

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 59 OF 2018

BISHNUPADA PAUL

VS

THE STATE OF WEST BENGAL

For the Appellant : **Mr. Chitta Ranjan Chakraborty, Adv.**
Mr. Parvej Anam, Adv.
Ms. Puspa Rani Jaiswara, Adv.,

For the State : **Ms. Z.N. Khan, Adv.**
Md. Kutubuddin, Adv.

Reserved on : **08.04.2026**

Judgement on : **25.06.2026**

Uploaded on : **25.06.2026**

CHAITALI CHATTERJEE DAS:-

1. This Criminal Appeal has been filed against the judgement and order of conviction dated 14.11.17 and 16.11.17, passed by the Learned Additional Sessions Judge, Fast Track 1st Court, Kandi, Murshidabad in sessions Trial no. 237 of 2009 sentencing the appellant to suffer Rigorous Imprisonment for 3 years and a fine of Rs. 10,000/- in default to suffer further rigorous imprisonment for 6 months for the commission of offence punishable under Section 498A of the Indian Penal Code.

Fact of the case

2. The prosecution case was initiated by lodging an FIR before the Officer-in-Charge Burwan P.S. by the de facto complainant on 05.06.2006 against the appellant alleging that on 6th Ashar of Bengali 1401, his sister since deceased was married to the youngest son of Late Kanai Paul, Bishnupada Paul according to the Hindu rites and rituals. On 8th April, 2006, at about 6 A.M. he was informed over telephone that his sister has been murdered by her husband and other in-laws. It was also alleged that the appellant committed the murder of his sister and hanged her body with rope and portrayed it as a case of suicide. On hearing the de facto complainant went with his brother and 216 co-villagers and found his sister lying dead, on the floor and after reaching they found the mother-in-law and other family members escaped from the place and came to learn from his nieces who were aged 10 and 7 years respectively that their mother was murdered by strangling and hanged with rope.

3. Over the said written complaint Burwan P.S. case no. 81/06 started under Section 498A/306 Indian Penal Code. After completion of investigation the charge sheet was submitted against the accused persons and the matter was transferred after commitment before the Learned Sessions Judge, F.T.C 1st Court Kandi, Murshidabad where the charge was framed against the accused persons under Section 498A/306/34 Indian Penal Code. The content of the said charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Accordingly the trial commenced. The Learned Trial Court considering the facts and circumstances of the case

and evidences adduced before the Court and the submission made before the Learned Trial Court passed the order of conviction against the present accused when acquitted the co-accused from all the charges. Being aggrieved thereby this appeal has been filed.

Submissions

4. The Learned Advocate appearing on behalf of the appellant argued that the deceased died on 7th April, 2006 and the complaint was lodged on 5th June, 2006 and there was delay of almost 2 months when the intimation was given on 8th April, 2006 without any explanation regarding such inordinate delay in initiating the process. There are sufficient inconsistencies in the evidences adduced by the witnesses which manifest that there is possibility of second inquest as well as a separate complaint. So far mark of injury found over the dead body there is difference of opinion as stated before the Court when the inquest report suggest single injury but in the post mortem report no external injury was mentioned. The co-villagers did not support the case of prosecution and most of the witnesses were declared hostile. The I.O. was not examined and P.W. 21 is the second I.O. and P.W. 11 is the third I.O. From the case diary no order of Magistrate to hold the inquest can be found. Two charge-sheet were submitted by two different I.O. under the same Section in connection with the same complaint which itself appears to be suspicious enough. No Gram Panchayat Member was examined in order to show that previous complaint or any settlement arrived. The daughters were at their tender age and from the evidence of the husband it can be found that on the very next date of the incident they were taken by their uncle and aunt. Only

P.W. 17 and 19 that is the said minor daughters stated about instigation by aunt whose statement was not recorded under Section 164. The allegations were levelled against all the accused and after considering the evidence adduced by the daughters the Learned Court acquitted the other accused from all the charges and also the husband from the charge under Section 306 IPC but passed the order of conviction under section 498A IPC without considering the scope and ambit of section 498A IPC .The Learned Advocate relied upon the decision reported in **Balaka Singh and Ors vs The State of Punjab¹** .The learned advocate prayed for setting aside the order of conviction.

