

06.01.2023

S/L. 35

Court No.12

Suvayan/

Sourav

CRA 206 of 2006

In the matter of: **Arun Bauri**

....Appellant.

Ms. Chandreyi Alam

...for the appellant.

Ms. Zareen N. Khan

Mr. Md. Kutubuddin

...for the State.

1. The instant appeal arises out of a judgment of conviction dated 18.01.2006 and order of sentence dated 19.01.2006 as passed by learned Additional Sessions Judge, 1st Court, Asansol in Sessions Trial No. 3 of 2005 arises out of Sessions Case No. 53 of 2004 whereby and whereunder the said court by the impugned judgment convicted one Arun Bauri to suffer imprisonment for life and pay a fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for a further period of 6 months for committing offence under Section 302 IPC. It is pertinent to mention herein that the said court by the self-same judgment, however, found the said accused not guilty under Section 498A IPC. The convict, Arun Bauri thus felt aggrieved and preferred the instant appeal.
2. For effective disposal of the instant appeal, the facts leading to the initiation of the aforesaid Sessions Trial is required to be dealt with in a nutshell.
3. One Paran Bauri (P.W. 2) of village Kakhoya, Asansol (N) P.S. lodged a written complaint with the Officer-in-Charge Asansol (N) P.S. stating *inter alia* that at about 12 years back his elder sister Ketu Bouri @ Bulu Bouri @ Tulu Bouri's marriage was solemnized with the present appellant as per Hindu rites and customs and in such marriage his father had given various

nuptials gifts but subsequently on account of further demand of dowry, the said accused used to inflict torture both physical and mental upon his said elder sister. It is the further version of the *de facto* complainant that on the said date, i.e., 10.10.2001 at about 6.00 p.m. he came to learn from the people of Nischinta village that his said elder sister Ketu Bouri @ Bulu Bouri @ Tulu Bouri was ablazed by her husband Arun Bouri by pouring kerosene oil on her person. It has also been disclosed that thereafter his said sister was taken to Asansol hospital for her treatment. On the basis of such written complaint, Asansol (N) P.S. Case No. 132 of 2001 dated 11.10.2001 under Sections 498A/307 IPC was started, investigation was taken up and on completion of the same charge-sheet was submitted under Sections 498A/302 IPC since the said victim succumbed to her injury in course of the investigation.

4. Before the learned trial court the defence case is of complete denial as well as false implication.
5. After commitment of the said case, the case record was transferred to the learned trial court for trial and disposal. LCR reveals that on 24th September, 2009 learned trial court on perusal of the entire materials as placed before him framed charged under Sections 302/498A IPC against the said accused and since the said accused pleaded his innocence and claimed to be tried, the said trial proceeded. Trial Court record reveals further that for bringing home the charges as framed by the learned trial court, the prosecution has examined 14

witnesses in all and several documents have been exhibited on their behalf. Learned trial court on perusal of the entire evidence both oral and documentary as adduced by the prosecution witnesses passed the impugned judgment of conviction and hence this appeal.

6. On perusal of the trial court record, it reveals to us that P.W. 1 at that material time was the Acting Superintendent of Asansol Sub-divisional Hospital and in his examination-in-chief he has testified that on 10.10.2001 at about 7.00 p.m. the victim was brought to the said hospital with 80 per cent burn injuries on her body and he personally examined the victim at Emergency Department and then admitted her to the hospital. In course of his examination-in-chief he duly proved the bed head ticket of the patient. He further testified that on 11.10.2001 the Executive Magistrate, Asansol recorded the dying declaration of the victim at 2.00 p.m. and at the time of recording of such dying declaration the patient was absolutely conscious and he (P.W. 1) had personally witnessed the recording of such dying declaration and thereafter put his signature on such dying declaration as a witness. It is his further deposition that on 13.10.2001 the patient died at the hospital. Eventually, P.W. 1 is also the postmortem doctor who in course of his examination-in-chief stated that he conducted postmortem over the dead body of the victim and he has duly proved the postmortem report wherein he expressed his opinion that the said deceased died on account of shock as a consequence of burn injuries as suffered by her and those injuries are ante-

mortem in nature.

