

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 684 of 2013**

1. Ramkumar, S/o Kailash Prasad Dewangan, aged about 30 years,
2. Ram Krishan, S/o Kailash Prasad Dewangan, aged about 45 years,
3. Smt. Kumari Bai, W/o Ram Krishna Dewangan, aged about 40 years,

All are resident of Village Chhurikala, Panika Mohalla, P.S. Katghora, District Korba, Chhattisgarh

---- Appellants(in jail)

Versus

- State of Chhattisgarh, Through District-Magistrate, Korba, Civil and Revenue District, Korba, Chhattisgarh

---- Respondent

For the Appellants : Shri Manoj Kumar Sinha, Advocate.

For the State/Respondent : Shri Rahul Tamaskar, Panel Lawyer.

**Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Shri Justice Rajendra Chandra Singh Samant**

Judgment on Board by Rajendra Chandra Singh Samant, J.

13/01/2018

1. This appeal has been preferred against the judgment dated 27.06.2013 passed by the Additional Sessions Judge, Katghora, District Korba, Chhattisgarh in S.T. No. 59/2010 by which the appellants have been convicted and sentenced under Section 302/34

of Indian Penal Code (for short 'IPC').

2. Brief facts of the case are these that deceased Uma Dewangan was wife of appellant No.1 and appellants No.2 and 3 are her in-laws. On 17.3.2010 at about 11.00 p.m., the deceased suffered burn injuries at her matrimonial home situated in village Chhurikala. She was taken to the Community Health Centre, Katghora where she informed Dr. Rudrapal Singh Kanwar PW-12 and witnesses Janu Dewangan PW-2, Vijay Kumar Jaiswal PW-5 and Narayan Dewangan PW-7 that appellants No.2 & 3 set her ablaze after pouring kerosene on her body, her husband (appellant No.1) was though present on the spot but he did not make any attempt to save her. Her statement Ex-P2 was also recorded by the police at the same time. The doctor noticed 55-60% burn injuries on her body. Victim died during the course of her treatment on 01.04.2010. FIR ExP-20 was recorded initially under Section 307/34 of IPC, however, after the death of the victim, the offence was registered under Section 302/34 of IPC. Morgue intimation Ex.P/21 was recorded by PS-Katghora. After completion of investigation, charge-sheet was filed before the Magistrate.
3. After the proceedings of committal, the trial Court framed charge under Section 302/34 against each of the appellants. Appellants/accused pleaded innocence. As many as 14 witnesses were produced by the prosecution. In their examination under Section 313 of CrPC, appellants/accused denied all the incriminating circumstances appearing in the evidence of prosecution against them and again pleaded innocence and false implication due to the reason that deceased and the appellants No.2 & 3 were not on good terms.

Two witnesses were examined in defence.

4. On completion of trial, the impugned judgment was passed, convicting all the appellants under Section 302/34 of IPC and sentencing each of them with life imprisonment along with fine of Rs.1,000/-.
5. It is submitted by the learned counsel for appellants that the prosecution has failed to prove the charge against the appellants in this case. Had the deceased really made oral dying declaration before the doctor and other prosecution witnesses, they would have taken steps in regard to certifying the fitness of the deceased. No such steps were taken in this case, therefore, making of any oral dying declaration by the deceased before the doctor and other prosecution witnesses appears to be unreliable. He has further submitted that statement of deceased recorded under Section 161 CrPC has been treated as her dying declaration, but this evidence could not have also been made basis for convicting the appellants, for the reason that there is no certification of the doctor as to the fitness of the declarant and therefore the same is not acceptable. In support of this submission, reliance has been placed on the judgment in the matter of ***Brundaban Moharana and another Vs State of Orissa***, reported in **(2010) 13 SCC 381** in which it was held by the Supreme Court that there was no certification that the deceased was in a fit condition to make a dying declaration, because of which the statement based on dying declaration was held unreliable.

