SUPREME COURT OF INDIA

Umakant

Vs.

State of Chhatisgarh

Crl.A.No.1424 of 2012

(Dipak Misra and N.V.Ramana JJ.)

01.07.2014

JUDGMENT

N.V. RAMANA, J.

1. Aggrieved by the judgment and order dated 24th September, 2010 of the Division Bench of the High Court of Chhattisgarh, Bilaspur in Criminal Appeal No. 495 of 2005 maintaining their conviction and sentence under Section 302 read with Section 34, IPC, the appellants have filed this appeal by special leave.

2. Brief history of the case, as per prosecution case, is that Anita Jaiswal (deceased) was married to Umakant (appellant No.1) and after six months of the marriage, her husband and in-laws started harassing her to bring money from her father whenever she visits her parental home and also made a demand of Rs.50,000/- as dowry. She was also subjected to torture and cruelty every now and then by the husband and in-laws. On 2nd August, 2003, within one and a half years of her marriage, the appellant No. 1 (husband) beat her with an iron rod before night and while she was going to take bath in the morning, he caught hold of her and allegedly poured kerosene on her body. Appellant No. 2 (mother-in-law) set her ablaze by lighting a match stick. The victim was immediately taken to Revival Medical Centre, Bhilai where appellant No. 2 stated to the Doctors that the victim sustained burn injuries due to accident (Ext. P-2) with a chimney (local lamp). The victim was treated at the Revival Medical Centre till 13th August, 2003 on which date, when the condition of the victim was getting

deteriorated, the Revival Medical Centre intimated the police about the incident vide Ext. P-21. Immediately thereafter, F.I.R. (Ext. P-24) was registered by the ASI, PS Newai (PW23). Investigation was taken up by PWs 26 and 27, the Superintendent of Police and the Station House Officer respectively who also seized a bottle of kerosene oil, one wooden stool, one iron pipe etc., and a seizure memo was accordingly prepared. On 13th August, 2003 itself the victims dying declaration (Ext. P-13) was also recorded by the Executive Magistrate (PW 12). The victim was then shifted to Jawaharlal Nehru Hospital & Research Centre, Bhilai for further treatment. However, on 7th September, 2003, during the course of her treatment, the victim died.

3. After the death of the deceased, investigation continued, witnesses were summoned, inquest was made, dead body was sent for autopsy, spot map was prepared. Having recorded statements of witnesses under Section 161, Cr.P.C., charge sheet was filed against the accused (husband, mother-in-law and father-in-law). The learned Judicial Magistrate, First Class committed the case to the Court of Session. The learned Trial Judge framed charges against the accused under Sections 3 & 4 of Dowry Prohibition Act, 1961 and under Sections 304B/34, 302/34 and 498-A, IPC. In their statement under Section 313, Cr.P.C. the accused denied the charges and claimed to be tried. At the trial, they took the plea that the deceased died as a result of accident of chimney (local lamp) and they have been falsely implicated.

4. To bring home the charges against the accused, the prosecution in all examined 27 witnesses whereas the accused, in their defence examined two witnesses.

5. The Trial Court, after analyzing the statements of witnesses and keenly considering the material evidence came to the opinion that the prosecution had got established its case and the dying declaration (Ext. P- 13) was also proved from its writer (PW-12). After going through the entire process of trial and in the light of various rulings of this Court, the Trial Court came to the conclusion that all the three accused were guilty of the offences charged against them, except charge under Section 304/B/34, IPC against father-in-law of the deceased. The Trial Court accordingly acquitted him of the said charge and sentenced all the accused in the following terms.

Accused No.1-Umakant (Appellant No.1-husband of the deceased)	Under Section 3 of Dowry Prohibition Act, 1961	R.I. for 5 years and fine of Rs.2000/-, in default, additional RI for one year
	Under section 4 of	R.I. for 1

year and fine of Rs.1000/-, in | |Dowry Prohibition |default, additional RI for six months. | |Act, 1961 | | |Under Section 498-A |RI for 3 years and fine of Rs.2,000/-, in | |of IPC |default, additional RI for six months. | |Under Section 304-B |Life imprisonment and fine of Rs.2,000/-, in | |of IPC |default, additional RI for one year | |Under Section 302/34,|Life imprisonment and fine of Rs.2,000/-, in | |IPC |default, additional R.I. for one year. |

Accused No. 2-Yashoda (Appellant No. 2-mother-in-law of the deceased)

|Under Section 3 of |R.I. for 5 years and fine of Rs.1000/-, in | |Dowry Prohibition |default, additional RI for six months. | |Act, 1961 | | |Under section 4 of |R.I. 6 month and fine of Rs.1000/-, in | |Dowry Prohibition |default, additional RI for one month. | |Act, 1961 | | |Under Section 498-A |RI for 3 years and fine of Rs.1,000/-, in | |of IPC |default, additional RI for six months. | |Under Section 304-B |Life imprisonment and fine of Rs.1,000/-, in | |of IPC |default, additional RI for six months. | |Under Section 302/34 |Life imprisonment and fine of Rs.1,000/-, in | |of IPC |default, additional RI for six months. |

