

**IN THE HIGH COURT AT CALCUTTA**  
**CRIMINAL APPELLATE JURISDICTION**  
**APPELLATE SIDE**

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Ananya Bandyopadhyay**

***C.R.A. 596 of 2012***

**Sanjib Bose @ Poppy**

**-Vs-**

***State of West Bengal***

**For the Appellant** : Ms. Subhasree Patel, Adv.  
Mr. Subir Debnath, Adv.  
Mr. Soham Banerjee, Adv.  
Ms. Roma Roy, Adv.  
Ms. Saini Das, Adv.

**For the State** : Mr. Partha Pratim Das, Adv.  
Ms. Amita Gaur, Adv.

**Heard on** : 20<sup>th</sup> May, 2022

**Judgment on** : 20<sup>th</sup> May, 2022

**Joymalya Bagchi, J. :-**

One and half years prior to the incident Sanjib Bose @ Poppy and Silpi Bose (the victim herein) married each other out of love. Parents of couple did not approve of the marriage. The couple started residing in the tenanted room under one Jagadish in Satin Sen Nagar. Matrimonial life of the couple was fraught with stress due to poverty. Sanjib demanded money and tortured Silpi. On 13.06.2005 Sanjib

returned home and a quarrel ensued. In course of quarrel, he hit his wife and thereafter he poured kerosene oil and set her on fire. In order to save her life Silpi ran out of the house and fell down in front of one Ranikuthi Lodge. She was taken in a van rickshaw to her parental residence. She disclosed that she had been set on fire by Sanjib. Her parents took her New Barrackpore outpost and therefrom in an ambulance she was taken to R.G. Kar hospital. P.W.16 Dr. Atanu Acharya examined her at the emergency department. She was conscious and stated that her husband had tortured and set her on fire. Dr. Acharya endorsed her statement in the admission papers. She was admitted in the hospital. On the next day her mother Sipra Mallick (P.W.1) lodged complaint at Ghola police station resulting in Ghola P.S. case No. 125 dated 13.06.2005 against the appellant under Section 498A/307 IPC. Investigation Officer (P.W.14) recorded her statement in the hospital in presence of Dr. Sudipta Chatterjee, (P.W.17). Unfortunately, she expired on 15.06.2005. Offence under Section 302 was added to the FIR.

In conclusion of investigation charge sheet was filed and charges were framed under Sections 498A, 307 and 302 of the Indian Penal Code against the appellant. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 18 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. In conclusion of

trial, trial judge by judgment and order dated 31.07.2012 and 01.08.2012 convicted the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs. 5000/-. Hence the present appeal.

Ms. Patel, learned advocate for the appellant argues there is no direct evidence that the appellant had set his wife on fire. Landlord of the premises was not examined. His wife Parul Roy, P.W.6 is silent with regard to any altercation between the appellant and the deceased on the day of occurrence. None of the neighbours were examined. Prosecution has relied on the dying declaration of the victim girl which is a product of tutoring by her parents and police. Appellant was not present at the house. When the victim lady was found with burnt injuries in front of Ranikuthi Lodge, he accompanied her to her parental home. He was wrongfully detained at the police station and thereafter falsely implicated in the case. Hence, conviction ought to be set aside and the appeal be allowed.

Mr. Das, learned advocate for the State argues the prosecution witnesses including one Badal Das, P.W.5 and Parul Roy, P.W.6 have spoken of torture on the victim by the appellant. On the fateful day the appellant had again tortured the victim and assaulted her. Thereafter, he set her on fire. Somehow she was escaped and ran in front of nearby lodge. Sanjay Nandi, P.W.8 owner of the lodge found her in

burnt condition. She was removed in van rickshaw to her parents house. At the earliest opportunity she disclosed appellant had tortured and set her on fire. Hearing this her parents took her to New Barrackpore out post and thereafter in an ambulance to R. G. Kar Hospital. At the time of admission she made statement before Dr. Acharya, P.W.16. On the next day she made elaborate statement before the Investigating Officer P.W.14 in presence of doctor, P.W.17. Her dying declarations as recorded by P.Ws.16 and P.W.14 are proved and marked as Exhibits 11 and 6 respectively. The dying statements are consistent with one another as well as the oral depositions of the parents P.W.1 and P.W.2 of the victim. Hence, the prosecution case is proved beyond doubt and the appeal is liable to be dismissed.

P.Ws. 1 to 4 are the relations of the deceased.

