

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A.(J)12 of 2023**

Mintur Rahaman @ Mithu,
son of Muslem Miah,
resident of Chataria,
Udaipur, P.O. R.K. Pur,
District : Gomati, Tripura

----- Appellant(s)

Versus

The State of Tripura

----- Respondent(s)

For Appellant(s)	:	Mr. P.K. Biswas, Sr. Adv. Mr. R.R. Nath, Adv. Mr. Pujan Biswas, Adv.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of Hearing	:	10.01.2024
Date of Judgment & Order	:	17.01.2024
Whether fit for reporting	:	YES

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

(Biswajit Palit, J)

Heard Mr. P.K. Biswas, Learned Senior counsel assisted by Mr. R.R. Nath, Learned Counsel and Mr. Pujan Biswas, Learned Counsel appearing for the appellant as well as Mr. S. Debnath, Learned Additional P.P. appearing for the State.

2. This is an appeal against the judgment dated 16.01.2023 passed by Additional Sessions Judge, Gomati District, Udaipur in connection with case No.S.T.35 of 2017 (Type-I). By the said judgment, the Learned Trial Court sentenced the convict to suffer RI

for life with fine of Rs.10,000/- under Section 302 of IPC, id to suffer RI for six months.

3. The gist of the appeal filed by the appellant in short is that the prosecution against him was set into motion on the basis of an FIR/ejahaar laid by one Smt. Smti. Sharika Begam, wife of Shri Jahangir Hussein of Hirapur under P.S. R.K. Pur, District : Gomati, Tripura on 28.10.2016 alleging inter alia that about six years back, the marriage of her daughter namely Sarifa Begam @ Bulti was hold with the appellant Mitnur Rahaman @ Mithun, son of Shri Muslem Miah of Village-Chataria, Sub-Division-Udaipur, P.S. R.K. Pur, District : Gomati, Tripura as per Muslim Rites and Customs. In the marriage, the informant has paid cash money amounting to Rs.80,000/- and other household articles to the appellant accused and after two years of marriage, the present appellant accused and his relatives started torturing upon the daughter of the informant both physically and mentally and out of their wedlock, a male issue was begotten to them and the deceased victim continued to reside at her matrimonial home digesting torture upon her. On 28.10.2016, at around 7.00 a.m. in the morning, the informant received one telephonic information about the illness of her daughter and accordingly, they were asked to attend District Hospital, Udaipur and on arrival therein, they found her daughter dead.

4. On receipt of the ejahaar, O/C, R.K. Pur Women P.S. registered R.K. Pur P.S. case No.2016WRP065 under Sections 498/302 of IPC and the case was endorsed to WSI of police namely Mina Debbarma for investigation.

The I.O. after completion of investigation laid charge sheet under Section 498A/302 of IPC against the appellant Mitnur Rahaman @ Mithun to the jurisdictional Court.

Learned CJM, Gomati District, Udaipur on receipt of charge sheet took cognizance of offence and the case was committed to the Court of Learned Sessions Judge, Gomati District, Udaipur and thereafter, the case was transferred to the Court of Learned Additional Sessions Judge, Gomati District, Udaipur for disposal according to law. The Learned trial Court framed charge against the appellant under Section 498A/302 of IPC. To substantiate the charge, prosecution before the Learned Trial Court has adduced in total nineteen number of witnesses and the prosecution also relied upon some documentary evidences which were marked as Exhibits in the case. After completion of trial, the Learned Court below convicted the appellant under Section 302 of IPC and accordingly, sentenced him under Section 302 of IPC as stated above. Challenging that conviction and sentence, the present appellant has preferred this appeal before the Court.

5. In course of hearing, Mr. P.K. Biswas, Learned Senior Counsel assisted by Mr. P. Majumder, Learned Counsel appearing for the appellant submitted before this Court that the prosecution both by oral and documentary evidence on record has failed to prove the charge against the present appellant. But the Learned Court below misinterpreting the evidence on record convicted him which needs to be interfered by this Court.

6. Learned Senior Counsel referring the evidence on record of the prosecution in course of hearing submitted before the Court that the Learned Court below framed charge against the appellant under Section 498A/302 of IPC but the prosecution before the Learned Trial Court could not adduce any independent witness to substantiate the charge levelled against the appellant under Section 498A of IPC. Even, the prosecution to sustain the charge against the appellant under Section 302 of IPC relied upon the disclosure statement of the

appellant in police custody but submitted that the same was not properly appreciated by the Learned Trial Court because from the evidence of the I.O., it is very clear that she, in course of her examination before the Court below totally remained silent regarding recording of disclosure statement. Even, the Medical Officer whose evidence was relied upon by the prosecution in course of his examination fairly submitted that the disclosure statement was recorded by I.O. but the I.O. in course of her examination did not whisper anything regarding recording of disclosure statement by her. There was no explanation from the side of the prosecution in this regard.

