

(2001) 08 RAJ CK 0024
In the Rajasthan High Court
Case No : Criminal Appeal No. 235 of 1987

Smt. Kamla and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 306

Citation : (2002) 3 RLW 1860

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Sanjay Mathur, for the Appellant; Ramesh Purohit, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Garg, J.—This appeal has been filed by the accused appellants against judgment and order dated 18,7.87 passed by the learned Sessions Judge, Dungarpur "in Sessions Case No. 39/85 and 20/86 by which the learned Sessions Judge, Dungarpur convicted the accused appellants for offences under Sections 306 1.P.C. and sentenced them as follows:

Name of accused

Offence

Sentence awarded

Smt. Kamla

u/Sec. 306 I.P.C.

3 years" R.I. and a fine of Rs. 2000/- in, default to further undergo 6 month"s R.I.

Chandulal

u/Sec. 306 I.P.C.

5 years" R.I. and a fine of Rs. 2000/- in default to further undergo 6 month"s R.I.

2. It may be mentioned here that in the trial Court, there were two Sessions cases being 39785 and 20/86 and in Sessions Case No. 39/85, accused appellant Smt. Kamla and Hiralal were tried while in Sessions Case No. 20/86, the accused appellant Chandu Lal was tried. The accused Hiralal who was father-in-law of the deceased was acquired for the offence charged against him. Both the Sessions cases were decided by common judgment on 18.7.87.

2A. It arises in the following circumstances:

(i) That on 6.8.84 Smt. Saraswati (hereinafter referred to as the Deceased) wife of Chandu Lal (Accused appellant) gave statement at about 7.45 p.m. to P.W. 11 Kalulal SHD, stating as under.

"1 was igniting stove and none was in the house and after preparing tea, my saree caught fire, as a result of which my whole clothes burnt. 1 cried. Neighbourers came, I came to the house of my father 6-7 months back and in the house, my younger sister PW-3 Vandana was there. My husband had gone to Khargada at about 12 noon. My husband had come from Bombay. There is no dispute of mine with my husband. 1 have not been burnt by anybody."

3. This statement Ex.P/11 was further verified by the P.W.9 Dr. Surendra Kumar Mathur.

4. On this report, P.W. 11 Kalu Lal chalked out Marg FIR No. 13/84 u/s 174 Cr.P.C. and started investigation.

5. Further case of the prosecution is that on the same day at about 7.45 p.m. the deceased gave statement to P.W.9 Dr. Surendra Kumar Mathur who recorded her statement and same is Ex.P/7 which is as follows:

"At about 5 p.m. in the evening, I was igniting the stone in my parents" house. None was in the house. After preparing tea, my saree caught fire, as a result of which fire accelerated. I cried. Neighbourers came. I am living in the house of my father for last 6 months. In the house my younger sister PW-3 Vandana was there. No quarrel of mine with anybody took place. My husband went to Khargada at about 12 noon. My husband has come from Bombay yesterday. There is no dispute of mine with my husband and I was not burnt by anybody."

6. During investigation, the deceased died on 7.8.84 in the night at about 12.20 a.m. and the post mortem of the body of the deceased was got conducted by PW-9 Cr. Surendra Kumar Mathur and the post mortem report is Ex.P. 9. P.W.9 assigned that the cause of death was shock due to extensive second degree superficial burns all over the body.

7. During proceedings u/s 174 Cr.P.C. site plan Ex.P/6 was prepared and Panchanama of the body of the deceased was prepared which is Ex.P/10. The

accused appellant Smt. Kamala was arrested on 3.5.85 through Fard Ex.P/15.

8. When investigation u/s 174 Cr.P.C. was going on P.W.I Ranchhold who is father of the deceased lodged a written report Ex.P/1 addressing to late Smt. Indira Gandhi, Prime Minister of India on 8.9.84 stating that the deceased aged 18 years was married with the accused appellant Chandu Lal 6 years back. After expiry of 6 months from the date of marriage, both the accused appellants and another accused Heera Lal who was father-in-law started torturing the deceased for not bringing sufficient dowry and they used to beat her. It was further stated that before 6 months, her husband accused appellant had left the deceased in his house and deceased told him that she had been shunted out from her in laws house by the accused appellants and on 6.8.84, her husband tortured the deceased. Therefore, because of this atmosphere, she committed suicide.

