
(2014) 12 MP CK 0076

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 375 of 2001

Shrimati Ramshri Pal

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304B, 34, 498A

Citation : (2014) 12 MP CK 0076

Hon'ble Judges : Sheel Nagu, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Rajesh Shukla and V.K. Pal, Advocate for the Appellant; G.S. Chouhan, PL, Advocate for the Respondent

Judgement

S.K. Gangele, J.—Appellant Shrimati Ramshri Pal has filed this appeal challenging the judgment of conviction and sentence dated 28th May, 2001 delivered by the Court of Special Judge (NDPS) and Additional Sessions Judge, Gwalior in Sessions Trial No. 362/1999, whereby she has been convicted for the offences punishable under sections 498-A and 302 IPC and sentenced to undergo life imprisonment and fine of Rs.1,000/- and two years RI and fine of Rs.500/- respectively with default stipulations. Both the sentences were directed to run concurrently.

2. Present appellant along with acquitted co-accused Hema were tried for the offences punishable under sections 498-A, 304-B IPC, in the alternative 302 IPC, read with section 34 IPC for harassing one Manju Pal (hereinafter, referred to as the "deceased") for demand of dowry and committing her murder of on 4/5/1999 by pouring kerosene oil and setting her on fire.

3. Prosecution story as unfolded in the impugned judgment is that the deceased was the married wife of Rajesh (DW 1). She often complained about ill treatment by her in-laws on account of demand of dowry. On 4/5/1999 Ramsingh (PW 2) got information that the deceased was admitted in the Kamla Raja Hospital. When he went to the hospital and asked his daughter as to how she caught fire,

the deceased told him that her mother-in-law (present appellant) and sister-in-law used to pick up quarrels with her on account of demand of dowry and she was set on fire by pouring kerosene on her body. Deceased died on 4/5/1999 in the evening.

4. After the death of the deceased, a Marg was registered and investigation was commenced. FIR (Ex.P/8) of the incident was lodged at Police Station Madhav Ganj. On lodging of the FIR, prosecuting agency was set in motion. The appellant was arrested vide Ex.P/9. Police reached on the spot, prepared the spot map (Ex.P/4), seized an iron can, a steel tumbler, match sticks etc. vide seizure memo (Ex.P/5). Inquest of the dead body was prepared vide Ex.P/2 and dead body of the deceased was sent for postmortem. Postmortem report is Ex.P/3. Dying declaration (Ex.P/7) of the deceased was recorded by Dr.Sanjana Lucas (PW 10).

5. After completing the investigation, the Police filed challan in the Court of Judicial Magistrate First Class, Gwalior, which in turn committed the case to the Court of Session for trial. Police filed supplementary challan against acquitted co-accused Hema.

6. The prosecution examined as many as eleven witnesses and proved documents Ex.P/1 to Ex.P/9 on record, while the accused took the defence that the deceased did not want to live with her in laws, hence, she committed suicide. In support of the defence, the accused examined one Rajesh Pal (DW 1) husband of the deceased and proved documents Ex.D/1 to D/4 case diary statements of the witnesses.

7. The Trial Court after appreciating the evidence on record, came to hold that present appellant had committed murder of the deceased by pouring kerosene on her body and setting her on fire for demand of dowry. Trial Court convicted and sentenced her as indicated herein above. However, the Trial Court found that the prosecution has failed to prove the charges against co-accused Hema, sister-in-law, beyond reasonable doubt, and acquitted her from all the charges.

8. Learned counsel for the appellant accused vehemently urged that the deceased committed suicide and the appellant had falsely been implicated in the case. Dying declaration (Ex.P/7) recorded by the doctor is not reliable and could not be made a basis for maintaining conviction. He further submits that Ward boy Raju Khan was a so called maternal uncle of the deceased and he influenced the doctor in recording the dying declaration. Learned counsel further submits that the doctor who recorded the dying declaration was not a regular doctor and was not authorised to record the dying declaration. He further submits that evidence of the parents of the deceased is also not reliable in as much as they have implicated both - the mother-in-law and sister-in-law in their statements before the Court, however, the trial Court has acquitted sister-in-law of all the charges on the same set of evidence, hence, the trial court has committed an error of law in convicting the appellant on the same set of evidence available

against both the accused persons. He further submits that the prosecution has failed to prove the offences against the appellant beyond reasonable doubt, hence, this appeal be allowed and the appellant be acquitted of the charges.

