

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 202 of 2019

Sushil Kumar Das

Vs.

The State of West Bengal & Ors.

For the Appellant	: Mr. Amitava Karmakar, Adv. Mr. Mahadeb Khan, Adv.
For the State	: Mr. Debabrata Chatterje, Adv. Ms. Mausumi Sarkar, Adv.
For the Respondent Nos. 2,4,5 & 6	: Mr. Kaushik Choudhury, Adv.
Hearing Concluded on	: September 26, 2025
Judgement on	: November 11, 2025

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and order of acquittal dated January 13, 2019 passed by the learned Additional Sessions Judge, 1st Court, Bankura in Sessions Trial No. 01 (08) of 2015 arising out of Sessions Case No. 39(04) of 2013 acquitting the private respondents of charges under Section 498A/302/201/34 of the Indian Penal Code, 1860.

2. Learned advocate appearing for the appellant has contended that, the daughter of the appellant was married to the respondent No. 2. The daughter of the appellant subsequent to her marriage had lived in her matrimonial home along with other members of the family of the in-laws. The daughter of the appellant had been continuously abused at her matrimonial home. On June 19, 2012, the private respondents had assaulted the daughter of the appellant and set her on fire. Appellant had lodged a First Information Report on June 19, 2012 under Section 498A/302/34 of the India Penal Code 1860. Police had submitted chargesheet under Section 498A/302/34 of the Indian Penal Code, 1860 as against the Private respondents. Jurisdictional Court had framed charges against the private respondent under Section 498A/302/34 of the Indian Penal Code, 1860.

3. Learned advocate appearing for the appellant has contended that, prosecution had examined 15 witnesses at the trial. Although, there were no eye-witnesses to the incident, prosecution had based its case on circumstantial evidence and child witness testimony.

4. Learned advocate appearing for the appellant has drawn the attention of the Court to the evidence of PWs 2, 5 and 11. He has contended that, from the evidence of PW 2, it would appear that, there were injury marks on the body of the victim. PW 5, the minor daughter had stated in her evidence that the victim was lying on the floor and the hands and legs of the victim were tied. Furthermore, the respondent No. 2 had told the grandmother in presence of PW 5 that respondent No. 2 had killed the victim.

5. Learned advocate appearing for the appellant has drawn the attention of the Court to the evidence of the doctor conducting the post mortem being PW 11. He has stated that, PW 11 opined that, the death was homicidal in nature.

6. Learned advocate appearing for the appellant has contended that, learned Trial Judge while recording the impugned judgment and order of acquittal relied upon the medical treatment sheet but did not consider the post mortem report. Learned Trial Judge has failed to evaluate the evidence of the doctor being PW 11. Learned Trial Judge has failed to appreciate the evidence of PW 5 and 6. Moreover, the incident had taken place within the four walls of the matrimonial

house of the victim and the respondent No. 2 as the husband is to explain the death under Section 106 of the Evidence Act which the respondent No. 2 has failed to discharge.

7. Learned advocate appearing for the appellant has relied upon **2025 INSC 261 (The State of Madhya Pradesh vs. Balveer Singh)** on the issue of Section 106 of the Evidence Act.

8. Learned advocate appearing for the respondent Nos. 2 and 4 to 6 has contended that, the prosecution had relied upon the evidence of PW 11, the post mortem doctor as well as the evidence of PWs 5 and 6 to claim that, the death was homicidal in nature. He has referred to the evidence of defence witness (DW 2) in support of the contention that, the opinion in the post mortem report was wrong and that there was no homicide.

9. Learned advocate appearing for the contesting respondents has contended that, there are material contradiction in the testimony of the post mortem doctor and the post mortem report being Exhibit 6. He has referred to the findings returned by the learned Trial Court in this regard.

10. Learned advocate appearing for the contesting respondents has contended that, the prosecution was guilty of suppressing vital medical documents with regard to the treatment of the victim which raises doubt and suspicion about the allegation of the prosecution.

11. Learned advocate appearing for the contesting respondents has contended that, the evidence of PW 5 and 6 does not inspire confidence since, they are minors and there are every possibility that they were tutored.

12. Learned advocate for the contesting respondents has contended that, there were contradiction in the evidence of PW 5 with that of her statement recorded under Section 164 of the Criminal Procedure Code.

