

(2003) 08 CAL CK 0059
In the Calcutta High Court
Case No : C.R.A. No. 446 of 1990

Dipak Haldar and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 302, 34, 498A

Citation : (2003) 3 CALLT 579

Hon'ble Judges : Nure Alam Chowdhury, J; Joytosh Banerjee, J

Bench : Division Bench

Advocate : Sekhar Basu and Biplab Mitra, for the Appellant; M.R. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

J. Banerjee, J.—The present appeal is directed against judgment and order of conviction dated 25-10-90 passed by additional District & Sessions Judge, 4th Court, Alipore. Appellants, namely, Dipak Haldar, Khokan @ Prodip Haldar and Dipali Haldar, by the impugned judgment were convicted u/s 498A read with Section 34 IPC and were sentenced to suffer R.I. for 2 years each and they were also directed to pay a fine of Rs. 1000/- each in default to suffer R.I. for 6 months each. In addition to that, accused Dipak Haldar was found guilty u/s 302 IPC and he was sentenced to imprisonment for life.

2. Briefly stated the facts and circumstances leading to the prosecution of the accused/appellants are as follows:-

The deceased Rimu daughter of Bimalendu Ganguly was married to accused Dipak Haldar on 18.2.86. Bimalendu failed to pay the agreed dowry amount of Rs. 10,000/- on the date of marriage. Although the other articles which he agreed to give by way of marriage gift were duly given. Due to non-payment of dowry money of Rs. 10,000/-, the bride Rimu had to face ill treatment and torture at the hands of her husband Dipak, her mother-in-law Dipali and also her

brother-in-law Prodip. It is alleged that after the marriage Rimu was physically tortured and she was often denied food. The ill treatment and torture, within a short time of marriage compelled the victim girl to return to her father's place along with her husband. On that occasion, the victim Rimu with her husband Dipak stayed for 3 weeks in the house of Bimalendu Ganguly (P.W.I.), the father of the victim. After 3 weeks Rimu was taken back to her in-laws place by her husband. At that time Dipak assured her that there would be no further torture. Again Rimu had to take shelter in her father's place. On that occasion a diary was lodged at the local P.S. by her husband who also accompanied Rimu, to her father's place, and stayed there for sometime with the victim. This time, she and her husband, started living in the house of Tejendra Nath Bose (P.W. 12), a well wisher to the family, till they got an accommodation, at the nearby place. In this way after 3 months they shifted at a flat of Nazir Bagan Lane within Kasba P.S. At that time Rimu was pregnant and subsequently she gave birth to a daughter on 10th of December, 1986. After she returned home, mental torture on her which gradually took shape of physical torture started. It is further alleged that accused Dipak was seen agitated, some times became violent whenever he used to go to his own house at Tanu Pukur and met his mother. The matter reached its climax on 25th of October, 1987 when the victim wanted money for Bhratri Ditia. It was reported by the maid servant that both the victim and her husband were quarreling with each other. Half an hour after that some young boys of the locality came running and reported that the Rimu had been burnt. Getting this information, the wife of the informant rushed to the spot. Even at that time she was abused and insulted by her son-in-law Dipak before the local people. Rimu was taken to the hospital by the local people in the car of Mrs. Binita Dhar. In spite of request, her husband Dipak refused to accompany the victim when she was taken to the hospital. On the next day, the victim succumbed to her injuries.

3. A charge u/s 302 IPC was framed against accused/appellant Dipak Haldar for causing the death of the victim Rimu. The other two appellants Dipali, the mother of the principal accused Dipak and Prodip his brother were charged u/s 302 read with Section 109 IPC for abetting the murder. All the three accused appellants were also charged u/s 498A read with 34 IPC. The trial proceeded when the accused/ appellants pleaded not guilty to such charge.

