
(1994) 02 SC CK 0101

In the Supreme Court Of India

Case No : Criminal Appeals Nos. 458 And 459 Of 1993

Kanchy Komuramma

APPELLANT

Vs

State of A.P.
 Kanchy Ramchander Vs State of A.P.

RESPONDENT

Date of Decision : 24-02-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 498

Citation : (1995) 4 SCC 110 Supp

Hon'ble Judges : Faizan Uddin, J;A. S. Anand, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

A.S. Anand and; Faizan Uddin, JJ.-These two appeals by special leave are directed against the common judgment of the High Court of Andhra Pradesh dated 29-6-1992 and are being disposed of together.

2. K. Rajamma died of burn injuries on 24-6-1988 at about 10 a.m. in M.G.M. Hospital. According to the prosecution case, appellant Kanchy Komuramma, the mother-in-law of the deceased and appellant Kanchy Ramchander, the father-in-law of the deceased, on 22-6-1988 at about 7 or 8 a.m. poured kerosene on her and set her ablaze in her house in Village Ellenda, Police Station Wardhanapet. The deceased was removed to the hospital by her mother PW 1, Elata Agamma and her husband PW 3 Kanchy Kumara Swamy and some others. At the hospital she was initially treated by the Casualty Medical Officer, Dr T. Linga Kurthy, PW 8 who found 64% superficial burns on her body on various parts. After giving initial primary treatment, the deceased was referred to Duty Surgical Officer and was admitted in Unit III of the M.G.M. Hospital, Warrangal on 27-6-1988. An intimation, Ex. P-6 was sent to the Judicial Magistrate and it was requested that the dying declaration of the deceased may be recorded. At 12.45 noon, on 22-6-1988, dying declaration of the deceased, Ex. P-7 was recorded by Judicial Magistrate, First Class, Shri Pettam Ramaish, PW 7 at the hospital. The deceased died on 24-6-1988, at 10 a.m. and the post-mortem on the dead body was

conducted by Dr K. Mahipal Reddy, PW 11 on 25-6-1988 at 1.30 p.m. Dr Reddy found 80% superficial burns on different parts of her body including face, neck, chest, upper part of abdomen and on the upper limbs, except palms, and the lower limbs. The cause of death, according to Dr Reddy, PW 11 was due to shock as a result of the burn injuries.

3. According to the prosecution case, the deceased had married Kanchy Kumara Swamy, PW 3 about two years back and the couple had a female child who was five months" old at the time of the occurrence. About one year before the date of the incident, the deceased and her husband separated from the in-laws, the appellants herein. The deceased with her husband, PW 3 started living in a newly constructed shed adjacent to the house of the appellants. The mother of the deceased, PW 1 had come to visit her daughter and according to her, there was quarrel between the deceased and the appellants on the date of the occurrence and on noticing their quarrel, she went out to the neighbour"s house. It is further the prosecution case that the parents-in-law of the deceased used to generally beat and torture her and that they were particularly sore with the deceased on account of the separation of their son. It is alleged that on the date of occurrence at about 9 a.m., the appellants poured kerosene on the deceased in her shed and set her on fire. On hearing her cries her mother, PW 1 and some other neighbours as also her husband, PW 3 rushed to the scene. PWs 1 and 2 made efforts to extinguish the fire, whereafter the deceased was taken to M.G.M. Hospital, Warrangal by her mother and husband and some other persons.

4. With a view to connect the appellants with the crime, the prosecution examined as many as 13 witnesses. The main reliance of the prosecution, however, is on the dying declaration, Ex. P-7 recorded by the Judicial Magistrate, Ist Class, Shri Pettam Ramaish, PW 7. Both the trial court and the High Court relied upon the dying declaration and convicted the appellants for an offence under Sections 302/34 IPC and sentenced each one of them to suffer imprisonment for life.

5. It is the common case of the parties before us that the dying declaration, Ex. P-7 is the only crucial piece of evidence connecting the appellants with the crime. Learned counsel for the appellants submitted that the dying declaration could not be relied upon as there is no evidence to the effect that the deceased was in a proper mental condition to make such a declaration and in the absence of the dying declaration, the conviction of the appellants to the offence under Sections 302/34 IPC could not be sustained.

6. Learned counsel for the State on the other hand submitted that the dying declaration was recorded by Judicial Magistrate, Ist Class, Shri Pettam Ramaish, PW 7 and there being nothing on the record to show that he had any interest to falsely implicate the appellants, the dying declaration deserves to be accepted and that conviction of the appellants can be based only on the basis of the dying declaration recorded by PW 7 at the hospital.

7. A dying declaration if found to be true and free from embellishment can be sufficient for recording conviction is now well settled. In *Kundula Bala Subrahmanyam v. State of A.P.*¹ while dealing with the evidentiary value of a dying declaration, this Court opined : (SCC p. 697, para 18)

such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration."

8. It is in the light of this settled principle that we shall examine whether the dying declaration bears a close scrutiny of this Court and passes the test of being trustworthy and reliable. It would be therefore desirable to extract the dying declaration at this stage.

