



IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

PRINCIPAL SEAT

Crl. A. 356/2023

**Shri Siteswar Das @ Tutu,
S/o Shri Sondhar Das,
Vill-Maisam Gaon, (Charaihagi),
P.S. Kachua,
Dist-Nagaon, Assam APPELLANT**

-Vs-

State of Assam & Anr RESPONDENTS

By Advocates:

For the appellant : Mr. J.P. Sharma,
For the Respondents : Mr. R.J. Baruah,
Addl. P.P., Assam.

**-B E F O R E-
HON'BLE MR. JUSTICE ROBIN PHUKAN**

**Date of hearing : 20.02.2024
Date of verdict : 29.04.2024.**

Judgment & Order (CAV)

This Criminal Appeal, No. 356/2023, under Section 374(2) Cr.P.C., is directed against the judgment and order, dated 07.07.2023, passed by the learned Addl. Sessions Judge No.2, Nagaon, in Sessions(T-1) Case No. 11/2016, under Section 302/307 IPC.

2. It is to be mentioned here that vide the impugned judgment and order, dated 07.07.2023, the learned Addl. Sessions Judge No.2, Nagaon, has convicted the accused/appellant - Shri Siteswar Das @ Tutu, u/s 304-A of IPC and sentenced him to suffer rigorous imprisonment of 2(two) years, with a fine of Rs.5000/ (Rupees five thousand) with default stipulation and further convicted him u/s 307 of IPC and sentenced him to suffer rigorous imprisonment of 7(seven) years with a fine of Rs.10,000/ (Rupees ten thousand) with default stipulation. Further, the learned court below has directed that sentence on both the counts shall run concurrently, and further directed that the period of detention, already undergone by the appellant shall be set off.

3. The background facts leading to filing of this Criminal Appeal are briefly stated as under:-

"Smti. Sumitra Das, the informant of this case, got married with the appellant Shri Siteswar Das @ Tutu, about seven years back. Thereafter, they lived together as husband and wife in Maisam (charaihagi) village. They were blessed with a child. Their relation was not cordial and right from the day of marriage, the appellant did not let her live in peace. Then on 21-10-2015, at around 4 p.m. the appellant, out of anger, dragged her and her daughter, namely, Miss Rimpi Das, forcibly to a distance of about 300 meters from their house, and thereafter, poured kerosene oil on their person and set them on fire and thereafter, went away from the spot. The fire engulfed the informant and her daughter instantly. And in spite of best effort, her daughter could not be saved and she died on the spot.

Thereafter, the informant had lodged an FIR with the Officer-in-Charge, Kachua Police Station on 22-10-2015, upon which the Officer-in-Charge, Kachua Police Station had registered a case, being Kachua Police Station Case No. 267/2015, u/s 302/307 IPC and endorsed S.I. Lithun Nath to investigate the same. The I.O. then visited the place of occurrence, examined the witnesses and held inquest on the dead body of the deceased and got the

post mortem done at Hospital and prepared sketch map of the place of occurrence and arrested the appellant and forwarded him to jail hazoot and thereafter, on completion of investigation he laid charge sheet against the appellant to stand trial in the court, under Sections 302/307 IPC.

On commitment of the case by the learned Judicial Magistrate, Nagaon, the learned Sessions Judge, Nagaon, had transferred the case to the court of learned Addl. Sessions Judge, No.2, Nagaon for disposal.

Thereafter, on 20-2-2016, on appearance of the appellant before the court, the learned Court below, after hearing the learned counsels of both sides, had framed following charges against the appellant u/s 302/307 IPC,

- (i) Whether the appellant on 21-10-2015, at about 4 p.m., at village Maisam, under Kachua Police Station of Nagaon district, committed murder by intentionally or knowingly causing the death of his daughter Miss Rimpi Das and there by committed an offence punishable under Section 302 of IPC ?
- (ii) Whether the appellant on the same date, time and place, poured kerosene oil on Smti Sumitra Das and Miss Rimpi Das and set them on fire with such

intention or knowledge and under such circumstances that if he by that act had caused death of Smti. Sumitra Das and Miss Rimpi Das, he would be guilty of murder and by that act he caused hurt to Smti. Sumitra Das and there by committed an offence punishable under Section 307 of IPC?

