

IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS, 2 nd COURT, BARRACKPORE, NORTH 24 PARGANAS PRESENT SMT. SAYANTANI DE TARAFDER JO Code- WB01493 [GR Case No 2994/14] [Reg. 2994/14] T.R. No. 720/15 (Arising out of Jagaddal P.S. Case No. 553 dated 15.6.14) <u>Under Sections 498A/323/506/34 of the Indian Penal Code</u> Date of Judgment- 05.6.26

Complainant	STATE OF WEST BENGAL
REPRESENTED BY	Ld. APP Mr. Satyabrata Nag
ACCUSED	1. Bijoy Pandit (A1) 2. Sonkar Pandit (A2) 3. Mira Devi (A3) 4. Indu Devi (A4) 5. Sarita Pandit (A5) 6. Kiran Devi (A6) 7. Asis Pandit (A7) 8. Kedar Pandit (A8)
REPRESENTED BY	Ld. Advocate.

Date of Offence	:	15.6.14
Date of FIR	:	15.6.14
Date of Charge Sheet	:	30.9.14
Date of substance of accusation (Charge)	:	1.7.23
Date of commencement of Evidence	:	27.2.24
The date on which judgment is reserved	:	5.6.26
Date of Judgment	:	5.6.26
Date of sentencing order, if any	:	NA

FORM B

Accused Details :

The rank of the Accused	Name of the 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.
A1 to A8	1.Bijoy Pandit (A1) 2.Sonkar Pandit (A2) 3.Mira Devi (A3) 4.Indu Devi (A4) 5.Sarita Pandit (A5) 6.Kiran Devi (A6) 7.Asis Pandit (A7) 8.Kedar Pandit (A8)	NA	3.9.14	498A/ 323/506/34 IPC	Acquitted	N/A	N/A

Form C

List of Prosecution /Defence/ Court Witnesses

A. Prosecution :

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Suchitra Pandit	De facto complainant
PW2	Rajkumar Pandit	Other witness
PW3	Pramila Devi	Other witness
PW4	Uttam Kumar Pandit	Other witness

Fact of the Case-

This instant case has been registered on the basis of the court complaint lodged by Suchitra Pandit, D/O- Rajkumar Pandit of Jagaddal, under PS Jagaddal, Dist. North 24 Parganas before the Court of Ld. ACJM, Barrackpore on 15.6.14. On the basis of the said complaint, Jagaddal P.S. Case No.553 dated 15.6.14 under Sections 498A/323/506/34 of the Indian Penal Code was started. After proper investigation, police submitted charge Sheet no.818 dated 30.9.14 against the accused persons namely, Bijoy Pandit, Sonkar Pandit, Mira Devi, Indu Devi, Sarita Pandit, Kiran Devi, Asis Pandit and Kedar Pandit under Sections 498A/323/506/34 of the Indian Penal Code.

The Prosecution case in brief is that the de facto complainant got married with the accused Bijoy Pandit in the month of May, 2002 by following Hindu Rites and rituals and after that along with the stridhan articles, the petitioner started residing at her matrimonial house. Out of the said wedlock, the petitioner gave birth to two male children and after that the accused persons started demanding to bring cash of Rs. 1,50,000/- from her father. When the defacto complainant had failed to bring that amount from her paternal house then the accused persons started assaulting her and after that the husband of the accused in connivance with the other accused persons started strangulating the petitioner by putting pillow on her face. After that the complainant is compelled to leave her matrimonial house and took shelter at her paternal house along with her two minor children. It is on the basis of these incidents, the prosecution case was started.

This case was transferred to this Court for trial Charge under Sections 498A/323/506/34 of the Indian Penal Code was framed against the accused persons and the substance of accusation was read over to the accused for which they pleaded not guilty and claimed to be tried. Prosecution produces four witnesses in support of its case.

The accused persons were examined U/Sec 313 of Cr.P.C and they did not adduce any defense witness. Now it is the time to enter into the evidence on record.

