

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.6 OF 2021**

Sri Ratan Das,

-----Appellant(s)

Versus

The State of Tripura.

Type your text

-----Respondent(s)

For the Appellant(s) : Mr. P.K. Biswas, Sr. Advocate.
Mr. P. Majumder, Advocate.

For the Respondent(s) : Mr. R. Datta, Public Prosecutor.

Date of hearing and delivery of
Judgment & Order : 06/07/2022

Whether fit for reporting : NO.

**BEFORE
HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH**

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

(T. AMARNATH GOUD)

This instant criminal appeal has been filed under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 12.03.2021 & 15.03.2021 passed by the learned Addl. Sessions

Judge, Court No.5, West Tripura, Agartala, in case No. S.T.(T-1)33 of 2016, convicting the appellant under Section 498-A of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 3(three) years and also to pay a fine of Rs.5,000/-with default stipulation. Further convicted him under Section 306 of the Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for 10 years and also to pay a fine of Rs.25,000/- with default stipulation. Further convicted him under Section 304A of the Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for 10(ten) years with a direction that the sentences shall run concurrently.

2. The facts of the case in brief, which may be relevant for the present purpose and manifest on the record are that one Sri Sunil Biswas lodged a written complaint against his son-in-law and in-laws of her daughter, Smt. Supriya Biswas alleging *inter alia* that his daughter was married to Sri Ratan Das, the convict-appellant herein in the year 2013 and was residing in the matrimonial home situated at Badharghat, Matripalli. The appellant herein namely, Ratan Das demanded a fridge (refrigerator) and steel almirah but it could not be fulfilled by the complainant. On 11.06.2015, it was

alleged that Supriya Biswas (*now deceased*) was severely beaten up and on 12.06.2015, in the morning at about 5.00 a.m., the appellant and others set her on fire.

3. Based on the aforesaid complaint, an FIR was registered before the O/C East Agartala Women P.S., as FIR No. 2015/WAW/031 dated 12/06/2015 under sections 498A/307/326/34 of IPC against the convict appellant herein and 3 ors.

4. On the basis of that FIR police took up investigation and on completion of the investigation filed a charge sheet against the appellant for offence punishable under Sections 498A/304B/34 of the IPC. As the case was exclusively triable by the Court of Sessions Judge, the same was committed to the Court of learned Sessions Judge. Subsequently, the case was transferred to the Court of learned Addl. Sessions Judge, Court No.5, West Tripura, Agartala. After hearing the prosecution as well as the defence and on the perusal of the papers submitted by the police, the learned Trial Court framed charges against the accused persons for the offence punishable under Section 498A/304B/34 of IPC and alternatively under Section 306 of IPC, to which the accused persons pleaded not guilty and claimed to be tried.

5. To prove the charges, the prosecution examined as many as 13 witnesses including the complainant and the investigating officer and they were also cross-examined. Thereafter, after the closure of the evidence, the accused persons were examined under Section 313 of Cr.P.C. After hearing the arguments of both sides, the learned Addl. Sessions Judge, Court No.5, West Tripura, Agartala by his judgment dated 12.03.2021 convicted the appellant as stated above.

6. Being aggrieved and dissatisfied with the conviction and sentence passed by the learned Addl. Sessions Judge, Court No.5, West Tripura, Agartala by his Judgment dated 12.03.2021, the appellant herein filed this instant appeal and prayed for the following reliefs:-

*"i. Admit the appeal;
ii. Call for the records of Case No.S.T.(T-1)33 of 2016 from the Court of learned Addl. Sessions Judge, Court No.5 West Tripura, Agartala;*

iii. Issue notice upon the respondent;

AND

iv. Suspend the order of conviction and sentence dated 12.03.2021 and released the appellant on bail till final disposal of the appeal;

AND

v. After hearing both the parties may please set aside the judgment and order of conviction and sentence

passed in case No.S.T.(T-1)33 of 2016 by the learned Additional Sessions Judge, Court No.5, West Tripura, Agartala dated 12.03.2021 and may please set the appellant at liberty;"

7. Heard Mr. P.K. Biswas, learned Sr. counsel assisted by Mr. P. Majumder, learned counsel appearing for the appellant as well as Mr. R. Datta, learned P.P. appearing for the State-respondent.

