

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 421 of 2007

**Susanta Purakayat @ Bhola
-Vs-
The State of West Bengal**

For the Appellant : Mr. Soham Banerjee
(*Amicus Curiae*)

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 05.10.2023, 11.12.2023, 09.01.2024

Judgment on : 15.03.2024

AnanyaBandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 10th July, 2007 and sentence dated 12.07.2007 passed by the Learned Additional Sessions Judge, Fast Track Court – I, Barrackpore, District- North 24 Parganas in connection with Sessions Trial Case No. 6(2)06, corresponding Sessions Case No. 26(8)05, which arose out of Baranagar Police Station Case No. 58/04 dated 09.03.2004 under Section 498A/306 of the Indian Penal Code following the said charges, the Learned Trial Judge considering the evidence on record, was pleased and found the appellant guilty of offence and convicted for committing offence punishable under Section 498A and 306 of the Indian Penal Code and to pass an order of

sentence to suffer rigorous imprisonment for three years and to pay a fine of Rs.1000/- only, in default, imprisonment of three months more in respect of the offence under Section 498A of the Indian Penal Code and further rigorous imprisonment for five years and to pay a fine of Rs.2000/- only, in default, to suffer simple imprisonment more for a period of three months in respect of the offence under Section 306 of the Indian Penal Code and all the sentences as passed will run concurrently.

2. The appellant/accused abovenamed was placed on trial in Sessions Trial No. 6(2)07 and Sessions Case No. 26(8)05 before the Court of the Learned Additional Sessions Judge, Fast Track Court – I, Barrackpore, North 24-Parganas to answer the charge punishable under Section 498A/306 of the Indian Penal Code.
3. The prosecution case in a nutshell is, inter alia to the effect, that a marriage was solemnized in between appellant and Purnima out of love affairs about 2½ years ago at Kalighat Temple and after the said marriage, Purnima and her husband/appellant started living as husband and wife in a rented house at Mandal Para and out of their wedlock one male child was born. After the said marriage, accused/appellant used to torture upon the deceased Purnima both physically and mentally. On 07.03.2004 accused/appellant shifted with his family at a new rented house under Kenaram Mondal, being accompanied with Bharati Maji who is sister of Purnima. But on the same day at about 08:30 P.M., Bharati Maji informed over telephone to her father that the rented house of Purnima was burnt and Purnima had also received

burn injury. Subsequently, she was admitted at R. G. Kar Hospital and she died on 09.03.2004 at the Hospital.

4. After maintaining all the formalities and procedure, the case was committed to the Court of Sessions Judge, Barasat, North 24-Parganas and the matter was subsequently transferred for trial before the Additional Sessions Judge, Fast Track Court – I, Barrackpore, North 24-Parganas and the Learned Trial Judge was pleased to frame charge against the accused person for committing offence under Section 498A/306 of the Indian Penal Code. At the time of framing charge, the accused person pleaded not guilty and claimed to be tried.
5. The prosecution in order to prove the case has examined altogether 17 witnesses and admitted the documents as Exhibit -1 to 11 and also 2 Mat Exhibit but defence did not adduce any evidence by D.W. and not to produce any document in favour of them.
6. Learned Amicus Curiae submitted as follows:-

- (i) It is alleged that the appellant used to abuse the deceased physically and mentally. On the last day of holy, while the deceased was in the house of her father, the appellant visited her and there were some altercations between them. On 07.03.2007 at around 8:30 PM, another daughter of the de facto complainant (PW-1, father of the deceased) called him and informed him that the deceased's house was on fire and that the deceased was completely burnt. It was alleged that the deceased

committed suicide due to the abuse of the appellant. [Page 2; Written Complaint]

- (ii) During the course of trial, the prosecution has examined 17 witnesses whereas the defence examined none.

PW-1	De facto complainant/father of the deceased	Never interrogated by the investigating officer
PW-2	Cousin of the deceased	Hearsay
PW-3	Sister of the deceased	Was present at the PO moments before the fateful incident took place; also first relative to reach the PO after the incident
PW-4	Adjacent neighbour	Eyewitness; saw the incident and asked her husband (PW-10) to rescue the child and the deceased
PW-5	Relative of the deceased	Hearsay
PW-6	Previous landlord of the deceased	Did not corroborate with the angle of cruelty as alleged by the interested witnesses
PW-7	Doctor conducting Post Mortem	Said doctor cannot opine on how burn injury was received
PW-8	Daughter-in-law of the relevant landlord	Hearsay
PW-9	Relevant landlord	Mentioned that PW-4 was also his tenant at that time
PW-10	Adjacent neighbour	Husband of PW-4; kicked the door open, rescued the child and took the deceased out of the

		burning house
PW-11	Police Officer who recorded the FIR	-
PW-12	Scribe	Mentioned that he knows PW-1 since childhood
PW-13	Seizure Witness	Two stoves were seized
PW-14	„	„
PW-15	Medical Officer of RG Kar	Says that appellant stated that deceased committed suicide by pouring kerosene on herself
PW-16	Medical Officer	Made inquest report
PW-17	Investigating Officer	Corroborates with PW-4 (EW), but does not corroborate with PW-3 (sister)

