

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 389 OF 2011

MANIK SARKAR

VS

THE STATE OF WEST BENGAL

For the Appellant : Mr. Pawan Kr. Gupta, Adv.

Mr. Anindya Ghosh, Adv.

Mr. Pronojit Roy, Adv.

Ms. Sofia Nesar, Adv.

Mr. Santanu Sett, Adv.

For the State : Mr. Anand Keshari, Adv.

Ms. Suchismita Dutta, Adv.

Reserved on : 06.04.2026

Judgement on : 02.07.2026

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CHAITALI CHATTERJEE DAS, J.:-

1. Assailing the Judgement and Order dated 29.6.2011 passed by Learned Sessions Judge, Fast Track court, Balurghat, Dakshin Dinajpur in Sessions Trial no. 20/2008 convicting the appellant for commission of an offence punishable under Section 498A of the Indian Penal Code and sentenced him to

suffer simple imprisonment for three years and to pay a fine of ₹ 2000 in default to suffer simple imprisonment for a further period of two months.

Factual Matrix

2. The complaint was lodged by the complainant being the brother of the deceased victim against the appellant and other in-laws alleging inter alia that the marriage was solemnized 10 years back according to Hindu rights and custom with the present appellant. The father of the complainant gave ₹ 20,000 in cash and gold ornaments and other articles. The sister of the present complainant delivered two children and after marriage up to 3 years the family was maintained by the accused properly. After that the accused used to fall out quarrel with the sister of the complainant without any rhyme or reason and she was subjected to physical and mental torture on the ground of demand of more money. The accused person ultimately drove her away from the matrimonial home after physical assault. The members of the family of the complainant after convincing sent her back to the matrimonial house due to poverty and incapability of the family of the complainant to maintain her immediately after that the accused persons by way of different manner started demanding money from the sister of the complainant. It was further alleged that in the morning of 4.4.2006 the accused persons in connivance with each other fell out a quarrel with the sister of the complainant and deprived her food and confined her in a room without food and water. On 6.4.06 the complainant came to learn about the severe illness of her sister and that she was admitted to Bhalurghat hospital. Then he received the news and found her sister lying in the hospital in burnt condition who subsequently succumbed to her injuries on the next date and the accused no. 1 fled away from his house.

On the basis of the complaint the Kumarganj P.S case No. 38/06 dated 10.4.06 under section 498A/306/34/406 IPC started against the FIR named accused persons and the chargesheet was submitted against them. The charge was framed by the learned Additional Sessions Judge, Fast Track Court, Balurghat against the present appellant along with other accused persons under section 498A/306/34 IPC and the same was read over and explained to the accused persons who pleaded not guilty and claimed to be tried. Accordingly the trial commenced. The learned Trial Court after considering the facts and circumstances and the evidence adduced before the court delivered the judgement whereby all the accused persons were acquitted in respect of charge of offence punishable under section 306 of IPC and the appellant was found convicted in respect of charge under section 498A IPC.

Submissions

3. The Learned Advocate appearing on behalf of the appellant argued that FIR was lodged against 5 persons under Section 498A/306 and all the accused persons were acquitted from the charges under Section 306 excepting the present appellant and all were acquitted from the charges of 498A IPC also. During inquest all witnesses were present from the side of victim as well as the appellant who signed therein. The inquest suggests that she committed suicide. No demand of dowry was mentioned. The daughter of the deceased was not cited as a witness. P.W. 2, the mother said about a dying declaration which is highly questionable as it is evident from the evidence adduced by other witnesses and the doctor that the patient was not in a condition to say anything. The taxi driver and the other witness also corroborate such version that the patient was unconscious and she did not say anything on the way to

hospital. The allegation of torture made in the FIR is vague and omnibus in nature as it is absolutely silent of any date, time or year since when the torture started. The neighbour and the relatives did not support the case of prosecution and deposed that the appellant and the deceased had a good relation. It is further argued that it is not possible for a person with 80% percent burn injury and under sedative to say anything to the mother only. In the post mortem no smell of kerosene oil was found and the jerkin containing liquid was never sent for forensic examination to establish whether it was kerosene or not. The contention of the Learned Advocate is that the first part of cruelty as per Section 498A is not established rather hostility of his mind can be reflected even in charge sheet that appellant committed murder. There is the delay in lodging FIR is not explained. Nowhere it was stated that the death was due to demand of dowry.

