SUPREME COURT OF INDIA

N. V. Satyanandam

Vs.

Public Prosecutor, A. P. High Court

Crl.A.No.920 of 1997

(N. Santosh Hegde and B. P. Singh, JJ.)

24.02.2004

JUDGEMENT

SANTOSH HEGDE, J.:-

1. The appellants before us were charged of offences punishable under Sections 304-B and 498-A, IPC and were sentenced to undergo RI for a period of 7 and 2 years respectively by the Sessions Judge, East Godavari District at Rajahmundry, Andhra Pradesh. Said conviction and sentence of the appellants came to be confirmed by the High Court of Judicature, Andhra Pradesh at Hyderabad by the impugned judgment. Now they are in appeal before us. Prosecution case necessary for disposal of this appeal is as follows:

The first appellant before us is the son of appellant Nos. 2 and 3 while appellant No. 2 is the husband of appellant No. 3. The first appellant was married to one Aruna Kumari which took place on 18-5-1990. It is the prosecution case that Aruna Kumari was the daughter of the sister of A-1. Thus, in reality Aruna Kumari had married her own maternal uncle. It is the further case of the prosecution that the appellants were constantly making demand from the parents of Aruna Kumari

which, inter alia, included 1/3rd share in a house belonging to the parents of Aruna Kumari. Thus, the appellants were constantly harassing said Aruna Kumari. The prosecution in support of its case relating to harassment relied upon Exs. P-4 to P-6 - letters written by Aruna Kumari between 12th May and 5th August, 1991. Prosecution also relies upon a Panchayat Ex. P-8 which took place and an agreement Ex. P-9 executed by the accused 1 and 2 undertaking to look after Aruna Kumari properly and not to harass her. It is the further case of the prosecution that on 12-7-1992 at about 3 p.m. deceased doused herself with kerosene and set herself afire due to which she suffered severe burn injuries. She was then taken to Government Hospital, Kothapeta, where noticing her condition the doctor sent a requisition to the Munsif Magistrate to make arrangements to record her dying declaration. Consequent to this request the Munsif Magistrate, PW-13 proceeded to the Government Hospital and recorded the dying declaration Ex. P-28 at about 5.30 p.m. He states that before recording he asked the opinion of the doctor PW-10 whether the patient was in a fit condition to make a declaration and on being told that she was in a fit condition, he started recording her declaration. He states that while recording the said statement, he asked the Police and others attending on the patient to leave the room and he recorded her statement in a question and answer form. A perusal of this document Ex. P-28 shows that the deceased stated that she suffered the burn injuries accidentally because of a stove burst while she was preparing tea. There is nothing in this dying declaration to indicate even remotely that she committed suicide.

2. Soon after this dying declaration was recorded, PW-11 who was then working as a Head Constable in Kothapeta Police Station, having received an intimation from the hospital, proceeded to the hospital and recorded another statement of the deceased marked as Ex. P-25. This statement also contains a certificate of PW-10 as to the condition of the patient to make a declaration. As per this dying declaration, the deceased stated that on being unable to bear the dowry demand and harassment meted out by her husband and in-laws, she poured kerosene on herself and set herself ablaze, consequent to which she suffered burn injuries. From the record it is seen that Aruna Kumari died at about 7.30 p.m. on the same day. During the course of investigation the prosecution examined nearly 14 witnesses out of whom P.Ws. 1 to 5 and 7 speak to the demand of dowry made by the appellants as also the harassment meted out to the deceased. Prosecution has also produced Exs. P-4 to 7 - letters written by the deceased to her parents narrating the nature of dowry demand as also the harassment. Ex. P-8 is a Memorandum drawn up by the Panchayatdars calling upon the appellants to give an undertaking to treat the deceased properly.

