

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

Present:

**The Hon'ble Justice Debangsu Basak
&
The Hon'ble Justice Prasenjit Biswas**

C.R.A.(DB) 24 of 2022

Rabindra Murmu

-Versus-

The State of West Bengal

For the Appellants : Mr. Saryati Datta, Adv.
Mr. Arijit Bhusan Bagchi, Adv.

For the State : Mrs. Rituparna Ghosh, Adv.
Ms. Trisha Rakshit, Adv.

Hearing concluded on : 10th July, 2025

Judgment On : 31th July, 2025

Prasenjit Biswas, J:-

1. The instant appeal is directed against the judgment and order of conviction dated 11.04.2019 and 12.04.219 passed by the learned Additional District and Sessions Judge, 1st Court, Hooghly

Sadar at Chinsurah in connection with Sessions Trial No. 01(02)/2016 corresponding to Sessions Case No. 119/2015.

2. By passing the impugned judgment this appellant was found guilty for commission of offence punishable under Section 302 of the Indian Penal Code and he was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 5000/-, in default of payment of fine to suffer rigorous imprisonment for another three months. This accused was also convicted for commission of offence punishable under Section 498A of the Indian Penal Code and he was sentenced to suffer simple imprisonment for three years along with a fine of Rs. 2000/- and in default to pay fine to undergo imprisonment for another three months.

3. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction passed by the learned Trial Court, the present appeal is preferred at the behest of the appellant.

4. The prosecution story in nutshell may be summarised as thus:

“The victim Anita Murmu (Kisku) was married with the accused about 15 years back from the date lodging FIR according to social rites and customs. After marriage the victim went to her matrimonial home at village-Harit-Bagar Badh within P.S. Dadpur, District-Hooghly. Out of marriage they were blessed with a child who was aged about eight years at the time incident and their child used to reside at his maternal uncle’s home at Village- Rospur, P.S. Jangipara, District-Hooghly. It is stated that during her stay at her matrimonial home, the accused (husband) Rabindra Murmu used to subject his wife to torture both physically and mentally, so as to instigate her to commit suicide. It is stated in the written complaint that on 13.11.2014 at around 7 P.M. this accused/appellant with active cooperation of his mother, elder brothers and their wives attempted to murder his wife (victim) by setting fire upon her and on

17.11.2014 the victim succumbed to her injuries in the District Hospital, Hooghly.”

5. On the basis of the complaint lodged by the de-facto complaint a case being Dadpur P.S. Case No. 164/2014 dated 15.11.2014 was started under Sections 498A/326/307 of the Indian Penal Code against this appellant along with other five accused persons. Prosecuting Agency started investigation and during investigation the Investigating Officer prayed for adding Section 302 of the Indian Penal Code, on the ground that the victim expired on 17.11.2014 and the said prayer for adding Section 302 of the Indian Penal Code was allowed by passing an order by the learned C.J.M., Hooghly on 18.11.2014.

6. After completion of investigation, Investigating Officer submitted charge-sheet against this appellant Rabindra Murmu for offences punishable under Sections 498A/302 and 201 of the Indian Penal Code and against the rest five accused persons for offence punishable under Section 498A of Indian Penal Code.

7. Charge was framed by the Trial Court against this appellant Rabindra Murmu for commission of offence punishable under

Sections 498A, 302 and 201 of Indian Penal Code and against the rest five accused persons under Section 498A of Indian Penal Code.

8. In this case, 17 (seventeen) witnesses were examined by the side of the prosecution. Documentary evidence and seized articles were marked as exhibits by the side of the prosecution. Neither any oral, nor any documentary evidence was adduced on behalf of the defence.

9. At the very outset, Mr. Saryati Datta, learned counsel appearing for the appellant submitted that the appellant does not intend to press his challenge to the finding of guilt recorded by the Trial Judge holding that the appellant is guilty for causing death of his wife Anita Murmu, but the Trial Judge has seriously erred in convicting the appellant for the offence under Section 302 of the Indian Penal code. Learned counsel submitted that if the evidence on record is examined in correct perspective then the offence committed by the appellant does not transfer beyond provisions of Section 304, Part II or 304 Part I of Indian Penal Code.

