Rajaram vs The State Of Madhya Pradesh on 16 December, 2022

Author: S. Ravindra Bhat

Bench: Sudhanshu Dhulia, S. Ravindra Bhat

REPOR

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 2311 OF 2022
[@ SPECIAL LEAVE PETITION (CRL.) NO(S). 6762 of 2022]

RAJARAM …APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. …RESPONDENT(S)

JUDGMENT

S. RAVINDRA BHAT, J.

1. Special leave granted. The appellant (husband of the deceased) is aggrieved by his conviction under Section 498A of the Indian Penal Code (IPC) and the sentence imposed on him. His appeal, against the conviction and sentence in respect of that offence, was dismissed by the impugned judgment of the Madhya Pradesh High Court.

2. The prosecution alleged that on 23-04-2009 at 10:00 A.M., information was received from the hospital that a woman had been brought there by her husband (the appellant) in a burnt condition. At the request of Police Station Ashok Nagar District Ashoknagar, Guna, M.P, the medico legal certificate (MLC) of the injured Pushpa was issued. Her dying declaration was recorded.

Reason:

3. On 23-04-2009, some burnt clothes smelling of kerosene oil, one chimani, one broken mangalsutra smelling of kerosene oil, a match box with “Anand” containing 3-4 match sticks were seized. A spot map too, was prepared. Statements of witnesses were recorded. The injured Pushpa succumbed to her injuries on 10-05-2009 in the district hospital, Guna. A post-mortem was conducted. The seized articles were sent for FSL. Police, after completing the investigation filed the charge sheet against the Appellants for offence under Sections 302, 307, 304B, 498A/34 of Indian Penal Code (IPC) and under Section 3 and 4 of the Dowry Prohibition Act. The trial court, by order dated 30-9-2009, framed charges under Sections 498A, 302 or in the alternative 304B of IPC

against the Santi Bai, whereas framed charges under Sections 498A, 304B of IPC against remaining accused, namely the appellant, Ramdayal, Ram Singh, Kamla Bai and Susheela Bai @ Halki. The accused pleaded not guilty. The prosecution examined 15 witnesses. Susheela Bai @ Halki had initially appeared before the trial court and thereafter absented herself; she was declared absconding and a perpetual warrant of arrest was issued. The trial court, by the impugned judgments, convicted and sentenced Santi Bai for the offence under Section 302 IPC and the appellant and other accused for the offence under Section 498A IPC.

4. The appellant and the other accused challenged their conviction and sentence. The High Court, by the impugned order, rejected their appeals. Consequently, the appellant's conviction and sentence under Section 498A IPC was affirmed.

5. Mr. Divyakant Lahoti, learned counsel appearing on behalf of the appellant Rajaram, urged that the courts below fell into error in relying on the dying declaration by the deceased, his wife. It was argued that where a statement is made by a person as to the cause of her death or as to any of the circumstances of the transaction resulting in death, that statement would be admissible. It was argued that hence, allegations made by the deceased against the accused, i.e., the appellant Rajaram, in her dying declaration would be inadmissible as they were not of the circumstances of the transaction which resulted in her death.

6. It was next submitted that Dashrath Raikwar (P.W.1), the deceased's brother; Phool Chandra (P.W.2), the deceased's father; Mayabai (P.W.3), the deceased's sister; and Ramcharan (P.W.4) the deceased's brother-in-law did not support the prosecution version about cruelty inflicted upon her. In the circumstances, the appellant's conviction is unsustainable.

7. Learned counsel also urged that the courts below fell into error in not giving weight to the significant contradictions between the so-called dying declarations, Ex. P-11 and Ex. P-26. It was submitted that the testimonies of PW-7, who recorded Ex. P-11 and PW-10, the doctor, are inconsistent and improbable with respect to the time attributable to the document. Furthermore, the later declaration Ex. P-26 is suspicious; it was not recorded by securing clearance from any doctor about the conscious state of the late Pushpa. Given the fact that all material witnesses who could have alleged cruelty, relating to dowry demands, except the appellant, were named in Ex. P-11, the inclusion of the appellant, in the later dying declaration (Ex. P-26) is untrustworthy. The absence of the doctor when the statement was recorded and the fact that the appellant was not named for the first dying declaration, but in the second declaration renders both the dying declarations unbelievable. It was submitted that the High Court, in fact, discarded the second dying declaration.