7. Furthermore, from the evidence on record, it transpires that all the witnesses very categorically stated before the Learned Trial Court that the accident occurred due to electrocution, even, the Medical Officer also deposed in the same tune but the Learned Court below without considering the evidence on record just on the basis of mere surmise that the present appellant committed homicide of his wife found him guilty and convicted him without application of proper mind. He also added that the disclosure statement was also not properly proved by the prosecution in the case. More so, there is also no evidence on record that prior to death, the accused has/had any inimical or strained relation with his wife and since the prosecution came up with the story of causing murder by the appellant to his wife for non-fulfillment of demand of dowry but the prosecution has miserably failed to bring home the charge under Section 498A of IPC against the appellant, so there is/was no scope to sustain the charge against the present appellant under Section 302 of IPC. Further, according to Learned Senior Counsel, for every offence there must be some motive but here in the case at hand, the prosecution could not

establish any motive, nor established any chain of circumstances causing murder by the appellant to his wife. So, according to Learned Senior Counsel, the present appellant is entitled to acquittal for failure on the part of the prosecution to substantiate the charge against the present appellant of this case and relied upon few citations which would be discussed later on.

8. On the other hand, Mr. S. Debnath, Learned Additional P.P. representing the prosecution has very fairly submitted that the Learned Court below has rightly after appreciating the evidence on record found the appellant guilty and sentenced him accordingly. So, according to Learned Additional P.P., there is no scope to interfere with the judgment of the Learned Trial Court and urged before this Court to uphold the judgment of the Learned Trial Court.

9. Learned Additional P.P. also submitted that the accused-appellant in course of his examination under Section 313 of Cr.P.C. totally remained silent regarding the incriminating materials/evidence revealed against him during trial before the Learned Trial Court which shows his implication/involvement with the alleged offence. Furthermore, Learned Additional P.P. also drawn the attention of the Court referring Section 106 of the Evidence Act and submitted that it was the duty of the accused to establish his innocence of the charge framed against him in view of the aforesaid provision of law. He has also submitted that since the prosecution has been able to prove the disclosure statement of the appellant under Section 27 of the Evidence Act, so Learned Additional P.P. prayed for upholding the conviction delivered by the Learned Trial Court against the appellant of this case.

10. We have heard argument at length of both the sides and also gone through the evidence on record. Now, before appreciate the submissions made by Learned Counsel of both sides let us examine the

material evidence on record of the prosecution recorded during trial of the case before the Learned Trial Court.

11. PW-1, Shri Santanu Dutta deposed that on 28.10.2016 to 02.11.2016 he was posted as DCM, office of SDM, Udaipur. That on requisition of SDM, Udaipur for recording disclosure Statement of one Mitnur Rahman, he went to R.K. Pur Women P.S. where the O.C. of the P.S., accused Mitnur Rahman were present. That time, the accused appellant, Mitnur Rahaman @ Mithun confessed his guilt before him and stated that on 28.10.2016, he was in his house along with his wife Sarika. Suddenly the accused heard that his wife talking over mobile phone and getting enraged, he caused his wife to be burnt by electric heater (oven). According to the witness, the accused appellant also confessed that he could show the place where he caused his wife to be burnt and accordingly, he led them to his house where the appellant showed the place where his wife caught fire by heater by his act and the accused appellant also showed them the broken pieces of heater. He further stated that the disclosure statement was recorded by WSI Mina Debbarma in his presence and the same was read over to him, as well as to the accused where he put his signature on the disclosure statement. He identified the disclosure statement wherein he put his signature and the signature of witness on his identification was marked as Exhibit-1. He also deposed that on that day, he conducted inquest over the dead body of deceased Sarika (Bulti) and the dead body was identified by the relative of the deceased namely Samsul Alam and one constable of police namely Priyanka Chakma. He identified the inquest report and his signature marked Exhibit-2 and Exhibits-2/1 to 2/5.

During cross examination, he deposed that as per column No.14 of the inquest report and after examination of the dead body prima facie nothing revealed as to the cause of death. He did not find

any mark of violence over the dead body except the burn injury and on 02.11.2016, appellant Mitnur Rahaman @ Mithun was already in the P.S. before he reached there and also deposed when the appellant laid them to his house for discovery, police personnel was also present with them.

12. PW-2, Shri Bimal Debnath deposed that on 02.11.2016, as a Constable of Police at Dhajanagar Police Reserve he came to R.K. Woman P.S. where the appellant Mitnur Rahaman @ Mithun made a disclosure statement to the I.O. in presence of the I.O. and O.C., Executive Magistrate and he made Videography of the entire incident through his mobile and after that, he transferred the file from his mobile to the computer installed in the Office of S.P. He again deposed that on 28.10.2016, he made Videography of the postmortem of deceased Sarika Begam through his mobile and transferred the file to the computer installed in the Office of S.P.