10. Learned counsel submitted that as per dying declaration prior to the alleged incident there was an altercation taken place between the victim and the appellant and it would be evident from the dying declaration made by the victim. It is said that the victim in the dying declaration stated that she was falling out with her husband and suddenly her husband enraged with her, poured kerosene oil on her body. The attention of this Court is drawn to the depositions of PW1 (de-facto complainant), PW2 (Durgapada Hansda), PW3 (Mangal Soren), PW8 ((Dakmani Kisku/mother) and PW9 (Purna Chandra Kisku/father) who admitted in their evidences regarding bitterness of relationship between victim and the appellant. As per submission of the learned Advocate the aforesaid depositions made by the prosecution witnesses clearly show that the appellant did the act with the knowledge that it is likely to cause death of his wife but without any intention to cause death, or to cause such bodily injury as likely to cause death. It is said by the learned Advocate that in the dying declaration the victim stated that when the victim caught fire, the appellant tried to rescue her by pouring water and the appellant took her wife

immediately to the hospital and these facts indicated that there is absence of mensrea of the appellant to commit the alleged crime. Accordingly, learned counsel submitted that the conviction of the appellant deserves to be altered from offence under Section 302 Indian Penal Code to under Section 304, Part II or Section 304, Part I of the Indian Penal Code. In support of contention, learned Advocate placed reliance upon a decision rendered by the Hon'ble Apex Court in case of **Vijay alias Vijay Kumar-vs- State** reported in **(2025) 3 SCC 671**.

11. Per contra, Ms. Rituparna Ghosh, learned Advocate for the State submitted that the guilt of the accused appellant stand proved beyond reasonable doubt on the basis of dying declaration (exhibit 2/1) and other corroborative evidences on record. Learned Advocate for the State submitted that PW13, autopsy surgeon in his evidence has stated that on examination he found superficial burn injury on both the side of cheek, parts of forehead, right lateral side of neck, lower half of the chest below the breast, parts of the abdomen, both thighs all along, upper half of left leg, both forearm and in the opinion of the doctor cause of death was due to

effect of burn injury and ante-mortem in nature. It is said by the learned Advocate that the victim had suffered burn injuries and ultimately succumbed to the injuries and thus the intention of the appellant to cause death is apparent on face of the record and therefore, the question of altering the conviction of the appellant from murder to culpable homicide not amounting to murder does not arise.

12. We have considered the rival submissions advanced by both the parties and perused the evidences on record.

13. Admittedly, the victim Anita Murmu (Kisku) expired due to burn injury at her matrimonial home. Now, the question arises as to how she suffered burn injury and whether there was any intention of the appellant to murder the victim.

14. PW1, Baddinath Kisku who happens to be the elder brother as well as the de-facto complainant has stated in his evidence that the victim used to work in the field but the appellant was unemployed and their relationships were not good. It is said by this witness that the appellant used to assault his sister and put mental pressure upon her to satisfy his demand for money to

consume liquor. This PW1 further stated in his evidence that this appellant set his sister ablaze on 13.11.2014 at about 7 PM when his sister was cooking and then this appellant came to her and demanded money to purchase liquor but when the victim refused to give him money, this appellant poured kerosene on her and set her on fire. This witness went to the hospital and the victim stated about the incident to him. This witness found that except face and fingers of his sister, her entire body got burnt. This witness further stated that about 2/3 months prior to the incident the victim came to their house and told him about physical torture inflicted upon her.

15. PW8, Dakmani Kisku and PW9, Purna Chandra Kisku are the parents of the victim. Those witnesses also stated in the same voice of PW1. PW9 stated in his evidence that the appellant killed the victim after pouring kerosene on her and thereafter, setting her ablaze. His daughter did not give money as demanded by this appellant and as such, she was killed by the accused. This PW9 further stated that he heard about the incident from his daughter in the hospital and he found his daughter's whole body excepting

her face and fingers were in burn condition. PW8 stated in her evidence that relation in between her daughter and the appellant (husband) was not good and there was frequent quarrel in between them and this appellant used to ask for money to consume liquor. It is said by this witness that the appellant did not look after their son and as such, the victim kept her son with her since her son was one and half years old. PW8 further said that this appellant set fire on her in her matrimonial home after pouring kerosene oil on her. It is stated by this witness that this appellant asked for money from his daughter to consume liquor but as she did not give the money so he set her ablaze. This witness saw the victim in the hospital with burn injuries and at that time she was speaking slowly.

