

S.T. No. 05(10)2014
Sessions Serial no. 63/2014
CNR No. WBMD01-011696-2014

1

DISTRICT- MURSHIDABAD
THE COURT OF THE ADDITIONAL SESSIONS JUDGE, 1ST COURT
AT BERHAMPORE

PRESENT: NILANJANA CHATTERJEE (WB00811)
ADDITIONAL SESSIONS JUDGE
1ST COURT, BERHAMPORE

SESSIONS SL NO. 63 OF 2014
SESSIONS TRIAL NO. 05 (10) 2014

STATE OF WEST BENGAL -VS- MOHAMMAD SK & 7 OTHER

[UNDER SECTION 498A/307/313/34 OF THE INDIAN PENAL CODE]
& 376 OF THE INDIAN PENAL CODE
DATE: 31ST DAY OF JULY, 2026

For the State : Sri Prashanta Dutta

For the Defence : Anowar Hossain

JUDGMENT

Berhampore P.S, on 19.12.2011, received a lengthy written complaint from one Musammat Jasmun Bright Khan; the sum and substance of which is narrated below in a nutshell:

The complainant was married to Md. Nizam Sk on 24.04.2009 in accordance to Islamic *Shariyat* laws and rituals. After her marriage, she went to reside with her husband at her matrimonial home comprising of a joint family including Md. Hasiruddin Sk, Md. Sarim Sk, Md. Karim Sk, Md. Arim Sk, Kaifa Bibi, Yasmin Bibi and Rangila Bibi. At the time of marriage, the complainant's father gave her 3 'bhoris' of gold ornaments to her. While residing at her matrimonial home, Hasiruddin and Kaifa Bibi being the father-in-law and mother-in-law of the complainant respectively started pressurizing the complainant to bring Rs. 5 lakhs from her father. The father of the complainant failed to meet their demand and, as such, the husband and the above-named in-laws [to be also referred to as the accused

persons] started physical and mental torture upon the complainant. Hasiruddin was a police constable and he used to threaten the complainant that he would not be held accountable for any wilful act because he is a policeman. In the meantime, the complainant gave birth to a girl child and this made matters worse. The intensity of torture increased as the complainant could not bear a male heir. On 06.05.2011, while the sister of the complainant Elizabeth was visiting her at the latter's matrimonial home, the accused persons poured kerosene on her and tried to set her body on fire. The complainant was saved by the neighbours who rushed in and rescued her. It is further complained that the accused persons even assaulted Elizabeth. The written complaint mentions that the accused persons then drove out the complainant and her daughter from the matrimonial home in one dress.

It is also stated that the complainant returned to her father's house with her daughter and started residing there. Accused Md. Nizam Sk, the husband of the complainant, came to the complainant's paternal home and there they started cohabiting. The complainant even went with her husband and stayed at a lodge named Kazi Nazrul Islam Bhawan.

On 10.12.2011 the complainant received a document left at her sister's house and after going through it the complainant was startled to find that it was a '*Talaquenama*' executed by her husband on 29.09.2011. Prior to 10.12.2011, the complainant, while engaging in sexual act with her husband Nizam, did not know that he had already divorced her.

It is also alleged that the complainant had conceived during this time and on 28.11.2011 Nizam forcibly made her consume pills which led to miscarriage of the unborn child.

Upon this written complaint, Berhampore P.S Case no. 1418 of 2011 dated 19.12.2011 u/s 498A/307/34 I.P.C & S. 417/376/313 I.P.C. was started. The investigation commenced and the I.O submitted charge sheet against all the F.I.R-named accused persons for committing offence u/s 498A/307/417/376/313/34 I.P.C.

Since offences u/s 307/376/313 I.P.C are all triable exclusively by the court of session, the case was committed to Ld. Sessions Judge, Murshidabad and then transferred to this court for disposal.

After the record was received, all 8 accused persons appeared and charge u/s 498A/307/313/34 I.P.C was read over and explained to them. Separate charge under Section 376 I.P.C was also framed against the accused Md. Nizam Sk.

The accused persons pleaded not guilty and claimed to be tried.

Hence, this trial.

POINTS FOR DETERMINATION

Whether the prosecution has been able to prove its case beyond reasonable doubt?

