

**HIGH COURT OF TRIPURA
AGARTALA
Crl.A(J) No.14/2022**

Sri Bimal Paul, S/O. Late Brajendra Paul, resident of Uptakhali, Bhumihin Colony, P.S.-Panisagar, District-North Tripura, Tripura.

.....Convict-Appellant(s).

V E R S U S

The State of Tripura

.....Respondent(s).

For Appellant(s) : Mr. D.K. Daschoudhury,
Legal Aid Counsel.

For Respondent(s) : Mr. Ratan Datta, P.P.,
Mr. S. Ghosh, Addl. P.P.

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

Date of hearing and judgment : 06th April, 2023.

Whether fit for reporting : NO.

JUDGMENT & ORDER (ORAL)

Heard Mr. D.K. Daschoudhury, learned legal aid counsel appearing for the convict-appellant. Also heard Mr. S. Ghosh, learned Additional Public Prosecutor, appearing for respondent-State.

2. By means of this appeal filed under Section 374(2) read with Section 383 of the Code of Criminal Procedure (Cr.P.C., for short), the appellant has challenged the judgment dated 30.09.2021 passed by the learned Sessions Judge, North Tripura, Dharmanagar in case No. ST (Type-

I) 16 of 2019 whereby the learned Sessions Judge has convicted the accused-appellant under Sections 326 and 307 of Indian Penal Code (IPC, for short) and sentenced him to suffer R.I. for a term of five years and to pay a fine of Rs.5,000/-, in default to suffer S.I. for another three months for commission of offence punishable under Section 326 of IPC and also to suffer R.I. for a term of ten years and to pay a fine of Rs.10,000/-, in default to suffer S.I. for another six months for commission of offence punishable under Section 307 of IPC.

3. Appellant has prayed for the following reliefs:

- "(i) Admit the appeal;
- (ii) Notice the respondent;
- (iii) Call for the trial Court records;
- (iv) After hearing set aside the impugned judgment and orders of conviction and sentences and acquit the appellant from the charges leveled against him;

AND

- (v) Pass any other order as Hon'ble High Court deems fit and proper."

4. That fact of the case, in brief, is that on 13.08.2018 one Smt. Shibani Paul, wife of accused Bimal Paul lodged an oral complaint before the police of Panisagar P.S. to the effect that about 8 (eight) years ago her marriage was solemnized with the accused-appellant Bimal Paul as per Hindu rites and customs and out of their wedlock, one son and two

daughters were born. But since beginning of their marriage, there was no peace and happiness in the family as the accused-appellant often used to assault his wife physically under the influence of liquor and the intensity of torture was gradually increasing. On 13.08.2018 at about 3.30 p.m. the appellant with a view to kill his wife assaulted her with a branch of tree resulting which she became senseless. Thereafter, the appellant poured kerosene oil on her body and set her ablaze with a burning matchstick.

5. On the basis of aforesaid complaint, Officer-in-Charge of Panisagar P.S. registered Panisagar P.S. Case No.2018 PNS 039 u/s 498A/326/307 of IPC against the accused-appellant and on completion of the investigation, the Investigating Officer finding *prima facie* case submitted charge sheet against the accused for the commission of offence punishable under Sections 498A/326/307 of IPC. After hearing the arguments of both sides, the learned Sessions Judge, North Tripura, Dharmanagar by judgment dated 30.09.2021 convicted the accused-appellant under Sections 326/307 of IPC and sentenced him to suffer R.I. for a term of five years and to pay a fine of Rs.5,000/-, in default to suffer S.I. for another three months for commission of offence punishable under Section 326 of IPC and also to suffer R.I. for a term of ten years and to pay a fine of Rs.10,000/-, in default to suffer S.I. for another six months for commission of offence punishable under Section 307 of IPC. Aggrieved thereby, the accused has preferred the

present appeal for setting aside the judgment dated 30.09.2021 passed by the learned Sessions Judge, North Tripura, Dharmanagar in case No. ST (Type-I) 16 of 2019. Hence, this appeal.

6. During trial before the Court below, prosecution examined as many as 9(nine) witnesses. Let us now evaluate the evidence of vital prosecution witnesses.

PW-1, the victim Smt. Shibani Paul, stated that about 8/9 months back suddenly fire caught on her wearing apparels from gas oven. She became senseless and was taken to hospital by her husband and local people.

But from her statement, it revealed that the victim resiled from her earlier statement and accordingly, she was cross-examined by the prosecution.

During cross-examination, victim admitted that on 13.08.2018 at about 3.30 p.m. her husband assaulted her with a branch of tree as a result of which she became unconscious and her husband (appellant) sprinkled kerosene oil on her body and set her ablaze with a matchstick. She further stated that one Gobinda Das (PW-3) brought her to Uptakhali hospital where she made statement before the medical officer Dr. Rajdip Das and police officer recorded her statement.

From the evidence of PW-3, Gobinda Das, it revealed that about a year back one day at about 4.30/5 p.m. victim Shibani Paul met him at a little distance from her house and she was having burnt injury on her body. She asked the witness to take her to hospital and accordingly, PW-3 took her to the emergency of Uptakhali Hospital and thereafter went to the house of the brother of the appellant to inform them about the incident.

PW-6, Dr. Rajdeep Das, stated that on 13.08.2018 victim attended the Uptakhali PHC for treatment of her burnt injury caused due to setting fire by pouring kerosene oil on her body by her husband and upon hearing the case history from her, he informed the matter to the O/C, Panisagar P.S. and accordingly, police recorded the oral ejahar of the victim.

PW-8, Dr. Dipak Haldar, stated that on 14.08.2018 he attended victim Shibani Paul at Dharmanagar District Hospital with some burn injuries and she was crying very shrill due to pain from burn injuries. She was admitted in the burn ward by PW-8 and initial treatment was given. He also opined that victim suffered 50% burn injury on various parts of her body and the injury was caused by inflammable object and it was fresh and grievous in nature.

7. Mr. D.K. Daschoudhury, learned legal aid counsel appearing for the convict-appellant, contends that the learned trial Judge without appreciating the evidence of the prosecution witnesses has arrived at a

wrong conclusion which is perverse, erroneous and based on no evidence. Counsel also contends that the learned trial Judge committed an error in relying on the hostile evidence of the victim (PW-1) who stated in her evidence that fire caught on her wearing apparels from gas stove and her husband with the help of local people shifted her to hospital. Counsel further contends that there was no eye witness of the occurrence except the victim. From the evidence of PW-8, it is apparent that one Dr. Ashish Sen, Surgeon treated the victim in Dharmanagar District Hospital but he was not examined by the prosecution. From the evidence of prosecution witnesses, it would clearly show that the accused appellant was never involved in the alleged crime and as such, learned trial Judge has committed a serious error in holding the appellant guilty of causing grievous hurt with attempt to commit murder by setting her ablaze. Accordingly, he prays for setting aside the impugned judgment dated 30.09.2021 passed by the learned Sessions Judge, North Tripura, Dharmanagar in case No. ST (Type-I) 16 of 2019.

8. On the other hand, Mr. S. Ghosh, learned Additional Public Prosecutor, appearing for respondent-State, vehemently objected the submissions advanced by the learned counsel for the appellant contending that learned Sessions Judge has rightly passed the judgment and order of sentence. Accordingly, he contends that there is no error in the impugned

judgment passed by the learned trial Court calling for any interference and prays for dismissal of the present appeal.

9. On appreciation of the evidence of prosecution witnesses as also the submissions of learned counsel for both the parties, this Court is of the considered view that the evidence of the victim was not shaken by any prosecution witnesses and the medical report/injury report was also confirmed by the medical officer (PW-8). Moreover, the evidence of the victim was also corroborated by one independent witness Gobinda Das (PW-3) with regard to taking her to hospital and the fact of her burnt injury caused by fire. So, we find no inconsistencies in the evidence of the prosecution witnesses and are of the considered view that the learned trial Judge has committed no error in passing the judgment of conviction which calls for no interference.

10. Here, this Court takes a judicial notice of the fact that the convict-appellant has been languishing in jail for more than four years and he has three minor children and if he still remains behind the bar, his wife (victim) along with the minor children will suffer a lot.

11. In view of above, the instant appeal is partly allowed. The conviction passed by the learned Sessions Judge, North Tripura, Dharmanagar vide impugned judgment dated 30.09.2021 in case No. ST

(Type-I) 16 of 2019 is upheld. The period of sentence is reduced to the extent already suffered by the convict in custody.

The convict-appellant shall be released forthwith, if he is not wanted in connection with any other criminal case.

12. With the above observations and directions, this criminal appeal stands disposed of.

13. Send down the lower court records forthwith.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

CHIEF JUSTICE (ACTING)

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