5. The Learned Prosecution on the other hand raises strong objection and argued that the intimation of death was given not by husband or his family members as stated by P.W. 13. A previous complaint of 498A was filed which suggest that there were marital discord between the parties. The delay has been well explained and the daughters' witnesses are important who were aged 17 years and 15 years while adducing the evidence to have witnessed the incident and they were found sitting beside the body of their mother for the entire night which is evident from the evidences adduced by the other witnesses. Accordingly prayed for dismissal of the criminal appeal.

Analysis

6. Having heard both the Learned Counsel as well as on perusal of the materials on record and prima facie the moot question appears to be decided is whether the Learned Trial Court rightly passed the order of conviction against the present appellant or not. In this case in order to bring whom the charges the prosecution adduced as many as 21 witnesses. In order to find out the truth it

¹ AIR 1975 SC 1962

is necessary to assess the evidences adduced before the Learned Trial Court. Initially it is found that the allegation though made by the de facto complainant about murder of his sister the chargesheet was submitted as well the charge was framed by the Learned Trial Court under Section 498A/306 of the Indian Penal Code.

7. In the instant case as it is evident from the nature of witnesses adduced that there are group of witnesses out of 21 witnesses who are family members supporting the prosecution case ,the neighbours of the appellant not supporting the prosecution case and according to them the relationship was cordial between the parties and those witness were declared hostile. The complaint was lodged by the brother on 5th of June, 2006 when on 8th of April, 2006 in the morning he was informed about the death of his sister. Nothing was mentioned in the written complaint as to why after such long delay of about 2 months such complaint was lodged before the Police Station. He adduced evidence as P.W. 13 before the Court and his testimony disclose that he went to Police Station to lodge a complaint that his sister was murdered but he was compelled to write that his sister committed suicide by hanging. The complaint which has been exhibited before the Court nowhere it was mentioned that she committed suicide but it was stated that she was murdered by strangling and hanging her with rope so apparently sufficient inconsistencies are found. . From his evidence for the first time it can be found that though he went to lodge complaint at first to the Police Station he refused to receive the same and then he sent complainant to the Superintendent of Police, Murshidabad, SDPO, Kandi, Human Rights

Commission, Bhabani Bhawan , Alipore, Chief Minister of West Bengal , Additional Director of CID and he filed a set of photocopies of those letters while adducing evidence and marked exhibit with objection. On perusal of such photocopies it can be found that the date of letter was mentioned as 18.05.2006 and as an annexure the FIR to Burwan Police Station dated 10.04.2006 was annexed where and also wrote the letter to the Deputy Inspector General, Special on 5.04.2000 intimating about the torture inflicted upon her as well as to the women cell. The witness stated that the post mortem report also clearly manifest that initially strangulation was written which was pen through and then hanging was incorporated. However, at the time of examination of the autopsy surgeon Dr. Ashim Kumar Banerjee no cross-examination to that extent was made and the said Post Mortem Report was exhibited without objection .This witness admitted of lodging two complaints .The first one on 8.4.2006 and later on 5.6.2006.He filed the photocopies of those letters in the court and never handed over the same to the police. He only wrote the letter to Chief Minister and the rest were written by uncle but subsequently those letters were not proved by the said uncle and neither these letters were annexed with his complaint.

8. In the decision of ***Balaka Singh and ors vs The State of Punjab (supra)*** as relied upon by the Learned Advocate of the appellant, the Hon'ble Supreme Court discussed that how the evidences are to be appreciated and the Court must make attempt to separate grain from chaff. Where grain cannot be separated from the chaff because the grain and chaff are so inextricably mixed up and that in the process of separation the court will have to re construct and

absolutely a new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they made this observation will not apply.