The charges above, having been read and explained over to the appellant, he had pleaded not guilty and claimed to be tried. Thereafter, the prosecution side has examined as many as 6(six) witnesses and exhibited 3(three) documents. After closing the prosecution evidence, the learned court below had examined the appellant under Section 313 Cr.P.C. The appellant also adduced evidence in defence and examined one witness in his defence. Thereafter, hearing arguments of both sides, the learned court below had found the charges under Sections 304-A/307 IPC well established against the appellant and convicted and sentenced him as aforesaid.”

4. Then being aggrieved, the appellant has preferred this appeal, and contended to set aside the impugned judgment and order of conviction, on the following grounds:-

- (i) That, the learned court below had failed to appreciate the evidence in its proper perspective;
- (ii) That, there is material contradiction between the version of P.W.1 and D.W.1 and the learned court below had failed to appreciate the same;
- (iii) That, the version of P.W.1 is inherently improbable and use of kerosene oil itself is doubtful;
- (iv) That, the evidence of P.W.1 that she had sustained injury on her person in the incident is doubtful in as much as the Doctor of Baithalangu P.H.C., where she had taken treatment, had not been examined;
- (v) That, investigation of the case has been conducted most perfunctorily and that the kerosene bottle has not been seized during investigation and as such use of kerosene in the said incident itself is doubtful and the Doctor-P.W.5, who had conducted post-mortem on the dead body of Rimpi Das, had not found any smell of kerosene, and for this lapse adverse inference can be drawn against the prosecution;
- (vi) That, because of the material contradictions in the versions of prosecution witnesses, the appellant ought to have been given the benefit of doubt;
- (vii) That, the prosecution side has failed to examine the I.O. and this lapse has vitiated the trial;
- (viii) That, the prosecution side had suppressed the material facts and the same vitiated the trial;

- (ix) That, the learned court below, having charged the appellant under Section 302 IPC, convicted him under Section 304-A IPC and that the offence under Section 304-A IPC is a distinct offence and as such Section 222(2) Cr.P.C. ought not to have resorted to, to convict the appellant under the said offence;
- (x) That, the learned court below had committed material irregularity while convicting the appellant and disbelieving the evidence of D.W.1 and that the finding of the learned court below is based on conjecture and surmise.

5. Mr. Sharma, the learned counsel for the appellant, besides reiterating the grounds mentioned herein above, submits that non-examination of the I.O. has caused serious prejudice to the appellant herein this case as the appellant had missed the opportunity to prove the contradiction in the version of the prosecution witnesses. Mr. Sharma, further submits that the Doctor of Baithalangsua Hospital has not been examined and the injury sustained by the P.W.1 has not been proved. Further, Mr. Sharma submits that the kerosene bottle has not been seized by the I.O. and as such it cannot be said that the prosecution side has succeeded in establishing the case against the appellant beyond all reasonable doubt and that the appellant is the sole earning member of his family and that in his absence, the family members are suffering a lot and therefore, Mr. Sharma has contended to set aside the judgment and order of conviction. Mr. Sharma has also

referred following case laws in support of his submission:-

(i) Bihari Prasad etc. vs. State of Bihar, reported in **AIR 1996 SC 2905;**

(ii) Sarju Ghorel and Ors. Vs. State of Bihar, reported in **2006 Cri.L.J. 1885.**