- (iii) The de facto complainant says that 'Bhola and Purnima had a love affair and that love affair turned into a marriage.'
- (iv) What is uncanny is that the close relatives, who became the witnesses of the prosecution including the own sister of the deceased, were not present during the marriage ceremony.
- (v) It clearly shows that the appellant was not in the good books of the family members of the deceased.
- (vi) Though there was a laudable effort by the prosecution to establish a fabricated story that the appellant was cruel to the deceased, the self-contradictions in the depositions of the interested witnesses revealed the truth.

- (vii) It was alleged in the FIR that appellant used to abuse the deceased physically and mentally. Then in his chief, the PW-1 claimed that he heard from para people that the deceased was assaulted and further says that the deceased never told her about any assault. Thereafter, in his cross-examination, PW-1 stated that the deceased never complained about any misbehavior of the appellant.
- (viii) PW-1 further alleged that two days prior to the incident, the appellant kicked the belly of the deceased while staying at his house. Whereas, PW-3 said that appellant slapped the deceased. However, in the cross-examination of PW-1, it was stated that he never saw any such assault happening and he cannot remember the name of the rickshaw puller who saw and told him about such assault. One of the independent witness the previous landlord of the deceased and appellant, PW-6 has stated that the appellant has never tortured the deceased and asked her to bring dowry and that the appellant was dutiful to his wife, the deceased.
- (ix) In a case under Section 306 of the Indian Penal Code, the prosecution must, beyond reasonable doubt prove that there is an abetment and there is a direct and immediate nexus between such abetment and the commission of suicide. The prosecution failed to establish any instance of abetment and tried to project the quarrel between a couple as abetment.

- (x) The Learned Judge invoked Section 113A of the Evidence Act to presume that the death of the deceased was suicide and it was abetted by the husband since the incident was within seven years of marriage.
- (xi) The Learned Judge erred in invoking Section 113A of Evidence Act, because the same is not applicable to the present case. Section 113A of Evidence Act has three essences, which are (a) the death must be a suicide, (b) such suicide must be committed within seven years of marriage and (c) the husband had subjected to the deceased to cruelty.
- (xii) It is admitted that the fateful incident happened within seven years of marriage. The point of non-establishment of cruelty has already been discussed above. Regarding the nature of the death as to whether it is suicide or not.
- (xiii) The eye witness, i.e. PW-4, has categorically stated that at the time of the incident the deceased was pumping the stove, when suddenly there was a sound and then she saw fire. It was further stated that the child of the deceased was inside and husband of PW-4, i.e. PW-10 had to kick the door open to rescue the child and the deceased from the burning house. The PW-10 stated that the kerosene spilled and caused the fences and bamboo structure to catch fire. The PW-17, the investigating officer, stated that in the PO, two/three houses were burnt. It is clear from the above discussion that the

incident was actually a case of accident and the scale of the arson was much higher than which it should be in the case of suicide.

- (xiv) When a mother commits suicide, she either kills her child with herself or makes proper arrangements for the safety of the child. In this particular case, it is admitted fact that the door was closed and the child was inside the burning house with the mother. PW-10 stated that the deceased was crying by saying “save my child”. The occurrence seems like an accident where the mother was cooking along with her child and suddenly the premise caught fire by accident. However, the Learned Judge relied upon the deposition of PW-15 and the material exhibits, i.e. the stoves, to conclude that the appellant commit suicide. But such conclusion suffers from logical lacuna.
- (xv) PW-15, the Emergency Medical Officer, who were posted at RG Kar Medical College and Hospital, during the relevant point of time, stated that the appellant stated that the patient set herself on fire by pouring kerosene. However, in her cross-examination, it was revealed that there is no signature of the appellant on exhibit 8, which is allegedly his statement regarding the cause of injury.
- (xvi) The Learned Judge overlooked such absence of signature and took such purported statement as the gospel truth which does not corroborate with the versions of the eye witnesses and

investigating officer. The Learned Judge erred in not considering the fact that the appellant was not present at the PO at the relevant point of time/. The appellant came back after the incident took place and he rushed to take his injured wife for treatment with the other family members of the wife. So, even if the uncorroborated statement is taken on its entirety, the appellant was certainly not the best person to know the reason of such burn injury. Moreover, it is admitted fact that PW-2, the husband of PW-3 and other relatives of the deceased were present at R.G. Kar Hospital. It is already discussed above that the family members of the deceased were not happy with the appellant due to the love marriage. In such circumstance, without the signature of the appellant in that purported statement, the same should not be considered at all, especially when the PW-15 never identified the appellant on dock.

