

(2016) 07 CHH CK 0010
In the Chhattisgarh High Court
Case No : CRA No. 808 of 2002

Ramadhar

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 300, Section 498

Citation : (2016) CriLJ 5052

Hon'ble Judges : Pritinker Diwaker and Chandra Bhushan Bajpai, JJ.

Bench : Division Bench

Advocate : Adil Minhaj, P.L, for the Respondent; Rajeev Shrivastava, H.S. Ahluwalia, Advocates, for the Appellants

Final Decision : Dismissed

Judgement

Pritinker Diwaker, J. - As both these appeals arise of a common judgment dated 6th July, 2002 passed by First Additional Sessions Judge, Bilaspur in ST No. 263/2001, they are being disposed of by this common judgment.

2. In the present case, name of the deceased is Shivkumari, wife of accused No. 1 Parmeshwar. Accused No. 2 Ramadhar is father-in-law of the deceased whereas accused No. 3 Rameshwar is her brother-in-law. Marriage of the deceased was solemnized with accused No. 1 Parmeshwar on 13-12-1997. On 18-2-2001 in the morning at about 8 a.m. Shivkumari was set ablaze by accused No. 1 by pouring kerosene on her at her parents' house. She was immediately taken to hospital, from where information was sent to the police vide memo Ex. P/4 dated 18-2-2001. On 18-2-2001 itself dying declaration of the deceased was recorded vide Ex. P/12 by the Executive Magistrate (PW-9 PS Toppo). On 21-2-2001 during treatment the deceased succumbed to the burn injuries and memo Ex. P/5 was sent from hospital to the concerned police station. Based on this information, merger intimation Ex. P/6 was recorded on 21-2-2001. Inquest over

the dead body was prepared on 21-2-2001 vide Ex. P/1 and the body was thereafter sent for post-mortem which was conducted on the same day vide Ex. P/3 by PW-5 Dr. C.M. Tiwari. In the opinion of autopsy surgeon, the deceased died of shock secondary to superficial to deep, ante-mortem bum injuries about 90%. After merg enquiry, FIR (Ex. P/8) was registered against accused Nos. 1 and 2 on 16-3-2001 under Sections 302, 304B, 34 of IPC. After investigation charge-sheet was filed against all the accused persons. While framing charge, the trial Judge framed charge against accused No. 1 under Sections 498A, 304B in the alternative 302 or in the alternative 306 of IPC and Section 4 of Dowry Prohibition Act whereas accused Nos. 2 and 3 were charged under Sections 498A, 304B or alternatively, 306 of IPC and Section 4 of Dowry Prohibition Act.

3. So as to hold the accused persons guilty, the prosecution examined as many as 11 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. They also examined one witness in defence.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted accused No. 1 Parmeshwar under Sections 302, 498A and Section 4 of Dowry Prohibition Act and sentenced him to undergo imprisonment for life, RI for three years and RI for one year plus fine amount with default stipulations respectively. Accused Nos. 2 and 3 (Ramadhar and Rameshwar) have been convicted under Section 4 of Dowry Prohibition Act only and Sentenced to undergo RI for six months plus fine amount with default stipulation. Hence these appeals.

5. Counsel for the appellants submits as under :

? that a very improbable story has been put forth by the prosecution where it is alleged that the deceased was burned by accused No. 1 Parmeshwar at her parents? house.

? that for the past many months the deceased was residing at her parents" house, accused No. 1 Parmeshwar had no connection with her and therefore, the question of his going to the parents? house of the deceased does not arise. Even otherwise, none of the prosecution witnesses have seen this accused in the house of the deceased on the date of incident.

? that so-called dying declaration is nothing but it concocted piece of evidence against accused No. 1 Parmeshwar. Fitness certificate of the deceased was obtained around 12.35 noon whereas her dying declaration was recorded at 6 p.m. Thus, in absence of any certificate that in the evening also, the deceased was in a fit state of mind to give any such statement, the dying declaration becomes doubtful, especially when the treating doctor has stated that condition of the deceased was deteriorating with the passage of time.

? that at the time of conducting inquest, no allegation whatsoever was made by

PW-1 and 2 i.e. father and brother of the deceased against the appellants.

? that while sending two memos (Ex.P/4 and P/5) nowhere it has been mentioned by the hospital staff that dying declaration of the deceased has been recorded. In absence of this, it is apparent that the dying declaration is nothing but a created piece of evidence.