13. Police had received a written complaint from PW 1 with regard to the death of the victim on June 19, 2012 which police registered as a First Information Report. Police had conducted an investigation with regard to such First Information Report and submitted a chargesheet. Jurisdictional Court had framed charges as against the private respondents. The private respondents had claimed to be innocent.

14. At the trial, prosecution had examined 15 witnesses. Apart therefrom, prosecution had relied upon various documentary evidence as well as material evidence in support of its case, at the trial.

15. Learned Trial Judge had considered three issues raised at the trial. The first issue was whether the victim was subjected to cruelty by inflicting physical and mental torture by the private respondents. The second issue was whether the private respondents committed murder of the victim. The third issue was whether the prosecution was able to prove the case as against the private respondents beyond reasonable doubt.

16. A neighbour of the victim has deposed as PW 1. He has stated that, he knows all the private respondents as co-villagers. He has stated that, his house is situated just opposite side of the house private respondents intervened by a road. He has claimed that he knew the victim as well as the private respondents. He has claimed that the private respondents used to behave well with the victim. He has claimed that, he heard that the victim committed suicide by setting fire on her person.

17. At the trial, on the prayer of the prosecution, learned Trial Judge has declared PW 1 as hostile witness. On such declaration, he has been cross-examined on behalf of the prosecution. He has also been cross-examined on behalf of the defence. In cross-examination by the defence, he has stated that he was not present in the house when the incident occurred.

18. Father of the victim has deposed as PW 2. He has stated that, the victim was married to the respondents No. 2 after a love affair. The victim had resided at her matrimonial home along with respondents No. 2 and the other accused persons. He has claimed that, the respondents mis-behaved with the victim with filthy language and used to assault her. The victim had narrated about such incident when she visited his house. After knowing such fact he had gone to the matrimonial home of the victim with the victim and his relatives and tried to compromise the problem but in vain. He has stated that, the torture was ongoing.

19. PW 2 has stated that, on June 11, 2012 when he was at his office, when he received a phone call informing him that the respondents assaulted the victim and burned her and that

she was hospitalised. Hearing such news he had gone to the Bankura Medical College where he did not find the respondents. He had seen his daughter dead. He had found cut injury inside the lip and found some mark on her hand. From such marks he had presumed that her hands were tied. From the hospital he had gone to the police station and lodged a written complaint. He has identified the written complaint which was tendered in evidence and marked as Exhibit 1.

20. PW 2 has narrated about the children of the victim. He had gone to the place of occurrence when police made a seizure. He has identified his signature on seizure list which was marked as Exhibit 2.

21. PW 2 has stated that on June 20, 2012 he came to learn from his grandson that on June 19, 2012, respondent No. 2 assaulted the victim with his helmet. He has also come to know from the grand-daughter on June 20, 2012 that, the uncle of the respondent No. 2 and the respondent No. 2 were in the corridor when they claimed that everything was finished.

22. The younger brother of PW 2 and the uncle of the victim had deposed as PW 3. He has stated that, he came to

learn from both the parents of the victim as well as the victim that, the victim used to be tortured at her matrimonial home. He has stated that, the written complaint registered as the F.I.R was written by him on the instructions of PW 2. He has witnessed the inquest of the dead body of the victim. He has tendered the inquest report which was marked as Exhibit 3.

23. The mother of the victim has deposed as PW 4. She has stated that, the victim used to confide in her that the private respondents used to mis-behave with the victim and that, the respondent No. 2 used to assault her. She has stated that, a compromise was held in presence of the villagers. She has claimed that the victim was murdered at her matrimonial home.

24. PW 5 is the daughter of the victim. She has claimed that, the victim was assaulted by the her father in presence of PW 6, her brother, who confided such incident in her.

25. PW 5 has stated that, a quarrel took place between the victim and the respondent No. 2. Victim had called her and when, she was near the old house, victim threw some piece of almirah and the purse. PW 5 had collected the same and went to the new building, when, the quarrel was still continuing.