9. Per contra, learned Panel Lawyer appearing on behalf of the respondent State argued in favour of the impugned judgment and prayed that this appeal be dismissed by maintaining impugned judgment of conviction and sentence.

10. We have heard arguments advanced by learned counsel for the parties and minutely examined the evidence on record and we are of the considered opinion that this appeal sans merit and deserves dismissal.

11. In this appeal, the questions for consideration are whether the appellant used to harass the deceased for demand of dowry and committed murder of the deceased by pouring kerosene and setting her on fire or the deceased committed suicide; secondly on the same set of evidence, when the trial Court has acquitted co-accused Hema giving benefit of doubt, then whether the Trial Court was justified in convicting the present appellant for the offences, and thirdly whether the dying declaration of the deceased (Ex.P/ 7) recorded by Dr. Sanjana Lucas (PW 10) inspires confidence of the court so as to base conviction on that count.

12. Admittedly, there is no eye witnesses to the incident and conviction in the present case is based on the dying declaration of the deceased (Ex.P/7) and other attending circumstances.

13. Dr. Siddarth Aayangar (PW 1) deposed that at the relevant point of time he was posted as Chief Medical Officer in JA Hospitals, Gwalior. Deceased was brought in burnt condition to the hospital and he medically examined the deceased. There were burns all over the body of the deceased and smell of kerosene was emanating from the body of the deceased. He medically examined the deceased and Ex.P/1 is the medical report.

14. Ramsingh (PW 2) is the father of the deceased. He deposed that after marriage, the deceased lived for about 10-15 days in her in-laws house and came back to his house. He further deposed that her in-laws had been demanding dowry of Rs.50,000/-. After some days, Dharmendra, brother-in-law of the deceased came to his house and assured him that in future there would not be any problem. Thereafter, he had taken the deceased with him. Husband of the appellant told him that the deceased was admitted in the hospital. He went to the hospital and enquired from the deceased as to what had happened, whereupon, the deceased told him that her mother-in-law (present appellant) and sister-in-law burnt her by pouring kerosene on her body. Thereafter, report of the incident was lodged at the police station.

15. Kalawati (PW 3) is the mother of the deceased. In her deposition, she deposed that after marriage the deceased came to her residence. She told her that her inlaws were demanding Rs.50,000/- and on that count, they are harassing and torturing her. 10-15 days after the said incident, her brother-in-

law Dharmendra came to her house and took the deceased on the assurance that there would not be any trouble to her in future. 18-20 days thereafter, father-in-law of the deceased came to their house and told her that the deceased was admitted in the hospital. She along with her husband and sister Vimla went to the hospital. When she asked the deceased as to how she caught fire, the deceased told her that her mother-in-law and sister-in-law had burnt her by pouring kerosene on her body.

16. Bhurekhan (PW 4) is a neighbour of the deceased. He deposed that when he came out of his house after hearing the cry of the deceased he saw that the deceased was standing naked in the courtyard and her sister-in-law was throwing water on her. Her husband and other persons had taken the deceased to hospital. (17) Raju Pal (PW 5) is the brother and Vimla Pal (PW 6) is the aunt of the deceased. They have deposed the same facts in regard to harassment of the deceased by her in-laws for the demand of dowry and setting the deceased on fire by her mother-in-law.

18. Dr. JN Soni (PW 7) had performed autopsy of the dead body of the deceased. He opined that the burn injuries were sufficient in normal course of nature to cause death. Cause of the death is stated to be due to cardiorespiratory failure due to burns and its complications.

19. Raju Khan (PW 8) was a wardboy in the JA Hospitals where the deceased was admitted for medical treatment. He is so called maternal uncle of the deceased. He deposed that the doctor recorded the dying declaration of the deceased in his presence. He has further deposed that the deceased told the doctor that her mother-in-law and sister-in-law poured kerosene on her body and set her on fire.

20. Gopal (PW 9) is the father-in-law of the deceased and witness to seizure memo Ex.P/4. He has deposed that the Police seized one can containing kerosene, one steel tumbler, deceased's clothes and match sticks from the spot.

