
(2001) 11 RAJ CK 0067
In the Rajasthan High Court
Case No : Criminal Appeal No. 635 of 1995

Ratan Lal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 23-11-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2002) 4 RLW 2324 : (2002) 4 RLW 2042 : (2002) 4 WLN 628

Hon'ble Judges : Shiv Kumar Sharma, J;A.C. Goyal, J

Bench : Division Bench

Advocate : A.K. Gupta, Alka Bhatnagar and Vishal Bansal, for the Appellant;
Rajendra Yadav, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.—Kumari Manju, aged 16 years was committed to Female Surgical Ward at bed No. 31 in Sadar Hospital, Alwar, having 100 burns on her body on October 24, 1994. Ram Kripal Tripathi, Executive Magistrate, P.W.9, reached to the hospital and allegedly recorded the statement of Manju (Ex.P.7) in the presence of four persons viz., Omi, Duli Chand Jatav, Raju Ram and Davendra Kumar. In her statement, Kumari Manju deposed that accused appellants Ratan Lal, Dalu Ram, Hukam Chand and Bheli alias Bhagwan Das, all sons of Tula Ram, took her to the roof of her house around 2 p.m. and after sprinkling kerosene oil on her body set her on fire. She further deposed that she was all alone in her house and because of incident occurred on a previous night, all the four persons put fire on her body. Learned Executive Magistrate put a note on the statement that as both the hands of Manju were badly burnt, therefore, she was not in a position to put her signatures. Rajendra Prasad, I.O. P.W.10, also reached to the hospital and allegedly recorded the statement Ex.P.8 of Kumari Manju at 2.30 p.m. on which Manju was able to put her thumb impressions at two places.

2. In both the afore quoted statements, neither any doctor was associated nor the opinion of doctor was sought about fitness of Kumari Manju for making the

statement"ent.

3. On the basis of statement Ex.P.8, F.I.R. No. 799/94, (Ex.P/9) u/s 307 IPC came to be registered by Police Station Kotwali, Alwar. Injuries sustained by Kumari Manju were examined by Dr.Raj Kumar Misra P.W. 5 at 1.15 p.m. on October 25, 1994 and according to Injury Report Ex.P.4, Kum. Manju sustained following ante-mortem injuries:-

- (1) Extensive burn on scalp, face and neck cut as well as back.
- (2) Extensive burn over chest and abdomen ant. as well aspect.
- (3) Extensive burn both arms, fore arms and hands ant. as well as posterior.
- (4) Extensive burn both thighs and legs ant. as well as posterior.

4. Kumari Manju died on October 25, 1994, at 6.45 p.m. Post- Mortem on the dead body of Manju was conducted at 9.45 a.m. on October 26, 1994. According to the Post-Mortem Report (Ex.P.5), the cause of death was shock due to extensive ante -mortem burns (100%). The case thereafter was converted into one u/s 302 IPC. All the accused appellants viz., Ratan Lal, Dalu Ram, Hukam Chand and Bheli alias Bhagwan Das were arrested and after usual investigation, charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No. 1, Alwar. Charges u/s 302 read with 34 IPC were framed against the accused appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as ten witnesses. In the statement recorded u/s 313 Cr.P.C. the accused appellants claimed innocence and stated that Manju did not name them as she was not in a position to give her statement. The accused appellants examined six witnesses in support of their defence. On hearing final submissions, the learned trial Judge convicted and sentenced each of the accused appellants u/s 302 read with 34 IPC to undergo imprisonment for life and fine of Rs.200/- in default to further undergo six months rigorous imprisonment. Against this finding that the present action of filing the appeal has been resorted to by the appellants.

5. We have heard the rival submissions and carefully scanned the material on record.

6. Admittedly the case of prosecution is based on the alleged dying declarations Ex.P.7 & Ex.P.8 of Manju and learned trial Judge after placing reliance on the said dying declarations convicted and sentenced the accused appellants. In receipt judgment rendered in Smt. Laxmi v. Om Prakash and Ors. (1), their lordship of the Supreme Court while dealing with "Nemo Moriturus praesumitur mentire (No one at the point of death is presumed to lie)" observed that a dying declaration not being a deposition in court, neither made on oath nor in the presence of the accused and, therefore, not tested by cross-examination to the general rule against the admissibility of hearsay. The admissibility is founded on the principle of necessity. The weak points of a dying declaration serve to put the Court on its guard while testing its reliability and impose on the Court an obligation to closely

scrutinize all the relevant attendant circumstances.

7. We, therefore, proceed to test the reliability of the alleged dying declarations Ex.P.7 and Ex.P.8. Ram Kripal, P.W.9, who was posted as an Executive Magistrate on October 24, 1994, in his deposition stated that he was directed by the then A.D.M. (City), Alwar, to proceed to Sadar Hospital, Alwar, and to record the statement of Manju, who was admitted to Female Surgical Ward. In pursuance to the said direction, he proceeded to the hospital, where he found Manju on bed No. 31 of Female Surgical Ward. He recorded her statement Ex.P.7 in the presence of four persons, who put their signatures on it. This witness further deposed that Manju was not in a position to put her signatures because her both hands were badly burnt. He thereafter sealed the statement and forwarded the same to A.D.M. (City). Manju, at the time of giving her statement, was fully conscious and was in a fit state of mind to give her statement. In his cross-examination Shri Tripathi stated that when he reached to the hospital, he found doctors and nurses there. Although, he met the doctor who was on duty yet he did not think it necessary to obtain the signatures of doctor on the statement of Manju. He could not explain as to who were those persons present near Manju, He also did not think it proper to record the statement of Manju in "question - answer form". This witness also admitted that he did not mention in the statement as to who was the person who identified Kumari Manju. He also could not mention the time of recording the statement. At the time of recording the statement, he was not associated by any Police Officer and he did not find any one near the bed of Manju. He did not ask Manju as to whether she was examined by any body prior to recording her statement by him.

8. Rajendra Prasad, I.O. P.W. 10, deposed that on October 24, 1994, he received information over telephone that a girl was admitted to the hospital in a burnt condition and after incorporating this telephonic message in Rojnamcha, he proceeded to hospital and recorded the statement of Kumari Manju (Ex.P.8). In his cross-examination, Rajendra Prasad stated that he was satisfied after making queries from the girl that she was in a fit state of mind to give the statement. He also admitted that at the time of recording her statement Dr.Raj Kumar Misra was present there but he did not think it proper to state this fact in the statement of Manju.

9. At this juncture, it would be appropriate to refer the observations incorporated in the Medical Jurisprudence and Toxicology of H.W.V. Cox, Sixth Edition at page No. 544 that reads thus:--

"Women are particularly prone to suicide by fire, this being traditionally one of the methods in ancient Indian culture. The common method is to soak the clothing in gasoline or kerosene and then ignite it. This may be done in the open or within a house, in which case a major fire may commence which may almost completely destroy the body."

10. In Paparambika Rosamma & Ors. v. State of Andhra Pradesh (2), it was held

by the Apex Court that where the prosecution case solely rested on the dying declaration, it is necessary for the prosecution to prove the dying declaration being genuine, true and free from all doubts and it is recorded when the injured was in a fit state of mind.

The question that needs to be considered now is as to whether the Magistrate could have come to a definite conclusion that Manju was in a fit state of mind to make a declaration in the absence of medical certificate.

11. As already noticed by us that Ram Kumar Tripathi, P.W.9 himself reached to the conclusion that Kumari Manju was in a fit state of mind to give the statement and even though the doctor was present in the hospital, he was not associated at the time of recording the statement. In the facts of this case, where Kumari Manju sustained 100% burn injuries on face neck and other parts of the body, we are of the view that the Medical Certificate ought to have been obtained that Manju was in a fit state of mind to make the statement. The Magistrate could not have come to a definite conclusion in absence of medical opinion about her fit state of mind and under the circumstances we find ourselves unable to persuade that Manju was in a fit state of mind to give the statement more so when Kailash, P.W.4, who is uncle of the deceased Manju, categorically stated that condition of Manju was so serious that she was on oxygen. How could she speak when her mouth was tied with oxygen pipe?

12. In Smt. Laxmi v. Om Prakash (supra), the Apex Court observed that the deceased at the time of recording of statement had 85% deep burns and dehydration while her condition was constantly deteriorating. In such condition was constantly deteriorating. In such condition making of statement and putting signature there by deceased was doubtful. More so, in absence of medical evidence showing that deceased was in a fit physical and mental condition at the relevant time. In the instant case also the prosecution has not placed on record the evidence to the effect that Kumari Manju was in a fit physical and mental condition at the time of making her statement. When doctor was present in the hospital, why he was not called to certify her physical and mental condition? We do not find any satisfactory answer to this question.

