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 Anuj Singh

C.R.A. 639 of 2018

Nasiba Bibi @ Nasiba Mir & Anr.
Versus
The State of West Bengal

For the Appellants	: Mr. Subir Ganguly, Mr. K. N. Nabi.
For the State	: Mr. Pradip Banerjee, A. P.P. Mr. Somnath Bera, Ms. Kritika Jain.
Heard on	: October 14, 2026.
Judgment on	: October 14, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against the judgment and order of conviction dated 13th September, 2018 and sentence dated 14th September, 2018 passed by the learned Additional District & Sessions Judge, Fast Track Court, Kalna in Sessions Trial No. 27 of 2014 arising out of the Sessions Case No. 6 of 2014. The appellants were convicted under Sections 498A/304B of the IPC. The appellant Mir Nazrul Islam was convicted for rigorous imprisonment for life and a fine of Rs. 10,000/- under Section 304B of the IPC and was also sentenced to suffer

rigorous imprisonment for 3 years and a fine of Rs. 2,000/- under Section 498A of the IPC.

2. Nasiba Bibi, deceased convict was sentenced to suffer simple imprisonment for 3 years and a fine of Rs. 3,000/-. In default, imprisonment for 3 months. Nasiba Bibi died during the pendency of the appeal on 1st December, 2025. Her name was struck off by a Co-ordinate Bench of this Court.

THE PROSECUTION CASE:

3. The prosecution case in brief is that the victim Hamida Firdousi, 34 years of age, was married to the appellant Mir Nazrul Islam on 25th May, 2009. The marriage was a negotiated one. At the time of marriage on the demand of the appellant and his family, the victim's family paid Rs. 60,000/- in cash, about 6 vories of gold ornaments, bedding and other household utensils in dowry. After few days of marriage, the victim was subjected to physical and mental torture of her husband Mir Nazrul Islam, brother-in-law, Mir Sirajul Islam and his wife Nice Begam and her mother-in-law. The torture was aimed at the victim being unable to bring further 50,000/ Rupees from her parents.

4. An attempt was made to reconcile the difference in her family and Syed Md. Ali, brother of the victim, upon being informed of the torture on the victim, went to the house of the appellant and requested them not to

torture the victim. The victim could not pay the further demand of Rs. 50,000/- post marriage since her father was seriously ill.

5. When the torture continued after 26th July, 2010, the PW-1, Syed Md. Ali and his mother once again, tried to explain to the appellant of the inability to pay any sum of money and also requested the appellant not to inflict any torture on the victim.

6. On the 10th of August, 2010, the victim's family received a phone call from the neighbours of the victim that she was seriously ill and was advised to take back to her father's house for treatment. When the family of the victim arrived at the matrimonial house along with other villagers, they found the door of a room in the matrimonial house of the victim locked from outside. Smoke was blowing from the room. They called the police and broke upon the door. They found the victim lying on the floor substantially burnt. The victim had died.

7. Inquest was conducted on the victim by the Monteswar Police. The PW-1 lodged a written complaint with the Monteswar Police. On 10th of August, 2010, based on which an FIR being No. 116 of 2010 dated 10th August, 2010 was registered under Sections 302/34 and 498A/34 of the IPC against four persons, namely, the appellant, one Mir Sirajul Islam, brother-in-law of the victim, mother-in-law of the victim and Nice Begam, ex. wife of Mir Sirajul Islam.

8. The second inquest was thereafter conducted by the SDO. Both the Inquest Officers found that there were injuries, viz. wounds fracture and bruises burn on the victim. Two injuries were found on the eyebrow and the shoulder of the victim. The third on the lateral side of the abdomen. The relatives of the victim stated that the cause of the death was unnatural and due to family problems.

9. Investigation was commenced by PW-11, the first Investigating Officer and completed by PW-8 and PW-9, the subsequent Investigating Officers. Charges against the appellants were framed in two stages. Firstly, on 12th August, 2014 under Section 302 read with Section 34 and Section 498A read with Section 34 of the IPC. Subsequently, charges were modified on 25th August, 2016 under Section 304B read with Section 34 of the IPC.

10. On behalf of the prosecution, **PW-1** was **Syed Md. Ali**, the de facto complainant and younger brother of the deceased. He narrated the entire prosecution case as indicated hereinabove. He was thoroughly cross-examined by the appellant. His evidence could not be seriously shaken.

11. **PW-2** was **Mir Abul Kashem**, father of co-accused Nice Begam. He did not have any personal knowledge of the incident. He admitted in course of cross-examination that his daughter who was married to accused Mir. Sirajul Islam got divorced. She was living with **PW-2** for 18 years after divorce. He confirmed that he had not lodged any proceeding

against the appellant or his family or son-in-law Mir Sirajul Islam. He, however, claimed that the victim was tortured by the appellant. He also admitted in cross-examination that he had no visiting relations with the appellant for a substantial period of time.

12. **PW-3** was **Nur Nehar Begam**, the mother of the accused Nice Begam. She was the wife of PW-2. She also did not have any personal knowledge of the circumstances under which the victim was tortured of burn.

13. **PW-4** was **Sk. Azizul Hoque**, a local villager and political leader who turned hostile.

14. **PW-6** was **Syed Mustafa Ali**, elder brother of the victim. **PW-12** was **Aftab Unnesa Begum**, mother of the victim. Both of them deposed on the lines of the prosecution case and on the lines of PW-1's evidence. Both PW-6 and PW-12 confirmed that the victim came to her father's house and stayed there for 10 to 15 days from time to time and informed them of physical torture by the appellant and his family and demanded for further sum of Rs.50,000/- post marriage. They also confirmed as did PW-1 that the victim told her mother both over telephone and in person that the appellant and his family tortured the victim and demanded Rs.50,000/-. PW-1 and PW-6 explained they do not inform the police for social reasons and to ensure somehow that the marriage between the victim and the appellant would continue.

15. **PW-10** was the first Inquest Officer, who found several injuries on the body of the victim particularly brushes marks on the eye brow, shoulder and left side of abdomen of the victim.

16. **PW-11** was the first Investigating Officer, **Sriram Layek**, He seized the iron rod, a wooden stick, a gas lighter and kerosene container from the place of occurrence immediately after the incident. Both Inquest Officers, who deposed in the evidence and proved their Inquest Report, indicated that there is smell of kerosene emanating from the body of the victim apart from indicating injuries on her body.

17. **PW-7** was **Doctor Debasish Sarkar**, who performed the post mortem on the victim, 60 hours after the death. He confirmed that there are two lacerated wounds on shoulder and neck of the victim. There is no mention of any other injury on the body of the victim.

18. All the accused persons were examined under Section 313 of the Code of Criminal Procedure. They did not offer any explanation as to under what circumstances the door of the room where the victim died was locked from outside. They did not explain where they were when the victim caught firm. They also do not offer any alibi to explain their presence elsewhere in course of the incident.

19. Based on the evidence as above, the Trial Court convicted the deceased appellant under Section 498A of the Indian Penal Code and the

appellant under Section 304B of the Indian Penal Code and sentenced them as already stated hereinabove.

ARGUMENTS OF THE COUNSEL AND ANALYSIS OF THIS COURT:

20. Learned Counsel for the appellants would firstly argue that the prosecution has not been able to demonstrate by any evidence that it is the appellant or his family members, who set the victim on fire. It is also argued that there is a variation between the date on which the iron rod, wooden stick, kerosene container and lighter were seized. This, according to the appellants, would be evident from the evidence of PW-8 and PW-9, who deposed that there is a variation between the date of such seizure and signature of the witnesses. It is lastly argued that PW-2 and PW-3 were interested witnesses, who had a grudge against the family of the appellants since their daughter was divorced with the accused Mir Sirajul Islam. It is also pointed out that the very inclusion of Nice Begum as accused would show the desperation of the prosecution.

21. Admittedly, Nice Begum was not residing in the house of the appellants for 18 years and PW-2 and PW-3 do not have any good relations with the family of the appellants.

22. This Court has carefully heard the arguments of the learned Counsel for the appellants as also considered the evidence on record.

23. It is now well-settled that when an incident of this nature occurs in the privacy of the house, there is unlikely to be any eyewitness to the same. What is clear and evident before this Court is that the victim was set on fire after pouring kerosene on her. She was definitely assaulted before setting her on fire. The injuries noticed by Post Mortem Doctor and more noticed by the Inquest Officers, clearly indicate that the same could not be inflicted by the victim herself. The prosecution witnesses were not cross examined on this aspect.

24. In so far as setting the victim on fire is concerned, one basic ingredient of burning by Kerosene and torture on the victim are established, the appellants are required to explain under Section 106 of the Evidence Act, as to under what circumstances, the victim caught herself on fire.

25. In the examination under Section 313 of the Code of Criminal Procedure, where the appellants got an opportunity to discharge such burden under Section 106 of the Evidence Act, they have remained completely silent and only denied the suggestion of circumstances that have emerged against them. The arguments of the learned Counsel for the appellants, therefore, cannot be acceptable. **PW-1**, **6** and **12** were not cross examined to dislodge any allegation of torture for dowry or setting the victim on fire.

26. In so far as variations between the injuries indicate on the body of the victim by the Inquest Officer and PW-7, the Doctor, are concerned, this Court notices as follows:

(a) The first person to inspect the body of the deceased is the Inquest Officers. In the instant case, the death occurred within seven years of marriage of the victim. The Inquest Officers have noted several brushes on the shoulder, eye brow, abdomen and neck of the victim.

(b) Two of such injuries have been confirmed by PW-7, the Doctor.

27. This Court is inclined to accept the report of the Inquest Officer as regards injuries on the body of the victim. The suggestion given by the defence that the victim was suffering from a scalp infection, have been clearly explained by the Post Mortem Doctor as not being the cause of death. The arguments of learned Counsel for the appellants, therefore, are not acceptable to this Court.

28. In so far as the variation in the date of seizure of the kerosene container, iron rod, wooden stick and lighter are concerned between the I.O. and witnesses, this Court notices that the omission and/or variations as regards the date of seizure are but minor and do not seriously affect the prosecution case.

29. The last argument advanced by the learned Counsel for the appellants that he has already suffered more than eight years of incarceration and that punishment inflicted on him must be reduced to the extent of incarceration already suffered. This Court notices that the appellant no.2 is a Deed Writer by profession and a Graduate. He was, therefore, literate and aware that a demand for dowry is ex facie illegal. The murder of the victim by the family of the appellants has been established beyond any reasonable doubt. With the increasing number of dowry death cases in the country, a punishment of life imprisonment is commensurate with the offences alleged against the appellants.

30. Since the accused, Mir Nazrul Islam and Nasiba Bibi have been acquitted by the Trial Court, this Court does not wish to comment upon the same.

31. In the light of the discussions made hereinabove, this Court is of the view that the conviction and sentencing the surviving appellant, namely, Mir Nazrul Islam by the Trial Court does not call for any interference. The said order of conviction and sentence of Mir Nazrul Islam for by the Trial Court is hereby confirmed.

32. C.R.A. 639 of 2018 fails and is hereby dismissed.

33. Let a copy of this judgment along with the Trial Court's Record be forthwith sent down to the trial Court for necessary compliance.

34. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(*Rajasekhar Mantha, J.*)

I agree.

(*Anuj Singh, J.*)