

Vinod Kumar Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Feb-17-2009

Reported in : 2009(2)MPHT302

Judge : Rakesh Saksena and ;K.S. Chauhan, JJ.

Appellant : Vinod Kumar

Respondent : State of Madhya Pradesh

Advocate for Pet/Ap. : Smt. Durgesh Gupta

Judgement :

Rakesh Saksena, J.

1. Appellant has filed this appeal against the judgment dated 26-8-2000 passed by the Additional Sessions Judge, Lakhnadaun District Seoni in Sessions Trial No. 121/99 convicting the appellant under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life with fine of Rs. 1000/-.

2. In brief, the case of the prosecution is that appellant/accused was married to Panchshila (deceased) about 8-10 years prior to the incident. She was residing with the accused in Village Khamariya, within the jurisdiction of Police Station, Chhapara. She was working as a health worker in Village Khamariya. On 30-4-1999, at about 5.30 p.m., when she returned from Chhapara, accused was

sleeping. When he woke up, he got enraged and asked her as to why she had gone to Chhapara. He told her that she had gone to the house of Vijay Thakur and had indulged in promiscuity. He started assaulting and abusing her. Her sister Indrakala was also present there. When deceased went into her kitchen, accused reached there, poured kerosene on her and set fire to her by a stove and went away. When her sister returned after answering the call of nature, she extinguished the fire. Accused then again came inside the house and asked her that who ignited her. Number of persons assembled there. She told to them that the accused set fire to her after accusing her of unchastity.

3. Report of the incident (Exh. P-I) was lodged by Ku. Indrakala (P.W. 1) at Police Station, Chhapara at 7.00 p.m., on the basis of incident narrated to her by Panchshila. Panchshila was then sent to Community Health Centre, Chhapara. Dr. Rajesh Kumar Vishwakarma (P.W. 7) examined her injuries and also recorded her dying declaration (Exh. P-20). Head Constable Churaman Singh Baghel (P.W. 4) recorded her case diary statement (Exh. P-6). Thereafter, Panchshila was shifted to Nagpur Hospital where Head Constable Punjab Rao (P. W. 5) recorded her dying declaration (Exh. D-I)

4. Dr. Rajesh Kumar Vishwakarma (P.W. 7), vide his injury report (Exh. P-17), found 90% superficial burn injuries on the body of Panchshila. Whole of her body was burnt except sole of both feet and some parts of front abdomen. He felt kerosene like smell coming out from her clothes and her body. At the time of occurrence, she was running advance stage of pregnancy. Her injuries were grievous in nature. He advised Station Officer of the police to arrange for recording the dying declaration.

5. On 16-5-1999, Panchshila succumbed to burn injuries at Nagpur. The post-mortem examination of the dead body was done by Dr. Makrand Beohare, lecturer of Forensic Medicine of Medical College, Nagpur. He found 85% burn injuries all over her body. Her injuries were sufficient in the ordinary course of nature to cause death. After investigation, charge-sheet was filed and case was committed for trial.

6. Trial Court framed the charge under Sections 306 and 302 of the Indian Penal Code. Accused pleaded false implication. However, relying on the evidence of

dying declarations (Exh. P-6 and Exh. P-20), Trial Court held him guilty under Section 302 of the India Penal Code and acquitted him under Section 306 of the Indian Penal Code.

7. Smt. Durgesh Gupta, learned Counsel for the appellant, submitted that the evidence of dying declaration (Exh. P-6) recorded by Head Constable Churaman by way of statement under Section 161 of the Code of Criminal Procedure and dying declaration (Exh. P-20) recorded by Rajesh Kumar Vishwakarma (P.W. 7) are not reliable. According to her, it was a case of suicide, as appeared from the dying declaration (Exh. D-I) recorded by Head Constable Punjab Rao (P.W. 5), at Nagpur. Real sister of deceased viz., Ku. Indrakala (P.W. 1) did not support the prosecution and testified that the deceased had committed suicide. In the alternative, she submitted that the incident had occurred on the spur of the moment without any premeditation upon a sudden quarrel, therefore, the conviction of the accused under Section 302 of the Indian Penal Code was not justified. At the most, it would be a case under Section 304 Part I or Part II of the Indian Penal Code. She further submitted that the accused, who is continuously in custody since 4-5-1999, deserved to be released on the sentence already undergone by him.

