

HIGH COURT OF TRIPURA
AGARTALA

CRL.A(J) NO.14 OF 2023

Shri Lalit Kapali.

.....Appellant(s)

Versus

The State of Tripura.

.....Respondent(s)

For the Appellant(s)	: Mr. S. Sarkar, Sr. Advocate. Ms. V. Poddar, Advocate. Ms. S. Banik, Advocate. Mr. D. Gope, Advocate. Ms. N. Debbarma, Advocate. Ms. M. Pal, Advocate.
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For the Respondent(s)	: Mr. Raju Datta, P.P.
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Date of hearing and delivery of Judgment & Order	: 22/04/2024
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Whether fit for reporting	: YES/NO.
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HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

J U D G M E N T & O R D E R(ORAL)

T. AMARNATH GOUD(J)

This present appeal has been filed under section 374 of the Code of Criminal Procedure, 1973 against the Judgment and Order of conviction and sentence dated 27.01.2023 passed by the learned Additional Sessions Judge, West Tripura District, Agartala, Fast Track Court, in connection with Case No. Sessions Trial (T-1) 49 of 2014 convicting the

appellant to suffer rigorous imprisonment for Life with a fine of Rs.10,000/- (Rupees Ten Thousand) only along with default stipulation for the commission of the offence punishable under Section 302 of Indian Penal Code, 1860.

2. The brief fact of the case is that the deceased Champa Debnath was married to accused Lalit Kapali about 6 years back from the date of filing the FIR dated 11.01.2014. After 15/20 days of marriage, convict-appellant Sri Lalit Kapali used to come into the house in a drunken condition and used to torture her physically and mentally on the victim on demand of money. As the victim refused to bring money from her parental house, the accused-Sri Lalit Kapali and Smt. Kiran Kapali used to assault her. At the time of filing of FIR, the said Champa Debnath had a child, aged about 4 years. Since 10/12 days back from the date of the FIR, the accused persons increased torture on the victim on the demand of money. On 10.01.2013, in the morning, the accused Sri Lalit Kapali left his house and at 10 am returned to the house and assaulted the victim and dragged the victim to the kitchen and poured kerosene oil on her person, and set fire to the body of the victim. Hearing the hue and cry, local people came and shifted the deceased to the GBP hospital and the informant came to know about the incident from his daughter, i.e. the victim in the GBP hospital. Stating the above-

mentioned fact, the informant filed an FIR before the OC of West Agartala Women PS. The victim died subsequently.

3. Based on the FIR, a P.S. case was registered against the accused persons. After completion of the investigation and finding sufficient materials, charge-sheet was filed and the accused was put on trial. After hearing both sides, the following points were framed for determination:-

"i) Whether accused Sri Lalit Kapali committed murder of the deceased Champa Kapali?

(ii) Whether accused Sri Lalit Kapali and Smt Kiran Kapali committed cruelty and dowry death of deceased Champa Kapali ?

4. To prove the charges, the prosecution examined 15(fifteen) witnesses and one Court witness and also exhibited some documents. On the other hand, the convict appellant did not adduce any defence witnesses.

5. After examination of the P.W.s, the convict appellant was examined under Section 313 of the Criminal Procedure Code, 1973 and after hearing both sides, the learned Trial Court convicted the appellant as stated above.

6. Being aggrieved by the said Order of Judgment and Conviction dated 27.01.2023, the convict appellant has preferred this instant appeal.

7. Heard Ms. V. Poddar, learned counsel appearing for the appellant as well as Mr. R. Datta, learned P.P., appearing for the State-respondent.

