

Man Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-04-2004

Reported in : RLW2004(3)Raj1997; 2004(3)WLC184

Judge : Shiv Kumar Sharma; and F.C. Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Jail Appeal No. 563 of 2000

Appellant : Man Singh

Respondent : State of Rajasthan

Advocate for Def. : Rizwan Alvi, Public Prosecutor

Advocate for Pet/Ap. : S.L. Songara, Adv.;for Amicus Curiae

Disposition : Appeal allowed

Judgement :

F.C. Bansal, J.

1. The instant appeal is directed against the judgment dated July 27, 2000 passed by learned Special Judge (Women Atrocities & Dowry Cases), Kota whereby appellant Man Singh has been convicted and sentenced to suffer imprisonment for life and a fine of Rs. 5,000/-, in default of payment of fine to further undergo

rigorous imprisonment for six months under Section 302 of the Indian Penal Code.

2. The brief facts of the prosecution case are that one receiving information from M.B.S. Hospital, Kota on march 31, 1997 to the effect that Smt. Manju Bai W/o Man Singh, by caste Rajput, Age 27 years, R/o - Kota has been admitted in the hospital in burnt condition, PW 9 Dwarka Prasad, the then SHO, P.S. Gumanpura, Kota reached the hospital and recorded 'Parcha-Bayan' Ex. P7 of Smt. Manju Bai at 8:15 p.m. wherein she stated that her marriage took place 14-15 years ago. She is having two sons and two daughters. Today at about 6:00 p.m. her husband and her father-in-law Ramcharan were quarreling each other on account of illicit relations of her husband with Kamla Kumhar. When she told him about his illicit relations with Kamla, he lost his temper, poured oil on her and set her on fire. Thereafter he fled away. Her father-in-law Ramcharan and neighbour Hemsingh extinguished the fire. She got burn injuries. Thereafter she was brought to the hospital. On the basis of 'Parcha-Bayan' Ex. P7, a case under Section 307 IPC was registered at P.S. Gumanpura, Kota at 9:30 p.m. on 31.3.97. The formal FIR is Ex. P8. As per the prosecution story, at the request of P.S. Gumanpura, dying declaration Ex.P4 of Smt. Manju Bai was also recorded by PW 6 Ramesh Chand Sharma, Additional Civil Judge Cum Judicial Magistrate No. 5, Kota in M.B.S. Hospital at 10.15 p.m. on the same day wherein the same facts were narrated by Smt. Manju Bai. Smt. Manju Bai succumbed to her injuries and post-mortem examination on the dead body was conducted by PW 7 Dr. Ashok Mundra, Medical Jurist, M.B.S. Hospital, Kota on 1.4.97 at 10:30 a.m. and he prepared Post-mortem Report ex.P6. Dr. Mundra found about 100% burn injuries on the body of Smt. Manju Bai which resulted in her death. Thereafter the SHO, P.S. Gumanpura proceeded with the investigation for the offence under Section 302 IPC. The Investigating Officer reached on the spot and prepared Site Plan Ex.P. 15. In mortuary room of M.B.S. Hospital, Kota, the Investigating Officer prepared inquest Report Ex.P18. In the same incident while extinguishing the fire, Ramcharan and Hemsingh also sustained burn injuries. Ramcharan succumbed to his injuries whereupon post-mortem examination on the dead body was conducted by PW 2 Dr. Rakesh Sharma, Medical Jurist, M.B.S. Hospital, Kota at 1:30 p.m. on 5.4.97 and he prepared Post-mortem Report Ex. P14 Hemsingh was medically examined at 10:15 a.m. on 21.4.97 by Medical Jurist, Kota and he prepared injury

Report Ex.P23. Appellant Man Singh was medically examined at 10:30 a.m. on 1.4.97 by Medical Jurist, Kota and he prepared Injury Report Ex.P24. Witnesses were examined under Section 161 Cr.P.C. On completion of investigation, charge-sheet was laid against the appellant in the Court of Additional Chief Judicial Magistrate No. 3, Kota who committed the case to the Court of learned Sessions Judge, Kota for trial. On transfer it was received by Special Judge. Learned Special Judge framed charge under Section 302 IPC against the appellant who denied the charge and claimed trial. To prove this charge, the prosecution examined as many as 13 witnesses. In his explanation under Section 313 Cr.P.C., the appellant pleaded innocence. In defence no witness was examined.

