

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 77 of 2003

Manik Shaw & Ors.

-Versus-

The State of West Bengal

For the Appellants : **Mr. Milon Mukherjee, Ld. Sr. Adv.
Mr. Swapan Kumar Mallick,
Ms. Sudeshna Das.**

For the State : **Ms. Faria Hossain, Ld. APP
Ms. Sonali Das.**

Hearing concluded on : **04.11.2025**

Judgment On : **21.01.2026**

Prasenjit Biswas, J:-

1. The impugned judgment and order of conviction and sentence dated 26.02.2003 passed by the learned Additional Sessions Judge, 2nd Court, Barasat, North 24 Parganas in connection with S.T. No. 1(8)95 is assailed in this appeal.

2. By passing the impugned judgment the present appellant being appellant no. 1 was convicted under Section 498A/304B of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for seven years along with a fine of Rs. 5000/- and in default of payment of fine to undergo further rigorous imprisonment for one year and the appellant Anuradha Shaw was also convicted under Section 498A/34 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for two years along with a fine of Rs. 1000/- and in default of payment of fine to suffer further rigorous imprisonment for three months.
3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction the present appeal was preferred at the instance of the appellants.
4. The case of the prosecution, in brief, may be delineated as follows:

"A written complaint was lodged by Radheshyam Gupta, the maternal uncle of the deceased victim, alleging, interalia, that the deceased had been married to appellant no. 1 and that she met with an unnatural death on 30.11.1990 at the tender age of 22 years. It was specifically contended in the complaint that soon after the marriage, the deceased was subjected to persistent demands for dowry by

her husband as well as by other members of her matrimonial family. Owing to the non-fulfilment of such alleged demands, the deceased was purportedly subjected to both physical and mental cruelty and torture at the hands of her in-laws. It was further alleged that on 30.11.1990, the de facto complainant received a telephonic message informing him that the victim had sustained severe burn injuries and had already been shifted to R. G. Kar Medical College and Hospital. Upon receiving such information, the de facto complainant rushed to the said hospital and reached there at about 10.30 A.M., where he found that the victim was being treated in the emergency ward. During his stay at the hospital, he was informed that the condition of the victim was extremely critical and that she had sustained about 90% burn injuries. Ultimately, the victim succumbed to her injuries. Thereafter, the defacto complainant informed the parents of the deceased about the incident and proceeded to Titagarh Police Station, where he lodged a written complaint narrating the aforesaid allegations. On the basis of the said complaint, Titagarh Police Station Case No. 308 dated 30.11.1990 was registered under Sections 498A and 306 of the Indian Penal Code against appellant no. 1 and other members of the

matrimonial household of the deceased, and investigation was set in motion accordingly."

- 5.** After completion of investigation, the prosecuting agency submitted charge-sheet against the accused persons, whereupon the case was committed to the learned Trial Court for trial in accordance with law. Upon consideration of the materials collected during investigation, the learned Trial Court, by order dated 01.08.1995, framed charges against the accused persons under Sections 498A and 304 of the Indian Penal Code. Consequent thereto, the trial commenced and the process of recording evidence was undertaken by the Trial Court.
- 6.** In the course of the trial, the prosecution cited as many as fourteen witnesses in support of its case. All the said witnesses were examined on behalf of the State and their depositions were recorded. Several documents were also tendered and marked as exhibits on behalf of the prosecution. It is an admitted position on record that neither any oral evidence nor any documentary evidence was adduced on behalf of the defence during the trial.
- 7.** After completion of the examination of all the prosecution witnesses and upon closure of the prosecution evidence, the learned Trial Court, by order dated 03.03.2001, altered and amended the charges and framed fresh charges under Sections

498A/34 and 304B/34 of the Indian Penal Code against twelve accused persons. Significantly, after such amendment and alteration of charges, no further examination of witnesses was conducted. More importantly, no opportunity whatsoever was afforded to the accused persons to recall or further cross-examine the prosecution witnesses who had already been examined, with reference to the essential ingredients of the amended charges.

