

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 309 OF 2002

BOREN MONDAL

VS

THE STATE OF WEST BENGAL

For the Appellant : Ms. Manasi Roy, Adv.

For the State : Mr. Debasish Roy, Adv.
Ms. Anusuya Sinha, Adv.

Last heard on : 21.01.2026

Judgement on : 27.03.2026

Uploaded on : 27.03.2026

CHAITALI CHATTERJEE DAS:-

1. This criminal appeal has been filed against the judgement and order of conviction dated July 18, 2002 passed by the learned Session Judge, Malda, convicting the appellant under section 498A of the Indian penal code and sentenced him to suffer R.I for two years and to pay a fine of Rs.1000/-, in default to suffer rigorous imprisonment for three months.

Factual matrix

2. On July 29, 1998 the brother of the victim Ranjith Mondol, lodged a complaint against the present appellant, holding him responsible for the suicide

committed by the sister of the complainant on 28/29th July 2002 by taking poison and also by administering poison to her minor daughter on account of torture inflicted on her both physical and mental on the demand of dowry. The complaint was lodged before Kaliachak Police Station under Section 498A/304B IPC and on completion of investigation the charge sheet was submitted against the appellant under the aforesaid provisions. The case being exclusively triable by the Sessions Court, it went before the learned Court of session on commitment and on perusal of the materials on record and after hearing both the learned Counsels, the learned session Judge framed the charge under Section 498A/304B of the Indian penal code. The contents of the same was read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Hence the trial commenced.

The learned Court after hearing the learned advocates as well as going through the evidences adduced by the prosecution witnesses and on examination of the accused under Section 313 of the code of criminal procedure, passed the order of conviction under Section 498A against the appellant but acquitted him from the charge under Section 304B of the Indian Penal Code. Being aggrieved by the order of conviction the appellant/husband has filed this appeal.

Submissions

3. It is submitted by the learned Advocate appearing on behalf of the appellant that the marriage took place 6/7 years before the incident and a girl child was born from their wedlock. Admittedly it was a case of suicide as can be found from the evidence adduced by the de facto complainant who further admitted that the appellant used to behave normally but the victim was of adamant type

of lady. The father P.W. 2 deposed about demand of further dowry but could not give any specific dates of assault. No previous complaint was lodged against the appellant by the de facto complainant or any other family members alleging demand of dowry. It could be found from the evidence that some expenses were borne by the father for the treatment of the appellant but the amount was given to Anil. The mother adduced evidence as P.W. 3 and admitted her daughter committed suicide and further that she lodged the complaint out of grudge.

It is further argued that the Learned Session Court passed the order of acquittal in respect of the charge of Section 304B of IPC due to lack of evidence but passed the order of conviction under Section 498 A of the Indian penal code without having any materials to support the said charge. Accordingly prayed for setting aside the order of conviction.

4. The learned prosecution on the other hand argued that on the basis of the complaint the case was initiated and the Learned Sessions Court though passed the order of acquittal in respect of the charge under Section 304B of Indian Penal Code, passed the order of conviction in respect of 498A as there are sufficient materials to attract the said charge. It is further argued that the victim/wife not only consumed poison herself but also administered poison to the minor girl and hence the magnitude of the torture can be understood. That apart the prosecution has adduced witnesses and proved the charge beyond the reasonable doubt.

Analysis

5. Heard the submissions. On perusal of the record and considering the submissions advanced by both the prosecution as well as learned defence counsel, the moot question falls for consideration is whether the learned Session Judge rightly passed the order of conviction against the appellant under Section 498A while passing the order of acquittal in respect of the charge under Section 304B of IPC. In this case the prosecution has adduced 11 witnesses and proved the exhibited documents. In order to ascertain whether the prosecution was able to prove the case beyond the shadow of reasonable doubt it is necessary to scan the evidences adduced before the learned session court.

