



GAHC010116982019

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**THE GAUHATI HIGH COURT AT GUWAHATI**  
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

**PRINCIPAL SEAT AT GUWAHATI**

**CRIMINAL APPEAL NO. 31 (J) OF 2019**

Shri Satish Telenga,  
Son of Late Raju Telenga,  
Resident of Lohpohia Tea Estate,  
District – Jorhat.

.....Appellant.

-Versus-

State of Assam,  
Represented by its Public Prosecutor.

.....Respondent.

Advocates for the appellant: Ms B Sarma, *Amicus Curiae*,

Advocate for the respondent: Mr D Das, Addl. P. P, Assam



**BEFORE**  
**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Date of hearing : 06.06.2023  
Date of judgment : 16.10.2023

**JUDGEMENT AND ORDER**

This appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 ('CrPC' for short), is preferred against the Judgment and Order dated 26.12.2018 and 27.12.2018, passed by the learned Sessions Judge in Sessions Case No. 49 (J-J)/2013, convicting Satish Telenga (hereinafter, referred to as the accused), under Section 304 Part-II of the Indian Penal Code, 1860 ('IPC' for short) and sentencing him to undergo Rigorous Imprisonment for 7 years and a fine of Rs 10,000/- (Rupees Ten Thousand Only) with default stipulation.

2. The prosecution case as unfolded from the FIR is that Nomi Robidas (hereinafter, also referred to as 'the victim' or 'the deceased') got acquainted with the accused, who indulged in a relationship outside marriage with the deceased and used to visit her in her staff quarter. He induced the victim to such a relationship by promising to marry her and he also at times, used to stay with the victim in her staff quarter. The victim was blessed with a daughter. The child was 3 years old at the time of the incident. The victim informed her mother that the accused used to drink and gamble frequently and used to demand money from her and he also used to subject her to cruelty. On 26.01.2023, at about 02:00 pm, the accused doused the victim with kerosene and set her ablaze. The victim was taken for medical treatment, but she passed away on 07.02.2013. On learning about this incident from the neighbours, the victim's mother lodged an FIR, which was registered as Pulibor PS Case No. 83/2013, under



Section 304-B IPC.

3. The Investigating Officer (IO, in short), embarked upon the investigation. He went to the place of occurrence and prepared the sketch map. He made preparations for inquest and forwarded the body for autopsy. He recorded the statements of witnesses. On finding *prima facie* materials against the accused, the IO submitted charge sheet against him under Section 304-B IPC. On appearance of the accused, copies were furnished and the case was committed for trial.

4. At the commencement of trial, a formal charge under Sections 302/306 IPC was framed and read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5. To connect the accused to the crime, the prosecution adduced the evidence of 12 witnesses, including the Medical Officer ('MO', in short). The defence cross-examined the witnesses to refute the charges. To the incriminating circumstances projected through the evidence, several questions were asked to the accused under Section 313 CrPC and his responses were recorded. The tenor of the answers to the questions put to the accused, depicts a plea of total denial. He stated that PW-2 deposed falsely against him. He denied of having locked the door as alleged by PW-2. He vehemently denied that he set ablaze his wife.

6. Learned counsel for the accused laid stress in her argument that benefit of doubt goes to the accused as the FIR was lodged a month after the alleged incident. The evidence of the witnesses depicts that the victim was able to speak after the incident, but no dying declaration was recorded. No mens rea could be attributed to the accused to kill his wife. The



victim died after eleven or twelve days, but the prosecution failed to record the dying declaration of the victim. The accused cannot be held guilty of murder because the evidence of PW-4 does not at all implicate that his mother (deceased) had specifically alleged that the accused set her ablaze. The victim's last statement was- "Why did you do so?" This statement cannot be conjectured as an allegation that the victim had incriminated that the accused had doused her with kerosene and set her ablaze. The accused had also sustained burn injuries while trying to save his wife and this reveals that he had no intention to eliminate his wife. PWs-3, 4, 6 and 7 are all related witnesses and they have exaggerated the entire incident. The cross examination of the witnesses Basudev, Debansh (PW-3) and Bobita (PW-4), clearly reveals the major contradictions which have been affirmed by the IO. Not a single eyewitness has stated that kerosene and matchbox was taken by the accused to destroy his bike.

