

Dharmej Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/900942

Court : Jammu and Kashmir

Decided On : May-28-2004

Reported in : 2004CriLJ4341,II(2005)DMC607,2005(2)JKJ140

Judge : S.K. Gupta, J.

Acts : Ranbir Penal Code (IPC), 1989 Smvt. - Sections 306 and 498A; ;[Evidence Act, 1872](#) - Section 32

Appeal No. : Cri. Appeal No. 24 of 1995

Appellant : Dharmej Singh

Respondent : State

Advocate for Def. : B.S. Salathia, AAG

Advocate for Pet/Ap. : R.P. Bakshi,; K.S. Pathania and; K.S. Johal, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Gupta, J.

1. Solely relying upon the dying declaration of Smt. Sushma Devi for abetting the commission of suicide and oral testimony of the witnesses to whom she narrated woeful tale of her being subjected to cruelty by the accused, Dharmej Singh, her

husband, the trial Court held the appellant-accused guilty and convicted and sentenced, him to undergo 10 years rigorous imprisonment and a fine of Rs. 500/- in proof of offence Under Section 306, RPC and 3 years rigorous imprisonment and a fine of Rs. 300/- under Section 498A, RPC and in case of non-payment of fine, the appellant was to suffer further three months rigorous imprisonment each in both the offences, however, on both the counts, the sentences have to run concurrently, vide judgment and order dated 25/26-7-1995, impugned herein.

2. A skeleton projection of the case may be noticed:

On receipt of information that one Sushma Devi, wife of appellant-accused, has been brought to the Hospital with burn injuries on 7-11-1992 at 12.20 a.m., Police party, headed by ASI Ram Dass Verma of Police Station Bani, proceeded to the hospital. ASI Ram Dass Verma found the deceased with extensive burn injuries and enquired in writing from the Block Medical Officer if Sushma Devi was in a fit condition to make the statement. Dr. Ashok Kumar, Block Medical Officer, certified the fact that Sushma Devi was in a fit condition to make the statement. The statement of the deceased was recorded in presence of Block Medical Officer, Dr. Ashok Kumar, and Hans Raj Medical Assistant, wherein the deceased stated to have been married about four years back with Dharmej Singh-accused. A son, aged 3 years, was born out of wedlock. The deceased also stated to have been physically chastised and harassed by her husband for the last 2 to 3 years. The accused had been levelling charges of infidelity and also for bringing insufficient dowry. The accused used to demand and compel the deceased to bring more and more dowry about which she informed her parents and other relations. The deceased also stated that about a day before the occurrence on 6-11-1992, the accused took a cudgel with her, about which she informed the Zonal Education Officer, under whom she had been working as a teacher in Government Primary School, Bani, for the last about 4 years. The deceased further stated that the accused had called her by bad names even on the day of occurrence at about 8-9 a.m., which instigated and provoked her, as a result of which, she sprinkled kerosene oil on herself, ignited the match stick and set her ablaze.

3. On the basis of the statement of the deceased Sushma Devi, a case under Section 309/498A, RPC was registered with Police Station, Bani. Since the deceased was in serious condition, on account of extensive burns, she was shifted to District Hospital Kathua in Ambulance. The deceased, however, succumbed to burn injuries on way to Hospital at Kathua, Police swung into action. The dead body of the deceased was seized and subjected to post-mortem examination. On completion of the formalities, the dead body was handed over to the relations for last rites.

4. After conclusion of the investigation, the accused was challaned for commission of offences under Sections 306 read with 498A, RPC.

5. The trial Court, after framing the charge, recording the evidence and hearing the learned counsel appearing for the respective parties, held the accused guilty of the offences under Section 306/498A, RPC and convicted and sentenced him to suffer 10 years and three years RI, vide judgment and order dated 25-7-1995/26-7-1995, the correctness of which has been challenged in this appeal.

6. I have heard the learned counsel for the appellant, Mr. R.P. Bakshi, Advocate, as well as Mr. B.S. Salathia, AAG for the State, as also Mr. K.S. Johal, learned counsel for the complainant, in extenso. Minute examination of facts on file has also been made meticulously.

