

Sharbati Vs. State

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Court : Delhi

Decided On : Dec-20-2013

Judge : Kailash Gambhir

Appellant : Sharbati

Respondent : State

Advocate for Pet/Ap. : Smt. Mukesh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: December 20, 2013 + CRL.A. 674/1999 SHARBATI Through: Appellant Mr. K.B. Andley, Sr. Advocate with Mr.M. Shamikh, Advocate versus STATE Through: Respondent Mr. Sunil Sharma, APP for the State AND + CRL.A. 42/2000 RAME SINGH Through: Appellant Mr. K.B. Andley, Sr. Advocate with Mr.M. Shamikh, Advocate versus STATE Respondent Through: Mr. Sunil Sharma, APP for the State CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR

JUDGMENT

KAILASH GAMBHIR, J.

1. By this common order we propose to dispose of two separate appeals preferred by Rame Singh and Sharbati Devi, respectively, who have been convicted by the

learned Trial Court for committing an offence punishable under Sections 302 read with Section 120B of the Indian Penal Code, 1860 (hereinafter referred to as IPC) and have been sentenced to undergo imprisonment for life together with a fine of Rs.300/- each and in default of payment of fine to further undergo imprisonment for a period of six months.

2. In brief the case of the prosecution is as under:

On 21.05.95 on receipt of DD No.11A at PPJohripur, ASI Noor Mohd with Constable Satender went to the spot house No.4/71 Jagdamba Colony, Johripur where they came to know that injured Smt. Mukesh Dei w/o Rame Singh had been removed to JPN Hospital then the said ASI reached JPN hospital and received the MLC No.3207 of Mukesh on which the doctor opined hundred percent burns and doctor opined the injured fit for statement. On that the said ASI with SDM, Shahdara reached to the hospital for recording the statement of the injured Mukesh in which she stated her name and time of marriage four years, caused fire. She was put on fire by her husband and there was nobody else with her, the fire was put by pouring the kerosene oil and by lighting a match stick and he ran away. She could not save herself as room was bolted and wearing a salwar suit. She could not tell who came first after catching fire. She was not liked by them and he used to beat her. The oil was kept in the room itself in a 10 litre can and it was poured directly on her clothes. This statement was taken by the SDM. After recording the statements in his endorsement ASI found the commission of offence u/s 498-A, 304-B of IPC and the case was got registered. Investigation was conducted, spot was inspected. The SDM prepared the papers u/s 176 of Cr.P.C. the Injured Mukesh died on the same day on 21.5.95 at 11 PM.

3. To prove its case, the prosecution had examined 12 witnesses. After the evidence of prosecution, the statements of the accused persons were recorded under Section 313 Cr.P.C. and both of them pleaded their innocence and false implication in the case. In defence, the appellants had also examined two witnesses.

4. Addressing arguments on behalf of the appellants, Mr. K.B. Andley, Sr. Advocate for the appellant duly assisted by Mr. M. Shamikh, strongly contended

that both the appellants have been falsely implicated by the police at the instance of the family members of the deceased. Learned counsel for the appellant also argued that since the date of her marriage on 21.06.1991, with the appellant Rame Singh, the deceased most of the time stayed at her parental house. Learned counsel for the appellant further submitted that to resolve the differences between the husband and wife a Village Panchayat was convened at the instance of Rame Singh at Village Johripur and in the said Panchayat, the appellant Rame Singh took a categorical stand that he would not keep his wife Smt. Mukesh any more. Learned counsel for the appellant further submitted that in fact the Panchayat after hearing both the parties arrived at a decision whereby the appellant Rame Singh was directed to return all the dowry articles, if he was not prepared to keep his wife any more. Learned counsel for the appellant further submitted that the appellant was further told by the Panchayat that in case any damage had been caused to the dowry articles then he shall compensate her for such damages. Learned counsel for the appellant further submitted that the deceased was having an illicit relationship with two other persons and when she found that her husband took a belligerent stand before the Panchayat of not keeping her with him anymore and exposed her infidelity before the Panchayat, she found no option but to commit suicide by pouring kerosene oil on her. Learned counsel for the appellant also argued that there could not have been any motive either on the part of Rame Singh or Sharbati Devi to physically eliminate Mukesh Devi as the Panchayat had already taken a decision in favour of Rame Singh so as to get rid of his deceased wife.

