

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Siddhartha Roy Chowdhury

C.R.A. 311 of 2012

Niranjana Murmu
-Vs-
The State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharyya, Adv.

For the State : Ms. Faria Hossain, Adv.
Mr. Anand Kesari, Adv.

Heard on : 08.12.2022

Judgment on : 08.12.2022

Joymalya Bagchi, J. :-

1. Appeal is directed against judgment and order dated 04.04.2012 & 05.04.2012 passed by learned Additional Sessions Judge, Fast Track 4th Court in-charge of Fast Track 5th Court, Malda in Sessions Trial No.15(3) of 2011 arising out Sessions Case No. 80 of 2011 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer

imprisonment for life and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for six months more.

2. Prosecution case as alleged against the appellant is to the effect that the appellant had married one Paraini Soren, daughter of Gupin Soren 3-4 years prior to the incident. 4-5 months ago, Paraini returned to her matrimonial home due to illness. Appellant wanted Paraini to join him at the matrimonial home. On 14.11.2010 at around 6:00 P.M. there was a quarrel between Paraini and the appellant at Nakail Hat. Appellant threatened that he would teach Paraini a lesson. In the night of 14.11.2010, appellant set fire in the room where Paraini was sleeping with her two aunts viz. Talamoi Soren and Makai Soren.

3. Gupin Soren, father of Paraini was sleeping in the veranda. Hearing hue and cry he woke up. With the help of others, fire was extinguished. Paraini, Talamoi and Makai were rescued. Paraini stated appellant had set fire in the room.

4. Tumkui Hembram (PW7), a neighbour had seen the appellant flee from the spot.

5. Injured victims were shifted to Malda Sadar Hospital. Paraini was declared dead. On the next day, Talamoi and Makai also succumbed to their injuries in the hospital.

6. Her uncle, Munsu Soren (PW1) lodged written complaint resulting in registration of Habibpur Police Station Case No.187 dated 15.11.2010 under Section 302 of the Indian Penal Code.

7. Charge-sheet was filed against the appellant and charge was framed under Section 302 IPC for the murder of his wife Paraini Soren and aunts-in-law viz. Talamoi Soren and Makai Soren. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 16 witnesses and exhibited a number of documents.

8. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 04.04.2012 & 05.04.2012 convicted and sentenced the appellant, as aforesaid.

9. Mr. Partha Sarathi Bhattacharyya, learned advocate for the appellant submits that no one saw the appellant set fire in the room. He has been falsely implicated out of mere suspicion. Paraini suffered third degree burn injuries. She was not in a position to talk. Her dying declaration ought to be taken with a pinch of salt. PW7, who claimed to have seen the appellant run away from the spot, is also an unreliable witness. Accordingly, appellant is entitled to an order of acquittal.

10. Ms. Faria Hossain with Mr. Anand Kesari learned Advocates for the State submits there was matrimonial discord between the appellant and his wife Paraini. On the fateful day around 6:00 P.M., appellant had threatened Paraini at Nakail Hat. Thereafter, he set fire in the room resulting in the death of Paraini and her aunts viz. Talamoi Soren and Makai Soren. Paraini made dying declaration which is reflected in the FIR. PW7 saw the appellant running away from the spot.

These circumstances clearly establish the prosecution case beyond doubt.

11. PW1 (Munsi Soren) is the uncle of Paraini and the de-facto complainant. He deposed appellant was married to Paraini. Four months ago, she returned to her parental home due to illness. On the fateful day in the evening at 6:00 P.M., appellant quarreled with Paraini at Nakail Hat. That night Paraini was sleeping with her aunts viz. Talamoi Soren and Makai Soren in the room. Her father, Gupin Soren and his wife were sleeping in the veranda. PW1 woke up upon hearing the cries of Paraini and others. He saw the room was burning. He tried to extinguish the fire. Victims were brought out of the room. Paraini stated appellant had set fire in the room. They were removed to the hospital. He lodged written complaint which was scribed by Fulen Mondal (PW2).

12. PW8 (Gupin Soren) is the father of Paraini. He has corroborated his brother (PW1). He deposed hearing hue and cry he woke up. The room was in flames. Paraini, Talamoi and Makai were rescued. Paraini stated the appellant had set the room on fire. They were removed to hospital.

