

Rajendra Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-30-2002

Reported in : II(2002)DMC701

Judge : Y.R. Meena and; A.C. Goyal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 498A

Appeal No. : Criminal Appeal No. 760 of 1999

Appellant : Rajendra

Respondent : State of Rajasthan

Advocate for Def. : Rajendra Yadav, P.P.

Advocate for Pet/Ap. : Biri Singh,; Sanjay Verma and; Naveen Dhawan, Adv.

Disposition : Appeal allowed

Judgement :

A.C. Goyal, J.

1. The appellant Rajendra has filed this appeal against the judgment dated 28.10.1999 passed by the learned Sessions Judge, Sawai Madhopur in Sessions Case No 57/1999, whereby the appellant has been convicted and sentenced under Section 498-A, I.P.C. with one year's rigorous imprisonment and under

Section 302, I.P.C. with imprisonment for life and with fine of Rs. 1,000/- and in default to further undergo two months' simple imprisonment.

2. The incident in question which gave rise to the present prosecution occurred on May 24 at about 3 or 4 p.m. in Sawai Madhopur. It is the case of the prosecution that P.W. 15 Shri Manvendra Singh, SHO, Police Station Kotwali, Sawai Madhopur received a written report Ex. P9 from General Hospital, Sawai Madhopur at about 6.20 p.m. on 24.5.1999 to the effect that one woman Smt. Vimla w/o Shri Rajendra, aged 32 years, resident of Sawai Madhopur, has been admitted in a serious burnt condition. Upon instructions of SHO, P.W. 17 Shri Sachendra Singh, ASI came to the hospital and recorded the statement of Smt. Vimla Ex. P18 at about 10.55 p.m. Smt. Vimla stated that her husband Rajendra poured kerosene upon her and set her on fire. She saw her husband sleeping with the wife of their tenant Shri Mahesh. She wanted Mahesh to vacate the house. At about 3-4 p.m., she was preparing meals. At that time, her husband first gave a beating to her and then set her on fire after pouring kerosene on her head. No one else except their minor children was present in the house. This Parcha Bayan Ex. P18 was submitted at the police station. A formal FIR Ex. P19 was registered under Section 307, I.P.C. At about 11.45 p.m. on that day one application Ex. P15 was submitted by ASI, Shri Sachendra Pal Singh to Additional Chief Judicial Magistrate P.W. 14 Shri Latif Mohd. for recording the statement of Smt. Vimla. P.W. 14 Shri Latif Mohd. reached the hospital. The duty doctor Shri R.K. Sharma informed the concerned Magistrate that Smt. Vimla is in a fit state to give her statement. The concerned Magistrate recorded her statement Ex. P16 at about 12 in the night. The contents of this statement are similar to the statement Ex. P18. According to Ex. P16, Smt. Vimla disclosed the name of the wife of their tenant as Usha. It was also stated that she came to her husband's house yesterday from her parents' house. The injured Smt. Vimla succumbed her injuries after a few hours in the hospital. P.W. 9 Dr. R.P. Gupta first examined her injuries at about 6 p.m. on that day and prepared the injury report Ex. P10. At about 8.15 a.m. on 25.5.1999. P.W. 11 Dr. Babu Lal Meena conducted the post-mortem on the dead body of Smt. Vimla and prepared the post-mortem report Ex. P14. After receipt of the information about the death of injured, offence punishable under Section 307, I.P.C. came to be altered to one under Sections 302 and 498, I.P.C. After

completing the investigation, charge-sheet came to be filed in the Court of Chief Judicial Magistrate, Sawai Madhopur, who committed the case to the learned Court of Sessions Judge, Sawai Madhopur, who framed the charges under Sections 498-A and 302, I.P.C. The accused-appellant Shri Rajendra pleaded not guilty and claimed trial. As many as 17 witnesses were examined on behalf of prosecution, the statement of accused-appellant Rajendra was recorded as provided by Section 313, Cr.P.C. He denied the prosecution evidence and stated that her wife was under mental disorder and in the year 1996 she once consumed poison. She herself set her on fire. She was taken to hospital immediately for treatment and immediate intimation was given to her parents. Her relatives came to the hospital. On account of her brother-in-law's political relations, he was falsely implicated. In defence one Smt. Ram Nathi was examined. Having heard final submissions, the learned Sessions Judge convicted and sentenced the accused-appellant as stated above.

