

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
PRITHVI RAJ

DATE OF JUDGMENT 12/07/1995

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PUNCHHI, M.M.

CITATION:
1995 SCC Supl. (3) 410 1995 SCALE (4) 358

ACT:

HEADNOTE:

JUDGMENT:
THE 12TH DAY OF JULY, 1995

Present:
Hon'ble Mr. Justice M.M. Punchhi
Hon'ble Mr. Justice K. Jayachandra Reddy
Mr. K.S. Bhati, Adv. for the Appellant
Mr. U.R. Lalit, Sr. Adv. and Mr. R.N. Keshwani, Adv. with him for
the Respondent.

JUDGMENT

The following Judgment of the Court was delivered:
State of Rajasthan
V.
Prithvi Raj

JUDGMENT

K. JAYACHANDRA REDDY, J.

This is an appeal by the State of Rajasthan against the judgment of the High Court acquitting the sole respondent of the offence punishable under Section 302 I.P.C. by setting aside the judgment of the trial court. This is a case of wife's murder. The appellant was married to Smt. Lachmi, deceased about 4-1/2 years prior to the date of occurrence. According to the prosecution though the parents of the deceased had given dowry according to their means but the same fell short of the expectations of the accused and his parents and therefore the relations between them became strained. It is alleged that the deceased was driven out of the house of her in-laws and therefore she was living with her parents. A panchayat was held and the in-laws of the deceased were persuaded to keep the deceased with them and that the deceased would thereafter go to her father's house for 10 days and thereafter she would be brought to her husband's house. Pursuant to this panchayat the deceased went to her father's house at Padampur. Om Prakash, the younger brother of the accused went to take her to her husband's house. At that time the deceased is said to have told her parents to give the rest of the dowry but the parents could not arrange the same. The deceased, however,

went weeping with Om Prakash in the morning of April 25, 1978. The neighbouring ladies P.Ws. 4 and 5 bid farewell to her. The deceased, however, went to her husband's house and while she was sitting in the Kotha of the house, the accused was annoyed and asked her to go away but the deceased did not go out of the house. It is alleged that the accused who lost his temper, poured Kerosene oil on her clothes, lighted a match stick and set her clothes to fire. It is also alleged that at that time the parents of the accused were sitting at the outer door. The deceased raised an alarm which attracted many. The deceased was moved to the hospital and was admitted there at 2.40 P.M. on April 25, 1978. Dr. Rajendra Kumar Gupta attended on her and finding her condition serious he informed the local police for getting her dying declaration recorded. The Doctor also stated that during her examination the patient told him that her husband had poured Kerosene oil on her clothes. On receipt of the intimation from the Doctor, the Assistant Sub Inspector, Iqbal Singh reached the hospital and recorded the statement of the deceased which is Ex.p.7. In that she has stated that the accused poured Kerosene oil on her clothes. The Judicial Magistrate also reached the hospital for recording the dying declaration and after satisfying himself with the condition and the ability of the deceased for giving the statement, recorded the statement and Dr. P.K. Agrawal, who was on duty at that time, certified the fitness of the patient to make the statement. The statement was recorded at 4.40 P.M. on the same day. The A.S.I. on the basis of the statement recorded by him registered a case under Section 307 I.P.C. and proceeded with the investigation. The deceased, however, died on April 28, 1978. On information of the death, an altered F.I.R. was issued. The post-mortem examination revealed that the deceased died due to extensive burns. The accused was arrested and after completion of the investigation, the charge-sheet was laid. To prove its case the prosecution examined 12 witnesses alongwith other documents mainly the dying declarations. The accused, however, pleaded not guilty and put forward a plea of alibi and in support of his plea he examined six defence witnesses. His plea is that the deceased was a frustrated person and used to desert him for no reason and that there had never been any dispute regarding the dowry. Regarding the incident of April 25, 1978 it is pleaded that the deceased returned from her father's house and after arrival she herself poured Kerosene oil on herself in an effort to commit suicide. It was further pleaded that at that time the accused alongwith his brother was working in his field and that during the investigation, the Additional Superintendent of Police visited the village and made enquiries from the villagers regarding the cause of the death of the deceased and many of the villagers on special oath in the temple stated that the accused did not commit the crime. The D.Ws. examined by the accused deposed about the alibi of the accused as well as about the enquiries made by the Additional Superintendent of Police. It is also the case of the accused that he himself took the deceased immediately to the hospital. The trial court accepting the dying declarations and other circumstantial evidence held that the prosecution has proved the motive as well as the guilt of the accused. The trial court, however, rejected the defence plea. The High Court having examined the oral evidence as well as the contents of the dying declarations reached the conclusion that the conduct of the accused is consistent with his innocence and that the motive part of it is not established and the evidence afforded by the dying

