

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Parmendra Singh

Crl.A.No.183 of 2003

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

04.05.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Rajasthan High Court, Jodhpur, directing acquittal of the respondent who faced trial alongwith two others namely, Smt. Keshar Kanwar and Tara Devi. They faced trial for alleged commission of offences punishable under Sections 302, 498-A, 201, 120-B of the *Indian Penal Code, 1860* (in short the `IPC'). The trial Court acquitted the accused Keshar Kanwar from the charges relatable to Section 498-A, 302/34, 201/34 and 120-B IPC. The accused Tara Devi was acquitted from the charges under Section 498-A and 120-B. Respondent Parmendra Singh was acquitted from the charges under Sections 120-B and 201 read with Section 34 IPC but he was sentenced to undergo life imprisonment and three years RI for the offences punishable under Section 302 and 498-A IPC respectively.

2. Prosecution version as unfolded during trial is as follows: On 1st February, 1992 Dr. Khushiram Tewani (PW-30) was working at the post of Medical Officer, Incharge at Primary Health Centre, Bagaur. In the afternoon on that day S.H.O., Bagaur brought Lalita, wife of respondent in burnt and unconscious condition for medical treatment. Lalita was admitted in the Primary Health Centre by him and initial treatment was given to her. In this regard, a slip Ex.P-58 was prepared. Lalita's body was received with more than 80% burn injuries and considering her condition he could not give her medical treatment due to lack of resources. Therefore, within half an hour she was referred to District Hospital, Bhilwara. According to Ex.P-58 at 3.05 in the afternoon Lalita was brought before him. There were several statements of the deceased which were treated as dying declarations. The trial Court found the accused guilty, convicted and sentenced as noted above basing on the dying declarations. In appeal, the High Court directed acquittal primarily on the ground that the dying declarations were not reliable. The Police Regulation relating to recording of dying declaration was violated and the deceased was not in a position to give her statement. It was noted that there was great variation between the dying declarations. There were four dying declarations in fact.

3. Learned counsel for the appellant-State submitted that in all the dying declarations name of the husband was mentioned and in all the four dying declarations the role played by the mother was also described except one where the father-in-law was named. Learned counsel for the respondent supported the judgment of the High Court.

4. It is to be noted that the High Court observed that the first dying declaration was to be disbelieved on the ground that there was no endorsement that the deceased was in a fit condition to give statement. The view expressed is clearly contrary to what has been stated by this Court in *Laxman v. State of Maharashtra*¹. So far as the non observance of the procedure laid down in Police Regulation is concerned, this court had occasion to deal with the nature of the police guidelines. It was observed that mere non-observance of the procedure indicated does not render the dying declaration suspect. So far as the first dying declaration is concerned, it was recorded at about 3.00 p.m. at PHC, Bagaur. The incident was around 2.00 p.m. The first dying declaration was recorded by the doctor (PW-30). The second was recorded by the SHO (PW-28). Third was by the Sub-Inspector (PW-15) in the presence of Dr. A.K. Mathur (PW-11) and two others. Finally, the fourth dying declaration was recorded before S.S. Kothari (PW-13) ADM City, Bhilwara and Puran Chand Gupta, Assistant Collector, Bhilwara in the presence of Dr. Arvind Malhotra (PW-12). In the last dying declaration it was noted by the doctor that the patient was in a fit condition to give statement.

5. There is no material to show that the dying declarations were the result of tutoring or prompting. In all the dying declarations the respondent has been specifically named, and the role played by him has been categorically described.

6. That being so, the High Court was not justified in directing acquittal. The same is set aside. Respondent shall surrender to custody forthwith to serve the remainder of sentence.

7. The appeal is allowed.

¹[2002 (6) SCC 710]