9. In the present case since the charge under Section 306 IPC was not proved and the case was not started under Section 302 IPC and no challenge made against the Order either framing of charge or the order of acquittal from the charge under section 306 IPC. This court is now therefore confined to the charge under section 498A IPC in which the order of conviction is passed. Hence, it is to be decided that when apparently the death was proved to be suicidal and anti-mortem in nature, whether the deceased took such drastic decision due to torture inflicted upon her by him or the ingredients to attract Section 498A was sufficiently assessed. The defacto complainant deposed that the character of appellant was not good and he had illicit relation with a lady which was not accepted by his sister and she informed him about such illicit relation. There was marital discord with regard to such illicit relationship between the appellant and his sister. P.W. 15 is another brother of the deceased and from his evidence it can be gathered that after birth of the children the inmates of matrimonial house of Kalyani used to misbehave with her which lastly resulted in filing a complaint one case under Section 498A against the appellant and relatives. Subsequently the said dispute was amicably settled and his sister went to her matrimonial house. From his cross-examination it can be gathered that he denied to buy Chumki and Rumki the daughters of the deceased forcibly from the village after demise of their mother. He also said that initially the police refused to receive the written complaint

and after many days on several request the FIR was received however failed to say the person who wrote the FIR .He along with 5/6 persons went to Police station when second time FIR was lodged in the Police Station. On that day police did not record his statement but interrogated him in his house during course of investigation. He did not remember the date when he was interrogated. He also said about the illicit relation in between the appellant and the sister-in-law of the deceased Madhobi which he came to learn after 2/3 months of the marriage of his sister.

10. From the evidence of P.W. 17, Rashmoni Pal and P.W. 19, Parboti Pal the two daughters of the deceased serious allegation can be found as they witnessed the incident how happened and the role attributed by their father, Aunt and mother in law of the deceased but the Learned Trial Court after assessing the credibility of their evidences who were only aged 6/7 years and 10/11 years respectively passed the order of acquittal to all the accused persons from the charge under section 306 IPC . More so the charge was framed by the Learned Court considering the statements under section 498A/306/34 IPC and the prosecution did not challenge the said order of framing of charge or the judgement of acquittal. Hence this Court does not find it necessary to put much emphasis on their statement which was recorded after one year of the incident. From her cross-examination it can be found that on the very next date of death of her mother her maternal uncle and aunt brought them from Jhillerra to Eguria. So, since after the death of their mother they were raised by their maternal uncle.

The daughter took the name of one neighbour China who gave water on the face of her mother who requested the accused person not to assault. She also deposed that her mother was assaulted 2/3 times in 2/3 hours interval during the noon time and Madhobi Pal and her grandmother was standing and her father was assaulting her mother. At the time Madhobi was also abusing her mother. However said Chaina was not cited as witness.

11. P.W. 1 Mihir Kumar Paul who was interrogated by police was declared hostile. Before such declaration he said that he was not aware about the internal relation between the appellant and Kalyani but she did not found any bad relation between them. P.W. 2 Gadadhar Pal being the neighbour was also declared hostile as he said that Kalyani had good relation with the inmates of her matrimonial house and he was not interrogated by police. P.W. 3 Mohan Bhalla being a neighbour also declared hostile who deposed before being declared hostile that he did not know how Kalyani died and he also signed in the inquest report but he did not say anything to Police. P.W. 4 Maheswar Pal who knew the appellant and his family members and he heard that Kalyani died by committing suicide and then police came and ask them to sign on a paper accordingly he signed on the paper in the inquest report. However he did not see the dead body of the deceased and did not say anything to the Police. P.W. 7 Bablu Mondal is the co-villager of the accused person and he said that he did not see how Kalyani died. He did not say anything to police and his witness was declared hostile.

