

(1996) 01 MP CK 0017
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 200 of 1989

Lallu Singh Samgar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 11-01-1996

Acts Referred:

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

Citation : (1996) 41 MPLJ 452 : (1996) MPLJ 452

Hon'ble Judges : R.D. Shukla, J; Nirmal Kumar Jain, J

Bench : Division Bench

Advocate : A.K. Yadaw, for the Appellant; Vijayvargiya, for the Respondent

Final Decision : Allowed

Judgement

R.D. Shukla, J.

The appeal is directed against the Judgment and Order dated 29-4-1989 of Vth Additional Sessions Judge, Ujjain, passed in Sessions Trial No. 94/87. whereby the accused-appellant has been convicted u/s 302, Indian Penal Code for having committed murder of his wife Sushilabai on 29-1-1987 by setting her to fire in his residential place, Rishi Nagar, Ujjain and sentenced to imprisonment for life.

This is not in dispute that Sushilabai d/o Ramnathsingh was married to accused, 12 to 14 years prior to the incident. Both of them were residing together at Rishi Nagar, Ujjain. Five children were born out of the wedlock. Three children were living along with them and the two children were living with their grand-parents. Sushilabai was admitted with serious burn injuries in Ujjain hospital and, thereafter, she died on the intervening night of 3rd and 4th February, 1987.

The prosecution story, in brief, is that the accused and his wife Sushilabai (deceased) were having strained relation. Accused was in the habit of consuming liquor and beating his wife. On one occasion he has turned his wife out of his house. On the date of incident accused came late in the night, he had consumed

liquor. He abused and beat his wife and thereafter, poured kerosene oil and set her to fire. Their child Meena @ Minni (P.W. 15) witnessed the incident as she was awoke because of sounds of quarrel. After the incident accused went to his friend Umesh Punjabi, hired an auto-riksha and took his wife Sushilabai to Civil Hospital. Sushilabai disclosed to auto-riksha driver Raturaj Pandey (P.W. 3) that she has been set to fire by his husband. Sushilabai was admitted in hospital. She was examined by Dr. Sharad Nayak (P.W. 14), who found 99% burn. Despite treatment Sushilabai succumbed to burn injuries and died as above. She died of hypovolumic and neurogenic shock due to 100% burn.

After investigation police Madhav Nagar, Ujjain, filed challan against the accused, the same was committed to the Court of Session in due course. The accused denied the guilt and pleaded false implication. Learned trial Judge has convicted and sentenced the accused as above. Hence, this appeal.

The contention of the learned counsel for the appellant is that the dying declaration has been purposely not proved by the prosecution. In the dying declaration Sushilabai has very clearly stated that she got burn injuries because of accidental fire; Appellant also got burn injuries that goes to show that he tried to extinguish fire. Lastly it has been contended that since Meena has not supported the fact of burn injuries being caused by the accused, corroborative evidence about alleged disclosure by Meena to witnesses cannot be made basis for conviction.

As against it learned counsel for the State has supported the judgment of conviction and sentence of accused and further submitted that looking to the strained relation and alcoholic habit of accused inference drawn is cogent and natural.

We were taken to the evidence on record. Dying declaration recorded by Executive Magistrate/Naib Tehsildar, Ujjain, has been filed in the case along with the challan, but the same was not proved during the course of trial. However, it has been taken in the paper book at the request of the counsel for the accused. Similarly, the injury report of accused was also not proved, but was taken in the paper book at the request of accused-appellant.

We deprecate method of prosecution of withholding the evidence collected during investigation. The prosecutor is a "State" and, therefore, the prosecution should be fair enough to produce all the evidence collected during investigation and it should be left to the Court to come to its own conclusion on the facts proved before him or the Court concerned.

But, despite the absence of formal proof of document of dying declaration, the same can be made use of by the accused in his defence accused can take the advantage of the document even without proof of the same. Similarly, the medical certificate showing the injuries on the body of the accused can also be made use of by the accused despite absence of formal proof.

Though, it is desirable that if the prosecution fails to produce the evidence for proving the document which it goes in favour of the accused; that accused should get the witnesses summoned through Court and prove the document. However, even if this formality has not been observed, since the document is a part of record and has been produced along with the police report, the same can always be considered by the Court to the advantage of the accused. We, therefore, looked-into and examined the dying declaration recorded by the Executive Magistrate/Naib Tehsildar, which finds place at pages 13 and 14 of the paper book.

