SUPREME COURT OF INDIA

Manoj

Vs.

State of Haryana

Crl.A.No.1853 of 2012

(T.S.Thakur and Sudhansu Jyoti Mukhopadhaya JJ.)

09.07.2013

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. The appellants in this case were found guilty of offence punishable under Sections 498-A and 304-B Indian Penal Code (for short, "IPC") by the Sessions Judge, Bhiwani. They were sentenced to undergo imprisonment for life for the offence under Section 304-B IPC and also to undergo rigorous imprisonment for three years, besides, payment of fine of Rs.5,000/- each and in default of which to undergo further imprisonment for a period of six months for the offence under Section 498-A IPC. Their appeal against the said judgment and conviction to the High Court of Punjab & Haryana at Chandigarh got dismissed except with a modification in the sentence of imprisonment from imprisonment for life to imprisonment for 10 years for the offence under Section 304-B IPC.

2. The prosecution case, in brief, is that on 14.4.2005 on receipt of a telephonic message from the Incharge, Police Post, General Hospital, Bhiwani regarding admission of Meena Devi wife of Manoj Kumar (appellant no.1) resident of Village Hetampura in burnt condition, ASI Chattarmal (PW- 11) of P.S. Sadar,Bhiwani along with other police officials reached the said hospital and collected medical ruqa (memo) alongwith medico-legal report of injured Meena. After obtaining the opinion of the Doctor regarding fitness of the injured to make statement when he brought the Duty Magistrate to record her statement in the hospital, the Doctor had already referred her to PGIMS Rohtak. Thereafter, he alongwith Magistrate reached PGIMS, Rohtak and collected two medical ruqas from Incharge, Police Post, PGIMS Rohtak out of which one was regarding death

of Meena. Then he reached in the gallery of emergency ward where complainant Vedpal (PW-9) met him and got recorded his statement (Ex.PA). It is alleged by the complainant- Vedpal (PW-9) that he had one daughter and two sons. His daughter was married with Manoj (appellant no.1) son of Mahabir about five years earlier (the actual date of marriage found to be 6.05.2000) to the incident that had occurred on 14.04.2005. He further stated that in the marriage of his daughter, he had given dowry beyond his financial capacity. However, his daughter on her return from her matrimonial home for the first time told him that her in-laws were not satisfied with the dowry articles that were given in marriage. The complainant had given double bed, T.V., fridge, cooler, sofa set, almirah, 21 utensils and clothes etc., besides, Rs.2100/- in cash. When the daughter of the complainant (PW-9) went to her matrimonial home for the second time, his son-in-law Manoj (appellant no.1), the mother-in-law of his daughter namely Chameli Devi (appellant no.2), the father-in-law namely Mahabir (since acquitted) and Jethani (husband's elder brother's wife) of his daughter namely Suman (appellant no.3) raised a demand for a motor cycle and started torturing her (beating) for this. Therefore, Meena Devi (deceased) started living with him (complainant). She stayed with her father (complainant) for fourteen months. About ten months earlier from the date of incident that occurred on 14.04.2005, the complainant (PW-9) made his daughter understand and sent her back in the presence of panchayat of Hetampura and Sant Mann Singh s/o Chandu Ram r/o Hissar. However, even then the accused were demanding a motor cycle and kept troubling his daughter for dowry. On 14.04.2005, at about 8.00 a.m, Mahabir informed him on telephone from the Hospital at Bhiwani that Meena Devi (deceased) had been admitted in the Government Hospital, Bhiwani with burn injuries. On receiving this information, the complainant (PW-9) and Dayanand s/o Jogi Ram and his brother Shamsher reached the Hospital at Bhiwani. There they came to know that Meena Devi (deceased) had been referred to PGIMS, Rohtak. Then they all reached PGIMS, Rohtak where he met his daughter in the emergency ward of PGIMS, Rohtak. His daughter told him that in the morning on that day, her mother-in-law namely Chameli Devi (appellant no.2) had called her in the room and her husband Manoj (appellant no.1) poured kerosene oil on her and her husband's elder brother's wife (Jethani) namely Suman (appellant no.3) lit a matchstick and set her on fire on account of which she got burnt. After sometime Meena Devi (deceased) while she was under treatment breathed her last. It it alleged by the complainant (PW-9) that on account of greed of dowry, his daughter Meena Devi (deceased) had been set on fire by pouring kerosene oil on her by her husband Manoj (appellant no.1), mother-in-law Chameli Devi (appellant no.2) and husband's elder brother's wife (Jethani) Suman (appellant no.3) after colluding with each other. He further requested for action being taken against the accused.

