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Lalit at Babloo Vs. State

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Court : Delhi

Decided On : Oct-20-2011

Judge : S. P. Garg, J.

Acts : Indian Penal Code (IPC) - Sections 302, 498-A, 307; Code of Criminal Procedure (CrPC) - Sections 313, 161

Appeal No. : CRL.A.191 of 1999

Appellant : Lalit at Babloo

Respondent : State

Judgement :

1. Present appeal has been preferred by the appellant Lalit @ Babloo against the judgement and order on sentence passed by Ld. ASJ, Delhi whereby the appellant was convicted under Section 498-A/302 IPC and was sentenced to undergo imprisonment for life.

2. Present case was registered by the police of PS Nangloi on 24.06.1996 on the statement of Rajni (since deceased). In her statement to SI Sammer Singh of PS Nangloi, deceased Rajni informed that she used to reside along with her husband at house No. D-310, Shakkarpur, Punjabi Bagh. Her marriage had taken place earlier about four and half years back with one Ikram. That marriage continued for about four years and a daughter named Pooja was born out of that wedlock. In January 1996, her marriage took place with the appellant. After marriage, the

appellant used to put pressure on her to indulge in prostitution. On 21.06.1996 he took her at the residence of her parents to meet them. At about 6.30 P.M. when her parents went to market, all of sudden, the appellant poured kerosene oil from stove on her. Thereafter, he threw the burning match stick on her as a result of which she sustained burn injuries. The deceased further informed SI Sammar Singh that the accused used to torture her for not bringing articles and also used to give her beatings.

3. Earlier on 21.06.1996 the police had received information vide DD No.46-B that deceased Rajni was got admitted by her husband in the RML hospital. SI Sammar Singh along with constable Dharam Pal reached at RML hospital where the doctor declared her fit for making statement. On enquiry by the IO regarding the burn injuries, deceased Rajni informed him that while preparing tea at the stove she caught fire on her clothes. DD No.46-B dated 22.06.1996 was kept pending.

4. Further, case of the prosecution is that on 24.06.1996 deceased Rajni desired to give her second statement. IO informed SDM about the same, and he himself reached RML hospital. There he recorded the above said statement of CRL.A.191/1999 Page 2 of 10 deceased Rajni and got the present case registered under Section 307/498-A IPC.

5. The deceased expired on 24.06.1996 itself and the case was converted to 302 IPC.

6. During investigation, the IO recorded statements of concerned witness. The appellant was arrested and his disclosure statement was recorded. Stove was seized vide seizure memo. The post-mortem on the dead body was also got conducted. After completion of investigation, the police of PS Nangloi filed challan against the appellant for the commission of the aforesaid offences.

7. Before the Sessions Court, the prosecution examined 9 witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C., in which he denied allegations of the prosecution and submitted that he was falsely implicated in this case by IO Sammar Singh as he was illegally demanding money from him. He never married deceased Rajni or lived with her any time.

8. On perusal of the evidence adduced on record by the prosecution and considering the rival contentions of the parties, the learned Additional Sessions Judge convicted the appellant and sentenced him accordingly. Aggrieved by the said orders, the appellant has come up in appeal.

9. We have heard the learned counsel for the appellant, Mr. Purvesh Buttan, Amicus Curiae, and the learned standing counsel Mr. Pawan Sharma, for the state and have gone through the file.

10. On scrutinizing the record, it reveals that the entire case of the prosecution is based upon dying declaration Ex.PW5/B made by deceased Rajni to IO of the case SI Sammer Singh PW5. Learned counsel for the appellant has challenged the reliability of aforesaid dying declaration and has pointed out contradictions and inconsistencies in the case of the prosecution.

11. There could be no doubt, and it is well settled legal position, as well that if the dying declaration is found to be true and free from any embellishment, then it could be taken to be sufficient for convicting the accused, but it is also true that to base conviction on dying declaration of the deceased, it must face that test of being worthy of credence.

