

Reserved Judgment

HIGH COURT OF UTTARAKHAND AT NAINITAL

Govt. Appeal No. 863 of 2001

State of Uttaranchal
(Now state of Uttarakhand). Appellant.

Versus

Raju Rana S/o Shri Devi Singh,
Resident of Telpura,
Police Station Sahaspur,
District Dehradun. Accused/Respondent

Mr. Atul Bhatt, Addl. Govt. Advocate present for the appellant,
Mr. Sandeep Tandon, Advocate with Ms. Deepa Arya, Advocate present for the accused/
respondent.

Dated: March 31, 2011

**Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble V.K. Bist, J.**

Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 378 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), is directed against the judgment and order dated 12.12.2000 passed by 1st Addl. Sessions Judge, Dehradun in Session Trial No. 147 of 1996, whereby said Court has acquitted the accused/respondent Raju Rana from the charge of offences punishable under Section 302, 326 and 498-A of the Indian Penal Code, 1860 (for short I.P.C.).

2. Prosecution story, in brief, is that Manju Devi (deceased) was the wife of accused/respondent Raju Rana. Two children were born out of the wedlock.

Accused/respondent used to run a tailoring shop in village Rajawala within the limits of Police Station Sahaspur in District Dehradun. His in-laws also used to live in the same village. Accused/respondent used to have his food from his in-laws' place. On 13.12.1995 at about 8:00 p.m. Manju Devi went to her husband's shop for taking wool to knit a sweater, and she also took food for her husband. At that time accused/respondent had gone to drink liquor. Manju started watching television in the shop. After sometime accused/respondent came back, in a drunken state, and he closed the shutter from inside. He started unclothing his wife Manju. On being resisted, he torn off her sweater. Accused/respondent Raju Rana, then poured kerosene bottle on his wife Manju and set her on fire. Manju shouted for help. The neighbours, including Bishan Singh (P.W.3), came and started beating the shutters asked the couple to open the shop. As soon as the shutter opened, Manju, badly suffering from burn injuries, ran towards her parental house and fell down. Her husband accused/respondent Raju Rana also ran away. Manju was taken to Doon Hospital, Dehradun for medical treatment, where she was admitted on the very day i.e. on 13.12.1995 at 10:15 p.m. PW-1 Dr. G.P. Singh, Medical Officer of Doon Hospital, Dehradun, who was on emergency duty, recorded the burn injuries found on the person of Manju and prepared injury report (Ext.A-5). The said Medical Officer observed hundred percent (100% top to bottom) burn injuries superficial to deep, with redness in the skin and singeing of hair. It appears that from the hospital necessary information was sent to the Police. PW-8 Surendra Ram, Sub Divisional Magistrate, Sadar, Dehradun recorded dying declaration (Ext.A-10) of Smt. Manju at about 00:30 hrs. in the intervening night of

13/14.12.1995, in which she stated that her husband Raju (accused/respondent) poured kerosene oil on her at about 8:15 p.m. and set her on fire. She further stated, in the dying declaration, that her husband used to quarrel with her. The said statement was recorded by the Magistrate, after taking endorsement from the Medical Officer that the victim was in a fit condition to make statement.

3. On the next day i.e. on 15.12.1995, PW-1 Ashish Kumar (brother of the deceased) lodged First Information Report (Ext.A-1) at Police Station Sahaspur on the basis of which a crime no. 200 of 1995 was registered in respect of offences punishable under Section 326, 308 and 498-A I.P.C. However, Manju succumbed to the burn injuries on 16.12.1995 and the case crime number was converted relating to the offence punishable under Section 302 I.P.C. Initially, the crime was investigated by PW-11 Sub Inspector Rajendra Singh, whereafter it was taken over by PW-12 Sub Inspector Indra Mani Verma on 19.12.1995. After the death of Manju on 16.12.1995, the Police took her dead body in possession and prepared Inquest Report (Ext.A-2) on 17.12.1995 at about noon. Also the other related papers i.e. Police Form No. 13 (Ext.A-24), Sketch of the dead body (Ext.A-25), letter to Chief Medical Officer and Sample Seal were prepared, and the dead body was sent for postmortem examination. PW-5 Dr. B.C. Pathak conducted postmortem examination on the dead body of the deceased on 17.12.1995 at about 4:10 p.m. and prepared the Autopsy Report (Ext. A-4). He recorded superficial and deep ante mortem burn injuries on all over the body, except sole of both feet, back of the neck, upper part of back and back of scalp. The said Medical Officer

