Kamla

Vs

State of Punjab

Criminal Appeal No. 69 of 1982

(K. Jayachandra Reddy, G.N. Ray JJ)

18.11.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. This is a case alleged to be one of dowry deaths. The appellant is the mother-in-law of the deceased Smt. Kamal. She is convicted by the trial court under S. 302, IPC. and sentenced to undergo imprisonment for life.

2. The appellant along with her husband Gurdial Mal was tried under S. 302, IPC read with S. 34, IPC. The trial Court acquitted Gurdial Mal and convicted the appellant. She preferred an appeal to the High Court but the same was dismissed. Hence the present appeal.

3. The prosecution case is that the deceased in the case of Smt. Kamal was married to Ramesh Kumar, the son of the appellant, about 1-1/2 years prior to the present occurrence which took place on 29-9-79. The deceased was living amicably with her husband at Ludhiana and gave birth to a male child who was about 5 months' old when the incident took place. Though the relations between the deceased and her husband were cordial, the appellant who was the mother-in-law of the deceased and Gurdial Mal, father-in-law were not satisfied with the articles of dowry and they were ill-treating the deceased. Because of some quarrels the deceased left the matrimonial house and went to the house of her uncle Dwarka Dass at Amritsar. However, her in-laws managed to bring back the deceased. On the day of occurrence the appellant and her husband had a quarrel with the deceased regarding the insufficiency of dowry. At that time the husband of the deceased was also there but he did not interfere. When the deceased was busy in the kitchen, the appellant and her husband were there and the deceased heard them talking while standing behind her. Soon thereafter the appellant sprinkled kerosene oil on the clothes of the deceased and set her on fire. The deceased raised an alarm which attracted her husband to the kitchen. He made an attempt to extinguish the fire and in doing so he received some burn injuries. The deceased was immediately removed to the hospital. A Doctor examined her and referred her to the Plastic surgery House Doctor. There she was examined by Dr. Rupinder Singh, P.W. 2 who found that she was having 70 per cent. burns on her body. The Doctor enquired from her as to how she had received the injuries and she is alleged to have made a statement Ex.PB/2 which was reduced to writing by P.W. 2. P.W. 2 sent an intimation to the police at about 10 a.m. on the same day. On that very day, the Medical Superintendent also sent an intimation to the police requesting them to arrange for getting her dying declaration recorded. In that intimation it was stated that the deceased had made a statement before P.W. 2. It appears that the police did not pay any serious attention. Only at 8 p.m., S.I. Vidya Sagar, C.W. I reached the

hospital and recorded the statement which is marked as Ex. PJ. On 30-9-79 the deceased requested the Doctors on duty to record her dying declaration. Dr. Abraham Thomas, P.W. 7 recorded the dying declaration marked as Ex. PD at about 10-30 a.m. and Dr. Bhupen Dass, P.W. 3 and Dr. Jaison Chopra, C.W. 1, who were present in the burn unit attested the same. Later she succumbed to the injuries. A case was registered, both the accused were arrested and the charge-sheet was laid subsequently. Dr. Kewal Kumar Singla, P.W. 4 who conducted the post-mortem, found burns all over the body of the deceased and he opined that the death was due to shock as a result of extensive burns. The prosecution case rests mainly on the dying declarations. The accused pleaded not guilty. The appellant in particular stated that she was ailing for the last two years and she was not even in a position to walk about. The other accused stated that he and the appellant were not in the house and they had gone to the Mandir as those were Navratra days. Later they came to know that their son and the deceased had received burn injuries and according to them the death was an accidental one and that he gave telephonic messages to the uncle of the deceased at Amritsar and to her father at Delhi. He pleaded that he and his wife namely the appellant were falsely implicated. In their defence they examined D.Ws. I to 4. The trial court relying on the dying declarations convicted the appellant but acquitted her husband Gurdial Mal, A-2.

4. Learned counsel for the appellant submitted that the prosecution has not proved beyond all reasonable doubt that the appellant sprinkled kerosene oil and set fire to the deceased and that the case rests entirely on the dying declarations which are highly inconsistent with each other and in such a situation it is highly unsafe to place reliance on any of these dying declarations and convict the appellant. Learned counsel also submitted that in one of the dying declarations it is mentioned that the death was accidental and that her clothes caught fire while working in the kitchen and the plea of the defence that it was a case of accident, is probabilised.

