
(2014) 05 CHH CK 0011
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 668 of 2008

Dhaniram Mahar	Vs	APPELLANT
State of C.G.		RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 3 CGLJ 305 : (2014) CriLJ 3877

Hon'ble Judges : Sunil Kumar Sinha, J; Inder Singh Uboweja, J

Bench : Division Bench

Advocate : Sunil Sahu, Advocate for the Appellant; Smita Ghai, Panel Lawyer, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.

1. Appellant- Dhaniram Mahar stands convicted u/s 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 5,000, with default sentence of R.I. for two years. The judgment and findings have been recorded in Sessions Trial No. 03/2008 by Additional Sessions Judge (F.T.C.), Dhamtari (C.G.) on 16th of May, 2008. The facts, briefly stated, are as under:--

2.1 Deceased- Laxmi was daughter of the appellant. She was aged about 15 years and was residing with the appellant in a hutment in Hathkeshwar Ward, Dhamtari. Ghasi Ram (PW-5) and Satrupabai (PW-6), wife of Ghasi Ram, were also residing in a hutment near the hutment of the appellant.

2.2 Appellant (A-1) had received certain amount on account of death of his wife in a motor accident, out of which, he had given Rs. 3,000 to Laxmi (deceased). The appellant was in habit of drinking. He had spent his money and was demanding money from Laxmi (deceased). Laxmi (deceased) was not giving money to the appellant.

2.3 The case of the prosecution is that on 25th of October, 2007, at about 4.00 pm, the appellant (A-1) and one Kannuram (A-2) came in drunken condition. The appellant said the deceased to give him food. The deceased denied to give food to the appellant. On this, a quarrel took place between them. The deceased had abused the appellant. During the abuse, Kannuram (A-2) stated the appellant that "if his daughter would have behaved like this, he would have killed him". Thereafter, Kannuram (A-2) went from the house of the appellant.

2.4 The allegations are that the appellant became angry on the said behaviour of the deceased. He poured kerosene on the deceased and set her on fire. The incident was witnessed by Ghasi Ram (PW-5) and Satrupabai (PW-6). The neighbours took the deceased to the Hospital. It was told to the Hospital people that Dupatta of deceased caught fire while she was preparing the meals. Information to this effect was sent to the Police Station. The Police made arrangement for recording dying declaration of the deceased. Thereafter, her dying declaration (Ex.-P-14) was recorded by the Executive Magistrate, Mr. G.R. Mahipal (PW-8) at 10.50 pm on the same day.

2.5 On 26th of October, 2007, the deceased told her sister Poornima Bai (PW-4) that in fact, she was put on fire by the appellant (A-1). Poornima Bai narrated the incident to the Police and Dehati Nalishi (Ex.-P-7) was recorded.

2.6 On this information, the Police again made application to the concerned Magistrate for recording another dying declaration of the deceased. Before that, the Police also issued Memo (Ex.-P-20) to the Doctor to record the dying declaration. Dr. Abha Hisikar (PW-11) recorded the second dying declaration (Ex. P-20A) of the deceased on 26th of October, 2007 at 3.30 pm. In this dying declaration, the deceased made allegations against the appellant saying that she was put on fire by him, after pouring kerosene on her body.

2.7 Thereafter, the Executive Magistrate, Mr. G.R. Mahipal (PW-8) again recorded the dying declaration of the deceased (Ex.-P-15) on 29th of October, 2007 at 4.10 pm. In this dying declaration also, the deceased made allegations against her father (appellant) saying that she was put on fire by him, after pouring kerosene on her body.

2.8 The prosecution came with two sets of evidence; first, the eyewitness account of Ghasi Ram (PW-5) and Satrupabai (PW-6); and second, the dying declarations made by the deceased against the appellant.

2.9 The learned Sessions Judge relied on both sets of evidences and held that it was proved beyond all reasonable doubts that the appellant (A-1) had put the deceased on fire, after pouring kerosene on her body, therefore, he was liable for punishment u/s 302 IPC. However, the other accused-Kannuram (A-2), against whom there was allegation of exhortation, was acquitted of the charges framed against him. Hence, this appeal.

2. Mr. Sunil Sahu, learned counsel appearing on behalf of the appellant, has

raised two fold of arguments. He firstly contended that the evidence of eye-witnesses are unreliable. He also contended that on the first instance, the deceased herself stated that her Dupatta caught fire while she was preparing the meals, therefore, the subsequent dying declarations, in which, there are allegations against the appellant are false and fabricated.