7. Per contra, the learned Additional Public Prosecutor, Mr D Das has submitted that the accused does not deserve leniency. He was relentlessly and ceaselessly fighting throughout the day with his wife. The evidence of PW-2 and PW-4 clearly depicts that the accused had also assaulted his wife when he was not provided with money for gambling. The motorcycle which was seized in connection with this case had slashes on it. This is not a case that the accused procured kerosene to burn the motorcycle lest the motorcycle would have exploded during the tussle. This is a case where the accused procured the kerosene to set ablaze his wife.

8. Now, on the anvil of these submissions, the question that falls for consideration is that whether the learned trial Court erred in convicting the accused/appellant under Section 304 Part-II IPC.

9. To decide the case in its proper perspective, the evidence is reappraised.

10. The informant, Minu Robidas deposed as PW-7 that the accused married her daughter Nomi Rabidas. Following her union with the accused, Nomi received employment benefits in the tea-garden and she was provided with an official quarter. The accused married her daughter about 5 years back. Her daughter, i.e., the deceased was earlier married to another person, who was a resident of Mohbandha and from that wedlock, her daughter Nomi was blessed with a son. On the day of the incident, her grandson came and informed her about a quarrel between his parents. She then immediately went to her daughter's house and saw her daughter (Nomi) engulfed in flames. When she asked her daughter about the incident, the accused came and carried her daughter inside the house and bolted the door from inside. Then, she (PW-7) raised alarm and the neighbours gathered near the accused person's house. The door of her daughter's (victim's) house was broken by the neighbours and they then entered into the house and she noticed that the accused person's motor cycle was damaged and had slashes over it. She saw one dao lying on the ground, one kerosene gallon and a match box inside the room. Her daughter and the accused were shifted to the Jorhat Civil Hospital for treatment. On the next day, her daughter (victim) was sent to Assam Medical College and Hospital (AMCH), at Dibrugarh, for better treatment, but her daughter finally succumbed to her injuries after about 11 days. Her other daughter Babita Robidas (PW-4) informed her that Nomi Robidas (victim) told her that the accused set her ablaze when Nomi refused to provide him with money. Thereafter, she lodged the FIR with the Police. In her cross-examination, this witness testified that the incident occurred on 26<sup>th</sup> of January, but she did not lodge any FIR till the death of her daughter. She lodged the FIR after

the Shraddha rituals. Her daughter (victim) succumbed to her injuries after 12 days of the incident. The accused also sustained burn injuries on his hands and he underwent treatment at AMCH.

11. A scrutiny of the evidence of PW-7 clearly depicts that she saw her daughter (victim) engulfed in flames and when she tried to ask her daughter about the incident, the accused came and carried her daughter inside and bolted the door. This implies that her daughter did not inform her anything about the incident. She was informed about the incident by her other daughter Babita Robidas.

12. Babita Robidas testified as PW-4 that her elder sister Nomi Robidas (victim) was married to the accused in the month of November, 2008. At that time, she used to reside in her parental home at Lohpohia Tea Estate. Nomi Robidas (deceased) was earlier married to Pradip Robidas and she was blessed with her son, Sri Debansh Robidas, from the previous marriage. From her subsequent marriage with the accused, the victim was blessed with a younger daughter, who was about 4 years old, at the time of the incident. On the date of incident, she went to her aunt's house at Bhatemara Gaon. Her sister (victim) used to reside in her official quarter at Lohpohia tea estate and she used to visit her sister Nomi frequently. Whenever her elder sister (victim) refused to provide the accused with money, he used to quarrel with her. Her sister informed her family and her friends about the quarrels and altercations in their house. They were also informed that the accused used to subject the victim to cruelty. Her younger sister, Purnima Robidas informed her over phone on 26.01.2013 that her elder sister Nomi Robidas had sustained burn injuries. Nomi's children, Debansh and Suman were also present at home at the time of incident. As there was a bandh call on the



day of the incident, she proceeded towards her sister's (victim's) official quarter from Bhatemara Gaon on foot. Thereafter, they hired a three wheeler (Ape). She was accompanied by her elder sister Smt Sangita Robidas and her friend Manju Paul. They reached her sister's house at 03:00 pm, but meanwhile, her sister was already taken to the Jorhat Medical College and Hospital (JMCH) in a 108 Ambulance. They noticed one motorcycle in a damaged condition lying in the courtyard. She (PW-4) identified this motorcycle as Material Exhibit-1.

13. She, PW-4 further deposed that the accused purchased this motorcycle with the money provided by her sister Nomi. PW-4 further stated that she saw kerosene galons, one plastic bucket, one matchbox as well as one machete (Kopi dao) at the place of occurrence. She also admitted that these articles were not produced before the Court. On the following day, her sister was referred for treatment to AMCH. She along with her sister, Sangita Roibidas accompanied Nomi to AMCH. The accused along with his first wife, Smt Malati Telanga also accompanied her elder sister (victim). After 12 days, her elder sister Nomi passed away.

14. PW-4 further deposed that she met her nephew Debansh Robidas in the official quarter of Nomi Robidas. Debansh informed her that on the day of the incident, his mother Nomi Robidas and the accused had an altercation and the accused assaulted Nomi Robidas. Debansh also informed her that the fight escalated between his parents when the accused demanded money for gambling as he lost all his money while gambling and thereafter, he returned home in an inebriated condition and demanded money from Nomi Robidas, but when Nomi refused to part with her money, the accused assaulted her and then he tried to destroy his own motorcycle with the machete. Debansh also told her that prior to the incident his father (accused) sent one person from the



place where they were gambling and the person asked for money, but when his mother (Nomi) refused to send money to the accused, the accused returned home in an inebriated condition and demanded money. When Nomi (victim) refused to part with the money, the accused took out the motorcycle to sell it for money to continue gambling and again when Nomi tried to resist, the accused threatened to eliminate her. The accused then exhorted Debansh to go to his grandfather's house and at that time, Nomi also asked her son Debansh to go to her parental home at Lohpohia. While leaving, Debansh suddenly heard his mother (Nomi) crying out and instead of going to his grandparents' house, he returned to his house along with his grandmother, Minu Robidas. Then both Debansh and Minu saw that Nomi (victim) was engulfed in flames. They also saw the accused beside Nomi, who was not at all concerned to douse the flames and when Minu confronted the accused, then he took Nomi Robidas inside the house and bolted the doors. Minu Robidas raised alarm and the neighbours arrived.

15. It is true that the evidence of Minu Robidas, PW-7 that Nomi Robidas (victim) informed her younger sister Bobita Robidas (PW-4) that the accused set her ablaze has not been substantiated by the evidence of PW-4. PW-4 stated that Debansh Robidas (PW-3) informed her about the incident, whereas, on the contrary, PW-7 deposed that Bobita told her that Nomi Robidas informed her that the accused set her ablaze. This is a minor contradiction which can be ignored. It is but normal, that in such a chaotic situation, witnesses tend to forget such minute details.





16. The cross-examination of the witnesses will be discussed at the appropriate stage.

17. The key witness, Sri Debansh Robidas deposed as PW-3 that the accused is his step-father, being the second husband of his deceased mother Nomi Telanga. His father's name is Pradip Robidas and his mother was earlier married to his father Pradip Robidas. At the time of the incident, he was residing in the accused person's house along with his mother and his minor sister who was about 3 years old. On 26.01.2013, on account of Republic Day, he was at home, as it was a holiday. At about 11:00 am, his step-father (accused) who was inebriated returned home, after he lost money while gambling and demanded money from his mother. Although his mother had money with her, she did not part with the money. The accused then stated that he would sell his motorcycle, which was purchased by his mother. His mother resisted as she had purchased the motorcycle with her savings. Then the accused stated that he would break the motorcycle into pieces and he brought a kerosene gallon and one matchbox from inside his house. He also brought out a dao and started slashing the motorcycle. At that time, his uncle Basudev Bawri, who is a neighbor arrived and tried to dissuade the accused from damaging the motorcycle. The accused then went out of the house, but again he returned and demanded money from his mother (victim). He (PW-3) then went to call his grandmother, Smt Minu Robidas and informed her about the quarrel between his mother and the accused. As his grandmother's house is in the neighbouring area, they could hear the commotion emanating from the house. As soon as he reached his grandmother's house, he heard his mother screaming and when he returned home with his grandmother, he saw his mother in flames and he saw the accused standing nearby but not at all trying to douse the flames. He and his grandmother raised alarm and the neighbours arrived. Their neighbor Jagdish Telanga poured a bucket of water over his mother and at that



time, the accused pretended to save his mother. He wrapped a jacket around his mother and took her inside the house and locked the doors from inside, preventing the people to get into his house. He (PW-3) along with his neighbours and aunt banged on the door and repeatedly requested the accused to open the door, but the accused refused to unlatch the door.