4. In order to bring home the charge, the prosecution in all examined 46 witnesses. The learned Sessions Judge by the impugned judgment, indicated that there were as many as 6 witnesses who were relatives of the deceased, there were 14 witnesses whom the learned Judge described as eye witnesses of the incident besides 6 seizure list witnesses, 4 medical and scientific witnesses and 8 police witnesses. Regarding the offence punishable u/s 498A IPC, the learned Judge relied on the evidence of the parents and brother of the victim who have been examined as P.Ws 1 to 3. Besides, he has heavily relied on a G.D. Entry Ext-30 stated to be lodged by the accused Dipak Haldar and also Ext. 4 a counter part of pay in slip of Indian Bank which the learned Judge in the judgment has described as bank draft. He also relied on the evidence of P.W.4 Soma Ganguly,

the sister of the deceased and P.W. 19 Dipti Dutta Roy a resident of Nazir Bagan and a close neighbour of the place where the deceased used to reside with her husband before her death. The learned Judge also considered the statement made by the accused Dipak on being examined u/s 313 Cr.PC admitting that often he created pressure upon the deceased for cooking various items of food. Regarding the charge of murder against the principal accused Dipak Halder, the learned Judge first of all relied on the background of the incident, as revealed through the evidence of the prosecution witness that in the morning of 25-10-87, the deceased Rimu paid Rs. 100/- towards the cost of Bhaiphota by going to her father's house without the consent of her husband. For this purpose, he has placed his reliance on the evidence of her parents and brother and sisters and also on the evidence of the maid servant of the house P.W.7 Sibani Shee. He also has placed reliance on the evidence of P.W.27 Rita Bose a resident of Nazir Bagan who met victim Rimu in the morning of 25.10.87 at the sweet meat shop where Rimu reported to her that she made a contribution of Rs. 100/- without the knowledge of her husband for which she might be punished. Coupled with this, the learned Judge also considered some other circumstances like (i) the wearing apparels of the victim contained smell of kerosene oil and the stove of the house did not burst, (ii) that there was quarrel between the couple in the night previous to the incident, even the quarrel going on immediately before the fire (iii) the doors and windows of the house were closed at the time of the fire, (iv) the P.M. report suggested that Rimu had been assaulted previous to the fire, (v) deceased Rimu tried to save herself from the hands of the accused Dipak and for that reason came out of the house and took shelter in the house of Tejendra Narayan Bose (vi) there was no evidence that accused Dipak tried to save deceased Rimu or he raised any alarm, (vii) when the neighbours tried to put off the fire accused Dipak was seen hurling abuses to the deceased and her parents. Considering all these he came to a final conclusion that charge u/s 302 levelled against the principal accused Dipak had been proved beyond doubt. But at the same time he also came to a further finding that charge u/s 302 read with Section 109 IPC against the other two accused persons was not proved as there was no evidence that the other two accused aided or abetted the accused Dipak to commit the murder. He however held that charge u/s 498A stood proved against all the 3 accused, the present appellants and passed the order of conviction and sentenced as noted earlier.

5. Short point here is whether the Court below, convicted the accused persons on proper consideration of evidence on record?

6. Before entering into the question touching the charge u/s 302 IPC against the principal accused and husband of the victim, Dipak Halder we should first of all consider the question whether the charge u/s 498A IPC has been duly proved against the accused/ appellants? At the very outset, it should be noted that the prosecution has led evidence to show that after the marriage, the victim Rimu went to stay with accused Dipak in a house at 27, Tanu Pukur Lane under Kasba P.S. where the two other accused also used to stay. From the evidence of close

