
(2018) 09 CAL CK 0070

In the Calcutta High Court

Case No : Criminal Miscellaneous Case No. 615 of 2016

Jiblal Hazra & Ors

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 27-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 304B, 326, 498A
Code of Criminal Procedure, 1973 — Section 313
Dowry Prohibition Act, 1961 — Section 3, 4
Indian Evidence Act, 1872 — Section 106

Citation : (2018) 09 CAL CK 0070

Hon'ble Judges : Joymalya Bagchi, J; Ravi Krishan Kapur, J

Bench : Division Bench

Advocate : Mujibar Ali Naskar, Sanjay Kumar Ghosh, Neguive Ahmed, Zareen N. Khan

Final Decision : Dismissed

Judgement

Ravi Krishan Kapur, J.

1. The appellants assail their conviction under Section 302 of the IPC read with Section 34 of the IPC sentencing them to life imprisonment.

2. An FIR was lodged on 8 June, 2014 by PW-1, Parash Hazra being the father of the victim girl namely Rinky Devi. In the complaint, it was alleged

by the complainant that he had given his daughter Rinky Devi in marriage to one Jiblal Hazra of Amdanga Parbelia Colliery under P.S. Neturia. After

their marriage, his daughter and her husband were residing in their matrimonial house with other relatives. Since the inception of the marriage, the

husband and the relatives always tortured his daughter and demanded cash and dowry.

3. It was further alleged in the FIR that on 6 June, 2014 at 7.30 PM his daughter

was tortured physically and mentally and was set on fire after

pouring kerosene oil by Jiblal Hazra, Hemlal Hazra, Manish Kumar Hazra, Gori Devi, Baby Devi and Puja Kumari. It is further alleged that all the

accused persons conspired and burnt the complainant's daughter. The victim was admitted to Vivekananda Hospital at Durgapur in a very serious

condition, where she succumbed to her injuries and died.

4. On receipt of the aforesaid complaint the police started a case under Sections 498A and 304B/34 of the IPC. Subsequent to her death, the police

added Section 302 of the IPC to the array of accusations. All the accused persons pleaded not guilty and claimed to be tried.

5. In the course of the trial, the prosecution examined 16 witnesses and a number of documents had been proved as exhibits. The defence did not

adduce any evidence. The defence of the accused persons was one of innocence and false implication. In the examination under Section 313 of the

Cr.P.C., after the recording of examination, the accused persons reiterated that they were innocent and they had been falsely implicated by the father

of the deceased. The accused persons contended that this was a case of an accidental burn.

6. By a judgment and order dated 28 July, 2016 and 29 July, 2016 the Trial Judge convicted and sentenced the appellants under Section 302 of the IPC

read with Section 34 thereof.

7. It was contended on behalf of the appellants that in convicting the appellants the Trial Court committed errors both in law and on facts. Counsel on

behalf of the appellants contended that there was no eye witness to the entire incident. He further contended that this was a case of an accidental

burn. He further contended that there was no evidence to show that there was any use of kerosene oil. He contended that the next door neighbour

had not been examined. He further contended that the prosecution had failed to prove the case beyond reasonable doubt and the necessary eye

witnesses had not been examined.

8. Counsel on behalf of the prosecution contended that the prosecution had beyond all reasonable doubt proved that the appellants had committed

offences under Section 302 read with Section 34 of the IPC.

9. Before addressing the rival contentions of the parties I think it is essential to appreciate the evidence of the witnesses recorded during the trial.

PW-1 (Paras Hazra) is the father of the deceased Rinky Devi and the de-facto complainant in this case. He deposed that his daughter was married to

Jiblal Hazra in 2009. It was a negotiated marriage. After their marriage, his daughter has gone to her matrimonial house at village Amdanga under P.S

Neturia. She was living with her husband, her father-in-law, mother-in-law and her brother-in-law. She was treated well for the first year but

thereafter subjected to torture and cruelty at her matrimonial home by her husband and her in-laws. They demanded cash of rupees one lakh failing

which they would beat up the deceased victim regularly. Ultimately, on 6 June, 2014 the complainant received a telephone call informing him that his

daughter had caught fire. Subsequently, the deceased victim was admitted to Vivekananda Hospital. The de-facto complainant arrived at the place of

occurrence about 5.30 a.m. Thereafter, he had gone to the matrimonial house of his daughter at Amdanga. This witness identified the written

complaint which was marked Exhibit-1. This witness further deposed that when he had visited the Vivekananda Hospital he had managed to speak

with his daughter. On being asked, his daughter had informed him that the burn injuries were not self-inflicted but she had been set on fire by her

husband and in-laws. They had forcefully put kerosene oil on her body. She also informed the de-facto complainant that, she had not been given any

food for the last three days before the incident. She died at the hospital on 11 June, 2014 at about 5.00 a.m. in the morning. Subsequently, the police

came to the hospital and held an inquest over her dead body. This witness was also a signatory to the inquest report which was marked as Exhibit-2.

