

Tulsa Ram Vs. State of Rajasthan

Tulsa Ram Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/759397

Court : Rajasthan

Decided On : May-01-2008

Reported in : RLW2008(4)Raj3335

Judge : Prakash Tatia and Bhanwaroo Khan, JJ.

Appellant : Tulsa Ram

Respondent : State of Rajasthan

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the parties.
2. This appeal is against the judgment and order dated 21.3.2002 passed by the Court of learned Additional Sessions Judge (Fast Track), Jalore in Sessions Case No. 110/2001 (Old No. 39/2001) by which the learned trial court convicted and sentenced the accused appellant as under:

Offence PunishmentSection 498A IPC To undergo three years' simple imprisonment with a fine of Rs. 1000/and in default tofurther undergo 6 months' simple imprisonment.Section 302 IPC To undergo imprisonment for life with a fineof Rs. 2,000/- each and in default to furtherundergo 1 year's simple imprisonment.

3. As per the prosecution case, the S.H.O., Sanchore - Shri Sohan Lal, PW5, received an information from the Community Health Centre, Sanchore (CHC, Sanchore) that one lady Smt. Geeta has been brought in hospital in serious condition due to burn injuries. After this information, the S.H.O. Went to the hospital and enquired from Dr. B.L. Vishnoi (PW7) about the condition of Smt. Geeta and after receipt of the opinion of the doctor that Smt. Geeta is in fit condition to give statement, her statement (Parcha Bayan) Ex.P/1 at 11:40 AM was recorded on the same day i.e. 4.5.2001. In this parcha bayan, Smt. Geeta stated that her husband poured kerosene upon her and burnt her. When she shouted for help, her father-in-law, mother-in-law and sister-in-law (her husband's sister) came to save her and thereafter, she fell down in a water tank. From the water tank, she was taken out by her mother-in-law with the help of one neighbour - Smt. Champa Ben. She further stated that she was not liked by her husband Tulsa Ram. On the basis of above parcha bayan, at 5:45 PM, a case under Sections 498A and 307 IPC was registered at the Police Station, Jab. Thereafter, investigation was conducted by Deputy Superintendent of Police, Sanchore - PW13 Mahaveer Prasad. During investigation, Smt. Geeta died at Civil Hospital, Ahmedabad (Gujarat) and, therefore, the case was registered under Sections 498A and 302 IPC in place of Sections 498A and 307 IPC.

4. As per the prosecution case, the S.H.O., Police Station, Sanchore gave a letter to the Medical Officer of CHC, Sanchore on 4.5.2001 requesting for medical examination of Smt. Geeta and this letter as per the doctor's endorsement was received by the doctor at 11:00 AM (Ex.P/6). Thereafter, another letter was given to the Medical Officer of CHC, Sanchore (Ex.P/7) at 11:35 AM to know whether Smt. Geeta is in fit condition to give statement or not. The doctor at 11:35 AM gave certificate that, 'she is in condition to give statement'.

5. As per the prosecution case at 11:35 AM itself, an application was submitted before the Judicial Magistrate, First Class, Sanchore requesting him to record the statement of victim Smt. Geeta and as per the endorsement made by the Judicial Magistrate, Sanchore. He received the application at 11:35 AM and he decided to record the statement of Smt. Geeta. The learned Judicial Magistrate started recording of the statement of Smt. Geeta at 11:45 AM and concluded her

statement at 12:35 PM, as per the endorsement of learned Judicial Magistrate made at the start and end of statement of Smt. Geeta (Ex.P/9).

6. Smt. Geeta, who was injured by burn injuries and was admitted at CHC, Sanchore was taken to Ahmedabad for treatment where she died and her post mortem was conducted at Ahmedabad and post mortem report was also submitted. The site was inspected, site maps and reports were prepared during investigation. Articles with the help of which the alleged offence was committed, were recovered.

7. After investigation, the police filed challan against the accused under Sections 302 and 498A IPC. Charges were framed against the accused which were denied by him and he sought trial.

8. At the trial, the prosecution produced PW1 Dhanna Ram, PW2 Ukaram (Motbir), PW3 Kesa Ram (Motbir), PW4 Anda, PW5 Sohan Lal, PW6 Mafa Ram @ Mafa Bhai, PW7 Dr. Babu Lal Vishnoi, PW8 Kalyan Singh, PW9 Bhav Singh, PW10 Smt. Champa Ben, PW11 Dr. Jayanti Lal, PW12 Kirta Ram Goyal, PW13 Mahaveer Prasad and PW14 Anil Arya and exhibited 20 documents including the documents referred above.