Ex. P-9 is an undertaking given by A-1 and A-2 to look after the deceased properly. It is on the basis of the above evidence collected during the course of investigation the appellants were charged for offences as stated above in the Court of District and Sessions Judge, Rajahmundry who as per his judgment dated 30-3-1994 convicted all the accused persons for offences punishable under Sections 304-B and 498-A, IPC. The said conviction and sentence came to be confirmed by the High Court of Judicature, Andhra Pradesh at Hyderabad by the impugned judgment and against which the appellants herein preferred a SLP. When the said petition came up before the Court on 26-11-1996, this Court dismissed the petition of the first appellant herein while notice confined to the petition of appellant Nos. 2 and 3 alone was issued. However, subsequently, by entertaining a review petition filed by the first appellant as per its order dated 29-9-1997, this Court granted leave in regard to the petitions of all the three appellants, hence, all the 3 appellants are now before us in this appeal.

3. In this appeal, Mr. P. S. Narasimha, learned counsel appearing for the appellants, submitted that both the Courts below erred in rejecting the first dying declaration Ex. P-28 on unsustainable grounds and further erred in placing reliance on the subsequent dying declaration Ex. P-25 recorded by a Police official which gave a different version. He also submitted that the Courts below erred in finding corroboration to the contents of the dying declaration Ex. P-25 from the evidence of the prosecution witnesses. He submitted that a dying declaration recorded by a Magistrate which is in conformity with the requirements of law, should always be preferred to an extra-judicial dying declaration made to a Police Officer and that too subsequent to the recording of the first dying declaration. Learned counsel pointed out if the contents of Ex. P-28, the dying declaration made to the Munsif Magistrate are unimpeachable and if the Court is satisfied, reliance can safely be placed on the contents of the said dying declaration. Any amount of evidence to the contrary could not diminish the value of such dying declaration. He submitted the fact that the deceased died of accidental burns is not only spoken to by her in unequivocal terms, the same is also supported by the entries made by the doctor, PW-10 in the information sent by him to the Police as also in the accident register Exs. P-20 and 21 which were entries and information made prior to Ex. P-28 which also shows that the deceased had suffered accidental burns. He submitted that there was a dispute between the families of the deceased and the appellants and all the witnesses who have spoken about the harassment or demand for dowry are interested persons whose evidence cannot be relied upon to discard the statement of the deceased herself as to the cause of her death.

4. Mr. G. Prabhakar, learned counsel appearing for the State, very strongly supported the judgments of the two Courts below and submitted that there is hardly any room for interference with the well-considered judgments of the two Courts below. He submitted that there is no law which makes a dying declaration recorded by a Police official either inadmissible or, in any way, lesser in evidentiary value. It is his submission that Courts will have to weigh the evidentiary value of these two dying declarations on their merit and if there is contradiction between the two, either reject both or choose one which is more acceptable for its evidentiary value. In the instant case, he submitted that the evidence produced by the prosecution shows that right from the beginning the appellants have been making undue demand for dowry and have also been harassing the deceased both physically and mentally which is amply evidenced by the documentary evidence as well as the oral evidence produced by the prosecution. In such a case a dying declaration which is in conformity with the said line of evidence produced by the prosecution should be accepted instead of the one which is contrary to other acceptable evidence produced in the case.

5. We have heard learned counsel and also perused the records. It is true from the evidence led by the prosecution it has been able to establish that the appellants were demanding dowry which was a harassment to the deceased. It is also true that the death of the deceased occurred within 7 years of the marriage, therefore, a presumption under Section 113-B of the Evidence Act is available to the prosecution, therefore, it is for the defence in this case to discharge the onus and establish that the death of the deceased in all probability did not occur because of suicide but was an accidental death.

