

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 356 of 2011

1. Durga Kurre, aged about 31 (30) years, S/o Shri Gendram Kurre, resident of village Farhada, P.S. Akaltara, Distt. Janjgir-Champa (CG)

**---- Appellant
(Accused person)
(In Jail)**

Versus

1. State Of Chhattisgarh, through the District Magistrate, District Bilaspur

---- Respondent

For appellant

Shri Jagat Sher Singh, Advocate with
Shri Neeraj Mehta, Advocate

For Respondent.

Shri Avinash K Mishra, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

JUDGEMENT

P. Diwaker, J

03/09/2015

1. This appeal arises out of impugned judgment of conviction & order of sentence dated 31.3.2011 passed by the 3rd Additional Sessions Judge, Bilaspur in S.T. No.76/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him with rigorous imprisonment for life and fine of Rs.100/-, in default to undergo additional R.I. for 01 month.
2. As per case of prosecution, Meena Krishnan (since deceased), widow of Late Nilesh Krishnan, had two children. It is alleged that she was having illicit relation with accused/appellant. On 18.1.2010 when she was in her house, the accused/appellant came there, demanded money from her and on her refusal, poured kerosene oil on her and set her ablaze with the help of

matchstick. It is further case of the prosecution that accused/appellant himself admitted the deceased in the CIMS Hospital, Bilaspur where she was immediately examined by Dr. Dhamendra Kumar (PW-16) vide Ex.P-16 who noticed 85-90% burn injuries. The In-charge, Police Outpost CIMS, Bilaspur vide Ex.P-8 requested the Executive Magistrate-cum-Tahsildar, Bilaspur for recording of dying declaration of the deceased. Shri J.K. Tiwari (PW-4), Naib Tahsildar, after obtaining certificate from Dr. P. Soni (PW-3) relating to her state of mind, recorded dying declaration vide Ex.P-9 in which she has narrated as to the manner in which she was burnt by accused/appellant. On 19.1.2010 itself FIR (Ex.P-15) under Section 307 of the IPC was registered against the accused/appellant at Police Outpost CIMS, Bilaspur and thereafter on the same day numbered FIR (Ex.P-25) under the same offence was also registered at Police Station Masturi. During course of hospitalization at CIMS, Bilaspur the deceased also made oral dying declaration before her relatives i.e. PW-6 Muktawan Ghosle (father of deceased), PW-10 Devendra Kumar Krishnan (son of deceased) & PW-11 Laxminarayan (brother of deceased), and also before Dr.Satya Prakash Singh (PW-15). On 22.1.2010 the relatives of deceased got her discharged from the CIMS, Bilaspur and took her to the hospital at Bhilai but she was again brought back to CIMS, Bilaspur where she succumbed to her burn injuries on 23.10.2010. Merg intimation (Ex.P-21) was given by the Ward Boy on 23.1.2010. Post-mortem on the body of deceased was conducted by Dr. Pranav Andhare (PW-8) vide Ex.P-13 on 24.1.2010 who opined that cause of death was extensive burn, shock and septicaemia.

3. After completion of investigation, charge sheet was filed against accused/appellant for the offence punishable under Section 302 of the IPC and accordingly the charge was framed against him by the Court below.

4. In order to hold the accused/appellant guilty, the prosecution had examined as many as 16 witnesses. Statement of accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication. Accused/appellant had taken a defence that out of anger, the deceased set herself ablaze and to prove this defence, he had examined himself as DW-2 and one another witness namely Pratap Kumar Nishad (DW-2), driver of vehicle in which the deceased was brought to the hospital.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted and sentenced the accused/appellant as described above.
6. Learned counsel for the appellant submits that:
 - though the conviction is based on dying declaration of deceased, but in the present case there are three dying declarations and all are contrary to each other, therefore, benefit of doubt ought to have been given to the accused/ appellant.
 - first dying declaration made before Dr. Satyaprakash Singh (PW-15) was oral in nature wherein the deceased had stated that she set herself ablaze, whereas in the oral dying declaration made before the relatives and dying declaration (Ex.P-9) recorded by the Executive Magistrate, it is alleged that it is the accused/appellant who set her ablaze. It has also been argued that had any such dying declaration was made by the deceased before the relatives, they would have certainly lodged the report against the accused/appellant in the police outpost situated within the hospital campus itself, but no report was lodged by any of the relatives.
 - In relation to the dying declaration (Ex.P-9) recorded by the Naib Tahsildar (PW-4), it has been argued that as this dying declaration does not bear

signature or thumb impression of the deceased, therefore, the possibility of false implication of accused/appellant cannot be ruled out. Had the accused/appellant set the deceased ablaze, he would not have brought her to the hospital and this conduct of accused/appellant shows that he was the protector and not the perpetrator.

- In support of aforesaid arguments, reliance is placed in the matters of Ram Das vs. State of Maharashtra reported in AIR 1977 SC 1164; State (Delhi Administration) vs. Laxman Kumar & others reported in (1985) SCC 476; State of U.P. vs. Shishupal Singh reported in 1992 Supp. (3) SCC 60.

7. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He further submits that while admitting the deceased to hospital with burn injuries, if any information has been given by the attendant, who was accused/appellant himself, then the same cannot be treated as dying declaration and can only be treated as an information recorded by the doctor at his instance. Dying declaration (Ex.P-9) of the deceased recorded by the Naib Tashildar (PW-4) being free from infirmities is sufficient for basing the conviction of accused/appellant. Oral dying declaration made by the deceased before her relatives also goes to show as to the manner in which she was brutally burnt by accused/appellant. He further submits that there is no reason to disbelieve statements of the Naib Tahsildar (PW-4) and PW-6 Mukhtawan Ghosle (father of deceased), PW-10 Devendra Kumar Krishnan (son of deceased) & PW-11 Laxminarayan (brother of deceased). He further submits that only on the ground that it is the accused/appellant who admitted the deceased in the hospital and got her treated, he cannot be treated as rescuer particularly

when on seeing the police in the hospital campus, he fled from there leaving his motorcycle.

8. We have heard learned counsel for the parties and perused the material available on record.
9. As per admission sheet of CIMS Hospital, Bilaspur, the deceased was admitted to hospital with burn injuries on 18.1.2010 at 4.20 p.m. and it was simply mentioned by the doctor who first attended her that “alleged case of kerosene oil burn”. Subsequently, at about 4.45 p.m. it was recorded in one of the document that “as per attendant and patient, self inflicted burn by patient herself after some quarrel by kerosene”.
10. In the dying declaration (Ex.P-9) of the deceased, which was recorded by the Naib Tahsildar-cum-Executive Magistrate (PW-4) in question and answer form, the deceased has categorically stated that after the death of her husband, she was living with accused/appellant as his wife, he used to demand money from her and used to quarrel on refusal. She has further stated that it was the accused/appellant who set her on fire with the help of matchstick after pouring kerosene oil on her. She has further stated that accused/appellant had extinguished fire and brought her to the hospital. She has further stated that her husband was killed by accused/appellant and two of his friends. She has clarified that even before her marriage she was having affair with the accused and because of her the accused/appellant has not performed marriage till date. Lastly, she has stated that she wishes that accused/appellant get herself treated properly and she still loves him. Document of Ex.P-8 i.e. letter written by the police to the Executive Magistrate requesting him for recording dying declaration of deceased, shows the endorsement of the doctor that “patient is fit for giving the

statement at present”.

11. Apart from above, the deceased had also made oral dying declaration before PW-6 Muktawan Ghosle (father of deceased), PW-10 Devendra Kumar Krishnan (son of deceased) & PW-11 Laxminarayan (brother of deceased).
12. The principle on which dying declarations are admitted in evidence is indicated in legal maxim “*nemo moriturus proesumitur mentiri*” (a man will not meet his Maker with a lie in his mouth). It is indicative of the fact that a man who is on death bed would not tell a lie to falsely implicate an innocent person. The law in this regard is well settled by the judicial pronouncements of the Hon'ble Supreme Court as well as by various High Courts that a conviction can be safely placed on a dying declaration provided the said dying declaration is free from vice of infirmities and if that dying declaration commands acceptance at the hands of the Court. Therefore, let us now examine the dying declarations and see whether the same can be acted upon without any demur.
13. Firoz Memon (PW-2) is the Patwari who prepared the spot (Ex.P-2).
14. Dr. Pradeep Soni (PW-3) is doctor at CIMS who treated the deceased when she was brought to the hospital in burnt condition. Various questions were put to this witness by the defence to establish that the deceased was not in a fit state of mind to make her dying declaration as she was under drug effect of drug, but he stuck to his version that the deceased was in position to give her statement.
15. J.K. Tiwari (PW-4), Naib Tehsildar, is the person who recorded the dying Declaration (Ex.P-9). He has duly proved the same in his Court statement. He has categorically stated that as to the manner in which dying declaration

was made by the deceased and recorded by him. The defence has not been able to elicit anything In the lengthy cross-examination of this witness which makes his testimony unreliable to the extent that the deceased had not made any dying declaration to him.

16. Muktawan Ghosle (PW-6) has stated that on receiving information from a boy living in his neighbour about the burn injuries being suffered by his daughter, he reached the hospital along with his wife. On being asked, his daughter told them that accused/appellant poured kerosene oil on her and thereafter set her on fire with the help of match-stick. She further told that he caused cut injury on her leg by blade. This witness has further stated that as there was no improvement in the condition of deceased at CIMS, she was admitted to hospital at Bhilai but thereafter she was again admitted in the CIMS, Bilaspur where she breathe her last. In the cross-examination this witness has admitted that though police outpost is situated within hospital campus but he did not lodge any report.
17. Dr. Pranav Andhare (PW-8) has conducted autopsy and opined that cause of death was excessive ante mortem burn injuries, shock and septicaemia.
18. J.K. Rathore (PW-9) is the Assistant Sub-Inspector who recorded the FIR on the basis of dying declaration of the deceased and had sent the memo of Ex.P-8 to the Executive Magistrate for recording of dying declaration of the deceased.
19. Devendra Kumar (PW-10), son of deceased, has stated that on coming to know about the incident, he came to the hospital to see his mother. On being asked, she told that it is the accused/appellant who had sprinkled kerosene on her and set her on fire. She has further informed that accused/appellant also caused cut injury in her leg. He has further stated that his mother was