7. Mr. R.P. Bakshi, learned Counsel appearing for the appellant-accused, vehemently argued at the threshold that the trial Court has not appreciated the evidence in its proper perspective. The dying declaration relied upon by the prosecution does not bear the certificate as to the mental condition of the deceased from a doctor to make the statement and, thus, neither can be relied upon nor is sufficient to record the conviction of the appellant-accused. It was further submitted by Mr. Bakshi that though independent witnesses, according to the prosecution, were available on spot, but none was contacted by police during investigation and, in such circumstances, the evidence of witnesses, who are related to the deceased, their evidence is interested and tainted and smokes of partisanship, and, thus, insufficient to base the conviction. Mr. R.P. Bakshi, learned counsel, also pointed out that the appellant-accused was present in the

hospital at the time when the dying declaration of the deceased was recorded, who also suffered burn injuries on his arms and hands while saving the deceased, which clearly rules out the possibility of provocation or instigation to the deceased to end her life by committing suicide and subjecting her to cruelty, in compelling her to bring more dowry after the alleged occurrence.

8. Whereas Mr. B.S. Salathia, learned AAG, on the other hand, submitted that the conviction can be based even on the dying declaration alone when the same has been recorded by the Investigating Officer about two hours before the death. His further submission is that the dying declaration cannot be discarded, particularly when recorded in presence of the doctor, who certified that the deceased was fully conscious and there was a settled hopeless expectation of death not qualified in prospect of recovery. His further submission is that the cruelty meted out to the deceased also has been sufficiently and satisfactorily proved in the testimony of the natural witnesses to whom she could have stated about the moments of agony and demand of dowry persistently made by the accused and, as such, the conviction and consequent sentence passed by the trial Court does not suffer from any infirmity to be interfered in appeal.

9. It may be pointed out at first flush that the entire prosecution case hinges on the dying declaration of the deceased, recorded by the Investigating Officer, in presence of the doctor, after securing opinion about the fitness of the deceased to make the statement, and further evidence of father, uncle and teachers of the school, where the deceased was working and the Zonal Education Officer, Bani, to whom she had narrated with regard to physical chastisement by her husband in pressing his demand to bring more and more dowry and making allegations of infidelity.

10. So far as the dying declaration is concerned, the FIR has been based on the dying declaration of the deceased. Before recording the dying declaration, ASI Ram Dass Verma of Police Station, Bani, secured the opinion from Dr. Ashok Kumar, BMO, Sub-District Hospital. Bani, with regard to fitness of the deceased to make the statement. According to the statement of Dr. Ashok Kumar, the dying declaration was recorded by ASI Ram Dass Verma in his presence and also in

presence of Hans Raj, Medical Assistant. When PW Ram Dass Verma, in presence of both the aforesaid witnesses, asked the deceased as to how she had received the injuries, she made the statement. The statement is stated to have been made by the deceased in Dogri language, which was reduced into writing by PW Ram Dass Verma, ASI, in Urdu. After recording the statement, scribe Ram Dass Verma, ASI, read-over and explained the same to the deceased, who admitted its contents as true and correct. The deceased Sushma Devi, however, could not put her signature on her statement as her fingers had been burnt as per the certificate issued by the Doctor. The dying declaration was attested by the doctor under his own handwriting and signature. It is also in the evidence that only one question was put to the deceased in Dogri by PW Ram Dass Verma, ASI, as to what had happened and in reply, the deceased made the statement, which was mixture of Dogri and Urdu languages.

11. Similarly, Dr. Ashok Kumar stated that PW Ram Dass Verma, ASI, after making an application as to whether Sushma Devi was capable of making the statement and after securing opinion that patient is fit to record her statement, recorded the dying declaration. This opinion was given by the doctor on a docket/application EXPWAKI. The statement of deceased Sushma Devi, according to the doctor, was recorded in his presence and he attested the same. Since the condition of the patient was serious, she was referred to District Hospital, Kathua, but she lost her breath on way. Police personnel also accompanied the deceased in the ambulance. The doctor further certified in his statement that Police reached the hospital within 20 to 25 minutes after the admission of the deceased with burn injuries. According to the doctor, the deceased had 90% burn injuries over her body. He, however, denied emphatically, when suggested, that patient became unconscious at any time while recording her statement. He also conducted the post-mortem of the deceased.

12. So far as the question of admissibility of dying declaration in evidence is concerned, it is apt to point out that the same is based on principle that 'a man will not meet his maker with a lie in his mouth'. The admissibility of the dying declaration rests upon the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under

oath. *Nemo moriturus praesumuntur mentire*. Such statements are admitted, upon consideration that their declarations made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth. In such circumstances the Court has obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or product of imagination. It further follows that once the Court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence.

13. Further the dying declaration has been challenged on the ground that no certificate of fitness by the doctor to make the statement appears on the dying declaration. Mr. R.P. Bakshi, learned counsel appearing for the appellant, vehemently argued that this renders the dying declaration unbelievable and legally untenable, particularly when the deceased was admitted in the hospital with 90% burn injuries.