- 8.** It is pertinent to note that the amended charges introduced new and distinct legal ingredients, particularly with regard to the applicability of Section 304B IPC and the invocation of Section 34 IPC, which were not the subject-matter of effective cross-examination at the time when the prosecution witnesses were originally examined. Despite this, the learned Trial Court proceeded to pronounce judgment on the basis of the evidence already recorded, without granting any scope or opportunity to the accused persons to meet the amended charges or to test the prosecution evidence in the context of the altered accusations.
- 9.** Ultimately, on the basis of the amended charges framed after the closure of the prosecution evidence, the learned Trial Court delivered the impugned judgment. By the said judgment, appellant no. 1 was convicted under Sections 498A/304B/34 of

the Indian Penal Code, while appellant no. 4 was convicted under Section 498A/34 of the Indian Penal Code, and both were sentenced accordingly.

- 10.** Aggrieved thereby, the appellants have preferred the present appeal assailing the impugned judgment and order of conviction on several grounds. One of the principal grounds urged in the appeal is that the impugned judgment and order of conviction are unsustainable in law, inasmuch as the learned Trial Court altered and amended the charges after the completion of the prosecution evidence but failed to afford the accused persons any opportunity to recall, re-examine, or further cross-examine the prosecution witnesses in respect of the amended charges. Such denial of opportunity, it is contended, has caused serious and manifest prejudice to the defence and has resulted in a gross violation of the statutory safeguards and the fundamental principles of a fair trial.
- 11.** The main thrust of the argument made by the learned Senior Advocate that after amending the charge dated 03.03.2001 to under Section 498A/34, 304B/34 against twelve accused persons no opportunity was given to them to cross-examine the prosecution witnesses who were already examined. It is said by the learned Advocate that at first the charge was framed by the

Trial Court under Section 498A/304 of the Indian Penal Code against the accused persons but astonishingly after amending of the charge they did not get any opportunity to cross-examine the prosecution witnesses on the amended/ altered charge. So, it is said by the learned Advocate that there cannot be any conviction of the appellant no.1 under Section 304B of the Indian Penal Code. It is further contended by the learned Advocate that in the written complaint, there is no whisper regarding demand of dowry and nor any statement made before the Investigating Officer. The evidence of PW1 regarding demand of dowry by the appellant is for the first time which he disclosed before the Court and as such, the said statement of PW1 is after thought, false, concocted and motivated one. Having regard to the facts and circumstances the conviction under Section 498A of the Indian Penal Code is also not maintainable.

12. Ms. Faria Hossain, learned Advocate for the State has said that there is no materials on record for which the findings of the learned Trial Court in the impugned judgment may be interfered with. It is said by the learned Advocate that it would appear from the evidences of the prosecution witnesses that these appellants used to inflict physical and mental torture upon the deceased on

demand of dowry and for such reason the victim faced the unnatural death within seven years of her marriage.

- 13.** Heard the learned Advocate for the parties and carefully perused the materials on record.
- 14.** This Court observes that the learned Trial Court initially framed the charge against the accused persons under Section 498A and 304 of the Indian Penal Code on 01.08.1995. At that stage, the prosecution case was confined to those sections i.e. allegations of cruelty and culpable homicide not amounting to murder and the evidences were led by the side of the prosecution to prove the charge as framed by the Trial Court. After evidence taking process was over, the Trial Court by an order dated 03.03.2021 materially amended/ altered the charges to Sections 498A/34 and 304B/34 of Indian Penal Code. This alteration of charge by the Trial Court introduced the statutory offence of dowry death under Section 304B Indian Penal Code which contains distinct and additional ingredients including that the death occurred under abnormal circumstances within seven years of marriage and the deceased was subjected to cruelty and harassment "soon before her death" in connection with demand of dowry. In addition to that imposition Section 34 Indian Penal Code introduced the legal

concept of common intention expanding the scope of liability of the accused persons.