- (xvii) The Learned Judge has observed that “But both the stoves are intact. There is nothing to show that none of the stove was burst.” Upon such observation, the Learned Judge concluded that the deceased committed suicide. The problem with such conclusion is probably the distance of the ivory tower from the ground realities of practical life. In colonial vernacular language, the term “stove burst” does not necessarily mean an explosion which shatters the metal stove. It may also mean due to over-pumping of an air-pressurized stove, the kerosene may

had been split, which caused a rapid ignition by combustion due to the flame of the stove. Such rapid ignition by combustion also produces a particular sound because of oxygen which helps the ignition. The statement of PW-4, PW-10 and PW-17 in this regard clearly shows that in this particular case, kerosene was spilt all around and as a result, the whole premise caught fire.

(xviii) It is humbly submitted that Section 113A of the Evidence Act empowers the Court to presume regarding the abetment in certain cases. But the provision also provides that the Court may draw such presumption, "having regard to all the other circumstances of the case". In this particular case, the Learned Judge did not consider the other circumstances and thereby straitjacketed the texts of the law to convict the appellant.

(xix) (2014) 12 Supreme Court Cases 595: (2014) 5 Supreme Court Cases (Cri) 127: 2014 SCC Online SC 259; Mangat Ram versus State of Haryana, which lays down that if a married woman commits suicide within a period of seven years of marriage, presumption under Section 113A of the Evidence Act would not automatically apply.

7. The Learned Advocate for the State submitted that the ingredients to constitute the offence under Section 498A of the Indian Penal Code and that of the offence under Section 306 of the Indian Penal Code have not been

established and only on the basis of presumption of death within 7 years of marriage, the appellant had been convicted.

8. A circumspection of the prosecution witnesses revealed as follows:

- i. PW-1 Ramani Karmakar in his deposition stated that Purnima Purkait was his daughter. He was the father of five daughters and one son. Purnima was his 4th daughter. Mamata, Bani, Bharati and Sonali were his daughters. Nemai karmakar was his son. His daughters were married except his eldest daughter. Netai Maji was his son-in-law. Purnima was married to the accused Susanta @ Bhola Purkait about 2/3 years ago. Susanta @ Bhola Purkait and Purnima had a love affairs and that love affairs turned in to a marriage. After marriage the (Torn) used to live together in a rented house. While Purnima used to live with the accused person she was not treated well by the accused person. He heard from the Para people that Purnima was assaulted by the accused person. He did not take any information about such assault. His daughter did not told him about the assault upon her. He did not take any information of his daughter. Purnima was in a rented house till her death. Purnima was not alive. Purnima was set into fire on 07.03.2004. It happened at 08:30 p.m. on 07.03.2004. Next dated 09.03.2004 his daughter died. His 2nd daughter told him over telephone that Purnima was set into fire and one boy came to their house and informed him about the incident of set fire. (Torn) On getting the information he went to the R.G. Kar Hospital. He did not meet to his daughter due to his illness but all other Para people met

with his daughter. His daughter was admitted at R.G. Kar Hospital and died on 09.03.2004 at night. He got the information of death at dawn from Bhaskar Sardar and Panchanan.

He lodged an F.I.R. before the I.C. Baranagar P.S. by a written complaint. The police officer wrote the F.I.R. as per his dictation and then he signed upon said F.I.R., marked as Exbt.-1.

The F.I.R. was written as per his narration and then it was read over and explained to him. The Executive Magistrate made an inquest over the dead body of his daughter and he signed upon the inquest report, marked as Exbt.-2.

Two days prior to the incident his daughter and his son-in-law came to his house and stayed for two days. Thereafter they had an altercation and his son-in-law kicked his daughter on her belly and threatened his daughter to kill her by setting herself on fire and at the same time his son-in-law also threatened to commit suicide. Then his son-in-law left his tenanted premises and on that night his daughter went to the house of his son-in-law. The incident happened at the rented house of his son-in-law. Due to wedlock one son was born to them and the said son was living with PW-1.

- ii. In his cross-examination PW-1 stated that they left the house of Ambagan to another rented house but he could not say the date. He went to the house of Ambagan as Susanta invited him there for 3/4 times. He was given well respect by his son-in-law Susanta. His daughter was not well at the house of Susanta. His daughter was

assaulted by Susanta there. His daughter never complained him about the misbehavior of Susanta. He himself did not see Susanta to assault his daughter.

Susanta kicked at the belly of his daughter Purnima over the public road in-front of his house. So far as he can remember that the date was 07.03.04 and it was 02:00/02:30 p.m. The accused kicked his daughter before his eyes.

At the time of the incident there were many person at the P.O. He could not say the names of the persons present at the P.O. He could not say whether he stated in his F.I.R. that the accused kicked his daughter at the lower abdomen of Purnima. Susanta was present when the inquest over the dead body of Purnima was done by the police.

