

Salma and anr Vs. State

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Court : Rajasthan Jodhpur

Decided On : Jun-30-2014

Appellant : Salma and anr

Respondent : State

Judgement :

-1- IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Mst.

Salma & Anr.

versus State of Rajasthan D.B.Criminal Appeal No.805/2008 against the judgment dated 24.09.2008 passed by Additional Sessions Judge (Fast Track).Sirohi, in Sessions Case No.15/2008(8/2008).Date of Judgment :: 30th June, 2014 P R E S E N T HON'BLE MR.JUSTICE GOVIND MATHUR HON'BLE MR.JUSTICE ATUL KUMAR JAIN Mr.K.R.Bhati, for the appellants.

Mr.J.P.Bhardwaj, Public Prosecutor, for the State...BY THE COURT : (PER HON'BLE MATHUR,J.) By judgment dated 24.9.2008 learned Additional Sessions Judge (Fast Track).Sirohi convicted accused Smt.

Salma wife of Firoz Khan and Smt.

Mariam Banu @ Panku wife of Barkat Khan for the offence punishable under Section 302 Indian Penal Code and sentenced them to undergo life term imprisonment with a fine of Rs.2000/- each with a default stipulation.

To question the conviction recorded and sentence awarded this appeal is preferred.

In brief, facts of the case are that on 14.11.2007 at 06:15 PM the Station House Officer, Police Station Sirohi reduced in writing the statements given by -2- Smt.

Rahisa undergoing treatment at Government Hospital.

Smt.

Rahisa stated that she entered into a wedlock with Shri Yasin Khan about a year and half earlier.

Her 'Jethani' (sister-in-law) wife of Firoz Khan used to harass her for one or other reason including for demand of dowry.

In morning of the day some dispute took place with regard to giving of a chocolate to the son of Rama Bhai.

Salma objected such grant.

In the evening at about 5-6 PM Salma and her mother came and threatened to kill her.

Salma then poured kerosene on Rahisa and her mother put her in flames.

At the time of incident neither Yasin nor Firoz were at home.

On basis of the statements so recorded (Ex.P/12) a case was registered for the offences punishable under Sections 307 and 498-A Indian Penal Code.

While undergoing treatment Rahisa died on 17.11.2007, thus, the investigation for the offence punishable under Section 302 Indian Penal Code too was initiated.

After necessary investigation a police report was filed before the court of learned Judicial Magistrate, Sirohi charging the accused persons for the offences punishable under Sections 302, 304-B and 498-A Indian Penal Code.

The case being exclusively triable by the court of Sessions was committed to the court of Sessions and after hearing accused persons a charge for commission of offences punishable under Sections 498-A, 302 and in alternative 304-B Indian Penal Code was framed.

On denial of the same, trial commenced as desired.

-3- The prosecution supported its case with the aid of the evidence adduced by 25 witnesses and several other documents.

Opportunity was accorded to the accused persons to explain adverse and incriminating circumstances in the prosecution evidence and while availing the same accused Salma stated that deceased Rahisa was not interested in staying with her husband at Sirohi and, therefore, she was visiting her maternal home at Barmer quite frequently.

On the fateful day she advised to deceased Rahisa for not going out all alone and also to restrain visit of certain unwarranted visitors at home.

Accused Mariam Banu, while pleading her innocence stated that on the fateful day she was not at the spot of occurrence and she came there only after receiving information of the incident.

In defence, statements of Shri Barkat (DW-1).Mujfar (DW-2).Firoz (DW-3).Mafat Singh (DW-4).Ramzan (DW-5) and Dr.

Rajendra Arora (DW-6) were recorded.

The trial court after examining the evidence available on record recorded conviction and awarded sentence.

In appeal, the submission of counsel for the appellants is that the entire case of the prosecution is based on the dying declaration, which as a matter of fact is not at all sufficient to be accepted.

It is submitted by learned counsel that the statements of Dr.

Rajendra Arora (DW-6).Barkat (DW-1).Mujfar (DW-2) and Firoz (DW-3) are adequate to establish that the deceased was not at all in position to utter even a single word and, therefore, no dying declaration could have been made by her.

-4- While defending conviction recorded and sentence awarded, learned Public Prosecutor submits that the dying declaration made by deceased Smt.

Rahisa bears all necessary confidence to be believed and, therefore, the trial court rightly settled conviction on basis of that.

It is asserted that deceased at the fiRs.instance made a statement before a police officer and then before a Judicial Magistrate.

The police officer as well as the Judicial Magistrate have supported the prosecution case and as such no reason exists to ignore the dying declaration.

Heard learned counsel for the appellants, learned Public Prosecutor and also examined the record.

As per the prosecution case the incident occurred in the evening of 14.11.2007.

Injured Rahisa after getting burnt was brought to the Government Hospital, Sirohi and at 06:10 PM she was medically examined.

As per the injury report submitted by Dr.

C.L.Dabaria, Smt.

Rahisa was having superficial and deep burn injuries on entire body.

Dr.

