

Non-Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1554 of 2014

Sandeep and Anr.

.... Appellants

Versus

State of Haryana

.... Respondent

J U D G M E N T

Uday Umesh Lalit, J.

1. This appeal by Special Leave by appellants, Sandeep and his mother Krishna, challenges the judgment and order dated 18.09.2012 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. D-203-DB/2008 affirming their conviction under Sections 304-B, 498A read with Section 34 IPC.

2. The crime in the instant case was registered on the basis of statement made by Sharmila, wife of appellant Sandeep, to Suresh Chand, ASI at 6:15 p.m. on 2.11.2006. Her statement Ext. P-13 was to the following effect:-

“Stated that I am resident of aforesaid address. I was married to Sandeep S/o Rajbir @Raja Jat by caste r/o Ghikara on 21.05.2005. After some days of the marriage

I was kept properly and there after they started harassing me and saying that less dowry is brought. My husband, my mother-in-law, Krishna father-in-law Rajbir and Nanad Urmila started taunting and my husband and mother-in-law used to beat me. I told about it to my mother Parasi Devi and brothers. Surender S/o Brij Mohan and Anand Kumar S/o Brij Mohan. At this my brothers brought Panchayat from Village Chelawas twice, upon which on the asking of the village my husband Sandeep brought me from my parental house on 23.10.2006. Yesterday dt. 01.11.2006 during night at about 9:00p.m. my husband, mother-in-law Krishna father-in-law Rajbir all gave me slap and fist blows which I tolerated. Today morning at about 8:30 a.m. my mother-in-law Krishna sprinkled kerosene oil upon me and my husband Sandeep set me with fire with a match box. My husband, mother-in-law, father-in-law ran away from the spot when I raised noise, our neighbours Lily s/o Harnath, Risalo W/o Lilu came there and got me admitted to Dadri Hospital from where I have been referred to Rohtak. Now I have got recorded my statement to you. My husband Sandeep, mother-in-law Krishna, and father-in-law Rajbir after sprinkling oil have set me on fire with an intention to finish me. Now I have got recorded my statement, heard it and the same is correct.”

JUDGMENT

3. Soon after the incident while Sharmila was being removed to the hospital by Lilu and Risalo appellant Sandeep joined them. She was taken to General Hospital Charkhi Dadri where PW 7 Dr. Anita Gulia medically examined her and found percentage of burns to be 85%. According to PW 7, Sharmila had not told her who had set Sharmila afire. Sharmila was thereafter referred to and admitted at

PGIMS Rohtak, where the aforesaid statement was recorded, pursuant to which FIR Ext. P-14 was lodged and the crime was registered under Sections 307, 498-A and 34 IPC.

4. On 3.11.2006 at about 4:30 a.m. PW 2 Shri Vimal Sapra Judicial Magistrate Rohtak, on receipt of police request Ext. P04 went to PGIMS Rohtak to record the statement of Sharmila. Before recording the statement, the witness vide Ext. P-8 had obtained the opinion of the doctor as regards her fitness. The witness thereafter proceeded to record the statement and the doctor was present all throughout the recording. Thereafter the concerned doctor put the endorsement Ext. P-9 "patient remained fit during the statement. In my presence". The statement Ext. P-6 so recorded was to the following effect:

"Statement of Sharmila w/o Sandeep, 18 years, Housewife, R/o Chelawas

Stated that I was married to Sandeep about 2 years ago. I have no issue. There are my husband and parents-in-law in my house. They all used to harass me for bringing less dowry. My husband used to say that Motor Cycle is not brought and she should bring the same. Yesterday i.e. 02.11.2006 at about 8:30/9:00 a.m. I had gone to fields my mother-in-law and husband were at home. Fight took place between them on some matter. When I returned, they were fighting. Then my mother-in-law poured oil upon me and my husband lit the fire with a match box. At

that time my father-in-law was not present at house. My Tai mother-in-law took me to the hospital. After the marriage my husband, mother-in-law, father-in-law were raising the demand of motor cycle and Rs. 50,000/-. I am giving this statement with my own free will.

