

(2023) 07 OHC CK 0028
In the Orissa High Court
Case No : Criminal Appeal No. 637 Of 2015

Subash Tarei And Another	Vs	APPELLANT
State Of Odisha		RESPONDENT

Date of Decision : 06-07-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 309, 436

Citation : (2023) 07 OHC CK 0028

Hon'ble Judges : Dr. S. Muralidhar, CJ;G. Satapathy, J

Bench : Division Bench

Advocate : Lalitendu Mishra, Janmejaya Katikia

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ

1. The present appeal is directed against the judgment dated 9th October, 2015 passed by the learned Additional Sessions Judge, Bhadrak in Sessions Trial No.04/85/57 of 2013-11 convicting the two Appellants for the offence punishable under Sections 302/307/436 read with 34 IPC and sentencing them as under:

- i. for the offence punishable under Section 302 read with Section 34 IPC to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment (RI) for 2 years;
- ii. for the offence punishable under Section 307 read with Section 34 IPC to undergo RI for 7 years and to pay a fine of Rs.5,000/-, in default to undergo RI for 1 year; and
- iii. for the offence punishable under Section 436 read with Section 34 IPC to undergo RI for 7 years and to pay a fine of Rs.5,000/-, in default to undergo for 1 year.

All the sentences were directed to run concurrently.

2. At the outset it must be mentioned here that Appellant No.2 was enlarged on bail pending disposal of the present appeal pursuant to the order dated 16th January, 2023 of this Court.

3. The Appellants were charged with committing the murder of deceased-Tillotama and attempting to murder her husband-Fakira Tarei (P.W.7) on 27th January, 2011 in the night at around 11 pm.

4. The case of the prosecution is that Accused No.1 (A1) Subash Tarei, about 7/8 months prior to the incident, attempted to commit rape Elina Tarei (P.W.1), the informant. A separate case was registered against A1 for that crime and he was in custody for a while. He emerged from custody about a month prior to the occurrence and is reported to have told to the villagers that he would kill the family members of the informant if she was not married to him. It is the case of the prosecution that out of anger A1 and his father (A2) committed the offence.

5. On the morning following the incident i.e. 28th January 2011, P.W.1 reported the facts in writing at the Dhamnagar Police Station (P.S.). ASI, P. K. Jena (P.W.14) took up the investigation. On completion of the investigation, a charge-sheet was laid against both the accused.

6. 14 witnesses were examined for the prosecution of which apart from the informant (P.W.1) and her father (P.W.7), who was the injured victim, his other daughter Tanushree Tarei (P.W.5) and his mother Sita Tarei (P.W.11) were witnesses. Then there was Narayan Tarei (P.W.3), Dasarathi Jena (P.W.4), Tapaswini Rout (P.W.6) and Jatindera Tarei (P.W.12) were independent witnesses to the occurrence. The post-mortem of the deceased Tillotama was conducted by Dr. Punima Singh (P.W.8). The injured P.W.7 was examined by Dr. Biranchi Narayan Mallick (P.W.13). P.Ws. 9, 10 and 14 were all the Investigating Officers (I.Os). Dr. Saroj Kumar Patra (P.W.2) examined A1 and gave a report.

7. The injured victim (P.W.7) deposed that he and his wife were sleeping in one room whereas his younger daughter P.W.5 and her mother P.W.11 were sleeping in another room. At around 11.30 pm, P.W.5 shouted saying Baapre, Baapre, upon which he woke up and found his thatched house was burning. According to P.W.7, they tried to leave the house but failed as the room was locked from the outside. They tried to get help by opening the window and at that time P.W.7 saw A1 and A2 were present there. A-1 and A-2 threw some liquid substance (Taila Jinisa) on deceased Tillotama and at the same time some burning pieces fell down from the roof as a result of which the deceased sustained burn injuries. According to P.W.7, the liquid substance thrown by A1 and A2 also fell on his legs and he sustained injuries on his legs.

