

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

C.R.A. 490 of 2019

With

CRAN 2 of 2024

Ranjit Mondal & Anr.

-Versus-

The State of West Bengal

For the Appellants : Mr. Soumajit Das Mahapatra,
Ms. Soma Mal,
Mr. Ali Ahsan Alamgir,
Ms. Madhuri Sinha.

For the State : Mr. Debasish Roy, Ld. PP
Mr. Rudradipta Nandy, Ld. APP.
Ms. Sanjana Saha.

Hearing concluded on : July 03, 2025

Judgment On : July 11, 2025

Prasenjit Biswas, J:-

1. The judgment and order of conviction dated 06.07.2019 and 08.07.2019 passed by the learned Additional Sessions Judge, Fast Track Court-I, Lalbagh in connection with Sessions Trial No.

02/June/2014 (Sessions Serial No. 29 of 2013) is assailed in this appeal.

2. By passing the impugned judgment and order of conviction the learned Trial Court found these appellants guilty for commission of offence punishable under Section 498A/34 and 302/34 of the Indian Penal Code and they were sentenced accordingly.

3. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction passed by the learned Trial Court, the present appeal is preferred at the behest of these appellants.

4. In short campus the story of the prosecution is that:

“The de-facto complainant being the father of the victim lodged a written complaint before the Raninagar Police Station alleging, interalia, that about two years back his daughter Santana Mondal got married to Ranjit Mondal (appellant no.1) and they were blessed with a baby girl who was aged about nine months at the time of alleged incident. It is stated in the written complaint that since after marriage the appellant no. 1 and his parents used to ill-treat and beat the victim almost regularly on demand of dowry. These appellants used to treat the

victim to kill and on 04.05.2013 she was beaten up by the appellants and as such, the victim sustained injuries on her person. On the next date i.e. on 05.05.2013 at about 7.20 A.M. morning all the accused persons killed the daughter of the de-facto complainant by throttling and hanged her with a towel. On the same day at about 8 A.M. morning the de-facto complainant came to know about the incident over phone and then he rushed to her in law's house and found her dead body there. Over the complaint a case being Raninagar P.S. Case No. 307/13 dated 05.05.2013 under Section 498A/302 of the Indian Penal Code was started against all the three FIR named accused persons."

5. After completion of investigation police submitted charge-sheet under Section 498A/302/34 of the Indian Penal Code against the accused persons. Charge was framed by the trial court under Sections 498A/302/34 of the Indian Penal Code against all the accused persons on 10.06.2014. Thereafter, one of the accused persons namely Arun Mondal, father-in-law of the victim died and his name was expunged from the charge. Alternative charge under Section 304B/34 of the Indian Penal Code was added and framed by the Trial Court against these appellants

namely, Ranjit Mondal (husband) and Sabitri Mondal (mother-in-law).

6. In this case, prosecution examined as many as 22 (twenty-two) witnesses. Documentary and material evidences marked as exhibits on behalf of the prosecution. Neither any oral nor any documentary evidences were adduced by the side of the defence.

7. Mr. Soumajit Das Mahapatra, learned Advocate for the appellants said that there is no clear and convincing evidences in the record regarding torture upon the victim by the appellants for demand of dowry. It is said that there were no demand of dowry at the time of marriage and certainly such demand for any dowry does not make any sense whatsoever. As per submission of the learned Advocate the prosecution failed to establish any kind of cruelty either mentally or physically upon the victim. No clear evidence has come in the record about the nature and substance of such demand, dates of such demands and consequent failure to meet such demand. It is said by the learned Advocate that during two years of conjugal life no complaint of torture for dowry demand was made before any authority. It is said that the

witnesses adduced by the prosecution as neighbors did not support the contention made in the written complaint and nobody saw the appellants committing the alleged crime. It is further said by the learned Advocate that the statements regarding the manner of causing injuries upon the victim is contradictory to each other. So, it is said that the depositions of the prosecution witnesses does not establish the essential ingredients of the offences punishable herein and in no manner substantiates the allegation sought to have been made against the appellants. There is no eye witness to this case which can prove the guilt of these appellants. It is said by the learned Advocate that PW7, PW8 and PW9 stated in their evidences that at the time of alleged offence Ranjit (husband of the victim) was not present at the spot. The attention of this Court is drawn to the evidence of PW13 who is the neighbor of the victim, also stated in the same line of PW7, PW8 and PW9 that the husband of the victim (appellant no. 1) used to leave the house in the morning for tuition and on the relevant date he left his house early in the morning.