8. Mr. P.K. Biswas, learned Sr. counsel appearing for the appellant submitted that the evidence on record and the statements made by the witnesses do not constitute any offence punishable either under Section 498A IPC or under Section 306 of IPC nor under Section 340B of the IPC. Learned Sr. counsel further submitted that the learned Trial Court has failed to apply its judicious mind in appreciating the evidence on record and accordingly came to a wrong finding. The prosecution examined as many as 13 witnesses and though a mere allegation of torture on demand of fridge and steel almirah has been made, but not a single witness has stated at any point of time that they found that the deceased was ever tortured by the appellant on demand of dowry. The statements made by the prosecution witnesses are self-contradictory and one is condemning the other as such, the learned trial Court

has committed a serious error by placing reliance on the evidence of the prosecution witnesses. The statement of the deceased was recorded by P.W.5 wherein, P.W.5 has specifically stated that the victim has categorically disclosed that she set fire on her person by herself and, the said statement i.e. the dying declaration recorded by P.W.5 has been marked as Exbt.-6. She, the victim deceased did not make any allegation of torture upon her by any person and, as such, the learned Trial Court should have held based on dying declaration that the appellant herein is completely innocent of the alleged offence. At no point of time, any witness made any allegation of physical and mental torture upon the deceased. The deceased herself did not make any complaint when her statement was recorded by the Magistrate i.e. P.W.5.

9. Mr. Ratan Datta, learned P.P. appearing for the State-respondent vehemently opposed the said submission of the learned Sr. counsel. Learned P.P. relying upon the witness of P.W.1 submitted that one Gita Das a local leader along with other party workers on the previous day of the incident went to the house of the appellant herein for subscription and saw the appellant physically assaulting the deceased. Learned P.P. further submitted that the incident occurred in the early

morning so there was no eyewitness to the incident. Learned P.P. also relied upon the submission of P.W.4 who is the elder brother of P.W.1, P.W.6, who is the Deputy Director, SFSL, and P.W.10, the Doctor who conducted post-mortem examination over the dead body of the deceased. Learned P.P. further argued that there was no attempt from the side of the appellant to arrange for medical treatment of the victim and the victim was taken to hospital after substantial time had elapsed. Learned P.P. concluded his submission by urging this Court to uphold the Trial Court Judgment and order of conviction.

10. We have given our thoughtful consideration to the rival submissions rendered by the learned counsels appearing for the parties. We have perused and scrutinized the evidence and materials on record as adduced by the parties.

11. P.W.1, Shri Sunil Biswas, is the informant and the father of the deceased. He deposed that in the year 2013 in the month of Bangla Baishak his daughter, Supriya Biswas was married to Ratan Das of Matripalli Badharghat. After marriage for a few months, she was happy at her matrimonial home but after that, she was subjected to torture by her husband on the issue that Fridge(refrigerator), Godrej Almirah was not given at

the time of marriage. He also deposed that time and again, the fact of tortures upon her was informed to him by his daughter, to which he used to say to his daughter to make her husband understand that the articles would be given to him as and when it becomes possible for him. But, the torture continued, and then on 12.06.2015, in the early morning, the husband, the father in law, mother in law and brother in law, all set his daughter on fire, and in that fire even his grandson was burnt. He deposed that he received the information from one Rupchand Sarkar, his brother-in-law and then he rushed to the GBP hospital where he found his daughter and grandson alive but with severe burn injuries. Later, on the same day, both of them succumbed to their burn injuries.

In his cross-examination, it revealed that the deceased Supriya had been to his house about six months back, prior to the fateful incident. Around that time, she stayed there for about 7 days. It also revealed that after that visit, he did not visit the matrimonial house of his daughter till her death. It has been admitted that on the alleged day of the incident, he received telephonic information from Rupchand Sarkar (P.W.11). It has also been admitted that when his daughter received the burn injuries, at that time, his grandson

Kushan was on the lap of his mother. It is further revealed from the cross-examination that this witness has made a material omission by not stating the fact in his earlier statement that one Gita Das, a local leader told him at GBP hospital that on the previous day of the incident when she along with other party workers visited the house of his daughter for collecting the subscription, they saw the husband of her daughter with another lady namely, Soma Das, assaulting his daughter. The said Soma Das was in an illicit relationship with the husband of his daughter. It has been admitted that except for the present complaint for which this case has been registered, no other complaint was earlier made before the Mahila Commission or at P.S. or before any authority. The witness voluntarily stated that once his daughter complained to him that her husband pressed her neck and pushed her head to the wall. He then advised that if such an incident, ever happens again, she should lodge a complaint at the P.S., to which his daughter replied that she informed the fact to her father-in-law for justice. A denial of this voluntary statement has been given on suggestion being put to the witness. The other suggestions so put by defence have been denied by the witness.

