

Meena Devi Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Oct-12-2017

Appellant : Meena Devi

Respondent : State of Jharkhand

Judgement :

1 Criminal Appeal (DB) No. 1425 of 2008 Against the Judgment of conviction and order of sentence dated 06.08.2008 and 07.08.2008, respectively passed by Sri Kaushal Kishor Jha, No. 1, the learned Additional Session Judge, FTC2 Bokaro in Session Trial No. 283 of 2002. Meena Devi wife of Manilal Pandey, resident of village- Balidih More, Pandey Tola P.S. Balidih, District- Bokaro, Jharkhand.APPELLANT -Versus- State of Jharkhand .RESPONDENT For the Appellant : Mr. N.K. Sahani, Advocate. For the State : Mrs. Vandana Bharti, A.P.P. PRESENT HONBLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE ANANDA SEN C.A.V. On:

04. 10.2017 Pronounced on:12 /10/2017 Ananda Sen, J: This criminal appeal is directed against the judgment of conviction and order of sentence dated 06 th August 2008 and 07th August, 2008 respectively, passed by Sri Kaushal Kishor Jha, No. 1, the learned Additional Session Judge, FTC2 Bokaro in Session Trial No. 283 of 2002, arising out of Pindrajora P.S. Case No. 6/2002, corresponding to G.R. No. 55 of 2002, whereby and whereunder, the appellant has been punished to undergo rigorous imprisonment for life for committing the offence punishable under Section 302 IPC and further pay a fine of Rs.5000/-. In default of payment of

fine, the appellant is liable to undergo rigorous imprisonment for further period of three months.

2. The prosecution case is based upon fardbeyan of Mina Pandey (the deceased-victim) which was recorded at Bokaro General Hospital, Bokaro on 18.1.2002. In the said fardbeyan, the deceased stated that she was married to Prahlad Pandey in the year 1982 and they were residing happily. On 18.1.2002 at about 08:00 hours in the morning, she was in her in-laws house when her mother- 2 in-law and sister-in-law (this appellant) came and sprinkled kerosene oil upon her. Her mother-in-law with the help of match stick put her on fire. She started screaming and hearing her screams, her son reached along with other neighbours. Her son called her husband and her husband immediately took her to Bokaro Hospital, where she is being treated by Dr. Sahay and Dr. Sharwan. She stated that she was being tortured by her mother-in-law and this appellant- Meena Devi on the pretext of dowry for which, information was given to her paternal house and also to her husband. On the basis of the aforesaid Fardbeyan, initially FIR was registered for the offence under Sections 498A/307/34 of the Indian Penal Code as Pindrajora P.S. Case no. 6/2002, corresponding to G.R No. 55/2002. Be it noted that the victim died on 19.1.2002, thus Section 302 IPC was added vide order dated 24.1.2002. The case was instituted against two persons i.e. mother- in-law of the deceased and this appellant- Meena Devi, being the sister-in-law of the deceased.

3. The police, after conclusion of investigation, submitted chargesheet against this appellant, showing mother-in-law of the deceased i.e. Khiroda Devi as an absconder. Charge was framed under Sections 498A and 302 IPC, to which the appellant pleaded not guilty and claimed to be tried.

4. Altogether, 9 witnesses were examined on behalf of the prosecution to prove its case and several documents and signatures were marked as Exhibits on behalf of the prosecution. After closure of the prosecution witnesses, the statement of this appellant was recorded under Section 313 Cr.P.C.. The defence did not produce any witness.

5. It is pertinent to mention herein that Satyadeo Pandey and Laxmi Devi were arraigned as accused under Section 319 Cr.P.C. vide order dated 20.2.2004. Thereafter, P.W. 2 and P.W.4 were recalled on their behest and they 3 were only cross-examined. This shortcut method was adopted by the trial court without de novo trial. Thereafter, vide order dated 6.1.2007, the court ordered de novo trial of Laxmi Devi and Satyadeo Pandey and the trial was separated and the prosecution was directed to produce all the witnesses afresh. That being the situation, we are not considering that part of the cross-examination of P.W.2 and P.W.4, which was done at the behest of the accused Laxmi Devi and Satyadeo Pandey.

6. The trial court, after hearing the argument of the parties and after analyzing the evidences on record as well as taking into consideration the materials on record, convicted the appellant for committing the offence under Section 302 IPC and sentenced her to undergo rigorous imprisonment for life along with fine.