12. The prosecution case of torture can be found to be corroborated from the evidence of P.W. 9 Ashok Mondal who deposed that an incident took place 6

to 7 years ago and he knew that the deceased died by hanging with a rope and he saw the dead body lying on the floor. He did not see misbehaviour with Kalyani but police did not interrogate me. Bonomali Das P.W. 10 deposed that he found dead body of Kalyani lying on the floor but did not see misbehaviour of accused person with Kalyani. He heard Kalyani died by hanging with a rope. He could not say exactly how the accused persons behaved with the deceased. During his cross-examination he said he went at the spot only after one or two minutes but he did not meet with the daughter, and after the incident, he was interrogated by police, but he cannot say date and time when he was interrogated. He deposed that he has no personal knowledge about the incident and only heard about the incident. P.W. 12 Ganesh Chandra Das is a neighbour of the house of the deceased and the house of his brother was situated near the house of appellant where he often visited .He deposed that at the time of marriage parents of the Kalyani gave utensils, furniture, dowry as per claim of the family members of the accused and after marriage she used to reside in her matrimonial house. She was subjected to torture physically and mentally due to dowry and the brother of Kalyani informed the Panchayat members about the same torture. On 7.4.2006 at night she died and on the following morning Prallad Mondal the maternal uncle of Kalyani informed them about the death. He also deposed that Kalyani used to say that her husband and in-laws assaulted her physically and mentally and for that reason she died. He further deposed that Kesto, Gour, Dayamoyee encouraged the appellant, Madhobi mother of Bishnupada to torture her. From his cross-examination it can be seen that the deceased was their neighbour and she used to address her as uncle. He visited matrimonial house of Kalyani because

he had relation with Bishnupada and her brother's houses was situated near the house of the appellant. He also informed about the illicit relationship of the appellant with his sister-in-law Madhobi pal who is the wife of Shyamal Pal. The witness came to learn about such illicit relation after 6 months of marriage and over this issue there was dispute between them and when Kalyani protested she was assaulted physically. According to him Kalyani was murdered by appellant by throttling. This witness gave the age of the two daughters about 18 years and 1/2 years junior to Chumki means 16 years. He saw Kalyani lying dead on the floor in the room and she wore saree, blouse and petticoat. He found sign of thumb pressing on the throat of Kalyani but he did not see the other injuries. P.W. 8 Probhat Mondal claimed to be a co-villager of the accused person who corroborates this fact that there was no good relation in between husband and wife and for that reason Kalyani filed a criminal case for torture upon her against the accused person. In his cross-examination he said that he could not remember whether police interrogate him as the incident occurred before 5 years ago. He went to the house of the appellant around 9.30 to 10 P.M. and he saw the deceased in the adjacent room of cowshed there was only one door. He did not see any rope in her neck and did not see any injury and in that room beside Kalyani her two daughters were present.

13. Out of the said prosecution witnesses rest of the of the witness belong to either police personnel or the autopsy surgeon. P.W. 11 Broji Gopal Debnath was posted at Burwan as S.I. of Police on 9.11.2006 when he was entrusted for re- investigation of Burwan P.S case under Section 498A/306. Prior to him S.I

Ajit Mondal was entrusted to investigate the said case and after being entrusted this witness examine 18 new witnesses and recorded their statement. He produced Rashmoni and Parboti Pal of the deceased before the Magistrate for recording their statement. He also examined Dr. Ashim Banerjee and recorded his statement and after completion of re-investigation submitted the charge sheet. From his cross-examination it appears that he did not enquire about the investigation conducted by his previous I.O. He found that inquest was done on 08.06.2006 and FIR was lodged on 05.06.2006 . The inquest was done on the basis of a U.D. case no 12 of 2006 and nothing was mentioned in the C.D of whose instance said U.D case started. Nothing can be found from the case diary whether Magistrate requested for holding inquest or not. He did not find any note in the case diary recording reasons of delay in filing the FIR. The first I.O. examined 10 witnesses in village Eguria in the father's house of the deceased who were resident of village Eguria. He also examined 5 witnesses in the matrimonial house of the deceased at village Jhillera. The sketch map was prepared by the previous I.O. and this witness verified the said rough sketch map. He did not examine Nitai pal and Naren Pal Whose house were situated near the place of occurrence.

