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(1999) 09 SC CK 0094

Supreme Court of India

Case No: Criminal Appeal No. 748 of 1998

Ramesh Prasad		APPELLANT
	Vs	
The State of Bihar		RESPONDENT

Date of Decision: Sept. 17, 1999

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 201, 302, 498(A)

Citation: (1999) 3 ACR 2167 : AIR 2000 SC 398 : (1999) AIRSCW 4540 : (1999) 2 ALD(Cri) 880 : (2000) 1 ALT(Cri) 75 : (2000) CriLJ 503 : (1999) 4 Crimes 303 : (1999) 7 JT 115 : (2000) 1 PLJR 31 : (2000) 1 RLW 4 : (1999) 6 SCALE 1 : (1999) 9 SCC 433 : (1999) 9 Supreme

Hon'ble Judges: S.N. Phukan, J; G. T. Nanavati, J

Bench: Division Bench

Final Decision: dismissed

Judgement

@JUDGMENTTAG-ORDER

G.T. Nanavati, J.
The appellant, along with six other accused, was tried in the Court of the Additional Judicial Commissioner, Lohardaga in Sessions Trial No. 286 of 1993/32 of 1994, for subjecting Chandrakanta to cruelty, for causing her death and also for causing disappearance of the evidence. The trial Court convicted only the appellant (husband of Chandrakanta) u/s 302 I.P.C. He appealed to the Patna High Court, but his appeal was dismissed. Therefore, he has filed this appeal after obtaining special leave.

2. The fate of this appeal depends upon two oral dying declarations - one stated to have been made by Chandrakanta before her sister Sheela (P.W. 5) and the other before another sister Asha Devi (P.W. 4) when Subodh Kumar (P.W. 3) was also present. No. evidence was led by the prosecution to prove the charge u/s 498(A) I.P.C. The trial Court found the prosecution evidence regarding the charge u/s 201 I.P.C. vague and

insufficient. Relying upon the two oral dying declarations and the conduct of the appellant in not trying to save his wife by getting her admitted in a local hospital, the trial Court held that the appellant had caused her death by pouring kerosene oil or her and setting her ablaze. As there was no clear and reliable evidence regarding involvement of the other accused (close relatives of the appellant) the trial Court acquitted them. The High Court also relying upon the two oral dying declarations and the circumstances that CHandrakanta was taken to a private doctor and not to the Government Dispensary at Lohardaga for the fear that she might make a statement to the police and that when the Investigating Officer had visited the house of the appellant incriminating articles like a tin containing kerosene oil, some unburnt match-sticks and smell of kerosene oil were found from the Puja room, confirmed the conviction of the appellant.

3. The learned Counsel for the appellant submitted that a close scrutiny of the evidence of the three witnesses Sheela (P.W. 5), Asha (P.W. 4) and Subodh Kumar (P.W. 3) discloses that they did not tell the truth when they stated that Chandrakanta had stated to them that her husband had poured kerosene oil on her and then applied a lighted match-stick to her clothes. He also submitted that the Courts below were not right in holding that the appellant had not tried to save Chandrakanta as the prosecution evidence clearly discloses that the appellant had also received burns on his hands and some hair of his moustache and head were also burnt. He also submitted that the Courts below were not right in drawing an inference against the appellant from the circumstances, that he had not taken Chandrakanta immediately to the Government Dispensary, but had called a private doctor for her treatment at home.

4. Mr. Singh, learned Counsel appearing for the State, on the other hand, submitted that the evidence of the three witnesses has been rightly believed by the Courts below and apart from the oral dying declarations the charge stands proved on the basis of the circumstantial evidence also.

5. According to the prosecution, the first dying declaration was made before Sheela (P.W. 5). She has stated in her evidence that on 5-10-1990 at about 9 A.M. When she was at her house she heard from the neighbours that her sister Chandrakanta was burnt. So she immediately rushed to Chandrakanta"s house. There she found Chandrakanta crying pain and telling that her husband had burnt her by pouring kerosene oil. Some neighbours called Dr. Rita Choudhary for getting her sister treated. When she reached Chandrakanta"s house, Ramesh Prasad - husband of Chandrakanta (A-7), Shoenandan - father-in-law (A-3), Davendra Prasad - brother-in-law, Shishir Prasad (A-4), Abhey Prasad (A-2) and Radhika Devi were present. As Dr. Rita advised them to take Chandrakanta to a bigger hospital Davendra Prasad took her to Ranchi for treatment in a car. Along with Chandrakanta her sister Asha Kumari (P.W. 4) and Subodh Kumar (P.W. 3) had also gone. She has also stated that after her sister was taken to Ranchi, Ramavatar Prasad Khatri (A3) told the relatives of the appellant to clean the room by removing burnt hair, burnt clothes, broken bangles, empty bottles and kerosene tin. Those articles were removed and then the floor was washed. Incense sticks were also lit

