

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CRIMINAL APPEAL No.1573 of 2010

Between :

Manchala Balaiah.

.....Appellant

And

The State of Andhra Pradesh.

.....Respondent.

JUDGMENT PRONOUNCED ON : 02.06.2017

HON'BLE SRI JUSTICE : SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE : U. DURGA PRASAD RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? : Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals ? : Yes/No
3. Whether Their Ladyship/ Lordship wish to see the fair copy of the judgment ? : Yes/No

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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.....Respondent.

For appellant : Venkateswara Rao Gudapati, Advocate.

For Respondent : Public Prosecutor.

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> Head Note:

? CITATIONS:

1. 2007 AILD 55 (SC)
2. AIR 1992 SC 1817
3. (2010) 3 SCC (Cri) 560 = (2007) 15 SCC 465.
4. 2010 (1) ALD (Cri.) 813 (SC)
5. AIR 1972 SC 656
6. 2016 (2) ALD (Crl.) 753 (SC)

C/15



**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

CRIMINAL APPEAL No.1573 of 2010

JUDGMENT : (Per Hon'ble Sri Justice Suresh Kumar Kait)

The present appeal is filed while challenging the judgment dated 21.12.2010 passed in Sessions Case No.464 of 2007 by II Additional District and Sessions Judge (FTC), Mahabubnagar, whereby, the appellant is found guilty for the offence under Section 302 IPC and accordingly convicted under Section 235(2) Cr.P.C. and sentenced to suffer imprisonment for life and also to pay a fine of Rs.500/- (Rupees Five hundred only), in default, to suffer simple imprisonment for a period of three months. Benefit of Section 428 Cr.P.C. is given to the appellant.

2. Brief facts of the case are that on 29.11.2006 at 18.40 hours, the Station House Officer/Assistant Sub-Inspector of Police, Nagarkurnool had received information from Duty Doctor, Government Area Hospital, Nagarkurnool, whereby, he was informed that one Masaiah, aged about 70 years was forcibly administered poison by some one and was admitted in hospital for treatment. Immediately, the same facts were entered in the General Diary. Later, he visited the said hospital along with P.C.1482 and enquired with the casualty ward Duty Doctor about the patient's status. He came to know that the patient was conscious and in a fit state of mind, upon which, the ASI recorded the dying declaration of the injured. The injured stated in his dying declaration that he was having only one son. On 29.11.2006, he went to his fields with his bulls to graze. While he was so grazing the cattle at fields, his villager Mala Balaiah (the appellant herein)

came to him and attributed that he was practicing sorcery against the family members of appellant, owing to which, they had suffered. The appellant had threatened to kill him if he did not sip the poison. The appellant brought the poisonous pills with him and forcibly administered into the mouth of the deceased. Villagers shifted him to Government Area hospital, Nagarkurnool and admitted him for treatment. The Station House Officer read over the statement to him, who found it to be correct. Thereafter, obtained his thumb impression. The Duty Doctor certified the condition of the victim/patient. As the victim died during the course of investigation, PW-12 altered the Section of Law from 307 to 302 IPC and sent the express memo to all concerned. On 30.11.2006, PW-14, Circle Inspector of Police, Nagarkurnool took up the investigation from PW-12, verified the investigation done by PW-12 and found it to be on proper lines. During the course of investigation, PW-12 recorded the statements of PWs.5 to 9 under Section 161(3) Cr.P.C. PW-14 sent the crime incriminating material i.e. Item No.1/viscera and Item No.2/glass bottle to the Forensic Science Laboratory through a letter of advice. The medical officer/PW-13 Dr.M.Narahari conducted autopsy over the dead body and preserved viscera for chemical analysis. Basing on the FSL report, PW-13 has opined that the cause of death was due to organophosphate, an insecticide poison.