7. Challenging the said judgment of conviction dated 6.8.2008 and order of sentence dated 7.8.2008 respectively, the appellant has preferred this appeal.

8. We have heard the learned counsel appearing for the appellant and the learned Addl. P.P. We have also scanned the evidences and gone through the lower court records.

9. Counsel appearing on behalf of the appellant submits that the prosecution has miserably failed to prove the guilt of the appellant. He also submits that in fact, there is no eye witness to the said occurrence. It is further submitted that if the evidence of P.W. 2 (husband of the deceased) is analyzed, it would be evident that he did not see the occurrence, rather he came after hearing that his wife had been burnt. He further submits that the son of the deceased i.e. P.W. 4 claims to be an eye witness but he was not present at the place of occurrence and has reached after the occurrence had taken place. He submits that if the evidence of P.W. 2 and P.W. 4 is discarded then only remaining 4 evidence is the alleged dying declaration of the deceased, which is the fardbeyan. He further submits that as per the medical report, the burn injury was 100 per cent and if the burn injury of a person is to the extent of 100 per cent, he/she will not be in a position to give any statement. He submits that thus the fardbeyan is doubtful and cannot be relied

upon on this ground. It is also submitted that in fact the real culprit is the husband of the deceased who only to save his own skin has cooked up the story and has falsely implicated this appellant. He lastly submits that on the aforesaid ground, the appellant is entitled to be acquitted, giving the benefit of doubt.

10. Learned Addl. P.P. submits that the oral evidence is consistent in this case. She submits that P.W.2 and P.W. 4 are the eye witnesses who categorically stated that the deceased was burnt by this appellant along with her mother-in-law. It is submitted that the fardebayan of the deceased is the dying declaration and the same cannot be doubted because the Doctors have clearly deposed that the deceased was in her sense and was able to speak. It is also submitted that there is nothing on record which even remotely suggests that the appellant has falsely been implicated in this case. It is lastly submitted that the prosecution has been able to prove the guilt of this appellant beyond all reasonable doubt, thus the conviction of the appellant is justified.

11. In this case, there are two eye witnesses i.e. P.W. 2- Prahlad Pandey (husband of the deceased) and P.W.4- Mahamaya Pandey (son of the deceased). From reading of evidence of P.W.2, it is quite clear that due to domestic work and dowry, his mother and this appellant used to often quarrel with the deceased. As per him on the fateful day, this appellant and her mother were quarreling with the deceased and this witness calmed them down and went outside his house. He was standing near the road, when his son Mahamaya Pandey (P.W.4) came and informed him that his mother has been put on fire by 5 this appellant and Khiroda Devi (mother in-law of the deceased). P.W.2 (husband of the deceased) immediately rushed to his house when the victim told this witness that this appellant poured kerosene oil on her and her mother-in-law lit match stick and put her on fire. This witness took the victim to the Bokaro General Hospital, where the police took her statement in his presence and the doctor had also taken her statement in which, she stated that her mother-in-law and this appellant had put her on fire. This fact has been supported by P.W.4- the son of the deceased. P.W.4 states that there was quarrel going on between his mother and this appellant as the son of this appellant had committed theft of tomato from their field. This incident occurred a day prior to the occurrence. He stated that on the

date of occurrence, this appellant had thrown garbage in front of the house of the deceased, to which the deceased objected. This appellant and her son started quarreling with the deceased. His father came and mediated and got the quarrel stopped and thereafter his father left at about 8:00 hours in the morning. When this witness was getting ready for going to school, he heard the screams of his mother and on hearing such screams, he went towards his mother where he saw that his mother was pinned down on the ground by this appellant and this appellant sprinkled kerosene oil on his mother and his grand-mother lit match stick and put her on fire. He was caught by his uncle and his mouth was gagged so that he could not shout. After few minutes, he was released then he started shouting when several persons gathered on the place of occurrence. He stated that his father came and had taken her mother to the Hospital. No contradiction has been found in their cross-examination. Thus, from the evidence of these two witnesses, it is clear that this appellant had quarreled with the deceased and sprinkled kerosene oil on the person of the deceased and thereafter the mother in law of the deceased (absconder) had burnt the deceased. 6 This fact has also been narrated by the deceased in her fardbeyan. From the fact, which emerges from the evidence of these two witnesses i.e. P.W. 2 and P.W.4, it can be said that this appellant and the mother in-law of the deceased burnt the deceased after sprinkling kerosene oil. Thus the fact which is the statement of the deceased and is the fardbeyan, stands corroborated.