Documentary Evidence

Sl No.	Particulars of documents	Date of admission	Marked as
1	Signature of the defacto complainant, PW-1 namely Suchitra Pandit, D/O- Rajkumar Pandit upon the court complaint .	27.2.24	Exhibit – P1

Oral evidence:

P.W. 1: PW 1 is Suchitra Pandit, i.e. the defacto complainant in the instant case. She stated during examination in chief that she lodged a complaint against her husband Bijoy Pandit. She cannot remember the date of marriage. After marriage she went to her matrimonial home. After 6 months of marriage her husband started torturing her for demand of money. Her husband demanded Rs.5,000/- and Rs.10,000/- frequently from her parents. She has given all her jewelry to her husband. Thereafter her husband driven out from her matrimonial home.

During cross-examination, she stated that her written complaint is written in English. She cannot read and write in English. She cannot say the date and time of torture. Rajkumar Pandit is her father who is very ill. Promila Devi is her mother and Uttam Pandit is her brother. She has two sons.

P.W. 2: PW 2, Rajkumar Pandit in his examination in chief stated that Suchitra is his daughter. She has filed this case against the accused persons. After marriage, initially she was happy. Thereafter, her husband and in laws demanded money from them and thereafter the physically tortured her and driven her from her matrimonial house.

During cross-examination, he stated that he cannot say the exact date and amount of money when the accused asked for money. He cannot say the date when the accused has driven her daughter from her matrimonial home.

P.W.3: PW3 is Pramila Devi, during her examination in chief she had stated that her daughter is the de facto complainant of this case.

She had lodged this case before the Bhatpara PS against her husband and father in law, mother-in-law and husband of sister-in-law, against 8 accused persons. One accused person is present before the Court. Identified. Other accused persons are not present before the Court.

My daughter got married in the year of 2002 along with Bijoy Pandit and after marriage she went to her matrimonial house with her husband. At the time of the said marriage ornaments and other gift articles and cash of Rs.1.5 lakh to them. My daughter gave birth to two sons in the year of 2003 and 2009 respectively. After that due to some marital dispute my daughter was ousted from her matrimonial house and after that when I tried to get my daughter back at her matrimonial house, then again, she was ousted from her matrimonial house with her two sons. Since then my daughter is residing with me. My son in law again got married. After that My daughter had lodged the complaint.

Cross-examination :

Today for the very first time I am narrating the alleged incident before the Court and except today I had narrated for the first time.

I had seen that my son in law and daughter in law had a fight with one another by my eyes at the rented house at 11 no. Gali at the house of Sawdagar Shaw.

I cannot state who were the residents of that locality and I cannot state when I went there to witness the marital dispute of my daughter.

P.W.4 namely Uttam Kumar Pandit commences today i.e. 16.05.2026:

My younger daughter is the de facto complainant of this case.

I do not know against whom my sister had lodged this case as I used to reside separately after my marriage, since 2010.

Cross-examination :

Declined

POINTS OF DETERMINATION

1. Whether prosecution has been able to prove their case beyond reasonable doubt by producing cogent evidence?
2. Whether the accused persons are liable to be convicted or not?

DECISION WITH REASON

All the points of determination are taken of together for sake of convenience.

Before delving deep into this point, it is pertinent to mention at the outset that the presence of the element of “Cruelty” in an alleged incident u/s 498A of IPC is the *Sine Qua Non*” for holding the accused persons liable under this section.

Now, during recording of evidence, PW 1 mentioned that the accused persons inflicted torture physical and mental torture upon her without having any specific reason thereto. Upon perusal of the deposition of PW 1, PW 2 and PW3 , this Court finds that all the witnesses disclosed only about “physical and mental torture” without any further enumeration as to the details of the same but none of them had not made any whisper about the specific date time and year of the said alleged torture. The defacto complainant had not made any whisper in the complaint or not mentioned during evidence that the torture inflicted upon her was on pretext of the demand of dowry. In the instant case, the prosecution has not adduced the oral testimony or documentary evidence of any alleged injury suffered by the defacto complainant let alone any specific injury resulting from the physical torture inflicted by the accused persons upon her. Thus, such description of alleged incident cannot be adhered to for the purpose of determining the existence of “Cruelty” , if any, being inflicted on the part of the defacto complainant.

Now, so far as narration of other details of the alleged “torture”, as already mentioned above, this Court has not found any such description.