8. It was lastly urged on behalf of the appellant that since the prosecution could not prove the charge on the count under Section 304B, he could not have been convicted on the basis of the dying declaration, because Section 32 of the Evidence Act renders relevant only statements relating to the circumstances surrounding the death of the person making it and that in the present case, the only dying declaration, Ex. P-11 nowhere mentions any act of cruelty attributable to the appellant.

9. On behalf of the state, it was argued by Mr. Yashraj Singh Bundela, learned counsel, that no interference with the concurrent findings of the courts below is called for and that the appeal involves appreciation of evidence. As there is nothing that can be termed as perverse or unreasonable as regards these findings, which are based on the evidence led, this court should not exercise its discretionary jurisdiction to upset or interfere with the findings.

10. It was submitted that the fact that the witnesses turned hostile may no doubt be a relevant aspect. Yet, this has to be weighed in with other factors, the most important being the dying declaration recorded as Ex. P-26. Counsel submitted that the first dying declaration, i.e., Ex. P-11 listed the actual perpetrators of the crime, which is those responsible for dousing the deceased with kerosene and setting her on fire, whereas Ex. P-26 contained details of the cruelty meted out to her since she had a disability and had a girl child. These and the people who treated her cruelly, taunted her, and demanded dowry were all named. They included the appellant, her husband. There was close proximity between the first and second statements. It was submitted that the absence of any endorsement by a doctor about the mental condition, or fitness to record the statement, or that it was recorded by a policeman cannot ipso facto result in its being ruled out.

Analysis and Findings

11. As can be gathered from the factual discussion, the incident, i.e., setting of the deceased on fire, her subsequently being moved to the hospital, where two statements were recorded, one by the Naib Tehsildar, certified by the doctor, and the other, a statement recorded by the police, are crucial for consideration in this case. In the dying declaration, Ex. P-11 recorded by PW-7, after the victim was examined by the doctor, the deceased mentioned the circumstances surrounding the Incident, i.e., how she was burnt:

> "I was sitting in the courtyard in the morning. Fighting was taking place. My both elder sisters-in-law (Jethani) were fighting. There was big adi, had poured kerosene oil one from it. My sisters-in-law (Jethani) Kiran and Shanti poured kerosene oil upon me and set me on fire from the match stick. My elder mother-in law was seeing by standing just there. My mother-in-law as not at home. My husband was out of the house." Later, during the course of recording of the declaration, she also stated:
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> "There are two Jeth, actually they are three Jeth, there are two mothers-in-law, the name of third Jethani is Sushila. She was not at home at that time. She used to fight and beat up me. My younger son is 6-7 months old. All used to beat. Mother-in law also used to beat up me. All the three Jeths used to fight with me. They called me lame. They used to demand dowry from me."

12. The recording of Ex. P-11 started at 10:35 and ended at 10:50. The appellant sought to make out a contradiction between the statement of witnesses. However, this court is unpersuaded that such contradiction is material. From the evidence, it appears that the second statement Ex. P-26 was recorded later by PW-15, the Officer in charge. After stating the circumstances under which the incident occurred- which were consistent with the contents of Ex. P-11, the deceased further stated:

> "…. I started burning and cried for saving me then they both fled away by leaving me burnt, then Dukra, my elder father-in-law by coming saved me, he died out the fire by throwing water on me. I have burnt up completely. Full clothes on my body have burnt. My face, breast, thigh, legs, hands have completely burnt. I am feeling very much pain. Then my husband and neighbouring persons have brought me to Ashok nagar for treatment. I had become unconscious at that time. My in-laws, husband, elder brothers-in-law Beeran, Halle alias Ramsingh, Praansingh alias Ramdayal, elder sisters-in-law Sushila, Kiranbai, Shantibai and mother in- law Kamlabai often by taunting for dowry used to beat up me for dowry demand. They used to tease me by calling lame. They used to demand rupees, motorcycle in dowry. These people had beaten up me last night also which I had told to my younger sister Mayabai over phone and that my condition is bad."

