

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 170/2004.

APPELLANTS
ACCUSED
(In Jail)

: 1. Govind Prasad S/o Sakha Ram,
aged about 45 years, Caste -
Satnami, resident of village
Baghmar, P.S. Kunda, District
Bilaspur (C.G.).

2. Smt. Balmiki Bai alias Balki Bai
W/o Govind Prasad, aged about
43 years, Caste - Satnami, R/o
village Baghmar, P.S. Kunda,
Distt. Bilaspur (C.G.).

V e r s u s

RESPONDENT

: State of Chhattisgarh
Through : P.S. Kunda,
Distt. Bilaspur (C.G.).

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF
CRIMINAL PROCEDURE, 1973 :

561/04

Filed on 05/2/04
by Shri Nishu Khatke Advocate

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N.H. Goswami
NATH GOSWAMI, ADVOCATE



12/12/16

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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.387 of 2003

- Rajesh Kumar and others

---- Petitioner

Versus

- The State of Chhattisgarh

---- Respondent

And

CRA No.170 of 2004

- Govind Prasad and another

---- Petitioner

Versus

- State of Chhattisgarh

---- Respondent

For Appellants

Mr. R.K. Tiwari and Mr. Rituraj Verma,
Advocates

For Respondent/State

Mr. Ramakant Mishra, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

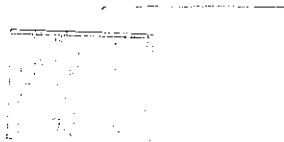
Order On Board By

Prashant Kumar Mishra, J.

07/11/2016

1. Heard.

2. The appellants have called in question their conviction by
the trial Court under Sections 302/34 and 498-A/34 of IPC





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and sentence of life imprisonment with fine of Rs.3000/- and R.I. for 3 years with fine of Rs.1000/- respectively for each of the appellants with usual default clause.

3. Deceased Nila Bai was married to accused No.1 Rajesh Kumar sometimes in the year 1993. Accused No.2 Ghasiya Das) is deceased's father-in-law, accused No.3 Bedin Bai is her mother-in-law, accused No.4 Dhanaj Bai is her sister-in-law, whereas, accused No.5 Govind Prasad is her father-in-law (*Chacha Sasur*), accused No.6 Anil Kumar is her brother-in-law (*Devar*) and accused No.7 Balmiki alias Balki Bai is her mother-in-law (*Chachi Saas*).

4. The prosecution case, as appearing from the material available on the record, is that after the marriage in the year 1993, accused No.1 Rajesh Kumar and his relatives have ill-treated the deceased on several occasions. She was also thrown out of the house, however, on intervention by the parents of the deceased and other relatives as well as villagers, she was allowed to reside in the marital house. On one occasion, prior to the present incident, accused No.1 Rajesh Kumar had tried to push the deceased inside the well. As per the *Dehatinalisi* (Ex.P/11), lodged by the deceased herself at 13:30 hours on 21.05.2000, the incident occurred at 9:00 a.m., when her husband -Rajesh Kumar, *Nanad* -Dhanaj Bai, mother-in-law Bedin Bai came to her room and Dhanaj Bai poured kerosene oil on her body, thereafter, Bedin Bai set her on



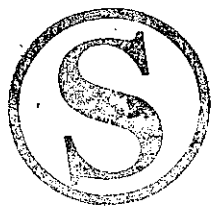
fire by igniting the match stick. The deceased's husband Rajesh Kumar, *Chacha Sasur* -Govind Prasad , *Devar* -Anil Kumar and *Chachi Saas* -Balmiki Bai did not allow her to move out of the house as they stopped her way out of the room. When she tried to scream and run away, her father-in-law Ghasiya Das caught hold of her, on which, Ghasiya Das received burn injuries on his right hand. Before recording of *Dehatinalisi*, the deceased was brought to PHC, Lormi by the accused persons at about 12:50 p.m., where her MLC was conducted by PW-14 M.T. Minj, who also medically examined accused No.2 Ghasiya Das vide Ex.P/29.

5. The Hospital authorities informed the police about requirement of recording a Dying Declaration, on which, the Executive Magistrate/ Naib Tehsildar A.K. Mishra (PW-15) recorded the Dying Declaration (Ex.P/30) at 1:55 p.m. Before recording of Dying Declaration, her fitness to record such statement was certified by PW-14 M.T. Minj in the Dying Declaration Ex.P/30 itself. In the Dying Declaration also, the deceased made allegations against all the accused persons, which are similar to the allegations levelled by her in the *Dehatinalisi*.
6. After the postmortem examination and conducting other investigations including recording of statement under Section 161 Cr.P.C., the appellants were sent for trial, wherein, the prosecution examined 18 witnesses to bring

home the charges. The appellants abjured the guilt and examined two defence witnesses. The trial Judge has convicted all the accused persons mainly on the basis of evidence in the nature of Dying Declaration.

