

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

Present:

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

**DR 5 of 2017
State of West Bengal
Vs.
Md. Jahangir Sahaji**

With

C.R.A. 321 of 2017

Rowsanara Bibi @ Rowsonara Bibi

-Versus-

The State of West Bengal

With

C.R.A. 377 of 2017

Md. Jahangir Sahaji

-Versus-

The State of West Bengal

For the Appellants : Mr. Sekhar Kurmar Basu, Sr. Adv.
Mr. Surajit Basu, Adv.
Mr. Jasika Alam, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Mr. Partha Pratim Das, Adv.
Mr. Manoranjan Mahata, Adv.

Hearing concluded on : 6th August, 2025

Judgment On : 27th August, 2025

Prasenjit Biswas, J:-

1. The impugned judgment and order of conviction dated 25.04.2017 and 29.04.2017 passed by the learned Additional Sessions Judge, Fast Track Court No. 5, Barasat, North 24 Parganas is assailed in both the appeals.

2. Both the appeals are filed challenging the same impugned judgment and order of conviction and as such, those two appeals are taken up together for disposal.

3. By passing the impugned judgment both the appellants were found guilty for commission of offence punishable under Section 302 and 498A of the Indian Penal Code. The appellant, Jahangir Sahaji was sentenced to death for the offence committed under Section 302 of the Indian Penal Code. The appellant Rowsanara Bibi was sentenced to suffer rigorous imprisonment for life. Both the appellants were sentenced to suffer rigorous imprisonment for

three years for commission of offence punishable under Section 498A of the Indian Penal Code.

4. In short campus the story of the prosecution is as follows:

“A written complaint was lodged by one Lucia Bibi being the first wife of the accused Jahangir Sahaji to the effect that she got married eight years ago with this appellant and since after her marriage with this appellant, she was subjected to physical and mental torture inflicted by her husband Jahangir Sahaji and by her mother-in-law Rowsanara Bibi, on failure to bring cash amount from her father in terms of the monetary demand. It is stated in the written complaint that both the appellants forcefully administered poisonous medicine to the complainant and her husband Jahangir Sahaji planned to kill this de-facto complainant at her matrimonial home in a night by electrocuting the body of the complainant wife by laying live wire, but this complainant somehow saved her life. Ultimately, this defacto complainant with her children left her matrimonial home and started residing at her father’s house. Thereafter, this appellant Imran Sahaji snatched their elder son namely, Imran Sahaji from the custody

of this defacto complainant and took away Imran with him. This appellant, thereafter, married with Sanjura Bibi (victim) for the second time. On 03.03.2006 this instant complaint was lodged by this defacto complainant to the effect that the second wife of this appellant namely Sanjura Bibi and the son of the defacto complainant were murdered by these appellants within nineteen days from the date of second marriage of the appellant Jahangir Sahaji with the deceased Sanjura Bibi.”

5. Over the complaint lodged by the defacto complainant a case being Ashok Nagar P.S. Case No. 48 dated 03.03.2006 was started. After completion of investigation charge-sheet was submitted by the prosecuting agency against both these appellants under Sections 498A/302/34 of the Indian Penal Code.

6. Charge was framed by the Trial Court against these appellants under Section 498A/302/34 of the Indian Penal Code

7. In this case, twenty-five witnesses were cited by the side of the prosecution and documentary as well as seized articles were marked as exhibits on its behalf. Neither any oral, nor any documentary evidence was adduced by the side of the defence.

8. Mr. Sekhar Kumar Basu, learned Senior Advocate on behalf of the appellant submitted that the learned Trial Judge failed to appreciate the evidences on record on proper perspective and as such, the impugned judgment and order of conviction on such failure are wholly unwarranted by law. Mr. Basu further contended that the prosecution has failed to establish the guilt of the accused beyond reasonable shadow of doubt and in this case, no direct or eye-witness to the incident exists and no motive has been proved by the side of the prosecution. Moreover, the appellant husband himself suffered burn injuries and was admitted into hospital for treatment. The mother-in-law (co-accused) was not present at the place of occurrence and no forensic or conclusive material supports homicidal intent. The attention of this Court is drawn by the learned Advocate to the deposition of PW15 (Mrinal Das, Constable) who in his statement has confirmed that the accused husband was injured and admitted to Habra Hospital with burn injuries. It is said that PW9, the first informant has testified that on the night of 02.03.2006-03.03.2006 he saw two rooms ablaze and found this appellant

Jahangir (accused husband) was emerging from the fire in injured condition and was crying. Upon entering, this PW9 found the deceased wife and child was lying in the room. This account supports the possibility that the husband was not the perpetrator, but also a victim.

