

Subhash Datta Vs. State of Tripura

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Court : Guwahati

Decided On : Dec-07-2007

Judge : Mutum B.K. Singh, J.

Appellant : Subhash Datta

Respondent : State of Tripura

Disposition : Appeal dismissed

Prior history : Mutum B.K. Singh, J. 1. This appeal is directed against the judgment dated 16.07.2005 passed by the learned Asstt. Sessions Judge, West Tripura, Agartala (Court No. 2) in S.T. No. 111(WT/A)/2004, convicting and sentencing the appellant to suffer rigorous imprisonment for a period of three years with a fine of Rs. 2,000/-, in default of payment thereof, to suffer rigorous imprisonment for a further period of three months and also to suffer rigorous imprisonment for a period of 10 years under Se

Judgement :

Mutum B.K. Singh, J.

1. This appeal is directed against the judgment dated 16.07.2005 passed by the learned Asstt. Sessions Judge, West Tripura, Agartala (Court No. 2) in S.T. No. 111(WT/A)/2004, convicting and sentencing the appellant to suffer rigorous imprisonment for a period of three years with a fine of Rs. 2,000/-, in default of

payment thereof, to suffer rigorous imprisonment for a further period of three months and also to suffer rigorous imprisonment for a period of 10 years under Sections 498-A IPC and 304-B IPC respectively.

2. Heard Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. S. Ghose, learned Counsel appearing for the appellant and Mr. R.C. Debnath, learned In-charge Public Prosecutor for the State-respondent.

3. The prosecution case, in brief, is that the deceased Bina Paul married to the appellant on 13.05.2000. Besides the other gifts given to the appellant, there was a demand of Rs. 25,000/- from the side of the appellant as dowry, which the deceased's family could not fulfill except the payment of Rs. 5,000/-. The deceased asked the informant on 10.05.2001 for making immediate payment of the balance amount failing which she would not be allowed to visit her parental house again. On 16.12.2001 at the midnight the deceased was set on fire preceded by assault by her husband bolting the door of the room from inside. In the early morning of 17.12.2001 she was taken to G.B. Hospital with severe bum injuries on her body for treatment, where she succumbed to the burnt injuries on 28.12.2001.

4. That, the learned trial court, on receiving the charge-sheet, framed charges under Sections 498(A) and 304(B) of the Indian Penal Code against the accused person. The prosecution, in order to substantiate the charges, examined 19 witnesses but none was examined on behalf of the defence. The learned trial court, after full dressed hearing, convicted the accused for the offences punishable under Sections 498(A) and 304(B) of the Indian Penal Code respectively.

5. That, I have carefully examined the materials available on record and the admitted facts which have emerged are that the deceased Bina Paul married with the appellant on 13.05.2000 and out of the said wedlock, a daughter was born to them. The appellant together with the deceased and their infant daughter stayed together in a room on that fateful night. On 16.12.2001 at the midnight the deceased sustained severe bum injuries on her body in the said room. In the early morning of 17.12.2001, she was taken to the GB. Hospital with the help of the others including the Fire Service Personnel for treatment and she expired on

28.12.2001 in the hospital itself.

6. That, the learned Counsel appearing for the appellant argued that the prosecution unsuccessfully invented the story of demand of Rs. 25,000/- as dowry from the side of the appellant and the assault of the deceased immediately prior to the occurrence. The prosecution has completely failed to prove the above allegations beyond all reasonable doubt. The learned Counsel further contended that the so called dying declaration of the deceased marked Exbt-6 is not a reliable document for the lack of certificate from the doctor about the mental and fitness condition of giving such statement. According to the learned Counsel, since the deceased sustained 100% burnt injuries, she was not in a fit state of mind to give such statement. Hence, the impugned order of conviction and sentence based on such dying declaration is not sustainable in law. The last point put forward on behalf of the appellant is that the statement of P.W. Nos. 1,2,7,9,10,13,14 and 19 are not trustworthy and reliable.

7. That, the statement of the P.W, Nos. 1,2,4,7 and 14 are consistent and corroborated each other that at the time of marriage of the deceased there was a demand of Rs. 25,000/- from the appellant as dowry, which the parent of the deceased were unable to fulfill except Rs. 5,000/- and because of nonpayment of the balance amount, the deceased was harassed physically and mentally by the appellant. The above fact of demand of dowry of Rs. 25,000/- is also reflected in the Ejahar. The statement of P.W. Nos. 1, 2, 7 and 14 further reveal that the deceased was physically tortured for not meeting the demand of dowry by the appellant immediately prior to the said fire incident. The above statement could not be rebutted by defence in cross-examination. There is no reason to disbelieve the said evidences on record.

That, the learned Counsel appearing for the appellant, in support of his contention that the dying declaration marked Exbt.-6 is unreliable, cited a decision of the Hon'ble Apex Court reported in : 1999 CriLJ4321 Paparambaka Rosamma and Ors. v. State of A.P. In the said cited case, the Hon'ble Apex Court held that the doctor's certificate not only about the consciousness but also about fit state of mind of the deceased that existed before recording of dying declaration is

essential. In the said case the dying declaration was recorded by a Magistrate and the doctor had also certified that the patient was conscious while recording the statement. However, the Hon'ble Apex Court held that in the absence of Medical certificate that the victim was in a fit state of mind at the time of recording the dying declaration, the conviction on such sole dying declaration was unsafe.

8. That, admittedly no certificate about the consciousness, fitness of the mental condition of the deceased as to whether she was in a fit condition to give statement was given by the doctors who were by then attending on the deceased. However, each and every case is to be decided depending upon the fact and attending circumstances. In the case in hand, P.W. No. 13 who was the first police officer rushed to the hospital in connection with the said occurrence, found the deceased in Female Surgical Ward No. 3 with severe burn injuries at about 0215 hours of 17.12.2001. Seeing the condition of the deceased, he first requested the resident surgeon to record the dying declaration of the deceased in writing but the same was turned down on the ground that they (doctors) were busy in connection with the treatment. Circumstances being as such, he recorded the statement of the deceased immediately in presence of two doctors, namely, Dr. Ajit Paul and Dr. Asit Bhattacharjee. Under the above peculiar factual position, in my considered view, it is to be ascertained as to whether the deceased was conscious and in a fit mental condition while giving her dying declaration from the evidences available on record. What has been surfaced from the evidences available on record is that P.W. No. 9, the ASI of Police of East Agartala Police Station, on receiving information of the occurrence, went to the place of occurrence and found the deceased on (he floor of the room with burn injuries, the deceased, on his query about the incident, narrated that her husband had lighted fire on her body bolting the door for not meeting the demand of dowry. P.W. No. 10, the Sub-Station Officer of the Office of the Fire Service Station, Agartala, had also stated the same fact, but such statement was not in his earlier statement marked Exbt.-A. The above two Officers visited at the place of occurrence before the deceased was shifted to hospital.

9. That, P.W. Nos. 2, 7 and 14 who visited the hospital after the deceased was hospitalized, had also deposed that the deceased Bina Paul informed them that

her husband poured kerosene on her body and set fire on her in the night. The above statement are consistent and also corroborated the statement of P.W. No. 9. It is also an admitted fact that Bina Paul survived for 13 days after the incident.

10. That, from the above materials it is crystal clear that the deceased was conscious and in a fit mental condition for giving statement before and even after her hospitalization for treatment. The dying declaration of the deceased marked Exbt.-6 was recorded at about 0215 hours of 17.12.2001 i.e. within-two and half hours of the incident. The recording of the dying declaration of the deceased by P.W. No. 13 is also admitted by P.W. No. 19 who was one of the resident surgeons attending on the deceased at the relevant time. He put his signature on the said statement. Record reveals that Dr. Asit Bhattacharjee was also present at the time of recording the said dying declaration, was not available for his statement as he had gone outside the State for higher study. No evidence on record is available indicating that the deceased was in coma at the time of recording her statement and on subsequent days. The contention of the learned Counsel for the appellant that the deceased was not in a fit mental condition in all probabilities as she sustained 100% injuries, is hardly acceptable in view of the above materials on record. True, P.W. No. 18 opined that in case of 100% burn injuries there is possibility of the patient developing delirium. But in the post-mortem report of the deceased, the percentage of burn injuries has not been reflected and he (P.W. No. 18) formed his opinion only on seeing the post-mortem report which was prepared by another doctor.

11. That, from the above materials I am of the considered view that the deceased was conscious and in a fit state of mind at the time of recording her statement marked Exbt.-6 and it can be relied upon as genuine and voluntary even in the absence of medical certificate about her consciousness and mental condition. Besides, there are oral declaration of the deceased made to the P.W. Nos. 2 and 7. The conviction of the appellant was not made solely on her said written dying declaration marked Exbt.-6 but on the basis of all evidences available on record.

12. That, admittedly the incident occurred at the midnight in the bed room where the deceased, appellant and their infant daughter were living. The only person who

could explain about the cause of incident was the appellant but he failed to explain as to how the incident took place except a meek suggestion put to the P.W. No. 1 during cross-examination that the house caught fire due to short circuit of electricity. But there is no other evidence on record to that effect. Of course, the non-explanation of the circumstances under which the incident took place at the time of examination of the accused under Section 313 of the Code of Criminal Procedure does not necessarily mean that he is guilty. Law demands, under such situation, the version of the person having the special knowledge as to how the incident took place if he was not involved at all.

13. That, the irresistible conclusion of the analysis of the materials on record is that the appellant first tortured the deceased and thereafter set her on fire at the midnight of 16.12.2001 in the bed room thereby, committed offences punishable under Sections 498(A) and 304(B) of the Indian Penal Code.

14. That, in view of the above discussions and observations, the order of conviction of the appellant passed by the learned trial court is not called for interference with by this Court. However, considering the fact that there is a baby left by the deceased who is to be looked after by the appellant also, the sentence under Section 304(B) of IPC is hereby reduced to 7(seven) years and both the sentences are to run concurrently. With the above modifications, this appeal is dismissed being devoid of merit.