

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1775 OF 2010

DIPANKAR SADHU

...APPELLANT

Versus

STATE OF WEST BENGAL

...RESPONDENT

O R D E R

1. This appeal arises out of a judgment and order dated 12.1.2009 passed by the High Court of judicature at Calcutta whereby Criminal Appeal No.378 of 1990 filed by the appellant against his conviction and sentence of imprisonment for life for an offence punishable under Section 302 IPC has been dismissed, thereby affirming the judgment and order passed by the trial court.

2. Briefly stated, the prosecution case is as under:

A complaint was lodged by one Charan Kumar Saha with Maniktala police station on 30.12.1986. The complaint was to the effect that on 29/30.12.1986 between 12.10/12.15 O'clock at night, the informant was told by one of his relatives that his (informant's) 2nd daughter Gitali had

been set on fire by her husband, the accused-appellant herein. On receiving this information, the informant went to the house of the appellant on Canal East Road and found that his elder daughter Papiya and her husband had already reached there. His younger daughter Gitali was, however, not in the house although her husband (appellant) was present. The informant asked the appellant as to what had happened but he got no answer. Papiya told the informant that at about 12 O'clock the same night, Ashoka, a maid-servant working in the house of the appellant, informed her that the appellant had poured kerosene oil over Gitali and set her on fire. Gitali, it was learnt by the informant, had been admitted to a hospital. The informant on that basis requested the police to take suitable action against the appellant.

3. A case under Section 307 read with Section 498A IPC was, accordingly, registered against the appellant which was later converted to one under Section 302/498A IPC following the death of Gitali. Investigation was, in due

course, completed and a charge-sheet laid before the competent court against the appellant for the offences aforementioned.

4. At the trial, the prosecution examined as many as 19 witnesses to prove its case while the appellant examined Dr. S.N. Haldar in defence. Appraisal of evidence so adduced by the prosecution eventually culminated in the trial court holding the appellant guilty of murder and sentencing him to undergo imprisonment for life. No conviction was, however, recorded by the trial court for the offence punishable under Section 498A IPC.

5. Aggrieved by the judgment and order of the trial Court, the appellant appealed to the High Court at Calcutta. A Division Bench of that Court heard the appeal, reappraised the evidence adduced by the prosecution and that adduced in defence by the appellant but affirmed the findings recorded by the trial court. The present appeal, as noticed above, assails the said judgments and order.

6. We have heard Mr. Pradip Kumar Ghosh, learned senior counsel for the appellant and Mr. Kabir S. Bose, learned counsel for the respondent-State at considerable length who have taken us through the judgments of the two courts below as also the depositions of all material witnesses examined at the trial. The prosecution case primarily rests on the deposition of Ashoka Sardar (PW-1) who was working as a maid-servant in the house of appellant at the relevant time. In addition, the prosecution places reliance upon the depositions of Pronab Kr. Sadhu (PW-4) and Monaranjan Sarkar (PW-5) besides other evidence suggesting that there was an earlier incident of an assault upon the deceased by the appellant and that the matrimonial life of the couple was far from being cordial.

7. In her deposition before the trial court, Ashoka Sardar (PW-1) stated that towards the end of 1986, she was working as a maid servant on a full time basis in the household of the appellant. She knew the wife of

appellant nicknamed Japanee who died about 2 years before the date of her deposition in the Court. The witness was at that time working in the house of the appellant. The witness goes on to state that on the date of occurrence, the appellant returned home at 10 p.m. and asked for food. Since the deceased was busy cooking food, he went out to return at 12/12.30 O'clock at night. There was then a quarrel between the appellant and deceased while the witness was in her room on the ground floor of the house. The witness, further, states that on hearing the noise, she came to the first floor of the house and heard the deceased telling the appellant to have his dinner. Both the appellant and deceased went to the kitchen which was located above the 1st floor of the house. The deceased sat there for serving food to the appellant. It was at that time that the appellant poured kerosene oil on the deceased who had her child in the lap. The mother of the appellant who also used to stay with the appellant took away the child from the lap of the deceased. The

appellant then took a match box lying at the top of refrigerator, lit a match stick and set the deceased on fire. The deceased was suddenly engulfed by the flames whereupon the appellant went to his mother and lamented his deed. The deceased was crying in pain and asked the witness to go to her sister's house at Gouribari and report the incident to her. The witness, accordingly, claims to have gone to the house of Papia Sadhukhan, the sister of the deceased at Gouribari and reported the incident to her. She stayed back in the house of Papia Sadhukhan while Papia Sadhukahn along with her husband, brother-in-law and sister-in-law went to the house of the appellant to find out about the well-being of the deceased.

8. In her cross-examination, this witness stated that she had made a statement to the police about the incident on the same date to the effect that the appellant came to the house at about 10 P.M. and asked for food from deceased and then he went out as food was not ready at

that time. She also stated in the statement made before the police that the appellant came back at 12/12.30 O'clock at night and that a quarrel took place between the deceased and appellant at 12/12.30 A.M. at night. The witness denied having told the police that she had gone to bed without taking food at about 9/9.30 p.m. or that appellant did not return home at that time or that she woke up from her sleep on hearing the noise of the quarrel between the accused and deceased.

9. The witness states that she had heard the quarrel between the appellant and deceased from her room. She did not go to the first floor of the house after 9/9.30 P.M. She further states that she could not go to the place where the deceased was burning due to the flames of fire. She had set her foot on the step of the stairs for going up but due to the flames she could not go any further. She had told the police that she had come out of her room on the ground floor and set her foot on the step of stairs for going up but could not do so on hearing the

cries of Gitali and the flames around her. She also stated to the police that there was no other way left for her except to run out of the house and that Gitali had asked her while she was burning to go to her sister's house at Gouribari and report the incident to her. She also claims to have told the police that the appellant had poured kerosene oil over the body of deceased, taken a match box from the top of the fridge and lit the fire.

10. Both the courts below have disbelieved the version of this witness insofar as she deposed in her examination-in-chief that she was a witness to pouring of kerosene oil over the deceased and lighting of a match stick to set her on fire. The contradiction in the statement made by the witness is much too obvious to be ignored. That is because while in the examination-in-chief, she has stated that she saw the appellant pouring kerosene over the deceased and setting her on fire, in the cross-examination, she clearly admitted that she did not go to the 1st floor of the house after 9/9.30 p.m. from her

room on the ground floor. It is also evident from her cross-examination that she had tried to take a step on the stairs leading to the first floor but could not go up because the deceased was engulfed in fire. She, therefore, ran out of the house to rush to inform the sister of the deceased. If this version of the witness that she could not take a step on the stairs towards the first floor is the correct version, it is difficult to see how this witness could possibly see the pouring of kerosene oil and lighting of the match stick by the appellant when the witness was on the ground floor and the incident of pouring of kerosene and lighting had taken place in the kitchen upstairs. The fact that she heard the cries of the deceased while she was burning only shows that the incident in which the deceased sustained burn injuries had taken place inside the first floor of the house but the genesis of that incident remains in the realm of speculation. The deposition of Ashoka Sardar (PW1) that she was a maid-servant serving

in the house of the deceased for some time and that she was present on the date of incident in the house and that the incident took place around 12/12.30 O'clock at night cannot and has not been disputed by the appellant. What is important is that in cross-examination, the witness does not claim to have gone up to the first floor after 9/9.30 p.m. If that be so, there is no way she could possibly see the pouring of kerosene over the appellant which is alleged to have happened in the kitchen upstairs. The courts below have, therefore, rightly placed no reliance upon this part of her statement; even assuming that the omissions in the statement made to the police under Section 161 Cr.P.C. could be overlooked or held inconsequential.