opined that deceased had died due to shock as a result of thermal burn (about 100%). The Investigating Officer interrogated the witnesses (including those who got the shutter opened on hearing shrieks of the deceased), and inspected the spot. On completion of investigation, Charge sheet (Ext.A-20) was filed against accused Raju Rana (present respondent) by the Investigating Officer for his trial in respect of offences punishable under Section 302, 326 and 498-A I.P.C.

4. The Chief Judicial Magistrate, Dehradun on receipt of the charge sheet, after giving necessary copies to the accused, as required under Section 207 Cr.P.C., appears to have committed the case to the Court of Sessions for trial. On 01.10.1996, after hearing the parties, the 1st Addl. Sessions Judge, Dehradun, framed charge of offence punishable under Section 498-A and 302 I.P.C. against the accused Raju Rana, who pleaded not guilty and claimed to be tried. On this, the prosecution got examined PW-1 Ashish Kumar, brother of the deceased (informant), PW-2 Vasudev Thapa (father of the deceased), PW-3 Bishan Singh, who was first, amongst those, who got the shutters opened after hearing shrieks of the deceased, PW-4 Ramesh Singh, PW-5 Dr. B.C. Pathak, who conducted post mortem examination, PW-6 Dr. G.P. Singh, who recorded injuries at the time Manju was taken in Doon Hospital and also certified the condition of the injured at the time of recording of dying declaration, PW-7 Kalam Singh, who has stated that the accused used to live with his wife in the shop let out by him, PW-8 Surendra Ram, Sub Divisional Magistrate, who recorded dying declaration, PW-9 Som Chand, photographer, PW-10 Gokulanand Joshi, in whose vehicle

the victim was taken to Doon Hospital, PW-11 Sub Inspector Rajendra Singh, who started the investigation and PW-12 Sub Inspector Indramani Verma, who concluded the investigation. Oral and documentary evidence was put to the accused Raju Rana under Section 313 Cr.P.C. in reply to which he admitted that Manju Rani was his wife but alleged that evidence led against him was false. However, no evidence, in defence, was adduced. The trial Court, after hearing the parties, found that the prosecution has failed to prove the charge of offences punishable under Section 498-A, 302, 326 I.P.C. and acquitted him accordingly. Aggrieved by the said judgment and order dated 12.12.2000 passed by 1st Addl. Sessions Judge, Dehradun in Sessions Trial No. 147 of 1996, this appeal was preferred by the State in which leave to appeal was granted and the appeal was admitted. Accused/ respondent was summoned. The record of the case was also summoned.

5. We heard learned counsel for the parties and perused the Lower Court's Record.

6. Before further discussion, we think it just and proper to mention the burn injuries recorded by PW-6 Dr. G.P. Singh, who observed the same on the person of Manju Devi on 13.12.1995 at about 10:15 p.m., when she was admitted in Doon Hospital. The Injury Report (Ext. A-5), prepared by this witness, shows that at the time of her admission in the hospital, Manju was suffering from "burn injuries, top to bottom. Superficial to deep. Redness of skin present. Vesicle present singeing of hair. Opinion:- Burn about 100%. Burn by dry heat. Duration fresh."

7. PW-6 Dr. G.P. Singh has stated that he sent urgent call to the surgeon, after preparing the report. He has further stated that Bed-Head-Ticket (Ext.A-6) bears his signatures. He further stated that when Sub Divisional Magistrate Shri Surendra Ram came to Doon Hospital to record dying declaration, in the evening of 13/14.12.1995, he verified the condition of the injured as fit to make the statement, and after the dying declaration was recorded by the Magistrate, he made another endorsement at the end of the statement to the effect that the injured remained in the fit state of making the statement. This witness (PW-6 Dr. G.P. Singh) further told that there is endorsement of death of the patient (Manju Devi) on the Bed-Head-Ticket that she died on 16.12.1995 at 9:30 p.m. He also proved the death memorandum sent to the Police Station. PW-1 Ashish Kumar, brother of the deceased, has stated that after the death of Manju Devi, Inquest Report (Ext.A-2) was prepared by the Police in his presence.