During cross examination, he deposed that he had no idea regarding experience in respect of Information Technology. He could not say the number of mobile phone as well as the SIM number of his mobile. There was Memory Card inserted in his mobile but the I.O. did not seize any mobile phone, SIM Card and Memory Card. He has also deposed that he has got no certificate of experience regarding computer operation.

13. PW-3, Shri Suman Kumar Chakraborty, Dy. Director-cum-ACE in SFSL deposed that on 09.12.2016 their office received one sealed packet from SDPO, Udaipur containing Exhibits. The exhibits were received in a sealed parcel and inside that sealed packet there were five exhibits, four plastic containers and another paper packet marked as Exhibits-A to E. Packets bearing PM No.exhibits, description etc. He also stated the Exhibits marked A to D are said to be collected

from the body of deceased Sarika Begam @ Bulti by Medical Officer. The exhibits were examined from 05.04.2017 to 17.04.2017 by colour test and chromatographic method. The exhibits marked as A, B and E on examination were negative for presence of common organochloro, organophosphorous and carbamates group of pesticides and ethyl alcohol and arsenic. He identified the report marked as Exhibit-3 and the signatures marked as Exhibits-3/1 and 3/2 and identified the forwarding report of Dr. H.K. Pratihari marked as Exhibit-4/1.

14. PW-4, Sahanaz Begam is the informant of this case. She deposed that she laid the ejahar against her son-in-law, Mitnur Rahaman, Jhutan Miah, the brother-in-law of her daughter, mother-in-law and sister-in-law of her daughter. The marriage of her daughter was solemnized with accused appellant in the month of February, 2010 as per Sariat and thereafter, she started living peacefully at her matrimonial home at Chataria for about two years and after that, the father-in-law, mother-in-law and husband, brother-in-law of her daughter started torturing her daughter on the demand of money and accordingly, her daughter came to her and told her to give her Rs.20,000/- as per demand of her husband in-laws and accordingly, she gave her Rs.20,000/- to meet up the demand and again after a month her daughter again came for giving further Rs.20,000/- as per demand of her husband and in-laws and then she gave Rs.20,000/- to meet up the demand. The witness further stated that despite of making payment torture upon her daughter remained as usual and the accused appellant used to stay with her daughter at Manughat since after 2/3 years of marriage. After that, when her daughter came from Manughat, she again approached her for Rs.1,00,000/- as per demand of her husband but she expressed her inability to pay the same and returned back to her matrimonial home where she had to

bear all the torture of her husband. On 28.10.2016, she received an information from one of her relative namely Kabir Miah that her daughter was hospitalized in Tepania Hospital and immediately thereafter, she along with her husband and other family members rushed to the hospital and found her daughter dead. In the hospital, she found injuries in face and chest portion of her daughter and it appeared to her that the injuries were caused to her daughter because of pressure created by electric heater. She further deposed that her husband used to suspect her daughter for having illicit relation with the brother of the appellant and she identified the signature on the ejahar marked as Exhibit-5 and her signature marked as Exhibit-5/1.

During her cross examination, she deposed that the ejahar was written at her house and she disclosed everything from her knowledge to the scribe Saraswati Das. She was confronted with her statement that in her ejahar she mentioned that she paid Rs.40,000/- in two installments to her daughter to meet the demand of her son-in-law. But that portion of evidence was not found in her statement recorded by I.O. under Section 161 of Cr.P.C. She was further confronted with the statement that in the ejahar, she expressed her inability to pay Rs.1,00,000/- to her daughter to met the demand of accused Mithnur Rahaman. But that portion of evidence was also not found in the statement recorded by I.O. This witness further confronted with the statement that she stated to the I.O. the name of person before whom she paid Rs.40,000/- in two installments to her daughter but the same was also not found in the statement of witness recorded by I.O. She also stated that earlier she did not file any case before the appellant for demanding money from his daughter or in respect of assault committed on her daughter. She did not inform anything to the Pradhan of the village about the demand of money and

the assault committed upon her daughter. Her daughter went to Manughat with accused Mithnur Rahaman after birth of their son who was seven months at that time. She heard that her husband and daughter stayed outside but she could not say the name of the exact place.

