Najjam Faraghi @ Najjam Faruqui

Vs

State of West Bengal

(M. M. Punchhi, M. Srinivasan JJ)

18.11.1997

JUDGMENT

SRINIVASAN, J.

1.The appellant is challenging the concurrent judgments of the courts below whereby he was convicted for an offence under Section 302 I.P.C.and sentenced to suffer imprisonment for life. He was also directed to pay a fine of Rs.5000/-.

2.On the night of 29.6.85 the appellant poured kerosene oil over the head of his wife from behind and lit a matchstick and set her on fire.She was admitted in the hospital around 1.00 A.M.on 30.6.85.Her statement regarding cause of her death was recorded on 1.7.85 by PW 18, Sub Inspector of police marked as Ex.6.Another statement marked as Ex.5 was recorded on 11.7.85 by PW 12, a Magistrate, who was sent to the hospital under orders of the High Court.In both the statements she had stated that her husband came home in a drunk condition in the mid night of 29.6.85 and assaulted her severely.She was driven out of the room but as her two children were sleeping inside she went back to the room.Then he poured kerosene oil from behind and set fire. Her parents were sent for and her father took her to the hospital.Thus in both the statements she had accused her husband of having set fire to her after pouring kerosene.The courts below relied upon the two statements and also the evidence of the post mortem examiner to the effect that the burn injuries were such that they lead to the conclusion that the death was homicidal.The courts below have also referred to all the circumstances of the case and rejected the defence that the wife of the appellant committed suicide or that the offence should if at all be considered to be one under Section 306 I.P.C.and not 302 I.P.C.3.Learned counsel for the appellant places reliance on the following circumstances:-(i) The case history noted in Ex.A by PW 9, a senior House Surgeon as soon as the deceased was admitted in the hospital states that the deceased tried to burn herself after pouring kerosene on her person in a suicidal attempt.ii) The father of the deceased (PW1) wrote a letter on 30.6.85 to the police which has been treated as First Information Report in which it is stated that he was convinced that his son-in-law abetted his daughter in committing suicide.(iii) PW 7 has stated that the deceased was speaking normally soon after the incident and she claimed to have set fire on herself.(iv) The two statements recorded by the Sub Inspector of police and the Magistrate marked as Exb.6 and 5 respectively cannot be considered as dying declaration and given any weight as the deceased lived for twenty days and more till 31.7.85.(v) The Judicial Magistrate who recorded the statement in Ex.5 did not ascertain the mental condition of the deceased and therefore her statement is not reliable in view of the ruling in Kanchy Komuramma Vs.State of Andhra Pradesh 1995 Supp.(4) S.C.C.118.(vi) In the first instance the case was registered under Section 306.When the charge was framed it was under Section 302 I.P.C.After examination of 9 witnesses, the presiding Officer of the Court framed an alternative charge under Section 306 I.P.C.The accused moved the High Court against the order framed an alternative charge in revision but the same was dismissed.Thus the prosecution was in a confusion as to whether the appellant was

guilty under Section 302 I.P.C.or under 306 I.P.C.4.All the aforesaid circumstance have been considered in detail by both the courts and it has been found that there is no substance in the contentions put forward by the defence.A perusal of the record shows that the death could not have been suicidal and it was nothing but homicidal.PW 10 the post mortem examiner has stated as follows:-"Death in my opinion was due to effect of ante-portem burns.Taking into consideration the sities and extent of areas involved in my opinion, the burn was homicidal in nature.Born injury causing death may be accidental, suicidal or homicidal.I found the injuries causing the death to be homicidal.The sites as described on examination of dead body were mostly on inaccessible parts of the victim, the areas were very very extensive.So I hold the opinion that the death was in homicidal in nature.Injury Nos.1,3,4,5,6,7, as mentioned by me were on the back side part inaccessible part on the body of the subject.These injuries were very extensive too.From these injuries I hold the opinion the death was homicidal in nature caused by those injuries which were burn injuries.On the front side of the trunk of the body I did not find any injuries.In regard to her face I did not find injuries exactly on the front side.There is no injury observed by me that could lead me to hold that it was a suicidal death."Nothing could be elicited in the cross-examination to discredit his aforesaid opinion.Both the courts have accepted his evidence and come to the conclusion that the case falls under Section 302 I.P.C.We do not find any justification to take a different view.5.The courts below have also referred to the circumstance that the accused who was admittedly present at the scene of occurrence did not make any attempt to put out the fire and save his wife.His case that he did so and got burn injuries in the process has been rightly negatived.The evidence on record shows that he has made a clumsy attempt to inflict some injuries on himself in order to make the court believe that he attempted to put out the fire.6.The history of the case recorded in the hospital in Ex.A has not been proved to have been given by the deceased.the courts below have rightly refused to attach any value thereto.7.The father of the deceased did not have the necessary information at the time of FIR as his daughter was not in a position to speak when she was taken by him to the hospital.8.The evidence of PW7 has also been considered in the proper perspective by the courts below.There is nothing on record to support the contention of the appellant that the deceased was tutored by her parents to make statements against her husband when she gave the dying declarations.The courts below are right in rejecting that case.9.There is no merit in the contention that the appellant died long after making the dying declarations and therefore those statements have no value. The contention overlooks the express provision in Section 32 of the Evidence Act.The second paragraph of Sub-section (1) reads as follows:-"Such statements are relevant whether the person who made them was or was not, at the time when they were made,under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question" No doubt it has been pointed out that when a person is expecting his death to take place shortly he would be indulging in falsehood.But that does not mean that such a statement loses it value if the person lives for a longer time then expected.The question has to be considered in each case on the facts and circumstances established therein.If there is nothing on record to show that the statement could not have been true or it the other evidence on record corroborates the contents of the statements, the court can certainly accept the same and act upon.In the present case both court have discussed the entire evidence on record and found that two dying declarations contained in Exs 5 and 6 are acceptable.10.The records show that the mental condition of the deceased was sufficiently good to give a statement to the Magistrate.11 The mere fact that the case was registered intially under Section 306 I.P.C ternative charge under the same Section was framed will not vitiate the proceedings or the conclusions of the courts below.There is no doubt that the charge under Section 308 IPC has been proved beyond doubt.

12.We have perused the records.We find ourselves in agreement with the judgments of the courts

below.Hence the appeal is dismissed.