

RAKESH AND ANOTHER
v.
STATE OF HARYANA
(Criminal Appeal No. 1779 of 2009)

MARCH 22, 2013

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

Penal Code, 1860 - ss.498A and 302 r/w s.34 - Dowry death - Prosecution of husband and mother-in-law - Conviction by courts below relying on dying declaration of the deceased - Held: Prosecution case established beyond reasonable doubt - The dying declaration is acceptable in view of the facts of the case - Conviction upheld.

The appellants-accused were prosecuted u/ss. 498-A and 302 r/w s. 34 IPC. The prosecution case was that A-1 and A-2, husband and mother-in-law of the deceased respectively, used to harass the deceased for dowry and killed her setting her on fire. Trial court convicted the accused primarily relying on the Dying Declaration of the deceased. High Court confirmed the conviction.

In appeal to this Court the appellants-accused inter alia contended that the Dying Declaration was not reliable and that in view of the burn injuries on the hands of the accused-husband, it was highly improbable that he set the deceased on fire.

Dismissing the appeal, the Court

HELD: 1. The prosecution has established its case beyond reasonable doubt. The materials placed by the prosecution about the recording of dying declaration, procedure followed, fitness of the deceased to make the statement, the evidence of doctor and the evidence of

- A Magistrate, who recorded the statement, amply prove their case. The statement of the deceased in the form of dying declaration is fully acceptable since on receipt of intimation from the police, the Judicial Magistrate (PW-10) reached the hospital and after satisfying herself through
- B the statement of the duty doctor that the deceased was conscious and fit to make a statement, recorded her statement in the form of question and answers. In the dying declaration, she had specifically stated that her husband scolded her for not bringing money in the
- C marriage of her sister. He used to demand money from her father. Her in-laws used to harass/tease her for not bringing sufficient dowry and on the relevant date her mother-in-law caught hold of her hands and her husband set her on fire with a match stick after sprinkling kerosene
- D oil. It is also seen from her dying declaration that before she was set on fire, her husband gave beat on her neck with his leg and she was beaten up mercilessly. The claim that there was wrong description of names in the dying declaration and some of the relatives were present
- E at the time of recording of dying declaration, are not material contradictions which would affect the prosecution case. [Paras 16, 18 and 21] [304-G-H; 305-A-D, H; 360-A, E]

2. The plea - that in view of the burn injuries in the
- F hands sustained by accused-husband, it was highly impossible that he set the deceased ablaze - is not sustainable. Though the accused-husband took the deceased to the hospital admittedly, he did not try to get any treatment from the doctor for his own alleged burn
- G injuries. Nothing prevented him from taking treatment on the same day from the same doctor. Admittedly, he did not get treatment till he was arrested on 21.05.1998. [Para 17] [305-D-F]

- CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
- H No. 1779 of 2009.

From the Judgment and Order dated 15.05.2006 of the High Court of Punjab & Haryana at Chandigarh in Crl. Appeal No. 575-DB of 2001.

R.N. Kush, S.K. Sabharwal for the Appellants.

Kamal Mohan Gupta, Mohd. Zahid Hussain for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. This appeal has been filed against the final judgment and order dated 15.05.2006 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 575-DB of 2001 whereby the Division Bench of the High Court dismissed the appeal preferred by the appellants herein and confirmed the judgment on conviction and sentence dated 27.09.2001 and 28.09.2001 respectively, passed by the Additional Sessions Judge, Sonapat, Haryana in Sessions Case No. 39 of 1998/2001 holding the appellants guilty for the offence punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and sentenced them to undergo rigorous imprisonment (RI) for one year for the offence punishable under Section 498-A and a fine of Rs.500/- each and RI for life for the offence punishable under Section 302 read with 34 IPC and a fine of Rs.2000/- each, in default, to undergo RI for one year and both the sentences to run concurrently.

2. Brief facts:

(a) The case of the prosecution is that the deceased - Kailash was married to Rakesh, resident of Gohana, Sonapat about 8 years prior to the date of the incident. Out of the wedlock, four children were born to them. At the time of marriage, adequate dowry was given by the parents of the deceased. However, being unsatisfied with the dowry, Kailash has been subjected to harassment and cruelty in her

A matrimonial home by Rakesh (A-1) and Smt. Ram Piari, (A-2) mother-in-law. 15 days prior to the occurrence, the deceased attended the marriage of her sister along with her husband and in-laws. The accused started harassing her for not bringing adequate amount after seeing the marriage of her sister.