In this context observation in the case of **Tapan Pal v. State , 1992, Cr.L.J 1017 (Cal)(DB)**, needs to be mentioned wherein it was held by the Hon’ble High Court at Calcutta that “*Basic facts from which cruelty is to be inferred are to be alleged and proved. It is not sufficient to say that the deceased was subjected to torture and cruelty. In absence of specific acts of omission or commission the Court is not in a position to decide whether the conduct of the accused amounted to cruelty within the meaning of section 498A*”

Moreover, from perusal of all the evidence of witnesses it appears that the main point of conflict between the defacto complainant and the accused persons was related to the ill treatment received by the defacto complainant by the accused person during her stay at her matrimonial house after her marriage which in anyway does not come under the purview of the cruelty as mentioned u/sec. 498A of IPC. Now, for the sake of argument, even if it is assumed that the defacto complainant was subjected to torture in the pretext of demanding dowry, the same needs to be analysed in the light of the definition of “Cruelty” as given under *Explanation* of section 498A of Indian Penal Code. In the case of **Krishanlal v. Union of India 1994 Cr.LJ 3472 (P & H)(FB)**, The Hon’ble High Court observed that “*The definition of “cruelty” in explanation to section 498A is not vague. To establish, the prosecution has to establish , firstly, the wilful conduct of the offender ;secondly that the nature of such conduct was likely to drive a woman to commit suicide or to cause grave injury or danger to life or limb(whether mental or physical”* . In this instant case none of the witness had made any whisper about the fact that whether the accused persons had inflicted torture upon the complainant by claiming dowry or any valuable articles.

In the instant case, not only the witnesses have merely mentioned about incident of physical and mental torture devoid of any detailed description, there also appears to be no material on record, whether oral or documentary from which it could transpire that any grave injury to life or limb of the defacto complainant could have caused to her.

Thus, the evidence on record does not reveal any incident of “Cruelty” which is a necessary

ingredient to warrant conviction under section 498A, IPC. In this context, the observations of the Hon'ble Apex Court should be taken into consideration. In the case of **Raj Rani Vs. State (Delhi Administration) (2000)10 SCC 662**, the Supreme Court held that *“while considering the case of cruelty in the context of the provision of sec. 498A, the court must examine that the allegations must be of a very grave nature and should be proved beyond reasonable doubt”*. But in this instant case the prosecution failed to adduce such evidence to prove the gravity of the allegation which could have amounted to cruelty.

Every harassment does not amount to “cruelty” within the meaning of Section 498-A. For the purpose of Section 498-A, harassment simpliciter is not “cruelty” and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property, etc. that it amounts to “cruelty” punishable under Section 498-A IPC, **State of A.P. v. M. Madhusudhan Rao, (2008) 15 SCC 582**. Cruelty can either be mental or physical. It is difficult to straight jacket the term cruelty by means of a definition because cruelty is a relative term. What constitutes cruelty for one person may not constitute cruelty for another person, **G.V. Siddaramesh v. State of Karnataka, (2010) 3 SCC 152**. But in the instant case the prosecution had failed to adduce any single scrap of paper wherefrom it can be established that the accused persons had ever caused any kind of cruelty to the defacto complainant by claiming any valuable articles or had caused any physical torture to such extent which had caused threat to the life of the defacto complainant or had provoked her to commit suicide to that effect.

Proof of the willful conduct actuating the woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, is the sine qua non for entering a finding of cruelty against the accused person, **Gurcharan Singh v. State of Punjab, (2017) 1 SCC 433**. In a criminal trial, the charges made against the accused must be proved beyond all reasonable doubts. This requirement does not stand altered in case of Section 498-A IPC. Before recording a finding of guilt, the Court must satisfy itself that the deceased was not hypersensitive, **State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73**. Section 498-A and “Dowry Demand” Dowry demand is included in the “unlawful demand” as contemplated under Explanation (b) of Section 498-A; however, it need not be the only demand. From a plain reading of Section 498A, the ingredients of cruelty thus must be an overt, wilful act that might lead to a woman committing suicide or cause grave injury to her physical or mental health of herself. Further, continuous harassment of a woman also constitutes cruelty. The types of evidence that can successfully establish a strong prosecution case and aid in the conviction of the accused have been enumerated below. Although these categories are overlapping, they need individual discussion because of the different requirements of their admissibility in courts.

