
(2004) 03 MP CK 0015
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 700 of 1998

Parvatibai	Vs	APPELLANT
State of M.P.		RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2005) 1 JLJ 440

Hon'ble Judges : S.L. Kochar, J; Ashok Kumar Tiwari, J

Bench : Division Bench

Advocate : Jaisingh and Vivek Singh, for the Appellant; Girish Desai, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Kochar, J.—This appeal has been preferred by the Appellant against the judgment passed by the learned Special and Addl. Sessions Judge, Indore, dated 23.4.1998 in Sessions Trial No. 212/1997, thereby convicting the Appellant u/s 302 of the IPC and sentencing her to undergo imprisonment for life.

2. The necessary and relevant facts for disposal of this appeal are that on 11.1.1997 at 11.30 a.m., deceased Jyotibai, wife of Harinarayan Yadav (PW 4) was inside her house situated at Bhagiratpura, Indore, with her two female children. Her husband was on duty. The Appellant, sister-in-law (nanad) and acquitted co-accused mother-in-law Rampyaribai picked up quarrel with the deceased on some property dispute. Thereafter Appellant, through window situated at the back portion of the house, threw kerosene oil and also lit fire by matchstick because of which her clothes caught fire. Deceased Jyotibai tried to run away but her mother-in-law Rampyaribai obstructed her on the door. She was also pushed by her inside the house. Deceased Jyotibai extinguished her fire by throwing water upon her. At this time, her husband Harinarayan reached over there and took her to M.Y. Hospital, Indore, for treatment. On the same day, in the night, her husband shifted her to a private nursing home, namely, Verma

Nursing Home, Pardesipura. From M.Y. Hospital, message was sent to police station Banganga, which was recorded in Rojnamcha Sanha No. 796 dated 11.1.1997. On the basis of this Rojnamcha Sanha, SI G.S. Kushwaha (PW 9), In-charge of Police Chowky Bhagirathpura, P.S. Banganga, stepped into enquiry and recorded her dying declaration on 12.1.1997 (Ex. P-18). He also prepared the spot map (Ex. P-7) and effected seizure of burnt sari of Jyotibai. After enquiry, G.S. Kushwaha (PW 9) registered the crime in police station Banganga u/s 302/34 of IPC against the Appellant and mother-in-law Rampyaribai on 14.1.1997 at 12.45 p.m. vide Ex. P-13. Her dying declaration was recorded on 16.1.1997 in Verma Nursing Home, Pardesipura vide Ex. P-II at 1.35 p.m. by Naib Tehsildar Surendra Dubey (PW 7). Jyotibai was again shifted from Verma Nursing Home, Pardesipura to Curewell Hospital. Ultimately she died on 28.1.1997 in Curewell Hospital. Post mortem of the body was performed by Dr. Ravindra Choudhary (PW 6), according to whom, deceased died because of shock and toxemia due to burn. After the incident, she was attended by Dr. Neeraj Puranik (PW 8) in M.Y. Hospital, Indore, who found in total 18% second degree burn on her body. Her MLC report is Ex. P-12.

3. Upon completion of investigation, the Appellant was charged u/s 302 of IPC simplicitor, and co-accused Rampyaribai was charged u/s 302/34 IPC. They pleaded innocence and claimed trial. After trial, the co-accused Rampyaribai, mother-in-law, has been acquitted by the trial Court whereas Appellant was convicted u/s 302 of IPC.

4. We have heard Shri Jaisingh, learned Sr. Counsel with Shri Vivek Singh, for Appellant. Shri G. Desai, learned Dy. A.G. for Respondent-State, and also perused the entire record.

5. After perusal of the entire record and hearing of the counsel, we are of the opinion that conviction of the Appellant is not at all sustainable on the basis of dying declarations Ex. P-II and P-18 for the following glaring defects in the prosecution case.

6. According to the prosecution, deceased was sitting inside the house at 11.30 a.m. At that juncture, Appellant threw kerosene from outside the window and also burnt match stick because of which her cloths caught fire. She rushed towards outside the house, at that time G.S. Kushwaha (PW 9) also reached on the spot. The police chowky, Bhagirathpura was situated about 100-150 mtr. from the place of incident Shri Kushwaha saw the deceased in a burnt condition on the spot and he asked her to set right her cloths but he did not suggest her to change the sari. He remained present at the door of the deceased Jyotibai for about five minutes and returned back to his police chowky but did not record any information in the chowky or sent any information to police station. (See paragraph 13 and 14 of the statement of this witness). For not doing so, he has given explanation that he suggested her husband to take her to hospital and waited for information from hospital.