26. PW 5 has stated that, she found uncle Ananta Das coming out from the first floor and going away on a motorcycle. Thereafter, respondent No. 2 had also come down from the first floor. Thereafter PW 5 had gone to the first floor and found the door was closed from inside. PW 5 had found sound of water from inside. PW 5 had called Babita Das and Tamaresh Das. She had tried to open the door. Smoke was coming out from another door which was under lock and key from the outside. When PW 5 was going upstairs she had found the respondent No. 2 talking to her grandmother namely the respondent No. 4 and talking that today all are finished. Respondent No. 4 had replied that you killed the daughter of PW 2 and now they will be put behind the bar. PW 5 has stated that, some villagers went to the first floor and broke the lock. At that time, PW 5 was on the ground floor. She had thereafter gone to the first floor and saw the victim lying on the floor with her hands and legs tied.

27. She has stated that, the victim was not in a position to talk. The victim was shifted to a hospital when, the respondents No. 2 had also gone with the victim.

28. PW 5 has tendered her statement recorded under Section 164 of the Criminal Procedure Code which was marked as Exhibit 4. She has stated that, respondent No. 2 always created pressure upon the victim to put her signature on some paper. Respondent No. 2 had also asked the victim for gold and ornaments.

29. The son of the victim has deposed as PW 6. He has stated that, he went with his parents on motorcycle driven by the respondent No. 2, his father. When they were returning, respondent No. 2 had asked the victim, his mother, to put signature on a paper. The victim had refused to do so and the respondent No. 2 assaulted the victim by helmet.

30. A co villager of the victim and the private respondents has deposed as PW 7. He has stated that he knew the victim as also the private respondents. He has stated that he did not know the cause of death of the victim and that on the day of the incident, he was not present in his house.

31. Prosecution has cross-examined PW 7 on him being declared hostile. Defence has also cross-examined him. Nothing fruitful has transpired from such cross examinations.

32. Another co villager has deposed as PW 8. He has stated that, he knew both the victim and the private respondents. He has also stated that on the date of the incident he was not present in his home. He has also stated that, he came to know that the victim was burned and hospitalised later on.

33. PW 8 has also been cross-examined by the prosecution after being declared hostile. Nothing fruitful for the prosecution has transpired from such cross examination.

34. A fair price shop owner has deposed as PW 9. He has stated that he knew all the private respondents. He has not added any value to the case of the prosecution or to the defence.

35. The driver of the vehicle in which, the victim was transported to the hospital has deposed as PW 10. He has stated that, on June 19, 2012 he received a phone call and went to the house of the respondent No. 3. He has stated that, respondent No. 2 and 5 brought the victim in burned condition. He has stated that, initially the victim was taken to the subdivisional hospital and subsequently on being referred, to the Medical College.

36. The doctor who performed the autopsy on the victim has deposed as PW 11. She has described the injuries found on the dead body of the victim. She has opined that, the victim was smothered to death with the help of 2/3 assailants. She has also stated that after death, the body was burned. She has attended the post-mortem report in evidence which was marked as Exhibit 6.

37. The sub- inspector of police who performed the inquest has deposed as PW 12. He has tendered the inquest report which was marked as Exhibit 3.

38. The investigating officer has deposed as PW 13. He has described the manner of the investigations. He has tendered the formal First Information Report in evidence which was marked as Exhibit 7. He has tendered the sketch map along with the index of the place of occurrence which was marked as Exhibit 8. He has identified the signatures of the seizure list. He has stated that, he filed an application for recording the statements of PW 5 and 6, which was done. He has contradicted the version of the hostile prosecution witnesses.

39. The police personnel who initiated the unnatural death case in respect of the victim, has deposed as PW 14. He has described how the unnatural death case was recorded.

40. A police constable who took the dead body of the victim to the morgue has deposed as PW 15. He has tendered the dead body challan which was marked as Exhibit 9 at the trial.

41. In conclusion of the evidence of the prosecution, the respondents were examined under Section 313 of the Criminal Procedure Code. In such examination, they have denied the charges. Respondent No. 2 has stated that on June 19, 2012, they had seen smoke from their house at about 10/10:30 AM. First they had thought that there was a short circuit. Then, the family and villagers had come and found the door to be closed. They had opened the door and found the burned body of the victim and took her to the hospital where she died.