13. PW6 (Talamoyee Kisku) is the wife of Gupin. She corroborated her husband.

14. PW2 (Fulen Mondal) is a neighbour. Hearing hue and cry, he came to the spot. He deposed Paraini made a dying declaration implicating the appellant. He scribed the FIR.

15. PW7 (Tumkui Hembram) is a neighbour and a very vital witness. He deposed on the fateful night around 11:30 P.M. he had come out of his house to urinate. In the flash of torch light, he saw the appellant running away. Soon thereafter, he received news that the house of Gupin was in flames. He came to the spot and heard the dying declaration of Paraini. He stated Paraini, though weak, was in her senses and able to speak.

16. These are the witnesses of fact.

17. PW12 (Dr. Bablu Soren) and PW15 (Bisweswar Saha) are the medical witnesses.

18. PW12 conducted post-mortem over the bodies of Paraini, Talamoi Soren and Makai Soren. He found extensive third degree burn injuries on Paraini. He opined death was due to effects of ante mortem burn injuries. He noted first and second degree burn injuries over the bodies of Talamoi Soren and Makai Soren. He proved the post-mortem reports, Exts.12, 13 & 14 respectively.

19. PW15 (Bisweswar Saha) is a medical officer who was attached to Malda District Hospital. He deposed on 15.11.2010 at around 3:30 A.M., Talamoi Soren and Makai Soren were admitted in the hospital. They died on the next day i.e. 16.11.2010. The patients were admitted with burn injuries. Percentage of burn was approximately 80% to 85% of total body surface area. They were in critical condition. Though they were in condition to speak, they were reluctant to give history of burn

injuries. He proved the bed-head tickets of Talamoi and Makai (Exts.17 & 18 respectively).

20. Inquest over the bodies was held by PW9 (Souvik Patra), PW10 (Sipra Roy) and PW11 (Dilip Kr. Sen).

21. PW16 (Debabrata Chakrabarti) is the Investigating Officer. He came to the place of occurrence and prepared rough sketch map. He collected the records relating to inquest. He seized articles from the place of occurrence. He examined witnesses. He forwarded Baha Tudu and Tumkui Hembram for recording statements before the Magistrate under Section 164 of the Code of Criminal Procedure. He submitted charge-sheet.

22. Analysis of the aforesaid evidence would show that the prosecution case primarily hinges on the dying declaration of Paraini Soren.

23. Mr. Bhattacharya has strongly assailed the dying declaration on the ground Paraini had suffered third degree burn injuries all over her body including face. Under such circumstances it was not possible for her to make a statement. The other two victims who suffered lesser injuries and died on the next day kept mum with regard to the incident.

24. I have given anxious consideration to the aforesaid submissions. PWs. 1 to 8 have unequivocally stated upon rescuing the victims Paraini stated her husband i.e. appellant herein had set fire to the room. PW7 further clarified Paraini though in a weak condition, was

in her senses and able to speak. No suggestion was put to witnesses including the post-mortem doctor (PW12) on behalf of the defence that due to injuries Paraini was not in a fit state to make statement. Hence, I am inclined to hold that Paraini was in her senses and in a fit condition to make the dying declaration. This incriminating circumstance also finds place in the FIR lodged by PW1 immediately after the incident.

25. It is contended the aunts did not disclose the incident in the hospital. Appellant was Paraini's husband. Evidence has come on record all was not well between the couple. 4-5 days ago owing to illness Paraini returned to her parental home. In the evening of the fateful day appellant had a quarrel and threatened her at Nakail Hat. Under such circumstances it is most probable that Paraini noticed the appellant who had stealthily come and set fire in the room where she had retired for the night with her aunts. Her aunts were already sleeping and hence were unaware of the identity of the miscreant. As a consequence, they were unable to come out with the history of burns in the hospital.

26. Moreover, truthfulness of the dying declaration is fortified through the evidence of PW7. PW7 is a neighbour and had gone out to relieve himself around 11:30 P.M. In the flash of torch light he saw the appellant running away. Admittedly appellant is a resident of a different village. His presence at the village at the time of occurrence is established and corroborates the truthfulness of the dying declaration of Paraini.

27. For the aforesaid reasons, I uphold the conviction and sentence of the appellant.

28. Appeal is accordingly dismissed.

29. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

30. Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

31. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Siddhartha Roy Chowdhury, J.)

(Joymalya Bagchi, J.)