
(2013) 09 CHH CK 0014
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 868 of 1998

Nirmala Bai	Vs	APPELLANT
State of M.P. (now State of C.G.)		RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 1 CGLJ 132 : (2013) 5 MPHT 90

Hon'ble Judges : Sunil Kumar Sinha, J; R.N. Chandrakar, J

Bench : Division Bench

Advocate : T.K. Tiwari, for the Appellant; Ashish Shukla, Govt. Advocate, for the Respondent

Judgement

Sunil Kumar Sinha, J.—The appellant is aggrieved by the judgment dated 31st of March, 1998 passed in Sessions Trial No. 1/97 by the Second Additional Sessions Judge, Durg, whereby she has been convicted u/s 302, IPC and sentenced to undergo imprisonment for life. The facts, briefly stated, are as under:--

1.1. Appellant-Nirmala Bai is mother-in-law of deceased-Anita Bai. Anita Bai (deceased) was married to the son of appellant five years back. She had a female child. On some dispute, she was residing in her parent's place, however, since last one year, she had come to reside with her husband in Village Mahamaya. The appellant (mother-in-law), her son Rajendra Kumar (husband) and Anita Bai (deceased), three persons were residing together in a house in Village Mahamaya.

1.2. On 28-8-1996 at about 1.30-2.00 p.m., the appellant and the deceased (only two persons) were present in their house. Husband of the deceased had gone for his routine work. The case of the prosecution is that the appellant poured kerosene on the deceased and put her on fire. The persons of the locality took the deceased to the hospital. The deceased had sustained 100% burn injuries. The concerned Doctor sent an information (Exh. P-4) to the police on admission of the deceased in the hospital. It was also reduced into writing in

Rojnamcha Sanha No. 1867, dated 28-8-1996.

1.3. The Investigating Officer, Sub-Inspector, S.P. Karosiya (P.W. 9), reached to the hospital and met the deceased. She was fully conscious. The deceased herself lodged the report in the hospital, which was recorded as Dehati Nalishi (Exh. P-5) by S.I., S.P. Karosiya (P.W. 9). Dehati Nalishi (Exh. P-5) bears thumb impression of the deceased. In Dehati Nalishi, the deceased made allegations against the appellant that she was put to fire by her, after pouring kerosene on her body. Based on Dehati Nalishi (Exh. P-5), a regular First Information Report (FIR -Exh. P-6) was recorded.

1.4. In further investigation a written dying declaration (Exh. P-1) was recorded by City Magistrate, S.L. Dagla (P.W. 5). In this dying declaration also similar allegations were made against the appellant.

1.5. Dwarika (P.W. 1) and Makhan (P.W. 2) had visited the hospital, where the deceased was admitted. When they met the deceased, she made oral dying declaration before them.

1.6. Prior to the above oral dying declaration before Dwarika (P.W. 1) and Makhan (P.W. 2), Vyasram (P.W. 3) had also visited the hospital in the evening of 28-8-1996. He was neighbour of the deceased. The deceased had made oral dying declaration before him also.

1.7. The deceased died at 6.10 p.m. on 29-8-1996. An information (Exh. P-19) was sent to the police. Inquest was prepared and the dead body was sent for post-mortem. The post-mortem examination was conducted by Dr. R. Ramteke (P.W. 8). It was opined that the cause of death was delayed shock due to extensive burn. The post-mortem report is Exh. P-3.

1.8. The learned Sessions Judge relied on the dying declarations of the deceased and held that it was proved that the deceased was put to fire by the appellant after pouring kerosene on her. The appellant, thus, was convicted and sentenced as above.

2. Mr. T.K. Tiwari, learned Counsel appearing on behalf of the appellant, has argued that the written dying declaration (Exh. P-1) was not reliable; it does not bear the certification of the Doctor; the deceased had sustained 90% to 100% burn injuries; she may not be in a fit mental condition to give the dying declaration; the other 3 dying declarations also appear to be suspicious. He cited the decisions of State of Madhya Pradesh Vs. Dal Singh and Others, and Jagga Singh Vs. State of Punjab,

3. On the other hand, Mr. Ashish Shukla, learned Govt. Advocate appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the Sessions Court. He also cited many decisions, including Laxman Vs. State of Maharashtra,

4. We have heard Counsel for the parties.

5. The instant case is based on 4 dying declarations. First one was made in form of Dehati Nalishi (Exh. P-5); the second was oral dying declaration which was made before Vyasram (P.W. 3); the third was the written dying declaration (Exh. P-1) recorded by the City Magistrate (P.W. 5) and the fourth dying declaration was an oral declaration made before Dwarika (P.W. 1) and Makhan (P.W. 2).

6. About the written dying declaration (Exh. P-1), it was mainly contended that the Magistrate did not take the certificate from the Doctor that the deceased was in a fit mental condition to give the dying declaration. The law on the point has been summarised in many decisions. In *Laxman* (supra), a reference was made to the Constitutional Bench of the Supreme Court, in which, a question has cropped up as to whether the certificate of Doctor was necessary and if no certificate was obtained, it would make the declaration unacceptable and the subjective satisfaction of the Magistrate recording the dying declaration that the deceased was in a fit state of mind at the time of making declaration cannot be relied on, is the correct enunciation of law? The Supreme Court held that what is essentially required, is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind, and where the same is proved by the testimony of the Magistrate, to the extent that the declarant was in fact fit to make the statements, then even without examination by the Doctor, the said declaration can be relied and acted upon, provided that the Court ultimately holds the same to be voluntary and definite. Certification by a doctor is essentially a rule of caution, and therefore, the voluntary and truthful nature of the declaration can also be established otherwise.