shifted to hospital at Bhilai from CIMS and thereafter she was again brought to CIMS, Bilaspur where she died. He has further stated that quite often accused/appellant used to harass her mother by demanding money and also used to beat her. He has further stated that it is her mother who had purchased motorcycle for the accused/appellant. In the cross-examination he remained very firm and nothing incriminating could be elicited by the defence.

20. Laxminarayan (PW-11), brother of deceased, has made almost similar statement as has been made by PW-6 Muktawan Ghosle & PW-10 Devendra Kumar Krishnan. He too has stated that in the hospital the deceased had oral dying declaration before him.
21. Shivkumar Rathore (PW-14) has made seizure of motorcycle of accused/appellant. He has stated that accused/appellant had left the said motorcycle in the hospital premises and it was seized vide Ex.P-21.
22. Dr. Satya Prakash Singh (PW-15) was an intern in the hospital who treated the deceased with his senior namely Dr. Pradeep Soni (PW-3). Dr. Dhamendra Kumar (PW-15) is the person who first attended the deceased in the hospital. He has stated that the deceased had suffered 85-90% burn.
23. Sadhna Singh (PW-18) is the investigating officer and has duly proved the prosecution case.
24. Pratap Mishra (DW-1), driver of Bolero vehicle, has stated that the deceased was brought to the hospital in his vehicle and on the way, it was disclosed by the deceased that out of anger, she set herself on fire after pouring kerosene.
25. Accused/appellant got examined himself as DW-2 and stated that the deceased was in his relation. Husband of the deceased was his brother in

relation and even after his death, he used to visit his house. He has further stated that gradually the deceased started loving him and on the date of incident when he reached the house of deceased, she threatened her that if he would not marry her, she would die. When he tried to explain her, she got annoyed and out of anger, she set herself on fire.

26. As regards the oral dying declaration said to have been made at the time of admission in the hospital wherein she has allegedly stated that she set herself on fire after pouring kerosene oil. Dr. Satya Prakash (PW-15) has stated in his statement that the endorsement made by him in Ex.P-4A that *“as per attendant & patient, burn self inflicted burn by patient herself after some quarrel”* is based on saying of accused/appellant & deceased. The endorsement as made is indicative of the position that a statement was made in the burn unit where apart from the accused/appellant and the doctor, none else was present. Record goes to show that immediately after the incident, the accused/appellant took the deceased to the hospital without making any disclosure to anyone and as soon as they reached the hospital, they informed the attending doctor that the deceased had set herself ablaze. Thus, taking into consideration cumulative effect of all the circumstances the possibility of first dying declaration being a tutored one cannot be ruled out.

27. As regards the dying declaration recorded by the Executive Magistrate-cum-Naib Tahsildar (PW-4) vide Ex.P-9. Shri J.K. Tiwari (PW-4), Naib Tahsildar, has stated that on being summoned, he went to the hospital and recorded dying declaration of the deceased in the form of questions & answers, and, as far as practicable, in the words of the maker of the declaration i.e. the deceased. This witness had also mentioned the date & time in the dying declaration (Ex.P-9). Memo (Ex.P-8) summoning the Executive Magistrate for recording dying declaration of the deceased contains endorsement of the doctor that the patient is fit for giving the

statement at present. Dying declaration (Ex.P-9) also finds corroboration from the evidence of PW-6 Muktawan Ghosle, PW-10 Devendra Kumar Krishnan & PW-11 Laxminarayan, who have stated that the deceased had specifically stated before them that it is the accused/appellant who set her on fire after pouring kerosene oil. The defence has not been able to elicit anything in the cross-examination of aforesaid witnesses to discredit their testimonies to the extent that the deceased has not made any dying declaration before them. Mere absence of signature or thumb impression of the deceased on the dying declaration (Ex.P-9) is not a sufficient ground to overturn the conviction. Even there is no such requirement of law that a dying declaration must contain signature or thumb impression of the maker and it depends on the facts and circumstances of each particular case. Thus, we hold that dying declaration (Ex.P-9) made by the deceased is voluntary and truthful and there is no reason before us to doubt the veracity of the same.

28. Further, the omission to lodge report by the relatives of deceased in the police outpost situated within the hospital premises itself, is of no importance and it does not give any benefit to accused/appellant. As we have already held that dying declaration (Ex.P-9) of the deceased is voluntary & truthful, therefore, we do not find any substance in the argument of counsel for accused/appellant that accused/appellant was the protector and not the perpetrator.

29. In the result, we see no infirmity or perversity in the judgment impugned before us and consequently we affirm the judgment of the trial Court and dismiss the appeal as devoid of any merit.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge