Lalita vs Vishwanath on 30 January, 2025

2025 INSC 173

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.1086 of 2017

LALITA

VERSUS

VISHWANATH & ORS.

O R D E R

1. This appeal is at the instance of the mother of the deceased (the de facto complainant) seeking to assail the Judgment and order passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No.125/2013 by which the High Court allowed the Criminal Appeal filed by the respondent - herein (original accused persons) and thereby acquitting them of the offence punishable under Sections 306, 498A read with Section 34 of the Indian Penal Code (IPC).

2. It is the case of the appellant that the deceased Dev Kanya was married to the Respondent No.1 – herein namely Vishwanath past 1½ years before the date of incident in question. It is her case that her daughter committed suicide she was incessantly harassed by her husband, father-in-law, mother-in- 16:38:04 IST Reason:

law and first wife of the husband.

3. Upon First Information Report being registered by the father of the deceased, the investigation started. The statements of various witnesses were recorded by the police.

4. The inquest panchnama of the dead body of the deceased was drawn in the presence of panch witnesses. The dead body was sent for post-mortem. The post-mortem report revealed that the cause of death was due to drowning. It is the case of the appellant that her daughter committed suicide by jumping into a well. The clothes and other articles were collected in the course of the investigation and were sent to the Forensic Science Laboratory for chemical analysis.

5. Upon completion of the investigation, charge-sheet came to be filed against all the four accused

persons.

6. The case came to be committed to the Court of Sessions under Section 209 of the Code of Criminal Procedure, 1973 (Cr PC).

7. Upon committal, the case crime to be registered as Sessions Case No.12/2012.

8. The Trial Court framed charge vide Exhibit '11' to which all the accused persons pleaded not guilty and claimed to be tried.

9. The prosecution examined the following witnesses in the course of the trial:-

1. Lalita Dadasaheb Bolke (Exh.27)

2. Rambhau Dhondiram Bolke (Exh.36),

3. Shivaji Bhaiamrao Pawar (Exh.40),

4. Dnyandev Hariram Patole (Exh.42),

5. Sonerao Kondiba Bodkhe (Exh.44),

6. Baasaheb Maruti Patole (Exh.45),

7. Dhondiram Bhanudas Bolke (Exh.46)

8. Dr. Blasahev Bhimrao Sawant (Exh.51) &

9. Brijpalsing Rajpalsing Thakur (Exh.54)

10. The prosecution also led the following documentary evidence in support of its case:-

1. Copy of sale deed of S. no. 24/2 admeasuring 1 H.2 R. dated 21/11/2009 at Exh. 28.

2. Copy of sale deed of S.o. 24/2 admeasuring 1 H. OR.

Dated 21/11/2009 at Exh. 29.

3. Copy of mutation entry of S. No. 24/2 admeasuring 1 h. 2 r. at Exh.30.

4. Copy of mutation entry of S. No. 24/2 admeasuring 1 H. O. R. at Exh. 31.

5. Copy of mutation entry dated 29/3/2011 at Exh. 32.

6. Copy of mutation entry dated 30/4/2011 at Exh. 33.

8. Complaint dated 29/8/2011 at Exh. 35.

9. Spot Panchanam Dated. 29/8/2011 at Exh. 41

10. Inquest Panchanama dated 29/8/2011 at Exh. 43

11. Provisional cause of death certificate at Exh. 52

13. Chemical Analyzers' report at Exh. 33/1.

14. Copy of affidavit of Devkanya w/o Vishwanath Borade at Article-'A'.

15. Copy of consent deed at Article 'B'

11. Upon closure of the recording of the oral evidence, the further statements of all the accused persons were recorded by the Trial Court under Section 313 of the Code.

12. Upon appreciation of the oral as well as documentary evidence on record, the Trial Court held all the four accused persons guilty of the offence enumerated above and sentenced them to undergo 10 years of rigorous imprisonment with fine of Rs.1000/-.

13. The accused persons, being dissatisfied with the Judgment and order of conviction passed by the Trial Court, went in appeal before the High Court.

14. The High Court upon re-appreciation and re-evaluation of the oral as well as documentary evidence on record allowed the appeal and acquitted all the four accused persons of the charges enumerated above.

15. The State did not deem fit to challenge the Judgment and order of acquittal passed by the High Court.

16. The mother, i.e., the appellant herein is here before this Court with the present appeal.

17. At this stage, it is relevant to note that although the first information report was lodged by father of the deceased yet before the trial commenced, he passed away.