RO & AC Sd/- in English
RTI of Sharmila D/JMIC, Rohtak dt. 03.11.06”

5. Sharmila died on 07.11.2006. The appellants along with Rajbir, father of appellant Sandeep were tried for having committed the offence under Sections 304-B, 498-A read with Section 34 IPC in the court of Sessions Judge, Bhiwani. In support of its case the prosecution examined 10 witnesses including the Judicial Magistrate as PW2, the brothers of Sharmila as PW 6 and PW 9 and the Investigating Officer ASI Suresh Chand as PW 10. The defence also examined six witnesses including Lok Ram and Risalo as DWs 3 and 4 respectively who had arrived at the scene of occurrence soon after the incident. PW 9 Anand stated about demands of dowry and that her in-laws were not ready to accept Sharmila in their house unless she had brought a golden chain, motorcycle and Rs. 50000/- in cash. He further stated that panchayats on few occasions were called and that on 23.10.2006 Sharmila was sent to her matrimonial house due to such Panchayat. It came out in his cross examination that Sharmila

was residing at her parental house few months before 23.10.06 and that though the demand for dowry was existing the accused had agreed to keep Sharmila in the matrimonial home.

6. The Trial Court found that the prosecution had proved its case against the appellants but gave benefit of doubt to accused Rajbir and acquitted him of all the offences. The trial court principally relied on both the dying declarations i.e. Ext. P-13 recorded by PW 10 and Ext. P-6 recorded by PW 2. The trial court sentenced the appellants to undergo life imprisonment and to pay fine of Rs. 10000/- each for the offence punishable under Section 304-B read with Section 34 IPC and in default of payment of fine to undergo further rigorous imprisonment of two years. It also sentenced the appellants to undergo rigorous imprisonment for two years and to pay fine of Rs. 5000/-, in default whereof to undergo further rigorous imprisonment for six months under Section 498-A read with Section 34 IPC. The appellants carried the matter further by filing Criminal Appeal before the High Court. The High Court affirmed the order of conviction but reduced the sentence under Section 304-B read with Section 34 IPC to ten years and set aside the sentence of fine under said count. It maintained the sentence imposed under Section 498A read with Section 34 IPC.

With such modification in sentence, the appeals preferred by the appellants were dismissed which view is presently under challenge.

7. Mr. Rishi Malhotra learned Advocate appearing for the appellants submitted that :-

(i) The conviction in the present case rested solely on two dying declarations, which were not consistent with each other (ii) That there were loopholes in the dying declarations rendering them unworthy of reliance (iii) The Doctor who had given the certificate of fitness to record such dying declaration was not examined at all (iv) That given the fact that Sharmila had suffered 85% to 90% burns it would be impossible for her to have given such statements (v) At the first available opportunity said Sharmila had not stated anything regarding the incident or the involvement of the appellant before PW 7 (vi) The evidence as regards alleged demand for dowry was absolutely scanty. PW 6, brother of the deceased did not speak about any such demand while the testimony of the other brother ie. PW 9 was without any details or particulars (vii) The incident in question was an accident as stated by appellant Sandeep in his statement under Section 313 Cr. P.C.

8. Dr. Monika Gusain learned advocate appearing for the State submitted that both the dying declarations were consistent as regards the involvement of the present appellants, that dying declaration Ext. P-6 recorded by the Judicial Magistrate in the presence of the Doctor and with requisite certification from the Doctor was entitled to be given absolute credence, that the dying declarations Ext. P-13 and P-6 themselves stated about the demands for dowry and inability to fulfill such demands being the reason why she was set afire which was fully supported by the testimony of PW9 and that the assessment made by both the Courts below holding the appellants guilty of the offences was absolutely correct and justified.

9. The status and importance of a dying declaration was summed up by this Court in ***Kundu Bala Subramaniam Vs. State of Andhra Pradesh***¹ in following words :-

"..A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of

1

evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration....."

In the very same case, this Court struck a note of caution in cases where there are more than one dying declarations. It was observed as under:-

"....If there are more than one dying declarations then the court has also to scrutinise all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same...."

10. In the light of the aforesaid principle, it needs to be seen if both the dying declarations are consistent with each other in material particulars. The analysis of these dying declarations shows following consistent assertions:

(a) Sharmila was being harassed by her husband and in-laws for bringing less dowry. (b) On 02.01.2006 at about 8:30 a.m. her mother-in-law poured Kerosene oil upon her (c) Her husband Sandeep

lit the fire with a match box and (d) Risalo i.e. her Tai mother in law took her to the hospital.