9. This report Ex.P/1 was received by DSP, Sagwara PW-12 Goverdhan Lal Meena on 8.1.85 and on 8.1.85 he ordered for registration of the case u/s 306 I.P.C. and thereafter regular FIR Ex.P/12 was chalked out and challan against the accused appellants and one Hira Lal was filed in the Court for offence u/s 306 I.P.C.

10. The accused appellant Chandu Lal was charged by the learned Sessions Judge on 9.6.86 while Smt. Kamla and other Hira Lal was charged on 7.1.86 for offence u/s 306 I.P.C. who pleaded not guilty and "claimed trial.

11. During trial, 13 witnesses have been produced by the prosecution and thereafter statement of accused u/s 313 Cr.P.C. were recorded, but no evidence was led in defence.

12. After the conclusion of the trial, the learned Sessions Judge, Dungarpur vide his judgment and order dated 18.7.87 convicted and sentenced the accused appellants as stated above inter alia holding that:

(i) both the dying declarations Ex.P/7 recorded by PW-9 Dr. Surendra Kumar Mathur and Ex.P/11 recorded by PW-11 Kalulal, SHO were rejected by the learned Sessions Judge holding that both the dying declarations Ex.P/7 and Ex.P/11 are bearing same time.

(ii) The learned Sessions Judge also relied on letters Ex.P/4 and 5 submitted by P.W.1 Ranchhod during investigation.

13. Aggrieved from the said judgment and order, this appeal has been filed by the accused appellants.

14. In this appeal, following submissions have been made on behalf of the accused appellants :

(i) That the dying declarations Ex.P/7 and P/11 recorded by P.W. 9 Dr. Surendra Kumar Mathur and P.W. 11 Kalulal respectively are true version of the deceased and therefore, reliance should have been placed on them and from the dying declarations Ex.P/7 and P/8, no case of suicide is made out, but a case of

accidental death is made out and hence conviction of the accused appellant under Sec. 306 I.P.C. is erroneous one and should be set aside.

(ii) So far as letters Ex.P/4 and P/5 are concerned, they do not help the prosecution in any manner, hence reliance has been placed wrongly on them by the learned Sessions Judge.

15. On the contrary, the learned P.P. has opposed the submissions made by the learned counsel for the appellant and submits that the judgment and order passed by the learned trial Judge do no call for any interference.

16. I have heard both.

17. To prove the above contentions, first medical evidence and other evidence has to be seen.

18. So far as medical evidence is concerned, there is no dispute in this case that the deceased died due to excessive burns and this fact is very well proved by the post mortem report Ex.P/9 of the deceased which has been duly proved by P.W.9 Dr. Surendra Kumar Mathur. Hence the fact that the deceased died because of extensive burn is well proved.

19. The next question is whether it is a case of accidental death or suicidal death.

20. Since in the present case, the learned Sessions Judge came to the conclusion that it is a suicidal death, therefore, it is to be seen whether this finding of learned Sessions Judge in this respect is correct one or not.

21. Before a person can be convicted of abetting suicide of any person, it must be established that such other person committed suicide as held by the Hon''ble Supreme Court in the case of Vajir chand v. State of Haryana (1).

22. In this case there are two dying declarations of the deceased one is Ex.P/7 recorded by PW-9 Dr. Surendra Kumar Mathur and other is Ex.P/11 recorded by PW.11 Kalu Lal SHO. Both appear to have been recorded at the same time i.e. at 7.45 p.m. on 6.8.84.

23. P.W. 9 Dr. Surendra Kumar Mathur states that on 6.8.84, he was posted as Medical Officer, in Primary Health Centre, Sagwara and at about 7.45 p.m. he recorded the statements of deceased while she was admitted in the hospital. He has further stated that at the time when he recorded the statement Ex.P/7 of the deceased, she was in a fit condition to give statement and he further states that he put leading questions to her and the answers which have been given by her have been reduced into writing by him. He has further stated that in bed-head ticket Ex.P/8, he has entered this fact that he recorded the statement and police was informed. He has proved his signature A to B on bed head ticket Ex.P/8. He has further admitted that dying declaration Ex.P/9 was recorded not in question-answer form, but in language.

24. The next question is whether dying declaration can be recorded by the doctor

or not. Dying declaration recorded by a doctor

25. Hon"ble The Supreme Court in a case reported in A.M.A. Rahman v. State of Gujrat (2), has opined like-

"The Doctor is the best person to opine about the fitness of the deceased to make the statement. Where the Doctor found that life was ebbing fast in the patient and that there was no time to call the police or a Magistrate, the Doctor, held, was justified-indeed, he was " bound to record the dying declaration of the deceased. He was a disinterested, respectable witness. The trial Judge was, therefore, wholly unjustified in rejecting the evidence of the medical Officer."

26. In another case reported in Suresh v. State of M.P. (3), the Hon"ble Supreme Court has held that-

"Penal Code (15 of 1860), Sec. 300 Conviction for murder by causing burns on basis of dying declaration-Recording of declaration by doctor-Testimony of doctor that deceased was capable of deposing and was in senses at the time of recording of statement-Conviction not liable to be interfered with (Evidence Act (I of 1872) Section 32)."

27. Thus from the above two rulings, it is very much clear that dying declaration can be recorded by the doctor. If there is no time to call for the Magistrate, the doctor is not only justified in recording the statement of the deceased, but he is duty bound to record the dying declaration. The doctor is an independent person and disinterested. So the dying declaration recorded by a doctor is admissible. Since in the present case, Ex.P/7 has been recorded by PW-9 Dr. Surendra Kumar Mathur who has stated that the ----- give statement and he has also made endorsement on Ex.P/8 Bed- head ticket, therefore, dying declaration Ex.P/7 recorded by P.W. 9 Dr. Surendra Kumar Mathur appears to be true version which was given by the deceased to P.W. 9 Dr. Surendra Kumar while she was admitted in the hospital in burnt condition.

28. P.W. 9 Dr. Surendra Kumar Mathur has no enmity either with the accused persons or no relationship with the complainant party. Therefore, there is no reason to disbelieve the dying declaration Ex.P/7 recorded by P.W, 9 Dr. Surendra Kumar Mathur. Dying declaration made before a police officer

29. Where after making statement before police, if victim succumbed to the injury, the statement amounts to dying declaration and is admissible u/s 32 of the Evidence Act. For this Munna Raja v. State of M.P. (4), may be referred to.

30. Hon"ble the Supreme Court in a case Ramawati Devi v. State of Bihar (5), has held that -

"There is no requirement of law that dying declaration must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to statement made before a police officer must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to

convict a person only on the basis of a dying declaration in the light of the facts and circumstance of the case."

Hence, if the dying declaration reported by the police passes all tests of fairness and truthfulness, that can be relied.

31. In the present case, the dying declaration Ex.P/11 recorded by P.W.11 Kalu Lal SHO is also certified by PW-9 Dr. Surendra Kumar Mathur. Thus, since in this case, there are two-dying declarations, one recorded by PW-11 Kalu Lal in the capacity as police officer and another by PW-9 Dr. Surendra Kumar Mathur and both are similar in nature, therefore, there is no reason to disbelieve them. Both reflect true version of the incident and throw light on the fact how incident took place and also relate to the cause of death of the deceased. The findings of the learned Sessions Judge that in both the dying declarations Ex.P/7 and Ex.P/11, the same time is mentioned therefore, they are doubtful in nature and no reliance can be placed do not appear to be convincing one as P.W.9 Dr. Surendra Kumar Mathur has categorically stated that as soon as he recorded the statement Ex.P/9, he referred the matter to the police and just after recording the dying declaration Ex.P/7 by him, same was recorded by PW.11 Kalu Lal SHO. Therefore, in these circumstances, if same time is mentioned in both the dying declarations, it will not invalidate the veracity or truthfulness of both the dying declarations.