In this case the complaint was lodged by Ranjit Mondol , the brother of the victim. The victim was given marriage about 6 to 7 years back with the appellant according to Hindu rites and customs and they lead normal matrimonial life and were blessed with the female child, who was aged about one year six months. The P.W. 1 qua the complainant deposed that the victim, committed suicide by taking poison along with her girl child, whom she administered poison, prior to committing suicide. He also deposed that the appellants usually behaved with his sister properly and she never raised any complaint against him and also never raised any complaint of torture by appellant to her, however described his sister as a adamant type of lady. He also said that at the time of incident the appellant was not at home and he did not inform him about taking poison by the sister. She further deposed that the appellant was residing with his married sister's house at Hosinagar on the

date of taking poison, such place is about 17 to 18 miles away and the appellant went to his sister's house on the previous day before the date of incident.

6. The father of the victim deposed as P.W. 2. According to his evidence after marriage his daughter went to her matrimonial house and she was subjected to cruelty both physical and mental by the appellant on demand of further dowry. He paid money for the Tumour operation of his son-in-law and also gave money to him. After receiving the information on the date of incident he rushed to his son-in-law's house and when she was taken at Sadar Hospital it was informed by his daughter that she could not bear the torture of her husband which lead her to commit suicide and she died immediately after admission in the hospital. He also said that at the time of incident the appellant and his family members were not present in the house. He also deposed that they often had fight with each other and the brother of the appellant took Rs. ₹9000/- from him for the purpose of surgery for the appellant. He admitted that the appellant never demanded money from him but his daughter demanded money to pay to the appellant. He also never handed over any money to his daughter but paid the same to Anil the brother of the appellant who demanded money to save the life of the appellant during the surgery. His daughter also demanded money after such surgery to pay to the appellant. He never informed the police about such demand of money by the appellant or lodged any diary regarding the physical assault on his daughter by her husband. He could not say the date and time when she made such demand of money and the physical assault which he witnessed on the

way to his house. His narrated such fact of assault to Subal, the maternal uncle of the appellant.

7. P.W. 3, the mother of the victim deposed that the victim committed suicide by taking poison at her matrimonial house. This witness was present at the hospital and prior to taking her to hospital she informed her that due to physical assault by her husband she committed suicide by consuming poison. From this testimony of this witness further fact revealed that the appellant in drunken condition used to assault the victim on demand of further dowry, and that such torture and demand started after two months from their marriage. She was informed about such physical torture by her daughter however she never lodged any complaint from her evidence it could be gathered that prior to the marriage, the appellant and the victim had an affair and their marriage was arranged subsequently, but initially they refused to give marriage to their daughter with the appellant. The appellant took the victim from their house though no complaint was lodged. She further deposed that at the time of marriage her daughter was minor hence, the marriage was not registered. In course of her evidence she said that she was examined by the I.O and she filed the case out of grudge against the appellant to take revenge after the demise of her daughter. She further deposed that excepting "I will be dead" the victim did not utter anything prior to removing are in hospital.

8. P.W.4 is the priest who gave the marriage of the victim and the appellant. After marriage he never went to see the family life of them. P.W. 5 Phani Bhusal Mondol is the scribe who wrote the complaint as per instruction of the de facto complainant and he proved his signature. He is a local resident of the village of the de facto complainant; however he did not talk with the police

person in this case. Felu Mondol whose house was situated near the house of the appellant deposed as P.W. 6 and said that she committed suicide by taking poison at her father's house, but this witness was declared hostile. P.W.7 is Dr. Ajoy Kumar Das, the Medical officer who conducted the post-mortem over the dead body of the victim aged about 18 years. He found anti mortem abrasion at the left anterior lower part of the neck and found chocolate coloured fluid in the stomach and small Intestine. His opinion regarding the cause of death was kept reserved for chemical examination of the preserved viscera. According to his opinion death was unnatural.