4. The Learned Advocate of the representing the prosecution on the other hand raises strong objection and submits that the Learned Trial Court considering the materials on record passed such order of conviction against the appellant. There are sufficient evidence adduced on behalf of prosecution and incriminating evidences were placed before him and accepting denial of the same he did not cite any evidence. Accordingly prayed for setting aside the order of conviction.

Analysis

5. In order to bring home the charges the prosecution has adduced as many as 18 witnesses which includes the complainant and the family members, the police personnel and autopsy surgeon. In order to find out the truth it is

necessary to scan the evidences adduced by the prosecution witnesses as to how far the case has been proved beyond the shadow of reasonable doubt. The witness no.1 is the brother of the deceased and he deposed the marriage of the appellant with the deceased held about 10 to 12 years back when gave cash amount and other articles. His testimony corroborates with the content of the written complaint that he could not meet up the demand of dowry made further on behalf of the husband and in-laws of the deceased and though the victim complained about torture and came to their house the family members after consoling sent her back. Thereafter on 6.4.2006 received information over telephone from the appellant about the admission of their sister and when they went to the hospital found their sister admitted with burn injuries all over her body. The victim told the mother about the serious torture for last two days meted out to her but she could not say the reason how she caught fire. In his cross-examination he disclosed that after marriage the witness and his wife stayed in her matrimonial house for about one and half years but he could not say any dates on which the deceased was tortured by her husband and in-laws for demand of money or the amount demanded. After marriage the family members were in visiting terms with her matrimonial home. He further disclosed that so long the deceased was alive they had visiting terms with each other. He did not tell any member of village panchayat regarding any torture meted out to his sister. No shalish held over any such matter. His testimony further reveals that at the time of marriage he was a minor and he heard from his mother about payment of ₹ 20,000 and gold ornaments. However from the entire testimony of this witness it is found that the deceased came on many occasion in their house and they sent her back to her matrimonial home and

even their grandfather Gopinath also once went the victim since deceased to her matrimonial home. He denied that the deceased was adamant in nature or had a tendency of buying new things or wanted to purchase or she used to become infuriated if restrained from purchasing. It is also found that the daughters of the deceased reside with the father.

- 6.** P.W. 2 is the mother of the deceased and she corroborated the entire facts as stated by complainant and further that she gave a cow to the accused. She further deposed that her daughter could not say as to how she caught fire. It can be found from her evidence that son P.W. 1 along with his wife resided at the matrimonial house of the deceased for long 5 years and her younger daughter resided in the matrimonial house for about 3/4 years after marriage and they had visiting terms with each other . She could not say any dates on which the accused persons tortured her daughter. From her evidence it is found that on 06.04.2006 the husband of the accused came to their house and informed about the admission of their daughter in the hospital. After she met with the daughter in the hospital on the next date she did not report the police what she heard from her daughter in the hospital. P.W. 1 and 15 other villagers accompanied her at the hospital but none of them reported the incident to the police. She also said that all along the appellant, Shibu were in the hospital till she was alive. From her testimony it is seen before the court she disclosed about consuming poison by herself once. P.W.3 is the uncle of the deceased and according to his evidence the husband and in-laws murdered his niece by setting fire. According to him the torture started within one year from the marriage but he did not inform or reported the same either to Police

or before panchayat or before any other forum. He did not advice the father of the deceased to inform the matter to police. He could not say the specific date on which the deceased gave the cow to the appellant.

