

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 491 OF 2007

GOLAM AMBIA MOLLA

VS

THE STATE OF WEST BENGAL & ANR.

For the Appellant : Mr. Saryati Datta, Adv.
Mr. Dipayan Dan, Adv.

For the State : Mr. Suman De, Adv.
Mr. Tirupati Mukherjee, Adv.

Last heard on : 05.02.2026

Judgement on : 13.05.2026

Uploaded on : 13.05.2026

CHAITALI CHATTERJEE DAS:-

1. The instant appeal has been filed against the judgement and order dated 16.6.2006, 18.6.2006 and 25.7.2007 by the Learned Additional Sessions Judge, 1st court, Howrah in session Trial no. 610 of 2006 whereby passed the order of conviction under section 498A of the Indian penal code against the appellant .

Brief fact of the case

2. The prosecution case in brief is that the daughter of Sheikh Yakub Ali the de-facto complainant got married with the appellant on 17.2.2004. A complaint was lodged on 15.5.2007 by said Yakub Ali to the officer in-charge J.B Pura Police Station, Howrah, alleging against the present appellant of inflicting physical and mental torture upon his daughter immediately after the marriage. It was further alleged that initially his daughter did not disclose anything to him, but after being informed by Sk Oliulla of that locality about the torture on his daughter, on asking , she broke down and admitted about the torture. The said fact was disclosed to Shafikul Mulla , member of Gram Panchayat, head of Gram Panchayath, Sankarhati -II Panchayat, and other people of the village and all of them asked the appellant and his mother to stop the torture, but everything went in vain. A meeting was held over this issue in the woman shelter of the police station with his daughter, son- in-law and women member of Police Station for reconciliation but the torture continued, and his daughter broke down mentally and physically. It was also alleged that the de-facto complainant tried a lot for meeting of their demand, but on several occasion, their demand was beyond his capacity. On 17. 4.2005, Sunday in the evening (torn) the victim came to him and disclosed that her mother-in-law is creating pressure for bringing an amount of Rs. 1 and ½ lakh and the defacto complainant expressed his inability then on that night his daughter became ill and she was taken to hospital where she died. The doctor told that she died due to consumption of poison.

- 3.** The de facto complainant lodged the complaint as the death of his daughter was caused due to the torture by his son-in-law and his mother. On the basis of the complaint lodged on 18.4.2005, the J.BPUR Police Station started the case No. 27 dated 18.4.05 under Section 498A/304B/34 of the Indian Penal Code against the Appellant and Tahura Bewa the mother in law of the victim. On completion of investigation, the charge sheet was submitted against them and the learned Chief Judicial Magistrate, Howrah took the cognizance of the offence and the case was committed to the court of sessions and ultimately transferred to the court of Learned Additional Sessions, Judge, 1st court, Howrah. The Learned Sessions Court after considering the materials framed the charges under sections 498A/304/34 of the Indian Penal Code against the accused persons, which were read over and explained to them to which they pleaded, not guilty and claimed to be tried. Hence the trial commenced.
- 4.** In this case 28 prosecution witnesses were examined to substantiate the charges by the prosecution and by virtue of the judgement and order the learned court passed the order of conviction against the accused persons under section 498A/34 of the Indian penal code and acquitted them from the charges under Section 304B of the Indian Penal Code. The learned court also on 18.6.2007, heard the applicant and his mother on the point of sentence and a report was called from the Probation Officer under section 4(2) of the Probation of Offenders Act. On 25.7.2007 after hearing the learned Advocate for the appellant and considering the report of the Probation Officer, direct the applicant to be released on probation for a period of one year and the other convict being the mother of the appellant was discharged under the Probation Officer Offenders Act.

Submission

5. It is submitted by the learned Advocate, representing the Appellant that the judgement of the learned trial court is based on conjectures and surmises not warranted by the evidence on record. In absence of any ingredients to attract 498A, such order of conviction was passed when the appellant was acquitted from the charge under Section 304, IPC due to want of evidence. The learned court failed to consider that the examination of the applicant under Section 313 of the Code of Criminal Procedure, 1973 was illegal, violating the principles of natural justice and fair play and has caused gross prejudice to the Appellant and has rendered a mistrial in the eye of Law. The learned Judge further failed to consider the deposition of the doctor with whom the victim was admitted at J.B pur rural Hospital, who stated about the enlargement of heart of the patient and the Autopsy surgeon deposed that the patient had pericardial effusion which may lead to heart attack. In the FSL report, there is no trace of poison. It is further argued that the prosecution failed to examine the persons who has taken the victim to the hospital and other witnesses who were relevant for the case. The prosecution failed to prove any demand of dowry and in absence of any cogent evidence, the prosecution failed to prove the case beyond reasonable doubt. In this regard relied upon the decisions reported in ***Preeti Gupta and Another versus state of Jharkhand and Another***¹.

