

Subash Deb Vs. State of Tripura

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Court : Guwahati

Decided On : Jun-26-2009

Reported in : 2009CriLJ3868

Judge : Mutum B.K. Singh, J.

Appellant : Subash Deb

Respondent : State of Tripura

Judgement :

Mutum B.K. Singh, J.

1. This appeal is directed against the judgment dated 11-10-01 passed by the Assistant Sessions Judge, South Tripura, Udaipur in Case No. S. T. 141 (ST/ S) 2000, convicting the appellant herein under Sections 458, 325, 307 and 436 of the Indian Penal Code and sentencing him to suffer consecutive rigorous imprisonment for two years, two years, five years and one year respectively.

2. Heard Mr. P. K. Biswas, learned Counsel appearing for the appellant and also heard Mr. R. C. Debnath, learned Addl. Public Prosecutor for the respondent.

3. The prosecution case is that on 17-10-1999 at about 8:30 p.m., one Sridam Ch. Das lodged a written report to the Darugababu of Sabroom PS to the effect that on the same day at about 7:30 p.m., while the informant was at Sabroom town with

his elder son, one Tapan Debnath of Kathalshari bazar informed him that the informant's house has been set on the fire. On getting the said information, the informant with his elder son rushed to his house and found that the big room of his western biti along with the household articles were completely gutted by fire. It also came to know that his domestic birds (hens, ducks etc.) were also burnt by the said fire. None of the family members was found present in his house except some drops of blood and utensils lying scattered near his kitchen. When he searched about his wife and younger son, he was informed from the house of his neighbour that his wife was lying with severe bleeding injuries in the kitchen of one Krishna Das. The informant immediately rushed to the said house where he found his wife lying with bleeding injuries having . cut marks on her body. On being asked, he was informed by his wife that in the same evening at about 6/6:30 p.m. the accused Subash Deb entered into his house and inflicted injuries on her body with sharp weapon and also burnt his house. On 15-10-1999 in the morning, the accused Subash Deb had a quarrel over a pathway dispute in which the accused/appellant threatened the informant and his wife to be killed.

4. On receipt of the said wirtten report, Sabroom PS registered FIR case No. 62/99 under Sections 447/326 and 436 IPC and investigated. On completion of the investigation, the IO submitted chargesheet under Sections 447, 326, 307 and 436 IPC. The learned trial Court, having satisfied with the evidence on record, framed charges against the accused/appellant under Sections 458, 326, 307, and 436 IPC to which the accused/appellant pleaded not guilty and claimed to be tried.

5. During the course of trial, 8 prosecution witnesses and 5 defence witnesses were adduced. The learned trial Court, at the conclusion of the trial and on the basis of the evidence on record, found the accused / appellant guilty of the offences punishable under Sections 458, 326, 307 and 438 IPC. The learned trial Court, accordingly, convicted and sentenced the accused/appellant as stated hereinabove. Hence, this appeal.

6. Mr. P. K. Biswas, learned Counsel appearing for the appellant strenuously contended that the impugned Judgment, the order of conviction and sentence are not warranted in the fact and evidence on record. According to the appellant's

learned Counsel, the statement of the PW No. 3 is not at all reliable as she gave an improved version while giving her statement before the Court. No reason has been given by the prosecution for the delay in recording her statement prior to 1-12-1999. The said witness (PW No. 3) did not mention in her statement recorded under Sections 161 and 164 Cr. P.C. that she had narrated the incident to PW Nos. 1, 4, 5 and others in the house of PW No. 5 before taking her to the Sabroom Hospital for treatment. Similarly, she had also not mentioned about her statement said to have been given to PW Nos. 2 and 6 in her statement recorded under Sections 161 and 164 Cr. P.C. and that, as per medical report marked as Ext. P4 and the statement of DW No. 1, the victim (PW No. 3) was not in a position or able to speak due to the injuries sustained on her throat. Thus, the statement of PW Nos. 1,2,4,5 and 6 are also not reliable. The accused,/appellant has been falsely implicated in the case at the instance of PW Nos. 1, 4 and 5, the learned Counsel urged. Controverting to the above submissions, the learned Addl. Public Prosecutor submits that the prosecution has proved the charges levelled against the accused/appellant beyond all reasonable doubt and as such there is no ground to interfere with the impugned Judgment and order of conviction and sentence.

