

(2012) 07 CHH CK 0008
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1024 of 1996

Basant Kumar

APPELLANT

Vs

State of Madhya Pradesh (Now Chhattisgarh)

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Evidence Act, 1872 — Section 32(1)
Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 07 CHH CK 0008

Hon'ble Judges : Rajeev Gupta, C.J.; Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Savita Tiwari, for the Appellant; J.A. Lohani, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 22nd of April, 1996 passed in Sessions Trial No. 88/1995 by the Second Additional Sessions Judge, Bilaspur. By the impugned judgment, the appellant has been convicted u/s 302 IPC and sentenced to undergo imprisonment for life.

2. The facts, briefly stated, are as under:--

Deceased-Devkumari was wife of the appellant. They were residing in rented premises of Shoukatlal in Mohalla Talapara, Bilaspur. On 1-11-1994 at about 6 a.m. the deceased received severe burn injuries. While she was burning, her neighbours namely-Subhash Das (P.W. 6) and Saukhilal (P.W. 7) came to rescue. They anyhow extinguished the fire. The deceased made oral dying declaration that she was burnt by her husband (appellant) by pouring kerosene, who has ran away. The deceased was taken to the hospital by her landlord-Shoukatlal. In the hospital, she was attended by Dr. R.J.P. Verma (P.W. 9), who examined the deceased and found 80 to 90% burn injuries. Being a burn case, he mentioned in the injury report that as per statement given by the patient herself, she was burnt by her husband. The injury report is Ex-P-13. Dr. R.J.P. Verma (P.W. 9),

then, sent a memo (Ex-P-12) to the concerned police. In the said memo also, he mentioned that the deceased was burnt by her husband and she has been admitted in the burn unit of the hospital. The Investigating Officer reached to the burn unit. There, the deceased herself lodged the First Information Report (FIR-Ex-P-7). In the FIR also, she stated that she was put to fire by her husband. The FIR contains her thumb impression. Subhash Das (P.W. 6) had also received burn injuries while extinguishing the fire of the deceased. He was also sent for his medical examination. Dr. Shekhar Chatterjee (P.W. 1) examined him and found burn injuries over his hands. His MLC report is Ex-P-1. The deceased died during the course of her treatment on 5-11-1994. The death was intimated to the police. Inquest (Ex-P-2) was prepared on the dead body of the deceased. A team of two doctors, including Dr. Ramkishan Jeetpura, P.W. 3, conducted autopsy on the dead body of the deceased and opined that the cause of death was shock with septicemia due to extensive burn injuries. The post-mortem report is Ex-P-4. The appellant took the plea of alibi. The learned Sessions Judge, in view of the dying declarations, did not accept the plea of alibi and convicted and sentenced the appellant as above.

3. Mrs. Savita Tiwari, learned counsel appearing on behalf of the appellant, argued that the dying declarations are suspicious, therefore, conviction based on the dying declarations cannot be sustained.

4. On the other hand, Mr. J. A. Lohani, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Sessions Court.

5. We have heard learned counsel for the parties at length and have also perused the records of the Sessions case.

6. Subhash Das (P.W. 6) deposed that on the fateful day, he was sleeping in his house. In the morning at about 6 a.m. he heard cries of the deceased. He came out of his house and saw that the deceased was burning. Bablu, Vakeel and Saukilal also came there. They extinguished the fire. The deceased stated before them that she was burnt by her husband. Her husband was not present at that time. The landlord then took the deceased to the hospital. He had also sustained injuries while extinguishing the fire and was treated in the hospital.

7. Saukilal (P.W. 7) was another tenant of Shoukatlal. He deposed that at about 5-6 a.m. he heard cries, like "bachao" "bachao", of the wife of the appellant. She was shouting that her husband had run away after putting her on fire. He came out from his house and saw that the deceased came out of her house in burning condition. They tried to extinguish the fire.

8. Devilal (P.W. 2) is brother of the deceased. At the relevant time, he was working in Haryana. He came to Bilaspur on 5-11-1994. His Aunt (Buwa)-Nanhi Devi told him that the appellant had caused burn injuries to his sister and she has been admitted in Dharam Aspatal (Government hospital), Bilaspur. Thereafter, he went to Dharam Aspatal and met his sister (deceased), who made

oral dying declaration that she was burnt by the appellant after pouring kerosene on her body. In the evening, the deceased died in the hospital.

9. On appreciation of evidence of above witnesses, we find that firstly the deceased made oral dying declaration before Subhash Das (P.W. 6) and Saukilal (P.W. 7). They were neighbours of the deceased. Saukilal (P.W. 7) was residing in another rented premises belonging to landlord of the deceased. It was adjacent to the premise of the deceased. Subhash Das (P.W. 6) was also residing in a close vicinity of the house of the deceased. Subhash Das (P.W. 6) and Saukilal (P.W. 7) have deposed in clear words that the deceased made oral dying declaration before them and she also added that the appellant had ran away after putting her on fire. Subhash Das (P.W. 6) claimed that he had extinguished the fire. He had sustained burn injuries on his hands. These two witnesses of first dying declaration, and Devilal (P.W. 2) the other witness of second dying declaration in the hospital, were put to lengthy cross-examinations by the defence, but the defence has not been able to elicit any such circumstance in their evidence, on which, either their testimonies may be discarded or it may be said that they were falsely implicating the appellant.

10. In Munnu Raja and Another Vs. The State of Madhya Pradesh, the Supreme Court held that where after making the statement before the police, the victim succumbs to his injuries the statement can be treated as a dying declaration and is admissible u/s 32(1) of the Evidence Act.

11. In the instant case, First Information Report was lodged by the deceased. In the said report, she made clear averments regarding the act of the appellant. After her death on 5-11-1994, the above statement made by the deceased while recording the F.I.R., therefore, was admissible u/s 32(1) of the Evidence Act. The defence has not been able to create any doubt against the above evidence of the F.I.R. lodged by the deceased.

12. Dr. R.J.P. Verma (P.W. 9) had firstly attended the deceased in the hospital. He has also mentioned in the MLC report of the deceased that as per statement given by the patient herself, she was burnt by her husband. Even in the information sent to the police (Ex. P-12), he has mentioned that according to the patient, she was burnt by her husband after pouring kerosene.

13. Shalikram (D.W. 1) and Digamwar (D.W. 2) were examined to prove the plea of alibi. Shalikram (D.W. 1) was a Kabadi. According to him, the appellant used to take a Thela and Rs. 100/- from him for purchasing Kabad. On 1-11-1994 at about 5 a.m., the appellant came to his shop and took a Thela. In cross-examination, he admitted that his shop used to open at 7 a.m. and all the labours used to come at 5-6 a.m. When the shop itself was being opened at 7 a.m., how this man can tell that the appellant was present in his shop at 6-6:30 a.m. Digamwar (D.W. 2) was also working, like the appellant, with Shalikram (D.W. 1). His evidence also becomes unreliable on the face of admission of Shalikram (D.W. 1) in para 4 that he used to open his Kabadi shop at 7 a.m. The

learned Sessions Judge, on appreciating entire evidence, has disbelieved the plea of alibi on the face of above dying declarations of the deceased.

14. On due consideration of the entire evidence available on record, we do not find any infirmity in the judgment and findings recorded by the Sessions Judge that the appellant could not establish the plea of alibi and it was not acceptable in view of the 3 dying declarations made by the deceased at different point of time. We are of the view that on the above evidence, the learned Sessions Judge was fully justified in convicting the appellant u/s 302 IPC. The appeal, therefore, is liable to be dismissed and is hereby dismissed.