C.L.Dabaria in the injury report itself stated that the patient was conscious and was able to give statement.

On basis of the note made by Dr.

C.L.Dabaria the statement of Rahisa was reduced in writing by a police officer Shri Babulal Bishnoi (PW-23).The statement so made also bears right thumb impression of Rahisa.

In the statement Smt.

Rahisa in definite terms stated that at about 5-6 PM she was in her room and at that time Salma and her mother came there.

Salma also brought kerosene in a jericane and bolted -5- the room from inside.

She then poured kerosene and match was given to that by her mother, commonly called Panku.

Shri Babulal Bishnoi (PW-23) stated that after availing necessary certificate from the treating doctor Smt.

Usha Chouhan, he recorded statement of Smt.

Rahisa as per Ex.P/12.

Suffice to mention that Dr.

Smt.

Usha Chouhan was the doctor on duty at the hospital and her testimony too was examined by the trial court.

This witness accepted that she certified about the fitness of deceased Rahisa for making statement.

She also stated that while recording statement Dr.

C.L.Dabaria, the medical jurist, was also present.

Dr.

C.L.Dabaria (PW-10) stated that he prepared injury report of Rahisa and also made an observation about her physical fitness to tender statement.

In view of the evidence discussed above, it is established that the statement of deceased Rahisa was reduced in writing as per document Ex.P/12 by Shir Babulal Bishnoi in presence of Dr.

Usha Chouhan and Dr.

C.L.Dabaria.

A dying declaration of Smt.

Rahisa was also recorded by Judicial Magistrate Shri Pravin Verma.

As per Shri Pravin Verma (PW-13) on 14.11.2007 at about 06:20 PM he received an application to record the dying declaration of Smt.

Rahisa wife of Yasin.

Acting upon the application he went to the Government Hospital where Smt.

Rahisa was undergoing treatment and after availing -6- necessary certification from Dr.

C.L.Dabaria her statement was recorded at 06:50 PM.

The statement made by deceased Rahisa is available on record as Ex.P/20.

Smt.

Rahisa stated that in the evening she was in her room and at that time Salma and Mariam came in her room.

They poured kerosene on her and burnt.

She also stated that her husband was telephonically called by the neighbour. Shri Pravin Verma, the Judicial Magistrate, in very specific terms stated that Smt.

Rahisa was fit to make a statement though she was suffering from acute pain.

We do not find any reason to disbelieve the statement given by Shri Pravin Verma, the Judicial Magistrate.

The seriatim of the entire incident also establishes the prosecution story.

Smt.

Rahisa was brought to the hospital at about 06:10 PM and her injuries were examined immediately by Dr.

C.L.Dabaria as well as Dr.

Usha Chouhan.

Dr.

C.L.Dabaria while preparing the injury report (Ex.P/13) specifically observed that the patient was conscious and was in position to make a statement.

Dr.

Usha Chouhan (PW-24) also made a note as per document Ex.P/33 about fitness of Smt.

Rahisa to make a statement.

The statement of Rahisa then was recorded at 06:15 PM and at the same time a request was made to the Judicial Magistrate to record dying declaration.

The Judicial Magistrate after availing necessary certification about physical fitness of the patient recorded the statement at 06:50 PM.

The statement made by Smt.

Rahisa before the police officer as well as before the Judicial Magistrate contains much less same version of facts.

The police officer as well as the -7- Judicial Magistrate had no reason to record anything else than the statement made by Smt.

Rahisa.

True it is, except the dying declaration no other evidence is available on record, however, a dying declaration can also be a sole basis for conviction even if that is not corroborated.

Hon'ble Supreme Court in Atbir versus Government of N.C.T.Of Delhi, reported in (2010) 9 SCC1 summed up the factors governing the evidence relating to dying declarations under:- 22.

The analysis of the above decisions clearly shows that : (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) 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.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) 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 corroborated.

The rule requiring corroboration is merely a rule of prudence.

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

-8- (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

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

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) 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.

(x) If after careful scrutiny, the court is satisfied that it is true and 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.

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In the instant case Smt.

Rahisa was brought to the hospital and immediately thereafter Shri Babulal Bishnoi (PW-23) after availing necessary physical fitness confirmation recorded her statement.

The investigating agency was vigilant enough to call the Judicial Magistrate as early as possible to record a dying declaration.

The Judicial Magistrate Shri Pravin Verma (PW-13) recorded dying declaration of Smt.

Rahisa in the form of questions and answers and this too was done after obtaining a physical and mental fitness -9- certificate from the competent medical officer.

Looking to this nature and degree of confidence available with the evidence referred above, we are of the view that the trial court rightly arrived at the conclusion of guilt.

So far as the defence evidence is concerned, suffice to mention here that Dr.

Rajendra Arora (DW-6) has stated that Smt.

Rahisa was having 100% burns, but we failed to understand that as to how he arrived at this conclusion and why he did not furnish any injury report, if he in any manner examined Smt.

Rahisa at the fiRs.instance.

In view of whatever discussed above, we do not find any merit in this appeal.

Accordingly the same is dismissed.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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