3. We have heard learned Counsel Mr. Biri Singh and learned Public Prosecutor and have scanned the entire evidence. It is not in dispute that Smt. Vimla, wife of the appellant died from extensive burns. According to P.W. 9 Dr. R.P. Gupta, she was having about 80% burns. As per statement of P.W. 11 Dr. Babu Lal Meena, she was having about 85 to 90% burns and in the opinion of Dr. Meena, Smt. Vimla died due to shock resulting from extensive burns. Even the accused-appellant admitted in his statement under Section 313, Cr.P.C. that his wife set herself on fire.

4. The crucial point for consideration is as to whether the accused-appellant, being the husband of Smt. Vimla Devi subjected her to cruelty and set her on fire after pouring kerosene

5. All the close relatives and neighbours of Smt. Vimla Devi turned hostile. P.W. 1 Shri Tara Chand is a witness of site plan Ex. PI. He stated in cross-examination that deceased consumed poison 3 or 4 years prior to this incident. P.W. 3 Shri Prabhu Nai was a tenant on the ground floor in the house of the accused-appellant. He stated that landlord Rajendra and one tenant Mahesh along with their families were residing at the upper storey. He turned hostile and did not

support the prosecution case. He pleaded ignorance as to how Smt. Vimla died. In cross-examination by learned Public Prosecutor, he stated that the accused-appellant Rajendra was pouring water upon his wife to extinguish the fire. Thus, this witness is wholly unreliable. P.W. 5 Kumari Apeksha of age 7 years is the daughter of the deceased and appellant Shri Rajendra. She did not support the prosecution case, hence she was declared hostile. But she was not confronted with her any previous statement. She stated that her mother was preparing meals and her brother Tannu (aged about 2 years) was also in kitchen. Her father (accused) was in his room and none set her mother on fire, rather her mother herself set on fire after pouring kerosene. Her mother was taken to hospital, where she died. In cross-examination by learned defence Counsel, she stated that upon cry raised by her, her father came and poured water upon her mother. Her father and brother were also burnt in this incident. She also told this fact to SHO P.W. 7. Kumari Mamta Sharma of 15 years age is a neighbour to the house of accused appellant. She was also declared hostile. She stated that there was a common wall in between her house and the house of the accused. She further stated that upon hearing cry she and the accused brought out Vimla and both her children from the kitchen and Smt. Vimla had tied on child to her waist. In cross-examination by learned Public Prosecutor she admitted the entire police statement Ex. P8 except the portion C to D. The portion C to D of Ex. P8 is to this effect that Smt. Vimla wanted the tenant Mahesh and his wife to vacate the house but Rajendra did not pay any heed to this. Thus, on careful consideration of her police statement Ex. P8 and the statement recorded during the trial. It appears that as a matter of fact she was not a hostile witness, as even in the police statement she did not depose that accused-appellant burnt her wife. In cross-examination, she further stated that most of the time she used to stay at the house of Rajendra (accused) because of his children and she was having very good relation with Smt. Vimla and Smt. Usha, wife of the tenant Shri Mahesh. She also stated that Smt. Vimla had often fits. According to P.W. 7 Kumari Mamta accused Rajendra also got burn-injury. It was also stated that Smt. Vimla at one earlier occasion consumed poison. She and Rajendra poured even water upon Smt. Vimla. P.W. 8 Shri Hari Gopal Sharma is brother of deceased Smt. Vimla. According to him, the marriage between accused-appellant and his sister Vimla was solemnized some

