

Devendrappa Vs. State of Karnataka

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SooperKanoon Citation : sooperkanoon.com/387793

Court : Karnataka

Decided On : Feb-25-2002

Reported in : 2002CriLJ2867; I(2003)DMC317

Judge : M.F. Saldanha and ;N.K. Patil, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304B; [Evidence Act, 1872](#) - Sections 32

Appeal No. : Criminal Appeal No. 400 of 1999

Appellant : Devendrappa

Respondent : State of Karnataka

Advocate for Def. : G. Bhavani Singh, Addl. S.P.P.

Advocate for Pet/Ap. : Y.S. Shivaprasad, Adv.

Judgement :

M.F. Saldanha, J.

1. The appellant before us, Devendrappa is alleged to have picked up a quarrel with his wife Padmavathi at about 8 a.m. on the morning of 14.5.1997 when he pressurized her to bring money from her parents and when she expressed her inability, he doused her clothes with kerosene oil and set fire to them. Padmavathi

screamed out for help and it is not very clear as to who exactly extinguished the flames but the accused ultimately took her to the hospital in a seriously burnt condition. Padmavathi had sustained about 63% burns though there is some difference of opinion with regard to the exact extent as one of the doctors has given the percentage as 40%, but the medical records show that on admission she had given the history of the burns to P.W. 9 Dr. Sharma. She had stated that pursuant to a quarrel her husband had poured kerosene on her clothes and set fire to them as a result of which she had sustained the burns. As it was a medico legal case, the hospital informed the police and the PSI P.W. 16 came to the hospital. His evidence is to the effect that when he asked the injured as to how she had sustained the burns that she made a statement to the effect that it was the accused-husband who was responsible. The PSI thereafter arranged to get the Tahsildar who is P.W. 1 Varadarjaiah to come to the hospital and to record the dying declaration which is Ex. P. 1. The dying declaration is in the handwriting of P.W. 1. The fitness of the patient particularly her mental condition has been certified by the doctor P.W. 15 and the statement has also been countersigned by P.W. 14 the Staff Nurse Anusuyamma. Below all of this, the Tahsildar himself has indicated the time when the statement was recorded and has counter-signed the same. The Trial Court has placed very heavy reliance on this document as also on several other heads of evidence including the fact that the clothes of the accused namely his pant and shirt which are Exs. P.6 and P.7 were found to be smelling of kerosene which fact has been confirmed by the chemical analysis report. The Trial Court after a very detailed consideration of the evidence on the law has recorded the finding that the accused is liable for the offence punishable under Section 302, IPC. and has accordingly awarded him a sentence of rigorous imprisonment for life. The present appeal is directed against this conviction and sentence.

2. We have heard the appellant's learned Advocate as also the learned Addl. S.P.P. on behalf of the State and we have also done a thorough review of the record. The principal ground of attack that has emanated on behalf of the appellant is that the condition of the injured Padmavathi who had sustained extensive burns and who hardly survived for one-and-half days even under medical care in the hospital must have been so very precarious that she would not have been in a condition to understand questions and make any cogent statement.

The learned Counsel who represents the appellant submits that in addition to the extensive burn injuries which are excruciatingly painful, coupled with the trauma which the deceased had expressed when the burns took place that the inevitable consequences of various medications mainly pain killers, sedatives and the like would have totally reduced Padmavathi's capacity to a position whereby it would have been impossible for her to either understand questions or make an appropriate statement. A very strong submission was canvassed, based on a number of decisions which have taken these factors into cognizance, that the Court ought not to accept the certificate from P.W. 15. Dr. Thippeswamy who has counter-signed the dying declaration and given a written certificate on the very document to the effect that the mental condition of Padmavathi was good enough for her to make cogent statement. The submission proceeds on the footing that these statements are mechanically given by the doctors at the request of the Investigating Officer and that whenever a case of burns comes before the hospital or the police, a similar mechanical approach comes to the extent of straightaway involving the husband. Our attention was drawn to the statement of the accused under Section 313, Cr.P.C. wherein he has mentioned that Padmavathi used to suffer from extensive bleeding and pain from time to time on a regular basis, that this had not responded to any treatment and that this was the obvious cause for her to commit suicide. The accused contended that he was not in the house when the incident took place, that on coming to know about the same, he came to the house and immediately rushed Padmavathi to the hospital. The last submission canvassed is the usual one namely that the conduct of the accused in taking the deceased to the hospital/weighed/heavily in his favour as he would not have done this had he been responsible for burning her. In sum and substance, what is submitted is that the accused has been unjustifiably involved and that the Trial Court has wrongly convicted him. The learned Addl. SPP has strongly supported the judgment of the Trial Court to the extent of pointing out that it is a very long and detailed judgment, that it is a very well considered judgment, that every aspect of the evidence both factual and circumstantial has been discussed, that even as far as the case law is concerned that the learned Trial Judge has proceeded on the basis of the well defined principles of criminal jurisprudence and that no interference is called for with the order of conviction.

