

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 413 of 2003****Judgment Reserved on 22.06.2017****Judgment Delivered on 25.07.2017**

1. Krishnabai, w/o Deo Prasad Satnami, aged about 22 years, at present aged about 28 years,
2. Sanat, s/o Hari Satnami, aged 30 years, at present 36 years,
3. Hirau, s/o Budhhuram Satnami, aged 53 years, at present aged about 59 years,
4. Smt. Kalash Bai, w/o Dhan Singh Satnami, aged 30 years, at present aged about 36 years,
5. Smt. Vaishakhiya Bai, w/o Hari Ram Satnami, aged 50 years, at present aged about 56 years,
6. Smt. Parwati Bai, w/o Sanat Satnami, aged 29 years, at present aged about 35 years,
7. Dhanash @ Dhansingh, s/o Hariram Satnami, aged 38 years, at present aged about 43 years,
8. Lakhuram s/o Heeradas Satnami, aged 48 years, at present aged about 54 years,
9. Hari Ram, s/o Budhram, aged 60 years, at present aged about 66 years,

All R/o. Vill. Khektara Hardi, P.S. Pandaria, at present Mungeli, District Bilaspur, Chhattisgarh.

---- Appellants (in Jail)

Versus

State of Chhattisgarh through Station House Officer, P.S. Pandaria, District Kawardha, Chhattisgarh.

---- Respondent

For the Appellant	:	Shri Goutam Khetrapal and Shri H.S. Ahluwalia, Advocates.
For the Respondent/ State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV JUDGMENT

Per R.C.S. Samant, J.

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 13.03.2003, passed by the Learned Third Additional Sessions Judge (FTC), Mungeli, District Bilaspur in Sessions Trial No. 148 of 1997, whereby and whereunder the Learned Third Additional Sessions Judge has convicted the appellants under Sections 498-A/ 34 and 302/ 149 of the Indian Penal Code (for short 'the IPC') and sentenced them to undergo RI for one year and imprisonment for life and to pay fine of Rs.1,000/- each on both the counts, respectively with default stipulation.

2. Deceased – Geeta Bai was wife of the accused Shiv Prasad and appellant No.1 – Krishna Bai is wife of elder brother of Shiv Prasad. Appellant No.2 – Sanat is the elder brother of Shiv Prasad and Appellant No.3 – Hirau is father-in-law in relation to the deceased. Appellant No.4 – Smt. Kalash Bai is the wife of elder brother of Shiv Prasad. Appellant No.5 – Smt. Vaishakhiya Bai is the mother-in-law of the deceased. Appellant No.6 – Smt. Parwati Bai is the wife of Appellant No.2 – Sanat Satnami, who is elder brother of Shiv Prasad. Appellant No.8 – Lakhuram is father-in-law in relation to the deceased. Appellant No.9 – Hari Ram is the father-in-law of the deceased and one more accused Lakkuram is also father-in-law in relation to the deceased. These appellants were arrayed as accused in the prosecution case. Appellants No.3 – Hirau and No.9 – Hariram have expired during the pendency of this appeal. Hence, their appeal stands abated.

3. The case of the prosecution in brief is that, about 4 to 5 years prior to the date of incident, marriage of accused Shiv Prasad and deceased Geeta Bai was solemnized. It is alleged that while residing in the matrimonial

home, deceased Geeta Bai was subjected to torture by the accused persons. It is also alleged that accused Shiv Prasad had illicit relationship with appellant No.4 – Smt. Kalash Bai and it was the reason that the deceased was tortured mentally and physically and dowry was also demanded from her. On the date of incident i.e. 14.8.1996, it was Holi festival and at about 7:00 pm, the deceased was in the kitchen and her husband Shiv Prasad had been away from home and at that time rest of the accused persons poured kerosene on her body and set her on fire, due to which she got 80% burns. Deceased – Geeta Bai was admitted in District Hospital on 15.8.1996. One information was sent to P.S. Kotwali, Bilaspur vide Ex. P/5. Statement of the deceased was recorded on 16.8.1996 vide Ex. P/3. During the course of treatment, one dying declaration was recorded by the Executive Magistrate, D.R. Khunte (DW-2). Later on, final dying declaration Ex. P/24 was again recorded by the Executive Magistrate, R.P. Tiwari (PW-20) on 21.8.1996 in which deceased – Geeta Bai stated that all the accused persons actively engaged in pouring kerosene on her body and setting fire. Deceased succumbed to the injuries sustained by her on 30.8.1996.