time before ten to eleven years to this incident. In the beginning they were in very good terms. Later on some dispute arose at two or three occasions. Two daughters and one son were born out of this wedlock. Prior to this incident Vimla was with them (at her parental house) for about six months and Rajendra himself came and took her one day prior to this incident. He further stated that immediate information regarding this incident was given to them by the father of accused and they came to the hospital and they were present when Police and the Magistrate recorded her statement. He also stated that it was told to them that Rajendra poured kerosene upon her and then set her on fire. But it is very important to say here that this witness has not disclosed as to who told that Rajendra set Vimla on fire after pouring kerosene. In cross-examination he stated that accused tried for her treatment. It was also stated that his sister was mentally ill in her childhood and she used to do unwanted activities and she was got treated for that. She was mentally disturbed but she was quite well after her marriage. He pleaded ignorance as to whether Smt. Vimla was admitted in General Hospital, Sawai Madhopur on 9th March, 1996. He categorically stated that Smt. Vimla never complained of bad behaviour of Rajendra. According to the statement of P.W. 9 Dr. R.K. Gupta, he examined the injuries, apart from examining Smt. Vimla also, of accused-appellant Shri Rajendra and his two years' son Tannu, and both were having 10% burns on the various parts of their body and he prepared injury report of Tannu Ex. P 11 and Injury Report of accused appellant Ex. P12. In cross-examination, he admitted that Dr. Pritam Chand Gupta was working as Medical Jurist in this hospital prior to his posting and Dr. Gupta prepared a medical report of Smt. Vimla Devi on 9.3.1996 and a certified copy of the same is Ex. D1. As per this report Ex. D1, Smt. Vimla had consumed poison. P.W. 10 Shri Chiranji Lal is father of the deceased Smt. Vimla. He also turned hostile. He deposed that both Rajendra and Vimla used to complain to him against each other. He further stated that prior to her death, Vimla was at his house for about three four months because of two marriages. He pleaded ignorance about her tenant in the house of accused Rajendra and her daughter accompanied her husband at her own and she died next day. He showed his ignorance as to who burnt her. In cross-examination, he stated that his daughter was short-tempered. P.W. 14 Shri Latif Mohammad, the then A.C.J.M., Sawai Madhopur, proved Ex. P16 as dying

declaration of Smt. Vimla, P.W. 15 Shri Manvendra Singh SHO investigated this case. P.W. 17 Shri Sachindra Singh is ASI, P.W. 16 Smt. Savitri is the wife of P.W. 8 Shri Hari Gopal. She also turned hostile as she stated that she does not know as to who set her sister-in-law on fire. She stated that Vimla and her husband used to quarrel on petty things. In cross-examination, she stated that Smt. Vimla was short-tempered. D.W. 1 Smt. Ram Nathi, a neighbour of the accused appellant stated that Smt. Vimla was under mental disorder and she once consumed one tablet and was got treated by her husband Rajendra.

6. Upon perusal of the entire prosecution evidence, it comes out that Smt. Vimla was married to appellant about ten/eleven years prior to this incident and two daughters and one son were born out of this marriage. The eldest daughter was of nine years age while the youngest son was two years age at the time of this sad incident. It is also proved that prior to this incident, Smt. Vimla was residing with her parents for about four to six months and she accompanied her husband to her in-laws house just one day prior to this occurrence. It is also borne out from the record that Smt. Vimla was a little bit mentally disturbed lady, as this fact has been disclosed by P.W. 1 Shri Tara Chand Soni, P.W. 7 Kumari Mamta Sharma, P.W. 8 Hari Gopal Sharma, who is real brother of Smt. Vimla. Even her father Shri Chiranji Lal and her sister-in-law Smt. Savitri admitted in cross-examination that Smt. Vimla was very short-tempered. At the cost of repetition, it is observed that P.W. 1 Tara Chand stated in cross-examination that Smt. Vimla consumed poison three or four years back to this incident. This statement was corroborated by P.W. 7 Kumari Mamta Sharma. The statements of these two witnesses find corroboration from the statement of doctor P.W. 9 Shri R.P. Gupta and the medical certificate Ex. D1 dated 9.3.1996. There is also evidence to show that the intimation of this incident was immediately given to her parents and they reached hospital. It has also come out in prosecution evidence that accused appellant tried to extinguish the fire and in this incident, he himself got 10% burns and baby Tannu of two years also got 10% burns. This fact corroborates the statement of P.W. 7 Kumari Mamta Sharma that Smt. Vimla had tied one child to her waist. P.W. 5 Kumari Apeksha had also narrated this fact that her brother Tannu was also in kitchen with her mother and he also got burns and this fact is also corroborated by medical evidence. The fact of pouring water upon Smt. Vimla by

