

HIGH COURT OF TRIPURA
AGARTALA
Crl. A. 11/2021

Smt. Malati Biswas,
wife of Sri Dulal Biswas, resident of South Chandrapur, P.S. R.K. Pur,
District- Gomati, Tripura

----Appellant

Versus

1. The State of Tripura

represented by the Public Prosecutor, High Court of Tripura, Agartala

2. Sri Milan Kar,

son of late Brajendra Kar, resident of Rajarbag, P.S. R.K. Pur, District-
Gomati, Tripura

3. Smt. Aditi Kar,

wife of Sri Dipak Biswas, daughter of Sri Milan Biswas, resident of
Rajarbag, P.S. R.K. Pur, District- Gomati, Tripura

4. Smt. Malati Biswas,

wife of Sri Dulal Biswas, resident of South Chandrapur, P.S. R.K. Pur,
District- Gomati, Tripura

----Respondent

For Appellant(s)	:	Mr. BN Majumder, Sr. Advocate Mr. R. Saha, Advocate
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For Respondent(s)	:	Mr. S. Debnath, Additional PP Mr. I. Chakraborty, Advocate
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Date of hearing & delivery of Judgment & Order	:	28.04.2022
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Whether fit for reporting	:	Yes / No
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HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT(ORAL)

Heard Mr. BN Majumder, learned senior counsel assisted by Mr. R. Saha, learned counsel, appearing for the appellant as well as I. Chakraborty, learned counsel, appearing for the respondents 2 and 3. Also, heard Mr. S. Debnath, learned Additional PP appearing on behalf of the respondent no. 1.

2. This appeal arises out of the judgment and order of acquittal dated 03.02.2021 passed by learned Sessions Judge, Gomati Judicial District, Udaipur in connection with Special case No. 20 of 2017.
3. The prosecution case, as projected by the learned Sessions Judge, is as under:

“That, Smt. Malati Biswas of South Chandrapur, Udaipur lodged a written complaint to the effect that after the marriage between her son Dipak Biswas and accused Smt. Aditi Kar on 23.07.2014, Aditi was residing in the family of the complainant and her husband Dipak was living at Imphal for the purpose of his service in a private sector. After marriage the complainant noticed some abnormality in the behaviour of Aditi such as passing stool in the bed room, throwing sewerage by the window, taking bath for long period of more than two hours, trying to commit suicide on several occasions and also trying to assault the parents-in-law on several occasions. The son of the complainant informed the matter to Milan Kar, father of Aditi, but he did not take any cognizance and told that due to change of place and environment there was some change in the behaviour of Aditi. Then husband of Aditi took her to a doctor for a change but the effort was in vain and she kept on behaving in such abnormal manner. Dipak also took her to Imphal and got her treated in Imphal Hospital & Research Centre, Manipur and the doctor prescribed her medicines but there was no change in her behaviour. On her return, she was taken to Dr. A.K.Nath, Psychiatrist at Agartala and as per his advice, Aditi was taken to NIMHANS, Bangalore and there the doctor opined that she is a patient of psychiatry and advised to attend the hospital again with her family members. On returning from Bangalore Dipak informed the matter to Milan Kar and showed the prescription to him. Then as per advice of Upa-Pradhan of the locality, Dipak went to his in-laws' house and requested them to take Aditi

to Bangalore to which Milan Kar became furious and abused Dipak vehemently. On this issue a meeting was held wherein a committee was formed regarding treatment of Aditi. As Dipak wanted to treat his wife Aditi by a doctor as per advice of the committee, he approached Milan Kar to which Milan Kar told him he will give decision. Thereafter, on 29.01.2016 at about 10.30 a.m. Milan Kar came to the house of the informant and discussed about treatment of his daughter in presence of witnesses. On that day at 12 noon all on a sudden Aditi attacked the informant at her courtyard, pulled her down catching her hair and started assaulting her by fistblows. When the informant raised alarm, her son i.e. Dipak came for rescue. At that time Milan Kar also joined Aditi and started assaulting Dipak by first blows and he fell down on the ground. Milan Kar caught hold of the neck and throttled to kill Dipak. Both the informant and her son sustained injuries on their persons. They raised alarm and many people gathered and rescued the informant and her son. Accused Milan Kar fled away from the house of the informant. Thereafter, the informant and her son were taken to Hospital and after that, they lodged a complaint to R.K.Pur P/S on 29.01.2016 itself. Thereafter, Police went to their house and investigated the case.

It is further stated by the informant that in the month of August, 2016 the informant came to learn that Police filed a P/R against the accused persons under Section 107 of Cr.P.C. instead of filing charge sheet under Sections 448/323/307/34 of IPC and for that delay had been caused in filing the complaint before the Court.”.

4. After registration of the FIR, investigation was carried out. On closure of the investigation, the investigating officer submitted charge-sheet against the private respondents. After filing of the charge-sheet and having taken

cognizance of the offence, the following charges had been framed by the learned trial court:

“I, Miss Dorothy Jamatia, Judicial Magistrate 2nd class cum Civil Judge (Jr. Div), Court No.1, Udaipur, Gomati, Tripura do hereby reduce the substance of accusation as required under Section 251 of Cr.P.C. against you as follows---

1) Milan kar

2) Aditi Kar

Allegations has been brought against you that, on 29.01.2016 at about 12:00 hours committed criminal trespass by entering into the house, at that time in possession of Malati Biswas and voluntarily caused hurt to the son of the complainant and the complainant herself and that you thereby committed an offence punishable u/s 447/323/34 of the Indian Penal Code and within the cognizance of this Court.

And I hereby direct that you be tried on the said charges by this Ld. Court of the Judicial Magistrate 2nd Class cum Civil Judge (Jr. Div.)”

5. To substantiate the aforesaid charges, the prosecution had examined as many as 10 witnesses. After closure of the prosecution witnesses, the private respondents were examined under Section 313 Cr.P.C.. Thereafter, the defence i.e. the private respondents had adduced evidence on their behalf by introducing one Sri Bikash Debbarma who deposed as DW-1. After completion of recording evidence of the parties, the learned trial court had acquitted the respondents i.e. Sri Milan Kar and Aditi Kar (Biswas). Being aggrieved by and dis-satisfied with the said order of acquittal, the appellant has preferred the instant appeal.

6. Mr. BN Majumder, learned senior counsel appearing for the appellant has drawn my attention to the evidences of PWs 2, 5 and 8 where from, according to him, the charges levelled against the accused persons have been proved beyond reasonable doubt.

7. On the other hand, Mr. I. Chakraborty, learned counsel appearing on behalf of the respondents no. 2 and 3 has vehemently opposed the said submission of learned senior counsel and submitted that the prosecution has miserably failed to establish the charges levelled against the private respondents i.e. Milan kar and his daughter Aditi Kar (Biswas).

8. From the evidences of PWs 2, 4 and 5 and on consideration of the said, according to this court, there is possibility of holding two views. Naturally, it is settled proposition of law that, in this situation, the view which is favourable to the accused and if it appears to the court that the view taken by the trial court is a reasonably possible, then, such of view should not be disturbed by the appellate court.

9. Accordingly, the view which is taken by learned trial court being a possible view, the and order of acquittal, as passed by the learned trial court, is not interfered with. Consequently, the instant appeal fails and stands dismissed.

Send down the LCRs.

JUDGE