

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

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Md. Shabbar Rashidi**

**C.R.A. 499 of 2014
Aktar Sk.
Versus
The State of West Bengal.**

For the Appellant : Mr. Subrata Karmakar.

For the State : Mr. Ranabir Ray Chowdhury,
Mr. Rayash Jana.

Hearing concluded on : February 24, 2026.

Judgment on : February 24, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgment and order of conviction dated 10th July, 2014 and 11th July, 2014 respectively passed by the learned Additional District & Sessions Judge, Jangipur, Murshidabad in Sessions Trial No. 5 of 2012 arising out of Sessions Case No. 171 of 2012. The appellant was convicted under Sections 498A of the IPC to suffer RI for 2 years and fine of Rs. 2,000/- and for the offence punishable under Section 302 of the IPC R.I for life and fine of Rs. 5,000/-

**THE PROSECUTION CASE, THE EVIDENCE ON RECORD AND
ANALYSIS OF THIS COURT**

2. The appellant and the victim was married for 17 years. They had children from their own marriage. Both of them were previously married and had children from their previous marriage. All the children of the appellant and the victim lived together in the matrimonial house.

3. On 18th December, 2011, the appellant returned home in a drunken condition and demanded his wife's ear rings. The appellant was stated to be a habitual gambler. On the refusal of the victim/wife to part with her ear rings, the appellant poured kerosene on her and set her on fire. There are no eye-witnesses to the incident.

4. A formal complaint was lodged by **PW-3, Mukleswar Rahaman** on 1st January, 2012. The victim was alive from 18th December, 2011 to 1st January, 2012. She was initially treated by a local *quack* doctor, namely, **Sakir Sk., PW-7**. He told that the victim needed to be taken to a hospital. The victim was taken to the local Mission Hospital, where she was treated. Since the hospital was closing down for Christmas vacation, the victim was referred to the **Anupnagar B.P.H.C. Hospital**. The appellant was the person who hired a taxi to send her to Madhupur where the de facto complainant resided. The paternal relatives of the victim took her to **Anupnagar B.P.H.C. Hospital**. She was then referred to Jangipur S.D. Hospital where she was treated by **PW-10 and PW-11, Dr. Amal Sarkar and Dr. Nirup Biswas** respectively.

5. The bed-head tickets and the treatment sheets at Anupnagar B.P.H.C. Hospital and Jangipur S.D. Hospital recorded that the victim had narrated to **PW-10 and PW-11** that her husband in a drunken condition had poured kerosene on her and set her on fire. It is only after the death of the victim that **PW-3, Mukleswar Rahaman**, brother of the victim lodged a complaint with the Suti Police Station Ourangabad, Murshidabad which registered FIR No. 5 of 2012 dated 1st January, 2012 under Sections 498A and 302 of the IPC. Until the death of the victim, the family of the victim did not bother to inform the police between 18th December, 2011 until 1st January, 2012.

6. **PW-1, Khurshed Sk.** and **PW-2, Baharul Islam**, are the family members of the victim and the appellant. Both had turned hostile. They only deposed that the victim sustained burn injuries while cooking. Both of them completely denied the prosecution case. Both of them stated that the appellant was not at home when the incident occurred.

7. Supporting the prosecution case, were PW-3, Mukleswar Rahaman, PW-4, Abdul Rahim, brother of PW-3, PW-5, Sayeda Bibi (step daughter of the appellant), PW-8, Momera Bibi (wife of PW-4 and sister of PW-3), PW-9, Sariful Sk. and PW-13, Bedora Bewa. Their evidence is hearsay. They only heard about the incident from others. Only evidence that could have some weight are the medical documents, namely, **bed-head tickets** at **Jangipur S.D. Hospital** and the treatment sheets thereat. They were marked as **Exhibits- 4, 5 and 6 series** respectively,

however, with objection from the defence. The said medical documents were duly supported by **PW-10** but denied by **PW-11**.

8. **PW-12, Dr. Indrajit Naskar**, who treated the victim at **Anupnagar B.P.H.C. Hospital**, had not stated anything with regard to the role of the appellant in burning the victim. The treatment documents of the victim at **Jangipur S.D. Hospital** indicate duly signed by **PW-10 and PW-11** that the appellant was in a drunken condition and poured kerosene on the victim and set her on fire.

9. Several witnesses have stated that the appellant was a habitual gambler and demanded ear rings of the victim in a drunken condition on the date and time of occurrence. Upon refusal of the victim to handover her ear rings, in such a drunken condition, the appellant set the victim on fire.

10. Had the appellant any motive to end the life of the victim, he would not have invited **PW-7, Sakir Sk**, a local quack doctor to treat the victim or send her in a taxi to the **Anupnagar B.P.H.C. Hospital**.

11. It is an admitted position that the appellant and the victim were married for more than 17 years. Children born out of their wedlock and the children from their respective previous marriages were all living in the same house duly supported by the income of the appellant. It further appears from the records that **PW-5, Sayeda Bibi**, who was the daughter of the victim from a previous marriage was married during the subsistence of the marriage between the victim and the appellant. It

transpires therefrom that the appellant duly took care of the children from his own previous marriage and that of the victim.

CONCLUSION:

12. This Court is, therefore, of the view that the evidence on record indicates an offence under part 2 of Section 304 of the IPC. The appellant committed the offence in a drunken condition. Had he not been inebriated he may not have committed the offence in question.

13. The evidence on record also does not show that the appellant had intention to end the life of the victim as would be proved from the substantive events that have come on record between 19.12.2011 till the death of the victim on 01.01.2012. There is no evidence on record of any torture by the appellant on the victim. No previous complaint was lodged by the victim and her family in that regard. On the contrary, the failure on the part of the complainant to notify the police of the incident from 19.12.2011 till 01.01.2012 would support the case of the defence that there is little or no evidence of offence under Section 302 much less any offence under Section 498A of the IPC.

14. The appellant is stated to have served more than 13 years of incarceration.

15. Having regard to the above, the conviction and sentence of the appellant under Sections 302 and 498A of the IPC are set aside. The appellant is sentenced to the extent that he has suffered incarceration under the second part of Section 304 of the IPC.

16. The appellant shall be set at liberty forthwith from the custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023

17. Accordingly, CRA 499 of 2014 is allowed and disposed of. Consequently, all connected pending applications, if any, are also disposed of.

18. Let the TCR along with a copy of this judgement be returned back to the trial Court for necessary action.

19. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Rajasekhar Mantha, J.)

I agree.

(Md. Shabbar Rashidi, J.)