State Of M.P vs Dal Singh & Ors on 21 May, 2013

Equivalent citations: AIR 2013 SUPREME COURT 2059, 2013 (14) SCC 159, 2013 AIR SCW 2978, AIR 2013 SC (CRIMINAL) 1381, 2014 (1) AJR 258, (2013) 2 MARRILJ 653, (2013) 5 ADJ 517 (SC), 2013 CRILR(SC&MP) 596, (2013) 127 ALLINDCAS 196 (SC), 2013 (5) ADJ 517, 2013 (7) SCALE 513, 2013 (4) KCCR 317 SN, (2013) 2 CURCRIR 690, (2013) 55 OCR 1015, (2013) 2 KER LT 135, (2013) 3 RECCRIR 1, (2013) 7 SCALE 513, (2013) 3 DLT(CRL) 87, (2013) 82 ALLCRIC 443, (2013) 4 ALLCRILR 239, 2013 CRILR(SC MAH GUJ) 596, (2013) 2 CRILR(RAJ) 596, 2013 (2) ALD(CRL) 348

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Bench: Dipak Misra, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2303 of 2009

State of Madhya Pradesh
…Appellant

Versus

Dal Singh & Ors. …Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and order dated 30.8.2006, passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.2152 of 2003, by way of which it has set aside the conviction of the respondents under Sections 498-A and 302, read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and acquitted them.

2. Facts and circumstances giving rise to this appeal are :-

A. That the deceased Kusum Rani got married to Hallu @ Chandrabhan, the 2nd respondent herein, in the year 2001. In her marital home, she was ill-treated by her parents-in-law, respondents 1 and 3 herein. They would constantly tell her that she was incapable of doing the house work properly, and her mother-in-law did not give her sufficient food to eat.

B. On 29.11.2002 at noon, when the deceased returned home after her bath in the pond, her mother-in-law hurled abuses at her and inquired what she had been doing at the pond. When she replied that she had been washing clothes there, her mother-in-law gave her few slaps, as a result of which the deceased began to cry. Her mother-in-law then directed her husband to burn her alive. Her father-in-law had thus poured kerosene on her and had asked his wife to set her on fire, as a result of which her mother-in-law lit a matchstick and threw the same at her. Since the deceased began to scream, her parents-in-law came out of the house and bolted the door from the outside. On hearing her shriek, a few villagers sent news of the same to her parents who resided in a neighboring village, at a distance of about half a kilometer. Her father, mother and uncle thus came to the place of occurrence. The door was opened by them, and the deceased was taken out.

C. The deceased Kusum narrated the said incident to her parents, and thereafter she was taken in a trolley to the Police Station, Nohta in a severely burnt condition, where she herself lodged a report narrating the incident, and at about 2 p.m., on the basis of the complaint, an FIR, Ex.P-17 was recorded.

D. The Investigating Agency made all the necessary arrangements in order to record her dying declaration and the Executive Magistrate P.K. Chaturvedi (PW.12), was called for the aforementioned purpose. Her dying declaration was recorded by the Executive Magistrate and subsequently, the deceased was admitted to the Government Hospital, Damoh at 3.25 p.m., where she died at 3.35 p.m. Intimation of her death was communicated by the hospital officials to the Police. The Investigating Agency thus took over the dead body of the deceased, and sent it for post-mortem. They also seized all the necessary articles from the spot, prepared the panchnama, and after recording the statements of the witnesses, submitted a charge sheet before the competent court, which in turn, committed the case to the Court of Sessions. Hence, trial commenced after framing charges under Sections 498-A, 302 and 306 IPC. The accused persons abjured their guilt. E. In order to prove the charges, the prosecution examined as many as 17 witnesses, and placed reliance on Ex.P1 to P24. The respondents- accused took the defence of an alibi in their statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C'), stating that they had been in their agricultural field at the time of the said incident and it was here that they had received information about the incident. The deceased had committed suicide and they were being falsely been implicated. F.

The learned Additional Sessions Judge, Damoh, in Sessions Trial No.305 of 2002, vide judgment and order dated 6.12.2003, after appreciating the material on record, recorded findings of fact to the effect that the deceased had not committed suicide, and that the respondents-accused were guilty of the offences punishable under Sections 498-A and 302, r/w Section 34 IPC. They were convicted and sentenced under Section 498-A IPC for two years RI and a fine of Rs.500/- each, in default of payment of fine, to further undergo one month RI; and under Section 302/34 IPC, to undergo imprisonment for life and a fine of Rs.2,000/- each, in default of payment of fine, to suffer further RI for 6 months.