14. It is not in dispute that an application was made by the Investigating Officer before the doctor for securing his opinion with regard to fitness and the condition of the patient to record her statement prior to its recording. It is also not in dispute that the doctor certified on the docket that the patient is fit to record her statement and her dying declaration was recorded by ASI Ram Dass Verma, after obtaining such certificate and in presence of Dr. Ashok Kumar and Hans Ram. Medical Assistant. The dying declaration also bears the attestation of the doctor at its foot, after recording the same. If that be the position, it is, indeed, a hyper-technical view, that the dying declaration does not bear the certificate of the doctor that the patient is in fit state of mind to make the statement, which would not inspire full confidence of the Court as to its voluntary nature and correctness, and should not be accepted. The requirement of law is that the Court should be satisfied that the deceased was in a fit state of mind to make the statement. In this case, the doctor has clearly certified as to the mental condition of the patient to make the statement on the docket, which fact is not disputed by the appellant's counsel. The deceased

died two hours after making the statement. This is sufficient indication that the maker of the statement at the time of making statement was under the shadow of death and entertained a belief that her death was imminent. In *Rambai v. State of Chhattisgarh* (2002 Cri LJ 4712) : (2002 AIR SCW 4085), the Apex Court while dealing with the dying declaration and mental condition of the declarant, held as under (at Page 3493 of AIR):--

'So far as the position of law in regard to the admissibility of the dying declaration which is not certified by the doctor, the same is now settled by a Constitution Bench judgment of this Court reported in *Laxman v. State of Maharashtra*, 2002 (6) JT 313 wherein overruling the judgment of this Court in *Laxmi (Smt.) v. Om Parkash*, 2001 (6) SCC 118, it is held that a dying declaration which does not contain a certificate of the doctor cannot be rejected on that sole ground so long as the person recording the dying declaration was aware of the fact as the condition of the declarant to make such dying declaration; If the person recording such dying declaration is satisfied that the declarant is in as fit mental condition to make the dying declaration then such dying declaration will not be invalid solely on the ground that the same is not certified by the doctor as to the condition of the declarant to make the dying declaration.'

15. Again in *Laxman v. State of Maharashtra* (2002 Cri LJ 4095) : 2002 AIR SCW 3479 the Apex Court considered the validity of dying declaration even in the absence of certificate of Doctor as to the fitness of patient and held as under :--

'Normally, the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witnesses state that the deceased was in a fit prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will be suffice, provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate absolutely necessary, although to assure authenticity it is

usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful. A certificate by the doctor is essential a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

Koli Chunilal v. State (1999 Cri LJ 4582) 1999 AIR SCW 3727, approved.

It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where after he recorded the dying declaration.'

16. Admittedly, the incident has taken place in the house of the accused. The deceased, immediately after the incident, made the statement with regard to the occurrence, naming the accused Dharmej Singh to have called her by bad name which obviously touched her and got her provoked to set herself ablaze by sprinkling kerosene oil and igniting with match stick. This is sufficient to prove abetment to commit suicide and when the dying declaration is made by the deceased voluntarily and without any extraneous consideration, such declaration can form the basis of conviction. It may further be pointed out that what is essentially required is that the person, who records the dying declaration, must be satisfied that the deceased was in a fit state of mind. Certification by doctor is a rule of caution, as is observed by the Apex Court in the case referred supra.

17. Mr. R.P. Bakshi, learned counsel, further submitted that dying declaration is liable to be rejected, as it had not been recorded in the language in which the statement was made by the deceased. According to Mr. Bakshi, the deceased had given the statement in Dogri language, but same was recorded by P.W. Ram Dass Verma in Urdu, which detracts the evidential value of the dying declaration.

18. The explanation given by P.W. Ram Das Verma, in his evidence, is that he understood both the modes of expression, but as he was not in a position to write Dogri dialect in Dev-Nagri Script, so he had to write it in Urdu language. He further stated that though it was an admixture of Dogri and Urdu languages but when read over and explained to the declarant after recording, the deceased admitted the same to be true and correct.

19. It is settled law that where the language of dying declaration was of the scribe but the substance was that of the deceased, no infirmity can be attached to the dying declaration on this count.

20. Another limb of argument put across by Mr. Bakshi, learned counsel, is that dying declaration does not bear the signature or thumb impression of the deceased, as such, it cannot be acted upon.