6. Per contra, Mr. R.J. Baruah, the learned Addl. P.P. has supported the impugned judgment and order of conviction. Mr. Baruah, submits that the learned court below has rightly recorded conviction of the appellant under Sections 304-A/307 IPC. Mr. Baruah, further submits that P.W. 1 is the wife of the appellant and she had vividly described the incident and she also had sustained injury in the incident and that the daughter of the P.W. 1, namely Rimpi Das suffered serious burn injury on her person and she died on the spot. Mr. Baruah, also submits that the non-examination of the I.O. caused no prejudice to the appellant as he had effectively cross-examined all the witnesses and no material contradiction could be brought on record which requires to be proved the same through the I.O. and therefore, Mr. Baruah has contended to dismiss the appeal.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the memo of appeal and the grounds mentioned therein and also gone through the record of

the learned court below and the case laws referred by Mr. Sharma, the learned counsel for the appellant.

8. Here in this case, the FIR and the evidence of the prosecution witnesses reveal that the occurrence took place on 21st October of 2015, at about 4 PM in the afternoon at Maisam (Charaihagi) village under Kachua P.S. The evidence of the informant P.W.1 is clear and cogent in this regard. The appellant side has not disputed the date, time and place of occurrence herein this case.

9. It also appears from the evidence on the record that in the said incident the informant - Smti. Sumitra Das had suffered injuries on her person i.e. over her chest and right hand and that her daughter Rimpi Das suffered demise in the said incident. Further, it appears that the death of Rimpi Das is not disputed by the appellant side.

10. Now, it is to be seen how the daughter of the informant suffered demise and whether it is accidental, suicidal or homicidal in nature. First, let the evidence of the Doctor, who had conducted the post mortem examination of the deceased Rimpi Das, be discussed.

11. The prosecution side has examined Dr. Gopal Ch. Roy of B.P. Civil Hospital, Nagaon as P.W.5. His evidence reveals that he had conducted post-mortem on the dead body of Rimpi Das on

22.10.2015. On examination he found:-

External appearance, condition of subject:-:-

Body – stout and swollen. Rigor mortis present. Eyes-closed. Mouth- closed. Teeth-intact.

Wound- Position and character:-

Black coloured skin due to burn from head to lower 3rd of legs (about 90% mixed burn). Hairs over head are burnt out. Loss of skin over both forearms and arms and also over anterior chest, exposing pink coloured tissue.

Cranium and spinal cord:-

Scalp- Burnt;

Skull and vertebrae- Healthy;

Membrane - Congested;

Brain and spinal cord- Healthy;

Thorax:-

Walls- skin over wall burnt;

Ribs, cartilage – Healthy;

Pleurae- Congested;

Larynx and trachea- Congested;

Right Lungs- Collapsed;

Left lungs- Collapsed;

Pericardium- Congested;

Heart- Congested

Vessels- Congested;

Abdomen:-

Walls, Peritoneum- Burnt skin;

Peritoneum- Congested;

Mouth, Pharynx and Esophagus- Congested

Stomach and its contents- Healthy and food matters;

Small intestine and its contents – Healthy and semi digested food;

Large intestine and its contents- Healthy and fecal matters;

Liver- Congested;

Spleen- Congested;

Kidneys- Congested;

Bladder- Healthy;

Organs of generation, external and internal- Healthy

More detailed description of injury of deceased:-

Injuries were ante-mortem in nature;

Time of death – Approximately 12-14 hours

(On 21.10.2015 at about 4 pm as per Inquest Report)

Upon the aforesaid finding the Doctor opined that cause of death was due to shock as a result of burn. He confirmed his P.M. report- Exhibit-3.

12. Thus, it appears from the evidence of P.W.5 and the P.M. report (Exhibit 3) that the cause of death of Rimpi Das was due to

shock as a result of burn. The P.M. report is also consistent with the evidence of P.W.5 and nothing tangible could be elicited in cross-examination of the P.W.5 except that he had not found smell of kerosene oil at the time of examination. The Inquest Report-Exhibit-2 also indicates that burnt mark was found on entire body. But, the prosecution side has not examined the Executive Magistrate, who had conducted inquest. Notwithstanding, the evidence of P.W.5 and Exhibit-3 goes a long way to establish that Rimpi Das died of shock as a result of burn injury.