8. PW-5 Dr. B.C. Pathak has stated that on 17.12.1995 he conducted post mortem examination of the dead body of Manju Devi and recorded following ante mortem injuries in the Autopsy Report (Ext. A-4) prepared by him.

“Superficial to deep burn of all over the body except sole of both feet, back of neck, upper part of back and back of scalp, with skin peeled off from almost all part of burn area except front of face with presence of red lines. Singeing of scalp hair, in front, axillary region of both side with pubic hair with blackening of skin of face.”

9. PW-5 Dr. B.C. Pathak opined, in the post mortem examination report, that the deceased had died of shock as a result of thermal burn, about 100%. From the statement of Dr. G.P. Singh (PW-6) and that of Dr. B.C. Pathak (PW-5) read with the injury report and the ante-mortem injuries mentioned in the autopsy report, narrated above, it is established on record that Manju suffered burn injuries superficial to deep 100%, on 13.12.1995 and died of the same on 16.12.1995. Now what we have to examine is that whether accused/respondent Raju Rana, husband of Smt. Manju Devi, committed her murder? We have to further examine, whether she was subjected to cruelty and harassment for non-fulfillment of demand of dowry?

10. As far as the question of demand of dowry is concerned, there is no iota of evidence on record that the accused/respondent Raju Rana demanded any dowry or harassed his wife for non-fulfillment of any demand of dowry. Neither PW-1 Ashish Kumar (brother of the deceased) nor PW-2 Vasudev Thapa (father of the deceased) has anywhere stated that any demand of dowry was made or for that reason Manju Rani was harassed. Both these witnesses were declared hostile. Therefore, so far as the acquittal recorded by the trial Court of the accused/respondent Raju Rana in respect of charge of offence punishable under Section 498-A I.P.C. is concerned, we do not find any illegality in the same. Rather, we concur with the view taken by the trial Court that it is not proved on record that the accused/respondent Raju Rana is guilty of the charge of offence punishable under Section 498-A I.P.C. We uphold said finding of the trial Court.

11. However, so far as the charge relating to offence punishable under Section 302 I.P.C. is concerned, we are of the view that the trial Court has committed grave error of law, in ignoring the dying declaration recorded by the Magistrate, in the presence of the Medical Officer, which was fully proved on the record. The trial Court has not discussed the significant piece of evidence and preferred to go by conjectures and surmises that the deceased might had set herself on fire. In this connection, firstly we would like to quote the dying declaration recorded by PW-8 Surendra Ram, Sub Divisional Magistrate, Sadar, Dehradun, who recorded dying declaration (Ext.A-10) in the presence of PW-6 Dr. G.P. Singh, which reads as under:-

“Certified that patient fully conscious before statement on 14.12.1995 at 12:30/00:30 a.m.

Sd. Emergency Medical Officer

Doon Hospital, Dehradun.

श्रीमती मंजू W/o श्री राजू थापा, उम्र 24 वर्ष, निवासी-ग्राम एवं पोस्ट राजावाला देहरादून का बयान 0:30 बजे A.M. रात्रि में लिया। श्रीमती मंजू कक्षा आठ तक पढ़ी है। मुझे मेरे पति श्री राजू ने मेरे ऊपर मिट्टी का तेल डालकर शाम 8:15 P.M. पर जला दिया। मेरा पति टेलर का काम करता है। मेरा पति श्री राजू मुझसे रोज लड़ाई करता था। मेरी शादी हुए आठ-नौ साल हो गये हैं। मैं अपने पति की दुकान में शाम को ऊन लेने के लिए गयी थी। ऊन स्वेटर बुनने के लिए लेने गयी थी। उस समय मेरे पति श्री राजू ने मिट्टी का तेल छिड़क कर जला दिया। परिवार के किसी दूसरे ने आग नहीं लगायी है और न ही किसी प्रकार से कोई सहयोग किया है। इसमें घर के किसी दूसरे आदमी का कोई दोष नहीं है। यह बयान श्रीमती मंजू ने पूरे होश में दिये।

यह बयान सुनकर तसदीक किया। मैंने यह बयान लिखना 0:40 A.M. पर लिखना समाप्त किया।

Rt.निशानी
श्रीमती मंजू

14.12.1995.
Sd. Surendra Ram.
S.D.M. Sadar,
Dehradun.

Certified that patient remained conscious during statement and after statement on 14.12.1995/00:40 a.m.