7. *Laxman* (supra), has been relied in *Dal Singh* (supra), cited by Mr. Tiwari and the law on the issue, was summarised in Para 14 as follows:--

14. The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a doctor in respect of such state of the deceased, is not essential in every case.

8. In the instant case, the City Magistrate (P.W. 5) reached to the hospital in the evening at about 7.00 p.m. In fact, he was informed by SDO (P). He found that the deceased was admitted in the hospital in burnt condition. She was talking. He asked the deceased as to who put her on fire? On which she replied that her mother-in-law has put her on fire. He had recorded the dying declaration (Exh. P-1) in his own handwriting and thereafter he put his signature and he also took thumb impression of the deceased. This dying declaration was recorded at 7.18 p.m. on 28-8-1996. In cross-examination, he admitted that in Shaheed Hospital, Mr. Bisen, S.D.O. (P), and other police officers had met him. He had talked to the Doctor, but he cannot tell his name. He did not take permission of the Doctor to record dying declaration. He added that no such permission is required and clarified that he had talked to the Doctor about the condition of the deceased,

though no written document was obtained. He deposed in clear words that the deceased was answering the question put to her. He admitted that he had taken thumb impression of the deceased, but he did not make endorsement that the thumb impression was taken by him.

9. On appreciation of evidence of City Magistrate (P.W. 5), it appears, that after meeting the deceased in the hospital, he was satisfied that she was in a fit mental condition to give the dying declaration. She was responding diligently to the questions put to her. This shows that the City Magistrate (P.W. 5) was fully satisfied regarding the physical and mental condition of the deceased to record the dying declaration and then the dying declaration (Exh. P-1) was recorded by him in the above manner, which contains positive allegations against the appellant. We are of the view that in light of the above facts and circumstances of the case, no infirmity could be attributed to the dying declaration on the ground that a certificate in writing was not taken by the City Magistrate (P.W. 5) prior to recording of the dying declaration. The dying declaration (Exh. P-1) appears to be correct and genuine.

10. In Jagga Singh (supra), the dying declaration was recorded by ASI, Harbans Singh. It was held that though the Doctor was present at the time of statement was record, but his certificate was not obtained. It was a case in which the dying declaration was recorded by a police officer and not by the Magistrate. A police officer and a City Magistrate cannot be put on the same pedestal. In the instant case, the City Magistrate was fully satisfied about the physical and mental condition of the deceased and then the dying declaration was recorded. Therefore, Jagga Singh (supra), stands on different fact situation in which the above event was held to be an infirmity in the dying declaration. This cannot be applied in the present case because the facts are quite distinguishable. Moreover, present is not a case of one dying declaration. In this case, there are 4 similar dying declarations. This is also a distinguishing feature.

11. As soon as the matter came to the notice of the police, SI, S.P. Karosiya (P.W. 9), immediately rushed to the hospital. There, he met the deceased. He had a talk with the deceased, who herself lodged Dehati Nalishi (Exh. P-5) making positive allegations against the appellant. The deceased had put her thumb impression on Dehati Nalishi. S.I., S.P. Karosiya (P.W. 9), had proved the Dehati Nalishi. This nalishi was also recorded in Rojnamcha Sanha No. 1867, dated 28-8-1996 at Serial No. 1867. Thus, it cannot be said that either this document was concocted or the deceased had not lodged the said report to the police as nothing adverse could be brought in the cross-examination of SI, S.P. Karosiya (P.W. 9), in this regard. The above report lodged by the deceased was the FIR containing many facts relating to her death. This was also a dying declaration of the deceased and was admissible u/s 32(1) of the Evidence Act. (Vide: Munnu Raja and Another Vs. The State of Madhya Pradesh,

12. That apart on 28-8-1996, Vyasram (P.W. 3) had visited the hospital in the evening. He was a neighbour of the deceased. He saw that the deceased was

lying on the floor in a room. She was in burnt condition. He requested to lay down her on a bed. Thereafter, a bed was provided to the deceased. He had asked the deceased as to how it happened, on which, the deceased replied that it was done by her mother-in-law. His said evidence also remained intact even after his lengthy cross-examination. This was the first oral dying declaration given by the deceased to Vyasram (P.W. 3). We have no reason to disbelieve the testimony of Vyasram (P.W. 3).

13. The fourth dying declaration was also oral dying declaration given before Dwarika (P.W. 1) and Makhan (P.W. 2). They were the persons belonging to Rajnandgaon, which was the parent's place of the deceased. They had visited the hospital at about 8.00 a.m., on 29-8-1996. According to them, the deceased was conscious at that time and she clearly stated to them that she was put to fire by her mother-in-law after pouring kerosene on her. It was argued by Mr. Tiwari that diary statements (Exhs. D-1 and D-2) of Dwarika (P.W. 1) and Makhan (P.W. 2) were recorded on 12-10-1996, i.e., after a very long period. We would have given importance to the late recording of their diary statements if this alone would have been solitary circumstance against the appellant. In the instant case, there are 4 dying declarations. Even if we take that their version was not reliable on account of late recording of their diary statements, the other 3 dying declarations were fully intact. We may note that there was no delay in recording the statement (Exh. D-3) of Vyasram (P.W. 3), which was recorded on 29-8-1996, i.e., on the very next day of the incident.

14. We are of the view that the learned Sessions Judge was fully justified in resting the conviction of the appellant on the above dying declarations of the deceased. The appeal has no merit. The same is liable to be dismissed and is hereby dismissed. It is stated that the appellant is on bail. Her bail bonds are cancelled. The appellant shall be taken into custody to undergo the remaining sentence.