

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 150 of 2009

Dilip Das & Ors.

-Versus-

The State of West Bengal

For the Appellants : **Mr. Swapan Kumar Mallick,
Ms. Sudeshna Das,
Ms. Puja Naskar.**

For the State : **Ms. Faria Hossain, A.P.P.
Mr. Asif Dewan.**

Hearing concluded on : **21.04.2025**

Judgment On : **30.04.2025**

Prasenjit Biswas, J:-

1. This Criminal Appeal is filed by the appellants against the judgment and order of conviction and sentence dated 10.04.2008 passed in Sessions Case No. 3(2)/05 (Sessions Trial No. 8(6)/05) by the learned Additional Sessions Judge, Fast Track Court, Baruipur finding the appellants guilty for commission of the offence under Section 498A and convicted and sentenced them to undergo three years simple imprisonment and to pay a

fine of Rs. 5,000/- each and in default to simple imprisonment for one year and if the fine is paid 50% of the realised amount should be handed over to the legal heirs of the deceased. The appellants were acquitted under Section 235(1) of the Code of Criminal Procedure from the charges framed under Sections 304B/302 of the Indian Penal Code.

2. Shorn of details, the facts leading up to the present appeal are as under:
A written complaint was lodged before the Officer-in-Charge of Joynagar Police Station by the father of the de-facto complainant namely, Amarendra Nath Sardar of the Village and P.O. Sarberia, P.S. Joynagar in the district South 24-Parganas to the effect that the marriage of his daughter Mousumi took place with the accused Dilip Das of village Ramchandrapur in the last month of Baisak before lodging of complaint. It is stated in the written complaint that after marriage all the appellants used to inflict physical and mental torture upon his daughter on demand of more money. The appellants being the husband, father-in-law and step mother-in-law used to give pressure upon the victim to bring money from her father's house and in such way all the appellants used to make mental torture upon the victim. On 09.07.2002 the daughter of the de-facto complainant committed suicide and it is stated that all the appellants instigated the daughter of the de-facto complainant to commit suicide.
3. On the basis of such written complaint a case was started by the concerned P.S. being Joynagar P.S. Case No. 83 dated 10.07.2002 under Section 498/306 of the Indian Penal Code. After completion of investigation the charge-sheet was submitted by the prosecuting agency.
4. The charge was framed against these appellants under Sections 498A/304B/302 of the Indian Penal Code by the learned Trial court. The accused persons pleaded not guilty and claimed to be tried.
5. During trial prosecution has examined 23 witnesses and exhibited the documents which are marked as exhibits 1 to 7. No oral evidence has been adduced by the side of the defence. Only a document is marked as Exhibit A on their behalf.

6. Mr. Swapan Kumar Mallick, learned Counsel for the appellants has assailed the impugned judgment and conviction of sentence on the following grounds:

- i) The impugned judgment and order of conviction passed by the learned Trial Court is full of inconsistencies and contradictions. It is said that the accused persons were acquitted from the charge framed under Section 304B because it could not be proved that the victim before her death was subjected to any cruelty or harassment by anyone of the present appellants. The acquittal of these appellants from the charge under Section 302 of the Indian Penal Code speaks for innocence of this appellant relating to the unnatural death of the victim. These appellants were not in any way connected with the death of the victim. The Investigating Officer could not find any justification, after enquiry to retain the Section 306 of Indian Penal Code in the charge-sheet.
- ii) The depositions of the prosecution witnesses are not trustworthy and not so strong to prove the offence under Section 498A against these appellants beyond all reasonable doubt. Out of 23 witnesses examined, PWs 2, 3 and 4 could not state anything about the incident. PW5 being the brother of the victim also could not state anything about infliction of physical and mental torture upon his sister. Save and except PW5 and PW6 the other prosecution witnesses did not depose about the fact of demanding any money as dowry by these appellants. The statements of all the witnesses are contradictory to each of other about the fact of demand of money from these appellants.
- iii) It is stated by the learned counsel that there is a history of the mental disorder in the family of the victim. PW15 stated that PW1 (father of the victim) used to take back his daughter to his house from her matrimonial home to medically treat her. This PW15 also stated that a sister of Mousumi was also unsound mind and she

committed suicide by hanging rope. This witness further stated in cross-examination that an uncle of Mousumi (victim girl) is also of unsound mind. It is said by the learned Advocate that PW11 who is a resident of village Ramchandrapur also stated in the same line of PW15 that Mousumi was of unsound mind and for her medical treatment she used to remain in her father's house. The attention of this Court is drawn by the learned counsel to the evidence of PW7, mother of the victim who also stated in her deposition that the uncle of her husband, her brother-in-law have disease of madness. It is said by the learned Advocate that this point was not properly appreciated by the learned Trial Court. It is further assailed by the learned Advocate that the victim was mentally ill and there is lack of evidence to prove the story of cruelty and torture allegedly inflicted by these appellants upon the victim.

