

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

**Present:**

**The Hon'ble Justice Debangsu Basak**

**And**

**The Hon'ble Justice Md. Shabbar Rashidi**

**DEATH REFERENCE NO. 04 Of 2018**

**STATE OF WEST BENGAL**

**... APPELLANT**

**Vs.**

**SRIMANTA TUNG**

**... RESPONDENT**

**With**

**C.R.A. 684 of 2018**

**SRIMANTA TUNG**

**... APPELLANT**

**Vs.**

**STATE OF WEST BENGAL**

**... RESPONDENT**

For the Appellant : Mr. Kaushik Gupta, Ld. Sr. Adv.  
Mr. Santanu Talukdar, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.,  
Mr. Rudradipta Nandy, Ld. A.P.P.  
Mr. Suman De, Adv.

Hearing Concluded on : 09.06.2025

Judgment on : 24.06.2025

**MD. SHABBAR RASHIDI, J.:-**

1. The death reference and the appeal are directed against the impugned judgment of conviction dated November 15, 2018 and order of sentence dated November 16, 2018 passed in Sessions Trial No. 3 (12) of 2016 arising out of Sessions Case No. 67 (11) of 2016.

2. By the impugned judgment of conviction, the appellant was convicted of the offences punishable under Sections 376 (2)(i)(k)/ 302/201 of the Indian Penal Code, 1860 as well as of Section 6 of the Protection of Children from Sexual Offences Act, 2012. By the impugned order of sentence, the appellant was sentenced to death for the aforesaid offences.

3. On August 8, 2016, the de facto complainant, who was the uncle of the victim, lodged a written complaint with Haldia Police Station to the effect that victim used to work in house of appellant as maid servant. On August 8, 2016, the de facto complainant received a telephonic call from the appellant that his niece was seriously ill. Getting such information, the de facto complainant accompanied by his sister went to the house of appellant and found his niece lying dead in the bathroom of the house of appellant. Entire body of the victim was in burnt condition caused by fire. In the written complaint itself, the de facto complainant disclosed that he suspected that the appellant had committed rape upon the victim and set her ablaze.

**4.** On the basis of such complaint, Haldia Police Station Case No. 106 dated August 8, 2016, under Section 376 (2)(i)(k)/302 of the Indian Penal Code together with Section 6 of the Protection of Children from Sexual Offences Act, was started against the appellant.

**5.** Police took up investigation, registered Unnatural Death Case, conducted inquest over the dead body of the victim, sent the dead body for post mortem examination and on completion of investigation, submitted charge sheet in the case under Sections 376 (2)(i)(k)/302/201 of the Indian Penal Code, 1860 coupled with Section 6 of the Protection of Children from Sexual Offences Act, 2012. Offences being exclusively triable by court of sessions, the case was committed to the Court of Session. Accordingly, on the basis of materials in the case diary, charges under Sections 376 (2)(i)(k)/302/201 of the Indian Penal Code, 1860 coupled with Section 6 of the Protection of Children from Sexual Offences Act, 2012 were framed against the appellant on December 22, 2016. The appellant pleaded not guilty to the charges and claimed to be tried. Consequently, he was put on trial.

**6.** Learned advocate for the appellant submitted that the prosecution has not been able to prove the charges brought against the appellant beyond all reasonable doubts. He referred to the evidence of PW 6 and PW 9 as also the statement of such witnesses recorded under Section 164 of the Code of Criminal Procedure to contend that the prosecution has not brought forth any explanation as

to the bathroom where the dead body of the victim was found, was locked from inside. It was broke open upon arrival of the witnesses. In such circumstances, the appellant could not have been held guilty by the learned trial court.

**7.** Learned advocate for the appellant further submitted in reference to the evidence of the prosecution that at the relevant point of time masons were working in the neighbourhood but nobody heard anything about any altercation between the victim and the appellant. Such evidence or lack of evidence, casts a shadow upon the veracity of the prosecution case. It was also contended that PW 5 is merely a chance witness and no reliance can be placed upon his testimony for the purpose of the case of the prosecution.

**8.** Learned advocate for the appellant also submitted that the testimony of the witnesses examined on behalf of the prosecution, are mostly inconsistent and not at all trustworthy enough to secure conviction of the appellant on the basis of such evidence. The account given by the witnesses examined on behalf of the prosecution does leave reasonable gaps in the chain of circumstances. For such reason, the conviction of the appellant based on circumstantial evidence cannot be sustained.