7. It is argued by Mr. R.K. Tiwari and Mr. Rituraj Verma, learned counsel for the respective appellants, that the time of occurrence had been differently informed by the deceased in the *Dehatinalisi* and in the Dying Declaration, therefore, her statement is not believable. It is also argued that accused No.2 Ghasiya Das received injuries while trying to save the deceased. It is further argued that as per the evidence of DW-2 Hitesh, son of the deceased, aged about 7 years, the deceased committed suicide and Ghasiya Das received injuries when he was trying to save the deceased, therefore, the appellants have been falsely implicated. It is vehemently put-forth that there being material contradiction and omission in the entire prosecution case, coupled with the statement of DW-2 Hitesh, it is a case where the prosecution has not been able to prove its case beyond all reasonable doubt.

8. According to learned counsel for the appellants, in the absence of any eye-witness, the burden lay heavily on the prosecution to establish the guilt of the appellants in view of the discrepancy in the Dying Declaration and the prosecution has failed to discharge that burden, therefore, the conviction deserves to be set-aside.



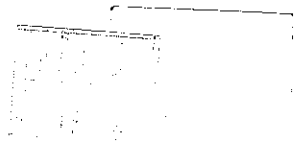
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9. Per contra, Mr. Ramakant Mishra, learned Dy. AG, would submit that there is no reason why the Dying Declaration recorded by the Executive Magistrate under certification by the Medical Officer be disbelieved. According to him, the prosecution has adduced all possible evidence, which may be available in the case and the appellants are completely nailed in committing the crime. He would also submit that the judgment of conviction is well-founded and reasoned, therefore, the appeals have no substance and they deserve to be dismissed.

10. We have heard learned counsel for the parties and carefully scrutinised the evidence available on record.

11. Before proceeding to ascertain the credibility and genuineness of the statement made by the deceased in her Dying Declaration, it would be apt to reiterate the principle as to when a dying declaration is entitled to weight and can be relied upon, settled by the Supreme Court in a catena of decisions.

12. In **Lallubhai Devchand Shah and others Vs. The State of Gujarat, 1971(3) SCC 767**, it is held that a dying declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case, bearing in mind, on the one hand, that the statement is by a person who has not been examined in court on oath and, on the other hand, that the dying man



is normally not likely to implicate innocent persons falsely. If the court is satisfied on a close scrutiny of the dying declaration that it is truthful, it is open to the court to convict the accused on its basis without any independent corroboration.

13. The above settled decision has been followed consistently in the matters of **State of Uttar Pradesh Vs. Ram Sagar Yadav and others, AIR 1985 SC 416, Paniben (Smt.) Vs. State of Gujarat, (1992) 2 SCC 474, Om Parkash Vs. State of Punjab, (1992) 4 SCC 212, State of Orissa Vs. Parasuram Naik, (1997) 11 SCC 15, Paparambika Rosamma and others Vs. State of A.P., (1999) 7 SCC 695, Laxmi (Smt.) Vs. Om Prakash and others, (2001) 6 SCC 118, Panchdeo Singh Vs. State of Bihar, (2002) 1 SCC 577, Ramilaben Hasmukhbhai Khristi and another Vs. State of Gujarat, (2002) 7 SCC 56, Lakhan Vs. State of Madhya Pradesh, (2010) 8 SCC 514, Javed Masood and another vs. State of Rajasthan, (2010) 3 SCC 538** and most recently, in the matter of **Gulzari Lal Vs. State of Haryana, (2016) 4 SCC 583.**

14. In the present case, the available evidence would suggest that the deceased was married with accused No.1 in the year 1993. Poon Das (PW-1), father of the deceased, would speak about the strained and quarrelsome relation between accused No.1 Rajesh Kumar and the deceased soon after the marriage. He has

clearly stated that Rajesh Kumar was in the habit of abusing and assaulting the deceased. On more than one occasion, the deceased was expelled from the house. About two months prior to the date of incident, the deceased was brought back to her marital house. This witness was informed about the incident by one Mohit of village Patalukdi. He would also speak about the oral dying declaration made by the deceased when he met her in the marital house before being taken to the PHC, Lormi. He has also stated that when the Tehsildar was recording the Dying Declaration, they all were asked to move out of the room. He has denied the suggestion that Mila Bai has informed him about commission of suicide. Similar suggestion made to PW-9 Boond Bai @ Boond Kunwar, mother of the deceased, has been denied by this witness. PW-1 Poon Das and PW-9 Boond Bai were also given suggestion that the deceased was not conscious and was not able to speak, however, these witnesses have denied the suggestion. PW-9 Boond Bai has also stated about the oral dying declaration made by the deceased.