DECISION WITH REASONS

During the trial, the prosecution examined the following witnesses:

1. PW-1 Jasmin Bright Khan (the complainant);
2. PW-2 Dilruba Bibi @ Bewa (mother of the complainant);
3. PW-3 Elizabeth Moon Bright (sister of the complainant);
4. PW-4 Sunrise Khan (sister of the complainant);
5. PW-5 Soma Shil (the friend of the complainant)

The necessary documents which have been marked Exhibits shall be discussed in the course of the judgment.

The accused has been separately charged u/s 376 I.P.C because it is the allegation of the complainant that he had suppressed the fact that he had given *talaq* to her but continued to cohabit with her as a married couple; a conduct which the complainant would never have consented if she was aware that on 29.09.2011 Nizam had given her unilateral *talaq* before Muslim Marriage Registrar. According to the complainant, Nizam took her to Kazi Nazrul Islam Bhawan at Patharchapri in the district of Birbhum and from 27.10.2011 to 29.10.2011 they stayed there as husband and wife and it was only on 10.12.2011 did the complainant learn about the *talaq* dated 29.09.2011.

Based on this allegation, the appropriate section for framing the charge against Md. Nizam Sk. would have been 376B I.P.C and not Section 376 I.P.C. Nevertheless, this defect would not prove fatal to the prosecution because the accused had been given the right to cross-examine the witnesses and there has been no failure of justice.

Further, section 376B IPC being a minor offence to section 376 IPC, the offence under section 376B IPC, if proved, would not prevent this court from convicting the accused under Section 376B. I shall continue my discussion in this judgment regarding the offence to be one under section 376B IPC and not under section 376 IPC.

The I.O. could not be examined in this case as he is no more. However, the documents collected by him during the investigation have been marked Exhibits under Section 294 Cr.P.C.

The pivotal point in proving this charge would have been to produce the alleged '*talaqnama*' dated 29.09.2011 executed before the Marriage Registrar. The same did not come before this court. The other important document which would have settled the issue was the register of Kazi Nazrul Islam Bhawan where the complainant and the accused Nizam allegedly stayed from 27.10.2011 to 29.10.2011. If it was found that Nizam and Jasmun had indeed stayed at the said Bhawan from 27.10.2011 to 29.10.2011 and the *talaqnama* was dated prior to 27.10.2011, the prosecution could have effortlessly proved the charge under Section 376B I.P.C beyond all reasonable doubts. Absence of seizure list in the record reveals that neither the '*talaqnama*' nor the hotel/ lodge register was seized by the I.O.

The complainant and Nizam was a married couple and in order to prove that the accused had suppressed the *factum* of *talaq* and cohabited with her, the above-mentioned documents were indispensable and imperative. I.O could have obtained the certified copy of '*talaqnama*' from the concerned Marriage Registrar.

In absence of these documents, the mere oral testimony of the witnesses that accused Nizam had cohabited with the complainant by suppressing the fact that he had already divorced her would not be sufficient to drive home the charge of section 376B I.P.C.

Now, I shall discuss whether the prosecution has been able to prove the other offences enumerated under section 498A/307/313/34 IPC or not.

The allegation of the complainant regarding the offence under section 313 IPC was against the accused Nizam. However, charge has been framed against all the accused persons for forcing miscarriage of the complainant.

The complainant has alleged that while Nizam was cohabiting with her at her paternal home and also when they went to Kazi Nazrul Islam Bhawan, she became pregnant and Nizam forced her to take pills which caused her miscarriage. The first primary ingredient to prove this offence is that the complainant was pregnant and there was miscarriage at the relevant time. Apart from the complainant's own oral testimony, the prosecution failed to establish this fact through medical documents. The mother and sister of the complainant who has deposed as PW-2 and PW-3 did not say anything about the complainant getting pregnant with the child of accused Nizam after the alleged divorce. It must be mentioned here that PW-4 who is another sister of the complainant was declared hostile for not supporting the prosecution case. Therefore, apart from the oral testimony of the complainant, there is nothing to prove that she was at all pregnant and the relevant time. There is also no medical document of abortion or miscarriage. Unless these facts are proved, there is no scope for the prosecution succeeding in proving the offence under section 313 IPC.

