

HIGH COURT OF TRIPURA
AGARTALA
Crl. A (J) 1/2022

Shri Samir Munda

son of late Mukta Munda, resident of Amgachia (Ishanpur),
P.S. Sidhai, District- West Tripura

----Appellant

Versus

The State of Tripura

----Respondent

For Appellant(s)	:	Mr. S. Lodh, Advocate
For Respondent(s)	:	Mr. S. Debnath, Addl. PP
Date of hearing and delivery of Judgment & Order	:	23.03.2023
Whether fit for reporting	:	Yes / No

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT (ORAL)

(Amarnath Goud, ACJ)

Heard Mr. S. Lodh, learned counsel appearing for the appellant as well as Mr. S. Debnath, learned Additional PP appearing on behalf of the respondent.

2. This appeal arises out of the judgment and order of conviction and sentence dated 08.01.2021 and 11.01.2021 respectively passed in connection with case No. S.T. (T-1) 80 of 2019 by the learned Additional Sessions Judge, Court No. 5, West Tripura, Agartala, whereby and whereunder the learned Additional Sessions Judge had convicted the appellant for the offence punishable under Section 302 IPC, and sentenced him to suffer R.I. for life with default stipulation.

3. The case of the prosecution, in brief, is that, on 21.07.2014 at about 24:00 hours the appellant herein has set his wife in fire by pouring kerosene

oil with a view to kill her resulting which she sustained burn injuries on her person, and thereafter, she was shifted to AGMC and GBP hospital for treatment, and subsequently the victim succumbed to her injuries while she was an indoor patient in the hospital.

4. The said complaint was registered as Sidhai PS case no. 65 of 2014 under Section 307 of the IPC and later on section 302 has been added. The matter was investigated by the investigating officer, and after completion of investigation submitted charge-sheet against the convict appellant under Sections 498A/307/302 of the IPC. At the commencement of trial, the learned Additional Sessions Judge had framed charge against the convict appellant under Section 302 IPC to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution to establish the charge had adduced 14 (fourteen) witnesses and exhibited some documents. After closure of recording evidences, the convict appellant was examined under Section 313 Cr.P.C. wherein he denied all the allegations levelled against him by the prosecution witnesses and also denied to adduce any evidence on his behalf. After hearing arguments and on examining the evidences and materials on record, the learned Additional Sessions Judge had convicted and sentenced the appellant for committing offence punishable under Section 302 IPC. Hence, this appeal before this court.

6. Mr. Lodh, learned senior counsel for the appellant has submitted that the prosecution has miserably failed to establish the charge levelled against

the convict-appellant. Mr. Lodh, learned counsel has submitted that the victim while was engaged herself in cleaning, she was burnt from the fire from the lantern. Mr. Lodh, learned counsel has also submitted that there are lot of contradictions between the depositions of the prosecution witnesses especially PW-1, 2, 3 and 4. Mr. Lodh, learned counsel has also submitted that as per forensic report, there was no smell of kerosene except smell from the blouse which can establish that the victim was burnt by pouring kerosene on her body. Further, Mr. Lodh has submitted that the child of the victim was not examined by the prosecution. He has also submitted that there is no dying declaration of the victim and that during examination of the appellant under Section 313 Cr.P.C. he has specifically stated that at the relevant point of time he was not present there and he has not burnt his wife. Lastly, Mr. Lodh, has urged this court to set the appellant at liberty.

7. On the other hand, Mr. S. Debnath, learned Additional PP has supported the findings of the learned trial court while convicting the accused. Mr. Debnath, learned PP has also submitted that if the evidences of prosecution witnesses are read conjointly, it could safely be presumed that the convict appellant had committed the alleged offence. Hence, learned Addl. PP has submitted to maintain the findings of the learned trial court.

8. We have considered the submissions for learned counsel appearing for the parties. We have also perused the evidences and materials on record and the judgment passed by the learned Additional Sessions Judge.

PW 1, the complainant in his testimony deposed that about 5 years and 2 months back, one day at midnight around 12, Ratish Gatowal called him from his house and on his call he rushed to his house where he found his sister i.e. the victim herein, was lying with severe burn injury and on being asked by him, his sister told him that her husband set her on fire after pouring kerosene upon her. He further deposed that thereafter, he arranged for shifting her to hospital. PW-1 further stated that the appellant Samir used to quarrel with his sister and also used to beat her.

PW 2, in his deposition stated that about 5 years and 2 months back at midnight at around 12 he and his wife heard cry of Panchami (victim) in their courtyard uttering “save me, Save me”. He further deposed that immediately they came out of their dwelling house and found the body of Panchami was burning and he extinguished the fire by pouring water and thereafter he called the local people and brother of Panchami (PW-1). This witness further deposed that on being asked Panchami told that her husband Samir set her on fire after pouring kerosene upon her. Thereafter, Panchami was shifted to hospital for treatment. This witness further deposed that prior to the incident accused Samir used to quarrel with her and used to beat her.

PW 3 also deposed in the same tune that of PW-2, her husband.

PW 4, also corroborated the depositions of PW-2 and PW-3.

PW 7, is the Medical Officer who conducted post mortem examination over the dead body of the victim, Panchami. As per postmortem report prepared by PW-7, the cause of death was shock as a

result of burn injury involving 60 percent of total body surface area caused by flames. In her cross-examination, PW-7 deposed that she did not find any smell as to presence of kerosene oil either in the body or in the wearing apparels of the deceased.

PW 11, in his deposition deposed that about 5 years back in the midnight on hearing hue and cry in the house of Ratish Gatowal (PW-2) he rushed there from where he came to know from local people that accused Samir Munda set his wife in fire after pouring kerosene and the victim was shifted to hospital before his arrival.

PW 12, is the Deputy Director of SFSL and he deposed that on examination of Exhibit-B, one purple coloured partially burnt blouse, he found positive for the presence of kerosene oil.

9. On scrutiny and scanning of prosecution evidence and other materials as well as the defence evidences and facts and circumstances on record keeping them in juxtaposition, it transpires clearly that on the alleged date of incident, Panchami sustained burn injuries on her person which were put to flame by pouring kerosene. From the evidences on record, it further transpires that PW-2 and 3 are her closest neighbours whom she had called and sought for help and also had disclosed the fact that she was put on fire by her husband by pouring kerosene oil. Thereafter, PW-2 called PW-1 and PW-4, who had subsequently arrived at the spot and found the victim lying in burnt condition wherein the victim had also disclosed to them that she had been put to burn by pouring kerosene oil by her husband. Thus, PW-2 and 3

are thereby considered to be the persons who were reported first by the victim and are also considered to be the eye witness to the alleged incident, accordingly, the statements of these witnesses are admissible under Section 6 of the Evidence Act. Section 6 of the Evidence Act, 1872 reads as under:

“6. Relevancy of facts forming part of same transaction.—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

10. Applying the ratio of the aforesaid evidences of PWs 1, 2, 3 and 4, indicating that the incident was narrated to them by the victim would become admissible under Section 6 of the Evidence Act. PWs 1, 2, 3 and 4 had deposed unequivocally that she had been put on fire by her husband, the appellant herein, by pouring kerosene on her, which could not be shaken by the defence in any manner whatsoever, and also the said prosecution witnesses are very categorical to their version. Further, the accused failed to bring any defence during his examination under Section 313 Cr.P.C. and also failed to discard the evidences of the prosecution witnesses by producing any defence witness.

11. In view of the foregoing discussions, it can be held that there is nothing which could shatter the veracity of the prosecution witnesses or falsify the claim of the prosecution. All the prosecution witnesses have materially supported the prosecution case and the testimonies of the prosecution witnesses (PWs 1, 2, 3 and 4) do not suffer from any material infirmity, and are consistent and corroborative. The prosecution witnesses

have been able to build up a continuous link. Therefore, the prosecution has been able to prove the necessary intent and knowledge of the accused to commit the murder of the deceased. As such, the prosecution has proved the essential ingredients of the offence for which the accused is charged with. Thus, we have no hesitation to agree with the order of conviction passed by the learned court below. We, therefore, confirm the sentence passed by the learned court below. The appeal is accordingly dismissed.

Send down the LCRs.

JUDGE

CHIEF JUSTICE (ACTING)



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