relatives of the victim, namely, P.W.1 Bimalendu Ganguly (father), P.W.2 Manjula Ganguly (mother), P.W.3 Subhendu Ganguly (brother), P.W.4 Soma Ganguly (younger sister) and P.W.43 Nirmalendu Ganguly, the younger brother, we get that there was a talk of cash dowry of Rs. 10,000/- and when the father of the victim could not give the cash on the date of marriage, the victim was tortured by the accused/appellants. But none of the witnesses in deposition has specifically alleged the nature of torture, and also how, when and by whom the victim was tortured. The prosecution has led evidence through the aforesaid witnesses disclosing that after marriage the deceased was physically tortured and was compelled to work like a maid servant. She was not provided with proper food. In this way, the witnesses have failed to disclose the nature of physical torture. Only thing which has been disclosed through their evidence is that the victim was compelled to work like a maid servant and was not provided with proper food. So it is evident from the oral testimony of the relatives of the victim that the victim was provided with food but it might not be proper. It is not disclosed what is meant by "proper food". So far the allegation that the victim was compelled to work like a maid servant, it may be pointed out that the evidence, as a whole discloses that the parties belonged to lower middle class family. It is not unexpected that in such families often daughter-in-law of the house is required to attend household chores. So, unless there is a specific allegation which reveals that the victim is required to do a particular work in the household which she is not expected to do or the nature of that particular work is such that it is not for a house wife to do the same; mere attending the household work cannot be considered as an act of torture in such families. Moreover, the evidence on record has shown that the victim returned to her father's house within a very short time that is to say within 2 months from the date of marriage. The evidence on this point further indicates that at that point of time, the victim did not go alone to her father's place but she was accompanied by her husband Dipak. We must pause for a moment to point out that if accused Dipak was a party to the torture, it was not expected that the victim would be accompanied by her husband Dipak to her father's place and would stay there with her husband for about 3 weeks before husband returned home alone. The evidence of P.W. 1 further indicates that the victim shortly thereafter went back to the house at 27, Tanu Pukur Lane only to return with her husband again to her father's house in July, 1986. This time it is claimed that before leaving the house accused Dipak lodged a diary against his brother accused Khokan. Here we should point out that the learned Court below in coming to its conclusion regarding the guilt of the accused persons has much relied on the said diary Ext-30 lodged in the month of July, 1986. So far Ext-30, the G.D. entry No. 534 dated 10.7.86 is concerned we find that accused Dipak Halder lodged the G.D. alleging that after his marriage his father and his brother Khokan Halder demanded money from the informant that is to say Dipak Halder and also from his father-in-law P.W. 1. It was also alleged that 3 months back the brother of the informant Khokan took Rs. 1000/- (one thousand) from the father-in-law of the accused Dipak without his notice. Coupled with this, the learned Judge has

also relied on the counter foil of a draft (Ext-4). But G.D. entry disclosed that the demand was made by the father of the accused Dipak (who is not an accused in this case) and also accused Khokan. It further disclosed that demand was made from accused Dipak as also from his father-in-law. Therefore, it cannot be said that the demand was in respect of any cash dowry in connection with the marriage of the parties. Then there could not be any question of demanding money from accused Dipak, the husband of the victim. That apart demand was in respect of Rs. 1000/- and not in respect of Rs. 10,000/-, the alleged cash dowry demand as made out in the evidence of the relatives of the victim. It should be noted that apart from the close relatives of the victim as noted above there is no other witness to establish the charge u/s 498A against Dipali and accused Khokan, the mother-in-law and brother-in-law of the victim.

