

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl.A(J). No. 25 of 2021

1. Md. Matachin Ali, son of late Kanai Miah of Purba Fulbari, Ward No.04, P.S. Churaibari, District: North Tripura.

.....Appellant

-V E R S U S-

1. The State of Tripura.

..... Respondent.

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE [ACTING]
HON'BLE MR. JUSTICE ARINDAM LODH

For Appellant(s)	:	Mr. S. Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. Public Prosecutor.
Whether fit for reporting	:	YES/NO

Date of judgment and order 23rd of February, 2023

JUDGMENT & ORDER [ORAL]

[Chief Justice [Acting]]

Heard Mr. S. Bhattacharjee, learned counsel appearing for the convict-appellant. Also heard Mr. S. Ghosh, learned Addl. Public Prosecutor, appearing for the respondent-State.

[2] This criminal appeal has been filed under Section-374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 21.09.2021 in connection with S.T. (Type-1) 18 of 2020 by the learned Sessions Judge, North Tripura, Dharmanagar convicting he appellant and sentencing him to undergo rigorous imprisonment of 3 punishable under Section-498A of IPC and also to pay a fine of Rs.10,000/- for the said offence and in default of payment of fine to undergo RI of 6 months and also to suffer RI for life for commission of the offence punishable under Section-302 of IPC with a fine of Rs.10,000/- and in default to undergo RI of 6 months. However, both the sentences shall run concurrently.

[3] The factual backdrop of this case is that Md. Ali Miah, son of Late Abdul Latif of Fulbari, Ward No. 05, PSChuraibari, North Tripura lodged an Ejhar with the Officer-incharge, Churaibari Police Station to the effect that accused Matachin Ali is the husband of his sister and they were blessed with three children and the accused used to torture his wife on different issues of their family and in this regard several shalish were held in their village. On 16-12-2018 at about 04.00 P.M. the accused after a quarrel with his wife became furious on her and thereafter suddenly sprinkled kerosene oil on her body and set her ablaze with a view to kill her. Tahamina Begam raised alarm and hearing her shouting the neighbouring people rushed to the spot and thereafter fire service personnel were called and they shifted the victim to Kadamtala PHC from where she was taken to GBP Hospital, Agartala.

[4] On the basis of the aforesaid complaint, Officer-in-Charge, Churaibari Police Station registered Churaibari Police Station case No. 2018 CRB 061 for the commission of offences punishable under section 498A/326/307 of the Indian Penal Code against accused Matachin Ali and endorsed the case to Sri Sadhan Majumder, Sub-Inspector of Police, for investigation. After registration of the case, the police started investigation and also arrested the appellant. On 10.01.2019, the victim Tahamina Begam succumbed to her injuries. During the investigation, police recorded the statements of witnesses and collected the material object and thereafter, filed charge-sheet under Sections-498A/302 of IPC against the appellant.

[5] Thereafter, the case was committed to the learned Court of Sessions Judge, North Tripura, Dharmanagar. The learned Court below read over the explained the charges to the appellant to which he pleaded not guilty and claimed to be tried. To substantiate the charge, the prosecution has adduced as many as 15 witnesses and exhibited some material documents. After closure of the prosecution evidence, the

appellant was examined under Section-313 of Cr. P.C. for having his response in respect of the incriminating materials those surfaced in the evidence as adduced by the prosecution, to which he strongly denied the incriminating materials brought against him by the prosecution and claimed to be tried.

[6] After hearing the arguments made by both sides and on perusal of the material evidence on record, the learned Court below delivered the judgment and order conviction and sentence dated 21.09.2021 against the appellant. For the purpose of reference, the operative portion of the impugned judgment and order of conviction may be reproduced hereinbelow:

24. Thus, considering all the aspects in the given case, this court sentenced convict Md. Matachin Ali, son of Late Kanai Miah, of Purba Fulbari, Ward No.04, P.S:- Churaibari, District:- North Tripura to suffer rigorous imprisonment for three years for the commission of offence punishable under section 498A of the Indian Penal Code and also liable to pay a fine of Rs.10,000/- (Rupees ten thousand) only for the said offence and in default of payment of such fine, he is liable to undergo rigorous imprisonment for a further period of 06 (six) months.

The convict is also further sentenced to suffer rigorous imprisonment for life for the commission of offence punishable under section 302 of the Indian Penal Code and also liable to pay a fine of Rs.10,000/- (Rupees ten thousand) only for the said offence and in default of payment of such fine, he is liable to undergo rigorous imprisonment for a further period of 06 (six) months. Both the sentences shall run concurrently.

Upon realization of fine, the same may be remitted to the legal heirs of the deceased as a token of compensation.

The record reveals that convict Md. Matachin Ali was in custody from 19-12-2018 to 19-03-2019 and from 13-03-2020 to till date i.e. 649 days during the investigation and trial of this case. So, this period of his detention will be set off against his term of imprisonment imposed under this judgment and order of conviction as per provision of section 428 of the Code of Criminal Procedure.

