
(2015) 08 OHC CK 0034
In the Orissa High Court
Case No : Govt. Appeal No. 08 of 1998

State of Orissa

APPELLANT

Vs

Shyam Meher

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 167 (1)
Penal Code, 1860 (IPC) — Section 306, 307, 498-A

Citation : (2015) 08 OHC CK 0034

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Advocate : D.K. Mishra, Addl. Govt. Advocate, for the Appellant; N.C. Panigrahi and S.C. Dash, Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.R. Dash, J—The State, in this appeal, impugns the judgment of acquittal recorded by the learned Assistant Sessions Judge-cum-C.J.M., Bhawanipatna in Sessions Case No. 73/34 of 1995.

2. P.W. 10, who is the mother of the deceased, is the informant in this case. Accused - respondent is the alleged husband of the deceased. The occurrence happened on 01.07.1995 in the dwelling house of the accused-respondent. It is the allegation of the informant that she had given the deceased in marriage to the accused-respondent Shyam Meher. After marriage, there used to be quarrel between the accused-respondent and the deceased relating to domestic affairs. The deceased Khira Dei had told several times about the torture meted out to her by the accused - respondent. On 29.06.1995 the informant came to her daughter's house (house of the deceased) and on her arrival the deceased told her that her husband is always abusing her in obscene language and assaulting her, for which she was passing through hard days. It is further alleged that on 01.07.1995 at about 6.30 A.M. the accused set the deceased afire by pouring kerosene on her and her condition is serious.

Finding the report lodged by the informant (P.W. 10) making out a cognizable case under Section 498-A and 307, I.P.C., the I.O. (P.W. 19) treated the report as F.I.R. and took up investigation.

During investigation, the I.O. (P.W. 19) visited the spot, examined some of the witnesses, recorded the statement of the victim lady and took her to Dharamgarh Hospital on issuing medical requisition. P.W. 20 took up charge of investigation from P.W. 19. He issued requisition to the Sub-Collector, Kalahandi for deputation of a Magistrate to record the dying declaration of the victim (who died later in the hospital). He also arrested the accused - respondent and forwarded him in custody, seized some incriminating articles and on 31.07.1995 he received intimation from the Medical Officer about the death of the victim lady Khira Dei. He conducted inquest over the dead body of the deceased and prepared inquest report and sent the dead body for post-mortem examination. P.W. 13 took charge of the investigation from P.W. 20 and, on completion of the investigation, he submitted charge-sheet against the accused - respondent implicating him in offence punishable under Sections 498-A & 306, I.P.C.

3. Prosecution has examined as many as twenty witnesses to prove the charge. P.W. 10 is the informant and the only eye-witness to the occurrence, P.W. 11 is the sister of the deceased, P.W. 7 is the brother of the deceased. All these witnesses have been examined to prove the factum of torture and harassment meted out to the deceased by the accused-respondent. P.W. 16, who is the first wife of the accused-respondent and P.W. 3, who is the brother of P.W. 16, have been examined by the prosecution to prove the factum of habit of the accused-respondent in ill-treating his wives. P.Ws. 5 and 6 are post-occurrence witnesses, P.W. 4 is the Scribe of the F.I.R. He, however, does not know anything about the occurrence. P.W. 1 is the Medical Officer, who conducted the post-mortem examination, P.W. 2 is the Medical Officer, who assisted P.W. 1 in conducting the post-mortem, P.W. 8 is the Medical Officer, who examined the victim lady on police requisition on her arrival in hospital on 01.07.1995. P.Ws. 9, 14, 15 and 17 are witnesses to the seizure. P.W. 18 is the Magistrate, who had gone to record the dying declaration of the deceased, but failed to record such declaration, as her condition was not conducive and she was not able to speak. P.W. 12 is the mother of the deceased second wife of the accused-respondent. P.Ws. 13, 19 and 20 are the Investigating Officers.

