

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 197 of 1988

**Narayan Chandra Sahu & Anr.
-Vs-
The State of West Bengal**

For the Appellants : Mr. Himanshu De
Ms. Monami Mukherjee

For the State : Mr. Avishek Sinha

Heard on : 05.12.2025

Judgment on : 24.03.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is directed against an order of conviction dated 30.04.1988 passed by the Learned Sessions Judge, Midnapore in Session Trial Case No.XX of March, 1987 arising out of G.R. Case No.1122 of 1980, convicting the appellants under Section 498A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of 2 years.
2. The prosecution case precisely stated on 02.09.1980 one Ranatosh Sahoo, brother of the deceased/victim lady lodged a written complaint at the police station alleging inter alia that his sister i.e. the victim lady was married to appellant no.1 and a male child was born to them. It had been alleged that the deceased/victim lady was cruelly tortured on account of non-fulfillment of demand of a radio, bi-cycle and a wrist watch. The villagers of Sadikpur

assembled and attempted to resolve the disputes. However, the torture on the victim lady/deceased still continued. On September 01, 1980, the information was received that the deceased/victim lady had committed suicide by hanging herself. The complainant learnt upon enquiry that on August 31, 1980, the appellants drove her out of the house after removing the conch shell bangle and iron bangle. Thereafter, upon the intervention of one Surendra Nath Sahoo, she entered her matrimonial home. The complainant also stated of receiving letters of deceased/victim lady in which allegations of torture meted out to her were stated by the victim lady.

3. On the basis of a written complaint, the Ramnagar Police Station Case No.3 dated 02.09.1980 under Sections 302/201 of the Indian Penal Code was initiated for investigation.
4. Upon conclusion of the investigation, the Investigating Agency submitted a charge-sheet under Sections 302/34 of the Indian Penal Code & Section 306 of the Indian Penal Code against the appellants to which they pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 13 witnesses and examined certain documents.
6. The Learned Advocate for the appellants submitted the following points of argument:-
 - i. Observation of the Learned Trial Judge:- *“For the charge under Section 302 IPC is concerned, the accused persons are to meet a case that in furtherance of their common intention they had intentionally caused the death of Anjali Bala Sahu. There were two accused*

persons in the same house and there is nothing on record to indicate that either of them have committed the murder. I can only hold that the charge under Section 302 IPC has not been brought home against either of the two accused persons.”

“For the charge under Section 306 IPC one must prove that the death was due to suicide. The doctor could not give any definite opinion that it was a case of suicide. When there is no suicide, there cannot be an abetment which led to suicide. I must hold that there being doubtful evidence of suicide by Anjali Bala, the charge under Section 306 IPC may not be sustained against the two accused persons.”

“..... There was consistent statement about demand of material dowry and of torture thereafter. I can hold that the evidence on record is sufficient to conclude that for non-fulfillment of the demand by Narayan Chandra Sahoo and Rukmini Sahoo, Anjali was consistently tortured physically and mentally which amounted to cruelty under Section 498A IPC.”

- ii. PW-1 Ranatosh Saw (Elder Brother of the Victim Lady) deposed the marriage between the appellant no.1 and the victim lady had taken place 10/12 years ago from the date of incident. The father of the victim lady (PW-2) received a letter where the victim lady had mentioned about the tortures meted out to the victim lady. It was further stated that when PW-1 and his father used to visit the matrimonial home of the victim lady, the appellant no.1 used to said

that he would marry for the second time and the appellant no.2 used to assault that he would give her brother in marriage again.

However, the alleged four letters were produced by PW-1 before the Investigating Officer (PW-11) on September 27, 1980. Such letters did not reflect the specific date and signature of the victim lady. The said four letters were not produced before the Salish Sabha earlier but were produced before the police later. PW-11, 1st I.O. did not collect any handwriting of the victim lady either from the house or from school. Thus, it created a doubt on the genuineness of the contents of the letters and there was a high probability of the letters being manufactured.

The evidence of PW-1, on scrutiny would reveal except for mere allegations that the appellant no.1 would remarry, there were no other allegations to nail the appellants under the charge under Section 498A Indian Penal Code.

Moreover, the Post-mortem doctor also did not find any external injuries over the person of the deceased.

As far as Section 498A of the Indian Penal code was concerned, there were no specific allegations against both the appellants which were general and omnibus in nature.

- iii. PW-2, Ramani Kanti Sahu (Father of the Victim Lady) deposed the appellant no.1 used to create pressure upon the victim lady for the fulfilment of material dowry like radio, bicycle and wrist watch. However, in the entire evidence of PW-2, there was no whisper

regarding the mode and fashion of assault and what the various tortures were.

However, no charge was framed under Section 304B of the Indian Penal Code and the Learned Court acquitted the appellants under Sections 302/306/34 of the Indian Penal Code.