7. The evidence of P.W. 1 Bimalendu Ganguly, the informant and father of the victim indicates that at the time of marriage it was settled that Rs. 10,000/- (ten thousand) had to be paid to accused Dipak (as cash dowry). Now, the FIR (Ext-1) in which the informant described the whole circumstances leading to the unfortunate death of his daughter did not disclose that there was a talk of cash dowry to the extent of Rs. 10,000/- and in the cross-examination, the witness had admitted that the cash dowry to the extent of Rs. 10,000/- was not mentioned in FIR. There is no explanation forthcoming for such failure on the part of the informant to mention a material fact as the prosecution has tried to lead evidence to show that the in-laws of the victim that is to say mother-in-law, brother-in-law and also the husband began to torture her due to non-payment of cash dowry Rs. 10,000/-, which was subsequently paid. But the FIR in spite of the fact that it was lodged by the father of the victim who was well aware of the fact, according to the allegation of prosecution, but he remained completely silent about the fact of demand for cash dowry, though the FIR was lodged in detail and that too a few days after the death of the victim. Regarding the allegation of payment of the cash dowry demanded by the accused persons, we find that PW 1 and 2 being the parents of the deceased have not stated anything on this point in their evidence, PW 3 Subhendu Ganguly, brother of the victim Rimu in his examination-in-chief stated that he went to the house of accused Dipak Halder on 24.4.86 with a sum of Rs. 10,000/- and demanded a written assurance that his sister would not be tortured any further, but the accused refused to give such assurance. It is his further evidence that 26.4.86 he made a bank pay order in favour of accused Pradip Halder through his banker Indian Bank, Russel Street Branch and went to the house of accused persons and made over the said pay order to accused Prodip Halder. We should pause for a moment to point out that in the background and circumstances as disclosed in the evidence of the witness, it is doubtful whether the money which the witness claimed that he paid through bank pay order was actually paid towards cash dowry or it was paid for any other purpose. First of all, from the evidence of PW 1, the father of the victim we find that the father of the principal accused, the husband of the victim Dipak was alive at the relevant point of time. So if the money was demanded as cash dowry

in connection with the marriage between accused Dipak and victim, cash dowry would be paid to parents of Dipak or to Dipak, the husband of the victim and not to his younger brother Prodip. There is no explanation to suggest that the pay order was handed over to Prodip in the absence of those persons, though the pay order was in the name of any of those persons. Secondly as per the evidence of this witness only two days back he had been to the house of the accused to hand over the money in cash and at that point of time he only demanded a written assurance, that his sister would not be tortured any further, but the accused persons were not agreeable to give that written assurance. In this background, it is not understandable how and under what circumstances, the witness had the occasion to take a different view and paid the money through bank order within two days. Besides this we have already noted that the informant being the father of the deceased was competent to disclose the material fact regarding demand of cash dowry but the same was not disclosed in the FIR inspite of the fact that the informant lodged the FIR a few days after the death of his daughter. Lastly, the aforesaid allegation goes directly against the fact noted in the G.D. Ext-30 on which the learned Judge placed much reliance in coming to the conclusion regarding the charge u/s 498A IPC Ext-30 goes to show that the money demanded by the younger brother accused Khokan @ Prodip could not have any connection with the alleged dowry demand as the same was demanded from his elder brother that is to say accused Dipak Halder and also from the father of the victim PW 1 and the money demanded was Rs. 1000/- and not Rs. 10,000/-.

8. In order to appreciate the evidence on record to come to a conclusion on this point, we think for the sake of convenience, Section 498A should be set out. It is set out herein below: -

"498A. Husband or relatives of husband of a woman subjecting her to cruelty-Whoever, being the husband or the relatives of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation the purpose of this section "Cruelty" means: (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

9. The Hon"ble Supreme Court in the case of Girdhar Shankar Tawade v. State of Maharashtra reported in 2002(2) Crimes 360 has observed that the basic purport of the statutory provision (contained in Section 498A) is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto and has further made the following relevant observation in this connection:-

"Two specific instances have been taken note of in order to ascribe a meaning to

the word "cruelty" as is expressed by the legislatures: Whereas explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity; in explanation;

(b) there is absence of physical injury but the legislature thought it - fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury; whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of cruelty" in terms of Section 498A."

