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Court : Patna

Decided On : Feb-21-2000

Judge : D.P.S. Choudhary, J.

Appeal No. : Cr. Appl. No. 7 of 1997 (S.J.)

Appellant : Md. Badruddin and ors.

Respondent : State of Bihar

Disposition : Appeal Dismissed

Prior history : D.P.S. Choudhary, J. 1. The appellants have preferred this appeal against the judgment and order dated 12th of December, 1996 passed by the 2nd Additional Sessions Judge, Bhagalpur in Sessions Trial No. 593 of 1994 convicting all the seven appellants under Sections 326, 307 and 498A of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentenced each of them to undergo R.I. for five years, ten years and one year respectively. All the appellants were also convicted under Sectio

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in Sessions Trial No. 593 of 1994 convicting all the seven appellants under Sections 326, 307 and 498A of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentenced each of them to undergo R.I. for five years, ten years and one year respectively. All the appellants were also convicted under Sections 3 and 4 of the Dowry Prohibition Act but no separate sentence was awarded under these sections. The sentences were ordered to run concurrently.

2. The prosecution case in brief is that informant Sogra Khatoon (P.W. 4) who is mother of the victim lady gave a written report dated 31.5.1992 before the Superintendent of Police, Bhagalpur, alleging that her husband Abdul Hafiz (P.W. 1) employed at Calcutta in the Defence Department. The victim lady Rizwana Khatoon is her daughter. She was married with Md. Badruddin (Appellant No. 1) about three years ago. At the time of marriage she was given articles worth Rs. 50,000/- in gift. After the marriage the Appellant No. 1, Md. Badruddin and his parent and brothers started demanding money and threatened that if the money is not brought by the victim lady (Rizwana Khatoon) from Naihar she will be killed. The victim lady gave birth to a daughter about one and half years ago. She further alleged that on 25.5.1992 her nephew Md. Shamsheer (not examined) came to her and stated that appellant Md. Badruddin and his brothers (Appellant Nos. 2 to 7) and his mother Bibi Zaitun had tied the hands and feet of her daughter Rizwana Khatoon and accused-appellant Badruddin sprinkled kerosene oil on her body and set her on fire. He further reported that she had severe burn injuries. On receipt of this message, she along with her nephew and others went to Nawadah at the house of Md. Badruddin where she met Md. Salam and Md. Ijhar, the brothers of Md. Badruddin to whom she enquired about her daughter Rizwana Khatoon but they did not reply and fled away from the house. On enquiry from the neighbours she learnt that all the accused-appellants with an intention to kill her daughter, had set her on fire after sprinkling kerosene oil and has concealed her in burnt condition somewhere. She went to the local police station but Sub-Inspector of Police was not ready to entertain her complaint. She became disappointed and sent her son to Calcutta to inform and bring her husband. Her husband came back from Calcutta and they all started searching their daughter Rizwana Khatoon. She was located confined in a house of one Md. Aslam and found her in the State of half-burnt condition. The victim lady told them that her husband and other

accused-persons have burnt her with an intention to kill after sprinkling kerosene oil. She requested them to send her in the hospital for her treatment but they did not listen and confined her in this house without any treatment. It is further case of the prosecution that when the local police failed to entertain her complaint, she filed the above petition before the Superintendent of Police and on his direction the case was registered in the police station. After investigation the charge-sheet was submitted and after commitment, the trial proceeded in the Court below.

3. The case of the defence is that they have been falsely implicated in this case. The victim lady Rizwana Khatoon wanted to get divorce from her husband Md. Badruddin because he became the patient of leprosy. Since she was not allowed divorce she tried to commit suicide by burning herself. They have not sprinkled kerosene oil on her body nor her husband or anybody set her on fire. They have been falsely implicated in this case. It is also the case of the defence that accused-persons, namely, Md. Jamil, Md. Quamaruddin, Md. Salim and Md. Shakil were not present in their house on the alleged date of occurrence and they were at different places. The Case of the accused-appellants Md. Shamshuddin is that on the date of alleged occurrence he was working at Haldia and Md. Jamil was working at Madhya Pradesh. In support of these contentions, the defence has examined three witnesses and has produced some documents (Exts. A to C).

