

Sheela Devi Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : Mar-07-2014

Judge : The Honourable Chief Justice Mr. Barin Ghosh & Servesh Kumar Gupta

Appeal No. : Criminal Appeal No. 203 of 2013

Appellant : Sheela Devi

Respondent : State of Uttarakhand

Judgement :

Servesh Kumar Gupta, J.

1. Along with preferring the instant appeal, bail application of the appellant was also moved. The ground, seeking bail, was substantially confined to the infirmity in dying declaration, so we directed on 26.12.2013 for listing of the appeal for hearing, along with the bail application. Registry was, accordingly, directed to prepare paper-books and make the same available to learned counsel for the parties, as quickly as possible, but not later than 24.02.2014. From the records, we have verified that, on 02.01.2014, the same was got received by Mr. Saurav Adhikari, Advocate for the appellant. However, when the matter is taken up for hearing, learned Senior counsel was not inclined to argue the appeal on merits except for bail application.

2. Since more than two months have elapsed from passing the earlier order on 26.12.2013, we thought it proper to hear the appeal on merits instead of hearing the bail application alone.

3. Having heard the appeal on merits, it transpires that the impregnability of the judgment and order of conviction dated 11.04.2013 is, in question, before us. By the impugned judgment, appellant Smt. Sheela Devi was found guilty for the offence under section 302 IPC. She has appropriately been sentenced for the same.

4. Initially, Sessions Trial No.08 of 2011 proceeded against the accused Raj Kumar S/o Sharmanand and appellant Sheela Devi W/o Sharmanand, for the offences under sections 498-A and 302 IPC read with section 3/4 of the Dowry Prohibition Act (hereinafter to be referred as the Act). The said trial culminated absolving Raj Kumar from all the charges, while the appellant was also exonerated for the offences u/s 498-A IPC and 3/4 of the Act, but at the same time, she was found guilty and convicted, as afore-mentioned. The said trial pertains to police station Jaspur, District Udham Singh Nagar, bearing F.I.R./crime no.155/2010.

5. In the backdrop of prosecution facts, it appears that deceased Smt. Jyoti was married in her early twenties (in the year 2003) with one of the accused Raj Kumar as per Hindu rituals. The groom and his family was amply rewarded with all gifts and dowry as per the status of brides family. But this all could not content the groom and his family, with the result, she was allegedly traumatized in her in-laws house at the hands of her husband Raj Kumar, mother-in-law Sheela Devi and sister-in-law Mamta. Meanwhile, she was blessed with a son, namely, Vishal Kumar who was around six years of age at the time of incident. The first information report discloses that once she was expelled from the matrimonial house with a demand of Rs.50,000/-, in cash, and colour television etc., with a warning that if she would return without fetching the dowry, as above, she may loose her life. Many a times, the matter was placed before the Panchayat of the village where the position of this matrimonial turmoil was somehow resolved. In the month of June, 2010, PW1 Buddh Singh (father of bride) also gave one colour television along with Rs.20,000/-, in cash, but all that could not satisfy the

insatiable lust of the accused persons.

6. The incident allegedly occurred on 26.08.2010 at about 2 PM. It has been stated in the report that kerosene oil was sprinkled on the body of Smt. Jyoti by her husband Raj Kumar, mother-in-law Sheela Devi (appellant) and sister-in-law Mamta. She was set ablaze with the intention to kill. After committing the incident, all trio escaped from the spot. Hearing the screams of victim, while writhing in state of burning, the neighbours assembled and carried her to the government hospital Jaspur. Looking to her serious condition, she was referred to the higher center at government hospital Kashipur, where she breathed her last on 02.09.2010 during the course of her treatment. This first information report was lodged on 27.8.2010 at 11:30 A.M. by PW1 Buddh Singh at police station Jaspur for the offences u/s 498-A, 323, 324 and 506 IPC read with section 3/4 of the Act. But after the death of victim, offence was converted inter alia to that of section 302 IPC. On 3.9.2010 at 10:30 A.M, inquest report (Ex.Ka-2) was prepared. In the opinion of inquest witnesses, she lost her life on account of severe burning, nonetheless, the post-mortem was recommended.

7. Autopsy (Ex.Ka-4) was conducted on 3.9.2010 at 1:30 P.M. in government hospital Kashipur, District Udham Singh Nagar. PW5 Dr. Kailash Rana noted the following ante-mortem injuries on the body of deceased: -

Ante-mortem 85% body surface burn 1st and 2nd degree with secondary infection over trunk, perineum, both upper limbs, both lower limbs and above knee, neck and face.

