

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. 72 of 2019

Ramjan Sk.

-Vs-

The State of West Bengal

For the Appellant : Ms. Sibangi Chattopadhyay, Adv.
Mr. P. Chakraborty, Adv.

For the State : Mr. Swapan Banerjee, Adv.
Mr. Suman De, Adv.

Heard on : 15.03.2023

Judgment on : 15.03.2023

Joymalya Bagchi, J. :-

1. Untruthful witnesses would have derailed the administration of criminal justice but for the vigilant stance of the medical officer (PW11) who recorded the dying declaration of the unfortunate victim.

2. Prosecution case runs as follows :-

Dulu Bibi, a 30-year old lady was residing alone. Her husband used to work in Kerala. Taking advantage of the situation, on 19.05.2017 at 10:30 A.M., the appellant trespassed into the house and

tried to ravish her. He tore her wearing apparels. Dulu tried to save herself from the clutches of the appellant and attempted to rush out of the room. Appellant dragged her inside and poured kerosene oil on her body and set her on fire. In flames Dulu ran out of the house and cried for help. Local people took her to the hospital where she was admitted. In the bed-head ticket, her statement was recorded by the treating medical officer viz. Dr. Rahul Gupta (PW11). Written complaint was lodged by one Baburali Sk., brother of Dulu (PW1) resulting in registration of Dhubulia Police Station Case No.103 of 2017 dated 19.05.2017 under Sections 448/354/326/307 of the Indian Penal Code.

3. In course of investigation, Investigating Officer (PW15) went to the hospital and videographed the dying declaration. Permission to videograph was given by the staff nurse (PW6). Subsequent to the demise of Dulu, Section 302 IPC was added. Appellant was arrested. Charge sheet was filed. Charges were framed under Sections 448/354/376/511/307/302 IPC.

4. In course of trial, prosecution examined 15 witnesses to prove its case. Defence of the appellant was one of innocence and false implication.

5. Relying primarily on the dying declaration of the deceased as proved by the treating doctor (PW11), learned Additional Sessions Judge, Fast Track Court-III, Krishnagar, Nadia by impugned judgment and order dated 28.11.2018 passed in Sessions Trial No.4(12) of 2017 arising out Sessions Case No. 18(9) of 2017 convicted the appellant for

commission of offence punishable under Sections 448/354/302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for five months more for the offence punishable under Section 302 of the Indian Penal Code.

6. Ms. Sibangi Chattopadhyay learned Advocate for the appellant submits the prosecution case has not been proved beyond doubt. Most of the prosecution witnesses had turned hostile. Though the incident occurred in a crowded locality, nobody saw the appellant enter the house of the deceased and set her on fire. Learned Advocate also challenged the veracity of the dying declaration. She referred to the deposition of the mother of the deceased viz. Lal Banu Bibi (PW2) (a signatory to the dying declaration) who stated her daughter was in senseless condition. It is also argued there was delay in providing medical treatment to the victim. This resulted in a fracas between local people and the treating doctor. As a result, the appellant was falsely implicated. Accordingly, she prayed for acquittal of the appellant.

7. Mr. Swapan Banerjee, learned senior Government Advocate for the State argues that the dying declaration is voluntary, truthful and does not suffer from any infirmity. Victim was in her senses when she was admitted to the hospital. Treating doctor (PW11) recorded her dying declaration. He had no enmity with the appellant. Plea of false implication on the ground of dispute between the doctor and local people is patently absurd. The fact that the victim was in her senses is

corroborated by the staff nurse (PW6) who gave permission to the Investigating Officer to videograph a subsequent dying declaration. Destruction of electronic evidence is a remissness in the investigation and would not militate against the earlier dying declaration recorded by the doctor. Depositions of hostile witnesses including relations are unreliable and have been rightly ignored by the trial Judge. Hence, prosecution case has been proved beyond doubt. The appeal is liable to be dismissed.

8. Prosecution case is that in the morning of 19.05.2017 appellant had trespassed into the house of the victim Dulu Bibi and attempted to ravish her. She resisted and tried to flee away. At that time appellant doused her in kerosene oil and set her on fire. While burning she came out of the house and cried for help. Local people shifted her to hospital.