4. On behalf of the prosecution in all 11 witnesses have been examined, out of which P.W. 1 (Abdul Hafiz) is father of the victim lady. He was working at Calcutta. On 25.5.1992, he got message from his son regarding the burn injuries on his daughter and thereafter he came to Bhagalpur. His wife Bibi Sogra (P.W. 4) also informed about the occurrence and named all the accused-persons who had set fire to his daughter after sprinkling kerosene oil. He along with his wife located his daughter in burnt condition and removed her to Bhagalpur Medical College and Hospital for treatment. According to him, his daughter was burnt by the accused-appellant because he could not fulfil the demand of money made by them amounting to Rs. 10,000/- and subsequently, it was enhanced to Rs. 20,000/-. He identified his son-in-law Md. Badruddin as an accused in the dock. He stated that on search he found his daughter in burn condition in the house of Md. Aslam who is Fufera brother of her son-in-law. He further stated that in the Hospital her

statement was recorded by the Magistrate and she remained under treatment for about three months. He denied the defence suggestion that his son-in-law (Appellant No. 1) was suffering from leprosy and his daughter wanted to get divorce from him. P.W. 2 (Pradeep Kumar Sinha) is a formal witness, who has proved the sanction order for prosecution under Sections 3 and 4 of the Dowry Prohibition Act (Ext. 1).

5. P.W. 3 (Rizwana Khatoon) is the victim lady. She stated that the occurrence took place on 25.5.1992 in her Sasural at village Nawadah. He named all the appellants including her husband and his brothers, who had caught her hands and feet and her husband Md. Badruddin sprinkled kerosene oil on her body and set on fire. She has also named her father-in-law who was present at the time of occurrence. She stated that on her cry some persons who had collected in the nearby place to offer Namaj, had came to rescue her and she became senseless. She stated that from her Sasural she was removed in the house of Md. Aslam where after few days her father, mother and relatives came and then she was removed to the hospital. She stated that her husband and other family members in Sasural used to tell her that she must bring money from her Naihar, otherwise she would be killed. She also stated that she was regularly tortured and assaulted in her Sasural at the hands of her husband because she was unable to fulfil the demand of money. In the Court while she was examined as a witness she, has shown the burnt part of her body to the Court as mentioned in her deposition. She further stated that in the hospital her dying declaration was recorded by the Magistrate and at that time she was in her complete sense.

6. P.W. 4 (Sogra Khatoon) is mother of the victim lady and informant of the case. She supported the prosecution case as made out in her written report before the Superintendent of Police, Bhagalpur, P.W. 5 (Md. Wakil Khan) and P.W. 6 (Most Hasina) have been tendered for cross-examination.

7. P.W. 7 is Dr. Sunil Kumar Sinha, who examined the victim lady in the hospital on 6.6.1992 at 9.35 a.m. He found, the following burnt injuries on the body of Bibi Rizwana:

(i) Chest

(ii) Abdomen

(iii) 4th upper lip and part of head and neck, with laceration and infection.

In the opinion of the Doctor the nature of injuries were grievous caused by fire and the age of the injuries was within 72 hours. He had proved the injury report marked Ext. 2. He further opined that which injury was possible by pouring kerosene oil and then set on fire. In cross-examination, he stated that since the patient was admitted in the hospital the injuries were mentioned on her bed head ticket and on that basis this injury report has been copied.