**9.** On the other hand, learned Public Prosecutor for the State submitted that the prosecution has sufficiently proved the charges levelled against the appellant. The evidence led at the trial proved the

complete chain of circumstances which leads to the guilt of the appellant alone to the exclusion of all. Therefore, it was submitted that the conviction of the appellant is liable to be upheld.

**10.** Learned Public Prosecutor for the State also submitted that in consideration of the circumstances brought forth and the manner in which the offence was committed, learned Trial Court was quite justified in awarding death penalty to the appellant.

**11.** In order to bring home the charges framed against the appellant, prosecution adduced 15 witnesses in all. In addition to the oral evidence, prosecution also relied upon certain documentary as well as material evidences.

**12.** The de facto complainant herself deposed as PW 1. In his deposition, he stated that the victim was the daughter of his elder sister. She used to work in the house of the appellant, a co-villager, as a maid servant for over 2½ years. He further stated that on August 8, 2016 at about 2.15 p.m., he received a phone call from the appellant informing him that his niece was ill. Hearing such news, he along with his sister i.e. the mother of the victim, went to the house of appellant. He could not find the victim in the two rooms of the house of appellant. Ultimately, PW 1 found the victim lying dead in the bathroom of the appellant and her entire body was charred. The victim was then aged 14/15 years. PW 1 stated that he believed that the

appellant committed rape upon the victim and killed the victim by setting her ablaze. He identified the appellant in court.

**13.** PW1 also stated that the victim used to work at the house of the appellant for a remuneration of ₹3000/- per month out which, ₹1500/- per month was paid to her family whereas, the remaining ₹1500/- was deposited by the appellant in bank, however, he had never seen any document in this regard. He further stated that 4/5 days prior to the incident, PW 1 was sent by his sister to the house of appellant to bring the salary of the victim. There, he did not find the appellant and his wife. The victim was in a very dismayed condition. On query, the victim told PW 1 that she was ill behaved with by the appellant but did not give details of such ill treatment.

**14.** PW 1 also stated that he rang up the police whereupon, police arrived at the spot. Many people including one advocate had gathered at the spot. The advocate drafted the written complaint as per his instructions. He signed such written complaint after being aware of its contents. Thereafter, police conducted inquest over the dead body of the victim and prepared its report to which he signed. He also signed on the seizure list through which, the wearing apparel, green kerosene jar and burnt portions of wooden door were seized. The seized articles were sealed and labelled. He identified such articles in court. The dead body was first taken to police station where it was kept for the night. On the following day the dead body was taken to Durgachak Hospital

for post mortem examination but from said hospital, it was referred to Tamluk hospital, where, post mortem examination was conducted. After the post mortem examination, PW 1 applied for return of the dead body for performing last rites. He proved his signature on such application. He also stated that the father of the victim had abandoned his family some 5 years prior to the incident. The cross examination of PW 1 by the defense could not yield anything favourable to them.

**15.** The mother of the victim was examined as PW 2. She proved the birth certificate of her eldest daughter who was aged 18 years at the time of her deposition. The victim was born 3 years after the eldest daughter of PW 2. She also testified that she was living separate from her husband for over 6 years. PW 2 also stated that the victim used to work as a maid servant at the house of appellant since 2 years prior to the incident at a remuneration of ₹3000/- per month. It was agreed that ₹1500/- per month was paid to hand of PW 2 whereas, the remaining ₹1500/- was to be paid in the bank account of victim. The victim used to visit the house of PW 2 very rarely. PW 2 further stated that the victim on her visit to her house used to confide about ill behavior of the appellant though, she did not disclose the details thereof. PW 2 told the victim to continue with the work until she arranged another job for her.

**16.** PW 2 further stated that on August 8, 2016, appellant gave a phone call to her brother asking him to come soon as his niece was

not well. PW 2 accompanied by her brother, PW 1, rushed to the house of appellant. Arriving there, she found all the doors of the house closed and there was no one there. She found her daughter lying dead on the floor of the bathroom with burn injuries. She also stated that the appellant had committed rape upon the victim and murdered her by setting her ablaze. She identified the appellant in court. She stated that she was interrogated by police in connection with the case. She also stated that there were two rooms in the house of appellant. First room had two doors whereas the second room had only one door. PW 2 was cross examined by the defense merely with regard to the birth certificate and age of the elder sister of the victim.