9. The statement of accused appellant was recorded under Section 313 Cr PC who stated that Smt. Geeta was his wife and she died because of the burn injuries but she was burned by herself. He never gave beating to Smt. Geeta. On the day of incident at 6:00 AM, he was sleeping and he woke up after hearing the shouts and found that his mother, father were putting a blanket on his wife Smt. Geeta. His wife did not like him because she was of fair colour and was well built and a girl of city whereas he (accused) was a villager. Two days before the incident, she insisted for going to her parent's house which was denied by the accused appellant and, therefore, she was not happy and she burnt herself. Smt. Champa Ben also helped in saving Smt. Geeta and lastly, he stated that he has been falsely implicated in this case. In defence, he produced DW1 Gordhan, DW2 Medaram and DW3 Smt.Chaini @ Chhaini and exhibited documents Ex.D/1 and Ex.D/2 - statements of Anda and Mafa Bai which were recorded during investigation.

10. The trial court, by the impugned judgment, convicted and sentenced the accused appellant as mentioned above by judgment and order dated 21.3.2002. Hence, this appeal.

11. Learned Counsel for the appellant vehemently submitted that in fact, the entire story has been concocted by the family members of deceased Smt. Geeta, even when they were told by Smt. Geeta herself that she was not burnt by the accused appellant. It is also submitted that it was done at the instance of Smt. Geeta's cousin brother Mafa. It is submitted that Smt. Geeta was not willing to implicate anybody and, therefore, she gave her statement voluntarily before the learned Judicial Magistrate but since she was tutored and was under pressure of her family members, therefore, she changed her version totally. It is also submitted that the learned Judicial Magistrate, who recorded the statement of Smt. Geeta (Ex.P/9), recorded the statement of Smt. Geeta at 11:45 AM and concluded the statement at 12:35 PM. This time cannot be disputed and Smt. Geeta in her statement Ex.P/9 clearly stated that she was not burnt by anybody and she had no complaint about the conduct of her inlaws including her husband. While cooking food, she caught fire and, thereafter, she jumped in the water tank. She was taken out from tank by her mother-in-law with the help of Champa Ben. She unequivocally stated that she was not burnt by anybody. Thereafter, she further stated that at the time of incident, her husband was sleeping. After this statement, she changed her version and even in changed version, she only stated that she burnt herself because of torture of her husband and thereafter, she changed her version again to implicate the appellant. In changed version, she stated that she was not liked by her husband, therefore, she was burnt by her husband. She also stated that her mother-in-law and father-in-law were quarreling with her. She gave her explanation for earlier different statement that she stated wrong fact in earlier part of her statement before learned Judicial Magistrate because she had fear that she will not be given proper treatment by her inlaws. According to learned Counsel for the appellant, the dying declaration is an important piece of evidence as well as it denies opportunity of cross examination of the person against whom there are direct allegations in the dying declaration.

12. In this case, story has been changed by the victim thrice not only in her statement recorded by learned Judicial Magistrate but the prosecution has manipulated the things in the manner to project that the case was registered after Parcha Bayan (Ex.P/1) of Smt. Geeta and thereafter, her statement was recorded by the learned Judicial Magistrate. According to learned Counsel for the appellant, in fact, the first statement of Smt. Geeta was recorded by the learned Judicial Magistrate and thereafter, under the pressure of her family members, the parcha bayan was concocted and that also has been projected as dying declaration. Because of the peculiar reasons, the timings on which the statements of victim Geeta have been shown as recorded is important which exposes falsity in the prosecution case.

13. Learned Counsel for the appellant vehemently submitted that the family members of the deceased reached on the scene of occurrence before the doctor examined Smt. Geeta and before her statements were recorded either in parcha bayan or by learned Judicial Magistrate and, therefore, there is every possibility that the unwilling lady Geeta was tutored to give statement to implicate the appellant. The alleged allegation of cause for dispute is that Geeta was not beautiful whereas in fact, it is admitted case that Geeta was beautiful and the appellant was of poor health with poor education and a villager and, therefore, Geeta was not liking the accused appellant and, therefore, was not happy and burnt herself without any situation created by the appellant.

