

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Parthu

Crl.A.No.325 of 2002

(S.B. Sinha and H.S. Bedi JJ.)

13.09.2007

JUDGMENT

S.B.SINHA, J :-

(1) The Officer In-charge of Harmirgarh Police Station received a telephonic message that one Smt. Lali wife of Parthu, appellant herein has received burn injuries and was lying in a serious condition. An entry to that effect was made in the Rojnamcha register whereafter Head Constable P.W.-6 Narayan Singh along with some other police personnel proceeded to the spot. They took her to Mahatama Gandhi Hospital at Bhilwara for treatment. The said Narayan Singh recorded her statement which was treated as dying declaration wherein she disclosed that she was burnt by her husband. On the basis of the said statement a First Information Report for an offence under Section 307 I.P.C. was recorded by P.W.9- Shankar Singh, SHO Police Station Hamirgarh. He took up the investigation in relation to the said incident. P.W.9-Shankar Singh also recorded the statement of the deceased on 8.6.1995.

(2) Lali died on 19.6.1995 whereafter Section 302 I.P.C. was added in the First Information Report.

(3) Before learned trial Judge eleven prosecution witnesses were examined.

Some of the prosecution witnesses who were relatives of the deceased turned hostile.

(4) Respondent, however, in his cross-examination under Section 313 stated that the death of Lali was an accidental one, as when she had been pouring kerosene in the stove and lit the match stick, suddenly the fire broke out.

(5) Learned trial Judge relying on or on the basis of the aforementioned two dying declarations, which were marked as Exhibit P-6 and Exhibit P-14 respectively, held the respondent guilty of commission of the said offence. The High Court, however, on an appeal having been preferred thereagainst by the respondent was of the opinion that as no statement had been made by P.W.10-Dr. Avdesh Mathur that the deceased was in a fit state of mind to make a statement before the Investigating Officer P.W.6.- Narayan Singh and furthermore in view of the fact that he had not treated the deceased, was sufficient to arrive at a conclusion that no reliance could be placed on the said dying declarations.

(6) The High Court was furthermore of the opinion that keeping in view the fact that the incident

took place on 27.5.1995 and the death took place on 19.6.1995, the dying declarations of the deceased should have been recorded by a Magistrate.

(7) On the finding, the High Court recorded a judgment of acquittal. The State of Rajasthan, is thus, before us.

(8) We may at the outset notice that the High Court itself has proceeded on the basis that the 'homicidal nature of the death of the deceased is not in dispute'. The fact that she had died of burn injuries is also not in dispute. The short question which arises for our consideration is as to whether the aforementioned two dying declarations could be relied upon or not.

(9) We have gone through the said two dying declarations Exhibit P-6 and Exhibit P-14. Similar statements in regard to nature of offence appear to have been made in the said two dying declarations; although the dying declaration recorded by the Investigating Officer- Shankar Singh PW-9 on 8.6.1995 is a bit more detailed one.

It has been recorded by both the Courts below that Dr. Avdesh Mathur PW-10 was present when the dying declaration(Exhibit P-14) was recorded. It is true that in the said dying declaration, no certificate to the effect that the deceased was in a fit state of mind to have such statement, was subscribed but after recording of the dying declaration was over, the Doctor attested her thumb impression as also her statement before the Investigating Officer.

(10) The High Court commented thereupon opining that there could not have any attestation of such statement. Technically the High Court may be right but what was meant by P.W.10-Dr.Avdesh Kumar by issuing such a certificate in the dying declaration was that the statement of the deceased was made by her before the Investigating Officer in his presence and the same has correctly been record by the latter, P.W.10-Dr.Avdesh Kumar is a Medical Jurist. He himself also had inquired about the incident in question from the deceased. She had revealed that a quarrel had taken place between the husband and wife whereafter he had poured kerosene on her and lit the fire.

(11) We may notice that P.W.10-Dr. Avdesh Kumar had in his cross- examination categorically stated:

" No note had been put on the report exhibit P6 to the effect that deceased is in fit condition to give statement, but she was in a fit condition to give statement. It is incorrect to say that the deceased was not in a position to give statement and when she was in the condition, she was not in her consciousness."

710, this Court opined as under: