

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 522 of 2011

Buddha Pradhan

-Vs-

The State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharyya, Adv.
Ms. Swarnali Saha, Adv.

For the State : Mr. Parthapratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 15.11.2022

Judgment on : 15.11.2022

Joymalya Bagchi, J. :-

Appeal is directed against judgment and order dated 29.07.2011 & 30.07.2011 passed by learned Sessions Judge, Darjeeling in Sessions Case No. 33 of 2008 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.2,000/-, in default, to suffer further rigorous imprisonment for one year more.

Prosecution case as alleged against the appellant is to the effect that the appellant was married to the victim viz. Biruna Gurung. They used to stay in the tea estate near Eden Hospital. On 06.08.2008, in the night, there was a quarrel between the couple. In the course of quarrel, the appellant poured kerosene oil on his wife and set her on fire. Local people shifted the victim to hospital. In the hospital, the victim made statement before Shri Augustine Lepcha, Deputy Magistrate (PW15) implicating her husband. While the victim was struggling for life, brother of the victim (PW9) viz. Sangeet Gurung lodged written complaint resulting in registration of Darjeeling Sadar Police Station Case No.90 of 2008 dated 07.08.2008 under Sections 326/307 of the Indian Penal Code. Upon her death, Section 302 IPC was added. In conclusion of investigation, charge-sheet was filed and charge was framed under Section 302 IPC against the appellant. In course of trial, prosecution examined 18 witnesses to prove its case. Defence of the appellant was one of innocence and false implication.

In conclusion of trial, learned trial Judge by the impugned judgment and order dated 29.07.2011 & 30.07.2011 convicted and sentenced the appellant, as aforesaid.

Mr. Partha Sarathi Bhattacharyya, learned advocate for the appellant submits that son of the victim lady (PW4) viz. Ashis Pradhan did not support the case of homicide. Staff nurse (PW14), who was present at the time of recording statement, stated victim was unable to speak properly. Even if the prosecution case is believed, it appears there

was a sudden quarrel and the appellant had acted without pre-meditation and in a fit of rage. Hence, conviction under Section 302 IPC has not been proved.

Mr. Parthapratim Das, learned advocate for the State argues Ashis Pradhan, son of the victim is a tutored witness. His version in Court is at variance to his statements to police and Magistrate. Hence, no credence ought to be given to his deposition. Immediately after the incident, victim made oral dying declaration to neighbours viz. PWs.3, 5, 6, 7 & 17. In the hospital, her statement was recorded before a Magistrate. Dying declarations have been proved beyond doubt and clearly establish the culpability of the appellant.

I have considered the evidence on record in the light of the rival submissions of the parties.

PW3 (Smt. Parmika Chettri), PW5 (Smt. Geeta Chettri), PW6 (Smt. Binita Chettri), PW7 (Md. Kaish) and PW17 (Smt. Geeta Gurung) are neighbours of the couple.

All the witnesses stated hearing hue and cry, they came to the spot and found the victim had suffered burn injuries. The victim told them that her husband had poured kerosene oil on her and set her on fire. Subsequently, the victim was shifted to Eden hospital. On 07.08.2008, in the hospital, she made a statement before Shri Augustine Lepcha, Deputy Magistrate (PW15) attached to District Magistrate's office, Darjeeling. The said witness stated that the victim told him around 11:30 P.M. there was a verbal argument between herself and her

husband. Suddenly, her husband poured kerosene oil on her body and set her on fire. As a result, she suffered burn injuries. Her dying declaration was recorded in presence of Dr. Nausaba Siddique (PW11) and Smt. Bandhana Tamang (Lama) (PW14). Dying declaration of the victim has been marked as Ext.5.

Dr. Siddique deposed that the patient was mentally alert and conscious at the time when she gave the statement. She also proved her signature on the dying declarations (Exts. 5/1 and 5/2). Staff nurse (PW14) of the hospital was also present during the recording of the dying declaration and proved her signature thereon (Ext. 5/3).