12. In the present case, appellant has been able to pinpoint number of inconsistencies in the recording of the dying declaration of the deceased which forces the Court not to believe it. There is considerable delay in recording the dying declaration of the deceased which has remained un-explained. The burning incident took place on 21.06.1996 at about 7.00 PM at the parents' house of the deceased. The deceased was removed to RML hospital by the appellant himself. At that time, the deceased Rajni was conscious and oriented as reflected in the MLC Ex.PW3/A prepared by PW3 Dr.Dheeraj Bahl. The deceased never disclosed to the Doctor preparing the MLC if the appellant had put her on fire. It was merely mentioned in the MLC that it was the case of burns. Parents of the deceased never lodged any complaint with the police attributing any motive to the appellant for putting the deceased on fire. It is the case of the prosecution that at the first instance when the IO PW5 SI Sammar Singh reached at RML hospital on receiving DD bearing No.46-B Ex.PW5/A, he recorded the statement of the

deceased, Rajni in narrative form. In his deposition before the court PW5 SI Sammar Singh testified that after the deceased was found fit for statement by the Doctor, in his presence, he recorded the statement of the deceased at about 1.45 A.M. and he had taken the thumb impression of the deceased, Rajni on the said statement.

13. From the perusal of record, it reveals that this statement of deceased Rajni was never brought on record by the prosecution. PW5 SI Sammar Singh was given time by the Trial Court on 28.09.1998 to produce the said statement but he miserably failed to do so. He admitted that the deceased had told him that it was an incidental case of burning. This fact also finds mention in the rukka. PW5 SI Sammar Singh categorically stated that the deceased had informed her that she had caught fire on her clothes while preparing tea.

14. The incident had occurred on 21.06.1996. Prior to the death of the deceased on 24.06.1996, no sincere efforts were made by the IO to get record the statement of the deceased from SDM or Judicial Officer. No plausible explanation has been offered by PW4 Sh.K.K.Dahiya the then SDM, Punjabi Bagh and PW5 SI Sammer Singh. PW4 K.K.Dahiya admitted that on 21.06.1996, he was informed by SHO PS Nangloi regarding burn incident in which Rajni had stated that she suffered burn injuries in her parents' house and SI Sammar Sing had informed him that deceased Rajni had made a statement that there was no foul play in the incidence. This assertion of PW4 shows his callous attitude towards performing his duties to contact deceased Rajni and record her statement personally. He merely relied upon the version given to him by SI Sammar Singh. PW4 K.K.Dahiya did not bother to record statement of the deceased till 24.06.1996. Even on 24.06.1996 when he was allegedly informed by PW5 that the deceased intended to make second statement, he did not bother to reach at the hospital to record her statement. He made a futile attempt only to reach at the hospital after the death of the deceased. Prior to that the PW5 SI Sammar Singh had recorded the dying declaration of the deceased Rajni. There is nothing in the statement of PW5 SI Sammar Singh that prior to recording the statement of the deceased Rajni, he had informed PW4 K.K.Dahiya to reach at the hospital to record the statement of the deceased.

15. It seems that the IO did not take the case seriously in the beginning as the deceased had not levelled any allegation against the appellant for putting her on fire. Only when she expired on 24.06.1996, it seems that to save his skin, he recorded the statement of the prosecutrix showing involvement of the accused. No corroborating evidence has been adduced on record by the prosecution to establish that in fact the deceased was in a fit state of mind to make the said statement or that the said statement was actually made by the deceased to the IO. Strange enough, there is nothing on record to show if any permission was taken by PW5 from the Doctor attending the deceased to record her statement. Even the IO did not bother to get signature of the concerned doctor/nurse to show if statement of deceased Rajni was recorded in his/her presence. IO simply recorded in the statement that the statements were recorded in the presence of Dr.S.Ravi Shankar. In the absence of any signature of Dr.S.Ravi Shankar on Ex.PW5/B it cannot be inferred that the said statement was recorded in his presence specifically when the prosecution failed to bring him in the witness box during trial. IO has failed to explain as to why he did not deem it proper to obtain signatures of Dr.S.Ravi Shankar to show that the said statement of the deceased was recorded in his presence.