- iv. PW-3, PW-4, PW-5, PW-8, PW-9 and PW-10 were declared hostile by the prosecution stated that the relationship between the appellant no.1 and the victim lady was normal and the appellants behaved properly with the victim lady. They further stated that they never saw the appellant no.1 to torture his wife.
- v. PW-6 Sri Krishna Maity (Post-mortem doctor) deposed *“due to softening of tissues and decomposition of the body no definite opinion could be given regarding cause of death. But the presence of ligature mark itself was in favour of homicide, Death, in my opinion, took place more than 49 hours before my examination. If dead body is burg up by neat immediately after death, there may be post mortem ligature mark. Minor external injuries may not be found in a decomposed body, but major external injury may be found. The ligature mark that I have found in the present dead body was likely to be post mortem in nature.”*

It implied the cause of death of the victim lady was not definite. Accordingly, the appellants were accorded the benefit of doubt and rightly acquitted from the charge under Sections 302/306/34 of the Indian Penal Code.

Furthermore, the Post-mortem doctor did not find any external injuries on the person of the deceased. Therefore, the allegations of physical torture under Section 498A Indian Penal Code cannot be said to have been committed by the appellants.

- vi. The appellants were convicted under Section 498A of the Indian Penal Code but no charge was framed under Section 498A of the Indian Penal Code. It was not merely an irregularity but an illegality which goes to the root of the case. Learned Trial court had given reasons observeing the appellants were given sufficient opportunity/notice of the allegations that they not only assaulted deceased/victims but also advanced mental torture. Therefore, there was no requirement to frame a specific charge under Section 498A of the Indian Penal Code. Such observation by the Learned Trial Court was totally erroneous in the eyes of law and it also caused serious prejudice to the appellants and thereby, vitiated the conviction and sentence under Section 498A Indian Penal Code.

Section 216(1) of the Code of Criminal Procedure stated any Court may alter or add any charge at any time before judgment was pronounced. However, the Learned Court below had neither altered the charge nor added the charge before the pronouncement of the judgment and thereby, it had caused serious prejudice to the appellants.

7. The Learned Advocate for the State submitted Section 498A of the Indian Penal Code came into force in the year 1983. The incident of assault on the

victim reportedly occurred in the year 1980, when the provision of Section 498A of the Indian Penal Code was not applicable. The conviction under Section 498A of the Indian Penal Code was granted without altering the charge.

8. A circumspection of prosecution witnesses reveals as follows:-

- i) PW-1 deposed he was the elder brother of the victim lady. The marriage between the appellant no.1 and the victim lady. The father of the victim lady (PW-2) received a letter where the victim lady had mentioned about the tortures meted out to the victim lady. The appellant no.1 used to create pressure upon the victim lady for providing radio, bicycle and wristwatch. It was further stated when PW-1 and his father used to visit the matrimonial home of the victim lady, the appellant no.1 stated he would marry for the second time and the appellant no.2 used to threaten to give her brother in marriage again. On 01.09.80, he got information from one Gajendra Sahu that his sister died due to hanging. On way to his sister matrimonial home, his father lodged a diary at Ramnagar P.S. about such death due to hanging. His father went to Sadikpur with two home guards. He went to Sadikpur on the next day via Ramnagar P.S. He was accompanied by police officers and went to the house of the appellant no.1.

The alleged four letters (marked as Exbt.-2 to Exbt.-2/3) were produced by PW-1 before the Investigating Officer (PW-11) on September 27, 1980. Also, such letters did not contain the specific

date and signature of the victim lady. The said four letters were not produced before the six salish sabha earlier but were produced before the police later.

- ii) PW-2 reiterated the evidence of PW-1.
- iii) PW-3, PW-4, PW-5, PW-8, PW-9 and PW-10 declared hostile by the prosecution.
- iv) PW-6 deposed on 03.09.80 he conducted post-mortem examination on the dead body of a female one Anjali Bala Sahu i.e. the victim in connection with Ramanagar P.S. Case No.3/80. It was a decomposed dead body with softening of the tissues. Ligature marks were found around back high up of the hyoid bone just near the chin. The ligature mark was continuous round. On dissection, he found the stomach slightly congested. It contained semi liquid material with indigested rice. The small intestine was found distended with gas. The bladder was empty.

Due to softening of tissues and decomposition of the body no definite opinion could be given regarding cause of death. But the presence of ligature mark itself was in favour of homicide. Death, in his opinion, took place more than 49 hours before his examination. If a dead body was hung up by neck immediately after death, there might be post mortem ligature mark. The ligature mark that he had found in the dead body was likely to post mortem in nature.

- v) PW-7 deposed he was the officer-in-charge of Ramnagar P.S. in December, 1981. On 02.09.80 at 08:00 p.m., PW-1 came to the

P.S. and one his statement he drew up the F.I.R., which was marked as Exbt.-1/1. He took up investigation of that case. On 25.08.1982 he examined PW-1 and PW-2 and recorded their statements. On 06.10.1982, he submitted charge-sheet after completing investigation.