14. Apart from the above, according to learned Counsel for the appellant, the site report and the statement of the doctor clearly reveals that the victim Geeta was not burned by pouring kerosene upon her and she could not have been burnt at the place where it has been projected. The doctor did not find any smell of kerosene from the body and clothes of Geeta which could have been in case kerosene might have been poured over her and absence of smell of version could have been only in the situation when she might have caught fire while cooking food and not because of pouring kerosene on her and burning her. It is also submitted that the site report clearly reveals that Smt. Geeta could not have taken such a long way to jump in the water tank. Not the branches and leaves of tree could have burn marks, in case, one who caught fire would have merely ran through under the

tree. It can be only when the flames reach to the height of leaves of a big tree and remains for longer time and that can be when the fire occurs and remain stagnant there, under the tree.

15. Learned Public Prosecutor supported the judgment of the learned trial court and vehemently submitted that because of some minor discrepancies in mentioning the time on certain documents, the credibility of documentary evidence has not affected because of the plain and simple reason that there may be possibility of difference of time in different watches and, therefore, different times have been mentioned in different documents. It is also submitted that the doctor who opined that Smt. Geeta was in fit condition to give statement and learned Judicial Magistrate who recorded the statement and the investigating officer are independent witnesses and there is no reason for them to concoct the story against the accused. It is also submitted that there is no evidence by which it can be gathered that the victim might have been tutored before her statements were recorded. It is also submitted that the victim died due to burn injuries and this fact is admitted fact. The accused failed to give explanation inspite of the fact that he himself was present in the house and Smt. Geeta died in short period of her married life in the house of her inlaws. There is evidence that she was tortured and, therefore, the trial court rightly convicted the appellant.

16. We considered the submissions of learned Counsel for the parties and perused the reasons given by the trial court in the impugned judgment as well as the record.

17. In the present case, there is no eye witness to the incident and the most important crucial evidence is the statement of Geeta who subsequently died due to the injuries suffered in the incident. The different timings mentioned in different documents in some cases may have been irrelevant but in some circumstances the infirmities regarding time of recording of dying declaration may cast a serious doubt on dying declaration, then that due weightage can be given to the infirmities and this view finds support from the judgment of the Hon'ble Apex Court delivered in the case of *Mehiboobsab Abbasabi Nadaf v. State of Karnataka* reported in JT 2007(1) SC 62.

18. In this case, there are three versions in the dying declaration and victim's alleged statement before her death. First we will examine the statement of Geeta. As per the prosecution case, the parcha bayan was recorded by S.H.O., Police Station, Sanchore at 11:40 AM (Ex.P/1). In this statement, Smt. Geeta stated that in the morning at 6:00 AM, she was cooking food and thereafter, she stated that she went in the backyard of her house for urination at 6:00 AM. There, her husband came and poured kerosene upon her and burnt her. She shouted, then her mother-in-law, father-in-law and sister's husband came to save her and thereafter, she fell down in the water tank. She was taken out from the water tank by her mother-in-law and neighbour Smt. Champa Ben. She gave cause of burning as her husband was not liking her and she was living in her parent's house since last 5 months and she was brought to her husband's house by her husband. She repeated that her mother-in-law, father-in-law and sister-in-law never quarreled with her. Ex.P/1 bears the endorsement of Dr.B.L. Vishnoi, Medical Officer of CHC, Sanchore, who certified 'statement taken of in presence of me'. At this place, the doctor has not certified that Smt. Geeta was in fit mental condition so as to give statement. Be it as it may be, if this is the first version, then there are two stands in the statement ; one, that at about 6:00 AM on the fateful day, she was cooking the food and she went to ease out in the backyard of husband, their her husband poured kerosene and burnt her. And second, her inlaws tried to save her and she had no grievance with her inlaws nor they had grievance with her. After this statement, as per the prosecution case, a request letter was given to learned Judicial Magistrate and as per the endorsement made by learned Judicial Magistrate, this request letter was given by the S.H.O., Police Station, Sanchore at 11:35 AM requesting him to record the statement of victim Smt. Geeta. We may recapitulate here that parcha bayan bears the time 11:40 AM whereas before that, as per Ex.P/6, letter given to the Medical Officer, CHC, Sanchore by the S.H.O., Police Station, Sanchore requesting for medical examination was made to medical officer at 11:00 AM and he certified that, 'she is in condition to give statement' by making endorsement on the letter Ex.P/7 and this endorsement was made at 11:35 AM. In this way, it may be probable that the Court of learned Judicial Magistrate concerned may be just near to the hospital and, therefore, immediately request letter was submitted before learned Judicial Magistrate for recording the

