

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 734 of 2009

Bablu Lohar
-Vs-
State of West Bengal

For the Appellant : Mr. Moinak Bakshi

For the State : Mr. Bibaswan Bhattacharya
Mr. Arani Bhattacharyya

Heard on : 3rd February, 2022

Judgement on : 3rd February, 2022

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 28th July, 2009 passed by the learned Additional District & Sessions Judge, Fast Track Court, Bishnupur, Bankura, in Sessions Trial No. 2(11)08 arising out of Sessions Case No. 9(7)08 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal

Code and directing him to suffer imprisonment for life and pay a fine of Rs.2,000/- , in default to suffer further simple imprisonment for a period of two months.

Prosecution case, as alleged against the appellant, is to the effect that the appellant was married to the deceased China Lohar. After marriage, the appellant and her mother-in-law, Uma Lohar tortured China over family affairs. They used to assault and abuse her. In the evening on 14.04.2008 China was admitted to Bishnupur S.D. Hospital with burn injuries. China made statement before the doctor that the appellant had poured kerosene oil on her body and set her ablaze with a lamp. On the next day, in the evening she expired. Written complaint was lodged by Biswanath Lohar (P.W. 1), brother of the victim, at Bishnupur Police Station resulting in registration of Bishnupur Police Station Case No. 37 of 2008 dated 15.04.2008 under Sections 498A/302 of the Indian Penal Code against the appellant and her mother-in-law, Uma Lohar.

In conclusion of investigation, charge sheet was filed in the instant case and case was committed to the Court of the Additional District & Sessions Judge, Fast Track Court, Bishnupur, Bankura for trial and disposal. Charges were framed under Section 302 of the Indian Penal Code and under Section 498A of the Indian Penal Code against the appellant and against the co-accused, Uma Lohar under Section 498A of

the Indian Penal Code. Defence of the accused persons was one of innocence and false implication. In order to prove its case, prosecution examined nineteen witnesses and exhibited a number of documents. In conclusion of trial, learned trial Judge by impugned judgment and order dated 28th July, 2009 convicted and sentenced the appellant, as aforesaid. By the self-same judgment and order, the Judge was pleased to acquit Uma Lohar of the charge levelled against her.

Mr. Bakshi, learned Counsel appearing for the appellant argues that there is no direct evidence connecting the appellant with the murder of his wife. None of the witnesses stated that he was present in the house when the incident occurred. Conviction is based solely on the dying declaration of the deceased. Dying declaration is unreliable as the medical parameters of the deceased had not been noted in the treatment sheet. Treatment sheet was not maintained in a chronological manner. Opinion of the post mortem doctor is inconclusive with regard to the cause of death of the victim. Hence, the appellant is entitled to an order of acquittal.

Mr. Bhattacharya, learned Counsel appearing for the State argues that the prosecution case has been proved beyond reasonable doubt. Housewife suffered burn injuries at the matrimonial home. She was taken to the hospital where she made a dying declaration to the treating doctor (P.W. 17) in the presence of a nurse (P.W. 18). That

apart, on the next date, the deceased made an oral dying declaration to her family members. Possibility of tutoring of the deceased is wholly ruled out as the initial dying declaration was recorded by an independent medical personnel and that too, in the absence of the interested witnesses. Treating doctor has recorded that the victim was in a sound mental state when she made a dying declaration. Such declaration is recorded in the treatment sheet in discharge of official duty which inspires confidence. Hence, the appeal is liable to be dismissed.

We have considered the evidence of record. Relationship between the appellant and the deceased is admitted. They were married according to Hindu Rites and Customs. Marriage has been proved not only through the evidence of the relations but through the deposition of the priest and barber being P.W. 9 and P.W. 15 respectively.

P.Ws. 1, 6, 7, 8 and 10 are the relations of the deceased.