21. It is clearly found in the statement of Dr. Ashok Kumar that the hands of the deceased were completely burnt and she was unable to put her signature/thumb impression on the statement. The dying declaration also bears a certificate of the doctor that the patient is unable to sign or give her thumb impression, as her fingers have burnt. This does not render the dying declaration suspicious when it is otherwise found genuine and proved in the testimony of the scribe and the doctor who attested it for having been recorded in his presence. This contention of the learned counsel for the appellant being without any substance and legal force, is not tenable, as the dying declaration has been recorded by P.W. Ram Dass Verma in presence of Dr. Ashok Kumar, BMO, an independent witness. The evidence of Dr. Ashok Kumar is convincing, straight forward and trustworthy. In his autopsy report, the doctor has clearly pointed out that the death has been caused due to burn injuries. The dying declaration clearly implicates the accused, as the declarant has stated in unequivocal terms that the accused had been levelling

accusation of infidelity and called her by bad name on the date of occurrence in the morning, which instigated the deceased and by pouring kerosene oil on herself, she set her ablaze. The declarant has given a clear manifestation of the explanation and circumstances leading to her death. It contains details of the incidents. Mere fact that dying declaration does not bear the signature or thumb impression or that there is no certificate of the doctor that declarant is in a fit condition for the declaration, does not provide a ground to merit rejection of the dying declaration and is, thus, sufficient to base the conviction of the accused without corroboration.

22. In order to prove the charge of cruelty against the accused, the prosecution relied upon the testimony of Hari Lal, Des Raj, Thakur Dass, Isher Dass and Angrez Singh, ZEO.

23. The deceased, in her declaration, has categorically stated that the accused started making accusations of unchastity against her and also taunting and harassing her for having brought insufficient dowry from her parents. It is also in the evidence that the accused had been making frequent demands for dowry and physically chastising her, about which she made a complaint to her parents and relations. P.W. Des Raj, father of the deceased, has stated that his daughter enjoyed a happy married life for about 1 year, but therefore, the accused started beating the deceased and demanding more dowry. It is also in his evidence that the accused was threatening the deceased to either commit suicide or he himself would kill her in the alternative. Des Raj further deposed to have given Rs. 17,000/- to the accused for construction of his house on persistent demands made by the latter. The deceased also told him to have been beaten in the school premises on 5-11-1992, about which she reported to the Zonal Education Officer also. The deceased also told about the incident to the witness on 6-11-1992 and had shown the marks of violence on her body.

24. Similarly, Hari Lal, another witness, is the real uncle of the deceased, who stated that the deceased had been oftenly complaining about the threats of accused and has persistent demands for more and more dowry from her parents. The witness also stated to have been narrated by the deceased about the accused

making accusation of immorality and maltreating. He had also seen the marks of violence on the body of the deceased. The witness further stated to have made attempts twice to prevail upon the accused to mend his ways and behaviour, but without any positive response. The witness was posted as Assistant Commissioner (Development), Kathua, and managed a job of school teacher for the deceased. The deceased, as per the witness, was posted in Government Primary School Bani, at the time of occurrence. So is the evidence of P.W. Thakur Dass, a school teacher, who stated that the deceased often complained to him about the maltreatment meted out to her by the accused. The deceased had also told him that she had arranged Rs. 19,000/- from her parents for the accused.

25. Ishar Dass is also a witness to heated discussions between the deceased and the accused in school premises and he mediated between them.

26. P.W. Angrez Singh was Zonal Education Officer, Bani, to whom also the deceased made a complaint at his residence that the accused had been beating and causing harassment besides teasing her. He also stated to have called the accused in his office and the latter admitted his fault and assured to keep the deceased nicely. The witness also stated that the deceased even thereafter had been telling him about the accused beating her mercilessly. The evidence provided by this witness is consistent, cogent, positive and convincing. The accused even did not spare the deceased in humiliating and insulting her in school premises, in presence of her colleagues. This incident, compounded with maltreatment meted out to her by the accused and repeated demands for dowry culminated to such a tendentious effect that she ended her life by committing suicide.