7. Cross-examination of P.W. 1 reveals that at the time of admission the patient was unconscious and she suffered burn injuries all over her body but on 11.10.2001 that is on the day of recording of her dying declaration, he noticed the said patient was conscious and was able to speak. It is his further version that the Executing Magistrate took 15 minutes time to record the dying declaration. On the other day, in course of his cross-examination he further stated that on the day of admission of the victim the patient was unconscious and was thus, not in a position to give her dying declaration, however, on 11.10.2001 at about 2.00 p.m. the victim became fit for giving dying declaration.
8. P.W. 2 being the informant in course of his examination-in-chief practically echoed his version as made by him in his written complaint which according to him was written as per his instruction. In his cross-examination, he stated that he did not witness the incident of setting fire upon her elder sister's person by the accused.
9. P.W. 3 is the scribe of the written complaint and at the same time he is a co-villager of the present appellant. In course of his examination-in-chief he testified that the relationship between the victim and the present appellant was strained and on several occasions the accused used to beat his wife on account of demand of money from her. He specifically stated that on 10.10.2001 at about 5.00 p.m. the present appellant Arun Bauri set his wife ablazed at his house and thus the

victim sustained severe burn injury over her person and, thereafter, she was taken to Asansol Sub-divisional Hospital by the local people. In his cross-examination, he stated that he was not examined by the I.O. He, however, denied all other suggestions as given to him. In considered view of us evidence of P.W.s 4, 6, 9, 10, 12 and 13 are not much relevant for the purpose of disposal of the instant appeal and accordingly, we do not propose to discuss with their evidence here.

10. P.W. 5 according to the prosecution is a vital witness to them who in his examination-in-chief stated that on the relevant day and hour he was posted as an Executive Magistrate of Asansol and in that capacity he recorded dying declaration of the victim in presence of P.W. 1 and the I.O. In his examination-in-chief, he stated that at the time of recording of such dying declaration he noticed that the victim was conscious and was able to speak. It is his further version that he recorded the dying declaration of the victim at the said hospital, i.e., Sub-divisional Hospital, Asansol under his own hand and, thereafter, he put his signature on such dying declaration. He further testified that the other witnesses also put their respective signatures on dying declaration in his presence. It is his further version that at the time of recording of dying declaration, the attending physician certified in the bed head ticket of the victim that the victim had sufficient capacity to make dying declaration. He further stated that he was very much satisfied with regard to the mental alertness of the victim at the time of dying declaration. In course of his cross-

examination except giving some suggestions nothing could be elicited from the mouth of the said Executive Magistrate which may be detrimental to the prosecution. It is pertinent to mention herein that the evidence of P.W. 5 get its due corroboration from the evidence of P.W. 1 as well as of P.W. 8 whose evidence will be discussed later on so far as the capability of the victim and mental alertness of the victim to give dying declaration on the relevant day and hours that is at the time of recording of dying declaration.

11. P.W. 8 is another medical officer (surgeon) of Sub-divisional Hospital, Asansol. It is his version in his examination-in-chief that on 10.10.2001 at about 9.00 p.m. the victim expressed her willingness to give her a dying declaration and accordingly he intimated such fact to the Superintendent of the said hospital. The cross-examination of P.W. 8 is not much relevant.
12. P.W. 11 is the recording officer who is in his examination-in-chief had duly proved his endorsement on the written complaint and the formal FIR. His cross-examination is not much significant.
13. P.W. 14 is the I.O. in this case. In his examination-in-chief he testified that on 11.10.2001 he was posted at Asansol (N) P.S. and as directed by his Officer-in-Charge, he took up the investigation. It is his further version that in course of investigation, he went to the said hospital and met the victim. He also examined her and recorded her statement. He visited the place of occurrence, examined the witnesses and recorded

their statements under Section 161 Cr.P.C. In course of investigation, he also collected the dying declaration of the deceased as recorded by an Executive Magistrate (P.W. 5). It is his further version that at the time of recording of dying declaration, he as well as the Superintendent i.e., P.W. 1 were present. He further testified that in course of investigation, he seized one plastic jaricane of kerosene oil from the place of occurrence under cover of a seizure list. He also seized bed head ticket of the victim. He examined one Mangala Bouri who in his statement under Section 161 Cr. P.C. stated that he had rescued the victim by putting off fire on her body and on completion of investigation, he submitted charge-sheet. In course of his cross-examination, the said I.O. stated that on 11.10.2001 he met the victim and at that time he also found her capable of speaking and at that time no relative of the victim was present at the hospital. He denied the suggestions as given to him in course of his cross-examination by the defence.