Accused No. 3 " Om Prakash (father-in-law of the deceased)

|Under Section 3 of |R.I. for 5 years and fine of Rs.2,000/-, in | |Dowry Prohibition |default, additional RI for six months. | |Act, 1961 | | |Under section 4 of |R.I. for 1 year and fine of Rs.1,000/-, in | |Dowry Prohibition |default, additional RI for two months. | |Act, 1961 | | |Under Section 498-A |RI for 3 years and fine of Rs.2,000/-, in | |of IPC |default, additional RI for six months. |

6. While dealing with the appeal filed by the accused, the High Court formed the opinion that there was not enough evidence to uphold the conviction and sentence of the appellants as awarded by the Trial Court under Sections 498-A, 304-B, IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961. Therefore, the High Court acquitted all the accused from the charges against the aforementioned Sections. But, placing reliance solely on the dying declaration (Ext. P-13), the High Court thought it fit to convict the appellants under Section 302 read with Section 34, IPC on the basis of dying declaration itself. Accordingly, the High Court maintained the conviction and sentence awarded by the Trial Court against the appellants under Section 302 read with Section 34, IPC.

7. In view of the above conviction and sentence maintained by the High Court, the appellants approached this Court in this appeal finding fault with the decision of the High Court, which is impugned herein.

8. Learned counsel for the appellants contended that the Courts below have dealt with the case without proper application of mind and there were several discrepancies and contradictories in the statements of witnesses. Normally, before convicting an accused under Section 302, IPC, Courts provide so many safeguards to the defence, whereas in the present case those safeguards have not been provided. Thus, entire process of trial has been vitiated and led to the miscarriage of justice against the appellants. He also contended that when the High Court was of the opinion that there is no cogent evidence to sustain the order of conviction passed by the Trial Court under Sections 498A, 304B, IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961, the dying declaration also ought not have been relied upon for punishing the accused under Section 302/34, IPC. The alleged dying declaration was a product of tutoring and not voluntarily given by the deceased, hence it is not trustworthy. He, therefore, argued that the conviction of appellants under Section 302/34, IPC. is completely erroneous, misconceived and deserves to be set aside.

9. On the contrary, learned counsel for the State submitted that the impugned judgment was rendered by the High Court after a thorough analysis of the entire case with scrutiny of the evidence of all material witnesses. Considering the facts and circumstances of the case, particularly the nature of cruelty and torture caused by the appellants to the victim which stands proved by the dying declaration, the High Court has rightly convicted and sentenced the appellants and there is no illegality in the impugned order. He therefore submitted that there is no ground calling for interference by this Court and the appeal deserves to be dismissed.

10. We have heard learned counsel for the parties and carefully gone through the records of both the Trial Court as well as the High Court.

11. Before we deal with the judgment of the High Court which is impugned before us, whereby it has acquitted the accused of the charges under Section 498-A, 304-B IPC and Sections 3 & 4 of the Dowry Prohibition Act and convicted them for the offence under Section 302 IPC, curiously the basis for acquittal under the other offences and

conviction of the accused under Section 302 IPC is based on the dying declaration of the deceased which is marked as Ex.P-13. For better appreciation, we shall refer to the important facts of the case. As per the case of the prosecution, the deceased was admitted in the hospital i.e. Revival Medical Centre on 02.08.2003 with burn injuries. The deceased when enquired by the Doctor as to how she sustained burn injuries, she informed him that she caught fire accidentally. This version of the deceased, was recorded by the Doctor, in the presence of her sister. Her sister and brother-in-law gave consent letter, which was marked as Ex.P-2, and it reveals that the deceased suffered burn injuries accidentally and the deceased Anita had burnt herself. Nobody had burnt her. When the Doctor asked the deceased several times, she gave the same answer. On 06.08.2003, her parents also came to Bhilai and stayed with her. She remained in the hospital till 10.00 p.m. of 13.08.2003. Thereafter, as her condition deteriorated, she was shifted to another hospital. On 13.08.2003, for the first time, Police were informed about the incident. On that day, her dying declaration was recorded by the Magistrate who was later examined as P.W.12. The deceased succumbed to the burn injuries on 07.09.2003.

12. The trial Court basing on the evidence available on record convicted and sentenced the appellants under Section 498-A, 304-B, 302 r/w 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act. While the High Court though acquitted the accused under Section 498-A and 304-B IPC and Sections 3 and 4 of the Dowry Prohibition Act, but found them guilty for the offence under Sections 302 r/w 34 IPC and confirmed the sentence imposed by the trial Court on that count.