8. Learned Advocate further assailed that these appellants have specifically denied their presence in the house where the fateful incident was happened which gets support from the testimonies of PW(s) 7, 8, 9 and 13. So, as per submission of the learned Advocate the prosecution has failed to bring home a single circumstance so as to call for an answer to the reverse presumption enumerated in Section 106 of the Indian Evidence Act. In support of his contention, he relied upon a judgment passed by the Hon'ble Apex Court in the case of **State of Madhya Pradesh-vs- Balveer Singh** reported in **2025 SCC OnLine SC 390**. So, it is said by the learned Advocate that the impugned judgment and order of conviction passed by the learned Trial Court may be set aside and the appeal may be allowed.

9. Mr. Debasish Roy, Ld. PP., for the State said that there is no material in the case record for which the impugned judgment and order of conviction passed by the learned Trial Court may be interfered with. It is said by the learned Advocate that undoubtedly the victim died within seven years of her marriage and she met her death in her in her law's house. It is further

contended by the learned Advocate that the evidences brought on record by the prosecution clearly shows that the victim was murdered by throttling and it gets support from the evidence of the autopsy surgeon (PW20) and post-mortem report (exhibit 10). It is said that the doctor who conducted the post-mortem report opined that the death was homicidal and ante mortem in nature and it was a case of asphyxia resulting respiratory failure caused by throttling. It is said that the de-facto complainant (PW1) has stated in verbatim which supports the contentions of the written complaint. It is further said that PW3 (brother of the victim), PW5 (mother of the victim) and PW2 (uncle of the victim) corroborate the statement made by PW1 and there is nothing in the record for which their testimonies can be disbelieved. It is further said that PW4, neighbour of the de-facto complainant also supports the case of the prosecution. So, as per submission of the learned Advocate that a clear case of murder by throttling has been well established by the prosecution witnesses. It is said by the learned Advocate that the prosecution gave sufficient credible evidence to establish the charge of cruelty for dowry demand, dowry death

and murder. So, as per submission of the learned Advocate the impugned judgment and order of conviction passed by the learned Trial Court may be upheld.

10. We have the considered the rival submissions advanced by both the parties.

11. PW1, Amulya Mondal/de-facto complainant has stated in his evidence that the accused persons used to assault his daughter (victim) as he could not provide dowry to the accused person. But in cross-examination, this PW1 stated that the marriage was solemnized in presence of many people without dowry. This PW1 has stated in his cross-examination that his daughter resided in the house of these appellants for about two years and during that period he never filed any complaint at any Court and he did not inform to any member of Gram Panchayat or any respected person about the alleged torture allegedly inflicted by these appellants. Moreover, at the time of lodging complaint before the police station after the death of the victim it was stated that the in laws of the victim demanded dowry from his daughter. At the time of inquest this PW1 along with his brother and son being PW2 and PW3 were

present but no allegation of torture demanding dowry was made. PW22, Investigating Officer of this case in his cross-examination has stated that no witness specifically stated before him that at the time of marriage there was any demand raised by the accused.

12. PW3, Saptam Mondal, the brother of the victim has stated in his evidence that he heard about the torture from his sister over telephone and the victim used to tell him about such torture while she used to come to their house. This PW3 stated that one day prior to the death of the victim she rang this witness and called him by saying that the accused persons would kill her. But in cross-examination, this witness stated that he did not state before police that his sister called him over telephone one day prior to her death and said that the accused person would kill her. So, this statement has been made by this PW3 for the first time before the Trial Court. This PW3 did not specifically say anything regarding demand of dowry allegedly made by these appellants.

13. PW5, Budhubala Mondal, mother of the victim stated in his evidence that during stay in matrimonial house, the appellant no. 1 and his family members used to assault her daughter on

demand of further dowry and her daughter told her that if dowry was not paid the accused persons would kill her. In cross-examination, this witness has stated that she could not say how much money was demanded by the accused person and how much was given to them. This PW5 stated in his evidence at the time of cross-examination that during lifetime of her daughter no case was filed against the accused persons, nor any “salishi” took place. This witness further said that there was no injury on the body of her daughter except mark on neck.

14. PW2, Santosh Mondal, uncle of the victim stated that all the accused persons used to inflict torture upon the victim on demand of dowry and this witness came to know about said torture directly from the victim. In cross-examination, this PW2 stated that he met the victim about two months prior to her death and he did not make complain to any police station or court. This witness is not the witness to the incident and he said that he heard from the neighbour of the accused persons that the accused persons throttled the victim and thereafter hanged her.

