

A

TANUA RABIDAS

v.

STATE OF ASSAM

(Criminal Appeal No.1503 of 2007)

B

SEPTEMBER 4, 2014

[M.Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

Penal Code, 1860 – s. 302 – Conviction and sentence under, on basis of the dying declaration – Prosecution case that husband along with the co-accused present in the house, poured kerosene oil upon his wife and ignited her – Incident took place nine years after the marriage – Wife succumbed to the burn injuries in the hospital – On basis of the prosecution evidence and two dying declarations, conviction of the husband u/s. 302 and imposition of life imprisonment, by courts below – Held: There is no infirmity or perversity in the order passed by the courts below – Statement of the doctor, and the nurse that the victim made a dying declaration that her husband poured kerosene oil on her and set her on fire fully corroborated by prosecution witnesses – Victim not known to the doctor and the nurse nor they were interested witnesses – Evidence of the doctor and the nurse was a very important piece of evidence and there was no evidence to the contrary that any effort was made by anyone to induce the deceased to make the false statement – Also, absence of smell of kerosene oil in the hair of the deceased sent for chemical examination does not render the dying declaration doubtful and unbelievable – Evidence.

G

Prosecution case was that the appellant-accused after nine years of marriage, along with co-accused present in the house, poured kerosene oil on his wife and set her on fire. The victim was taken to the hospital where she succumbed to the burn injuries. PW-1, brother of the

H

victim, lodged an FIR. Investigation was carried out. PW 8 who had accompanied PW 1 to the hospital deposed that deceased had made a dying declaration in their presence stating that her husband had set her on fire. The doctor who conducted autopsy deposed that death was due to shock resulting from burn injuries. The victim made a dying declaration before PW 6-doctor and PW 7-nurse working in the hospital, that her husband poured kerosene oil upon her and ignited it. On basis of the evidence and the two dying declarations, the trial court convicted the appellant for the offence punishable u/s. 302 IPC and imposed life imprisonment. The High Court upheld the order. Hence, the instant appeal.

Dismissing the appeal, the Court

HELD: On going through the evidence it is found that the statement of PW-6-doctor and PW-7-nurse that the victim made a dying declaration that her husband poured kerosene oil on her and set her on fire has been fully corroborated by PW-1 and PW-8. The submission that the evidence of PW-6 cannot be believed because PW-6 did not inform the police about the dying declaration made by the deceased while she was brought to the hospital, cannot be accepted. Indisputedly, PW-6 and PW-7 came in contact with the victim only when she was brought to the hospital for treatment. There is nothing on record to show that the victim was known to them. Further, they are not related to the victim nor they are interested witnesses. In that view of the matter, the evidence of PW-6 and PW-7 is a very important piece of evidence and the trial court rightly held the appellant guilty of the offence punishable under section 302 IPC as also affirmed by the High Court. Moreover on careful scrutiny, the Sessions Court was fully satisfied that the evidence of PW-6 was true and

A there was no evidence to the contrary that any effort was made by anyone to induce the deceased to make the false statement. Further absence of smell of kerosene oil in the hair of the deceased sent for chemical examination does not render the dying declaration doubtful and unbelievable. Thus, there is no infirmity or perversity in the judgment and order of conviction and sentence passed the trial court and affirmed by the High Court. [Para 12, 13, 14, 15, 17, 18] [1147-G, H; 1148-A-C; E-G]

C *Surinder Kumar v State of Haryana* (2011) 10 SCC 173- distinguished.

State of Rajasthan vs. Kishore 1996 (2) SCR 1103:(1996) 8 SCC 217-relied on.

Caes Law Reference :

D (2011) 10 SCC 173 distinguished Para 16
1996 (2) SCR 1103 relied on Para 17

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1503 of 2007.

From the Judgment and Order dated 20.03.2007 of the High Court of Guwahati in Criminal Appeal No. 118 of 2006.

F P.K. Goswami, Parthiv K. Goswami, A. Henry, Rajiv Mehta for the Appellant.

Avijit Roy (For Corporate Law Group) for the Respondent.

The Judgment of the Court was delivered by

G M. Y. EQBAL, J. The appellant was put on trial along with co-accused Sarbananda Das for offence under section 302/326/34 of the Indian Penal Code (for short the 'IPC'). The Additional Sessions Judge, Jorhat by judgment dated 30.03.2006 in Sessions Case No.27(J.J.) of 2005, acquitted

H

the co-accused Sarbananda Das but held the appellant guilty of offence under section 302 IPC and sentenced him to undergo rigorous imprisonment for life and pay fine of Rs.1,000/- with default clause. Aggrieved by the same, the appellant preferred appeal before the High Court. The High Court by impugned judgment and order dated 20.03.2007 passed in Criminal Appeal No.118 of 2006, affirmed the conviction and sentence of the appellant and dismissed the said appeal. Aggrieved by the same, the appellant preferred this appeal by special leave.

2. According to the prosecution, the appellant-accused Tanua Rabidas was working as an Assistant in the Social Welfare Department. He was married with Meera Saikia Rabidas and both were living together and had no issue. On the day of their marriage anniversary, it was alleged that the accused-appellant along with co-accused Sarbananda Das were present in the house. The appellant poured kerosene oil upon his wife and set her on fire. She was immediately removed to Mission Hospital, Jorhat and therefrom to Dibrugarh Medical College Hospital. The victim succumbed to the burn injuries. The First Information Report (for short the 'FIR') was lodged at Jorhat Police Station Case No.496/99 by PW-1 Atul Saikia the brother of the victim. After usual investigation, the police submitted the charge-sheet against both the accused under sections 302/326/34 IPC and the case was accordingly committed to the Sessions Court.