From the evidence adduced by the prosecution during trial it appears that no medical evidence of cruelty is there as alleged by the complainant as she never taken to any doctor for the treatment of the said alleged assault by the accused. A very important type of evidence that helps in proving cases of cruelty under Section 498A is medical evidence. They can be oral or documentary. Thus, medical reports of the wife seeking care from a professional with respect to injuries sustained either physically or mentally all come under this category. Of course, such evidence will be indirect and the burden of proof is on the prosecution to successfully establish a link between such injuries and wilful, cruel conduct of the husband and his relatives. It is important to note, however, that in case of

conflict between direct evidence of eyewitnesses and medical evidence, it was said in [Prem v. Daula \(1997\)](#) that eyewitness evidence, if unimpeachable, should be preferred and medical evidence cannot nullify evidence of eyewitnesses. As the prosecution failed to adduce either medical or the eye witness of the alleged assault during trial and thus the same appears a lacuna on the part of the prosecution and the accused should get a benefit of doubt in that case. Moreover, during evidence, PW2 had clearly stated that there was some ego issue between the defacto complainant and her mother in law and from the said statement it could be safely concluded that the defacto complainant might have left the matrimonial house due to said ego clash. Moreover, the defacto complainant had clearly stated that her step son used to study and stay at Hostel at Misnapore in the year of 2009 wherefrom it can be easily stated that the accused namely, Subhajit Bhattacharya cannot be held liable in any way for inflicting torture upon the complainant in the pretext of demand of dowry since her marriage.

From the above discussion, what can be concluded is that for proving cruelty, direct evidence has the most value. One single act of cruelty cannot ensure successful conviction under Section 498A. Instead, a series of acts that can be shown to have continuous detrimental effects, both mental and physical, on the woman can ensure a conviction.

Thus this point of consideration is decided in favour of the accused person.

After scrutinizing the material on record it appears to this Court that prosecution has failed to prove the accusations against the accused persons. Prosecution has examined only five witnesses. The prosecution did not examine any independent witnesses as well. After perusal of the deposition of all the witnesses that it appears to this Court that there is no sufficient ground to prove the allegation against the accused persons. There is no material of incriminating nature on record to ascertain the guilt of the accused persons beyond reasonable doubt. After perusal the deposition of PW 1 it appears to this Court that there is no sufficient ground to prove the allegation against the accused. There is no material of incriminating nature on record to ascertain the guilt of the accused persons beyond reasonable doubt.

After perusal the deposition of all the witnesses it appears to this Court that the defacto complainant as well as her father and mother were unable to state any details of the alleged incident or any particular incident happened with them. Moreover, as per the contents of the FIR the defacto complainant was assaulted by the accused persons. However, this Court finds not a single piece of any proof in support of any claim of any grievous hurt as alleged therein. Thus, the prosecution has not been able to fix liability upon the accused persons beyond reasonable doubt. Moreover, facts of offence as stated in the FIR appears to be of vague nature which cannot in any way be held as infliction of cruelty in absence of any allegation of specific nature or tentative time or period during which a person is treated as such.

During evidence PW2 had stated that he does not know any specific reason of the dispute between his sister and the accused persons, whereas on the other hand PW3 had stated that he along with PW2 went to Dumdum PS on the date of the alleged incident and took her back to the paternal house. Thus there appears to be gross discrepancy between the allegations levelled in the FIR and the oral testimonies of all the witnesses. Thus, there is nothing on record to prove even the contents of the complaint petition. In this context of grossly erroneous testimony adduced by one of the most significant witnesses for the prosecution, the observation by the Hon'ble Supreme Court in the case of ***State of Rajasthan v. Smt. Kalki and Another; (1981) 2 SCC 752***, needs to be mentioned,

wherein it was observed that “*in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are —material discrepancies so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses*”.

Besides, mere allegation of physical torture without any insight into the details of the same is not adequate to hold the accused persons liable of the offence alleged against them.

Thus there is no sufficient ground to prove the allegation against the accused persons. The prosecution has failed to produce any further cogent and trustworthy witness who may have even proved any criminality.

