(2002) 06 CAL CK 0004

Calcutta High Court

Case No: Criminal Revision Application No. 312 of 1998

Khokan Patra and Another	APPELLANT
Vs	
State	RESPONDENT

Date of Decision: June 24, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34, 498A

Hon'ble Judges: Sadhan Kumar Gupta, J; Nure Alam Chowdhury, J

Bench: Division Bench

Advocate: H. De., Mr. Arunava Jana and Mr. S. Chakraborty and Mr. Sandip Kundu, for the Appellant; Sudipto Moitra and Mr. L.M. Dutta, for the Respondent

Judgement

Sadhan Kumar Gupta, J.

This Criminal Appeal has been preferred against the Judgment and Order dated 15.9.1998 passed by Shri A.K.Das-1, Additional Sessions Judge, Contai, Midnapore in S.T. Case No.1X/August/1996. By the said Judgment the learned Additional Sessions Judge convicted the appellants namely Shri Khokan Patra and Smt. Bharati Patra u/s 498A and u/s 302/34, I.P.C. and sentenced both of them to suffer imprisonment for life and to pay fine of Rs. 1,000/- each so far as the offence u/s 302/34,1 PC. is concerned. No separate sentence u/s 498A was passed.

2. Being aggrieved and dissatisfied with the said order of conviction, the petitioners/appellants have preferred the present appeal on the ground that from the materials, as available on record, the learned Additional Sessions Judge was not justified in holding that the appellants were guilty of the offence u/s 498A and u/s 302/34. I.P.C. The point that is to be considered, so far as the present appeal is concerned, is. whether the learned Court below was justified in convicting the accused persons under those sections of the Indian Penal Code.

3. It is the case of the prosecution that on 12.10.1994 at about 1.45 P.M. one Shri Charan Mirdya submitted a written complaint to the officer-in-Charge, Patashpur P.S. to the effect that his daughter Bandana was given in marriage 5/6 years before with Shri Khokan Patra of Ramchandrapur. At the time of marriage dowry was also given. Since the marriage, Khokan and his mother Smt. Bharati Patra used to torture Bandana Both physically as well as mentally. On 12.10.1994 in the morning the minor grandson of the Defector Complainant viz Janmenjoy Mirdya. who was in the father-in-law''s house of Bandana, prior to the date of the incident. came reported him that Bandana expired. The villagers of that village helped Janmenjoy to give this news to the De facto Complainant. Hearing the news, he rushed to the said village and found that Bandana was lying dead in a burn condition inside the room. Seeing the dead body and after hearing the villagers the De facto Complainant was of the opinion that the accused persons at first murdered Bandana and thereafter her dead body was burnt. According to him accused Khokan Patra and Bharti Patra were responsible for the death of Bandana. On the basis of that, present case was started. The case was investigated and after investigation charge-sheet was submitted against the accused persons. During trial charge u/s 498A/302/34, I.P.C. were formed against the accused persons. Same was read over and explained to both of them who pleaded not guilty and claimed to be tried. Prosecution in all has examined 21 witnesses-to prove the charge against the accused persons. In order to come to decision, so far as the present case is concerned, it is necessary to look into the statements that the witnesses have made during trial.

4. P. W. I is Shri Bhanu Charan Mirdya, he is the father of the deceased Smt. Bandana Patra. It is he who lodged the F.I.R. This witness has stated in his evidence that her daughter was living in her matrimonial house happily. At the same time he has stated that sometimes Bandana used to complain against her husband and in-laws as they used to abuse and quarrel with her over household affairs. According to him his minor grandson informed him about the death of Bandana and on hearing that he rushed to the place of occurrence and found that Bandana was lying dead with burn injury on her body. Of course, he has not corroborated the other parts of the statement that he. has made in the F.I.R. In his cross-examination this witness explained that as at the relevant time he was mentally shocked, so he could not understand the contents of the written complaint. He has admitted that Bandana and her husband used to visit his house together frequently.

5. P.W.2 is Shri Bibhu Chakraborty, he is a neighbour of the accused persons. According to him Bandana committed suicide by putting fire on her body. As this witness did not support the prosecution case, so he was declared hostile. Same is the case with P.W.3 Shri Parameshwar Samanta.