The following is the discussion as to whether the prosecution has been able to prove the charge of cruelty enumerated under section 490 8A IPC:

Section 498A IPC explains "cruelty" as-

(1) 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 and limb or health (whether mental or physical) of the woman; or

(2) harassment of the woman when 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 needs such demand.

In the written complaint which has been marked as Exhibit no. 1, the complainant has alleged that at the time of marriage, her father had gifted her 3 'bhoris' of gold ornaments. After marriage, while residing at her matrimonial home, the accused persons namely Nizam (the husband), Md. Hasiruddin (the father-in-law) and Kaifi Bibi (the mother-in-law) demanded Rs. 5 lakhs. The father of the complainant

being a poor person could not meet the demand as a result of which all accused persons started mentally and physically torturing the complainant. The father-in-law being a police constable would often threaten the complainant with dire consequence and boast that he being a policeman would face no consequence for causing death of the complainant. It is further alleged in the written complaint that in spite of such torture the complainant continued to lead marital life with the accused Nizam. She gave birth to a female child and things turned worse for the complainant. She was taunted and sneered by the accused persons for not bearing a male child and the intensity of physical and mental torture intensified.

Here, the written complaint reveals that the demand for dowry was made by the husband and parents-in-law and the other accused persons joined in to torture the complainant upon her father's failure to meet the demand.

The PW-1 stated in her examination-in-chief that her husband and father-in-law used to coerce her to bring Rs. 5 lakhs from her father and on failure all the accused persons inflicted mental torture on her. The accused persons made her do all sorts of domestic work, the father-in-law threatened to kill the complainant as mentioned in the written F.I.R. She also stated that she was tortured for giving birth to a girl child and the accused persons even declined medical treatment to the newborn though she was suffering from respiratory trouble.

The PW-2 also reiterated that the accused Nizam and his parents demanded Rs. 5 lakhs from her daughter and when the father could not fulfill the demand, the accused persons put pressure on her. She also testified that when the complainant gave birth to a female child, the dispute between the complainant and her in-laws increased.

PW-3 is one of the sisters of the complainant. She stated in her testimony that Nizam was fully aware that it was the complainant's second marriage yet he said that he would not be able to lead marital life with her and never took care of the complainant. The witness also stated that accused Nizam did not provide the complainant or the minor daughter with food. She even stated that she went to visit the complainant on the day before '*Jamai Sasthi*' and found that the complainant was not allowed food and was tortured by the father-in-

law with filthy language. The PW-3 did not, however, mention anything about demand for dowry.

The PW-5 mentioned that she had heard that the accused persons demanded dowry of Rs. 5 lakhs from the complainant and her parents. She did not say from whom she had heard about the demand for dowry.

In order to drive home a charge under section 498A IPC, the prosecution must prove beyond doubt direct statements of the victim, eyewitnesses, medical reports or injury reports, if any. The Hon'ble Supreme Court of India has consistently mandated that the allegations of cruelty must have specific dates and times or roles and not be just omnibus allegations of torture. ***In Dara Lakshmi Narayana vs State of Telengana reported in (2025) 3 SCC 735***, the Hon'ble Supreme Court has observed that it has become a recurring tendency to implicate every member of the husband's family irrespective of their role or actual involvement, merely because a dispute has arisen between the spouses.

In the present case, the written complaint mentions that the complainant was tortured mentally and physically by the accused persons and harassed for not paying the dowry amount of Rs. 5 lakhs. During trial, the witnesses, including the complainant, did not mention anything about physical torture. According to the complainant, she was made to do all household work by the accused persons on failure to pay the dowry amount. The mother of the complainant mentioned the demand for money and birth of a female child was the course of dispute between the complainant and the accused persons. PW-3 did not mention anything about harassment with demand for dowry and for giving birth to a girl child. The evidence of PW-5 is mere hearsay. She mentions that since the inception of marriage there was dispute and quarrel in between Jasmun and the accused persons.

None of the above-mentioned witnesses specified the dates, incidents and the roles played by the accused persons in harassing and treating the complainant with cruelty.

Thus, in absence of specific allegations relating to incident, date, time and roles played by the accused persons, an omnibus allegation of torture cannot successfully drive home the charge of Section 498A I.P.C.

