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Edward John and ors. Vs. State (Delhi Administration)

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Court : Delhi

Decided On : Jul-30-1990

Reported in : 1991CriLJ310; 42(1990)DLT299; II(1990)DMC516; 1990(19)DRJ185

Judge : Malik Sharief-ud-Din and; Jaspal Singh, JJ.

Acts : Indian Penal code, 1860 - Sections 302

Appeal No. : Criminal Appeal No. 105 of 1986

Appellant : Edward John and ors.

Respondent : State (Delhi Administration)

Advocate for Pet/Ap. : D.C. Mathur,; Satish Tamta and; B.D. Batra, Advs

Judgement :

Jaspal Singh, J.

(1) Bungalow No. 17-B, Prithvi Raj Road, New Delhi has three servant quarters. In one of them lived Alfred John, Edward John and Augilina Gladia. The first two are real brothers. The third Is their mother. On October 12. 1983 there was an addition to the family. Smt. Rajni @ Alvia was married on that day to Alfred John. As per the prosecution, the marriage soon ran into rough whether and that though each day remained laden with heavy clouds of discontent and disharmony, the reason

being dissatisfaction over dowry, on December 28, 1983 the day dawned with ill-portent. At about 8.30 a.m.Rajni suffered second to third degree burns all over her body except in the sacral area and the left groin. She was rushed to Safdarjung hospital by Edward John where, at about 10.30 p.m., she breathed her last. Her mortal remains were subjected to post mortem on December 30, 1983. It was opined (See Ex. Public Witness -20/A) that the burn were ante mortem caused by fire and the death was due to shock from burn injuries. However, before her death, Rajni had made three dying declarations. The first before Dr. D.C. Nautiyal at 9.30 a.m. which was recorded in the Mlc (Ex. Public Witness -11/A), the second before Public Witness -19, S.I. Rajinder Singh (Ex. Public Witness -4/B) at about 10.50 a.m., and the third before the Sub-Divisional Officer (Ex. Public Witness -2/C) at about 11.50 a.m.

(2) As the entire case of the prosecution is founded on the dying declarations, it is time to first notice as to what they are. Their closer scrutiny would follow.

(3) As noticed above, Ex. Public Witness -11/A is the dying declaration earliest in time. The relevant entry runs as under :-

'INFORMANT-PATIENTherself. Alleged H/O sustaining burn injury when her husband poured petrol over her and lighted it with fire at her residence on 28-12-1983 at about 8.30 am to 9.00 am.'

The second recorded by Public Witness -19, S.I. Rajinder Singh is in greater detail and so is the third. A brief resume of their essential would suffice.

(4) As per the second dying declaration (Ex. Public Witness -4/B), at about 8.30 a.m. first the utensils presented to her at marriage were thrown out and then she was belaboured by Alfred John in the presence of her mother-in-law, father-in-law and the wife of Edward John. Thereafter, Alfred John went out of the room and Edward John poured kerosene oil on her, lighted a paper from the electric beater, and set her on fire. She screamed and tried to run away but Edward John caught bold of her band as a result of which she fell down. Soon thereafter, Alfred John came out of the other room and spread a carpet on her.

(5) In the last dying declaration recorded by the Sub Divisional Officer, Rajni first talked of her marriage, the dissatisfaction of her husband and his mother over the dowry and their ill treatment towards her. Coming to the fateful day she stated that at about 7.00 am her mother-in-law and husband beat her and when she threatened to leave, her husband's elder brother not only threatened to do away with her but actually at about 8.30 am poured petrol on her from a can and set her on a fire by lighting a paper from a heater. She made it clear that at the time of setting her on fire, only her husband's elder brother, Edward John and his five year old daughter Binny were present and that her mother-in-law, her husband's sister and the wife of Edward John had reach there only afterward.

(6) The prosecution arrayed Edward John, Alfred John and their mother Augilina Gladia as the accused On July 20, 1984 all the three were charged under Section 302 read with Section 34 of the Indian Penal Code. Ultimately Alfred John and Augilina Gladia were convicted and sentenced under Section 323 read with Section 34 while Edward John was convicted and sentenced under Section 302 of the Indian Penal Code. All of them have felt dissatisfied with the result of the real trial. Hence this appeal.