6. P.W.4 is Shri Shakti Pada Chakraborty. Surprisingly prosecution practically did not put any relevant question to this witness so far as the present case is concerned. It is not known as to why the prosecution produced this witness before the Court at

the time of trial. Be that as it may in hiscross-examination this witness admitted that after the marriage Bandana and Khokan used to live peacefully.

7. P.W.5 is Shri Bankim Chandra Jana, this witness has stated that he found Bandana lying dead with burn injuries on her, body.

8. P.W.6 is Shri Rash Behari Samanta and P.W.7 Shri Sarbeshwar Jana were tendered for cross-examination.

9. P.W.8 is Shri Bijoy Krishna Mirdya. He is the brother of Bandana. He is also the father of P.W. 17 Janmenjoy Mirdya. who reported the matter in his house. He has stated that hearing the news he had been to the place of occurrence and found that Bandana was lying dead with burn injuries on her person. He has not supported the other part of the prosecution case. On the contrary in his cross-examination he has stated that Bandana used to live peacefully and happily with her husband.

10. The evidence of P.W.9 Smt. Sushila Patra is also not relevant for our purpose. Prosecution examined P.W. 10 Smt. Kajal Mirdya who happens to be sister-in-law of the deceased. She lias stated in her evidence that Bandana was happy in her in-law''s house. It is surprising as to why the prosecution examined this witness and even if the present witness was examined then why inspite of the damaging statement she was not declared hostile by the learned prosecutor. Be that as it may the fact remains that this witness did not support the prosecution case.

11. P.W.11 is Shri Kanailal Mirdya, he is the uncle of Bandana. In his evidence he has stated that the accused persons used to ill-treat Bandana in their house. She was even assaulted on account of quarrel over domestic affairs. This witness claimed that Bandana was murdered by the accused persons. In his cross-examination this witness had admitted that he was living separately from his elder brother. Learned Advocate for the appellant argued much on this point. We shall discuss the said argument at an appropriate time. He has clearly denied the defence suggestion that Bandana and Khokan used to live happily in the matrimonial house.

12. P.W.12 is Shri Bimal Mirdya. He is the brother of Bandana. According to him Bandana was murdered by accused Khokan. In his cross-examination he has admitted that he was not examined by the police about the incident.

13. P.W.13 is Shri Gour Hari Mirdya. He is also another brother of the deceased Bandana. According to him he heard from Janmenjoy Mirdya that Bandana was murdered by Khokan Patra. He has further staled that hearing the news he rushed to the spot and found that Bandana was lying dead with burn injury on her person.

14. P.W. 14 is Smt. Gouri Mirdya. She is the sister-in-law of the deceased Bandana. According to her Janmenjoy informed that Bandana was murdered by Khokan Patra. She has further stated that Bandana informed her that Khokan used to assault her. This witness has been cross-examined by the defence in detail. She has strongly denied the suggestion that she made false statement regarding the ill-treatment of

Bandana in her in-laws house.

15. P.W. 15 is Shri Benu Mirdya. He is the uncle of the deceased Bandana. He has categorically claimed that Bandana was not happy in the matrimonial house. According to this witness Janmenjoy reported that Bandana''s husband and mother-in-law murdered her in the matrimonial house. This witness has also been cross-examined by the defence in detail. However, this witness strongly denied the defence suggestion that he deposed falsely so far as the present case is concerned.

16. P.W.16 is Smt. Reboti Mirdya. she is also a close relative of the deceased and according to her Bandana was ill-treated in her in-laws'' house. She has stated that she heard from Janmenjoy that Bandana was murdered. She has also denied the defence suggestion that she deposed falsely in connection with this case.

