

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 820 of 2013**

- Dhannu Chandravanshi S/o . Arjun Chandravanshi Aged About 30 Years R/o. Vill. Dongriyakala, Thana Pandatarai, Distt. Kabirdham C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Pandatarai, Distt. Kabirdham C.G.

---- Respondent

For Appellant	: Smt. Indira Tripathi, Advocate
For Respondent/State	: Shri Neeraj Mehta, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Manindra Mohan Shrivastava, J.

05/04/2019

At the outset, learned counsel for the appellant would submit that in this case, she was engaged to argue the matter, however, one Lal Chandrakar, claiming himself to be relative of the appellant, had taken the file away stating that they want to engage another counsel.

We find that no counsel has been engaged as counsel of the appellant, who is languishing in jail.

As no one appeared despite repeated calls, we requested

Smt. Indira Tripathi, Advocate to assist the Court more so, because she happened to be the counsel for the appellant.

This appeal is directed against the impugned judgment of conviction and order of sentence date 18.07.2013 passed by the Sessions Judge, Kabirdham (Kawardha) in S.T. No. 07/2013 by which the appellant has been held guilty of commission of offence under Section 302 IPC and sentenced to undergo Life Imprisonment.

2. Prosecution case, as is unfolded from the records of the case and the impugned judgment, is that father of deceased Usha Bai @ Bhuvaneshwari, submitted a written report in Ex.P-1 on 15.12.2012 that he received information from the brother-in-law of his daughter Usha Bai that she has been set ablaze by the appellant. He demanded appropriate proceedings to be drawn.

Taking cognizance of this report, the police immediately registered offence under Section 307 IPC against the appellant on the allegation of he setting ablaze his wife on fire with intention to kill.

3. Usha Bai had sustained burn injuries in her matrimonial house and she was brought to Community Health Centre, Pandariya where she was examined by Dr. PW-13. In the meantime, soon after arrival of Usha Bai in burnt condition to the hospital, the medical officer in the hospital, promptly acted and immediately informed the SHO of police station Pandariya who, in turn, immediately informed the Executive Magistrate and arrived at the hospital within less than half an hour and according to the prosecution, dying declaration in Ex.P-

15A was recorded by him in which, Usha Bai disclosed that she was set on fire by her husband. She stated that on a petty issue, husband got enraged, poured kerosene on her and set her ablaze. Investigation culminated in filing of charge sheet against the appellant for the alleged commission of offence under Section 302 IPC. Upon framing of charges, appellant abjured guilt and, therefore, was put to trial.

4. Prosecution, in order to prove its case and the allegation that the appellant had murdered his wife by setting her ablaze, mainly relying upon the dying declaration Ex.P-15 A recorded by Executive Magistrate vide Ex.P-15A, upon satisfaction regarding fitness of the victim on the basis of evidence of Dr. Balram Jaiswal, PW-13, convicted the appellant.

5. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel would emphatically and vehemently argue that the prosecution case is highly doubtful because in this case, even according to the prosecution, the Executive Magistrate had recorded dying declaration at 10.32 p.m., whereas, according to the doctor, medical examination itself was conducted at 10.45 p.m. It is argued that in such matters, the proceedings for recording dying declaration takes place only after the victim, brought to the hospital, is first examined by the doctor and then other steps like informing the police officer and calling Executive Magistrate take place. Next submission of counsel for the appellant is that in the present case, the doctor himself has admitted in his cross-examination that ordinarily, with

such extensive burn injuries, as was found on the body of the victim, almost 94%, the victim would not be in a position to speak. Therefore, the prosecution case that the victim disclosed and gave dying declaration becomes doubtful and it would be unsafe to convict the appellant without any corroborative evidence. It is further argued that as far as the other prosecution witnesses namely, Ashwani Bai, Mannu Chandravanshi and Mukesh Chandravanshi, PW-2, PW-3 and PW-4 are concerned, all of them have stated that the victim stated that she immolated herself because of dispute with her husband. Therefore, it is argued that the case of the prosecution is rendered doubtful in view of the evidence of the prosecution witnesses themselves. As there is no independent corroboration to so called dying declaration Ex.P-15 A, the appellant was entitled to be acquitted by giving him benefit of doubt. Counsel for the appellant would lastly submit that the prosecution case further becomes doubtful because PW-10 has stated that in the memo of the hospital, it has not been disclosed as to how the victim had sustained burn injuries.