- iv) The appellants were acquitted under Section 304 B and 302 of IPC, then they cannot be convicted for the offence under Section 498A of the Indian Penal Code. Moreover, the oral evidences adduced by the side of the prosecution do not say that these appellants had the necessary mensrea to do an act which would amount to wilful conduct so as to constitute an offence under Section 498A of the Indian Penal Code.

7. It is said by the learned Advocate that it is the specific case of the defence that hanging rope was not seized by the Investigating Officer which casts a reasonable doubt in the veracity of the witnesses and strong suspicion over the prosecution case. The attention of this Court is drawn to the evidence of PW19 (Doctor) who stated that if sufficient pressure exerted in the body of a person who hanged himself or herself to save her life then the body of the person may sustain bruise on the body and leg.
8. The attention of this Court is drawn to the deposition of PW9 where she stated that the accused Dilip Das had illicit relationship with the wife of Niranjana Bairagi of his village and Mousumi protested against such illicit

relationship of Dilip with the lady and because of such protest Dilip used to assault the victim but this statement has not made in the FIR. The said Niranjana Bairagi has not been cited as witness by the prosecution.

9. Though the incident had happened within two months of marriage, but there was no exact date when demand was made to bring the money from the father of the victim. It is said by PW1 at the time of deposing before the Court that the marriage between his daughter (victim) and the accused Dilip Das was solemnized on 22nd Baisak, 1409 and further deposed that because of torture meted out to her Mousumi committed suicide but this witness did not state anything about quantum of money. So, as per submission of the learned Advocate the evidences of PW3 cannot be believed as it is nothing but exaggeration and none of the villagers have supported the case of the prosecution.
10. Per contra, Ms. Faria Hossain, the learned Additional Public Prosecutor stated that PW1 and PW7 have spoken about the victim being subjected to cruelty by the appellants and other witnesses cited by the prosecution also supports the story of the prosecution. The prosecution has proved its case by adducing clear and cogent evidence and after considering the evidences both oral and documentary, in a proper perspective; the Trial Court had rightly convicted and sentenced these appellants by the impugned judgment which warrants no interference by this Court. It is said by the learned Advocate for the State that there is no illegality or material irregularity in the impugned judgment and order of conviction and as such, there is nothing to interfere with it.
11. I have given careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned the entire evidences available on record and also perused the impugned judgment and order of conviction.
12. These appellants were acquitted from the charges framed against them under Section 304(B) and 302 of the Indian Penal Code but they are

convicted and sentenced only for the commission of offence under Section 498A of Indian Penal Code.

- 13.** Now, the point that arises consideration is as to whether the learned Trial Court was right in convicting these appellants for the offence under Section 498A of the Indian Penal Code on the same state of facts of evidence while acquitting them for the offence under Section 304B and 302 of the Indian Penal Code relying on the same evidences.
- 14.** Though an acquittal under Sections 304B and 302 of the Indian Penal Code is itself, not a ground of acquittal under Section 498A of Indian Penal Code, there must be a cogent material and evidence in the case of the prosecution to bring home the guilt of the accused for the offence under Section 498A of Indian Penal Code. The evidences of the witnesses of the side of the prosecution runs as under.
- 15.** PW1, Amarendranath Sarkar who is the father of the victim deposed that his daughter Mousumi (victim) was married to the accused Dilip Das on 22nd Baisak, 1409 B.S. according to Hindu Rites and Customs. This witness stated in his examination-in-chief that these appellants were not satisfied with the bridal articles given to them and as such, they used to demand more money from him. It is further stated by this witness that on demand for money these appellants used to inflict torture upon Mousumi and because of such torture meted out to her the victim committed suicide. But this statement in respect of infliction of torture on demand of money is not stated in the FIR by this witness. On cross-examination, this witness stated that the FIR was written at the police station and he put his signature on the FIR at the words of the Investigating Officer at the police station at about 9 PM. It is admitted by this witness that previously he did not complain either to any member of Gram Panchayat or to police station regarding alleged torture inflicted by the appellants physically and mentally upon the victim. In the written complaint this PW1 did not state the dates when demands were made to bring money from the appellants. Even during inquest although this witness is present and put his

signature as witness but he did not state any single date in respect of demand of money by the appellants from him. So, there is no whisper that prior to 09.09.2002, there is any complaint by the de-facto complainant or anyone of his family members regarding alleged torture and demand of money by the appellants either before police station or before any authority. Only after the incident, it was stated by the de-facto complainant that these appellants created pressure upon the victim to bring money from him.