18. PW-3 further deposed that after some time, the accused unlatched the door and he along with his grandmother and aunt, Urmila Robidas went inside the house. His mother Nomi Robidas was in a position to speak and they heard their mother asking the accused 'why he had done so', meaning thereby, why he had poured kerosene on her body and set her ablaze. This witness identified the motorcycle as Material Exhibit-1 and he pointed out the punctured petrol tank and the damages on the motorcycle. This witness also stated that during investigation, the Police forwarded him to the Magistrate to record his statement. He proved his statement as Exhibit-3 and his signatures on the statement as Exhibit- 3 (1), Exhibit- 3(2) and Exhibit- 3 (3).

19. A scrutiny of the statement of this witness under Section 164 CrPC clearly reveals that the evidence of this witness is consistent to his statement under Section 164 CrPC. His evidence corroborates the evidence of PW-4 and PW-7.

20. PW-3 was cross-examined at length. No contradictions could be elicited through the cross-examination of PW-3 under Section 145 of the Indian Evidence Act, 1872 ('The Evidence Act', for short) qua Section 162 CrPC. The IO, Sri Lohit Chandra Bora was examined as PW-11 and cross-examination of IO clearly reveals that the only contradiction which could be culled out through the cross-examination of PW-3 vis-à-vis the cross-examination of the IO is that PW-3, Debansh did not mention in his earlier statement that when the accused



returned to his residence for the second time, he came out of the house with a gallon and a matchbox in his hand.

21. The evidence of PW-3, who is an eye-witness and whose evidence is fortified by his statement under section 164 CrPC, cannot be ignored. The evidence of PW3 is substantiated by the evidence of PW-1, PW-2, PW-4, PW-6 and PW7. PW3 witnessed the fight between his parents which erupted as a result of drinking and gambling. He did not witness his father setting ablaze his mother but he clearly stated that his mother had asked his father why he had done so. He has not at all exaggerated because he could have more convincingly incriminated his stepfather. Several witnesses observed the latter part of the incident, and they saw the victim engulfed in flames and they also noticed that the accused made no effort to extinguish the flames, but he took his wife inside and latched the door from inside . The accused thus acted in a very peculiar manner.

22. The evidence of Debansh, PW-3 is also fortified by the evidence of PW.2. Basudev Bawri deposed as PW-2 that he was a member of the Village Defence Party at the time of the incident. He is a neighbour of the accused and the distance between his house and the accused person's house is about 20 feet. On 26.01.2013, at about 9:30 am, while he was taking rest after his night duty, he heard some noises/sounds, which were akin to that of cutting bamboo. He woke up to the sound and he went out of his residence and noticed the accused quarrelling with his second wife Nomi in his courtyard. He then entered into the accused person's house and dissuaded him from assaulting his wife. He advised the accused to go to the residence of his first wife, who stays separately, and to return home after his anger subsides. Accordingly, the accused left for his first wife's house, which is at a walking distance of 10 minutes. Then he asked Nomi (victim) about the reason behind the quarrel,



but Nomi did not reply to his queries. Meanwhile, the accused again returned to his house, and he again asked the accused to stay away from his house for some time so as to prevent any further quarrel with his wife.

23. PW-2, further deposed that at about 02:00 p.m., he heard a commotion emanating from the accused person's house and he heard Nomi and he heard the victim Nomi crying out-"Save me - save me" (In Assamese-Aai oi! Aai oi!). Suspecting that the accused had again assaulted his wife, he (PW-2) rushed to the place of occurrence (PO, for short) and he noticed that the victim (Nomi) was in flames. Her garments were also in flames. Another neighbour, Jagdish Robidas, reached the PO and poured a bucket of water over the victim's body. The accused also tried to douse the flames. He removed his jacket and covered his wife's body and took her inside his house and he locked the doors from inside. His mother-in-law, who resides nearby, arrived at the PO and his sister-in-laws also arrived at the PO. Meanwhile, the neighboring people arrived at the PO and exhorted the accused to unlatch the doors. The neighbours also rebuked him for bolting the doors from inside. After some time, the accused unlatched the doors of his house.

24. PW-2 further deposed that he went to the compounder's house and requested him to go to the PO. The compounder Sri Bolin Chetia called the driver of the ambulance of Lohpohiya Tea Estate. The victim Nomi Telanga was taken to some hospital at Dibrugarh, where she expired after eight or nine days as a result of the burn injuries.