15. PW6, Anjali Mondal, aunt of the victim has stated in his evidence that her “bhasurji” used to tell her that the appellant no. 1 had stated to her that money and gold was required for marriage of his (Ranjit) daughter and he (Ranjit) used to tell her to bring money and gold from her father. This PW6 further said that they heard from the villagers that after killing the victim she was hanged. On cross-examination, this witness stated that the accused demanded dowry on sixteenth and she could say the name of the month but they demanded about ten days prior to the death of the victim. When the said statement made by this witness was confronted with the statement made before the Investigating Officer then PW22 stated that no witness specifically stated that at the time of marriage there was demand raised by the accused.

16. PW2 stated that he heard that the accused persons throttled the victim and thereafter they hanged her. PW6 stated that they heard from the villagers of the accused that after killing the victim she was hanged, whereas PW7, Jahangir Alam, PW8, Manindra Nath Mondal and PW13, Tahamina Bibi who are the neighbours of the appellants stated that the victim hanged herself.

17. PW8, Manindra Nath Mondal stated in his cross-examination that the appellant no. 1 (husband of the victim) was absent from his house on the date of alleged incident and the victim had good relation with the accused persons and the appellants had very good relation with the family members of the de-facto complainant (PW1). This PW8 further said that the victim was hanged and died in hospital. It is said by this witness that hearing hue and cry he went to the house of the accused persons and found that dead body of the victim was lying on a bench. In cross-examination, this witness stated that the appellant no. 1 was absent from his house and he went for tuition. It is said by this witness that the local people took victim to the hospital wherein she expired. This witness was not declared hostile by the side of the prosecution and as such, his evidence cannot be thrown away straightway.

18. PW9, Nasura Bibi, one of the neighbours of the appellants was cited as witness of the prosecution and she was declared hostile by the prosecution and cross-examined her by the prosecution but nothing has been elicited from such cross examination which may help the prosecution to prove its case. On

cross-examination by the defence she stated in the same line of PW8 and stated that the victim had good relation with the accused persons and she came to know that the appellant no. 1 went for tuition on the relevant date.

19. PW10, Anarkuli Bibi also echoed the same voice as made by PW8 and PW9 and stated in cross-examination by the defence that the victim had good relation with the accused persons. This witness was also declared hostile by the prosecution and cross-examined her but nothing has come out from such cross-examination which may support the case of the prosecution.

20. PW12, Tahirul Islam also supported the contentions made by PW8, PW9 and PW10 by stating in cross-examination by defence that he had never seen any dispute between the victim and the accused persons.

21. PW7, Jahangir Alam has stated in cross-examination made by the defence that on the date of incident there was a “rice ceremony” in their house and none of the appellants attended the ceremony. It is said by this witness in cross-examination that the appellant no. 1 is a private tutor and left house at about 5/6 A.M.

and returned home at about 10/11 A.M. It is further said by this witness that the father of the appellant no. 1 went to the field and appellant no. 2 (mother- in- law) went to local people for casual visit. This PW7 further said that the victim had very good relation with the accused persons. The statement of PW7 gets corroboration from the evidences made by PW8, PW9 and PW13. As per statement of PW8 the appellant no. 1 was absent from his house and he went for tuition. PW13 has stated in his evidence that the appellant no. 1 used to leave the house in the morning for tuition to Dauraghati and on the relevant date, the appellant no. 1 left his house early in the morning and he had good relation with the victim.

22. Appellant no.1 during his examination under Section 313 of Cr.P.C. has stated that it is fact that Santana died but allegation against them is not true and he was not present at his house then. He left for to give tuition to others elsewhere. The answer to the question put to the accused Ranjit Mondal which was given by him clearly showed that he was absent from his house on the relevant date and it had come with a clear and plausible

explanation of their innocence. This explanation offered by the appellant gets support from PW7, PW8, PW9 and PW13. The learned Trial Court at the time of passing the judgment convicting these appellants completely failed to consider the explanation offered by this appellant made under Section 313 of Cr.P.C.

23. It is trite law that if the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) of Cr.P.C., the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The use of the word “may” cannot be held to confer a discretionary power on the Court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice. Whether the defence acceptable or not and whether it is compatible or incompatible with the evidence available is different matter but if there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. In this case, the appellants came with a specific and plausible defence but the Trial Court did not consider the same. So, in our considered opinion the conviction of the appellants from this angle too, is

unsustainable. The appellants have specifically denied their presence in the house where the fateful incident was happened and such claim gets support from the testimonies of PW7, PW8, PW9 and PW13.