6. On the other hand, learned prosecution argued that the learned trial court passed the order of acquittal under Section 304 of the Indian penal code. No charge was framed under section 304 of the Indian Penal Code. Without

¹ (2010) 7 SCC 667

applying his judicial mind passed the impugned order which is apparent from the record itself. The case was started under section 498A/304B of the Indian Penal Code. Thereafter the charge under section 498A/34 of the Indian penal code was written in page no. 53, and subsequently in page no. 54 of the paperbook points or decision no. 2, and section 304, IPC has been mentioned. In page 61 of the paperwork again in the ordering portion section 304 of the IPC was mentioned. By filing the written notes of argument, the learned prosecution has assailed these allegations of torture within the meaning of Section 498A of the Indian Penal Code was established beyond reasonable doubt. The deposition of witnesses, particularly P.W.1,4 and to whom the victim gave oral dying declaration and P.W.9 eye witness of torture therefore, the judgement and order of conviction and sentence should be upheld for the ends of justice.

Analysis

7. Having heard both the learned prosecution as well as defence counsel and considering the same coupled with the materials on record the moot question now falls for consideration is whether the learned trial court rightly passed the order of conviction against the appellant or not. At the outset the issue raised regarding non framing of charge by the prosecution it is seen that the charge under Section 304 IPC was framed by the Learned Trial Court where the allegation was of demand of dowry and subjected to cruelty but Section 304 IPC deals with the Punishment for culpable homicide not amounting to murder. The learned trial court corrected the charge framed under Section 304 by putting "B" at the sec 304 IPC which is dowry death, delivered judgement

under also Section 304 IPC, was also mentioned so the learned Judge consciously framed the charge u/s 304 IPC but consciously passed the judgment u/s 304 IPC. However the prosecution did not challenge the said judgement of acquittal and raised the issue when the appeal is filed by the appellant and hence has no merit.

8. In this case, in order to bring home the charges, the prosecution adduced as many as 28 witnesses. Out of the above with P.W.1 is the father and the de facto complainant, P.W.2 Rajya Begum is the sister-in-law of the deceased P.W.4 is the mother of the victim lady, P.W.5 is a local person, P.W.7 is the sister of the victim. P.W. 2, P.W.3, P.W.6 ,P.W. 12, declared hostile. P.W.8 is a Panchayat member and scribe of the complaint. PW 10 is a van puller who knew that the appellant is of loose character. PW 11 was tendered by the prosecution for cross examination and was declined. P.W. 13 is a Moulvi and attended the marriage ceremony of the victim and the Appellant. P.W. 14 and 16 are seizure list witnesses. P.W. 15 is the grandfather of the victim who was present at the time of marriage ceremony. P.W. 17 is the executive magistrate who prepared the inquest report. P.W. 18 is the medical officer who was attached to J.B. Pur rural hospital on 18.4.2005 when he examined the patient. P.W. 19, 20 & 21, are the member of women cell/Mahila Samiti. PW 23 is the S.I of police who received the written complaint and P.W. 24 sent the dead body challan where he signed. P.W. 25 is the superintendent M.R Bangalore Hospital who conducted P.M. exam over the dead body of the victim. P.W. 26 is the SI of the police who sent the Viscera to FSL. P.W. 27 is the S.I of police who took up the investigation and submitted the chart sheet but did not take any part in the investigation. P.W. 28 is the I.O. of the case.

9. On perusal of the deposition of P.W. 1 it transpires that during his testimony, he was informed by his daughter that her husband is a habitual drunker and used to assault her regularly and he further directed her to bring ₹ 60,000 towards dowry. It was further informed that he sometimes demanded Pultzar motorbike. The witness went to meet the accused person personally, but all went in vein. The said torture was informed to Gram Panchayat and the Gram Pradhan went to the house of the accused along with the neighbours and there was a Shalish to settle the matter amicably. Mahila Samiti also tried to settle the matter, but in vain. His daughter came to his house and informed that the accused demanded ₹1.5, 00,000 as for the dowry. His daughter became ill and he found his daughter had a nausea and bodily pain at that time. His daughter came to their house in the evening, and she slept with her mother at night and at about 2.30 a.m., the witness was called by his wife and found but eyes of his daughter was coming out, and saliva was coming out room his daughter's mouth. He started searching for vehicle and got a Maruti van and she was taken to hospital. The doctor informed him about the serious condition and that about 5 A.M. his daughter died in the hospital.