Thus, this case is disposed of on conviction and on contest.”

[7] Being aggrieved by and dissatisfied with the judgment and order of conviction, the present appeal has been preferred by the appellant.

[8] Mr. S. Bhattacharjee, learned counsel appearing for the appellant has submitted that the learned Court below erred in law and come to a wrong conclusion and the judgment of conviction and sentences dated 21.09.2021 passed in S.T. (Type-1) 18 of 2020 liable to be set aside.

[9] The learned Court below has failed to appreciate that the case is not proved beyond the reasonable doubt and the appellant cannot be convicted. He has further contended that the learned Court below has failed to appreciate the procedure adopted by the IO while recording the statement of the victims. In absence of doctor's evidence, who has treated the deceased Tahamina Begam the case cannot be said to be proved beyond reasonable doubt. In the present case the doctor of Kadamtala PHC and GBP Hospital was not examined nor were any treatment related documents produced before the learned Court below to come to a conclusion that the injury allegedly sustained by the said Tahamina Begam is fatal and this can cause death in ordinary course.

[10] Mr. Bhattacharjee, learned counsel has further argued that the Court below has failed to appreciate that the statement of the witnesses would clearly shows that the alleged dispute regarding family matters is nothing but, wear and tear between the husband and wife. None of the witnesses has ever deposed a single sentence about the basic ingredients of Section-498A of IPC but, the Court below illegally beyond the evidence on record convicted and sentenced the appellant.

[11] The Doctors who conducted the postmortem report was examined as PW-15 has stated that during the postmortem report it was found 90% deep burn injury but in absence of treatment related paper

such as bed-head ticket the conclusion cannot be relied upon. The bed-head ticket are produce and the concerned doctors who had treated the deceased at GBP Hospital was examined the veracity of the alleged statement of deceased made before the investigation officer could be tested. The appellant on this sole reason of serious prejudice is entitled to get acquittal.

[12] The learned Court below erroneously and wrongly held that the chain of events is completed since the case is based on circumstantial evidence. As such the judgment of conviction and sentence passed by the learned Court below is liable to be set aside. Exbt.MO-III the gas lighter, Exbt.MO-IV a plastic drum of kerosene, Esbt.MO-VIII kupibati etc. are commonly used in the villages and from the evidence of PWs would clearly shows that the appellant as well as the deceased are from lowest echelon of the society and this exhibits are commonly available in every household in villages.

[13] The Court below ought to have held that the presence of the accused appellant at the place of occurrence and participation of the appellant in the commission of offence are absolutely doubtful and on the basis of such evidence, the appellant could not be legally convicted. On the improved versions of the PWs illegally and on the basis of such improved versions, convicted and sentenced the appellant only on surmise and conjecture.

[14] Before we proceed to deal with the merits of the case and decide the points taken up, it would be apposite to have a deep look at the material evidence of certain relevant prosecution witnesses for better appreciation of the rival contentions and to decide the dispute involved in the case.

[15] It is not in dispute that the incident has taken place on 16.12.2018 and subsequently she was discharged from the hospital after

treatment and she was in the house of her parents and subsequently, on 11.01.2019 she died. There is a gap of so many days from the date of incident and to the date of her death. On the strength of the evidence of PW-3, who is the son of the accused and the deceased, the learned Court below has taken the cognizance and convicted the accused-appellant.

[16] But, on careful examination of the evidence of PW-3, wherein it has been categorically stated before the Court below that his father used to quarrel with his mother as his mental condition was not suitable and he further stated that in the process of putting off flames his father also burnt his hands. For the purpose of reference the deposition of PW-3 may be extracted:

“My father was present in the kitchen at the material time. It is a fact that my father used to quarrel with my mother as he had some mental problem. It is a fact that my father also sustained burn injury in his hand as he tried to put off the flame of my mother. It is a fact that during the treatment of my mother my father gave Rs.7000/- to myself and a police officer. It is not a fact that my mother did not state immediately after the incident to me that my father set her in ablaze.”

[17] In view of above deposition, this Court draws a conclusion that due to anger the incident has taken place. There was no motive and ground that the action of the father in trying to put off the flames supports the case of the appellant. Accordingly, the sentence undergone by the accused-appellant is taken into consideration and Section-302 of IPC is converted into Section-304-II and the amount of punishment he has already undergone shall be treated sufficient punishment and accordingly, the remaining sentence is wipeout.

[18] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspensions, however, grave in nature, should not amount to prove. The

discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, we find it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

[19] In the backdrop of above analysis, we are of the view that the prosecution has failed to establish their projected case and consequently the instant appeal is allowed. Accordingly, the order of conviction and sentence dated 21.09.2021 passed by the learned Sessions Judge, North Tripura, Dharmanagar in connection with S.T. (Type-1) 18 of 2020, stands set aside. The appellant shall be released forthwith, if not wanted in connection with any other cases.

[20] With the above observations and direction, the instant appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

JUDGE

CHIEF JUSTICE [ACTING]

A.Ghash