8. On the other hand, Shri R.S. Patel, Additional Advocate General for the State, justifying the judgment of conviction passed by the Trial Court, submitted that the evidence of dying declaration adduced by the prosecution in the case is clear cogent and trustworthy.

9. We have heard the submissions made by learned Counsel of both the sides at length and perused the oral as well as documentary evidence on record.

10. It is not disputed that the deceased was the wife of the accused and she died on 16-5-1999 due to the burn injuries suffered by her on 30-4-1999. The only question to be decided is whether the accused caused burn injuries to Panchshila and if yes, under what circumstances. According to prosecution, Indrakala (P.W. 1), sister of deceased, was present at the time of occurrence. She lodged the report stating that, when Panchshila came back from Village Chhapara, accused abused and assaulted her, accusing her that she had illicit relations with Vijay

Thakur. In the meanwhile, she went to answer the call of nature and when she came back, she found Panchshila burning. Panchshila told her that accused poured kerosene on her by stove and set fire, however, Indrakala did not stick to the version given by her in the First Information Report (Exh. P-I), before the Court and deposed that Panchshila became unconscious and when she was taken to Nagpur for the treatment, before the police, she disclosed that she herself had set fire. According to her, immediately after the occurrence Panchshila did not tell her anything. This witness was declared hostile. Except Indrakala (P.W. 1), there is no other eye-witness of the incident.

11. Prosecution also placed the evidence of dying declaration (Exh. P-20) given by the deceased to Dr. Rajesh Kumar Vishwakarma (P.W. 7). According to Dr. Vishwakarma, Panchshila was brought to Community Health Centre, Chhapara where he was posted as Assistant Surgeon. She had 90% burn injuries and she was pregnant. Smell of kerosene was emanating from her body and clothes. He asked the Investigating Officer for recording of her dying declaration but he was informed that no Executive Magistrate was available, therefore, Station Officer Chhapara asked him to record the same. In the dying declaration (Exh. P-20), Panchshila categorically stated that at about 5:30 p.m. when she returned from Chhapara, her husband was asleep. When she sat on his cot, he got enraged and asked her why she had gone to Chhapara. He accused her that she had gone to the house of Vijay Thakur and had indulged with him in misdeed. He started abusing and beating her. When she went into kitchen, he poured kerosene on her by the stove and ignited her by matchstick. Thereafter accused went out from the back door. Her sister Indrakala extinguished the fire. After some time, accused again came there and brought her out where many people had assembled. He tried to feign ignorance by asking her that who set fire to her, but she told to everybody that accused, accusing her of illicit relations with Vijay Thakur, set fire to her by pouring kerosene.

12. Dr. Vishwakarma (P.W. 7) deposed that when he recorded statement of Panchshila, she was under Neurogenic shock, but was giving relevant and appropriate answers to the questions put to her. He recorded her statement verbatim. She was not in a position to sign, therefore, her thumb impression was

obtained and he himself had signed the aforesaid statement.

13. The argument advanced by the learned Counsel for the appellant that no certificate about the physical and mental conditions of the deceased was recorded in the dying declaration (Exh. P-20) is not acceptable in view of the fact that said statement was recorded by the doctor himself. It was clearly denied by Dr. Vishwakarma (P.W. 7) that Panchshila was not in her senses. The allegation made in the cross-examination that he himself had harassed Panchshila by withholding her wages was also denied.

14. In *Muthu Kutty and Anr. v. State by Inspector of Police, T.N.* : (2005)9SCC113 , Supreme Court observed:

Moreover, State of mind was proved by testimony of the doctor who was present when the dying declaration was recorded. In the aforesaid background it cannot be said that there was any infirmity. Further, if the persons recording the dying declaration is satisfied that the declarant is in a fit medical condition to make a dying declaration then such dying declaration will not be considered invalid solely on the ground that the doctor has not certified as to the condition of the declarant to make the dying declaration.