3. Case of the prosecution is that on 29.11.2006, in afternoon, the deceased had gone to the fields to graze his bulls. While so, according to the pre-plan and pre-determination, the appellant went to the fields of deceased with M.O.1/bottle containing poisonous granules mixed with water and while the deceased was grazing his cattle in the fields at about 2 p.m., the appellant

went to him and alleged that the deceased was practicing sorcery against him and forcibly administered poison into the mouth of the deceased, and due to that, the deceased swallowed some quantity of poison. After administering the poison, the appellant had left the scene of offence by throwing the glass bottle into the nearby bushes. Later, the deceased went into the village and informed the incident to the villagers i.e. PWs.3 to 8 and others. Then, villagers shifted the deceased to hospital in the auto of PW-9 on the same day at 6.40 p.m. PW-12/Assistant Sub-Inspector of Police, Nagarkurnool Police Station received information from the Duty Medical Officer, Government Area Hospital, Nagarkurnool about admitting the deceased in the hospital. Accordingly, PW-12 visited the hospital and recorded the statement of deceased and on the basis of it, at first instance, a case was registered against the appellant in Crime No.161/2006 under Section 307 IPC. On the same day at about 11 p.m., PW-12/Assistant Sub-Inspector of Police received intimation that the deceased had died at 9.45 p.m. while undergoing treatment at the hospital mentioned above. On the basis of such information, PW-12 altered the Section of law from 307 to 302 IPC and issued express memos to all concerned. On 30.11.2006, PW-14/Inspector of Police took up investigation, examined the witnesses and visited the Government Area hospital, Nagarkurnool; conducted inquest over the dead body of deceased in the presence of mediators and sent the dead body to postmortem examination. During the course of further investigation, PW-14/Inspector of Police visited the village; recorded the statements of villagers and on the same day at 10.10 p.m., PW-14 apprehended the appellant at Grampanchayat office, Bondalapally village; during interrogation, the appellant said to have

confessed the offence in the presence of mediators and led the Police to the fields and shown the place where he administered poison to the deceased and also the place where he threw the glass bottle containing some granules. The Police seized the said glass bottle containing some quantity of granule poison from the bushes. The Medical Officer, who conducted the autopsy over the dead body of the deceased, preserved the viscera of the deceased, and then, the glass bottle containing suspected poison was sent to the Forensic Science Laboratory along with the viscera, for chemical examination. After examination of viscera contents preserved by the Medical Officer during the course of autopsy and the granules in the glass bottle seized by PW-14, the Forensic Science Laboratory, Hyderabad gave a finding that both were containing the same element, namely, organophosphate, an insecticide poison. After completion of investigation, Police filed charge sheet against the appellant for the offence punishable under Section 302 IPC. Thereafter, charge framed against the appellant was readover to him and explained. However, the appellant pleaded not guilty and claimed to be tried.

4. To bring home the guilt of the appellant/accused, the prosecution examined PWs.1 to 15 and marked Exhibits P-1 to P-14 and material object M.O.1/glass bottle. After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C., for which, he denied the incriminating evidence against him and stated that he has not committed any offence. The appellant did not examine any defence witness.

5. Learned counsel appearing on behalf of the appellant submits that PW-12 said to have recorded the statement of the victim but not the dying declaration and there is no mention of General Diary number in the First

Information Report by the Police. PWs.1 to 5 are interested witnesses having enmity with the appellant, therefore, their evidences cannot be relied on to believe the case of the prosecution. Learned counsel submits, the deceased died due to Asthma and old age, but the villagers, due to political rivalry, foisted a false case against the appellant. He further submits that no medical report is filed regarding the treatment given to the deceased. The glass bottle seized at the instance of the appellant was not sent to FSL for matching the finger prints, to establish that the appellant had used the said bottle for administering poison forcibly to the deceased.