7. We are unable to accept and understand this explanation. This is obligatory on the part of the police officer to ask her as to how she had received burn injury and also take her to the hospital. As a matter of fact then and there he must have recorded her statement in presence of the witnesses of the locality. The incident had occurred in a broad daylight at 11.30 a.m. Even he has not recorded any information about this incident in daily diary of police chowky. This conduct of S.I.G.S. Kushwaha throws considerable amount of doubt over the veracity of the prosecution case which was developed later on involving the Appellant in the crime. Not only this, the deceased and (PW 9) G.S. Kushwaha, immediately after the incident, on the spot, had a talk but deceased also did not voluntarily disclose anything about the involvement of the present Appellant and about receiving burn injuries by her. This was the best time and opportunity for the deceased to disclose before the police officer. We are also unable to understand as to why the police officer Kushwaha reached on the spot did not function and discharge his duty which was required to be discharged by him as a police officer. His curiosity should have been to know as to how the deceased had received injuries so that later on the case may not be concocted and true version would have come before the Court.

8. The second important circumstance is that when the deceased was taken to the government M.Y. Hospital, Indore, and there she was attended by Dr. Neeraj Puranik (PW 8) at 11.30 a.m., she did not put any question as to how deceased received injuries, though she has mentioned history of homicidal burn injury but as to how deceased sustained such homicidal burn injury has not been mentioned. This witness is silent and her MLC report (Ex. P-12) is also not revealing anything. At this stage, it would be apposite to refer the Supreme Court judgment passed in *Rehmat Vs. State of Haryana*, . In paragraph ten, the Supreme Court has observed that:

Admittedly Padam Singh (PW 4) along with Vijaysingh had first gone to the Primary Health Centre for medical help but he did not disclose the name of the assailant to the Doctor. Ordinarily, in a medico-legal case, the doctor is supposed to write down the history of the injured but admittedly in this case, medical papers of Padam Singh (PW 4) do not indicate the name of the assailant. The names were disclosed only at the time when the complaint was recorded by SI Narain Singh at about 9.00 p.m..

9. The similar situation exists in the present case. Neither the deceased disclosed the name of her assailant to the doctor nor the doctor asked her about the name and address of the perpetrator of the crime. In furtherance to these circumstances, it would be apt to mention that G.S. Kushwaha (PW 9) instead of arranging for recording of dying declaration immediately on 11.1.1997, recorded the statement of the deceased on 12.1.1997 in presence of two persons Nandram and Ramesh. Surprisingly enough, in the statement (Ex. P-18) S.I.G.S. Kushwaha (PW 8) did not mention the father's name and full address of these two attesting witnesses of the statement of the deceased which has been used as

a dying declaration for the purposes of conviction of the Appellant. Not only this, these two persons have also not been cited as prosecution witnesses so that the accused persons may examine them in their defence. This conduct of Shri Kushwaha and the way of investigation is attaching serious vulnerability to the prosecution case and give full support to the submission of the learned Counsel for the Appellant that, after due thought over the matter, the case was concocted by the police on 14.1.1997 and thereafter in the noon the offence was registered. This delay in registration of crime is also fragile to the prosecution case. On 12.1.1997, after recording the statement (Ex. P-18) by G.S. Kushwaha (PW 9) he came to know about offence of ablazing the deceased by the Appellant but he did not register the offence immediately. This kind of behaviour of a police officer has been condemned seriously by the Supreme Court in the case of Ganesh Bhavan Patel and Another Vs. State of Maharashtra, .

10. It is also pertinent to mention here that right from the time of incident till death, the deceased was in a conscious condition. The medical history nowhere disclosed the fact of her unconsciousness or seriousness. Therefore, why her dying declaration was got recorded by Executive Magistrate on 16.1.1997 at 1.35 p.m. ? The incident had occurred in Indore town. Therefore, concerned police could have not said that Executive Magistrates were not available to them for recording dying declaration. Dying declaration could have been got recorded even by the Doctor or any independent respectable person of the society in presence of two independent witnesses. But there was absolutely no endeavour from the side of the prosecution to do so. The deceased was immediately in the same night, allowed to be shifted from a Government Medical College Hospital, Indore to the private hospital at Pardesipura and after 4-5 days, again she was shifted to Anr. private nursing home i.e. Curewell Hospital. The prosecution has not filed any document of treatment provided to her in Verma Nursing Home, Pardesipura as well as Curewell Hospital. Prosecution has also not examined any Doctor who had attended her and treated her. The Doctors of both these private nursing homes would have certainly asked the deceased as well as her husband and the concerned police about history of the patient but no such document disclosing this fact has been filed by the prosecution. This shows that all the medical papers of both these hospitals were not in line and in tune of the prosecution case as lateron prepared and placed before the Court of law.

