

Shew Kumar Singh and anr. Vs. the State of West Bengal and anr.

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Court : Kolkata

Decided On : Dec-17-2008

Judge : Ashim Kumar Roy, J.

Acts : Indian Penal Code (IPC) - Sections 34, 308 and 326

Appeal No. : C.R.A. No. 697 of 2005

Appellant : Shew Kumar Singh and anr.

Respondent : The State of West Bengal and anr.

Advocate for Def. : Debabrata Roy, Adv.

Advocate for Pet/Ap. : Prabir Mazumdar and ;Nani Gopal Chakraborty, Adv.

Judgement :

Ashim Kumar Roy, J.

1. In a Sessions Trial held before the Learned Additional Sessions Judge, Fast Track, 2nd Court, Howrah, both the appellants were convicted under Sections 326/308/34 of the Indian Penal Code. While for their conviction under Sections 326/34 of the Indian Penal Code the appellant No. 1 was sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- and in default to suffer simple imprisonment for one year more, and the appellant No. 2, to suffer simple imprisonment for three years and to pay a fine of Rs. 5,000/-, in

default to suffer simple imprisonment for six months more, for their conviction under Sections 308/34 of the Indian Penal Code, the appellant No. 1 has been sentenced to pay a fine of Rs. 10,000/- and in default to suffer simple imprisonment for one year, and the appellant No. 2 to pay a fine of Rs. 10,000/- and in default to suffer simple imprisonment for six months. Against the aforesaid order of conviction and sentence the appellants preferred this appeal.

2. Both the appellants as well as the State were duly represented by their respective advocates, but in spite of service of notice none appeared on behalf of the defacto-complainant. It is to be noted that while imposing the aforesaid sentence against the appellants, the trial Court directed, if the fine amount is realized, 50% out of the same be paid to the defacto-complainant as compensation.

3. The case of the prosecution in a nutshell are as follows;

The appellant No. 2 Manju Singh is happened to be the elder sister of the victim Shila Kumari Shaw and the appellant No. 1 Shew Kumar Singh is the husband of the appellant No. 2. There was a longstanding dispute over a rented premises situated at 32/3, Dasharath Ghosh Lane, Howrah between them. The appellant No. 2 used to reside at the said premises with her family. On the fateful day at around 12 noon, the victim Shila Kumari Shaw went to the aforesaid rented premises at 32/3, Dasharath Ghosh Lane for discussion over their dispute. At that time both the appellants misbehaved with the victim and as the victim strongly protested to, that the appellant Manju Singh thrown kerosene oil all over her person and the accused Shew Kumar Singh set her on fire. Being ablazed she raised hue and cry and being attracted by the same the neighbouring people rushed to the place and rescued her. Thereafter she was removed to the Hospital and they made a verbal complaint to the police.

4. The aforesaid incident being reported to the local police station, a First Information Report was recorded for offences under Sections 326/308/34 of the Indian Penal Code and after completion of investigation the police submitted charge-sheet for the self-same offences. Subsequently, the case was committed to the Court of Sessions for trial where the present appellants were charged under

Sections 326/308/34 of the Indian Penal Code. During the trial prosecution examined as many as 10 witnesses, while defence examined one.

5. Victim Shila Kumari Shaw was examined as P.W. 1. In her deposition she stated that at the time of the alleged incident, over the right of occupation of the rented premises in question, which was originally belonging to her father, there was some altercation between her and the appellants. While the appellant No. 2 threatened to kill her and then splashed kerosene oil on her person, her husband the appellant No. 1 set her on fire by putting a burning matchstick on her person, as a result she got ablazed, thereafter being attracted by alarm raised by her, the local persons came to the spot and removed her to the Hospital.