9. Mr. Basu further said that the autopsy surgeon did not opine that the death of the victims were homicidal and he clearly deposed that the injuries sustained by the victims could also be accidental or suicidal and thereby neutralising the conclusiveness in the initial opinion. So, as per submission of the learned Advocate that the medical expert stated about the possibility of accidental or self inflicted burns and this creates a reasonable doubt which must be held in favour of the accused persons. It is said by the learned Advocate that mere presence of kerosene and a barrel does not prove mensrea of criminal intent of the accused person, when no forensic evidence (like burn patterns, accelerant traces on cloths or matches/lighters) have been produced to establish deliberate dousing or ignition. It is further contended by the learned Advocate that although there was allegation of dowry

demand from the father of the deceased second wife of the appellant but no complaint/diary was lodged before the appropriate authority. So, as per submission of the learned Advocate that the possibility of catching accidental fire by the deceased persons or committing suicide by them cannot be ruled out.

10. It is said by Mr. Basu that in case of circumstantial evidence it is the bounden duty of the prosecution to prove that a complete chain was formed excluding every other hypothesis excepting to the guilt to the accused. In support of his contention, learned Advocate cited a decision rendered by the Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda-vs- State of Maharashtra**¹.

11. Lastly, the learned Advocate submitted that suspicion, however strong, cannot take the place of proof and Section 106 of the Indian Evidence Act cannot be applied when the prosecution has failed to discharge its primary burden of proving the case. It is said by the learned Advocate that the burden of proof solely rests

¹ (1984) 4 SCC 116

upon the prosecution and it never shifts and Section 106 of the Evidence Act does not relieve the prosecution of its burden of proving of guilt of the accused beyond reasonable doubt and only when the prosecution has established the facts, the burden may shift to the accused to explain facts especially within his knowledge.

12. In support of his contention reliance has further been placed upon a decision rendered by the Hon'ble Apex Court in the case of **Nagendra Sah -vs- State of Bihar**². So, it is said by the learned Advocate that the medical evidence in connection with this case is conclusive and the alleged motive of the accused persons are absent. The prosecution has not proved its case beyond reasonable doubt and as such, the impugned judgment and order passed by the learned Trial Court is not sustainable under the provision of law and the said impugned judgment and order of conviction may be set aside.

13. Learned Advocate for the State has made submission supporting the impugned judgement. It is said that there is no

² (2021) 10 SCC 725

irregularity or illegality in the judgment passed by the Trial Court. Moreover, there is no material on record for which the impugned judgment and order may be interfered with.

14. We have considered the rival submissions advanced by the learned Advocates of the parties.

15. PW27, Lucia Bibi, the first wife of the appellant Jahangir Sahaji has stated in her evidence supporting the contentions made in the written complaint. This witness has stated that she was married with the appellant Jahangir Sahaji and out of their marriage two children were begotten. It is said by this witness that her husband (Jahangir Sahaji) used to illtreat her and due to such unbearable torture inflicted upon her, she left her matrimonial home and started to reside in her father's house with their children. It is said by this PW27 that the appellant Jahangir Sahaji took one of her sons namely, Imran Sahaji (deceased) from her custody and thereafter her husband married for the second time and subsequently burnt up his second wife Sanjura. Hearing the incident this witness went to the place of occurrence and

found his son in dead condition. Over the incident this witness lodged FIR which is marked as exhibit 10/1 in this case.