12. P.W. 4, Sri Anil Biswas deposed that Supriya, the deceased was his niece and she was married about 5 years back to Ratan Das of Badharghat. He further deposed that in the marriage, a cash amount of Rs. 62,000/- only, one motorbike, sofa set, etc. was given as per the demand of Ratan Das, the appellant herein. For about 1 (one) year, she was happy in her matrimonial house but after that when Supriya, now deceased visited her parents' house, she informed that her husband and mother-in-law used to torture her on the demand of Fridge and one Godrej Almirah which they failed to fulfill. After about two years of marriage, he heard that Supriya was set on fire and subsequently, she died. He further deposed that the deceased was taken to the GBP hospital where he too visited. He further deposed that he came to know that Supriya's husband was into an illicit relationship with one Soma Das and that on the previous night of the fateful incident, the victim (*now deceased*) was physically tortured by her husband and then the husband and mother-in-law of Supriya doused Supriya on fire.

It was revealed in his cross-examination, that he had been to the hospital when Supriya, was admitted to the hospital with burn injuries, who later succumbed to those burn

injuries. Though on being queried by the defence, he could not say the exact time and the room/ward where the deceased was so admitted in the hospital. Defence did not put any suggestion to this witness or give denial in specific to the fact that Rs. 62,000/- only in cash with a motorbike, sofa set, etc. was not given at the time of the marriage of Supriya with Ratan Das, the appellant herein as per his demand. Denial in the form of suggestion was given to the witness in regard to the illicit relationship in between Ratan Das, the appellant herein, and one lady named Soma.

13. P.W.5, Dr. Emilia Reang, deposed that on 12.06.2015, she was posted as Deputy Collector attached with the office of SDM, Sadar. On that day as per requisition of SDM, Sadar, she visited GB Hospital, Female Surgical ward No. 1 (Unit II) in the Department of Surgery and recorded the statement of one patient namely, Supriya Biswas wife of Ratan Das of Matripalli, Badharghat, P.S A. D Nagar. She also deposed that before recording the statement of the deceased, the attending Doctor certified that she was mentally fit for giving her statement. She then recorded the statement of the victim in her own handwriting. The victim in her statement categorically disclosed that she set her on fire by herself. She

further deposed that after recording the statement, she took her RTI at the bottom of the statement recorded by her, and then she put her dated initial with an official seal. The said statement of the victim recorded by her was identified and exhibited as Exbt-6.

The cross-examination of this witness has been declined.

14. P.W.10, Dr. Anamika Nath deposed that on 13.06.2015, she was posted at AGMC and GBP hospital in the capacity of Jr. Resident, Department of Forensic Medicine and Toxicology. On that day, she along with Dr. Anamika Das conducted a post-mortem examination on the body of deceased Supriya Biswas (Das), aged about 22 years, W/o Sri Ratan Das of Badharghat, Matripalli, under A.D Nagar P.S. The alleged history was that Lt. Supriya Biswas(Das) sustained burns injuries on 12.06.15 at about 06:30 am and she was immediately shifted to AGMC and GBP hospital and admitted on 12.06.15 at 07:09 am who later succumbed to her injuries on 12.06.15 (same day) at 2:40 pm. She further deposed that a post-mortem examination was conducted in between 02:10 pm to 03:10 pm and that the body was identified by Sri Sunil

Biswas, father of the deceased. She also deposed that in their considered opinion, the cause of death is shock as a result of 79% of total body surface area burns caused by flame. She deposed further that a report in c/w West Agartala Women PS Case No. 2015/WAW/031 dated 12.06.15 under sections 498A/307/326/34 IPC was then prepared and the same with dated initial and official seal has been identified and marked as Exbt. 10 and the signature of the witness marked as Exbt. 10/1.

She also deposed that on the same day, in c/w same case reference P.M. examination over the dead body of one Kushan Das, aged about 8 months, S/o Sri Ratan Das was also conducted. The alleged history was that the said child sustained burns injuries along with his mother (*Supriya Biswas*) on 12.06.15 at about 06:30 am. She deposed that the child was taken to AGMC and GBP hospital and was admitted at 06:58 am, who succumbed on the same day i.e. on 12.06.15 at 06:35 pm. The body was identified by Sri Sunil Biswas, maternal grandfather of the deceased child. She also deposed that they have conducted post mortem examination over the said dead body in between 01:45 pm to 02:45 pm and that the cause of death was shock as a result of 72% burns injuries

caused by flame. She further deposed that report was been prepared by them and the report with dated initial and official seal has been identified and marked as Exbt. 11. The signature of the witness has been marked as Exbt. 11/1.