3. Learned Special Judge after hearing the final submissions, convicted and sentenced the appellant as indicated here-in-above.

4. We have heard learned Amicus Curiae for the appellant, learned Public Prosecutor and have also scanned the material on record.

5. There is no dispute that the cause of the death of deceased Manju Bai was burn injuries. PW7 Dr. Ashok Mundra, Medical Jurist, M.B.S. Hospital; Kola stated that on 01.04.1997 he conducted post-mortem examination on the dead body of Manju Bai W/o Mansingh, by caste-Rajput, aged 27 years, R/o- Chhavani Kola and found that her entire body was burnt. There were burn injuries on face, neck, head, chest; abdomen, both the hands and other parts of the body. Duration of injuries was within 36 hours. In his opinion the cause of death was shock as a result of extensive ante-mortem burn injuries which were sufficient in the ordinary course of nature to cause death. He prepared post-mortem report Ex.P6 which bears his signature.

6. Learned Amicus Curiae for the appellant did not challenge the veracity of the statement of Dr. Ashok Mundra. There are no other reasons to disbelieve his testimony. Therefore, it has been established beyond reasonable shadow of doubt by the prosecution that the cause of the death of Smt. Manju Bai was burn injuries.

7. The case of the prosecution rests solely on two dying declaration which are Ex.P7 and Ex.P4. These dying declarations were recorded by PW 9 Dwarka

Prasad, SHO, P.S. Gumanpura and PW 6 Shri Ramesh Chand Sharma, Additional Civil Judge cum Judicial Magistrate No. 5, Kota. In regard to evidentiary value of the dying declarations, Hon'ble the Supreme Court, in P.V. Radhakrishana v. State of Karnataka (1), has observed as under:-

'The principle on which dying declaration is admitted in evidence is indicated in the legal maxim 'nemo moriturus praesumitur mentiri-a man will not meet his maker with a lie in his mouth.'

This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on the deathbed is so; solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides/should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth and an obligation of oath could be. This is the reason the court also insists 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. This court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Paniben v. State of Gujarat (1992 (2) SCC 474):

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja v. State of M.P.* (1976 (3) SCC 104)

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it without corroboration. (See *State of U.P. v. Ram Sagar Yadav* (1985 (1) SCC 552) and *Ramawati Devi v. State of Bihar* (1983 (1) SCC 211).

(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 an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See *K. Ramachandra Reddy v. Public Prosecutor* (1976 (3) SCC 618)

(iv) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg. v. State of M.P.* (1974 (4) SCC 264)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh v. State of M.P.* (1981 Supp. SCC 25)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath v. State of U.P.* (1981 (2) SCC 654)

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra v. Krishnamuriti Laxmipati Naidu* (1980 Supp. SCC 455)

(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. (See *Surajdeo Ojha v. State of Bihar* (1980 Supp. SCC 769).

(ix) Normally, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the

dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. (1988 Sup. 152)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan (1989 (3) SCC 390)

(xi) where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred. On course, if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohahlal Gangaram Gehani v. State of Maharashtra (1982 (1) SCC 700).

In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated there in the unalloyed truth and that it is absolutely safe to act upon it. 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 the basis of conviction, even if there is no corroboration. (See Gangotri Singh v. State of U.P. (1993 Supp.) (1) SCC 327), Goverdhan Raoji Ghyare v. State of Maharashtra (1993 Supp.(4) SCC 316), Meesala Ramakrishan v. State of A.P. (1994 (4) SCC 182) and State of Rajasthan v. Kishore (1996 (8) SCC217).