16. From the scanning of the record, it further reveals that the IO did not bother even to cite parents of the deceased as witness before the Court. It has come on record that during investigation IO had recorded their statements under Section 161 Cr.P.C. Prosecution has failed to explain as to why the parents of the witness were not examined to corroborate the contents of the alleged dying declaration. The burning incidence had taken place at the residence of the parents of the deceased and it is alleged in the dying declaration that at the time of incidence, both her parents had gone to market. The parents of the deceased were the proper witnesses to reflect if at the time of incidence they had gone to market or that in their absence any such burning incidence had taken place or as to what was there reaction on their arrival. They were also to throw light as to what deceased had informed them regarding the incidence when they had met her for the first time, after the burning incidence, either at the spot or at the hospital. The deceased was removed to RML hospital by the appellant and there is nothing to show as to why the parents of the deceased had not accompanied her to the

hospital. Adverse inference is to be drawn against the prosecution for withholding these material witnesses.

17. Parents of the prosecutrix were also relevant to prove the motive of the appellant to set the deceased on fire. In the alleged dying declaration, the deceased has attributed motive to the appellant that he used to force her to indulge in prostitution. There is no material on record to substantiate this version of the deceased. Parents of the deceased were material witness to depose if the deceased had ever complained to them about this objectionable demand of the appellant. It has come on record that earlier the deceased was married with one Ikram and her marriage with Ikram continued for about four years. There is no cogent proof on record to prove valid marriage between the deceased and the appellant. IO has admitted that the parents of the deceased had informed that the marriage between the appellant and the deceased had not taken place. No complaint was ever lodged by the deceased or her parents against the appellant for allegedly forcing the deceased to indulge in prostitution. Parents of the deceased never came forward to lodge any complaint against the appellant for harassing the deceased, Rajni on account of dowry. No complaint was ever lodged either by the deceased or her parents at any time against the appellant before any authority on that account.

18. Post-mortem report Ex.PW8/A proved on record also does not corroborate the theory presented by the prosecution. As per the post mortem report, inflammable material was poured on the body of the deceased, Rajni. The report reveals that there were 3rd degree deep burns present on the forehead, face, neck, chest, abdomen, etc. Scalp hair were partly burnt and there was no smell of kerosene oil in scalp hair. No FSL report was proved on record to show if kerosene residue was detected on the exhibits collected by the IO. IO did not bother to seize the stove in question on the day of incident. It was alleged to have been seized only on 24.06.1996. Even at the time of seizing at the stove, no independent public witness was joined. Names of the parents of the deceased find mention in the seizure memo sans their signatures. Nothing has been explained as to why the signatures of the parents of the deceased were not obtained on the seizure memo Ex.PW5/E. There is nothing on record to show that during the intervening period,

this stove was not used by the parents of the deceased for cooking purposes.

19. There are inherent flaws in the investigation of the case. Learned Trial Court itself observed in para 16 that a mess has been created by SI Sammar Singh when he deposed that on 21.06.1996 on receipt of DD No.46-B Ex.PW5/A, he went to RML hospital and recorded the statement of deceased, Rajni in narrative form where she stated that it was an accidental fire but surprisingly that statement has not been placed on record. There are other discrepancies in the deposition of the witnesses regarding the circumstances in which the appellant was arrested and stove in question was seized. The incident had taken place at the house of the parents of the deceased, Rajni. In normal circumstances the appellant cannot be imagined to first take the deceased along with her daughter aged about two years to her parents' home and there on finding an opportunity of her parents to go to market to purchase vegetables or flour, he would set the deceased on fire. There is nothing that the appellant had anticipated departure of her parents for purchase of house hold articles.

20. All the above referred circumstances were enough to create a serious doubt in the mind of the learned trial court not to base conviction of the appellant on the second dying declaration Ex.PW5/B without having any cogent collaboration. Ld. ASJ fell in grave error while relying upon the second dying declaration and convicting the appellant for the serious offence punishable under Section 302 IPC. The evidence adduced on record by the prosecution was not sufficient or creditworthy to base conviction on the dying declaration of the deceased, Rajni.

21. Consequently, the impugned judgement and order on sentence of the learned trial court cannot be sustained and the same are accordingly set aside. The appeal filed by the appellant is allowed and the appellant is acquitted of all charges.

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