.W. 1 did not disclose as to when and in which manner the alleged torture was inflicted by the

present appellant upon her sister. The said P.W. 1 also remained absolutely mum as to when the alleged talks of settlement took place. The said P.W. 1 stated nothing in whose presence, the said talks of settlement were held. In his cross-examination, he stated further that he submitted no written application to Panchayat against the present appellant alleging his torture upon his sister by the present appellant.

15. It is pertinent to mention herein that the P.W.s. 2 and 3 became hostile since they did not support the case of the prosecution. So far as the P.W. 4 is concerned, he was simply tendered by the prosecution, however his cross-examination was declined.
16. Admittedly, P.W. 5 being the mother of the deceased in her examination-in-chief stated in detailed manner as to how during her lifetime Madhabi was tortured in her matrimonial home but she had not stated specifically the role of the present appellant in the alleged cruelty at the instance of the present appellant towards her daughter. As rightly pointed out by Mr. Ghosh, the entire evidence of P.W. 5 in considered view of this Court got demolished since in her cross-examination, she stated that she was tortured by a police personnel as to how and in what manner she has to depose before the learned trial Court.
17. This Court has meticulously gone through the evidence of P.W. 7 who is the Investigating Officer in this case. In considered view of

this Court nothing reveals from the mouth of the said P.W. 7 which attracts the provision under Section 498A as against the present appellant.

18. This Court is in agreement with the learned Trial Court that since matrimonial offences are often committed within the four walls of the matrimonial home, it is very difficult to get independent witnesses and thus considering the peculiar nature of the crime, the evidence of relatives cannot be thrown out in the event, their evidence inspires confidence. However, learned Trial Court while applying the said principle, in considered view of this Court has failed to make proper scrutiny of the evidence of P.W.s 1 and 5 for the reasons as discussed in the foregoing paragraphs.
19. On careful considerations of the entire materials as placed before this Court, this Court finds that the evidence of P.W. nos. 1 and 5 are not at all inspiring and, therefore, placing reliance upon the evidence of said two witnesses, in considered view of this Court, would be very risky in coming to a finding with regard to the proof of guilt against the present appellant.
20. In view of the discussion made hereinabove, this Court, thus, finds sufficient merits in the instant appeal and accordingly, the instant appeal being **CRA 224 of 1995** is allowed and disposed of.

21. Consequently, the judgment of conviction and order of sentence dated 21.08.1995 as passed in Sessions Trial No. 165 of 1988 by the learned Additional Sessions Judge, First Court, Hooghly is hereby set aside.
22. Consequently, the present appellant Ajit Kumar Paul @ Ajit Paul is found 'not guilty' under Section 498A IPC in connection with the said Sessions Trial as disposed of by the learned Trial Court.
23. Consequently, the present appellant Sri Ajit Kumar Paul @ Ajit Paul is discharged from his bail bond and be set at liberty at once, if not wanted in connection with any other case.
24. Department is directed to send down the Trial Court Record along with a copy of this judgment forthwith.
25. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)