

(2018) 01 MP CK 0090
In the Madhya Pradesh High Court
Case No : 223 of 2003

Lallu Lal Soni

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 374\(2\)](#) - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 307](#) - Punishment for murder

Citation : (2018) 01 MP CK 0090

Hon'ble Judges : Anurag Shrivastava, Nandita Dubey

Bench : Division Bench

Advocate : Durgesh Gupta, Aseem Dixit

Final Decision : Dismissed

Judgement

1. The present appeal has been preferred by appellant/accused under section 374(2) of Cr.P.C. being aggrieved by the judgment and conviction

passed on 27.12.2002 in Sessions Trial No.42/2002 by Second Additional Sessions Judge, Shahdol; whereby the appellant has been convicted

for the commission of offence punishable under section 302 of IPC and sentenced to undergo R.I. for life and fine of Rs.500/-, with default

stipulation.

2. The case of prosecution in brief is that the deceased Smt. Aruna Soni was the wife of appellant Lallu Lal Soni. The marriage was solemnized on

18th June, 1995. After the marriage, the deceased was living with appellant at Village Kotma. The appellant was a Greengrocer. He used to

suspect the character of deceased and did not allow her to talk with any other person. He quarrels with deceased and beat her suspecting her

fidelity. On 02.10.2001 at about 10:00 O"Clock in the night, the appellant came home after purchasing a huge quantity of vegetables. Deceased

Smt. Aruna Soni told him that the vegetables are too much in quantity and would get rotten, if not sold within time. Hearing this, appellant started

abusing and beating her. Thereafter he poured kerosene oil on her and set her ablaze. Deceased raised alarm for help. Hearing this, her neighbours

Uday Bhan Singh and Basor rushed on the spot and doused fire. Deceased had sustained about 72% burn injuries. The mother and brother of

deceased were informed of the incident and after their arrival the deceased was taken to Police Station, Kotma where she lodged FIR (Ex.P.16).

3. As per prosecution, the police registered an offence under section 307 of IPC on report of the deceased and sent her for medical examination

to District Hospital, Shahdol. The dying declaration of deceased was got recorded by the Nayab Tahsildar. During investigation, police prepared

spot map and a bottle of kerosene oil and burnt clothes were recovered from the spot. On 4.10.2001 at about 12:15 O" Clock in the night

deceased has been died during treatment. The police initiated the inquest, prepared Panchanama of the dead body of the deceased and sent the

body for postmortem. The statements of witnesses were recorded and after usual investigation, the charge-sheet has been filed against the

appellant under section 302 of IPC before the trial court.

4. The trial Court framed charge of offence punishable under Section 302 of I.P.C. The appellant abjured guilt and pleaded innocence. The

prosecution has examined 13 witnesses; whereas the appellant adduced 5 witnesses in his defence.

5. The trial court, on appreciation of evidence, held the appellant guilty for commission of murder of his wife and convicted him under section 302

of IPC and sentenced to RI for life and fine of Rs.500/-, with default stipulation.

6. It is argued by the learned counsel that appellant has been falsely implicated in this offence. He was not present on the spot at the time of

incident. The deceased had sustained burn injuries due to accident. Since the deceased was not having cordial relations with the appellant, she had

given false statement against the appellant and implicated him in present offence. There is no eyewitness to the incident. The dying declaration of

deceased is not reliable. The trial court on erroneous appreciation of evidence

has held the appellant guilty for commission of alleged offence and thereby committed illegality.

7. Heard arguments. Perused the record.

8. It is not disputed that deceased was the wife of appellant, who was living with him at the time of incident. It is also not disputed that deceased had sustained burn injuries in her house. She was taken to the hospital where she was admitted for the treatment. Later on, 4.10.2001 she has expired during treatment.

9. Dr.M.K.Mallah (P.W.1) deposed that on 3.10.2001 at Community Health Centre, Kotma, he had medically examined deceased Aruna Soni and found 72% burn injuries on her face, chest, abdomen, neck, both hands, thighs and back. He had referred the deceased to District Hospital, Shahdol after giving her first aid. The statement of doctor is duly corroborated by MLC report (Ex.P/1), also.

10. K.P.Shukla, ASI, Police Station Kotwali, Shahdol (P.W.9), deposed that on 4.10.2011 at about 12:15 O'Clock in the night, Ward Boy Rameshwar brought an intimation regarding death of deceased Aruna Soni, who was admitted in District Hospital, Shahdol. On the basis of this intimation, he had recorded Marg Intimation (Ex.P/13).

11. Rakesh Kumar Yadav, Tahsildar (P.W.8), deposed that on 4.10.2011 at District Hospital, Shahdol he had conducted the inquest and prepared Pachanama of dead body (Ex.P/5), and send the body for postmortem.

12. Dr. Pradeep Kumar Khare (P.W.11) deposed that on 4.10.2001 at District Hospital, Sahadol, he had performed the postmortem of dead body of deceased Aruna Soni and found burn injuries on her face, neck, chest, abdomen, both hands and legs. The skin had become black and in some areas reddish subcutaneous tissues were seen. There was 80-90% burn injuries found. The death was caused due to burn injuries suffered by the deceased. The statement of doctor is corroborated by the postmortem report (Ex.P/15). In cross-examination nothing has been elicited to doubt testimony of doctor.

13. Thus, relying upon the statements of Dr. M.K.Mallah (P.W.1) and Dr.Pradeep Kumar Khare (P.W.11) and their medical reports, the trial court has rightly found that the deceased had received burn injuries at the time

of incident and she had been died due to these injuries.

