
(2004) 09 MP CK 0052
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 873/95

Patha alias Laxman Kol

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 09-09-2004

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2004) 4 MPHT 313

Hon'ble Judges : Dipak Misra, J; A.K. Shrivastava, J

Bench : Division Bench

Advocate : Durgesh Gupta, for the Appellant; S.K. Rai, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—This appeal has been preferred u/s 374 of the Code of Criminal Procedure against the judgment of conviction and order of sentence dated 10-1-1995 passed by Additional Sessions Judge, Maihar District Satna in Sessions Trial No. 99/91 whereby the appellant has been convicted u/s 302 read with Section 34 of the Indian Penal Code (in short the IPC) and has been sentenced to suffer rigorous imprisonment of life.

2. Though the charge-sheet was submitted against the present appellant and one other Chhottua alias Chhote, however, the case of Chhotua alias Chhote was sent for trial before the Juvenile Court.

3. In brief the case of prosecution is that complainant Ganesh Yadav on 5-7-1991 at 6.10 a.m. lodged the report that in the night at 2 Vijay Lal (hereinafter referred to as "the deceased") was screaming in his field which is located nearby his (deceased's) house, as a result of which he went at the place of occurrence. The deceased told him that at 2 in the night, the appellant and Chhotua Kol took him nearby the road and after pouring diesel on him, lit the fire. This statement he gave in presence of Mahesh Yadav, Lakhpatt Yadav and some other persons.

The entire body of the deceased was burnt. On the said report, a case punishable u/s 324, IPC was registered.

4. On lodging of the FIR, the criminal law set in motion. The investigating agency after registering the case sent the deceased, who was alive at that time to the hospital where he was examined by Dr. R.P. Singh. On examining the deceased, as his condition was quite serious/he was referred to District Hospital, Rewa and on the way, the deceased breathed his last. There- after in the morning at 8.45 hours on 5-7-1991 the same doctor performed the post-mortem. The doctor opined that the deceased died on account of burn injuries which were caused in between 1-6 hours.

5. After completion of the investigation, a charge-sheet was submitted by the prosecution in the Competent Court, which on its turn committed the case to the Court of Session and from where it was received by learned Trial Judge for trial.

6. The learned Trial Judge on bare perusal of charge-sheet framed charge punishable u/s 302/34, IPC which was denied by the accused/appellant.

7. In order to prove the charges, the prosecution examined as many as 4 witnesses and placed certain documents on record. Though the defence of accused is of false implication but he did not choose to examine any witness in his defence. .

8. The learned Trial Judge after carefully scrutinizing the evidence came to hold that appellant did commit the offence for which he was charged and eventually convicted him and passed the sentence which we have mentioned hereinabove. Hence this appeal.

9. In this appeal Mrs. Durgesh Gupta, learned Counsel for the appellant has submitted that on the basis of conjectures and surmises the learned Trial Judge has convicted the appellant. Indeed, there is no cogent and reliable evidence against him. Therefore, this appeal be allowed and the conviction be set aside.

10. On the other hand, it has been contended by learned Public Prosecutor that the learned Trial Judge has taken much pains in appreciating the evidence and there is overwhelming evidence in order to hold that appellant has committed the offence and therefore no interference is required and the appeal deserves to be dismissed.

11. In order to appreciate the rival contentions of learned Counsel for the parties, we shall now examine the evidence which has been placed on record.

12. Ganesh (P.W. 1), is the author of FIR. The deceased is his nephew. In between the night of 4th and 5th July, 1991, this witness lodged the FIR (Ex. P-1). In the FIR he has specifically mentioned that in the late night at 2 deceased was screaming nearby his field, as a result of which he went at the spot and found that he was lying burnt. The deceased told him that appellant and Chhotua took him nearby the road and poured diesel on his body and thereafter lit the

fire, as a result of which he sustained burn injuries. This statement was given by the deceased in presence of Mahesh Yadav, Lakhpat Yadav and some more persons. On going through the FIR, it is revealed that there is specific allegation against the appellant. The FIR has been duly proved by P.W. 1, when Ganesh, who is the author of FIR, appeared in the Court as P.W. 1, he has specifically stated the role assigned by the appellant which was told to him by the deceased. In very specific words, he has stated that when he arrived at the spot, deceased was lying in burning condition and told him in presence of Lakhpat, Mahesh, Jagdish, Ishwardeen etc. that appellant and Chhotua after pouring diesel on him, lit the fire. The police station was 7-8 kms from the place of occurrence and this witness thereafter lodged the report. At that juncture, the deceased was with him but his condition was very serious and when he arrived at the police station, the deceased was not in a position to lodge the report, as a result of which the report was lodged by him. The deceased, thereafter was sent to the hospital at Govindgarh from where he was referred to District Hospital at Rewa, but, just after travelling 2 kms, on the way, the deceased passed away. True, there are certain contradictions which have arrived in the testimony of this witness. But, after giving our anxious consideration to these contradictions, they are not found to be material or goes to the root of the matter. Indeed they are minor contradictions. The cross-examination has been made in respect to the relationship between this witness and the deceased and by which vehicle deceased was brought to the hospital. Thereafter this witness was cross-examined on the point that the deceased drunk the milk at police station and he was properly speaking. In cross-examination, he specifically stated that whatever was told by the deceased to him, same averments he made in his report. Though this witness was cross-examined at length, however, he remained embedded in his version. After scanning the evidence of this witness only a singular inference is drawn that the appellant poured the diesel on the person of deceased and thereafter lit the fire and the deceased was succumbed to burn injuries.