24. Section 106 of the Evidence Act is an exception to the rule which is Section 101 of the Act, and it comes into play only in a limited sense where the evidence is of a nature which is especially within the knowledge of that person and then the burden of proving that fact shifts upon that person. In criminal case, the burden of proof is always with the prosecution. It is the prosecution which has to prove its case beyond reasonable shadow of doubt. Section 106 of the Act does not alter that position. It only places burden for disclosure of a fact on the establishment of certain circumstances. We have to keep it in mind that Section 106 of the Act, only comes into play when the other facts have been established by the prosecution.

25. It is trite law that to fasten liability under Section 106 of the Indian Evidence Act, first, it is necessary that the prosecution must create an unbroken chain of circumstances from which a

reasonable grave suspicion arises regarding guilt of the accused person. In the judgment rendered by the Hon'ble Apex Court in the case of **Balveer Singh (supra)** explained that Section 106 refers two cases where the guilt of the accused is established on the evidence produced by the prosecution, unless the accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But if the accused in such case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him.

26. In the aforesaid case, the Hon'ble Apex Court held, inter alia, that:

“When facts are peculiar but the knowledge of the accused the burden is on him to present evident of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a

prima facie case has been established, for the Court must still find that he is guilt beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the Court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise there from. Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution."

27. In this case, it can be said from the attending facts and circumstances of the instant case that the prosecution has failed to bring home a single circumstance except unnatural death of the victim so as to call for an answer to the reverse presumption under Section 106 of the Indian Evidence Act. In the case when the prosecution is on a weak footing Section 106 of the Act would not be applicable under the peculiar facts and circumstances of the case.

28. We have already said that the allegations of the de-facto complainant in the written complaint about demand of dowry and cruelty are hard to believe. The complaint was bereft of any details

like the date on which the demand of dowry was made or mental or physical cruelty was committed upon the victim. There is no specific allegation about the alleged acts of cruelty on demand of dowry and as such said allegation of demand of dowry cannot be relied upon by the Court.

29. PW20, Autopsy Surgeon in cross-examination has stated that he had no special degree of autopsy. At the time of giving deposition the de-facto complainant (PW1) have stated that it was his suspicion that the victim was throttled and then strangulated and the post-mortem report also said that. PW20 stated in his evidence that he had no special degree of autopsy and was not specialist in the field then it is difficult to say the opinion of the said PW20 is sacrosanct and the cause of death as indicated in the post mortem is to be sustainable. We have already said that deposition given by the neighbouring witnesses of the appellants were based upon the suspicion and stories made up in the minds of those witnesses viewing the alleged crime scene but nobody saw the appellant committing the alleged crime. A large number of witnesses cited by the prosecution have been declared hostile and

did not support the case of the prosecution which indicates about the absence of certainty in the prosecution case.

30. In view of the above facts and circumstances and discussion made above we are of the opinion that the prosecution has miserably failed to prove that these appellants have committed the offence. The evidences adduced by the prosecution are not clinching and conclusive and therefore, we find it difficult to uphold judgment of the Trial Court.

31. Therefore, the appeal **succeeds**.

32. The judgment and order of conviction passed by the learned Trial Court dated 06.07.2019 and 08.07.2019 passed in connection with Sessions Serial No. 29 of 2013 (Sessions Trial No. 02/June/2014) is hereby set aside.

33. The conviction of the appellants namely, Ranjit Mondal and Sabitri Mondal are hereby set aside. If they are in correctional home shall now be released forthwith, unless their presence is required in any other case.

34. In view of provision of Section 437A of Cr.P.C. the appellants shall have to execute bail bonds with sureties and such bail bonds shall be in force for six months.

35. Let a copy of this order along with the Trial Court Record be transmitted to the appropriate Court for taking appropriate steps.

36. A copy of this judgment be sent to the concerned Superintendent, correctional home through the District Judge concerned for an immediate compliance. Trial Court Records be transmitted to the appropriate Court along with a copy of this judgment and order forthwith.

37. CRA 490 of 2019 alongwith all connected applications are disposed of accordingly.

38. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

[PRASENJIT BISWAS, J.]

39. I Agree

[DEBANGSU BASAK, J.]