8. P.W.1 came and rescued him and his wife. P.W.7 was treated at the hospital in Cuttack for about 25 to 30 days. When he returned, he found his house, with the cash and articles, totally burnt.

9. P.W.7 was subject to cross-examination but nothing much could be elicited

from him so as to doubt the veracity of his deposition.

10. Although it was sought to be suggested by Mr. Lalitendu Mishra, learned counsel for the Appellants, that P.W.7 was not a reliable witness, there is nothing pointed out by him from the deposition of this witness to substantiate this submission. As the Court views it, P.W.7 being an injured witness was both credible and consistent and his deposition receives full corroboration from not only the other witnesses including P.W.1 and P.W.5 but also the medical evidence of P.W.8 who certified that the deceased died due to 100% thermal burn injuries. Even P.W.7 suffered 16% second degree thermal burn of his left and right lower limb below the knee.

11. The theory sought to be advanced by learned counsel for the Appellants that on account of the previous criminal case registered against A1 for his attempting to rape P.W.1, the present case was falsely foisted upon the Appellants is not supported by any evidence on record. The criticism that P.W.1 was only a hearsay witness who had not actually witnessed the crime is again to no avail since the evidence of P.W.7 who was an injured eye-witness, corroborated by the medical evidence, is more than sufficient to sustain the conviction against the Appellants. As explained by the Supreme Court of India in *Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259 as under:

“Injured Witness

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide *Ramlagan Singh v. State of Bihar*, AIR 1972 SC 2593; *Malkhan Singh v. State of Uttar Pradesh*, AIR 1975 SC 12; *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470; *Appabhai v. State of Gujarat*, AIR 1988 SC 696; *Bonkya v. State of Maharashtra*, (1995) 6 SCC 447; *Bhag Singh v. State of Punjab*, (1997) 7 SCC 712; *Mohar v. State of Uttar Pradesh*, (2002) 7 SCC 606(SCC p.606b-c); *Dinesh Kumar v. State of Rajasthan*, (2008) 8 SCC 270; *Vishnu v. State of Rajasthan*, (2009) 10 SCC 477; *Annareddy Sambasiva Reddy v. State of Andhra Pradesh*, (2009) 12 SCC 546 and *Balraje v. State of Maharashtra*, (2010) 6 SCC 673.

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30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the

commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

12. It is sought to be contended that the medical evidence shows that there was no detection of any oil or liquid substance on the body of the deceased. This however does not take away the cogent and consistent manner in which the eye-witnesses have described the incident and the medical evidence has corroborated the death due to the burns suffered by the deceased. P.W.7 also received burn injuries. That two of the inmates in the house were sleeping in a room different from the one that actually caught fire also explains how those two witnesses i.e. P.W.3 and P.W.5 did not suffer burn injuries. Accused Subash Tarei was medically examined for having consumed poison but the trial Court found the evidence of P.W.2 in this regard not to be convincing. He was therefore not found guilty of the offence under Section 309 IPC.

13. Even the motive for the crime has been fully established. There is no question of previous enmity when it is A1 himself who was facing a criminal case for attempting to rape P.W.1. It has been convincingly proved that the accused were in a vengeful mood prior to the occurrence about the informant rebuffing the attempts by A-1 to have her marry him.

14. Mr. Mishra sought to make much of the alleged dying declaration of the deceased. However, a careful perusal of the judgment of the trial Court reveals that the conviction was not based exclusively on such dying declaration. The conviction of the accused can easily be sustained by the testimony of the injured eye-witness-P.W.7 corroborated by the testimonies of P.Ws.1, 3, 5, 6, 11 and 12.

15. Consequently, no grounds have been made out for interference with the impugned judgment of the trial Court. The appeal is accordingly dismissed. The bail bonds of Appellant No.2 are hereby cancelled. He is directed to surrender forthwith and, in any event, not later than 5th August, 2023 failing which the IIC of the concerned P.S. will take steps to take him into custody to serve out the remainder of his sentence. A copy of this judgment be sent by the Registry to the IIC of the concerned P.S. forthwith.

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