

Sessions Trial Case No. 80 of 2024

Miscellaneous Form No
(M) 34 to Form No (M) 36

Form A

IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
4th COURT, PURBA MEDINIPUR AT TAMLUK

Present: ANNADA SANKAR MUKHOPADHYAY
(JO Code-WB 00863)
Additional Sessions Judge,
4th Court, Purba Medinipur at Tamluk

Date of Judgement: Tuesday the 01st April, 2025

Sessions Trial Case No. 80 of 2024
Sessions Case No. 349/2023
CNR No. – WBEM 0100-4697-2023

Under Section 498A/304B/306/34 of the Indian Penal Code

Complainant- State of West Bengal

Represented by- Sri. Uttar Sekha Bera, Ld Public Prosecutor

Accused-
1. Sk. Amjedul @ Gura,
2. Taslima Bibi,
3. Sk. Kurban,
4. Mst. Sahida Bibi
5. Gulenoor Khatun

Represented by- Sri. Goutam Bhowmik, Ld Advocate

FORM B

Date of Offence	On the night intervening on 31.03.2000 and 01.04.2000
Date of FIR	09.05.2000
Date of Charge-sheet	19.10.2001
Date of framing charges	08.07.2024
Date of Commencement of	12.11.2024

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Evidence	
Date on which Judgement is reserved	19.03.2025
Date of the Judgement	01.04.2025
Date of the Sentencing Order, if any	Nil

Accused details:

Rank of the accused	Name of Accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C.
1	Sk. Amjedul @ Gura	28.09.2000	26.12.2000	Ss. 498A/304B/306/34 of IPC	Acquitted	Nil	Nil
2	Mst. Taslima Bibi	12.07.2000	26.08.2000	Ss. 498A/304B/306/34 of IPC	Acquitted	Nil	Nil
2	Sk. Kurban	12.03.2014	23.06.2014	Ss. 498A/304B/306/34 of IPC	Acquitted	Nil	Nil
2	Mst. Sahida Bibi	Nil	Surrendered and got bail on 28.08.2019	Ss. 498A/304B/306/34 of IPC	Acquitted	Nil	Nil
2	Gulenoor Khatun	Nil	Surrendered and got bail on 28.08.2019	Ss. 498A/304B/306/34 of IPC	Acquitted	Nil	Nil

FORM C

LIST OF PROSECUTION/DEFENCE/COURT WITNESS

A. Prosecution:

Having the burden of proof upon the prosecution, the Public Prosecutor initiating the case adduced a total **06** witnesses as detailed hereunder:

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
P.W. 1	Sk. Nurul Amin	Defacto complainant
P.W. 2	Lahorjan Bibi	Complainant' mother
P.W. 3	Madan Baichar	Independent witness
P.W. 4	Mantaj Khan	Uncle of complainant
P.W. 5	Affazuddin Khan	Uncle of complainant
P.W. 6	Dr. Subodh Kr. Bera	Attending doctor

B. Defence witnesses, if any:

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
	Nil	
	Nil	

C. Court witnesses, if any:

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
	Nil	
	Nil	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
01	Exbt P-1/PW-1	Written complaint
02	Exbt P-2/1/PW-1	Signature of PW-1 on the inquest report
03	Exbt P-3/PW-6	Post mortem report

B. Defence witnesses, if any:

Sr. No.	Exhibit Number	Description
1	Nil	Nil

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Nil	Nil

D. Material Objects:

In the course of the prosecution evidence, the following materials were formally proved before this Court and marked as exhibits (Materials Exhibits and Defence Exhibits) in favour of the respective parties.

Sr. No.	Exhibit Number	Description
1	Nil	Nil

JUDGMENT

1. The brief factual matrix of the prosecution case, which sets the criminal law in motion, is that of one Sk. Nurul Amin of Khagda under