13. We have given our anxious consideration to the judgment of the High Court which is impugned before us, to find out the legality or otherwise of the judgment of conviction and order of sentence passed against the appellants for the offence under Section 302 r/w 34 IPC. The whole basis for the High Court to convict and sentence the accused under Section 302 IPC is the dying declaration recorded by the Magistrate which was marked as Ex.P-13. It would be appropriate to extract the same, which reads: Question: Whether would you able to give your statement?

Answer: Yes.

Q: What is your name? What is the name of your husband? Where do you live at? Please tell your complete name.

A: My name is Anita Jaiswal. Umakant is the name of my husband. I reside in Marauda Bhilai.

Q: Who had admitted you at this place and when they had admitted you?

A: My husband and mother-in-law have admitted me at this place. I do not remember the date of my admission. I have been burnt therefore they have admitted me.

Q: How you were burnt, the incident is of which date, please tell the whole description.

A: My mother-in-law was committing cruelty against me, whenever I went my Mayeka she used to tell me for taking Rs.50,000/- from my Mayeka. We are total four sisters and four brothers. Whenever I returned from my Mayeka, upon not taking the money she used to torture me badly, recently some mothers back while I went to Gujarat, my mayeka, when I came back my Sasural then they started telling about the money. One day prior to the date of the incident my husband had heavily beaten me, he beaten me from the Pirha (wooden structure) and from the iron rod, on the next day to that at about 8.00 a.m. after holding me my husband poured kerosene oil over me and after lit up a match stick my mother-in- law thrown the same at me, after becoming frightened, I held the hands of my Jeth, while my Jeth also started burning then after giving jolt at me, he got me fell down, the ladies residing in the back side of my residence arrived there and they changed my clothes after than by arranging a temp, I got admitted in the hospital.

Q: Whether you did not tell your parents that your husband and mother- in-law were harassing you?

A: After the marriage, I visited Mayeka for three times, then on the third occasion while I had gone to Mayeka then I had told my father then my father had told me that presently his position was not good, after managing the money as earliest he would sent the money. I had told abiout the cruelty of my husband and mother-in-law.

Q: Since how may days from the marriage they have been committing cruelty? You have been burnt at which body parts?

A: They have been harassing me since 4 -5 months after the marriage. They were committing cruelty for the dowry. My whole body parts below the neck have been burnt.

Q: Whether you want to tell anything more?

A: No.

14. According to the High Court, Ex.P-2, the alleged consent letter given by sister and brother-in-law, which says that burn injuries sustained by the deceased was a case of accident and Anita had burnt herself, runs contrary to each other, because in the case of accident, the patient will burn herself, but if she burnt herself, then it cannot be a case of accident. Hence, the High Court disbelieved Ex.P-2. The High Court further observed that not giving the information about the incident by the Revival Medical Centre to the police shows that the hospital staff in connivance with the accused, treated the deceased without informing about the incident to the police.

15. Another reason given by the High Court for convicting the accused under Section 302, IPC is that, as per the dying declaration, the deceased had stated that when her mother-in-law and husband lit fire to her, she asked the brother-in-law and caught hold of him, and at that time, he also sustained burn injuries, which is supported by the evidence of the Doctor P.W.13, who has deposed that the injury on the hands of the brother-in-law P.W.14 is possible if a person who is in flames catch holds of another person. The High Court disbelieved the evidence of Doctor Vijay Kumar Sharma, which is in favour of the accused, basing on the contradictions in his evidence with regard to the nature of injuries and not informing about the incident to the police.

16. Finally, the High Court convicted and sentenced the accused, basing on the dying declaration that the deceased was not having cordial relationship with the accused. The appellant No.1 poured kerosene oil upon the deceased and appellant No.2 had set her ablaze. As the dying declaration inspires confidence, it is trustworthy and drew inference that the appellants Umakanth and Yashoda poured kerosene oil upon the

deceased, set her afire and caused her death. However, the High Court felt that there is no cogent evidence to convict the accused under Section 498-A and 304-B IPC and Sections 3 and 4 of the Dowry Prohibition Act.

17. Now the issue that falls for consideration before us is whether the High Court was right in convicting and sentencing the accused under Section 302 IPC basing on the dying declaration of the deceased?

18. The philosophy of law which signifies the importance of a dying declaration is based on the maxim nemo moritusus prasumitus mennre, which means, no one at the time of death is presumed to lie and he will not meet his maker with a lie in his mouth. Though a dying declaration is not recorded in the Court in the presence of accused nor it is put to strict proof of cross-examination by the accused, still it is admitted in evidence against the general rule that hearsay evidence is not admissible in evidence. The dying declaration does not even require any corroboration as long as it inspires confidence in the mind of the Court and that it is free from any form of tutoring. At the same time, dying declaration has to be judged and appreciated in the light of surrounding circumstances. The whole point in giving lot of credence and importance to the piece of dying declaration, deviating from the rule of evidence is that such declaration is made by the victim when he/she is on the verge of death.