11. This brings us to the depositions of other witnesses relied upon by the prosecution. Pronab Kumar Sadhu (PW4) has in his deposition stated that he was a resident of 35/4B, Canal West Road and that the appellant was the son of his cousin brother. The witness

claims to be a joint-owner of M/s. Narayani Oil Mills which stands shutdown since 1986. According to this witness, the appellant's wife died on 30.12.1986. The appellant came to him with a car and asked him to accompany him to the hospital saying that his wife had sustained burn injuries in an accident. The witness claims to have accompanied the appellant and the deceased to the hospital where the deceased was admitted. He however had no talk with the doctor who admitted the deceased for treatment. In cross-examination, the witness states that on the way to the hospital, the deceased had been telling him in the car as to why she had to boil milk at such an unearthly hour of the night only to meet with an accident. She was talking normally at that time. She did not say anything else to the witness. The witness also testifies to the presence of one Monoranjan Sarkar (PW5) and the mother of the appellant. The car was being driven by the appellant himself. The witness also states that he knew PW-1

Ashoka Sardar who used to sleep in the same room as the mother of the appellant on the ground floor of the house and that it was not possible to hear anything from the room on the ground floor as to what was happening on the floor above.

12. There is, in our view, nothing incriminating in the deposition of this witness especially when the witness does not even remotely suggest that the deceased was in any way holding the appellant responsible for the misfortune that had befallen her. The witness does not even suggest that the appellant made any confession or that there was any suspicion about the whole incident.

13. So also the deposition of Monoranjan Sarkar (PW5) does not, in our opinion, lend any assistance to the prosecution. This witness has stated that on the date of incident, he woke up on hearing the cries of 'bachao bachao' (save save) of a male voice which was coming from an open space near the place where he was sleeping. Some other people also assembled there hearing the noise.

Appellant told him that his wife had caught fire in the house. On the request of the appellant, he accompanied the appellant and deceased to the hospital but had no talk with the doctor who admitted the deceased for treatment. In cross-examination, the witness states that the deceased was writhing in pain as she was being taken to the hospital and blaming herself for waking up to boil milk only to meet with an accident. This statement also, in our opinion, does not incriminate against the appellant to justify the conclusion that the appellant was indeed guilty of murdering the deceased.

14. It was strenuously argued on behalf of the respondent-State that Ashoka Sardar (PW-1) was a witness to an earlier assault by the appellant in which the deceased was beaten up by the appellant. It is further submitted that the presence of kerosene oil mixed with water streaming down the staircase coupled with the strained matrimonial relations between the deceased and appellant ought to give rise to an adverse inference

against the appellant that the incident in which the deceased died in unnatural circumstances was the making of the appellant.

15. It is true that Ashoka Sardar (PW-1) has made a statement to the effect that there was an earlier incident in which the appellant is said to have assaulted the deceased but that incident stands alone and does not prove the charge of murder levelled against the appellant by itself. This is particularly so when the father of the deceased has while in the witness box neither alleged any dowry harassment nor any physical torture to his daughter. If there was anything of that sort happening between the couple, there was no reason why the parents of the deceased would not have known and testified about the same in the court. Even assuming that there was any earlier incident of assault on the deceased, the same does not unerringly lead to the conclusion that the appellant was guilty of killing the deceased by pouring kerosene over her setting her on fire. At any rate the

previous incident and the telltale signs of some quarrel having taken place immediately before the occurrence can at best give rise to a suspicion but suspicion howsoever strong is not sufficient to hold an accused guilty of a capital offence. In the circumstances, we are inclined to grant benefit of doubt to the appellant while acquitting him of the charge framed against him.

15. We, accordingly, allow this appeal, set-aside the judgments and orders passed by the courts below and acquit the appellant of the charge framed against him. The appellant is on bail. His bail bonds shall stand discharged.

.....J.
(T.S. THAKUR)

.....J.
(R. BANUMATHI)

**NEW DELHI;
APRIL 15, 2015.**

ITEM NO.103

COURT NO.2

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1775/2010

DIPANKAR SADHU

Appellant(s)

VERSUS

STATE OF WEST BENGAL

Respondent(s)

Date : 15/04/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. Pradip Kr. Ghosh, Sr. Adv.
Mr. Kunal Chatterjee, Adv.
Mr. Partha Sil, Adv.

For Respondent(s) Mr. Kabir S. Bose, Adv.
Mr. Anip Sachthey, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Appeal is allowed in terms of signed order. Appellant is acquitted of the charge framed against him. The appellant is on bail. His bail bonds shall stand discharged.

(VEENA KHERA)
COURT MASTER

(PARDEEP KUMAR)
AR-cum-PS

[SIGNED ORDER IS PLACED ON THE FILE]