G. Aggrieved by the aforesaid order of conviction and sentence, the respondents-accused challenged the same before the High Court, preferring Criminal Appeal No.2152 of 2003, which was allowed by the High Court vide its impugned judgment and order, acquitting all the accused.

Hence, this appeal.

3. Ms. Vibha Datta Makhija, learned standing counsel has submitted, that the only ground taken by the High Court for reversing the judgment and order of the Trial Court was that conviction can be based solely upon a dying declaration, provided that the same is found to be trustworthy. However, in the instant case, as the deceased had 100 per cent burn injuries, she would not have in all probability, been in a position to make a statement. Additionally, in the absence of a certificate provided by a doctor to the extent that she had in fact been fit enough to make such a statement, the said dying declaration could not be relied upon, as she had died as a result of such injuries on her person, after traveling about 10 k.ms. from the place of occurrence to the Police Station. The High Court doubted her ability to speak and also the lodging of the FIR. There is sufficient evidence on record to show that Kusum had been ill-treated by her parents-in-law, and thus that they were responsible for causing her death. A person having 100 per cent burns can make a statement, and a certificate of fitness provided by a doctor is not a condition precedent for placing reliance upon a dying declaration. Therefore, the appeal deserves to be allowed.

4. Per contra, Ms. Nidhi, learned counsel for the respondents has submitted, that the FIR alleged to have been lodged by Kusum, deceased, bore her thumb impression and has also stated that she had narrated the entire incident, on the basis of which an FIR was lodged. The High Court has rightly reached the conclusion that a person with 100 per cent burns could neither affix a thumb impression, nor manage to speak, and therefore, the respondents have rightly been acquitted. The parameters laid down by this Court for interference against an order of acquittal by the High Court do not require interference. Moreover, the said incident took place about 12 years ago. The respondents have suffered considerably. Thus, at such a belated stage, no interference is called for. There are material contradictions in the two dying declarations, as well as in the depositions of the witnesses. The appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

Appeal against acquittal:

6. It is a settled legal proposition that in exceptional circumstances, the appellate court for compelling reasons should not hesitate to reverse a judgment of acquittal passed by the court below, if the findings so recorded by the court below are found to be perverse, i.e. if the conclusions arrived at by the court below are contrary to the evidence on record, or if the court's entire approach with respect to dealing with the evidence is found to be patently illegal, leading to the miscarriage of justice, or if its judgment is unreasonable and is based on an erroneous understanding of the law and of the facts of the case. While doing so, the appellate court must bear in mind the presumption of innocence in favour of the accused, and also that an acquittal by the court below bolsters such presumption of innocence. (Vide: Abrar v. State of U.P., AIR 2011 SC 354; and Rukia Begum v. State of Karnataka, AIR 2011 SC 1585).

Discrepancies:

7. So far as the discrepancies, embellishments and improvements are concerned, in every criminal case the same are bound to occur for the reason that witnesses, owing to common errors in observation, i.e., errors of memory due to lapse of time, or errors owing to mental disposition, such as feelings shock or horror that existed at the time of occurrence.

The court must form its opinion about the credibility of a witness, and record a finding with respect to whether his deposition inspires confidence. "Exaggeration per se does not render the evidence brittle. But it can be one of the factors against which the credibility of the prosecution's story can be tested, when the entire evidence is put in a crucible to test the same on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of a statement made by the witness at an earlier stage. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to contradictions in material particulars, i.e. which materially affect the trial, or the core of the case of the prosecution, render the testimony of the witness as liable to be discredited.

Where such omission(s) amount to contradiction(s), raising serious doubts about the truthfulness of a witness, and other witnesses also make material improvements before the court in order to make their evidence acceptable, it cannot be said that it is safe to rely upon such evidence. (Vide: A. Shankar v. State of Karnataka, AIR 2011 SC 2302).

Whether 100 per cent burnt person can make a dying declaration or put a thumb impression:

8. In Mafabhai Nagarbhai Raval v. State of Gujarat, AIR 1992 SC 2186, this Court dealt with a case wherein a question arose with respect to whether a person suffering from 99 per cent burn injuries could be deemed capable enough for the purpose of making a dying declaration. The learned trial Judge thought that the same was not at all possible, as the victim had gone into shock after receiving such high degree burns. He had consequently opined, that the moment the deceased had seen the flame, she was likely to have sustained mental shock. Development of such shock from the very

beginning, was the ground on which the Trial Court had disbelieved the medical evidence available. This Court then held, that the doctor who had conducted her post-mortem was a competent person, and had deposed in this respect. Therefore, unless there existed some inherent and apparent defect, the court could not have substitute its opinion for that of the doctor's. Hence, in light of the facts of the case, the dying declarations made, were found by this Court to be worthy of reliance, as the same had been made truthfully and voluntarily. There was no evidence on record to suggest that the victim had provided a tutored version, and the argument of the defence stating that the condition of the deceased was so serious that she could not have made such a statement was not accepted, and the dying declarations were relied upon.