? that the autopsy surgeon has not opined that death was homicidal in nature and as such, on the basis of evidence on record, the possibility of the deceased setting herself on fire out of frustration as her married life was badly disturbed or for any other reason, cannot be ruled out.

? in relation to accused/appellants Ramadhar and Rameshwar (Cr. A. No. 808/02), it has been argued that basic ingredients of Section 4 of Dowry Prohibition Act have not been made out against them as required under the law and as such, their conviction under the said section is bad in law and they deserve to be acquitted of this charge by giving them benefit of doubt.

6. On the other hand, supporting the impugned judgment it has been argued by the State Counsel that conviction of the accused/appellants is based on proper appreciation of evidence on record and there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He submits that dying declaration has been recorded strictly in accordance with law and there is no reason for this Court to doubt the veracity of this statement. Likewise, credibility of the Executive Magistrate (PW-9) who recorded the dying declaration can also not be doubted, especially when defence has not put any such specific question to this witness in his cross-examination which could make his evidence untrustworthy or doubtful.

7. Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

8. In the present case, the most important piece of evidence against accused No. 1 Parmeshwar is the dying declaration of the deceased Ex.P/12, which was recorded by PW-9 PS Toppo, Executive Magistrate wherein a note has been endorsed in the said dying declaration that as both the hands of the deceased are bandaged, her thumb impression has not been obtained. The dying declaration reads as under:

"ej.kklu dFku fnukad 18-02-2001

le;&6-00 cts

uke& f"kodqekjh firk jk/kkje.k xqIrk] ifr ijes"oj xqIrk] mez 23 o"kZ fuoklh fljfxV~Vh] fcykliqj

vkids lkFk ;s ?kVuk dSls gks xbZ\\

vkt fnukad 18-02-2001 dh ckr gS fd esjk ifr esjs ikl vkdj iSls ekax jgk Fkk fdl fy, iSls ekaxk eSa ugha tkurhA og nqdku [kksyuk pkgrk Fkk vkSj esjs ls dgk djrk

Fkk fd rqe rqEgkjs ek;ds ls 14000@& pkSng gtkj :i;s ysdj vkukA blds igys Hkh esjs ls dgk djrk Fkk fd iSlS ugha ykvksxh rks eSa rqedks tyk nqWaxkA gekjh "kknh pkj lky igys gqbZ FkhA esjs cky cPps ugha gSA esjs dks esjk ifr ges"kk ekjrk Fkk vkSj dgrk Fkk fd tkvks iSlk ysdj vkuk dgrk FkkA vkt vkB cts losjs esjs mij feV~Vh rsy Mky dj ekfpl yxk fn;k gSA

mDr c;ku eSa vius eu ls fdlh ds Mj Hkko ;k ncko ls ugha ns jgh gwWaA LosPNk ls ns jgh gwWaA eSa rhljh rd i<+h gwWaA

nksuksa gkFk iV~Vh ls ca/ks gksus ds dkj.k vaxwBk fu"kk ugha fy;k tk ldkA

Yet another piece of important evidence against accused No.1 Parmeshwar is memo Ex. P/14C sent to the Executive Magistrate by the police for recording dying declaration wherein it has been requested by the police to ensure whether the patient is in a fit state of mind to make such statement. Vide Ex. P/15C it was certified by the doctor (PW-11 Dr. K.K. Jaiswal) that the patient is in a fit state of affair to give dying declaration. After recording dying declaration, the same was duly forwarded by the Executive Magistrate vide Ex. P/13 to the concerned police station.

9. PW-1 Radharaman Gupta, father of the deceased, has stated that marriage of the deceased was solemnized with accused No.1 Parmeshwar about four years prior to the date of incident. He has stated that at the time of incident, he had gone to the shop of his son Vinod to give him tiffin where he was informed by one Chandra that his daughter has suffered bum injuries. By the time he reached his house, the deceased had already been taken to hospital in the jeep of one Horilal Sharma. He states that he never had any talk with the deceased in the hospital. He has further stated that before marriage, accused No. 2 Ramadhar had demanded Rs. 20,000/- for his business, which was given to him. He has stated that when he had gone to meet the deceased, she informed him that her husband Parmeshwar used to harass her for demand of money and also used to beat her. He has stated that the deceased was also ousted by her husband. He is also a witness to spot map Ex. P/2 and seizure memo Ex. P/3 whereby certain articles were seized from the place of occurrence.