17. P.W.17 is Janmenjoy Mirdya. At the lime of his deposition he was aged 12 years. He was examined in the year 1997 while the incident took place in the year 1994. So at the time of the incident this witness was aged around 8 years. The learned Additional Sessions Judge'', before recording the evidence of this witness, tested him in order to be satisfied regarding the competency of this witness. As the Learned Additional Sessions Judge was satisfied that this witness was in a position to give proper answer to questions put to him, so he allowed the prosecution to examine the witness. According to this witness, on the date of incident he was present in the house of the accused persons. He has further claimed that since the morning there was quarrel in between his aunt Bandana with his Pishamasai, that is accused Khokan. He has also stated that on that day Bandana had a quarrel with her mother-in-law also. As per this witness, on the fateful night be slept just outside the room in verandah alongwith his brother i.e. the son of accused Khokan Patra. According to him at that time Kliokan Patra was present in the house. This witness has stated that suddenly in that night he woke up and found fire inside the room. At that time he found Khokan Patra and his mother were standing on the verandah, Bandana was inside the room in burning condition. He found blood oozing out from the right ear of Bandana. Seeing that condition he began to cry. When the villagers assembled there, he requested them to send him to his own house and reported the incident to his parents and others to the effect that Bandana was murdered or killed by Khokan by putting fire on her body. He was extensively cross-examined by the defence. In his cross-examinations this witness stated that on that night of incident the daughter of Bandana also slept with her and at the relevant time she was nearly a baby in lap. When asked by the defence this witness slated that on that night he saw a lamp inside the room but it was not in burning condition. He has denied the suggestion of the defence that Bandana sustained burn injuries due to the light of the lamp accidentally and she was not murdered by anybody.

18. P.W.18 is Smt. Bishnupriya Mirdya. She is a close relative of the deceased Bandana and according to her the accused persons used to ill-treat Bandana in the matrimonial house. She has further stated that she heard from Janmenjoy that

Bandana was assaulted by Khokan and thereafter fire was put on her body. She has denied the defence suggestion that she was deposing falsely regarding the ill treatment of Bandana in the matrimonial house.

19. P.W.19 is Dr. Tushar Kanti Maity. This Doctor held Post Mortem examination on the dead body of the deceased Bandana. According to him he observed burn injury to the extent of 100% on all over the body and the Doctor opined that the death was suicidal in nature. This Doctor has opined that if the burn injury was accidental then the injured would try to save her life. He has also stated in his evidence that he gave his opinion on assumption. In his cross-examination this Doctor has further stated that he, after perusal of the burn injury on the body of the deceased, came to a conclusion on that it was not homicidal but suicidal.

20. P.W.20 is Smt. Chanchala Mirdya. She is the mother of the deceased Bandana. She has stated in her evidence that Bandana informed her on many occasions that the accused persons used to ill-treat her. According to this witness Janmenjoy told them that Bandana''s husband Khokan killed her and thereafter set fire on her body. This witness was also extensively cross-examined by the defence. During Cross-examination she has strongly denied the defence suggestion that she was giving false statement. She has also denied the defence suggestion that Bandana suffered accidental death.

21. P.W.21 is Shri Pramatha Nath Mukherjee. He is the Investigating Officer of this case. He has stated that he took up the investigation of this case on 12.10.1996 and during investigation he visited the place of occurrence and prepared inquest report on the dead body of the deceased in presence of the witnesses. He has proved the inquest report during evidence which has been marked as exhibit-6. According to him, he stated everything in detail regarding the actual state of affairs at the time of preparation of the inquest report. After completion of the investigation he submitted charge-sheet against the accused persons.

22. The accused persons have not examined any witness in their defence. So far as the defence case is concerned, it appears from their examinations u/s 313, Cr. P.C. that they had denied that Bandana was murdered by them. In their ''cross-examination the accused persons tried to set-up a defence that actually Bandana sustained accidental burn injury and as a result of that she died.

23. It has already been pointed out that the accused persons have been charged u/s 498A, I.P.C. and u/s 302/34, I.P.C. So it is the duty of the prosecution to prove first of all that the victim i.e. Bandana was subjected to cruelty as envisaged tinder Section 498A. I.P.C. That apart prosecution is also bound to prove beyond any reasonable shadow of doubt that it was the accused persons who in furtherance of their common intention caused the death of deceased Bandana. Let us now sec how far the prosecution has been able to prove all those things. It is the admitted position that the learned Court below convicted the accused persons both u/s 498A and u/s

302/34. I.P.C. So. 1et us now see. what evidence has been adduced by the prosecution in respect of the two offences, one after another. So far as Section 498A, I.P.C. is concerned, the prosecution is bound to prove that the accused persons actually subjected Bandana to cruelty. In the explanation given u/s 498A. I.P.C. it has been stated clearly that 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 lo meet any wilful 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."

