

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 721 of 2010

- Budharuram, aged about 29 years, S/o Bedeh Singh, R/o Bansla, Thana Bhanupratappur, Distt. Uttar Bastar, Kanker.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through Police Station Bhanupratappur, Distt. Uttar Bastar, Kanker.

---- Respondent

For appellant : Shri Parag Kotecha, Advocate.
For Respondent/State : Shri Rahul Tamaskar, PL.

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

Judgment On Board

Per P. Diwaker, J

02/02/2016

This appeal arises out of the judgment of conviction and order of sentence dated 9.9.2010 passed by the Additional Sessions Judge (FTC), Bhanupratappur, Distt. North Bastar, Kanker, in ST No.24/10 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.500/- with default stipulation.

02. As per prosecution case, deceased Amrikabai @ Ambikabai was second wife of the accused/appellant. On 17.1.2010 she was burned by the appellant in his house at 9.40 pm. She was immediately taken to Community Health Center, Bhanupratappur where her MLC was done

vide Ex.P/6, according to which she had suffered 85-95% burn injuries, which was dangerous to her life. There her dying declaration (Ex.P/8) was recorded by PW-10 PR Tekam, Assistant Sub Inspector, in presence of Dr. Sumit Dhruv (PW-8) who also certified that the deceased was in a fit state of mind to make such statement. However, after recording her dying declaration, on 18.1.2010 she succumbed to the burn injuries. Inquest over the body of the deceased was prepared vide Ex.P/5. The dead body was thereafter sent for postmortem, which was conducted by PW-12 Dr. PK Kapil on 19.1.2010 vide Ex.P/25 wherein he noticed 98% burn injury and opined that the cause of death was antimortem second degree burn, which was sufficient in the ordinary course of nature to cause death. Based on merg enquiry, on 19.1.2010 FIR (Ex.P/18) was registered against the appellant for the offence under Section 302 of IPC. After investigation, charge sheet was filed under Section 302 of IPC and accordingly, charge was framed against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, the appellant examined two witnesses.

04. 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 appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits as under:

(i) that the dying declaration recorded by the police has no evidentiary value and no explanation has been offered by the prosecution as to why Executive Magistrate was not called for recording such statement.

(ii) that the deceased suffered 98% burn injuries, in that case the question of making dying declaration does not arise.

(iii) that the oral dying declaration made by the deceased before PW-1 Hansraj Dugga, PW-2 Jainibai, PW-3 Radheshyam and PW-4 Bisahuram is not reliable.

(iv) that when the deceased was a literate lady, her signature should have been obtained on the so-called dying declaration whereas her thumb impression has been obtained which makes the dying declaration doubtful.

(v) that the trial Court has committed illegality in not giving due consideration to the defence evidence.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that there is no reason to disbelieve the dying declaration Ex.P/8. the same was recorded after the treating doctor certified that the deceased is in a fit state of mind to make such statement and the witnesses to this declaration have also remained very firm. Likewise, witnesses to oral dying declaration (PWs. 1 to 4) have also remained firm during their examination. This apart, present being a case of house murder, the appellant was under an obligation to explain as to how the deceased suffered burn injuries, but he failed to

discharge the said burden as required under the law.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Hansraj Dugga appears to be neighbour of the appellant and the deceased. He has stated that in the night the deceased came out from her house in burning condition screaming for help, on which he called the other persons and with their help took her to hospital. When he asked the deceased as to how she suffered burn injuries, she informed him that it is the accused/appellant who after pouring kerosene oil on her body set her on fire. He is also a witness of seizure Ex.P/1 and P/2 by which broken pieces of bangle, broken necklace and burnt clothes were seized from the place of occurrence. In cross-examination, he remained very firm and reiterated that the deceased informed him that it is the accused/appellant who burned her. PW-2 Jainibai, the landlady, is the witness of oral dying declaration. She has stated that the deceased informed her that it is the accused/appellant who burned her. She has denied all the suggestions put to her by the defence to create doubt as to the credibility of the oral dying declaration made to her by the deceased. PW-3 Radheshyam, neighbour of the accused/appellant and the deceased, saw the deceased lying on the road in burnt condition and when he enquired from her, she informed him that it is the accused/appellant who burned her. He has stated that when he and other persons enquired from the deceased as to how she suffered burn injuries, her mental condition was good enough to disclose the above fact. PW-4 Bisahuram is also a neighbour before whom oral dying declaration was made by the

deceased. He is also a witness of inquest Ex.P/5. PW-5 Vishnuprasad is a witness of Ex.P/5. PW-6 Faguram and PW-7 Chandrabhan are hearsay witnesses.

09. PW-8 Dr. Sumit Dhruv did MLC of the deceased vide Ex.P/6 when she was hospitalized on 17.1.2010 and noticed smell of kerosene emanating from her body, both her hands, face, legs, chest, back, buttock, thighs were burnt, however, both palms and sole were not burnt, the burn was of second degree which was 85-95%, and was fatal to her life and he immediately referred her to higher center for treatment. He has also proved the dying declaration (Ex.P/8) recorded by PW-10. He has stated that while making the dying declaration, the deceased was in a fit state of mind and therefore, he gave a certificate to this effect. He also gave information to the police station regarding death of the deceased vide Ex.P/9. PW-9 Rameshwar Hichami, Patwari, prepared the spot map Ex.P/10. PW-10 PR Tekam, Assistant Sub Inspector, did major part of investigation. He also recorded dying declaration of the deceased vide Ex.P/8. He has stated that before recording the dying declaration he had obtained certificate of the concerned doctor and in the dying declaration the deceased has categorically stated as to the manner in which she was burned by the accused/appellant. PW-11 Meena Mahilkar, investigating officer, has duly supported the prosecution case. PW-12 Dr.PK Kapil, conducted postmortem on the body of the deceased on 19.1.2010 vide Ex.P/25 wherein he noticed 98% burn injury and opined that the cause of death was antimortem second degree burn, which was sufficient in the ordinary course of nature to cause death.

