

**HIGH COURT OF TRIPURA**  
**A\_G\_A\_R\_T\_A\_L\_A**  
**Crl.A. No. 52 of 2019**

1. The State of Tripura, represented by the Ld. Public Prosecutor,  
High Court of Tripura, Agartala, West Tripura.

*.....Appellant*

**-VERSUS-**

1. Sri Mitan Das, S/o Sri Sukha Ranjan Das @ Shova.  
2. Sri Sukha Ranjan Das @ Shova, S/o late Upendra Kr. Das.  
3. Smt. Rekha Das, W/o Sri Sukha Ranjan Das @ Shova.  
4. Sri Litan Das, S/o Sri Sukha Ranjan Das @ Shova.  
5. Smt. Suparna Das, W/o Sri Litan Das.

All are resident of village Purba Assam Para, P.S. Ranirbazar,  
District: West Tripura.

*..... Respondents.*

**B\_E\_F\_O\_R\_E**  
**HON'BLE MR. JUSTICE T. AMARNATH GOUD**  
**HON'BLE MR. JUSTICE ARINDAM LODH**

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For Petitioner(s)	:	Mr. Samrat Ghosh, Addl. P.P.
For Respondent(s)	:	Mr. S. Bhattacharjee, Advocate.
Date of hearing and delivery of judgment and order	:	<b>10.11.2021</b>
Whether fit for reporting	:	<b>YES/NO</b>

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**JUDGMENT & ORDER [ORAL]**

सत्यमेव जयते

Heard Mr. Samrat Ghosh, learned Addl. Public Prosecutor  
appearing for the State of Tripura-appellant and Mr. S. Bhattacharjee,  
learned counsel appearing for the respondents.

[2] This criminal appeal under Section- 378(2) of the Code of  
Criminal Procedure is directed against the judgment and order of

acquittal dated 06.05.2019 passed by the Ld. Additional Sessions Judge, Court No.5, Agartala, West Tripura, in case No. ST/T-1/14/2014.

[3] The factual background of the case is that on 30.11.2012, Sri Maheshwar Das had lodged one written ejahar before the O.C of Ranirbazar P.S. alleging inter-alia that his daughter Smt. Rita Das [deceased herein) was given marriage with Mithun Das @Mitan of Assampara giving all the articles as per his demand. After marriage another amount of Rs.50,000/- was given for his business. In spite of that, Mitan Das along with his parents and other family members used to torture his daughter. On the morning of 30.11.2012, at about 7.00am he got information that his daughter was admitted in GBP Hospital due to her illness. Immediately after getting the information, he along with others rushed to the GBP Hospital and found his daughter having several bleeding injuries on her head and she was not in a position to speak anything. After a while, she was declared dead by the attending doctor. Thus, it was alleged in the ejahar that Rita Das was killed by her husband and other family members under conspiracy.

[4] The trial court had examined evidence of PW-1, the informant herein, marked as Extb.1. The trial court also examined the P.M report marked as Exbt.5 which was not effectively challenged by the defence during the cross-examination of PW-12, Dr. Juthika Debbarma.

[5] On the basis of the aforesaid ejahar, Ranirbazar Police Station FIR No. 61 of 2012 dt. 30.11.2012 was registered under Sections 498A/304B/34 of IPC against the accused person Sri Mitan Das and other family members. During investigation, it was revealed that on 04.07.2012, Rita Das got married with Mithun. At the time of marriage all the articles were given to the Mithun Das but subsequently, she was tortured mentally and physically by her husband and other family

members demanding more dowries. In the month of September, 2012, the father of the deceased gave 50,000/- to Mithun Das but, the torture upon his daughter increased day by day. Ultimately, on 30.11.2012, in the morning, the husband of deceased inflicted blow upon her head by an 'Axe' resulting to bleeding injuries. It is pertinent to mention here that the 'Axe' which was produced during trial and marked as Exbt.MO.1, as per evidence of PW11, Dr. S. Nath, no blood stain could be detected in the Exbt.A i.e. the 'Axe'.

[6] Thereafter, on the same day, she died at GBP Hospital. On completion of investigation, being prima facie satisfied about the commission of offence, the Investigating Officer registered Ranirbazar P.S. Case No. 14 of 2013 dt. 30.04.2013 under Sections-498A/304B/34 of IPC against principal accused Sri Mitan Das and under Sections-498A/34 against other four accused persons namely, Sukha Ranjan Das @ Shova, Smt. Rekha Das, Sri Litan Das and Smt. Suparna Das to face the trial in the Court of Law.

[7] Cognizance was taken on the basis of police report and in due course, the case was committed to the Court of Sessions. The learned Sessions Judge considered the materials on record and after hearing both sides, framed charges against the accused persons for commission of offence punishable under Section-498A/304B/302/34.