- iii. PW-2 Panchanan Mondal in his deposition stated that Ramani Karmakar was his uncle. Purnima was his cousin and the daughter of Ramani Karmakar and Purnima was married to Susanta Purkait @ Bhola. The said marriage was solemnized about 3/3½ years ago. After marriage age Susanta and Purnima used to stay at a rented premise. He could not say how Purnima was treated by the accused. He heard that there was displeasure on the date of Dol Festival in the year 2004.
- iv. PW-4 Arati Das in her deposition stated that previously she used to stay at the rental house of Kena Ram Mondal near TirthaBharati School under Baranagar P.S. She know Susanta and his wife Purnima Purakait. Susanta and Purnima were the tenants under Kenaram.

They came to the house of Kenaram as tenant on the next date of Dol festival and about 3 years ago. Purnima was not alive and she was burnt to death. After the burn Purnima died at hospital after two days of the incident. Next day of 'Dol' festival Purnima was burnt at 08:00 p.m. and on that date they came to the house as tenant of Kenaram Mondal, the incident happened at the house of Kenaram Mondal.

Purnima and Susanta took the house of Kenaram Mondal and the house hold goods were shifted at the said rental house and Purnima was taken to the rental house at about 06:30/07:00 p.m. by her sister (Dali) and brother-in-law. Bharati was the said sister. She was engaged in cooking food at that time. Purnima was cooking food and prior to her cooking food. Purnima fed her child and also prepared Tea for herself and her husband. Thereafter Purnima was giving air in the pumping stove. Then she heard a sound of falling utensils. Then she saw fire and came out side in order to save herself from the fire. The child of Purnima was inside the room and her husband opened the door by kicking the same and rescued the child of Purnima from the fire and handed over the child to him. Then she ran to the house of Bharati and handed over the child to her and stated her that Purnima was no more in the world. She came to know that her husband took Purnima from treatment. But she could not say where Purnima was taken. On getting the information the members of Purnima's family came there, the police came to the P.O. after the incident.

- v. In her cross-examination PW-4 stated that she was present when Purnima came to the house with her sister and brother-in-law. They came to the house at 07:00 p.m. They stayed there 10/15 minutes and (torn) left the house of Purnima. After their departure Purnima was inside the room. She only stated to Bharati *"Purnima ar Nei"*. She did not state other words to Purnima except the above. Prior to the arrival of the members of Purnima's father's family. She was taken to the hospital by her husband Susanta @ Bhola Purakait. The police came to the P.O. on the same date of the incident. She stated to the police on interrogation how the fire was caught. It was fact that she stated to the police at that time of the incident Susanta was out the tenanted premises. She also stated to the police on interrogation that due to heavy pressure in the stove, it was burst. It was fact that she stated to the police on interrogation, *"at about 08:30 p.m. Purnima Purakait lit the stove to boil milk and I heard loud sound of pumping. I heard the sound from the next room and heard loud sound of fire. In the meantime the stove burst with a loud noise. Kerosine oil spilled and Purnima's saree caught on fire. The door jumb, tiles and the bamboos adjacent with it caught fire."* She also stated to the police while Purnima was taking to the hospital by Susanta she stated to him that due to burst of stove she was burnt. It was fact that Purnima did not set herself on fire due to torture upon her by her husband and stated to the police officer that the incident happened due to the negligent act done by the

victim Purnima Purnakait. While she was burning the stove for cooking. She did not know what happened later on.

- vi. PW-5 Bishaka Mondal in her deposition stated that PW-1 was her brother-in-law. They reside side by side with the PW-1. Purnima was the daughter of PW-1. She was married to Bhola @ Susanta. After marriage Purnima used to live with her husband. When she met Purnima occasionally she used to state him that she was not well. Purnima was not alive and she was burnt and died. Two days after the incident Purnima died about two years ago. The incident of fire took place near the TirthaBharati School. On the date of the incident she returned back to her house at 08:45 p.m. and then she came to know about the incident. Hearing the said incident she went to R.G. KarHospital and on 8th she met Purnima i.e., next date of the incident. Purnima wanted to state something to him but she moved her mouth but she could not understand (sic) what she stated to him. Then she returned home. Purnima died on 9th at R.G. Kar Hospital. Her son Panchanan Mondal, Susanta and one other son-in-law were present at the Hospital along with the neighbours. They came to know over telephone at dawn on the next date. Her son and others returned back and reported about the incident. Later Panchanan and the neighbours and the father of Purnima went further to the Hospital. The dead body of Purnima was brought to their house and they saw the dead body of Purnima. She heard that Purnima was assaulted by Susanta on the

date of Dole. She did not hear as to whether or not the police came to the P.O.