42. Defence has examined 3 witnesses at the trial. Wife of the brother of the respondent No. 5 has deposed as DW 1. She has stated that, the victim and the respondent No. 2 used to sleep in one room on the first floor. She has described the location of the room which was used by the victim and the

respondent No. 2. She has described that, the respondent No. 5 has share in 2 rooms in each floor of the building. Between 2 rooms of both sides there is a passage in each floor. There is a balcony on the roadside of the passage. The passage has door on each side, one inside and another on the roadside. They have staircase inside the building. Except the staircase there is no way to enter the first floor.

43. DW 1 has stated that, respondent No. 2 and the victim initially had a love affair and they married secretly. Subsequently, when the family came to know, the family had organised a social marriage. After marriage, the victim was living with the respondent No. 2 and his family. She has stated that, 2 children were born out of the wedlock. She has also stated that, the victim was living happily at her matrimonial house.

44. DW 1 has stated that, on June 19, 2012, she met the victim in the morning. The victim was moving to the first floor by staircase. DW 1 was cooking at that time. DW 1 has stated that, she did not see any injury mark on the body of the victim. DW 1 has stated that she found the victim to be

happy. She has also stated that, at that time, PW 5 was with DW 1.

45. DW 1 has stated that, thereafter she heard people crying about burn. She had called for help. Nearby shopkeepers had come to the house and broke open the door of the room. After opening the door, she had seen of the victim. The villagers had taken the victim out. The skin of the victim was peeling up. The respondent No. 2 and the parents of the respondent No. 2 had accompanied the victim to the subdivisional hospital from where the victim was referred to the medical College where the victim died.

46. DW 1 has stated that, the children of the respondent No. 2 were taken by the police forcibly after the incident and that they were living at the maternal uncle's house.

47. A doctor who treated the victim at the Medical College on June 19, 2012 has deposed as DW 2. He has stated that on June 19, 2012, the victim was admitted with burn injury in the hospital in his unit. He has tendered the referral card made by the subdivisional hospital which was marked as exhibit A. He has also tendered the outdoor ticket of the Medical College which was marked as exhibit B. He has stated

that, according to the bed head ticket on June 19, 2012, the respondent No. 2 was present in the hospital and that, the victim was in gasping condition. He has stated that, as per the bed head ticket, the victim was found clinically dead at 12:20 PM. He has also stated that, he did not find any doctor to mention about any injury mark or strangulation mark except burn injury on the body of the victim. He has tendered the death report and the bed tickets with other documents in evidence and the same were marked as exhibit C series.

48. In cross-examination, DW 1 has stated that, although the bed head ticket reveals that the patient was in gasping condition, her pulse was feeble.

49. At the trial, the prosecution had to establish murder of the victim on June 12, 2012 at her matrimonial house physical and mental torture on her and common intention between the private respondents to commit the murder as well as torture.

50. Post mortem of the victim being Exhibit 5 has classified the death of the victim to be due to effects of violent mechanical asphyxia by smothering, ante mortem and homicidal in nature. PW 11, who had performed the post

mortem on the victim and is the author of Exhibit 6 being the post mortem, in her deposition stated that, the nature of the injuries and the photographs of the dead body determined that the victim was smothered to death. She has also stated that smothering was done with the continuous pressure over the abdominal region by the assailant, either sitting or in kneeling position which led to haemorrhage in the mesentery/peritoneum and right kidney capsule. She has also described that the victim could not resist because another assailant held the hands of the victim which is corroborated by the bruise over extension surface of both hands. She has claimed that the, number of assailants were 2/3. In her opinion, after death, the body was burned.

51. This testimony of PW 11 is in complete contrast to the testimony of DW 2 who had treated the victim at the Medical College where the victim was admitted. DW 2 has stated that, on June 19, 2012, the victim was admitted with burn injury in the Medical College under his unit. He has stated that, victim was referred from the sub-divisional Hospital. He has tendered the referral document which was marked as Exhibit A. He also tendered the copy of the outdoor ticket of the Medical College

in respect of the victim which was Marked as Exhibit B. He has stated that, according to the bed head ticket, the respondent No. 2 and the victim were present in the hospital and that the patient was in a gasping condition. He has stated that the victim was found clinically dead on 12.20 PM. He has also stated that, the patient was not brought dead.

52. Prosecution has established at the Trial Court that the victim suffered burn injuries on June 19, 2012. She had been taken to the Sub-Divisional Hospital accompanied by the respondent No. 2 apart from other family members. The Sub-Divisional Hospital had referred the victim to the Medical College on June 19, 2012 itself. The victim had expired on June 19, 2012 at 12.20 PM at the Medical College after being taken on time.