P.W.1 Sipra Mallick, is a mother and informant in the instant case. She deposed one and half years ago her daughter had married Sanjib Bose. It was a love marriage. She had not approved the marriage. After marriage couple started residing in a rented premises under one Jagadish at Jora Pukur. Sanjib used to torture her daughter. She was found lying injured in front of Ranikuthi Lodge. The boys of a catering team brought to her house around 2.30 A.M. Front portion of her body was completely burnt. She stated she was assaulted and set on fire by her husband. They took her to New Barrackpore Phari. An ambulance was arranged and she was taken to

R.G. Kar hospital where she expired three days after the incident. P.W.1 lodged written complaint at Ghola police station. Police seized various articles from the residence of the appellant. She was signatory to the seizure list. Her husband P.W. 2 Sristidhar Mallick has corroborated her version. He stated at 1.30 P.M. Gopal brought his daughter in a van rickshaw. Front side of her body was burnt. Gopal informed she was found in burnt condition in front of a lodge. His daughter stated that Sanjib had set her on fire. She was taken to police phari thereafter to hospital. She died after three days. She made statement before police in front of doctor. She had come to their residence on the previous day, i.e., Jamail Sasthi and asked money as they were in stringent condition.

P.W.3, Dulal Madhu is the maternal uncle of the deceased. He met her at R.G. Kar hospital where she stated that appellant had set her on fire.

P.W.4 Sima Mallick is the younger sister of the deceased. She has corroborated her parents in all material particulars.

P.W.5, Badal Das is a neighbour of Sanjib. He stated one night he had seen Sanjib physically assaulted his wife. He had raised alarm.

P.W.6, Parul Roy, is the wife of the landlord where the couple resided. She also stated from time to time she had seen the couple quarrelling. She was a signatory to the seizure list prepared in connection with seizures made at the rented apartment of the couple.

P.W.7 Lakshmirani Halder, another neighbour stated at night Gopal informed that Shilpi was burnt. He saw Shilpi was being brought in a van rickshaw. She told him that appellant had poured kerosene oil and set her on fire. Thereafter, Shilpi was taken to R. G. Kar Hospital in municipal Ambulance.

P.W.8 Sanjay Nandy, is the owner of Ranikuthi Lodge. He stated one Parimal Roy, caretaker of the lodge, informed him about the incident. He came to the spot and saw Shilpi in burnt condition. He called van rickshaw and she was taken to her fathers house.

P.W.12 Gopal Das, deposed he had taken Shilpi to the hospital from Ranikuthi Lodge. P.W.11 Tapas Banerjee deposed he drove the ambulance and took Silpi to R. G. Kar Hospital.

At R.G. Hospital P.W.16 Dr. Acharya examined Silpi in the emergency department. He found her conscious and as per her statement noted the history of assault as follows:

“Her husband tortured and set her on fire on 12.06.2005 night”. He proved the report Exhibited 11.

P.W 14 SI Raghunath Ghosh was the first investigating officer. He went to the place of occurrence and prepared rough sketch map. He seized one jerican of kerosene oil, one lighter and burnt nighty from the residence of the appellant under a seizure list. He sought permission from the Superintendent of R.G. Kar hospital to record the statement of the victim. Thereafter he examined the victim at R.G. Kar

hospital in the presence of Dr. Sudipta Chatterjee (P.W. 17). The victim stated as follows:

*“Yesterday i.e. on 12/06/05 at about 11.30 in the night my husband beat me up severely. Thereafter I asked him why do you beat me up after returning from your paternal home? When quarrel broke out with my husband over this comment he told me – I will kill you. After that he poured kerosene on my body from the jeurycan kept in the room and set fire to my body with a lighter. Then I told my husband that I wanted to like and asked him to save me. But he kept the door closed. I asked him to call the landlady but he did not pay heed. After that I poured water over my body from the bucket kept inside the room. Thereafter I forcibly (sic. forcibly) went out of the room although my husband was in the room and I collapsed after reaching Ranikuthi. Then some people who are in catering service saw me of them one was called Gopal whom I knew. They informed my father. Thereafter my father came and with their help brought me to the hospital. I have been married one and a half year ago. They did not accept the marriage and that is the cause of the trouble. Extract copy of New Barrackpore O.P. GDE No. 40 dt. 2-9-04.”*

He proved the dying statement of the victim marked as “Exbt.-6”. He arrested the appellant on the same day at 10.00 p.m. Remaining investigation was conducted by P.W. 15 (SI Palash Chattopadhyay) who submitted the charge-sheet.

P.W. 17 (Dr. Sudipta Chatterjee) corroborated investigating officer (P.W. 14) and stated he was present when the dying declaration of Silpi Bose was recorded. He examined the patient before her declaration and found she was conscious, alert and cooperative. He made endorsement to that effect on dying declaration recorded by police. He proved his endorsement marked as “Exbt.-6/1”.

P.W.18, Dr. Sobhan Kr. Das held post mortem on the body of the deceased. He found the following injuries:-

- “first and second degree burn injuries involving No.1 right lateral side of neck and right side of lower face and portions under the chin
- 2. whole of the front of the chest and abdomen including perineum excepting 4” x 4” area on hypo-gastric region
- 3. both of her limbs including axillae excepting lateral surface of both arms and upper half of forearm
- 4. both the gluteal region(buttock)
- 5. both the thyres all around
- 6. upper 1/3<sup>rd</sup> of right leg with knee”

All the injuries noted above showing evidence of vital reaction. Bases of burn injuries are congested with evidence of ante mortem of blister formation at places. No other injuries could be detected. Approx 65% of total body surface area were involved in burn injury.