- vii. In her cross-examination PW-5 stated that she only heard about the incident of fire and after fire Purnima was taken to Hospital. The husband of Bharati Maji telephoned him about the incident of death. She was not examined by the I.O. She did not go to the house of Susanta as she was busy on her duty.
- viii. PW-6 Depali Mitra in her cross-examination stated that Susanta and Purnima used to stay at Ambagan as tenant at the house of her father. They stated at the rental house at Ambagan for a period of 2½ years. The behavior of Susanta was good while he was in the rental house at Ambagan. He was dutiful to his wife Purnima and his only son. During his stay at Ambagan at the rental house Susanta @ Bhola never tortured upon his wife and he never asked his wife to bring dowry from the house of her father. The family members of Purnima's father's family used to come to the rental house of Susanta at Ambagan. Susanta and his wife used to go to the house of PW-1. The son of Susanta was born at their house. Susanta was dutiful to his wife while Purnima was pregnant. Purnima was not alive. She heard about the death of Purnima in a "KhasKhabar" in Television Set. She stated to the police that Purnima was burnt in the stove fire and she heard it in the T.V. Set.
- ix. PW-7 Dr. Rabindra Nath Karmakar in his deposition stated that he was a Professors and Head of the department of Foreign and State

Medicine attached to N.R.S. Medical College, Calcutta. On 9th March, 2004 he was posted in the same place in the capacity on 09.03.2004 he held a P.M. examination over the dead body of one Purnima Purakait 20 years Hindu female in connection with Sec. N inquest no. 197/04 dated 09.03.04 and Baranagar P.S. case no. 58/dated 09.03.04 u/s 498A and 306 I.P.C. and executive magistrate inquest no. Nil dated 09.03.04 being identified by constable no. 75 of Chitpur P.S. P. Misra. Death in his opinion was due to the effect of burn injury as noted in the P.M. report and anti-mortom in nature. Further opinion on receipt of chemical examination report. That was the P.M. report, that prepared and signed by him and contains the official seal. The P.M. report was marked as Exbt.-4. During P.M. examination he collected the viscera for chemical examination. That was the requisition which was hand over to the police along with the viscera for onwards transmission to F.S.L. Dept. That was the said requisition duly written and signed by him with official seal. The requisition was marked as Exbt.-5.

- x. In his cross-examination PW-7 stated that Doctor could not opined how the patient received the burn injury.
- xi. PW-8 Mithu Mondal in her deposition stated that Kenaram Mondal was her father-in-law. She did not know Susanta Purakait. One of the tenant died due to burn injury and she received the burn injury at the house of her father-in-law. The said tenant was a woman tenant. The said woman came to the tenancy of father-in-law on that date at 08:00

p.m. The said woman received the burn injury. The said incident happened about 2 years ago. Their house and the tenancy houses detached with each other.

- xii. In her cross-examination PW-8 stated that she herself did not see the incident in her own eyes.
- xiii. PW-9 Kenaram Mondal in his deposition stated that Susanta Purakait was his tenant. So he was known to him. He came to his house as a tenant about three years ago. He did not know how to read and write. Wife of Susanta Purakait came to the rented house on that night. Wife of Susanta Purakait was not alive. He could not say the date. There was a fire in his rented house on that night. He could not say where was the wife of Susanta. But his wife died at Hospital. After the incident police came to the P.O. He was not seeing the accused Susanta. He saw Susanta for $\frac{1}{2}$ an hour on that date. So he could not identify him that day.
- xiv. In his cross-examination PW-9 stated that the police asked him about the incident and he started to the police that he knew nothing about the incident. One Arati Das was a tenant in their house.
- xv. PW-10 Shyamal Das in his deposition stated that in the year 2004 he was a tenant under Kenaram Mondal. He knew Bhola. He was also known as Susanta Purakait. He met him once when he was a tenant under Kenaram Mondal. Bhola came to the house of Kenaram Mondal as a tenant. It was the day after the Dol festival in the year 2004. He did not know whether Bhola came to the house of Kenaram Mondal

alone or with his companion. He heard that the wife of Bhola had died. She died due to burn injury on her person. The wife of Susanta was burnt in the house of Kenaram Mondal on the next day of Dol festival in the year 2004. Wife of Bhola died at Hospital that he heard. At that time he was on the road. At his tenanted house was burnt and then his address was foot path while the fire was caught, a woman started crying save his child, save his child. The door was closed. He entered into the room and saved the child of burnt lady and he was injured in the alleged incident. He saw the woman in burnt condition. Then He handed over the child to his wife Arati Das. After the incident the police came to the P.O.