3. On the basis of such complaint FIR No.103 dated 14.4.2005 under Sections 304-B/498-A/406/34 IPC was registered. Subsequently, on the basis of above allegations, all the four accused were charged under Section 304-B in alternative under Sections 302, 498-A and 406 r/w Section 34 of the IPC to which they pleaded not guilty and claimed trial.

4. All together eleven witnesses were produced by the prosecution in support of their case. Exhibits were proved through the prosecution witnesses. Defence also produced two witnesses in its favour.

5. The Sessions Judge, Bhiwani by judgment dated 4.09.2006 acquitted Mahabir father-in-law of the deceased and held the appellants guilty for the offence under Sections 498-A and 304-B of the IPC. The Sessions Judge further held that the prosecution has miserably failed to prove its case against all the four accused for the offence under Sections 302 and 406 r/w Section 34 IPC and, hence, all the four accused were acquitted for the said offence.

6. An appeal was preferred by the appellants against the judgment passed by the Sessions Judge, Bhiwani and another appeal was preferred by the complainant-Ved Pal (PW-9) against acquittal of Mahabir. By impugned judgment dated 15.02.2012 the Division Bench of the High Court of Punjab and Haryana at Chandigarh dismissed the appeal preferred by Ved Pal- complainant(PW-9). The judgment passed by the Sessions Judge was affirmed with the modification in the sentence of imprisonment, the appeal preferred by the appellants was also dismissed.

7. In this appeal, learned counsel appearing for the appellants contended that in view of severity of burn injuries of the deceased she could not have been in a fit state of mind or condition to make a dying declaration. The said dying declaration is purported to be made in presence of Dr. Rajender Rai (PW-4). In absence of any other material to corroborate the same, the dying declaration should not be relied upon.

8. It was submitted that PW-7, the Police Inspector who had prepared a report under Section 173 Cr.PC, in his statement admits that there was no mention of the statement of the deceased allegedly recorded by the Doctor at the time of her MLR. Even under Section 313 Cr.PC, no question was ever put to the accused with regard to his signing of the said MLR in question. The said dying declaration raises suspicion and doubt. It may not be an absolute proposition of law that a dying declaration should be recorded by a Magistrate but if in a given case, there is

ample time and opportunity,the services of a Magistrate should be called upon in order to lend credence to the said dying declaration. The I.O (PW-11) has stated that after reading of the statement Ex.PF, he did not approach the deceased to verify from her if she had made such statement or not.

9. Per contra, according to counsel for the prosecution, the dying declaration recorded by Dr. Rajinder Rai (PW-4), Medical Officer is reliable. There is nothing on record to suggest that Dr. Rajinder Rai (PW- 4) is an unreliable witness. To the contrary, he is a natural witness and his testimony has not been shaken during a long cross examination. The theory of tutoring is also ruled out in the present case as the accused persons only were present with the deceased during that time and none of the family members of the deceased were present when the dying declaration was recorded by the Doctor. The husband (appellant no.1) Manoj has also affixed his signature on the MLR on which the dying declaration was recorded by the Doctor. The evidence of PW-4 is trustworthy, cogent and reliable.

10. Further according to the learned counsel for the prosecution an alternate charge under Section 302 shall be framed in addition to Section 304-B and in view of dying declaration of the deceased, which has been believed by both the courts below. A grave error of law has been committed by the trial Court as well as the High Court by not convicting the accused persons under Section 302. It was submitted that this is a fit case wherein this Court may exercise its extraordinary powers under Article 142 of the Constitution of India and shall consider altering the conviction from Section 304-B to Section 302 IPC.

11. Coming to the evidence of Dr. Rajinder Rai (PW-4) who conducted medico-legal examination and recorded the statement of the deceased, we find that he specifically deposed that the deceased Meena was brought to the Hospital with the history of burns. Kerosene like smell was present. Smell was also present in the clothes. On examination she was conscious. There were superficial to deep burns about 100% with in a duration of 12 hours. Dr. Rajender Rai (PW-4) stated that the deceased told him that she was called inside and the door was latched from inside. Kerosene oil was sprinkled upon her and her Jethani Suman had ignited the fire by the match stick. Her husband and mother-in-law were also involved in it. After recording the statement of the deceased, he signed it. The statement was again read over to the patient by him in Hindi. She stated Yes. He again asked the patient whether the above statement was correct and she again stated Yes. He again signed the endorsement and put the time of 7.55 a.m. He prepared MLR including statement of the patient recorded by him in his handwriting and his endorsement. He further stated that he had sent ruqa (Ex.PG) to the Incharge, Police Post,