This witness had also handed over a photograph of his daughter to the Investigating Officer. This witness identified all the three accused persons

including the deceased victim's husband who were present in Court. In cross-examination, the witness deposed that he had five daughters and one

son.

He further deposed that it took 2 to 3 hours to reach Amdanga village from his house by a four wheeler vehicle. He deposed that his daughter's

matrimonial village was a populated area. He further deposed that he received a call soon after the incident. He deposed that after receiving the

telephone call on the date of the incident he had immediately gone to his daughter's matrimonial home. He deposed that on arrival at his

daughter's matrimonial home he did not find her and was informed that she had been admitted to Vivekananda Hospital, Durgapur. He had a conversation with her daughter at the hospital. He was not sure who had admitted his daughter to the hospital. He deposed that his daughter died leaving behind a minor son who is living with him as per the order of the Learned Court. He deposed that he was informed about the incident over the telephone. After the birth of his grandson, the accused persons had left his daughter at his home for one year. Thereafter, the husband of the deceased victim had visited his home and taken her back. He deposed that his daughter was an unemployed person. He deposed that his daughter was not treated well at her matrimonial home. He deposed that it is not a fact that her daughter caught fire at the time of cooking in the kitchen of her matrimonial home.

PW-2 (Abdul Gaffur Ansari) is a neighbour. He deposed that he was residing at the quarter of his brother Tapu Mia at Amdanga. He deposed that the matrimonial home of the deceased victim was in front of his brother's home. He deposed that the incident took place on 6 June, 2014 in the evening at about 7.30 P.M. He deposed that he was sitting in front of his quarter when suddenly he found a woman was coming out from the opposite quarter with flames on her person. She was shouting and screaming "bachao bachao". At that point of time, the main door of his quarter was open, the deceased victim entered into the quarter and jumped into the bath tank behind the quarter. Thereafter, many women of the locality arrived. Subsequently, the lady who was on fire was identified as the wife of Jiblal Hazra. The locals asked the said Jiblal Hazra and his family members to take his wife to the hospital but they did not come out from the quarter. It was only after severe rebuke from the local people that the accused persons came out of their home and arranged for a tempo to take the deceased victim to the hospital. This witness was subsequently examined by the police who had also taken his signature on the seizure list. This witness identified the accused persons in open Court. In cross-examination, he deposed that he was not a worker at the nearby colliery. He further deposed that he had been living in the quarter with his family members. He also deposed that the father-in-law of the deceased victim was a colliery worker. He deposed that there were 15/20 persons of the locality who had arrived when the

incident had occurred. He deposed that he had not visited the hospital. He also did not immediately visit the police station. He further deposed that police interrogated him within one and a half month after the incident. He was not aware of the state of mind of the deceased victim when she had been taken to the hospital. He did not know who had accompanied the deceased victim in the tempo to the hospital. He reiterated that after the incident had occurred the local people had rebuked the accused persons for refusing to take the deceased victim to the hospital.

PW-3 (Jiten Hazra) is the younger brother of the complainant and an uncle of the deceased victim. He deposed that Rinky was given in marriage with

Jiblal Hazra about 5 years ago at village Amdanga. At the time of her marriage, she was given cash of Rs.50,000 and some other articles including

furniture. After her marriage, Rinky resided at her matrimonial home with her husband and in-laws in the same place. She complained that soon after

her marriage she was subjected to cruelty and torture due to demands of dowry. He deposed that on 6 June, 2014 in the morning he received

information that she was set on fire at her matrimonial home. He further deposed that after getting the said information he had visited the matrimonial

home immediately but on arrival at her matrimonial home he came to learn that she had admitted to Vivekananda Hospital. He had then gone to

Vivekananda Hospital where Rinky ultimately died. He identified all the accused persons who were present in Court. After the death, the police held

an inquest over the dead body of the deceased victim and also obtained his signature on the inquest report. In cross-examination, the witness deposed

that on 6 June, 2014 he was in his village situated at Jharkhand. He further deposed that he personally received no telephone call regarding the

incident.

