

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

Present:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Rai Chattopadhyay

C.R.A. 289 of 2012

Jabbarul Sk.

-Vs-

The State of West Bengal

For the Appellant : Mr. Subrata Karmakar, Adv.
Mr. Prince Akhtar, Adv.

For the State : Mr. Shataroop Purukayastha, Adv.

Heard on : 09.06.2026

Judgment on : 09.06.2026

Rajasekhar Mantha, J. :-

1. This appeal is directed against judgment and order of conviction dated 30.04.2012 and 02.05.2012 passed by the learned Additional Sessions Judge, 4th Court, Murshidabad in Sessions Trial No. 3/Nov/2010 arising out of Sessions Sl. No. 416 of 2010. The appellant was convicted under Sections 302/498A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.6,000/-, in default, to suffer rigorous imprisonment for one year more

for the offence punishable under Section 302 IPC. He was also sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for two months more for the offence punishable under Section 498A IPC; both the sentences were to run concurrently.

Prosecution case:-

2. The prosecution case against the appellant is as follows :

On 16.03.2010, PW 1 (Imamuddin Sk.) brought his burnt daughter to the Beldanga Police Station along with certain villagers on a rickshaw van. His daughter, Achhora Bibi (the victim herein) had informed her father and other people that her husband (the appellant herein) had poured kerosene oil on her and set her on fire.

3. On the written complaint of PW 1, FIR was registered against the appellant at about 02.35 P.M. being Beldanga Police Station Case No.71 of 2010 dated 17.03.2010 under Sections 498A/307 of the Indian Penal Code.

4. On the advice of the police, the victim was taken to Beldanga BPHC wherein she was examined by PW 13 (Dr. Madhusudan Dutta). Considering the seriousness of the injuries suffered by the victim, she was referred to Berhampore N.G. Hospital. The victim later succumbed to her injuries on 19.03.2010 at about 02.40 A.M.

5. On the way to the hospital, the victim, inter alia, informed PW 3 and PW 4 that her husband had poured kerosene oil on her and had set her on fire.

6. In the complaint, PW 1 stated that the marriage between the appellant and the victim had solemnized about eight years prior to 16.03.2010. After the marriage, the victim was repeatedly tortured for dowry. On one occasion, the appellant broke the victim's leg. The couple had two minor children; a girl (10-years old at the time of trial) and a boy (younger to the girl). Even before PW 13 the victim had clearly stated that she was sleeping in the night on her cot under a mosquito net. Her husband entered the house late in the night, tore open the mosquito net and initially assaulted her. Thereafter, he poured kerosene oil upon the victim and set her on fire. The victim ran outside the house, somehow broke open a tin grilled gate, fell on the ground and tried to douse herself.

7. After the victim died, Section 302 IPC was added to the FIR. The police commenced investigation and charge sheet was filed. Charges were framed against the appellant by the trial court on 25.11.2010 under Sections 498A/302 IPC.

The evidence on record:-

8. PW 1 (Imamuddin Sk.) is the father of the victim. He deposed that the victim told him that she was burnt by her husband after pouring kerosene oil upon her. In the morning of the next day i.e. 17.03.2010, after arrival at the place of occurrence, he and other local villagers took the victim to the Beldanga Police Station and were advised to take her for medical treatment. The victim was rushed to Beldanga BPHC wherein she was examined by Dr. Madhusudan Dutta (PW 13). On the advice of PW

13, the victim was shifted to Berhampore N.G. Hospital where she was treated by doctors and finally succumbed to her injuries on 19.03.2010.

9. PW 2 (Md. Noor Haque) witnessed the inquest and had scribed the complaint.

10. PW 3 (Habibur Rahaman) is a neighbour who arrived at the place of occurrence after coming to know of the victim being burnt. Upon arrival at the place of occurrence, he was informed by the victim that her husband had poured kerosene oil upon her and set her on fire. He deposed that the victim was tortured regularly for dowry for many years prior thereto. He was also the seizure witness to the kerosene oil container, burnt match sticks and the burnt wearing apparel of the victim that were seized by PW 15 (PSI of Beldanga Police Station).

11. PW 4 (Billal Sk.) is also a neighbour of the victim. He deposed that the victim was tortured regularly by the appellant. He further deposed that on one occasion the appellant broke the victim's leg while beating her up for dowry. He also deposed that the victim informed him on the way to the hospital that the appellant had poured kerosene oil upon her and set her on fire. He was also the seizure witness to the kerosene oil container, burnt match sticks and the burnt wearing apparel of the victim.