21. Dr. Sanjana Lucas (PW 10) had recorded the dying declaration of the deceased. In her deposition, she has deposed that on 4/5/1999 she was posted in Unit No. 2 (Burn Unit) of Kamla Raja Hospital. On that date, the deceased was brought to the hospital in burnt condition. There were severe burn injuries all over the body of the deceased and the deceased sustained 85-90% burns. Her pulse rate was 146 per minute, however, her blood pressure was not recordable. Condition of the deceased was serious. The deceased was in a position to speak. Thereafter, she prepared the MLC report (Ex.P/6). She further deposed that she recorded the dying declaration of the deceased. The deceased told her name as Manju Pal. When she was asked as to how she had burnt, she deposed that at about 11.30 in the morning her mother-in-law (present appellant) had poured kerosene on her body and thereafter lit fire. When she was asked who had saved her, the deceased told that her sister-in-law had thrown water on her and saved her. The deceased also told this witness that her mother-in-law (present appellant) used to quarrel with her daily. This witness has further deposed that

when the deceased was giving dying declaration she was fully conscious. No intoxicating medicines were administered to her and she was in a position to speak. After recording the dying declaration, she got the thumb impression of the deceased on the dying declaration.

22. SS Chahal (PW 11) is the investigating officer. He gave out the details of investigation.

23. As regards nature of death, the Trial Court has considered medical evidence in detail and found that the death was not suicidal, but homicidal in nature. As per the evidence of Dr.Siddarth Aayangar (PW 1), the deceased sustained burn injuries all over the body. She sustained 80% burns and smell of kerosene was emanating from her body. Dr. Sanjana Lucas (PW 10) who medically examined the deceased also deposed that the deceased sustained burn injuries all over her body. In the postmortem report also, Dr.JN Soni (PW 7) has found 2 to 3 degree burn injuries over the body of the deceased and the injuries were sufficient in the normal course to cause death. He further opined that the cause of death was cardiorespiratory failure as a result of shock due to burns and its complications.

24. The Trial Court has found that as per the medical evidence, hairs of the deceased were not burnt and there were no burn injuries on her head. The Trial Court has also recorded that had the deceased wanted to commit suicide, she could have poured kerosene on her head. It further found that head and face of the deceased were not burnt, hence it could not be held that the deceased immolated herself by pouring kerosene.

25. On this aspect, the Trial Court has also considered the oral evidence on record, viz Bhure Khan (PW 4) who has deposed that when he reached the spot after hearing cry of the deceased, he had seen the deceased was standing naked in the courtyard. The trial court, therefore recorded that if the deceased had committed suicide, she could not have shouted for help and ran outside the house, that too naked. That apart there is a recovery of kerosene can, match stick and a steel tumbler from the spot. The trial court therefore, found that had there been any intention on the part of the deceased to commit suicide, she could have very well poured kerosene from the can itself and there was no necessity to take out kerosene from the can into tumbler and then to pour it on the body from tumbler. As such, the trial Court came to the conclusion that the deceased had not committed suicide, rather she had been murdered by the appellant by setting her on fire after pouring kerosene.

26. As regard harassment for demand of dowry, there is consistent evidence on record of parents of the deceased, viz Ramsingh (PW 2) and Kalawati (PW 3) and her brother Raju Pal (PW 5) that the deceased was being harassed for demand of dowry of Rs.50,000/- and the deceased came back to her parents house on that count. It has also come in the evidence that a few days before the incident, her brother-in-law came to take her on the assurance that in future, there would not be any harassment to her. Hence, the Trial Court has rightly held that the

deceased was being harassed for demand of dowry.

27. So far as acquittal of co-accused Hema who is sister-in-law of the deceased on the same set of evidence is concerned, the trial court has categorically held that there appears to be exaggeration in regard to involvement of acquitted co-accused in commission of the offence. It has also held that although there is exaggeration in the statements of the witnesses, i.e. family members of the deceased regarding involvement of acquitted co-accused, yet their entire statement cannot be discarded on that count and can very well be relied in regard to involvement of the present appellant in commission of the offence.

28. The Trial Court also found corroboration in its findings to this effect from the dying declaration of the deceased (Ex.P/7) wherein the deceased had specifically named the present appellant to have poured kerosene on her body and setting her on fire and completely exonerating her sister-in-law, viz. acquitted co-accused Hema and the deceased rather stating in her favour that she had tried to save her by pouring water. The Trial Court has also taken into consideration the statement of Bhure Khan (PW 4) who has stated that when he reached the spot, he had seen the acquitted co-accused Hema pouring water on the deceased.

29. Defence has examined husband of the deceased Rajesh Pal as DW 1. However, the Trial Court found that this witness deposed in favour of the accused only to save them. It also found that this witness was not present on the spot.