6. It is for the above purpose, learned counsel for the appellants has strongly relied on the dying declaration Ex. P-28 which according to him, is free from all blemish and is not surrounded by any suspicious circumstances. We are of the opinion that if the contents of Ex. P-28 can be accepted as being true then all other evidence led by prosecution would not help the prosecution to establish a case under Section 304-B, IPC because of the fact that even a married woman harassed by demand for dowry may meet with an accident and suffer a death which is unrelated to such harassment. Therefore, it is for the defence in this case to satisfy the Court that irrespective of the prosecution case in regard to the dowry demand and harassment, the death of the deceased has not occurred because of that and the same resulted from a cause totally alien to such dowry demand or harassment. It is for this purpose the appellants strongly place reliance on the contents of Ex. P-28, therefore, we will have to now scrutinise the circumstances in which Ex. P-28 came into existence and the truthfulness of the contents of the said document. It is the prosecution case itself that on the fateful day at about 3'O clock the deceased suffered severe burn injuries and she was brought to the Government hospital at Kothapeta. As per the evidence of PW-10 the doctor when she was admitted to the hospital, he sent an intimation to the Police as per Ex. P-21 and also made an endorsement in Ex. P-22, the accident register. In both these documents, he had noted that the deceased suffered accidental burn injuries due to stove burst. It is not the case of the prosecution that this entry was made by the doctor at the instance of any one of the appellants. At least no suggestion in this regard has been put to the doctor when he was in the witness box. As a matter of fact, there is considerable doubt whether any of the appellants was present at the time when the deceased was brought to the hospital and was first seen by the doctor PW-10. On the contrary, according to the doctor, a large number of relatives other than the appellants were present at that point of time when the deceased was brought to the hospital, therefore, it is reasonable to infer that the information recorded by the doctor in Exs. P-21 and 22 is an information given to the doctor either by the victim herself or by one of the relatives present there, who definitely were not the appellants. From the evidence of this doctor, we notice that anticipating the possible death he sent a message to the Munsif Magistrate to record a dying declaration and the said Magistrate PW-13 came to the hospital immediately and after making sure that all the relatives and others were sent out of the ward and after putting appropriate questions to know the capacity of the victim to make a statement and after obtaining necessary medical advice in this regard, he recorded the dying declarations which is in question and answer format. It is in this statement the deceased unequivocally stated that she suffered the injuries accidentally while preparing tea. There has been no suggestion whatsoever put to this witness when he was in the box to elicit anything which would indicate that this statement of the deceased was either made under influence from any source or was the statement of a person who was not in a proper mental condition to make the statement. From the questions put by the Munsif Magistrate, and from the answers given by the victim to the said questions as recorded by the Munsif Magistrate we are satisfied that there is no reason for us to come to any conclusion other than that this statement is made voluntarily and must be reflecting the true state of facts. The trial Court while considering this dying declaration seems to have been carried away by doubting the correctness and genuineness of this document because of other evidence led by the prosecution thus, in our opinion, erroneously rejected this dying declaration which is clear from the following finding of the trial Court in regard to Ex. P-28 : "Her statement made to the Magistrate which is at Ex. P-28 has been demonstrated to be an incorrect statement of fact and it appears that in the presence of the 3rd appellant, she made the statement that from the burning stove her sari caught fire while she was preparing tea." We find absolutely no basis for the two reasons given by the trial Court for coming to the conclusion that the deceased's statement under Ex. P-28 is an incorrect statement. The Court came to the conclusion that this statement must have been made in the presence of the 3rd appellant, a fact quite contrary to the evidence of PWs. 10 and 13. On the contrary, the Munsif Magistrate

specifically states that he asked everyone present and who were unconnected with the recording of the statement, to leave the room. This has not been challenged in the cross-examination. Therefore, in our opinion, this part of the foundation on which the trial Court rejected Ex. P-24 is non-existent. It is also seen from the above extracted part of the judgment of the trial Court that it held that it "has been demonstrated to be an incorrect statement of fact". For this also, we find no basis. If the trial Court was making the second dying declaration as the basis to reject the first dying declaration as incorrect then also in our opinion, the trial Court has erred because in the case of multiple dying declarations each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there are more than one dying declaration, it is the duty of the Court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.

7. The trial Court in its turn while considering Ex. P-28 observed thus : "I do not want to give much importance to the dying declaration recorded by PW-13. The deceased out of confusion or live (sic) and affection towards her husband and in-laws, who are no other than the grand parents might have stated so." With respect to the learned Judge, this finding in regard to Ex. P-28 is based on inferences not based on record. We have already noticed that none of the accused was present at the time Ex. P-28 was recorded. That apart, we fail to understand if the finding of the trial Court that Ex. P-28 came into existence because of love and affection towards her husband and in-laws, is correct then why did the deceased about 10 minutes later implicate the very same persons in Ex. P-25 of having led her to commit suicide. In our opinion, unless there is material to show that the statement as per Ex. P-28 is given either under pressure of the accused or is a statement made when the victim was not in a proper state of mind or some such valid reason, the same cannot be rejected merely because it helps the defence. We have already observed even a harassed wife can get burnt accidentally in which case her death cannot be attributed to harassment so as to attract Section 304-B, IPC.

