

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A NO.22 OF 2022**

The State of Tripura,

Represented by the learned P.P. Prosecutor,
High Court of Tripura,
Agartala, West Tripura.

..... **Appellant(s)**

Vs.

Sri Rasaraj Debnath,

S/o. Lt. Jadulal Debnath,
Resident of Powramura, Holakhet,
P.S.- R.K. Pur, Gomati Tripura

..... **Respondent(s)**

For the Petitioner(s) : Mr. S. Debnath, Addl. P.P.

For the Respondent(s) : Mr. A. Basak, Advocate.

Date of hearing and delivery of
Judgment & Order : 04.05.2023.

Whether fit for reporting : YES/NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH**

JUDGMENT AND ORDER(ORAL)

सत्यमेव जयते

This present appeal has been filed under Section 378(1)(b) of the Code of Criminal Procedure, 1973, against the impugned Judgment & Order of acquittal dated 01.07.2022, passed by the learned Sessions Judge, Gomati District, Udaipur, in case No.ST.34 of 2019, whereby, the learned Judge has

acquitted the accused-respondent from the charges leveled against him under Section 302 of IPC.

2. The brief fact of the case leading to this present appeal is that a written FIR was lodged by one Samir Debnath alleging, *inter-alia*, that on 02.09.2018 at around 11-30 to 11-45 p.m., suddenly he heard a hue and cry from the house of his uncle Rasaraj Debnath i.e the accused-respondent which is situated adjacent to his house. The informant and his brother noticed that their grandmother Surabala Debnath was burning in fire in the courtyard and their uncle Rasaraj Debnath was pouring kerosene from a drum on her. Then he along with his brother rushed to the rescue of their grandmother but they were restrained by the accused-respondent who threatened to kill them if they went for rescue. They raised alarm to which the neighbouring people arrived at the spot and the accused-respondent fled away. It is alleged by the informant that his uncle, the accused-respondent herein killed the victim by pouring kerosene oil and setting her ablaze.

3. On receipt of the written complaint, O/C, R.K.Pur P.S. Udaipur registered FIR No. 155 of 2018 dated 03.09.2018 under Section 302 of IPC and put S.I. Santanu Debbarma in charge of the investigation. The I/O on completion of the

investigation submitted charge sheet against the accused-respondent under Section 302 of IPC.

4. Learned Chief Judicial Magistrate, Gomati, Udaipur took cognizance of offence under Section 302 of IPC and transferred the case to the learned Judicial Magistrate 1st Class, (Court No.2), Udaipur for disposal according to law. Offence under Section 302 IPC being exclusively triable by the Court of Sessions, the same was committed to the said Court for trial after supplying the copies of incriminating papers to the accused person under Section 207 Cr.P.C.

5. Post commitment, the case was taken up for trial. Charge was framed on 05.01.2020 under Section 302 of IPC against the accused-respondent. The contents of the charge were read over and explained to him in Bengali to which he pleaded not guilty and claimed to be tried.

6. In the course of the trial, the prosecution has examined as many as 19 witnesses which are reproduced herein under:-

- PW.1 Sri Samir Debnath, Informant.
- PW.2 Sri Arjun Debnath, Relative of deceased.
- PW.3 Sri Mithun Debnath ,Neighbour.
- PW.4 Sri Shiba Prasad Bhowmik, Neighbour.
- PW.5 Md. Abdul Gani, Neighbour.
- PW.6 Sri Ratan Debnath, Relative of deceased.
- PW.7 Sri Prasenjit Debnath, Neighbour.
- PW.8 Smt. Chinu Debnath, Neighbour.
- PW.9 Dr. Jothika Debbarma, Medical Officer.

PW.10 ASI Satya Ranjan Debnath, Police personnel.
PW.11 Sri Sahadeb Debnath, Relative of deceased.
PW.12 Smt. Rina Debnath, Relative of deceased.
PW.13 Sri Pulak Bhowmik, Police Constable.
PW.14 WASI Hemlata Debbarma, Police personnel.
PW.15 Sri Jatan Debnath, Scribe.
PW.16 Sri Sridam Debnath, Son of deceased.
PW.17 Sri Abhijit Biswas, Police Constable.
PW.18 Smt. Kajal Rani Debnath, Relative of deceased.
PW.19 SI Santanu Debbarma, Investigating Officer.