3. The prosecution examined as many as seven witnesses. PW-1 Atul Saikia the brother of the victim in his evidence stated that his sister was married with the accused-appellant nine years before the incident. He deposed that the accused-appellant had two wives prior to the marriage with his sister and he had deserted first wife before marrying his sister. He, on being informed about the incident went to the Hospital and was advised by the Doctor to take his sister to the Dibrugarh Medical College Hospital for better treatment.

A 4. PW-2 is the son of the accused-appellant from his first wife. He was living with the couple but he deposed that after hearing a commotion he saw his step-mother near the gateway.

B 5. PW-3 and PW-4 are the neighbours of the victim. After hearing the commotion, they also saw the victim near the gateway. PW-8 had accompanied PW-1 to the hospital and deposed that the deceased had made a dying declaration in their presence stating that her husband had set her on fire.

C 6. Another person present at the time of the occurrence was Mamu Borbora, a maid servant. Her statement was recorded under section 164 of the Code of Criminal Procedure but she could not be examined because of her absence and she was traceless.

D 7. Dr. Rupak Kr. Gogoi, who conducted autopsy over the dead body of the victim, was examined. He opined that the death was caused due to shock resulting from the ante mortem flame burn injuries involving of 90% body surface and of dermo
E epidermal in severity.

F 8. Besides the oral dying declaration, the victim also made a dying declaration before PW—6 Dr. Imnuksungba Langkumer who is working at Jorhat Christian Hospital. This witness has deposed that on 04.12.1999, he had examined the victim who was brought to the hospital in burned condition. The witnesses has deposed that he had enquired from the patient as to how she sustained burn injuries whereupon she reported that her husband poured kerosene oil upon her and ignited it. While recording the case history, PW-6 Dr. Langkumer has also
G recorded the statement made by the victim in the said report (Ex.6). The evidence of PW-6 Dr. Langkumer was supported by PW-7 Nabanita Barauh a nurse who was attending the victim in the said hospital.

H

9. On the basis of evidence adduced from the side of the prosecution including the two dying declarations, the trial court found the appellant guilty of the offence punishable under section 302 IPC and accordingly sentenced him to undergo life imprisonment and to pay fine of Rs.1,000/- with default clause. The High Court on appeal filed by the appellant re-appreciated the entire evidence and affirmed the finding recorded by the trial court and dismissed the appeal.

10. Mr. P.K. Goswami, learned Senior Counsel appearing for the appellant, assailed the impugned judgment and order of the High Court on two grounds. He firstly contends that no reliance can be placed upon Ex.6 i.e. the report prepared by Dr. Langkumer inasmuch as allegedly it was an oral dying declaration and that it was highly doubtful whether the victim was in a position to speak when she was admitted in Jorhat Mission Hospital with 90% burn injuries. He put reliance on the decision of this Court in the case of *Surinder Kumar vs. State of Haryana* – (2011) 10 SCC 173. He contends that there was no smell of kerosene oil from the body of the victim which falsifies the entire case of the prosecution.

11. On the other hand, learned counsel appearing for the respondent-State, submits that the prosecution has proved the case beyond all reasonable doubt. The evidence of PW-6 and PW-7 i.e. Dr. Langkumer and Nabanita Baruah a nurse in the Jorhat Mission Hospital, have been fully corroborated by PW-1 and PW-8.

12. We have gone through the evidence and we find that the statement of PW-6 Dr. Langkumer and PW-7 Nabanita Baruah that the victim made a dying declaration that her husband poured kerosene oil on her and set her on fire has been fully corroborated by PW-1 and PW-8.

13. Mr. Goswami strenuously argued that the evidence of PW-6 Dr. Langkumer cannot be believed because PW-6 did

A not inform the police about the dying declaration made by the deceased while she was brought to the hospital.

B 14. We do not find any force in the submission made by Mr. Goswami. Indisputedly, PW-6 Dr. Langkumer and PW-7 Nabanita Barauh came in contact with the victim only when she was brought to the hospital for treatment. There is nothing on record to show that the victim was known to them. Further, they are not related to the victim nor they are interested witnesses.

C 15. In that view of the matter, the evidence of PW-6 Dr. Langkumer and PW-7 Nabanita Barauh is a very important piece of evidence and the trial court has rightly held the appellant guilty of the offence punishable under section 302 IPC as also affirmed by the High Court.

D 16. The decision relied on by Mr. Goswami in the case of *Surinder Kumar* (Supra) is distinguishable for the simple reason that the dying declaration fully supports the prosecution version.

E 17. Moreover on careful scrutiny, the Sessions Court was fully satisfied that the evidence of PW-6 Dr. Langkumer is true and there is no evidence to the contrary that any effort was made by anyone to induce the deceased to make the false statement. Further absence of smell of kerosene oil in the hair of the deceased sent for chemical examination does not render the dying declaration doubtful and unbelievable as held by this Court in the case of *State of Rajasthan vs. Kishore* – (1996) 8 SCC 217.

G 18. After giving our anxious consideration in the matter, we do not find any infirmity or perversity in the judgment and order of conviction and sentence passed the the trial court and affirmed by the High Court.

19. For the aforesaid reasons, there is no merit in this appeal which is dismissed accordingly.