P.W. 1 is her brother and informant of the case. He deposed that the deceased was married to the appellant four years ago. At the time of marriage cash and other articles were given. After marriage his sister started residing at her matrimonial home. She was abused and assaulted. On 1st Baishak, appellant set his sister on fire. She was admitted at Bishnupur Hospital. On the next date he went to the hospital whereupon his sister told him that her husband had tied her

hands and legs and poured kerosene oil and set fire on her. He lodged written complaint as (Exhibit – 1) which was scribed by P.W. 12. He signed on the inquest report prepared by the police and Executive Magistrate (P.W. 11).

P.W. 1 is corroborated by his father (P.W. 7), his mother (P.W. 8) and his brother (P.W. 6). P.W. 8, mother also deposed that husband of her daughter poured kerosene oil on her and set her on fire.

Analysis of the aforesaid evidence would, therefore, show that the relations, upon being informed of the unfortunate incident, had gone to the Bishnupur S.D. Hospital on the next morning. Upon arriving in the hospital the deceased had made an oral dying declaration before them that she had been set on fire by the appellant.

Apart from such oral dying declaration to the relations, it appears that the statement of the deceased was recorded on the very night of her admission by the treating doctor (P.W. 17).

P.W. 17 is the doctor who treated the deceased. He deposed that the patient had been admitted in the hospital with burn injuries. Patient was in sound mental condition and made statement that her husband was abusing her for the last four days. On the fateful day, he poured kerosene oil and set her ablaze with a lamp. She had 90% burn injury. P.W. 17 recorded her statement. The victim expired on 15.04.2008. He proved the treatment sheet as Exhibit-8 series. He further deposed that

he had advised for shifting of the patient for better treatment at Bankura Medical College but her mother-in-law, Uma Lohar who had admitted her expressed unwillingness to do so. In cross-examination, he stated that there is no LTI or thumb impression of the patient in the statement. There is only a signature of senior nurse, Santana Pal (Mondal) (P.W. 18). He stated that the patient was burnt except both feet.

P.W. 18, nursing sister, has corroborated the deposition of P.W. 17. She identified her signature on the dying declaration (Exhibit-9).

When the evidence of the aforesaid medical witnesses are seen in the light of the Exhibit -8 series it is clear that the victim, upon being admitted at the hospital, had made a dying declaration which was recorded by the doctor. Absence of thumb impression on the dying declaration is due to the fact victim had suffered 90% burn injury and her entire body except her feet was burnt.

It is argued that the parameters of the victim have not been noted to the dying declaration. I am of the view that such plea is of little substance. P.W. 17 was the treating doctor who recorded that the victim was in sound mental condition when the declaration was given. Hence, I have no doubt in my mind that the victim was in a fit state of mind to make the dying declaration. Dying declaration had been recorded by an independent witness namely the treating doctor in presence of the nursing staff. They have no enmity against the appellant and I, therefore,

have no doubt that such declaration recorded in the course of discharge of official duty by the Government doctor is a genuine one.

Coming to the issue of voluntariness and truthfulness of the dying declaration, I note that the declaration was made and recorded in the medical papers at a time when none of the family members of the deceased were present. In fact, such declaration has been made in the presence of the acquitted accused i.e. mother-in-law namely Uma Lohar who was present at the time of admission. Thus, the dying declaration appears to be wholly voluntary and not a product of prompting and tutoring by interested persons. Truthfulness of the dying declaration is evident as its contents appear to be corroborated by the evidence of the post mortem doctor (P.W. 16) who found extensive burn injuries on the body of the deceased and had opined that the victim had died due to shock in a case of 100% deep burn which is ante mortem in nature. When the maker of a dying statement is found to be in a fit of mental state to do so and such declaration is found to be voluntary and truthful, the same can form the sole basis of conviction.

A faint plea with regard to absence of the appellant at the place of occurrence has been raised. Although a bald statement has been made by the appellant during his examination under Section 313 of the Code of Criminal Procedure that he was not at home, no evidence probalising such fact was led on behalf of the defence. The incident

occurred at the residence of the appellant at night which raises an irresistible inference that he would ordinarily be present at the place of occurrence. Furthermore, the alibi of the defence is wholly demolished by the dying declaration of the deceased before the treating doctor.

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

The appeal is accordingly dismissed.

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.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)