

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.A.326 of 2021

Sunil Baran Paitundi

VS.

The State of West Bengal

Amicus Curiae : Mr. Saryati Datta

For the State : Mr. Swapan Banerjee,
Mr. Anindya Sundar Chatterjee

Hearing concluded on : 19.04.2023

Judgement on : 19.04.2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment of conviction dated December 1, 2020 and the order of sentence dated December 2, 2020, passed by the learned Additional Sessions Judge, Bishnupur in Sessions Trial No.4 (11) 2013 arising out of Sessions Case No.16 (12) 2012.

2. By the impugned judgment of conviction, the appellant was found guilty under Section 302 of the Indian Penal Code, 1860. By the impugned order of sentence, the appellant was awarded a sentence to suffer imprisonment for life and to pay a fine of Rs.50,000/- and in default to suffer rigorous imprisonment for six months for the offence under Section 302 of the Indian Penal Code, 1860.

3. Learned *Amicus Curiae* submits that, the prosecution was unable to prove the charges as against the appellant beyond reasonable doubt. He submits that, three persons were charged at the trial. They were charged under Sections 498A/326/302/34 of the Indian Penal Code, 1860 and under Section 3/ 4 of the Dowry Prohibition Act. Two of the accused were acquitted by the learned trial Judge. The appellant was found guilty only under Section 302 of the Indian Penal Code, 1860.

4. Moreover, learned *Amicus Curiae* submits that, the incident of burn occurred on June 16, 2010. The First Information Report was lodged on June 20, 2010. The victim succumbed to her burn injuries on June 25, 2010.

5. Prior to the victim succumbing to her burn injuries, she recorded three dying declarations. Learned *Amicus Curiae* refers to the dying declaration of the victim which was marked as Exhibit-6 at the trial. He submits that, prior thereto there were two other dying declarations. He refers to the testimony of the doctor before whom the two previous dying declarations were made by the victim. He also refers to the contents of Exhibit-6. He submits that, two doctors and a nurse were present at the time of recording Exhibit-6. One of the doctors and the nurse were not examined by the prosecution at the trial.

6. Relying upon **(2008) 5 Supreme Court Cases 468 (Amol Singh vs. State of Madhya Pradesh)** learned *Amicus Curiae* submits that in the facts of the present case, the first two dying declarations of the victim does not speak of any involvement of the appellant. The appellant was introduced only in Exhibit-6, which is the last one. There are apparent contradictions in the three dying declarations of the victim. Consequently, benefit of doubt, at the basic minimum, should be afforded to the appellant.

7. Learned *Amicus curiae* submits that, the contents of Exhibit-6 were not corroborated by the material evidences tendered at the trial. Exhibit-6 speaks of kerosene oil being poured over the victim. No kerosene jar was seized by the police. He refers to the deposition of the Investigating Officer. He submits that investigations were done in a perfunctory manner.

8. Learned *Amicus Curiae* submits that, the dying declaration being Exhibit-6 was not corroborated by any of the prosecution witnesses. He submits that some of the prosecution witnesses including the victim turned hostile.

9. In such circumstances, learned *Amicus Curiae* submits that the appellant should be acquitted of the charges.

10. Learned advocate for the State refers to the testimonies of the prosecution witnesses. He submits that, the victim recorded her dying declaration being Exhibit-6. According to him, there is nothing on record to disbelieve the contents of Exhibit-6. In Exhibit-6, the appellant was implicated. Consequently, according to him, the impugned judgment of conviction and the order of sentence should be upheld.