15. P.W.-11, Sri Rupachand Sarkar deposed that on 12.06.2015, Supriya died from burn injuries along with her minor child, aged about 9 months. He deposed that Supriya was married to Ratan Das, three years back from her death. He also deposed that about one month back of her death, once the father of Supriya (PW1) told him that Supriya was subjected to cruelty at her matrimonial house on demand of steel almirah, fridge, etc. He deposed that on 12.06.2015, he got telephonic information from Sunil Biswas (P.W.-1) and then he visited GBP hospital and found Supriya with burns, and at that time she was able to speak. He stated that he enquired Supriya as to how the incident happened to which Supriya replied to him that on the previous night i.e. on 11.06.2015, Ratan Das and another lady namely, Soma physically assaulted her and at that moment the other family members did not object and remained silent. He deposed that he asked Supriya as to how the fire caught in her person to which Supriya replied but, this

time he could not understand her voice properly. He also deposed that he is the scribe of the ejahar.

In his cross-examination, it revealed that there is a material contradiction to the point that in his examination in chief he stated that on 12.06.2015 he got telephonic information from Sunil Biswas about the incident. After visiting GBP hospital he found Supriya with burns and at that time, she was able to speak. He then enquired Supriya as to how the incident happened to which Supriya replied that on the previous night i.e, on 11.06.2015, Ratan Das and another lady namely, Soma physically assaulted her and at that moment, the other family members did not object and remained silent. Whereas in his statement recorded under section 161 Cr.P.C, this portion has not been found rather, it has been found that on 12.06.2015 morning he received information from Badharghat, Matripally on his mobile that Supriya and her son received burn injuries and they were shifted to AGMC and GBP hospital. Thereafter, he went to GBP hospital and found Supriya and her son in critical condition and he then informed the matter to Sunil Biswas (PW1) who then arrived at the hospital and these, the witness denies to have stated to the IO which subsequently has been exhibited as Exbt.A subject to

confirmation by the I.O. (*I.O. in her deposition has confirmed this point*). On perusing the earlier statement recorded under section 161 of Cr.P.C of this witness, it does appear that he heard from the local public that Ratan Das and Soma Das on 11.06.2015 in the evening have physically assaulted Supriya in front of the other accused persons but, none of them took any step against Ratan and Soma and they all remained silent at that moment. Contradiction to this point is there but, not fully. The other suggestions so put by the defence have been flatly denied.

16. P.W.-12, Smt. Ramfanmawii deposed that on 12.06.2015, she was posted at West Agartala Women P.S. as S.I. of police, and on that day at 12:15 hours, she received one written complaint from Sri Sunil Biswas. Based on the same, registered West Agartala Women PS FIR No. 2015/ WAW/ 031 dated 12.06.15 under sections 498A/307/326/34 IPC against Sri Ratan Das, Sri Suresh Das, Sri Ajit Das, and the mother-in-law of the victim. The witness identified the endorsement on the body of ejahar and it has been exhibited as Exbt.1 /2. She deposed that the printed form of FIR has been prepared and registered by her and on identification; it has been exhibited as Exbt. 12 as a whole. Being O.C. (in charge), she took up the

investigation. She then examined witnesses namely, Sri Sunil Biswas, Sri Rupchand Sarkar and recorded their statements under section 161 Cr.PC and that she then visited P.O., prepared hand sketch map with separate index and on identification those has been exhibited as Exbt. 13 and 13/1 respectively. Thereafter, she seized one green colour kerosene oil drum, four nos. sacks, and some portion of ashes suspected to be burned clothes and that the said seizure list was then prepared by her and identified and exhibited as Exbt. 4/2. She also stated that she then examined Smt. Gita Rani Das, Smt. Purnima Das, Sri Swapan Dey, Smt. Swapna Das and recorded their statements under section 161 Cr.P.C. On the same day at 15:55 hours, she received information over the telephone from GBP hospital that victim Supriya Biswas(Das) expired at 2:40 pm. She then prepared the surathal report over the dead body of deceased Supriya Biswas (Das) in presence of witnesses which has been exhibited as Exbt. 2/4. On the same day at about 6:35p.m, the child of the deceased namely; Kushan Das also expired at GBP hospital, the surathal report over the dead body of said deceased child Sri Kushan Das was also prepared by her and it has been exhibited as Exbt. 3/3. She stated that on the same day at about 17:55hours she arrested one of the

FIR named accused Suresh Das and forwarded the accused to the Court just the next day. She stated that on 23.06.2015, she received both the P.M. reports from AGMC and GBP hospital. On 18.08.2015, she forwarded the seized exhibits to the SFSL for necessary examination and report thereon. On 10.10.15, she received the SFSL report, and on 17.10.15, she received the dying declaration of the victim from DCM, Emilia Reang. On the same day, she also received the inquest report prepared by the Executive Magistrate on 12.06.15. She also deposed that on 28.10.15, she handed over the case docket to the Dy. SP(CAW) after adding section 304B of IPC as she was then not competent to proceed further with the investigation. She confirmed Exbt. 5 as part of the previous police statement of witness Smt. Purnima Das (PW3). She also confirmed Exbt. 8 as part of the previous police statement of witness Smt. Swapna Das (P.W.7). Accused Suresh Das too was identified in the Court.