(7) The prosecution has not offered any eye witness to the occurrence. It is banking upon the dying declarations and to dye them deep it is claimed that it was the un satiated thirst for more and more dowry and extreme dissatisfaction over what had already been received, which bad led to matrimonial acrimony and to ultimate extermination of a young bride by setting her ablaze And to substantiate the same our attention was drawn to its star witnesses who are none other but the flesh and blood of the deceased. Alwin James Paul (Public Witness -5) is the father, Eldie Admiral @ Vijay (Public Witness -6) is the brother and Elthiya @ Guddi (Public Witness -7) is the sister while Manju Sneh Lata Paul (Public Witness -8) is none other but the mother of the deceased. Here is a brief resume of their depositions. According to them after about a week of the marriage the deceased on her visit to her parental home, told them that she was being taunted over insufficiency of dowry and that on October 18, 1983 when Vijay paid a visit to her matrimonal home, she told him that she bad beaten by the appellants and her father-in-law.

(8) Mr. D.C. Mathur, Senior Advocate, who appeared for the appellants, however, found no virtue in anything said and done by the prosecution. To him the dying declarations were an amalgam of gargantuan lies and the allegations regarding dowry and maltreatment, sheer blasphemy. As per him it was a case of suicide, pure and simple.

(9) Where lies the truth Let us search for it from beneath the labyrinth of gone hesitant and some deliberate lies, some half-truths.

(10) Undoubtedly, and as noticed by us above, the parents and the brother and sister of the deceased have painted the appellants in darkest hues. Are they worthy of reliance? As per the father, in the month of November when Alfred John, husband of the deceased, visited them to take back the deceased to her matrimonial home be was told by the mother of the deceased that in case there was any deficiency or inadequacy in dowry, the same Would be made up. The mother repeats it as Public Witness -8. However, significantly, neither of them had made such an allegation under Section 161 of the Code of Criminal Procedure. The father also tells us that when Vijay (Public Witness -6) came back from the visit to the matrimonial home of the deceased, he had told them that he bad noticed blue marks of her body and her hand bandaged on account of beatings given to her by the appellants. Here too he was confronted with the statement made by him under Section 161 of the Code where in there is no such allegation. The mother of the deceased too does not lag behind. Though, as per her, the deceased bad complained that the appellants had been taunting her over insufficiency of dowry brought by her and about the bed and bed-sheets, no such statement was made by her under Section 161 of the Code.

(11) Besides the improvements and embellishments noticed by us in the preceding paragraph, is it not strange that while there is now a loud chorus of protest against the behavior of the appellants and their lust for more dowry, there was not even a single note of protest during the life time of the deceased Had the appellants, or any one of them, really been cruel to the deceased, would not her parents, brother and sister, have lodged a protest, strong or at least meek, on the visit of Alfred John to their house There would have actually been a storm. How is it that we

discern not even a ripple As per the record no protest was lodged. Why not On the contrary, what we find is that in November, like any other loving and understanding husband, Alfred John visited the house of his in-laws to bring back his wife. And let us not forget that even the deceased was allowed to visit her parents and stay with them for days together. That was before Alfred John had gone to bring her back It was one of those visits which loving and understanding in-laws always permit. Can we lose sight of all this And does it not show how loving and understanding the in-laws were This is not all. Vijay, the brother of the deceased, paid a visit to the matrimonial home of his sister. Significantly, he too did not care to give quiver to his lips in protest. And pray, why not On the contrary what we find is that he was entertained with tea and snacks and was presented a jacket besides rupees ten in cash. For how long one can cloud the truth?

(12) The burial remains. The job is completed by the four letters placed on the record. One (Ex. DD) is in the handwriting of the father of the deceased. The remaining three (Ex. Dc, Db & DA) were written by the deceased.