15. PW-5, Salaha Begam deposed that the deceased was her sister. The marriage of her sister was solemnized in the year 2010 as per Sariat and after few months of marriage, the accused used to live elsewhere for his job and that time, her sister (deceased) had to reside her matrimonial home at Chataria. After 2/3 years of marriage, oneday her sister came to her mother and told her to pay Rs.20,000/- as per demand of accused. Accordingly her mother gave the amount and thereafter, again, her mother paid Rs.20,000/- to meet up the demand of appellant. She further stated that her deceased sister disclosed to her that brother of the appellant tried to enter her room at night in absence of the appellant and on that issue, the appellant used to suspect her and caused physical torture upon her. One day, in the morning, she heard that her sister was hospitalized in Tepania Hospital and immediately thereafter, she rushed to hospital to see his sister but there he could know that his sister was dead.

During cross examination, she deposed that immediately after marriage of her sister she was taken by the accused appellant outside the State of Tripura and thereafter again, she was brought back to her matrimonial home as he was transferred. He was confronted with the statement that her sister was tortured by accused appellant Mithnur Rahaman as he suspected that the ill relation of her sister with brother of appellant. But that portion of statement was not found in the statement of witness. He was again confronted with the statement that he stated to I.O. that the brother of the appellant tried

to enter into the room of his sister at night in absence of her husband but that portion was also not found in the statement of witness recorded by I.O.

16. PW-6, Shri Kanu Das is a member of Chataria Panchayat. He deposed that on 28.10.2016, he came to his house about 8 to 8.30 a.m. That time, he got the information that someone in the house of Mithnur Rahaman got electrocuted and after that, he went to the house of Mithnur Rahaman where the parents of Mithnur Rahaman, i.e. the appellant told him that the wife of Mithnur Rahaman got electrocuted from electric heater while she was boiling milk.

During cross examination, he deposed that prior to 28.10.2016, nobody in his village complained anything about the present appellant. He also deposed that he never heard any sort of family dispute in the family of Mithnur Rahaman and he heard from the parents of Mithnur Rahaman that Mithnur got electric shock while saving his wife and on the day of incident, he also did not hear any family dispute before proceeding to the market.

17. PW-7, Smti. Priyanka Chakma is the police constable posted at R.K. Pur Women P.S. identified her signature on the seizure list in respect of viscera, stomach, kidney, liver prepared by the I.O. and he identified her signature marked Exbt.6.

18. PW-8, Smti. Sukla Debbarma also deposed in the same manner and stated that on 28.10.2016, after postmortem, Dr. Nani Gopal Das handed over the viscera and other things of the deceased by preparing one seizure list in his presence and identified his signature marked Exbt.6/1.

19. PW-9, Smti. Saraswati Das is a paralegal volunteer. She deposed that on 02.11.2016, she along with one Goutam Dey were attached to R.K. Pur Women P.S. as PLV. That day, the appellant

Mithnur Rahaman in presence of Executive Magistrate, Woman S.I. Mina Debbarma and PLV Goutam Dey disclosed the incident how he committed assault upon his wife Smti. Sarika Begam and thereafter, he disclosed that he could show the place where he subjected his wife to assault and accordingly, they went to the house of Mithnur Rahaman as pointed by him and in the house of the appellant Mithnur Rahaman he showed broken pieces of local made oven (made of clay) which were seized by WSI, Mina Debbarma by preparing seizure list. The witness identified his signature on the seizure list marked as Exbt.1/1. He wrote the ejahar as per narration of the informant and identified the same marked as Exbt.5/2 and her signature marked as Exbt.5/3.

During cross examination, she stated that the informant did not state to her that she paid Rs.40,000/- in two installments to her daughter as per narration of accused appellant. She also stated that the informant did not disclose her that she expressed her inability to pay Rs.1,00,000/- to her daughter as per demand of the accused. She further deposed that at the time of disclosure other police personnels were present.

20. PW-10, Shri Goutam Dey also deposed in the same manner like PW-9 and identified his signature on the disclosure statement marked as Exbt.1/2.

During cross examination, he could not say anything about the contents of disclosure statement.

21. PW-11, Dr. Nanigopal Das deposed that on 28.10.2016, he along with Dr. Chandan Kumar Tripura and Dr. Moumita Roy committed postmortem examination over the dead body of deceased of Sarika Begam @ Bulti and on examination, they found the following external injuries :

"1) Multiple abraded contusion over the left side of the chest, over the dorsum of right hand, over the medical aspect of right ankle.

2) One bruise over the left side of the neck just below the clavicle and over the front of right shoulder, 3 cm below the clavicle.

3) Electric burn injuries over the front of the neck and face involving mouth and nose and over the dorsum of left hand involving digits with signs of vital reactions.

Rigor mortis well developed all over the body."

According to him, the cause of death was "Ventricular Fabrillation" as a consequence of electrocution and his opinion remains unchanged after receipt of forensic report. He also identified the postmortem report marked Exbt.6 and his signature marked Exbt.6/1. He identified the signature of Dr. Chandan Kumar Tripura and Dr. Moumita Roy marked Exbt.6/2 and 6/3.