9. Learned Advocate for the appellant submits there is no eyewitness to the incident.

10. PW1 (Babur Ali Sk.) is the brother of the deceased and the de-facto complainant in the instant case. PW2 (Lal Banu Bibi) is her mother. PW4 (Runa Bibi) is the minor child of the deceased.

11. During trial, all these witnesses had turned hostile and resiled from the FIR as well as their previous statements to police. PW1 even claimed he put his LTI on a paper at the police station. These witnesses have been extensively cross-examined by the prosecution. They were confronted with their previous statements to police. Their statements to police are clearly at variance to their evasive depositions in court.

12. For reasons not far to seek, these witnesses had been won over and did not come out with the truth before the court. However, Mohir Ali Molla (PW8), a neighbour deposed he carried Dulu in his car to Saktigarh hospital. He heard that the appellant had set Dulu on fire. At the hospital the victim was admitted under PW11.

13. Dr. Rahul Gupta is the doctor who treated the patient at the hospital. He stated the patient told him one Ramjan Sk. poured kerosene oil on her and set her on fire at her residence. He found the following injuries :-

- “1. Burn of lower part of back.*
- 2. Burn of abdomen lower part.*
- 3. Burn of whole of right lower limb except feet.*
- 4. Burn of right arm almost whole patchy burn on left thigh and whole left leg, patchy burn on left arm and whole forearm, the estimated burn 60%, patient was treated accordingly and patient died on 22.05.17.”*

He proved the certified copy of the bed-head ticket (Ext.2).

14. During her hospitalisation, Investigating Officer viz. SI Vivekananda Biswas (PW15) also videographed a subsequent dying declaration. This was done with the permission of the staff nurse viz. Niyati @ Minati Banerjee (PW6) and in presence of a civic police officer viz. Kamalesh Ghosh (PW10). Unfortunately, the videographed statement was destroyed and could not be produced during trial. Prosecution rested on the dying declaration recorded by the treating doctor (PW11).

15. It is trite law conviction may be recorded on the sole basis of a dying declaration. In such cases, the court must satisfy itself that the maker of the dying declaration was conscious and in a fit state to make the statement and that the statement is voluntary and truthful.

16. I have made an endeavour to test whether the dying declaration recorded by PW11 satisfies the aforesaid requirements. PW11 is the treating doctor. He is the best witness with regard to consciousness and capacity of his patient to make the statement. He has categorically stated that the victim told him that the appellant had set her on fire. No effective cross-examination has been made by the defence on this score.

17. On the other hand, staff nurse (PW6) deposed subsequent to the recording of the dying declaration she gave permission to the Investigating Officer to talk to the patient. Had the patient not being conscious and capable of speech, the staff nurse (PW6) would not have given such permission. This corroborates PW11 with regard to the consciousness and capacity of the victim to make the dying statement.

18. Little credence ought to be given to the deposition of PW2 who claimed her daughter was senseless at the hospital. During trial, she had committed a *volte face* and resiled from her earlier statement to police wherein she categorically admitted that her daughter had made the dying declaration. She has also not been able to explain why her LTI appears on the dying declaration.

19. The other desperate plea of the defence is the so-called false implication of the appellant owing to a fracas between the treating

doctor and local people. Two hostile witnesses viz. PWs.3 & 4 claimed there was dispute between local people and the treating doctor as there was delay in treatment. Local people forced the doctor to introduce the name of the appellant in the dying declaration. Even if the said witnesses with regard to dispute between the local people and the doctor is believed it defeats logic why under such circumstances name of the appellant would be introduced in the dying declaration. On the other hand, PW8 who took the victim to hospital claimed he heard that the appellant had set the victim on fire. Corroboration with regard to the dying declaration is also evident from recoveries made at the place of occurrence.

20. PW15 seized torn saree, plastic container containing kerosene oil etc. from the place of occurrence. He proved the seizure list (Ext.1/1). PWs.8 & 9, though declared hostile, admitted the recoveries from the place of occurrence and their signatures on the seizure list.

21. Post-mortem doctor (PW12) opined that the victim died due to septic shock resulting from secondary bacterial infection over burnt areas which were ante mortem in nature. Burn injuries had also been noted by the treating doctor (PW11).

22. These circumstances corroborate the truthfulness of the dying declaration and establish its credibility beyond doubt.

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

24. The appeal is accordingly, dismissed.

25. 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.

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

27. Photostat certified copy of this judgment, 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.)