General Hospital, Bhiwani at 8.00 a.m. Therefore, Chhattarmal ASI of P.S. Sadar, Bhiwani moved application Ex.PH before him asking his opinion regarding fitness of Meena Devi to make statement, on which, he opined vide endorsement Ex.PH/1 at 8.45 a.m that she was fit to make statement and thereafter he referred the patient to PGIMS, Rohtak vide endorsement Ex.PH/2. He had recorded the statement of deceased Meena Ex.PF correctly without any addition thereto and on the basis of whatever had been stated before him.

12. The Defence had tried to make a futile effort to prove that Dr. Rajinder Rai (PW-4) was an interested witness because cousin of the deceased and his wife were posted in the same Hospital and, thus, undue influence was exercised upon him by them but it was not believed by both the courts in absence of any evidence on the file that alleged cousin of the deceased and his wife were posted in Government Hospital, Bhiwani at the time the deceased was medico-legally examined at 7.30 a.m on 14.4.2005. Contrary to it, evidence was brought on record that aforesaid cousin of the deceased and his wife were posted in some private nursing home in Siwani, which was about 70 kilometers away from Bhiwani.

13. There is another glaring factor in the present case which proves that Dr. Rajinder Rai (PW-4) was not under influence of anyone because had it been, he or investigating officer Chhattarmal (PW-11) might not have made any effort to call the Magistrate for recording the statement of the deceased. The law is well settled that if the declaration is made voluntarily and truthfully by a person who is physically in a condition to make such statement, then there is no impediment in relying on such a declaration. Such view was taken by this Court in Kanaksingh Raisingh Rav v. State of Gujarat, (2003) 1 SCC 73 wherein this Court held:

> "5. ……. The question then is, can a conviction be based primarily on the dying declaration of the deceased in this case? In this regard we do not think it is necessary for us to discuss the cases cited by the learned counsel which are noted hereinabove because, in our opinion, the law is well settled i.e. if the declaration is made voluntarily and truthfully by a person who is physically in a condition to make such statement, then there is no impediment in relying on such a declaration. In the instant case, the evidence of PW 5, the doctor very clearly shows that the deceased was conscious and was medically in a fit state to make a statement. It is because of the fact that a Judicial Magistrate was not available at that point of time, he was requested to record the statement, which he did. His evidence in regard to the state of mind or the physical condition of the deceased to make such a declaration has not been challenged in the cross- examination. That being so,

it should be held that the deceased was in a fit state of mind to make a declaration as held by the courts below. The next question for our consideration is whether this statement is voluntary and truthful. It is not the case of the defence that when she made the statement either she was surrounded by any of her close relatives who could have prompted her to make an incorrect or false statement. In the absence of the same so far as the voluntariness of the statement is concerned, there can be no doubt because the deceased was free from external influence or pressure. So far as the truthfulness of the statement is concerned, the doctor (PW 5) has stated that she has made the said statement which, as noted above, is not challenged in the cross-examination. The deceased in her brief statement has, in clear terms, stated that because of the quarrel between her and the accused, the accused had poured kerosene and set her on fire which, in our opinion, cannot be doubted....."

14. In Ashok Kumar v. State of Rajasthan, (1991) 1 SCC 166 this Court noticed that if it was a case of death by burning, entries of injury report in the bed head ticket can be construed as dying declaration. In the said case this Court held:

"11. Entries in the injury report which have been construed as dying declaration by the two courts below were severely criticised and it was submitted that although dying declaration was admissible in evidence and conviction could be recorded on it without corroboration yet the circumstances in which it was recorded created doubt if it was genuine. The High Court for very good reasons rejected similar arguments advanced before it. We also do not find any substance in it. When the deceased was examined by Dr Temani he having found her condition to be serious immediately sent message to the police station and also requested for arranging for recording of the dying declaration. This is corroborated by the entry in the record of the police station. But the Inspector of Police came after 11.00 when the injection of morphine had already been administered to lessen the agony of the patient who thereafter became unconscious. She was, however, as indicated earlier conscious between 10.00 to 11.00 during which period the bed head ticket was written by Dr Saxena and the entries were made on the injury report. The judge did not doubt the recording on the bed head ticket that the deceased complained of misbehaviour by her brother-in-law. Even the learned counsel could not point out any infirmity or reason to discard it except that by mere word, brother-in-law it was not established that it was appellant, i.e. the effort was to make out a case of doubt. That could have been possible if that entry could have stood alone. But it stands not only corroborated but clarified by identifying the appellant by entry in

injury report as the brother-in-law who was responsible for this crime. We perused the injury report and we could not find any reason to doubt its authenticity."