25. Thus, it is manifest that the accused had assaulted his wife just before the incident. PW-2 is an independent witness and his evidence substantiates and fortifies the evidence of the eyewitness as well as the evidence of the other witnesses. He was cross examined at



length but no contradictions could be culled out through his cross examination vis-a-vis the cross examination of the IO, PW-11. The IO, PW-11 affirmed that PW-2 did not mention about the commotion emanating from the accused person's house and that he went out of his house and rushed towards the PO. This is a minor contradiction which can be safely brushed aside.

26. The evidence of PW-2 and PW-3 is corroborated by the evidence of Sri Jagdish Rabi Das, who deposed as PW-1. Jagdish Rabi Das corroborated the evidence of PW-2 that, at about 02:30 p.m., he heard a commotion emanating from the place of occurrence and he went to the place of occurrence, which is about a kilometre away, and he saw the body of Nomi Rabidas engulfed in flames. Thereafter, he along with another driver, Basudev Bawri (PW-2) entered into the house of Nomi Rabidas and doused the fire by pouring water on her body. At that time, the accused took his wife inside the house. Meanwhile, the neighbours gathered at the PO and he left the PO. Later, he learnt that the victim, Nomi was taken to Jorhat Medical College and Hospital and from thereon, she was referred to Assam Medical College and Hospital, where she died after the incident.

27. Both PW-1 and PW-2 have deposed that their statements under section 164 CrPC have been recorded by the Magistrate. They have proved their signatures on their statements as Exhibits- 1 (1) and 1 (2) and Exhibits- 2(1) and 2(2), respectively. A close scrutiny of the statement of the witnesses under section 164 CrPC clearly reveals that their evidence is consistent to their statements under section 164 CrPC.

28. Smt Urmila Bawri is the elder sister of Nomi Robi Das (victim) and she deposed as PW-6 that on 26.01.2013, at about 02:00 p.m, she heard the compounder, Bolin Chetia screaming

and saying that Nomi Robi Das has been set ablaze by the accused. Her residence is near the accused person's house and she immediately went to the accused person's house with a wooden plank to assault the accused as she was enraged by the deeds of the accused, but the accused somehow managed to snatch away the wooden plank. The accused took Nomi (victim) inside his house and bolted the door from inside and many people, including the hospital nurse arrived at the PO. They had to break open the door and her two younger sisters, along with some neighbours, took the victim to the Jorhat Civil Hospital for treatment. On the next day, the victim was shifted to AMCH Dibrugarh for better treatment, but after seven days, the victim succumbed to her injuries. She did not go to the AMCH to attend to her sister Nomi Robidas.

29. It has surfaced from the cross examination of PWs-1, 6 and 7 that the FIR was lodged by PW-7, after the victim passed away. PW-6 was also cross-examined at length, but no contradictions could be elicited through her cross examination vis-a-vis the cross examination of the IO, as per section 145 of the Evidence Act *qua* Section 162 CrPC.

30. Sri Manoj Robi Das testified as PW-5 that on the day of the occurrence, when he arrived home at about 04:00 pm, he noticed a gathering and he heard from the people assembled that the victim had suffered burn injuries. Another witness, Mr Kailash Telenga testified as PW-8 that the accused is his first cousin. On 02.03.2013, the Police of Pulibar PS directed him to produce the motorcycle from the accused person's house and accordingly he produced the motorcycle at Pulibar Police Station. He proved the Seizure List as Exhibit- 4 and Exhibit 4 (1) as his signature. In his cross examination, he testified that he did not read the contents of Exhibit-4 and so he was not aware of what was written on Exhibit-4. Another seizure witness, Mr Durga Telenga (PW-9), also did not support the seizure of the motorcycle.



He deposed in his cross examination that he did not know where the police recovered the seized motorcycle from.

31. Mr Krishna Karmakar, however, supported the seizure of the motorcycle. He deposed as PW-10 that he, along with one friend, brought the motorcycle from the accused person's house to Pulibar PS, as directed by the police and the police seized the motorcycle vide Exhibit-4. He proved his signature on the seizure list as Exhibit-4(3) and he also identified the seized motorcycle as material Exhibit-1. He deposed that there was a dent on the tank of the motorcycle.

32. The evidence of PW-10 clearly depicts that there was a dent on the motorcycle. The Exhibit-4 clearly reveals that the motorcycle bearing Registration No. AS-03/8322 had two slashes on it. The headlight of the motorcycle was also broken. This motorcycle was taken to the police station by none other than the first cousin of the accused (PW-8), who chose not to prove the Seizure list. The Seizure list was proved by another seizure witness, PW-10.