10. The witness said that he was present when the inquest was prepared. He also identified his signature in the inquest report which was marked as exhibit 2. In his cross-examination, this witness stated that his daughter came to his house prior to the date of incident in the evening time and he did not see his daughter vomiting. At 2:30 AM, his wife called him and he went to search out for the vehicle and was till 4.30 A.M. he did not find any vehicle. His sister Rama Begum, his wife and he went to hospital with Asit Paul. Police came to

hospital at about 8.30/9 AM and wrote something and as the witness was mentally upset, he did not tell anything to police at that time. At about 10/11 A.M., he visited the Police Station and did not tell anything to police, which he stated before the court on that day. It can be found that his daughter took rice at that night when she was in his house. He could not remember about reporting the incident to Hakim. It is for the same that he was not examined by the I.O after lodging the F.I.R. He also could not say the date when Panchayat Shailsh held and say that he mentioned about demand of 60,000 and motorbike Pultzar and further demand of ₹1.50 lakhs by the accused.

11. P.W. 3 is the mother who deposed that the marriage between her daughter with the appellant was the outcome of their love affair. According to her testimony, the appellant informed one day that the victim became seriously ill, and in the evening, her two sons brought her daughter to their house. Her daughter had pain all over the body. She complained of physical assault by the accused and demand dowry to the tune of Rs. 1.5 lakhs. Her daughter complained of physical ailments and then she complained against her mother-in-law and husband. She also informed that her husband is a habitual drunkard and used to torture her. The mother-in-law of the victim was also responsible for the misbehaviour coupled with torture.. She also said that her daughter came in the evening and she informed that she took one tablet and a cup of tea from her mother-in-law. She had nausea and her eyes were coming out, and froth was coming out and it happened at about 2.30 a.m. She told Police that her son-in-law informed Mahila Samiti and Police over the incident. Both parties were called by Mahila Samiti, but she did not go to the Shailsh.

She further deposed that her daughter came on Sunday as decided earlier, and she reported her husband about the element of nausea of her daughter. No doctor could be called at that night. After 2:30 AM, her daughter was taken to hospital. This witness further deposed that the accused had a motorcycle for himself at the time of marriage. She could not say after how many days he talked with the police and police came to their house. She did not inform the doctor about the torture inflicted on her daughter by the husband or to the police that the accused was a habitual drunkard used to assault her daughter along with his mother. They did not lodge complaint before the police.

12. The name of Rajya Begum appeared in course of evidence of P.W.1 but she stated the appellant and the victim had good relationship and this witness was declared hostile, however, from her evidence the factum of a village Salish found which was held at the request of her devar means the appellant on the date of incident. P.W. 18 Dr. Chittaranjan Bhattacharya stated before the court that he was not an expert in the case of poisoning and F.S.L report can confirm the cause of death. He however, deposed about enlarged heart and in a severe case of pericardial effusion a patient may die. The post-mortem report is marked as exhibit and on perusal of the same transpires that black Fluid was found from the stomach which was sent for forensic examination. The FSL report was collected by the I.O and marked with exhibit 5 which suggest 'no poison' could be detected in respect of any of the article including the greyish turbid liquid. The inquest was held on 25.5.2007 on the body of the deceased and the description of different parts of the body reflects no mark of injury. The apparent cause of death was mentioned as she may have taken or have

been compelled to take poison or poison may have been infected in her body but the FSL report as discussed above do not support such contention . The inquest was signed by the husband/appellant, the de facto complainant/father and maternal uncle Sheikh Akram Ali, The paternal uncle Sk. Zulfiqar Ali other than the police official and Dom of Police Morgue. Nothing adverse against the appellant was divulged by any of the witnesses present before the Executive Magistrate who held inquest. The investigating officer of this case seized an application submitted before the Nari Kalyan Samiti under a seizure list but admitted that in the column of Alamat he did not find any letter of Nari Kalyan Samiti mentioned. One complaint was lodged before the police station, which was forwarded to the said Samity. He admitted that he did not examine the father of the victim. He did not find any indication that the appellant was a drunkard in the statement of the wife of the de facto complainant. She also did not tell him about dowry demand.