- xvi. In his cross-examination PW-10 stated that he came to the house of Kenaram Mondal as a tenant about three months ago of the incident. He did not know Bhola @ Susanta prior to the incident of burn. The tenanted house of Bhola and his tenanted house are adjacent to each other. On that date he met Bhola at night. He did not went to the hospital but he heard about the death of the wife of Susanta. His wife was with him when he entered into the tenanted house of Bhola. He was injured in the incident but he did not go to the hospital for his treatment. The police came to the P.O. long after the incident and he was interrogated by the police so far as he could remember he did not tell much to the police about the incident. It was fact that he stated to the P.O. *“this excessive pumping of the stove caused it to burn very strongly and at that time his wife Arati Das was in their house and she*

knows all about it. The sound of the stove bursting as the stove pumped too hard in succession and the sound of bursting the stove was heard and as the kerosene burning of the stove spilled and caused the fences and bus (sic) structures to catch fire.” He did not know what happened later on.

- xvii. PW-11 Purnendu Maity in his deposition stated that on 09.03.2004 he was posted at Baranagar P.S. as A.S.I. of Police. On that date he received the written complaint and started the Baranagar P.S. Case No. 58 dated 09.03.2004 u/s 498A and 306 I.P.C. as per direction of the I.C. Barrackpur. That was his endorsement upon the written complaint. The endorsement was marked as Exbt.-1/1. A.S.I. was the duty officer he received the written complaint. Accordingly he filed up the formal F.I.R. That was the formal F.I.R. The formal F.I.R. was marked as Exbt.-6. The I.C. of the P.S. made an endorsement upon the formal F.I.R.
- xviii. In his cross-examination PW-11 stated that the F.I.R. (written complaint) was written in his presence and at the P.S. he could not say whether there was a G.D. entry before lodging the F.I.R. at the P.S. He had no personal knowledge about the incident.
- xix. PW-12 Uttam Das in his deposition stated that he knew Ramani Karmakar. He also knew Purnima Karmakar @ Purakait. Purnima was married to Susanta Purakait @ Bhola. He knew Bhola @ Susanta. Purnima was not alive. She died on 09.03.2004 at R.G. Kar Hospital. She died due to burns and on 07.03.2004. She was burnt at the rental

house of Bhola. But he could not say the name of the Para where Bhola resided. He went to R.G. Kar Hospital to see Purnima. The body of Purnima was P.M. at N.R.S. Hospital. He did not know whether the Magistrate made an inquest over the dead body of Purnima Purakait. That was his signature upon the inquest report. The signature of the witness upon the inquest report was marked as Exbt.-2/1. He did not go with Ramani Karmakar after the P.M. examination. That was the F.I.R. duly written by him and that signature upon the F.I.R. was of him. The F.I.R. along with the signature of the scribe was marked as Exbt.-1/2. That F.I.R. was written by him as per direction of Ramani Karmakar. It was written at Baranagar P.s. and then it was read over and explained to Ramani Karmakar. Then Ramani Karmakar signed upon the F.I.R. He did not know whether or not police came to the P.O.

- xx. In his cross-examination PW-12 stated that he knew Ramani Karmakar since his childhood. His house was adjacent to him. He had a talking term with the family of Ramani Karmakar. He also knew Purnima. He knows that the marriage of Purnima was held out of love affairs. He came to know about the burn of Purnima at night. He could not say where and how the incident happened. He could not remember whether there was an interest over the dead body of Purnima by the Magistrate. He signed upon the inquest report at N.R.S Hospital. In the written complaint there was no endorsement that the F.I.R. was written as per dictation of Ramani Karmakar and then it was read over and explained to him. He heard the hue and cry held on the day of

“Dol festival”. Except that he knows nothing about the incident. He could not say whether or not there was diary at the P.S. against Susanta.

- xxi. PW-13 Chittaranjan Das in his deposition stated that he know Kenaram Mondal. About two years ago the tenanted house of Kenaram Mondal was burnt. The wife of the tenant was burnt and later she died. The police came to the P.O. after two days. The police prepared seizure list where he signed. The police seized the burnt articles by seizure list where he signed. That was his signature upon the seizure list. The signature of the witness was marked as Exbt.-7. The police seized one stove (Janata) made of Alluminium and one Janata Pump Stove in his presence. These are the said stoves that police seized on that date. The stove is marked as MAT. Exbt. – I and II.
- xxii. In his cross-examination PW-13 stated that his house was situated after four house of Kenaram Mondal. After preparing the seizure list, the police officer asked him to signed upon the seizure list where he signed. He saw the incident of fire. He went there where he saw the fire. Many person saw the incident. His signature was not seen in the paper pasted on the MAT.Exbt.- I and II. Police asked him to sign on the seizure. The seizure was made in his presence. The son of Kenaram Mondal also signed upon the seizure list. He could not say the numbers of persons present at the time of the seizure.
- xxiii. PW-14 Madan Mondal in his deposition stated that he was the eldest son of Kenaram Mondal. About two years ago there was an incident.