9. S.I. Anilkumar Ray received the written complaint and started Kalyan Chok police Station Case No. 197 of 1998 against the present appellant. He also filled up the formal F.I.R.

P.W. 1. S.I H.N Roy who investigated the case and prepared the rough sketch map of the place of occurrence with index. He seized the marriage invitation card from the father of the victim and examining the witnesses and recorded their statement under section 161 of the code of criminal procedure .He collected the Post Mortem Report and wrote a letter to the superintendent, District Hospital on October 26, 1998 for sending the viscera but could not collect FSL report. He recorded the statement of Felu Mondol ,who stated that the appellant inflicted torture both physical and mental upon his wife for bringing money from appellant.

In this case the incriminating materials and evidences were put before the appellant while taking his evidence under section 313 of the code of criminal

procedure to which he denied the same but did not intended to adduce any defence witness.

10. Therefore on close scrutiny of the injured evidences of the prosecution witnesses it can be seen that excepting the parents, brother and priest only P.W. 6 adduced evidence to be a neighbour of the house of the appellant but he was declared as hostile witness. This witness only deposed that she committed suicide by taking poison at her father's house however he did not assign any reason for committing suicide. No other independent witness being the local resident of the house of the appellant adduced any evidence. The written complaint lodged by the elder brother of the victim, who during his evidence did not divulge any grievance against the appellant rather he said that usually appellant behaved with the victim properly and the victim also never raised any complaint against him. In fact from his evidence the justification of the appellant being not present at the house at the time of the incident also can be found. From the evidence of the father regarding physical and mental torture upon his daughter appears to be vague as no specific date of time or year of the incident has been mentioned. He repeatedly harped on the fact of paying money to the brother of the appellant for the treatment of his son-in-law and it is evident that such amount was demanded by the brother of the appellant only for the purpose of surgery. After the surgery was done his daughter demanded money for payment to the appellant but this fact was never stated either by the brother or by the mother. No date was given as to when such demand was made during which month. It is evident that the victim was living at her matrimonial house since after marriage and never

lodged any complaint against any of the member of the appellant family or against the appellant. The mother of the victim though deposed that her daughter was subjected to torture, since after two months from their marriage she never informed to any authority or lodge any diary. However it can be found that she was not in favour of the marriage of the parties who had love affair and the appellant took the victim from their house after which the marriage was arranged and the victim was at that time was a minor. In fact this witness stated clearly that she filed the case after demise of their daughter only to take revenge. Interestingly none of this witness spoke anything about the minor daughter who was also administered poison as alleged. Nothing can be found regarding taking the minor to hospital. Lastly this witness said that while taking the victim to the hospital she could only said that “she will be dead”. So her statement about intimating her by the victim about the torture on her which compelled her to take such drastic decision appears to be stated out of emotion. The witness did not tell the I.O. that due to perpetuated torture by the husband, her daughter compelled to take poison. According to the evidence of the father he narrated the said fact to Subol , the maternal uncle of the appellant but he did not adduce evidence and not cited as the witness in the charge-sheet. No FSL report was received by the investigating officer and the I.O did not collect any post-mortem report or inquest report in respect of the minor girl. A little spot of lacerating on the throat of the deceased was noted both by the person who did inquest as well as the doctor who did the post-mortem but no sign or any spot of injury from the outside of the body was detected. From the inquest report it can be seen that after primary investigation the Officer came to know about the marriage which was 4/5

years old and the appellant was habitual drunkard and used to quarrel with her and on 28/7/98 he under influence of liquor abused her with fist and blow then villagers came and stop in to do so. Not a single person of the said village adduced evidence to support the same. None of the witnesses to the inquest was examined by the I.O. The nature of the poison was not identified. The I.O. did not seize any container with poison. There is a silence on the part of the de facto complainant as well as the parents of the victim about the death of minor girl. No evidence could be gathered whether the victim administered any poison to the minor girl or. In absence of any material the death of the minor girl also cannot be ascertained. The I.O. prepared the sketch map of the P.O. but did not submit the index and therefore it cannot be ascertained the place of occurrence where the incident happened.