16. PW2, Abdul Sattar, father of the deceased Sanjura has stated in his evidence that the incident occurred on 03.03.2006 and after marriage her daughter went to the appellant Jahangir's house and started her conjugal life there. It is further stated by this witness that just after 5-7 days of marriage, her daughter called this witness over phone and stated about the torture inflicted by these appellants. In the evidence taking process this PW2 stated that when he after 10/12 days of marriage went to the house of the appellants, then his daughter told him that her husband (Jahangir Sahaji) assaulted her on two occasions and kept her unfed. This witness after getting information about the death of his daughter went to the appellant's house. He found the dead body of her daughter and Imran were lying on a van there and the villagers who were present at the spot were discussing among themselves that Jahangir killed his daughter and thereafter burnt her by pouring kerosene oil. This witness put signature on the

inquest report of the dead body of the victims which are marked as exhibits 1/1 and 2/1 in this case.

17. The evidences of PW2 and PW27 get corroboration from the evidence of PW1, Md. Musaraf Sahaji. It is said by this witness that on the date of incident he went out to attend a marriage and came back home at around 2.00 A.M. at night and then he was informed by his wife that Jahangir's wife and son died due to burn injuries and getting this information he went to the house of the appellants and saw the victims were lying side by side. It is said by this witness that there was smell of kerosene in that room and also saw an empty barrel of kerosene there. It is further said by this witness that only the 'tosak' (mattress) and 'mosari' (mosquito net) were burnt but in the rest of the room nothing was burnt. This PW1 is one of the signatories on the inquest report of the deceased and his signatures were marked as exhibits on the inquest report in this case.

18. Same as to PW1, PW5 (Amjad Ata) has stated in his evidence that the victim Sanjura was married with the appellant Jahangir in the year 2006 and after 20/22 days of her marriage they

received information of her death. It is said by this witness in his evidence that after marriage they heard that the appellant Jahangir Sahaji had demanded Rs. 20000/- which Sanjura told them. The victim Sanjura also told to this witness that the appellant Jahangir Sahaji threatened her that if money was not given, she would be killed and after few days they received the news of death of Sanjura. This PW5 stated that on getting the news of death he went to the house of the appellants with others and found that the appellants were absent at that place. This witness stated that he saw the bed and 'tosak' (mattress) in brunt condition but nothing else of the room was burnt. It appears from the exhibit 9 that a report on unnatural death was made before Ashoknagar P.S. being U.D. Case No. 10/6 dated 03.03.2016 which was reported by Saukat Ali Sahaji wherein it is stated by the said Saukat that on 03.03.2006 he heard hue and cry from the house of the appellant and when he went to the house of this appellant, he found that fire broke out in the room of the appellant and the accused Jahangir Sahaji was coming out in the

room sustaining some burn injuries and immediately the accused Jahangir Sahaji disappeared from the place of occurrence.

19. PW21, Supriti Ghorai, autopsy surgeon stated that she found the victims with the burn injuries and the death was caused by the burn injuries which are ante-mortem in nature. The post-mortem report of the victims are marked as exhibits 7 and 8 in this case.

20. The case of the prosecution is that these appellants committed the murder of the victims by causing burn injuries inside their house. The prosecution case rests upon circumstantial evidence supported by medical testimony. It is the case of the prosecution that on the fateful night the deceased persons sustained fatal burn injuries in a closed room of the house of the appellants. At the time of the incident, the only other person present inside the house was the accused i.e the husband of the deceased Sanjura Bibi. It is the case of the prosecution that immediate to the incident, the victims were taken to hospital by the appellant husband. The post-mortem proved by PW21 revealed that the deceased sustained burn injuries over their bodies. The

seizure list reflects empty kerosene jerry-cane, its lid were lying on the spot. The trouser of the accused Jahangir was also seized by the Investigating Officer from the custody of the appellant Jahangir Sahaji which also bears smell of kerosene. The doctor opined that the burn injuries were ante-mortem. There were no signs of self immolation such as a matchbox or partially burnt cloths near their bodies. The conduct of the accused Jahangir Sahaji is otherwise and he did not attempt to douse the fire. We have already said that PW2, the father of the deceased Sarjuna stated that she (victim) disclosed before this witness about the assault inflicted by the appellant Jahangir Sahaji upon her on two occasions.

21. PW1 has stated in his evidence that when he went to the place of occurrence, he saw the smell of kerosene in the room and there was also an empty barrel of kerosene and save and except 'tosak' (mattress) and 'mosari' (mosquito net) nothing in the room was found burnt. The accused Jahangir Sahaji was the only person present with the deceased inside the room at the relevant time but no effort was made by the accused Jahangir Sahaji to

rescue or to arrange medical aid to the victims which are inconsistent with his innocence. The medical evidence categorically shows the burn injuries sustained by the victims which could not be self-inflicted in the course of a suicidal burning. The absence of implements for self-immolation, the smell of kerosene and presence of empty kerosene jar and when it was found that nothing in the room was burnt as stated by the witness negate the possibility of suicide. When it is undisputed that the incident took place inside the close room of the house of the appellants and the accused Jahangir Sahaji was alone present with the deceased and in such a situation the facts being especially within the knowledge of the accused Jahangir Sahaji, the burden rests upon him under Section 106 of the Indian Evidence Act to offer a cogent and plausible explanation. So, the vague plea of suicide in absence of any evidence does not contradict the medical findings.

22. The circumstances i.e. death of the deceased in a close room, presence of only accused Jahangir Sahaji with the deceased, absence of suicide indicators, kerosene smell in the body of the

deceased as well as from the seized trouser of the appellant Jahangir Sahaji, the seizure of kerosene jerry-cane, kerosene lamp and lack of plausible explanation form a complete chain pointing unerringly to the guilt of the accused and excluding any reasonable hypothesis of his innocence. It is well settled that when case of death occurs inside the house and the accused is the only other occupant, the principle under Section 106 of the Evidence Act operates with full force and if the husband fails to explain the circumstances leading to her death, the Court is entitled to draw an adverse inference. The failure of the accused to explain incriminating circumstances within his special knowledge can be an additional link in the chain of circumstances. The Trial Court upon evaluating the medical and circumstantial evidence found the death to be homicidal and convicted the appellants under Section 302 of the Indian Penal Code. We have already said that the medical evidence is unequivocal and the burn injuries sustained by the victims are inconsistent with self-immolation. The absence of any matchbox, lighter or half burnt cloth near the bodies of the victim coupled with kerosene smell on the accused

Jahangir's own clothing it rules out a spontaneous act of suicide. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would still be upon the prosecution, but where the prosecution has succeeded in establishing facts which indicate that the accused alone was present with the deceased at the relevant time, the accused is expected to offer an explanation in terms of section 106 of the Evidence Act. The nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. Once the prosecution succeeds in leading evidence to show that death was occurred in the dwelling house, an accused must give a plausible explanation and in the absence of such explanation the Court can draw an adverse inference against him. The chain of circumstances in the present case is completed. The homicidal death of the victims by burns was held inside a close room, the exclusive presence of the accused Jahangir Sahaji at the spot, there are ante-mortem burn injuries sustained by the victims, kerosene smell on the seized trouser of the accused Jahangir Sahaji, absence of suicide

indicators and failure to offer plausible explanation by the side of the appellants. So, the chain is so interlinked that it excludes every hypothesis other than the guilt of the appellant satisfying the golden rule as enunciated in the case of Sharad Birdhichand by the Hon'ble Apex Court.

23. The applicability of Section 106 of the Indian Evidence Act, 1872 in the context of the facts and circumstances of the present case is to be seen. The prosecution has strongly urged that certain facts being exclusively within the knowledge of the accused, an adverse inference must be drawn from his failure to explain it. Section 106 of the Indian Evidence Act entails that when any fact especially within the knowledge of any person, the burden of proving that fact is upon him. At the outset, it is imperative to note that this provision does not dispense with the fundamental and well-settled principle of criminal jurisprudence that the prosecution must prove its case against the accused beyond reasonable doubt. Section 106 places a burden upon the accused to explain facts which are peculiarly within his knowledge.