He heard hue and cry and come out side, saw that the tenanted house started burning. In the afternoon he saw that the tenanted house was vacant. Police came to the P.O. next date of the incident. The police prepared one seizure list after seizing the articles kept in that room. He signed upon the seizure list. That was his signature upon the seizure list. The signature of the witness upon the seizure list. The signature of the witness was marked as Exbt.-7/1. On that date the police seized one Janata Stove and one Pumping Stove. These are the said stove. The witness identified both the stove i.e., MAT.Exbt.- I and II. He resides at the corner side of the house of Kenaram Mondal. He heard that one woman was burnt alive.

- xxiv. In his cross-examination PW-14 stated that he could not say how and when the tenanted house was burnt. After the seizure list he signed upon the seizure list. His signatures are absent upon paper pasted in the stoves. There are no signatures upon the paper pasted on the stoves.
- xxv. PW-15 Dr. Sruti Kr. Bera., in her deposition stated that at that time she had been posted at National Medical College & Hospital as E.M.O. On 07.03.2004 she was posted at R.G. Kar Medical as E.M.O. in Charge. On that day at 09:15 p.m. she examined one patient namely Purnima Purakait W/o – Susanta Purakait in connection Sec. N. G.D. entry no. 772 dated 08.03.2004. The patient was burnt. According to the statement patient's husband Susanta Purakait that patient set herself on fire by pouring kerosene oil on body on 07.03.2004 at 08:00

p.m. to commit suicide. On examination she found (1) her whole body burnt. Patient was admitted in-door. The patient was not in a position to give evidence. The patient was referred from Baranagar State General Hospital. That was the said injury report prepared and signed by him. The injury report was marked as Exbt.-8. That was the death certificate issued by Dr. Subhadip Bharati of the victim Purnima Purakait. From that death certificate it reveals to him that Purnima died on 09.03.2004 at 02:20 a.m. From that death certificate it revealed that the patient died due to irreversible shock in a case of 90% (approx.) mixed burn. The death certificate was marked as Exbt.-9.

- xxvi. In her cross-examination PW-15 stated that the patient was referred from the Baranagar S.G. Hospital for treatment but there was nothing mentioned in the Exbt.-8 as regards to her first treatment. She did not see the papers as regards to the treatment given to the patient at Baranagar S.G. Hospital and the paper as regards to the statement given by the victim. There was nothing details in the exbt.-8 when the patient was admitted in the hospital and when the patient was referred to their hospital. Susanta Purakait did not put any signature upon the injury report (exbt.-8) on his statement as regards to cause of injury.
- xxvii. PW-16 Osman Ali Shah in his deposition stated that at that time he had been posted as Dy. Director, Drug Control Board, Govt. of W.B. On 09.03.2004 he was posted at N.R.S. Medical College and Hospital as Secretary. On that date he held an inquest over the dead body of Purnima Purakait W/o – Susanta Purakait in reference to Chitpur P.S.

inquest No. 194/2004. That inquest report was prepared by him in his own hand writing and duly signed by him. The witnesses and the person who identified the dead body also signed upon the inquest report. That was the inquest report. The inquest report was marked as Exbt.-2/2.

xxviii. In his cross-examination PW-16 stated that time of death was not mentioned in the inquest report. There was nothing mentioned in the exbt.-2/2, after how much time the inquest was done after the death of the deceased.

xxix. PW-17 Manjusree Das in her deposition stated that at that time she had been posted at Baishnabnagar P.S. as L.S.I of Police. On 09.03.2004 she was posted at Baranagar P.S. as L.S.I. of police. On 09.03.04 she was took up investigation of the case being Baranagar P.S. no. 581 dated 09.03.2004 u/s 498a and 306 of I.P.C. The complaint was lodged by one Ramani Karmakar. On getting the responsibility of the investigation, she went to the house of Ramani Karmakar and thereafter went to the P.O. (in the southern side of the house of Ramani Karmakar). Then she prepared a sketch map of the P.O. That was the said sketch map of the P.O. along with index in her own hand writing. The sketch map along with index was marked as Exbt.-10. She examined the available witnesses and recorded their statement u/s 161 Cr.P.C. The seizure list was prepared by him in her own handwriting. The seizure list was marked as Exbt.-7/2. During her investigation she seized several articles including stove and

cooker. She shall able to identify the said articles which she seized on that date. These are the said Stove and Aluminum Cooker. The witness identified the MAT. Exbt.- I and II. During the investigation of that case she collected the death certificate, the injury report of the victim Purnima Purakait. She also collected the inquest report prepared by the police and the magistrate. P.M. over the dead body was held at N.R.S. Hospital and she collected the P.M. examination report of the victim. She gave a requisition to O.C. Chitpur to hand over the dead body of the victim to Ramani Karmakar. That was the said requisition. The requisition was marked as Exbt.-3/1. She arrested the accused Susanta Purakait on 09.03.2004. The witness fail to identify the accused in dock and identifies another person as Susanta Purakait. She consulted with her superior officer. She sent the viscera for F.S.L. examination. It was the rule that the viscera of the dead body were to be sent with the permission of the Ld. S.D.J.M. The articles sent for viscera examination are to be sent with the Exbt. Mark. These are the chalans and the exbt. marked by him, were sent for F.S.L. test. These are the documents. The challan and the exbt. marked by the I.O. are marked as Exbt.-11 and 11/1. The F.S.L. Dept. received the said viscera by putting seal and signature upon the seeing documents. The endorsement upon the exbt. 11 was marked as exbt.- 11/2. After consulting with the superior she submitted C.S. u/s 498A and 306 I.P.C. vide C.S. No. 137 dated 30.12.2004 against the accused Susanta Purakait.