The P.W. 1 was cross-examined at length but during such crossexamination nothing was brought out from her to discredit her. She denied the suggestion that she caught fire outside the premises in question due to an accidental fall on a burning oven and there was no willful act on the part of the accused persons. She further stated that she filed an affidavit in the court below stating that she fell down on a burning oven and due to some misunderstanding she made the complaint against the accused persons. She asserted that such affidavit was managed by the accused persons from her under threat. She also admitted that she stated before the Sessions Court that the injury she sustained was caused due to accident and on such submissions the accused Shew Kumar Singh was granted bail. She alleged that she was compelled to make such statement in court as threatened by the present appellants. She also admitted that she lodged no complaint against the accused persons for such threatening.

P.W. 2, Lal Bahadur Yadav is a post occurrence witness and has no personal knowledge about the alleged occurrence.

P.W. 4, the husband of the victim is also a post occurrence witness. He denied the suggestion that the victim caught fire on an accidental fall on a burning oven and taking the advantage of the injury sustained by her the complaint was falsely lodged. However, this witness who immediately after the occurrence came to the spot fully corroborated the case of the P.W. 1.

P.W. 3, Bhriugu Nath is a local man. According to the said witness he knew both the appellants as well as the victim. He stated that there was frequent quarrels between the appellants and the victim over the tenancy right in respect of the premises in question. He further stated on December 16, 2004, at noon an occurrence took place at the disputed premises, at that time there was a quarrel between them when Shila went out of premises and fell down on a burning stove and sustained burn injuries. The witness further claimed the said stove was seized by the police in his presence and on his identification the stove in question was marked as material Exhibit-1. He also proved the seizure list. During his cross-examination the witness further admitted that there was frequent quarrel between the victim and the appellants. He stated that Shila fell down outside the premises on a burning oven and further stated that Shila did not fall on the material Exhibit-1.

P.W. 5, Bindu Debi, P.W. 6 Golab Sharma both were declared hostile during the trial.

P.W. 7 is the doctor who treated the victim at the Hospital. According to the said witness he found the victim sustained 25% burn injuries on her front chest and both arms and was under his treatment from December 16, 2004 to January 14, 2005. He further stated that the injuries were grievous in nature and there was life risk of the patient due to the said injuries.

P.W. 10, Dr. Arunachal Dutta Chowdhury attended the victim Shila Kumari Shaw at Emergency Department of Howrah General Hospital. According to him at that time patient was conscious. There was a positive smell of kerosene. The patient stated to him that she was lighted by one Manju Singh and Shew Kumar, which was recorded by him in the injury report and the same was marked as Exhibit-7 during the trial.

The only witness examined on behalf of the defence is D.W. 1, Nawain Kumar Jha, a practicing lawyer of Howrah Court. He proved the affidavits and the applications filed by the victim P.W. 1, Shila Kumari Shaw in the court below where she stated that injuries were sustained by her due to accidental fall on a burning stove.

The rest of the witnesses are the police personnels.

6. Mr. Prabir Kumar Mazumdar, the learned advocate, appearing on behalf of the appellants vehemently urged that the prosecution has failed to prove its case beyond all reasonable doubt. According to him that the victim herself in her affidavit and the application filed in the court below, categorically admitted that she sustained those injuries due to an accidental fall on a burning stove. He further submitted that P.W. 3 Bhrigu Nath clearly stated in his evidence that Shila received burn injuries as she accidentally fell on a burning oven outside the premises in question. According to him the said witness was not declared hostile as such the defence can very well rely on the evidence of such witness to prove the innocence. He further relied on a decision of the Hon'ble Apex Court in the case of Mayur Panabhai Shah v. State of Gujarat reported in : 1982 CriLJ1972 and submitted that there is no presumption in law that a doctor is always a witness of truth and the evidence of doctor has also to be appreciated like the evidence of any other witness. Lastly, Mr. Mazumdar submitted that in any event the sentence is too excessive.