4. Merg intimation Ex. P/6 was recorded by P.S. Pandariya, District Bilaspur. Inquest on the dead body of the deceased was conducted vide Ex. P/2 and postmortem vide Ex. P/8 was conducted by Dr. Nilima Sharma (PW-13) alongwith Dr. K.K. Sharma in which it was opined that deceased – Geeta Bai died as a result of complications from burn injuries. On the basis of merg enquiry, First Information Report Ex. P/6-A was lodged on 3.10.1996 against the accused persons for the offence under Section 306/ 34. Statements of the witnesses were recorded under Section 161 of the Code

of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, the appellants and the co-accused were charge-sheeted.

5. The appellants and co-accused persons were charged under Sections 498-A/ 34 and 302/ 149 and in alternative Section 304-B of the IPC. The appellants and the acquitted accused persons denied the charges. The prosecution examined as many as 21 witnesses and the defence examined three witnesses. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against them, the appellants pleaded innocence and false implication. It was submitted that the death of deceased - Geeta Bai was accidental. After giving opportunity of hearing and leading evidence to the prosecution and the defence, the impugned judgment has been passed in which accused - Shiv Prasad was convicted under Section 498-A of the IPC and sentenced to RI for two years and to pay fine of Rs.2,000/-. No appeal has been preferred by accused - Shiv Prasad. One of the accused – Dev Prasad expired during the pendency of the case and rest of the accused persons who are the appellants in this case have been convicted and sentenced as mentioned above. Hence, this appeal.

6. The grounds in this appeal are that the trial Court has erroneously passed the impugned judgment of conviction against the appellants. Statements of the prosecution witnesses were unreliable being full of contradictions and omissions on material particulars. The trial Court has erroneously relied on the last dying declaration dated 21.8.1996 ignoring the fact that in the earlier dying declaration, the deceased made a different statement that the incident was accidental. Hence, the multiple dying

declarations were contrary to each other which could not have been relied upon to convict the accused persons. Hence, for these reasons, the appellants are entitled for acquittal and it is prayed that the impugned judgment may be set aside.

7. Learned counsel for the appellants submits that in the information given by the hospital to the Police Ex. P/5, it was mentioned that deceased - Geeta Bai received burn injuries while she was cooking food. First statement of deceased Geeta Bai recorded on 16.8.1996 mentions that the deceased caught fire accidentally and the family members helped in extinguishing the fire. Similar statement was given in dying declaration recorded by the Executive Magistrate vide Ex. D/4 and the documents of investigation were not produced by the prosecution and the defence had to apply for its production before the court. The third dying declaration Ex. P/24 is a concocted document prepared after deliberations. The concoction is further affirmed by the delay in lodging the FIR which was lodged on 3.10.1996. The conviction of the appellants is based only on the dying declaration Ex. P/24 which is not a legally admissible evidence. In the matter of multiple dying declarations, it is well settled that each dying declaration will have to be considered independently on its own merit as to its evidential value and one cannot be punished because of the contents of the other. It is the duty of the Court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. The appellants have placed reliance on the judgments rendered in **Nallam Veera Stayanamdam and Others vs. Public Prosecutor, High Court of Andhra Pradesh** reported in (2004) 10 SCC 769, **Leela Srinivasa Rao vs. State of Andhra Pradesh** reported in (2004) 9 SCC 713, **Heeralal**

vs. State of Madhya Pradesh reported in **(2009) 12 SCC 671** and **Sudhakar vs. State of Madhya Pradesh** reported in **(2012) 7 SCC 569**.

The appellants have also placed reliance on the judgments rendered in **Saleem Gulam Pathan vs. State of Maharashtra** reported in **(2012) 6 SCC 606** in which the Hon'ble Supreme Court has analyzed the previous decisions and held that dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court, the court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It was also held where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

8. On the other hand, learned State counsel has opposed the grounds raised in this appeal and the arguments submitted on behalf of the appellants. He also argued that the prosecution has successfully proved its case against the appellants and there is no reason to interfere with the impugned judgment.

9. Considering the material on record and the arguments submitted from both the sides, the question in this appeal is, whether the conviction against the appellants is supported by evidence of the prosecution beyond all reasonable doubt?