It is further submitted that Dr. Rudrapal Singh (PW-12), who first examined the deceased, did not notice any kerosene smell emanating from the body of the deceased and this fact has been admitted by him

before the Court also. Similarly, no smell of kerosene was noticed by the doctor at the time of conducting postmortem examination, which is evident from the postmortem report Ex.P-26. This creates strong doubt on the prosecution story that the deceased was set ablaze after pouring kerosene on her body.

In these circumstances, it is prayed that appeal be allowed and appellants be acquitted of the charge.

6. Learned counsel for the State opposes the grounds raised and the submissions made. It is submitted that there is no such rule or principle of law to disbelieve the oral dying declaration made by deceased and a statement initially recorded under Section 161 of CrPC can be treated as dying declaration subsequent to death of the maker of such statement. Such statement is relevant under the provision of Section 32 of Indian Evidence Act. It is also submitted that the incident occurred on 17.03.2010 at 11 p.m. in the night and the deceased was examined on the next day at 4.30 p.m. and before that while giving her treatment, her injuries were cleaned and medicines were applied. The deceased succumbed to the burn injuries on 01.04.2010. In these circumstances, absence of kerosene smell is natural and the accused persons cannot derive any benefit of same. The prosecution has proved its case beyond all reasonable doubts and there is no ground for acquittal of any of the appellants. Hence, the appeal be dismissed.
7. On the basis of the grounds raised in this appeal, the first point to be determined is, whether the oral dying declaration and the statement given to police having the effect of dying declaration is admissible in

evidence or not? Second point for determination is whether non-finding of smell of kerosene oil on the body of the deceased by the examining doctor and the doctor conducting autopsy can be taken as a ground to disbelieve the prosecution evidence ?

8. Section 32 (1) of the Indian Evidence Act clearly provides that 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 his death comes in question, is a relevant fact. A dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused, hence it cannot be subjected to cross-examination, though a dying declaration may be admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. In ***Tapinder Singh Vs. State of Punjab another***, reported in **1970(2) SCC 113** it was held that the weak points of a dying declaration merely serve to put the Court on its guard while testing its reliability, by imposing on it an obligation to closely scrutinise all the relevant attendant circumstances.

9. In ***Munnu Raja and another Vs. The State of Madhya Pradesh***, reported in **(1976) 3 SCC 104** it was held by Hon'ble Supreme Court that there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. It was further held in ***State of Uttar Pradesh Vs. Ram Sagar Yadav and others***, reported in **(1985) 1 SCC 552** that if the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it. It is further submitted that a

dying declaration may be made to a Magistrate, a police Officer, a public servant, a private person or a doctor. It was held in ***Ramawati Devi Vs. State of Bihar***, reported in **(1983) 1 SCC 211** that there is no requirement of law that dying declaration must necessarily be made to a Magistrate. In that case, the dying declaration was recorded by a Police Officer. The only rule of caution which should be applied is whether the dying declaration was voluntarily given and that the deceased was in a fit state to make such declaration.

10. Janu Dewangan PW-2 has stated, that deceased was his sister. He received a call from appellant No.1 asking him to come immediately. On reaching the place, he found his sister standing in courtyard in burnt condition. He immediately shifted the deceased to the hospital at Katghora. On being asked by the doctor, the deceased informed that appellant Nos.2 & 3 had poured kerosene oil on her and thereafter set her ablaze with the help of matchstick. She further informed that her husband appellant No.1 was also present on the spot but he did not make any attempt to save her. On the statement given by her, the police personnel present there, also recorded the same vide ExP/2. In cross-examination, he admitted that deceased was crying but he denied this suggestion that the deceased was not in a position to talk. There is nothing in his cross-examination to suggest that the deceased was not in a fit state to make any statement before the doctor and the persons present there and that the statement made by the deceased was not voluntary in nature.
11. Vijay Kumar Jaiswal PW-5 appears to be an independent witness having acquaintance with the brother of deceased. He arrived on the

spot of incident when the deceased was taken to the hospital at Katghora. He was also present when the deceased made a statement before the doctor making allegations against the appellants. He has supported the version of Janu Dewangan PW-2. In cross-examination, he has denied this suggestion that deceased was writhing in pain and was unable to give any statement. He has stated of his own that she was giving statement.