7. Having heard the rival submissions of the learned Counsel appearing for the parties, I have carefully gone through the evidence on record in order to satisfy myself as to whether the prosecution has proved the charges levelled against the accused/ appellant or not. Before discussing the evidence of the witnesses, it may be mentioned that the only star witness in the case is the PW No. 3, Smti Sefali Das. PW No. 1 is the husband of PW No. 3, PW Nos. 2 and 6 are the Doctors who attended/treated PW No. 3 at Sabroom Hospital on the same night of the incident. PW No. 4 is one of the villagers who had seen the PW No. 3 in the house of PW No. 5 with bleeding injuries. PW No. 5 is a neighbour of PW No. 1 in whose kitchen the PW No. 3 took shelter with bleeding injuries. PW No. 7 is also a Doctor who examined PW No. 3 at G. B. Hospital. PW No. 8 is the Investigating Officer of the case. DW No. 1 is the son-in-law of the victim. DW Nos. 2, 3, 4 and 5 are the villagers who have stated that the accused/appellant was at Sabroom bazar at the time of the incident.

8. Evidence reveals that the alleged incident took place on 17-10-1999 at about 6/6:30 p.m. The victim (PW No. 3) was taken to Sabroom Hospital for treatment at about 7:15 p.m. of the same day. The victim was discharged from the G. B. Hospital on 12-11-1999, her statement under Sections 161 and 164 Cr. P.C. were recorded on 1-12-1999 and she gave her statement as PW No. 3 before the Court on 13-6-2001.

9. The victim as PW No. 3 deposes before the Court that on the fateful day i.e., 17-10-1999, at about 6/6:30 p.m., she was in her dwelling house which situates about 10 cubits away from the kitchen. She was suddenly caught pressing her mouth by the accused/appellant who tussled with her when she tried to free herself from his grip. At that time, the accused / appellant started inflicting knife blows on her body and as a result of which she sustained cut injuries on her hand, throat and other parts of her body. She fell down on the ground inside the hut with bleeding injuries. Thereafter, the accused appellant set the hut on fire. She somehow managed to reach to the kitchen and therefrom, she along with her youngest son rushed to the house of PW No. 5, Sri Krishna Das. At that time, two ladies were present in the house of Krishna Das and she narrated the incident to them. The said two ladies shouted for help. She further stated that she had also narrated about the incident to Swapan Debnath, Ashutosh Debnath (PW No. 4), Krishna Das (PW No. 5) and to her husband PW No. 1) and her son namely, Utam Das. She narrated to them that the accused/appellant Subash Deb had caused the incident. Thereafter, she was taken to Sabroom Hospital for treatment where on being asked by the Doctor, she narrated that accused Subash Deb had caused the incident. From the said Hospital she was referred to G. B. Hospital at Agartala for treatment where she underwent treatment for about one month and 4/5 days. The above evidence shows that the victim first narrated about the incident to the two ladies at the house of Krishna Das, PW No. 5, and thereafter to the other prosecution witnesses.

10. It is in the evidence of PW No. 5 that about one year and 7/8 months ago at about 6:30 PM, while he was returning to his home he heard the cry of his two daughters-in-law namely, Manibala Das and Shibani Das shouting that fire has been set in the house of Sefali Das (PW No. 3) and she sustained injury on her

body. When he reached home, he found Sefali Das (PW No. 3) lying in his kitchen with bleeding injuries on her throat, hand and other, parts of her body. He immediately shouted for help to which Swapan Debnath, Ashutosh Debnath (PW No. 4) and other also arrived at his house and later on PW No. 1, husband of PW No. 3, and their son also came. On being asked by them, the victim (PW No. 3) stated the name of Subash Deb. Thereafter, they shifted the victim to Sabroom Hospital where the victim, on being asked by the Doctor in their presence, stated that Subash Deb caused injuries on her.