11. Police received a written complaint from the father of the victim being P.W.4 on June 20, 2010. Such written complaint, which was tendered in evidence and marked as Exhibit-1, P.W.4 stated that, the victim was married to the appellant on 26th Falgun, 2002 as per Hindu rituals. At the time of the marriage, the groom side demanded Rs.80,000/- in cash, gold ornaments and other essentials as dowry. Out of such demand, he gave Rs.55,000/- in cash and some gold ornaments and other essentials. The amount due was undertaken to be paid within few days. After marriage, the in-laws of the victim started torturing the victim physically and mentally. The in-laws did not provide the victim proper food or clothes. Whenever, the victim used to come to her parental home or over phone the victim would narrate about such torture. After that, the appellant was working in a factory under the jurisdiction of Bishnupur Police Station. They started living in a rented house at Hazrapara at Bishnupur. In that rented house, the in-laws of the victim frequently visited and used to torture her. The appellant used to pressurise the

victim to bring the due amount of Rs.25,000/- and tortured her.

12. On June 10, 2010 at about 6:30 p.m. in the evening, P.W.4 received a phone call on his mobile when he came to know that victim was admitted to Bishnupur Hospital with severe burn. On receiving such news, P.W.4 rushed to the hospital and saw the entire body of the victim burnt and that the victim there was fighting for her life. Taking permission from the doctor, P.W.4 talked to the victim and came to know that for the demand of dowry amount of Rs.25,000/-, appellant poured kerosene oil over the victim with the help of parents-in-law and second brother-in-law, set the victim on fire and forcibly pushed her into a room and closed her from outside. Then hearing the victim's cry, the local residents came to rescue the victim and admitted the victim to the hospital. Seeing her medical condition, victim was transferred to Bankura Gobindanagar Hospital. In the written complaint, being Exhibit-1, P.W.4 named four persons as those involved in setting the victim on fire to kill her.

13. On the basis of Exhibit-1, Police registered Bishnupur Police Station FIR No.83/10 dated June 20, 2010 under Section 498A/326/307/34 of the Indian Penal Code, 1860 and under Section 3/ 4 of the Dowry Prohibition Act.

14. On conclusion of the investigation, police submitted charge-sheet against three of the four persons named in the First Information Report on June 20, 2010 under Section 498A/326/307/302/34 of the Indian Penal Code, 1860 and Section 3/ 4 of the Dowry Prohibition Act. The FIR named accused person Parul Bala Paitundi was not named in the charge-sheet.

15. Court framed charges as against three accused persons on September 20, 2011 under Section 498A/326/307/302/34 of the Indian Penal Code, 1860.

16. The case of the prosecution at the trial was that the accused persons inflicted mental and physical torture on the victim since after her marriage on demand of dowry and for non-fulfilment of their demands. The accused persons in furtherance of their common intention voluntarily assaulted the victim by dangerous weapon and causing grievous injuries

to the victim. The accused persons murdered the victim on June 10, 2010 by burning her. The accused persons demanded dowry and tortured the victim for non-fulfilment of the demand of dowry.

17. In order to establish the charges as against the accused persons beyond reasonable doubt, at the trial, the prosecution examined 15 witnesses and relied upon various documentary and material exhibits.

18. The landlord of the house where the victim and the appellant were residing as tenants deposed as P.W.1. He stated that, the victim and the appellant were married. He identified the appellant in Court. He stated that, there was one son and one daughter born out of the marriage. They used to reside in his house at Bishnupur, Hazrapara as tenants.

19. With regard to the incident, P.W. 1 stated that at around 2:30/3.00 p.m. on the date of the incident, he was sleeping in his house and at that time suddenly he saw that fire was coming out from the house where the victim and the appellant used to reside as tenants. He heard cries of a female from there and so he rushed. Many people threw water to douse

the fire. He also did so. Thereafter, he entered the house and saw the victim lying on floor of the house. The victim looked all white. They brought the victim out and took her to hospital on a rickshaw. He heard that the victim later died at the hospital.

20. In cross-examination by the defence, P.W. 1 stated that, the appellant entered into the house with them and that the appellant suffered burns while trying to douse the fire.

21. The nephew of the landlord deposed as P.W.2. He stated that, the victim died in a fire. P.W. 2 was declared hostile by the prosecution. On cross-examination by the prosecution subsequent to P.W. 2 being declared as hostile, he denied the suggestions put to him.

22. The wife of P.W. 1 deposed as P.W.3. She stated that, the victim died out of a fire inside their house. She did not know how the victim caught fire. She was declared hostile by the prosecution. On P.W. 3 being declared hostile by the prosecution, she was cross-examined by the prosecution. In such cross-examination, she acknowledged that police

interrogated her. She, however, denied the suggestions put to her by the prosecution.

23. The father of the victim deposed as P.W. 4. He stated that the victim and the appellant were married on 26th Falgun, 2002. He stated that he gave dowry of Rs.80,000/-, gold and other items. In the wedding, he gave Rs.55,000/- and some portion of the gold to the father of the appellant. After marriage, victim started residing at the matrimonial home. The appellant and the other accused persons used to inflict torture upon the victim and demanded dowry. Thereafter, appellant and the victim came to Bishnupur and started residing in the rented house. Thereafter, the parents-in-law inflicted torture upon the victim. The in-laws of the victim used to come to Bishnupur and inflict torture upon the victim. On June 16, 2010, he received a phone call from P.W. 1 stating that the victim was hospitalized. He came to learn that the victim was kept inside the room by the appellant after pouring kerosene oil on the victim and lighting her on fire. He learnt about the same from the neighbours of the victim. Victim was rescued by the club members of the area.

24. P.W. 4 identified the written complaint. The written complaint was tendered in evidence and marked as Exhibit-1. P.W. 1 was present in the inquest of the victim. The inquest report was tendered in evidence and marked as Exhibit-2. He identified the application for return of the dead body of the victim. It was tendered in evidence and marked as Exhibit-3. He identified the accused persons in Court.

25. P.W. 5 is the mother of the victim. She corroborated P.W. 4 with regard to the demand for dowry. She also claimed that the appellant killed the victim by pouring kerosene oil on her and lighting fire. She claimed that the accused persons used to inflict torture upon the victim. She identified the accused in Court. She stated that the mother-in-law of the victim expired.

26. A police constable deposed as P.W. 6. He took the dead body of the victim to the Bankura hospital. He tendered the dead body challan which was marked as Exhibit-4. He witnessed the seizure of the bangles of the deceased. The seizure list was marked as Exhibit-5.

27. The younger brother of the victim deposed as P.W. 7. He stated that due to the trouble regarding food in the matrimonial home of the victim, appellant and the victim came to Bishnupur and started residing at Hazrapara. Victim expired due to fire on her body. Victim caught fire while she was boiling milk. He identified the accused persons in Court.

28. P.W. 7 was declared hostile by the prosecution. On being cross-examined by the prosecution, he denied the suggestions put to him.

29. The second Investigating Officer deposed as P.W.8. He stated that he was entrusted further investigations of the case on June 6, 2010. He stated that during his tenure of investigation, he visited the place of occurrence, examined available witnesses and recorded their statements under Section 161 of the Criminal Procedure Code. He arrested one accused person and forwarded such accused person to Court. He collected the death certificate of one of the accused persons. He submitted the charge sheet.

30. P.W. 9 is the Doctor who treated the victim when she was admitted at the Bankura State Medical College and Hospital.

He stated that on June 16, 2010, the victim was admitted at the hospital with 100 per cent burn injury and treated accordingly. The patient was able to speak. On June 18, 2010 at 13:53 hours, the victim delivered a statement and during delivery of the statement, the victim was conscious, oriented and mentally alert. He recorded the statement of the victim in presence of Dr. Kunal Sanyal. The victim put her left thumb impression on the statement in his presence. He read out the statement made by the victim. The statement of the victim was tendered in evidence and marked as Exhibit-6. He tendered the Bed Head Ticket with treatment sheet which was marked as Exhibit-7 series.