13. Section 32 of the Evidence Act, which is material for the purposes of this appeal, reads as under:

> "32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. -- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: --
>
> (1) When it relates to cause of death. --When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) Or is made in course of business.--When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) Or against interest of maker.--When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) Or gives opinion as to public right or custom, or matters of general interest.--When the statement gives the opinion of any such person, as to the existence of any public right or custom or

matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) Or relates to existence of relationship.--When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons as to whose relationship [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) Or is made in will or deed relating to family affairs. --When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) Or in document relating to transaction mentioned in Section 13, clause

(a).--When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in Section 13, clause (a). (8) Or is made by several persons and expresses feelings relevant to matter in question.--When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question."

14. This court has considered the above provision in numerous decisions and held that the weight and utility of a dying declaration depend upon the surrounding circumstances and the credibility which the court attaches to it, having regard to the evidence led before it. Therefore, whether it is essential to have medical certification before the statement is recorded, who records it, etc. are all fact dependent, and no stereotypical approach can be adopted by courts. In Laxman vs. State of Maharashtra1 a five-member Bench of this court explained the position, in law, as follows:

> "A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite.
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> 12002 (SUPP1) SCR 697 In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die.
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> There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has

> to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind.
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> Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

15. In a decision, Lakhan v. State of Madhya Pradesh,2 this court considered and indicated the approach which may be adopted, where the evidence includes multiple dying declarations, that may contain inconsistent facts:

> "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."

16. Recently, in Jagbir Singh v State of NCT Delhi,3 this court reviewed several previous decisions involving multiple dying declarations and re-stated the law in these terms:

> 22010 (9) SCR 705 3 (2019) 8 SCC 779 "30. A survey of the decisions would show that the principles can be culled out as follows:
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> a. Conviction of a person can be made solely on the basis of a dying declaration which inspires confidence of the court;
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> b. If there is nothing suspicious about the declaration, no corroboration may be necessary;
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> c. No doubt, the court must be satisfied that there is no tutoring or prompting; d. The court must also analyse and come to the conclusion that imagination of the deceased was not at play in making the declaration. In this regard, the court must look to the entirety of the language of the dying declaration; e. Considering material before it,

> both in the form of oral and documentary evidence, the court must be satisfied that the version is compatible with the reality and the truth as can be gleaned from the facts established; f. However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconciliable.
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> g. In such cases, where the inconsistencies go to some matter of detail or description but is incriminatory in nature as far as the Accused is concerned, the court would look to the material on record to conclude as to which dying declaration is to be relied on unless it be shown that they are unreliable; h. The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In a dying declaration, the Accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration but a dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two." i. In the third scenario, what is the duty of the court? Should the court, without looking into anything else, conclude that in view of complete inconsistency, the second or the third dying declaration which is relied on by the prosecution is demolished by the earlier dying declaration or dying declarations or is it the duty of the court to carefully attend to not only the dying declarations but examine the rest of the materials in the form of evidence placed before the court and still conclude that the incriminatory dying declaration is capable of being relied upon?"

17. In light of the above principles, it is necessary to consider the evidentiary value of the dying declaration, which was relied on by the prosecution to convict the appellant.