33. The entire incident can be succinctly recapitulated as follows:-

A fight erupted between the accused and his second wife as the accused was gambling and drinking heavily on the day of the incident. As he lost money while gambling, the accused asked for more money but his second wife Nomi Rabidas refused to provide him money for gambling. When he was not provided with the money, he started slashing his motorcycle with a dao. With intent to set ablaze his motorcycle, the accused brought out a gallon containing kerosene, but unfortunately, the victim sustained the burn injuries. No one witnessed the final assault, but the accused was last seen quarrelling with his wife. PW-2 and PW-3 have witnessed the



accused quarrelling and fighting with his wife. PW-2 tried to intervene but he failed to convince the accused. The evidence of PW-2 remained uncontradicted and uncontroverted even after vigorous cross examination by the defence. The evidence of PW-3 relating to the quarrel between his mother and his father has remained uncontradicted. The evidence of PW-3 transpires that the quarrel between his parents was heard by their neighbour PW-1, who rushed to the PO, but he failed to save the victim despite the fact that he poured water to douse the flames engulfing the victim. The evidence of PW-1 has also remained uncontradicted and uncontroverted. Rather, PW-1's evidence is corroborated by the evidence of PW-2. Some contradictions could be elicited through the cross examination of PW-7, but these contradictions does not cause a dent in the evidence. The only contradiction that could be culled out through the evidence of PW-7 and the evidence of other witnesses is that PW-7's daughter Nomi Robidas informed her other daughter Bobita Robidas that the accused set her ablaze, but Bobita Robidas, PW-4 stated that Debansh informed her about the incident. This contradiction cannot be considered to be a major contradiction. At the time of the incident, it is but normal that a witness may forget which one of her daughter or grandson had informed her about the incident, as the incident was a tumultuous and heinous incident. Despite vigorous cross-examination, the defence failed to convince that the victim had committed suicide. It is true that PW-3 has not stated that his mother specifically asked the accused – "Why did he set her ablaze?" His mother had asked the accused- 'why had he done this?'

34. This is a case of circumstantial evidence along with substantive evidence. The initial fight between the accused and the victim was witnessed by PW-2 and PW-3, whilst the latter



part of the incident was witnessed by PWs-1, 3, 6 and 7. The burn injuries have been proved by the Medical Officer, Dr Hemanta Kumar Mahanta, who testified as PW-12, that on 17.02.2013, while working as Head and Professor of the Department of Forensic Medicine at AMCH, Dibrugarh, he performed post-mortem examination over the dead body of Nomi Telanga, wife of Satish Telanga, in connection with this case and found that:-

- i) the body of the victim was covered with surgical bandage, except the head and neck and front and back of the chest.
- ii) Epidermal to dermo-epidermal flame burn present over both forearms and lower half of both arms, front and back of upper half of abdomen, both the thighs, upper half of both legs.
- iii) There was singeing of hair at places.
- iv) Zone of hyperemia present between healthy and burnt tissue.
- v) Total area of burn was 50% of body surface approximately.
- vi) The cause of death was due to shock resulting from ante-mortem burns.
- vii) The total areas of burn is 50% of body surface and was epidermal to dermo epidermal in depth.

35. In his cross examination, PW-12 (MO) has deposed that he was not aware of the subsequent treatment given to the victim after she was admitted at the hospital. The deceased died later as a result of shock due to unbearable pain.

36. The argument of the learned counsel for the appellant that the accused ought to get the benefit of doubt as the FIR was lodged after a month after the incident, holds no water.



The victim was undergoing treatment. She had suffered from 50% burns, and all her family members were busy trying to save her life. She was shifted from JMCH to AMCH. The victim was indeed unable to give her statement and no dying declaration was recorded. It is submitted on behalf of the accused that he too suffered from burns as he tried to save his wife and this depicts that the accused had no intention to kill his wife. This argument of the learned counsel for the accused can be safely brushed aside. The evidence of PWs- 1, 2, 3, 4, 6 and 7 clearly reveals that the accused took the victim inside the room and he locked the door from inside despite the fact that the neighbours tried to convince him to unlatch the door. After much hesitation, the accused finally unlatched the door. Instead of taking his wife to the hospital immediately, the accused kept delaying to provide the requisite treatment to the victim. Why did he not take his wife immediately to the hospital? The defence failed to rebut the evidence of the eyewitnesses. The accused was last seen fighting with the victim.