the accused-appellant finds corroboration from the statement of Investigation Officer P.W. 15 Shri Manvendra Singh, who stated at the end of his cross-examination that when he reached the spot he found water on the floor and water tank, bucket were empty, in view of these facts and circumstances, the learned Counsel Mr. Biri Singh has contended that the only evidence against the appellant is that of two dying declarations which are Exs. P18 and P16. The main contention of learned Counsel Mr. Biri Singh is that there is no such medical evidence to prove this fact that Smt. Vimla was in a fit state of mind to narrate this incident, as no such certificate was given by any doctor and further doctor Shri R.K. Sharma has not been produced on behalf of prosecution, therefore, it is totally unsafe to base conviction only on the basis of Ex. P18 and Ex. P16 the statements of Smt. Vimla. He has placed reliance on some of the judgments of Hon. Apex Court. Learned Public Prosecutor argued that conviction can take place only on the basis of dying declarations and in this case there are two dying declarations similar to each other and there is no reason to interfere with the conclusion arrived at by learned Sessions Judge.

7. Having given our anxious consideration, we are of the view that it is quite unsafe to sustain conviction of the appellant in the facts and circumstances of this case only on the basis of dying declarations. The prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declarations being genuine, true and free from all doubts and both the statements were recorded when Smt. Vimla was in fit state of mind. The certificate of the doctor appended to the dying declarations did not comply with the requirement as it has been certified that the injured was in a fit state of mind at the time of recording the dying declarations. This view is based upon judgment of Hon. Supreme Court delivered in Paparambakea Rosamtna and Ors. v. State of Andhra Pradesh, VII (1999) SLT 417=III (1999) CCR 232=JT 1999 (6) SC 585.

8. The same view has been taken by Hon. Supreme Court in Smt. Laxmi v. Om Prakash and Ors., II (2001) DMC 139=AIR 2001 SC 2383, wherein it was held that the Court should be satisfied that deceased was in fit state of mind and capable of making a statement at the point of time when the dying declaration purports to have been made and/or recorded. Hon. Division Bench of this High Court in

Girdhari Lal and Anr. v. State of Rajasthan, reported in 2000 (2) RCC 1042, held that neither the Magistrate recorded a certificate on the dying declaration that the deceased was in a fit state of mind to give a statement nor there is a certificate of the Medical Officer as to the mental condition of the patient, it is not safe to act on such a dying declaration in yet one another judgment Panchdeo Singh v. State of Bihar, IV (2001) CCR 362=JT 2001 (10) SC 322, the Hon. Apex Court held that there is 110 rule of law that a dying declaration cannot be acted upon unless it is corroborated. Where, however, the Court finds some infirmity, howsoever negligible, then it has to look for some corroboration. In view of this legal position, we now examine this aspect of evidence. According to the prosecution case, this incident took place at about 3 to 4 p.m. and she was immediately taken to the General Hospital, Sawai Madhopur. P.W. 9 Dr. Gupta examined her at about 6 p.m. and prepared injury report Ex. P10. He also informed concerned Police Station vide Ex. P9, and this Ex. P9, was received at Police Station at about 6.20 p.m. Thereafter, upon instructions of SHO P.W. 15 Shri Manvendra Singh, P.W. 17 Sachendra Singh, ASI came in Ward No. 2 of the hospital and recorded the statement of Smt. Vimla at about 10.55 p.m. Shri Sachendra Singh stated that he recorded this in presence of duty doctor Shri R.K. Sharma and Ward Incharge Dr. D.K. Gupta and both the doctors put their signatures upon Ex. P18. Thus, according to the statement of P.W. 17, it can be said at the most that the two doctors put their signatures upon Ex. P18 but no such certificate was given or was obtained from these doctors that Smt. Vimla was in a fit state of mind and capable of making a statement at the given point of time. Even P.W. 17 Shri Sachendra Singh did not record his own satisfaction to this effect. Dr. R.K. Sharma has not even been cited as a prosecution witness. No doctor namely Dr. D.K. Gupta was also examined, rather Dr. G.L. Gupta was examined as P.W. 13, who was member of the Medical Board, which conducted the post-mortem. Dr. G.L. Gupta has given no evidence in support of the statement of P.W. 17 and the statement of Smt. Vimla Ex. P18. Second dying declaration Ex. P16 was recorded by P.W. 14, the then A.C.J.M., Sawai Madhopur, which was recorded according to him at 12 night in the hospital. Shri Latif Mohammad stated that at about 11.45 p.m. ASI Shri Sachendra Singh submitted an application Ex. P15 at his residence with a prayer to record the dying declaration of Smt. Vimla. He immediately reached the hospital