10. Kamla Bai (PW-5), mother of deceased has stated about the torture given to her daughter by the appellants and accused Shiv Prasad (husband of the deceased). After the incident took place, she met with her daughter Geeta Bai in the District Hospital at Bilaspur where she told her that all the

accused persons poured kerosene oil on her body and set fire to her body. Another important witness is Jhumuk (PW-5), father of the deceased who has given similar statement about the torture given to his daughter for demand of dowry and for other reasons. He was also informed by his daughter that it was the appellants/ accused persons who acted to cause burn injuries on the body of the deceased. Both these witnesses were not present at the time of incident. Bhagwat (PW-8) is cousin of the deceased. He has not given any statement with regard to torture or ill-treatment of the deceased and neither he has stated about the circumstances at the time of incident. Mithelal (PW-11) is another witness related to the deceased who has not given any statement in support of the prosecution. No other witness has been examined by the prosecution who could have stated about the circumstances before or at the time of incident.

11. It is not disputed that deceased – Geeta Bai suffered burn injuries on the date of incident i.e. on 14.8.1996. The witnesses of the investigative procedures Suresh Kumar Sahu (PW-2) and Purushottam (PW-7) were also present in the inquest procedure. Head-Constable, R.M. Tripathi (PW-3). Constable - Devendra Tiwari (PW-4) helped in the investigative procedures. Spot map Ex. P/7 was prepared in presence of Khagdev (PW-9) and Dhanauprasad (PW-10). ASI, S.S. Rajput (PW-14) recorded the merger intimation Ex. P/6. Patwari, Prem Sai Keskar (PW-15) has prepared the spot map Ex. P/9. P. Nagendra Pratap Singh, SDO (PW-18) is the person who conducted some part of investigation. ASI, S.L. Sharma (PW-19) has conducted the merger enquiry procedure and the remaining investigation was conducted by Inspector, R.S. Baghel (PW-21).

12. Dr. S.G. Pandey (PW-16) examined deceased Geeta Bai on 19.8.1996 vide Ex. P/11 and reported that she had 80% burns on her body and she was referred for treatment to surgical specialist. Dr. Vinay Kumar Gupta (PW-17) has stated that Geeta Bai was admitted for treatment in District Hospital, Bilaspur on 15.8.1996. He sent the information to the police station that Geeta Bai expired on 19.6.1996 (Ex. P/12). Dr. Nilima Sharma (PW-13) has conducted the postmortem vide Ex. P/8 and reported that death of Geeta Bai was as a result of shock and septicemia because of excessive burn injuries, it is not under challenge. In cross-examination, she has stated that no opinion can be given whether the death of the deceased was homicidal or suicidal or accidental.

13. Apart from the evidence discussed above, the only evidence found against the appellants directly implicating them is the statement of Executive Magistrate, R.P. Tiwari (PW-20), who has stated that he recorded the dying declaration of Geeta Bai on 21.8.1996 at 6:00 pm in the District Hospital, Bilaspur. In this statement, Geeta Bai stated that all the appellants at first quarreled with her on the date and time of incident and then set fire to her body. All the accused persons stood at the door blocking her way from going out and poured kerosene oil on her body and set fire to her body. He has also stated that the doctors who were present also certified that Geeta Bai was in a fit condition to give the statement. In cross-examination, he admitted that no statement was given about torture for demand of dowry. He could not remember as to who were present at the time of recording the statement. At this stage, this is the only evidence of the prosecution directly implicating the accused persons, but this evidence had been subjected to challenge by the defence.