18. In such circumstances, the mother though fit to come before this Court seeking to challenge the impugned Judgment and Order of acquittal passed by the High Court.

19. We heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondent Nos.1 to 4 (original accused persons) and the learned counsel appearing for the State of Maharashtra.

20. We are of the view that no error not to speak of any error of law could be said to have been committed by the High Court in acquitting all the four accused persons.

21. There is no cogent or any reliable evidence on the basis of which it could be said that the accused persons abated the commission of suicide.

22. Mere harassment or cruelty is not sufficient to infer abetement. There has to be some credible evidence that the accused persons aided or instigated the deceased in some manner to take the drastic step of putting an end to her life.

23. We do not rule out the possibility of the husband pressurizing the deceased to transfer the land once again on his name. However, even such instances, by themselves, may not be sufficient to come to the conclusion that the deceased was left with no alternative but to commit suicide.

24. The learned counsel appearing for the appellant would rely upon Section 113A of the Indian Evidence Act, 1872 (for short 'the Evidence Act').

25. In one of our recent pronouncements in the case of Ram Pyarey v. the State of Uttar Pradesh, Criminal Appeal No. 1408 of 2015, decided on 09.01.2025, we have explained the true purport of Section 113A of the Evidence Act, more particularly in what manner it shall be applied. We quote the relevant observations:-

> "It is relevant to note that under Section 113B, the Court shall presume dowry death unlike Section 113A where the provision says that Court may presume abetment of suicide. This is the vital difference between the two provisions which raises presumption as regards abetment of suicide. When the Courts below want to apply Section 113A of the Evidence Act, the condition precedent is that there has to be first some cogent evidence as regards cruelty & harassment. In the absence of any cogent evidence as regards harassment or abetment in any form like aiding or instigating, the court cannot straightway invoke Section 113A and presume that the accused abetted the commission of suicide."

26. Even with the aid of presumption under Section 113A of the Evidence Act, it is difficult to say that the accused persons abetted the commission of suicide. It is possible that the deceased might have felt bad because the first wife came back to the matrimonial home and being hyper sensitive might have taken the extreme step to commit suicide.

27. Before we close this matter, we deem it necessary to explain one very important aspect of the procedural law so far as it relates to proving the contents of the First Information Report through the Investigating Officer. In other words, if the first informant has passed away before stepping into the witness box, then whether the contents of such First Information Report can be proved through the evidence of the Investigating Officer and read into the evidence.

28. In the case on hand, as noted above, the First Information Report was lodged by the father of the deceased. However, before the father could step into the witness box, he passed away. In such circumstances, the Trial Court permitted the Investigating Officer to prove the contents of the First Information Report Exhibit-35 and read into evidence as per Section 67 of the Evidence Act.

29. The basic purpose of filing a First Information Report is to set the criminal law into motion. A First Information Report is the initial step in a criminal case recorded by the police and contains the basic knowledge of the crime committed, place of commission, time of commission, who was the victim, etc. The term 'First Information Report' has been explained in the Code of Criminal Procedure, 1973 by virtue of Section 154, which lays down that:

> "Every information relating to the commission of a cog- nizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the infor- mant and every such information, whether given in writ- ing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this be- half.

30. F.I.Rs. can be registered by a victim, a witness or some- one else with the knowledge of the crime. The police can record three different kinds of statements. The first kind of state- ment is one which can be recorded as an F.I.R., the second kind of statement is one which can be recorded by the police during the investigation, and the third kind of statement is any kind of statement which would not fall under any of the two cate- gories mentioned above. Evidence is the matter of testimony manifesting the fact on a particular precision or circum- stances. The First Information Report is not by itself a sub- stantial piece of evidence and the statement made therein can- not be considered as evidence unless it falls within the purview of Section 32 of the Evidence Act. It is an admitted fact that the original first informant because of the injuries caused by the applicants. The relative importance of a First Information Report is far greater than any other statement recorded by the police during the course of the investigation. It is the foremost information the police gets about the com- mission of an offence and which can be used to corroborate the story put-forward by the first informant under Section 157 of the Evidence Act or to contradict his version by facts under Section 145 of the Evidence Act in case he is summoned as a witness in the case by the Court. It may happen that the infor- mant is the accused himself. In such cases, the First Informa- tion Report lodged by him cannot be used as an evidence against him because it is embodied in the basic structure of our Con- stitution that a person cannot be compelled to be a witness against himself.