8. Mr. V. Poddar, learned counsel appearing for the appellant submits that there is no motive behind the commission of the crime as both the deceased and the accused-appellant had a marriage borne out of love relation. The allegation of demand for dowry has not been proved as no specific demand for dowry has been specified by the parents of the deceased. P.W.-3 in her deposition stated that when he found the victim with a burned injury, the victim only requested him to give information to her mother, but she did not seek any help or divulge the name of the perpetrator, the instant reaction of the victim put the shadow of doubt on the story of the prosecution as there is no urgency or cry for help. The alleged place of occurrence is visible to the witnesses but there is no eye witness to the said incident. Further, the forensic evidence could not determine whether the death of the victim was suicidal or homicidal in nature. Further, there is lacuna in the investigation process. According to the dying declaration, a stick has been used to perpetrate the crime but the said stick has not been produced as evidence. Learned counsel submits the date and time of the dying declaration of the victim is not specified and

contradictory. Further, the accused and his parents in their statement stated that they were trying to help and bring the victim to the hospital after the incident. Learned counsel also casted doubt on the evidence on P.W.-1, the mother of the victim, wherein the victim divulged the incident after a considerable period of time. Stating thus, learned counsel urged this Court to allow this appeal and acquit the convict appellant herein.

9. On the other hand, Mr. R. Datta, learned P.P., submits that P.W.-1, mother of the deceased specifically mentioned that the convict-appellant used to torture her daughter for dowry and also stated the victim-deceased divulged to her that the accused beat her with lathi and pour kerosene on her. P.W.-2, the father of the deceased also confirmed the demand for dowry and torture and beating of the victim by the convict-appellant. Learned P.P., also relied upon the evidence on P.W.-3 to prove that the convict-appellant used to consume liquor. Further Doctor also certified that the victim-deceased at the time of the dying declaration was fit to give the same. The dying declaration of the victim was recorded by the Deputy Magistrate and Collector and therein he stated that her husband came home drunken every day and used to beat her. On the date of the incident, he struck her with a stick and after she fell

down, he poured kerosene on her and ignited it with a match stick, causing severe injuries on her body. P.W.-5 who is the independent witness stated that the victim-deceased divulged to him that her husband beat and poured kerosene on her and put her body on fire in the house of her husband. P.W.-10, who was posted in AGMC and GBP Hospital stated that the patient was admitted with 95% burn injuries, and since the admission, till the morning of 12.01.2014, the patient was conscious as it appears from the entry of the bed head tickets. The said witness also stated that the patient succumbed to her injuries on 22.01.2014 and the dying declaration of the victim was recorded on 11.01.2014. P.W-8, the Deputy Collector and Magistrate who recorded the dying declaration also stated the fact that the victim stated that she was beaten by the convict-appellant and then he poured kerosene on her and put her body on fire.

To support his argument on the point that the Executive Magistrate who recorded the dying declaration is the independent witness, learned P.P., relied upon **Para-6** of the Hon'ble Supreme Court Judgment reported in **(1998) 9 SCC 303** titled as **Ravi Chander and ors Vs. State of Tripura**.

The same is produced here-in-under:-

"6. After giving our anxious consideration to the facts and circumstances of the case and the evidences adduced and also after taking into consideration the two recorded dying declarations, namely, the first one recorded by the ASI and the second one recorded by the Executive