14. Head-Constable, R.M. Tripathi (PW-3) recorded the statement of injured Geeta Bai on 16.8.1996 vide Ex. P/3. In cross-examination, he stated that he recorded the statement as narrated by the deceased. The dying declaration could not be recorded on that day because the Executive Magistrate was not available Ex. P/3 is not signed or no thumb impression of the deceased was affixed on it, even then the statement of the Head-Constable, R.M. Tripathi (PW-3) stands as it is relied upon by the prosecution itself. This statement of the prosecution itself (Ex. P/3) can be read as the statement of the deceased and as a dying declaration describing the circumstances before the incident took place and the manner in which the incident took place. In Ex. P/3 there is no statement implicating the accused persons. It is alleged by counsel for the appellants that the prosecution suppressed the evidence of second dying declaration which was recorded on 18.8.1996 by the Executive Magistrate. On application of defence and by orders of the Court, Ex. D/4 dying declaration dated 18.8.1996 was produced before the Court. D.R. Khunte (DW-2) has stated that he was posted as Nayab Tehsildar in Bilaspur on 18.8.1996. On receiving the information for recording of dying declaration, he visited Burn Unit, District Hospital, Bilaspur on 18.8.1996 at 12:00 am. He recorded the statement of Geeta Bai, wife of Shiv Prasad who was in a fit state and the statement was certified by Nagendra Pratap Singh and the statement of Geeta Bai recorded vide Ex. D/4 on which he affixed his own signature and also got affixed the thumb impression of Geeta Bai. Other defence witnesses Jagmohan (DW-1) and Gautam (DW-3) have stated that deceased Geeta Bai accidentally caught fire and it was not a case that she was burnt by anybody.

15. This is a case where there are two dying declarations recorded by the Executive Magistrate contradicting each other on the contents of the statement given by the same person i.e. the deceased. Even if it is taken into consideration that the first statement Ex. P/3 was recorded on 16.8.1996 by the police officer, it is difficult to arrive at any conclusion as to which of the dying declaration Ex. P/24 or Ex. D/4 is worth reliance and reject the contents and the statement of the other dying declaration. The statement recorded by the Executive Magistrate has a sanctity. The certification of fitness of Geeta Bai is shown in both the dying declarations. The first dying declaration i.e. on 18.8.1996 Ex. D/4 is in conformity with statement given by the deceased in Ex. P/3, whereas the second dying declaration Ex. P/24 dated 21.8.1996 is a statement in total contradiction wherein the incident was converted from accidental to a criminal act of the appellants. It is not a case where some addition or alteration has been made to the previous statement of dying declaration made by the deceased, but here the subsequent statement has been recorded rejecting the previous statement dated 18.8.1996 and no explanation was sought by Executive Magistrate, R.K. Tiwari (PW-20) from the maker of the statement, the deceased as to why she has given a different statement than the earlier statement given by her. Hence, for this reason, there is nothing in Ex. P/24 or in the statement of R.P. Tiwari to suggest or explain that the earlier dying declaration Ex. D/4 was incorrectly recorded or recorded under some kind of pressure or the maker of the statement Geeta Bai was influenced or she was not in a fit state to give the statement. After giving due consideration to the merits of both the dying declarations Ex. P/24 and Ex. D/4, it is absolutely clear that the dying declaration Ex. P/24 does not rule out or rejects the earlier dying

declaration Ex. D/4 in any respect. Hence, it was not possible for the Court to place reliance only on Ex. P/24 to record conviction against the appellants. Ex. P/24 does not inspire confidence in any manner. It is a case where two views are possible and the settled principle is that the view in favour of the accused person has to be adopted. In this regard reference is made to the judgments rendered by the Hon'ble Supreme Court in the case of **Shingara Singh vs. State of Haryana and Another** reported in **2004 CRI.L.J. 828** and **Thummala Lovaraju vs. State of Andhra Pradesh** reported in **2009(2) ALT (Cri) 135**. For these reasons, the appellants in this case have been entitled for benefit of doubt to the extent of charge of committing murder of deceased – Geeta Bai.

16. A chart showing the details regarding detention of the appellants during trial and after their conviction by the trial court is as follows:

Name	Total Days (approx.)
Smt. Krishna Bai	2 years 7 months 8 days
Sanat	2 years 1 month 14 days
Smt. Kalash Bai	2 years 7 months 8 days
Smt. Vaishakhiya Bai	2 years 7 months 8 days
Smt. Parwati Bai	2 years 7 months 8 days
Dhanash @ Dhansingh	2 years 2 months 1 day
Lakhuram	2 years 2 months 1 day

17. In view of the aforesaid discussion and on the basis of the findings aforementioned, this appeal is allowed in part. The judgment of conviction and order of sentence against the appellants under Section 302/ 149 of the IPC is hereby set aside. However, the judgment of conviction and order of sentence under Section 498-A of the IPC recorded by the trial court is upheld. It is clear from the record that all the present appellants have

undergone the period of custody more than the sentence awarded for this offence. Hence, there is no requirement of arrest and detention of the appellants.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge

Nimmi