13. It is also unacceptable as to why the Investigating Officer Rajendra Prasad recorded the statement of Kumari Manju again when her statement was allegedly recorded by Executive Magistrate. There is also one more disturbing feature in the statement recorded by the investigating Officer Ex.P.8. In that statement Kumari Manju has been shown to put her thumb impression at two pieces. When Executive Magistrate categorically stated that Manju was not in a position to put her signature or thumb impressions in the statement recorded by the I.O. We have also tested veracity of statement of Rajendra Prasad, I.O. in view of Rule 6.22 of Rajasthan Police Rules, 1965, which reads as under:-

6.22. Dying declaration.--(1) A dying declaration shall, whenever possible, be recorded by a Magistrate.

(2) The person making the declaration shall, if possible, be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no Magistrate can be obtained, the declaration shall, when a gazetted police officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case.

(4) If no such witnesses can be obtained without risk of the injured person dying before his statement can be recorded, it shall be recorded in the presence of two or more police officers.

(5) A dying declaration made to a police officer should, u/s 162, Code of Criminal Procedure, be signed by the person making it.

14. A look at the aforequoted provisions goes to show that I.O. Rajendra Prasad was duty bound to examine Kumari Manju by a Medical Officer who was present in the hospital and two independent persons ought to have been associated at the time of recording her statement but the I.O. did not do so for the reasons best known to him. Thus we find the following infirmities in the alleged dying declarations of Kumari Manju:-

1. The Executive Magistrate did not record the time in the statement Ex.P.7.

2. The Executive Magistrate had gone to the hospital all alone and was not associated by any Police Officer who could identify Kumari Manju.

3. Although, doctor was present in the hospital, yet he was not associated while recording the statement.

4. In Ex.P.7, as many as four persons put their signatures as witnesses but they were not produced during the trial and even during investigation, their whereabouts were not known to the I.O.

5. In Ex.P.7, signatures of Kumari Manju could be obtained but on Ex.P.8, she allegedly put her thumb impressions.

The prosecution in support of its case, has not examined any neighbour but the defence produced three next door neighbours of Kumari Manju namely, Rohitashw (D.W.5), Raj Kumar (D.W.3) and Ramavtar (D.W.2). As per the statement of Heera Lal (D.W.6) he had love affairs with Kumari Manju and on a previous night Manju invited him to her house and he visited her house during odd hours where he was beaten severely by the uncle and parents of Manju and was thrown out of her house. The flying squad admitted Heera Lal to the Hospital. Next day Manju came to the hospital and felt sorry to look his serious condition and after saying that she too would die, she left the hospital.

15. Rohitashav D.W.5 a neighbour of Manju, categorically stated that when Manju sprinkled kerosene on her body and ignited fire, many persons made

attempt to reach at the roof to save her. At that time the girl was saying that she wanted to die. Thereafter she was taken in a riksha to the hospital by the crowd. Raj Kumar, D.W.3, another neighbour of Manju deposed that many persons entered the house of Manju and took her to the hospital at that time the accused were not present. Ramavtar, D.W.2, another neighbour of Manju, categorically stated that the girl himself set her on fire and she was unable to speak. These witnesses were cross-examined but their testimony could not be shattered.

16. Ramji Lal, D.W.1, who is father of Manju admitted this fact in his cross-examination that they caught Heera Lal in their house and gave severe beating to him and Heera Lal was admitted to the hospital. It is no doubt true that Manju died on account of burns but the injuries sustained by her cannot be attributed to the accused appellants. There is no satisfactory evidence on record which could connect the accused appellants with the crime. The prosecution has failed to establish the dying declarations of Manju being genuine, true and free from all doubt and that they were recorded when Manju was in a fit state of mind. The charge u/s 302 read with 34 IPC against the accused appellants, thus is not established. The learned trial Court, in our opinion has committed illegality in placing reliance on the alleged dying declarations of Manju.

17. In the result, we allow the appeal and set-aside the impugned judgment. We acquit all the four accused appellants viz., Ratan Lal, Dalu Ram, Hukam Chand and Bhilly @ Bhagwan Das from the charge u/s 302 read with 34 IPC. All the four appellants are in jail, they shall be set at liberty, if not required in any other case.