A similar view has been re-iterated by this Court in Rambai v. State of Chhatisgarh, (2002) 8 SCC 83.

9. In Laxman v. State of Maharashtra, AIR 2002 SC 2973, this Court held, that a dying declaration can either be oral or in writing, and that any adequate method of communication, whether the use of words, signs or otherwise will suffice, provided that the indication is positive and definite. There is no requirement of law stating that a dying declaration must necessarily be made before a Magistrate, and when such statement is recorded by a Magistrate, there is no specified statutory form for such recording. Consequently, the evidentiary value or weight that has to be attached to such a statement, necessarily depends on the facts and circumstances of each individual 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, and where the same is proved by the testimony of the Magistrate, to the extent that the declarant was in fact fit to make the statements, then even without examination by the doctor, the said declaration can be relied and acted upon, provided that the court ultimately holds the same to be voluntary and definite. Certification by a doctor is essentially a rule of caution, and therefore, the voluntary and truthful nature of the declaration can also be established otherwise.

10. In Koli Chunilal Savji v. State of Gujarat, AIR 1999 SC 3695, this Court held, that the ultimate test is whether a dying declaration can be held to be truthfully and voluntarily given, and if before recording such dying declaration, the officer concerned has ensured that the declarant was in fact, in a fit condition to make the statement in question, then if both these aforementioned conditions are satisfactorily met, the declaration should be relied upon. (See also: Babu Ram & Ors. v. State of Punjab, AIR 1998 SC 2808).

11. In Laxmi v. Om Prakash & Ors., AIR 2001 SC 2383, this court held, that if the court finds that the capacity of the maker of the statement to narrate the facts was impaired, or if the court entertains grave doubts regarding whether the deceased was in a fit physical and mental state to make such a statement, then the court may, in the absence of corroborating evidence lending assurance to the contents of the declaration, refuse to act upon it.

12. In Govindappa & Ors. v. State of Karnataka, (2010) 6 SCC 533, it was argued that the Executive Magistrate, while recording the dying declaration did not get any certificate from the medical officer regarding the condition of the deceased. This Court then held, that such a circumstance itself is not

sufficient to discard the dying declaration. Certification by a doctor regarding the fit state of mind of the deceased, for the purpose of giving a dying declaration, is essentially a rule of caution and therefore, the voluntary and truthful nature of such a declaration, may also be established otherwise. Such a dying declaration must be recorded on the basis that normally, a person on the verge of death would not implicate somebody falsely. Thus, a dying declaration must be given due weight in evidence.

13. In State of Punjab v. Gian Kaur & Anr., AIR 1998 SC 2809, an issue arose regarding the acceptability in evidence, of the thumb impression of Rita, the deceased, that appeared on the dying declaration, as the trial court had found that there were clear ridges and curves, and the doctor was unable to explain how such ridges and curves could in fact be present, when the skin of the thumb had been completely burnt. The court gave the situation the benefit of doubt.

14. The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a Doctor in respect of such state of the deceased, is not essential in every case.

Undoubtedly, the subject of the evidentiary value and acceptability of a dying declaration, must be approached with caution for the reason that the maker of such a statement cannot be subjected to cross-examination. However, the court may not look for corroboration of a dying declaration, unless the declaration suffers from any infirmity.

So far as the question of thumb impression is concerned, the same depends upon facts, as regards whether the skin of the thumb that was placed upon the dying declaration was also burnt. Even in case of such burns in the body, the skin of a small part of the body, i.e. of the thumb, may remain intact. Therefore, it is a question of fact regarding whether the skin of the thumb had in fact been completely burnt, and if not, whether the ridges and curves had remained intact.

15. The present case requires to be examined in light of the aforesaid settled legal propositions.

With the help of the learned counsel for the parties, i.e. Ms. Vibha Datta Makhija and Ms. Nidhi, we have gone through the entire evidence on record, and it may be necessary to provide a bird's eye view of the same, particularly of the portion provided by the magistrate, who had recorded the deceased's dying declaration.