(13) EX.DD is dated 23rd October, 1983. It is addressed to the father-in-law of the deceased and shows that during those days the deceased was with her parents. It speaks of the deceased having received an injury and about her self-medication and proceeds to say : 'You need not worry'. and that 'we all are looking after her sincerely'. Would a father, knowing fully well about the cruelty perpetrated upon her daughter by her in-laws, inform them of a minor injury sustained by her and implore them not to worry and assure them that she was being looked after 'sincerely'

(14) EX. Dc in a letter admittedly written by the deceased from her parental home. It is dated October 27, 1983. It starts with the sentence: You please oblige me by receiving day to day compliments.' A clear indication of a love-letter wife writing daily to her husband. She informs him that she was taking her medicine regularly and that 'You need not to worry at all'. She concludes the. letter by writing : 'Please bestow my love and affection on Mama, Papa, Didi, Doli, the elder brother and both the children. I conclude to write the letter with great love and affection'. Does it speak of matrimonial disharmony and family discord or of a perfectly happy

matrimonial life.

(15) A day before Ex. Dc, the deceased had written another letter. It is addressed to 'My dear Mama, Papa Ji. the elder brother and sister, and both the kinds'. She prays to God 'for your welfare' and informs them that she had reached her parental home comfortably and that : 'You people need not worry at all'. She enquires : 'How are all the members of the family, I remember all of you very much'. She advises Harison to study a lot and not to tease his mother and father. While Binny is lovingly remembered, she sends her affections to Doli, compliments -o Didi and younger sister and bestows her love and affection on all of them. She concludes the letter : 'with great love and affection' What do we call such an epistle An epitome of love. Each word dripping honey. And who would write such a letter to a family of blood-thirsty hounds

(16) During arguments it was contended by Mr. B.D.Batra, Senior Standing Counsel for the State, that the letters referred to by us above were written when the marriage was hardly a few days old and that by then probably nothing untoward had happened. The argument stands not even a moment's scrutiny In one of the dying declarations the deceased talks of maltreatment immediately after the marriage. The expression used by her in Devnagri is truant which would show hardly any lapse of them (see Ex. Public Witness 14/D) Even otherwise, as per Vijay(PW-6) complaints had been made to him by the deceased on 18th October, 1983 when he bad visited her and as per the parents and sister of the deceased (PG-5. 7 and 8 respectively) she had spoken of her matrimonial unhappiness and of ill-treatment on her visit to them in October. Thus, it cannot be said that the letters referred to above do not belong to the relevant period Rather they are the immediate fallouts of the so-called tormenting period in her matrimonial life.

(17) We intentionally kept back so far the letter Ex.D.A. It makes naked the hollowness of the prosecution case. It is of December 23, 1983, that is, five days before her. death. She wrote it to her uncle. She sent him not only her own compliments but even the compliments of her in-laws, and told him that every one in the family was quite well, that she herself was quite happy, that there was nothing to worry about her and that everybody in the family loved her.

(18) Do the letters referred to in the preceding paragraphs not depict a matrimonial home ringing with the music of love and affection No. we cannot and do not believe that she was ever ill-treated or subjected to cruelty, physical or mental, or that there was ever any expression of unhappiness over insufficiency of dowry. We believe that Mr. D.C. Mathur, Senior Advocate appearing for the appellants, was justified in his submission that the parents and the brother and sister of the deceased had minted a story of matrimonial discord.

(19) With one limb of the prosecution's case having crumbled to the ground, time to peep into the dying declarations.