10. Now, if we judge, the allegations levelled against this case in connection with the charge u/s 498A IPC, then we will find that there is no allegation levelled against the mother-in-law, brother-in-law or even the husband that the cruelty attributed to them was for the purpose of driving the victim to commit suicide or to cause grave injury or danger to live, limb etc. As the only other charge here is the murder punishable u/s 302 IPC Therefore, it is nobody's case that the cruelty if any was committed on the victim for the aforesaid purpose. The only other situation which is laid down in explanation (b) is regarding harassment of the victim with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. In the instant case from the discussion above, it is clear that the prosecution has completely failed to establish through the evidence on record that the harassment alleged was with a view to coercing the victim or any of her relations to meet any unlawful demand or failure to meet such demand. It is to be noted further that the victim lived with the mother-in-law, brother-in-law and other relations of her husband only for a brief period that is to say for about 2 months after her marriage. Then for some time before departing the house finally in July, 1986. Thereafter, the victim used to stay with her husband in the house of one Tejendra Narayan Bose (P.W. 12) for a brief period and finally she started living with her husband in the house of Sisir Dey at 41, Nazir Bagan, Calcutta-78 till the incident of fire in which she died, took place. We have already noted that the allegations raised in this connection made by the father and other relatives of the victim, have failed to make out a case of cruelty, against any of the accused including the husband. In fact, the prosecution has led evidence to allege that after the victim Rimu started living with her husband in a separate house, husband and wife had frequent quarrels. But such quarrels or friction between the wife and husband cannot establish the case of cruelty, unless there is some other evidence to bring the case within the meaning of cruelty as per the explanation to Section 498A of the Indian Penal Code as noted above. In the facts and circumstances of the case it is clear that charge levelled against the accused persons u/s 498A IPC must fail. Next comes the question of conviction and the sentence recorded by the learned trial Court u/s 302 IPC against the accused Dipak. The learned counsel for the prosecution in his argument has supported the decision reached at by the trial

Court in this respect. It is his contention, the learned trial Judge has considered the question very elaborately in the judgment impugned and has rightly come to a conclusion that in the facts and circumstances of the case, the accused/appellant should be held guilty for committing an offence u/s 302 IPC for committing murder of his wife. On the other hand, the learned defence lawyer has submitted that the conviction is based on circumstantial evidence, but the circumstances which have been relied on by the learned Judge have failed to complete the chain which may point out to the accused/appellants and none else as the person who was responsible for murdering the victim.

11. Evidence on record has clearly established that the victim Rimu met with an unnatural death. She was seen engulfed in fire coming out from her house before she was seen at the Varandah of PW 12 Tejendra Narayan Bose. It is not disputed that the victim died due to burn injuries sustained by her. Now such death by fire might be (i) accidental (ii) suicidal or (iii) Homicidal. Here the defence has wanted to establish that the death of the victim was due to accidental fire and for this reliance has been placed on the evidence of PW 13 Dr. S. Dey, a medical officer attached to S.S.K.M. Hospital at the relevant point of time, who was on duty at the emergency department of the hospital. The witness stated in his evidence that the patient was brought with 80% burn injury in the morning of the date of incident and the victim stated before him that she had been boiling water when the stove burst and the patient sustained such injury. We are of the opinion that the learned Judge has rightly rejected that particular evidence of the doctor, mainly relying on the evidence of PW 34 Dr. Dilip Bose, who held the P.M. examination of the body of the deceased who in his evidence indicated that the larynx and tracheae were congested, the same were full with soot. For that reason, the victim was not in a position to speak. We have seen from the evidence of some material witnesses like PW 8 Anil Dhar in whose car the victim was taken to hospital. PW 11 Sipra Bose and her husband PW 12 Tejendra Narayan Bose, in the varandah of whose house the victim was found lying with burn injuries immediately after the incident that they have not stated anything to indicate that seeing them the victim reported anything to them. While PW 11 stated that the victim was seen crying out in pain of burn injuries. PW 5 only stated that when the victim was being removed on being questioned by PW 12 she expressed her anxiety regarding her daughter. It should be noted that PW 12 Tejendra Narayan Bose has not stated anything regarding such enquiry and the evidence of PW 5 does not suggest that the expression of anxiety by the victim at that point of time was by uttering some words or talking with Tejendra Babu or any other person. Be that as it may, we have already noted the circumstances which have been relied on by the learned Judge in coming to his ultimate conclusion regarding the guilt of the accused/ appellant. One of the most important circumstances is the evidence of PW 34 Dr. Dilip Kr. Bose who held the P.M. examination over the dead body of the victim. According to him he found deep bruises over big tissues of whole interior chest wall and burn of chest present. It is his further evidence that as per his opinion, the