He deposed that he arrived at the place of occurrence at 5.00 a.m. in the morning after getting the information on the previous night. He deposed that

he was accompanied by 10/11 persons. He deposed that none of the accused persons was present at the said Vivekananda Hospital. He deposed that

he was not allowed to enter the hospital but only the complainant was permitted to see his daughter. He deposed that the accused persons had

admitted Rinky to the Vivekananda Hospital. He deposed after 3/4 days of the death of Rinky the hospital authorities released her dead body due non-

payment of the hospital charges. The witness could not recollect the exact date of death of the deceased victim. He further deposed in his cross-

examination that it was not a fact that the deceased victim had caught fire while cooking in the kitchen. He further stated that it was not a fact that he

had deposed as per the instructions of his elder brother.

PW-4 (Raju Hazra). This witness is a cousin of the de-facto complainant. He knew the deceased victim and had also attended the marriage of the

deceased victim. He deposed that after marriage initially the deceased victim was treated normally but soon thereafter there was trouble with her in-

laws in the matrimonial home. After giving birth to a child she returned to her parental home but after a few months, she was taken back by her

husband to the matrimonial home. He further deposed that he had come to learn from a neighbour that the deceased victim had caught fire. He had

visited the Vivekananda Hospital at Durgapur. He was not allowed to enter the hospital. He did not see any of the accused persons in the hospital. He

came to learn from the local people of Amdanga that the deceased victim had come out from her matrimonial home in flames and jumped into the

water tank of a neighbour. In cross-examination, this witness deposed that he was not examined by the police. He further deposed that he had visited

the hospital with 10/11 persons. He stated that it was not a fact that he had deposed falsely or as per the instructions of the de-facto complainant.

PW-5 (Shiv Shankar Shaw). This witness was a resident of Amdanga Parbelia Colliery quarter which was situated next to the matrimonial house of

the deceased victim. He identified the accused persons and deposed that they were residing in the same locality. He knew that the deceased victim

was the wife of Jiblal Hazra. He deposed that on 6 June, 2014 in the afternoon around 4.40 p.m. he was at his home he heard shouting and screaming

and found a huge gathering of local people outside his home. He had seen the deceased victim in a charred condition and local ladies were wrapping

her with clothes. Thereafter, a local tempo was arranged and the deceased victim was taken to Durgapur hospital in the same tempo. In cross-

examination, he deposed that he had not gone to the hospital. He further deposed that he did not know how the deceased victim had caught fire.

PW-6 (Parsuram Bhagat) was the tempo driver. He was also a resident of Parbelia Amdanga Colliery quarter. He knew the accused persons as they

were residents of the same locality. On 6 June, 2014, at around 5.00 p.m. he had carried the deceased victim in his tempo and taken her to the hospital

accompanied by some of the accused persons. This witness was not examined.

PW-7 (Surendra Kumar Mahato), was a neighbour of the accused persons and a resident of the same locality. He knew the deceased victim as the

wife of the appellant no.1. He was present when the police arrived at the place of occurrence after the incident. He saw the police seize an empty

kerosene oil jariken, a match box and some burnt wearing apparels. He identified his signature in the seizure list and also identified the seized articles.

In cross-examination, he deposed that the seized articles did not have any seal label with his signature.

PW-8 (Mahesh Das) was a neighbour and a resident of Amdanga Parbelia Colliery quarter. He knew all the accused persons. He deposed that the

accused persons were residents of the same locality. He had heard that the wife of the complainant no.1 had died due to burn injuries. He was

present when the police arrived at the home of the accused persons. He identified the seized articles. He identified the signature in the seizure list. In

cross-examination, he deposed that the seized articles did not have any label with his signature.

PW-9 (Shib Charan Show) is a resident of Parbelia Amdanga Colliery quarter. He knew and identified all the accused persons. He deposed that the

accused persons were residents in a neighbouring quarter. He deposed that the incident took place on 6 June, 2014. At the time of the incident, he was

at his place of work. He had heard that the deceased victim had caught fire and sustained severe burn injuries. He subsequently came to learn that the

deceased victim had died leaving behind a son. In cross-examination, he deposed that after returning from duty he did not find the deceased victim.

PW-10 (Bharat Yadav) is a neighbour of a nearby locality where the accused persons resided. He knew all the accused persons and identified them

in Court. He knew that the deceased victim had died out of burn injuries sustained on 6 June, 2014 in the evening at about 6.00/6.30 p.m. He was at

his home at the time of the incident. Upon hearing that the deceased victim had caught fire and had jumped into the water tank of a neighbour he

visited the place of occurrence. Upon arrival, he found some women from the locality who had taken out the deceased victim from the water tank,

arranged a tempo for her removal of the hospital. As a neighbour, he deposed that the deceased victim was not treated well in her matrimonial home.

He further deposed that he had heard from other local women that the deceased victim had been tortured by her husband and her in-laws. In cross-

examination, he deposed that he was at his home at the time of the incident. He further deposed that when he reached the place of occurrence he

found 15/20 persons had already arrived. He was interrogated by the police in connection with this case. He deposed that he was not on visiting terms

with the accused persons. He further deposed that it was not a fact that he had given any false evidence as per the instructions of the de-facto

complainant. He also deposed that he had never visited the matrimonial home of the deceased victim.

PW-11 (Bijoy Shaw). This witness identified all the accused persons present in the dock. He deposed that on 6 June, 2014 he was on official duty. He

subsequently came to learn, that the deceased victim had caught fire and sustained severe burn injuries and was subsequently taken to the hospital. He

deposed that the accused persons were his neighbours but he did not know much about their family affairs. In cross-examination, he deposed that it

was not a fact that he was examined by the police in connection with this case. This witness was declared hostile by the prosecution.

PW-12 (Asoke Kumar Barik). He is an Assistant Sub-Inspector of police attached to the Neturia P.S, District Purulia at the relevant point of time. He

had conducted an inquest over the dead body of the deceased victim. He had made a requisition for a magisterial inquest over the dead body of the

deceased victim. He identified his signature over the inquest report which was marked Exhibit-2/2. In cross-examination, he had not mentioned the

date of death on the inquest report. However, it was mentioned in the Case Diary that the deceased victim had died on 11 June, 2014. He deposed

that he had not mentioned any cause of delay in the inquest report. He further deposed that he could not understand the cause of death of the

deceased victim due to which he sent the dead body to the morgue of S.D. Hospital for post-mortem examination.

PW-13 (Suman Dasgupta) was the Executive Magistrate now attached to the Durgapur SDO. He deposed that on the day of the incident as per the

requisition of the police he had conducted an inquest over the dead body of the deceased victim. He had found the dead body in a severely burnt

condition. He could not find any external injuries over the dead body. He identified his signature on the inquest report. The entire magisterial inquest report was marked Exhibit-3/1. In cross-examination, he deposed that he had mentioned in the inquest report that the date of death of the deceased victim was 11 June, 2014. However, he deposed that he had not mentioned the cause of delay in holding the inquest over the dead body.

PW-14 (Tapas Roy) was the Medical Officer attached to the Durgapur Sub-Divisional Hospital. He had performed the post-mortem examination over the dead body of the deceased victim. On examination, he found that the whole body burnt with injuries, eyes closed, brain congested. He was of the opinion that the whole body burn injuries ultimately caused cardio-respiratory failure and resulted in the death of the deceased victim. He identified his signature in the post-mortem report.

PW-15 (Uttam Kumar Mandal). He was posted with Neturia Police Station and was a Sub-Inspector. On the instructions of the Officer-in-Charge of

Neturia P.S. he started police case no.40/14 dated 07.06.2017 under Section 498A/326/307/34 of the Indian Penal Code and under Section 3/4 of the

Dowry Prohibition Act. He had filed the formal FIR. He identified the signature in the said FIR. He had caused the official investigation and had

seized one five litres empty jarikane having the smell of kerosene, oil match box containing sticks, one polyester saree and one burnt red blouse in the

presence of the witnesses from the place of occurrence. He had prepared a seizure list in the presence of the witnesses. He had seized a joint

photograph of the deceased victim and her husband from the matrimonial home of the deceased victim. He had visited the Vivekananda Hospital

where he came to learn that the deceased victim died on 11 June, 2014. He had also collected the inquest report and post-mortem report. In cross-

examination, he deposed that he had examined the accused persons and some of the neighbours. He had prepared a sketch map of the place of

occurrence. He had also examined the elder brother of the de-facto complainant.

PW-16 (B.D Mukherjee) was a Sub-Inspector of Police and at the relevant point of time was attached to Neturia P.S. He had conducted an

investigation on 7 June, 2014. He had visited the place of occurrence. He had examined the available witnesses and recorded their statements. He had

arrested the in-laws of the deceased victim. He identified the accused persons.

He had seized one marriage invitation card. He had submitted the charge sheet against the four accused persons. He had also collected the FSL report and submitted a supplementary charge sheet. In cross-examination, he deposed that he had submitted the charge sheet in the final form. He denied that he had submitted the charge sheet without investigating the case properly.