statement of victim Smt. Geeta and there may be possibility that in recording the time by the doctor and the learned Judicial Magistrate on Ex.P/5 and Ex.P/7 respectively, there may be some difference in watches of two officers. The learned Judicial Magistrate started recording statement of victim at 11:45 AM (Ex.P/9) and he continued recording the statement till 12:35 PM, then it cast doubt on Ex.P/1 which is alleged to have been recorded at 11:40 AM. It is relevant because of the reason that the statement of Geeta in Ex.P/1 and Ex.P/9 have no consistency and version has been changed materially not only in relation to the allegation against her husband but also against her father-in-law and mother-in-law. This fact is apparent from Ex.P/9, statement of Geeta recorded by the learned Judicial Magistrate. In the first instance, Smt. Geeta stated that she died due to blast in stove resulting into catching fire by her clothes and she categorically stated that she was not burnt by anybody and she had no complaint against her husband, mother-in-law, father-in-law and other persons. She clearly stated that she jumped into water tank to save herself. When a last question which is normally asked in the last i.e.... 'What you have to say more?', she changed the version, yet she stated that she burned herself because her husband used to abuse her and used to level false allegations and also used to beat her. Thereafter, she stated that because of that reason, she took kerosene from Patila and pour it on her head and burnt herself and because of that she suffered burn injuries and she categorically stated that at that time, her husband was sleeping and repeated that her mother-in-law, father-in-law and husband's sister never tortured her. Only her husband used to torture her. However, even after that question, the learned Judicial Magistrate put more questions to the victim, then the victim stated that her husband is sixth pass and is not doing any work. She was asked a further question, 'Whether you were burnt by stove?' In response to this question, she stated that she burnt because of torture of her husband but she wrongly stated that she burnt due to blast in stove because her mother-in-law and father-in-law asked her to say so. Therefore, at this stage also, her stand was that she burnt herself, may it be due to torture by her husband. Thereafter, another question was put to the victim that, 'How your husband used to torture you?' In response to this question, she stated that her husband used to beat her and he used to say anything to her including that she is sleeping with others and he used to say that

he will make her father also correct and thereafter, when more questions were put, she further changed her stand and stated that her husband burnt her, then again same question, which was put to the victim much before other questions, was put, 'You want to say more?' and in response to this question, she stated to the learned Judicial Magistrate that don't tell this statement of hers to her inlaw because they will not arrange proper treatment for her. Therefore, there are three versions in her alleged dying declaration ; (1) she burned because she caught fire from stove ; (2) she burned herself due to her torture by her husband and (3) her husband burned her.

19. In the background of the above facts, if we look into the oral evidence, then the prosecution witness PW12 Kirta Ram, Assistant Sub Inspector, Police Station, Sanchore stated that before recording of statement of victim Geeta, her uncle's son Mafa Ram, her father and her uncle met with the victim. He also stated that they met with the victim and asked Geeta to give correct statement. Thereafter, they were taken out of the room from where Geeta was lying. Therefore, before statement of Geeta was recorded, either by the S.H.O., Police Station, Sanchore, or by the learned Magistrate, her father, her uncle and her cousin brother not only met with her but had opportunity to discuss about the statement to be given by Smt. Geeta to the police or to the learned Judicial Magistrate.

20. The victim's cousin brother Mafa Ram PW6 is also an important witness. He stated that DW2 Medaram came to his village and took them to the hospital where Geeta was admitted. PW6 Mafa Ram in cross examination admitted that they reached in the hospital in the morning at about 9:00 AM as his village was not far away from Sanchore and one could have reached there within a period of 1 1/2 - 2 hours only. It is improbable that the family members of Geeta would reach the hospital well before reaching of the police and Magistrate and they would not talk to the victim. Not only this probability is there, but PW6 Mafa Ram in his examination in chief himself stated that when they enquired from Geeta, how the incident occurred, then she told that she was burnt by her husband and she told that when she shouted, nobody came to help her and she fell down in the water tank, whereas in Parcha Bayan, she stated that her mother-in-law, sister-in-law and father-in-law came and tried to save her. Therefore, at least, it is admitted

case of the prosecution that the family members were with deceased Geeta before her statement was recorded either by the S.H.O., P.S., Sanchore or by the learned Judicial Magistrate.