6. Learned counsel appearing on behalf of appellant submits that as per the prosecution case, PW-12 Mohd. Azeez, ASI of Police, Nagarkurnool recorded the dying declaration of the deceased at 7.50 p.m. under Exhibit P-7. In the said dying declaration, the deceased stated that the appellant, by saying that the deceased had destroyed his family life with black-magic, forcibly administered poison granules in his mouth to kill him and that the villagers took the deceased to the hospital. Whereas, PW-1, son of the deceased, has stated in his deposition that he had two wives. First wife did not beget children for ten years. Thereafter, he married Shanthamma for issues, who gave birth to one female and one male child. They used to attend agricultural works in their land. The appellant's land is situated near their land. About 5 or 6 years prior to the incident, the appellant caught hold his first wife Venkatamma while she was working in their land, demanding to fulfill his sexual desire. When his wife told him about the incident, he approached the appellant, who fell on his feet seeking apology. He did not inform the incident to anybody to protect his family prestige in the village.

However, his wife informed the incident to his parents. About 6 years prior to the incident, he purchased a house plot from one Billakanti Rama Swamy. Two years later, the appellant also purchased one plot adjoining to his plot. Since then, he used to abuse them and inspite of it, they used to keep silent. The appellant bore grudge against his first wife Venkatamma and also developed some sort of desire for her. They informed the matter to the village elders i.e. Chinna Malla Reddy, Nagi Reddy, Kamsani Krishna Reddy, Edga Niranjan, Gudipally Kista Reddy etc. They convened the panchayat and advised the appellant not to pick up quarrels. However, two months later, the appellant again started abusing them. The appellant used to say that he will kill them.

7. Learned counsel further submits that on one day, his wife Venkatamma left to her parents' house saying that the appellant was harassing her. After one week, he went to the house of his inlaws to bring his wife Venkatamma. While he was present in inlaws' house, one Dandu Narayana (PW-3) telephoned him and informed that the appellant had administered poison to his father at their agricultural land and that they were taking their father to Nagarkurnool hospital. He found his father admitted in the hospital and was in a position to speak. His father stated that while he was present in their land grazing bulls, found the appellant sitting near jawar heep (Jonna Choppa Gudu). When his father enquired the appellant as to why he was sitting there, the appellant went upon him by caught holding the neck stating that he made the appellant impotent and as such, he will kill him and put some poisonous granules on his mouth saying that "Chavu Naa Koduka" (you should die) and left that place. Accordingly, PW-1 informed

the Police; Police came there; the deceased informed about the manner in which the appellant administered poison to him. His father also informed to his villagers about the manner in which poison was administered to him by the appellant. However, the deceased died at about 8.30 p.m. on the same day.

8. Learned counsel for appellant submits that as per the prosecution case, the sorcery was the issue for enmity, whereas, as per PW-1, the enmity bore between the appellant and his family on the issue that the appellant asked his first wife for sexual favour, and there upon, PW-1 approached the appellant, who touched the feet of PW-1 seeking apology.

9. Learned counsel further submits that, PW-2 is the first wife of PW-1. She is declared hostile, but supported the case of prosecution. However, she did not support the theory of PW-1. As per PW-2, the dispute is because of the agricultural land but not due to the appellant asking her to fulfill his sexual desire. Even PW-3, who took deceased to the hospital, speaks about the land disputes. The deceased was 70 years old. He himself consumed poison and committed suicide for the reason that he was suffering with asthmatic problem due to which, there was unbearable pain in the stomach, therefore, just to come out from the pain, decided to finish his life, but, the appellant was falsely implicated in the present case.

