

JUDGEMENT WRITING PROBLEM

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In the present case, name of the deceased is rani, wife of the accused . Their marriage was solemnized on 25.04.2012 and she suffered burn injury in her matrimonial house on 27.04.2013. Immediately after the incident, rani was taken to the hospital where she was medically examined vide Ex. Ka-2 and 70% burn injuries have been noticed by the doctor examining her. On 27.04.2013 itself, dying declaration of the deceased was recorded by PW-2 Ompal Singh, the Executive Magistrate. Considering her critical condition, from Tauru she was taken to on 27.04.2013 itself where she was hospitalized in Medical College, rewari. On 28.04.2013, she was taken to gurgaon in a private hospital where she remained till 04.05.2013 where she succumbed to her burn injuries. At gurgaon, yet another dying declaration of the deceased was recorded by PW-3 Umesh Chandra, Executive Magistrate vide Ex. Ka-12. On 11.05.2013, a written report Ex. Ka-1 was made by PW-1, Indrapal Singh, father of the deceased, alleging that since the date of marriage, there was demand of dowry on the part of the accused persons and that she was subjected to cruelty. He further alleged that the deceased has been burnt by the accused persons. Based on this report, FIR was registered against as many as five accused persons, namely, tanveer Singh, Pushpendra, brother-in-law (Dewar) of the deceased, Brijendra @ Shivpal, uncle-in-law of the deceased, Ramrati, mother-in-law of the deceased and Sangeeta, married nanad of the deceased, under [Sections 498-A/304-B](#) of I.P.C. read with [Section 3/4](#) of Dowry Prohibition Act. In the meanwhile, on 15.05.2013 inquest on the dead body of the deceased was conducted vide Ex.Ka-13 and the dead body was sent for postmortem, which was conducted by Dr. Nikhil Agrawal . The autopsy surgeon has noticed 80% burn injuries on the body of the deceased and according to him, the cause of death is due to cardiac respiratory failure.

While framing charge, the trial Judge has framed charges against all the accused persons under [Sections 498-A, 304-B](#) of I.P.C. read with [Section 4](#) of the Dowry Prohibition Act and alternate charge under [Section 302/34](#) of IPC.

So as to hold the accused persons guilty, prosecution has examined 13 witnesses, namely, PW-1 Indrapal Singh, PW-2 Ompal Singh, Executive Magistrate, PW-3 Tehsildar Umesh Chandra Kaurav, Dr. R.B. Arya, PW-4, whereas two defence witnesses, namely, Pushpa and Sirawan Deen have been examined by the accused persons.

After hearing the counsel for the respective parties and considering the material available on record, , the trial Judge has acquitted the other accused persons of all the

offences. The accused has also been convicted under [Section 498-A, 304-B](#) of I.P.C. read with [Section 4](#) of Dowry Prohibition Act. and [Section 302](#) of I.P.C.

. Learned counsel for the accused submits as under:

(i) that there is no eye witness account to the incident and the accused has been convicted solely on the basis of circumstantial evidence, in particular the second dying declaration of the deceased. However, the chain of circumstantial evidence is not complete and the dying declaration is not reliable.

(ii) that it is a case of multiple dying declaration made by the deceased and considering the inconsistency in the dying declaration, the dying declaration is required to be discarded and no conviction can be made on the basis of the said dying declaration.

(iii) that in the first dying declaration recorded by the Executive Magistrate, allegations have been levelled not only against the accused but also against the acquitted accused persons for pouring kerosene oil on the deceased and then setting her ablaze, whereas in the second dying declaration the allegation is only against the accused.

(iv) that once the first dying declaration, which was also recorded by the Executive Magistrate, has been disbelieved by the trial court, it creates a question mark on the second dying declaration recorded on 28.04.2013 by another Executive Magistrate. It has been argued that there was absolutely no occasion for the prosecution to record two dying declarations especially when the earlier one was also recorded by the Executive Magistrate.

(v) that the first dying declaration has been disbelieved by the trial court and based on the same, the other co-accused persons have been acquitted and, therefore, the subsequent dying declaration automatically loses its significance and possibility of the deceased being tutored by her relatives, cannot be ruled out.

(vi) that the defence witness DW-2 Sirawan Deen was undisputedly saw the entire occurrence, which is clear from the spot map Ex. Ka-14. He was also witness of recovery and in his spot map also his presence has been shown wherein he has categorically deposed that he saw the deceased in the terrace roaming from one place to another in burning condition. It has been argued that attached to the said terrace, there is a kitchen and possibility of the deceased being either accidentally burnt or committing suicide, cannot be ruled out.

(vii) that before her marriage, the deceased was having illicit relation with someone and at the time of marriage, she was carrying pregnancy. She had also delivered a child after about 4 months of the marriage. According to the defence counsel, though this fact was within the knowledge of the accused and other family members that she was carrying pregnancy with someone else but yet the accused persons have accepted

her, and this could be the reason for the deceased to commit suicide as she could be under mental stress and/or in inferiority complex.

(viii) that soon after the incident, the deceased was medically examined vide Ex. Ka-2 and though 70% burn injury has been noticed by the doctor, but no smell of kerosene oil was found either on the body of the deceased or on her cloths. Likewise when she was taken to rewari, no such kerosene oil or its smell was noticed by the treating doctor.

