

CASE NO.:
Appeal (crl.) 911 of 1997

PETITIONER:
Meera

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 15/03/2004

BENCH:
N. SANTOSH HEGDE & B.P. SINGH

JUDGMENT:
JUDGMENT

B.P.SINGH, J.

In this appeal by special leave the sole appellant Smt. Meera is the mother-in-law of the deceased Smt. Hanja. She was sentenced to life imprisonment under section 302 IPC and was sentenced to pay a fine Rs.200/- by the learned Additional Sessions Judge, Sirohi in Sessions Case No. 28/78. D.B. Criminal Appeal No. 155 of 1979 preferred by the appellant has been dismissed by the High Court of Judicature for Rajasthan at Jodhpur by its impugned judgment and order of 27th May, 1997. The case of the prosecution is that the deceased was residing with the appellant in Sumerpur. The parents of the deceased resided in a village known as Purada which was at a distance of about 3 kms. from village Sumerpur. The case of the prosecution is that on 9th December, 1976 the appellant alongwith Deva, DW-2, took the deceased in a 'Tonga' from village Sumerpur to Village Purada, to the house of her parents. The deceased complained to her mother and others, namely PWs. 2 and 3 that she had been administered poison by the appellant. She was, therefore, immediately taken to the hospital at Sumerpur. The appellant also accompanied them to the hospital. The deceased was examined by PW-1 Dr. Purohit who sent a peon, Madan Lal, DW-1, to inform the police about the arrival of the deceased who was suspected of having consumed poison. Accordingly DW-1 made an oral report at Police Station Sumerpur which was recorded by Head Constable Amar Singh, PW-7, in the absence of the Station House Officer, in the daily diary Ext.D/2. From Ext.D/2 it appears that PW-7 was informed by DW-1 that a woman had been brought to the hospital whose condition was bad and it was said that she had swallowed poison. After recording Ext.D/2, PW-7 went to the hospital and recorded the statement of the deceased in presence of the doctor, PW-1. The said statement has been marked as Ext.P/1. In her statement to PW-7 the deceased stated that she had delivered a child about 2 - 3 months ago. After delivery she had been brought to Sumerpur. She was continuously suffering from dysentery and fever but she was not being treated. Only yesterday an injection was given. On the date of occurrence her mother-in-law (appellant) got a medicine from a long container which had rats drawn on it and gave her that medicine. When she was not able to swallow the medicine her mother-in-law forced some water in her mouth and her father-in-law kicked her on her head. Thereafter she was put in a 'tonga' and taken to her parents'

house at Purada. Her parents said as to why they had dumped her there and that they should take her back to Sumerpur. Her mother-in-law used to say that it would be better if she dies.

Ext.P/1 has been treated as dying declaration and the prosecution has heavily relied upon this statement.

As the prosecution case goes the matter was investigated by Head Constable Amar Singh PW-7 and it appears that no concrete steps were taken. From the deposition of PW-1, Dr. Purohit, it appears that suspecting it to be a case of poisoning he had sent the viscera to Forensic Science Laboratory for examination and report. It is not in dispute that the report of the Forensic Science Laboratory was received on 22nd June, 1977 which disclosed the presence of Zinc Phosphide, a poisonous substance usually used for killing rats. It further appears from the record that after the report of the Forensic Science Laboratory was received the Deputy Inspector General of Police on 7th October, 1977 issued a direction to the Deputy Superintendent of Police to lodge a report and to register a case. Pursuant to the direction of the Deputy Inspector General of Police, Deputy Superintendent of Police Shri Raghunath Singh (PW-5) lodged a report on 24th November, 1977 on the basis of which a case was registered against the appellant under section 302 IPC. It will thus appear that the report relating to the incident on the basis of which the appellant has been prosecuted was lodged in November, 1977 while the occurrence took place on 9th December, 1976, about a year earlier.

