

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 188 OF 2006

RAMA KRUSHNA ROY

... APPELLANT

VERSUS

STATE OF ORISSA

...RESPONDENT

ORDER

1. Sole appellant, aggrieved by his conviction under Section 302 of the Indian Penal Code and sentence of rigorous imprisonment for life, has preferred this appeal by special leave.

2. According to the prosecution, the deceased Santilata was the wife of the appellant and married about a year prior to the date of occurrence and they were residing in a portion of the house belonging to PW-1, M. Appa Rao. A day prior to the lodging of the report i.e. 30th of June, 1994 the deceased along with her husband i.e. appellant herein came together, went in their house and closed the door. After some time, the landlord, PW-1 M. Appa Rao heard screams of the deceased whereupon he went to the portion of the house in which the appellant and his wife were residing

and knocked the door. According to the prosecution, appellant opened the door and when M.Appa Rao entered the room, he found Santilata in a severely burnt condition covered with a bed-sheet. The appellant came out of the house and fled away. M.Appa Rao brought Santilata to the hospital on a trolley-rickshaw and on being asked Santilata disclosed that it is the appellant who poured kerosene oil on her and lighted the match-stick with a view to kill her. PW-1, M.Appa Rao gave the report of the incident at Jeypur Town Police Station on 30th of June, 1994 at about 12 Noon. On the death of Santilata on 1st of July, 1994, Section 302 of the Indian Penal Code was added. The deceased was taken to Sub-Divisional Hospital, Jeypore where his statement was recorded by the attending Assistant Surgeon PW-20, Dr. Bijayananda Padhi.

3. Police after usual investigation submitted charge-sheet and the appellant was ultimately committed to the Court of Sessions where he was charged for committing the offence under Section 498-A and 302 of the Indian Penal Code to which he pleaded not guilty. In order to bring home the charge the prosecution examined altogether 23 witnesses besides a large number of documentary evidence including the dying declaration of the deceased were exhibited. Three witnesses were also examined on behalf of the appellant which included the appellant himself as DW-2. From the trend of the cross-examination of the prosecution witnesses and the evidence of the defence witnesses, the plea of the appellant seems to

be that the deceased committed suicide by setting herself on fire. The trial court relying on the evidence of PW-20, Dr. Bijayananda Padhi who recorded the dying declaration of the deceased (Exhibit 18) came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt and accordingly convicted the appellant as above. Said conviction and sentence has been affirmed in appeal by the High Court.

4. PW-20, Dr. Bijayananda Padhi has stated in his evidence that on 30th of June, 1994 he was posted as Assistant Surgeon at Sub-Divisional Hospital, Jeypore and on that date at 11.15 P.M. Santilata, the deceased was admitted in the hospital with extensive superficial burn injuries. According to him, the victim disclosed that her husband Rama Krushna Roy poured kerosene on her night dress and set her on fire. According to this witness such an entry was made in the bed head ticket of the deceased. He has further stated in his evidence that the Investigating Officer of the case made requisition for recording dying declaration of the deceased and being satisfied he recorded the dying declaration in the presence of the witnesses. He has proved the dying declaration as Exhibit-18 which, according to this witness, was recorded in question and answer form. Regarding the cause of death of the deceased he has further stated in his evidence that her husband brought kerosene and poured that on her body and subsequently set her on fire. The deceased died on 1st July, 1994. The dying declaration (Exhibit 18) is in question and

answer form relevant portion whereof reads as under :

“Q. What is your name?

A. Santilata Bihari.

Q. What is your husband Name?

A. Rama Krishna Roy my second husband.

Q. Where are you staying?

A. I am staying at market.

Q. What happened today?

A. There was a quarrel between us for a silly matter regarding an earring. He was annoyed as I got the same. My husband is after my second number sister Bidulata that is why the quarrel.

Q. Thereafter what happened?

A. He told me to leave.

Q. Thereafter what happened?

A. He poured kerosene and lighted me saying his line would be cleared.”

JUDGMENT

5. Mr. Sibbo Sankar Mishra, learned counsel for the appellant submits that save and except the dying declaration of the deceased, there is no material to connect the appellant with the crime. He submits that the dying declaration (Exhibit 18) does not contain any endorsement that the deceased was in a fit state of mind to give the statement. In the absence of the same, according to the learned counsel, the dying declaration is not fit to be relied upon. We do not find any substance in the submission of

the learned counsel. The fact that the deceased died of burn injuries has not been disputed by the appellant. According to him, the deceased committed suicide by setting herself on fire. Therefore, the fact that the deceased died of burn injuries cannot be ruled out. PW-20, Dr. Bijayananda Padhi has clearly stated in his evidence that at the time when he recorded the dying declaration the deceased was conscious and in a fit state of mind. This doctor is an independent witness and there is no reason to disbelieve his evidence. As such there is no escape from the conclusion that the deceased gave the statement while she was conscious and in a fit state of mind. The dying declaration clearly shows that the appellant had poured the kerosene oil and set his wife on fire which ultimately led to her death.

5. We are of the opinion that the trial court and the High Court did not err in relying on the evidence of PW-20, Dr. Bijayananda Padhi and the dying declaration to convict the appellant. Appellant is on bail, his bail bonds are cancelled and he is directed to surrender to serve out the remainder of the sentence.

6. In the result, we do not find any merit in the appeal and it is dismissed accordingly.

.....J.
(HARJIT SINGH BEDI)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI,
FEBRUARY 8, 2011.