31. In certain cases, the First Information Report can be used under Section 32(1) of the Evidence Act or under Section 8 of the Evidence Act as to the cause of informant's death or as a part of the informant's conduct. Section 32 of the Evidence Act 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 facts in issue or rel- evant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evid- ence, or whose presence cannot be procured without an amount of delay or expense which, under the circum- stances of the case, the court considers unreasonable, or who is kept out of the way by the adverse party, are themselves relevant facts in the following cases:" (1) When it relates to cause of death:- When the state-

ment 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 state- ments are relevant whether the person who made them was or was not, at the time when they were made, under ex- pectation 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 state- ment was made by such a person in the ordinary course of business and, in particular, and without prejudice to the generality of the foregoing provisions of this clause, when it consists of any entry or memorandum made by him in books kept in the ordinary course of business. (2A) Or is made in discharge of professional duty etc.:-

> When the statement consists of an entry or memorandum made by such person in the discharge of professional duty or of an acknowledgement written or signed by such person in respect of the receipt of money, goods, secur- ities 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.
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> (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.

Explanation: A recital as regards boundaries of immov- able property in document containing such statements, as to the nature or ownership or possession of the land of the maker of the statement or of adjoining lands belong- ing to third persons, which are against the interests of the maker of the statement, are relevant and it is not necessary that the parties to the document must be the same as the parties to the proceedings or their privies." (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 gen- eral 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 a [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 af- fairs:- 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 relat- ing to the affairs of the family to which any such de- ceased 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 documents relating to transactions mentioned in section 13, clause (a): When the statement is con- tained in any deed, will or other document, being a deed, will or other document which relates to any trans- action by which a right or custom was created, claimed, modified, recognized, asserted or denied or which was inconsistent with its existence, as mentioned in clause

(a) of section 13.

Explanation I:- Such statement is relevant where the question in the proceeding now before the court is as to the existence of the right or custom or if such state- ment related to facts collateral to the proceeding and it is not necessary that the parties to the document must be the same as the parties to the proceeding or their privies.

Explanation II:- A recital as regards boundaries of im- movable property in a document containing such state- ment, as to the nature or ownership or possession of the land of the maker of the statement or of adjoining lands belonging to third persons, shall be relevant and it is not necessary that the parties to the document must be the same as the parties to the proceeding or their privies."
(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.

Illustrations

(a) The question is whether A was murdered by B: or

(b) A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B: or The question is, whether A was killed by B under such circumstances that a suit would lie against B by As widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable were under consideration, are relev- ant facts.

(b) The question is as to the date of As birth. An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regu- larly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for cer- tain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at As orders, is a relevant fact.

(f) The question is, whether A and B were legally mar- ried.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact."

32. If the informant dies, the First Information Report can be, unquestionably, used as a substantive evidence. A prerequisite condition must be fulfilled before the F.I.R. is taken as a substantive piece of evidence i.e. the death of the informant must have nexus with the F.I.R. filed or somehow having some link with any evidence regarding the F.I.R. This is what has been explained by this Court in the case of Damodar Prasad v. State of U.P. [(1975) 3 SCC 851 : AIR 1975 SC 757].

33. There are plethora of decisions taking the view that an F.I.R. can be a dying declaration if the informant dies of his injuries after lodging the same. [See Munna Raja v. State of M.P. ((1976) 3 SCC 104 : AIR 1976 SC 2199)].

34. Another important thing is that for an F.I.R. lodged by a deceased person to be treated as substantial, its contents must be proved. It has to be corroborated and proved for there to be any value of the same in the case. The F.I.R. can be used by the defence to impeach the credit of the person who lodged the F.I.R. under Section 154(3) of the Evidence Act. In case the death of the informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injur- ies inflicted on him in relation to a matter, the contents of the F.I.R. would not be admissible in evidence. In such circum- stances, the contents cannot be proved through the

Investigat- ing Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact con- tents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Of- ficer can, in his deposition, identify the signature of the first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date on a particular police station.

35. It is absolutely incorrect on the part of the Trial Court and the High Court to say that in the absence of the first in- formant, the police officer can prove the contents of the F.I.R. as per Section 67 of the Evidence Act.