27. Mr. R.P. Bakshi, learned counsel for the appellant, submitted that as the witnesses examined by the prosecution are related to the deceased, their evidence is interested and unless corroborated by independent testimony, it is highly unsafe to base the conviction on such evidence. His further contention is that the evidence provided by these witnesses suffers from material contradictions on vital points and, thus, is not sufficient to inspire confidence in the Court. In repelling the contention of the appellant's counsel, Mr. B.S. Salathia, AAG,

submitted that humiliation, abuses and physical chastisement to a wife by her husband is normally not accepted to be done and made in public view or in presence of neighbours for obvious reasons that it would invite criticism with regard to the conduct of the accused. That apart, whatever is stated by Hira Lal and Des Raj, stated to be related to the deceased, has been fully corroborated by Angrez Singh, Zonal Education Officer and Ishar Dass, teacher, about the melodrama performed by the accused in abusing, castigating with immorality, humiliating and harassing the deceased in the school premises, in presence of her colleagues. Thus, the evidence of the witnesses examined by the prosecution, coupled with the dying declaration, unambiguously establishes that the accused had caused harassment, hurled abuses and treated the deceased with cruelty by physically chastising her and raising frequent demands for dowry. Therefore, the prosecution evidence cannot be whittled down merely on the ground that witnesses are related and interested, which is otherwise found reliable, credible and trustworthy and sufficiently proves the charge of cruelty against the accused.

28. According to Mr. R.P. Bakshi, learned counsel, the innocence of the accused is clear from the fact that he, while saving the deceased, also suffered burn injuries on his arms and hands. The Investigating Officer did not care to obtain the medical certificate and place it on record, which is a clear indication of mala fide investigation. According to the learned counsel for the appellant, the fact remains that accused made a desperate attempt to save the deceased so much so, he put his own life into complete danger and in that process he got born injuries, militates against the normal human conduct and if, as a matter of fact, deceased Sushma was tortured, tormented or insulted for not bringing either sufficient dowry or accusation of infidelity was made against her, the accused would not have made a valiant, although abortive, attempt to save his wife.

In that case, he would have not been that much interested that Sushma might survive, as she had been an eye sore for not fulfilling the demands of dowry or cause of her illicit relations with Vidya Sagar, of having committed sexual intercourse with him.

29. It is not in dispute that the accused was arrested on 11-11-1992, fourth day after the occurrence. Dr. Ashok Kumar stated that the accused when came in the hospital, he had some burn injuries on his hands. The accused was brought under arrest by the Police for treatment. It is nowhere in the statement of the doctor that the accused had even told him during treatment to have received these injuries in an attempt to save the deceased nor there was any suggestion put to the doctor by the defence during cross-examination about the cause and time of the injuries. It is also not in the statement of the doctor that the injuries were found on the finger tips of the accused. The plea, therefore, taken by the defence itself stands falsified by the conduct of the accused in not narrating about the cause of injuries sustained by him to the doctor from whom he was getting treatment. The contention raised by Mr. Bakshi, learned counsel, on this count also, neither appears to have any substance nor any justification to merit acceptance.

30. It is impossible to escape the conclusion that, in a case such as this, the death of a young wife must be attributed either to the commission of a crime or to the fact that mentally tortured by the suffocating circumstances surrounding her, she committed suicide. Young women of education, intelligence and character do not set fire to them selves to welcome the embrace of death unless provoked and compelled to that desperate step by the intolerance of their misery. It is pertinent to note that such cases evidence a deep-seated malady in our social order. The greed for dowry and, indeed, the dowry system as an institution, call for the severest condemnation. It is evident that legislative measures, such as the Dowry Prohibition Act, have not met with the success for which they were designed. Perhaps, legislation in itself cannot succeed in stamping out such an evil and the solution must ultimately be found in the conscience and will of the social community and in its active expression through legal and constitutional methods. Besides this, what is important to point out is that where the death in such cases is due to a crime, the perpetrators of the crime not infrequently escape from the nemesis of the law because of inadequate police investigation. It would be of considerable assistance if an appropriately high priority was given to cases, if a special magisterial machinery was created for the purpose of the prompt investigation of such incidents and efficient investigative techniques and procedures were adopted taking into account the peculiar features of such cases.

Among other suggestions, we would recommend that a female police officer force should be associated with the investigation from its very inception, as is observed by the Apex Court in AIR 1983 SC 826.

31. After taking conspectus of the facts and circumstances of the case, on going through the entire evidence and hearing the submissions of learned counsel for the parties, the inevitable conclusion reached at is that the prosecution has proved that the dying declaration was true, voluntary and not influenced by any extraneous consideration. The probabilities of the deceased committing suicide under provocation and instigation caused by the circumstances created by the accused, have not been eliminated.

32. I do not find any infirmity in the findings returned by the trial Court on appraisal, estimation and circumstances set out herein-above that it was because of abetting, the deceased committed suicide. The findings arrived at by the trial Court, after considering and weighing the gamut of entire evidence, are unexceptional.

33. For the reasons aforesaid, the appeal in my opinion, does not possess any merit and is accordingly dismissed and the conviction and sentence is affirmed. The appellant-accused will immediately surrender to serve out the remaining period of his sentence.