11. The husband of the deceased Harinarayan Yadav (PW 4) has been examined by the prosecution who has testified that deceased disclosed before him in M.Y. Hospital that she received burn injuries while cooking food when stove flared up.

12. The dying declaration (Ex. P-I 1) was recorded by Naib Tehsildar, but prosecution has not filed any document establishing the fact that Naib Tehsildar Surendra Dubey (PW 7) was informed and called by police of Bhagiratpura outpost or Banganga Police Station having jurisdiction. This dying declaration was recorded in a private nursing home. Before recording of the dying declaration (Ex. P-I 1) by Naib Tehsildar, he did not obtain certificate "regarding

fit state of mind" of the deceased. After completion of the dying declaration, one Dr. Surendra Verma has given certificate that deceased was in a condition to give statement and was fully conscious. Prosecution has not examined Dr. Surendra Verma which has precluded the Appellant to cross-examine him on so many material and important questions like as to how deceased reached in private nursing home, who brought her, what was her condition at the time of recording of statement, for production of her bed-head-ticket and treatment documents. All these questions and answers to the same would have given lot of assistance to the Court to dig out the truth, but the prosecution has with-held the material witness Dr. Surendra Verma. There is no evidence on record that the dying declaration was made when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth. The principle on which the dying declaration are admitted in evidence, is based upon the legal maxim *liNemo moriturus praesumitur mentire*,, i.e.; a man will not meet his maker with a lie in his mouth. Considering all these factors, the Supreme Court in *Uka Ram Vs. State of Rajasthan*, has held that:

It has always to be kept in mind that though a dying declaration is entitled to great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross-examination, it is essential for the Court to insist that dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or product of imagination. Before relying upon a dying declaration, the Court should be satisfied that the deceased was in a fit state of mind to- make the statement. Once the Court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence.

13. In the premises of the above mentioned legal position of appreciation and placing reliance on dying declaration, we are of the opinion that the prosecution has utterly failed to prove that dying declaration was true, voluntary and not influenced by extraneous considerations. On perusal of the contents of the dying declaration (Ex. P-I 1), one important fact is also emerged that deceased has not at all alleged against the Appellant that she threw burnt matchstick on her body because of which her clothes and body caught fire, and at the end of dying declaration deceased has stated that "These wordings are showing that deceased was not set fire by the Appellant and her mother, but they were the reason for cause of fire.

14. On the basis of the medical report, it is clearly revealing the fact that on the complete palm of the deceased, she did not sustain any burn injuries. Under that circumstance, the possibility of setting fire by herself and receiving self-inflicted burn injury by the deceased could not be ruled out. Under such fact and

circumstances of the case, the Supreme Court has held in the case of Pavan Kumar Prasanth Trivedi v. State of Gujarat 1999 SCC 352 that "absence of burn injuries on the palm of the deceased is indicative of the fact that deceased had committed suicide". The deceased herself was also not serious after receiving burn injury, mentally and physically, and after seeing her in such condition at the door step of the house, the Investigating Officer Mr. Kushwaha (PW 8) who was present, was also not serious and took the matter in a casual manner which is evident from the contents of the dying declaration (Ex. P-I 1) in which the deceased has mentioned that her house was situated near the policy chowky and Incharge of the said Chowky Shri Kushwaha asked her to set right her clothes. If the deceased was set fire by the Appellant as alleged in the dying declaration (Ex. P-I 1), she would have not failed to disclose before S.I. Kushwaha about the incident and Mr. Kushwaha would have not failed to ask her about sustaining burn injuries. These tale tell circumstances compelling us to presume that because of some sort of ill-will with the Appellant and mother-in-law a criminal case has been concocted after four days of the incident and the fact of strained relation with the Appellant and the mother-in-law is mentioned in dying declaration (Ex. P-I 1).

15. In the wake of above mentioned factual and legal considerations, we are of the opinion that prosecution has utterly failed to prove its case against the Appellant beyond all reasonable doubt. Therefore, she is entitled to be acquitted.

16. In the result, the appeal is allowed. The conviction of the Appellant u/s 302 IPC and sentence to R.I. for life is hereby set aside. She is directed to be released forthwith, if not required in any other criminal case.