5. Learned counsel for the appellant further laid serious challenge to the alleged dying declaration recorded by the SDM on 25.05.1995 at 7:15 p.m. The contention raised by the learned counsel for the appellant was that Smt. Mukesh Devi was admitted in JPN hospital at about 5:15 p.m. on 21st May, 1985 with 100% burn injuries and the SDM arrived at the hospital at 7 pm, but her statement was recorded by the SDM after a gap of just thirty minutes at 7:30 p.m., without taking any opinion of the doctor about the fitness of the victim to give a statement. Learned counsel for the appellant further submitted that medical fitness given by the doctor in the MLC at 5:15 p.m. was of no consequence as there was a gap of two hours fifteen minutes in the recording of the dying declaration by the SDM.

The contention raised by the counsel for the appellant was that the medical fitness of such a person suffering from 100% burn injuries was imperative at the time of recording the dying declaration and in the absence of the same no reliance can be placed on such a dying declaration. Learned counsel for the appellant further argued that even on MLC (Ex.PW-12/A) no time was mentioned as to at what time the patient was declared fit for making statement and therefore, non-mentioning of any time on the MLC will throw enough doubt on the case of the prosecution. Learned counsel for the appellant further argued that there were bandages all over the body of the victim Smt. Mukesh Devi including her legs, therefore, it was not possible for the prosecution to take an impression of her right foot thumb on the dying declaration (Ex.PW-8/A). Learned counsel for the appellant further argued that it was also not possible for a person to have an unburnt foot even after getting 100% burn injuries. Attention of this Court was invited to the testimony of PW5-Smt. Satto, who in her evidence deposed that except the upper part of skull of the deceased, forehead and to some extent eyes of the deceased, the whole of her body up to sole of the foot was burnt. Learned counsel for the appellant further submitted that it is also surprising that doctor Mr. Manish Tomar, junior assistant doctor, who had admitted the patient and recorded her MLC was more interested to engage himself in raising queries to the patient for a period of 5-10 minutes instead of administering any sedative or pain killer to the patient of such a serious condition of 100% burn injuries. Learned counsel for the appellant further argued that even the SDM who had recorded the dying declaration of the deceased on the evening of 21.5.1995 did not recommend the registration of the FIR, even though as per the dying declaration she had named the appellant Rame Singh as a perpetrator of the crime and the said FIR was registered only on the following day at 2.30 p.m. after the statement of PW-2 was recorded by the police.

6. Learned counsel for the appellant also argued that there was interpolation in the dying declaration by converting 90% burn injuries to 100% and insertion of a line that victim is fit for statement as per MLC also. Learned counsel for the appellant thus submitted that such a dying declaration would not inspire the confidence of the court as the same being surrounded by many suspicious circumstances and also not recorded by the SDM as per the settled procedure. So far the appellant - Sharbati Devi is concerned, counsel submitted that there is no evidence proved on

record by the prosecution to inculcate her in the commission of the said crime and she was not even named in the alleged dying declarations made by the deceased. Based on these submissions, learned counsel for the appellant pleaded for the acquittal of both the appellants. In support of his arguments learned counsel placed reliance on the following judgments:1. Kanti Lal v. State of Rajasthan reported in 2009 [3]. JCC16042. State v. Kumari Mubin Fatima and ors. Reported in 2013 [2]. JCC10997. The said contentions raised by learned counsel for the appellants were strongly refuted by Mr. Sunil Sharma, learned Additional Public Prosecutor for the State. Learned APP for the State submitted that since the very inception of marriage, the deceased was being subjected to harassment by the appellants because of her bringing insufficient dowry in the marriage and also because of non fulfilment of various other monetary demands raised by the appellant, Rame Singh. Learned APP further submitted that there can be no reason to disbelieve the three dying declarations made by the deceased i.e., one before the doctor Manish Tomar of Jai Prakash Narain Hospital at the time of her medical examination and which dying declaration is reflected in the MLC proved on record as Ex. PW-12/A; the second dying declaration proved on record as Ex. PW-8/A which was recorded by SDM; and third dying declaration made by the deceased before her elder sister Ms. Satto. Contention raised by learned APP for the State was that the person on the verge of death is not expected to tell lies or falsehood and therefore, the truthfulness of the three dying declarations made by the deceased cannot be disbelieved. Learned APP also argued that at the time of her admission in Jai Prakash Narain Hospital, the deceased was conscious and oriented and she was declared fit for statement by the doctor who attended her and therefore, merely because she had suffered 100% burn injuries cannot lead to infer that she was not medically fit to give her statement to the doctor as well as to the SDM. Learned APP for the State also argued that both the appellants were present in the Panchayat and as per the deposition of PW2, PW-3 and PW-4, they had left the Panchayat and immediately thereafter, it was found that in the house of appellant - Sharbati, the deceased got herself burnt and the said door of the house was bolted from outside. Learned APP for the State also argued that it has also come in the evidence of these witnesses that the deceased had accompanied the appellant, Sharbati Devi to her house while the appellant, Rame Singh had