11. Whereas, PW No. 4, Shri Ashutosh Debnath. on the other hand, deposes that about one year and 7/8 months ago at about 6:30 PM, on hearing the news from Tapan Debnath that the house of Sridam Das has been burnt, he rushed to the house of Sridam Das and on the way he heard from the wives of Dulal Das and Nandalal, Das that Sefali was in the house of Krishna Das. Thus, he went straight to the house of Krishna Das where he found Sefali lying in the kitchen of Krishna Das with bleeding injuries. At that time and in presence of Swapan Debnath, Krishna Das and two ladies, the victim Sefali stated that Subash Deb had caused the injuries on her. After a while, Sridam Das had also arrived thereat. They shifted the victim to Sabroom Hospital for treatment. In the said Sabroom Hospital the victim again, on being asked by the Doctor stated that Subash Deb had caused injuries on her.

12. PW No. 1, Sridam Das was examined on 12-6-2001, who deposes that on being informed by his neighbour Tapan Debnath that the fire has been set in his house, he rushed to his house and saw that his dwelling hut was gutted. Then he rushed to the House of Krishna Das where he found his wife (PW No. 3) lying in the kitchen of Krishna Das with bleeding injuries. Tapan Das also went there with him. On being asked by him his wife stated that Subash Deb caused the injuries on her and at that time Swapan ' . Debnath, Krishna Das, Ashutosh Debnath were also present. They took the victim to Sabroom Hospital. In the said Hospital Doctor Gautam Majumder and Doctor P. K. Roy treated his wife and the said Doctor asked to his wife about the incident.

13. From the evidence of PW Nos. 1, 4 and 5, it is clear that they are not the eye witnesses to the occurrence but they heard from the victim PW No. 3 that the accused appellant had committed the crime. It is in the evidence of PW Nos. 1 and 4 that one Shri Tapan Debnath, a neighbour of PW No. 1, was the first person who informed to them about the incident. It is also in the evidence of PW No. 3 that immediately after the incident the victim first narrated about the incident to two ladies who are the daughters-in-law of PW No. 5. The said three persons, if examined as witnesses by the prosecution, they could have, thrown more detail informations about the incident but the prosecution had chosen not to examine them as prosecution witnesses for the better reasons known to the prosecution. Of course, it is the discretion of the prosecution to give up certain witnesses and not to examine some of the cited Witnesses at the time of trial. It appears that the said three persons are very important witnesses for the reasons that the PW Nos. 1 and 4 have stated that they were informed about the incident by the said Tapan Debnath. Similarly, PW No. 3, the victim had also stated that she narrated about the incident first to the said two ladies. It is in the evidence of the I. O., PW No. 8 that he had recorded the statement of the said three persons during the investigation but they were not examined before the Court by the prosecution at the time of trial. None examination of such important witnesses at the time of trial, in the absence of other clinching evidence, renders the prosecution case unbelievable.

14. Besides, it is in the evidence of PW No. 3, that her statement under Sections 161 and 164 Cr PC were recorded but nothing has been mentioned in both the statement that she had narrated the incident to any one of the prosecution witnesses as well as to the said three persons. It may be stated that omission of some, facts in recording the statement under Section 161 or 164 Cr PC, are not fatal to the prosecution case but omission on vital point while recording such statement is generally viewed with suspicion. Such omission has reasonably created a doubt to the genuineness of the prosecution story. However, the learned trial Court while passing the impugned Judgment overlooked these aspect and convicted the accused/appellant on the ground that the statement of PW No. 3 is supported by the statement of PW Nos. 1, 2, 4, 5 & 6, who have deposed before the Court that the victim narrated to them that the accused/appellant had

committed the crime. It has now become necessary to examine whether the victim had actually narrated the incident to the prosecution witnesses as claimed by the prosecution.