4. Defence plea is one of complete denial.

5. From the evidence on record, it is found that P.W. 10 (informant), who happens to be the mother of the deceased, is the only eye-witness so far as the occurrence is concerned. She has however not seen as to how the deceased caught fire. Whether it was an accidental fire or the deceased set herself afire in her bid to commit suicide or the accused-respondent set the deceased ablaze. To find answer to these questions, learned trial court fell back upon the dying declaration of the deceased vide Ex. 17, which is the statement of the victim recorded under Section 161, Cr.P.C. So far as the evidence of torture and

harassment meted out to the deceased is concerned, learned trial court took into consideration the entire evidence including the evidence of P.Ws. 7, 10, 11 and P.Ws. 3 and 16. So far as the dying declaration is concerned, learned trial court found the versions of some witnesses indicating to prevaricating declarations given by the deceased. Learned trial court also doubted the genuineness of Ext. 17 and disbelieved the dying declaration. On the point of harassment and torture, learned trial court disbelieved the witnesses and acquitted the accused-respondent of the charge.

6. Mr. Mishra, learned Addl. Govt. Advocate submits that, learned trial court has not properly taken into consideration Ext. 17 and the grounds on which Ext. 17 has come to be doubted by the learned trial court are not sustainable. Further it is submitted by Mr. Mishra, learned Addl. Govt. Advocate that so far as the factum of torture and harassment on the deceased is concerned, the deceased herself has told about such torture and harassment in Ext. 17 and further P.Ws. 7, 10 and 11 have also told about such torture and harassment of the deceased by the accused-respondent.

7. Learned counsel for the respondent on the other hand supports the impugned judgment and submits that the respondent has been rightly acquitted of the charge and his acquittal is legally justified.

8. From the evidence on record, it is found that P.W. 18, who was deputed by the Sub-Collector on 15.07.1995 to record the dying declaration of the deceased, could not record the dying declaration, as the victim had swelling and she could not speak. To that effect he gave his report vide Ext. 10. In absence of any formal dying declaration recorded by the Magistrate deputed, i.e. P.W. 18, the statement of the victim recorded under Section 161, Cr.P.C. and marked as Ext. 17 is the only evidence embodying the dying declaration of the deceased. From Ext. 17 it is seen that, statement of the victim under Section 161, Cr.P.C. was recorded by the I.O. on 01.07.1995, i.e. the date of occurrence itself. P.W. 10, the informant and mother of the deceased has specifically stated in her cross-examination that, after the deceased came out with burning, she fell down senseless and she was not able to speak. P.W. 10 in her examination-in-chief has testified that on the date of occurrence itself the police came and took the deceased to the hospital for treatment. P.W. 19, the I.O. has also testified that, from the spot he took the victim lady to Dharamgarh Hospital and issued Medical Requisition vide Ext. 3/2. At Dharamgarh Hospital P.W. 8, the Medical Officer examined the victim lady on the basis of the requisition, vide Ext. 3/2 and found some burn injuries covering almost the entire body of the victim including front of her chest and back of her chest. In his cross-examination P.W. 8 has specifically testified that, initially two to three days the victim was in a state of shock owing to pain and she was giving prevaricating statements with regard to the incident. P.W. 8 has further testified that he has not recorded the statement of the victim, as she was in a confused state owing to delirium. P.W. 8 has however assessed the percentage of burn injuries on the body of the deceased at

50 to 60%. P.W. 1, who conducted the post-mortem examination on the dead body of the deceased on 31.07.1995 has assessed the percentage of burn injuries at 75%. In his cross-examination P.W. 1 has specifically opined that a patient is able to talk if there are 50 to 60% burn injuries, but a patient cannot speak if the burn injuries are 75%. From the evidence it is not clear as to when the victim regained her senses after she collapsed at the spot. If P.W. 8 is believed, then the victim was in a state of delirium initially for two/three days, and during that period she has been examined by the I.O., vide Ext. 17. P.W. 8 is specific and emphatic in his opinion that the victim was giving prevaricating statements regarding the incident during the period of delirium, and for that reason he had not recorded her statement during that period. If the evidence of P.Ws. 10, 8 and 1 are taken into consideration, it is clear that Ext. 17 was recorded at a time when the victim was not in a free state of mind. Further, there being no evidence regarding the fact, i.e. time and place, when and where the victim regained senses, recording of statement vide Ext. 17 by the I.O. has been rightly disbelieved by the learned trial court. Besides the aforesaid discussion, I am one in my view with the reasoning of the learned trial court so far as genuineness of Ext. 17 is concerned.