3. On the other hand, Ms. Smita Ghai, learned Panel Lawyer appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the Sessions Court.

4. We have heard counsel for the parties.

5. We shall firstly examine the eye-witness account.

6. Ghasi Ram (PW-5) was neighbour of the appellant. His hutment was situated just by the side of the hutment of appellant. He was residing with his wife Satrupabai (PW-6). According to him, on the fateful day, at about 3.00 pm, the deceased was sitting with his family members in his house. Kannuram (A-2) came to call the deceased. The appellant (A-1) said the deceased to give some food. The deceased denied to give food, on which, an altercation took place between them. At that time, both the accused (A-1 & A-2) were in drunken condition. Hearing the quarrel and abuse, Kannuram (A-2) said the appellant (A-1) that and went from the house of the appellant. Thereafter, the appellant poured kerosene on the deceased and set her on fire by a match-stick. The deceased, in burning condition, rushed towards their house and fell down. The fire was extinguished and thereafter, she was taken to the Hospital on a Rikshaw.

7. Satrupabai (PW-6) is wife of Ghasi Ram (PW-5). She had gone to a boring to fetch water. While she was coming from boring, she saw the incident that after the altercation, appellant poured kerosene on the deceased and thereafter, set her on fire. Satrupabai (PW-6) has corroborated the evidence of Ghasi Ram (PW-5).

8. Mr. Sahu has argued that in the Court evidence, Ghasi Ram (PW-5) has deposed that the accused persons (A-1 & A-2) were in drunken condition and Kannuram (A-2) was holding a container of one liter kerosene, whereas, this was not mentioned in his diary statement (Ex.-D-1). It was also not mentioned that the deceased was present in the house of these witnesses before the incident. Therefore, on these omissions/contradictions, evidence of Ghasi Ram (PW-5) should be discarded.

9. On going through the entire evidence of Ghasi Ram (PW-5), we find that these omissions are not material omissions and his evidence cannot be thrown out on this account alone. His diary statement (Ex.-D-1) was recorded on 26th of October, 2007 i.e. on the next day of incident. In the diary statement, he clearly stated that the deceased was set on fire by the appellant, after pouring kerosene on her body. This he also deposed in his Court evidence. We find that his both statements are similar on material particulars and there is no infirmity in his

evidence and the omission pointed out does not affect his credibility.

10. We also find no infirmity in the evidence of Satrupabai (PW-6). She deposed in clear words that the appellant had poured kerosene on deceased and set her on fire.

11. Ghasi Ram (PW-5) and Satrupabai (PW-6) were put to lengthy cross-examinations by the defence, but nothing material could be brought in their cross-examinations, on which, either their testimonies may be discarded or it may be said that they were falsely implicating the appellant in the said incident.

12. The contents of map would show that the incident occurred at an open place, between the hutments of the appellant and these witnesses, which were adjacently situated: Both the eye-witnesses had seen the incident from a very short distance. The eye-witnesses had also seen the quarrel between the appellant and deceased, which took place prior to the incident. Thus, it cannot be said that they might not have witnessed the actual incident of putting the deceased on fire in the above manner or they were not in a position to see the incident on account of some obstructions etc.

13. We have gone through the entire evidence of these witnesses, we are of the view that the learned Sessions Judge was fully justified in believing the testimonies of these two eye-witnesses, who deposed that the deceased was set on fire by the appellant in the above manner.

14. This is a case, in which, there are multiple dying declarations. In this regard, Mr. Sahu has relied on the judgments of *Puran Chand Vs. State of Haryana*, . It is held in the said judgment that when there are more than one dying declarations, the intrinsic contradictions in those dying declarations are extremely important. It cannot be that a dying declaration which supports the prosecution alone can be accepted while the other innocuous dying declarations have to be rejected, as such trend will be extremely dangerous.

15. In *Shudhakar Vs. State of M.P.*, , it was held that where multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent, test of common prudence would be to first examine which dying declaration is corroborated by other prosecution evidence. Further, attendant circumstances, "condition of deceased at the time of making of each declaration, concerned medical evidence, voluntariness and genuineness of statement made by deceased, physical and mental fitness of deceased and possibility of deceased being tutored, are some of the factors which would guide exercise of judicial discretion by Court in such matters.