to remove the smell of kerosene. The house was then locked. She has further stated that she received information about the death of her sister at about 4.30 P.M. and, therefore, she went to the police station and gave her complaint (Ext. 2). This witness was confronted by her complaint wherein she had not stated that Chandrakanta was telling the persons present there that her husband had burnt her by pouring kerosene oil. She has admitted in her cross-examination that Asha Kumari was present when she reached there. She admitted that she had not stated in her complaint that her sister Asha Kumari had gone to Ranchi along with her sister Chandrakanta. She admitted that the appellant''s both hands and nose had received burns and his moustache and some hair on the front side of the head were also burnt. She further stated that she did not know where the things which were removed from the Puja room were kept. This witness had, not gone to the police station as, according to her, a threat was given to her by the appellant. It is proved that she had not stated in her complaint given at about 5 P.M. that Chandrakanta had made any dying declaration before her. She had also not stated so in her statement subsequently recorded u/s 161 Cr.P.C. The trial Court and the High Court have brushed aside this omission on the ground that the complaint/F.I.R. is not expected to be a complete document and contain every minor details of the occurrence. It is difficult to appreciate how this omission can be said to be a minor one. It was not a cryptic complaint. She has referred to various other details in her complaint and, therefore, this omission regarding Chandrakanta having made a dying declaration could not have been brushed aside as an omission on a minor point. If the Courts below had carefully examined the evidence of P.Ws. 4 and 5 it would have become apparent that P.W. 5, Sheela was making a definite improvement when she stated before the Court for the first time that Chandrakanta had made a dying declaration to her or in her presence. Significantly, Asha Kumari (P.W. 4) who had reached the place of offence before Sheela, has not even referred to the presence of Sheela at the place of the offence till Chandrakanta was removed to Ranchi. If really Sheela had gone to the place of offence and Chandrakanta had made a dying declaration before Sheela, then Asha Kumari would not have failed refer to the same. Thus a serious doubt arises regarding any dying declaration having been made by Chandrakanta to P.W. 5, Sheela. Both the Courts below have failed to consider this aspect. It is also not believable that if she was told by Chandrakanta that really her husband had poured kerosene oil on her body and set her ablaze, then she would not have gone to the police station and kept quite till about 5 P.M. The police station was only 150 yards away from Chandrakanta''s house. The explanation given by her that because of threat given to her she had not informed the police is not believable because it was not so stated by her in her complaint and it was for the first time in the Court that she had given such an explanation. Moreover, she has not stated what threat was given to her. We are, therefore, of the view that P.W. 5 Sheela is not a reliable witness and it was an error on the part of the Courts below to have relied upon the oral dying declaration stated to have been made to her.

6. P.W. 4, Asha Kumari, has deposed that on receiving information about the burning of her sister at about 9.15 A.M., she had gone with her mother and another sister to

Chandrakanta''s place. There she had found Chandrakanta crying and uttering that her husband had poured kerosene oil and burnt her with match-sticks. At that time some women from the crowd told her to keep quiet. Thereupon her sister Chandrakanta had stated that nobody can stop her from telling the truth. She has deposed about how Chandrakanta was removed by her and her sister''s brother-in-law Davendra Prasad to Ranchi and what happened thereafter. In her cross-examination she admitted that even though her house was situated only 50 yards away from the house of Chandrakanta and that the Lohardaga police station was only 100 yards away she had not gone to the police station or tried to inform the police. She also Admitted that neither her sister Chandrakanta had said anything to Dr. Rita Choudhary regarding who had poured kerosene oil on her body nor she had told the doctor that her husband had set her on fire. She denied that one Saroj had gone with them in the car to Ranchi, but she was contradicted by her police statement. She also admitted that she had not told Dr. Sahu, to whom Chandrakanta was first taken, or to the doctor at RMCH hospital, were they had gone subsequently, under what circumstance her sister had received burns. Her explanation was that Davendra Prasad had told her on the way to Ranchi not to give correct information to anyone.