Magistrate and also after taking into consideration the oral dying declaration said to have been made by the deceased to PW 4, Prem Chand, it appears to us that the first dying declaration which was recorded by the ASI cannot be accepted. The deposition of PW 4 Prem Chand appears to be reliable and his deposition also gets support from the post-mortem report. Prem Chand has deposed that his sister stated to him that previously in the hospital under threat her signature was taken on a paper by the police and she had not made any such statement. PW 4 also deposed that in the previous evening the mother-in-law hit the deceased on the head with the rolling pin. From the post-mortem report it transpires that a lacerated injury was found in the parietal region. Such injury on the head fits in with the case of hitting the deceased with a rolling pin (belna) as alleged by the deceased. We have carefully looked into the dying declaration recorded by the Executive Magistrate and it appears to us that there is no occasion to hold that such dying declaration was not taken properly by the Executive Magistrate. Correction made in the first leaf in respect of Question No. 7 and the answer given to such question is only in respect of describing whether it was the question or the answer. The statements given by the deceased have been recorded without any overwriting or without any interpolation. Initials have been put by the Executive Magistrate at the bottom of the first leaf and only a part of the signature has touched some writing in respect of Question No. 8 for which no doubt can be entertained about the correctness of recording. So far as the flow of writing is concerned, it also appears that all the questions and answers have been recorded in the same flow. We have also looked at the reverse side of the page and considering the same it does not appear to us that there is any occasion to doubt that such writing was subsequently made by the Executive Magistrate. The Executive Magistrate has also deposed in the case and he has specifically deposed that he recorded the dying declaration in question and answer form. He has denied the suggestion in the cross-examination that there was any antedating or fabrication on his part in recording the dying declaration. The Executive Magistrate is a disinterested witness and is a responsible officer. There is no circumstance or any material on record to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration. The dying declaration recorded by him tallies substantially with the dying declaration said to have been made orally to the brother Prem Chand PW 4. Simply because the offence under [Sections 498A](#) and [304B](#) IPC could not be established beyond doubt by the prosecution for which the accused were acquitted of the said charges, it cannot be held that the accused had no motive for committing the said murder. Although the dying declaration recorded by the Executive Magistrate was sent to the Investigating Officer after about a fortnight, we do not think that for such delay, genuineness of the said dying declaration recorded by the Executive Magistrate is to be doubted. There is an entry in the despatch register by which the said statement was sent to the DSP (H) Ludhiana by the Head Constable of the police post. Mr Roy has contended that the doctor who countersigned the first dying declaration recorded by the ASI has not been examined by the prosecution. In our view, for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made to Prem Chand, PW 4, need not be doubted. Moreover, it was open to the accused to examine the doctor alleged to have countersigned the dying declaration recorded by the ASI if the accused had intended to rely on such dying declaration.

On the same point, learned P.P., also relied upon **para-10.1** of the Judgment of the Hon'ble Supreme Court reported in **(2022) 4 SCC 741** titled as **State of Uttar Pradesh Vs. Veerpal and anr.** The same is produced herein:-

"10.1. In Laxman after referring to and considering the earlier decisions on the credibility of the dying declaration recorded by the Magistrate, it was observed that the Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded the Magistrate does not arise."

On point of circumstantial evidence and to support the statement of P.W.-5, learned P.P. relied upon **Paras-30** and **66** the Judgment of the Hon'ble Apex Court reported in **(2019) 4 SCC 771** titled as **Pattu Rajan Vs. State of Tamil Nadu.** The same is produced herein:-

" 30. Before we undertake a consideration of the evidence supporting such circumstances, we would like to note that the law relating to circumstantial evidence is well settled. The Judge while deciding matters resting on circumstantial evidence should always tread cautiously so as to not allow conjectures or suspicion, however strong, to take the place of proof. If the alleged circumstances are conclusively proved before the Court by leading cogent and reliable evidence, the Court need not look any further before affirming the guilt of the accused. Moreover, human agency may be faulty in expressing the picturisation of the actual incident, but circumstances cannot fail or be ignored. As aptly put in this oft quoted phrase: "Men may lie, but circumstances do not"

66. In our considered opinion, the overwhelming, consistent, cogent and reliable testimonies of PWs 1 and 2, along with the aforementioned corroborative evidence, conclusively prove the prosecution case. We reiterate that PWs 1 and 2 were steadfast in their testimony about the motive, the last seen circumstance, recovery of the dead body based on the confession of Accused No.2, and about the identification of the dead body. We do not find any embellishment or exaggeration in the evidence of these witnesses. Moreover, the evidence of the other prosecution witnesses (especially PWs 7, 26, 27, 29, 32 and 33) is homogeneous, consistent and reliable, and corroborates the testimony of PWs 1 and 2, which leads us to conclude that the chain of circumstances is complete and points solely at the guilt of the accused. In our considered opinion, the prosecution has proved the complicity of all the appellants in

murdering Santhakumar by strangulating him and thereafter throwing the dead body at Tiger Chola. It is worth recalling that while it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that such proof should be perfect, and someone who is guilty cannot get away with impunity only because the truth may develop some infirmity when projected through human processes. The traditional dogmatic hyper technical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Justice cannot be made sterile by exaggerated adherence to the rule of proof, inasmuch as the benefit of doubt must always be reasonable and not fanciful. (See Inder Singh v. State (Delhi Administration), (1978) 4 SCC 161; State of H.P. v. Lekh Raj & Anr., (2000) 1 SCC 247; Takhaji Hiraji v. Thakore Kubersing Chamansing & Ors., (2001) 6 SCC 145; Chaman & Anr. v. State of Uttarakhand, (2016) 12 SCC 76)"