deceased had been assaulted before receiving such injury. The witness also found mark of deep bruises over tissues round the neck at that area. According to the deposition of the doctor both, the injuries might be caused by throttling or by putting pressure of her neck. The learned counsel through the written notes has pointed out that the doctor PW 34 has admitted that the bruise may be caused due to an impact of a blunt substance. He has further pointed out that the doctor has admitted that in case of manual throttling by hands the marking would appear on the front side. Regarding bruise detected covering entire back and front of the chest wall it is pointed out that in such a case the instruments of assault has to be a big square which can cover the entire area of back and chest wall. It is to be pointed out that no such suggestion has been made to the expert, namely, Doctor, PW 34 during his cross-examination. Now, coupled with his evidence of the doctor, the learned Judge has pointed out about closing of windows etc. of the house from before the incident, victims coming out of the house and ultimately falling on the ground floor varandah of the house of the PW 11 and 12. He also noted, the further fact that her husband did not accompany her to the hospital or did not take any step to take her to the hospital for the purpose of treatment and also he was seen hurling abuses towards the victim and her relatives when the victim was seen burning. The question is whether the cumulative effect of all these circumstances lead to a conclusion that the same was a case of murder and the accused was responsible for such murder. It is well settled that the circumstantial evidence can be reasonable made the basis of an accused person's conviction if it is of such a character that the same is wholly inconsistent with innocence of the accused and is consistent only with his guilt. The incriminating circumstances for being used against the accused must be such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In such a case, the Court should find out whether the crime was committed by the accused and the circumstances proved, formed themselves into a complete chain which clearly point out to the guilt of the accused. In case, the circumstances proved against the accused are consistent either with the innocence of the accused or raise a reasonable doubt about the way the prosecution has alleged, the offence is committed, the accused is entitled to the benefit of doubt (1) Kanhai Mishra @ Kanhaiya Misar Vs. State of Bihar, , (2) M.G. Agarwal Vs. State of Maharashtra, , (3) Ronny @ Ronald James Alwaris Etc. Vs. State Of Maharashtra, and, (4) Joseph Poulou Vs. State of Kerala, .

12. Before we take up the circumstances which emerge through the evidence on record to consider the question whether chain has been completed through the same, it is to be noted here that the incident culminating the unfortunate death of the victim has got a background which has been established through the evidence of the competent witnesses. The background here has been disclosed in the evidence of the PW 5 Sima Banerjee who is the elder sister of the victim Rimu. It is her evidence that she came to her parents' house on the occasion of Bhratriditia two days before the scheduled date on a Thursday, and ceremony was on Saturday. Rimu came to that house in the night and asked the witness