8. Having noticed the findings of the two Courts below in regard to Ex. P-25, we will now consider the dying declaration recorded by PW-11 as per Ex. P-25. This statement came into existence about 10 minutes after Ex. P-28 was recorded by the Munsif Magistrate. We have already expressed our doubt as to the need for recording this statement when the Munsif Magistrate on a request made by the doctor had already recorded a dying declaration as per Ex. P-28. It has come on record that when PW-11 recorded this statement, he did not take the precautions which the Munsif Magistrate took in sending the relatives of the victim out of the room. He also did not put preliminary questions to find out whether the patient was in a fit state of mind to make the said statement. It is to be noted here that the doctor in Ex. P-25 only states that the patient is conscious. In the said statement, of course, the victim had stated that she set fire to herself being unable to bear the harassment meted out to her by her husband and in-laws. This part of the statement in Ex. P-25 directly contradicts his earlier statement made to the Munsif Magistrate as per Ex. P-28. Ex. P-28 is a document which exculpates the accused person of an offence under Section 304-B, IPC. There is no reason to disbelieve the contents of Ex. P-28 merely because it is not in conformity with the prosecution case as to the harassment meted out to the victim. The Courts will have to examine the evidentiary value of Ex. P-28 on its own merit and unless there is material to show that the statement made in Ex. P-28 is inherently improbable and the same was made by the victim either under pressure from outside source or because of her physical and mental condition, the same cannot be rejected as untrue or

unreliable. The Magistrate by the preliminary questions had satisfied himself that the victim was in a fit condition to make the statement. In this background, we find no reason why Ex. P-25 which was recorded by a Head Constable without following the proper procedure should be given preference. The Courts below, in our opinion, have fallen in error in rejecting Ex. P-28 and preferring to place reliance on Ex. P-25; moreso in the background of the fact that no suggestion whatsoever has been made either to the Munsif Magistrate or to the doctor as to the correctness of Ex. P-28. Per contra, a specific suggestion has been made to PW-11 the Head Constable that he had implicated the accused persons in Ex. P-25 at the instance of the relatives of the deceased and her thumb impression was taken subsequently. Of course, he has denied this suggestion. Be that as it may, the fact that Ex. P-25 came into existence a few minutes after Ex. P-28 and was recorded without taking necessary precautions by a Police Officer, we think it more appropriate to place reliance on Ex. P-28 rather than on Ex. P-25. If that be so, the death of the deceased will have to be related to her having suffered burn injuries accidentally and succumbed to the same. We are aware that since death of Aruna Kumari in this case occurred within 3 years of her marriage, a presumption under Section 113-B of the Evidence Act is available to the prosecution, but since we have accepted the contents of Ex. P-28 as true, that presumption stands rebutted by the contents of Ex. P-28. In such a case unless the prosecution is able to establish that the cause of death was not accidental by evidence other than the dying declarations, the prosecution case under Section 304-B, IPC as against the appellants must fail.

9. The above finding of ours, however, will not exonerate the appellants of the charge under Section 498-A. We have noticed from the evidence of P.Ws. 1 to 5 and 7 as also from Exs. P-4 to 9 that the prosecution has established frequent demands for dowry as also harassment of the victim because of the non-payment of dowry. In this regard, we are in agreement with the findings of the two Courts below, though we have come to the conclusion that the same finding would not assist the prosecution to base a conviction under Section 304-B. In our opinion the material produced by the prosecution in regard to the demand for dowry and harassment is sufficient to base a conviction under Section 498-A, IPC. Hence while allowing this appeal and setting aside the conviction and sentence imposed by the two Courts below for an offence punishable under Section 304-B, IPC, we confirm the sentence imposed by the Courts below for an offence punishable under Sec. 498-A, IPC.

10. We are told appellants are on bail. Their bail bonds shall stand cancelled. They shall serve out the balance of sentence, if need be. Remission for the sentence already served, if any, shall be given. The appeal is partly allowed.

Appeal partly allowed.