24. So the intention of the legislature is very much clear that in order to prove cruelty, prosecution is bound to prove that it was in fact a cruelty of such a nature which may compel the victim to commit suicide or to cause injury to her person. Mere quarreling in the matrimonial house is not sufficient to prove that there was cruelty on a house-wife. Something more is required for that. In order to prove the charge u/s 498A. I.P.C. the prosecution has adduced evidence of the P. Ws. P.W. 1 is Shri Bhanu Charan Mirdya. is the father of the deceased. He, in his evidence in-chief has stated "sometimes my daughter used to carry on her matrimonial home happily, sometimes she used to complain against her husband and in-law as they used to abuse and quarrel with her over household affairs." In cross-examination he has admitted that his son-in-law and daughter used to visit his house frequently. So, the evidence of the father of the victim clearly shows that there was no cruelty on the deceased from the side of her in laws as alleged by the prosecution. His statement finds support from the evidence of P.W.4 Shri Shakti Pada Chakraborty who is neighbour of the accused persons. He has stated in cross-examination to the effect "after marriage they used to live peacefully, Smt. Bharati Pan a is looking after Bandana Patra as her own daughter." That apart P.W. 10 Smt. Kajal Mirdya who is the sister-in-law of the deceased has stated that Bandana was happy in her in-laws house. Surprisingly enough she was not declared hostile by the prosecution.

25. At the same time it appears from the record that P.W. 11 Shri Kanailal Mirdya, who is the uncle of Bandana has stated that Bandana was ill-treated in her in-laws'' house. this statement finds support from the evidence of P.W. 14 Smt. Gouri Mirdya, another sister- in-law of the deceased. Like this P.W. 15 and P.W. 16 also claimed about the torture of Bandana in her in-laws'' house. Moreover. P.W.20 Smt. Chanchala Mirdya, who is the mother of the deceased bandana also claimed (hat Bandana was ill-treated in her in-laws" house.

26. So, it appears that regarding the alleged ill-treatment of Bandana in her inlaws house there are differences in the statements of the PWs. Some of them are saying

that there as no ill-trcatment. while others have claimed that the accused persons used to ill-treat Bandana. We have already pointed out that Section 498A requires that the fact of cruelty must be of serious in nature. Mere quarrelling or something like that will not attract the provisions of Section 498A, I.P.C. Even if we look into the evidence of the mother and other witnesses who have stated about torture of Bandana, then we will find that nothing specific has been staled in their evidence. The mere quarreling over household matters does not attract the offence u/s 498A, I.P.C. Moreover. when the P.Ws. who are near relatives of the deceased are not unanimous in proving the claim of the prosecution that Bandana was tortured in her in-laws, house, then certainly a doubt arises in our mind regarding (he alleged-claim of cruelly as put forward by the prosecution in this case. So, we are of opinion that there is reasonable room for doubt regarding the prosecution case that Bandana was treated with cruelty as provided u/s 498A, I.P.C, by the accused persons. Under such circumstances we have got no hesitation to hold that the prosecution has failed to prove the charge u/s 498A, I.P.C. against the accused persons beyond any reasonable shadow of doubt. So we hold that the accused persons are not guilty for the offence u/s 498A. I.P.C. and they arc entitled to be acquitted so far as the charge u/s 498A, I.P.C. is concerned.