Dr. Purohit was examined as PW-1, who was the doctor at the Sumerpur hospital where the deceased had been brought on the date of occurrence. According to PW-1 the deceased was brought to the hospital at about 7.30 p.m. and she had died at about 9.50 p.m. He had sent intimation to police station through Madan Lal (DW-1) whereafter Head Constable Amar Singh (PW-7) had come to the hospital and recorded the dying declaration of Smt. Hanja in his presence. On the next day he conducted the post-mortem examination on the body of the deceased. On the basis of his finding he opined that the deceased had died due to peripheral circulatory failure and respiratory distress due to ingestion of poisonous material \026 probably the poison administered was Zinc Phosphide (rat killer). He had sent the viscera to the Forensic Science Laboratory for their report. PW-1 stated that he had recorded the condition of the deceased in writing but that paper was destroyed after he had recorded the facts in the post-mortem report Ext.P/2. He did not remember if any entry relating to this case was recorded in the out door register of the hospital, and in any case the out door ticket number was not referred to in the post-mortem report. He stated that the deceased was brought to the hospital by her husband and mother-in-law as also by her father and mother and other relatives. The police had reached the hospital at about 8.00 p.m.

Head Constable Amar Singh was examined as PW-7. He stated that he was informed by Madan Lal (DW-1) that a case of poisoning had been brought to the hospital and, therefore, he went to the hospital and recorded the statement of that lady. 5-10 minutes after recording her statement the lady died in his presence. He had taken the opinion of the doctor before recording her statement. He admitted that the residence of the Tehsildar was about 1 mile away from the hospital but he did not call anyone to record her statement. He also failed to record the time on Ext. P/1, the dying declaration by inadvertence. He denied the suggestion that the certificate was obtained from the

doctor after the death of the deceased. He had prepared the Fard-Surat-Hal, Ext.P/11 and searched the house of the appellant and prepared Fard Ext.P/12. He reported the matter to the Station House Officer on reaching the police station but he did not register the case and asked him to continue with the investigation. In re-examination he stated that due to paucity of time he did not call for any Magistrate as the condition of Hanja was serious.

The second dying declaration on which the prosecution relied is said to have been made by the deceased when she was taken on a 'tonga' to her parents' house at Purada. Such a statement was allegedly made by her to her mother Chhogi (PW-10) in the presence of Sadia (PW-2) and Uma (PW-3). Chhogi (PW-10), the mother of the deceased, stated that on the date of occurrence the deceased had been brought on a 'tonga' to her village in the evening. Deva was also with her. Her daughter was brought down from the 'tonga' and at that time she was saying that her mother-in-law made her drink a rat poison and this was stated in the presence of PW-2 Sadia and PW-3 Uma. Immediately the Sarpanch was contacted who gave them a letter with which they left for the hospital at Sumerpur. At the hospital her daughter was alive for about an hour.

She admitted that her daughter had delivered a child 2 = months before the occurrence. She delivered the child at her parents' house and 2 months after delivery she was sent to her matrimonial home. She denied the suggestion that the deceased used to remain sick. On the date of occurrence when deceased Hanja came to her house on a 'tonga' she was not taken inside the house and immediately they had taken her to the hospital after obtaining a letter from the Sarpanch. The statement allegedly making allegation against her mother-in-law was made by the deceased on her own and without being questioned by anyone. She was weeping and saying that her mother-in-law made her to drink medicine meant for rats. It appears from the cross-examination that her statement had not been earlier recorded by the police when the matter was investigated by PW-7 soon after her death. She admitted that her statement was only recorded 12 months after the occurrence.

Sadia (PW-2) alleged that in the evening Deva and the appellant came on a 'tonga' alongwith the deceased who was vomiting, weeping and saying that she would die and that her mother-in-law had administered rat poison to her. She was pleading for being taken to the hospital. They all went to the hospital where police had recorded the statement of the deceased. She denied the suggestion that the deceased had only stated that she had taken the medicines but her condition was worsening. She further admitted that on the date of the death of the deceased or thereafter her statement was not recorded by the police. Only about 12 months later her statement was recorded for the first time.

The deposition of Himmata, father of the deceased, (PW-4) is not of much consequence since he reached the hospital directly on learning about the condition of his daughter and that she died soon after he reached the hospital. According to this witness the deceased and her husband had come to their house for one night. His daughter had told her husband that though he insisted upon her to go to her matrimonial home, her mother-in-law misbehaved with her. This witness also stated that the deceased had told him that her mother-in-law used to torture her. He feigned ignorance about the indifferent attitude of the deceased for 1 \026 1 = months prior to her death. His statement

was also recorded for the first time 12 months after his daughter's death. However, surprisingly, from the statement recorded under Section 161 of the Code of Criminal Procedure it appears that there is no mention of the fact that his daughter had told him about the bad behavior of her mother-in-law or had stated such a fact in his presence to her husband. It would, therefore, be difficult to hold, on the basis of his statement, that the deceased was subjected to torture by the appellant. Indeed there is nothing in the evidence of Chhogi (PW-10), the mother of the deceased, that her daughter was subjected to torture by her mother-in-law during her two years of married life.