9. According to the I.O. (P.W. 20), the accused-respondent was arrested at 4.00 P.M. on 01.07.1995. He was forwarded to Court in custody at 4.00 P.M. on 02.07.1995. By the time accused-respondent was forwarded to Court, the statement of the victim vide Ext. 17 had already been recorded. In paragraph-4 of his cross-examination, P.W. 20 has admitted that he has not mentioned in his forwarding report as to what statements were submitted to the Court while forwarding the accused. Ext. 17 does not show endorsement of the Magistrate on the date of forwarding. Such fact would go to show that the statement of the victim vide Ext. 17 though was in existence at the time of forwarding the accused-respondent to Court in custody, it was not submitted to the Court in compliance of Section 167 (1), Cr.P.C. Such a lapse on the part of the I.O. itself creates doubt regarding existence of the statement of the victim vide Ext. 17 on the date of forwarding of the accused and genuineness of the same.

10. Adding to the above, different witnesses have given different versions regarding the oral declaration of the victim before them. P.W. 11, the sister of the deceased, in her evidence has testified that, after two days of the occurrence, on being asked to the deceased, she told that the accused poured kerosene on her and set fire on her and burnt her. P.W. 6, another independent witness has testified that on being asked to the deceased she told that while cooking, her saree caught fire. P.W. 7, the brother of the deceased has testified that, on being asked, the deceased did not say as to how she was burnt. These evidences of the aforesaid witnesses show that evidence of P.W. 8 to the effect that the deceased was in a state of delirium and she was giving prevaricating statements during the initial two/three days of the occurrence is true and believable. In view of such prevaricating statements of the victim before different witnesses and in absence of any corroboration to Ext. 17, I am constrained to hold that the learned trial

court has rightly disbelieved Ext. 17 and the evidence regarding dying declaration.

11. So far as the offence under Section 498-A, I.P.C. is concerned, P.Ws. 7, 10 and 11 are the witnesses to prove the fact constituting the offence. P.W. 7 in her testimony has given an omnibus statement that the accused was ill-treating her sister and abusing her and, still then her sister was there. Prior to the occurrence, the matter was settled. So far as P.W. 10 is concerned, in her examination-in-chief she has testified that on the date of occurrence the accused assaulted the victim. Prior to the date of occurrence also there was ill-treatment by the accused towards the deceased. In her cross-examination she has stated that she has not seen the accused assaulting the deceased on the date of occurrence. She has further testified that when the deceased was burning, the accused was pouring water on her to extinguish fire. P.W. 11 has also given an omnibus statement regarding the ill-treatment meted out to the deceased. None of them has stated the manner in which the deceased was being subjected to harassment and torture. The evidence on this score by the aforesaid witnesses is out and out omnibus. Though the deceased was staying as wife of the accused-respondent preceding two years from the date of occurrence, no effort has been made at any point of time by any of the family members of the deceased to report the matter about the factum of alleged ill-treatment of the deceased before anybody including the "Gauntia" of the village, village panch or the police. P.W. 16, the first wife of the accused-respondent and P.W. 3, the brother of P.W. 16 have been examined to show that the accused-respondent was assaulting P.W. 16 on flimsy grounds. Their evidence regarding such habit of the accused-respondent cannot be said to be incriminatory so far as the present occurrence is concerned. Learned trial court has painstakingly scanned the entire evidence on record on this aspect to come to a finding that no offence under Section 498-A, I.P.C. is made out against the accused-respondent. I do not find any justification to interfere in the finding of the learned trial court.

12. Taking into consideration the aforesaid discussions and the evidence on record, the impugned judgment is confirmed and the Govt. Appeal is dismissed in the result.