27. At the very outset we have pointed out that the accused persons have been charged u/s 498A. I.P.C. and also u/s 302/34, I.P.C. we have already pointed out that the prosecution has failed to prove beyond reasonable doubt, the charge u/s 498A, I.P.C. against the accused persons. Let us now see how far the prosecution has been able to prove the charge u/s 302/34, I.P.C. If we look into the charge as framed against the accused persons, then, it will appear that it has been stated therein that on 12.10.1994 the accused persons in furtherance of their common intention caused the death of Smt. Bandana Patra by setting fire on her body. So it is the responsibility of the prosecution to prove that it was the accused persons who actually caused the death of Bandana Patra by setting fire on her body. In order to prove this claim the prosecution has mainly relied upon the evidence of P.W. 17 Janmenjoy Mirdya. According to the prosecution case this P.W. 17 actually was present when the alleged" incident took place in the house of the accused persons. Besides the evidence of this P.W. 17 there is practically no other direct evidence available so far as the present case in concerned. In addition to that the prosecution has also relied upon certain other circumstances which according to the prosecution, leads to the guilt of the accused persons. So let us now discuss the evidence as adduced by the prosecution. We have already pointed out that the prosecution mainly relied upon the evidence of the P.W. 17 Janmenjoy Mirdya. It appears from the record that this P.W. 17 was aged about eight years at the time of the incident. When he deposed in this case, at that time he was aged about twelve years i.e. a child. The learned Sessions Judge recorded the statement of this child witness after being satisfied that he was in a mental position to depose in a Court of law. This witness has claimed that the day on which Bandana Patra died, he as

present in the house of the accused persons. According to him he was in that house prior to the incident in connection with the festival. I le has claimed that on the relevant day Bandana had some troubles with her husband as well as with her mother-in-law. The P.W. 17 has further claimed that on that nigh! accused Khokan was present in that house and as per his instruction he slept on the Verandah of the room of accused Khokan Patra alongwith the minor son of the accused. This witness slated that suddenly in that night he was awaken and he found fire inside the room and he saw that accused Khokan Patra and his mother were standing in front of the duar. I le has also stated that his Pisi i.e. deceased Bandana was inside the room in burning condition and he found that blood was oozing out from the right ear of the deceased. This child witness has stated that thereafter he somehow managed to return to his father''s house with the help of the villagers and narrated the incident to the inmates of that house. This witness was extensively cross-examined by the defence. Learned Advocate for the accused persons argued much by saying that in cross-examination this witness admitted to the effect "when I saw fire inside the room at that time I did not see khokan Patra there in the room." Due to this statement the learned Advocate argued that the evidence of this witness cannot be relied upon as there is material contradiction in between the statement as made in-chief and cross-examination. But we regret, we cannot agree with this argument. We should remember that age of P.W: 17 was at the time of deposition was not more than twelve years. We cannot expect that there will be no minor discrepancy in the statement of this witness. If we look into this part of the evidence then it appears that what this witness wanted to say was that he did not see accused Khokan Patra inside the room. That does not nullify his earlier statement that he found Khokan Patra present just outside the room. The statement of this witness to the effect that Khokan Patra was very much present in that house on that night has remained unshakened even in cross-examination. We do not find any reason whatsoever as to why this witness will depose falsely against the accused persons without any reason whatsoever. Learned Advocate also drew our attention to the statement of this witness made in cross to the effect "1 was not examined by police over the incident on any occasion." By this, according to the learned Advocate the evidence of this witness is inadmissible as he was not examined during investigation. But if we look into the later part of that cross-examination then we will find that defence itself gave suggestion to this witness to the effect, that he told something to the police during investigation. So, this argument of the learned Advocate for the accused persons does not stand at all and we do not attach any importance to this argument. The manner in which this witness has deposed clearly shows that he has given a correct version regarding the alleged incident. He has clearly described that on that night he found that body of Bandana was burning and she could not speak anything. It is not possible for a child witness like this P. W. 17 to differentiate at that moment as to whether Bandana at that time was already dead or not. He has categorically stated that he found that blood was oozing out from the right ear of the deceased. This statement of this witness finds clear

corroboration from the inquest report. Naturally, due to all these things we are of opinion that the evidence of this witness is most trustworthy and there is no reason to disbelieve his statement.

28. Of course, it is well settled principle that a person should not be convicted on the basis of any uncorroborated statement of a child witness. Prudence requires that some corroborations are required in order to pass a conviction order on the basis of the statement of a child witness. In this context reliance can be placed on the decision reported in Paras Ram v. State of Himachal Pradesh, 2001 C.Cr. L.R. (SC)9. Wherein it has been decided that there is no legal bar against relying on the testimony of a child witness if the Court is satisfied that her evidence is reliable, Even so, the Courts always insisted on adequate corroboration of the evidence of such a child witness. We have already pointed out that the evidence of the child witness viz. P.W.I7 Janmenjoy Mirdya withstood the cross-examination and there is nothing to disbelieve his statement. There is nothing on record to show that this witness deliberately made a false statement against the accused persons. As such we have got no hesitation to believe the statement of the P.W. 17. Let us now see as to how far the statement of this P.W.I 7 has been corroborated from the other surrounding circumstances.

