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Subhash Chand Vs. State

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Court : Delhi

Decided On : Apr-06-2005

Reported in : 119(2005)DLT462; II(2005)DMC44

Judge : Manmohan Sarin and; R.S. Sodhi, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 489

Appeal No. : Criminal Appeal No. 380 of 2002

Appellant : Subhash Chand

Respondent : State

Advocate for Def. : Anil Soni, Adv.

Advocate for Pet/Ap. : Braham Singh, Adv

Disposition : Appeal allowed

Judgement :

R.S. Sodhi, J.

1. This criminal appeal seeks to challenge the judgment and order dated 27.3.2002 of the Additional Sessions Judge in Sessions Case No. 243/2/97 arising out of FIR No. 395/97, Police Station, Subzi Mandi, whereby the learned Judge has acquitted the appellant of the offence under Section 498 IPC but convicted

him under Section 302 IPC. Further, by order dated 30.3.2002, the appellant was sentenced to life imprisonment together with a fine of Rs.5,000/- and in default thereof further rigorous imprisonment for five months.

2. The case of the prosecution, as put up in its charge-sheet and as noted by the learned Additional Sessions Judge, is that :

' on 23.7.1997 ASI Jagdish Chand, with Ct. Santokh Singh was present in the area when Ct. Rama Shanker met him and handed over DD No.7A to the effect that quarrel was going on in H.No.426. On this, ASI with his accompanying Ct. reached H.No.426 and learnt that Smt. Meera had been removed to the hospital by her husband/accused. After leaving Ct. Santokh Singh at the spot, ASI reached HRH and collected MLC of the accused and his wife Meera. The Doctor declared Meera unfit for statement but subsequently recorded that she was fit for statement. ASI informed SDM and called him to hospital. SDM recorded her statement. She told that she was married to accused on 7.12.1996 and was pregnant; that for cooking she was lighting the stove when her clothes caught fire; that her husband tried to extinguish the fire with his hands. She further stated that her husband was lying in the room while her in-laws were sitting in another room at that time; that she was very happy in her matrimonial home and everybody loved her. During the night of 24th and 25th July 1997, Meera's father Chhanga Ram informed control room that his daughter Meera, who had been set on fire by her in-laws and was admitted in hospital and gave statement under pressure the day before, wanted to make statement. DD No.32A was handed over to ASI Jagdish Chand who informed SDM and SDM recorded statement of Meera in the hospital. In that statement Meera stated that she was married to the accused 8 months ago; that on 23.7.97 at 11.00 am the accused took one tablet and lied down; that after sometimes he came out; that she demanded Rs.20/- from him as she was to repay that money to her sister in-law; that on this the accused shouted that he was not earning for her, started throwing eatables, poured kerosene oil on her and set her on fire by lighting a match stick; that on hearing her cries, her mother-in-law and other in-laws came and extinguished the fire by throwing water on her; that after setting her on fire, the accused immediately went out; that when she was brought to the hospital in a three wheeler, the accused threatened her that in case she said

anything against him, he would finish her entire family; that earlier also he used to give such like threats to her and thereforee she stated in her earlier statement that she caught fire from stove; that now she was giving statement without any pressure. Her father and brother made statement that she was being harassed and tortured because of dowry. On direction of SDM FIR of this case was registered. The matter was investigated and the accused was arrested. Meera died in the hospital on 26.7.1997. Post mortem of her body was conducted. As per report burn injuries were ante-mortem in nature caused by flame/burn involving about 85.90 % of the body surface area and cause of death was septicemia consequent to infected burn wounds. After collecting evidence, the accused has been challaned,

The accused was supplied copies and the case was committed to the Sessions Court by ld. MM vide order dt.24.11.97. After hearing the parties, my Ld. Predecessor framed charge u/s 498A/302 IPC against accused. Charge against him is that between 7.12.96 to 23.7.97 he subjected his wife Meera with cruelty by harassing her and beating her for not bringing money from her parents and that on 23.7.97 he intentionally committed her murder by causing her death by burning her after pouring kerosene oil at house no.426, Gali Robin wali, Subzi Mandi. He pleaded not guilty and claimed trial.