It appears from the record that, in the instant case there is also no chance of ending of this case in conviction.

Again, in the case of **Satish Mehra vs. Delhi Administration & Anrs, 1996(9) SCC 766**, the **Hon’ble Supreme Court** held that “*in case where there is no prospect of the case ending in conviction, the valuable time of the court should not be wasted for holding a trial for the purpose of formally completing the procedure to pronounce the conclusion on the future date*”.

The prosecution has also failed to adduce the evidence of any other independent witnesses who were allegedly present in person at the place of occurrence at the time of the alleged incident. In this context the observation made in the case of **Harijana Thirupala And Ors. v. Public Prosecutor, High Court of A.P., Hyderabad**, is pertinent to be mentioned. It was held that “*the trial court took a right view that non-examination of independent witnesses seriously impaired credibility of the prosecution case*”. The prosecution had not examined any witnesses who are the residents of the locality of the matrimonial house of the defacto complainant. Moreover, at the time of preparing charge-sheet the police had not made any such neighbor of the defacto complainant as witness who can be examined as an independent witness to corroborate the allegation brought by the defacto complainant against the accused persons.

Moreover, PW2 and PW3 had mentioned that they had heard about the alleged torture inflicted by the accused persons upon the defacto complainant and none of them were present at the time of the alleged incident. **Sakatar Singh v. State, (2004) 11 SCC 291**, needs to be mentioned. In that case the Hon’ble Supreme Court had observed that “*Statement of witness not based on his personal knowledge but on what he heard from others is “hearsay” evidence and such evidence is inadmissible*. Thus in the instant case, as it is admitted by the PW2, that he had heard about the incident of the alleged torture from the defacto complainant as he could hear hue and cry from the background when he used to call his sister, therefore, from the said admission made by the witness, it can very well be presumed that they have not witnessed the alleged incident himself and thus he does not have personal knowledge of the same. Thus their evidence appears to be grossly unreliable.

Moreover, all the witnesses had stated that defacto complainant was previously married and got divorced prior to their marriage with the accused Partha Pratim Bhattacharya and none of them could state the reason behind the dissolution of the 1st marriage of the defacto complainant.

Such kind of a statement made before the Court during evidence definitely creates doubt in the mind of the Court about the credibility of the witness brought by the prosecution as evidence.

In this case instituted under S.498A of IPC, to prove the alleged incident of torture and cruelty on demand of dowry by the husband and his relatives, circumstantial evidence play an

important role to prove it which is found to be absent in this case.

The prosecution has failed to produce any further cogent and trustworthy witness who could have proved any criminality. The ingredients of the offence punishable under Sections 498A/323/506/34 of the Indian Penal Code is not established by any credible evidence. In such circumstances, this court has no other way but to hold the accused persons innocent and accordingly acquit the accused persons from the accusation of this case.

Hence, it is,

ORDERED

that all the accused persons namely, Bijoy Pandit, Sonkar Pandit, Mira Devi, Indu Devi and Sarita Pandit are found not guilty of the offence punishable under Sections 498A/323/506/34 of the Indian Penal Code and they are hereby acquitted from the instant case u/s 248 (1) of Cr. P.C.

The bail bond of the above mentioned accused persons shall remain in force for a period of 06(six) months from the date of this Judgment as per the provision of section 437A of Cr.P.C.

The record shows that nothing was seized in this case.

Victim has a right to prefer an appeal against this judgment under section 372 CrPC, if necessary they may avail free legal aid from the appropriate legal services authority to institute and prosecute such appeal.

In compliance to the solemn order dated 29.3.22 passed by the Hon'ble Division Bench in CRA 266of 2020 with CRA 01 of 2020 (Sabitri Bhunya Vs The State of West Bengal and others).

Let a copy of this judgment be sent to District Magistrate, North 24 Parganas and SDLA, Barrackpore, North 24 Parganas for due intimation to the victim as defined under section 2 (wa) of the Code of Criminal Procedure.

The case is disposed of on contest.

Note in Trial Register as well as in Case Information System.

Dictated & Corrected by me.

(Sayantani De Tarafder)

Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas

(Sayantani De Tarafder)

Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas
JO Code- WB01493