On the point of special knowledge, learned P.P., relied upon **Paras-21 and 22** the Judgment of the Hon'ble Supreme Court reported in **(2014) 4 SCC 353** titled as **Rajkumar Vs. State of Madhya Pradesh**. The same is produced herein under:-

"21. Admittedly, the appellant did not take any defence while making his statement under [Section 313 Cr.P.C.](#), rather boldly alleged that the family of the deceased had roped him falsely at the instance of the police. However, appellant could not reveal as for what reasons the police was by any means inimical to him.

22. The accused has a duty to furnish an explanation in his statement under [Section 313 Cr.P.C.](#) regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under [Section 313 Cr.P.C.](#) is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide: [Ramnaresh & Ors. v. State of Chhattisgarh](#), [Munish Mubar v. State of Haryana](#), and [Raj Kumar Singh alias Raju @ Batya v. State of Rajasthan](#).

Stating thus, learned P.P., urged this Court to dismiss the appeal and uphold the order of Judgement and Conviction as passed by the Trial Court.

10. Before coming to the conclusion of the case, let us examine some important witnesses.

11. PW.1 Smt. Mira Debnath, the mother of the deceased, in her evidence, deposed that the deceased-Champa Debnath was her daughter who died in the month of January, 2014 just after 6 years of her marriage with accused Sri Lalit Kapali. She led a happy life at her matrimonial home for about 15 days and thereafter her husband started beating her for bringing money from them and when they could not fulfill the demand they used to make torture upon her for bringing money. It was on a certain day in the morning in the month of January, 2014 accused Lalit Kapali started beating her daughter with a lathi and when she fell on the ground she was set in fire after pouring kerosene on her body. Thereafter, the accused fled away through the window of the dwelling hut. Her house is located after crossing two houses from the house of the accused persons. PW.1 further deposed that after the incident she got information about sustaining injury of her daughter from one Santosh Paul and she rushed to the house of the accused persons where she found her daughter lying with burn injury and she took her to the AGMC and GBP hospital by an Auto rickshaw when her daughter told the aforesaid incident to her at AGMC and GBP hospital. On the following day, she submitted a written

complaint at the police station which was written by one Sanjib Roy in the court premises as per her version.

During cross-examination, PW.1 stated that the complaint petition was written as per her version. Further nothing contrary was indicated in her cross-examination.

12. PW.2, Sri Sefal Debnath deposed that after the marriage, the convict-appellant used to create pressure upon her daughter to bring money for him. The witness also stated that the victim told him that her husband used to beat her when she asked him to give her some money.

13. PW.3, Sri Santosh Rudra Paul in his evidence deposed that after the incident, the victim requested him to give information to her mother and he then rushed to the parental house of Champa Kapali and reported the same to the mother of Champa and the mother of Champa namely Mira Debnath.

In cross-examination, PW.3 deposed that at their area the day laborer used to work for the whole day, they consumed alcohol after finishing the work. At the time of the occurrence, the accused Lalit Kapali was the driver of the truck vehicle.

14. PW.5, Sri Bikash Sarkar in his evidence deposed that he know accused Lalit Kapali and his mother accused Kiranbala Kapali. PW.5 further deposed that Champa Kapali, wife

of accused Lalit Kapali died about 2 years ago after sustaining burn injury. After getting information about the incident he went to the hospital to see her on the following day of sustaining burn injury. In the hospital, she told him that her husband set her on fire after beating her at her husband's house.