9. The Judicial Magistrate appearing as PW 7 at the trial deposed that on receipt of the requisition Ex. P-6, he went to the hospital on 22-6-1988 and after reaching the hospital, the deceased was identified by Dr Hanumantha Rao and after Dr Rao certified that the patient was in a fit condition to give her statement, he recorded her statement Ex. P-7. During the cross-examination, PW 7 stated that he had verified from the doctor that the patient was in a fit condition to make the statement but admitted that he had not specifically questioned the patient whether she could make a statement or not? He stated that "I asked the doctor whether she is in a fit condition to give the statement, he said, "Yes". That I noted down the same before recording Ex. P-7." A perusal of Ex. P-7 (supra) however, shows that no such mention has been made therein by the learned Judicial Magistrate, PW 7. The learned Magistrate, PW 7 also admitted that he did not inquire from the doctor about the percentage of the burns on the patient. He denied the suggestion that the mother of the deceased, PW 1 was present at the time when he recorded the dying declaration, Ex. P-7. He further stated that he had obtained certificate of the doctor on Ex. P-7. From a perusal of Ex. P-7, we find that at the end of the statement, there is an endorsement to the effect that "the patient is in a fit state of mind to depose". It is signed by one Dr H. Rao. We have examined the original dying declaration. The above endorsement appears just above the signatures of the Magistrate and is written in blue ink, while the entire dying declaration, including the signatures of the Magistrate, are recorded in green ink.

10. PW 1, the mother of the deceased, according to the prosecution's own case, had accompanied the deceased along with her son-in-law and some others to M.G.M. Hospital, Warrangal. She deposed at the trial that she did not ask the deceased as to how she had received the burns and that she was present at the hospital, near the deceased till she died, on the third day of the incident at the hospital.

During her cross-examination, she stated :

11. The prosecution for reasons best known to it did not examine Dr H. Rao who is alleged to have made the endorsement on Ex. P-7 that "the patient was in a fit state of mind to depose". No other witness was examined to prove the certificate

of the doctor either. The non-production of Dr H. Rao to prove his certificate and subject himself to be cross-examined by the appellants when considered in the light of the testimony of the mother of the deceased, PW 1, who specifically stated that the condition of the patient was not good and that she was not in a fit condition, creates a doubt in our minds as to whether the patient was actually in a proper mental condition to make a consciously truthful statement. This infirmity renders it unsafe to rely on the dying declaration. As a matter of fact, the failure of the prosecution to establish that the deceased, before she made the dying declaration, was in proper mental condition to make the dying declaration detracts materially from the reliability of the dying declaration and it would not be safe to rely upon it. That the dying declaration has been recorded by a Judicial Magistrate, by itself is not a proof of truthfulness of the dying declaration, which in order to earn acceptability has still to pass the test of scrutiny of the court. There are certain safeguards which must be observed by a Magistrate when requested to record a dying declaration. The Magistrate before recording the dying declaration must satisfy himself that the deceased is in a proper mental state to make the statement. He must record that satisfaction before recording the dying declaration. He must also obtain the opinion of the doctor, if one is available, about the fitness of the patient to make a statement and the prosecution must prove that opinion at the trial in the manner known to law. These safeguards have not been observed in the present case. Even PW 8, Dr Kurthy, the Casualty Officer has not stated that the deceased was in a fit condition to speak.

12. That apart, the natural instinct of the patient would be to immediately tell her nearest available relation, and there could be none more nearer to her than her own mother or her husband, as to how she received the burn injuries and who was responsible for the same. The mother of the deceased, PW 1 specifically stated, that she was present at the hospital near the deceased till she died but that the deceased did not tell her as to how she had received the burn injuries as she was not in a fit condition. PW 1 admitted in the cross-examination that she was present when the Magistrate had arrived and that some of her relations had also come prior to the arrival of the Magistrate in the hospital but that the deceased did not tell any one as to how she had received the burn injuries. Keeping in view the above statement of the mother of the deceased, the denial by the Magistrate about the presence of the mother near the deceased does not appear to be correct.

13. Since the dying declaration which we have found to be unsafe to rely on, is the solitary piece of evidence on which the prosecution relies to sustain the conviction of the deceased, we are of the opinion that conviction of the appellants for the offence under Sections 302/34 IPC cannot be sustained on the basis of the doubtful dying declaration.

14. From the material on the record, we find that there used to be frequent quarrels between the deceased and her in-laws and they had started harassing

her and used to beat and torture her often. The testimony of PW 1, the mother of the deceased is categoric on this point and there is no challenge, whatsoever, to her statement in the cross-examination on that aspect of the case. From her statement, we are satisfied that the mother-in-law and the father-in-law of the deceased subjected the deceased to cruelty. The defence version that the deceased set herself ablaze, which is also noted in the requisition slip Ex. P-6 and is deposed to by PW 3 also shows that the deceased must have been subjected to such cruelty as to impel her take her own life, though she had a five-month-old child. No sane person would take such a drastic step unless forced by the circumstances. There is material on record to lead to the inference that the deceased may have committed self-immolation unable to bear the cruelty of her in-laws any more. According to PW 1, PW 2 and PW 4, the in-laws of the deceased were not present when they reached the home of the deceased and found the door of the room bolted from inside. According to PW 3 there is no door connection between the house of the deceased and the accused. According to the evidence of PW 2, the door of the room in which the deceased suffered injuries was bolted from inside and when the door was broken open, the deceased emerged almost naked. It probabilises the defence version. Even according to PW 3, the deceased had committed self-immolation. Since, it is not the case of the prosecution that the deceased was being harassed on account of demand of dowry, the appellant cannot be held guilty of the offence under Section 304-B IPC either. However, from the established facts and circumstances on the record we hold each of the appellants guilty of an offence under Section 498-A IPC.

15. We, accordingly, set aside the conviction of both the appellants for the offence under Sections 302/34 IPC and instead convict each one of them for an offence under Section 498-A IPC and sentence each one of them to suffer rigorous imprisonment for three years.

16. With the above modification in the conviction and sentence of the appellants, these appeals are disposed of.

17. We are informed by learned counsel for the appellants that the appellants have already undergone more than three years of rigorous imprisonment since the date of their conviction taking into account the period spent by them as undertrial prisoners. If that be so, the appellants shall be set at liberty forthwith by the jail authorities, unless required in any other case.