already left for the house of appellant, Sharbati Devi. Learned APP for the State also argued that the appellant, Rame Singh had fled away from the scene of crime and this was witnessed by PW-2.

8. Based on these submissions, learned APP for the State submitted that the appellants are not entitled to acquittal and there is no reason to upset the well reasoned judgment passed by the learned trial court convicting these appellants for committing an offence punishable under Section 302 read with section 120B.

9. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the record of this case and closely scrutinised the evidence led by both the parties.

10. Appellant, Rame Singh is the husband of deceased, Mukesh Devi and appellant, Sharbati Devi is the sister-in-law (bhabhi) of the deceased. Appellant, Rame Singh got married with Mukesh Devi according to Hindu Rites and Ceremonies on 21st June 1991. After her marriage, she started residing with her husband at the matrimonial house at Johripur. Rupal Singh, who was also one of the accused persons, is maternal uncle of the appellant, Rame Singh. As per deposition of PW-2 - Tej Ram, brother of the deceased, the deceased came back from her in-laws house after 3-4 days of her marriage and again went to her in-laws house in the next month i.e., on 5th/6th July 1981.

11. After a gap of 2-3 days, PW-2, Tej Ram visited his sister at her in-laws house where she disclosed to him that her husband, Rame Singh used to say that she did not brought a fridge in dowry. On the same lines, the deceased told her brother that appellant, Sharbati Devi also used to say that in the present day marriages, at least scooter is given in the dowry but she has not brought any and likewise, Rupal Singh, maternal uncle of the appellant, Rame Singh also used to say that in the present day, marriages are solemnised in a better way but she has got nothing in the dowry. PW-2, after having heard about the raising of such demands, told his sister that he will give a fridge at the time of birth of a child and thereafter, he returned back to his house. PW-3 had further deposed that after three days of his visit at the in-laws house of the sister, Rame Singh left his wife at his native place

i.e. Gamari, (UP), where his sister remained for about 3/4 months. He further deposed that appellant, Rame Singh brought his sister at her parental house after about 3/4 months, whereafter his sister remained with them for about 3/4 months. At that time, Mukesh Devi told her brother that her husband demanded cash of Rs.10,000/- and as per PW-2, the said amount of Rs.10,000/- was given by him to the appellant, Rame Singh when he came to take his wife back to the matrimonial house. PW-2 further deposed that despite the payment of Rs.10,000/-, the appellants - Rame Singh and Sharbati Devi, Shri Omi and Rupal Singh kept on harassing her and repeated their demand for more and more money. PW-2 also deposed that appellant, Rame Singh again raised a demand for a sum of Rs.2,000/- which was declined by him. In January 1995, appellant, Rame Singh again brought his wife to her parental house and left her there while he went back to his house. As per PW-2, the reason for bringing his sister at the parental house was due to non-fulfilment of demand of Rs.2,000/- by them. PW-2 further deposed that he and his brother Hira Lal contacted Rame Singh on telephone as to why he was not keeping his wife with him, to which Rame Singh replied that he was interested to live with his bhabhi only, whose husband died one and half year back. As per PW-2, they continued with their efforts to persuade appellant, Rame Singh to take his wife back but without any success. Thereafter, appellant, Rame Singh told them that they should come to the village, Daujipur alongwith their sister and 2-4 respective persons and accordingly on 21st May 1995, they had reached Village Daujapur at about 12.30 pm. PW-3 brought with him his elder brother Hira Lal, his sister Mukesh Devi, his matrimonial grandfather, Shri Mawasi and a villager namely Prabhu Dayal.

12. This narration of facts in the deposition of PW-2, PW-3 and PW-4 makes one thing absolutely clear that right from the date of inception of the marriage, the married life of appellant, Rame Singh and his wife was not smooth and happy but embittered and acrimonious. As per the family members of the deceased the reason was the greed of the appellant, Rame Singh, his brother-Omi, Bhabhi-Sharbati and Rupal Singh - maternal uncle of the appellant, who were harassing the deceased with taunts for not bringing CRL.A. 674/1999 & 42/2000 a demands raised by the appellant, Rame Singh.

13. As per the defence, deceased Mukesh Devi had developed illicit relationship with one Mukesh and Rajpal, who were running kirana shops and from whom she used to purchase kirana items and in the process she developed illicit relationship with them. Without touching this issue, one fact which is admitted by the defence as well as the prosecution is that it is appellant, Rame Singh who told PW-3 Hira Lal to come to his house on 21st May 1995 alongwith his sister and 2-4 respectable persons so as to settle the matter. It is also not in dispute that PW-2 Tej Ram, PW-3 Hira Lal and Satto (PW-4) alongwith two respectable persons, namely, Prabhu dayal and Mawasi Lal had reached the house of the appellant, Rame Singh on 25th May 1995 along with the deceased Mukesh Devi. It is also not in dispute that there were about 20 persons from the side of Rame Singh present and Panchayat was held at the house of appellant, Rame Singh. It is further not in dispute that in the said Panchayat meeting, Rame Singh took a firm stand that he will not keep his wife Mukesh Devi at his house and then the Panchayat took a decision that all the dowry articles (stridhan) will be returned by the appellant, Rame Singh to his wife and if any of the dowry articles were found damaged then he will compensate the same by way of money. It is after this decision that there is a conflict in the version set up by the prosecution on the one hand and by the defence on the other hand. As per the prosecution, when the Panchayat decided that the accused persons will return the dowry articles and will give money for the damaged articles, Rame Singh took away accused Rame Singh from the Panchayat to the house of Rame Singh and they did not return for 15 minutes. At the same time Sharbati also took Mukesh Devi (deceased) to her house and just after 15 minutes smoke was seen emanating from the house of Sharbati Devi and when PW-2 and PW-3 rushed towards the house of Sharbati Devi, they saw that the house of Sharbati was bolted from outside and when opened by somebody, they saw that Mukesh Devi was crying with burn injuries. At the same time, they saw accused Rame Singh was running from the house of accused Sharbati Devi. Although Rame Singh, Sharbati Devi and Omi were not found at the house.

14. In contrast, the defence version is that after the decision of the Panchayat, the accused persons were taking out the articles, from their house, so as to return them back to Ms. Mukesh and during that period Mukesh Devi came inside the

house of Sharbati Devi on the pretext of attending the call of nature and then burnt herself after bolting the door from inside.

15. After the said incident, the police had reached there and the victim was rushed to Jai Prakash Narain hospital. PW-11 ASI Noor Mohd after having received the information from Police Post Dajau Pur vide DD No.11A reached to the spot and from the spot he had reached the JPN Hospital alongwith Constable Satinder. PW-11 had collected the MLC of the injured and thereafter had informed the matter to SHO and SDM. After sometime, PW-8, K.K. Dahiya (SDM) came in the hospital and recorded the dying declaration of the deceased-Mukesh Devi. The SDM had recorded the statement of Tej Ram, Hira Lal, and Ms.Satto on the following day, i.e., on 22.05.1995 and based on the said statements of these witnesses and the dying declaration made by the deceased, FIR under Sections 304-B/498-A read with Section 34 of IPC was registered against the accused persons. During the course of investigation the crime team had collected the burnt pieces of clothes, matchbox containing burnt match sticks and one plastic cane was found lying in the chowk and some little quantity of about 10/25 ml kerosene oil was found lying in the said chowk. All these items from the spot were seized vide seizure memo proved on record as Ex.PW-11/A. The site plan of the place of the occurrence was prepared and the same was proved on record as Ex.PW11/B. On 23.5.1995, the Post Mortem of the deceased - Mukesh Devi got conducted and the post mortem report was proved on record as Ex. PW10/A. As per the Post Mortem Report, cause of death opined was due to burn shock consequent upon burn injuries, all the injuries were anti mortem and recent in duration and were caused by burn due to fire.

16. If for a while, we do not go into the question as to under what circumstances the death of Mukesh Devi had taken place, whether it was a suicide committed by Mukesh Devi herself or whether it was a case of homicidal death, we see that the scene preceding the said incident is a scene of Panchayat wherein the appellant, Rame Singh unequivocally said that he was not prepared to keep his wife, Mukesh Devi any more. Reason given by Rame Singh was the alleged illicit relationship of deceased, Mukesh Devi with two kirana shopkeepers. Irrespective of the veracity of the said reason of alleged illicit relationship, the prosecution witnesses had also

admitted the fact that Panchayat had told Rame Singh to return all the dowry articles to his wife and to pay money for those dowry articles which have already been damaged. Now, with this decision of the Panchayat we are at complete loss to find any reason or motive on the part of appellant Rame Singh to have gone to the house of Sharbati Devi to kill his wife Mukesh Devi and equally puzzling is the fact that as to how Sharbati, sister-in-law of Rame Singh would leave the Panchayat alongwith the deceased and then burn her in her own house. It is not the case of the prosecution that there was already a well-designed conspiracy hatched by the accused persons to somehow bring the deceased to the house of Sharbati Devi and then to burn her with the help of kerosene oil. However, there was strong provocation for Mukesh Devi to have taken a decision to commit suicide because in the Panchayat she was put to defame and humiliation because of revelation of her alleged illicit relationship with two kirana shopkeepers and the adamant stand of her husband, Rame Singh not to take her back to join the matrimonial home. Appellant, Rame Singh who was getting rid of his wife, Mukesh Devi, as per his wishes expressed by him in the Panchayat, possibly was not expected to go to the extent of eliminating his wife that too at the house of his own bhabhi and at the time when the members of the Panchayat were yet not disbursed. This appears to be more probable and logical in the facts of the present case and in this background of facts, let us now examine the validity of the three dying declarations made by the deceased.

17. The first dying declaration made by the deceased Mukesh Devi was before Dr. Manish Tomar of Jai Prakash Narain hospital. As per the MLC proved on record as Exhibit PW12A the deceased was brought to the said hospital by Head Constable, Hari Singh on 25.5.1995 at about 5.15 p.m. At the time of her examination by the doctor, she told the doctor that she was being burnt by her husband by pouring kerosene oil on her on 21.5.1995 at 4.30 p.m. in her house. The MLC also records that the patient was conscious, oriented and had a pulse rate of 120 per minute. It is also on record that there was a smell of kerosene oil and that the victim was fit for making the statement. In the column of the name of relative or friend, name of Head Constable, Hari Singh appeared while in the column name of Constable the name of one Surender had been mentioned. The second dying declaration was recorded by Shri K.K. Dahiya, SDM Shahdara who

entered the witness box as PW-8. In this short dying declaration, which is in question-answer form the victim disclosed the name of her husband, the period of her marriage and the person, who had burnt her. To a specific question as to how she caught fire, her reply was that it was her husband who burnt her. To another question that, was there anybody accompanying him, she replied that there was none else. Another question put to her was how she was put on fire, the answer came it was by pouring kerosene oil and by lighting up the fire with the help of match box and thereafter he ran out. To another question whether she was not happy with her in-laws, reply came that she was not liked by her husband. To another question whether he used to beat her, the answer came in the affirmative. The third dying declaration was made by the deceased before her sister Satto, in which she told that it was Rame Singh who had put her on fire and after the fire he ran away after bolting the room from outside. On these dying declarations the view taken by the learned Trial Court was that there could not be any possibility of false implication by these independent witnesses, as there could be no enmity of PW-8 SDM and PW-12 Dr. Manish Tomar with the accused persons that they would fabricate the documents. The Trial Court also took a view that none of the prosecution witnesses i.e. PW2, PW3 and PW5 were present in the hospital when the MLC was prepared by the doctor and dying declaration was recorded by the SDM. Based on the said reasoning, the learned Trial Court held that two dying declarations proved on record as Exhibit PW12/A and PW8/A are valid and free from any kind of infirmity. Learned Trial Court further found that the statement of the public witnesses is consistent and corroborative to the statements given by the family members of the deceased and they also find support from the said dying declarations made by the deceased and thus guilt of accused Rame Singh and Sharbati was proved beyond any reasonable doubt. Accordingly learned Trial Court held Rame Singh guilty for committing offence punishable under Section 498-A and Sections 302/34 IPC while convicting Sharbati for offence punishable under Sections 302/34 IPC. Learned Trial Court, however, acquitted other two accused persons Rupal Singh and Omi as no evidence beyond reasonable doubts surfaced against these accused persons to convict them under the said provisions.