15. PW. 8 Sri Takshiray Debbarma in his evidence deposed that on 11.1.14 he was posted in the office of the SDM, Sadar, West Tripura, Agartala in the post of Deputy Collector and Magistrate and on that day he recorded the dying declaration of victim Smt. Champa kapali in the AGMC and GBP hospital, in ward FS-2. Before the recording of her statement, the medical officer on duty, namely, Sutirtha Dasgupta gave her fitness certificate for the recording of dying declaration of the patient and in her statement she stated to him, *"Her husband every day used to come back at home under intoxication and used to quarrel and on the day of occurrence in the morning at about 10.30 my husband gave hit on my head with a lathi and as a result he fell down on the ground and at that time she poured kerosene on my body and set me on fire with match stick causing burn injury on my whole body"*. After recording her statement he obtained her thumb impression and also certified that the statement of patient Smt. Champa Kapali wife of Sri Lalit Kapali was given by her to him at AGMC and GBP hospital

and recorded by him. The witness identified the dying declaration recorded by him along with the certificate of the Doctor.

16. PW.10 Dr. Diptendu Chaudhuri in his evidence deposed that on 10.01.2014 he was posted at AGMC and GBP Hospital, Agartala as a Medical Officer. On that day around 12.43 pm one patient namely Champa Kapali was admitted with burn injury at their hospital, initially, she was attended by junior doctors and he himself informed the fact to local PS. The carbon of said information given by him to the O/C GB outpost Agartala have dated initial with official seal is marked as Exhibit 8 as a whole. The Patient was admitted with 95% burn injuries and since admission till the morning of 12.01.2014 patient was conscious as it appears from the entry in bed head tickets and ultimately patient succumbed to her injuries on 22.01.2014. The dying declaration of the victim was recorded on 11.01.2014.

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

18. The charge against the convict appellant herein is under Section 302 of IPC for the brutal murder of his victim-wife. It is alleged that after subjecting his wife to a severe beating with a stick, he poured kerosene on her and set her body on fire, resulting in her death.

19. The evidence presented before that can be categorized into 4(four) category 1) *Dying Declaration of the victim--deceased*, 2) *Witness Testimonies*, 3) *Magistrate Testimony* and 4) *Medical Evidence*.

20. Let us now produce the dying declaration of the victim deceased taken on 11.01.2014:-

"My husband would come home drunk every day and subject me to physical assaults. On the day of the incident, at around 10.30 AM, he struck me on the head with stick. Consequently, I fell on the ground, and then he proceeded to pour kerosene on my body and ignited it with a matchstick, causing severe burns to my body."

The victim, before her death, made the above extracted dying declaration before the Magistrate i.e. P.W.-8, which was duly recorded. In her statement, she accused her husband, the convict-appellant herein, of beating her and setting her person on fire.

21. In the witness testimonies, P.W 1, the mother of the deceased and P.W 5, who is an independent witness testified that the victim confessed to them about the dowry demands and torture inflicted by the convict-appellant.

22. Further, P.W 8, the Magistrate in terms of the Judgments of the Hon'ble Apex Court as cited by the learned P.P.

can be considered as an independent witness. He confirmed that the deceased victim identified her husband, the convict-appellant, as the one who beat her with a stick and set her on fire.

23. In the medical evidence, P.W 10, a hospital staff member, testified that the victim had suffered 95 percent burn injuries and the patient gave her dying declaration on 11.01.2014 and since admission till the morning of 12.01.2014, the victim-deceased was conscious as evident from bed head ticket. Further, the doctor confirmed that the victim was in a fit state to give her dying declaration.

24. After reviewing the evidence presented before the court and after taking into consideration the Hon'ble Apex Court Judgment as referred by the learned P.P., it is evident that the convict-appellant herein is guilty of the brutal murder of his wife. i.e., the deceased victim. The dying declaration, supported by witness testimonies and medical evidence, establishes the convict-appellant's culpability beyond a reasonable doubt.

25. In view of the above, this Court finds no ground to interfere with the impugned Judgment and Order of Conviction and sentence dated 27.01.2023 and, accordingly, the same is upheld and the present appeal stands dismissed.

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

B. PALIT, J

T. AMARNATH GOUD, J

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HIGH COURT OF TRIPURA



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