13. Now, let it be seen how Rimpi Das sustained burn injury on her person. In this regard the evidence of the informant P.W.1 is relevant. She is the only eye witness to the occurrence. Though the prosecution side has examined four more witnesses, they have not seen the occurrence. They have heard it from the P.W.1 and they have noticed burn injury on the person of the informant and also seen the dead body of Rimpi Das with burn injuries.

14. P.W.1 Smti. Sumitra Das is the informant, who lodged the Ejahar (Exhibit-1). She is the wife of the accused and mother of the deceased Miss Rimpi Das. Her evidence reveals that at the time of occurrence Rimpi was 5-years 3-months old. The occurrence took place on 21-10-2015, at about 4 pm. At that time, her husband picked up quarrel with her on account of missing of one of their duckling. Her evidence also reveals that money was

borrowed from a lending unit ('goot') and in order to repay the loan her husband asked her to bring money from her house. And at that time she, her husband and daughter Rimpi were present in the house. Thereafter, at the kitchen garden, behind their house, her husband poured kerosene on her from a bottle and set her on fire by lighting a matchstick. As a result, she sustained burn injuries on her chest and right hand, and she had shown injuries on her hand to the court.

15. Her evidence also reveals that at that point of time, her daughter Rimpi embraced her and as a result, she also caught fire and though she (P.W.1) tried to save her, she could not succeed. Immediately Rimpi's body caught fire and she died. Then leaving the dead body of Rimpi, she went immediately to the house of the VDP secretary-Prasanna Nath and narrated the occurrence to him and thereafter, with him, she went to the police station and lodged the Ejahar (Exhibit-1). Police took her to Baithalangsung Hospital on the day of occurrence at about 8:30 p.m. But, as she did not recover from the medical treatment given there, she was taken to Gauhati Medical College & Hospital, where she stayed for one day and thereafter she was discharged. Her evidence also reveals that she had taken treatment at her village. Her evidence further reveals that she had eloped with the accused about 7 years back and got married with him and that the accused had demanded property, land and also money from her.

16. The appellant side had cross-examined PW1 at length; however, nothing tangible could be elicited to demolish her evidence. Rather, it was confirmed in her cross-examination that on the day of occurrence, in the morning the accused went to drive Tata Magic vehicle and after returning home he had picked up quarrel with her as he did not see the ducks and the chickens. It is, however, elicited that her husband borrowed money from the '*goot*' a lending unit, in her name, but, failed to repay the same and that he picked up quarrel with her when one duckling went missing and he poured kerosene oil on her by shouting and set her on fire. It is also elicited that at the time of occurrence the neighbors' went to enjoy '*puja*' festival and they came only at around 6/7 pm to her house. It is also elicited that when she caught fire, on being poured kerosene oil, her '*sadar*', '*mekhela*' and '*blouse*' got burnt and at that time there was no clothes on her person and when police arrived at her house she handed over the burnt clothes. It is further elicited that Rimpi was wearing an orange frock. Further, it is elicited that the accused brought Rimpi and laid her in the court yard and when she returned home with police she had found the dead body in the court yard, though she died at the place where she caught fire and that police did not seize any bottle with kerosene.

17. The FIR (Exhibit-1) is also consistent with her evidence and

lends corroboration to the evidence of P.W.1 in material particulars. A discrepancy is, however, noted, in respect of pouring kerosene on the person of Rimpi, but the same appears to be insignificant to spell inveracity to her version. Besides, she also sustained burn injury on her right hand and chest and she had shown her burnt hand to the Court. It is however, a fact that the prosecution side has failed to examine the Doctor, who had treated her. But, on this count alone the evidence of the informant cannot be disbelieved. Having tested her evidence, on by the yardstick of probabilities, its intrinsic worth and the animus of the witness, I find her evidence withstand the test and the same able to inspire confidence. I find no ground to disbelief her evidence. Besides, being injured, she also lost her daughter in the hand of her own husband with whom she eloped seven years back.