- 16.** PW7, the mother of the victim stated in the same line of her husband (PW1) that out of Rs. 25,000/- they gave Rs. 5000/- to the appellants and on failure to give the remaining amount of money, the accused Dilip assaulted her daughter, abused her and throttled her neck and her daughter used to narrate the incident to this witness after coming to her. This witness further stated that the accused Dilip Das has illicit relationship with a lady and the victim voiced protest against such illicit relationship of him.
- 17.** PW6 stated that he believed that because of illicit relationship between Dilip and the wife of Niranjana Bairagi, Mousumi was murdered. PW9 stated in his deposition that the accused Dilip had illicit relationship with the wife of Niranjana Bairagi of his village but the said Niranjana Bairagi has not been examined by the side of the prosecution.
- 18.** PW3 is a signatory to the inquest. This witness stated that the police asked him to put his signature on the police paper and accordingly he put his signature on the paper. On cross-examination, this witness stated that excepting putting his signature on the police paper he knew nothing about the incident and at the instruction of the police he put his signature on the police paper and further said that he put his signature on a white paper.
- 19.** PW4, the brother of PW1 stated that earlier on 09.07.2002 at about 2 P.M. he lodged written information at Joynagar P.S. regarding unnatural death of the victim. This earlier FIR does not disclose any name. The said FIR is

marked as Exhibit A in this case. PW23, Investigating Officer of this case did not examine this witness. This PW4 stated that he did not know personally how Mousumi died. This witness further stated that while he made the written information at Joynagar P.S., he did not make any allegation against any of the accused persons. PW4 further stated that he did not lodge any diary at the concerned P.S. on the allegation that Mousumi was unhappy in her matrimonial home.

- 20.** PW5, the cousin of the victim also stated in the same line of PW4 that he did not know about the matrimonial relationship between Mousumi and her husband. Mousumi and Dilip together used to come to the house of his uncle. So, this witness did not state anything about the alleged torture upon the victim by the appellants for demand of more money.
- 21.** PW6, uncle of the victim stated that the accused Dilip used to mix with the wife of Monoranjan Bairagi and the victim voiced protest against such mixing of Dilip Das with her and for which Dilip quarrelled with Mousumi. The said Monoranjan Bairagi has been examined as PW17 but he did not state anything about illicit connection of the accused Dilip Das. Like other witness this witness (PW6) also stated that Mousumi committed suicide by hanging with rope. On cross-examination, this witness stated that he heard about illicit relationship of the accused Dilip Das with the wife of Nirranjan Bairagi from the victim Mousumi and he also heard it from PW7, the mother of the victim. So, it is nothing but hearsay evidence regarding alleged illicit relationship of the accused Dilip with the wife of Nirranjan Bairagi. In cross examination this witness stated that he believed that because of illicit relationship between Dilip and the wife of Nirranjan Bairagi Mousumi was murdered. I have already stated that the said Nirranjan Bairagi has not been examined by the prosecution in this case. This witness stated that he did not complain either to any member of Gram Panchayat or to P.S. that the accused persons tortured Mousumi on demand for money.

- 22.** It is the specific case of the defence that the learned Trial Court failed to appreciate that mental disorder of the victim might have led her to commit suicide. PW7, mother of the victim stated that the uncle of her husband and her brother-in-law have disease of madness (mental disorder). PW11 stated at the time of cross-examination by the prosecution that Mousumi was of unsound mind and for her medical treatment, Mousumi used to remain in her father's house. PW15 stated that Mousumi told him that she was of unsound mind and the father of Mousumi often took back Mousumi to his house from her matrimonial home to medically treat her. This witness further stated that a sister of Mousumi was also of unsound mind and she also committed suicide by hanging with rope and an uncle of Mousumi is also of unsound mind. This witness further stated that the accused Dilip and his parents never misbehaved with the victim. This witness was not declared hostile by the prosecution. So, it would appear that the statements of this witness corroborate the statements of PW15 and PW11 that there is a history of mental disorder in the family of the victim. PW17 did not state anything which may corroborate the case of the prosecution. This PW17 stated that the marital relationship between Dilip Das and his wife was cordial and he heard that the wife of the Dilip committed suicide by hanging with rope. On cross-examination, this witness stated that a sister of the victim also committed suicide by hanging with rope. In cross-examination, this witness stated that often the father of the Mousumi took her to his house on the reason that the victim suffered from illness and he heard it from his neighbours. It is said by this witness in cross-examination that after her marriage Mousumi used to pass her time mostly at her father's house. PW18, one of the witnesses to the inquest report stated that he did not know how the wife of the Dilip Das died and in cross-examination he said that he was not aware about the contents of the inquest report.
- 23.** PW19, Medical Officer who held the post-mortem report opined that the death of the victim was due to the combined effect of hanging and