29. From the evidence of the P.W. 17 it appears that he claimed that he narrated the incident to his parents and other relatives immediately after reaching his father''s house. True it is that his father and uncle did not say anything about that in their evidence. In the F.1.R. also there is no mention about the incident as stated by the P.W. 17 in his evidence. But the father and uncle of this P.W. 17 could not deny that they heard about incident first from the P.W. 17 Janmenjoy Mirdya. The learned Advocate for the appellant argued that in view of the statement of the father and uncle of the P.W. 17, it should be presumed that the said P.W. 17 did not say all those things to them, as he has deposed in Court at the time of trial. But if we look into the evidence of the mother of the deceased as well as some other relatives then it will appears that they have claimed that the P.W. 17 Janmenjoy Mirdya narrated the entire incident to them. The manner in which the father and uncle of the deceased deposed in this case left a scope for doubt. For reasons best known to them, they felt shy to give a detailed description of the incident as was. narrated to them by the P.W. 17. But simply for this reason we cannot brush aside the evidence" of the P.W. 17. It is clear that the mother and other relatives, some of whom are ladies, really supported the P.W. 17 and claimed that he narrated the entire incident to them immediately after his death of return to the village. The mother is the most important witness so far as the death of the deceased is concerned. It is quite natural for her to describe the incident she heard from the P.W. 17 and actually she did it during the disposition. Under such circumstances we are opinion that the prosecution has been able to prove that the P.W. 17 narrated the entire incident to the relatives immediately after his return to the village. The net result of this evidence is that the prosecution has been able to prove prima facie that actually

Bandana died in a suspicious condition due to fire and at that time both the accused persons were present in the said house. There is no dispute that Bandana died within few years of her marriage and naturally when she died in a suspicious condition in her in-laws'' house then onus shifts on the appellants to explain the actual cause of death. But in order to discharge the said onus the appellants actually did not take any step whatsoever.

30. Be that as it may, let us now consider some of the aspects which were present in the house of the deceased at the time of her death. The evidence of the P.W. 17 has clearly established that on that fateful night besides himself, both the appellants and the two minor children of the deceased were present. One of the child of the deceased was aged about 2/3 months. It is admitted position that the P.W. 17 was at that material time a minor so the fact remains that on that night besides Bandana only two major persons were present in the house i.e. the accused persons. The P.W. 17 has clearly stated that when he woke up he found that the body of Bandana was burning. He has stated that the appellants, who were standing by the side of the door, did not take any step for putting off the said fire. It is most unnatural that a husband and mother-in-law will remain static even after seeing the daughter-in-law/wife burning. The appellants could not deny that on that night they were present in that house. The attitude of the appellants, as pointed out by the P.W. 17 appears to be very suspicious in nature and it clearly goes against the appellants, and supports the prosccution case that actually both these appellants were instrumental in causing the death of the deceased. In their statements made u/s 313 Cr. P.C, the appellants had taken a plea that it was an accidental fire due to which Bandana died. But if we look into the answer given by the husband in Section 313, Cr. P.C. then it will appear that the husband claimed that Bandana committed suicide. On the other hand suggestion has been given to the effect that Bandana died due to accidental fire. So it is clear that the appellants are not sure about their stand regarding the death of Bandana who died in a suspicious condition in their house. We have already pointed out that onus lies of the appellants to prove as to how Bandana died. We have got no hesitation to hold that the appellants have thoroughly failed to give any satisfactory explanation regarding the suspicious death of Bandana. This fact clearly goes against the claim of the appellants.

31. If we look into the statement as made by accused Khokan Patra in his examination u/s 313, Cr. P.C. then it will appear that he has claimed to the effect that he and his mother Smt. Bharati Patra shouted and the villagers came hearing that sound in that night. But no evidence whatsoever has been forthcoming on behalf of the appellants to prove this claim. As such it is clear that the appellants are merely setting up these pleas in order to establish their innocence. We have got no hesitation to hold that the claim of the appellants in this regand. has not at all been established by adducing cogent evidence and as such we have got no other alternative but to disbelieve this claim.