5. It is well-settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests. (vide Khushal Rao v. State of Bombay, 1958 SCR 552: (AIR 1958 SC 22)). The ratio laid down in this case has been referred to in a number of subsequent cases with approval. It is also settled in all these cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. In a case where there are more than one dying declarations if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying decarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

6. Learned counsel further submitted that there are four dying declarations in the case, three of them were recorded by the doctors and one of them by the Sub-Inspector and that in spite of an intimation being given at the earlier time, the police did not make any attempt to get a dying declaration recorded by a judicial officer. Therefore that factor also has to be taken into consideration in examining the inconsistent versions given in these dying declarations.

7. There is no dispute that when the deceased made these dying declarations she was in a fit mental condition. Ex. PB / 2 is the earliest statement made before Dr. Rupinder Singh, P.W. 2 and which was reduced to writing. Apart from this the deceased made two more statements on 29-9-79. The second one is said to have been made before Dr. Jaison Chopra who was examined as C.W. 1. This statement is incorporated in the patient record and is marked as Ex.DA. The third statement Ex.PJ

made by her on that day was recorded by S.I. Vidya Sagar, CW. 2 at about 8 p.m. in the presence of Satpal, examined as D.W. I and Kirpal Singh. Then the fourth dying declaration is said to have been made by her on 30-9-79 before a team of Doctors consisting of Dr. Abraham Thomas, P.W. 7, Dr. Bhupen Dass, P.W. 3 and Dr. Jaison Chopra, C.W. 1. The same is marked as Ex. PD. Both the courts below have relied on the earliest dying declaration ignoring the inconsistencies when compared to the other dying declarations. We think it is necessary to extract these dying declarations as found in the records. Ex. PB/2 a dying declaration recorded by Dr. Rupinder Singh, P.W.2 reads as follows:

> "Patient informed now that her mother-in-law sprinkled kerosene on her from behind and burnt her. Then, her husband came and caught her and dragged her outside. After that, she was brought to the hospital. There had been a fight in the morning between the mother-in-law and father-in-law and the patient."
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> Ex. DA, another dying declaration recorded by Dr. Jaison Chopra, C.W. 1, which is incorporated in the patient record, reads as follows:
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> "History of present illness:
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> Patient was alright before 8 a.m. when she claims to have got burnt by her clothes catching fire from a stove. She was brought to the hospital at 9-30 a.m. and admitted right away."

The third dying declaration Ex PJ was recorded at 8 p.m. on. the same day by S.I. Vidya Sagar, C.W. 2 and the relevant portion of it reads as follows:

> "Somebody had put me on fire from behind. It can be possible that it might have been set in by my parents-in-law (mother-in-law and father-in-law). No injury or burning has been caused with the fire to my son Runnu. All the neighbourers of vicinity had arrived at the spot, but on account of semi-unconsciousness, I could not tell anything to anybody. As my hand and most of the entire body have been burnt, therefore, neither I can append signatures nor thumb impression can be affixed."

The fourth dying declaration Ex. PD made on the next day before a team of three doctors consisting of Dr. Abraham Thomas, P.W. 7, Dr. Bhupen Dass, P.W. 3 and Dr. Jaison Chopra, C.W. 1, reads as follows:

> "My father-in-law and mother-in-law used to fight with me ever since my marriage asking for more dowry. Yesterday morning they quarrelled with me again. It was late for food, so I went to the Kitchen to cook chenas. I was turned to the store when I heard my father-in-law and mot her-in-law talking behind me. Suddenly they poured kerosene over me and there was a noise I turned down to see what it was and a jug had fallen on the floor. At the same time they set fire on me and I was pushed I do not know what happened afterwards."