and obtained a certificate of mental state of Smt. Vimla from Incharge doctor Shri R.K. Sharma. Shri R.K. Sharma certified upon Ex. P15 that Smt. Vimla is fit to give her statement. He also stated that he himself made an inquiry from Smt. Vimla and he found that she was willing to give her statement and thus he recorded her statement as Ex. P16 and got her thumb impression which was also certified by Dr. R.K. Sharma. The certificate of the doctor marked A to B upon Ex. P15 when examined in view of the above referred judgments cannot be acted upon. The certificate of the doctor is as under :

'xxx xxx xxx xxx xxx xxx'

9. As stated above, this doctor Shri R.K. Sharma was not cited even as a prosecution witness and no reason has been assigned as to why this doctor Shri R.K. Sharma was not examined. Even assuming that this certificate was recorded by the Dr. R.K. Sharma, it is not in accordance with the legal position as held by Hon. Supreme Court in Paparambaka's case (supra). The certificate of the doctor was to this effect that 'patient is conscious while recording the statement'.

10. In absence of such certificate that the injured was in a fit state of mind at the time of recording the dying declaration, the Hon. Supreme Court held that in view of these material omissions, it would not be safe to accept the dying declaration as a true and genuine and was made when the injured was in a fit state of mind. In medical science, two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be a conscious but not necessarily in a fit state of mind. In the case before Hon. Supreme Court, the injured had sustained 90% burn injuries and similar was the position of burns in this case.

11. Apart from above serious infirmity in the dying declarations, there are some other defects and improbabilities so as not to place any reliance upon said dying declarations as truthful and voluntary. It is the defence of the accused appellant that his wife Smt. Vimla was suffering from mental disorder, and she had often fits. In the year 1996, she consumed poison and under such mental condition she herself poured kerosene upon her and set herself on fire. He took her immediately to the hospital for treatment and her relatives were also informed immediately. This statement of the accused finds corroboration from the prosecution evidence

itself as stated earlier. At the cost of the repetition, it is mentioned that even the father of Smt. Vimla, P.W. 10 Chiranji Lal, and sister-in-law P.W. 16 Smt. Savitri admitted that Smt. Vimla was quite short-tempered. The real brother of Smt. Vimla P.W. 8 Hari Gopal Sharma categorically admitted that she was suffering from mental disorder and was treated by the doctors and she often used to perform unwanted activities. He further admitted that Smt. Vimla never complained of bad behaviour of her husband Shri Rajendra. It has also come out in prosecution evidence that in the year 1996 Smt. Vimla, once consumed poison and she was treated by the doctor. One important fact is to be noticed and that is that neither in the first dying declaration Ex. P18 nor in second dying declaration Ex. P16, it has come out as to how she was set on fire. Whether the accused threw a lighted match stick on her or some other fire implement was taken into use. In both the statements Ex. P18 and Ex. P16, it is commonly stated that she was put to fire by her husband. There is also no evidence on record to show that Smt. Vimla was meted out any ill-treatment or there was any dowry demand. The only fact made in dying-declarations was that Smt. Vimla wanted her husband to oust tenant Shri Mahesh and his wife from their house but her husband was not prepared to do so because she saw her husband once sleeping with Smt. Usha, wife of Shri Mahesh. As discussed earlier, there is no evidence at all in support of these facts, rather, there is evidence against such allegation. It is also mentioned here that Ex. D2 is also the statement of Smt. Vimla recorded by Investigating Officer on the same day under Section 161, Cr.P.C The name of the wife of tenant Shri Mahesh has been recorded as Mamta and when confronted with this name, P.W. 15 Shri Manvendra Singh, I.O. stated that Smt. Vimla told him the name of the wife of Shri Mahesh Sharma as Mamata. Thus, in view of the entire discussion, it is quite unsafe to base the conviction of the accused-appellant only on the basis of the dying declarations.

12. In the result, the appeal is allowed. The order of conviction and sentence dated 28.10.1999, passed by learned Sessions Judge, Sawai Madhopur, is set aside, and the appellant is acquitted of all the charges. The appellant is in jail. He shall be set at liberty forthwith, if not required in any other case.