whether the witness came there for Bhaiphota and disclosed that she would meet the witness on the following morning. At this stage, the witness disclosed that she was thinking to observe the ceremony on Saturday and was contemplating to return to her in-laws house on Sunday. The victim told her that accused Dipak was scheduled to go to his parents house at Tanu Pukur on Saturday. She requested her to fix the dinner (on the occasion of Bhratriditia) on Sunday, so that her husband Dipak might participate. The witness agreed. It was settled at that time that the expenses would be borne by both the sisters in equal shares. Her evidence further disclosed that in the morning of Sunday Rimu came to her parents house and kept a hundred rupee note on the table and before leaving the house requested the witness to make necessary expenses and she would pay the balance if any, afterwards. Thereafter the witness heard the news that at about 7.30 a.m. in morning, her sister had been burnt by fire. This particular fact gets sufficient corroboration from the other witness like PW 7 Sibani Shee, the maid servant of the house of the deceased, who found her Rimu Didi was asking for mercy from her husband. PW 26 Rita Bose in her evidence has stated that on 25.10.87 when she went to bring milk she met the victim at a sweetmeat shop, both of them purchased Jilapi from that shop. It is her further evidence that since the victim was looking pale, the witness asked her the reason for such appearance, and she heard from the victim that she was returning from her mother's place where she paid a sum of Rs. 100/- towards the contribution for the occasion of Bhaiphota and such contribution was made without the consent of her husband. The evidence of this witness on this particular point has not been seriously challenged and we have got no reason to reject such evidence. Now from the total evidence on record, it transpires that over the matter there was a quarrel between the husband and wife in the morning. It has also come into evidence that the doors and windows of the house of the principal accused and the victim were found closed by the local people immediately before the incident complained of that is to say when the victim was seen coming out of the house engulfed in fire. Most of the witnesses who are the local people have deposed that on 25.10.87 after hearing an outcry "fire-fire" they rushed to the spot and found the victim lying on the Verandah of Tejendra Narayan Babu, PW 12. The evidence of Sipra Bose (PW 11) and her husband Tejendra Narayan Bose (PW 12), close neighbours and family friends of the family of the victim would be very relevant for the purpose of getting a picture of the incident which led to the ultimate death of the victim. PW 11 Sipra Bose in her evidence has stated that the victim and her husband stayed for about 3 months free of rent or any other charge in their house and that accommodation was arranged at the request of the mother of the victim. Thereafter, they shifted to a rented accommodation at 41, Nazir Bagan, the house of Sisir Babu and which house was visible from the house of the witnesses. It is further evidence of PW 11 that during their stay in that house she witnessed the quarrel between the husband and wife. She met the victim Rimu on the day previous to Bhaiphota in the year 1987. On that occasion Rimu the victim broke down into tears and reported that she would not be allowed to attend Bhaiphota function and she was also abused for that and at

that time the witness assured her that she would make her husband agree to allow her to attend the ceremony, at least on the following day. It is her further evidence that she heard quarrel between the husband and wife in the night of Bhaiphota and on the following morning when the family members of the witness were taking tea she was alarmed hearing that Rimu was burning in a fire. All of them came out there and found that Rimu was lying on their ground floor Varandah and she was covered with a gunny bag. She was crying with pain of injury and she was also very much anxious for the baby. Then the witness asked her husband to arrange for a vehicle so that Rimu might be shifted to a hospital. Later on Rimu was shifted to hospital by a Maruti car owned by a neighbour Anil Dhar. Her husband PW 12 has corroborated the evidence of PW 11. He has further stated that prior to the date of incident when he was going by the side flat of the victim, at 7.30 P.M. in the night, he found the baby was standing by the side of the window but on that occasion accused Dipak and his wife did not exchange good wishes with the witness following their normal practice. On the following morning he came out of his house, hearing an alarm and found the victim lying on the Varandah of his ground floor. Later on, she was shifted to P.G. Hospital in the car of Anil Dhar. On carefully going through the evidence of the local witnesses who were either neighbours of the victim and her husband or found the victim lying on the ground floor Varandah of the house of PW 12, we find that there is nothing to indicate under what circumstances the victim caught fire. Some of the witnesses have only stated that the couple (accused and victim) used to quarrel often. Even in the morning of the incident there was a quarrel between them. But the background as disclosed in the evidence of PW 5 one of the sisters of the victim and the circumstances that the couple used to quarrel with each other very often and over the incident of making a contribution of Rs. 100/-towards Bhaiphota ceremony there was a quarrel between the husband and wife in the morning of the date of incident cannot lead us to a conclusion that the husband, committed the murder by setting the victim on fire. It is to be noted here that there is no cogent evidence to show that the principal accused had any reason to set his wife on fire. No doubt, some of the neighbours of the father's house of the victim wanted to allege in their evidence that the husband and mother-in-law of the victim used to launch assault on the victim. But in our considered opinion that evidence should not be accepted in view of the fact that even the parents of the victim did not raise such allegation in their evidence that the husband used to launch assault on the wife, on any occasion or at any point of time. If the husband was in the habit of assaulting his wife, then there was no reason for the victim to return to her father's place with her husband. On the other hand, we find that the husband took her to her father's place and stayed with her in that house for a considerable period of time before shifting to the house of PW 12 and thereafter he continued to live with his wife and the baby in a separate rented house. From the evidence of some of the acquaintances we find that Rimu had the occasion to complain to them that her husband used to ask her to cook different preparations which was not possible for her to cook, looking after their child. But there is not enough circumstance to