12. Now the question is whether reliance can be placed on dying declaration of the deceased. The fardbeyan is the dying declaration, which has been recorded by P.W. 6-Balmiki Singh, the Sub-Inspector of Police. From his evidence, it is clear that he recorded what the deceased had narrated before him, the entire facts which have been scribed by him and now is the fardbeyan. He stated that the Doctor- Sarawan Kumar and Doctor Sahay were also present there, when he was recording the statement of the deceased. In paragraph 9, he stated that the victim was in her sense and she was in a position to speak. He stated that the victim told him that her sister-in-law, Meena Devi had sprinkled kerosene oil upon her and her mother-in-law with the help of match stick burnt her. Doctor Sharwan Kumar (P.W.5) in paragraph 3 of his evidence stated that Mina Pandey (the victim) was burnt by pouring kerosene oil by her mother in-law and sister in-law. This doctor

categorically stated that the deceased was in a conscious state at that time and was speaking. The I.O. was examined in this case but the defence could not bring out any contradiction from his evidence.

13. From the conjoint reading of the evidences of P.Ws. 4 and 6, it is quite clear that though the victim was burnt, she was in her sense and was able to speak. Thus the argument of the learned counsel for the appellant that a person who is 100 per cent burnt could not give any statement, is not acceptable. In the case of Ramesh and Others Vs. State of Haryana reported in (2017) 1 SCC529 the Honble Supreme Court while dealing with dying declaration of a victim 7 who sustained 100 per cent burn injury held that the dying declaration of the victim, who has sustained 100 per cent burn cannot be brushed aside and the conviction can be passed merely on such dying declaration, which inspires confidence.

14. In this case, we find that there is nothing to discredit the fardbeyan of the victim. Though, she was 100 per cent burnt yet she was conscious and she was able to speak, which has been vouched by the Sub- Inspector of Police, who had recorded the statement of the victim. The attending doctor also supports the said position of the victim. Where the doctor and the scribe who recorded the statement says that the victim was in her sense and was talking, there is no ground to disbelieve their statement. In view of such statement by the doctor and the scribe the percentage of burn loses its reliance, so far the state of the victim to give her statement is concerned. In this case, we find that not only there is a reliable dying declaration implicating this appellant but also the evidence of P.Ws. 2 and 4 corroborates the entire fact that this appellant was instrumental in burning the deceased.

15. So far as argument of the learned counsel for the appellant that it is the husband, who is the main culprit, and has falsely implicating this appellant, is concerned, the same has also no leg to stand. There is nothing in the evidence, which can even remotely support the above proposition floated by the counsel for the appellant. Moreover, the father of the deceased namely, Shankar Pandey (P.W.3) had deposed in paragraph 7 that he used to make complain to his son-in-law that the deceased is regularly being tortured by this appellant, her mother-in-

law and his brother on the pretext of demand of dowry. He also stated that his son in-law (P.W.2) was also being assaulted by them. Thus from the aforesaid fact, it can be said that the plea raised about false implication of this appellant has got no merit. 8 16. Thus, it can be safely held that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt, which does not call for acquittal of the accused-appellant.

17. It is also pertinent to mention herein that the prosecution has exhibited several documents i.e. the fardbeyan, the FIR, the postmortem report, the inquest report, the medical slips, the case history and several signatures on different documents, which were marked without any objection from the side of the defence. We also find that all documents supported the case of the prosecution. We further find that there is no procedural illegalities or irregularities in conducting the trial.

18. Thus on overall consideration, we find that there is no merit in this appeal and the same is thus liable to be dismissed and the judgment of conviction and order of sentence dated 06.08.2008 and 07.08.2017 respectively, passed in S.T. No. 283/2002 is confirmed.

19. The appellant is already in custody. She is to serve out rest of the sentence.

20. In the result, this appeal is dismissed. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this judgment. (Ananda Sen, J.) H.C.Mishra, J.- I agree (H.C. Mishra,J.) Jharkhand High Court, Ranchi. Dated: the 12th October, 2017. NAFR/Anu/cp.-3.

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