3. The prosecution, in order to prove its case, examined as many as eighteen witnesses. Of these are PW-1, Dr. K. Goyal, PW-2, Chhanga Ram, father of the deceased, PW-3, Rakesh, brother of the deceased, PW-4 HC Laxman Singh, Duty Officer, PW-5, Chander Kanta, sister-in-law of the deceased, PW-6, Jagdish Kumar, brother of the deceased, PW-7 ASI Jagdish Chander, the Investigating Officer, PW-8, Mr. H.P.S. Sran, SDM Civil Lines, PW-9, Mr.A.K. Garg, Additional Director Vigilance (earlier SDM Kotwali), PW-10, Mr. G. Sudhakar, Deputy Director Trainee (earlier SDM Sadar Bazar), PW-11 Retd. SI Radhey Lal, PW-12, Dr. Sunil Massand, PW-13, HC Anita, Duty Officer, PW-14, Sideshwar Mehto, Medical Record Technical RML hospital, PW-15, Ct. Rajbir, PW-16, Ct. Santok Raj, PW-17, SI Manoj Sharma, and PW-18, Dr. Sandeep Parbhakar.

4. Counsel for the appellant argued that this case primarily hinges on the so-called dying declarations made to PW-7, ASI Jagdish Chander in the presence of Dr. A. Anju on the day Meera was admitted to the hospital, the second dying declaration recorded by PW-8, SDM, Civil Lines, on 23.7.1997 and the third dying declaration recorded by PW-9, SDM, Kotwali on 25.7.1997. The statement of Meera, Ex. PW-7/A, made to PW-7 reads as under :-

"Statement of Smt.Meera w/o Subhash r/o House No.426, Katra Mangla Kumar Near Robin Cinema, Subzi Mandi, Delhi aged 22 years.

Made statement that she is residing at the aforesaid address along with her in-laws (Susral Wales) and I was married to Shri Subhash s/o Shri Saligram as per Hindu rites and ceremonies about one year back. Now I have eight months pregnancy. There is not any dispute and quarrel between us at present. Today I was burning the stove, all of sudden due to over flow of the Kerosene it caught fire and the fire caught my clothes and due to that my body is brunt, and I have been admitted in Hospital by my husband. No body is guilty and responsible for it. This fire had taken place due to all of sudden overflow of kerosene and the fire, at the time of burning stove and due to sudden fire my clothes caught fire, at that time nobody was there, on hearing my hue and cry all came there. My in-laws loves me very much. Heard the statement and found correct. I do not want any action against anybody regarding this occurrence.This statement was R.T.I. ofrecorded in presence Meeraof me.Dr. A. Ahujasd/JR - Unit-3 Surgery

5. The second statement made before PW-8, SDM, Civil Lines, Delhi, Ex. PW-8/A, on 23.7.1997 reads as under :-

Statement of Smt. Meera w/o Subhash, r/o 426, Gali Robin Katra Mangla Kumar Subzi Mandi, Delhi aged 22 years.

Q. What is your name, and what is your husband doing?

A. My name is Meera and name of my husband is Subhash.

Q. When you was married an do you have any child?

A. My marriage was solemnized on 7th December, 1996, I do not have any child, now I am pregnant.

Q. How you have burnt?

A. At noon I was cooking food and was burning stove, the Kerosene was not flowing properly, I pinned the stove as soon as I strike the match stick to stove, there was a big fire and I also burnt, my husband extinguished the fire with his hands.

Q. Who was present there at that time?

A. My husband was taking rest inside the room and my in-laws were in second room.

Q. Were you happy in your matrimonial house?

A. Yes. They all loved me very much and I was living happily.

Statement heard and found correct.

Sd/Recorded by me at R.T.I.15.20 hours on 23.7.1997 MeeraS.D.M.Civil Lines'6. The third statement recorded by PW-9, SDM, Kotwali, Ex. PW-9/A, on 25.7.1997, reads as follows :

'THIRD DYING DECLARATION'S TRUE ENGLISH TRANSLATION MADE TO SHRI A.K.GARG, PW-9 S.D.M. KOTWALI, ALLEGEDLY ON 25.7.1997.

Statement of Smt.Meera w/o Subhash d/o Shri Chhange Ram, r/o House No.426, Gali Robin, Subzi Mandi, Delhi aged 22 years.