11. The Learned Court considered the statement of the victim as dying declaration when she was taken to hospital by her parents. Such observation was only on the basis of the evidence adduced by the mother who lastly said that excepting 'I will be dead 'she could not say anything. The learned court held that the dowry death under section 304B of Indian penal code read with Section 113B be of the Indian Evidence Act, to presume that soon before her death such woman was subject to any cruelty or harassment on the ground of dowry, was not proved. Therefore passed the order of acquittal in respect of charge under Section 304B I.P.C.

This order was not challenged and hence the allegation of torture upon him on the ground of demand of dowry by the appellant which compelled the victim to commit suicide is not proved.

In the case of ***Preeti Gupta and another versus State of Jharkhand and another***¹ it was observed that unfortunately at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant and such complaint can lead to insurmountable harassment, going in pain the complainant, accused and his close relations.

12. The primary object of justice is to find out the truth and to punish the guilty and to protect innocent. To find out the truth is of Herculean task and in the majority of these complaints, the tendency of implicating the husband and all immediate relations is also not uncommon. At times after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The court has to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases.

13. In the present case as the allegation under section 304B has been negated by the learned Sessions Court and there remains no material to suggest that the unfortunate incident of suicide by the victim was committed because of demand of dowry or harassment immediate prior to such incident. Section 498A IPC reads as follows;

Section 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 3 years and shall also be liable to fine.

Explanation:-

For the purpose of this section 'cruelty' means:-

¹ (2010) 7 SCC 667

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

This provision has two parts. So far the part regarding torture on account of dowry is concerned that has not been proved.

14. The learned Sessions Judge in this case, though passed the order of conviction under section 498A IPC, passed the order of acquittal under Section 304B IPC due to lack of evidence to suggest that she was subjected to cruelty, both physical and mental and such harassment and torture compelled the victim to commit suicide.

In this case the victim had three brothers and three sisters and one unmarried sister but excepting one brother being Ranjeet Mondol no other brother or sister adduced evidence. Nowhere from the evidence it is seen that the torture made on her went to such extent to drive her to commit suicide. The entire case made out by the prosecution appeared to be hazy as the witnesses were silent about administering poison to the minor girl. No other reason was assigned by any of the witnesses which was the cause of any dispute prevailing between the parties. An amount of Rs. 9,000/-was demanded in respect of a

particular purpose that is for the treatment of the son-in-law of the P.W. 2 and it also cannot be ascertained as to whether said Anil returned the money to them or not. But excepting such amount of Rs. 9,000/- no other specific demand could be found made by the appellant or by the victim. However it is apparent that they did not like the appellant as son-in-law gave her daughter marriage with the appellant but under compulsion as the appellant took the girl from their house. More so the statement of the mother who on the dock stated before the court that the complaint was lodged after death of their daughter only to take revenge. It is held by the Hon'ble Supreme Court that criminal law ought not become a platform for initiation of vindictive proceedings to settle personal score.

Conclusion

- 15.** Hence this Court is unable to conquer with the order of conviction passed by the learned trial court, which order was passed solely on the basis of the statement made by the victim to the parents treated to be a dying declaration of the victim that she committed suicide for torture inflicted by the appellant, without considering the testimony of the mother that excepting the word 'I will be dead" she could not utter any other word .So there was no dying declaration by the victim, which may be considered as the basis for passing any order of conviction when otherwise the prosecution has failed to prove the case beyond the shadow of all reasonable doubt.
- 16.** Hence this CRA stands allowed. The judgement and order of conviction is hereby set aside.
- 17.** The appellant be released from the bail bond.

18. No order as to costs.

19. Department is directed to send the T.C.R. to all concerned Court forth with.

20. Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS,J.)