10. On the other hand, learned Prosecutor appearing on behalf of the State argued that the evidence of PWs.1 to 15 coupled with dying declaration of deceased marked as Exhibit P-7 establish that the appellant had forcibly administered poison into the mouth of the deceased, and thus caused his

death. Immediately after the incident, the deceased informed the same to his villagers and then the villagers admitted the deceased in the hospital. The deceased also informed to his son PW-1. The evidence of prosecution witnesses coupled with Exhibit P-7/dying declaration clearly establish that the appellant, with an intention to murder the deceased, administered poison. It is further submitted by the learned Prosecutor that the appellant could administer small quantity of poison to the deceased, therefore, he survived from 2 p.m. to 11 p.m. At about 4 'o' clock, the deceased was admitted in the hospital, first aid was given to get omitted, therefore, there was no occasion to mention in the report that some treatment was immediately given to the deceased. Moreover, FSL report/Exhibit P-11 confirms the poison to be organophosphate, an insecticide poison. The appellant has not examined any defence witnesses and did not produce any medical record regarding the illness of the deceased. This defence is an after-thought just to mislead the Court. PW-1 has given complete details of enmity regarding the appellant asking his first wife for sexual favour and the appellant alleging that the deceased had done sorcery on him. The said witness has told the complete story to the Police and also deposed before the Court. In the cross-examination of this witness, the counsel for the appellant could not get any material to support the case of the appellant.

11. We have heard learned counsel for the parties and perused the material on record.

12. As recorded above, PW-1 deposed that he purchased a house plot 6 years before the incident, and two years thereafter, the appellant also purchased one plot adjoining to his plot. Since then the appellant was

residing there and used to abuse them. Accordingly, they informed the matter to the village elders like Chinna Malla Reddy, Nagi Reddy, Kamsani Krishna Reddy, Edga Niranjana, Gudipally Kista Reddy etc., for which, mediation was held, wherein, the villagers advised the appellant not to quarrel with the family of deceased. When he was in his inlaws' place, he received information from PW-3/Dandu Narayana that appellant administered poison to his father in his agricultural fields. Thereafter, he rushed to the hospital, and in the hospital, the deceased informed that poison was administered by the appellant.

13. PW-2/B.Venkatamma, the first wife of PW-1, deposed that two years prior to the incident, one day, while she was working in the fields, the appellant came and caught hold of the shoulder and demanded her to satisfy his sexual lust, for which, she refused and informed the same to her husband and inlaws. She also deposed about their purchasing of plot and after that the appellant also purchasing plot and quarrelling with them.

14. PW-3/Dandu Narayana, a villager has deposed that one day, while he was proceeding in the street, the deceased was coming near Hanuman temple and he noticed that deceased was in a panic condition and informed that the appellant administered poison to him. He found the deceased was not in the normal position as he was shivering and then they admitted the deceased in the Government hospital for treatment. At that time, the appellant came from their opposite direction. This witness also deposed regarding the land disputes between the appellant and the family of deceased. In the cross-examination, this witness denied the suggestion that the deceased was suffering from asthma and stomachache and he consumed poison due to

unbearable pain. He also denied the suggestion that he belongs to one political party and the appellant belongs to another political party.

15. PW-4/G.Madhava Reddy, one of the elders of the village deposed that on the day of incident, when he was going to his fields, the deceased came in his opposite direction and touched his feet and requested to save his life and narrated the incident that appellant poured poisonous granules into his mouth. He further deposed that the lands of the deceased and the appellant are situated near his lands. In cross-examination, he stated that nearly 100 members of their village gathered at the hospital on the date of incident, where, the statement of deceased was recorded by the Police. He also denied that himself and PWs.1, 9 and 11 belong to one group and foisted a false case against the appellant.

16. PWs.5, 6, 7 and 8, all are from the same village and stated on similar lines as that of PWs.3 and 4. Thus, there is consistency in the deposition of the witnesses mentioned above and nothing favourable to the accused could be elicited from the cross-examination of said witnesses.

17. PW-9/G.Madhusudhan Goud, an Auto driver has deposed that at the request of the villagers on the date of incident, he had taken the deceased to the Government hospital, Nagarkurnool. In the cross-examination, he deposed that two or three villagers accompanied the deceased to the hospital. He denied the suggestion that deceased died due to asthma and stomach pain.