13. P.W.3 Mulla.Fahad Anwar was also declared hostile after he deposed about good relationship between the deceased and her husband. P.W.5 Khadija Begum, could learn from the victim about the physical pain on her spinal cord and waist just after she arrived at her father's house and she further reported her about the physical and mental torture inflicted on her by the husband and mother-in-law and used to demand money but no date was intimated to her by the victim. She resided as a tenant at the house of Hobi who is the brother of Oliullah the P.W. 5 and she saw the victim got down from the bike of her brother. P.W.7 appears to be the sister of the victim while who only signed on the seizure list and she was present on the date of incident but she did not

take her food in her house being away from the house. P.W.9. Sk. Oliullah deposed that he was working at different houses, including the house of accused as a day labour and victim narrated him and also he saw the torture and abuse made by the accused and his mother-in-law upon the victim. This witness also appears to be the close relative of the victim and he was examined by the police after six days of the death of the victim. He did not mention the time and date of assault to the victim before police.

The nature of evidence as appears from the testimonies given by the family members makes it is difficult to ascertain whether there was any demand of dowry or whether the victim in fact subjected to torture by the appellant. The witnesses who stated about the relationship between the husband and wife was cordial they were declared hostile. The doctor opined that the victim had an enlarged heart and the FSL report disclosed that no poison was detected. No external injuries or mark of injury were found on the body of the victim. Furthermore no witness stated anything adverse against the appellant before the Executive Magistrate, who did the inquest. The most vital part of this evidence is that the victim came in the evening on 17.4.2005 at her father's house and after consumed food suffered discomfort at the mid of the night and suffered for more than 2 hours and died in the early morning while taken to hospital. P.W. 21 Hasi Saha deposed that at the instance of the husband they sat together but the parties did not come. P.W. 19 a member of women cell deposed that on 12.9.2004 there was a salish over the dispute of husband and wife and they reconciled but could not remember what was the exact complaint. So both the witnesses being the member of same Mahila samity

gave contradictory statement. No copy of resolution or settlement could be produced. Therefore it is difficult to ascertain whether any salish took place before the Mahila samity at the instance of the parent of the victim or the husband but even if there was a salish there was reconciliation and parties were leading their conjugal life.

14. Glaring inconsistencies are found in the evidences adduced by the parents and it is deposed by the mother that the victim came to their house as per an arrangement and not because of any reason for torture faced by her and was sent to her paternal house. So the stand taken by the prosecution about her coming to her parent's house due to torture do not sustain. It is apparent that the parent could not make an arrangement of doctor for more than 2.5 hours when she was suffering from the discomfort and also did not inform any person of their locality nor informed the husband. The exhibit 3 is a seizure list whereby nothing was seized and the P.W. 1 identified his signature there. This court failed to ascertain as to why a Nil seizure list was prepared and why the signature of P.W. 1 was proved on it. The exhibit 4 is the seizure list whereby the application filed by the victim in respect of torture inflicted upon her can be found which was dated. 30.8.2004. exhibit 5 is the report of FSL and it suggest no poison could be detected in respect of any of the article including the greyish turbid liquid.

15. Therefore with this report the case of the prosecution gets completely demolishes that she died due to consumption of poison. With this the opinion of the doctor who held post mortem about the possible reason due to her enlarged heart inspire confidence in the mind of the court that the poor girl

died due to her illness and she suffered for more than two hours but was not attended with any doctor and lastly died while taken to hospital.

16. Therefore after careful consideration of the entire facts and circumstances this court is of the opinion that the prosecution failed to prove the case beyond the shadow of all reasonable doubt. The learned Trial court framed the charge under Section 304 IPC which was never challenged and the Learned Court passed the order of acquittal against the appellant and his mother and further acquitted her from the charge under Section 498A IPC, but passed the order of conviction against the appellant under Section 498A IPC without appreciating the evidences placed before the court and hence the judgement and order of conviction passed by the learned trial court is liable to be set aside.

Conclusion

16. This Criminal appeal is hereby allowed. The judgement and order of conviction passed by the learned Additional Sessions Judge, 1st Court Howrah in Session Trial 610 of 2006 is hereby set aside. All connected applications stands disposed of. The appellant is hereby acquitted from the charge under section 498A I.P.C and be set at liberty forthwith.

17. The criminal Department is directed to send down the T.C.R along with a copy of the judgement to the concerned Court at an earliest.

18. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]