We may now refer to the evidence on record on which the defence places considerable reliance.

Chunia (PW-8), the husband of the deceased, was examined by the prosecution as a witness. He deposed that his wife used to behave like a mad person and at night she used to go out from the house. There was no medicine for killing rats in his house and there was no quarrel between his wife and mother. The deceased had been suffering from dysentery and fever for a period of one month prior to her death. She used to give a blank look and suffered a suspicion that she was being tortured by Gods and Goddesses. From the statement of PW-8 produced before us it appears that this witness was not declared hostile.

The other witness DW-2, Deva, deposed that on the date of occurrence the deceased was unwell and he had accompanied her in a 'tonga' to her parents' house. The deceased had stated that she had taken the drug used for killing rats. They had gone to the hospital after obtaining a letter from the Sarpanch of the village Purada. During his presence the deceased had not stated that she had been administered poison by her mother-in-law. She had only stated that she had taken a drug and that she should be taken to the hospital.

There is then the evidence of Pukhraj (PW-9), the 'tonga' driver who took the deceased to her parents' house at Purada. According to him he had taken the deceased along with the appellant and Deva (DW-2) to village Purada. Deva alighted from the 'tonga' near the naka of Purada village and thereafter those persons went to village and returned after an hour and asked him to take them to village Sumerpur. Sadia (PW-2) and Chhogi (PW-10), the mother of the deceased, also accompanied them to Sumerpur on his 'tonga'. He brought them to the Government hospital at Sumerpur. According to this witness the girl (deceased) did not appear to be ill and she herself walked to the hospital. This witness was declared hostile by the prosecution and was confronted with his statement earlier made to the police in the course of investigation.

Such is the evidence on record. We have already noticed the fact that the report relating to the occurrence on the basis of which the case was investigated was lodged about one year after the occurrence and only thereafter the witnesses were examined. It does not appear that the parents of the deceased or anyone else formally lodged a report complaining of the fact that the deceased had been poisoned by the appellant. The record also discloses that after receiving the report from the Forensic Science Laboratory the Deputy Inspector General of Police directed the Deputy Superintendent of Police to lodge a report and to get a case registered against the appellant. In a case of this nature one has to guard against any improvements made by the witnesses taking advantage of considerable lapse

of time. There is no direct evidence on record to prove the fact that the deceased had been administered some poisonous substance by the appellant. The case of the prosecution rests entirely on the dying declaration alleged to have been made by her to her mother Chhogi (PW-10) at her village Purada and the second dying declaration in the form of a statement made to Head Constable Amar Singh (PW-7) after she was brought to the hospital at Sumerpur. There is really no evidence worth mentioning to establish the fact that the appellant had a motive to cause the death of the deceased. PW-10, the mother of the deceased has not even whispered that the appellant used to torture her daughter when she lived with her. There is no reference to any incident in this connection. For the first time after one year, the father of the deceased, PW-4, Himmata sought to bring in a story of his daughter telling him about the ill treatment meted out to her by the appellant. Surprisingly, though his statement before the police was recorded almost one year after the occurrence, there was no mention of this fact in the said statement. We are, therefore, not persuaded to accept the allegation regarding torture by the appellant made for the first time in the course of trial by PW-4. There is, therefore, no evidence on record to prove that the appellant had any motive to commit the offence. In fact if one goes by the evidence of Chunia (PW-8), the husband of the deceased, there was no quarrel between his wife and his mother. He, however, did mention that after delivery of the child his wife behaved in a peculiar fashion. She looked blank in dazed and was suspicious of the fact that she was being tortured by Gods and Goddesses. She had also been suffering from dysentery and fever for about a month before her death. In fact in the alleged dying declaration made to Head Constable Amar Singh, PW-7, there is mention of the fact by the deceased herself that she had been keeping unwell for about a month and that she was suffering from dysentery and fever. Though she alleged that she was not being properly treated, she admitted that one day before the occurrence she was given an injection by way of treatment. The circumstances, therefore, disclose that after child birth the deceased was in a disturbed state of mind and was suffering from dysentery and fever for which she was being treated. In fact in her dying declaration made to the police she had stated that her mother-in-law had given her a drug from a long container on which the picture of rats were printed. All these go to show that the deceased was unwell and was being medically treated.