37. In view of my foregoing discussions, it is thereby held that the trial court had rightly held the accused guilty of offence under Section 304 – Part-II of the IPC. This is not a case of premeditated murder. The incident was the result of a fight between the accused and the victim. The evidence is clear that the accused was asking for money while the victim was refusing to part with the money which led to the final assault.

***Culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—***

***2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—***

**3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—**

**4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.**

**Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.**

**The above exception is subject to the following provisos:—**

**First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.**

**Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.**

**Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.**

**Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.**

***Exception 2.—Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.***

***Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.***

***Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.***

***Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.***

***Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.***

38. In this case on hand, the turbulent relationship between the accused and the victim is



apparent. It has been proved beyond a reasonable doubt that the accused was fighting with the victim before the incident. The evidence of PWs-3, 4, 6 and 7 clearly reveals that while the accused was fighting with the victim, PW-3, Debansh went to his grandmother's house, but he heard his mother's shrieks and he immediately returned to his house with his grandmother and so he did not witness how his mother got ignited. However, the circumstances form a complete chain. In a fit of rage, the accused committed the offence, which caused the burn injuries resulting in his wife's death. Thus, this incident falls within the ambit of Exception- 4 to Section 300 IPC.

39. The accused was last seen fighting with his wife and thereafter, within a short span of time his wife was in flames. The first person to reach the victim who was shouting for help was PW-3 and he categorically stated that his mother asked the accused –“why had he done this?” It could be deciphered from this statement made by victim that the accused had committed the offence. It cannot be presumed that the trial court has conjectured that the accused had set ablaze his wife. The question itself- ‘why have you done this?’ clearly implicates that the accused had done the deed, meaning thereby the accused had set ablaze his wife. It is true that no one had seen the accused dousing the victim with kerosene, but all the witnesses starting from PW-1 to PW-7 have stated that the victim was in flames. The Medical Officer's evidence reveals that the victim suffered from 50% burn injuries. Specialized treatment at AMCH and Jorhat Medical College and Hospital could not save the victim. When the victim was screaming for help, a neighbour had to come and pour water to extinguish the fire. What was the accused doing at that time? One neighbour (PW-1) came from a distance of 1 km and the other (PW-2) came from a distance of 20 feet and they poured water over the victim to douse the flames. Why was the accused not acting immediately? The accused

did not even try to extinguish the flames. Two neighbours came and poured water to douse the flames engulfing the victim. Here, the conduct of the accused is relevant. He took the victim inside the house and bolted the doors from inside and the neighbours had to bang on the doors. The time was crucial. Immediate treatment may have saved the victim. If the accused was so keen to save his wife and ended up scorching his hands, then why did he take his wife inside and bolted the doors from inside? Why did he not take the help of a doctor to save his wife but took his wife inside the house instead. Thus, the circumstances form a complete chain and it is held that in a fit of rage, the accused caused such injuries on his wife, which led to her death.

40. The trial Court has appositely held that the accused failed to discharge his burden when his statement was recorded under Section 313 CrPC. He failed to offer any plausible explanation to the incriminating circumstances brought against him by the prosecution. Although the accused was charged under Section 306 IPC, he was not held guilty of offence under the Section 306 IPC. It was rightly held by the trial court that the victim did not commit suicide and there is no abetment on the part of the accused instigating the victim to commit suicide. The evidence of PW-3, that the victim had asked the accused- "Why did you do this", clearly reveals that she did not commit suicide, but the accused had done the act which finally resulted in the victim's death. This is indeed not a case of suicide lest the victim would not have confronted the aggressor alleging that he was responsible for her burns. At the same time, intention cannot be attributed to the accused. The incident clearly depicts that his temper suddenly flared up as his wife refused to provide him money to continue with his gambling. In the heat of the passion, the accused committed the offence which resulted in his wife's death. It is thereby held that the accused committed the offence without



premeditation in a sudden fight in the heat of passion, upon a sudden quarrel and without taking undue advantage or having acted in a cruel or unusual manner. In such cases, it is immaterial which party offers the provocation or commits the first assault.

41. I do not find any infirmity in the decision of the learned trial Court. I record my concurrence to the decision of the learned trial Court. The appeal is hereby dismissed as the appeal is bereft of merits.

42. Send back the LCR.

**JUDGE**

**Comparing Assistant**