30. The Trial Court observed that in the light of the dying declaration (Ex.P/7) the prosecution could not establish the guilt of sister-in-law of the deceased beyond reasonable doubt and she has been acquitted of the offences. We are in complete agreement with the findings recorded by the Trial Court on this count and hold that the trial court has not committed any error in recording a finding that the appellant alone was involved in commission of the offence.

31. As regards evidentiary value of the dying declaration is concerned in order to base conviction, Ex.P/7 is the dying declaration of the deceased. Questions No. 5,6 and 7 are germane which are reproduced herein below :

Aforesaid dying declaration was recorded by Dr.Sanjana Lucas (PW 10). She had certified before recording of the dying declaration that the patient (deceased) was fully conscious and was not under the effect of drug, intoxication or threat. The dying declaration was also witnessed by one Dr.Ansari. She obtained the thumb impression of the deceased on the dying declaration. This doctor also certified that she had explained the dying declaration to the patient and found her fully conscious and oriented before and during statement and was not under the effect of any drug, intoxication or threat.

32. Defence of the appellant was that Raju Khan (PW 8) so called maternal uncle of the deceased was posted in the hospital as Ward Boy and he has maneuvered the doctor who recorded the dying declaration. However, this defence has been rejected by the Trial Court on the ground that though as per statement of Raju

Khan the deceased had levied allegation against both - present appellant as well as her sister-in-law (acquitted co-accused), but in the dying declaration, the deceased has completely exonerated her sister-in-law. The Trial Court has also recorded that the defence has not brought on record any evidence to the effect that ward boy Raju Khan was so influential that he could influence the doctor who recorded the dying declaration.

33. The dying declaration is natural because the deceased has specifically mentioned that her sister-in-law tried to save her by throwing water on her body, after she was set on fire by her mother-in-law. This fact has also been corroborated by the statement of neighbour of the deceased Bhure Khan (PW 4) who has deposed that he had seen the deceased standing in the courtyard and her sister-in-law was throwing water on her in order to save her. The deceased did not deliberately implicated any other member of her inlaws family including her husband or sister-in-law or father-in-law. She only named the present appellant in her dying declaration to have set her on fire after pouring kerosene, which appears to be natural.

34. Aforesaid fact has also been corroborated by Ramsingh (PW 2) and Kalawati (PW 3) parents of the deceased. They have specifically deposed that when they heard that the deceased was hospitalised, they reached the hospital. At that time, the deceased told them that present appellant had burnt her by pouring kerosene. The testimony of these witnesses cannot be discarded and is to be relied upon.

35. Supreme Court in Nallapati Sivaiah Vs. Sub-Divisional Officer, Guntur, A.P., has held that conviction can be solely recorded on the basis of dying declaration, if it is true, voluntary and inspires confidence of the Court. There is no hard and fast rule that the dying declaration has to be recorded by the Executive Magistrate.

36. In the present case, the dying declaration was recorded by the attending doctor who was working in the Burn Unit of the Hospital at the relevant point of time. She has deposed that the patient (deceased) was fully conscious and oriented before and during statement. Apart from this, the dying declaration (Ex.P/7) was also signed by another doctor namely Dr.Ansari. The Trial Court has relied upon the dying declaration and this Court finds that the Trial Court has not committed any error relying upon the dying declaration.

37. Although SS Chahal (PW 11) the investigating officer at one stage has stated that the deceased burnt herself on her own, however, said statement has been made by the investigating officer without any corroboration. As discussed herein above, there is no evidence on record to suggest that the deceased committed suicide by burning herself. Hence, the statement of the investigating officer cannot be relied upon.

38. Considering the overall evidence on record, in view of the discussions made herein above, we are of the considered opinion that the Trial Court has rightly

held that the prosecution has led sufficient evidence to prove its case against the appellant beyond reasonable doubt and rightly convicted and sentenced the appellant for the offences alleged against her.

39. Consequently, we do not find any merit in this appeal. It is hereby dismissed. Impugned judgment of conviction and sentence is hereby maintained.

40. Appellant Ramshri Pal is on bail. Her bail bond and surety bonds are hereby cancelled. She is directed to surrender before the Trial Court on or before 12th January, 2015 to undergo remaining part of the sentence. If the appellant fails to surrender before the Trial Court on or before the date fixed, the Trial Court shall issue warrant of arrest against her. Registry is directed to send back record of the court below so as to reach the concerned Court well before the date fixed.