He opined death was due to burn injuries, ante mortem in nature.

Analysis of the aforesaid evidence on record would show the prosecution case is primarily rested on the dying declarations of the victim lady. On 12.06.2005 appellant returned to his residence at night. There was a quarrel between the couple. In course of quarrel, he assaulted his wife and thereafter poured kerosene oil and set her on fire. He prevented her from going out but somehow she escaped and in burnt condition fell in front of a nearby lodge viz. Ranikuthi Lodge. Local people including P.W. 7 assembled at the spot. P.W. 7 (Lakshmirani Halder) stated the

victim disclosed that the appellant had set her on fire. Thereafter the victim was taken in a van rickshaw to her parent's residence. In front of her parents (P.Ws. 1 and 2) and her sister (P.W. 4) she again made a statement implicating the appellant. In view of such disclosure her parents initially took her to New Barrackpore outpost and thereafter she was taken in a municipal ambulance driven by P.W. 11 to R. G. Kar hospital. At the hospital Dr. Acharya (P.W. 16) treated her and recorded her dying declaration marked as "Exbt.-11". On the next day, her statement was again recorded by the investigating officer (P.W. 14) in presence of Dr. Sudipta Chatterjee (P.W. 17) who endorsed on the declaration that the victim was conscious and in a fit state to make the statement.

All dying declarations are consistent with one another and clearly implicate the appellant as the person who had poured kerosene oil and set her on fire.

Ms. Patel, learned Counsel for the appellant has assailed the dying declarations on the ground neither wife of the landlord (P.W. 6) nor any neighbour had heard quarreling between the couple on the fateful night. It is also contended the declarations were made on the prompting of the parents and police. No injury apart from burn injuries was noted either by the treating doctors or did the post mortem doctor (P.W. 18) improbabilising assault on the victim.

I am unable to accede to any of the aforesaid contentions. From the tenor of the dying declaration it appears that the appellant had beaten the victim and thereafter set her on fire. It is nobody's case that the appellant had beaten her with a heavy or sharp cutting weapon which would result in external or internal injuries. It is possible that the victim was physically beaten and thereafter set her on fire. Due to burn injuries marks of physical assault, if any, may not have been detected. Hence, I am unable to accept the submission that the dying declaration of the victim lady is at variance with the medical evidence on record.

The incident occurred late at night and the neighbours may have gone to sleep. As per dying declaration appellant had returned home and started beating his wife. When she resisted he had poured kerosene oil and set her on fire. Under such circumstances, it may not have been possible for the victim to cry out loudly before she escaped from the clutches of the husband and ran out on the road and fell before a nearby lodge. In this backdrop, failure of the neighbours to hear the initial quarrel between the couple before the victim come out of the house and fell in front of the lodge does not improbabilise the dying declaration.

First oral dying declaration was made in front of P.W. 7 even prior to the victim reached her parental home. In such view

of the matter it is absurd to suggest that the declaration made by the victim implicating the husband was at the behest of her parents or police. It was a most natural expression of the dying lady to come out with the cruel acts of her husband which resulted in her ultimate demise.

Finally it is argued the appellant was not at home and had accompanied the victim in burnt condition from Ranikuthi lodge to her parental home. Subsequently he was falsely implicated in the case. Apart from a raising a bald plea of alibi appellant has not led any evidence in support of such plea. He did not adduce defence evidence to show where he was at the time when the incident occurred. On the other hand, his presence at the place of occurrence is probalised by his availability at Ranikuthi Lodge soon after the incident. In view of the statement made by the victim in presence of the neighbours implicating her husband, appellant had no chance to escape and meekly accompanied the victim to her parental home. Such conduct of the appellant was clearly under compulsion and duress and cannot be treated as an ameliorative step which would wash away his culpability.

As discussed above, dying declarations of the victim are clearly consistent and corroborative of one another. They have been proved to be voluntarily truthful and were made when the victim was conscious and in a fit state to make the statement.

They do not suffer from inherent improbability or gross embellishment. Hence, dying declarations are wholly truthful and can form the basis of conviction of the appellant.

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

The appeal is, accordingly, dismissed.

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.

Appellant has already undergone seventeen years of actual imprisonment. From the evidence on record it appears that quarrels used to erupt between the couple due to abject poverty. Though the conduct of the appellant in setting the victim on fire is a heinous one, his criminal act does not show potentiality to recidivism. In the event the appellant makes an application for remission under section 432 read with section 433A of the Code of Criminal Procedure before the appropriate Government, the said Government shall consider his application in the light of the aforesaid circumstances and other relevant factors including his conduct in the Correctional Home.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

**(Ananya Bandyopadhyay J.)**

**(Joymalya Bagchi, J.)**

cm/sdas/PA