Sd. Emergency Medical Officer
Doon Hospital, Dehradun.”

Translation of the dying declaration(quoted
above in Hindi)

“Smt. Manju W/o Raju Thapa, aged 24 years. Resident of village and Post Rajawala, Dehradun, at 00:30 a.m. Smt. Manju is literate upto Class-VIII. I was set on fire at 8:15 p.m. by my husband Shri Raju, after pouring kerosene oil over me. My husband works as a Tailor. My husband Shri Raju used to quarrel every day. My marriage is 8-9 years old. I had gone, in the evening, to the shop of my husband to take wool. Wool was needed to knit a sweater. At that time my husband Shri Raju poured kerosene and set fire. No one else in the family set the fire and nor anyone else cooperated in it. No one else is responsible for this. Smt. Manju made this statement in her consciousness.

This statement is verified. I finished the writing of statement at 00:40 a.m.

14.12.1995.
Sd. Surendra Ram.
S.D.M., Sadar,
Dehradun.”

12. Now we come to the oral evidence adduced by the witnesses, who reached at the place of incident before brother and father of the deceased.

13. PW-3 Bishan Singh is the witness, who reached, first of all, on hearing shrieks of the deceased, at

the place of incident. This witness has stated that on the day of incident at about 8:00 p.m. he heard shrieks of the wife of the accused in his house, which is situated behind the shop of the accused. PW-3 Bishan Singh further states that when he found that shutter of the shop is closed from inside, he knocked the shutter and asked to open the door. After sometime, the door opened and Manju came out of the shop with burn injuries. She was crying BACHAO!-BACHAO! (save!-save!). The witness further states that Manju went towards her father's house from the shop, and accused Raju also ran away.

14. Statement of PW-3 Bishan Singh is further corroborated by the statement of PW-4 Ramesh Singh, who also resides at Rajwala, Dehradun. He has also stated that on 13.12.1995 at about 8:00 p.m. when he heard sound of beating shutters, he went towards the shop of the accused, where Bishan Singh (PW-3) was already present and trying to get the shutters open. This witness has further stated that after about five minutes, the shutter opened and Manju came out with burn injuries. He has also stated that accused/respondent Raju Rana ran away. This witness has further corroborated that Manju went to her parental house from the shop. Testimony of PW-3 Bishan Singh and PW-4 Ramesh Singh is not correctly appreciated by the trial Court and preferred to reach to the conclusions based on conjectures and surmises.

15. Learned counsel for the respondent argued that in the present case, the First Information Report is delayed one. On examination of First Information Report, we find that undoubtedly the F.I.R. is delayed one but the

delay stands explained on the record. It appears that brother of the deceased (PW-1 Ashish Kumar) and father of the deceased (PW-2 Vashudev Thapa) had priority to save the life of Manju Devi. They had taken Manju from Sahaspur to Dehradun for medical treatment. Since, the condition of the injured was serious, it cannot be said that the informant (PW-1 Ashish Kumar) had no sufficient reason not to lodge the First Information Report, immediately after the incident. Apart from this, on the basis of the First Information Report, a doubt is created relating to improvement in the prosecution story, but in the present case, in the intervening night of 13/14th December, 1995, the deceased had already given the dying declaration stating that her husband set her on fire, as such, delay in lodging First Information Report is of no help whatsoever to the accused/respondent.

