



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1018 OF 2010

STATE OF RAJASTHAN

... APPELLANT

VERSUS

Mst. GANWARA

... RESPONDENT

JUDGMENT

N.V. RAMANA, J.

This appeal by special leave is directed against the impugned judgment dated 3rd November, 2009 passed by the High Court of Rajasthan at Jodhpur in D.B. Criminal Appeal No. 186/1985 whereby the High Court allowed the appeal filed by the respondent herein and set aside the order of conviction and sentence passed by the learned Sessions Judge, Bikaner against the respondent for the offence punishable under Section 302 of the Indian Penal Code (“IPC” for short).

2. The facts of the case in a nutshell are that upon receiving a telephonic call from P.B.M. Hospital on 5th September, 1982 at about 1.45 p.m. PW14 — Jagdishlal, D.S.P. (Probationary) of P.S. Nava Shehar, Bikaner visited the hospital where he found Shanti alias Nylon in a completely burnt condition. In her statement to PW14, she alleged that her mother-in-law—Ganwara (respondent herein) had cruel intention against her for not satisfying her with undue demands of dowry. For this reason, with an evil intention to get rid of her, Ganwara had burnt her alive on pouring kerosene and lighting a match stick. On raising screams, the neighbouring people rushed to the spot, extinguished the flames and admitted her in the hospital. Having recorded her statement, PW14 has registered the criminal case under Section 307, IPC against the respondent and visited the place of occurrence, prepared spot panchnama (Ext. P26) and site map (Ext. P2). Pieces of burnt clothes (Ext. P5) and a lantern were recovered from the spot (Ext.P3). Meanwhile, learned Magistrate has recorded dying declaration (Ext. P11) of the injured. As the victim has succumbed to the burnt injuries on 7th

September, 1982, charge under Section 302, IPC was also added to the case and the case was committed to the sessions. The accused pleaded not guilty and claimed to be tried.

3. In its effort to prove the case against the accused, prosecution has examined as many as 16 witnesses, whereas the accused—respondent produced three witnesses in her defence. The learned trial Judge in the end formed the opinion that the accused was guilty of intentionally murdering the victim. Accordingly, she was convicted for the offence punishable under Section 302, IPC for which a sentence of life imprisonment with payment of fine of Rs.50, was awarded by the trial Court.

4. The aggrieved accused Ganwara carried the matter in appeal before the High Court. On reappraisal of evidence on record, the High Court disbelieved the prosecution story and came to the conclusion that under the circumstances of the case, it would be unsafe to confirm the guilt against the accused basing on the dying declaration.

The High Court, accordingly, allowed the appeal and acquitted the accused of the charge. The State of Rajasthan is, therefore, before this Court in appeal challenging the judgment of the High Court.

5. It is vehemently assailed by the learned State counsel that the High Court judgment is arbitrary and against the settled principles of law. The deceased in her dying declaration categorically mentioned the way in which the accused indulged in the criminal act and burnt her alive with a clear intention to kill, owing to her undue demands of dowry. The statement of the deceased was duly corroborated with the testimonies of mother, brother and sister of the deceased. The learned trial Court has passed a reasoned judgment convicting the accused for the offence, but the High Court in an arbitrary manner set aside the order of conviction and sentence passed by the trial Court and prayed for interference by this Court.

6. Having given our anxious consideration to the facts and circumstances of the case in the light of material on

record, we find that multiple statements (dying declarations) were given by the deceased at different times under varying circumstances. When the Investigating Officer, PW14—Jagdish Lal visited the deceased at the hospital and recorded her statement (Ext. P24) at 1.45 p.m. on 5.9.1982, she told the I.O. that she was burnt by her mother in law (respondent) for not meeting her demands of dowry. It was the neighbouring public who upon hearing her hue and cry, took her to the hospital. The said statement was given by the deceased in the presence of one advocate namely Mr. Purushottam Vyas, her sisters and other relatives in the hospital. PW14 has also recorded the statement of the deceased under Section 161, Cr.P.C. (Ext. P29). It is admitted by PW14—I.O. in the cross examination that before recording the statements of the deceased (Ext. P24 and P29), he had not verified from the Doctor, the fitness or otherwise of the deceased to make statement.

7. However, the record clearly shows that after two hours of recording Ext. P24 by PW14, learned Magistrate has also recorded a dying declaration of the deceased, duly

obtaining fitness certificate from the Doctor. Whereas, in that statement given to the learned Magistrate (Ext. P11) at 3.40 p.m. on the date of incident, the deceased did not mention about the demand of dowry by her mother in law but specifically told that it was her mother-in-law who admitted her in the hospital.

8. It is well settled and needs no reiteration at our hands that dying declaration can form the sole basis for conviction. At the same time, it is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters. The settled legal principle is that dying declaration should be free from slightest of doubt and shall be of such nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court must exercise great caution while considering the weight to be given to a dying declaration, particularly when there are more than one dying declaration.

9. The accused—respondent in her statement under Section 313, Cr.P.C. deposed that at the time of incident,

she was not present at the home as she has gone to Gopalji temple as per her daily routine and while returning from temple, somebody informed her about the incident. Immediately, she rushed to home, called her brother Lalchand for help and took her daughter-in-law to hospital in a tempo and admitted her in the hospital. When she was sitting aside the victim in the hospital, the family members of the deceased along with advocate Mr. Purushottam arrived there and asked her to go and sit in verandah. While she was outside the room of the deceased, the advocate and family members instigated and tutored the deceased to depose against the accused.

10. The intrinsic worth and reliability of dying declaration can generally be judged from its tenor and contents themselves. Here in the case on hand, the so called dying declarations recorded at the behest of the deceased create huge doubt on their veracity inasmuch as there was contradictory variance as to the facts of presence of the accused at the scene of offence at the time of incident, bringing the victim to the hospital and impact of the

presence and provocation of relatives and advocate at the time of recording of statement of the deceased. It is also evident from the record that when PW14 made enquiries in the vicinity, no one supported the case of prosecution that the accused had put the deceased on fire. The I.O. (PW14) categorically deposed that during his enquiry, he found that at the time of incident, the accused was away from home as she went to Gopalji temple and it was the accused who first of all took the deceased to the hospital. It was also made clear by PW14, that he came to know from the neighbourhood that the deceased did not want to live at her matrimonial home and always wanted to live at her parental home. According to him, the deceased Shanti was well built woman with strong physique and the accused Ganwara was weak in comparison to the body structure of deceased Shanti. Most of the other prosecution witnesses are either relatives of the deceased or hearsay witnesses and investigating witnesses and none of them was present at the time of offence. In the light of foregoing, it can be said that the allegations levelled against the respondent in the dying

declarations have not been corroborated by the material witnesses.

11. Taking stock of the facts and circumstances of the case, in our view, the High Court has rightly felt that the dying declaration in the case on hand did not inspire confidence so as to award conviction to the accused. In this state of things, the Court has to give benefit of doubt to the accused as it is not safe to sustain the conviction as implicit reliance cannot be placed on the dying declaration under the peculiar circumstances of the case.

12. For all the aforesaid reasons, we uphold the impugned order passed by the High Court. The appeal is accordingly dismissed being devoid of merit.

.....**J.**
(N.V. RAMANA)

.....**J.**
(MOHAN M. SHANTANAGOUDAR)

**New Delhi,
August 28, 2018.**