abdominal injury and ante mortem and homicidal in nature. This witness further opined that usually abrasions and bruises are not found on the body of a person who dies by hanging and if the body of the person is stuck any hard substance, the person may sustain the injuries as stated in the post-mortem report. In cross-examination this doctor said that if sufficient pressure is exerted on the body of the person who hanged himself or herself to save his or her life, the person may sustain such type of injuries on her abdomen. So, this PW19 is not sure about the causes of abrasions and bruises which were found on the body of the victim. There is no concrete opinion given by the doctor about such abrasions and bruises sustained by the victim over her body.

- 24.** PW21, a medical practitioner who visited the house of the appellants after committing suicide by the victim saw that the body of the wife of the accused Dilip Das was being brought down from the ceiling. He examined the victim and felt that her pulses stopped. This witness deposed that the wife of Dilip Das was hanging from the frame of the shade of asbestos and the head of the wife of Dilip might receive injury while her body was being brought down. This PW21 further stated in cross-examination that the body of the wife of Dilip might receive injury while she was being rubbed against wall while being brought down. So, as per statement of the witness the body of the victim might receive injury for the aforesaid reasons.
- 25.** PW22, A.S.I. of police who filled up the formal FIR stated in cross-examination that there is no signature or thumb impression of the de-facto complainant on the relevant column of the formal FIR although, it is mandatory under the provision of law. PW23, I.O. of the case stated that he did not find any bleeding injury over the dead body excepting haematoma on the neck. I have already stated that PW4, Gautam Kumar Sardar on 09.07.2002 at 2 PM lodged written information at Joynagar Police Station regarding unnatural death of the victim and the said FIR did not disclose any name and has not been treated as FIR and marked as Exhibit A in this case but PW 23 stated that he did not examine the said

PW4. It is said by this witness (PW23) in cross-examination that U.D. case was started on the basis of a written complaint made by PW4 but the said U.D. case was not in the C.D. Inquest was held over the dead body of the victim in connection with the said U.D. case being no. 44 dated 09.07.2002. It is said by this witness that he sized one Khil (latch) and one tape of red colour and on seizure on such articles he prepared a seizure list but on the date of his examination he did not find those articles in the Court. This witness specifically stated that from the inquest report prepared by the learned Executive Magistrate he did not find any bleeding injury over the dead body. PW7 stated that Mousumi used to narrate the incident after coming to her but PW23 stated that PW7 did not state to him that Mousumi used to narrate the incident before PW7 after coming to her. It is said by PW7 that Dilip did not like the bridal articles given to them but PW23 stated that PW7 did not state the said fact to him. So, there are apparent contradictions in statements made by PW7 at the time of giving deposition and at the time of giving statement before the recording officer.

- 26.** PW8 stated that he heard that Dilip made demand for some amount of money from Mousumi and he did not know any another incident concerning the material life of Mousumi. This witness also failed to state whether the parents of Mousumi made any complaint either to Pradhan of Gram Panchayat or to police after the marriage of Mousumi. So, no complaint was made before the fateful date of 09.07.2002 about the alleged torture inflicted by the appellants upon the victim. PW1 also failed to state the dates when demands were made by the appellants to bring the money.
- 27.** PWs 2, 3 and 4 could not state anything supporting the case of the prosecution. PW 5 being the brother of the victim also could not state anything about infliction of physical and mental torture upon his sister. The amount of money alleged to have been demanded by these appellants differs in statements of PW5 and PW6 and their evidences are also

contradictory to each other. PW5 deposed that his jhatha (uncle) gave Rs.15,000/- to Dilip at the time of marriage of Mousumi where as PW6 stated that at the time of marriage they gave Rs.10,000/- out of Rs.25,000/- and thereafter the father of the victim gave money to Dilip in instalments and by instalments they gave Rs.5,000/- to Dilip. It is said by PW7 in cross-examination that PW3 (Swapan Mondal) and PW4 (Gautam Kumar Sardar) took signature of her husband on a paper in their house. This PW7 who happens to be the mother of the victim stated in her cross-examination that they did not want to lodge any case against accused persons and they wanted to settle the matter.