7. P.W. 4 is the resident of the same village of the accused and from his evidence it is seen that when he was cutting grass by the side of the pond adjacent to the house of the accused and the accused and his mother was taking a bath in the pond, he found fire and entered into the house and saw the deceased holding a big spoon and cooking rice and then the victim was conscious and she informed that she caught fire from the matchstick. He never found the accused or his mother to misbehave with the deceased and he never found any complaint from the victim about any torture. This witness was not declared hostile. P.W. 5 a rickshaw puller who also deposed that she died sustaining burn injuries while cooking, was declared as hostile. P.W.6 the local villager of the matrimonial house of the deceased was declared hostile who deposed that she died sustaining burn while cooking.

8. P.W. 9 Karuna Basak is a neighbour who deposed that she could have identified the mother of Manik and other sisters have they remained present and she also deposed that wife of Manik died about 4/5 years while residing in her matrimonial home. She heard from villagers about the death of said lady sustaining burn injury while cooking. The relation between the deceased and her in-laws was good. After this statement she was declared hostile by the public prosecutor. She denied to have made any statement before I.O. or examined by I.O. Her cross-examination by defence reveals that the deceased as well as the mother-in-law also were in visiting terms with the witness and

the deceased never made any complaint during her lifetime before her and she never heard about any torture from their villagers.

9. P.W. 10 is a taxi driver by profession as well as had a phone-Booth (PCO) at Dangarhat. On 06.04.2006 in between 2 to 2.30 P.M. he received a phone call from Fakirganj Bazar and asked him to take patient to Hospital and then he went and took the lady who sustained burn injury to Balurghat Hospital. The patient was unconscious and during the journey the patient did not tell anything the persons who accompanied the patient in the taxi were discussing that she caught fire while cooking.

10. P.W. 11 Sanjib Sarkar deposed being a resident of Fakirganj village that he was an employee of the PCO Booth of Ujjal Pramanik which was attached with Nanda Saha Bhandar owned by Narayan Pramanik. Manik Sarkar on 06.04.2006 came in the booth and made a phone call to Dangarhat asking for a taxi to go to Balurghat Hospital. From his cross-examination it appears that after Manik made a phone call the villager brought his wife found with burn injuries on her person in front of their booth. So long the taxi reached the patient did not say anything as she was unconscious. He heard from the villagers that she caught fire while cooking.

11. P.W. 12 Sikander Ali Molla who run a STD booth as well as maintained a Xerox machine who accompanied police on 12.04.2006 according to their request to Fakirganj with camera and as per direction he entered inside a room of Fakirganj house took snaps of the cot inside the room as well as the floor and after developing the print he handed over the same to the police. Police did

seize the memory card with which the snaps under Mat. Exhibit was taken. He did not possess any technical knowledge about the format of digital camera.

12. P.W. 13 Laxman Saha a member of West Bengal Health Service posted as M.O. surgeon, District Hospital, Balurghat. On 08.04.2006 he held the P.M. examination and found condition of the dead body as stout and rigor mortis set on all four limbs. He further found the whole of the body was burnt out except right anterior leg and part of left foot. There was carbon shoots in the trachea and no other injury or disease was detected. The cause of death was found due to burn injury and ante mortem in nature. The witness proved his signature on the post mortem report. The deceased was admitted in the Hospital on 06.04.2006 in then Burn Unit and died on 07.04.2006. He attended the patient and prescribed for the necessary treatment. He also proved the bed head ticket of the patient (Xerox copy) comprising five pages including emergency slip. During his cross examination he deposed that her husband Manik Sarkar brought the patient for admission on 06.04.2006 and analgesic sedative drugs were applied to the patient considering her condition. The prognosis was very bad and it was duly explained to the patient party. He did not give any opinion in the BHT regarding the cause of death of the patient as to whether it was homicidal, accidental or suicidal. The exhibit 3 does not mention any detection of smell of kerosene oil on the dead body when the P.M. was held. In a case of severe burn there is possibility of irrecoverable shock. He did not mention the rate of pulse, blood pressure and rate of respiration in the BHT.

13. The prosecution cited P.W. 14, Kanika Das who purchased the land measuring 3 bighas at a consideration of Rs. 90,000/- from Naresh Chandra

Shil about 12/13 years ago. According to her testimony he sold the said land to meet up the expenses of the marriage ceremony of his daughter.