3. Dealing with the head of challenge, what we need to point out is that the finding of kerosene oil on the clothes of the accused is a very strong and incriminating circumstance against him. It is true that one of the contentions raised was that if the accused while shifting Padmavathi to hospital had obviously come into close contact with her that this would explain the presence of kerosene on his clothes. We are not prepared to accept this explanation for the simple reason that when kerosene oil is used in cases of this type, it causes an immediate blazing because it is highly inflammable and within no time, all of the kerosene oil and the clothes get burnt. There is precious little of the kerosene oil that remained after the fire has done its job. Also, reading between the lines we find that the statement of the accused that he was not in the house when the incident took place is obviously false. The time factor was such and so short that there could have been no question of his arriving from some third place and then taking the deceased to hospital. It is very clear that when an incident of this type takes place and there is commotion in the area that the best type of defensive action even on the part of a guilty party would be to act as helpful as possible by taking the injured person to the hospital. The doctor P.W. 9 has very clearly stated that it was the accused who brought Padmavathi to the hospital and we have no reason whatsoever to doubt this evidence. There is no conceivable ground on which it can even be alleged that the doctor would be out to falsely implicate anyone in the case even if such an allegation may be sometimes tenable as far as the police authorities are concerned. Again, it is this very doctor who has made the entries in the medico legal case papers which are to the effect that Padmavathi at the earliest point of time made a statement implicating the accused. This statement is absolutely consistent because the PSI P. W. 16 has stated that it was an identical statement made by her to him shortly thereafter and again, about one-and-half hours later when P.W. 1 recorded the dying declaration the same version has emerged for the third time in succession. Consequently, we are unable to accept any of the submissions canvassed on behalf of the accused under this head that he had been falsely implicated and that the evidence has been misconstrued.

4. The next major head of challenge is to the dying declaration. As far as the condition of Padmavathi is concerned, we have the evidence of Staff Nurse P. W. 14 Anusuyamma but more importantly the evidence of the Dr. Thippeswamy P. W.

15 who has in terms stated that she was in a fit condition to make the statement. He has certified this in writing below the dying declaration and signed the same and it is obvious that it was done at the same time when the dying declaration was recorded because the handwriting of the Magistrate who has counter-signed the dying declaration appears after the certificate from doctor.

5. The appellant's learned Advocate submitted that this dying declaration will have to be discarded for a variety of reasons, the first being that the condition of Padmavathi must have been so very precarious in addition to which the after affects of the medication would have worked on her mind and that the doctor has in these circumstances wrongly and mechanically subscribed his certificate..: of fitness. As far as this charge is concerned, we find in the first instance that the evidence of the doctor is truthful and convincing and so is the evidence of P.W. 1 the Tahsildar who has recorded the dying declaration both of whom have in terms deposed to the effect that Padmavathi was in a fit condition to make the declaration. We find corroboration from the PSI who is P. W. 16 and the learned trial judge has very rightly upheld the evidence under this head holding that Padmavathi was in a fit condition to make a statement. We only need to add here that while the damaging effects of the various factors could seriously affect the condition of an injured person that the Court needs to take cognizance of the opposite namely that as a result of pain killers, sedatives and medication there is often a temporary improvement in the condition of the patient after admission, In. any case, once a doctor has certified the fitness and once we find that the evidence of the doctor passes scrutiny, there is really no ground on which we can doubt the fitness of the patient to make a statement.

6. The appellant's learned Counsel drew our attention to the fact that the dying declaration is not in question and answer form and not in the exact words of the deceased. P.W. 1 has recorded the substance of what she told him and the submission is that since the dying declaration is not in the prescribed form or the desired form, that the Court should reject it outright. While it is true that the guidelines generally prescribe that as far as possible it should be in question and answer form and in the exact words or language of the deceased these are only sign posts or guidelines and even if for good reason these are not followed, it

would not either vitiate or destroy the evidentiary value of the dying declaration.

7. It was also submitted before us on behalf of the appellant that the certificate of fitness has been subscribed after the dying declaration has been recorded and that having regard to the law laid down by the Supreme Court in several recent decisions that the certificate ought to have confirmed the fitness of the patient to make the statement before the dying declaration was recorded as otherwise, there is no guarantee that during this period of time the patient was in a fit condition. We do concede that in the recent past both the Supreme Court and this Court have refined the law on the point and have even laid down that it would be highly desirable for the certificate to cover the fitness aspect both before the dying declaration has been recorded and during the period when this is being done in order to rule out any possibility of lapses during the interim period. What we need to take cognizance of is that the Supreme Court in the decision reported in 2000 SCC (Cri) Page 432, Koli Chhnilal Savji and Anr. v. State of Gujarat, has laid down that even in the total absence of the doctor's endorsement as to mental fitness of the deceased to make the declaration that the ultimate test would be as to whether the dying declaration is truthful and voluntary and that if the Court is satisfied about these aspects from other material on record that there is no reason why the I.L.R.dying declaration should be rejected. We have borne in mind all these principles and in the present case though the doctor has admitted that he was not present right through the period during which the statement was being recorded, we are satisfied that he has acted responsibly and correctly in certifying the mental fitness and that merely because this has been done after the recording of the dying declaration that it would not in any way reduce the evidentiary value.

8. The next and rather serious head of attack was with regard to the non-obtaining of the signature on the dying declaration of Padmavathi. It was pointed out that she is an educated girl who was capable of affixing her signature and that despite this, there is only a thumb impression on the document and that this would strongly go against the contention that she was in a mentally fit condition. It was also pointed out to us that this is not a case where the hands were burnt and that consequently, there was really no justification for taking the thumb impression instead of the signature. Also, the thumb impression on the statement recorded by

the PSI P.W. 16 has been shown to the Court in support of the contention that the two thumb impressions do not tally. As regards the last aspect, we are not prepared even after a visual comparison to lend any suspicion to the thumb impression and we also accept the statement of the Tahsildar and the PSI who have stated that Padmavathi stated that she was in no position to affix her signature and that this was the reason why her thumb impression was taken. It is quit understandable particularly in the condition in which Padmavathi was for her not to have been in a position to affix her signature particularly from a lying down position and consequently, the obtaining of the thumb impression under these circumstances is perfectly justified.

9. Our attention was drawn to the following decisions :

1. 1993 SCC (Cri.) Page 1361.

2. 2001 Karnataka Page 5600.

3. I.L.R. 1998 Karnataka 584.

4. : ILR 1998 KAR1387 .

5. 1999 (1) KCCR Page 92.

All these cases deal with the evidentiary value of dying declarations and the various requirements and in our considered view, these are all well define principles of law which have been borne in mind by us while assessing the evidentiary value of the dying declaration in this case.

10. Having done so and having very carefully reconsidered the findings recorded by the Trial Court in our considered view, no case whatsoever is made out for interference with any of those findings.

11. The last submission which we need to address ourselves to is the question as to whether the conviction under Section 302, IPC, is correct. The appellant's learned Advocate submitted that even assuming the evidence is good enough for a conviction that at the very highest it should be under Section 304-B, IPC, because the prosecution case itself is that the quarrels between the husband and

wife were dowry related and it is Padmavathi's own charge that the accused wanted her to bring more money from her parents and because she refused to do this, that he attacked her. The learned Addl. SPP has submitted that the more serious offence under Section 302, IPC, is made out here because the parties were married for over seven years. There is no charge under the Dowry Prohibition Act and furthermore, that this was a demand simplicitor for money which cannot be confused with a dowry amount. His submission was that the conviction under Section 302, IPC, ought not to be disturbed. We have very carefully assessed the legal position and we do find that there is unimpeachable evidence on record, that the principal basis of the trouble between the husband and wife was because he was pressurizing Padmavathi to get money from her parents. In the large number of dowry death cases the demands have gone on for a long period of time after the marriage and in so far as it is a demand for money or property addressed to the parents of the wife, it would come squarely within the four corners of a dowry related offence. The time factor is not of much significance. Since this is a case of burning in relation to a demand for money from the wife's parents in our considered view, the conviction under Section 304-B, IPC would be appropriate. Accordingly, the conviction under Section 302, IPC, is set aside. The accused is convicted of the offence punishable under Section 304-B, IPC and it is directed that he shall undergo rigorous imprisonment for a period of ten years. We maintain the sentence of fine imposed on the accused by the Trial Court. The accused is in custody and it is directed that he shall be entitled to set off for the period undergone by him while carrying out the sentence of this Court.

12. Bangalore city, shamefully enough, has the dubious distinction of the highest number of recorded wife burning cases for any State capital in the country - last week alone, eight wife burning victims were admitted to hospital in a precarious condition. In terms of savage brutality, barbaric and inhuman conduct, there is no act of cruelty more horrifying than to burn a living human being and the unfortunate aspect is that the number of these cases has been going up. Unfortunately, despite daily reports in the media, the public conscience has not been sufficiently aroused principally because nobody visits the hospitals and ever looks at the terrifying condition of the victims. Irrespective of what treatment is offered, it is a matter of hours or days of unimaginable torture and unbearable

suffering before the victim dies. With the acquittal rate in this class of cases hovering in the high nineties, the husbands are merrily acquitted and they start the savage drama all over again by collecting fresh dowry and burning the next wife. As a deterrent, we strongly recommend that howsoever sad and distressing it may be that the media should place before the public actual photographs and videos of the victims of these atrocities. This should be regularly done until it is very strongly ingrained in the public psyche that irrespective of what the hostility levels are between the spouses that wife burning should never be resorted to.

13. We refuse to consider any pleas for leniency in this class of offences. Once the charge is proved, the accused must be awarded a sentence that is commensurate with the gravity of the offence and it is equally necessary that the Courts make an example of this class of criminals by awarding them condign punishments.

14. The appeal partially succeeds and stands disposed of.

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