18. The evidence of PW4-Sri Prasanna Nath also supported the evidence of the informant (P.W.1). This witness is the VDP Secretary of Barpathar Doloni village. His evidence reveals that on the day of occurrence, he had returned home at about 7 pm in the evening, after enjoying Karbi Festival and then he was called by his neighbor Anil Bora (P.W.6), who resides opposite to his house on the other side of the road, and when he arrived at the house of Anil Bora he saw one woman, who was wearing sleeve less blouse and brown coloured "mekhela" and was covering herself with a "gamosa". Then the woman, whom he did not know from before,

removed the 'gamosa' and showed, possibly, her left hand and he noticed white flesh ,and blood was also oozing out of the injuries which extended towards the side of her shoulder. He also noticed that the hair of part of her head was also burnt. And when he asked she told him that the accused Tutu (Siteswar Das) set her on fire and her 6-year old daughter-Rimpi caught fire while she embrace her seeing fire and as she was wearing nylon clothes, she also caught fire and died. His evidence also reveals that the woman, i.e. Sumitra Das climbed the hill for 2 or 2½ Kms and reached the house of Anil Bora without taking the road as 'Puja' and Karbi festival were going on and there were thousands of people on the road and she was not adequately dressed at that time.

19. The evidence of P.W.4 also reveals that in order to help her, he had communicated with the police of Baithalangsua police station as he did not have the phone number of Kachua police station. Thereafter, police personnel of Baithalangsua police station arrived at the place of occurrence, enquired about the incident and informed Kachua police station and sent the woman to Baithalangsua PHC for medical treatment and he also accompanied the Baithalangsua police to the said police station as the situation might deteriorate. Thereafter, from the police station, the Officer In-Charge and Circle Inspector etc. came with the injured woman to her house, which was situated towards the upper side of the hill.

His evidence also reveals that he knows the accused, who was working in his house as helper of mason for several days. Then having visited the house, below the house of the accused, he found gathering of people and also found the dead body of a young girl, covered with cloth in the courtyard. About half an hour or 45 minutes thereafter police from Kachua police station arrived at that place and recorded the statements of the injured woman as well the persons present there. His evidence also reveals that it was almost 12 a.m. when the accused was taken away by police of Baithalansu police station and when the police from the Kachua police station took away the dead body then it was around 1:30 a.m. at night. His evidence also reveals that he put his signature in the inquest report (Exhibit-2). His evidence also reveals that when the cloth was removed from the dead body of the young girl, he saw that she had died of burning. The appellant side could not demolish the evidence of this witness in cross-examination. And it appears that his evidence amply corroborated the evidence of the informant and I find no ground to disbelieve the same.

20. The evidence of P.W.4 that he had found the informant Sumitra Das with injuries over her hand and with burnt hairs covered by one gamosa is also confirmed by Anil Bora, whom the prosecution side examined had examined as P.W.6. His evidence reveals that on the day of occurrence he was in the house of one of his relatives and then his wife sent his son to call him. Then

returning home, he saw Sumitra in the courtyard with her head wrapped by a 'gamosa' and she told that she was set on fire by her husband and while her daughter embraced her, then she also caught fire and succumbed to the injuries. His evidence also reveals that Prasanna Kumar Nath informed the police about the occurrence and then police arrived there and then Sumitra had narrated the incident to police. The appellant side could not demolish the evidence of this witness in his cross-examination. It is elicited that Sumitra first came to his house and then his wife sent her to the house of VDP Secretary Prasanna Kumar Nath. Though some contradictions are here and there, the same failed to spell inveracity to his version as the same are not on material point.