31. In cross-examination, P.W. 9 stated that, the victim made two further statements on June 16, 2010 and June 17, 2010 which were recorded on the medical documents. On June 16, 2010, initially the victim stated that she sustained burn injury at the time of cooking milk on a gas oven when she caught fire in her night dress. The incident was about 5:30 p.m. On June 17, 2010 at about 11:56 a.m., victim stated that she used to stay in a rented house and she caught fire on her

dressings while boiling milk in the evening. The exact time was not specified by the victim. She was alone at the time and her garment caught fire accidentally. Her husband was in the courtyard at that time. According to the victim, nobody put her on fire or she committed suicide. The victim was conscious, oriented during delivery of such statement. The burn injury was 100 per cent and was carrying a poor prognosis which was explained to the patient party by him. The victim expired on June 25, 2010. The victim was conscious and alert till June 23, 2010.

32. A police personnel deposed as P.W.10. He stated that, he received the written complaint from P.W.4. On the basis of the written complaint, he started the police case. The formal First Information Report was tendered in evidence and marked as Exhibit-8. He endorsed the case in favour of another police personnel to hold the investigation.

33. P.W.11 is the doctor who performed the post-mortem on the dead body of the victim. He described the injuries found on the dead body. He opined that, the death was due to the effect of burn injuries, ante-mortem in nature. He tendered

the post-mortem report which was marked as Exhibit-9. He also opined that, if a person is lit fire by someone such kind of burn injuries may occur. In cross-examination, he stated that, such kind of burn injuries may take place from burning gas stove or due to leakage of gas.

34. The police personnel who held the inquest of the dead body of the victim deposed as P.W.12. He stated that, on June 26, 2010, he went to the Bankura Hospital in respect of an unnatural death case. The ward master and the relative of the victim identified the victim. He held the inquest over the dead body. He tendered the inquest report. He tendered the dead body challan in evidence. He sent the dead body for holding the post-mortem. He prepared a seizure list. The seizure list was marked as Exhibit-5/1. He handed over the case diary to the Investigating Officer in respect of the present police case.

35. A seizure list witness deposed as P.W.13. He identified the signature on the seizure list which was marked as Exhibit-5/2.

36. Another doctor, who attended the victim deposed as P.W.14. He tendered the Bed Head Ticket in respect of the victim which was marked as Exhibit-7.

37. The Investigation Officer deposed as P.W.15. He stated that, in course of his investigation, he visited the place of occurrence, prepared rough sketch map with index. Such rough sketch map with index was tendered in evidence and marked as Exhibit-10. He examined the witnesses and recorded their statements. He collected the inquest report along with the connected papers, the post-mortem report, Bed Head Ticket, and dead body challan. He prayed for adding Section 302 of the Indian Penal Code, 1860 to the case which was allowed.

38. On conclusion of the evidence of the prosecution, the accused persons were examined under Section 313 of the Code of Criminal Procedure. In his examination under Section 313 of the Code of Criminal Procedure, the appellant claimed to be innocent and falsely implicated. He declined to adduce any defence witness.

39. Death of the victim was caused by burn injuries. This will appear from the post-mortem report of the victim being Exhibit-9 and the testimony of the post-mortem doctor being P.W.11. P.W. 11 stated in his testimony that, if a person is lit by fire by someone, such kind of burn injuries on the dead body of the victim may occur. He also opined that, such kind of burn injuries may take place from burning gas stove or due to leakage of gas.

40. There is one written dying declaration which was marked as Exhibit-6. Such declaration was dated June 18, 2010. Such dying declaration was recorded by a doctor attending the victim. Such doctor deposed as P.W.9.

41. In Exhibit-6, victim states that, the appellant put kerosene on her and set her ablaze. Exhibit-6 is the last of the three dying declarations of the victim. It was recorded in presence of another doctor and a nurse. None of them were examined by the prosecution.

42. There are two other oral dying declarations recorded by P.W.9. The oral dying declarations were made by the victim to the doctors. Such dying declarations appear from the Bed

Head Ticket of the victim. Such oral dying declarations were recorded on June 16, 2010 and on June 17, 2010. Victim was admitted to the hospital on June 16, 2010. Victim was attended by P.W.9. He stated that, as per the treatment sheets of the victim on June 16, 2010, initially the victim stated that she sustained the burn injuries at the time of cooking milk on a gas oven and she caught fire in her night dress. P.W.9 stated that, on June 17, 2010, the victim stated that, she used to stay in a rented house and she caught fire while dressing when boiling milk in the evening. She was alone at that time and her garments caught fire accidentally. The appellant was in the courtyard. She did not commit suicide. Nobody put her on fire.

43. P.W.9 stated that, on June 17, 2010, the victim was conscious and oriented during delivery of such statement. P.W.9. in his cross-examination stated that, the victim was conscious and alert upto June 23, 2010.

44. In the facts of the present case, therefore, there are multiple dying declarations. Two oral dying declarations made by the victim and as recorded by the doctor treating her, were

on June 16, 2010 and June 17, 2010. Both the two dying declarations do not implicate any of the accused persons including the appellant. June 17, 2010 was very specific and states that, she caught fire accidentally.

45. Exhibit-6, however, is a statement where, the victim claims that, she was set on fire by the appellant after kerosene oil being poured over. She did not implicate the appellant earlier due to fear.

46. Prosecution did not produce any evidence of presence of kerosene oil at the place of occurrence. The medical documents of the victim also do not suggest that the doctor found any smell of kerosene oil on the victim when she was admitted to the Hospital on June 16, 2010.

47. **Amol Singh (supra)** considers a case of multiple dying declarations and is of the following view:

“13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had

several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See Kundula Bala Subrahmanyam v. State of A.P.) However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”

48. As noted above, the dying declarations dated June 16, 2010 and June 17, 2010 are diametrically opposite to the dying declaration dated June 18, 2010. There are, therefore, three dying declarations and on the anvil of **Amol Singh (supra)**, we are to consider the dying declarations cautiously and find corroboration with regard thereto.

49. Exhibit-6 which claims that, the victim was set ablaze after kerosene oil being poured on her was not corroborated by the prosecution by any evidence of presence of kerosene oil at the place of occurrence or the smell of kerosene on the body of the victim.

50. Police did not seize any kerosene oil or kerosene stove at the place of occurrence. None of the prosecution witnesses

alluded to any kerosene oil being poured by the appellant on the victim. Prosecution did not produce any eye-witness to the incident. The parents of the victim heard about the incident. There evidence with regard to the pouring of kerosene oil and the victim being set on fire by the appellant, is hearsay.

51. Although charges were framed under Sections 498A/326 of the Indian Penal Code, 1860, the prosecution failed to establish any torture being meted out to the victim by the in-laws on demand of dowry. The prosecution also failed to establish any grievous hurt being caused to the victim by the accused. Consequently, two of the three accuseds were acquitted completely of all the charges with the appellant being convicted for murder.

52. Evidence on record suggest that the appellant also suffered burn injuries. P.W.1 stated that the appellant joined the local people in dousing the fire.

53. In view of the discussions above, we are required to afford the benefit of doubt to the appellant with regard to the charge of murder. The three dying declarations, the first two on one part is inexorably opposite to the last one. The first

two are exculpatory. The last dying declaration remains uncorroborated.

54. In such circumstances, we are unable to affirm the judgment of conviction and the order of sentence as against the appellant. We acquit the appellant of the charge of murder. The appellant was already acquitted by the trial court with regard to the other charges.

55. CRA 326 of 2021 is **allowed**.

56. The impugned judgment of conviction and the order of sentence as against the appellant under Section 302 of the Indian Penal Code, 1860 is set aside.

57. The appellant be released from custody subject to the appellant furnishing a bond under Section 437A of the Criminal Procedure Code, which shall remain valid for six months from date.

58. A copy of this judgment and order along with the trial court records be transmitted to the appropriate Court forthwith.

59. Urgent photostat certified copy of this judgment and order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

60. I Agree.

(Md. Shabbar Rashidi, J.)

