

(2023) 07 OHC CK 0195
In the Orissa High Court
Case No : Criminal Appeal No. 348 Of 2016

Ushman Khan @ Tana

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 24-07-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 374(2)
Indian Penal Code, 1860 — Section 34, 302, 498A

Citation : (2023) 07 OHC CK 0195

Hon'ble Judges : D.Dash, J;Dr S.K. Panigrahi, J

Bench : Division Bench

Advocate : Satyanarayan Mishra IV, S.K. Nayak,

Final Decision : Dismissed

Judgement

D.Dash, J

1. The Appellants, by filing this Appeal has challenged the judgment of conviction and order of sentence dated 24.05.2016 passed by the learned 2nd Additional Sessions Judge, Khurda in S.T. Case No.71 of 2014 arising out of G.R. Case No.1675 of 2012 corresponding to Begunia P.S. Case No.195 of 2012 of the Court of learned Sub-Divisional Judicial Magistrate, (S.D.J.M.), Khurda.

By the same, the Appellant (accused) has been convicted for commission of offence under section-302/498-A/34 of the Indian Penal Code, 1860 (for short called as 'the IPC'). Accordingly, he has been sentenced to undergo imprisonment for life and pay fine of Rs.10,000/-in default to undergo rigorous imprisonment for one year for the offence under section-302 of the IPC. The Petitioner is further sentenced to undergo rigorous imprisonment for two years and pay fine of Rs.2,000/- in default to rigorous imprisonment for four months for the offence under section-498(A) of the IPC.

2. The prosecution case is that the accused had married Laila Begum (deceased) in or about the year 1992. They were blessed with four sons. For quite a long

period, the couple had the marital discord. It is stated that Laila (deceased) was being subjected to severe physical and mental torture by the accused who had illicit relationship with another lady for various reasons. The fact regarding the torture and ill-treatment meted out at Laila at the instance of the accused had earlier been reported at Begunia Police Station and also before the village Masjid Committee. Every time false assurance being given by the accused to maintain the harmony and cordial relationship followed by the assurance of looking at the future life of their sons, the matters were being resolved. However, the bad habits were not shun by the accused.

On 31.12.2012 around 4.30 pm, Sk. Mustak Alli, P.W.1, who is the brother of Laila (deceased) presented a written report (Ext.1) with the Inspector-In-Charge (IIC), Begunia P.S. informing that on 29.12.2012, Laila (deceased), her children and accused had come to their house in village Chuda. Laila went to witness Bolagarh Mahastov in the evening. While she was at the entrance gate in the Mahastov area, accused called her over phone and compelled her to return. When she returned home, accused abused her and her children and prevailed upon them to return to their house at village Jamusahi. Therefore, at around 8.30 pm, Laila with her children left in an Auto Rickshaw to their house at Jamusahi. The accused went ahead of them in a motorcycle. In that night, the accused with his mother dowsed Laila with Kerosene and set her ablaze in their house. Laila having sustained severe burn injuries was shifted to SCB Medical College and Hospital, Cuttack. Receiving the information, the family members of Laila rushed to the hospital and there they found Laila lying in a critical condition with extensive burn injuries. In course of treatment on 30.12.2012 Laila expired.

Receiving the said report from the brother of the deceased namely, Sk. Mustak Alli (P.W.1) is the son of P.W.7, the Inspector-In-Charge (I.O.-P.W.10) treated the same as F.I.R. and registering the case, took up investigation.

In course of investigation, the I.O. examined the Informant (P.W.1) and other witnesses, visited the spot and prepared the spot map. The inquest having been held by the police personnel attached to Mangalabag Police Station; that inquest report, Ext.4 with the record of U.D. Case No.1696 of 2012 were collected. The Investigating Officer (P.W.10) on being transferred, handed over the charge of investigation to his successor in Office who submitted the Final Form placing the accused to face the trial for commission of offence under section-302/498-A of the IPC.

3. Learned S.D.J.M., Khurda having taken cognizance of the above noted offences and after observing the formalities, committed the case to the Court of Sessions. That is how the Trial commenced by framing charge for offence under section-302/498-A/34 of the IPC against these accused.

4. In the Trial, the prosecution has examined in total ten (10) witnesses. As already stated the brother of the deceased who is the Informant and lodged the F.I.R. Ext.1 is P.W.1. whereas P.W.2 and P.W.7 are the mother and father of the

deceased and the Informant (P.W.1). P.W.3 is a co-villager of P.W.-1 and 2 and their neighbour. The Auto Rickshaw Driver who had taken the deceased and her children in that fateful night to their house at Jamusahi has been examined as P.W.4. P.W.5 is one of the members of the village Masjid Committee, who several times had participated in the matter of settlement of the dispute between the accused and his wife (deceased); and P.W.8 is the son of the accused and the deceased. The Doctor who had conducted autopsy over the dead body of the deceased has been examined as P.W.9; whereas the P.W.10 is the I.O.

5. The prosecution besides leading the evidence by examining the above witnesses has proved several documents, which have been admitted in evidence and marked Exts.1 to 5. Out of which, the important the F.I.R., Ext.1, the spot map, Ext.3 and the inquest report Ext.4.

6. The defence plea is that of denial and false implication. In support of the same, he has examined two witnesses as D.W. 1 and D.W.2 who have stated that accidentally, the deceased had been gutted with fire while she was cooking food and the accused arrived there subsequent thereto.

7. The Trial Court upon examination of the evidence of the witnesses and on going through the documents admitted in evidence from the side of the prosecution has held that it is the accused who had set fire at the deceased in the relevant night and it has also been held that the accused was torturing the deceased both mentally and physically for quite a long period and as such cruelty was being meted at the deceased at the instance of the accused. The accused, therefore, has been convicted by the Trial Court for committing the offence under section-498-A/302 of the IPC and has been sentenced as aforestated.

8. Learned Counsel for the Appellant (accused) submitted that the solitary testimony of P.W.8 ought not to have relied upon by the Trial Court to render the finding that it is the accused who had set fire at the deceased pouring kerosene over her body. He further submitted that P.W.8, being the son of the deceased and the accused and since he was always siding his mother (deceased) and was not pulling on well with the accused, his evidence without corroboration either direct or some proved attending circumstances ought not to have been relied upon. He submitted that evidence of P.W.8 in view of the admitted strained relationship with the accused for quite long period is quite unsafe to base the conviction. He further submitted that the evidence with regard to cruelty being wholly insufficient, the Trial Court has gone wrong in convicting the accused for committing commission of offence under section-498-A of the IPC.

9. Learned Counsel for the State-Respondent on the other hand submitted all in favour of the finding returned by the Trial Court holding the accused guilty for the above noted offences. He further submitted that the evidence of P.W.8, who is none other than the son of the accused and deceased is quite natural and despite cross-examination, no such material has been elicited to cast any doubt on his version as to have seen the incident in his own eyes. He further submitted

that the evidence of P.W.8 being corroborated by the evidence of his maternal uncle of P.W.1 and maternal grandparents i.e. P.W.2 and P.W.7 have been rightly accepted for passing the conviction for both the offences.

10. Keeping in view the submissions made; we have carefully read the judgment of conviction. We have also extensively travelled through the depositions of all the witnesses i.e. P.W.1 to P.W.10 and have perused the documents which have been marked as Exts.1 to 5.

11. There is no dispute that Laila Begum who is the wife of the accused died on account of extensive burn injuries received by her in her matrimonial home situated at village Jamusahi. It has been stated by P.W.1, (brother-in-law of the accused), P.W.2 (mother-in-law of the accused), P.W.6 (another brother-in-law of the accused) and P.W.7 (father-in-law of the accused) that on 29.12.2012 night, the accused having insisted upon his wife Laila to return to their house at Jamusahi made her and children comeback and for the purpose, accused had paid the higher charges of the Auto Rickshaw in which they came. Over and above, P.W.8, who is the son of the accused, has also so deposed. The accused in his statement recorded under section-313 of the Cr.P.C. has simply denied the same. But then all the above witnesses being cross-examined at length, we find no such material to have been elicited to disbelieve their version that in that night, the deceased and her two sons came to the house of the accused at village Jamusahi under compulsion of the accused.

12. P.W.8 being the star witness for the prosecution, asserts his position to eye witness, His evidence is of great significance. Having stated that in that night, they all returned to their house at Jamusahi being compelled by the accused, he states that his father (accused) came ahead of them in a motorcycle, when they came in a Auto Rickshaw. He further stated when they reached their house at Jamusahi, accused assaulted his mother(Laila-deceased) and took her into house by keeping them outside. He further stated that accused poured kerosene on her mother and set her ablaze and thereafter threatened to take away their lives. He has also stated that the accused then told them that if anybody would be asking anything about the incident, they must say that their mother committed suicide by setting herself ablaze. Even though he had stated nothing in his examination-in-chief as regards the longstanding torture being meted out at the instance of the accused upon her mother (deceased). During cross-examination, it has been so brought out when he has stated that accused often was torturing the deceased physically by drinking liquor and that his father had assaulted his mother and abused her at the door step in that night for about 10 minutes and then except the family members, none were present and no outsider also turned up even though his mother was crying. He has further stated that the accused then assaulted him (P.W.8) and out of fear his brothers did not call anybody for help. He has stoutly denied the suggestion that the accused had not poured kerosene upon his mother and set her ablaze. With the above evidence, of P.W.8, when the same receives corroboration from the evidence of other prosecution

witnesses including the parents and brothers of the deceased as regards their relationship under great stress and the happening in the night that the accused compelled the deceased and her two sons including P.W.8 to return home; we find that the Trial Court has rightly held the prosecution to have established the charge under section-302 of the IPC in causing murder of his wife.

13. The evidence as to the continuous ill-treatment and torture upon the deceased has been stated by all the witnesses including some co-villagers, neighbour P.Ws.4 and P.W. 6 and village Masjid Committee Member as P.W. 5, who have absolutely no reason to falsely state so against the accused. It has also been stated by the son of the accused (P.W.8). The evidence of the witnesses having been discussed in great detail and analysis from every possible angle being made, we find that Trial Court is right in holding the accused for also guilty of commission of the offence under section-498-A of the IPC.

Therefore, the finding of the Trial Court that the prosecution has established the charges against the accused beyond reasonable doubt by leading clear, cogent and acceptable evidence, in our view, receives the seal of affirmation.

14. In the result, the Appeal stands dismissed. The judgment of conviction and order of sentence dated 25th May, 2016 passed by the learned 2nd Additional Sessions Judge, Khurda in S.T. Case No.71 of 2014 are hereby confirmed.

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