6. On the other hand, State counsel supports the judgment of conviction and order of sentence and submits that in the present case, evidence of Executive Magistrate is emphatic wherein he has stated that upon receipt of information, he reached the hospital and upon being satisfied, on the basis of medical examination conducted by the doctor, he recorded the dying declaration. The doctor, who examined the victim and certified that she was in a fit state of mind to give dying declaration, has supported the prosecution case and

has remained firm in his cross-examination and nothing is elicited to doubt his testimony. Therefore, on this clinching evidence, the conviction of the appellant does not warrant any interference.

7. We have heard counsel for the parties and perused the records.

8. As we see from the impugned judgment and records of the case, the entire case of prosecution stands on the dying declaration Ex.P-15A. It is this dying declaration, which has been made basis to convict the appellant. There is no other evidence brought by the prosecution except this dying declaration because other witnesses have not supported the prosecution case. Therefore, we shall carefully examine the evidence on record to find out whether the evidence with regard to dying declaration is trustworthy, reliable and could be acted upon without seeking any independent corroboration.

9. Before we proceed to deal with the evidence on record, we consider it appropriate to refer to the decisions of the Supreme Court in the matter of caution and approach while dealing with cases based on dying declaration. In the case of ***Sudhakar Vs. State of MP, (2012) 7 SCC 569*** dealing with law of dying declarations generally it was held thus,

In the case of ***Lakhan Vs. State of MP, (2010) 8 SCC 514***, this Court provided clarity, not only to the law of dying declaration, but also to the question as to which of the dying declarations has to be preferably relied upon by the Court in deciding the question of guilt of the accused under the offence with which he is

charged. The facts of that case were quite similar, if not identical to the facts of the present case. In that case also, the deceased was burnt by pouring kerosene oil and was brought to the hospital by the accused therein and his family members. The deceased had made two different dying declarations, which were mutually at variance. The Court held as under :

“9. The doctrine of dying declaration is enshrined in the legal maxim *memo moriturus praesumitur mentire*, which means “a man will not meet his Maker with a lie in his mouth.” The doctrine of dying declaration is enshrined in [Section 32](#) of the Evidence Act, 1872 (hereinafter called as “the [Evidence Act](#)”) as an exception to the general rule contained in [Section 60](#) of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon

without having corroborative evidence. 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 must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. ([Vide Khushal Rao v. State of Bombay 1](#), [Rasheed Beg v. State of M.P.](#), [K. Ramachandra Reddy v. Public Prosecutor, State of Maharashtra v. Krishnamurti Laxmipati Naidu](#), [Uka Ram v. State of Rajasthan](#), [Babulal v. State of M.P.](#), [Muthu Kutty v. State, State of Rajasthan v. Wakteng](#) and [Sharda v. State of Rajasthan](#).) XXX XXX XXX

In the case of ***Sher Singh Vs. State of Punjab, (2008) 4 SCC 265***, the Supreme Court also cautioned and laid down necessity of cautious approach to ensure that the statement was not as a result of tutoring or prompting or a product of imagination, in following words:

“16. We may, now, refer to some of the judgments of this Court in regard to the admissibility and evidentiary value of a dying declaration. In the case of [Bhaju @ Karan Vs. State of M.P. \[\(2012\) 4 SCC 327\]](#),

this Court clearly stated that Section 32 of the evidence Act was an exception to the general rule against admissibility of hearsay evidence. Clause (1) of Section 32 makes statement of the deceased admissible, which has been generally described as dying declaration. The court, in no uncertain terms, held that:

“24..... It cannot be laid down as an absolute rule of law that dying declaration cannot form the sole basis of conviction unless it is corroborated by other evidence. The dying declaration, if found reliable, could form the basis of conviction. This principle has also earlier been stated by this Court in the case of Surinder Kumar Vs. State of Haryana (2011) 10SCC 173 wherein the Court, while stating the above principle, on facts and because of the fact that the dying declaration in the said case was found to be shrouded by suspicious circumstances and no witness in support thereof had been examined, acquitted the accused. However, the Court observed that when a dying declaration is true and voluntary, there is no impediment in basing the conviction on such a declaration, without corroboration.

17. In the case of Chirra Shivraj Vs. State of Andhra Pradesh [(2010)14 SCC 444], the Court expressed a caution that a mechanical approach in relying upon the dying declaration just because it is there, is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by other persons and where these ingredients are satisfied, the Court expressed the view that it cannot be said

that on the sole basis of a dying declaration, the order of conviction could not be passed.”