8. If we examine all these dying declarations one by one we notice glaring inconsistencies as to who exactly poured kerosene oil and set fire or whether she caught fire accidently. Suicide however is ruled out. In Ex. PB/2 recorded by P.W. 2 the deceased stated that her mother-in-law sprinkled kerosene oil from behind and burnt her. In the next statement Ex.DA recorded by Dr. Jaison Chopra, C.W. 1, she is alleged to have stated that her clothes got burnt catching fire from the stove, thereby indicating that it was an accident. In the third statement Ex. PJ recorded by C.W. 2 she was rather

vague as to who exactly poured kerosene oil and set fire on her and she only stated that it could be possible that her mother-in-law and father-in-law might have set the fire after pouring kerosene oil. On 30-9-79 Ex. 13D was recorded in the presence of three doctors, P.W. 7, P.W. 3 and C.W.1 wherein she stated that she turned to the store and she heard her mother-in-law and father-in-law talking behind her and suddenly they poured kerosene oil and they set her on fire. The trial Court and the High Court discarded the other statements and relied only on Ex. PB/2 recorded by P.W.2 wherein she implicated only her mother-in-law. So far Ex. DA recorded by D.W. I is concerned, the High Court pointed out that C.W. I was also present when Ex. PD was recorded and that at any rate there was no occasion for CM. I to record such statement and that he must have done the same at the instance of the accused. After having carefully examined the record and facts and circumstances, we do not think that a remark of this nature against C.W. 1, a responsible doctor is called for. The mere fact that C.W. I Dr. Jaison Chopra was present when Ex. PD was recorded on the next day does not necessarily mean that he could not have recorded Ex. DA on the previous day. As a matter of fact, even in Ex.PD recorded by a team of doctors, she implicated both mother-in-law and father-in-law whereas in Ex. PB/ 2 she implicated only her mother-in-law. This itself shows that she was bent upon implicating both of them at a later stage. In this context it is also noteworthy that D.W. 2, the husband of the deceased supported the plea of the accused. He deposed that both the accused namely his mother and father were away to Dandi Swami Mandir on the day of occurrence and that at about 8-15 a.m. he heard the shrieks raised by the deceased from the kitchen. He picked up a blanket and went running into the kitchen apprehending that she might have caught fire due to bursting of the gas cylinder. He covered her with the blanket and brought her out and his clothes also caught fire and he became unconscious and regained consciousness in the hospital. In the cross-examination by the prosecution he denied the suggestion that he made a false statement with a view to save his parents. Deceased in all her dying declarations has clearly stated that her husband namely D.W,2 came and rescued her. Therefore D.W. 2's evidence cannot simply be brushed aside on the ground that he might have given such a version to save his parents and his evidence further shows that the occurrence could be due to accident. Viewed from this angle also the version-given in the statement made before C.W. I in Ex. DA that it was due to accident, is not improbable. In Ex. PJ she only expressed a suspicion against both her mother-in-law and father-in-law. The accused examined D.W. I Satpal an attesting witness of the statement Ex. PJ. He supported the defence version. Thus it can be seen that there are glaring inconsistencies in these dying declarations. Both the courts below, however, held that P. W. 2, Dr. Rupinder Singh is a reliable and independent witness, therefore, the statement recorded by him has to be accepted and accordingly convicted the appellant. We must observe that P.W. 2 simply recorded the statement of the deceased but the contents of that statement have to be subjected to a close scrutiny in the light of many other circumstances since the conviction has to be based on the sole dying declaration Ex.PB/2. A dying declaration should satisfy all the necessary tests and one such important test is that if there are more than one dying declarations they should be consistent particularly in material particulars. Just like P.W. 2, P.W. 7, P.W. 3 and CM. I are also respectable doctors and independent witnesses who spoke about the contents of Ex. PD in which she implicated both her father-in-law and mother-in-law specifically as having participated in the crime. Under these circumstances" the irresistible conclusion is that the dying declarations are inconsistent and in such a situation we just cannot pick out one statement namely Ex. PB/ 2 and base the conviction of the appellant on the sole basis of such a dying declaration. The courts have cautioned that in view of the fact that the maker of the statement cannot be cross-examined, the dying declaration should be carefully scrutinised. In the instant case the deceased was wavering for the reasons best known to her. The inconsistency between Ex. PB / 2 and Ex. PD is enough to manifest the same. That being so, we do not think that either Dr. Jaison Chopra, C.W. I or S.I. Vidya Sagar, C.W. 2 who claimed to have recorded Ex. DA and Ex.PJ should be blamed. Having given our

earnest consideration, we feel that under these circumstances it is highly unsafe to convict the appellant on the sole basis of the dying decraration Ex. PB/2 recorded by P.W. 2. In the result the conviction and sentence passed against the appellant are set aside and the appeal is allowed. If she is on bail, her bail bonds shall stand cancelled. Appeal allowed.

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