show that the type of grievance on the part of her husband would culminate into an intention to kill the wife. No doubt, the doctor who performed the P.M. over the deadbody of the victim found some injuries. But there is nothing to indicate that these injuries were caused on being assaulted and that too on the date of incident. This is more so, in view of the fact that none of the close neighbours has stated that they had the occasion to see the principal accused to launch assault on the wife. PW 7 Shibani Shee the maid servant of the house in her evidence has claimed that on Sunday morning she had been to the house of accused and victim for the purpose of working but at that time the victim Rimu Didi asked her not to work. But the witness waited by the side of the door and heard that the victim was asking for mercy from her husband and accused at that time uttered that he would finish her. But from the evidence of I.O. PW 45 Debaki Nandan Ghosh, we find PW 7 did not state before him that the victim Rimu was praying for mercy from the accused Dipak and in reply Dipak expressed his desire to finish her.

13. We have already pointed out the circumstances which have led the learned trial Court to come to of conclusion regarding the guilt of the accused persons specially on the point of murder. But we are of the opinion such circumstances, taken cumulatively fail to form a chain so complete, which points towards the accused and none else as a person responsible for commission of the offence complained of that is to say murder. The total circumstances which emerge from the evidence only indicate that the couple who used to quarrel often and who quarreled in the morning of the incident and shortly thereafter the victim was seen running out of the house burning. Coupled with this the doctor under whom she was admitted in the hospital did not find any other injury except the burn injuries. But the doctor, who held the P.M. examination found the injuries as discussed above. It is quite possible that when the victim came out running engulfed in fire and fell down on the ground floor Varandah of the house of PW 12. She sustained injuries noticed by the doctor. In any case it cannot be said in the absence of any other circumstance that the accused was responsible for the injuries and he ultimately set the victim on fire causing her death. Here we require to point out that the accused, Dipak also sustained 15% burn injury in his person and it is stated that he sustained so to save the victim. Coupled with this we find that one of the brothers of the victim Rimu, Babul Ganguly @ Nirmalendu Ganguly lodged a G.D. (Ext.29) immediately after the death of the victim stating that the wearing apparel of his sister caught fire from the stove when she was engaged in boiling water. This G.D. practically demolishes the allegation of murder. The said brother of the victim of being examined as PW 43 did not deny that he lodged the G.D. Ext 29, but his allegation is that he was forced to do so by the principal accused Dipak Halder immediately after the death of his sister. It would be too much to accept such an allegation. A brother who had just lost his sister in a very unfortunate incident would succumb to the pressure given by the brother-in-law, and would lodge G.D. giving false particulars about the circumstances under which his sister died, such a conduct is

not expected from an ordinary prudent man. That apart facts and circumstances of the case also did not support such allegation. Considering all these facts, circumstances and evidence on record we are constrained to hold that the prosecution has failed to bring home the charge u/s 302 raised against the principal accused Dipak Haldar.

14. It is to be noted here that one of the accused, namely, the mother-in-law of the victim Dipali Haldar died during the pendency of the appeal, so the appeal stands abated so far accused Dipali is concerned. In the result, the appeal is allowed and order of conviction and the sentence passed on the two accused, namely, Dipak Haldar and Prodip Haldar are set aside. They are acquitted from the charge levelled against them and are discharged from the bail bond. Let the LCR be returned to the Court below with a copy of this judgment.

N.A. Chowdhury, J.

15. I agree.