21. Sri Lakhiram Das, whom the prosecution side has examined as P.W.2, is a co-villager of the accused and the informant and his evidence reveals that he heard a commotion at around 9:00 p.m. and when he came out, he came to know that the wife of the accused caught fire. Thereafter, he went to the house of accused and saw a dead body in his court yard which was covered with a cloth and on being asked he was told that the father set his daughter on fire. He also saw the accused there. He did not see the mother of the deceased girl at the house. Then about half an hour after Sumitra arrived at there with police and the dead body was taken away by police. His evidence also reveals that he saw that Sumitra sustained also burn injuries on her hair and hands.

Nothing tangible could be elicited in his cross-examination of this witness also by the appellant side. Thus, the evidence of this witness also corroborated the evidence of the P.W.1, 4 and 6 in material particulars, in respect of the injuries sustained by P.W.1, and in respect of death of the daughter of P.W.1.

22. The prosecution side has examined the elder brother of the informant, namely, Shri Joon Das as P.W.3. His evidence reveals that on the day of occurrence, at about 9 pm, he had arrived at the house of Sumitra with his father Krishna Kanta Das and saw the dead body of his niece Rimpi Das. Then police arrived at that place and his sister Sumitra was also accompanying the police. His evidence further reveals that he saw a bandage on the hand of Sumitra as her hand was burnt. He was told by Sumitra that her husband had poured kerosene oil on her and set her on fire. Further, his evidence reveals that the occurrence took place out of a domestic quarrel and the same was narrated to him by Sumitra that it was her husband who had set her on fire and when she caught fire, Rimpi embraced her as a result of which she also caught fire and though Sumitra tried to save her, she could not succeed. Thereafter, police took the accused away. His evidence further reveals that Sumitra was given medical treatment at Baithalansu Hospital and thereafter she had also taken treatment at the Gauhati Medical College Hospital. Nothing tangible could be elicited in cross-examination of this witness also and he withstands

the same rather it is elicited that when Sumitra came, she was wearing a half burnt cloths and was covering herself with a cloth.

23. The appellant had also examined one Smt. Luku Das in support of his defence, as D.W.1. Her evidence reveals that on the day of occurrence at around 8:30 p.m., Sumitra came to her house, sat down and then she had offered a bottle of coconut oil, which she took and went out of her house. Her evidence also reveals that Sumitra Das told her that her daughter had died by burning and when she asked Sumitra how her daughter died Sumitra revealed that she had lighted a matchstick and fire spread to the clothes of her daughter as her daughter was wearing silk attire. It is elicited in her cross-examination that she (D.W.1) has no knowledge when the occurrence took place.

24. But, having analyzed the evidence of D.W.1 in the light of the evidence on the record, I find the same un-worthy of credence in as much as it is the categorical evidence of PW4 and PW6, that at about 8.30 p.m., Sumitra Das was already taking medical treatment at Baithalangsuh PHC and thereafter with police she arrived at her house. Thus, the evidence of D.W.1 failed to outweigh the clear and cogent evidence of P.W.s 1, 2, 3, 5 and 6, and on such count the same failed to inspire confidence. The learned court below also disbelieved the evidence of this witness and to the considered opinion of this court it has rightly did the same. Moreover, she (D.W.1) came to the court, admittedly, with

the appellant which further weakened the version.

25. It is however a fact that the prosecution side had failed to examined the I.O. in spite of getting sufficient opportunities, spreading over a period of six long years. The learned trial court had found that non-examination of the I.O. caused no dent to the prosecution case as it had not found any major contradictions in the depositions of the prosecution witnesses which are required to be proved, so as to discredit the version of prosecution witnesses. The learned court below also found that it is also not the case of the defence that any prejudice has been caused to the accused by such non-examination. In arriving at such a finding, the learned court below had relied upon a decision of Hon'ble Supreme Court in the case of **Behari Prasad vs. State of Bihar** reported in **AIR 1996 SC 2905**. It is to be noted here that in the said case it has been held that a criminal case would not fail, merely because the investigating officer has not been examined, a case of prejudice to the accused has to be established.