32. In both the dying declarations, the deceased has clearly stated that nobody had burnt her and her saree caught fire and thereafter she burnt and further nowhere she stated that she committed suicide. Therefore, it appears to be a case of accidental death and not a case of suicidal death.

33. There is one more aspect which shows that it is a case of accidental death and not a case of suicidal death. In this case the incident took place on 6.8.84 and report Ex.P/1 was lodged by father P.W.I Ranchhod of the deceased on 8.9.84, meaning thereby just after one month of the incident. This delay is certainly fatal to the prosecution case and the same has not been explained. Had it been a case of suicidal death, the parents of the deceased would have certainly lodged the report earlier when proceedings u/s 174 Cr.P.C, were being conducted by the police. P.W.5 Javli Bai who is mother of the deceased has clearly admitted that for one month, no complaint was lodged by her and other members of the family. This also goes to show that it was not the case of suicidal death and contents alleged in report Ex.P/1 are not correct one.

34. Now the another set of evidence which is found in the postcards/letters Ex.P/2 to P/5 has to be looked into.

35. Ex.P/2 is the post card dated 2.8.84 in which there is mention of the fact that in her in laws" house, there was shortage of money. P.W.I Ranchhod, father of the deceased has admitted in cross-examination that so far as letter Ex.P/2 is concerned, it has got no relevancy so far as accused of this case are concerned. Therefore, demand which is mentioned in Ex.P/2 is not the demand made by the

accused appellant, but it was a general demand of the family of the accused appellants. P.W.I Ranchhod has further admitted that Ex.P/2 does not relate to the present accused appellants. Therefore letter Ex.P/2 is not helpful to the prosecution. Now there is another letter Ex.P/3 and some lines of letter Ex.P/3 are as follows:

"I am dying after taking poison because my father-in-law and mother-in-law torture etc. etc."

36. Admittedly, Ex.P/3 so called letter does not bear the signatures of the deceased and it has not been proved by other evidence that Ex.P/3 is in hand-writing on the deceased. The contents of letter Ex.P/3 that she was taking poison stand contradicted with the post mortem report Ex.P/9 where the cause of death of the deceased was extensive burns. Therefore, Ex.P/3 has also got no relevancy so far as cause of death of the deceased is concerned. So far as letters Ex.P/4 and P/5 are concerned. So far as letters have been washed away and therefore, no reliance can be placed on them. Apart from this, there is no evidence which suggests that the deceased committed suicide. Hence, from both dying declarations Ex.P/7 and P/11, the case of accidental death is well proved.

37. From perusal of both the dying declaration Ex.P/7 and Ex.P/11, it appears that at the time when deceased caught fire, P.W.3 Vandana was in the house and she has been examined as P.W.3. This witness is a child witness of 7 to 8 years and after asking some preliminary questions, the Court found her a competent witness and recorded her statement in question-answer form and she has admitted in her cross-examination that at the time when her sister Saraswati (deceased) caught fire, she was preparing tea on the stove. This version of P.W.3 Vandana also corroborates to the version of the deceased given by her in both the dying declarations Ex.P/7 and Ex.P.11. Thus, from the statement of P.W.3 Vandana also, case of accidental death comes into picture.

38. When the prosecution has not been able to prove that death of the deceased was suicidal death, offence u/s 306 I.P.C. cannot be held to be proved and both the accused appellants are entitled to acquittal of the charge for offence u/s 306 I.P.C. and the findings of conviction recorded by learned Sessions Judge for offence u/s 306 I.P.C. against the accused appellants are liable to be set aside and the appeal is liable to be allowed. For the aforesaid reasons, the present appeal filed by the accused appellants is allowed and the judgment and order dated 18.7.87 passed by the learned Sessions Judge, Dungarpur in Sessions Case No. 39/85 are set aside and the accused appellants are acquitted of the charge for offence u/s 306 I.P.C. Since the accused appellants are on bail, they need not surrender. Their bail bonds are hereby cancelled.