7. Version of Subodh Kumar (P.W. 3), who accompained Asha Kumari is that while going to Ranchi Chandrakanta and Asha Kumari were on the back seat of the car and he and Davendra Prasad had sat in the front and that on their way to Ranchi Chandrakanta was repeatedly saying that her husband had poured kerosene oil on her body and set her ablaze. During his cross-examination he tried to cancel the presence of Saroj in the car by stating that he did not remember whether Saroj had accompained them to Ranchi. He also evaded giving clear answers by stating that he did not remember whether he had not referred to the presence of Asha Kumari in his statement recorded u/s 164 Cr.P.C. and whether he had stated to the police that the appellant and his family members had burnt the deceased to death by conspiring. All these omissions and contradictions have been proved.

8. The Courts below considered this witness to be an independent witness. What they have failed to appreciate is that this witness had falsely involved other family members of the appellant in the statement which he had given to the police. Similar attempt was also made by Sheela (P.W. 5) in her complaint. It was for that reason that the other family members of the appellant also came to be tried for the offence of murder along with the appellant. Both the witnesses have not uttered a single word against the family members while deposing in the Court. Both of them have denied that at the relevant time a talk regarding their marriage was going on but it has come on record that Subodh (P.W. 3) did marry Asha Kumari (P.W. 4) after some time. For all these reasons P.W. 2 cannot be regarded as an independent disinterested witness. It was because of his statement and the statement made by Sheela (P.W. 5) that some other innocent persons had to face the criminal trial unnecessarily. His conduct also does not appear to be natural. Before he had gone to Chandrakanta''s house the only information which he had received was that

Chandrakanta was burnt. He did not know how that had happened yet after going to Chandrakanta"s place he did not inquire from Asha Kumari or anyone as to how the incident had happened. One more important aspect which has been over-looked by the Courts below is the attempt made by the witness to conceal the presence of Saroj in the car while going to Ranchi. It was not an innocent omission. Even though Saroj was cited as a witness in the charge-sheet, the prosecution did not examine her and this witness and Asha Kumari also tried to establish that she had not accompained them in the car. At the instance of the defence Saroj (P.W. 8) was summoned for cross-examination. She clearly stated that while Chandrakanta was being taken to Ranchi she was almost unconscious and she had not said anything to anyone in the car. No evidence was led by the prosecution to show that Chandrakanta was conscious when she had reached Ranchi. The evidence of Saroj (P.W. 8) that Chandrakanta was not conscious appears to be more probable because Dr. Rita Choudhary had given her a pain relieving injection and as stated by her effect of the injection must have started within about fifteen minutes. It was not the case of the prosecution that Saroj Kumari was won over by the defence or that what she had stated in her evidence was contrary to her earlier version before the police. Her evidence also creates a doubt regarding truthfulness of the evidence of Subodh Kumar and Asha Kumari that a dying declaration was made by Chandrakanta in the car while going to Ranchi.

9. Reverting back to the evidence of Asha Kumari (P.W. 4) what we find is that her evidence also suffers from serious infirmities. Even though her initial version before the police was that Saroj had accompained them, before the Court she stated that Saroj was with them in the car only while returning from Ranchi. She has been contradicted on this point. Her conduct, as disclosed by the answers given by her in cross examination, also appears to be unnatural and that creates a doubt regarding correctness of what she has deposed before the Court. If really, she had come to know through Chandrakanta that her husband had poured kerosene over her she would not have failed to inform the police. When Dr. Rita Choudhary had come to treat Chandrakanta this witness did not tell her anything about how she had received burns though Dr. Rita Choudhary had tried to ascertain that from Chandrakanta. She had not disclosed to anyone how her sister had received burns and her explanation for not doing so is that Davender had told him not to give correct information to anyone. It is difficult to accept this explanation because she has not given any reason why she had agreed to do so. All these infirmities lead us to believe that she is not a witness on whom implicit reliance can be placed. The Courts below were, therefore, not right in relying upon the oral dying declaration stated to have been made to her by Chandrakanta without any independent corroboration.

10. The High Court also committed an error in holding that the presence of incriminating articles like empty kerosene tin, half lighted match stick, half lighted clothes and broken bangles in the Puja room clearly indicated the involvement of the appellant. The prosecution evidence is that they were removed from that room by the family members of the appellant. They were, therefore, charged and tried for the offence punishable u/s 201

I.P.C. If they were removed from that room then how they were found in that room remains unexplained.

11. The Courts below having over-looked all these important aspects the findings arrived at by them have to be regarded as erroneous. In our opinion, the Courts below have committed a grave error in relying upon the oral dying declarations and convicting the appellants on the basis thereof for the offence of murder. Circumstantial evidence is also not such on the basis of which the conviction can be sustained. We, therefore, allow this appeal set aside the conviction of the appellant u/s 302 I.P.C. and the sentence imposed upon him.