7. Mr. Debobrata Roy, the learned advocate, appearing on behalf of the State, on the other hand submitted that the prosecution has proved its case beyond all reasonable doubts. He draws the attention of this Court to the evidence of the victim P.W. 1, Shila Kumari Shaw and submitted that whatever she stated in her chief, could not have been anyway discredited by the defence during her cross-examination. Finally, Mr. Roy in his usual fairness submitted that since the victim sustained only 25% injuries and the appellant No. 1, Shew Kumar Singh has been jail for sufficiently long period and the appellant No. 2 is a lady, this Court may consider the question of reduction of sentence.

8. Heard the learned advocates appearing on behalf of the parties. Considered the evidence of the witnesses as well as the materials on record.

9. During the trial the victim Shila Kumari Shaw deposed as P.W. 1, in her testimony she clearly implicated the appellants for causing burn injuries to her. According to her during the altercation between the appellants and herself the appellant No. 2 poured kerosene oil on her person and the appellant No. 1, her

husband lighted her and as a result she sustained those injuries. I find that she was cross-examined at length by the defence but during such crossexamination nothing could be brought out to impeach her credit. It was heavily argued on behalf of the appellants that she by filing an affidavit and an application in the court below categorically admitted that the injuries sustained by her was due to an accidental fall and the allegations in the FIR against the appellant was made out of some misunderstanding. In this connection I find that during her cross-examination defence gave a suggestion to her in the same tune but in reply to that she categorically stated that under threat she was compelled to file such affidavit in court. It may be noted that the occurrence took place on December 16, 2005 whereas such an affidavit was sworn on March 5, 2005, that means nearly two and half months thereafter. I do not find any reason to discard her claim. On behalf of the defence it was also argued that a local man Bhrigu Nath, who has been examined as P.W. 3 has categorically stated that she sustained those burn injuries as she accidentally fell on a burning stove outside the premises, the said witness was never declared hostile and his evidence clearly demolished the prosecution case. It is well settled that in a criminal case the defence need not have to prove its case with same rigor as is necessary for the prosecution. While prosecution has to prove its case beyond all reasonable doubts, defence can establish its case by preponderance of probability and that too even relying on the evidence of the prosecution, without adducing any further evidence in defence. It is true that when a prosecution witness has not been declared hostile the evidence of such witness can very well be relied upon by the defence to prove its innocence. However, I am of the opinion even in a case where any witness examined by the prosecution did not support its case and gives a clean chit to the defence supporting its case and when such witness is not declared hostile, still then the evidence of such witness is required to be appreciated like the evidence of any other witness and simply because the prosecution has not declared its witness hostile, the court cannot act on the face value of such evidence without any scrutiny and come to its conclusion. In the instant case, although P.W. 3, Bhrigu Nath stated in his evidence both in chief and in cross-examination that there was frequent quarrel between the appellants and the victim over the right of possession of the rented premises in question. However, it is not clear from the entire evidence of the P.W.

3 whether the alleged incident of sustaining burn injury by the victim was happened before him or not. Be that as it may the said witness, during his examination-in-chief, categorically stated that the victim fell down on a burning stove and caught fire. He also identified the Exhibit - 1, as the said stove on which the victim fell down and caught fire and was seized in his presence. But during his cross-examination he came out with a different story and claimed that the deceased fell on a burning oven and not on the burning stove which was marked Material Exhibit -1 on his identification. Due to such patent discrepancies the evidence of P.W. 3 Bhrigu Nath does not inspire any confidence and same ought to be excluded from the consideration.

10. The Learned Counsel of the appellants relied on the decision of the Apex Court in the case of Mayur Panabhai Shah v. State of Gujarat (supra), where the Apex Court held that there is no presumption in law that a doctor is always a witness of truth and the evidence of the doctor has also to be appreciated like the evidence of any other witness. To my utter surprise I felt to understand why the learned advocate relied on this decision. It was never the case of the appellants that the evidence of the doctor has been accepted by the trial court without any appreciation in accordance with law on the ground that a doctor is always a witness of truth. The State has also not urged to accept the evidence of the doctor on its face value without any appreciation or scrutiny.