18. PW-10/K.Anantha Reddy deposed that in his presence, Police have conducted inquest over the dead body of the deceased and that they did not

find any external injury over the dead body. They came to know that the deceased died due to the poison administered on him by the appellant.

19. PW-11/V.Prabhakar, the then Village Revenue Officer, deposed that in the year 2006, Police came in a jeep along with the appellant. Himself and one Bal Reddy accompanied the Police to the place of offence and then appellant confessed about the offence and in his presence, Police drafted Exhibit P-4/confession panchanama and seized a glass bottle and drafted seizure panchanama, which is marked as Exhibit P-5 and also drafted rough sketch of the scene of offence, which is marked as Exhibit P-6. He categorically stated in the cross-examination that the scene of offence is situated in the land of the deceased. He denied the suggestion that since the appellant refused to issue ration card, he bore grudge against him and is deposing falsely.

20. PW-12/Mohd.Azeez, Assistant Sub-Inspector of Police, who recorded the statement of deceased in the hospital, who deposed that poison was administered upon deceased by the appellant. The said witness has categorically stated about putting preliminary questions to know the state of mind of the deceased, and after certification by the Medical Officer, he recorded the statement of deceased. The statement of deceased is marked as Exhibit P-7. He categorically stated in cross-examination that himself and Duty Doctor were present at the time of recording the statement of the deceased. He specifically stated that he did not record the dying declaration, however, recorded the statement of the deceased, but since the deceased died, that statement became dying declaration.

21. PW-13/Dr.M.Narahari, Medical Officer, who conducted autopsy over the dead body of the deceased on 30.11.2006 and found ante-mortem injuries on the neck, which are possible due to pressure of human fingers. Then he collected viscera during the course of postmortem examination and gave final opinion after receiving Forensic Science Laboratory report that the cause of death was due to poisoning.

22. PW-14/A.Venkateshwarulu, Inspector of Police, deposed about recording the statements of witnesses on 30.11.2006 at Government hospital, Nagarkurnool and visiting scene of offence. He arrested the appellant from the Grampanchayat office at Bondalapally and on interrogation, the appellant confessed the offence and led them to the fields where the incident had happened. Accordingly, they seized M.O.1/glass bottle from the nearby bushes at the instance of appellant and drafted the panchanama in the presence of panchayatdars.

23. PW-15/M.Chinnaiah, Civil Assistant Surgeon, deposed that on 29.11.2006 at about 7.20 p.m., PW-12/Assistant Sub-Inspector of Police recorded the statement of deceased in his presence and at the time of recording, the deceased was conscious, coherent and in a fit state of mind. The statement of deceased is Exhibit P-7. His endorsement on Exhibit P-7 is Exhibit P-14.

24. As per the evidence of prosecution witnesses, the prosecution case is that the appellant, having previous grudges with the family of the deceased and also suspecting that the deceased had practiced sorcery against him, due to that he became impotent. Accordingly, the appellant went to the fields of

deceased and forcibly administered poison to the deceased. The same was informed by the deceased to the villagers and then deceased was shifted to the Government hospital in an Auto by the villagers, where, the Assistant Sub-Inspector of Police recorded the statement of the deceased. So, the case of the prosecution is based on the statement of the deceased to PW-12/Assistant Sub-Inspector of Police and also on the basis of information given by the deceased to PW-1 and the villagers. Moreover, during the course of investigation, at the instance of appellant, M.O.1/glass bottle containing poisonous granules was recovered in the presence of the mediators, while the appellant was in Police custody.

25. Section 32(1) of the Indian Evidence Act is relevant to refer here, which is reproduced as under :

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) **When it relates to cause of death.** —When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

Therefore, when a statement is given by a person with regard to the cause of his death or as to any of the circumstances of the transaction which resulted his death, is a relevant factor. So, the dying declaration is the statement given by the person since died, as to the cause of death or as to any circumstances which resulted into his death. Section 32(1) of the Indian Evidence Act makes the dying declaration relevant fact in cases, in which, cause of death of a person comes into question.