The complainant has mentioned a specific incident which has attracted the charge under section 307 IPC. It has been alleged in the F.I.R that on 06.05.2011, while the younger sister of the complainant namely Elizabeth was visiting her, the accused persons tried to burn her alive by pouring kerosene on her and on hearing her screams the neighbours rescued her. The accused Md. Sarim Sk and the other accused persons severely assaulted Elizabeth and drove the complainant and her infant daughter out of the matrimonial home. This narrative in the written complaint is reiterated in the testimony of the complainant. PW-2 also stated that the accused persons tried to kill her daughter by setting her body on fire and accused Sarim being the brother-in-law of the complainant assaulted her (the complainant) and poured kerosene on her body and as per instruction of accused Karim, another brother-in-law of the complainant, Sarim, tried to set fire to the body of the complainant but failed to do so as Elizabeth came to her rescue.

PW-3 testified that on the day before '*Jamaisasthi*' she went to visit the complainant at her matrimonial home. The complainant told her that the accused persons were not allowing her food and she is being tortured by her father-in-law. When PW-3 informed the accused persons that she intended to take the complainant home with her, the accused persons refused to allow the complainant to go to her paternal home. After Elizabeth went out of the matrimonial home of the complainant, she heard her cries and went inside and found that accused persons had poured kerosene on her. She dragged the complainant to the nearest water tap and tried to wash off the kerosene from her whole body. Then, as per advice of the villagers, she took the complainant and her daughter to her paternal home.

The question which might arise is whether this alleged incident dated 06.05.2011, for which the accused persons have been charged under section 307 IPC also attract 498A IPC.

The complainant has mentioned a specific date when the incident of attempt to kill the complainant allegedly occurred. The complainant has also mentioned roles played by the accused persons namely Sarim and Karim. As has already been discussed in the foregoing paragraphs, the prosecution has by and large failed to establish the offence under section 498A IPC. Generally, a single isolated incident does not amount to conviction under section 498A

because this section requires proof of continuous, persistent and willful conduct by the accused persons. However, if the solitary incident is exceptionally portentous and grave, such as to endanger life of the married woman, it can also attract section 498A IPC in addition to section 307 IPC.

The alleged incident took place on 06.05.2011 and in nature it is such as to attract the offence of attempt to murder. Even though the accused persons allegedly tried to kill the complainant by pouring kerosene on her and that too on the day when the complainant's sister was visiting her, the complaint was finally launched on 19.12.2011. That is, seven months after the incident. It must be remembered that according to the complainant's version, she was driven out of the matrimonial home on the same day (06.05.2011) after the neighbours and her sister Elizabeth rescued her. Delay in filing F.I.R is not *per se* fatal but an explained delay creates grave suspicion in the mind of the court and the benefit of doubt would surely rest in favour of the accused persons.

The allegation that the accused persons tried to kill the complainant on the very day her sister was visiting her is not quite believable. The failure on the part of the complainant to lodge F.I.R on the same day after she was allegedly driven out of her matrimonial home is, no doubt, fatal because the complainant has given no explanation. In fact, the complainant has stated that she had cohabited with her husband even after she was driven out.

The main dispute arose, it appears, after the complainant came to know that her husband had divorced her. Till then, she did not lodge a complaint. The neighbours who had supposedly rescued the complainant after the alleged incident of attempt to murder were not examined by the prosecution. The sister of the complainant who has deposed as PW-4 did not hear about the incident either. This is most unlikely. The alleged incident is grave and PW-4 not hearing about it also raises suspicion in the mind of this court. The prosecution cannot afford to base its charges against the accused persons on preponderance of probability. It has to prove the charges beyond all reasonable doubts. For that, it was incumbent upon the complainant to lodge complaint without delay, hand over the kerosene -soaked apparels to the police and I.O was required to examine the neighbours of the accused persons.

The statements of the witnesses recorded under section 161 Cr.P.C., reflect that nothing had been stated by the witnesses as regards the allegation of attempt to murder. The statements of the witnesses in the examination-in-chief regarding allegation of attempt of murder were contradicted during cross-examination. The description narrated by the witnesses specially PW-1 and PW-3 are definite improvement in respect to the narration present in the F.I.R and in the statements recorded under section 161 Cr.P.C. In the statements of the mother and sister Elizabeth recorded under Section 161 Cr.P.C there is no mention of the incident dated 06.05.2011.