15. PW-2 Anuj Ram is an independent witness being a resident of village Baghmar. This witness has not disclosed any material information in his examination-in-chief, but during cross-examination, he denied the suggestion that he informed the Police that accused No.2 Ghasiya Das was shouting that his daughter-in-law has set herself on fire. Thus, an independent witness has also

denied the suggestion that the deceased has committed suicide or that Ghasiya Das was shouting like this soon after the incident. PW-3 Ravindra Nath Pandey and PW-4 Premlal Patre have not thrown much light on the prosecution case. PW-5 Dr. P.R. Nanda is the Medical Officer, who conducted the postmortem and submitted the postmortem report Ex.P/6A. He would state that the deceased had suffered 70% burn injuries, however, he denied the suggestion that since the deceased had suffered 70% burn injuries, she was not able to speak.

16. Dr. P.L. Kurre (PW-10), Dr. M.T. Minj (PW-14) and A.K. Mishra (PW-15) are the important witnesses around whom the evidence of Dying Declaration and its credibility depends. According to PW10 Dr P.L. Kurre, accused No.1 Rajesh Kumar was examined by him, wherein, he was found to have sustained burn injuries, for which, he submitted his medical report. (Ex.P/13). Dr. M.T. Minj (PW-14) is a Medical Officer, who first examined the deceased when she was brought to the PHC, Lormi at 12:50 p.m. He has proved the memo sent by him to the Police vide Ex.P/16. When the deceased was examined by this witness, she had suffered 60% burn injuries. The MLC in relation to the deceased has been proved by this witness as Ex.P/28. Dr. M.T. Minj also examined accused Ghasiya Das, on which, he was found to have sustained burn injuries on four fingers of his right hand. The report in relation to Ghasiya Das has been proved by Ex.P/29. Dr.

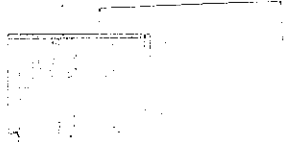


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M.T. Minj has further denied the suggestion that the deceased was semi-conscious at the time of treatment. He would himself state that the deceased was able to put her signature also.

17. Now, if we come to the statement of PW-15 A.K. Mishra, Naib Tehsildar/Executive Magistrate, who has recorded the Dying Declaration, we have not found any such discrepancy in his statement, which would discredit the Dying Declaration Ex.P/30 as forged or incorrectly recorded document. This witness has clearly stated that the Dying Declaration has reproduced the exact statement made by the deceased. He would also state that after recording the statement, the entire document was read over to the deceased, on which, she admitted to have made such Dying Declaration. Moreover, PW-14 Dr. M.T. Minj has also certified that the statement has been recorded in his presence, meaning thereby that after certifying the mental state or the health condition of the deceased to make a Dying Declaration, the Physician did not leave the room but remained there all throughout in the course of recording of the Dying Declaration.

18. Considering the law laid down by the Supreme Court in the matters of **Lallubhai Devchand Shah (supra)**, **Ram Sagar Yadav (supra)**, **Paniben (Smt.) (supra)**, **Om Parkash (supra)**, **Parasuram Naik (supra)**, **Paparambaka Rosamma and others (supra)**, **Laxmi (Smt.) (supra)**,



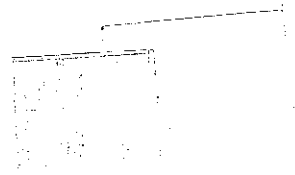


Panchdeo Singh (supra), Ramilaben Hasmukhbhai Khristi (supra), Lakhan (supra), Javed Masood and another (supra) and Gulzari Lal (supra) , as to when a Dying Declaration can be trusted to sustain conviction, we do not find any infirmity in the Dying Declaration.

19. Much emphasis has been laid down by the appellants' counsel on the time of occurrence differently mentioned by the deceased in the *Dehatinalisi* and the Dying Declaration, however, mere discrepancy of time by about 2 hours or so and that too concerning a person, who has sustained 60-70% burn injuries, may not by itself is such discrepancy that would belie the entire prosecution case or the whole Dying Declaration, which is otherwise consistent with the material contained in the *Dehatinalisi*.

20. It is settled by the Supreme Court in the matters of **Kuriya and another Vs. State of Rajasthan, (2012) 10 SCC 433**, and **Thoti Manohar Vs. State of Andhra Pradesh, (2012) 7 SCC 723**, that minor discrepancy in the statement of witnesses would not adversely impact the prosecution case when the discrepancy has no material bearing on the basic prosecution case.

21. Having anxiously considered the arguments raised and upon intense examination of the evidence, we failed to persuade ourselves to take a different view of the matter than the one taken by the trial Court while convicting the appellants. There is absolutely no infirmity in the



impugned judgment.

22. In the result, the appeals fail and they deserve to be and are hereby dismissed.

23. The appellants are on bail. Their bail bonds are cancelled. They be taken into custody forthwith and sent to jail for serving the remaining part of the sentence.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Anil Kumar Shukla)

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