- 15.** Despite such a fundamental alteration in the nature and gravity of the acquisition the learned Trial Court proceeded further to pronounce the judgment without recalling any of the prosecution witnesses and without affording the accused persons any opportunity to cross-examine the witnesses with reference to the amended/altered charges. It appears from the record that no fresh examination-in-chief was conducted nor was any opportunity granted to the accused persons under Section 217 of the Code of Criminal Procedure to test the prosecution evidences in the context of the newly introduced offence under Section 304B of the Indian Penal Code.
- 16.** It is settled position of law that whenever there is alteration/amendment of charge, the parties must be afforded a fair and effective opportunity to meet the case arisen out of such altered/amended charge. This requirement flows not only from the expressed mandate of the Code of Criminal Procedure but also from the border constitutional guarantee of a fair trial.
- 17.** Section 216 of the Code of Criminal Procedure empowers the Court to alter or add to any charge at any time before judgment is pronounced. However, this power is not unfettered. The

safeguard against possible prejudice to the accused person is expressly provided under Section 217 Cr.P.C., which mandates that whenever a charge is altered/amended or added, the prosecution and accused shall be allowed to recall or re-summon any witness who has already been examined and to examine such witnesses with reference to the altered or added charge. The provision further confers a corresponding right to adduce additional evidence if so advised.

18. The underline rational of Section 217 of Cr.P.C. is to ensure that no charge is taken by surprise and that neither the prosecution nor the defence suffers prejudice on account of a material charge in the nature of acquisition. In this case, charge was framed at first against the accused persons under Section 498A/304 of the Indian Penal Code and after completion of the evidence taking process the charge was amended to Section 498A/34 and 304B/34 of the Indian Penal Code and introduced new factual elements, change the legal character of the offence and in such circumstances evidence already adduced may require clarification, elaboration or testing in the light of the amended charge as framed by the Trial Court on 03.03.2008. Denial of an opportunity to recall or re-examination prosecution witnesses would, therefore, strike at the root of the procedural fairness.

- 19.** It is well recognized the right to cross-examine to witnesses is an integral containing of the fair trial when the charge is altered the earlier cross-examination may become inadequate or irrelevant in the context of the amended acquisition. Consequently, fairness demands that the accused must given meaningful opportunity to recall witness for further cross-examination confined to the altered charge. Similarly, the prosecution must be permitted to re-examine witnesses or lead further evidence to establish the ingredients of the amended offence.
- 20.** The obligation is casted upon the Court in such a situation which is said to be not merely formal but substantive and the Court must apply its judicial mind to determine whether the alteration of charge has caused or is likely to cause prejudice to either side. If such alteration is material in nature, the Court must ensure strict compliance with Section 217 Cr.P.C., by granting an opportunity to recall or re-examine witnesses, unless such opportunity is expressly declined by the concerned party. Failure to do so may vitiate the trial, as it would amount to denial of a statutory and constitutional right.
- 21.** It is equally important to note that right under Section 217 Cr.P.C. is not depended upon a specific application being made by the parties in every case. Once the charge is altered in a

material manner, the Court is duty bound to inform the parties on their right and to afford them a reasonable opportunity to exercise the same. Any conviction recorded on the basis of an altered charge without granting such opportunity would be vulnerable on the ground of prejudice and violation of the principles of natural justice. So, in the event of alteration/amendment of charge, providing an opportunity to the parties to recall or re-examine witnesses in reference to such altered/amended charge is not a matter of discretion but a mandatory procedural safeguard. It ensures adherence to the principles of fair trial prevents miscarriage of justice and upholds the integrity of criminal proceedings.

22. It has already been stated that after the Trial Court initially framed charges against the accused persons under Sections 498A and 304 of the Indian Penal Code, the prosecution proceeded to adduce its evidence and the said witnesses were cross-examined by the defence on that footing. Subsequently, however, the learned Trial Court altered the charge to one under Sections 498A/34 and 304B/34 of the Indian Penal Code. Despite such alteration, no step was taken to recall the prosecution witnesses, nor was the accused persons afforded any opportunity

to further cross-examine or re-examine those witnesses in the context of the altered charges.