14. P.W. 15 is the Judicial Officer who proved the statement recorded by her under 164 Cr.P.C of witness Aroti Shil. In her cross-examination she said that during recording such statement the witness Aroti Shil did not state before her that the deceased told her in the hospital that accused Manik physically assaulted her for 3/4 days and did not give her food.

15. P.W. 16 kalipada Das is home guard posted at Balurghat when as per order of the Investigating Officer escorted the dead body of a woman to Balurghat morgue by a dead body challan. P.W. 17 did the enquiry in connection with Balurghat UD case no. 79/2006 dated 07.04.2006. During such enquiry he held inquest of a dead body being wife of the appellant in the burn ward of Balurghat District Hospital in presence of witnesses namely Manik Sarkar the husband, Ganga Charan Shil, Goutam Shil and Subhas Chandra Shil. The witnesses also signed on the inquest report in his presence.

16. P.W. 18, Pradip Chandra Shil on 10.04.2006 was posted at Kumarganj Police Station as S.I. and he was entrusted to investigate the Kumarganj P.S. case no. 38/06 during investigation he seized one plastic jarican which was marked with exhibit 6, one photograph of victim and collected post mortem report from Balurghat District Hospital. He made prayer for recording statement of the mother of the victim. He submitted the charge sheet against the five accused persons after completion of investigation. From his cross-examination it appears that he did not conduct any investigation that where from the marriage gift purchased like gold ornament, T.V. set etc. by the de facto complainant and his parents. He did not seize any sale deed executed by

the father of the complainant in favour of Kanai Chandra Das showing consideration to the tune of Rs. 90,000/-, he did not examine the emergency attending Medical Officer of District Hospital at Balurghat who admitted the victim on 06.04.2006. He did not cite the name of emergency attending doctor as witness and not made the doctor who treated the victim during her detention at hospital as witness. He deposed that in the bed head ticket of the victim the column "how injury occurred" was lying blank. He did not send the jarican containing kerosene oil smell for chemical examination to ascertain that the said liquid was kerosene or not. He did not conduct any investigation whether any complaint was lodged by de facto complainant and her relatives against accused persons towards any incident or dispute which took place during the continuation of the marital life of the deceased. He admitted that Aroti Shil did not state before him that Manik inflicted physical assault upon deceased and kept her unfed for 3 / 4 days just preceeding to the date of incident. He also admitted that the mother did not state that the victim stated to her that she has not been able to narrate how she caught fire. He did not get any material during investigation to that effect any salish took place between two families to resolve disputes.

17. The Learned Sessions Court considered the evidence of P.W. 2, mother regarding the statement made before her by the victim at her death bed to that effect that the victim was not given any food for last 3 / 4 days and she was beaten by her husband. The Learned Sessions Court was of the opinion that the husband of the deceased took active part in the commission of offence of cruelty as the wilful assault and keeping one's wife unfed for 3 / 4 days can obviously cause danger to life limb or health which likely to drive the victim to

end her life by drastic decision of committing suicide and hence clearly comes within the definition of cruelty as defined in the explanation of 498A of the Indian Penal Code, accordingly passed the order of conviction. From the evidence of the P.W. 1 being the brother of the deceased it is seen that the daughters of the deceased were residing with the father. The marriage took place 10 to 12 years back and prior to the incident no complaint can be found to have been made by any of the family member before any authority regarding any cruelty inflicted upon the deceased by the husband.

18. In the present case the marriage is 10/12 years old and the allegations made by the complainant primarily lacking in material particulars necessary to meet the required threshold. Apart from asserting that the convict-husband had harassed her for dowry, the complainant had not provided any specific details or described any particular instance of such harassment. The allegations in the FIR and the depositions of the prosecution witnesses indicated that the complainant was allegedly ousted from the matrimonial home and due to poverty and incapability they could not meet up the demand and sent her back to the accused but there is no whisper within this long conjugal life when such incident happened. She was also reportedly subjected to repeated torment over dowry demands, and, when unable to meet them, was allegedly physically assaulted by the convict and his family but no specific details of any of such incident has been described. It is further evident that the P.W 1 along with his wife stayed at the matrimonial house of the deceased for long one and half years and not a single allegation made against the appellant or his family members regarding any mistreatment of either them or the deceased. The brother of the victim did not bother to reside in the matrimonial