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Chandipore PS appeared before the learned ACJM, Tamluk on 24th April 2000 (then it was so designated) and filed a petition under section 156(3) of CrPC contending that his sister Rabiya Bibi married with accused no. 1/ Sk. Amjedul, according to Mohammadan Rites and Customs on 4th Jaistha 1405 BS and as per the demand of the accused persons, the complainant's father gave dowry and after the marriage was convened, the complainant's sister went to her matrimonial house at Jalpai with all the accused persons. After a few days of the marriage, the accused persons demanded further dowry from the father of the complainant, and on such demand, they started physical and mental torture upon Rabiya Bibi, and she was driven out of her matrimonial house by the accused persons. After returning to her paternal home, Rabiya Bibi informed the same and filed a petition under section 125 of the Code of Criminal Procedure before the learned Addl. Chief Judicial Magistrate Tamluk also filed a case under section 498A of the IPC against the accused persons, being G.R. case no. 52/1999. On 15.11.1999, a compromise was made regarding the accused under section 125 of Cr.P.C (being Misc Case no. 111/1999). Notwithstanding that compromise, the accused persons tortured Rabiya Bibi, both physically and mentally, and informed her that if the accused persons marry for the second time, he will get more dowry, and they instigated the victim to commit suicide by taking poison. On 01.04.2000 at about 10.00 a.m. a local trolley puller namely Sk. Sadir who is the cousin of the complainant informed the complainant and other inmates that said Rabiya Bibi was admitted at Erashal BPHC in precarious condition and hearing the same, complainant and his parents along with other relatives went there and saw that said Rabiya Bibi was lying dead on the ground floor of the hospital and they found marks of injury on different parts of her body. They also found the accused persons there. On query from the villagers, they came to know that on the night intervening on 31.03.2000 and 01.04.2000 they had quarrel in between said Rabiya Bibi and accused persons and crying of Rabiya Bibi was coming out from the house of the accused. They also reported that accused persons used to assault said Rabiya Bibi for demand of dowry. The complainant filed an instant M.P case before the learned Addl. Chief Judicial Magistrate, Tamluk so prayed for investigation of this case.

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2. On receipt of the said written complaint, through OC Chandipore P.S, the O.C, Chandipore PS started said PS case no. 29/2000 dated 09.05.2000 for offence punishable under sections 498A/304B/306/34 of Indian Penal Code (in short 'IPC') against the accused persons and after filing up the formal FIR, Officer-in-charge of the said P.S endorsed the case to O.C SI of Police, H.D.Patra to investigate the case (hereinafter called as IO).

3. Taking up the investigation, the I.O. visited the Place of Occurrence (in short 'P.O') and prepared a rough sketch map with an index of the P.O, examined the complainant and available witnesses and recorded their statements under section 161 of CrPC, arrested the accused persons and forwarded them before the learned ACJM, Tamluk and collected P.M. Report of the deceased from the Sub-Divisional Hospital, Tamuk and found from the observation of the Dr. Subodh Kr. Pal that the stomach finding of the deceased goes in favour of a suspicious death of the deceased, though a final opinion was not given for want of a chemical examination report. A FSL report was not received by the Investigating Officer till the closure of his investigation, and after consultation with the superior, he has submitted a charge sheet against the accused persons for offences punishable 498A/304B/306/34 of IPC vide C.S no. 43/2001 dated 19.12.2001.

4. On submission of the charge sheet, Ld. ACJM, Tamluk took cognizance of the offence on 11.11.2001. After cognizance has been taken Ld. CJM, Tamluk served copies to the accused persons and committed the case to the Court of learned Sessions Judge, Purba Medinipur on 10.08.2023.

5. On receipt of the case record, Ld. Sessions Judge, Purba Medinipur transferred the same to this court for disposal on 06.03.2024.

6. After receipt of the case record by this court, accused persons on bail appeared and a charge was framed against them for the offence punishable under sections **498A/304B/306/34** of the IPC. The contents of the charge, so framed, were read over and explained to the accused persons, to which they pleaded not guilty, claiming them innocent and prayed for trial.

7. The prosecution, having the burden of proof to establish the case and allegation against the accused persons beyond a reasonable doubt, adduced and examined a total of six (7) witnesses, details of which are already explained above in this judgment.

8. After examination and cross-examination of the witnesses, the record was taken up for examination of the accused under section 313 of CrPC. The brief of incriminating material and evidence brought against the accused persons by the prosecution was prepared in consultation with both sides in English due to the non-availability of the Bengali Stenographer. Contents of the same were narrated in brief to the accused in Bengali, to which they denied everything and claimed themselves innocent and declined to adduce any evidence on their behalf and therefore the defence evidence was also closed. Heard the argument of both sides thereafter.

Arguments:

9. During the argument, Ld. the Public Prosecutor has submitted that this is one of the oldest cases and out of the twenty-20 charge sheet witnesses he has produced as many as six witnesses because of the death of most of the witnesses during the pendency of the case before the learned CJM, Purba Medinipur. He has further submitted that the defacto complainant in his evidence supports his complaint for the death of his sister about 27 years ago. He has submitted that the PW-1 categorically corroborated his complaint and identified his complaint as well as his signature in the inquest report. He has further submitted that PW-2, the mother of deceased Rabiya Bibi, also alleged that her daughter committed suicide due to a misunderstanding with the accused persons. He has further submitted that PW-3 also stated that the victim committed suicide by taking poison, and evidence of PW-4 also heard about the same. He also discussed about the evidence of PW-5, who supported the other witnesses and evidence of PW-6, the Autopsy Surgeon, who also held a post-mortem examination on the dead body of the deceased. He has submitted that PW-6 found green colour, pungent smell liquid in the stomach of the deceased and opined that the death was caused due to taking poison. He has submitted that the prosecution is able to prove the case against the accused persons for the offence for which a charge was framed and prayed for the conviction of the accused persons.

