

State of Gujarat

Vs

Khumansingh Karsan Singh and others

Criminal Appeal No. 549 of 1980

(A. M. Ahmadi, S. Mohan JJ)

10.03.1992

### JUDGMENT

1. Both the trial Court and the High Court have acquitted the respondents and hence this appeal by special leave. The prosecution case is that in the early hours of 4th July, 1976 around 4 a.m. the deceased was burnt to death by her husband and her mother-in-law. There is no direct evidence and the fate of the case depends on the three dying declarations made by the deceased while she was in the hospital. She died on 6th July, 1976 at about 12.45 p.m. The first dying declaration was recorded by a Head constable P.W. 16 wherein she implicated her mother-in-law alone. She did not implicate her husband at all. The second dying declaration was made to her father P.W. 8 wherein she implicated both her husband and her mother-in-law. The third dying declaration was recorded by the executive Magistrate P. W. 14 at about 9 p.m. wherein she implicated both her husband and mother-in-law. It is, therefore, clear that the second and the third dying declarations 'implicated both her husband and mother-in-law while the first dying declaration made to the Head Constable involved her mother-in-law only. It would, therefore, seem that after her father P.W. 8 met her she in the second dying declaration implicated her husband also.

2. There is no doubt that the relations between the deceased on the one hand and her husband and her mother-in-law on the other were strained and she had made an application to Jyoti Sangh at Ahmedabad alleging mental and physical torture. It is not necessary to go into the details but suffice it to say that prior to the occurrence the relations were strained. The prosecution case is that on the morning of 4th July, 1976 when the deceased was attending to some kitchen work her mother-in-law sprinkled kerosene on her from a small lamp and set her on fire. In the first dying declaration she stated that her husband was in the house asleep. The courts, below looked for corroboration in view of the inconsistency in the first dying declaration and the subsequent two dying declarations. The courts below came to the conclusion that in the view of the said inconsistencies and in, view of the bad blood between the deceased and the mother-in-law, it was not possible to place implicit reliance on her dying declaration in the absence of some assurance from! any other independent evidence. The High Court pointed out a number of short comings, so far as the first dying declaration Ex. 54 is concerned. The High Court was also of the view that the possibility of an accidental death could not be ruled out. In that view of the matter the High Court felt it unsafe to base a conviction merely on the aforesaid three dying declarations.

3. We do not think that the view taken by the courts below is so erroneous as would require interference by this Court in exercise of jurisdiction under Art. 136 of the Constitution. There is no doubt that there is inconsistency between the first dying declaration and the subsequent two dying declarations which betrays the possibility of her being amenable to tutoring. It is quite clear the relationship was strained due to the bad blood between her and her mother-in-law. The possibility of

false involvement could not be ruled out and the High Court, therefore, thought that in the absence of corroborative evidence, it is unsafe to rely mainly on the inconsistent dying declarations. We do not think that this case demands our interference under Article 136 of the Constitution. Hence the appeal fails and is dismissed. Bail bonds to be stand cancelled. Appeal dismissed.

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