53. Therefore, the victim was alive between the period when, the incident of burn occurred on June 19, 2012 at about 10/10.30 AM till her death on June 19, 2012 at 12.20 PM. In between, the victim had initially been treated at the Sub-Divisional Hospital and on reference, at the Medical College. At the time of admission at both the two medical facilities, the victim was not declared as brought dead.

54. Victim having expired at the Medical College, the opinion and testimony of the PW 11 that the victim was smothered to death and that after death, the body was burnt cannot be accepted. Testimony of PW 2 as also exhibit A to C series have established that, the victim was not brought dead at the two medical facilities. Rather, victim had succumbed to her injuries at the Medical College at 12.20 PM on June 19, 2012.

55. Of all the prosecution witnesses, only one prosecution witness namely PW 5 has stated that, the door of the room from which the smoke was coming out, was locked from outside. She has however, stated that, local people entered the residence and opened the door.

56. Prosecution has examined a number of local villagers at the trial. However, all of them have either turned hostile or did not add any value to the case of the prosecution. PW 1, PW 7 and PW 8 have turned hostile while PW 9 did not add any value to the case of the prosecution.

57. PW 5 has stated that, one of the doors of the room at which, the dead body of the victim was found, was locked from outside. She has not seen any of the co-villagers

breaking open the door. She has not described the door which was broken open in order to rescue the victim.

58. Importantly, PW 5 and 6 who are the children of the victim had stayed at their maternal uncle's house from the date of the incident as transpiring from the deposition of DW 1. The incident is of June 19, 2012 while PW 5 has deposed at the trial on January 17, 2017. PW 6 has deposed on January 19, 2017. Possibility of PW 5 and 6 being tutored cannot be conclusively ruled out in the facts of the present case. Testimonies of PW 5 and 6 moreover remain uncorroborated by any other independent witness examined by the prosecution. Therefore, it would not be proper to rely upon the testimony of PW 5 and 6 where, the possibility of them being tutored remains.

59. On the issue of the evidentiary value of the testimony of a child witness, ***Balveer Singh (supra)*** has observed as follows :-

“35. From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the

susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.”

60. As has been noted above, the possibility of both the child witnesses being PWs 5 and 6 being tutored cannot be ruled out. Their testimony does not inspire confidence in the Court since, the prosecution has failed to establish that, the death was due to smothering as claimed by PW 11 and Exhibit 6.

61. PW 6 has stated that, there was an incident of assault on the victim prior to her death, causing an injury on the lips of the victim. DW 1 has stated that, she saw no injury mark on the body of the victim. Doctors treating the victim at the

sub-divisional hospital and the Medical College Hospital have not seen any injury marks on the body of the victim while treating her. There is no noting to such effect in the bed head ticket of the victim in the course of her treatment.

62. On the aspect of Section 106 of the Evidence Act, ***Balveer Singh (supra)*** has observed as follows :-

“76. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.”

63. In the facts and circumstances of the present case, the prosecution has failed to establish murder. Therefore, the question of the private respondents discharging onus under Section 106 of the Evidence Act does not arise.

64. Prosecution has failed to establish any physical or mental torture. Apart from the parents of the victim no independent witness has come forward to establish that there was any torture meted out by any of the respondents upon the victim during her lifetime. On the contrary, two of the prosecution witnesses have stated that, there was no matrimonial discord between the victim and the respondent No. 2.

65. It is trite law that, while considering an appeal directed against a judgment and order of acquittal, appreciation of the evidence of the witnesses adduced at the trial is permissible. It is also trite law that, a judgment and order of acquittal should not be interfered with unless, it is found on misleading of the evidence led at trial, or is based on an erroneous understanding of the law. Moreover, should the judgment and order of acquittal is founded upon one of the two plausible views then, the view that benefits the accused is to be accepted.

66. Tested on such legal parameters, we find no infirmity in the impugned judgment and order of acquittal.

67. In view of the discussions above we find no ground to interfere in the present appeal.

68. CRA 202 of 2019 along with all connected applications are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

69. I agree.

[MD. SHABBAR RASHIDI, J.]