26. The learned court below also considered the decision of Jharkhand High Court in **Sarju Ghorel & Ors. vs. State of Bihar (now Jharkhand)** reported in **2006 CRI.L.J. 1885** referred by the appellant side, and found that the same does not come to the rescue of the appellant, in as much as the appellant side had failed to indicate that any of the independent witnesses i.e. P.W.2, P.W.4 and PW6 are inimical to the accused or have motives to falsely

implicate the accused with the alleged offences and that except P.W.3, who is the elder brother of the informant, P.W.2, P.W.4 and P.W.6 are not related either to the injured or to the deceased, and they are not hostile to the accused in order to doubt their evidence and moreover, the appellant side had failed to elicit anything from their cross-examination so as to indicate that whatever they have deposed is false or concocted also contributes to their creditworthiness. And having considered the finding of the learned court below, in the light of given facts and circumstances on the record, I find no just ground to take a different view from that of the learned court below. While no material contradiction in the version of witnesses were brought on record so as to prove the same through the I.O., then non examination of the I.O. would have no consequence and it has no bearing upon the veracity of the prosecution case. Moreover, no prejudice to the appellant was established.

27. Thus, the evidence of the P.W.s 1, 2, 3, 4 and 6, as discussed above, goes a long way to establish that the victim, Rimpi Das died of shock as a result of burn injury, and the same was caused by the present appellant, who happened to be her own father. It is also established that when she saw her mother on fire, she embraced her and therefore, she also caught fire and died consequently. The learned court below had found that the accused had no intention or knowledge to cause death of his own 5 year

old daughter and when she saw her mother on fire she embrace her and therefore, she also caught fire and died consequently.

28. The finding, so arrived at by the learned court below, appears to be based on evidence on record and also appears to be just and proper as the death of Rimpi Das was indisputably, accidental in nature. There is no material on record, what so ever, to show that the appellant had the intention to kill her. And thus, the death of Rimpi Das appears to be purely accidental in nature.

29. The learned court below had also examined the issue as to whether death of Rimpi Das would come within the rigours of Section 302 of IPC read with Section 301 of IPC, in the light of the doctrine of trans migration of motive or theory of transferred malice. Thereafter, having found absence of intention or knowledge to cause death of his daughter, on the part of the appellant, and also considering the events, which does not give any indication that the theory of transferred malice, by virtue of Section 301 IPC, can be made applicable in this case, had held that the action of the appellant would only attract the offence of causing death by negligence under Section 304-A of IPC and not the offence of murder under Section 302 r/w Section 301 of IPC. Thereafter, by virtue of Section 222(2) Cr.P.C. the learned court below had convicted the appellant under Section 304-A of IPC, being the same a minor offence, to the offence under Section 302 of IPC with which he was charged. The finding so arrived at by the

learned court below appears to be justified and reasonable and it requires no interference of this court.

30. Now, what left to be seen is whether pouring of kerosene oil on the person of PW-1 Sumitra Das and thereafter setting fire upon her, which caused injuries on her person, would fulfill the ingredients of Section 307 of IPC. The learned court below, however, considering the evidence of the prosecution witnesses and also considering the injuries sustained by the P.W.1, had arrived at a conclusion that the offence under Section 307 IPC is well established and convicted him accordingly.

31. The essentials, to prove an offence under Section 307 (Attempt to Murder) of the Indian Penal Code are:-

- (1) That the accused did an act -
- (2) That it was done –
 - (i) with the intent, or
 - (ii) with the knowledge-
 - (a) of causing death,
 - (b) of causing such bodily injury as the accused, knew to be likely to cause the death of the person to whom the harm was attempted to be caused ; or
 - (c) of causing bodily injury to a person, and the bodily injury intended to be inflicted would have been

sufficient in the ordinary course of nature to cause death ; or

- (d) the act if completed would have been so imminently dangerous that it would have in all probability caused death, or such bodily injury as is likely to cause death; and the act attempted was committed without any excuse for incurring the risk of causing death or such injury as aforesaid.