In the dying declaration recorded on 30th January, 1987 at 10.50 a.m. to 11.05 a.m. Sushilabai has very clearly stated that she sustained burn injuries because of accidental fire from the stove. This is not the case of the prosecution that at the initial stage Sushilabai was under pressure and influence of the accused and did not disclose the real fact and disclosed it after removal of undue pressure on her. Sushilabai was admitted in the hospital on the night of 29th January, 1987. This is first disclosure by her to Executive Magistrate and, therefore, it will be accepted that she made statement (dying declaration) out of her own volition and without any pressure and persuasion by either of the party. The document at page 15 of the paper book discloses the fact of burn injuries found on the face and palmer region of both hands of accused. This is indicative of the fact that accused tried to extinguish the fire and this appears to be consistent with the disclosure in the dying declaration that accused put blanket on the clothes of Sushilabai.

P.W. 1 Chatursingh has stated that on hearing the alarm of "save save" he reached the house. There was fire in the house. Accused was trying to extinguish the fire. He also found Sushilabai w/o accused with burn injuries. Similar statement has been given by P.W. 2 Dr. Umesh Punjabi. P.W. 4 Dr. Vimal Kumar Garg has examined Sushilabai and opined that Sushilabai died of 100% burn because of Hypovolumic and Neurogenic shock.

P.W. 6 R.N. Saloman is a witness of inquest report. P.W. 7 Kishore kumar is a witness of seizure of three letters. P.W. 8 Anandsingh Vaskale has recorded morgue report, prepared inquest report and sent the dead body for post mortem examination. He also seized plastic can, broken bangles and burnt pieces of blouse, Baniyan and Sari vide Ex.P/5. P.W. 9 Rambaccan Pandey only recorded information about the telephonic message vide Ex.P/20. P.W. 10 Roshanlal Sonkar has proved photographs taken during investigation that shows condition of the room after Sushilabai was removed from there. P.W. 11 Ramkrishna Chore is a witness who produced the photographs. P.W. 12 Smt. Chandrakali (elder sister of Sushilabai) has stated about earlier ill-treatment, but could not talk to Sushilabai on coming to Ujjain after receiving information of admission of Sushilabai in the hospital because of burn injuries.

P.W. 13 Digvijaysingh (brother of deceased) has tried to prove earlier ill treatment by the accused. He has given no evidence as to how Sushilabai

sustained burn injuries. P.W. 14 Dr. Sharad Naik initially examined Sushilabai and found burn injuries with smells of kerosene. P.W. 15 Meena d/o accused and deceased Sushilabai was examined to prove causing of fire by accused, but she turned hostile and has not supported the case of the prosecution and, therefore, that witness is of no help to the prosecution.

P.W. 3 Ruturaj Pandey (auto-riksha driver) has been examined to prove the disclosure of Sushilabai immediately after the incident, but he has nowhere stated that accused set her to fire. She was only talking almost in delirium that she has got burn injuries, "Jal Gaye - Jal Gaye". In the last line of examination-in-chief he has made a casual statement that wife of accused told that her husband has set her to fire. His statement u/s 164, Criminal Procedure Code was also recorded, as stated by him in para-3 of his statement. He appears to be a reluctant witness and appears to have been made to speak about disclosure by Sushilabai that her husband has set her to fire.

From the very fact that his statement was recorded u/s 164, Criminal Procedure Code it is evident that at one stage of investigation prosecution doubted the veracity and credibility of the witness. This witness cannot be relied with respect to dying declaration and allegation of setting Sushilabai to fire by her husband in presence of dying declaration recorded by Executive Magistrate, as referred above.

P.W. 13 Digvijaysingh has stated that Munni @ Meena (P.W. 15) has told him that accused abused, manhandled and set Sushilabai to fire, but this fact has not been stated by Meena and, therefore, in the absence of substantive evidence corroborative evidence of Digvijaysingh cannot be made basis of conviction. In our opinion statement of Digvijaysingh on that point would be inadmissible in evidence as the substantive evidence itself is missing and the statement of Digvijaysingh would be only corroborative evidence. On close scrutiny of evidence we do not find any other connecting link with the crime. Even if the fact of cruelty and misbehaviour of accused with the parents and parental relations, as discussed in letters Exs. P/8 and P/9 is accepted, the same would be equally a ground for suicidal. However, in the presence of specific evidence of accidental fire, as disclosed by Sushilabai in her dying declaration it would not be proper to draw inference of commission of suicide by Sushilabai. It may further be observed that even if a finger of doubt and suspicion can be raised against the accused that shall not be sufficient for upholding the conviction. At least the accused is entitled to benefit of reasonable doubt.

As a result, the appeal succeeds. Accused is extended benefit of reasonable doubt and acquitted of the offence charged. He is on bail, his bail bonds are, therefore, discharged.