15. What we find in the present case is that the dying declaration (Ext.PF) which was recorded by Dr.Rajinder Rai (PW-4) was also signed by Manoj (appellant no.1) which indicates that appellant No.1 was present when statement was recorded. Nothing on the record to suggest that any of the relation of the deceased was present to influence Dr. Rajinder Rai (PW-4).

16. Thus, we find that there is no infirmity in the finding of the Sessions Judge as affirmed by the High Court.

17. Admittedly, the death of Meena Devi (deceased) is caused by burns i.e. otherwise than under normal circumstances within seven years of her marriage. The complainant (PW-9) father of the deceased has stated that at the time of marriage he had given double bed, sofa set, T.V., cooler and other domestic articles, besides, gold ornaments of 4 tolas, 21 utensils and Rs.2100/- in cash. However, his daughter told him that her in-laws were not satisfied with those articles. When his daughter visited her matrimonial home for the second time, all the accused started taunting her and harassing her raising demand for a motor cycle. She was turned out of her matrimonial home after giving beatings. Thereafter, she started living with him (PW-9) and stayed with him for 14 months. Then he convened a panchayat consisting of Sant Man Singh, Krishan of Hetampura and others i.e. his brother Satyawan and his brotherhood from village Khera. In that panchayat, the accused assured not to harass Meena in future and then accused Mahabir and Chameli came to take her away and she was accordingly sent to her matrimonial house about 10 months prior to her death. After four days, they again started harassing her by demanding motor cycle and continued beating her. His brother Satpal (PW-10) has also corroborated his deposition. No mitigating circumstances are found on record to disbelieve their statements.

18. In view of such evidence on record both the courts have come to definite conclusion that soon before her death she was subjected to cruelty and harassment by her husband and his relatives in connection with demand for dowry. Therefore all the ingredients are present to convict the appellants under Section 304-B of the IPC. The prosecution proved beyond reasonable doubts that the appellants are guilty for the offence under Section 498-A of the IPC.

19. In these circumstances, we find that the Sessions Judge has recorded cogent and convincing reasons for convicting the appellants for the offences under Sections 304-B and 498-A IPC.

20. So far as conviction of the appellants under Section 302 IPC, as suggested by counsel for the State, we find no wrong to alter the conviction to Section 302 IPC.

21. In Muthu Kutty and Another v. State by Inspector of Police, Tamil Nadu (2005) 9 SCC 113 this Court held that when it was found that the accused were responsible for setting the deceased on fire and causing her death, Section 302 instead of Section 304-B was attracted. On facts, no prejudice would be caused to accused-appellants of the said case if the conviction is altered to Section 304 Pt. II on the basis of conclusions arrived at by the trial court as they were originally charged for offence punishable under Section 302 alongwith Section 304-B IPC.

22. In the present case, we have noticed that after appreciation of evidence, learned Sessions Judge by judgment dated 4.9.2006 specifically held that the prosecution has miserably failed to prove its case against all the four accused for the offence under Sections 302 and 406 r/w Section 34 IPC and, hence, all the four accused were acquitted under the said offence. Against the acquittal of Mahabir Singh the complainant (PW-9) filed an appeal which has been dismissed by the impugned judgment. No appeal has been preferred by the complainant or the State against the acquittal of all the accused for the offences under Section 302 and 406 r/w Section 34 IPC. The finding of Sessions Judge having reached finality, the question of altering the present sentence under Section 304-B to Section 302 does not arise.

23. Lastly, it was submitted on behalf of the appellants to consider reducing the sentence awarded to the appellants from 10 years to 7 years which is the minimum sentence prescribed under Section 304-B IPC considering the facts and circumstances of the case. In the present case we find that the appellants were sentenced for life for the offence under Section 304-B IPC by the trial Court and the High Court already considered the facts and circumstances of the case and reduced the sentence from life imprisonment to 10 years.

24. We find no other circumstances to reduce it to minimum sentence of seven years. In absence of merit, the appeal is dismissed.

25. Bail bonds of the appellant nos. 2 and 3 are cancelled. Appellant nos. 2 and 3 are directed to be taken into custody to serve out remainder of the sentence.