It was further observed:

Though a dying declaration is entitled to great weight, it must be kept in mind that the accused has no power of cross-examination. Such a power is essential for eliciting the truth. This is the reason the Courts always insist that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. 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.

15. On examining the dying declaration (Exh. P-20), we find it clear cogent and convincing. It has been recorded by Dr. Vishwakarma (P.W. 7), who categorically stated that the deceased, though was in painful condition, but was conscious and was giving answers to the relevant questions in a coherent manner, which was recorded in the form of questions and answers. Besides, the above dying declaration, another piece of evidence is the statement of deceased (Exh. P-6) recorded by Head Constable Churaman (P.W. 4) under Section 161 of the Code of Criminal Procedure. It is settled that if the person, whose statement has been recorded, subsequently dies, his/her statement can be taken into consideration as dying declaration, if it relates to cause of his death or as to any of the circumstances of the transactions, which resulted in his death. In Exh. P-6, the same facts have been narrated which were disclosed to Dr. Vishwakarma (P.W. 7) in Exh. P-20. There appears no reason to disbelieve this dying declaration, which has been proved by Head Constable Churaman (P.W. 4). Churaman Singh (P.W. 4) deposed that he had written a letter to Naib Tehsildar for recording the dying declaration but he was not available. He categorically stated that though Panchshila was unconscious for sometime but after her treatment in the hospital, she had regained consciousness and was in fit condition to give relevant answers to the questions. Though he did not obtain certificate about the fitness of deceased to make a dying declaration, but in the circumstances of the case, it cannot be held that the statement recorded by him was not a truthful document.

16. The aforesaid dying declarations clearly established that it was the accused only, who poured kerosene and set fire to deceased. There appears no reason to assume that deceased was prompted or influenced by anybody to speak untrue against her husband. After close scrutiny of the above dying declarations, we are fully satisfied that the above dying declarations are truthful and reliable and clearly establish that the accused set fire to deceased.

17. As far as the dying declaration (Exh. D-I) is concerned, it was recorded by Punjab Rao (P.W. 5), Head Constable of Police Station Anjani District Nagpur (Maharashtra). According to Exh. D-I, deceased disclosed that since after marriage there occurred frequent skirmishes between her and her husband. Due to some altercation, on 30-4-1999, under infuriation, she poured kerosene on her

and ignited herself. This statement was recorded while deceased was under treatment in Nagpur hospital, but no certification from any doctor was obtained. A dying declaration at Nagpur could have been recorded by an Executive Magistrate or by the doctor himself, but instead it was recorded by the Head Constable. Trial Court, after examining the aforesaid aspects of the matter, rightly disbelieved this dying declaration.

18. It is true that by the evidence of dying declaration, it has been established that accused caused the death of Panchshila by setting her on fire, but from the contents of Exh. P-6 as well as of Exh. P-20, it seems to us that the incident occurred suddenly when accused admonished deceased saying that she had gone to the house of Vijay Thakur and had indulged in sinful act. It was mentioned by her that accused told her that he had received information that she had gone to the house of Vijay Thakur. On appreciating the mental condition of the accused, as reflected by his conduct at the time of commission of the offence, it can be gathered that he acted on a sudden impulse, in a sudden quarrel and without premeditation. In these circumstances, we are unable to hold that accused intended to commit murder of the deceased, but his act of setting fire to deceased must be held to have been done with the intention of causing her death or causing such bodily injury as was likely to cause death, in which case the offence would be one punishable under Section 304 Part I of the Indian Penal Code.

19. In the result, the conviction of the appellant under Section 302 of the Indian Penal Code and the sentence of life imprisonment awarded to him by the Trial Court are set aside and instead, he is convicted under Section 304 Part I of the Indian Penal Code and sentenced to Rigorous Imprisonment for 10 years. The appellant is in custody since 4-5-1999. If he has completed his sentence of 10 years, he shall be released forthwith if not required in any other case.

20. Appeal partly allowed.