Q. What is your name?

A. Meera.

Q. What is the name of your husband?

A. Subhash.

Q. What is your father's name?

A. Shri Chhanga Ram.

Q. When you was married?

A. About 8 months back.

Q. up to what standard you have been educated?

A. I have studied up to 7th class in Govt. School.

Q. How you have been burnt?

A. On 23rd July at 11.00 hours in day time my husband bring a intoxicant tablets and after taking that intoxicant tablets he was sleeping. After some time I reached to him and demanded Rs.20/- which I have to give to my sister-in-law. I borrowed those rupees. On demanding Rs.20/- my husband cried over me and said that I am not earning for you. Thereafter he slapped me twice and started throwing the eatables. Thereafter he poured kerosene on me and lit the fire. I started crying. My mother in-law and other members of in-laws family came and tried to extinguish the fire by water. After lighting the fire my husband immediately went out. While they were taking me to Hospital in three wheeler scooter, my husband threatened me that if she will speak directly then he will destroy her entire family. Earlier also he threatened me like that, that's why I have said in my earlier statement that I have been burnt due to fire in stove. Now I am making this statement without any pressure. Heard and found correct.Before me on 25.7.97SDM KotwaliLink Magistrate to RTI of Smt. Meera SDM Civil Lines.Forwareded to S.H.O. (Sabzi Mandi) for taking action as per law.25.7.97(A.K.Garg) SDM KotwaliLink Magistrate to SDM Civil Line'

7. In the statement recorded by PW-7, ASI Jagdish Chander, the deceased states that the fire had been caused accidentally due to overflow of kerosene oil from the stove. In the second statement made before the SDM, PW-8, she repeats that her clothes caught fire accidentally due to kerosene having poured out of the stove while in the third statement before PW-9, SDM, Kotwali, dated 25.7.1997 she

states that her husband after taking intoxicant tablets had fallen asleep when the deceased requested for twenty rupees to be given to her which she could return to her sister-in-law. The accused, on hearing such a demand, got agitated, slapped the deceased, threw a tantrum, poured kerosene oil and set her ablaze. On hearing her cries, the mother-in-law and other members of her in-laws family came and doused the flames with water. The deceased categorically states that after setting her ablaze, her husband immediately went out of the room. She also states that while they were taking her to the hospital in a three-wheeler, her husband had threatened her with dire consequences which was the reason given for not being truthful in the earlier two statements.

8. Counsel for the appellant submitted that the third statement is an 'afterthought' and appears to have been made on being tutored by her family members. Counsel for the State, on the other hand, contended that the deceased herself has given an Explanationn as to why the earlier two statements were made incorrectly and there was no reason why she should have falsely implicated her husband if she was really being treated with great love and care, as has been mentioned in the earlier statements. He contended that the statement of the deceased is sufficient to bring home the guilt of the accused.

9. Heard counsel for the parties and have carefully gone through the material on record. PW-7, ASI Jagdish Chander, has stated that on 23.7.1997 he was posted as ASI, Police Station, Subzi Mandi, on which date, while on routine patrol duty along with Constable Santok Raj, received DD Entry No. 7A at 11.00 a.m. through District Home Guard Constable, Uma Shankar. The DD entry was exhibited as Ex. PW-7/A. It contained the information of quarrel going on in house No. 426, Gali Mangla Kumar. This witness went to inquire into the incident and found that injured Meera had been removed to Hindu Rao Hospital by her husband. He left a constable at the spot and himself proceeded to the hospital. At the hospital, he collected the MLC and made inquiries whereupon it was revealed that the marriage of Meera and Subhash had been performed a year ago on which this witness informed the SHO, Police Station Subzi Mandi, as also the SDM, Civil Lines. This witness also contacted the Doctor to ascertain whether Meera was fit to make a statement. On receiving clearance, he recorded the statement of Meera

in the presence of the SHO and the Doctor on duty. The aforesaid statement was got attested by the Doctor and thumbed up by Meera. It is exhibited as Ex. PW-7/B. The witness continues to state that the SDM, Civil Lines, also arrived at the hospital and contacted the Doctor who declared Meera to be fit to make a statement. Thereafter the SDM recorded the statement of Meera. After recording the statement, this witness along with the SHO, ACP and SDM, Civil Lines, came to the place of occurrence. The place was photographed and articles present there were taken into possession vide Ex. PW-7/C and sealed. They were thereafter deposited in the malkhana. Message was sent to the parents/relatives of Meera and action on DD Entry No. 7A was kept pending till their arrival. Meera was transferred to Dr. Ram Manohar Lohia Hospital in the evening of 24/25.7.1997. While she was admitted in the Ram Manohar Lohia Hospital, a message was received from the control room that Meera wanted to make another statement. Daily diary entry was made which is Ex. PW-7/D. The SDM, Civil Lines, was once again informed. The SDM Civil Lines was on leave, thereforee, SDM Kotwali was intimated. The parents, brothers and sisters of Meera were present at the hospital when the SDM got recorded the statements of Shri Chhanga Ram, Smt. Chander Kanta, Shri Jagdish and Rakesh by the Investigating Officer at the dictation of the SDM and then the SDM went on to record the statement of Meera on 25.7.1997. The members of the family of Meera were called to the office of the SDM and thereafter the SDM directed registration of an FIR.