12. Narayan Dewangan PW-7 is the brother of deceased, who has made similar statement in cross-examination and has further stated that deceased also stated that the appellants were quarreling with her saying that they do not want to keep her. Nothing could be elicited in his cross-examination to show that dying declaration was not voluntary or that the deceased was not in fit state to give such statement.
13. Doctor who admitted the deceased in hospital for treatment has not been made a witness in this case. Dr. Rudrapal Singh Kanwar PW-12 conducted medical examination of the deceased on 18.3.2010. He has stated that on being asked, the deceased told that her husband and relatives had set her ablaze. MLC report Ex.P18 describes the burn injuries noticed on the body of the deceased. In cross-examination, he has not given any such statement that deceased was unable to make any statement. However, he has stated that he does not remember whether any certificate of fitness of deceased was obtained by the police or not, but this statement makes no difference. On the contrary, the statement of this witness suggests that when he examined the deceased after a few hours from the incident, she was

in a fit state of mind to give statement. This version of this witness further supports the prosecution version.

14. ASI B.S. Rajput PW-13 has stated that on receiving information from CHC, hospital, Katghora, he immediately went to the hospital and recorded the statement of deceased Uma Dewangan exactly in the manner as stated by her. In cross-examination, although he admitted that he did not obtain any certificate of fitness of the deceased about giving statement. Further, there is no such statement in his cross-examination which can be regarded as against the version of the prosecution so far, that deceased has made dying declaration voluntarily and that she was in a fit state to give such statement.
15. After considering all the evidence on the point of dying declaration, we are of the considered view, that the oral dying declaration and the statement of deceased recorded by the police as Ex.P/2 is relevant and admissible in evidence. Hence, no fault can be found with the finding of the trial Court in admitting and relying upon this evidence to form the basis of conviction against the appellants.
16. On the second point of consideration, Dr. Rudrapal Singh PW-12 has admitted in his cross-examination, that he did not notice any smell of kerosene at the time when he examined the injuries of the deceased. MLC report Ex.P/18 given by this doctor clearly mentions the date and time of examination as 18.3.2010 at 4.30 pm. Further in cross-examination, he has stated that some balm or ointment was applied on the injuries of the deceased. This statement itself makes it clear and explains why any smell of kerosene was not noticed by the examining doctor, at the time when he conducted the medical

examination. No question can be raised as to why the smell of kerosene was not found at the time of conducting postmortem, particularly when the death of deceased took place of 1.4.2010 i.e. after lapse of sufficient long time from the date of incident.

17. There is other evidence on record showing use of kerosene oil in the incident. ExP/6 is the seizure memo by which half burnt apron, sari, peticoat and blanket were seized from the spot in which the smell of kerosene was felt. A half burnt plastic bottle containing kerosene was also seized. A match box and kerosene stained soil was also seized from the spot by the same seizure memo. Janu Dewangan PW-2 has stated that the seizure according to Ex.P/6 was made in his presence. The Investigating Officer conducted seizure. ASI B.S. Rajput has not made any such statement in his examination-in-chief, even then the question was put to him in his cross-examination suggesting that he has not made any seizure, to which he has denied. This is another corroborative piece of evidence. Hence, on the basis of these findings the second point raised by the counsel for appellants is found to be without any substance, hence, that is rejected.
18. After close scrutiny of evidence on record and on the basis of findings given above, we are of the considered view that this appeal has no merits.
19. Accordingly, the appeal is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(R.C.S. Samant)
Judge