8. Keeping in view the aforesaid principles, we will now examine the dying declarations allegedly made by deceased Smt. Manju Bai. in both the dying declarations, Smt. Manju Bai had stated that her husband was having illicit relations with Smt. Kamla Kumhar. Because of these illicit relations, today i.e. 31.3.1997 her husband and . her father-in-law started quarreling each other. Thereafter her husband poured kerosine oil on her and set her on fire. Her father-in-law extinguished the fire. Her husband fled away. PW9 Dwarka Prasad stated that on receiving information from the hospital to the effect that Smt. Manju Bai was admitted in the hospital in burnt condition on 31.3.97 he went there and recorded 'Parcha-Bayan' Ex.P7 of Manju Bai. He sent it to the police station to

register the case. PW 6 Shri Ramesh Chand Sharma stated that on 31.3.1997 he was posted as Additional Civil Judge cum Judicial Magistrate No. 5 Kota (North). On the application of the SHO, P.S. Gumanpura, he recorded the statement ex.P4 of Smt. Manju Bai W/o Mansingh, aged 27 years at 10.15 p.m. in M.B.S. Hospital, Kota, this statement bears his signature and Smt. Manju Bai put her thumb impression on it.

9. Now the question which arises for consideration is whether deceased Manju Bai was in a fit state of mind at the time of making dying declarations Ex. P4 and Ex. P7. In *Paparambaka Rosamma and Ors. v. State of Andhra Pradesh (2)*, the Apex Court observed as under:-

'The main question is as to whether she was conscious and was in a fit mental condition to make a voluntary disclosure of the incident. Dr. K. Vishnupriya Devi (PW 10) who was attached to Tenali Government Hospital examined Smt. Venkata Ramana on 4.3.1994 at 1.30 p.m. She then sent a requisition (Ex.P/9) to the Magistrate Shri K. Lakshamana Rao (PW 13) to record the dying declaration of the injured.

All that Dr. K. Vishnupriya Devi has stated is that injured was conscious but she has not deposed that the injured was in a fit state of mind to make a statement. It has come on record that Smt. Venkata Ramana had sustained 90% burn injuries. K. Lakshamana Rao (PW 13) who recorded the dying declaration has made a note in Ex.P/14 the dying declaration after putting some preliminary questions to the injured and it reads as under:-

'On the basis of answers elicited from the declarant to the above questions I am satisfied that she is in a fit disposing state of mind to make a declaration.'

Thereafter the learned Magistrate proceeded to record the dying declaration. At the end, Dr. Vishnupriya Devi (PW 10) has appended a certificate saying 'patient is conscious while recording the statement. The question that needs to be considered is as to whether the Magistrate could have come to a definite conclusion that the injured was in a fit state of mind to make a declaration in the absence of a certificate by the doctor certifying the state of mind that existed

before recording the dying declaration? In our opinion, in the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration. It is case of circumstantial evidence and only circumstances relied upon by the prosecution is dying declaration.

It is true that the medical officer Dr. K. Vishnupriya Devi (PW 10) at the end of the dying declaration had certified 'patient is conscious while recording the statement.' It has come on record that the injured Smt. Venkata Ramana had sustained extensive burn injuries on her person. Dr. P. Koteswara Rao (PW 9) who performed the post-mortem stated that injured had sustained 90% burn injuries. In this case as stated earlier, the prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K. Vishnupriya Devi (PW 10) did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that 'patient is conscious while recording the statement.' In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P/14) as true and genuine and was made when the injured was in a fit state of mind.'