10. The defence witnesses have not stated anything specific in favour of the accused/appellant.

11. In the present case, conviction of the accused/appellant is substantially based on the dying declaration Ex.P/8 recorded by PW-10 and the orally made before PW-1 Hansraj Dugga, PW-2 Jainibai, PW-3 Radheshyam and PW-4 Bisahuram.

12. Close scrutiny of the evidence makes it clear that on 17.1.2010 it is the accused/appellant who after pouring kerosene on the body of the deceased set her afire as result of which she suffered 98% burn injuries and ultimately succumbed to the same on 18.1.2010 during treatment in the hospital. It has come in the evidence that when the deceased came out from her house in burning condition and was screaming for help, some persons of her neighbourhood came to her rescue and on being enquired by them, she informed them that it is the accused/appellant who burned her by pouring kerosene on her body. PW-1 Hansraj Dugga, PW-2 Jainibai, PW-3 Radheshyam and PW-4 Bisahuram are the witnesses to this oral dying declaration. In their Court statements all of them remained very firm and supported the prosecution case. The defence has utterly failed to elicit anything from them to make their statements, especially with regard to oral dying declaration, doubtful or unreliable. Thus there is no reason for this Court to disbelieve their version. This apart, the dying declaration of the deceased was also recorded by PW-10 PR Tekam, ASI, vide Ex.P/8, wherein she has categorically stated that it is the accused/appellant who burned her after pouring kerosene on her body. From the evidence of PW-10 it is clear that the said dying declaration

was recorded in presence of Dr. Sumit Dhruv (PW-8) only after his certification to the effect that the deceased is in a fit state of mind to make such statement. PW-8 Sumit Dhruv has stated that on query being made by the police whether the deceased is in a fit state of mind to give dying declaration, he had endorsed in the said application that the deceased is conscious and fit to give statement vide Ex.P/7.

13. The principle of dying declaration is based on legal maxim “*nemo moriturus proesumitur mentiri*”—a man will not meet his maker with a lie in his mouth. Such declarations are made in extremity, when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful is considered by the law as creating an obligation, equal to that which is imposed by a positive oath in a court of justice. While dealing with the question of dying declaration, the Apex Court in the matter of State of U.P. v. Ram Sagar Yadav (AIR 1985 SC 416) has held that if the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. It is also a settled legal position that mere absence of doctor's certification as to the fitness of the declarant's state of mind would not ipso facto render the dying declaration unacceptable. It is for the Court to decide whether on the basis of statement of the person who has recorded dying declaration, the deceased was in fit state of mind or not and it is the authority who records the dying declaration to satisfy whether the injured is in a position to make statement or not.

14. If we examine the evidence of PW-8 and PW-10 minutely in light of

the aforesaid principles of law, there appears to be no reason to doubt the credibility of the dying declaration Ex.P/8 and the same appears to have been made in a fit state of mind, without any pressure or coercion.

15. Yet another important aspect of the case is that the present is a house murder. In such a case, it is extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. In such cases, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house can not get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation. In the case in hand, it has come in the evidence that the accused/appellant and the deceased were the only inmates of the house and at the time of incident, the appellant was also there in the house. Even assuming that the deceased had caught fire accidentally or she had set herself ablaze, the appellant being husband of the deceased was required to save her by all possible means, however, there is no such evidence to this effect that the appellant tried to save

the deceased. The accused/appellant has not offered any explanation in his statement under Section 313 of Cr.P.C. as to how the deceased suffered burn injuries and made only bald denial of all the incriminating circumstance appearing against him in the prosecution case. This circumstance also goes against the appellant and points towards his guilt.

16. We find no substance in the argument of the appellant that as the deceased was a literate lady, instead of obtaining her thumb impression her signature should have been obtained on the dying declaration. It is not in dispute that the deceased had suffered 98% burn injuries, which was fatal to her life. Mere absence of signature or thumb impression of the deceased on the dying declaration is not a sufficient ground to doubt its reliability, especially when the evidence of witnesses to such statement is firm, trustworthy and beyond any doubt. 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 peculiar case, including the physical condition of the declarant. Thus we hold that the dying declaration (Ex.P/8) made by the deceased is voluntary and truthful, and there is no reason before us to doubt the veracity of the same.

17. Keeping in view the aforesaid evidence on record, complicity of the accused/appellant in commission of the crime stands proved beyond all reasonable doubt. The findings recorded by the trial Court holding the appellant guilty under Section 302 of IPC suffer from no illegality or infirmity. Being so, the judgment impugned is hereby affirmed.

18. In the result, the appeal being sans merits is liable to be dismissed and is, accordingly, dismissed. The accused/appellant is reported to be in jail, therefore, no further order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge

Khan