12. In cross-examination, he reiterated that the victim had told him that she was burnt by the appellant who poured kerosene oil upon her.

13. PW 5 (Sukchand Sk.), PW 6 (Sahajul Islam) and PW 7 (Amjad Sk.) knew nothing about the incident.

14. PW 8 (ASI Purabi Ghosh), PW 9 (ASI Arun Dev Saha) and PW 10 (ASI Bajlur Rahaman) are police officials who, inter alia, carried the body of the victim for inquest and post mortem.

15. In addition to the above evidence of PW 3 and PW 4, PW 11 (Nazma Khatoon) is the star witness of the prosecution. She is the 10-years old daughter of the victim. She had recorded her statement before the Judicial Magistrate (PW 14) under Section 164 of the Code of Criminal Procedure and narrated the same in course of trial. She deposed that in the night of 16.03.2010, the appellant came into the house at about 10.00 P.M. and found the victim sleeping on a cot under a mosquito net. The appellant thereafter tore open the mosquito net despite protest from the victim. He then brought a container full of kerosene oil, poured the same upon the victim and set her on fire.

16. The capacity and ability of PW 11 to depose was duly tested by the trial court. This Court is satisfied that the answers given by PW 11 to the questions shows that she was capable of deposing in the trial court.

17. PW 11 further deposed that after being set on fire, the victim ran out of the house, somehow broke open the tin grilled gate and fell down on the street. The victim rolled over several times possibly trying to douse the flames. The evidence of PW 11 is sterling in nature and could not be shaken at all during cross-examination.

18. PW 12 (Dr. Swapan Kumar Mondal) is the post mortem doctor who opined that the victim died due to shock induced by cardio respiratory failure from the burn injuries.

19. PW 13 (Dr. Madhusudan Dutta) examined the victim first at Beldanga BPHC. He deposed in examination-in-chief and cross-examination that the victim told him that the appellant tore open the mosquito net of the cot where she was sleeping and assaulted her. The victim further told him that the appellant thereafter poured kerosene oil upon the victim from a tin container and set her on fire. He was further informed by the victim that her two minor children were present in the house when the incident occurred.

20. PW 14 (Kuntal Bhattacharya) was the Judicial Magistrate before whom the statement of PW 11 under Section 164 of the Code of Criminal Procedure was recorded. The statement has been marked as Exhibit-8.

21. PW 15 (Indraraj Chakraborty) was the Investigating Officer who conducted the investigation and filed charge sheet.

Arguments at the Bar:-

22. Mr. Subrata Karmakar, learned counsel for the appellant would argue that the younger son of the victim and PW 11 ought to have normally choked as a result of the smoke of the fire that their mother was on. They, therefore, could not have witnessed the incident or deposed during trial. Since PW 11 was admittedly living with her grandfather namely, PW 1, she must be deemed as a tutored witness.

23. This Court however, notes that the evidence of PW 1 is substantially corroborated by the evidence of PW 3, PW 4 and PW 11.

24. While it is true that the dying declaration of the victim could not be recorded by the police, the evidence of PW 11 read with the evidence of

PW 3 and 4 clearly and in no uncertain terms prove the prosecution case beyond reasonable doubt.

25. Mr. Karmakar would lastly argue before this Court that the punishment imposed on his client was rather serious, excessive and disproportionate. According to Mr. Karmakar, this is because his client did not flee and/or escape the place of occurrence. Admittedly, the appellant was arrested two days after the incident from his own house.

Analysis and findings:-

26. This Court has considered the said arguments advanced by the learned counsel for the appellant and is not convinced by the same merely because a person charged with ending the life of his wife by pouring kerosene oil upon her after eight years of torture for dowry and after having regularly assaulted her including on one occasion when he broke her leg deserves no punishment than what has been imposed by the trial court.

Conclusion:-

27. In the facts and circumstances of the case, this Court is of the unequivocal view that the impugned judgment and order of conviction and sentence calls for absolutely no interference whatsoever.

28. Accordingly, conviction and sentence of the appellant is upheld.

29. CRA 289 of 2012 is accordingly, dismissed.

30. Trial court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

31. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Rajasekhar Mantha, J.)

32. I agree.

(Rai Chattopadhyay, J.)

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