26. In the case of **Mohan Lal & others v. State of Haryana**¹, the Supreme Court has quoted several judgments on the principles governing dying declaration, which could be summed up as indicated in **Smt.Paniben v. State of Gujarat**² as under :

- “(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration [See **Munnu Raja and another vs. State of Madhya Pradesh (1976) 2 SCR 746**].
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See **State of Uttar Pradesh Vs. Ram Sagar Yadav and others, AIR 1985 SC 416** and **Rama Devi Vs. State of Bihar, AIR 1983 SC 164**].

¹ 2007 AILD 55 (SC)

² AIR 1992 SC 1817

- (iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See **K.Ramachandra Reddy and another Vs. Public Prosecutor, AIR 1976 SC 1994**].
- (iv) Whether the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See **Rasheed Beg Vs. State of Madhya Pradesh, 1974 (4) SCC 264**].
- (v) Whether the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. [See **Kaka Singh Vs. State of M.P., AIR 1982 SC 1021**].
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See **Ram Manorath and others Vs. State of U.P., 1981 (2) SCC 654**].
- (vii) Merely because a dying declaration does contain the details as to the occurrence, it is not be rejected. [See **State of Maharashtra Vs. Krishnamurthi Laxmipathi Naidu, AIR 1981 SC 617**].
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See **Surajdeo Oza and others Vs. State of Bihar, AIR 1979 SC 1505**].
- (ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See **Nanahau Ram and another Vs. State of Madhya Pradesh, AIR 1988 SC 912**].
- (x) Where the prosecution version differs from the version as given in the dying declaration that said declaration cannot be acted

upon. [See **State of U.P. Vs. Madam Mohan and others, AIR 1989 SC 1519**].

- (xi) Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted. [See **Mohanlal Gangaram Gehani Vs. State of Maharashtra, AIR 1982 SC 839**].”

27. In addition to above, in the case of **Nallapati Sivaiah V. Sub-Divisional Officer, Guntur**³, the Hon’ble Supreme Court held that nobody would wish to die with a lie on his lips. A dying declaration has got sanctity and a person giving the dying declaration would be the last to give untruth as he stands before his creator. There is a legal maxim *nemo moriturus praesumitur mentire*, meaning that a man will not meet his maker with a lie in his mouth.

28. In the case in hand, as per the dying declaration, the appellant said to have forcibly administered poison to the deceased when the deceased was at his fields. Motive behind was that appellant suspected that the deceased had practiced sorcery against him and due to that, the appellant became impotent and his wife left his company. All the villagers, who are examined in this case, categorically deposed that there are land disputes between the appellant and the family of the deceased. It is an admitted fact that the house of the appellant is situated near to the house of the deceased. PW-5 also deposed that the deceased’s land and the land of the appellant are situated at one place, for which, there is no cross-examination. There is no rule to say that PW-12 being Police Officer, cannot record the dying declaration. Any

³ (2010) 3 SCC (Cri) 560 = (2007) 15 SCC 465.

person can record the dying declaration, provided the statement recorded by the said person must repose confidence. In the present case, PW-15/Medical Officer has categorically deposed that the deceased was conscious, coherent and in his presence, PW-12/Assistant Sub-Inspector of Police has recorded the statement of the deceased i.e. Exhibit P-7/dying declaration, in which, the deceased has narrated the manner in which the incident had happened. The deceased had also informed the incident to his villagers i.e. PWs.3 and 4 on the same day.

29. In the cross-examination of PWs.1 and 6, it is suggested that the deceased had died by consuming pesticide poison due to unbearable stomach pain as the deceased was suffering from asthma. However, the same was denied by the witnesses, which establishes that the deceased had died due to consumption of pesticide poison being forcibly administered by the appellant.