The prosecution could not prove the charge under section 307 either.

Hence, it is

ORDERED

The accused persons namely 1) Mohammad Nizam Sk; 2) Mohammad Hasiruddin Sk; 3) Mohammad Sarim Sk; 4) Mohammad Karim Sk; 5) Mohammad Arim Sk; 6) Kaifa Bibi; 7) Yeasmin Bibi and 8) Rangila Bibi are hereby found not guilty and acquitted under Section 235(1) Cr.P.C.

The accused persons be set at liberty at once and the surety shall be discharged after six months in accordance to the provision of Section 437A Cr.P.C.

Typed by me:

(NILANJANA CHATTERJEE)

(NILANJANA CHATTERJEE)

Additional Sessions Judge,
1st Court, Berhampore Murshidabad

Additional Sessions Judge
1st Court, Berhampore,
Murshidabad
WB00811

Arising out of Berhampore P.S case no.1418/2011 dated 19.12.2011

Date of offence	10.12.2011
Date of F.I.R	19.12.2011
Date of Charge-sheet	18.02.2012
Date of Framing Charges	31.10.2014
Date of commencement of evidence	15.09.2016
Date of Judgment	31.07.2026
Date of Sentencing order, if any	N.A.

Accused Details:

Rank of accused	Name of Accused	Date of Arrest (DOA)/ Date of Surrender (DOS	Date of Release on Bail	Offence charged with	Convicted/ Acquitted	Sentence Imposed	Period of detention undergone during trial(for Section 428 CrPC)
1.	Md. Nizam Sk	17.01.2012 (DOA)	17.01.2012	Section 498A/307 /313/34 of IPC & 376 of IPC	Acquitted	N.A	N.A
2.	Md. Hasiruddin Sk	01.02.2012 (DOS)	01.02.2012	Section 498A/307 /313/34 of IPC	Acquitted	N.A	N.A
3.	Md. Sarim Sk	17.01.2012 (DOA)	17.01.2012	Section 498A/307 /313/34 of IPC	Acquitted	N.A	N.A
4.	Md. Karim Sk	25.01.2012 (DOS)	25.01.2012	Section 498A/307 /313/34 of IPC	Acquitted	N.A	N.A
5.	Md. Arim Sk	01.02.2012 (DOS)	01.02.2012	Section 498A/307 /313/34 of IPC	Acquitted	N.A	N.A
6.	Kaifa Bibi	25.01.2012 (DOS)	25.01.2012	Section 498A/307 /313/34	Acquitted	N.A	N.A

				of IPC			
7.	Yeasmin Bibi	25.01.2012 (DOS)	25.01.2012	Section 498A/307 /313/34 of IPC	Acquitted	N.A	N.A
8.	Rangila Bibi	25.01.2012 (DOS)	25.01.2012	Section 498A/307 /313/34 of IPC	Acquitted	N.A	N.A

List of Prosecution/ Defence/ Court Witnesses--

A. Prosecution Witnesses:

Rank	Name	Nature of Evidence(Whether Eye Witness/Police Witness/Medical Witness /Panch Witness Other witness)
P.W-1	Jasmoon Bright Khan	De-facto complainant
P.W.-2	Dilruba Bibi @ Bewa	Mother of de fact complainant
P.W-3	Elijabeth Moon Bright	Co-villager
P.W-4	Sunrise Khan	Sister of de-facto complainant
P.W-5	Soma Shil	Friend of de facto complainant

B. Defence Witness: Nil

C. Court Witness: Nil.

List of Prosecution/Defence/Court Exhibits:

For Prosecution:

Exhibit No.	Description	Proved by
1 /1 collectively	Signatures of PW1 on the written Complaint	P.W-1
1/2	Endorsement on the complaint	Under section 294 Cr.PC.
2	Formal FIR	Under section 294 Cr.PC.
3 & 3/1	Rough Sketch map of P.O with Index	Under section 294 Cr.PC.

For Defence: Nil

For Court: Nil

List of Material Objects:

Serial No.	Material Object No.	Description
	NIL	