(ix) that as per the two dying declarations and as per oral dying declaration made before PW 1, the accused persons had first poured kerosene oil and then set her ablaze. In such eventuality there was every possibility of finding the smell of kerosene oil on the body of the deceased or on her clothes was there but no such evidence has been collected by the prosecution. Likewise, the nature of the burn injury has been opined by the doctor as thermal burn and there is no opinion by the doctor that the injury sustained by the deceased was because of kerosene oil.

(x) that at the time of occurrence, the accused was outside the house in and around 'bayare' and as soon as he came to know of the incident, he rushed to the house. It is the accused who hospitalized the deceased and made all possible best efforts to save her.

(xi) that the deceased also made a dying declaration before the DW-2 and DW-3, but the said dying declaration has not been considered by the trial judge.

it has been argued by the State counsel:

(I) that the first dying declaration made by the deceased has been disbelieved by the trial court as there is some discrepancy in the same in respect of the timing.

(ii) that there is no bar in law to record the second dying declaration by the Executive Magistrate. He submits that the second dying declaration was recorded at gurgaon i.e. in the State of haryana and the doctor examining the deceased may not be aware of the fact that the first dying declaration has already been recorded. He further submits that considering the percentage of burn injury sustained by the deceased, if in its wisdom the doctor has decided to have a dying declaration of the deceased, it cannot be questioned by any one.

(iii) that in the second dying declaration, the deceased has categorically stated that she was burnt by the accused. He further submits that having disbelieved the first dying declaration, the trial court was justified in placing its reliance on the second dying declaration.

(iv) that apart from dying declaration recorded by the Executive Magistrate, the deceased also made oral dying declaration before the PW-1, and witnesses have supported the same.

(v) that so called overwriting in the second dying declaration is of no help to the accused because the fact remains that the second dying declaration has been signed by the deceased.

(vi) that even assuming that kerosene oil has not been found on the body of the deceased or on her clothes, it is of no help to the accused.

(vii) that once the dying declaration inspires the confidence of the Court, the same can be made basis for conviction of the accused

(viii) that the defence witnesses are nothing but an after thought and they have been examined before the court just to ensure the acquittal of the accused.

Indrapal Singh, PW-1 is the father of the deceased and is lodger of the written report. He states that after receiving the information about the burn incident of his daughter, he rushed to her house, took her to Government Hospital at tauru and there in the hospital she informed her that she was burnt by the accused and her husband tanveer, brother-in-law (dever) Pushpendra, father-in-law (sasur) Brijendra alias Shivpal, mother-in-law (saas) Ramrati and sister-in-law (bhabhi) Sangita. . He admits that the deceased had delivered a child who immediately died after one hour but he has not stated after how many months of the marriage, the said child was born.

Dr. R.B. Arya, PW-4 medically examined the deceased at tauru on 27th April, 2013 and noticed 70% burn injury. He states that the deceased was hospitalized by her husband. He has categorically stated that there was no smell of kerosene oil from the body of the deceased.

Sri Om Pal Singh, PW-2 recorded the first dying declaration of the deceased on 27th April, 2013 at rewari He states that in her dying declaration, the deceased has stated that for demand of dowry she was burnt by all the accused persons after pouring kerosene oil on her and that she was hospitalized by the accused.

Umesh Chandra, PW- 3 recorded the second dying declaration on 28th April, 2013 at gurgaon. He stated that after obtaining the certificate from the Doctor he recorded the statement, wherein she has stated that she was burnt by her husband. He states that in the dying declaration two names have been mentioned i.e. Rashmi and rani, but he has not written the name of Rashmi.

Pushpa, DW-1 is aunt (bua) of the deceased whose marriage was solemnized in the family of the accused persons. She states that in the marriage no dowry was settled and that the deceased delivered an illegitimate child. However, considering the old relationship in the family, no dispute was made and it was decided to accept the deceased. She further states that immediately after coming to know about the burn

incident, her husband Pushpendra and the accused tanveer immediately rushed to the spot and saw the deceased in a burning condition, by the time the fire was already extinguished by her neighbour Sirawan Deen DW-2 and other persons. When the deceased was inquired as to how she suffered burn injury, she informed that while cooking food she sustained burn injury. Information was given to the father of the deceased and then the deceased was admitted. She further states that she made statement before the Police Officers that the accused persons have been falsely implicated but if her statement was not recorded by the Circle Officer, she could not tell the reason.

Sirawan Deen, DW-2 is a neighbour of the accused. He states that from his roof, he saw the deceased in a burning condition. He immediately rushed to the spot and at that time the accused was not in the house and was working in his 'bayare'. He extinguished the fire with the help of other persons and by that time the accused and other family members also reached there.

In the case Additional Sessions Judge, Court No.2, convicting the accused under [Section 498-A](#), [304-B](#) of I.P.C. read with [Section 4](#) of Dowry Prohibition Act. and [Section 302](#) of I.P.C. and sentencing him for life imprisonment and to pay a fine of Rs.40,000/- in default thereof to undergo additional rigorous imprisonment for two years , Appeal has been filed by Accused in High court of Delhvi

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