16. Shri Sandeep Tandon, the learned counsel for the accused/respondent pointed out that it has come in the cross-examination of PW-3 Bishan Singh that after the shutter was got opened, Manju told him “MAUSAJI AAJ MAINE APNI SHADI KHUD KAR LEE”. In this connection, it is argued that the deceased had meant that she had committed suicide. On carefully going through the statement of the witness, we are unable to gather such meaning from the above sentence. The oral evidence adduced by the witness should be read in its entirety. If we read whole of the oral statement of PW-3 Bishan Singh and PW-4 Ramesh Singh, we find that the deceased had shouted for help. Had she been committing suicide, she would not have shouted for help. As such, we do not find substance in the argument advanced on behalf of the accused/respondent.

17. Thirdly, it is submitted on behalf of the accused/ respondent that the accused/respondent Raju Rana had tried to save the life of his wife, as he himself got injured in the incident. No doubt, in the statement of PW-3 Bishan Singh and PW-4 Ramesh Singh, it has come that accused too had suffered burn injuries in his hand and feet but that, by itself, is not sufficient to hold that the evidence adduced by PW-3 Bishan Singh, PW-4 Ramesh Singh, and the dying declaration of the deceased are not reliable. From the evidence on record, it is clearly established that inside the house, only accused and his wife were there at the time of incident, and the accused had not disclosed, even in his reply to the evidence put to him under Section 313 Cr.P.C., as to how his wife got 100% burn injuries.

18. Our attention is drawn on behalf of the accused/ respondent to the principle of law laid down in *State of Rajasthan vs. Yusuf* (2009) 12 SCC page-139, *Gopal vs. State of Madhya Pradesh* (2009) 12 SCC page-600, *Heera Lal vs. State of Madhya Pradesh* (2009) 12 SCC page-671 and *Bawa Ram and another vs. Union Territory* (2009) 13 SCC page-270. We have gone through the principle of law laid down in the said cases and we find that the aforesaid cases are of no help to the accused/respondent in the present case. In *State of Rajasthan vs. Yusuf* (supra), several variations were found in the dying declaration and same was not found reliable. In the present case in hand, the trial Court has not discussed the dying declaration made by the deceased, which was the most important piece of evidence to throw light as to the cause of death of the victim. In *Gopal vs. State of Madhya Pradesh*, there were serious discrepancies between the dying declarations

recorded by the Sub Divisional Magistrate and the one recorded by the Assistant Sub Inspector. In the present case before us, there is no material discrepancy in the statement made by the deceased before the Magistrate and the one recorded by the Investigating Officer. Similarly, in the case of Heera Lal vs. State of Madhya Pradesh (supra), two Naib Tehsildars recorded two different versions in the dying declarations, which is not the situation in the present case. Lastly, the case of Bawa Ram and another vs. Union Territory (supra) is also of no help to the accused/respondent, as there is no evidence on record indicating that the deceased had a suicidal tendency, as found in the case of Bawa Ram (supra).

19. For the reasons, as discussed above, we find that the trial Court has committed grave error of law in acquitting the accused by holding that the charge of offence punishable under Section 302 I.P.C. is not proved against him. Said finding of the trial Court is based on conjectures and surmises. In our opinion, on the basis of the evidence, already discussed in the preceding paras, we find that though charge of offence punishable under Section 498-A I.P.C. is not proved on the record, but the charge of offence punishable under Section 302 I.P.C. is fully proved against the accused/respondent Raju Rana beyond reasonable doubt.

20. Therefore, the appeal is allowed. The impugned judgment and order passed by the trial court is set-aside to the extent the accused was acquitted for the charge of offence punishable under Section 302 I.P.C. The accused/ respondent is held guilty of said charge and convicted under Section 302 I.P.C. Considering the facts

and circumstances of the case and the evidence on record and after hearing the parties, we are of the view that Raju Rana deserves punishment to imprisonment for life under Section 302 I.P.C. He is, accordingly, sentenced to imprisonment for life. He shall surrender before the trial Court forthwith. The trial Court's record be sent back to make the accused/ respondent Raju Rana to serve out the sentence awarded by this Court under Section 302 I.P.C., by issuing Non Bailable Warrants, if the accused fails to surrender, as directed above.

(V.K. Bist, J.) (Prafulla C. Pant, J.)

31.03.2011

NCM: