

Betal Singh

Vs

State of M.P.

Criminal Appeal No. 124 of 1987

(M.M. Punchhi, K.T. Thomas JJ)

15.04.1996

JUDGMENT

THOMAS, J. –

1. This is a case of uxoricide. Kamla, the teenage wife of the appellant was burnt to death. Her suckling baby also sustained burns but did not die then. The appellant was charged for murder of Kamla. Though the Sessions Court acquitted the appellant the High Court of Madhya Pradesh in an appeal filed by the State, reversed the acquittal and convicted him under Section 302 IPC and sentenced him to imprisonment for life. Hence this appeal by the convicted appellant.

2. Facts, set up by the prosecution, in brief, are these.

3. Kamla and her husband Betal Singh (appellant) and their little child were living together with the appellant's mother. Kamla was entertaining suspicion that her husband was carrying on illicit sexual connection with his elder sister-in-law, and Kamla used to openly accuse him of it. This conduct of Kamla invited trouble to her from the appellant as well as her mother-in-law and she was subjected to torture by them on account of it. The murder took place on 7-6-1979. A few days prior to it her mother-in-law left the house and went to a nearby village on some errand. Around 10 a.m. on the date of occurrence, the appellant doused the deceased with kerosene and set her ablaze by lighting a matchstick. Her little child also caught fire and both sustained severe burn injuries. Hearing her tantrums people around, including some of the prosecution witnesses, rushed into the room and they witnessed a human inferno remaining helpless. They made some efforts to extinguish the fire. But the burn injuries sustained by Kamla were so devastating that she could not survive beyond evening.

4. Before her death Kamla was taken to a nearby hospital. FIR was registered on the strength of a statement given by a neighbour (PW 1). A police officer (PW 14 - ASI), went to the hospital and recorded a statement from Kamla (Ext. P-1) which later turned out to be the most important item of evidence in this case as the same became admissible under Section 32 of the Evidence Act, 1872.

5. The version recorded in Ext. P-1 is the following.

6. Her husband had illicit connection with his sister-in-law and he persisted in it despite her repeated protestations. She was subjected to physical assaults by her husband's father and mother and occasionally she was put to starvation. Once she saw her husband in liaison with the sister-in-law and when she protested she was beaten up by her husband as well as her mother-in-law. Food was denied to her for four days. About eight days before the occurrence, her mother-in-law had gone away but she suggested to her son to eliminate Kamla by burning her. On the day of occurrence,

while she was sleeping on a cotton carpet (deri) in her room, the appellant sprinkled kerosene on her and lighted a matchstick. He then bolted the room from outside. She was rescued by the neighbours.

7. If the version in Ext. P-1 can be acted on, it certainly would prove the guilt of the appellant. But the Sessions Judge did not believe it and hence the acquittal by him. The High Court has chosen to place reliance on the said statement. After reminding themselves of the legal principles to be observed while interfering with an order of acquittal, learned Judges of the High Court reached the conclusion that Kamla was murdered by the appellant and accordingly convicted him and sentenced him as aforesaid.

8. The appellant in his defence has examined two doctors (DW 1 and DW 3) who were attached to the hospital where Kamla was admitted with burn injuries. Those witnesses proved a statement recorded in Ext. D-1, which is said to be part of the case sheet included in the "bed head ticket". DW 1 Dr. Kamal Misra said that he scribbled down the version given by the deceased Kamla soon after she was brought to the hospital. What is stated in Ext. D-1 is that when Kamla was cooking food, a stove abruptly burst and her clothes caught fire and her husband rushed to her rescue. Kamla also told the doctor that she had no enemies, although she had some disputes with her mother-in-law. DW 1 said that the thumb impression of Kamla was taken on Ext. D-1 statement. DW 3 is a junior doctor working under DW 1. He too had affixed his signature on Ext. D-1.

9. No doubt if Ext. D-1 is a genuine document it would cut at the root of the prosecution case and nothing more need be considered by us in this case. But the learned Judges of the High Court found Ext. D-1 as a concocted document. The High Court pointed out the incongruity that those doctors ventured to record the dying declaration of a patient who was struggling in pain instead of applying any ointment or medicine on her person. That apart, the bed head ticket maintained for the patient which was seized by the police (marked as Ext. P-28) did not contain any sheet with a statement like Ext. D-1. Ext. P-28 shows that two other doctors (Surgeons-in-charge) had attended on the patient first whereas the names of DW 1 and DW 3 were not mentioned in it. In cross-examination, DW 1 Dr. Kamal Misra said that he forwarded the sheet containing Ext. D-1 statement to the office and that he collected it from the office when he was summoned to appear in the court. The High Court castigated Ext. D-1 as a concocted document. The learned Judges pointed out that after Ext. P-28 was marked on the prosecution side the defence did not even suggest during cross-examination that a paper containing Ext. D-1 statement was actually incorporated in it. Nor did the defence even suggest to any prosecution witness that a stove was kept near the place of occurrence. Those features have been highlighted by the learned Judges of the High Court for sidelining Ext. D-1. The following conclusion has been reached by the learned Judges regarding Ext. D-1 :