14. Now the question arises whether the appellant has caused the burn injuries to deceased by setting her ablaze? In this regard the prosecution

has examined Uday Bhan Singh (PW-5) who is the neighbour of deceased. Uday Bhan Singh deposed that on 02.10.2001 at about 10 -11 O''

clock in the night he was sleeping in his room, he heard the cry of the deceased who was living with her husband in adjacent room. He rushed to

the room of the deceased and found her in burnt condition. Appellant was also present there. He went to the house of parents of deceased to

inform them. When he was giving them information of the incident deceased also came there and stated that the appellant had set her ablaze by

pouring kerosene oil on her. Thereafter, brother of the deceased took her to Police Station by scooter.

15. Statement of PW-5 is also corroborated by Smt. Kashi Bai (PW-3) and Ashish Soni (PW-4) who are the mother and brother of the

deceased. Kashi Bai deposed that the deceased was living with appellant near her house. At the time of incident PW-5 came in her house and

informed her that there was a quarrel between deceased and appellant and thereafter deceased had sustained burn injuries. When PW-5 was

giving information of the incident, deceased also came in the house of her mother and she informed that the appellant had sprinkled kerosene oil on

her and set her ablaze. There was a quarrel between husband and wife on account of purchase of huge quantity of vegetables. This fact is also

corroborated by Ashish Kumar Soni (PW-4). Ashish Soni deposed that he took the deceased to Police Station, Kotma where the deceased lodge

the report of the incident and thereafter she was taken to Government Hospital, Kotma.

16. Investigating Officer P.K.S. Goutam, SHO, Police Station Kotma (PW-13) deposed that on 02.10.2001 at about 11:15 P.M in the night

deceased Aruna Soni brought to the Police Station Kotma by her brother. She lodged a report (Ex.P/16) stating that the appellant used to suspect

on character of deceased. He beats and harassed her. At the time of incident he quarreled with her and set her ablaze by pouring kerosene oil on

her. It is further deposed by Investigating Officer that after recording the FIR (Ex.P/16) he sent the deceased for treatment to Government

Hospital, Kotma and also intimidated the Executive Magistrate for recording of her dying declaration.

17. D.N. Singh (PW-7) the Executive Magistrate deposed that in the intervening night of 2nd and 3rd October, 2001 he visited the Government

Hospital, Kotma at about 00:30 in the night and recorded the dying declaration of the deceased (Ex.P/2). The deceased was fully conscious and fit

to make statement. He got her examined by the Doctor and the doctor has endorsed the fitness certificate on Ex.P/2. This fact is also verified by

Dr. M.K. Mallh (PW-1) who deposed that at the time of recording of dying declaration he had examined the deceased and found her fit to make

statement. He had endorsed the certificate of fitness on Ex.P/2 the dying declaration.

18. In the dying declaration (Ex.P/2) it is categorically stated by the deceased that the appellant had poured kerosene oil on her and set her ablaze.

The appellant used to suspect on her character and used to harass and beat her.

19. Undisputably conviction can be recorded on the basis of dying declaration alone but therefore, the same must be wholly reliable. The

admissibility of dying declaration is explained by Hon"ble Supreme Court in case law Ramesh v state of Haryana AIR 2016 SC 5554 as under:-

Law on the admissibility of the dying declarations is well-settled. In Jai Karan v. State of N.C.T., Delhi³, this Court explained that a dying

declaration is admissible in evidence on the principle of necessity and can form the basis of conviction if it is found to be reliable. In order that a

dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it

had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the

case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal

knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that

such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any

other piece of evidence, neither extra strong or weak, and can be acted upon without corroboration if it is found to be otherwise true and reliable.

20. In the present case the deceased in her dying declaration (Ex.P/2) which is duly recorded by the Executive Magistrate has stated that the

appellant has set her ablaze by pouring kerosene oil. The deceased has informed the same fact to her mother Smt, Kashi Bai (PW-3) and brother

Ashish Soni (PW-4) soon after the incident. This fact is also corroborated by Udhay Bhan Singh (PW5), who recorded the FIR lodged by

deceased. The deceased has mentioned in her FIR (Ex.P/16), that her husband had set her on fire, which can be treated as dying declaration. I am

fortified from the judgment of the Supreme Court in the matter of Paras Yadav v. State of Bihar reported in (1999) 2 SCC 126 wherein it has

been held by the Supreme Court that ""a statement of the deceased recorded by a police officer in a routine manner as a complaint and not as a

dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses

clearly establishes that the deceased was conscious and was in a fit state of health to make the statement"".

21. The testimony of PW-3 and PW-4 and also the FIR (Ex.P/16) shows that the appellant used to suspect the character of deceased and used to

beat and harass her. In view of aforesaid facts and circumstances of the case the dying declaration of deceased inspires confidence. The testimony

of mother and brother of the deceased appears to be cogent, reliable and trustworthy. The trial Court on proper appreciation of evidence has

relied upon the dying declaration and testimonies of PW-3 and PW-4 and arrived at the conclusion that the appellant had poured kerosene oil on

the deceased and set her ablaze. Thus, it is proved that the appellant has committed murder of his wife. There is no infirmity or illegality in

conviction and sentence awarded by the trial Court. Appellant is rightly proved guilty under Section 302 of IPC.

22. In view of aforesaid, we do not find any merits in this appeal and it is hereby dismissed.