

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A.(J)57 of 2020**

Sri Akhil Das,
son of late Dharendra Chandra Das,
Village-South Pulinpur (Kuishar Tilla),
P.S. Teliamura, P.O. Hawaibari,
District : Khowai, Tripura, Pin : 799205

----Appellant(s)

Versus

The State of Tripura

---- Respondent(s)

For Appellant(s)	:	Mr. P.K. Biswas, Sr. Adv.
		Mr. P. Majumder, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
		Mr. J. Majumder, Adv.
Date of Judgment & Order	:	20.07.2022
Whether fit for reporting	:	YES/NO

**HON'BLE MR. JUSTICE AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order

Heard Mr. P.K. Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the appellant. Also heard Mr. S. Ghosh, learned Addl. P.P. appearing for the State.

2. This is an appeal under Section 374 of the Cr.P.C. against the judgment dated 18.12.2020 passed by the learned Sessions Judge, Khowai Tripura in Case No.ST(T-1)06 of 2018 convicting the appellant under Section 302 of the IPC and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for one year.

3. The prosecution case was set in motion by way of a complaint lodged by one Sri Swapan Das to the O.C. Teliamura P.S. on 07.04.2017.

4. The brief fact of the case is that in the year 2007 marriage ceremony was solemnized in between the deceased Sima and the FIR named accused person Akhil Das as per social customs. The complainant who is the father of the deceased alleged that since after marriage, the accused Akhil Das subjected to cruelty upon his wife [daughter of the complainant] both physically and mentally. Several times these issues were amicably settled up by the local people. The complainant also alleged that the husband of the deceased is a central government employee and used to stay outside the state. Once when the husband returned back to his house on leave, he tortured upon the victim and administered poison in her mouth and she was admitted to G.B.P. Hospital at Agartala. The complainant alleged that since for the last ten years the FIR named accused Akhil Das subjected to cruelty to the victim both physically and mentally. On 07.04.2017 at about 0600 hrs. the complainant came to know from his son Uttam Das that his daughter is no more alive. Accordingly, the complainant along with others visited the house of Manik Das i.e. the rented house of his deceased daughter and found his daughter in hanging condition with some blood stain in her face and nose. The complainant alleged that accused Akhil Das murdered his daughter and after murder, he hanged her body and he committed this heinous offence due to the abatement of his brother Apurba Das.

5. On receipt of the said complaint, TLM P.S. Case No.2017/TLM/0012 dated 07.04.2017 under Section 498(A)/302/109 of the IPC was registered and thereafter, the case was endorsed to SI Mangesh Patrai for its investigation. In course of his investigation, IO visited P.O., prepared hand sketch map with separate index, recorded statement of the available witnesses under Section 161 of Cr.P.C., arrested FIR named accused person Akhil Das, collected postmortem examination report and State Forensic Science Laboratory report from the said laboratory and finally, on completion of his investigation, as he found a prima facie case against the accused persons filed charge-sheet vide Teliamura P.S. charge-sheet No.60/17, dated 30.11.2017, under Section 498(A)/302 of the IPC against the accused namely Akhil Das and under Section 498 (A)/302/109 against the another namely Apurba Das.

6. On receipt of the charge-sheet the then SDJM, Khowai took cognizance of offence under Section 498(A)/302 of the IPC. Attendance of both the accused persons were procured and the case record was committed to this court since this is a sessions trial case. On 27.04.2018 this court received the case record from the court of Judicial Magistrate, 1st Class, West Tripura, Khowai. Thereafter, charge was framed against both the accused persons for the offence committed under Section 498A/302 read with Section 34 of the IPC explaining the contents of charge to the accused persons translating the same in Bengali to which they pleaded not guilty and claimed to be tried. Accordingly, to prove the case from the prosecution adduced as

many as 22(twenty two) witnesses and are examined in this case who are also duly tested by cross-examination by the defence.

7. After completion of evidence of prosecution side, accused persons were examined under the provision of Section 313 of the Cr.P.C. and they adduced evidence in their defence by producing four numbers of witnesses.

8. The court below has framed the following points for determination :

(I) Whether the present accused persons being husband and brother-in-law of deceased Sima Das subjected her to cruelty both mentally and physically ?

(II) Whether on 07.04.2017 at any point of time before 0600 hours at Gauranga Tilla under TLM P.S. accused Akhil Das intentionally committed murder of the victim Sima Das and Apurba Das instigated Akhil to do the same ?

9. After examining the evidence of the prosecution witnesses as well as the defence witnesses the trial court finds that though the prosecution has able to prove their case against accused Akhil Das but the evidence on record are not sufficient to come to a conclusion that accused Apurba Das was instigated Akhil Das and thereby committed any offence as charged against him. Hence, the present appeal.

10. Mr. P.K. Biswas, learned senior counsel appearing for the appellant has emphasizes that it is a case of suicide but it is not the case of homicide.

11. On the contrary, Mr. S. Ghosh, learned Addl. P.P. appearing for the state has stated that the medical evidence is not a conclusive proof in the

present case but it has been corroborated by the statement of the land lady and the minor daughter that the accused was present in the hut. He has further submitted that the corroboration, the last seen together, the special knowledge is the case of the prosecution.

12. PW-2 being the owner of the premises and PW-9 the wife of the owner of the land where the accused person was residing along with his family. PW-13, the daughter of the accused has deposed before the court that there is a variation and improved version appeared in the statement recorded under section 161 Cr.P.C. Even Section 161 Cr.P.C. statement which was recorded on 21.04.2017 was after so many days when the FIR of the cause of action has taken place on 06.04.2017 and the FIR has been issued on 07.04.2017. PW-2 and PW-9 in their cross-examination has specifically agreed that they have not indicated regarding most of the statements. Their attention has been drawn in 161 Cr.P.C. statement before the police officer. This is only the evidence of PW-2 and PW-9 including PW-13 made before the court, which is an improved version.

13. In so far as the medical evidence of PW-21 who has conducted the postmortem examination is inexperienced and has no special knowledge in forensic segments and even the medical evidence has not been categorically confirmed with regard to the death of the deceased. The mere presence of the accused persons and the last seen of offence along with the child in the hut with the deceased woman (wife) in a hanging position cannot draw an inference and the circumstantial evidence cannot be connected that

the husband has killed the wife. It is needless to observe that in a family the wife, the husband and the child who stays under one roof, any conjugal relation is obvious amongst the couple. Since it has not been proved who had killed the wife, the prosecution has failed to prove the case beyond reasonable doubt.

14. In view of the above discussion, we feel that the prosecution has failed to prove his case beyond reasonable doubt against the accused person.

Accordingly, the appeal stands allowed. As consequence thereof, the impugned judgment and order dated 18.12.2020 is set aside and quashed. The appellant is set at liberty forthwith.

JUDGE

JUDGE



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