house of his sister despite knowing that they made huge demand of money and on account of non-payment his sister was tortured. No iota of evidence is adduced to substantiate that the panchayet member was intimidated. Most interestingly the P.W 1 did not utter a single word about his stay at the house of the deceased and it was revealed only in course of cross examination. The mother of the deceased and P.W. 1 deposed P.W.1 stayed at the matrimonial house of his sister with his wife for 5 years and their youngest sister Shefali also resided for 3 to 4 years. All of them had a visiting term with their family members. She further deposed that the husband himself came to their house and informed that the victim has been admitted at the hospital. She further said that Manik and Shibu both were all along present in the hospital till the deceased was alive. So it suggests that after getting the information on 6.4.2006 they went to hospital on the next date found their sister/daughter lying in burnt condition and came to learn from about the torture on her sister from her only but did not lodge the complaint till 10.4.2006 when she died and no explanation can be found to justify why there was such long delay. The testimony of the mother further suggests that the husband /appellant went to their house on 10.4.2006 that is after the date of death and on that day the complaint was lodged. On the contrary there is eye witness who saw the appellant and his mother were taking bath in the pond and the witness found the victim in the kitchen who caught fire .The evidence manifest cordial relation prevailed between the deceased and the appellant and he was not declared hostile. The witnesses who belonged to the village of the appellant are mostly declared hostile who did not support the prosecution case. It can be found further that the victim while taking to hospital was unconscious which

is further supported by the taxi driver .The patient was brought to the hospital by the husband and the evidence of the doctor suggest that analgesic sedative drugs were applied and no smell of kerosin could be found. No abnormality in the PM and the cause of death was burn injury and ante mortem in nature. No other injuries were found. The glaring inconsistencies the severe improbabilities and suppression of the factum of the stay of both de facto complainant and his sister at the matrimonial house of the deceased for long span of time unless disclosed during cross examination coupled with any previous complaint during their prolong stay at her house fails to support the case of prosecution. The observation of the Learned Court that there was a dying declaration made by the victim to her mother failed to inspire confidence to this court since it is quite improbable that she was in a position to say anything. More so the mother never said that her daughter told that her husband was responsible for the incident. usually Court looks to the medical opinion about the fit condition of the declarant at the time of making such statement band the doctor specifically described the condition which manifest that it was improbable for her to utter anything so clearly to her mother only. Besides the medical opinion no other convincing evidence could be found which can support the stand.

Conclusions

- 19.** Therefore there left no room to doubt that the victim while admitted in the hospital was unconscious and was not in a position to say anything .The evidence laid before the court by mother was for the first time as she admitted to have not stated before police. Their delayed action to set the police in motion by lodging F.I.R further weakened the case of the prosecution. Absence of any

prior complaint despite staying at the matrimonial house by the brother for 5 long years without interruption and by another daughter for 3/4 years further disclose how cordial their relationship was and hence the testimony of the mother alone is absolutely fails to inspire any confidence in the mind of the Court that it was a dying declaration based on which an order of conviction can be passed.

20. Hence this court is of the considered view that the Learned Court ought not to have passed the order of conviction on the basis of sole testimony of the mother which prima facie is a weak piece of evidence and cannot be relied upon and therefore the said judgement is liable to be set aside.

21. Hence this CRA is hereby allowed. The Judgement and order of conviction passed by the Learned Session court in Sessions Trial no. 20/2008 convicting the appellant for commission of an offence punishable under Section 498A is hereby set aside.

22. The appellant is hereby acquitted and be discharged from the respective bail bond forthwith.

23. The concerned department is directed to send the T.C.R along with a copy of the order forthwith.

24. Urgent certified copy of the Order, if applied for, be provided to the parties upon observance of all necessary requirements.

[CHAITALI CHATTERJEE (DAS), J.]