19. In spite of all the importance attached and the sanctity given to the piece of dying declaration, Courts have to be very careful while analyzing the truthfulness, genuineness of the dying declaration and should come to a proper conclusion that the dying declaration is not a product of prompting or tutoring.

20. The legal position about the admissibility of a dying declaration is settled by this Court in several judgments. This Court in Atbir v. Government of NCT of Delhi - 2010 (9) SCC 1, taking into consideration the earlier judgments of this Court in Paniben v. State of Gujarat - 1992 (2) SCC 474 and another judgment of this Court in Panneerselvam v. State of Tamilnadu - 2008 (17) SCC 190 has given certain guidelines while considering a dying declaration:

> 1. Dying declaration can be the sole basis of conviction if it inspires full confidence of the Court.

2. The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

3. Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

4. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborative. The rule requiring corroboration is merely a rule of prudence.

5. Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

6. A dying declaration which suffers from infirmities, such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

7. Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

8. Even if it is a brief statement, it is not to be discarded.

9. When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

10. If after careful scrutiny the Court is satisfied that it is free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.

21. In the light of the above legal position that governs the consideration of a dying declaration, the factual matrix has to be scrutinised. As already extracted above, in the dying declaration Ex.P-13, the deceased stated before the Magistrate that the appellants demanded dowry and that the appellants set fire to her and she asked her brother-in- law to rescue her, but he had chosen not to do so, and further on hearing

her cries, the neighbours came and extinguished the fire and admitted her in the hospital. After she was admitted in the hospital, her parents came and she informed them about the incident.

> The deceased is said to have stated that when she was pregnant she was beaten up by the accused and because of which the child died in the womb. At that time, she had taken treatment in Revival Hospital]. This statement is found in Ex.P-23, FIR written by K.B. Singh (P.W.23), and not in Ex.P13 dying declaration.

22. When we look at the dying declaration, it is not inspiring confidence in the mind of this Court and throws serious doubt that the same is a product of tutoring by the family members of the deceased for the reason that, the sister of the deceased who was present when the deceased was admitted in the hospital had signed in Ex.P-2 wherein it is stated that it was an accident and nobody has burnt the deceased, but later she turned around and stated that unless she signed on that, they were told that the deceased would not be treated, and the High Court has taken this fact into consideration, whereas in the dying declaration, the deceased has stated that when her parents came to the hospital on 06.08.2003, she informed to the parents for the first time and she had not mentioned that she informed her sister or anybody before that, but according to the sister of the deceased, on 02.08.2003, she was aware of this, which shows that the evidence of the witness is not reliable and clouded with doubt.

23. The other circumstances which draw our attention is when the deceased informed her parents on 06.08.2003, it is quite natural that the parents will inform the police about the incident, because it is nobodys case that they were restrained in any manner from informing the police. Even the deceased throughout the stay in the hospital for those 11 days had many an occasion to meet the Doctors and other staff of the hospital, but she had chosen not to give any complaint nor tried to share her agony with them, which throws a grave doubt on the genuineness of the dying declaration. We have gone through the judgment of the High Court, where P.W.7 who has specifically deposed that they have tutored the deceased to state that she was burnt by the accused.

24. The High Court while considering Ex.P-2 has come to a conclusion that the statement given in that one line is contradictory to one another. In one line, it says that

the injuries sustained by her are by accident. Nobody has burnt her and she burnt herself. Hence, the High Court discarded Ex.P-2. But, in our considered opinion, the High Court did not appreciate the same in its proper perspective and interpreted it in a wrong way. What Ex.P-2 states is that it is an accident, and nobody has pushed her and for that accident, only the deceased is responsible.

25. The burden of proof in criminal law is beyond all reasonable doubt. The prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is also rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted. After considering the evidence and the judgments of the Courts below, we are of the considered opinion that the evidence available on record and the dying declaration does not inspire confidence in the mind of this Court to make it the basis for the conviction of the appellants. Apart from this, the High Court basing on the same dying declaration, ought not to have convicted the appellants under Section 302 IPC, when they were acquitted under Section 304-B and 498-B IPC and Sections 3 and 4 of the Dowry Prohibition Act by the High Court.

26. Accordingly, this Criminal Appeal is allowed. The conviction and sentence imposed by the High Court vide its judgment dated 24th September, 2010 in Criminal Appeal No. 495 of 2005, against the appellants for the offence under Section 302 r/w 34 IPC, is set aside. Consequently, the appellants shall be released forthwith, if they are not required in any other case.