21. The possibility of tutoring the victim Geeta cannot be ruled out because of additional fact and that is, the site report do not support the prosecution story. Ex.P/3 is the site map as well as report. It is alleged that at Place 'A', Smt. Geeta and her husband were sleeping at night and just nearby in south, one earthen pot, match box with one match stick inside it and 2 burnt match sticks were found. Just 10 feet away from that place 'B', there were signs of urination and this is also in south direction and it will be worthwhile to mention here that in the southern side of place 'E', water tank is there, whereas, as per the site report, Smt. Geeta ran in reverse direction, took a complete round of house by running towards north side and took turn in west side and thereafter, she ran towards south and thereafter, she jumped in water tank. The route shown by the prosecution of moving of Smt. Geeta from place 'E' towards place 'B', then towards 'A', then towards 'G', then towards 'D', 'F' and then to water tank could not have been the way looking to the distance of this route qua the distance to water tank from place 'E'. In the site report Ex.P/3, the kitchen has been shown near Neem tree. The neem tree is in front of the kitchen and, therefore, it is probable that Geeta might have been cooking the food outside the kitchen under the Neem tree and there could not have been any reason for her for cooking food in the back side of her house far away from the kitchen. In that situation, if she might have caught fire from stove, flames might have reached to the leaves so as to leave burn marks on the leaves of the tree and this fact causes serious doubt on the prosecution story that Geeta was burnt by her husband at the place shown in the map. From under the tree, she could have run in the direction of the water tank and it is clear from the site map that her clothes were found on the route travelling from Neem tree and kitchen to the water tank.

22. The possibility of her catching fire from stove is fortified from the statement of PW2 Ukaram, who in his cross examination, stated that no smell of kerosene was coming from the match box or even from the clothes of the deceased. He also admitted that Lumba Ram's wife showed the blanket which was burned by fire to

the police but the police did not took that blanket in their possession. He also stated that Lumba Ram and his wife told the police on the spot that they tried to save the victim Geeta by putting this blanket over her. This statement supports Geeta's version that she caught fire and her mother-in-law and father-in-law tried to save her by putting a blanket over her. PW7 Dr.Babu Lal Vishnoi also stated that he did not find any smell of kerosene from the body of the deceased, neither from the body nor even from her hair. In view of the above fact, the possibility of Smt. Geeta's catching fire while cooking cannot be ruled out, rather say, it appears to be more probable.

23. In the facts of the case, the judgments of the Hon'ble Supreme Court delivered in the cases of (1) Shaikh Bakshu and Ors. v. State of Maharashtra reported in 2007 Cr.L.R. (SC) 507; (2) Mehiboobsab Abbasabi Nadaf v. State of Karnataka reported in JT 2007(1) SC 62 and (3) T.K. Reddy v. State of A.P. Reported in 2002 SCC (Criminal) 1613, are helpful and in the light of the observations made in these judgments, the dying declaration of Geeta (Ex.P/9) as well as her Parcha Bayan (Ex.P/1) cannot be considered as reliable piece of evidence on the basis of which conviction of the appellant can be maintained. So far as other evidence on record is concerned, there is no eye witness of the incident. The first stand of the victim Smt. Geeta that she caught fire from the stove and she jumped in the water tank, her husband was sleeping, her mother-in-law and father-in-law and Smt. Champa Ben took her out from the water tank and tried to save her, appears to be more nearer to truth. Therefore, the conviction of the appellant under Section 302 IPC cannot be maintained and is entitled to be acquitted from the charge under Section 302 IPC.

24. The trial court also convicted the appellant under Section 498A IPC. The deceased's statement so far as her torture by her husband is concerned, there is consistency and that part can be relied upon as a separable part from the statement of the deceased. The deceased's statement that her husband at the relevant time was sleeping is not material for deciding his past conduct because of the fact that the allegation of torture of deceased is of the time prior to the incident. From the other evidence available on the record as well as from the statement of accused himself, the relationship of accused appellant and deceased Smt. Geeta

were not cordial and she was not happy with the appellant. She was living in her parent's house since last 5 months before the time of incident. The reason of dispute as shown by the prosecution is that there was a gap in the mental attitude of the husband and wife. The husband was illiterate villager and was not doing any work whereas the victim wife was from a city and was educated. The victim wife was fair in appearance whereas the appellant was not good in appearance. The specific instance of victim's torture has not been shown but the totality of the facts clearly show that she was treated cruelly by her husband and, therefore, the trial court rightly convicted the appellant under Section 498A IPC and that conviction is upheld.

25. In the result, the appeal of the appellant Tulsa Ram is partly allowed and his conviction under Section 302 IPC is set aside. However, his conviction under Section 498A IPC is maintained.

26. The appellant is behind bars and now he has completed his term of sentence of three years as awarded by the trial court under Section 498A IPC. Therefore, in view of his acquittal from the charge under Section 302 IPC and his already serving the sentence under Section 498A IPC, the appellant be released forthwith, if not needed in any other case.