10. The aforesaid decision is fully applicable to the facts of the instant case. As per the statement of PW 6 Ramesh Chand Sharma, he did not obtain the certificate from the doctor to the effect that injured Smt. Manju Bai was in a fit mental condition to make statement before proceeding to record the dying declaration Ex. P4. He stated that medical certificate which is on the application Ex. D1 was obtained by Shankar Lal, ASI at 8.05 p.m. Shankar Lal, ASI as well as the doctor who had issued this certificate, was not examined by the prosecution. It was also not stated by PW 6 Ramesh Chand Sharma that this certificate was issued in his presence. Therefore, it has not been proved by the prosecution beyond reasonable doubt that the medical certificate which is on Ex.D1, was issued by.

the doctor. It is true that PW 6 Ramesh Chand Sharma also stated that when dying declaration Ex. P4 was recorded, Smt. Manju was fit to give her statement but in view of the facts of the case, in our opinion, in the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate. As per the prosecution version, the aforesaid certificate was issued at 8.05 p.m. whereas dying declaration Ex. P4 was recorded by PW 6 Ramesh Chand Sharma at 10:15 p.m. Ramesh Chand Sharma admitted in his deposition that he did not call the doctor at the time of recording the dying declaration. As stated above, PW 7 Dr. Ashok Mundra who had conducted post-mortem examination on the dead body of Smt. Manju Bai, deposed that there were around 100% burn injuries on the person of the deceased Manju Bai. Smt. Manju Bai succumbed to her injuries within 12 hours of the incident. PW 5 Hemsingh who had seen the, incident, stated in his cross- examination that Smt. Manju became unconscious on the spot. In view of these facts, we are of the opinion that the deceased could not have made dying declaration Ex. P4 to PW 6 Ramesh Chand Sharma and it was not made when she was in a fit state of mind and, therefore, no reliance can be placed on it.

11. As regards the dying declaration Ex. P7 which was allegedly recorded by PW 9 Dwarka Prasad, SHO, P.S. Gumanpura at 8.15 p.m. on 31.3.1997, it was not stated by PW 9 Dwarka Prasad that he had obtained a medical certificate from a doctor to the effect that Smt. Manju was fit to give her statement before 'Parcha-Bayan' (dying declaration Ex. P7) was recorded. It was also not stated by him that he himself was satisfied that Smt. Manju was in a fit state of mind to give her statement. Apart from that, as per the prosecution case when medical certificate Ex.D1 was obtained by Shankar Lal, ASI, P.S. Gumanpura then why did he not record the 'Parcha-Bayan' Gumanpura then why did not record the 'Parcha-Bayan' of Smt. Manju Bai. In view of these facts, we are also of the opinion that the prosecution has failed to prove that when 'Parcha-Bayan' Ex.P7 was recorded, Smt. Manju Bai was in a fit state of mind.

12. The aforesaid dying declarations also suffer from other infirmities. PW 3 Parwati stated in her deposition that Smt. Manju herself poured kerosine and set

herself on fire. Same is the statement of PW 5 Hemsingh whose presence on the spot is not doubtful because he also sustained burn injuries in the incident. In view of these statements, no reliance can be placed on both the dying declarations. PW 13 Dr. P.K. Tiwari stated that on 1.4.97 he examined appellant mansingh and found burn injuries on his person. Duration of injuries was within 24 hours. It was also stated by him that 60-65% area of the body was burnt. He prepared Injury Report Ex. P24. Therefore, it stands proved that the appellant also sustained extensive burn injuries in the same incident while extinguishing the fire. This fact further proves that the appellant did not set his wife on fire but she had committed suicide. For the aforesaid reasons, we are of the considered view that dying declarations Ex.P4 and Ex.P7, if made by the deceased, are not true. If these dying declarations are excluded from consideration, then there is no evidence on which the prosecution can be said to have established the charge beyond reasonable doubt against the appellant. Hence, the appeal deserves to be allowed.

13. For the reasons stated, we allow the appeal and set-aside the judgment dated July 27,2000 of the learned Special Judge, Women Atrocities and Dowry Cases, Kola. We acquit the appellant of the charge Under Section 302 IPC. The appellant, who is in jail shall be set at liberty, if not required to be detained in any other case.