10. On the other hand, the learned Advocate for accused persons completely brushed aside the arguments of the prosecution. He has submitted that the prosecution failed to establish the ingredient of an offence under section 498A of the IPC since none of the witnesses stated that the accused persons had

practiced cruelty upon the deceased. He has submitted that there is no evidence that the victim committed suicide due to the act or torture, or instigation of the accused persons. He has submitted that no ingredient of dowry death or instigation to commit suicide from the side of the accused persons as proved by the prosecution, so he prayed for the acquittal of the accused.

Points for determination:

- Whether the accused persons, being the husband and other relatives of the husband of the deceased, practiced cruelty upon the complainant's sister for the demand of further dowry.
- Whether the accused persons caused the dowry death of the victim woman within seven years of her marriage due to failure to meet such demand of dowry?
- Whether the accused person abet the deceased to commit suicide?

Decision with Reason

11. All the aforesaid points for determination are taken up together for discussion, to reach to a meaningful and logical conclusion since all these are interlinked and are chain actions of the same offence.

12. PW-1 is the defacto complainant who stated that his sister got married to Sk. Amjedul, about 27 years ago, and they gave gold ornaments to his sister in the course of marriage. He has stated that initially his sister was living peacefully at her matrimonial house, but after 2 ½ years, a family dispute cropped up between his sister and the accused persons, and his sister returned to her paternal home and made a complaint before his father. This matter was subsequently resolved amicably, but after 3-4 months of the return of his sister to her matrimonial home, he came to know that Rabiya died due to poisoning. He also stated that he was a witness to the inquest report of the dead body of his sister. He identified his complaint and signature in the inquest report. He admitted during cross-examination that his sister was admitted to the hospital by the accused persons. It is revealed from his reply that his sister was interested in

living in a separate mess from the big matrimonial family of her husband. He has replied that his father got the first complaint filed through his sister. He has also replied that he lodged a complaint due to the instigation of his relatives and made no complaint against anybody during the inquest report of the dead body of his sister.

13. PW-2, mother of the deceased and complainant, stated that her daughter got married to Sk. Amjedul was about 26 years ago, and initially she was living peacefully, but subsequently she had some disputes and misunderstandings with the accused persons, for which she committed suicide by taking poison in the year 2000. She failed to state why or for what reason her daughter took poison. She admitted that the dispute of her daughter was regarding managing her living with her larger matrimonial family.

14. PW-3 Madan Baichar stated that the son's wife of Tejimuiddin Sekh took poison and he took her to Chandipore Erashal BPHC by his rickshaw van. He stated further that while he was carrying the said lady, she was alive. He did not state anything more.

15. PW-4 is the uncle of defacto complainant who stated that his niece died due to taking poison, which he came to know after her death, but he failed to state why she took poison. He added that he heard that after the marriage of his niece, she used to return to her paternal house on and often.

16. PW-5 is also the uncle of the defacto complainant as well as deceased. He heard that his niece died due to taking poison, but he failed to state why she committed suicide.

17. PW-6 is the Medical Officer who held a post-mortem examination over the dead body of Rabiya Bibi, female, aged 20 years by religion Muslim under Chandipore PS case no. 21/2000 dated 01.04.2000 brought and identified by Constable no. 1834 Dulal Bauri of Chandipore PS and on dissection he found that the dead body was completely decomposed and there was froth from mouth to nose and there was no marks of ligature and both the lungs and heart were decomposed and following viscera was preserved for chemical examination; a portion of liver; stomach with its content; entire right kidney and it is also found that stomach content was about half litre green colour pungent smell liquid which was preserved and in my opinion following the stomach findings

was in favour of poisoning as cause of death but final opinion kept pending of for chemical examination report and he identified the post mortem report(P-3).

18. In this case, almost substantial witnesses died during the pendency of this case before the learned CJM, Purba Medinipur, and after taking several attempts I.O. could not be produced. Considering the material evidence available in the record and the age of the case, this court closed the prosecution's evidence without examining the investigating officer.

19. Section 498A in The Indian Penal Code:

498A. Husband or relative of husband of a woman subjecting her to cruelty.—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 three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

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

20. Section 498A, IPC reads that 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 three years and shall also be liable to fine."

21. Cruelty is the essence of offence under Section 498A of the IPC. This provision has given a new dimension to the concept of cruelty for matrimonial relief. The expression 'cruelty' has been defined for Section 498A. The concept of cruelty is multi-dimensional. It can either be mental or physical; either intentional or unintentional. Each case has to be decided on its facts to decide what type of cruelty is applicable.

Cruelty:

22. Essential ingredients of the offence under section 498A of the IPC are:

- (1) The woman must be married;
- (2) She must be subjected to cruelty or harassment; and

(3) Such cruelty or harassment must have been done either by the husband of such woman or the relative of her husband.