11. Both the dying declarations i.e. Exts. P-13 and P-6, on these material particulars are completely consistent. There appear to be certain additional features in the statement Exh. P-13 recorded by PW 10 to the following effect:-

(i) Sharmila had told about her harassment to her mother Patasi Devi and brothers (ii) At this her brothers had brought Panchayat twice (iii) On the asking of such Panchayat her husband Sandeep had brought her from her parental house on 23.10.2006. (iv) On the previous night at about 9:00 p.m. her husband and parents in law had beaten her, and (v) Soon after the incident her husband and parents in law had run away from the spot.

12. It is no doubt true that the aforesaid features do not figure in the dying declaration Ext. P-6 recorded by the Judicial Magistrate. However such non mention does not make both the dying declarations incompatible. The incompatibility or inconsistency can be said to arise if the assertions in one dying declaration are so diametrically opposed to the statements in the other that both cannot stand together. Such is

not the case in the present matter. At best it could be said that the aforesaid features of the matter were additionally spelt out in the statement Ext. P-13 given to the police. The incompatibility in the dying declarations Ext. P-13 and P-6 however is quite eloquent when it comes to the allegations against Rajbir, father in law. Though he was definitely ascribed a particular role in the statement Ext. P-13 given to the police, the declaration Ext. P-6 however specifically recorded that he was not present at all. The assertions being diametrically opposed would certainly make allegation against said Rajbir completely inconsistent. The Courts below were therefore perfectly justified in granting benefit of doubt to Rajbir. However as regards the role ascribed to the appellants there is no inconsistency or incompatibility in the dying declarations.

13. It may be useful at this juncture to quote the observations of this court in *Lakhan Versus State of Madhya Pradesh*² which are as follows:-

"12. A dying declaration recorded by a competent Magistrate would stand on a much higher footing than the declaration recorded by officer of lower rank, for the reason that the competent Magistrate has no axe to grind against the person named in the dying declaration of the

² 2010 (8) SCC 514

victim, however, *circumstances showing anything to the contrary should not be there in the facts of the case.* (Vide *Ravi Chander v. State of Punjab*, *Harjit Kaur v. State of Punjab*, *Koli Chunilal Savji v. State of Gujarat* and *Vikas v. State of Maharashtra*).

.....

21. In view of the above, the law on the issue of dying declaration can be summarised to the effect that in case the court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."

14. In the present case the dying declaration Ext. P-6 recorded by the Judicial Magistrate was in the presence of a doctor who had certified about the fitness of Sharmila before and after recording of such statement. There was not even a suggestion in the cross examination of the Judicial Magistrate that any of the relations of

Sharmila were present when such statement was recorded nor is there any circumstance which could cast a doubt about the genuineness of Ext. P-6 as recorded by the Judicial Magistrate. Further the certification by the doctor was also not put in challenge. Though statement Ext.P-13 recorded by PW10 completely satisfies the requirements, in the light of the law laid down by this Court in ***Lakhan Vs. State of Madhya Pradesh*** (supra) dying declaration Ext.P-6 as recorded by the Judicial Magistrate would certainly stand on a higher footing and we have no hesitation in placing intrinsic reliance thereon. We must add that we find no inconsistency between the statement Ext. P-13 recorded by PW10 on one hand and the dying declaration Ext. P-6 recorded by the Judicial Magistrate on the other as regards the involvement of the appellants.

15. It is true that PW-7 was the first Medical Officer to see Sharmila and according to the witness, Sharmila had not told her who had set Sharmila afire. However the fact remains that Sharmila was brought to the hospital by her husband appellant Sandeep and she was not given any extensive treatment in said hospital but was immediately referred to PGIMS Rohtak. In the circumstances it is possible that the victim did not have the occasion to disclose as to

who had set her afire. The other criticism that there was no evidence to suggest that Sharmila was harassed for demands of dowry is also incorrect. Said fact finds clear mention in the statement Ext. P-13 recorded by the police as well as the dying declaration Ext.P-6 recorded by the Judicial Magistrate and finds further corroboration in the testimony of PW-9, brother of deceased Sharmila. We therefore reject the submissions of Mr. Malhotra.

16. In our considered view, the conviction of the appellants is absolutely correct and justified. We therefore affirm the order of conviction and sentence as passed by the High Court and dismiss this appeal. The appellants shall serve out the sentence as awarded.

JUDGMENT

.....J.
(A.K. Sikri)

.....J.
(Uday Umesh Lalit)

New Delhi,
May 26, 2015