24. In case at hand murder was committed in secrecy inside a house and the prosecution had succeeded in establishing the foundation of facts which indicated that the accused was alone present with the deceased persons at the relevant time, the accused Jahangir Sahaji is expected to offer an explanation under Section 106. The initial burden to establish the case would undoubtedly be upon a prosecution but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden of the inmates of the house who has to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies upon the prosecution and there is no duty at all on an accused to offer an explanation. In this case, the chain of circumstantial evidence is complete. So, the accused is shown to be in a position to explain the incriminating circumstances. In

this case the fact to be explained is within the exclusive knowledge of the accused but he fails to offer a satisfactory explanation and chose to remain silent in the face of incriminating evidence. The Trial Court as a rule of evidence under Section 106 of the Evidence Act drew adverse inference against the accused Jahangir Sahaji when the prosecution has done its part in establishing the ingredients of the offence. When the prosecution case is fully established with strong circumstantial evidence pointing towards the guilt of the accused, Section 106 can be invoked to call upon the accused Jahangir Sahaji to explain facts which are within his special knowledge, such as (i) his presence at the scene of the crime, (ii) the last scene circumstances and cause of injury sustained by the deceased in his exclusive company.

25. We have already held that the prosecution succeeded in leading evidence which points to the presence of the accused in the house at the time of the incident. The accused Jahangir Sahaji is expected to offer an explanation in terms of Section 106 of the Evidence Act. Therefore, in the case of the unnatural death of a wife in a room shared with the husband, the accused husband is

legally bound under Section 106 of the Indian Evidence Act to explain the circumstances of her death. In such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above applied. This is because such facts are especially within his knowledge, and his failure to explain them can be a significant factor in the court's assessment of guilt, especially in cases based on circumstantial evidence. In the instant case, the vital reaction conclusively proved that the deceased person were alive when the kerosene was poured and ignited coupled with the fact that the burning occurred in the closed room. The medical evidence decisively supports the prosecution's version of a homicidal death rather than suicide or accidental burning.

26. It is profitable to quote the following observation made by the Hon'ble Apex Court in the case **Nagendra Saha (supra)** which is as follows-

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.”

27. In the above referred case, Hon’ble Apex Court held that when prosecution has succeeded to establish the fact from which

a reasonable inference can be drawn regarding certain other facts which are within the knowledge of the accused and if the accused fails to give proper explanation about the existence of the said other facts, the Court can always draw an appropriate inference. In the case in hand the prosecution has discharged its initial burden of proving the foundational facts of the case and when a fact is peculiarly within the knowledge of a person, it is reasonable to expect that the person to provide an explanation. In this case, kerosene oil soaked trouser of the accused Jahangir Sahaji was seized from his custody and possession. It is the opinion of the doctor that the dead bodies were burnt uniformly. So, it is proved that the accused Jahangir Sahaji was within the room when his newly married second wife and son of the first wife were burning and he was within the room until the wife and first wife's son were burnt to the death and charred. The accused Jahangir Sahaji and his family members did not attempt to rescue the victim from fire. The accused Jahangir Sahaji did not disclose to others as to how the victims sustained burn injuries or they did not call any of the neighbours to save them. Immediate to the incident, the accused

Jahangir Sahaji was found absent at the spot and he did not attempt to arrange any medical treatment for the victims or took them to the nearby hospital. There was kerosene smell in the room and on the dead bodies of the victims as well as smell of kerosene was coming out from the seized trouser of the accused Jahangir Sahaji, empty kerosene jerry-cane of three litre capacity and lamp containing small amount of remaining kerosene oil was seized by the investigating agency. It is admitted by the appellant Jahangir Sahaji that he got him admitted to the hospital due to injury sustained by him. At the time of examination of the accused Jahangir Sahaji under Section 313 Cr.P.C. he categorically stated that he sustained burn injury and immediately dived into a pond and thereafter got him admitted into hospital which proves his presence in the room where the deceased persons were found dead after sustaining burn injuries.

28. Immediately, after the incident when police came to the spot found that the bed was still burning. In the preliminary enquiry the police found that the accused persons were found absconded immediately after the incident. It appears from the evidence of

PW2, the father of the victim Sanjura Bibi that his daughter told that her husband Jahangir Sahaji used to torture and assault her and the victim was kept unfed. This information was given by the victim Sanjura to this witness within five days of her marriage and accordingly PW2 went to the house of the accused person after ten days of the marriage, wherein the deceased disclosed that the accused Jahangir Sahaji is a 'gunda' and 'badmais' person. On asking by this witness the appellant Jahangir Sahaji disclosed that he would not henceforth inflict torture upon the deceased and after that he received a message from the police station that his daughter has been killed at her matrimonial house. In this case, the prosecution has been able to establish the strong link and the entire chain of circumstances connecting the accused Jahangir Sahaji with the crime. Just after few days of marriage this victim tortured physically upon the deceased Sanjura and threatened her to be murdered in the event of failure to provide cash amount to Rs. 20,000/-.