10. PW-2 Vinod Kumar Gupta, brother of the deceased, has stated that at the time of incident, he was in his shop along with PW-1 and there they were informed that the deceased has suffered burn injuries. He has stated that Rs. 20,000/- was given to accused No. 2 Ramadhar. After about one year of marriage of the deceased Gouna ceremony of the deceased was performed. She lived in her in-laws' house for about one month and thereafter, she was brought back to her parents' house where she lived for about a year and during this period, nobody came to take her back to her matrimonial home. He has further stated that after efforts of his father, the deceased was taken by the accused persons to her matrimonial home and Rs. 20,000/- was given to them for business. He has stated that earlier also a report was lodged by the deceased at Tarbahar police station. In cross-examination, but for minor contradictions, he remained very

firm and nothing could be elicited from him to render his evidence doubtful.

11. PW-3 Manisha Gupta, wife of PW-2, has also stated that she came to know that the accused persons were demanding Rs. 20,000/-and that the deceased was subjected to cruelty by her husband. PW-4 Chhatlal, Patwari, prepared the spot map Ex. P/2. PW-5 CM Tiwari, conducted post-mortem on the body of the deceased vide Ex. P/3 on 21-2-2001 and noticed that she had suffered 90% bum injuries. In his opinion, the deceased died of shock secondary to superficial to deep dry, antemortem bum injuries about 90%. PW-6 Ramgulam is seizure witness of Ex. P/3 whereby certain articles from the place of incident were seized. PW-7 A.R. Verma, investigating officer, and PW-8 M.L. Shandilya, who helped in the investigation, have duly supported the prosecution case. PW-9 PS Toppo, Executive Magistrate, who recorded dying declaration (Ex. P/12) of the deceased, has stated that the deceased was burned by her husband Parmeshwar. She made this declaration without any fear or pressure, as both her hands were bandaged her thumb impression could not be obtained. He states that the dying declaration was recorded by him after receiving memo Ex. P/14 and certificate of fitness Ex. P/15C given by the doctor.

It is relevant to note here that no question was put to this witness that he was, in any manner, prejudiced against the accused persons or was interested in recording false dying declaration or was anywhere connected with the family of the deceased. In fact, if the cross-examination of this witness is seen, it is apparent that his credibility has not been questioned by the defence.

12. PW-10 Melaram Kotothiya, Head Constable, helped in the investigation whereas PW-11 Dr. K.K. Jaiswal gave fitness certificate Ex. P. 15C to the police for recording dying declaration of the deceased. He has also sent memo Ex. P/4 to the police informing them about admission of the deceased in burned condition in the hospital.

13. DW-1 Feknibai, neighbour of the accused persons, has stated that the deceased was suffering from some disease and quite often she used to fell unconscious.

14. Close scrutiny of the evidence makes it clear that on 18-2-2001 it is accused No. 1 Parmeshwar who poured kerosene on the body of the deceased and set her ablaze. Immediately after the incident she was taken to hospital from where information was forwarded to the police vide Ex. P/4, who in turn, sent a memo to the Executive Magistrate (PW-9) for recording dying declaration of the deceased. Before recording dying declaration, mental and physical condition of the deceased was ascertained and after obtaining certificate from the treating doctor that the deceased was in a fit state of mind to make statement, her dying declaration (Ex. P/12) was recorded by PW-9 PS Toppo, Executive Magistrate, wherein she has categorically stated as to the manner in which she was burned by accused No. 1 Parmeshwar. There is no reason for this Court to disbelieve the dying declaration of the deceased, it has been recorded strictly in accordance

with law and as such, inspires confidence of the Court.

15. The principle of dying declaration is based on legal maxim "nemo moriturus proesumitur mentiri" - a man will not meet his maker with a lie in his mouth. It is settled legal position that if the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. Such declarations are made in extremity, when the party 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 is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful is considered by the law as creating an obligation, equal to that which is imposed by a positive oath in a court of justice.

16. In the present case, as already discussed above, the dying declaration of the deceased appears to be without any pressure or fear and have been given in a fit state of mind. As regards credibility of the Executive Magistrate (PW-9) recording such declaration, there is absolutely no evidence brought on record by the defence based on which trustworthiness of this witness could be doubted. No evidence whatsoever has been adduced by the defence to prove that PW-9 had any interest in recording dying declaration against accused Parmeshwar, nor any such suggestion was given to this witness in cross-examination.