16. P.K. Chaturvedi (PW.12), the Executive Magistrate had recorded the dying declaration of the deceased, and he deposed that no doctor had been available at Nohta at the relevant time. He had been called by the police, and despite this fact he had asked the police officer to call a doctor. He further deposed that he had recorded the dying declaration in the form of questions and answers and that he had satisfied himself that Kusumbai, had in fact been fit enough to make such a statement. While making her statement, Kusumbai had been fully conscious, and she had placed her thumb impression on the same. When her statement was recorded, she was tutored by anybody,

though some other persons had been present at such time. Kusumbai, deceased, had spoken continuously and clearly.

17. Similarly, R.S. Parmar (PW.14), the Investigating Officer has deposed, that he had recorded the report as had been narrated by Kusumbai. He had not added/omitted anything in the said report. He had read over the same to her after writing it, after which she admitted it to be true, and thus put her thumb impression upon the same. He has further deposed that he had called Naib Tehsildar Jabera to record the dying declaration of Kusumbai, and as no doctor had been available in Nohta at the said time, a doctor could not be arranged.

18. In the dying declaration recorded by P.K. Chaturvedi (PW.12), it is stated that the mother-in-law of Kusumbai had set her on fire by throwing kerosene oil on her, and that her father-in-law had also set her on fire. Her husband Chandrabhan, had closed the door. While she screamed in pain, her uncle Hakam Singh had brought her out by opening the door. While lodging the FIR, it was recorded by R.S. Parmar (PW.14), that her father-in-law Dal Singh had said, 'burn this bitch'. Her father-in-law had then lifted the kuppi of kerosene oil, and had poured the same on her, after which he had told his wife to set her ablaze. Thereafter, her mother-in-law had lit a matchstick and set her on fire. She had started to scream because of pain. Her husband Hallu had then closed the door of the room. After hearing the hue and cry raised by her, a person from the village had informed her family who lived closeby. Her father Nirpat Singh, uncle Hakam Singh and several other persons had come there, and her uncle Hakam Singh, had opened the door and had brought her out. There is thus, some discrepancy in both the dying declarations.

19. Dr. S.K. Jain (PW.8) deposed on 7.4.2003, stating that he had been the medical officer in the district hospital Damoh on 29.11.2002. Kusumbai had been brought for medical examination from the police station in an injured state and he had examined her. According to him, she had on her person, 100% superficial burn injuries, and the smell of kerosene oil had also been present in the body of the victim. She was unconscious at the time, and her pulse and blood pressure had been difficult to detect. She was able to breathe, but with great difficulty. She had died after some time. In his cross-examination, he has deposed that at the time of examination at the initial stage, Kusumbai had been unconscious, and had been unable to speak. He has further opined that if a person suffers 100% burn injuries, then he may not be able to speak.

20. Burn injuries are normally classified into three degrees. The first is characterised by the reddening and blistering of the skin alone; the second is characterised by the charring and destruction of the full thickness of the skin; and the third is characterized by the charring of tissues beneath skin, e.g. of the fat, muscles and bone. If a burn is of a distinctive shape, a corresponding hot object may be identified as having been applied to the skin, and thus the abrasions will have distinctive patterns.

21. There may also be in a given case, a situation where a part of the body may bear upon it severe burns, but a small part of the body may have none. When burns occur on the scalp, they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt by their appearance, their position in areas highly susceptible to burning, and on fleshy areas

by the findings recorded after internal examination. Shock suffered due to extensive burns is the usual cause of death, and delayed death may be a result of inflammation of the respiratory tract, caused by the inhalation of smoke. Severe damage to the extent of blistering of the tongue and the upper respiratory tract, can follow due to the inhalation of smoke. (See: Modi's Medical Jurisprudence and Toxicology by Lexis Nexis Butterworths Chapter 20).

22. FIR (Ex. P-17) – It was recorded by Kusum Bai – deceased, on 29.11.2002 at about 2.00 p.m. According to the FIR, the said incident had occurred at 10.00 a.m. and the distance between the police station and place of occurrence is about 10 Kms. The deceased in the FIR, has named all the three accused. The deceased has mentioned that her mother-in-law had not been giving her adequate meals, and continuously harassed her for not working. On that fateful day, her mother-in-law had slapped her 2-3 times and she had started to cry loudly. Thereafter, her father-in-law had asked the other accused, if this bitch should be burnt alive? He had then brought a can of kerosene oil and poured its contents over her. Her mother-in-law lit a matchstick and had thrown its contents on her, setting her ablaze. She had then begun to scream owing to the pain. Her husband had locked the door. Her parents-in-law and husband had set her on fire with the intention of causing her death. She had burns all over her body.