**17.** PW 3 is the aunt of the victim. She stated that she had come to her father's house and was there on August 8, 2016. At about 2.00 p.m. she got information from her brother, PW1, that the victim, who was then aged 15 years, was raped and murdered by the appellant. She also accompanied her sister to the house of the appellant. She further stated that at the relevant time, victim used to work at the house of the appellant for 2 years prior to the incident. When PW 3 reached the house of appellant, nobody could be found. The dead body was found in the bathroom. She identified the appellant in court. PW3 also stated that she was interrogated by police in connection with the case. Police seized green coloured oil drum, match box, plastic door and wooden bolt under a seizure list to which she signed. She

identified her signature on the seizure list together with the seized articles in court.

**18.** PW 4 is a police officer. On August 9, 2016 he carried the dead body of the victim to Durgachak State General Hospital and therefrom to Tamluk District Hospital. He also collected the wearing apparel of the victim from the hospital and handed it over to the investigating officer which was seized under a seizure list. PW 4 signed the said seizure list. He identified his signature on such seizure list as well as the seized articles in court.

**19.** A co-villager deposed as PW 5. He stated that the distance between his house and that of the appellant was about 500 mtr. He identified the appellant in court. He further stated that on August 8, 2016 at about 1:30 p.m. he was returning home. When he was crossing the house of the appellant, he received a phone call by the side of a pathway which was used by the villagers. PW 5 saw the appellant calling PW 6 and his wife who were living next door on the first floor. Upon such call, both of them came down from the first floor. PW 5 also stated that the appellant was calling PW 6 and his wife from another door on the side of the house but not from the door from which he had come out. Thereafter, PW 5 finished his talks over the phone and returned to his house.

**20.** A neighbour of the appellant was examined as PW 6. He identified the appellant in court. He stated that his house was situated

20 feet away from the house of the appellant. The victim used to work at the house of the appellant. He further stated that on August 8, 2016 at about 1. 00 p.m. he and his wife were getting ready to take food. At that time, the appellant who was his uncle, called from downstairs by shouting Bouma, Bouma. PW 6 further stated that when he came downstairs, the appellant informed him that his maid servant was not opening the door. He also requested PW 6 to break open one of the doors whereupon the main door which was of the kitchen door was broken. PW 6 also stated that this was the main door from which everybody used to get inside the house.

**21.** PW 6 further stated that on breaking open the door, he along with his wife and the appellant entered the house. The victim was not found in the first and the second room. When they reached near bathroom, they found the door was a little ajar and smokes were coming out from the bathroom. The victim was found lying upside down. PW 6 and others went to kitchen for water. At that time, he saw, the appellant was closing the bolt of the door of the first room which was leading outside. They poured water on the victim and came out shouting. Thereafter, neighbours came there. He also stated that he was interrogated by police in connection with the incident on that very day. He also recorded his statement under section 164 of the Code of Criminal Procedure. He proved his signature on such statement.

**22.** A medical officer attached to Tamluk District Hospital deposed as PW 7. He had medically examined the appellant on September 21, 2016 in connection with Haldia P. S. Case No. 106 dated August 8, 2016 brought by the investigating officer. He proved the medical examination report of the appellant prepared in his pen and signature.

**23.** PW 8 is a photographer. He stated that on August 14, 2016 he was called upon by Haldia police for recording purpose. He accompanied the police to the house of the appellant and video recorded the statement given by the appellant. He proved the video recording at the trial. He identified the appellant in court.

**24.** The wife of PW 6 was examined as PW 9. In her deposition, she stated that the victim used to work at the house of her uncle i.e. the appellant. The victim died on August 8, 2016. PW 9 also stated that on August 8, 2016, she and her husband were getting ready to take food at about 1:00 p.m. At that time, the appellant called from downstairs calling Bouma, Bouma. Hearing such call, PW 9 and her husband came down whereupon the appellant informed them that the victim was not opening the door. PW 9 and PW 6 asked the appellant if he has checked all the doors. The appellant replied that he had seen the doors and asked them to break open one of the doors. Thereafter, PW 9, PW 6 and the appellant broke the door and entered into the house.

**25.** She further stated that the first room had two doors, one to go outside and the other door led inside. Both the doors were opened but

the victim was not found there. They went inside the second room which had only one entry but the victim was not found in such room as well. Thereafter, they headed to the bathroom. Its door was slightly open. There the victim was found lying on the floor in burnt condition and smoke was coming out. PW 9 went to kitchen to bring water and at that time, she saw the appellant closing the door of first room which led outside. Water was poured on the body of the victim and thereafter, they came out shouting. Neighbours gathered. Police arrived at the spot. She also stated that she was interrogated by police and recorded her statement under Section 164 of the Code of Criminal Procedure. She proved her signatures on such statement.

**26.** The autopsy surgeon was examined as PW 10. He stated that on August 9, 2016, he conducted post mortem over the dead body of the victim in connection with Haldia P.S. U.D. Case No. 9/16 dated August 8, 2016 and Haldia P.S. Case No. 106/16 dated August 8, 2016. The dead body of the victim was identified by police personnel i.e. PW 4 and one relative of the victim i.e. PW 1. PW 10 described the general condition of the dead body with great details and also described the nature of injuries found on it. According to him, the dead body was in burnt condition on almost every part of the body.

**27.** Upon post mortem examination, PW 10 found the hyoid bone fractured covered with ante mortem clots of blood on the fractured ends having features of abrasion, bruise and abraded bruise with few

laceration of muscles. PW 10 also found faint smell of kerosene oil coming out from the corpse. He also described the burn injuries found on different parts of the body of the victim with ample details. In the opinion of PW 10, the cause of death was effect of throttling which was ante mortem and homicidal in nature. PW 10 also opined that flame burn of the victim was a post mortem phenomenon. On the basis of autopsy features mentioned in his report, PW 10 also opined that the victim was the prey of repeated rape. According to him the injuries found on the dead body of the victim were sufficient to cause death in ordinary course of nature. PW 10 proved the post mortem report prepared in his pen and signature. According to the autopsy surgeon, death was caused within 30 hours of the time of autopsy plus minus 3 hours.

**28.** The scribe of the written complaint deposed as PW 11. He stated that he had scribed the written complaint as per dictation of PW 1 who signed on it in his presence. PW 11 also signed on such written complaint in the capacity of scribe. He proved the written complaint.

**29.** PW 12 is a seizure list witness. He stated that on August 14, 2016 at about 9. 00/9. 30 p.m. he had gone to the house of the appellant. The appellant was brought by the police and the police recovered certain articles like pillow, Lungi, mat and bed cover as shown by the appellant. The aforesaid articles were seized by the

police under a seizure list to which she signed besides another witness. He further stated that the seized articles were sealed and labelled. He also signed on such labels. PW 12 proved his signature on the seizure list, labels attached to the seized articles as well as the seized articles. He also identified the appellant in court.

**30.** PW 13 is a police officer. He stated that on August 8, 2016 he was posted as sub- inspector of police at Haldia police station. On such date, the inspector in charge received a written complaint. He proved the endorsement of receipt of the written complaint made by the inspector in charge. Such written complaint was made over to PW 13. On the basis of such written complaint, he started Haldia P.S. Case No. 106/16 dated August 8, 2016 under Sections 376 (2) (i) (k)/302 of the Indian Penal Code and Section 6 of Prevention of Children from Sexual Offences, Act. PW 13 also proved his endorsement on the written complaint as well as the Formal First Information Report drawn up in his pen and signature.

**31.** The Judicial Magistrate was examined as PW 14. He stated that on September 19, 2016, he recorded the statements of two witnesses under section 164 of the Code of Criminal Procedure. He proved such statements at the trial.

**32.** The investigation officer of the case was examined as PW 15. He stated that on August 8, 2016, he received the written complaint at Brajanathchak from PW 1 and sent the same to the inspector in

charge through a constable. Based on the said complainant, an Unnatural Death case was started. He further stated that he took up the investigation of the case. In course of investigation, he examined the complainant and other witnesses, visited the place of occurrence and prepared rough sketch map with index thereof. He proved the rough sketch map with index of the place of occurrence. PW 15 also arrested the appellant in connection with the case at 18. 25 hours on August date 2016. He also conducted inquest over the dead body of the victim and prepared a report which he proved at the trial. He also seized certain articles from the house of the convict like, a green kerosene jar, matchbox, portion of burnt door, that of door bolt etc.

**33.** He sent the dead body for post mortem examination on August 9, 2016 under a dead body challan. He also sent requisition for deputing a forensic officer to examine the place of occurrence. An officer came and prepared a report after examining the place of occurrence which he collected. He also collected the post mortem report. PW 15 also collected the alamats from the dead body produced by the constable who carried the dead body for post mortem examination which he seized under a seizure list.

**34.** PW 15 also produced the convict before the court and sought police remand of him. During the police remand, he recorded the statement of convict and took him to the place of occurrence to reconstruct the scene of incident which was video graphed. He also

seized certain articles on August 14, 2016 under a seizure list. He also collected the report from Forensic Science Laboratory (FSL). On completion of investigation, PW 15 submitted charge sheet and supplementary charge sheet in the case under Sections 376(2)(i)(k) /302/201 of the Indian Penal Code as well as Section 6 of the Protection of Children from Sexual Offences Act. He identified the convict in court. He also proved the viscera report collected during investigation. He also proved the articles seized by him which were admitted in evidence as material exhibits.

**35.** According to the case set out by the prosecution, after getting information of the medical condition of the victim, her mother and maternal uncle went to the house of the convict. Reaching there, they found the victim lying dead in the bathroom of the house of the convict. On their alarm, local people assembled. Police was informed and thereafter, the dead body was sent for post mortem examination after conducting inquest over the dead body in presence of witnesses.

**36.** Post mortem was conducted on the following day. Upon such examination, the autopsy surgeon opined the death to be caused due to throttling. It was also opined that victim's body was set on fire after her death. PW 10 is the autopsy surgeon who conducted post mortem examination over the dead body of the victim which he described as burnt female corpse. In his deposition, PW 10 stated that on examination of the dead body he found on dissection that both greater

horn of hyoid were fractured and covered by ante mortem blood clots of the fractured ends. PW 10 described the injuries found on the dead body of the victim at great details and proved the post mortem report which was admitted in evidence and marked as Exhibit 12. In such report, PW 10 opined that the cause of death in this case was due to the effects of throttling-ante mortem and homicidal in nature. He categorically opined that flame burn of the victim is a post mortem phenomena and that the victim was the prey of repeated rape as the autopsy features mentioned in the report suggested. He answered to a question confronted to him to the effect that if a minor victim was assaulted by an adult, hyoid bone is fractured as is seen in the post-mortem report. He further opined that during life, if the throttling occurs blood clots will be seen which is there in the post-mortem report.

**37.** Therefore, on the basis of the testimony of PW 10 coupled with that of Exhibit 12, it is quite evident and can safely be inferred that the victim girl suffered an unnatural death. Such evidence led at the trial also establishes that the victim was subjected to sexual assault repeatedly prior to her death.

**38.** It also transpires from the evidence placed on record that the victim was first killed by throttling and thereafter, there was an endeavor to annihilate the evidence of such crime by setting the dead body ablaze. There is sufficient evidence on record that the victim was

a minor at the time of the incident. As such, a case under Section 376 (2)(i)(k)/302/201 of the Indian Penal Code, 1860 as well as Section 6 of the Protection of Children from Sexual Offences Act, 2012 was straightaway made out.

**39.** The next question that comes up for consideration is who is responsible for the offence of rape as well as murder of the victim. According to the case made out by the prosecution, the victim used to work at the house of the convict for over two years prior to the incident. PW 1 has stated in his deposition that he was informed by the convict over telephone that the victim was seriously ill. The fact of information over telephone by the convict has not been denied on the part of the defense. PW 2 has also corroborated the statements of PW 1 that it was the convict who informed her brother that the victim was seriously ill. She has also testified that the victim used to work as a maid servant at the house of the convict.

**40.** When PW 1 and PW 2, being so informed, reached the house of the convict, they did not find anybody. They entered into the house but could not find the victim in the first and the second rooms in the house. The dead body of the victim was detected lying in the bathroom. According to the statement of PW 1, he saw flames coming out of the bathroom. Both PW 1 as well as PW 2 have testified that the door of the bathroom was little open from where smokes were coming out. The convict was not found there.

**41.** Admittedly, none of the witnesses examined on behalf of the prosecution has claimed having seen the convict committing murder of the victim. The case is entirely based upon circumstantial evidence. The fact that the victim used to work at the house of the convict as a maid servant has not been disputed.

**42.** Two neighbours, who also happened to be the relatives of the convict and resided in the adjoining house, have placed the convict at the place of occurrence at the relevant point of time. According to PW 1, he received a phone call from the convict at about 2:15 p.m. PW 6, the nephew of the convict stated in his deposition that on August 8, 2016 at about 1:00 p.m., when he along with his wife were getting ready for lunch, the convict called them. When they went downstairs to reciprocate the call, the convict told them that the victim was not opening the door. They asked the convict if he had checked all the doors and thereafter, the main door was broken. Upon such breaking open the door, PW 6, PW 9 and the convict entered into the rooms. The victim was not found in the first and the second room. When they reached near bathroom, they found the door of the bathroom slightly open with smokes coming out and the victim was found lying inside the bathroom upside down.

**43.** PW 6 as well as PW 9, in their deposition stated that when they went inside the kitchen to fetch water, they saw the convict closing the bolt of the door of the first room which led outside. The fact of calling

of PW 6 and PW 9 by the convict at the relevant point of time was testified by PW 5. He testified that at the relevant point of time, he was moving through the common pathway on his motorbike in front of the house of the appellant. Owing to a telephone call, he stood in front of the house of convict to pick up the call and at such time, he saw the convict calling PW 9.

**44.** There is no dispute that the victim used to work as a full time maid servant at the house of the appellant for over 2 years and lived there. It is also not disputed that the victim was found dead in the bathroom of the house of the convict. A case was set up that at the time of incident; the victim locked her inside for which the appellant called upon PW 9. He stated before PW 6 and PW 9 that the victim had locked herself from inside and was not opening the doors. Calling of PW 9 by the appellant was testified by PW 5 as well. It is the statement of PW 6 and PW 9 that being called by the appellant, they came downstairs to the residence of appellant. They were reported by the appellant that the victim was not opening the door.

**45.** On such reporting, the said witnesses verified from the appellant if he had checked all the doors and thereafter, one of the doors of the house was broke open by PW 9 and others. The victim could not be found in the first and the second room of the house. However, she was discovered lying dead in the bathroom. The door of the bathroom was found a little ajar with smokes coming out.

Curiously, both PW 6 and PW 9 made a statement that while they were searching for water to pour upon the victim on fire; they saw the appellant closing the doors of one of the rooms from inside. Such statement belied the statement of the appellant that the victim had locked herself and all the doors were locked from inside, for which he had to call PW 9. Such state of affairs gives rise to a reasonable inference that one of the doors was open and the appellant gave a call to PW 9 with a view to create evidence, apparently a desperate attempt to mislead the investigation.

**46.** We have noted hereinbefore that the medical evidence led at the trial i.e. PW 10 coupled with Exhibit 12 establishes that the death of the victim was caused due to throttling and not by fire. The medical evidence sufficiently proved that flame burn of the victim was a post mortem phenomenon. She was first strangled to death and thereafter set on fire. Not only that, medical evidence also suggested that the victim was subjected to repeated sexual assault, prior to such strangulation.

**47.** For the sake of argument, if we ignore the statements of PW 6 and PW 9 to the effect that they were called and reported by the appellant that the victim had locked herself inside and was not opening the door, even then, it is not in dispute that the victim was staying at the house of appellant as a maid servant for over two years prior to the incident. There was no other inhabitant in the house

except the appellant and the victim. If that be so, in terms of Section 106 of the Indian Evidence Act, the appellant was under obligation to explain the circumstances under which the victim died. There was no attempt on the part of the appellant to discharge such obligation which necessarily entailed an adverse inference against him.

**48.** There is ample unimpeachable evidence on record that the victim was a minor at the time of incident, aged about 14/15 years. The medical evidence establishes that the victim was subjected to repeated sexual assault prior to the incident of her death. PW 1 and PW 2 have stated in their deposition that the victim reported indecent behavior of the appellant, though; she did not give the details of such behavior. She was not willing to return to the house of the appellant but for the assurance given by PW 1 and PW 2 to the effect that they will arrange another job for her. The deposition of the medical officer, PW 7 coupled with his medical report Exhibit 9, demonstrates that the appellant was quite capable of sexual intercourse.

**49.** Moreover, as noted above, the medical evidence does suggest that death of the victim was caused due to throttling and later the dead body was set on fire conceivably, to cause disappearance of the evidence of the crime.

**50.** In view of the discussions made hereinbefore, considering the evidence adduced at the trial, we are of the opinion that the circumstances brought forth by the prosecution leaves no iota of

doubt that the appellant alone is the perpetrator of the crime. The chain of circumstances, are complete and neatly woven to exclude the intervention of anybody other than the appellant, in the commission of the offence. In such view of the facts, we find no reason to interfere with the impugned judgment of conviction passed by learned trial court in convicting the appellant for the offences punishable under Sections 376 (2)(i)(k)/302/201 of the Indian Penal Code, 1860 as well as of Section 6 of the Protection of Children from Sexual Offences Act, 2012.

**51.** So far as quantum of punishment, specially imposing death penalty upon the appellant is concerned, it is now settled by various pronouncement by Hon'ble Supreme Court that death penalty should be resorted to in exceptional circumstances where the court awarding the sentence is able to return a finding that the case fell within the category of 'rarest of rare cases' and the possibility of reformation of the convict stood foreclosed. In order to hold a case as 'rarest of rare case' the Hon'ble Supreme Court has ordained to evaluate the circumstances on the parameters of 'aggravating circumstances' and 'mitigating circumstances'. Besides, in a case of murder, it is to be conclusively evaluated that the offence was committed in a manner which can be termed as cold blooded. At the same time, age of the convict is also required to be considered. As per the directions of the

Hon'ble Supreme Court, that a convict, too young and too old, should not be awarded with death penalty.

**52.** We have gone through the psychological report in respect of the appellant called upon in course of hearing of the instant death reference proceeding. Such report indicates that the convict is 58 years of age. The convict was not found suffering from any kind of psychopathological infirmity. That apart, the socio-economic evaluation report conducted on the convict indicates that the family of the convict consists of two brothers, wife and two children of advanced age of 22 years and 24 years. Though, educational status of the convict could not be ascertained but his wife is a working lady, working as support staff in a school. The convict himself previously, used to work as a labourer. No criminal antecedent, however, could be found as against the convict. The evaluation report also signified that there was no history of unstable social behavior or mental or psychological illness reported against the convict.

**53.** The facts of the case reveal that the victim used to work as maid servant at the house of the convict. There is nothing on record to suggest any previous enmity between the victim and the convict or between their respective families. The wife of the convict was a working lady. This might have generated an opportunity to the convict to freely intermingle with the victim which possibly rendered into an illicit sexual assault upon the victim. Later, when the assault was

perpetrated, in an anxiety to get off with its consequences, the convict killed the victim and set the dead body on fire with a view to cause disappearance of evidence of crime. The convict is not reported with any criminal antecedent or unstable social behavior in the past. Moreover, he is of an advanced age of 58 years.

**54.** Therefore, taking into consideration the entire facts and circumstances of the case discussed hereinbefore, we are minded to commute the death sentence awarded to the appellant into one of life imprisonment. However, considering the age of the appellant as well as other circumstances obtaining from the facts of the case, the imprisonment of life, so awarded to the appellant, shall mean imprisonment for life without remission until 20 years from the date of his arrest.

**55.** Consequently, Death Reference No. 4 of 2018 along with the appeal being C.R.A. 684 of 2018, are disposed of accordingly.

**56.** A copy of this judgment along with the Trial Court records be remitted to the appropriate Trial Court forthwith. In view of the commutation of the death penalty of Srimanta Tung, any warrant issued by the appropriate Court with regard thereto in respect of Srimanta Tung stands modified in terms of this judgment and order. Department will inform the Correctional Home, where the appellant is lodged, as to this judgment and order. The Correctional Home will record the fact of commutation of death penalty to the sentence

awarded by this judgment and order in respect of Srimanta Tung, in their records.

**57.** Period of detention already undergone by the appellant shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.

**58.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

**[MD. SHABBAR RASHIDI, J.]**

**59.** I agree.

**[DEBANGSU BASAK, J.]**