"All these facts indicate that Ext. D-1 the dying declaration allegedly recorded by Dr. Misra (DW 1), did not exist at all till the trial came to its fag-end. Defence filed an application on 13-11-1979 for summoning the case sheet of Kamla containing Ext. D-1 and to us it seems that this Ext. D-1 was prepared after the trial started. We have no doubt in our mind that Ext. D-1 is not only a false and spurious document, but it did not exist at all on 7-6-1979. It appears that it was prepared later on to show that the death of Kamla was caused due to bursting of stove, while she was cooking."

10. Those are very cogent reasons and the High Court has reached such a conclusion on the strength of those reasons. We are not persuaded to take a different view on Ext. D-1.

11. Evidence of the defence witness (DW 2) that the door of the room was bolted from inside did

not inspire confidence and the High Court for good reasons rejected it. Apart from the statement recorded by the ASI in Ext. P-1 certain other circumstances were also considered by the High Court. They are : (1) when the neighbours rushed to the room Kamla told PW 2 and PW 3 that she was being murdered by her enemy. PW 3 said further that while saying so the deceased had pointed her finger to the appellant who was standing nearby, (2) PW 1 overheard the statement which the deceased gave to the ASI and the testimony of PW 1 is in substantial concord with what is recorded in Ext. D-1, (3) appellant did not move a little finger to put out the fire when his wife and child were struggling in the fire, (4) nor did he raise even an alarm seeking the help of others to rescue his wife and child, (5) the motive i.e. the conduct of the deceased constantly attributing incestuous adultery to the appellant would have made up his mind to do something drastic to end this menace even if there was no truth in such an accusation.

12. Learned counsel for the appellant referred to a discrepancy which he noticed between the testimony of PW 2 and that of PW 3, as the latter alone said that Kamla pointed her finger to the appellant. The High Court did not take the said discrepancy seriously. Perhaps PW 3 alone would have noticed that gesticulation of the deceased.

13. Learned counsel attacked PW 1's evidence as he told the police that he did not know how the incident happened. We don't think that the said evidence needs rejection on that ground because when PW 1 met the police first the deceased had not made any statement to the police and so PW 1 would have had no reason to come to the conclusion about what happened. As the High Court has placed reliance on the evidence of PW 1 we do not see any reason to take a different view regarding that.

14. It is true that in *Munnu Raja v. State of M.P.* [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : AIR 1976 SC 2199] this Court has struck a note of caution that the investigating officers, who are naturally interested in the success of the investigation, ought to be discouraged in recording the dying declarations, during the course of investigation. However, in *Dalip Singh v. State of Punjab* [(1979) 4 SCC 332 : 1979 SCC (Cri) 968 : AIR 1979 SC 1173] this Court noticed the above observation and pointed out that it is not meant to suggest that such dying declarations are always untrustworthy. Their Lordships observed : (SCC p. 335, para 8)

"We do not mean to suggest that such dying declarations are always untrustworthy, but what we want to emphasize is that better and more reliable methods of recording a dying declaration of an injured person should be taken recourse to and the one recorded by the police officer may be relied upon if there was no time or facility available to the prosecution for adopting any better method."

15. Legal position remains unaltered that dying declaration should be scrutinised very carefully and if the court is satisfied after such scrutiny that the dying declaration was true and was free from any effort to prompt the deceased to make such a statement and is coherent and consistent, there is no legal impediment in founding the conviction on it. (*Kusa v. State of Orissa* [(1980) 2 SCC 207 : 1980 SCC (Cri) 389 : AIR 1980 SC 559]). The position does not change even if such a dying declaration is put forward in a bride-burning case whether or not it has been recorded by the police officer during investigation. (*State of Punjab v. Amarjit Singh* [1988 Supp SCC 704 : 1989 SCC (Cri) 58 : AIR 1988 SC 2013], *Paniben v. State of Gujarat* [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817], *Charipalli Shankararao v. Public Prosecutor, High Court of A.P.* [1995 Supp (4) SCC 24 : 1996 SCC (Cri) 21])

16. There is no reason for PW 14 ASI to concoct such a statement as Ext. D-1. As PW 1 also heard Kamla telling those facts to the ASI, the High Court is fully justified in acting on the testimony of PW 1. The conduct of the appellant as observed by the witnesses who reached the scene while Kamla was in flames is very much consistent with the conduct of a culprit who did the act attributed to him.

17. In the result, we agree with the conclusion arrived at by the High Court in reversal of the finding reached by the Sessions Court. Accordingly, we dismiss the appeal.