32. Another importance factor that should be taken note in connection with this case, is that, the P.W.17 Janmcnjoy Mirdya has claimed that on that night the minor daughter of Bandana who was aged about 2/3 months was with her in that room when fire broke out. It is expected that this baby aged about 2/3 months would be by the side other mother and if there was any accidental fire then under normal circumstances it is expected that the said fire will also touch the said minor daughter. But surprisingly enough this baby did not sustain any burn injury at all. This fact certainly raised a doubt regarding the theory of accidental burn injury sustained by the deceased, as claimed by the appellants. It leads us to the conclusion that the baby must have been removed from the place of occurrence immediately before the setting up of fire on the body of the deceased. The appellants, as we have already pointed out, tried to put up a theory that Bandana sustained accidental burn injury. But if we look into the inquest report then it will appear that there was no sign of burn on the different parts of the room where the incident actually took place. The inquest report can be looked into to test the veracity of witness or to prove any circumstance which is relevant to a particular case. In this respect we rely on the decision reported in Kuldip Singh Vs. State of Punjab, . Moreover, in case of an accidental lire, as claimed by the appellants, normally it is expected that the person-who sustained the bum injury would try her best to save her life and for that she is expected to run here and there leaving signs of burn in different places. But from the inquest report it appears that there was no sign of burn in the different parts of the room where the body of Bandana was lying. This fact clearly nullifies the claim of the appellants that Bandana died due to accidental fire and on the contrary it strengthens the prosecution claim that actually Bandana was murdered and thereafter fire was set on her body. I his circumstance is also very much against the appellants.

33. Learned Advocate for the appellants drew our attention to the Post Mortem Report of the deceased wherein the Doctor, who conducted the Post Mortem, opined that the death of the deceased was suicidal in nature. By this the learned Advocate submitted that in view of the opinion of the Post Mortem Doctor it should be accepted that the deceased committed suicide and the case of the prosecution that she was murdered by the appellants should be disbelieved. But the report of this Doctor who conducted the Post Mortem appears to be somewhat perverse in nature. This Doctor in his report has slated that he found burn injuries all over the body (hundred per cent) of the deceased. According to him death of the deceased was due to this burn injury. Without disputing the remark of the Doctor regarding the injuries on the body of the deceased, it can be said that the Doctor has exceeded his jurisdiction by mentioning that the death was suicidal in nature. How it is possible for a Doctor to say that the deceased committed suicide by setting up lire on her body herself or the deceased sustained burn injuries as lire was put on her body by someone else. It is not within the competence of the doctor to opine as to the nature of the death whether it is suicidal or not. The opinion of the Doctor that