So far as the veracity of the first dying declaration is concerned, we are not inclined to attach much weight to it because the witnesses have for the first time mentioned about the said dying declaration one year after the occurrence and after the report of the Forensic Science Laboratory had become available. No one had earlier reported to the police about the alleged dying declaration. It is, therefore, not safe to base the conviction of the appellant on the basis of such a dying declaration about which the witnesses for the first time have spoken after about a year of the occurrence.

This leaves us with the second dying declaration allegedly made to Head Constable Amar Singh (PW-7). The defence of the appellant is that this statement was recorded on a blank sheet of paper after the death of the deceased. According to the doctor, PW-1, the deceased was brought to the hospital at about 7.30 p.m. and she breathed her last at 9.50 p.m. PW-7, Head Constable Amar Singh admitted in the course of his examination that the Tehsildar was available about 1 mile away from the hospital but on account of paucity of time he was not

called for recording the dying declaration. We may also notice at this stage that no time is mentioned on the alleged dying declaration recorded by this witness. The reason given by PW-7 for not summoning the Magistrate to record the dying declaration does not appear to us to be convincing. According to PW-7, on receiving information, he reached the hospital at 8.00 p.m. and recorded the statement of the deceased. He further stated that the deceased died within 5-10 minutes of his recording the statement and he was present in the hospital at that time. This explanation does not appear to be convincing because according to the doctor, PW-1, the police had come to the hospital and recorded the dying declaration at 8.00 p.m. and the deceased died at 9.50 p.m. The prosecution had, therefore, abundant time to summon the Magistrate for recording the dying declaration since he was available only a mile away from Sumerpur.

So far as the medical records are concerned, the doctor, PW-1, admitted that the papers on which he had recorded the condition of the patient till she died, had been destroyed. There is no entry in the out door register about the deceased having been brought to the hospital, nor is there any reference to the out door ticket number in the post-mortem report. The treatment sheet of the hospital recorded by the doctor would have shown whether she was really treated for poisoning, because if she had really made such a statement, as alleged by the prosecution in the presence of the doctor, he would have taken appropriate measures. Though the doctor claims that he had subjected the deceased to gastric aspiration, that was done before her dying declaration was recorded. He claimed to have given treatment for respiration stimulation and maintenance of blood pressure but the condition of the deceased went on deteriorating. Apart from the oral statement of the doctor made 2 years after the occurrence, no documentary evidence has been produced to substantiate his claim. His original writings on which the treatment given to the patient was recorded, admittedly was destroyed by him, even though he knew it to be a medico legal case, as admitted by him.

There is another aspect of the matter for which there is no explanation. This is not a case where, according to the prosecution, the poison was administered to the deceased without her knowledge or suspicious. If one is to believe the dying declaration one fails to understand why the deceased would have swollen the poison given by her mother-in-law when she had seen, as claimed by her, that what was being given to her was poison meant for killing rats. All these facts create a serious doubt in our mind as to whether the dying declaration was really recorded in the manner alleged and also as to the veracity and truthfulness of the said dying declaration. As we have noticed earlier there is no evidence on record to show that the relationship between the appellant and the deceased were strained and not cordial. There is also evidence on record to show that the deceased had been keeping unwell after child birth and she was being treated for her ailments. The High Court has observed that there was no reason for the deceased to commit suicide. Apart from the fact that a person committing suicide behaves with abnormality, equally there is no reason for the appellant to commit the murder of the deceased. That apart, the conduct of the appellant is also not consistent with the hypothesis of her guilt. If she had really administered poison to the deceased she would not have accompanied the deceased to her parents' house at Purada and thereafter taken her to the hospital at Sumerpur. Admittedly, she was present all the time and all this only indicate her

innocence in the matter. Looking to the circumstances in which the dying declaration was recorded by the police officer and not by the Magistrate, and having regard to the other facts and circumstances of the case, we are of the view that the prosecution has not proved its case beyond reasonable doubt, and in any event the appellant is entitled to the benefit of doubt.

Accordingly we allow this appeal, set aside the conviction of the appellant and acquit her of all the charges levelled against her. She is on bail. Her bail bonds are discharged.

JUDIS