(20) A critical analysis of the dying declarations would reveal that they are far from consistent. The first dying declaration made before Dr. Nautiyal and as recorded in the medico-legal report (Ex. Public Witness /11/A) has already been reproduced by us in the second paragraph. A bare perusal of the same would go to show that there the deceased, in clear and unambiguous terms, implicated her husband and husband alone. In the subsequent two dying declarations we find her commit a somersault. In them she claims that she bad been burnt by her husband's brother and thus clearly absolves her husband. There is no Explanationn for it. To our mind this, in itself, is sufficient to ignore the dying declarations. But then there is more to them. In the dying declaration Ex. Public Witness 2/C recorded by the Sub Divisional Magistrate, she says that at about 7 Am while she was lying, her mother-in-law beat her and when she protested she gave her more beatings and that she was beaten by her husband too and thereafter when she told them that she wanted to leave the house, her husband's elder brother (Edward John) threatened that he would do away with her. We find no such version in the dying declaration Ex, Public Witness -4/B recorded by Sub Inspector K.S. Yadav. The omissions are too significant to be ignored. Further, in Ex. Public Witness 4/B she says that at 8.30 Am her husband threw out the utensils presented by her father and asked her to take them away and that thereafter her husband and his elder brother belabored her in the presence of her mother-in-law, father-in- law and the wife of her husband's elder brother. Significantly this version is missing from the dying declaration Ex. Public Witness -2/C. Similarly in Ex. Public Witness -4/B she tells us that she was beaten by her husband and her husband's elder brother.

Significantly this version is missing from the dying declaration Ex. Public Witness -2/C. Similarly in Ex. Public Witness -4/B she tells us that she was beaten by her husband and her husband's elder brother. This too does not find mention in Ex. Public Witness 2/C. Rather, as noticed above, in Ex Public Witness /2C she alleges that she bad been beaten by her mother-in-law. In Ex. Public Witness 2/C she tells us that when she was set on fire by Edward John, besides him only his five years old daughter Binny was present there. However, in Ex. Public Witness 4/B there is no reference to the presence of Binny. This is not the end. In Ex. Public Witness 4/B she tells us that when she tried to run away after having been set on fire, her husband's elder brother caught hold of her from her hand as a result of which she fell down. No such thing appears in the dying declaration Ex. Public Witness 2/C. And lastly, as per her version in Ex.PW 4/B,on her falling down,her husband came from the other room and spread a carpet on her. This version too is missing from Ex. Public Witness 2/C. In short, there arc not only material omissions, there are significant variations also.

(21) During arguments, it was contended by Mr. B.D. Batra that the dying declaration recorded by the doctor in the Mlc (Ex. Public Witness 11/A) could not be read in evidence as Dr. Nautiyal who recorded it had not been examined. We feel it was an argument borne out of desperation. True, Dr. Nautiyal was not examined and in his place the medico-legal report was got proved from the record clerk who made statement that Dr. Nautiyal bad left service and his whereabouts were not known. He proved the medico-legal report. He stated clearly that he bad been seeing Dr. Nautiyal writing and signing in the normal course of his official duties and consequently was in a position to identify the same. This how the medico-legal report was proved. The prosecution produced it. It relied upon it. It cannot now wriggle out of it. Even otherwise, interests of justice being uppermost in our mind, we cannot, and shall not allow it to so happen.

(22) A few more things need also to be noted, for they are not any less significant. It is the case of the prosecution that the main door leading into the matrimonial home bad a bolt attached to it from inside and that its hook was found uprooted and banging on to the bolt. Obviously the door bad been violently pushed from outside. It is also the case of the prosecution that the window panes of that room

had also been broken. Obviously an attempt was made to enter the room not only by pushing the door violently but through the windows as well. All this shows that desperate attempts were made to enter the room and to save the body and soul of the deceased. This finds support from prosecution witnesses themselves. Dban Pal (Public Witness -9) was working as a guard at building No. 17-B, Prithvi Raj Road. He knew the appellants and their father. He says that the appellant Edward John was the person who bad gone inside the room to extinguish the fire in his presence. Yet another witness of the prosecution Roop Chand (Public Witness -12), who too used to work in the same building, has deposed that he had seen Edward John and Alfred John trying to break open the door of their servant quarter. That was the time when the deceased was all flames. We find no reason to disbelieve them.

(23) Before we finally drop the curtain, let us give words to our yet another thought. The deceased speaks of the presence of five years old daughter of Edward John in the room when be allegedly poured oil and set her ablaze. Would a five years old child be allowed by her father to witness him enacting such a devilish, diabolical part They very thought is sickening, nauseating. We refuse to believe it.

(24) In the end, we find the bastion founded mainly on the dying declarations crumbling to the ground. The appeal is allowed. The judgment of conviction and the order of sentence stand set aside.

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