17. P.W.-13, Smti Olivia Debbarma deposed that on 28.10.2015 she was posted as Dy.SP(CAW), West Tripura. On that day this case was re-endorsed to her for investigation and as a part of my investigation. She verified all the investigations done by the previous I.O. namely WSI R.F. Mawaii. She stated

that she visited the place of occurrence and conducted raids to cause the arrest of the absconding accused persons. She re-examined all the witnesses and as they corroborated with their earlier statements, she did not record the statements afresh. She also examined and recorded the statement of witnesses namely, Emilia Reang, DCM, Sadar, Dr. Anamika Das, Junior Resident, AGMC and GBP hospital, Dr. Anamika Nath, Junior Resident, AGMC and GBP hospital, Smt. Gita Rani Das, Sri Suman Kumar Chakraborty, Dy. Director and Chemical Examiner, TSFSL, Dr. Abhijit Dey of AGMC and GBP hospital, Sri Sunil Biswas, Anil Biswas. Finally, a prima facie case having been found, she laid West Agartala Women PS C/S No. 74 of 2015, dated 30.11.2015 under sections 498A/304B/34 IPC against the accused persons.

18. From the above analysis of the evidence on record, it is established that the prosecution relied on the evidence of P.W.1, P.W.4, and P.W.11 to establish the guilt of the appellant. Learned P.P. further relied upon the medical evidence to prove the guilt of the appellant herein.

19. P.W. 1 in his deposition stated that one Gita Das, a local leader along with other party members saw the appellant along with one Soma Das physically assaulting

Supriya, now deceased when they went to collect subscription the previous day before that incident. But, the said Gita Das was not examined, so, there is no evidentiary value to the said deposing of P.W.1. The statement given by P.W.1 is an indirect statement. Moreover, P.W-1 is the father of the deceased and P.W.4 is the uncle of the deceased. The deceased herein is the niece of the P.W.11. So, they are all related witnesses. It is also pertinent to mention here that there is no direct witness to the said event.

20. In the dying declaration given by the deceased, she categorically stated before P.W.5 that *"I by myself committed suicide by setting ablaze(fire). I myself set fire on my body."*

21. Learned P.P. relied upon the Medical evidence i.e. evidence of P.W. 6 and P.W.10 to establish his argument. But medical evidence has its evidentiary value in the case of murder. But, the instant matter relates to suicide, so, medical evidence cannot fix the guilt of the appellant-husband herein. It is also pertinent to mention here that the victim-wife suffered severe burn injuries and rural people cannot handle such injuries and it has to be handled by expert. So, the

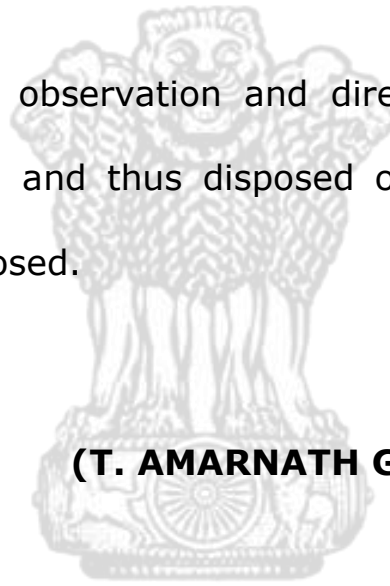
argument of the learned P.P. that the victim being taken to hospital after substantial time has elapsed also fails.

22. In the light of the above discussions, we are of the view that the prosecution, in the instant case, has failed to prove the charges leveled against the appellant herein beyond a reasonable doubt. Accordingly, the judgment and order of conviction dated 12.03.2021 passed in S.T.(T-1)33 of 2016 is set aside. The appellant herein, Sri Ratan Das is set at liberty forthwith, if he is not wanted in connection with any other case.

23. With the above observation and direction, this instant appeal stands allowed and thus disposed of. Pending application(s), if any stands closed.

(ARINDAM LODH,J)

(T. AMARNATH GOUD,J)



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