18. The principles governing dying declaration were eloquently summed up in one of the earliest case reported in *Paniben vs. State of Gujarat* AIR 1992 SC1817 and the same are reproduced as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (vi) A dying declaration which suffer from infirmity cannot form the basis of conviction. (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration has to look to the medical opinion. But where the eye-witness has said that the deceased was in a fit conscious state to make this dying declaration, the medical opinion cannot prevail. (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted.

19. The principle on which the dying declaration is admitted in evidence is based upon the legal maxim *Nemo moriturus praesumitur mentire* i.e. a man will not meet his maker with a lie in his mouth. While keeping this old age principle in view, it cannot be forgotten that before dying declaration is relied upon by the Court, the Court should be satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration and same is not as a result of either

tutoring, prompting or vindictive or product of imagination. In *Laxman vs. State of Maharashtra*, 2002 CrL.L.J.

4095 the Honble Supreme Court held that:

a dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence, it has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the Court, making a statement, stating the facts contained in the declaration, with the difference that the declaration, is not a statement on oath and the maker thereof be subjected to cross-examination.

20. The issue of reliability of dying declaration also came up for consideration before the Supreme Court in *State of Rajasthan vs. Wakteng*, AIR 2007 SC2020 and it was held as under:- 21. While great solemnity and sanctity is attached to the words of dying man because a person on the verge of death is not likely to tell lie or to concoct a case so as to implicate an innocent person but the Court has to be careful to ensure that the statement was not the result of either tutoring, prompting or a product of the imagination. It is, therefore, essential that the Court must be satisfied that the deceased was in a fit state of mind to make the statement, had clear capacity to observe and identify the assailant and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it is sufficient for the purpose of conviction. Further in the matter of *Laxman vs. State of Maharashtra* reported in (2001) 2 JCC71 the Constitution Bench of the Honble Apex Court took a view that there is no requirement of law that there should be always a medical certification that the injured was in a fit state of mind at the time of making a declaration and such certification of doctor is essentially a rule of caution and even in the absence of such a certification the voluntary and truthful nature of the declaration can be established otherwise. The Court also held that where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without the examination by the doctor the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful.

22. In the background of the aforesaid settled legal position, let us now examine as to whether three dying declarations made by the deceased can inspire the confidence of the Court being totally truthful and reliable and can it said that all of them were made by her totally uninfluenced by any tutoring, prompting, motive or any other extraneous reasons and more particularly in a fit state of mind despite having suffered 100% burn injuries. The dying declaration recorded by the Sub-Divisional Magistrate is accorded higher sanctity because Sub-Divisional Magistrate is considered to be an independent and impartial person for recording the statement. The dying declaration, which was recorded by the SDM was proved on record as Exhibit PW8/A. The said dying declaration nowhere records any certification of the doctor to certify the fitness of the victim to record her statement. PW8 in his cross-examination deposed that he reached hospital immediately at around 7.00 p.m. and he found the IO present in the hospital. He further deposed that IO did not brief him before he started recording the statement of the injured to find out whether the injured was in a fit state of mind to make statement or not. He also deposed that no written request in this regard was made to the doctor and it was only an oral request made to the doctor at about 7.00 p.m. He denied the suggestion that no such request was ever made by him to the doctor before recording the statement of the victim. He also deposed that he had gone through the MLC before recording the statement of the victim. He admitted the fact that there is overwriting over the percentage of burn injuries which was converted from 90% to 100%. He also admitted that the words as per the MLC were added later on in Exhibit PW8/A. In his deposition the SDM failed to disclose the name of the doctor, who had orally declared the victim to be medically fit for giving her statement. We also find no answer coming forth from the SDM as to why he could not call the doctor to take certification in writing with regard to the fitness of the victim. We cannot lose sight of the fact that in the facts of the present case the victim had suffered 100% burn injuries at about 4.30 p.m. on 21.5.1995, her MLC was recorded by the doctor at 5.15 p.m. on the same evening, while her dying declaration was recorded by the SDM at 7.10 p.m. Thus there was a clear gap of more than two hours when the doctor who had recorded her MLC declared the victim fit for statement and the time when the statement was recorded by the SDM. We thus find merit in the submission of the counsel for the appellant that in such a