B (b) On 14.05.1998, at about 11 p.m., a quarrel took place in the house of Rakesh (A-1) where he put his leg on the neck of the deceased and beaten her mercilessly. Thereafter, Ram Piari (A-2) caught hold of the hands of the deceased while Rakesh (A-1) sprinkled kerosene upon her and set her ablaze.

C At that time, Lala, younger brother of Rakesh (A-1) was also present in the house. On the same night, Rakesh (A-1), Ram Piari (A-2) and Siri Ram - father-in-law took the deceased to the hospital and admitted her in the hospital on 15.05.1998 at 1.30 a.m. After getting a telephonic message, the parents of

D the deceased also reached the hospital.

(c) On 16.05.1998, on receipt of telephonic information about the admission of Kailash in PGI MS, Rohtak, on account of burn injuries, the police contacted Kailash and an application

E was moved by the investigating officer to the Duty Magistrate at 5.50 p.m. Ms. Shalini Nagpal, Judicial Magistrate, on getting the permission of the doctor at 6.10 p.m. about the fitness of the victim to make a statement, recorded her statement.

(d) On the same day, a copy of the statement was sent to

F the police station for registration of the case. An FIR was registered and the investigating officer took the case for investigation on 17.05.1998.

(e) On 21.05.1998, Rakesh was arrested and got

G medically examined by the doctor who opined that his hands were found to be having superficial to deep burns. On his disclosure, a stove containing the kerosene was recovered.

(f) On 29.05.1998 Ram Piari- mother-in-law of the

H deceased was also arrested. Ultimately, on 04.06.1998,

Kailash succumbed to her injuries in Safdarjung Hospital at New Delhi. A

(g) On completion of the investigation, charges for the offence punishable under Sections 498-A and 302 read with Section 34 IPC were framed against the accused. B

(h) The Additional Sessions Judge, Sonapat, after examination of all the witnesses, vide judgment 27.09.2001, convicted the accused persons guilty for the offences punishable under Sections 498-A and 302 read with Section 34 IPC. By judgment dated 28.09.2001, the trial Judge, sentenced the accused persons to RI for one year and a fine of Rs.500/- under Section 498-A and RI for life and a fine of Rs.2000/- under Section 302/34 IPC and in default of payment of fine, both the accused shall have to undergo RI for one year. Both the sentences shall run concurrently. C D

(i) Being aggrieved, the accused persons (A-1 and A-2) filed an appeal before the High Court of Punjab and Haryana at Chandigarh. After hearing both the parties, by impugned judgment dated 15.05.2006, the High Court confirmed the judgment of the trial Court and dismissed the appeal preferred by the appellants herein. E

(j) Questioning the conviction and sentence, Rakesh (A-1) and Smt. Ram Piari (A-2) preferred this appeal by way of special leave before this Court and leave was granted on 11.09.2009. F

3. Heard Mr. R.N. Kush, learned counsel appearing for the appellants-accused and Mr. Kamal Mohan Gupta, learned counsel appearing for the respondent-State. G

Contentions:

4. Mr. R.N. Kush, learned counsel for the appellants, at the foremost, contended that since the deceased - Kailash was not fit to make a statement as she was suffering from 85% burn H

- A injuries, reliance and conviction based on the dying declaration cannot be sustained. He further submitted that Rakesh (A-1) also suffered injuries which are indicative of the fact that he came to rescue her wife on seeing her burning. On the other hand, Mr. Gupta, learned counsel for the respondent-State
- B contended that the dying declaration was recorded by the Judicial Magistrate only after the duty doctor duly certified that she was in a fit condition to make a statement and the same was rightly relied on by both the courts below. As regards the second contention, it is pointed out by that if the injuries alleged
- C to have been sustained by Rakesh (A-1) as claimed by him, nothing prevented him from taking treatment on the date of the incident, particularly when he took the deceased to the Hospital. However, the fact remains that only on 21.05.1998, when he was arrested by the police, he showed his alleged injuries to the doctor which itself create a doubt about his version.
- D

5. We have perused all the relevant materials and considered the rival contentions.

Discussion:

- E 6. It is not in dispute that the deceased - Kailash sustained burn injuries at the house of the accused - Rakesh where they were living for about eight years. The incident occurred at 11.00 p.m. on 14.05.1998 and she was admitted in the hospital on 15.05.1998 at about 1.30 a.m. It is also not in dispute that the
- F deceased was under the supervision of doctors as well as the accused Rakesh till 10.00 a.m. on 16.05.1998.