8. P.W. 8, S.I. Shiv Kumar Tiwary is part I.O., who has taken charge of the investigation from S.I. Nitya Nand Singh on 17.12.1992 and submitted the charge-sheet after obtaining the sanction order for prosecution by the Sub-divisional Magistrate, Bhagalpur, P.W. 9 (Shiv Narayan Prasad) is the Judicial Magistrate, who recorded the dying declaration of victim Rizwana Khatoon in Bhagalpur Hospital on 7.6.1992. At that time, she was admitted in the emergency ward of Bhagalpur Hospital. Her dying declaration was Recorded at 1.45 p.m. He has proved the dying declaration marked Ext. 3. He stated that at the time of recording dying declaration he found the victim in her senses who was in burnt condition. In cross-examination, he stated that the victim lady stated on 7.6.1992 that about seven days ago she was burnt and she further narrated that her husband Md. Badruddin used to torture her and regularly made demand of money and ornaments from her. He was a habitual drunkard. She further stated that he along with others had set her on fire. Ext. 3 (the dying declaration) has been recorded in question and answer form. The victim lady stated that she was married with Md. Badruddin about three years ago. On the question How she got burn injuries her answer was that in her sasural all the accused-appellants (eight in numbers) including her husband (she named all the accused-appellants) caught hold her hands and feet and after sprinkling kerosene oil on her body, her husband set her on fire. She gave detail description how she was caught hold by the accused-persons and dragged from her room where she was sleeping and thereafter they poured kerosene oil on her body and set her on fire with the help of a match box. They have sprinkled kerosene oil from a stove. She also stated that from her

Sasural she was removed to the house of one Aslam Mian who is cousin of her husband and from that house she was recovered by her father and other relatives and then removed to the hospital. Since the Doctor found her both the thumbs burnt, as such, the impression of left toe was taken on her dying declaration and the Doctor has given certificate to this effect on her dying declaration.

9. P.W. 10 (Umesh Chandra Mishra) is another police officer who only submitted the charge-sheet in this case. P.W. 11 (Raghunath Rai) is the I.O. who made investigation in this case. He has proved the seizure-list marked Ext. 4, which is dated 2.6.1992 and it mentions that from the house of accused Md. Badruddin, the I.O. has recovered a kerosene stove in presence of two independent witnesses, who have put their signatures over the seizure-list. He received the dying declaration recorded by P.W. 9. He has proved the formal F.I.R. (Ext. 6) and the endorsement of the Superintendent of Police, Bhagalpur on the written application of the informant marked Exts. 7 and 7/A, directing the Officer-in-charge to register the case.

10. On the basis of the evidence discussed above, the Court below has come to the finding that prosecution has been able to substantiate the charges against all the accused-persons and accordingly convicted them as indicated above.

11. The learned appellants lawyer submitted that except the evidence of the informant (P.W. 3) there is no eye-witness in support of the allegation that the accused-persons had burnt Rizwana Khatoon after sprinkling kerosene oil on her. As per the evidence of the informant (P.W. 4) on 25.5.1992 her nephew Md. Shamsheer has informed her that all the accused-persons had set her daughter (victim) on fire in her sasural but Md. Shamsheer has not been examined as a witness. The victim lady in her evidence stated that, when she was burnt in her sasural she raised hulla and some persons who had collected at the nearby place to offer Namaj had come there and they helped her and put a blanket on her but none of them has been examined in this case. As such, the evidence of the victim lady has not been corroborated by an independent witness of the locality. The learned appellants' lawyer further submitted that it is the case of the defence that victim lady attempted to commit suicide by burning because she was frustrated

from her husband who was suffering from leprosy and she wanted to get rid him by divorce, but she could not succeed. It was also argued on behalf of the appellants that the bed head ticket of Bhagalpur hospital has not been brought on record which could have given the detail description of the patient. The injury report (Ext. 4) has been copied on the basis of the bed head ticket as stated by the Doctor (P.W. 7). This omission on the part of the prosecution is a serious lacuna.

12. In reply, the learned A.P.P. submitted that the alleged occurrence took place in the sasural of the victim lady. At the time of occurrence, on her cry, the persons who had assembled, were local people of that village. In ordinary course, these persons, being co-villagers of accused are not expected to depose against them nor the prosecution was in a position to examine them as witness. Besides, the occurrence took place inside the house of the appellants. As such, there was remote possibility of any outsider to be present there at the time of occurrence. There can't be possibility of any other eye-witness of the alleged offence. Therefore, non-examination of any witness to corroborate the occurrence is not a lacuna on the part of the prosecution. The learned A.P.P. further submitted that P.W. 7 (the Doctor) who examined the victim lady in hospital has stated that he has copied the injury report (Ext. 4) from the bed head ticket of the patient. The Doctor is the most competent witness to depose that the victim lady has burn injuries when she was brought in the hospital for treatment. The Doctor has found about 60 per cent burnt injuries. The bed head ticket is maintained in the register of the hospital and in normal course it is not produced in the Court, unless specifically called by the Court when some discrepancies are pointed out in the evidence of the Doctor and the injury report. As such, non-production of the bed head ticket is not a lacuna in this case.

13. I have carefully scrutinised the evidence examined on behalf of the prosecution and also on behalf of the defence. The trial Court has rightly disbelieved the plea of alibi taken by some of the accused-appellants as mentioned above. Exts. A and C have been produced on behalf of the defence to show that accused Md. Zamil Khan was working in the organization known as 'Eastern Apparels' at Madhya Pradesh as a worker since 1.9.1989 till 31.7.1992 and accused Md. Samsuddin was residing at Quarter No. 272 at Calcutta and

working as a Welder in a private concern at Haldia Indian Oil Refinery. These certificates produced on behalf of the defence, does not inspire any confidence because the maker of these certificates have not been examined nor the Attendance Register of the said concern have been brought on record. Therefore, only on the basis of these certificates, it cannot be conclusively proved that these accused were working at Calcutta and M.P. and not present at the time of alleged occurrence. The trial Court has rightly come to the finding that these certificates do not inspire confidence and appears to have been procured to create evidence in this case.

14. From the discussions made above, I find substance in the submissions made on behalf of the learned A.P.P. that considering the facts and circumstances of the case the possibility of examining any eye-witness to corroborate the evidence of the victim lady was not possible. Admittedly, the victim lady sustained injuries in her sasural. As per her evidence inside the house of her sasural she was put on fire after sprinkling kerosene oil. Therefore, any witness who might have arrived on her hulla must be the co-villagers of the accused-persons and in ordinary course they would not come to Court to depose against the co-villagers. I further find substance in this contention of the learned A.P.P. that the evidence of the victim lady corroborated by the medical evidence, as discussed above, proved beyond all reasonable doubts that she was set on fire by the accused-persons after sprinkling kerosene oil on her.

15. In their evidence, P.Ws. 1, 3 and 4 have stated that husband of the victim lady and other accused-persons who happens to be his brother had regularly made demand of Rs. 10,000/- to 20,000/- from her and also threatened her that if she does not bring this amount from her Naihar she would be killed. As such, the trial Court has rightly come to the finding that accused-persons are guilty for the offence under Section 498A, I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act.

16. In the facts and circumstances of the case, I do not find any merit in this appeal, which is accordingly dismissed.

17. The learned appellants lawyer submitted that Appellant No. 1, Md. Badruddin who is husband of the victim lady is in jail custody since 9.12.1993, i.e. for about six years. The appellant Nos. 2 to 7 who are brothers of Appellant No. 1, have remained in custody for more than one and half months each. For the ends of justice, their period of sentence may be reduced to the period already undergone.

18. These appellants are young persons and brothers of the husband. The husband has already remained in jail custody for more than six years. The occurrence is of the year 1992. After lapse of about eight years it would not be desirable to send Appellant Nos. 2 to 7 in jail custody again. Accordingly, the period of sentence of all the appellants is reduced to the period already undergone in custody. Issue release order with respect to appellant No. 1, Md. Badruddin.

19. With this modification in the judgment and order of the Court below the appeal is dismissed.

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