18. The trial court had relied upon the circumstances such as the presence of kerosene, the nature of burn injuries on the deceased, the articles such as match box which smelt of kerosene, and a broken mangalsutra, apart from two dying declarations (Ex. P-11 and Ex. P-26). The testimonies of the deceased's relatives were not of much consequence as none of them supported the prosecution. The High Court, in its impugned judgment, accepted and relied upon the dying declaration recorded by PW-7 (Ex. P-11), Naib Tehsildar Yasha Rai. However, the High Court held that the second dying declaration recorded by the Officer-in-Charge, PW-15 – in the form of a statement, could not be relied upon. The court was of the opinion that even though PW-15 was not required to obtain fitness certificate from the doctor, yet in view of the last line in the dying statement that her condition was bad, it was unsafe to rely on such a police statement. The High Court's findings on this aspect are as follows:

> "39. Before considering the submissions made by the Counsel for the Appellants, this Court would like to consider as to whether the police statement of the injured Pushpa, Ex. P.26 is reliable or not?
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> 40. As already pointed out, S.K. Chaturvedi (P.W. 15), who had recorded Police Statement of injured Pushpa, was not examined after the re-arrest of Appellant Susheela Bai @ Halki, and as evidence of S.K. Chaturvedi (P.W.15) was recorded in absence of Susheela Bai @ Halki, therefore, his evidence cannot be read either in favor or against the Appellant Susheela Bai @ Halki.

Thus, there is only one dying declaration, Ex. P.11 against the Appellant Susheela Bai @ Halki.

41. S.K. Chaturvedi (P.W.15) has stated that he had recorded the statements of the witnesses including that of injured/deceased Pushpa. If the police statement of injured/deceased Pushpa is considered then at the end of the statement, it is mentioned that her condition is very bad. Therefore, it is not clear as to whether the injured/deceased Pushpa was in a fit state of mind or not. Even otherwise, this witness has not clarified that on what date he had recorded the statement of injured/deceased Pushpa. It is true that while recording the police statement under Section 161 of Cr.P.C., this witness was not required to obtain the fitness certificate from the Doctor, but in view of the last line of her statement, that " her condition is very bad", this Court is of the considered opinion, that it would not be safe to rely on the Police Statement of the injured/deceased Pushpa, Ex. P.26.

42. Accordingly, the Police Statement of the injured/deceased Pushpa Bai, Ex. P.26 is hereby disbelieved."

19. The principles enunciated by the decision of this court, especially Laxman and the decisions dealing with multiple dying declarations, adduced in the course of a criminal trial, especially where the deceased had been a victim of burns and had succumbed to burn injuries and had prior to death made more than one dying declaration have indicated that test of credibility having regard to the overall facts on record, has to be adopted.

20. This court notices that the present is a case where the second dying declaration has been rejected completely by the High Court. In these circumstances, the cumulative weight of evidence relied upon by the High Court needs to be examined to ascertain whether the appellant is guilty of the offence he stands convicted for, i.e., Section 498A IPC. Ex. P-26, the second dying declaration is the only piece of evidence which names the appellant as one of the perpetrators of cruelty on the deceased along with the other accused. Both the courts below have noticed that in Ex. P-11, the first dying declaration, the appellant has not been named; rather he along with his father took the deceased in a critically injured state to the hospital. Undoubtedly, the focus of the first dying declaration is only upon the incident involving pouring of kerosene and setting the deceased on fire. The second dying declaration, Ex. P-26 alone elaborates acts of cruelty. That is the only piece of incriminating evidence against the accused. As far as the recovery of articles and the smell of kerosene in the report considered by the court are concerned, they are circumstances relating to the

incident of setting the deceased on fire. They do not further the prosecution's case under Section 498A as against the appellant.

21. Having regard to the above circumstances, especially the fact that the only evidence against the appellant, i.e., Ex. P-26 was discredited by the High Court, there is no other material to sustain his conviction. For these reasons, the impugned judgment and the appellant's conviction and sentence are hereby set aside. . The appeal is allowed but without any order as to costs.

.....J. [S. RAVINDRA BHAT] .....J. [SUDHANSHU DHULIA] New Delhi, December 16, 2022.