7. Now, let us consider the dying declaration, its contents, and the procedure followed while recording the same. It is seen
- G that after knowing the condition of the deceased, the police requested Ms. Shalini Nagpal, the Judicial Magistrate, 1st Class, Rohtak (PW-10) for recording her statement. It is further seen that before recording her statement, the Magistrate (PW-10) asked for the opinion of the duty doctor about her condition
- H whether she was fit to make a statement. The record shows

that after obtaining the opinion of doctor, all the police officials and relatives were directed to leave the ward. Dr. Raman Sethi (PW-6) explained to the patient that she is deposing before the Magistrate and apprised that she is free to make her statement voluntarily without any fear or pressure. After satisfying her position to make a statement, the Magistrate (PW-10) recorded the statement of the deceased. It reads as follows:

"Q: How many years have passed to your marriage?

Ans: 8 years

Q: How many children have you?

Ans: Four

Q: On which day the incident took place?

Ans: The quarrel was continuing for the last 15 days.

Q: On the night of last Thursday at 11.00 P.M. what happened with you?

Ans: My husband used to say as to why I did not bring money in the marriage of my sister. He used to demand money from my father. My mother-in-law Ram Piari and father-in-law Siri Ram used to harass/tease me for dowry. It was Thursday, my mother-in-law, Devar (husband's younger brother) Lala were at home. My mother-in-law caught hold of my hand and my husband set me on fire with match stick after sprinkling kerosene oil. My devar came afterwards, when I was set on fire. My husband gave beating to me and set me ablaze. Then my husband put his leg on my neck and I was beaten up mercilessly. After that my father-in-law came, but he did not set me on fire. My husband, mother-in-law and father-in-law brought me to the hospital.

A Q: Do you want to say any thing else?

Ans: No

(Right great Toe impression of Patient) Sd/- J.M.I.C.(D)

B R.O. & A.C.

Patient remained fit and conscious during the statement

Sd/- in English Dr. Raman Sethi
P.G. Surg 5/IV"

C 8. In order to strengthen the above statement, the prosecution examined Dr. Raman Sethi (PW-6) who certified the condition of the deceased. In his evidence, he deposed that on 16.05.1998, Ram Kumar (ASI) moved an application (Ex. D PD) before him seeking opinion regarding fitness of Kailash, W/o Rakesh, resident of Gohana for making a statement. PW-6 declared her fit to make a statement at 6.30 p.m. on 16.05.1998. Basing on his statement, the duty Magistrate recorded her statement. Even after recording the statement, E PW-6 again examined Kailash and opined that the deceased remained fit and conscious during her statement. He also stated that the statement was over within 20 minutes and also informed that he did not treat the patient at any stage and denied that he gave wrong opinion at the behest of Magistrate.

F 9. Ms. Shalini Nagpal, Judicial Magistrate, 1st Class, Rohtak, who recorded the dying declaration of the deceased was examined as PW-10. According to her, on 16.05.1998, the police had moved an application before her for recording the statement of Kailash, and she had visited PGIMS, Rohtak at G about 5.50 p.m. on the same day and contacted the doctor concerned in Ward No.5 and sought his opinion about her fitness to make a statement. She asserted that the doctor had declared Kailash fit to make a statement (Memo Ex PB/3). She further explained that thereafter, she recorded her statement in H the form of question and answers form which is Ext. PB. The

statement was concluded by her at 6.25 p.m and PW-6, after
examining the deceased certified that Kailash was in her sense
throughout the period of her examination. She also deposed
that the statement (Ex.PB) had been recorded by her in the very
language of Kailash without any addition or omission and her
certificate to that effect is Ex.PB/5. The certificate of the doctor
about the physical condition of the deceased during the course
of examination is Ex.PB/4. She also informed the Court that the
statement was read over to Kailash who accepted the contents
to be correct. She also stated that she did not obtain the thumb
impression of the patient as both her hands were burnt, hence
she elected to obtain the impression of her right toe. In the cross
examination, she admitted that the document exhibited as
Ex.PB by her is the carbon copy prepared by her in the same
process. It is also clear from her evidence that before recording
the statement of the deceased, she specifically directed the
police officials and relatives to leave the ward so that the patient
was not under any influence while making the statement before
her. Though, in the evidence, it has come on record that few of
the relatives were standing in the ward, in view of the assertion
of the Magistrate (PW-10) who recorded her statement, mere
presence of some of the close relatives would not affect the
contents of the declaration.