declarations in the case is a weak type of evidence and accordingly gave the benefit of doubt to the accused.

In this appeal the learned counsel for the appellant submitted that there are no infirmities in the dying declarations Ex.p.7 and Ex.p.11 and that motive aspect also is established and that the High Court without giving sound and cogent reasons interfered with the findings of the trial court.

To satisfy ourselves we have carefully gone through the evidence and also the original records. From the above resume it can be seen that the dying declarations Ex.p.7 and Ex.p.11 recorded by the Assistant Sub Inspector and the Magistrate are of great importance in this case. It is held in a number of cases that if there are more than one dying declaration, the court has to see whether they are consistent in material particulars. In the instant case we have to examine the contents of the dying declaration particularly in the background of the plea taken by the accused. In Ex.p.7 the deceased stated that her husband used to give her threats and that he would burn her to death and that she returned from her father's house and was sitting in the kotha when her husband asked her to go out. Thereafter her husband poured kerosene on her and went out into the aangan (court-yard). He brought a match stick and set fire. Her in-laws were sitting near the out gate and doing stitching work. In ex.p.11 she stated that she was sitting in the aangan and not in the kotha and that her husband set fire to her clothes and on making hue and cry, people gathered and her husband and her in-laws carried her to the hospital.

While examining the question whether it was a suicide or homicide, the High Court considered the evidence of medical expert who examined the deceased in the first instance in great detail and noticed that as per the statement of the medical expert, the hairs on the head of the deceased were neither signed nor burnt and therefore the statement of the deceased that while she was sitting, kerosene oil was poured on her, does not appear to be correct. Further, the High Court also noticed that in Ex.p.7 she stated that she was sitting in the kotha and her in-laws were sitting in the aangan whereas in Ex.p.11 she stated that she was sitting in the aangan. Nothing this discrepancy, the High Court noted that if she was sitting in the aangan then her in-laws who were also sitting in the aangan would have noticed as to what was happening and would not have kept quiet. The High Court also noted that the oral dying declaration said to have been made by her before the Doctor was wholly of general type without any details. The High Court also strongly relied on one important circumstance namely that the accused as well as all the members of the family immediately arranged a jeep and rushed the deceased the hospital. The High Court further examined the aspect of motive and the mental make-up of the deceased and the frustrated condition in which she was, which would have impelled her to commit suicide. The High Court in this context was not prepared to simply brush aside the voluminous defence evidence. Taking all these circumstances into consideration alongwith the plea set up by the accused, the High Court gave the benefit of doubt and in support of the same has given a number of reasons which cannot be held to be wholly irrelevant.

It is true, as contended by the learned counsel, that the manner of appreciation of the evidence in respect of the dying declaration is not altogether sound. But the High Court has rightly held that the immediate conduct of the

accused and his parents in rushing the deceased to the hospital immediately by arranging a jeep is quite consistent with their being innocent. However, we find that the overall reasoning of the High Court in giving the benefit of doubt to the accused cannot be said to be wholly unsound and does not stand judicial scrutiny. This is an appeal against acquittal and that too in respect of an offence said to have been committed in the year 1978. Since this is a bride burning case and having regard to the nature of the evidence that can be available in such cases, we have gone through the entire records including the original records. However, having given a careful consideration to the whole matter we are not wholly satisfied that this is a case where interference should necessarily be called for. Accordingly the appeal is dismissed.