14. P.W. 14 is Dr. Dr. Ashim Banerjee who was posted at Kandi SD Hospital as Medical Officer on 08.04.2006 and on that day he performed post mortem in connection with Burwan P.S. UD case no. 12/06 dated 08.04.2006. He found 1 / 1½” ligature mark over neck which is 10” long with gap of 2” below left ear. He did not find evidence of any other external injury. He believed that cause of death was asphyxia due to hanging and ante mortem in nature and the

manner of causation of injury was suicidal. He proved the post mortem report which was prepared by him as Exhibit 5. P.W. 21 Ranjit Kumar Biswas was posted as S.I. on 03.07.2006 when he was endorsed with investigation of Burwan P.S. Case no. 81 of 2006 dated 05.06.2006 by the O.C. M.M. Haque .Prior to taking charge of investigation S.I., Ajit Mondal investigated some part of investigation. He took charge of investigation and tried to arrest the rest accused person but could not arrest them. Though they surrendered before the Court. After completion of investigation he submitted the charge sheet no 22/06 dated 29.08.2006 for the offence under Section 498A and 306 IPC against the accused person. In his cross-examination he deposed that he went to the house where the victim died but he could not say at what place of the house the victim died. He did not made any reflection in the C.D that his investigation the daughter of the victim met him.

15. P.W. 5 Rathin Chakraborty who was posted as ASI of Police on 08.04.2006 when he conducted inquest report of deceased Kalyani Paul. He submitted the carbon copy of the said report. From his cross-examination it can be found that he found the dead body wearing printed saree yellow blouse and one petticoat. He saw the dead body lying on the floor in the cow shed during investigation he found sign of mark of rope in the throat and one injury in the left side of the dead body. P.W. 6 Alok Kumar Ghatak posted at Kandi Court as constable. He brought the dead body of the deceased to morgue of Kandi Hospital for inquest.

16. The appellant was examined under Section 313 of the Code of Criminal Procedure and the incriminating materials that was placed before him and

stated that he was married to the victim but most of the time she used to live in her mother's house and he was assaulted and that is why he escaped from the house after the incident. His brother lives in different place and they said everything false. The daughters are tutored by the maternal uncle he further stated that on the day of her mother's death his uncle and aunt took them to their house and secretly left the place and took his daughter with them. He claimed to be innocent.

17. The Learned Trial Court after scanning the evidences was of the opinion that there was no good relation in between the husband and wife for which a case was filed by the deceased against her husband and other inmates which was subsequently settled. Furthermore, there was an allegation of illicit relation between the appellant with Madhobi and there was dissatisfaction between the appellant and his wife, and after considering the evidences of the daughters passing such order of acquittal against the other co-accused and order of conviction against other co-accused and order of conviction against the present appellant being the husband under Section 498A.

Conclusion

18. On careful scrutiny of the entire records and the scanning the evidences though certain contradictory statements and inconsistencies are found those do not appear to be fatal for the prosecution. It is well established that prior to the instant complaint in the year 1999 the victim's elder brother lodged a complaint Burwan P.S case no 120/99 started under section 498A/34IPC as she was driven out from the matrimonial house but in the year 2001. Two different reasons are assigned by the family members of the accused being the

probable cause of their matrimonial discord which are an illicit relationship in between the appellant and his sister in law and birth of two female child but the deceased died in the matrimonial house. There are witnesses corroborating the cause of material discord and the same.

19. Therefore summing up, on close scrutiny of the entire facts and circumstances of the case this Court do not find any reason to interfere with the observation made by the Learned Court and hence this appeal is liable to be dismissed .

20. Accordingly, this CRA 59 of 2018 is hereby dismissed. The Judgement and Order of conviction passed by the Learned Additional Sessions Judge, Fast Track 1st Court, Kandi, Murshidabad in sessions Trial no. 237 of 2009 is hereby affirmed. Bail bond executed by the Appellant shall stand cancelled.

21. All connected applications are hereby disposed of.

22. Urgent certified copy of the order if applied for be provided to the parties upon observance of all necessary requirements.

[CHAITALI CHATTERJEE (DAS), J.]