23. This procedural course has occasioned serious and manifest prejudice to the accused persons. The evidence that had been adduced and tested in cross-examination was with reference to the original charges under Sections 498A and 304 IPC. Such evidence was never subjected to cross-examination vis-à-vis the distinct and essential ingredients of Section 304B IPC, particularly the requirement of proof of "dowry demand" and cruelty or harassment "soon before death", nor with regard to the applicability of Section 34 IPC concerning common intention. In the absence of an opportunity to recall and further cross-examine the prosecution witnesses on these vital aspects, the defence was effectively disabled from meeting the altered case sought to be set up by the prosecution.

24. Despite the substantial alteration in the nature and gravity of the acquisition this Court finds that no opportunity was afforded to the accused persons to recall or further cross-examination the prosecution witnesses in accordance with Section 217 Cr.P.C.. After amendment of the charge no fresh examination was conducted, nor the witnesses were re-examined or cross-examined with reference to newly introduce ingredients of

Section 304B/34 Indian Penal Code. Consequently, the evidence originally led to reference in Section 498A/304 Indian Penal Code remained wholly untested against the essential ingredients of altered charge.

25. The power to alter or amend a charge is not unfettered or mechanical in nature. The statute itself builds in an important safeguard in favour of the accused. Section 216(3) and (4) CrPC specifically mandate that whenever a charge is altered or added to, the same shall be read and explained to the accused, and the Court must consider whether such alteration is likely to prejudice the accused in the conduct of his defence. If prejudice is likely to be caused, the Court is duty-bound either to direct a new trial or to adjourn the trial for such period as may be necessary to enable the accused to meet the altered or additional charge. It is therefore incumbent upon the Trial Court, upon altering or adding a charge, to afford the accused a meaningful opportunity to recall and further cross-examine prosecution witnesses, if so demanded, and, if necessary, to lead additional defence evidence. This opportunity is not an empty formality but a substantive right flowing from the principles of natural justice and the constitutional guarantee of a fair trial under Article 21 of the Constitution of India. The accused must be allowed to tailor

his cross-examination and defence strategy to the essential ingredients of the altered or additional charge, which may materially differ from those of the original charge.

- 26.** In sum, while the Court possesses wide powers to amend charges or frame alternative charges at any stage of the trial to ensure that justice is done, the exercise of such power is inextricably linked with the obligation to safeguard the rights of the accused. Any alteration or addition of charge must be accompanied by a proper, effective, and real opportunity to the accused to meet the case against him. Absent such opportunity, the alteration of charge, though legally permissible in form, becomes unsustainable in substance, having resulted in manifest injustice and serious prejudice to the defence. The impugned judgment passed by the learned Trial Court does not contain any reasons for alteration/amendment of the charge on 03.03.2001.
- 27.** In view of the above and in the light of the principle that the alteration of charge must not prejudice the rights of the defence and the hearing must be fair and in conformity with the statutory safeguards. This Court holds that the trial has been vitiated on account of procedural omission. Any conviction that may have been found on evidences not tested against the altered/amended charges cannot be sustained in law.

- 28.** The appeal is hereby allowed.
- 29.** The impugned judgment and order of conviction passed by the learned Trial Court dated 26.03.2003 and 27.02.2003 are set aside.
- 30.** The matter is remanded back to the Trial Court from the stage of alteration of the charge, with a clear direction that the accused persons to be afforded a full and effective opportunity to recall and cross-examine the prosecution witnesses and thereafter for the trial to proceed in accordance with law. The Trial Court is requested to expedite for disposal of the case preferably within six months from the date of communication of this order.
- 31.** Let a copy of this judgment along with the Trial Court record be sent down to the Trial Court immediately for necessary compliance.
- 32.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)