10. Dr. S.P. Chug, Casualty Medical Officer, PGIMS,
Rohtak was examined as PW-11. In his evidence, he deposed
that on 15.05.1998 at about 1.30 a.m., he examined Kailash
W/o Rakesh and on examination he found that the patient was
conscious, pulse and BP were unrecordable. He further stated
that there were superficial to deep burns involving almost all the
body except the legs below the knees. There was approx. 85%
burns which were subjected to surgeon's opinion and was kept
under observation. Though it was pointed out that while
recording the history of the patient, he noted that it was the
accidental fire while cooking food, in view of categorical
statement by the deceased in her dying declaration the

A reference made by PW-11 while recording the history of the patient would not affect the prosecution case.

11. Dr. B.S.Kadian, Medical Officer of CHC, Gohana was examined as PW-7. In his evidence, he explained the nature of burn injuries.

12. Dr. L.K. Barua, who was examined as PW-13 has conducted the post mortem on the dead body of Kailash and submitted the report vide (Ex.PH). He asserted that the death was due to burn injuries.

13. Hiralal, father of the deceased was examined as PW-14. He explained the manner in which the in-laws of Kailash was behaving with her prior to the occurrence. He has supported the entire prosecution version.

14. Madhu - daughter of Rakesh aged about 12 years, was examined as a defence witness. Though she deposed that her mother caught fire, per chance, from the kersone stove, however, she admitted that her father Rakesh was present in the house at the time of the incident.

15. It is not in dispute that the accused did not inform the parents of the deceased about the incident. Though it is the claim of A-1 that it was he who informed PW-14, father of the deceased, in his evidence, he denied the same and according to him, he received a message from Hukum Chand. It is also relevant to note that only after arrival of PW-14 and on seeing the deteriorating condition of her daughter, he complained to the doctor concerned to shift her to Safdarjung Hospital, New Delhi. The fact remains that the accused did not take any such step.

16. The statement of the deceased in the form of dying declaration is fully acceptable since on receipt of intimation from the police, the Judicial Magistrate (PW-10) reached the hospital and after satisfying herself through the statement of the duty doctor that the deceased was conscious and fit to make

a statement, recorded her statement in the form of question and answers. In the dying declaration, which we have extracted in the earlier part of our order, she had specifically stated that her husband scolded her for not bringing money in the marriage of her sister. He used to demand money from her father. Her in-laws used to harass/tease her for not bringing sufficient dowry and on the relevant date her mother-in-law caught hold of her hands and her husband set her on fire with a match stick after sprinkling kerosene oil. It is also seen from her dying declaration that before she was set on fire, her husband gave beat on her neck with his leg and she was beaten up mercilessly. Considering the materials placed by the prosecution about the recording of dying declaration, procedure followed, her fitness to make a statement, the evidence of doctor and the evidence of Magistrate, who recorded her statement, it amply prove their case.

17. Coming to the claim that inasmuch as the husband Rakesh also sustained burn injuries in his hands, it is highly impossible to set her ablaze, it is relevant to note that the incident occurred late night on 14.05.1998, though the accused-husband took her to the hospital admittedly, he did not tried to get any treatment from the doctor for the alleged burn injuries. As rightly pointed out by the learned counsel for the State, if he had sustained burn injuries in his hands nothing prevented him from taking treatment on the same day from the same doctor. Admittedly, he did not get treatment till he was arrested on 21.05.1998. In view of the same, the argument of the learned counsel for the appellant that inasmuch as the burn injuries were found on the hands of the husband, it was necessary to look for corroboration is liable to be rejected. In view of the factual position, the decisions of various Courts relied on by the counsel for the appellants on this aspect are not applicable to the case on hand and there is no need to refer the same.

18. The claim that there was wrong description of names in the dying declaration and some of the relatives were present

A at the time of recording of dying declaration are not material contradictions which would affect the prosecution case.

B 19. Though learned counsel for the appellants contended that in view of the conduct of A-1 taking the deceased to the hospital and he also sustained injuries on his hand prayed for altering the conviction from Section 302 to Section 304 Part I, in view of our earlier discussion, we are not in a position to accept the same. It is not in dispute that the occurrence took place in the house of the accused where Kailash was residing, and unfortunately, even after having four children, she died at C the matrimonial home due to burn injuries at the instance of the accused appellants. There is no valid ground to alter the conviction as pleaded by the counsel for the first appellant.

D 20. Inasmuch as the second appellant-Ram Piari had been released after 14 years on the orders of the appropriate Government, no argument was advanced about the decision of the courts below.

E 21. In view of the above discussion, we are satisfied that the prosecution has established its case beyond reasonable doubt and we are in entire agreement with the conclusion arrived at by the trial Court as well as the High Court. Consequently, the appeal fails and the same is dismissed.

K.K.T.

Appeal dismissed.