16. In *Ashabai and Another Vs. State of Maharashtra*, , it was held that the law does not insist upon corroboration of dying declaration before it can be accepted. Insistence of corroboration of dying declaration is only a rule of prudence. If the prosecution solely depends on dying declaration, normal rule is that Courts must exercise due care and caution to ensure genuineness of dying declaration,

keeping in mind that accused have no opportunity to test veracity of statement of deceased by cross-examination. When Court is satisfied that dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of imagination of declarant, in that event, there is no impediment in convicting accused on the basis of such dying declaration.

17. In *Bhadragiri Venkata Ravi Vs. Public Prosecutor High Court of A.P., Hyderabad*, it was held that it is not plurality of dying declaration but reliability thereof adds weight to prosecution case.

18. In the instant case, the incident took place at about 4.00 pm on 25th of October, 2007 and the first dying declaration (Ex.-P-14) was recorded at 10.50 pm on the same day. In the said dying declaration, the deceased did not make any allegation against the appellant. She simply stated that her Dupatta caught fire while she was preparing the meals. Thereafter, on 26th of October, 2007, elder sister of the deceased, Poornima Bai (PW-4), met her in the Hospital, where the deceased stated that she was put to fire by her father. Poornima Bai (PW-4), then, narrated the above facts to the Police, on which, Dehati Nalishi (Ex.-P-7) was recorded on the same day.

19. Thereafter, the Police issued Memos (Exs.-P-19 & P-20) to the concerned Magistrate and Doctor to record fresh dying declaration of the deceased. After receiving the said Memo, second dying declaration (Ex.-P-20A) was recorded by Dr. Abha Hisikar (PW-11) on 26th of October, 2007 at 3.30 pm. In this dying declaration, the deceased made allegation against her father saying that she was put to fire by him (appellant), after pouring kerosene on her body.

20. Then, the Executive Magistrate, Mr. G.R. Mahipal (PW-8), also recorded the dying declaration (Ex.-P-15) of the deceased on 29th of October, 2007 at 4.10 pm. Here also, the deceased made allegation against her father and stated that she was put to fire by the appellant (A-1), after pouring kerosene on her body.

21. Thus, in the instant case, there were three dying declarations of the deceased. In the first dying declaration (Ex.-P-14), she did not make any allegation against the appellant. However, in two other dying declarations (Exs.-P-20A & P-15), she made positive allegation against him.

22. Mr. Sahu has argued that the first dying declaration was the earlier version of the deceased, therefore, it should have been believed by the Sessions Judge, rejecting the credibility of other two dying declarations.

23. The argument of Mr. Sahu cannot be accepted. The principles reiterated in *Shudhakar* (2012) 7 SCC 569 (supra) would make it clear that the "dying declaration" is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally, in such situations, Court attach intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is

not an attempt by deceased to cover up truth or falsely implicate a person, then Courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where version given by deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for Courts to doubt truthfulness of such dying declaration.

24. In case on hand, the deceased had survived for about eight days. She was not very serious on the first day, when her first dying declaration (Ex.-P-14) was recorded at 10.50 pm. Thus, she might not be under serious apprehension of her death and expectancy of life must have survived while giving the first dying declaration. The appellant is father of the deceased, therefore, the deceased in expectancy of life might not have stated against her father. However, subsequently when she started deteriorating and the expectancy of life became lesser and lesser, she made two other dying declarations (Exs.-P-20A & P-15); one before Dr. Abha Hisikar (PW-11) and the other before the Executive Magistrate, Mr. G.R. Mahipal (PW-8) on 26th of October, 2007 and 29th of October, 2007. Then, she died on 2nd of November, 2007. Thus, the two subsequent dying declarations were rightly held to be genuine by the Sessions Judge.

25. That apart, as we have already stated, there are two eye witnesses to the incident, who had seen that the appellant had poured kerosene on the deceased and put her on fire. We have believed the testimonies of these two eye-witnesses. In the present fact situation, evidence of these eye-witnesses, which itself was sufficient to uphold the conviction, would also be supporting the two later dying declarations given by the deceased.

26. On due appreciation of the entire evidence on record, we find that the learned Sessions Judge was fully justified in resting the conviction of the appellant on the eye-witness account of Ghasi Ram (PW-5) and Satrupabai (PW-6), as also on the two later dying declarations made by the deceased. For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, is liable to be dismissed and is hereby dismissed.