10. In cross-examination, this witness states that at about 5.30 p.m. the parents of Meera met him when they arrived at the house of the accused. This witness informed them that Meera had made a statement at the hospital but the parents did not want to make any statement at that time.

11. PW-8, SDM, Civil Lines, Mr. H.P.S. Sran, states that on 23.7.1997 he was posted as SDM, Civil Lines, on which date he was informed that Smt. Meera, wife of Shri Subhash, was admitted in the Hindu Rao Hospital after sustaining burn injuries. He was requested to reach the hospital and record statement of the injured on which this witness reached the hospital and confirmed from the doctor whether Smt. Meera was fit to make statement. On being satisfied that Meera was fit to make statement, recorded her statement, Ex. PW-8/A, in his own hand which

was signed by him and thumb mark put by Meera. The witness states that he recorded the statement correctly. The statement was read over to Meera and after accepting its correctness, she thumb marked it. In cross-examination, this witness states that no one was present near Meera when her statement was recorded.

12. PW-2, PW-3, PW-5 and PW-6 are Chhanga Ram, Rakesh, Chander Kanta and Jagdish Kumar, the family members of the deceased who do not support the prosecution. It may also be noticed that the accused sustained burn injuries on his hands which he is stated to have suffered while putting off the flames.

13. PW-13, Shri A.K.Garg, states that on 25.7.1997 he was posted as SDM Kotwali and was Link SDM to SDM, Civil Lines. He received an information that Smt. Meera was admitted in Ram Manohar Lohia Hospital after having been referred by Hindu Rao Hospital and that she wanted to make another statement to the SDM. Thereupon this witness proceeded to Ram Manohar Lohia Hospital at about 7.00 p.m., contacted the doctor on duty and, being satisfied that Meera was fit to make statement, recorded her statement, Ex. PW-9/A.

14. In cross-examination, this witness states that Meera had sustained 80-90 per cent burns and almost her entire body was in bandage. He denied the suggestion that parents of Meera met him outside and they narrated the facts to him which were reproduced in Ex. PW-9/A.

15. In order to test the statement, Ex. PW-9/A, we find that the accused had drugged himself and fallen asleep where after he was aroused and threw a tantrum, became violent, threw food articles and then doused the deceased before setting her ablaze. Thereafter he walked out of the room. The flames were doused by the other members of her in-laws family.

16. From the evidence on record it appears that the Investigating Officer reached the spot of occurrence and collected items found at the spot and did not notice any marks of throwing of utensils or eatables. He also confirms that the accused was being treated at the hospital for burns on his hands. The Investigating Officer further confirms that at the instance of the SDM, PW-9, he recorded the statements of PW-2, PW-3, PW-5 and PW-6 at the hospital which statements were

dictated to him by the SDM before the SDM went to record the statement of Meera. There is also nothing on record to show that the sister-in-law of Meera had lent rupees twenty to her which she was required to repay.

17. From an analysis of the evidence/material available, the possibility of Meera having been tutored by her parents, cannot be ruled out. The statement of Meera gets no corroboration from the articles recovered and taken into possession by the Investigating Officer and is in the teeth of the fact that the accused suffered burn injuries on his hands. On the other hand, we have statements recorded of the deceased soon after the occurrence both by the Investigating Officer in the presence of the Doctor as also the statement recorded by the SDM, PW-8, which statement is quite opposite to Ex. PW-9/A. In this view of the matter, it would be highly dangerous to rest conviction under Section 302 IPC on the statement, Ex.PW-9/A. It is needless to point out that the accused was acquitted under Section 498A IPC. The trial court has laid great emphasis on DD Entry No. 7A which, according to the trial court, was an information regarding a quarrel going on in house No. 426 prior to the incident and, thereforee, it was legitimate to deduce that the accused had set ablaze Meera after throwing a tantrum and turning violent. From the material on record it appears that DD Entry 7A was lodged after Meera had been taken to the hospital by her husband and, thereforee, the question of quarrel, at the time such information was lodged, was not correct.

18. In any view of the matter, taking the totality of the circumstances into consideration, since there are three statements of the deceased recorded by independent persons, two of which are similar while the third accuses the appellant, it is necessary to look for corroboration which, as already been discussed above, is woefully absent. In this view of the matter, having given our careful consideration to the matter on record, we are of the view that the judgment of the learned Additional Sessions Judge under challenge, cannot be sustained. We, thereforee, allow Criminal Appeal No. 380 of 2002, set aside the judgment under challenge and acquit the appellant of all charges. The appellant is on bail. His bail bond and the sureties are discharged.

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