

HIGH COURT OF TRIPURA
AGARTALA

Crl.A(J) 47 of 2023

Sri Tutan Nama

-----Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant (s)	:	Ms. R. Purkayastha, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP.
Date of hearing and date of judgment and order	:	23.07.2024.
Whether fit for reporting	:	No

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

Judgment & Order (Oral)

T.Amarnath Goud, J

Heard Ms. R. Purkayastha, learned counsel appearing for the appellant also heard Mr. Raju Datta, learned PP appearing for the state-respondent.

[2] This is an appeal under Section 374 of Cr. P.C against the impugned Judgment of conviction and sentence dated 17.04.2023 and 19.04.2023 respectively passed by the Ld. Additional Sessions Judge, Gomati Judicial District, Udaipur in case No. S.T. 38 of 2017 whereby and where under the appellant has been convicted under Sections 302 of IPC and has been sentenced to suffer R.I for life with a fine of Rs.10000/- and in default of payment of fine to suffer R.I for 6 months.

[3] The prosecution story unfolded during the trial is that on 31.05.2016 an oral ejahar was lodged by one Smti Gita Das, W/O Shri Paresh Das of Anandanagar No.7, PS: Srinagar, District: West Tripura as reduced in writing by the WSI of Police namely Mina Debbarma stating inter alia to the facts that the daughter of informant namely Rupashi Das (Nama) got married to one Tutan Nama, S/O Shri Narendra Nama of Matabari,

Bhumihin Colony, Udaipur, PS: R.K. Pur, District: Gomati, Tripura on 20th Falguna, 1420 BS (Bengali year corresponding to English calendar year 2014) as per Hindu rites and customs. It was further alleged by the informant that at the time of marriage cash money amounting to Rs.20,000/-, golden ornaments and wooden furnitures were given to the groom. The informant's daughter led her conjugal life peacefully for about one year only and after that she was subjected to cruelty both in mentally and physically on demand of dowry. The father-in-law of Rupashi Das (Nama) namely Narendra Nama always using filthy language and taunting her for not bringing any valuable articles from her parents house. In the meantime Rupashi Das (Nama) gave birth of one son but after that cruelty upon her increased in manifold by her husband Tutan Nama and his father namely Narendra Nama. Prior to 20/21 days of the alleged incident Rupasi and her husband along with their son visited her paternal house and on the next day she was asked by her husband to get money of Rs.2000/- from the brother of informant namely Ranjit Majumder but he paid only Rs.500/-. Subsequently on this issue Rupasi was assaulted s Judge Udaipur by her husband. On 23.05.2016 at noontime the brother-in-law of Rupasi namely Goutam Nama informed through mobile to the informant that her daughter set her on fire and as such she was taken to the Tepania District Hospital. Later on the informant's daughter was taken to GBP Hospital on 24.05.2016 and there informant came to know from her daughter that Tutan Nama i.e. the husband of Rupasi Das (Nama) on 22.05.2016 nighttime at around 11:00 PM set her on fire after pouring kerosine oil on her body and thereby she received grievous burn injuries over on her body.

[4] The O/C of R.K. Pur Women PS namely Smti Madhabi Debbarma received the ejahar on 31.05.2016 at around 2301 hours and registered a case vide R.K. Pur Women PS case No. 2016WRP032 under Sections 498A/326/307 of IPC. Then the case was endorsed to WSI Mina Debbarma for its investigation.

[5] During investigation the 1st IO visited the PO, prepared hand sketch map with separate index, examined the available witnesses by recording their statements under Section 161 of Cr.P.C., seized some relevant articles from the place of occurrence, collected the PM examination report & the dying declaration of the deceased and also arrested the FIR named accused Tutan Nama.

[6] The case was then endorsed to Smti Mina Kumari Debbarma, Dy.S.P. and during investigation she collected the SCD containing inquest report, dead body challan and other relevant documents in respect of the deceased from GB TOP and tagged the same with the original case record.Deskiet, Udakpur.

[7] To prove the charges prosecution has examined as many as 16 (sixteen) witnesses including the IO of this case. After the closure of prosecution evidences both the accused persons were examined under Section 313 Cr.P.C to which they claimed to be innocent and also declined to adduce any DW's on their behalf.

[8] After hearing both sides, the learned Court below delivered the judgment and order of conviction and sentence in the following manner:

“In the end, I conclude that the prosecution has proved beyond reasonable doubt the main ingredients of the offence under Section 302 of I.P.C. against only the accused person namely Shri Tutan Nama by adducing cogent, reliable evidence supported by medical evidence but failed to prove the charge under Section 498A of IPC. Hence accused Tutan Nama is hereby acquitted from the offence charged under Section 498A of IPC.”

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

[10] It is contended by the counsel for the appellant that the learned court below convicted the appellant to be guilty of alleged offences on the basis of non evidence in as much as the evidence on record does not constitute the alleged offence and in no case implicated the convict appellant in the commission of alleged offence. He further added that the learned court below relied on the improved versions of all the PWs illegally land

on the basis of such improved versions, convicted and sentenced the appellant only on surmise and conjecture.

[11] On the other side, Mr. Raju Datta, learned Addl. PP appearing for the state-respondent has vehemently opposed such statement and contended before this court that the impugned order as passed by the learned court below is just and proper and further prayed to dismiss the appeal.

[12] From the factual position, which has emerged from the record, it is noticed that the incident in question happened all of a sudden without any premeditation following the habit of the accused appellant of asking money from the family of the deceased every now and then. If this court believes the story of the prosecution then there would be no question of entertaining the matter at this juncture as he is already serving his terms in jail. But this court cannot also neglect the fact that sometimes after hot altercation or even after when a wife is subjected to cruelty by her husband and inlaws for a long period, she takes away her life by suicide. The husband, in this type of scenario, may not be physically abetting the suicide but his previous act of torturing his wife paves the way for her to take such step. On the other hand, no antecedent or involvement in any other criminal case has been reported against the appellant in the present case in hand. Taking oral view of the matter, therefore, we find force in the argument of the appellant that the quantum of sentence is excessive. Keeping in view the aforesaid factors it becomes evident that the case of the appellant would fall under Section 304 Part II IPC as the incident took place where none of the PWs were present in person which can support their contention that none but only the accused killed the deceased. We are, therefore, of the opinion that it was an offence which would be covered by Section 304 Part-II IPC and not 302 IPC.

[13] In view of the above discussion and verdicts of given by the learned court below, the criminal appeal is partly allowed. The culpability of the appellant is

maintained but his convictions is altered from section 302 of IPC to section 304 Part II of IPC, and accordingly sentenced is reduced from life imprisonment to the period of 10 years. Accordingly, the impugned Judgment of conviction and sentence dated 17.04.2023 and 19.04.2023 respectively passed by the Ld. Additional Sessions Judge, Gomati Judicial District, Udaipur in case No. S.T. 38 of 2017 stands modified.

[14] With the above observation and direction, the present appeal stands allowed to the extent as indicated above.

[15] A copy of this order be marked to the Superintendent, Kendriya Sansodhanagar Tripura, Bishalgarh at the earliest.

B.Palit, J

T. Amarnath Goud, J



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