The prosecution side has to prove all the (i) act (*actus*) and (ii) intention (*mensrea*) to bring home the charge u/s 307 IPC.

32. The learned court below had found that the action of the appellant .i.e. pouring kerosene oil on the person of the informant and thereafter setting fire on her, as a result of which, she had sustained injuries on her person, is squarely covered by Section 307 IPC. In view of the given facts and circumstances on the record, the finding so recorded by the learned court below, cannot be said to be unjustified. As because the appellant may not have the intention to cause death or such bodily injury to the informant, but he had the knowledge that the act of setting fire to a person, after pouring kerosene and the bodily injury intended to be inflicted thereby, would have been sufficient in the ordinary course of nature to cause his/her death.

33. It is, however, a fact that the prosecution side has not examined the Doctor who had examined the victim and also not exhibited the medical report of the informant (P.W.1). Mr. Sharma, the learned counsel for the appellant, had rightly pointed this out during hearing and contended to disbelieve the prosecution version as the injuries allegedly sustained by the informant, had not been established. Another contention of the learned counsel for the appellant is that since the I.O. has not been examined by the prosecution side and since the half burnt wearing apparels of the informant were not seized and produced before the court, the same raised doubt about the veracity of the prosecution version and the appellant is entitled to benefit of doubt.

34. But, having considered the submission of Mr. Sharma, in the light of facts and circumstances on the record, I am unable to record concurrence to his contention, in as much as there is clear and cogent evidence of the informant- P.W.1 and P.W.s 4 and 6 and also of P.W.s 2 and 3 to show that the informant had sustained burn injury over her hand. The evidence of the informant also reveals that she had sustained injury over her chest. Moreover, the informant-P.W.1 had shown the injury sustained over her hand to the learned court below, at the time of her examination. Over and above sustaining of injury by the victim is not the requirement of Section 307 IPC. If the act, so intended to commit or with knowledge that such act if completed would have

been so imminently dangerous that it would have, in all probability, caused death, or such bodily injury as is likely to cause death, is sufficient to attract the Section 307 IPC.

35. Here in this case, the informant had sustained injuries over her chest and hand and she had shown the injury sustained by her over her hand in the court also. Thus, the basic requirement of Section 371, IPC stands established here in this case, to bring home the culpability of the act of the appellant under the purview of said section. No doubt some sort of lapses are there on the part of the prosecution in the investigation of the case and also on the part of the learned court below, as it had failed to examine the Doctor, who had treated the informant at Baithalangsua Hospital, in spite of such report being available on the record. But, these lapses failed to spell inveracity to the prosecution version. Thus, it appears that the prosecution side has succeeded in bringing home the charge u/s 307 IPC against the appellant.

36. The learned Court below, having convicted the appellant, under Sections 304-A/307 IPC, sentenced him to suffer rigorous imprisonment of 2(two) years with a fine of Rs.5000/ (Rupees five thousand) in default, simple imprisonment stipulation under Section 304-A IPC and further sentenced him to suffer rigorous imprisonment of 7(seven) years with a fine of Rs.10,000/ (Rupees ten thousand) in default, simple imprisonment for 2(two) months u/s 307 of IPC. Having adjudged the aggravating as well as

mitigating factors and also the attending facts and circumstances, under which the offences were committed, the sentence so handed down, appears to be justified and reasonable and to the considered opinion of this court, the same warrants no interference of this court.

37. In the result, I find no merit in this appeal and accordingly, the same stands dismissed. Send down the record of the learned court below immediately with a copy of this judgment and order. The parties have to bear their own costs.

JUDGE

Comparing Assistant