serious case of 100% burn injury, it was imperative for the SDM to have obtained certification from the doctor about the fitness of the victim to record her statement. We are further distressed to find that the SDM had inserted a line i.e. victim is fit for statement as per MLC also later and this is quite apparent on a bare perusal of the said dying declaration proved on record as Exhibit PW8/A. The said line, appears to us, has been compressed in the hand written noting of the SDM and there is not a usual gap between the preceding lines and the line immediately thereafter. From the insertion of this line later in time we feel convinced that the SDM had failed to take the opinion of the doctor before recording the statement of the victim and had he done so, there was no need for him to insert the said line in his note on Exhibit PW8/A. PW8, therefore, made false deposition before the Court that he had requested the doctor before recording the statement of the injured and the same being an oral request. An officer of the rank of the SDM is not expected to conduct himself in such a dubious manner. Had he approached the doctor of the hospital, he could have taken the certification of the doctor about the fitness of the victim on the dying declaration itself. The dying declaration Exhibit PW8A was also not signed by the victim because of the serious deep burn injuries received by her all over the body and as per the deposition of SDM, IO had brought the red ink pad, from which impression of her right foot thumb was taken on the said dying declaration proved on record as Exhibit PW8/A. Such an extreme medical condition of the victim also warranted the presence of a doctor to certify her fitness due to which impression of her right foot thumb could only be taken by the SDM. In these peculiar facts of the case, we find it extremely difficult to believe that the alleged dying declaration recorded by the SDM is truthful and reliable.

23. So far as the dying declaration made by the deceased to her elder sister Mrs. Satto is concerned, there again we find no proof on record that the victim was in a fit medical condition to make her statement at that time or not. We thus cannot attach any credence to the said deposition of PW-5 that the victim made any dying declaration to her, naming her husband in the commission of the said crime.

24. So far as the dying declaration made by the victim at the time of her examination by Dr. Manish Tomar of Jai Prakash Narain hospital, we find on a

bare perusal of the same that there is an insertion of fit for statement by some other person whose name has not surfaced in the entire evidence of the prosecution. Even the Head Constable Hari Singh whose name has been mentioned in the column of name and relative or friend was not examined by the prosecution and, therefore, it is difficult to accept that the victim was not accompanied by one of her own relatives or she could tell the doctor having been burnt by her husband on 21.5.1995 at 4.30 p.m.

25. In the above circumstances, we are not persuaded to believe that said dying declarations can be held to be trustworthy and genuine inspiring the confidence of the Court, and to hold the appellants guilty based on the alleged dying declarations would be quite hazardous and against judicial prudence. We also hasten to add that even if the victim had named her husband in the said dying declarations, the same could be because of her immediate provocation as in the panchayat she was publically ridiculed and embarrassed when her husband had refused to take her back mainly on the premise that she was having illicit relationship with the other two persons. To us it appears that the case in hand is a clear case of suicide committed by the deceased after she was humiliated in the panchayat by her husband and also when he showed his complete reluctance to take her back. The learned Trial Court has not analysed the evidence on record in its proper perspective, and got influenced by extraneous factors to convict the appellants Rame Singh for offences punishable under Sections 498-A, 302/34 IPC and Sharbati for offence punishable under Sections 302/34 IPC. We are also dismayed to note that there was not even a shred of clinching evidence against Sharbati and we do not find any material placed on record by the prosecution to prove common intention on the part of Sharbati and Rame Singh to burn Mukesh Devi, the deceased. Mere fact that the deceased had gone to the house of Sharbati and there she had burnt herself will not make Sharbati responsible for the crime, which she had never committed. We do not find any material proved on record by the prosecution to even sustain the conviction of the appellants under Section 498-A as no specific allegations were levelled by PW3 and PW4 subjecting Mukesh Devi to harassment due to demand of dowry in connection with her marriage.

26. In view of the aforesaid discussion, the appeals filed by the appellants are allowed and the impugned judgment and the order on sentence passed by the learned Trial Court is hereby set aside.

27. The appellants are on bail, their bail bonds be discharged.

28. Copy of this order be sent to Jail Superintendant for information. KAILASH GAMBHIR, J.

INDERMEET KAUR, J.

DECEMBER20 2013 v/pkb

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