11. I have carefully gone through the evidence of two doctors examined during the course of trial viz. P.W. 7 Dr. Arun Kumar Ghosh and P.W. 10 Dr. Arunachal Dutta Chowdhury. I find from appreciation of the evidence of P.W. 7 that according to him the injuries he found in the person of the victim was grievous in nature, there was life risk of the patient due to the said injuries. During cross-examination the defence has not been to bring out anything from the said witness to even remotely indicate that such evidence of the said doctor is not acceptable. The other doctor P.W. 10 Dr. Arunachal Dutta Chowdhury attended victim Shila Kumari Shaw at emergency of the Howrah General Hospital. According to him at that time patient was conscious there was a positive smell of kerosene. It is his further evidence that the victim stated to him that she was lighted by one Manju Singh and Shew Kumar Singh. I find such statement of the victim has been duly recorded in the

admission sheet and has been marked as Exhibit - 7. Throughout his cross-examination prosecution never challenged the factum of recording of the statement of the victim by the doctor in which she implicated the appellants for setting her on fire. The witness has never been suggested that such a statement was not made to him by the victim. The entire cross-examination of P.W. 10 Dr. Arunachal Dutta Chowdhury is quoted below;

It is fact that the nature of injury either simple or grievous has not been mentioned in exhbt. 7. It has not been mentioned in exhbt. 7 that there was any complaint of the patient regarding pouring kerosene oil on her person. No wearing apparel of the patient was retained by us or handed over to the police by us. The details of injury over the body of the patient has not been mentioned in exhbt. 7. Not a fact that the injury of the patient was not grievous and that I have not mentioned it as grievous because it was not grievous injury.

12. However, I find from the evidence of the victim girl P.W. 1, she nowhere stated that she told the doctor i.e. the P.W. 10 Dr. Arunachal Dutta Chowdhury that she was set on fire by the appellants as such the statement of the doctor remain to be hearsay and cannot be taken into consideration. Now excluding this part of the evidence of P.W. 10 Dr. Arunachal Dutta Chowdhury that he was told by the victim that the appellants set her on fire I find there is a very important piece of unchallenged evidence of the said doctor which can very well be taken into consideration without any legal bar that he found smell of kerosene on the person of the victim. This piece of evidence has never been challenged by the victim even by making suggestion during the cross-examination of the P.W. 10. Such evidence of the doctor clearly demolished the evidence of the P.W. 3 Bhrigu Nath, who stated in his cross-examination, contradicting his evidence-in-chief, that the victim received injury by falling on a burning oven and not on a burning stove. This evidence of the doctor also corroborated the evidence of victim girl that the kerosene was first splashed on her person and then she was set on fire by the appellants. In view of above, I do not find any reason to disbelieve the evidence of P.W. 1, the victim girl. It is settled law that no number of witness is required to establish the prosecution case and when the evidence of one single witness after careful consideration and scrutiny is accepted by a court to be truthful then the

same can be the basis of an order of conviction.

13. Now, coming to the question of sentence I find it is an admitted position that the victim was set on fire by the appellants in course of an altercation which continued for a petty long time. Thus, it cannot be said that the injuries were caused to the victim in cold blood. Accordingly, I am of the opinion that justice will be sub-served if the sentence imposed upon the appellant No. 1 is reduced to rigorous imprisonment for five years and so far as the appellant No. 2 is concerned, who is a mother of four minor children is reduced to a simple imprisonment for one year. So far as the sentence of fine is concerned that was imposed against the appellants for their conviction under Section 326/34 of the Indian Penal Code and under Section 308/34 of the Indian Penal Code does not deserve any interference and same shall remain unaltered. It is further directed that if the fine amount is realized the entire amount shall be paid to the victim as compensation.

This appeal thus stands disposed of.

The Office is directed to communicate this order to the court below and send down the Lower Court Records at once.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.

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