10. Keeping in forefront the aforesaid legal principles, we find that the prosecution case of deceased having given dying declaration, is based primarily on the evidence of Executive Magistrate. He has deposed that while he was posted as Naib Tahsildar at Pandariya, he recorded dying declaration of the victim. He has categorically deposed that before recording dying declaration, Dr. Balram Jaiswal had given his opinion and the victim was in a fit state to give dying declaration. He has further deposed that the dying declaration was recorded in the form of questionnaire and the response of the victim in which she had stated that her husband asked for the keys of the vehicle and money for consuming liquor but when she refused, the appellant poured kerosene on her and set her ablaze. She also disclosed that at that time, there was no body in the house. He has proved the dying declaration in Ex.P-15A. He has further stated that all through the recording of the dying declaration, the victim was fully conscious, awaken and alert. He has further deposed that the dying declaration was taken on the basis of memo Ex.P-15A. He has been subjected to a detailed cross-examination and has stated that he himself verified from the victim with regard to her identity but he had not talked to any of the relatives. He reiterates that the victim was fully understanding works. He further deposes that the entire dying declaration in Ex.P-15A was recorded in the hospital itself. He himself has stated that at the time of taking statement, there was nobody around. A suggestion that because of condition being

serious the victim was not in a position to speak, has been denied. He has also denied suggestion that he did not record dying declaration as per the disclosure given by the victim.

11. We do not find that in the cross-examination anything was elicited to doubt the testimony of the Executive Magistrate with regard to his satisfaction regarding fitness and recording of dying declaration and regarding the disclosure given by the deceased.

12. PW-13, the doctor, has deposed that at about 10.05 p.m. in the night, victim was brought in burnt condition and this fact was informed to SHO, PS Pandariya by RMA, CHC, Pandariya vide Ex.P-13. He has further deposed that when victim was brought she was in senses and even talking. Smell of kerosene was coming out from her body and she sustained almost 91% burn however, there were no other kind of injuries. He further states that looking to the serious condition, he referred the patient to higher Centre vide Ex.P-4A. This doctor has categorically stated that before recording dying declaration, the Executive Magistrate, Pandariya had obtained information regarding the fitness and competency of the witness upon which, he had given his opinion of fitness, endorsed on Ex.P-15A. He has been subjected to cross-examination. Though, he states that the fingers of both the hands were burnt, he states that he had examined the victim at about 10.45 in the night and also that after recording the dying declaration, he had also put another endorsement.

The evidence of the Executive Magistrate PW-15 and the

doctor is emphatic, firm and coherent and we do not find anything in their cross-examination to doubt their testimony.

13. A conjoint reading of the evidence of the doctor and the Executive Magistrate proves that before recording dying declaration, the Executive Magistrate sought doctor's opinion and the doctor gave the opinion that victim was in a fit state. Not only that, even after completion of recording of dying declaration, her condition was checked by the doctor and she was found to be in a fit state. Statement of the doctor has remained unimpeachable and fully reliable.

14. Once we are satisfied that there is no doubt raised on the evidence of the Executive Magistrate and the doctor on facts, it is not a case where we need to look for any independent corroboration before relying upon the testimony of the Executive Magistrate and doctor.

An argument has been raised that PW-3 and PW-2 have not supported the prosecution case, on the contrary, have stated that the deceased gave an oral dying declaration before them that she had immolated herself therefore, the prosecution case is liable to be disbelieved. Mannu Chandrawanshi PW-3 is the younger brother of the appellant and Ashwani Bai PW-2 is his wife. Thus, the oral dying declaration version is coming out from the brother of the appellant and his wife. Once we are satisfied with regard to the evidence of dying declaration, we are not inclined to reject the same on the basis of what has been stated by PW-2 and PW-3 for the reasons stated

above.

15. The doubt raised on the ground that even before the MLC conducted at 10.45 p.m., dying declaration was recorded at 10.32 p.m., we are of the view that prompt action shown on the part of the hospital authorities, police officers and Executive Magistrate only seeks to fortify and strengthen the prosecution case rather than creating any doubt. In the present case, no sooner the victim was brought to the hospital, not only the hospital authorities but also the police officer and Executive Magistrate acted very promptly. Merely because after recording dying declaration, the victim was sent for detailed medical check-up, by itself, without anything more, would not render the dying declaration doubtful.

16. It is not a case where upon subsequent examination by the doctor and in the court evidence, the doctor has stated that the victim was not at all in a condition to speak or that she was not in senses or was completely disoriented so as to rule out the possibility of she being in a condition to give dying declaration.

17. In view of the above consideration, we do not find any good ground to interfere in the judgment of conviction and order of sentence.

Appeal is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge