Form No. J(1)

IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

Present:-

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 130 of 2016

Sk. Morsed Ali & Ors.
Versus
The State of West Bengal

For the Appellant	:	Mr. Sudipto Maitra, ld. Sr. Adv., Mr. Vijay Verma, Mr. Dwaipayan Biswas, Mr. Anik Bhattacharya.
For the State	:	Mr. Debasish Roy, Ld. P.P. Ms. Amita Gaur.
Heard on	:	18.02.2025, 09.09.2025 & 20.01.2026.
Judgment on	:	January 20, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against the judgment of conviction dated 28th January, 2016 and order of sentence dated 29th January, 2016 passed by the learned Additional Sessions Judge, 3rd Court, Tamluk, Purba Medinipur in Sessions Trial No. 01(02)/2014 arising out of the Sessions Case No. 252(April)/2013.

2. The appellants were convicted for offenses punishable under Section 498A read with Section 34 of the IPC for 3 years simple imprisonment and a fine of Rs. 2,000/-. The appellants were also convicted and sentenced to suffer RI for life and fine of Rs. 5,000/- for the offence punishable under Section 302 read with Section 34 of the IPC. The sentences were directed to run concurrently.

THE PROSECUTION CASE AND ANALSYIS OF THIS COURT:-

3. The prosecution case was that the appellants burnt the victim by pouring kerosene on her and setting her on fire. In the instant case the victim died of burns 14 years after marriage and was living separately from her in-laws for more than 13 years. The presumption under Section 304B is attracted if the victim dies within 7 years of marriage. The prosecution was therefore required to prove each and every detail of the facts against the appellants.

4. **PW 1 was Rausan Mirda**, the father of the victim, who filed the written complaint dated May 4, 2012, with the Kolaghat PS, Purba Medinipur. PW 1 has stated in the complaint that the victim was charred to death by the appellants on May 3, 2012. The appellants are the in-laws of the victim. PW 1 has deposed that the appellants were demanding money from the victim. The victim was asked to bring Rs 25,000 (twenty five thousand) from PW 1. PW 1 could not pay the same. Thus, the appellants set the victim on fire. PW 1 has

further deposed that at the time of marriage, he paid Rs 50,000(fifty thousand) in cash and other ornaments to the victim.

5. PW 1 furthur deposed that on the fateful day, he was at Amta. He reached the victim's matrimonial house upon being informed by her brother-in-law. The said brother-in-law was, however, not examined before the Court. The examination of the said brother-in-law assumes significance since the PW 1 was not near to the matrimonial house of the victim on that fateful night. He was at great distant to the PO. Thus, the evidence of PW 1 is not of much value without corroboration.

6. The Inquest was conducted on May 3, 2012. The inquest report did not name the appellants. The inquest report recorded that the inquest witnesses have stated that the victim had been burnt in her matrimonial house. In this regard, the post-mortem doctor, PW 10 has deposed that he was unable to state whether the death was homicidal since he was not provided with the wearing apparel of the victim. The condition of the wearing apparel, according to PW 10, would have enabled him to ascertain the nature of the death. The wearing apparel, namely charred saree of the victim was however seized by the PW 11, the investigating officer of the case.

7. The prosecution case is belied and ripped apart by the evidence of PW-2. He was 8 years of old at the time when he deposed in the trial. The incident occurred on 3rd May, 2012 at about 11.00 p.m. PW-2 was however not cited as a charge sheet witness. The preliminary

examination of PW 2 conducted by the trial Judge to ascertain the capacity of the PW 2 to depose, did not specify the questions put to PW 2. The relevant portion of the deposition of PW 2 in this regard is set out below-

> *(The witness is minor of 8 years. He is required to be tested).*
>
> *To Court:- I am a student of the school namely Baharjola Primary School. I am the student of Class-III. Our head teacher is namely Pappu. My mother is dead.*
>
> *(On test it appears to this court that the minor is capable to understand the questions to give answer properly).*

8. The above extract from the deposition of PW 2 before the trial Court does not indicate the exact questions that were put to PW 2 by the trial judge. It is, however, clear from the afore-extracted answers that the trial judge has not ascertained the sense and knowledge of the minor witness about the place, day and time. The Trial judge was under an obligation to ascertain whether the minor witness knows that he has to depose truthfully before the Court.

9. The preliminary examination conducted by the trial court does not reflect whether the victim had the rational mind to depose. Reference in this regard may be made to decision in the ***State of Madhya Pradesh v Balveer Singh reported in 2025 INSC 261,*** wherein it was held as follows:-

> 28. Similarly in Pradeep v. State of Haryana reported in 2023 SCC OnLine SC 777 this Court emphasized on the importance of preliminary examination of a child witness. **It held that although oath cannot be administered to a child witness under 12-years of age yet, as per Section 118 of the Evidence Act it is the duty of a Trial Judge to**

conduct a preliminary examination before recording the evidence of the child witness to ascertain if the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. It held that the Trial Judge must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and state **why he is of the opinion that the child understands the duty of speaking the truth**. It further held that the questions put to the child in the preliminary examination must also be recorded so that the appellate court can go into the correctness of the opinion of the Trial Court. The relevant observations read as under: –

> 10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. ***He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers.*** It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court."

Emphasis applied

10. In ***Ratansinh Dalsukhbhai Nayak v. State of Gujarat reported in (2004) 1 SCC 64,*** it was held as follows:-

> 7. [...] **The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath....**

Emphasis applied

11. The trial judge was therefore required to record his or her opinion as to the capability of the minor to depose. It was held in **Ratansinh decision (supra)** that the questions put by the trial Judge to the minor witness must be recorded in the deposition. The nature of questions and the answer given thereto establishes that the preliminary examination, conducted by the trial judge is wholly inadequate and mechanical. The evidence of the PW 2 was therefore only partly reliable.

12. Be that as it may, PW 2 has deposed that he was present in the house along with his two other brothers, namely, Habibul Mirda and Nazibul Mirda and sister Hafeza Khatun when the incident occurred. He was sleeping and claims to have woken up on hearing the hue and cry of his mother. He deposed that prior thereto there was a heated altercation between the father and mother. The father is stated to have gone out and called his parents and brothers, namely, the appellants. The appellants are thereafter stated to have tied the victims hands with a saree and poured kerosene on her and set her on fire.

13. This portion of the testimony of PW 2 is doubtful since PW 1 and his evidence on record has indicated that the father of the PW 2, Sk. Hafizul stayed two miles away from their residence at Baharjola village. In cross-examination of PW 1 the appellants put forth their case that the victim and her husband had assaulted the in-laws of the victim few years earlier. A local village *Salishi* was

called in that regard and since thereafter the victim and her husband left the residence of the accused persons. The victim, her husband and four children lived in a rented house at Baharjola village.

14. Therefore, it was not possible for the in-laws of the victim to immediately arrive at the PO after being called on by their son, husband of the victim and appellant no.1. The distance between the rented accommodation, where the victim and family stayed, and residence of other appellants render the immediate arrival of the appellants highly improbable. They may have arrived after the incident of burning.

15. Further, the husband of the victim did not have a cordial relation with his parents. Therefore, it is out of normal that the husband of victim will call on his parents to intervene in a heated altercation between him and his wife in view of the hostile relation that he had with his parents. There are other contradictions in the deposition of PW2.

16. The evidence of PW 2 lacks clarity on whether he woke upon hearing the heated altercation between the victim and her husband or after the arrival of the other appellants, after which the victim is alleged to have been set on fire by them. PW 2 has vaguely stated that he woke upon hearing hue and cry of the victim. If the victim had been set on fire after the arrival of the appellants, the victim would have definitely again made a hue and cry, in addition to the

hue and cry made during the heated altercation with her husband. The lack of clarity in the evidence of PW 2 on this score renders his eye witness account of the appellants having set the victim on fire unreliable.

17. PW 2 deposed that the appellants tied the hands of the victim with a saree before pouring Kerosene over her and setting her a blaze. If the appellants and the husband of the deceased in fact wanted to kill the victim, the husband would not have put out the fire on the victim with a blanket. He would not have taken the victim on his lap. He would not also have put the victim on her Riksha Van to take her to a hospital or look for a Doctor. The answer of the appellants Roshni Begum to question no. 25 that after the incident of the victim sustaining burns she took her to Populer Nursing Home in Mecheda and also later to Tamluk District Hospital cannot be ignored.

18. The evidence of PW 2 is partly reliable to the extent that he has stated that his mother was in her senses and shouting in pain after being burnt, she was taken to two hospitals. None of the doctors who examined the patient at Popular Nursing Home in Mechada or Tamluk District Hospital have been examined by the prosecution. The history sheet of the victim, required to be recorded by the doctors could have indicated the cause of her death. There is no evidence produced by the prosecution as to who took the victim to the hospital. The assertion by the appellant

Roshni Begum that she took the victim to the two hospotals must therefore be accepted.

19. The prosecution case is further tainted by the fact that by the bed head ticket of the victim at Popular Nursing Home in Mechada and Tamluk District Hospital have not been seized or exhibited in the trial. This was confronted to the IO of the case PW-9.

20. There is another contradiction noticed by this Court. The Inquest Officer, PW 9, S. I., Paresh Chandra Samanta stated that there was 100 per cent burn on the body of the victim whereas the PM Doctor stated that there was only 90 per cent burns.

21. One inquest witness, namely, the brother in law of the victim, Sk. Mantu or even the inquest officer for that matter, did not indicate the cause of death of the victim or any harassment or torture by the appellants. Inquest was performed the day after the incident where the brother-in-law of the victim could have easily mentioned alleged torture by the appellants and the appellants setting her on fire. There is no such mention in the inquest report.

22. The evidence of PW 8, the other son of the victim, partially contradicts the evidence of PW 2. The preliminary examination of PW 8 conducted by the trial Judge to ascertain the capability of the witness to depose has also been inadequate and mechanical. PW 8, was Nazibul, who was 11 years old at the time of trial and 8 years at the time when the incident occurred, has stated that his mother's hand was tied with a rope and not a saree. The partially

burnt saree was seized by the police but not shown to the PM doctor. This is another major lapse on the part of the prosecution.

23. The two eyewitness accounts are in serious doubt notwithstanding the fact that the PW-8's evidence was not only recorded before the magistrate under Section 164 of the Cr.P.C. but also video-graphed with the prior permission of the A.C.J.M. concerned.

24. The inquest report is silent on whether the hands of the victim were tied. Equally, the post mortem report has not stated whether there was any marks in the hands of the victim which would suggest that the hands of the victim were at all tied at any point in time. The post mortem doctor, PW 10, however, deposed that the palm of the hands of the victim was not burnt. Therefore, it cannot be ruled out that the post mortem doctor could have deciphered that whether the hands of the victim were tied.

25. The medical evidence has remained inconclusive on the procedure by which the body of the victim was put on fire. The inquest officer, PW 9, and post mortem doctor, PW 10, have contradicted each other on the extent of burn injuries suffered by the victim.

26. While PW 2 stated that in addition to the saree, a stick was used to tie the hands of the victim. The burnt remains of the stick of the saree have not been seized by the I. O. The inquest report has not indicated whether the hands of the victim was tied with

any rope or saree. PW-2 and PW-8 appear to have been tutored by the prosecution.

27. The evidence of the other PWs does not have a direct relevance to the prosecution's case. PW 3 was the maternal aunt of appellant no. 1, the husband of the victim. She turned hostile. The prosecution cross- examined her. She denied the prosecution case. PW 4 is a hearsay witness. He is a witness to the presence of the appellants and the children of the victim after the incident. PW 5 reached the PO but was unable to identify the victim due to her burns. PW 6 is the brother of the victim. PW 6 has deposed that the appellants were demanding Rs 25,000 from the victim and her family.

28. PW-6 has not seen the incident. He has deposed that the victim had a turbulent time in her matrimonial home. He deposed that the victim revealed the same when she visited her parents' house. PW 6 has deposed that he works as a carpenter in Kolkata. He therefore did not live in the paternal house of the victim. PW 6 has remained silent on when the victim last visited her paternal house and narrated the demand of Rs 25,000 (twenty-five thousand) by the appellants. PW 6 in fact has deposed that on the fateful night, he was at his house at Bahajarjola due to fever. He deposed that he was supposed to be in Kolkata but due to a fever, he was at home. The arrival and presence of PW 6 on the fateful night thus is

doubtful. PW 12, was another investigating officer of the case. He arrested one of the appellants.

29. In the back drop of the above, this Court cannot but notice that while a UD case was registered immediately on the same day or the day after the incident being no. 183 of 2012, The inquest started about 1:15 PM which ended on 2.05 p.m. on 4th May, 2012. None of the appellants were named in the inquest. Yet a complaint is lodged by PW1 and a formal FIR is drawn up naming the appellants at 2.25 p.m. on 4th of May, 2012, within a span of 20 minutes.

30. What completely belies the prosecution case is that the FIR was presented before the jurisdictional magistrate only on the 7th of May, 2012, ie 3 days after its registration.

31. Reference in this regard is made to the decision of the Supreme Court in the case of ***Balaka Singh v. State of Punjab*** reported in ***(1975) 4 SCC 511*** particularly ***Paragraph 5*** thereof, which is set out hereinbelow:-

> "***5.*** *We may now refer to the reasons given by the High Court for acquitting the four accused mentioned above. The first and foremost reason given by the High Court was that although the inquest report was prepared by the ASI at about 2.30 a.m. in the morning yet the names of the four accused did not find place in the body of the inquest report which was made on the basis of the report made to the police by the informant Banta Singh. It is true that the names of all the nine accused were mentioned at the top of the inquest report but the High Court found that this appears to have been an addition made by the Assistant Sub-Inspector to help the prosecution and to bring the inquest report in conformity with the FIR*

We have perused Ext. PH inquest report ourselves and find that in the brief facts of the case which were made to the Investigating Officer by Banta Singh only the names of Balaka Singh, Joginder Singh, Pritam Singh, Darbara Singh and Jarnail Singh are mentioned. There is no reference at all to Makhan Singh, Sucha Singh s/o Inder Singh, Teja Singh and Inder Singh in the report nor is it mentioned that Teja Singh and Inder Singh incited or exhorted the other accused persons to open the assault on the deceased which appears to be the starting point of the occurrence. The prosecution has not been able to give any reasonable explanation for this important omission in the inquest report.

Thus even the ASI while admitting that the names of the four accused were not mentioned by Banta Singh has not chosen to give any explanation for this deliberate omission to that effect. According to the prosecution the names of the four accused who have been acquitted by the High Court had already been mentioned in the FIR which was lodged 4/5 hours before the inquest report was prepared. Any investigating officer possessing some intelligence would have at once questioned Banta Singh as to how it is that while he had named the four accused in the FIR he had not referred to them in his brief statement in the inquest report. In these circumstances, therefore, the High Court was fully justified in holding that the omission of the names of the four accused acquitted by the High Court in the inquest report was a very important circumstance which went in favour of the four accused. This omission has a two-fold reaction. In the first place it throws doubt on the complicity of the four accused acquitted by the High Court and secondly it casts serious doubt on the veracity and authenticity of the FIR itself. ***It is not understandable as to why the four accused who are alleged to have taken an active part in the assault on the deceased were not at all mentioned in the inquest report and in the brief statement of the very person who had lodged the FIR four hours before****. Counsel for the State tried to justify this omission on the ground that in the inquest report Ext. PH the names of all the nine accused appear to have been mentioned at the top of that document. There is, however, no column for mentioning the names of the accused and, therefore, there was no occasion for the Investigating Officer to have mentioned the names of the accused in that particular place."*

Emphasis applied

32. In ***Balaka Singh decision (supra),*** the inquest report did not mention the name of the accused persons as in the instant case. The case of the prosecution however was that the said accused persons

had played the main role in the commission of the crime. The significance of the inquest report was adverted to. Since an inquest report records the immediate circumstances surrounding the commission of the crime, the names of the perpetrators are ordinarily are recorded in the report.

33. It is crucial to note that in the present case, the inquest report stated that the witnesses had told the inquest officer that the victim was burnt in her matrimonial home. The said witnesses, however, remained silent on whether the present appellants were involved in the murder of the victim. It is surprising to note that the inquest witnesses can specifically locate the place where the crime took place, they, however, did not indicate the names of the persons involved therein. It is not a case where the FIR was lodged against unknown persons.

34. This Court's mind is not free from doubt that the prosecution case against the appellants may have been cooked up as afterthought. The chain of circumstances is not even remotely complete.

35. The lapses pointed out in the investigation, the contradiction between the evidence of PW-2 and PW-8, the non-examination of the treating doctors and local villagers and the inquest witnesses in course of trial and the inclusion of PW-2 as a witness in the trial despite their being no mention of his name in the charge sheet as a prosecution witness leave serious doubts on the prosecution case.

The inclusion of the appellants in the formal FIR appears to be an afterthought. The prosecution thus has clearly withheld material witnesses.

36. This Court is of the view that the prosecution has not been able to establish the culpability or participation of the appellants in the death of the victim, even remotely, much less beyond reasonable doubt.

37. For the reasons stated above, the said impugned judgment of conviction and order of sentence of the appellants shall stand set aside. All the appellants shall be set at liberty.

38. The appellants, who are in jail, shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Trial Court which shall remain in force for a period of six months in terms in terms of Section 437A of the Code of Criminal Procedure.

39. The appellants, who are already in bail, shall be discharged from their bail bonds after expiry of six months in terms of Section 437A of the Code of Criminal Procedure.

40. Accordingly, CRA 130 of 2016 is allowed and disposed of. Consequently, all connected pending applications, if any, are also disposed of.

41. Trial Court records along with copy of this judgment be sent down at once to the learned Trial Court for necessary compliance.

42. Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)