10. A cumulative consideration of the evidence particularly of the local witnesses residing around the place of occurrence conclusively proves that the deceased victim had come out from her matrimonial home in the evening of 6 June, 2014 in flames and jumped into the water tank of the quarter of Tapu Mia where PW-2 was residing. The evidence of PW-2 in this regard is corroborated by the evidence of PWs-4, 5, 9 and 10. These witnesses are indisputably the most natural witnesses to the entire incident.

11. In the instant case, there are admittedly no eye witnesses because the incident took place inside the four walls of the matrimonial house of the deceased victim where admittedly the accused persons were residing and were present at the time of occurrence. It is the evidence of PW-2 which gives a vivid account of the entire incident. The deceased victim came out of her matrimonial home in flames (where the accused persons were present) crying for help to get relief and threw herself into the water tank of a neighbour (PW-2). She ultimately died due to the burn injuries she had suffered. The local persons who were present there had then rebuked the accused persons for not coming out from their home and it was only then that a tempo was arranged which took the deceased victim to the hospital. The evidence of PW-12 and PW-14 being the Executive Magistrate and the Autopsy Surgeon clearly corroborates the fact that the deceased victim had died out of burn injuries corroborating the ocular version of the other witnesses.

12. It appears from the records that no defence case of accidental burn was made out or even attempted to be made out. There was only a suggestion given to prosecution witnesses that the deceased victim had caught fire at the time of cooking in the kitchen at the matrimonial home. I am of the view that the cumulative effect of the evidence stated hereinabove proves beyond reasonable doubt that the accused persons had committed the offence as they were present at the matrimonial home where the victim housewife had

suffered burn injuries and the accused persons have failed to explain the circumstances in which she suffered such injuries save raising an improbable plea of accidental fire which is not borne out from the evidence on record. On the other hand, PW-1 claimed that the victim made an oral dying declaration to him that the accused persons had set her on fire. In the decision reported in *Trimukh Maroti Kirkan vs. State of Maharashtra* (2006) 10 SCC 681 the Honâ??ble Supreme Court has held that in invoking the provisions of Section 106 of Evidence Act there is a corresponding burden upon the inmates of the house to give a cogent explanation as to how the crime was committed and they cannot get away by keeping quiet on the premise that the prosecution must discharge its burden of proving the case.

â??The principle is that when incriminating circumstances are put to an accused and the said accused either offers no explanation or offers an explanation which is found to be untrue then the same becomes an additional link in the chain of circumstances to make it completeâ??.

13. Admittedly, the incident took place in the quarters of the accused persons and they were the only persons having special knowledge as to how the victim died. The accused persons were under a legal compulsion to explain how the victim had died.

14. Upon consideration of the entire evidence, the circumstances of the instant case which appear to be incontrovertible and indisputable and fully established are as follows: (a) The deceased victim had caught fire at her matrimonial home in the evening of 6 June, 2014 (b) All the accused persons being the husband and in-laws of the deceased victim were present in the matrimonial home at the time of incident (c) None of the accused persons made any attempt to extinguish the fire on the victim (d) The deceased victim came out from the home on fire, screaming for help and jumped into the water tank of the neighbouring quarters (e) None of the accused persons followed the deceased victim when she left the matrimonial home but the local persons brought the deceased victim out of the water tank (f) It was only on being severely rebuked by the neighbours that the accused persons had taken the deceased victim to Vivekananda Hospital, Durgapur (g) Admittedly, the deceased victim remained in the hospital for three days and ultimately succumbed to injuries (h) The victim made an oral dying declaration to her father, PW-1, that the accused persons had set her on fire.

15. I am of the opinion that the only defence of the accused persons that the deceased victim had caught fire while cooking is an imaginary plea and has not been substantiated by any evidence of any kind whatsoever.

16. The Trial Court has held that the prosecution had established beyond reasonable doubt the charges under Section 302 read with Section 34 of the

IPC. To justify a charge under Section 302, it is now well settled that (i) There must be a death of a human being caused (ii) by or in consequence

of an act of the accused (iii) such act was done (a) with an intention of causing death (b) that the accused knew likely to cause such death (c) that the

injury was sufficient in the ordinary course of nature to cause such death.

17. I am satisfied that the Trial Court has correctly and justifiably held the accused persons guilty of the charges under Section 302 read with Section

34 of the IPC. I find no reason to interfere with the impugned judgment and order. Accordingly, the appeal fails and is dismissed.

18. A copy of the judgment along with the Lower Court Records be sent back to the Court below at once. A certified copy of this order, if applied for,

be given to the parties on a priority basis upon compliance with all necessary formalities.