the deceased died as she sustained hundred per cent burn injury is acceptable but not. the opinion regarding the cause of the death i.e. suicidal or not. If we look into the Post Mortem report then it will appear that this Doctor did not detect anything unnatural while examining dead body excepting that it sustained burn injuries (hundred percent). But if we look into the evidence of the P. W. 17 then it will appear that he emphatically claimed that he found that blood was oozing out from the ear of the deceased. This claim of the P W. 17 finds clear support from the inquest report which was conducted few hours after the incident and prior to the Post-Mortem examination. In the inquest report it has been stated clearly to the effect "blood is coming out of the right ear". This fact is most important so far as the dead body of the deceased is concerned and it is expected that the post Mortem Doctor also must have noticed the same. Inspite of that the Post-Mortem Doctor did not mention anything about this injury in his Post Mortem Report. The manner in which the Post Mortem has been done by the Doctor appears to be very much suspicious in nature. Also the manner in which the Doctor has deposed in this case is not at all satisfactory. He has admitted in his deposition that he gave his opinion on assumption on inspecting the dead body. At the same time in cross-examination this witness stated that on inspecting the dead body and considering the hundred per cent burn injury, he came to the conclusion that it was not homicidal but suicidal. We have already pointed out that it is not within the competence of the Doctor to give opinion as to whether a person sustained hundred per cent injury for committing suicide or the said person sustained the said injury after fire was set on her body by somebody else. As such, we are of the opinion that no importance should be given to this opinion of the Post Mortem Doctor so far as the present case is concerned. Learned Advocate for the appellants argued that in case of contradiction in the inquest report with that of the Post Mortem Report, the later should prevail and in this respect he relied on the decision reported in State of Raj. v. Mahavir@ Mahavir Prasad, AIR 1983 SCC (Cri.) 199, wherein it has been decided that Post Mortem Report should be preferred to the inquest report prepared by Police Officer during investigation. We have gone through the said decision carefully. To out mind, the said decision is not applicable so far as the present case is concerned as the fact is entirely different. Even then in the said decision it has been clearly laid down to the effect "Post Mortem Report and the testimony of Doctor who conducted the Post Mortem, if otherwise reliable, held, preferable to the Panchnama prepared by Police during inquest," so, the ratio decided in this case puts a pre-condition that the Post Mortem Report and the testimony of the Doctor can be accepted if it is otherwise reliable." But so far as the present case is concerned we have shown that the opinion given by the Doctor that the death of Bandana was suicidal in nature has got no relevancy at all as the said Doctor could not give such opinion so far as the present case is concerned. We have also pointed out that the evidence of the Doctor who conducted the Post Mortem report in this case is not at all reliable. Under such circumstances, we are not in a position to place our entire reliance upon the Post Mortem Report as conducted by the Doctor and as

such we find no reason to disbelieve the statement in the inquest report as prepared during investigation and immediately after the incident. So, simply because the Doctor has opined that the death of Bandana was suicidal in nature it cannot be said that Bandana committed suicide. Particularly when, as pointed out by us earlier, there are overwhelming circumstantial evidence which clearly shows that actually Bandana was murdered.

34. Therefore from our above discussion we are of the opinion that the prosecution first of all has been able to prove that death of Bandana took place in suspicious circumstances in the house of her in-laws and at the time of her-death besides the two appellants, there were no other major persons present in the said house. The prosecution has further been able to prove that the P.W.I7 found that the body of Bandana was burning in the room and both the appellants were standing by the side of the door and they did not take step to save the life of Bandana. It has transpired from the evidence on record that the baby of Bandana who was in the said room at the relevant time did not sustain any injury and there was no sign of burn on the different parts of the room in which Bandana expired. As per the decision reported in State of Rajasthan Vs. Mahavir @ Mahavir Prasad, if death occurs in suspicious circumstances, a reasonable explanation is expected from the respondent as to how the death took place. But so far as the present case is concerned the only explanation, as given by the appellants, as it appears from record, that either Bandana sustained accidental burn injury or she committed suicide by setting fire on her self. We have already discussed that this alibi taken by the appellants during trial could not be established by way of adducing evidence and the circumstances which we have discussed earlier excludes the possibility of suicide or accidental death. So from the evidence of the P.W. 17 Janmenjoy Mirdya i.e. child witness, as well as from the corroboration of those statements by the chain of circumstances which we have discussed earlier, it is clear that the prosecution has unmistakably been able to prove that Bandana did not commit suicide or she did not die due to accidental fire and the only logical conclusion of the evidence as it appears from record is that it was the accused persons, i.e. the present appellants who caused murder of Bandana in their house in furtherance of their common intention and as such we fully agree with the finding of the. 1earned Additional Sessions Judge that it was the accused persons who are guilty of murder and as such they are liable to be punished for the offence u/s 302/34, I.P.C. The punishment, as imposed by the learned Additional Sessions Judge appears to us to be reasonable and we do not interfere with the said finding.

35. Therefore, from our above discussion, we are of the opinion that the prosecution has been able to prove the charge u/s 302/34, I.P.C. against both the appellants and the learned Court below is perfectly justified in sentencing them in accordance with law. We however are of the opinion that the charge u/s 498A, I.P.C. has not been proved beyond doubt by the prosecution and the accused persons are entitled to get the benefit for the same and as such we are of the opinion that they are liable to

be acquitted so far as the offence u/s 498A, I.P.C. is concerned. The order of the learned Court below is modified to that extent.

36. The appeal is thus disposed of.

Nure Alam Chowdhury, J.

37. I agree.