[8] In course of trial, prosecution had examined 14 witnesses including the informant and the investigating officer. On closure of prosecution evidence for the time being, trial was clogged as it was reported that accused Mithun Das was suffering from schizophrenia and was under treatment at Modern Psychiatric Hospital, Narshingarh, Agartala and in this regard one Board was constituted consisting of three doctors and was certified that Sri Mithun Das is suffering from

schizophrenia and he is not fit for face the trial. Subsequently, on 07.12.2017 the accused persons were examined under Section-313 of Cr. P.C. to which each of them claimed themselves as innocent and denied the prosecution case in toto.

[9] The learned Sessions Judge considering the evidence on record arrived at a conclusion that prosecution has failed to prove the case against the accused beyond reasonable doubt and therefore, acquitted the prime accused and four other family members from the charges.

[10] The appellant herein, being aggrieved by and dissatisfied with against the impugned judgment of acquittal dated 06.05.2019, has preferred this appeal on the following grounds:

(I) The learned trial court has lead to an affirmative finding in favour of the respondents (accused persons) and this clearly indicates that the PWs- 1, 2, 3, 4, 5, 6, 8 and 9 was the vital witnesses of this case. But the trial court did not considere the evidence of that PWs and arrived at wrong finding and hence liable to be set aside.

(II) The alleged offence committed on 30.11.2012 and it is settled law that it is not every and any plea of unsoundness of mind that will suffice for attracting Section-84 of IPC in the chapter of general exceptions the standard of proof to be applied shall be of legal insanity and not just medical insanity. The burden of proving that the case comes within the purview of general exception under Section-84 of IPC rests on the accused/defence.

(III) It was not proved that the accused was suffering from such legal insanity at the time of commission of offence to proof that by reasons of such unsoundness of mind he was incapable of knowing the nature of the Act or that he was doing what was either wrong or contrary to law. Therefore, Section-84 of IPC cannot come in to play to the rescue of accused Mithun Das if otherwise his involvement in the commission of the alleged offence is established from the prosecution evidence. The

condition precedent for taking plea of any of the general exception of the IPC is that the involvement of the person accused of the offence is either admitted or not denied.

[11] From The evidence of PWs-1, 2, 3, 5 and 6 it is proved that the deceased was cruelly treated by all the accused persons on demand of money since after 15 days of her marriage till death and their evidence are consistent to each other. So, charge under Section-498A IPC has duly proved. Admittedly, the deceased was a married lady at the time of alleged incident. PW-1 Maheswar Das, the informant herein, deposed that the deceased is his younger daughter and her marriage was solemnized with the accused. PW-2, Rajesh Das, PW-5, Gobardhan Das and PW-6, Chanchala Das (mother of the deceased) have also supported the fact of marriage and it was not disputed by the defence. Thus the first ingredient to constitute an offence of cruelty has been duly established.

[12] On the other hand, learned counsel for the respondent in the present appeal opposing the submission of the learned Addl. P.P. contending that the evidence of aforesaid witnesses are not consistent to each other and merely on the basis of some omnibus statement, no charge of cruelty can be established.

[13] Now, it is the settled principle of law that allegation of cruelty has to be proved with material particulars. Omnibus statement of exercise of cruelty cannot prove the case. Here in the present case also this Court finds that there are certain omnibus statements in the evidence of close relatives of the victim without any material particulars to justify the nature of cruelty exercised upon the victim. Thus, on the basis of evidence on records, no conclusive findings can be arrived at to establish the charge of cruelty. In the result, the accused persons are not found guilty under Section-498A of IPC.

[14] In the present case, it has been observed that the accused was suffering from schizophrenia and was under treatment at Modern Psychiatric Hospital, Narshingarh, Agartala and to that affect, a Board consisting of three doctors of Psychiatric department clearly observed that the accused was suffering from mental disorder and requires further observation as inpatient. But, fact remains that prosecution failed to explain as to why the detail information and history of the patient was not supplied to the Board for further observation and to collect the necessary information about the exact period from which point of time he was suffering from mental disorder. It was the duty of the investigating officer to subject the accused for medical examination immediately and place that evidence before the Court, but, that was not done in the present case. Therefore, it creates a serious doubt on the prosecution case for which, the accused is liable to get benefit of Section-84 of IPC.

[15] In view of above and having regard to the entire evidence and materials on record, I am of the opinion that prosecution has failed to prove the case beyond reasonable doubt and hence, the order of acquittal recorded by the learned Sessions Judge does not deserve interference. Accordingly, the criminal appeal filed by the State-appellant stands dismissed. The Judgment and order of acquittal passed by the learned Sessions Judge is affirmed.

Send back the L.C. records along with a copy of this judgment. As a sequel, miscellaneous applications pending, if any, shall stand closed.

**JUDGE**

**JUDGE**