- vi) PW-7 in his cross-examination stated that on 25.08.82 he had examined another witness named Gajendra Nath Sahu. In addition to PW-1, PW-2 and Gajendra Nath Sahu, he had examined no other witness. During his investigation, he made no attempt to collect any writing of the victim either from her home or from her school.
- vii) PW-11 deposed on 02.09.80 he was attached to Ramnagar P.S. as the 2nd officer. PW-7 was the officer-in-charge and he was the officer on duty on 02.09.80. The F.I.R. was drawn up by PW-7 in Ramnagar P.S. Case No.3 dated 02.09.80. Investigation was entrusted to him and he took up investigation. On 02.09.80 itself he went to village Sadikpur in c/w investigation of the specific case. He went to the house of the appellant no.1 and found there A.S.I. to be present. He prepared inquest report of the dead body and sent it for post-mortem examination. He inspected the house of appellant no.1 thoroughly. He prepared a rough sketch of the house and its precincts in his own hand with explanatory notes which was marked as Exbt.-4.

On 03.09.80, he had arrested the appellant no.1 and 2. During investigation, the complainant PW-1 had produced certain letters before him on 27.09.80. The same was seized under a seizure list which was marked as Exbt.-2, 2/1 and 2/2 only). He had collected the post mortem examination report of the deceased during investigation. Certain alamats seized by A.S.I. A. Nath were handed over to him and he sent the alamats, some blood stained earth and control earth and a printed saree to the F.S.L. for chemical examination and report.

- viii) PW-12 deposed on 02.09.1980 he was posted as a Constable at Ramnagar P.S. He had accompanied A.S.I. of Ramnagar P.S. to Sakidpur on 02.09.80. In his presence inquest was held on the dead body of the victim in the house of appellant no.1. It was identified to them by the villagers. After inquest, the dead body was taken by him to Contai S.D. Hospital under the orders of the A.S.I. along with challan and a copy of inquest report. He had identified the dead body to the doctor, who held P.M. Examination. He brought back the P.M. report with wearing apparels of the deceased/victim and some materials collected by the doctor in a bottle and handed over the same to I.O.
- ix) PW-13 deposed on 01.09.80 he was an A.S.I. of police attached to Ramnagar P.S. He was in-charge at the P.S. at 09:45 p.m. on that day in the absence of superior officer. At that time PW-2 came to the P.S. and submitted a written report concerned the death of the

victim. On that report, he started his P.S. U.D. Case No.6/80. He sent two Home Guards to keep watch on the dead body.

He set out for the village of occurrence on 02.09.80 along with others police officials. He reached Sadikpur at the house of appellant no.1. He found the door lying uprooted with its frame. He entered the room and found a body of a woman hanging from the roof with the help of a rope. The appellant no.1 identified the dead body as that of his wife. He saw the toe of the dead body touched the floor and the toe was bleeding. There was a bleeding mark on the floor. The cot wherefrom the dead body was lying was 6'-4" above floor level. A portion of the rope by which the dead body was hanging was found tied around her right arm pit and the end of the rope was found pressed against that touched roof. He noticed three bleeding marks on the right mandible of the dead body. The dead body was brought out by appellant no.1 and one Murari Khatua. He held inquest on the dead body there. He noticed a 7" long hematoma on the abdomen of the dead body. The hematoma was 2½ wide in the lower part and 3½" wide in the upper part. The eyes were found a bit open. The teeth clasped against each other. He noticed black mark around her neck and mark of a knot below the chin.

The broken door was seized under a seizure list which was marked as Exbt.-5/1. He had found a Biscuit tin container near the foot of the hanging dead body. That tin and the rope by which

the dead body was hanging as also some blood stained earth from the floor and some control earth were seized from the P.O. He made a proper seizure list which was marked as Exbt.-5/2, Exbt.-I and Exbt.-II.

- x) PW-13 in his cross-examination stated that after receipt of the written report from PW-2 he had lodged a G.D. entry in the G.D. book of his P.S. He had prepared an inquest report and obtained the signatures of the witnesses thereon.

9. The Learned Advocate representing the respective parties have arguably explained the nuances of the case on the perspective of evidence and interpretation of law.
10. Assessed the evidence on record as well as the respective submissions. Section 498A of the Indian Penal Code was inserted into the Indian Penal Code by the Criminal Law (Second Amendment) Act, 1983 being effective on and from December 25, 1983.
11. Article 20(1) of the Constitution of India prohibited implementation of ex-post facto laws. Since the act of assault was not an offence under Section 498A of the Indian Penal Code when it was committed in 1980, conviction under the said Section could not be legally granted.
12. Section 222 of the Code of Criminal Procedure legally permits an accused to at times convicted of a minor offence without being charged, however Section 498A of the Indian Penal Code was promulgated to address a specific offence requiring proof of cruelty (as defined in the explanation to Section 498A of the Indian Penal Code). It emphasized a series of acts constituting

continuous harassment or a willful act compelling the woman to commit suicide subjected to severe injury, rather than a single isolated incident of assault.

13. Criminal laws in India are devoid of application and implementation retrospectively to offences committed prior to its existence.
14. In the instant case Section 498A of the Indian Penal Code could not have been applied without altering the charge since the provisions of the said Sections were inapplicable retrospectively.
15. The conviction of the appellants and the sentence accordingly are set aside.
16. In view of the above discussion, the instant criminal appeal being CRA 197 of 1988 is allowed.
17. Accordingly, the instant criminal appeal stands disposed of.
18. There is no order as to costs.
19. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
20. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)