7. The prosecution also proved some documents (Exbt-1 to Exbt-13). Upon closure of prosecution evidence, the accused person was examined under section 313(1)(b) of Cr.P.C. Accused-respondent denied the veracity of all the prosecution evidence and also declined to lead any oral or documentary evidence.

8. The learned Sessions Judge after hearing the arguments of both sides at length on 06.05.2022 and vide Judgment dated 01.07.2022 acquitted the present accused-respondents from the charge leveled under Section 302 of IPC.

9. Being aggrieved and dissatisfied by the said Judgment and Order of acquittal dated 01.07.2022, the present appeal has been filed praying to quash and set aside the impugned Judgment and order of acquittal dated 01.07.2022.

10. Heard Mr. S. Debnath, learned Addl. P.P. appearing for the appellant-State as well as Mr. A. Basak, learned counsel appearing for the respondents.

11. Mr. S. Debnath, learned Addl. P.P. appearing for the appellant-State submits that the Court below while acquitting the present accused-respondent ought to have considered the evidence of P.W.-1, Sri Samir Debnath who is the complainant and the eye witness to the alleged incident. Learned Addl. P.P. further stated that he along with the brother P.W.6, Ratan Debnath on hearing hue and cry in the house of the accused person rushed to the P.O. and found that their grandmother was burning and lying on the ground. They also found that his uncle i.e., the accused respondent, and aunt i.e. P.W.12 were present at the place of occurrence. They came to learn from P.W.12 that the accused-respondent set fire to their grandmother. P.W.-1 also stated that the accused respondent also threatened them not to come to the rescue of the victim, nor the accused respondent would kill them but the learned Court below did not consider that evidence. P.W.6, who is the brother of P.W.1 and the eyewitness to the alleged incident corroborated P.W.1 i.e. the complainant of this case.

To support his argument, learned Addl. P.P. pressed into service **Para-22, 24, and 26** of the Hon'ble Supreme Court Judgment reported in **2014(12) SCC 211** titled as **State of Rajasthan Vs. Thakur Singh** which is reproduced here-in-under:-

"22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in [Section 106](#) of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.

26. In our opinion, the High Court has very cursorily dealt with the evidence on record and has upset a finding of guilt by the Trial Court in a situation where Thakur Singh failed to give any explanation whatsoever for the death of his wife by asphyxia in his room. Moreover, the very fact that all the relatives of Thakur Singh turned hostile clearly gives room for suspicion and an impression that there is much more to the case than meets the eye. Even the complainant, Himmat Singh who squarely blamed Thakur Singh (in the FIR) for the murder of his wife, turned hostile to the extent of denying his relationship with Thakur Singh."

12. On the other hand, Mr. A. Basak, learned counsel appearing for the respondent submits the learned Court below rightly acquitted his client as he is innocent and the same has been indicated by the learned Court below.

13. Heard both sides and perused the evidence on record.

14. Learned Addl. P.P. relied upon the evidence of P.W.-1 and P.W.-6 to establish his case. Here, the informant (P.W.-1) was accompanied by his brother (P.W.-6) to the scene of occurrence. Ratan Debnath (P.W.-6) stated that he found his grand-mother totally burnt and the wife of the accused i.e., Rina Debnath (P.W.-12) was crying while the accused herein was holding a 'dao' in his hand and threatening them not to rescue or come to the aid of his grand-mother. He does not speak anything about the information from their aunt that the accused set fire to his mother. His evidence also does not directly disclose that the accused herein set fire to his mother after pouring kerosene. Both P.Ws-1 and 6 are the first to arrive at the scene of the occurrence and both of them did not see the accused setting fire to their grandmother. Their source of information it seems is Rina Debnath(P.W.-12), wife of the accused, and P.W.-12 turned hostile and did not depose against the accused. The witnesses herein presented their evidence in a scattered way specially P.Ws.- 1 and 6. None of the witnesses including the informant stated that they saw the accused setting fire to the victim by pouring kerosene. In such a situation the benefit of the doubt must go to the accused. Further, the motive is not established behind the reason as to why the accused would set his mother on fire who is aged

about 90 years old. In the fact and circumstances of this case, the Judgment as referred by the learned Addl. P.P is not relevant to the fact of the case.

15. In view of the above discussion, the guilt of the accused herein is not established beyond reasonable doubt. As such, the Judgment and Order dated 01.07.2022, passed by the learned Sessions Judge, Gomati District, Udaipur, in case No.ST.34 of 2019 is confirmed and the appeal herein is dismissed.

16. As a sequel stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

JUDGE

suhanjit