There is a thumb impression on the FIR which appears to be normal. It has ridges and curves.

23. Ex.P-14 is the dying declaration recorded by the Executive Magistrate, Jabera. The original reveals that the executive Magistrate had asked the SHO to call a doctor at 2.25 p.m., but there is an endorsement stating that there was no government doctor available at Nohta. What the deceased has said, is that her mother in law had set her on fire. Her father-in-law and husband had also been party to the same. She has also stated that they had never provided her adequate food. She, in anger, had told them not to harass her everyday and to simply kill her (set me ablaze). Her mother-in-law had poured kerosene oil on her and had then set her ablaze, (humari saas ne mitti ka tal dalkar jalaya). Her father-in-law set her on fire (Sasur ne aag lagayi). Her husband bolted the door.

There is thumb impression of the deceased on the FIR also. We have carefully seen the thumb impression of the deceased on the said dying declaration. The same has ridges and curves.

24. It is evident from the record that defence neither put any question in cross-examination to either the Executive Magistrate, or to the doctor who had examined the deceased in the hospital, or to Dr. S.K. Jain (PW.8), who had conducted the autopsy on the body of the deceased with respect to whether the skin of the thumb was also burnt, or whether the same was intact. Nor was any such question put to R.S. Parmar (PW.14), who had recorded the FIR, which can also be treated as a dying declaration.

25. The respondents in their statements under Section 313 Cr.P.C. denied their presence at home at the time of incident, taking the plea that they had been working in their agricultural field. They had rushed to the place of occurrence only after learning about the incident. They further took the defence that Kusumbai had committed suicide by burning herself, and that it was on being tutored by her parents that she had given a dying declaration against them. The trial court however, rejected

the suggestion made by Mannu Singh (PW.5), to the effect that Kusumbai had caught fire while preparing food on the ground. Kerosene oil had been found on her body and in her burnt clothes and hair. Evidence has been led by the prosecution witnesses to the extent that she had died within a short span of 10 months of her marriage, and that she had been ill-treated by her parents-in-law as she was not being given proper food etc. She had been harassed and tortured by her in-laws, as she was not good looking, could not cook well, and had been unable to do household work properly. She was considered to have a temperamental nature, and thus had also been slapped. This evidence has not been challenged by the defence.

26. The contradictions raised by the defence in the two dying declarations, as regards who had put the kerosene oil on her, and who had lit the fire have been carefully examined and explained by the trial court. Furthermore, in such a state of mind, one cannot expect that a person in such a physical condition, would be able to give the exact version of the incident. She had been suffering from great mental and physical agony. Upon proper appreciation of the evidence on record, the trial court had found the dying declarations to be entirely believable, and worth placing reliance upon, but the High Court on a rather flimsy ground, without appreciating material facts, has taken a contrary view. In our opinion, as the defence did not put any question either to the executive magistrate, or to the I.O., or to the doctors who had examined her or conducted the post-mortem, with respect to whether any part of the thumb had skin on it or not, as in both the dying declarations, ridges and curves had been clearly found to exist, we do not see any reason to dis-believe the version of events provided by the executive magistrate and the I.O., who had recorded the dying declarations. No suggestion was made to either of them in this regard, nor was any explanation furnished with respect to why these two independent persons who had recorded the dying declarations, would have deposed against the respondents accused. In the event that both of them had found the deceased to be in a fit physical and mental condition to make a statement, there exists no reason to disbelieve the same. In light of such a fact-situation, the concept of placing of a thumb impression, loses its significance altogether.

27. We cannot accept the submissions made on behalf of the respondents stating that Kusumbai had been tutored by her parents, as the evidence on record clearly reveals that the tractor had been brought at the instance of the respondents, and that they had been present in the trolley with her parents and other relatives throughout. Therefore, her parents and other relatives could have had no opportunity to implicate the respondents, or to tutor her.

28. Thus, in view of the above, the appeal succeeds and is allowed. The judgment and order impugned before us, passed by the High Court is set aside, and the judgment and order of the trial court is restored. The respondents are directed to surrender within a period of four weeks from today, failing which the learned Chief Judicial Magistrate, Damoh, Madhya Pradesh, shall take them into custody and send them to jail to serve out the remaining part of their sentence. A copy of the order be sent to the CJM by the registry.

.....J. (Dr. B.S. CHAUHAN) .....J. (DIPAK MISRA) New Delhi, May 21, 2013