22. PW-12, WC Shilu Chanda is the seizure list witness. In her presence, on 02.11.2016, the IO seized the some broken pieces of heater from the house of the appellant accused and she identified her signature marked Exbt.7.

23. PW-13, Dr. Moumita Roy deposed that on 28.10.2016, she was posted as Medical Officer in Gomati District Hospital, Tepania and on that day, postmortem over the dead body of one Sarika Begam was conducted by Dr. Nanigopal Das, Dr. Chandan Kumar Tripura and the witness herself. After the preparation of the report, they put their signatures. The witness again identified the postmortem report marked Exbt.6 and her signature marked Exbt.6/3.

During cross examination, she stated that the death of Sarika Begam might have caused due to electrocution.

24. PW-14, Shri Utpal Majumder deposed that one day Kanu Das of his locality came and informed him that Sarika Begam got electrocuted and on reaching the house of Sarika Begam, he found that the dead body of Sarika was already taken to hospital.

During cross examination, he deposed that Sarika got electrocuted in the kitchen room. He also deposed that he did not say to IO that "Mitnur also got electric shock when he tried to save his wife." Attention of the witness is drawn to his previous statement recorded under Section 161 of Cr.P.C. but the same was found recorded and marked as Exbt.A subject to prove by IO, as the witness denied to have made such statement.

25. PW-15, Md. Aktar Hossain only deposed that he could know that Sarika Begam got electrocuted in the kitchen room and so she was taken to Hospital.

26. PW-16, Md. Mustak Hossain Chowdhury deposed that on 28.02.2010, the appellant, Mithnur Rahaman married his cousin Sarika Begam as per Mahammaden Law. In the marriage, Rs.80,000/- in cash, furniture and golden ornaments worth Rs.2,00,000/- were given to Mithnur Rahaman, i.e. the appellant by his uncle. 2/3 years after the marriage, the appellant demanded Rs.1,00,000/- more. Sarika's father gave Rs.40,000/- to the appellant accused in two installments of Rs.20,000/- each. As the rest amount could not be meet up, so, Sarika was subjected to physical and mental torture by her husband and finally she was sent to her father's house. When Sarika came to her father's house, she disclosed that her husband had started mental and physical torture on account of dowry demands. She also disclosed that her husband suspected her for having her illicit relation with his younger brother and the same led to frequent fights between them. After that, his cousin again went back to her husband's house. In the morning of 28.10.2016 at around 8.00 to 8.30 a.m. he got one information that his cousin had been admitted in Gomati District Hospital. Accordingly, he along with others went to hospital and after reaching there, they saw Sarika was lying dead in Emergency Ward of

the hospital and they noticed burnt injuries all over Sarika's face. He further told that the neighbours of the accused who were present in the hospital told them that Sarika died to electric shock. He identified his signature in the Surathall report dated 28.10.2016 marked Exbt.8/1.

During cross examination, he stated that he did not say to I.O. to whom Rs.40,000/- in two installments was paid and he also have not specifically stated in his 161 statement that the accused appellant assaulted his cousin after his demand of Rs.1,00,000/- was not met completely. Further, he stated that in course of his examination, he did not say to IO that the accused assaulted his cousin after his demand of Rs.1,00,000/- They did not make any complain before the police regarding the dowry harassment.

27. PW-17, Smti. Sunanda Chakraborty is a woman Constable of Police at R.K. Pur Women P.S. She deposed that on 02.11.2016, she along with WSI Smt. Mina Debbarma went to the residence of the appellant where Smt. Mina Debbarma seized eight pieces of electric heater plate by preparing seizure list in her presence and she put her signature on the seizure list and identified his signature marked Exbt.7/1 and the seized pieces of electric heater plate marked M.O.1.

28. PW-18, Khalek Miah Sarkar deposed that deceased was the daughter of his maternal uncle. On 28.10.2016, he was in a shop at Maharani Bazar. When he heard from some shop keepers that his cousin Sarika was admitted in hospital, he went to hospital and saw that Sarika died and people present in the hospital told that Sarika's husband Mithnur Rahaman had killed her.

During cross examination, he stated that he did not say to IO that he heard from the people present in the hospital that Mithnur Rahaman killed his wife.