28. Section 498A reads as follows:

"498A. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purposes of this section. 'cruelty' means - i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman: or (ii) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand".

29. The ingredients for an offence to be made out under Section 498-A of IPC require that there has to be cruelty inflicted against the victim which either drives her to commit suicide or cause grave injury to herself or lead to such conduct that would cause grave injury or danger to life, limb or health. The second part of this Section refers to harassment with a view to satisfy an unlawful demand for any property or valuable security raised by

the husband or his relatives. In the present case, no allegations which would fulfil the requirement of the second part are found. In order to attract the provisions of Section 498A of the Indian Penal Code, the cruelty or harassment meted out to the wife by her husband or relatives of her husband should be to the extent that it becomes unbearable.

30. Although, it is the case of the prosecution that there is a demand of more money by the appellants from PW1, the father of the deceased but there is no whisper that in prior to 09.07.2002 there was any complaint by the de-facto complainant or any of the family members regarding torture and/ or demand of money either before police station or to any statutory body.
31. It is profitable to quote the following observation of the Hon'ble Apex Court in case of **Jayedepsinh Pravinsinh Chavda v. State of Gujarat, (2025) 2 SCC 116** –

12. Section 498-AIPC provides for punishment to the husband or to relatives of the husband of a woman subjecting the woman to cruelty. "Cruelty" under this provision has been explained to mean-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

From the above report it is clear that 'cruelty' is not enough to constitute the offence. It must be done with the intention to cause grave injury or drive the victim to commit suicide or inflict grave injury to her. In the present case, the allegations levelled in the FIR do not reveal the existence of any such allegations. Those bald allegations by the defacto complainant about demand of dowry and cruelty are hard to believe. The complaint was bereft of any details like the dates on which the demand of dowry was made or mental or physical cruelty was committed on her. There were no

specific allegations about the alleged acts of dowry demand and cruelty in the evidences. Thus, the allegations without any corroborative evidence are just bald allegations and cannot be relied upon by the court. To convict a person under Section 498(A) IPC, there must be evidence to prove that wilful conduct of the person drove a woman to commit suicide or to cause grave injury or danger to life, limb or health (mental or physical). Absolutely there is no evidence in this case to prove that the victim suffered any of these due to the wilful conduct of the petitioners. The only allegation that the appellants used to inflict physical torture upon the victim is a vague statement and there is no specific allegation of any such injury being caused by the appellants herein.

- 32.** The mere fact that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations would not amount to cruelty but it must be of such nature as it likely to drive this spouse to commit suicide to fall within explanation to Section 498A of Indian Penal Code. Even assuming that there is illicit relationship, unless some other acceptable evidence is led in to establish such high degree of mental cruelty the explanation of 498A of the Indian Penal Code which includes cruelty to drive the woman to commit suicide would not be attracted. In the case on hand, there is no material to prove that such alleged illicit intimacy existed between the appellant and the victim and proved by the side of the prosecution.
- 33.** It is my opinion that, the prosecution failed to convince me about the act of the accused as a cruelty within the terms of the meaning as explained in Section 498-A of IPC. Therefore, I do not find any strong consistent, cogent and corroborative evidences in the prosecution to attract the ingredients of Section 498A of IPC. The facts and circumstances revealing from the evidences by itself sufficient to extend benefit of doubt to the accused. In toto, in my opinion, the prosecution failed to establish the guilt of the accused beyond all reasonable doubt to the hilt.

34. In view of the above discussions, this Court is of the considered view that the impugned judgment of the Trial Court warrants interference and has to be set aside.
35. In the result, this Criminal Appeal is **allowed**.
36. The impugned judgment and order of conviction and sentence passed by the learned Trial Court is set aside. The appellants are acquitted from the charges levelled against them.
37. The bail bonds if any, executed by the appellants shall stand cancelled and the fine amount if any paid by the appellants shall be refunded to them.
38. Let a copy of this order along with T.C.R. to be sent down to the Trial Court immediately.
39. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)