15. P.W. No. 2, Dr. P. K. Roy deposes before the Court that on 17-10-1999, he was a Medical Officer at Sabroom Hospital and on that day, he attended a female patient with cut injury in throat at the request of Dr. Gautam Majumder, PW No. 6. According to PW No. 2, the patient was conscious and she stated to them that Subash Deb (appellant) caused the injury on her. PW No. 6, Dr. Gautam Majumder stated that on 17-10-1999, he was in emergency duty at Sabroom Hospital and on that day, in the evening one Sefali Das (PW No. 3) was brought to Sabroom Hospital with cut injury on throat and other parts of the body. He examined the patient with his colleague Dr. P. K. Roy and closed the cut portion of her throat and then only she could speak. She disclosed the name of the miscreant but he had forgotten the name. They narrated the matter to the police what they heard from the injured Sefali Das. According to the said witness, the victim sustained cut injuries on throat and 70% of larynx was exposed and the injury was grievous in nature. PW No. 2 in his cross-examination stated that a person cannot speak if his throat is cut or exposed upto 70%. PW No. 7, a Doctor who examined the victim at G. B. Hospital, is also of the opinion that a person having injury like injury No. 1 could not be in a position to speak clearly. The injury No. 1 referred to above is the cut injury sustained by the victim on her neck as per medical report marked Exh-P4. The said medical report marked as Exh-P4 was prepared by the PW , No. 6 which runs as follows:

The aforesaid patient was brought at Emergency block on 17-10-1999 at 7:15 p.m. by her neighbours in shock condition due to excessive blood loss from multiple severe injuries. She was unable to talk when she gain her consciousness due to exposed larynx.

She was refd. To the EMO TSD Hospital Udaipur on same night at 11 PM for further management.

Signature of Medical Officer.

16. The statement of PW Nos. 2 and 6 is not supported by the medical report mentioned above. According to PW No. 2 the patient was conscious and disclosed the name of the miscreant but the PW No. 6 stated that she could only speak after closing the cut portion of her throat by them. Whereas, the medical report marked Exh-P4 shows that the patient was brought in shock condition and she was unable to talk even after regaining her sense due to the injuries sustained on her throat. In view of the above medical evidence, the statement of PW Nos. 1, 3, 4 & 5 have rendered unreliable as the victim was not in a position to speak before closing the cut portion of her throat. The statement of PW Nos. 2 and 6 is also not supported by the medical report marked as Exh-P4.

17. That, as regards the credibility of the evidence of PW No. 3, it is a well settled proposition of law that the delay in recording/examining the material witness during the investigation will render the evidence of such witness unreliable. In the instant case, it is on record that she was in Hospital under treatment with effect from 17-10-1999 to 18-11-1999, she was discharged from the Hospital on 19-11-1999 and thereafter, she was available at her residence but her statement under Sections 161 and 164 Cr PC were recorded only on 1-12-1999. It is not the number of days delay which is fatal to the prosecution but unexplained and unjustified delay in recording the statement of material witness always goes against the prosecution. PW No. 8, the IO could not assign any reason for the delay caused in recording the statement of PW No. 3. The IO categorically stated in his evidence that till 1 - 12-1999, he made no attempt to record the statement of the victim (PW No. 3). In view of the above unexplained and unjustified delay in recording the statement of PW No. 3, the credibility of evidence of PW No. 3 has reduced to nil, though she was the victim in the said unfortunate incident.

18. It appears that in order to prove the motive, the prosecution has unsuccessfully tried to establish the previous enmity between the accused / appellant and the PW Nos. 1 and 3. Such plea of animosity is a dangerous double edged weapon which could be a ground for false implication and it could also be a ground for assault.

19. That, in view of the above discussion and for the reasons given hereinabove, I am of the considered view that the prosecution has failed to prove the charges

levelled against the accused/appellant beyond all reasonable doubt. Thus, the benefit of doubt has to be credited to the accused/ appellant. Consequently, I feel it unnecessary to discuss the evidence of the DWs.

20. Resultantly, the impugned Judgment and order of sentence dated 11-10-2001, passed in ST 141 (ST/S) 2002 by the Assistant Judge, South Tripura, Udaipur is hereby set aside and the accused/appellant is set at liberty on benefit of doubt, if not wanted in any other case. No order as to costs. .

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