30. It is pertinent to note that though some political rivalry is suggested to the prosecution witnesses during the course of their cross-examination, however, there is no suggestion with regard to specific enmity between PWs.3 to 11 and the appellant, so as to attribute falsehood to their evidence. The evidence of PWs.3, 4, 6, 7 and 8 clearly shows that immediately after the incident, the deceased had informed to them about the same, therefore, their evidence is admissible under Section 6 of the Indian Evidence Act as the fact deposed by them forms part of the same transaction of the incident. As per the evidence of the witnesses, the appellant was arrested near Grampanchayat office in the village in the presence of PWs.10 and 11 and the Police seized M.O.1/glass bottle containing some poisonous substance

and sent to Forensic Science Laboratory along with the viscera of the deceased. On chemical examination, the Forensic Science Laboratory has issued report marked as Exhibit P-11, which shows that the poisonous substance found in the viscera of the deceased and in the glass bottle is one and the same.

31. Exhibit P-5 is seizure panchanama and portion of it, is admissible in evidence under Section 27 of the Evidence Act. As per said provision, when any object is discovered or recovered by the Police when the accused is in the custody of Police and the said object is connecting the accused with the offence, then it is relevant fact and admissible. So, the confessional statement of appellant leading to discovery of the article is admissible in evidence, as the accused has voluntarily shown the place where he had thrown M.O.1/glass bottle after forcibly administering the poisonous granules to the deceased. On the aforesaid issue, the case of **Musheer Khan @ Badshah Khan vs. State of Madhya Pradesh**⁴ is very relevant, whereby, the Supreme Court held as under :

“The limited nature of the admissibility of the facts discovered pursuant to the statement of the accused under Section 27 can be illustrated by the following example : Suppose a person accused of murder deposes to the police officer the fact as a result of which the weapon with which the crime is committed is discovered, but as a result of such discovery, no inference can be drawn against the accused, if there is no evidence connecting the knife with the crime alleged to have been committed by the accused. So, the objection of the defence Counsel to the discovery made by the prosecution in this case cannot be

⁴ 2010 (1) ALD (Cri.) 813 (SC)

sustained. But the discovery by itself does not help the prosecution to sustain the conviction and sentence imposed on A-4 and A-5 by the High Court.”

32. In the present case, the prosecution has proved the crime committed by the appellant by examining PW-11/Village Revenue Officer, with whom, the appellant has not established specific enmity. The evidence of PW-11 shows that the appellant, while in custody of Police, confessed about the crime and led the Police party to the fields and at the instance of the appellant, Police seized M.O.1/glass bottle from the bushes and also drafted seizure panchanama marked as Exhibit P-5, which is admissible in evidence under Section 27 of the Evidence Act. The object i.e. M.O.1/glass bottle recovered from the place of offence also establishes the case of the prosecution as the same was sent to the Forensic Science Laboratory along with the viscera of the deceased, and after chemical examination, the Forensic Science Laboratory has issued report/Exhibit P-11, to the effect that the viscera as well as the glass bottle contain the same nature of poison i.e. organophosphate insecticide poison.

33. During the course of arguments, learned counsel for the appellant cited case of **Ramgopal v. State of Maharashtra**⁵ and case of **Pankaj v. State of Rajasthan**⁶. However, the said judgments are not helpful to the appellant in view of the strong and un-impeachable evidence proving the guilt of the appellant.

34. In view of the above evidence of the prosecution witnesses, there is no need to disbelieve the case of the prosecution. Accordingly, we find no

⁵ AIR 1972 SC 656

⁶ 2016 (2) ALD (Crl.) 753 (SC)

perversity or illegality in the order and judgment dated 21st December 2010, whereby, the appellant was convicted and sentenced for the offence under Section 302 IPC.

35. Having no merit in the instant appeal, same is accordingly dismissed. Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

2nd June 2017

N.B: L.R.Copy be marked.
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