29. PW-19, Smt. Mina Debbarma is the IO. She deposed that on 28.10.2016, she was posted at R.K. Pur Women P.S. and on that day, O/c of that P.S. asked her to enquire about the death of one Bulti Begam at Tepania District Hospital. Accordingly, she proceeded towards District Hospital and after reaching there, she found the dead body at emergency Ward which was identified by one relative namely Md. Mustak Hossain Choudhury. Then she prepared surathal report in presence of the witness and identified her signature marked Exbt.P-8. Then she submitted prayer for inquest before the SDM, Udaipur, prepared challan for postmortem examination of the dead body of the victim, identified the challan marked Exbt.P-9. After that, one ejahar was laid by the informant, Sahanaj Begam to O/c R.K.Pur Women P.S. and accordingly, R.K.Pur P.S. Case No.2016/WRP/065 was registered under Section 498A/302 of IPC and she took up the investigation of this case being endorsed to her. After completion of investigation, she laid charge sheet against the present accused of this case. During examination-in-chief she also stated that she had given a certificate as per 65(b) of the Evidence Act after conversion into the CD of the disclosure statement of accused and identified the certificate marked Exbt.P-13 and identified the CD marked Exbt.MO-2.

During cross examination, she deposed that on 28.10.2016, the case docket was handed over to her around 2045 hours. No UD case was registered in connection with the death of deceased Sarika Begam alias Bulti. After the revelation in surathaal report it was suspected by Md. Mustak Hussein Choudhury that deceased, Sarika Begam alias Bulti was killed by her husband and accordingly, she conducted her investigation. She visited place of occurrence on 29.10.2016 and arrested the accused on that day. She further deposed that before arresting the accused, he was admitting in the hospital.

She did not collect the discharge certificate of accused Mithnur Rahaman and she also did not ascertain why accused was admitted therein. She also stated that she recorded the statement of Utpal Majumder as per his version on good faith who stated to her that Mitnur also got electric shock when he tried to save his wife and confirmed Exbt.A.

30. These are the synopsis of the evidence on record of the prosecution. Here in the case at hand, initially charge was framed against the appellant under Section 498A/302 of IPC but at the end of the trial, the Learned Trial Court below acquitted the appellant from the charge under Section 498A of IPC but convicted him under Section 302 of IPC. From the evidence on record, it is clear that some of the witnesses specifically the near relatives of the deceased in course of their examination tried to satisfy the Court that the victim was subjected to cruelty for unlawful demand of money. But from the evidence on record, it appears that none of the witnesses could specifically say anything as to when and how the present appellant caused cruelty upon the deceased victim for unlawful demand of money. The informant and other relatives stated that Rs.40,000/- in two installments were paid to the accused appellant but when the amount was paid, nobody could whisper anything. There was no explanation from the side of the prosecution in this regard. Even, from the evidence it appears that some of the witnesses after coming before the Court deposed that the appellant demanded money from the deceased victim which were the improved version and there is also no evidence on record that the present appellant demanded money directly to the informant or her husband or any other near relatives. The witnesses who appeared on behalf of the prosecution stated that the deceased victim demanded money from the informant as

demanded by the accused appellant, but in this regard, the prosecution could not adduce any conclusive evidence on record before the Learned Trial Court. More so, most of the witnesses are/were hearsay. So, in our considered view, the Lower Court below has rightly acquitted the present convict from the charge framed under Section 498A of IPC.

31. As already stated, the present appellant was convicted under Section 302 of IPC by the Learned Trial Court, but here in the case at hand, after going through the evidence on record, it appears that all the witnesses of the prosecution stated that the deceased expired due to electrocution/electric shock. There is/was no any direct eye witness of the prosecution that the present appellant caused the death of his wife by electrical heater. Now, to find out the truth, let us see the evidence on record of the Medical Officer who conducted the postmortem over the dead body of the deceased victim. As already stated, PW-11, Dr. Nanigopal Das conducted the postmortem examination along with Dr. Chandan Kumar Tripura and Dr. Moumita Roy on 28.10.2016 over the dead body of the deceased. After conducting postmortem examination, he has very specifically stated that the cause of death was "Ventricular Fibrillation" as a consequence of electrocution. Similarly, PW-3, Shri Suman Kumar Chakraborty who is the Dy. Director-cum-ACE in SFSL in course of his examination deposed that the Exhibits marked as Exbts. A, B and E on examination were found negative for presence of common organophosphorous and carbamates group of pesticides and ethyl alcohol and arsenic. Based on that, the Medical Officer, Dr. Nanigopal Das in course of his examination specifically stated that the opinion in respect of cause of death remain unchanged, even after receipt of forensic report. There is also no other evidence on record that the appellant had strained

relation with the deceased prior to her death. The Learned Court below on conclusion of the trial relied upon the disclosure statement of the present appellant and convicted him in this case. PW-1, PW-9 and PW-10 identified the disclosure statement in presence of whom the present appellant made disclosure statement and they identified their signatures on the said disclosure statement. PW-1 stated that the disclosure statement of the accused appellant was recorded by WSI, Mina Debbarma. But surprisingly, the IO i.e. PW-19 when came to the Court to depose as witness, she did not say anything that the disclosure statement of the accused appellant was recorded by her.