13. The next question is that what is the nature of the evidence of this witness in the eye of law. We have no scintilla of doubt that the version of the deceased given to this witness would come under the ambit and sphere of Section 32 of Evidence Act and, it would come under the scope of dying declaration. For better understanding, we would like to re-write Section 32 of the Evidence Act which reads thus :-

"32. Cases in which statement of relevant fact by person who is dead or can not be found, etc. is relevant.- Statements, written or verbal, of relevant facts made by a person who is dead, or who can not be found, or who has become incapable of giving evidence, or whose attendance can not be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant fact in the following cases :-

(1) When it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction

which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. (2)*** ***(3)*** ***(4)*** ***(5)*** ***(6)*** ***(7)*** ***(8)***

Thus, if we analyse clause (i) of Section 32 to the statement given by the deceased informing P.W. 1, the cause of his death as well as the circumstance of the transaction which resulted in his death, we can safely say that whatever has been said by the deceased to this witness is a dying declaration. u/s 32 of the Evidence Act, there is no prescribed form for recording a dying declaration. If the statement made by the deceased explaining the cause of his death and the circumstances of the transaction which resulted in his death, it would be a dying declaration. True, the doctor found that the burn injuries were third degree, but, this fact can not be marginalized and blinked away that soon the deceased was subjected to burn injuries, he screamed and immediately P.W. 1 arrived at the spot to whom the deceased narrated the entire episode that how the incident had occurred. It be seen that the percentage of burn injuries alone would not be a determining factor in order to dis-believe the dying declaration. Since P.W. 1 within short duration arrived at the place of occurrence after hearing the shriek of the deceased and immediately the deceased narrated the incident to him, it can not be said that deceased was not in a position to speak. It be seen that there is evidence to the effect that deceased was brought to the police station where he drunk the milk. The FIR was lodged at 6.10 a.m. and the incident took place at 2 a.m. and the deceased died at about 8.10 a.m. Thus, it can not be said that soon after the incident, when P.W. 1 arrived at the place of occurrence, the deceased was not in a position to speak and therefore the argument advanced by learned Counsel for appellant that the story of dying declaration is planted and manufactured, can not be accepted.

14. Similar type of evidence-is of P.W. 2, Mahesh who is the father of the deceased. Indeed, this witness has corroborated the evidence of P.W. 1. According to this witness, when he arrived at the spot and on being asked, the deceased narrated the incident. This witness was also cross-examined but nothing crept out in order to dis-believe this witness. The prosecution further took pains to examined Jagdish (P.W. 3), who was also present when the deceased was narrating that how the incident had occurred. This witness has corroborated the evidence of P.W; 1 and P.W. 2.

15. Dr. R.P. Singh (P.W. 4) is the autopsy surgeon who has proved his post-mortem report. This doctor examined the deceased when he was alive and has also performed the post-mortem. The injury report of deceased is Ex. P-3 and post-mortem report is Ex. P-4. According to the autopsy surgeon, the deceased died on account of shock, as a result of burn injuries.

16. We have X-rayed the evidence of prosecution witnesses and tested the contention of learned Counsel for appellant on the touchstone of the evidence placed on record. We have also given our anxious consideration to the reasonings assigned by the learned Trial Judge holding the appellant to be guilty. According to us, the reasonings assigned by learned Trial Judge are cogent and are based on evidence and material placed on record. We have also considered the evidence and material placed on record. We have also considered the evidence of the prosecution witnesses and we do not find anything in order to disbelieve the evidence of prosecution witnesses. We have already discussed hereinabove in detail that there is a clear, cogent and trustworthy dying declaration of the deceased, though it is oral and was made to the prosecution witnesses whose evidence we have already discussed hereinabove. Merely it was an oral dying declaration, it would not weaken the case of the prosecution. By placing reliance on the oral dying declaration, the guilt of the accused is proved. The learned Trial Judge rightly convicted the appellant for the reasons assigned in the judgment and we do not wish to deviate ourselves from those reasonings.

17. Ex consequenti the appeal is found to be devoid of any substance and the same is hereby dismissed.