23. So far as the evidence available in the case record, the mother and brother of the deceased are the most important witnesses. Mother as PW-2 failed to state whether the husband and in-laws of her daughter killed her daughter or not. PW-1 stated that there was a family dispute at the matrimonial home of his sister, the deceased and did not state about practicing cruelty upon her by the accused. PW-2, the mother of the deceased, did not allege that the accused of practised cruelty upon her daughter. She too stated that there was a misunderstanding between her daughter and the accused persons, which caused the death of her daughter. PW-3 is the local person who did not allege any cruelty upon the deceased. PW-4 and PW-5, both uncles of the deceased, did not allege practicing of cruelty by accused to their niece. Therefore, from the strength of the evidence, no material ingredient of the offence of cruelty is made by the prosecution against the accused persons.

Dowry Death:

24. S.304-B of the I.P.C. penalised dowry death. It says:

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

25. Section 2 of the Dowry Prohibition Act defines the word 'dowry'—

"dowry" means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before 2 [or any time after the marriage in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.—The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

26. Section 113B of the Evidence Act states about the presumption of dowry death caused within 7 years of the marriage. It says-

“When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.— For the purpose of this section, “dowry death” shall have the same meaning as in Section 304-B of the Penal Code, 1860.”

27. In ***Major Singh v. State of Punjab*** reported in (2015) 5 SCC 201, a three-Judge Bench of Hon’ble Supreme Court held as follows :

“10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:

- (i) the death of a woman should be caused by burns or bodily injury or otherwise than under a “normal circumstance”;
- (ii) such a death should have occurred within seven years of her marriage;
- (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) such cruelty or harassment should be for or in connection with demand of dowry; and
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.”

28. In ***Kans Raj v. State of Punjab, (2000) 5 SCC 207*** Honourable Supreme Court observed-

“9. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304-B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

- (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) such death should have occurred within 7 years of her marriage;
- (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) such cruelty or harassment should be for or in connection with the demand of dowry; and
- (e) to such cruelty or harassment the deceased should have been subjected soon before her death.”

29. From the prosecution evidence, no allegation of cruelty or harassment by the husband and relatives of husband of the deceased found. Evidence of prosecution failed to fulfil the ingredients of the offence of dowry death.

Abetment of Suicide:

30. S.306. I.P.C: If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

31. Section 107 of the Indian Penal Code defines abetment comprising of:-

- (1) Instigating a person to commit to offence;
- (2) engaging in conspiracy to commit the offence;
- (3) intentionally aiding a person in the commission of an offence.

32. The prosecution evidence in totality reveals that there was some dispute between the deceased and the husband and in-laws at her matrimonial home, but it was subsequently resolved, and the husband and the deceased together and subsequently the sister of the defacto-complainant died by poisoning. Poisoning was not finally proved since no chemical examiner's report was placed in the record during the trial.

33. The prosecution evidence further disclosed that there was no evidence that the accused persons practised cruelty upon the deceased, nor was there any harassment of the deceased just before the death of the deceased. The death was unnatural indeed, occurred within 7 years of their marriage, but whether it was accidental or suicidal is a question of fact. The medical evidence of the prosecution shows that the death was due to poisoning, but the final opinion was held up by the doctor for want of an FSL report, which was never received.

34. After careful reading of Section 113-B of the Evidence Act it could be understood that there must be material to show that 'soon before the death' of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of a woman and the accused persons from the evidence of prosecution are able to discharge this presumption.

35. Having considered the materials of record in evidence, both oral and documentary and for the want of believable and credible as well as sufficient evidence, this court is convinced to hold that the prosecution is unable to prove its case beyond reasonable doubt and as a result, the accused persons are entitled to be acquitted.

36. Hence, it is

Ordered

that the accused persons namely 1. Sk. Amjedul @ Gura, 2. Taslima Bibi, 3. Sk. Kurban, 4. Mst. Sahida Bibi and 5. Gulenoor Khatun are not found guilty of the offence punishable under sections 498A/304B/306/34 of the Indian Penal Code and are acquitted under section 235(1) of the Criminal Procedure Code.

They shall be set at liberty at once unless they are required in any other case and be discharged from their bail bond liability.

Seized alamats shall be destroyed after the appeal period is over. Property seized as personal property, if any, be returned to its owner after proper verification and identification.

A copy of the judgement each will be forwarded to the District Magistrate, Purba Medinipur and the Secretary of the DLSA, Purba Medinipur for information with copies of evidence and statements under section 313 Cr.P.C to enable the victim to appeal against the judgement if so desires.

Typed & Corrected by

Sd/-Annada Sankar Mukhopadhyay
(JO Code-WB 00863)
Addl. Sessions Judge
4th Court, Tamluk,
Purba Medinipur