14. At the time of argument, Ms. Alam, learned *amicus curiae* draws attention of this Court to the Ext. 2 i.e., the alleged dying declaration of the deceased. It is contended by her that in the dying declaration there was some scoring off name which raises serious doubt with regard to the veracity and genuineness of the said dying declaration. It is contended by him that since the learned trial Court while passing the impugned judgment practically gave sole reliance upon such dying declaration and since from such dying declaration a

suspicion arose with regard to its genuineness, the instant appeal may be allowed by setting aside the impugned judgment.

15. In course of his argument, Md. Kutubuddin, learned Counsel for the State, however, opposes the contention as raised by Ms. Alam, learned *amicus curiae*. It is argued on behalf of the State that leaned trial court committed no error of fact or of law in placing reliance upon the dying declaration of the deceased i.e., Ext. 2. It is contended that on conjoint perusal of the evidence of the prosecution witnesses, there is no reason to disbelieve such dying declaration as well as the version of the prosecution witnesses. It is thus argued that it is a fit case for dismissal of the instant appeal.
16. We have meticulously gone through the entire materials as available in the trial court record including the evidence of the prosecution witnesses as well as the exhibits. We have also gone through the impugned judgment. We have also considered the rival submissions of the parties to the instant appeal. In considered view of us for effective disposal of the instant appeal, a look to the Ext. 2 i.e., the alleged dying declaration is very much necessary. On perusal of the Ext. 2, it appears to us with the wording of such dying declaration is unambiguous, clear and short. So far as the capability and alertness of mind of the victim at the time of recording of such alleged dying declaration is concerned, we find from the evidence of P.W. 5 (which gets due support from P.W.s. 1, 8 and 14) who in unequivocal manner categorically stated that

the victim on the relevant day and hour of recording of dying declaration was absolutely alert and capable of giving such dying declaration. It also reveals from the cross-examination of the I.O that at the time of recording of dying declaration, no relative of the victim was present at the hospital. All the aforesaid witnesses in their evidence categorically stated as to how such dying declaration was recorded and as to how they put their respective signatures on such dying declaration. It is pertinent to mention herein that the factum of scoring off the name of one Smt. Shukla Chandra 'sister' has not been confronted to any of the aforesaid witnesses who supported the genuineness of the dying declaration. It is pertinent to mention herein that such dying declaration was recorded in the Sub-divisional Hospital, Asansol and, therefore, presence of a Sister (Nurse) is not very much unnatural.

17. In view of such, we hold that the learned trial court is absolutely justified in placing of his reliance upon such dying declaration.
18. Now the question comes for consideration before us as to whether a dying declaration can be the sole basis of the conviction or not. In the plethora of decisions as passed by the Hon'ble Supreme Court as well as the different High Courts of our Country had expressly viewed that a dying declaration can be the sole basis of conviction provided the same inspires confidence of the Court. The same view was taken by the Hon'ble Supreme Court in a reported decision *Atbir vs. Govt. NCT of Delhi* reported in (2010) 39 SCC 1 where the Hon'ble

Apex Court expressed the following:

- (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.
- (ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
- (iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
- (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
- (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
- (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
- (viii) Even if it is a brief statement, it is not to be discarded.
- (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
- (x) It after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction,

even if there is no corroboration.

19. In view of the above proposition of law and in view of the discussion (Supra) we thus find that before the learned trial court the prosecution is very much successful in proving the charge under Section 302 IPC against the present appellant and thus, learned trial Court is very much justified in passing the impugned judgment of conviction under Section 302 IPC against the present appellant.
20. As a result, the instant appeal fails. The impugned judgment of conviction dated 18.01.2006 and order of sentence dated 19.01.2006 as passed by learned Additional Sessions Judge, 1st Court, Asansol in Sessions Trial No. 3 of 2005 arising out of Sessions Case No. 53 of 2004 is hereby affirmed.
21. Accordingly, the appeal being **CRA 206 of 2006** is dismissed.
22. Let a copy of this judgment along with LCR be sent down at once.
23. Urgent xerox certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)