36. In the case of Harkirat Singh v. State of Punjab [(1997) 11 SCC 215 : AIR 1997 SC 3231], this Court observed as under:-

> "In our considered view, the High Court was not justi- fied in treating the statement allegedly made by Kharaiti Ram during inquest proceedings as substantive evidence in view of the embargo of Section 162, Cr. P.C. Equally unjustified was the High Courts reliance upon the contents of the FIR lodged by Walaiti Ram who, as stated earlier, could not be examined during the trial as he had died in the meantime. The contents of the FIR could have been used for the purpose of corroborating or contradicting Walaiti Ram if he had been examined but under no circumstances as a substantive piece of evi- dence."

37. In the case of Hazarilal v. State (Delhi Administra- tion) [(1980) 2 SCC 390 : AIR 1980 SC 873], this Court, in para 7, observed as under:-

> "The learned counsel was right in his submission about the free use made by the Courts below of statements of witnesses recorded during the course of investigation. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any en-
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> quiry or trial in respect of any offence under investig-
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> ation at the time when such statement was made, except for the purpose of contradicting the witness in the man- ner provided by S. 145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter re- ferred to in his cross-examination. The only other ex- ception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of S. 32 (1) of the Indian Evidence Act or permitted to be proved under Section 27 of the Indian Evidence Act. Section 145 of the Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing and reduced into writing and relevant to matters in question, without

> such writing being shown to him or being proved but, that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The Courts below were clearly wrong in using as substantive evid- ence statements made by witnesses in the course of in- vestigation. Shri. H.S. Marwah, learned counsel for the Delhi Administration amazed us by advancing the argument that the earlier statements with which witnesses were confronted for the purpose of contradiction could be taken into consideration by the Court in view of the definition of "proved" in Section 3 of the Evidence Act which is, "a fact is said to be proved when, after con- sidering the matters before it, the Court either be- lieves it to exist or considers its existence so prob- able that a prudent man, ought, in the circumstances of the particular case to act upon the supposition that it exists". We need say no more on the submission of Shri. Marwah except that the definition of proved does not en- able a Court to take into consideration matters, includ- ing statements, whose use is statutorily barred."

38. We have to our benefit a very lucid and erudite judgment of the Madhya Pradesh High Court in the case of Umrao Singh v. State of M.P. [1961 Criminal L.J. 270]. In this case, the petitioners Umrao Singh and Kunwarlal were convicted of the offence punishable under Section 323 of the Penal Code and sen- tenced to two months rigorous imprisonment. The case of the prosecution was that on 27th August 1959, the petitioners named above belaboured Barelal who had gone out to graze his cattle, and who was blamed by the accused to have caused damage to their crops. Barelal, however, died a natural death after six months of the occurrence, but before he could be examined as a witness. It was contended that the F.I.R. lodged by Bare- lal could not be considered by the Courts below and that the evidence of the solitary witness, Pannala was unreliable, as he was not mentioned in the list of witnesses filed by the prosec- ution. In this set of facts, the Court observed as under:-

> "4. It is true that the first information report is not by itself a substantive piece of evidence and the state- ment made therein cannot be considered as evidence un- less it falls within the purview of S. 32 of the Evid- ence Act. It is an admitted fact that Barelal did not die because of the injuries caused by the petitioners. Section 32 was inapplicable.
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> 5. It is true that in the list of witnesses Pannalal's name has been mis-spelt as 'Dhannalal', but this doubt is removed when the first information report is looked into. There, Pannalal's name is mentioned. Shri. Dey contends that it is not permissible to look at the F.I. R. at all. In my opinion this argument cannot be accep-

ted. It is proved by Ram Ratan P.W. 6 that he recorded the report which was lodged by Barelal There is a dis- tinction between factum and truth of a statement. It has been aptly pointed out by Lord Parker C.J. in R. v. Wil- lis (1960) 1 W.L.R. 55 that evidence of a statement made to a witness by a person who is not himself called as witness may or may not be hearsay.

It is hearsay and inadmissible when the object of the evidence is to establish what is contained in the state- ment; it is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement but the fact that it was made. According to Ram Ratan, Barelal mentioned Pannalal's name to him. Applying the above dictum, Ramratan's evidence is inad- missible to prove that Pannalal was in fact present at the time of the occurrence; but Ram Ratan's statement is admissible to prove that Barelal had mentioned the name of Pannalal to the witness."

39. In the overall view of the matter, we are convinced that no case is made out for interference.

40. In the result, this Appeal fails and is hereby dismissed.

……J (J.B. PARDIWALA) ……J (R. MAHADEVAN) NEW DELHI 30TH JANUARY, 2025.