17. We also find no substance in the argument of counsel for the appellants that fitness certificate was obtained showing fit state of mind of the declarant at 12.35 noon whereas her dying declaration was recorded at 6 p.m. and as such, the dying declaration cannot be said to have been given by the deceased in a fit state of mind. Once the dying declaration has been duly proved by the prosecution as required under the law, PW-9 Executive Magistrate has specifically stated that at the time of giving statement, she was in a fit state of mind and further that she died on 21-2-2001, we are unable to accept the argument of the appellants that at the time of giving statement the deceased was not conscious.

18. So far as argument of the appellants that none of the witnesses has stated to have seen accused Parmeshwar on the date of incident in the house of the deceased is concerned, there is no need for the prosecution to prove the same separately once the deceased has made specific dying declaration before the Executive Magistrate stating therein that it is her husband-accused Parmeshwar who set her afire. Even otherwise, if alibi was the defence of this accused, he ought to have taken it at the earliest available opportunity but he has not done so. At the time of framing of charge, he merely denied the same and pleaded for trial. Even in his statement under Section 313 of Cr. P.C., nowhere he has taken this plea and rather pleaded innocence, false implication and stated that the deceased was suffering from epilepsy, this fact was suppressed at the time of marriage and a false report was lodged for fear of being defamed in the society. Moreover, from the dying declaration it is evidence that before setting the deceased on fire, accused Parmeshwar again made demand of money from her and on her refusal, he set her ablaze.

19. We further find no substance in the argument advanced on behalf of appellant Parmeshwar that as the doctor has not opined death of the deceased to be homicidal in nature, appellant Parmeshwar cannot be held guilty of commission of murder. True it is that in a case of murder it is the duty of the prosecution to first establish homicidal death and for which either direct evidence or expert evidence regarding cause and nature of death is required. However, in a case of death by bum injuries, it is difficult for the doctor to give a definite opinion regarding nature of death, whether it was homicidal, suicidal or accidental. At times, it is also difficult to draw distinction whether the deceased set himself ablaze or he was burned by some other person because symptoms/injuries found in both the cases are almost of similar nature. In the present case, though expert evidence as to nature of death is not there on record, the deceased in her dying declaration (Ex. P/12), which has already been held to be trustworthy and free from the suspicion on falsity, has categorically stated that it is her husband (accused Parmeshwar) who set her ablaze. Thus, for the reasons stated above, the argument that in absence of definite opinion of the doctor regarding nature of death, accused/appellant Parmeshwar cannot be held guilty under Section 302 of IPC is not acceptable.

20. Thus, considering the overall evidence on record, in particular the dying declaration (Ex. P/12) of the deceased, complicity of accused No. 1 Parmeshwar in crime in question stands proved beyond all reasonable doubt, The trial Court after due appreciation of evidence has rightly convicted him for the offence under Sections 302, 498A of IPC and Section 4 of the Dowry Prohibition Act.

21. So far as conviction of accused No. 2 Ramadhar under Section 4 of Dowry Prohibition Act is concerned, though it has come in evidence of the prosecution witnesses that Rs. 20,000/- was given to accused Ramadhar by father of the deceased for his business purposes, but that itself is not sufficient to uphold his conviction under Section 4 of Dowry Prohibition Act. Except the above evidence, there is no conclusive piece of evidence to show that this accused made any demand of dowry or meted out cruel treatment in connection therewith to the deceased. As for accused Rameshwar, the prosecution has not been able to prove the allegation of demand of dowry against this accused also so as to convict him under Section 4 of Dowry Prohibition Act. In these circumstances, conviction of accused Nos. 2 and 3 (Ramadhar and Rameshwar) under Section 4 of Dowry Prohibition Act cannot be sustained and they deserve to be acquitted of the said charge by extending them benefit of doubt.

22. In the result:

? Cri. A. No. 808/2002 preferred by accused/appellants Ramadhar and Rameshwar, is hereby allowed. They are acquitted of the charge under Section 4 of Dowry Prohibition Act by giving them benefit of doubt. They are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

? Cri. A. No. 956/2002 filed by accused/appellant Parmeshwar being without any

substance is dismissed. He is on bail, therefore, his bail stands cancelled and he is directed to be taken into custody forthwith to serve the remaining part of sentence.