PW16 (Dr. Sabita Rongong) is the post-mortem doctor. She found the following injuries :-

*'60% deep burn injury including whole face, ears, whole chest, upper abdomen upto naval, back upto buttocks and both arms including hands.
Cut injury right leg above ankle. Four stitches given. Reddish marks, bruise along right leg, fracture left parietal region of scalp.'*

She opined death was due to 60% burn injuries. She proved the post-mortem report (Ext.7).

From the aforesaid evidence it appears the oral as well as the written dying declarations of the victim recorded in the hospital have been proved beyond doubt. Dying declaration of the victim (Ext.5) was recorded by a Deputy Magistrate in presence of a medical officer. The medical officer stated that the victim was conscious and mentally alert when she made the statement. In view of such convincing evidence on

record, a stray observation by the staff nurse (PW14) that she was unable to speak properly is of little relevance.

Mr. Bhattacharyya has strenuously argued that the dying declaration is not truthful. In support of his contention he refers to the deposition of the son of the deceased (PW4) viz. Ashis Pradhan. Ashis in his deposition stated he was sleeping on the sofa at night. There was a quarrel between his parents. His father went to the kitchen, brought out kerosene oil and poured it on his mother. He tried to light a match stick but failed. Then his father hit his mother on the head with a beam. His mother exclaimed whether he wanted to burn her and both of them went into the kitchen. His mother set herself on fire in the kitchen.

No doubt the aforesaid version is at variance with the dying declarations.

Hence, I have made an endeavour to test the intrinsic truth of the version of the minor child. On a holistic examination of his statement in court against other materials on record, it appears the same is a tutored one.

Other prosecution witnesses do not support PW 4.

Brother of the deceased and the de-facto complainant (PW9) stated hearing that his sister had been severely burnt, he went to the hospital. On enquiry from the stepson Ashis (PW4), he heard that appellant had set his sister on fire.

That apart, the version of PW4 in Court regarding suicide by his stepmother is at variance to his earlier statements to police and

Magistrate. Before the police, PW4 had supported the prosecution case and told the Investigating Officer (PW18) that his father had poured kerosene oil and set her mother on fire. He altered his version before the Magistrate and stated upon entering the kitchen his mother tried to light the cooking oven when she caught fire.

From the aforesaid evidence on record it is clear PW4 had changed his stance with regard to the incident at various stages. Before the police, he claimed that his father had set his mother on fire. Thereafter, before Magistrate he claimed that his mother suffered burns while trying to light the cooking oven and finally in court he came with a case of suicide. It is patently clear PW4 is an untruthful witness and in all probability has been tutored by his father to give a false version with regard to the cause of death of his stepmother.

For the aforesaid reasons, I am of the view PW4 is an untrustworthy witness.

On the other hand, the written dying declaration (Ext.5) recorded by PW15 finds corroboration from the deposition of neighbours viz. PWs.3, 5, 6, 7 & 17, who stated in unison that the victim had told them that her husband had poured kerosene oil and set her on fire.

Post-mortem doctor noted burn injuries in addition to physical assault upon the deceased corroborating the dying declarations. Hence, the dying declaration of the victim appears to be voluntary and truthful and can be relied upon to record a finding of guilt against the appellant.

Finally, it is argued that the incident occurred in course of a quarrel. Appellant did not intend to murder the deceased.

I am unable to accede to this submission of Mr. Bhattacharyya too. Initially, appellant assaulted the deceased. He hit her with such force that she suffered fracture on the skull. He did not stop at that. Thereafter, he poured kerosene oil and set her on fire. This conduct of the appellant leaves no doubt in my mind that he intended to murder his wife and his conviction ought not to be converted from murder to culpable homicide.

In the light of the aforesaid discussion, I uphold the conviction and sentence imposed upon the appellant.

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.

Appeal is accordingly dismissed.

Appellant has served more than 14 years of incarceration. He does not have criminal antecedents. Though he has assaulted his wife and set her on fire, evidence has also come on record that there was a quarrel between the couple. In the event, the appellant makes an application for remission of sentence under Section 433A of the Code of Criminal Procedure, the appropriate authority shall take into consideration the aforesaid circumstances in addition to his conduct in

the correctional home while considering such application in accordance with law.

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

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

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

akd/PA