xxx. In her cross-examination PW-17 stated that she got charge of investigation on 09.03.2004 at 11:45 a.m. and then she went to the P.O. On that date she examined Ramani Karmakar, Bharati Maji, Arati Das and Debdulal Das. She stated before him that *“on 07.03.2004 at about 19:30 she along with all other goods entered from her earlier house at Ambagan. At about 08:30 p.m. Purnima lit the stove to boil milk. She heard the loud sounds of pumping. She also heard loud sounds of fire. In the meantime the stove burst with a loud sound. Purnima’s saree caught on fire after the kerosene oil spilled into the saree.”*She examined one Bharati Majhi*“she did not state him that there was a displeasure over the dispute of taking meal and Susanta slept Purnima over that matter.”*She examined Arati Das, BharatiMajhi did not state him that she came running to him and stated that Bhola set Purnima on fire. She examained Bharati Maji. Bharati Maji did not state to him *“didi oi dike jasna, amai bacha”*. Bharati Maji did not state to him that Purnima was not well in the house of the accused Susanta Purakait and also did not state to him that they would be happy if same hard case was given to them. Bharati Maji stated to him *“when Purnima caught in the stove, the stove burst and caught fire. She doesn’t know how true that story was.”*Bharati Maji stated him that she heard the above incident from the Nurse. During the course of investigation she did not examine the Nurse.

Bharati Maji did not state to her *“Don’t talk with Arati masi. Give the boy to the elder sister; otherwise he will also be killed.”*

She did not go to Baranagar S.G. Hospital, where Purnima was first admitted. She did not seize any document of the Baranagar S.G. Hospital. She did not examine the first doctor of Baranagar S.G. Hospital. She examined Bishaka Mondal (PW-5). PW-5 did not state to her that when she met Purnima, occasionally she used to state her that she was not well there. In the east side of the P.O.- House of Kanu Mondal – west – Nabin Ch. Das Road were situated which was mentioned in the C.D. She examined them.

She did not seize the bed head ticket from the R.G. Kar and Baranagar S.G. Hospital.

She had submitted the C.S. against the accused on the basis of suspicion of the de-facto complainant. She went to the P.O. where two/three houses were burnt and seized all the articles from those MAT. Exbt. I and II were readily available in open market. Neither she nor any witness signed upon the level given in the MAT. Exbt. I and II.

There was no level upon the MAT. Exbt. I and II put by her.

9. It was proved that PW-1, father of the deceased (de facto complainant), PW-2 was cousin of PW-1 and PW-3 was the another daughter of PW-1 and PW-5 was also the relative of the PW-1 but there was no direct knowledge about the torture upon the deceased by the appellant or they did not stated in their evidence that deceased Purnima was tortured by the husband for any type of demand. On the other hand, they also admitted there was cordial relation in between appellant with them.

10. The neighbouring witnesses that PW-4, 6, 8, 9, 10 and 14 also did not state in their evidence that the appellant is involved with that unnatural death but they stated the case of totally accidental case and they also stated that good relation was there with the deceased and accused and the accused always took care of the deceased and they also stated that at the time of incident, the accused was not present at the spot.
11. Other formal witnesses could not state anything against the present appellant but it was admitted that the deceased died due to burn injury and the appellant was always present at hospital for treatment of his wife.
12. From the assessment of the evidence of the prosecution witnesses it transpired that the death of the victim was accidental in nature through a burst of stove and cannot be attributable to be the offence committed under Section 498A/306 of the Indian Penal Code. There had been general and omnibus allegation of demand of dowry and the evidence of independent witness PW-4 an independent witness was reliable. The appellant was not present at the house to abet the offence concerning Section 306 of the Indian Penal Code. The victim unfortunately died in an accident and the prosecution failed to prove torture being inflicted upon the victim by the appellant or to have instigated the appellant to commit suicide.
13. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
14. Accordingly, the criminal appeal being CRA 421 of 2007 stands disposed of.
15. There is no order as to costs.

16. I record my appreciation for the able assistance rendered by Learned Advocate, Mr. Soham Banerjee, as Amicus Curiae in disposing of the appeal.
17. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
18. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)