8. In the opinion of the medical officer, cause of death was ante-mortem burn injury with secondary infection with septicemia. Duration of death was opined to be about 24 hours before.

9. After the report was lodged, on 27.8.2010, police arrested the accused persons and recovered empty matchbox and five burnt matchsticks besides some pieces of broken bangles from the spot. Memo of that recovery is Ex.Ka-5.

10. It is pertinent to mention here that while the victim was fighting for her life in the hospital, her dying declaration (Ex.Ka-3) was recorded by PW3 M.M. Padaliya, Naib Tehsildar on the instructions of Sub Divisional Magistrate, in presence of the Emergency Medical Officer.

11. Investigation of the case resulted into submission of chargesheet against two accused persons, namely, Raj Kumar (husband), and appellant Smt. Sheela Devi (mother-in-law) for the offences u/s 498-A/302 IPC r/w Section 3/4 of the Act. Learned Sessions Judge, accordingly, framed Charges against both the accused to which they abjured their guilt and claimed trial.

12. In support of its case, prosecution has examined as many as eleven witnesses, namely, PW1 Buddh Singh, PW2 Rakesh Singh, PW3 M.M. Padaliya, Naib Tehsildar, PW4 Master Vishal, PW5 Dr. Kailash Rana, PW6 Vimal Kumar, PW7 Mukesh, PW8 S.I. Hema Gunwant, PW9 Inspector V.C.S. Gusain, PW10 Head Constable Naresh Singh Rawat and PW11 Nand Ram Arya, Naib Tehsildar.

13. Thereafter the statement of the accused persons were recorded under section 313 Cr.P.C. In reply, appellant has stated that the burning of victim Smt. Jyoti was a sheer incident and she (appellant) has been framed on account of conspiracy on the part of family members of native home of deceased. In oral evidence, DW1 Om Prakash was produced.

14. The trial court resulted the trial into conviction of the appellant, as afore-stated.

15. Having heard the learned counsel for the parties and on going through the evidence on record, we notice that the substantial evidence, as available on record against the appellant, is the dying declaration of victim Smt. Jyoti, which was recorded on 26.8.2010, the day she was admitted in the hospital itself. In the fitness of things, it will be proper to mention the English translation of the same which is as follows: -

œ..Seven years have elapsed of my marriage. Eighth is running. I have one son aged about seven years. Since very morning my mother-in-law is quarrelling. I was ailing and feeling pain in my abdomen. I was not provided food, so was unable to

do any household chore. My mother-in-law taunted that I only eat food and do not do any work. My husband had left in the morning for his duty in Ply Factory. Inside the room, I was there along with my mother-in-law and son. One month has passed since my father-in-law died. My mother-in-law cursed me saying that my mother be also widowed. I objected to the same. My mother-in-law then closed the door and set ablaze me by sprinkling kerosene oil. My child strived to prevent my mother-in-law but he was pushed out of the room. I raised shrieks, hearing which the neighbours assembled. They threw water and ashes in order to put out the flames. By that time, I had become unconscious. These people (accused persons) tortured me for the purpose of dowry. My husband kept on saying that a handicapped woman had been tied with him. I remained silent and sometimes replied that I was in your fate, so where would I go? My mother-in-law beats me a lot and my husband also turns a blind eye on the same. This all is my statement?

16. PW3 M.M. Padaliya, Naib Tehsildar, recorder of the statement, has mentioned that her body had been too burnt to enable her to put either the signature or thumb impression upon the statement. The doctor, who was present at the time of recording such statement, has opined in the following words:-

Patient is referred as a case of about 82% burn injury from C.H.C. Jaspur.

Patient is conscious and oriented..

Patient is able to give dying deposition. She is stable clinically and no sedative is given to her.

17. Having gone through such declaration carefully, we feel that it is flawless without any infirmity. In the case of Bhajju @ Karan Singh v. State of Madhya Pradesh reported in (2012) 4 SCC 327, Honble Apex Court has propounded the law on the subject. It has been held in the said judgment that: -

œThe law is well-settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A Court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. The 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 light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence. If in a given case a particular dying declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the Court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the Court, the same may be refused to be accepted as forming basis of the conviction.?

18. The argument of learned Senior counsel to the effect that the presence of either signature or thumb impression, upon the dying declaration, was indispensable to make the statement creditable, is quite baseless, inasmuch as, PW3 M.M. Padaliya, Naib Tehsildar, who was a responsible officer, has mentioned the reason as to why he could not obtain the signature or thumb impression below the statement because the same was not possible since the body had been considerably burnt.

19. It was also argued on behalf of the appellant that no certificate from the doctor was obtained before recording the dying declaration of victim. This argument also cannot be accepted for the reason that in such a short statement, which could have been recorded just within 6-7 minutes, the doctor has very well opined in the bottom thereof that patient was well capable to give dying deposition and her condition was stable clinically and no sedative was given to her. It was further opined that the patient was conscious and oriented, so the certificate, to the above effect, by the Emergency Medical Officer, strengthens the credential of dying declaration and we find no infirmity in the same, as argued by learned counsel for the appellant. In our opinion, this substantial evidence, by itself, is sufficient to find the appellant guilty for the offence, as has been held by the trial court. 20. Learned Senior has next argued that there is no eyewitness of the occurrence nor there is any evidence about the dowry demand from the victim, rather DW1 Om Prakash has stated that deceased was never ill-treated in her matrimonial house. These arguments do not hold any water for the reason that in her dying declaration itself, victim has stated that there was no other person in the house except her mother-

in-law and a son aged about 6-7 years. When this innocent child tried to save his mother from the cruel hands of appellant, he was pushed out of the room by the mighty hands of the culprit. So he was made helpless. Further, the statement of DW1 also does not inspire any credence as he is only the hearsay evidence. He could not have been a witness as regards the day to day treatment, meted out to the victim, at the hands of accused persons within the forecorners of the house.

21. The next argument, put forth before us, is that the appellant is too old a lady to overpower the victim while setting her ablazed. This argument is also not tenable for the reason that from nowhere in the record, her age has been revealed. So, we are of the view that she was well capable to overpower her ailing, faint and feeble young daughter-in-law who was not permitted even to eat food since morning of the day of incident. However, it can be noticed that there is a mention by the doctor about the appellants age to be about 60 years at the time of her medical examination on 28.8.2010 when she was produced after her arrest for such purpose. And this age cannot be accepted as to make the culprit unable to overpower her daughter-in-law in such circumstances as aforestated.

22. The statement of the appellant that she was busy in saving the life of her daughter-in-law is not verified from the record anywhere. The neighbours assembled after hearing the shrieks of burning victim and finding her condition serious, she was shifted to the government hospital. Even the reporter (her father PW1 Budh Singh) was informed over telephone by the villagers, as has been disclosed by him in his statement. PW1 did not see the occurrence, so his statement is relevant only to the extent that he got information from the villagers and subsequently, he reached in the government hospital to meet his daughter.

23. PW2 Rakesh Singh is only the witness of inquest report (Ex.Ka-2). He has proved the same.

24. PW3 M.M. Palariya is the Naib Tehsildar who recorded the dying declaration of the victim and has proved the same.

25. PW4 Master Vishal is a child witness who was seven years of age at the time of deposition and eversince the date of occurrence, he was living alongwith his

maternal grandfather. So we do not find any reason to give credence to his testimony. More so, in view of the fact that in the last of his cross-examination, he has disclosed that the deposition, so made by him, was at the instance of his maternal grandfather.

26. PW5 is Dr. Kailash Rana who conducted autopsy on the body of deceased and has proved the ante-mortem injuries found on her body, as aforementioned.

27. PW6 Vimal Kumar is the Pradhan of the village. He was informed about the occurrence by someone. On this information, he reached at the spot and shifted the victim at the government hospital on a Tractor. It has nowhere been stated by him that appellant was present in the house at the time of occurrence.

28. PW7 Mukesh is the resident of the same village where the occurrence took place. His house is around 150 meters away from the spot. His statement, negating the demand of dowry, is of no relevance because he cannot be a witness as to how the victim was being treated inside the house.

29. PW8 is Sub Inspector Hema Gunwant who started investigating the matter whereas PW9 is Inspector Vijay Chandra Singh Gusain, who concluded the same on submission of chargesheet, which he has proved.

30. PW10 is Head Constable Narendra Singh Rawat who recorded the first information report in the relevant General Diary while PW11 Nand Ram Arya is the Naib Tehsildar who conducted the inquest and prepared its report (Ex.Ka-2). He has proved the same.

31. Thus, in view of what has been discussed above, we are of the considered view that there is no infirmity in the finding of guilt and conviction recorded by the trial court. The appeal lacks merit and is, accordingly, dismissed. Impugned judgment and order, passed by the trial court, is upheld. Appellant is already in jail. She shall serve out the sentence so awarded to her by the trial court.

32. Bail application no.2017 of 2013 thus, too stands rejected.