16. On conjoint reading of the evidences of PW1, PW8 and PW9 it is evident that all of them have claimed that the relation of the victim with the appellant was bitter and it is the appellant who poured kerosene oil upon the victim and set her ablaze. It further appears from the evidences that there was constant demand of money by the appellant from the victim to purchase liquor and

being refused kerosene oil was poured upon the person of the victim by the appellant and set fire upon the victim.

17. PW2, Durgapada Hansda has stated in his evidence that PW1 informed him on 13.11.2014 that this appellant demanded money from the victim and when she denied to pay, he assaulted her with fist and blows and also set fire on her. This witness along with PW1 went to the burn ward of Chinsurah Imambara Hospital and found that the victim was lying in a serious condition and was not able to speak and he came to know on the next day that this appellant set the victim ablaze as he failed to pay money as per demand of her husband.

18. PW3, Mangal Soren stated that he came to know about the incident from PW1 over phone. This witness also went to the hospital on 15.11.2014 and talked with the victim. The victim said to this witness that on 13.11.2014 at about 7/7.30 P.M. while she was cooking at the courtyard and at that time this appellant came and assaulted her and made her lie down by the side of the oven and thereafter brought kerosene from inside his house and poured it on her and thereafter set fire on her. It is said by this witness

that thereafter this appellant doused the flame by pouring water and clothes upon her. This witness also stated that he heard from Anita (victim) that there was disturbance in her matrimonial life and the victim told him that the disturbance was over the demand of money as this appellant used to consume liquor and as such, there was quarrel in their house.

19. PW5, Sukumar Murmu has stated in his evidence that he also went to the hospital and found the victim in a lot of pain and she told this witness that the appellant used to assault her and demanded money from her and as she was unable to pay the money, the appellant poured kerosene on her and thereafter set fire on her by match stick in his house on 13.11.2014 when the victim was cooking. It is said by this witness that the victim told him that the appellant used to create disturbance asking the victim to pay money to consume liquor and the relation between the victim and the appellant was not good.

20. PW6, Sunil Mandi also stated in the same line of PW5 and other witnesses that the relation in between victim and her husband was not good and there was quarrel and disturbances

created by the appellant and this appellant killed the victim by setting her ablaze. It is said by this witness that the appellant used to ask money to consume liquor but when the victim refused to pay, there was disturbance and quarrel in their house and after quarrel this appellant poured kerosene on her and set her ablaze and this witness came to know this incident from the victim at hospital.

21. PW7, Bhim Mandi who is a 'morol' of Saontal Community of that village has stated in his evidence that the appellant killed the victim by setting her ablaze after pouring kerosene on her in her matrimonial house as the victim did not give the appellant money to consume liquor. It appears from the evidence of PW12, Dr. Soumitra Upadhyay who stated in his cross-examination that the patient was brought by this appellant on 13.11.2014 at 11.15 A.M.

22. On careful perusal of the evidences brought on record on the side of the prosecution it appears that PW1, de-facto complainant is the brother of the victim. PW2 is the brother-in-law of PW1, PW3 is brother-in-law/ 'jathtuto sala' of PW1. PW8 and PW9 are

the parents of the victim. Although they are the relations to the victim but their testimonies regarding alleged torture by the appellant upon the victim and pouring kerosene oil on her and set her ablaze on the relevant date and time cannot be denied and their testimonies gets corroboration from the evidences of PW6 and PW7 who are the independent witnesses cited by the prosecution. The law nowhere states that the evidences of the interested witnesses or the witnesses who are in relation with the victim should be disregarded altogether. The law only warrants that the evidences should be scrutinized with care and caution and merely if it is found that the witnesses are relative, their testimonies cannot be discarded on the ground alone. So, being relatives of the victim does not automatically render witnesses as interested or biased. There is nothing in the record or in their cross-examination for which their statements can be disbelieved. In this case, the aforesaid witnesses have corroborated on material particular that the appellant used to demand money for consuming liquor and on the fateful day when the victim refused to give money, this appellant poured kerosene oil on the person of

the victim and set her ablaze. So, it is evident from the deposition of witnesses like PW1, PW2, PW3, PW8 and PW9 that there was bitterness of relationship in between the victim and the appellant, the appellant used to inflict torture physically and mentally upon the victim with demand of money to purchase liquor to consume. Even in examination under Section 313 Cr.P.C. this appellant disclosed that the victim very often fled away from her house. It is further evident that the son of the victim was not with the appellant and the victim. PW8 has stated that this appellant did not look after the son and her daughter kept her son with her since he was aged about one and half years old.

23. After scanning the entire evidences brought on record by the prosecution it is evident that the appellant did the act with the knowledge on the relevant date and time when the alleged incident happened that it was likely to cause the death but without any intention to cause death or to cause such bodily injury had likely to cause death. The evidences also did not disclose that whether the appellant took any prior preparation to commit murder to his wife before the incident and the entire incident happened on the

spur of the moment. After setting her wife ablaze, this appellant tried to rescue his wife (victim) from the flames. So, if the appellant had intention to cause death he would not have altered his senses to bring water in an effort to rescue her. In the dying declaration the victim stated that when she was set on fire, the appellant tried to rescue her by pouring water and this appellant took the victim to the hospital as it is evident from evidence of PW12 wherein this witness stated that the patient was brought by Rabindra Murmu (the appellant). Such facts strongly established the absence of mensrea of the appellant to commit the alleged crime of murder. The appellant does not have any intention to murder his wife and as there was bitter relationship in between the appellant and the victim since few years, after their marriage and on the relevant date and time the appellant was out of control from his mind and committed such offence.

24. It is trite law who ever cause death by doing an act with the intention of causing death or with the intention or causing such bodily injury as is likely to cause death or with the knowledge that he is likely, by such act, to cause death is responsible for the

commission of offence of culpable homicide. Culpable homicide is murder if the act by which the death is caused, is done with the intention of causing death and is not covered by any of the exceptions of Section 300 of the Indian Penal Code. As already noticed, in this case there is no evidence to show that the aforesaid accused person proved to have been involved in the occurrence, had intended to cause the offence of murder within the meaning of section as punishable under Section 302 of the Indian Penal Code. It is, therefore, apparent from the facts and circumstance of this case that the convict had no intention to commit murder of the victim. The convict had also definite knowledge that by such action the victim could have died. Learned Trial Judge, however, has considered the aggravating circumstances in awarding the punishment to the convict for the offence under Section 302 of the Indian Penal Code. It is clear from the evidence on record that the convict suddenly being enraged with her wife poured kerosene oil on her body and set her ablaze and as a result the victim died.

25. PW13, Dr. Jayanta Kumar Misra holding post-mortem examination of the victim also found superficial burn injury on both side of cheek, parts of forehead, right lateral side of neck, lower half of the chest below the breast, parts of the abdomen, both thighs all along, upper half of left leg, both forearm and in his opinion cause of death of the victim was due to effect of burn injury which are ante-mortem in nature. It is thus, apparent that the convict was engaged in the commission of such offence. We are not oblivious of the fact that the convict should be appropriately punished for such commission of offence.

26. In case of **Vijay alias Vijay Kumar (supra)** the Hon'ble Apex Court, interalia, held that if the incident occurred at a spur of the moment and the act was not pre-planned or pre-meditated, then it is important to note that the appellant did not take any undue advantage or acted in a cruel or unusual manner.

27. No intention may be attributed to the appellant as may be culled out from the record to cause death of the deceased. So, it cannot be said that the appellant is guilty of commission of murder. We do hold that in such offence a convict would clearly

fall within the purview of Section 304 (Part II) of the Indian Penal Code and accordingly, we reduce the sentence awarded by the learned Trial Judge under Section 302 of the Indian Penal Code to one under Section 304 (Part II) of the Indian Penal Code and sentence him to suffer rigorous imprisonment for ten years and to a pay fine of Rs.10,000/-, in default to undergo further rigorous imprisonment for two years.

28. On that score also we affirm the judgment of the learned Trial Judge by directing that the convict shall suffer the sentence for the offence under Section 304 (Part II) in addition to the sentence imposed to the convict under Section 498A of the Indian Penal Code and the aforesaid sentences shall run concurrently.

29. The period of imprisonment already undergone by the accused should be set off with the sentence as directed by this court.

30. The appeal is allowed accordingly, in part.

31. Consequently, pending application(s), if any, shall stand disposed of.

32. Let a copy of this judgment along with the Trial Court Record be sent down to the Trial Court for issuance of fresh jail warrant in terms of the directions given in the foregoing paragraphs.

33. Urgent Photostat certified copy of this judgment be given to the parties upon compliance of all formalities as per usual terms and conditions.

[PRASENJIT BISWAS, J.]

34. I Agree

[DEBANGSU BASAK, J.]