32. In course of hearing, Mr. P.K. Biswas, Learned Senior counsel appearing for the appellant has relied upon few citations. In **Ramnand alias Nandlal Bharti versus State of Uttar Pradesh** reported in **AIR 2022 SC 5273** the Hon'ble Supreme Court observed as under :

53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular

place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

Referring the aforesaid citation, Learned Senior Counsel has submitted although according to the prosecution the disclosure statement was recorded in view of the provision provided under Section 27 of the Evidence Act but in view of the principles laid down by the Hon’ble Supreme Court in the afore noted case, the Learned Court below could not consider that the IO of this case failed to record the disclosure statement of the accused in accordance with law for which no reliance can be placed upon that. There is also no evidence on record that the IO at the time of recording disclosure statement has followed the exact provisions of law and thereafter proceeded to record the disclosure statement of the accused appellant in this case. So, legally there is no scope to place any reliance upon the disclosure statement of the accused appellant as alleged to be recorded by the IO of this case. It appears that there is deficiency in compliance of the requirement as required by law under Section 27 of the Evidence Act.

33. Learned Senior Counsel further submitted that the witness of the prosecution in course of their examination deposed before the Court that the deceased expired due to electrocution. The prosecution did not take any step for declaring those witnesses as hostile. In this regard, Learned Senior Counsel has also relied on a citation of the Hon’ble Supreme Court in **Javed Masood and Another versus State of Rajasthan** reported in **2010 AIR SCW 1656** which reads as under:

"13. In the present case the prosecution never declared PWs 6, 18, 29 and 30 "hostile". Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence to rely on their evidence. This court in Mukhtiar Ahmed Ansari vs. State (NCT of Delhi) : (2005) 5 SCC 258 observed:

"30. A similar question came up for consideration before this Court in Raja Ram v. State of Rajasthan, (2005) 5 SCC 272. In that case, the evidence of the Doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The Doctor was not declared "hostile". The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the Doctor and it was binding on the prosecution.

14. The proposition of law stated in the said judgment is equally applicable to the facts in hand."

Referring the aforesaid citation, Learned Senior Counsel further submitted that since the material witnesses of the prosecution were not declared hostile by the prosecution who very specifically stated that the deceased expired due to electrocution. So, there is no scope to place any reliance on the prosecution story that the present appellant caused the murder of his wife by electric heater on the alleged date and time just relying on the alleged disclosure statement of the appellant.

34. Learned Senior Counsel also in course of hearing referred the provision of Sections 25 and 26 of the Evidence Act and submitted that if for argument sake the alleged statement of the accused appellant is treated as confessional statement under Section 25 and 26 of the Evidence Act, in that case the same also cannot be taken into consideration as per law. In this regard, Learned Senior Counsel has relied upon another citation of Hon'ble Gauhati High Court in **Kartik Chakraborty and Others versus State of Assam** reported in **(2018) 2 GLR 1** which reads as under :

"33. This has also been the view of the Madras High Court and it finds its expression in several decisions. In **Palanisamy alias Kunjupaiyan Vs. State**, Criminal Appeal No.541/2005, decided on 22.03.2013, Madras High Court has held that the Evidence Act was enacted before the commencement of the Code of Criminal Procedure, 1973. In view of Section 3(3) of the Code of Criminal Procedure, 1973, the term "Magistrate" referred to in Section 26 of the Evidence Act does not refer to Executive Magistrate. Consequently, the expression "Magistrate" as appearing in Section 26 of the Evidence Act would mean only a Judicial Magistrate. Therefore, confession recorded or videographed by police in the presence of Executive Magistrate would be hit by Sections 25 and 26 of the Evidence Act. Again, in the case of **Kalam @ Abdul Kalam Vs. Inspector of Police**, reported in MANU/TN/07588/2011, the Madras High Court examined the provisions of Section 26 of the Evidence Act vis-à-vis Section 3(3) of the Code of Criminal Procedure, 1973 and after observing that the Evidence Act was enacted before the commencement of the Code of Criminal Procedure, 1973, held that the term "Magistrate" as referred to in Section 26 of the Evidence Act will mean only a Judicial Magistrate."

Referring the above, Learned Senior Counsel submitted that the statement was recorded in presence of Executive Magistrate, not before any Judicial Magistrate as interpreted by the Hon'ble Gauhati High Court. So, there was also no scope to place any reliance upon the evidence of PW-1, Shri Santanu Dutta DCM in whose presence the disclosure statement was recorded by IO on the alleged date and time.

35. During the course of argument, Learned Senior Counsel has referred another judgment of the Hon'ble Supreme Court in **Zwinglee Ariel versus State of Madhya Pradesh** reported in **(1952) 2 SCC 560** which reads as under :

13. Finally, the High Court relied on the statements alleged to have been made by the appellant when he was halted after leaving the Bedia Bungalow. Extracts from the evidence given by Pande, Joshi and Deo have been set out in para 18 of the High "Court's judgment. The whole evidence of course was not quoted. It will be observed that the witness Pande tried to add a little embellishment to his statement by referring to the conduct of the accused, namely, that he started trembling and showed signs of being frightened, presumably to make it admissible in evidence as conduct of the appellant under Section 8, Evidence Act.

The two Magistrates, however, did not refer to any such conduct. The conduct being thus out of

the way, it is clear that the appellant's statements in reply are not admissible at all under Section 8, Evidence Act. If these alleged statements are to be regarded as confessions then they will be hit by Section 25, Evidence Act. for they were made to Pande, the Police Officer, who was there. If they are sought to be brought in under Section 26 as confessions made in the immediate presence of the Magistrates, then also they will not be admissible in evidence in that they were not recorded by the Magistrates in the manner prescribed by Section 164, Criminal P. C.

Referring the above, it was further argued that even if the alleged statement of the appellant is treated as confession, so, the same is also not admissible in evidence since the same was also not recorded by the Magistrate in the manner prescribed by Section 164 of Cr.P.C. Thus, according to Learned Senior Counsel, the prosecution has miserably failed to prove that Sections 25, 26 and 27 of the Evidence Act have been complied with in this case and urged for acquittal.

36. Mr. S. Debnath, Learned Additional P.P. appearing for the State in course of hearing submitted that this case is based on circumstantial evidence and here in the case at hand, there is no scope to disbelieve the evidence on record of the prosecution and the disclosure statement relied upon by the prosecution and from the chain of circumstances, it appears that on the alleged date and time, the present appellant committed murder of his wife by electric heater and he also drawn the attention of the Court referring Section 106 of the Evidence Act. In this regard, Learned Additional P.P. has referred one citation of the Hon'ble Supreme Court in **Trimukh Maroti Kirkan versus State of Maharashtra** reported in **(2006) 10 SCC 681** which reads as under :

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict

principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

Referring the same, he submitted that the Learned Court below rightly and reasonably after elaborate discussion of the evidence on record came to the right conclusion of guilt of the appellant and urged before this Court to uphold the judgment and sentence.

37. Here in the case at hand, the evidence on record of the prosecution is discussed in detail and we have already come to the conclusion that there is no evidence on record to sustain the charge against the appellant under Section 498A of IPC as because the prosecution by adducing evidence on record has failed to satisfy the Learned Court below that the deceased prior to her death was subjected to cruelty for unlawful demand of money by the present appellant. So,

Learned Court below has rightly acquitted the present appellant from the charge under Section 498A of IPC. Now regarding the charge as leveled under Section 302 of IPC, it appears that all the witnesses very categorically stated that on the alleged day, the accident occurred due to electrocution resulting which the accident took place and the victim succumbed to death. The medical evidence also reveals that the victim died due to electrocution. Now, the witnesses who deposed that the deceased died due to electrocution were not tendered for cross examination by the prosecution. There is also no evidence on record that the victim has/had strain relation with her deceased husband. No motive has been proved by the prosecution as to why the appellant committed the murder of his wife on the alleged day. Further, from the disclosure statement it also appears that the same also has not been proved in accordance with Section 27 of the Evidence Act as observed by the Hon'ble Apex Court in the judgment **Ramanand alias Nandlal Bharti**(supra). Prosecution also failed to prove that the alleged statement of the appellant as a confession as the same was not made before a Judicial Magistrate as required under law and the citations as relied upon by the appellant in **Zwinglee Ariel** (supra) also supports the case of the appellant in the case at hand.

38. Thus, after analyzing the evidence on record and also after hearing both the sides and the principles of the aforesaid citations laid down by the Hon'ble Supreme Court in our considered view the prosecution has failed to prove the charge beyond reasonable doubt against the present appellant and accordingly, the present appellant deserves acquittal in this case which we hereby do. Learned Court below has failed to consider the above aspects in delivering the judgment against the present appellant.

39. In the result, the appeal filed by the appellant is hereby allowed. The judgment dated judgment dated 16.01.2023 passed by Learned Additional Sessions Judge, Gomati District, Udaipur in connection with case No.S.T.35 of 2017 (Type-I) is hereby set aside. The appellant is hereby acquitted from the charge of the case leveled against him under Section 302 of IPC on benefit of doubt and be set at liberty. He be released from the custody henceforth, if not wanted in connection with any other case.

Send down the LCRs.

JUDGE

JUDGE



SABYASACHI
BHATTACHARJEE

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