

HIGH COURT OF TRIPURA
AGARTALA

Crl.A(J) 6 of 2024

Md. Asab Ali @ Achab

-----Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant (s)	:	Mr. Sankar Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP.
Date of hearing and date of judgment and order	:	21.05.2025.
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 Mr. S. Bhattacharjee, 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 judgment and conviction of order of sentence dated 24.08.2023 passed in Sessions Trial 14 (U/K) of 2019 (Type-1) by the Ld. Sessions Judge, Unakoti Judicial District, Kailashahar, convicting and sentencing the appellant to suffer Rigorous imprisonment for life and also to pay fine of Rs.10,000/- (rupees ten thousand only) in default of payment of fine to suffer further rigorous imprisonment for 6 (six) months for the commission of offence punishable under Section 302 of the IPC.

[3] The prosecution case, as revealed in the FIR submitted by the complainant Mst Terabanun Nessa is that the accused Md Asab Ali alias Achab Ali, being the husband of Rabia Begam, since after marriage till her death on 23.08.2018 at his house at Sukanta Colony under Kailashahar PS, subjected said Rabia Begam to cruelty by assaulting her both physically and mentally on demand of dowry.

[4] The prosecution case, also is that on or about the day of 15th August, 2018 at about 02 pm at the house of the accused Asab Ali alias Achab Ali at Sukanta Colony under Kailashahar PS intentionally poured kerosene oil on the person of his wife Rabia Begam and then set fire on her and as a result she suffered with serious burn injuries on her person and died at AGMC Hospital, Agartala on 23.08.2018 at 0130 hours out of that sustained burn injuries.

[5] On the basis of this written FIR WKS PS Case No. 2018 WKS 029 U/Ss-498(A)/326/307 of IPC was registered on 15.08.2018 against the accused person namely Md Asab Ali alias Achab Ali and the case was endorsed to WSI Sampa Das for investigation. On completion of investigation IO submitted charge sheet vide No 27/2018 dtd 30.11.2018 U/S 498(A)/326/307/302 of IPC against the accused person Md Asab Ali alias Achab Ali to faced trial in the open court of law.

[6] On commitment of the case, on 04.06.2019 Charge U/Ss 498(A)/302 of IPC was framed against the accused Md Asab Ali alias Achab Ali and trial began accordingly.

[7] To prove the case prosecution has examined as many as 15 (fifteen) nos. of witnesses. Defence did not adduce any evidence. Defence case, however, as revealed from the trend of the cross examination of the prosecution witnesses and examination of the accused person U/S 313(1) (b) of Cr.P.C is of total denial.

[8] After hearing both sides, the learned Court below delivered the judgment and conviction of order of sentence dated 24.08.2023 in the following manner:

“14. Hence, in the result, I do hereby sentence the convict Asab Ali, for commission of offence punishable U/S 302 of the IPC to suffer rigorous imprisonment for life and also to pay a fine of Rs.10,000/- (rupees ten thousand) only, i.d., to undergo further rigorous imprisonment for 6 (six) months for commission of offence U/S 302 of IPC.

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

[10] It is contended by the learned counsel for the appellant that the Ld. Trial Court has failed to appreciate that the PW- 1 and PW-3 are the daughters of the appellant and victim and both of them claimed to have seen the flame of fire upon their mother's body but on material part such as PW- 1 has stated that she (Victim) was assaulted by the appellant since she (Victim) was not at home and went to neighbors house and could not say where she had been. After assault the appellant went sleeping. On the other hand PW-3 another daughter has stated that while her mother was busy in the kitchen then her father went to the kitchen and started quarrelling with her mother then all on a sudden her father i.e. the appellant asked her brother to give him match box while in cross examination her such statement that father asked for match box was not available. Ld. Trial Court ought to have appreciated this part of material contradiction.

[11] It is further contended that from the evidence of the PW-14 the doctor who has conducted the postmortem has stated that the burn injury was about 89% of body surface area. Ld. Trial Court ought to have disbelieved the statement of PW-9 the doctor of District Hospital, Kailashahar as he deposed that he has recorded her statement in presence of witnesses and in cross he has stated that he did not certify that he found the victim mentally fit to make any statement. As such the finding of the Ld. Trial Court that the victim made the declaration and the conclusion of the Ld. Trial Court that the appellant has committed the offence is liable to be set aside.

[12] In course of his submission, he further stated that Ld. Trial Court ought to have considered that the quarrel as asserted by the prosecution witnesses are clear wear and tear and there is no motive to set fire upon the wife, as such the finding of conviction and order of sentence is liable to be set aside.

[13] 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.

[14] 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. A bare perusal of the dying declaration shows that none but the accused person has caused the crime. The whole transaction took place when the accused-appellant had returned home intoxicated and asked about the whereabouts of his wife (now deceased). When she informed him that she was in neighbours' house, he got furious. He started rebuking her and went to sleep after some time. After waking up, the accused-appellant demanded meal from her wife (now deceased) but she was not present there and the food was served by their elder daughter. Meanwhile, frightened by the behaviour of the accused-appellant, the deceased went to her mother's residence. When she returned home, the accused-appellant assaulted her physically and dragged her to the kitchen and poured kerosene on her body and set her on fire. We are of this view that the entire act was not premeditated and it happened in a sudden fit of rage and without prior intention.

[15] Having considered the materials on record, the submissions of learned counsel for both parties, and the evidence adduced during trial, this Court is of the considered opinion that the prosecution has failed to establish that the act committed by the accused was premeditated or intentional.

[16] It is evident from the circumstances that the incident occurred as a result of sudden and grave provocation, without any prior planning or motive. The accused, in a moment of extreme emotional disturbance, poured kerosene on the deceased, which unfortunately resulted in her sustaining burn injuries leading to death.

[17] Accordingly, the conviction of the accused under Section 302 IPC is set aside, and he is instead convicted under Section 304 Part I IPC, as the act was committed without premeditation and the offence needs to be connected under Section 299/300 of the IPC culpable homicide not amounting to murder, and no *mensrea* that it was likely to cause death. Therefore, the accused is sentenced to undergo rigorous imprisonment for a period of 10 (ten) years.

[18] In view of the above discussion and verdicts of given by the learned court below, the criminal appeal is partly allowed. Accordingly, the impugned judgment and conviction of order of sentence dated 24.08.2023 passed in Sessions Trial 14 (U/K) of 2019 (Type-1) by the Ld. Sessions Judge, Unakoti Judicial District, Kailashahar, stands modified.

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

[20] 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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