29. PW2 stated that her daughter termed her husband as 'gunda' and 'badmais'. The trouser of the accused shocked with kerosene

oil without any sign of burn of the accused was seized from his custody. In this case, kerosene lamp containing residue kerosene and the kerosene oil jerry-cane of three litre capacity were found lying on the floor and was seized by the Investigating Officer. It appears that the relationship between the deceased Sanjura and the accused Jahangir Sahaji was not good. All the facts and circumstances indicate that this accused Jahangir Sahaji committed the murder of his wife and son Imran Sahaji. The deceased Imran Sahaji was the only witness to the incident and as such, the accused Jahangir Sahaji decided to kill him also. He committed murder of the two persons. Moreover, the inquest report which was marked as Exhibit 1 and Exhibit 2 showed that the deceased victims were laying bed in such position which seems to be a sleeping on the bed suggests that the victim died during their sleep on their bed. It is not possible to commit suicide by fire in sleeping condition and there is no justification as to why the victim Imran Sahaji who was aged about six years committed suicide. It further appears from the materials on record that the door of the room in which the incident happened was not bolted

from inside. When the deceased victims were sleeping in its supine position on the bed, kerosene oils were poured upon them from the tin and set them on fire.

30. In conclusion, when a wife faces an unnatural death in a room shared with her husband and the incident occurred in circumstances known only to the husband, Section 106 of the Indian Evidence Act, 1872 becomes directly applicable. The accused husband is legally bound to explain the circumstances leading to her death, since these facts are especially within his knowledge. Failure to provide a satisfactory explanation can be a significant factor in the Court's assessment of guilt, particularly in cases based on circumstantial evidence. This principle serves both as a tool of justice and as a safeguard to ensure accountability in domestic settings where the truth might otherwise be concealed within the four walls of a home.

31. It is admitted position that the mother-in-law of the victim Sarjuna Khatoon namely, Rowsanara Bibi was not present at the time of incident. There is no act of instigation; conspiracy which has been proved against her. No prosecution witnesses attribute

act or commission to her. Therefore, the allegation against the accused Rowsanara Bibi under Section 302 or 498A against her is not sustainable under the eye of law.

32. Accordingly, the appeal filed by the Rowsanara Bibi @ Rowsonara Bibi being CRA 321 of 2017 is hereby **allowed**. The judgment and order of conviction passed against her is hereby set aside.

33. The accused Rowsanara Bibi @ Rowsonara Bi is hereby discharged from bail bonds and be set at liberty if she is not wanted in connection with other case.

34. In view of provision of Section 437A of Cr.P.C. the appellants namely, Rowsanara Bibi shall have to execute bail bonds with sureties and such bail bonds shall be in force for six months.

35. The impugned judgment and order of conviction passed by the learned Trial Court against the accused Jahangir Sahaji is hereby affirmed.

36. In view of the discussion made above, the appeal filed by the accused Md. Jahangir Sahaji, being C.R.A. No. 377 of 2017 is hereby **partly allowed** with the following modification.

37. Having considered the facts and circumstances of the case, the nature of the offence and the mitigating circumstances placed on record, this Court is of the considered view that the case does not fall within the category of the ‘rarest of rare’ cases warranting the extreme penalty of death. While the offence committed is undoubtedly grave and serious, the possibility of the accused being reformed and rehabilitated cannot be completely ruled out.

38. In view of the settled principles laid down by the Hon’ble Supreme Court, particularly in **Bachan Singh -vs- State of Punjab**³ and **Machhi Singh-vs- State of Punjab**, the death sentence imposed on the accused deserves to be modified.

39. Accordingly, the sentence of death awarded to the accused is commuted to imprisonment for life.

³ (1980) 2 SCC 984

(1983) 3 SCC 470

40. Let a copy of this order along with the Trial Court Records be sent down to the Trial Court immediately for taking necessary steps in this regard.

41. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

[PRASENJIT BISWAS, J.]

42. I Agree

[DEBANGSU BASAK, J.]