
(2018) 05 MP CK 0078

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.2404 of 2008

Rakesh Mehtara & Anr

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 174, 233, 374
Indian Penal Code, 1860 — Section 34, 302

Citation : (2018) 05 MP CK 0078

Hon'ble Judges : SUSHIL KUMAR PALO, J; RAJEEV KUMAR DUBEY, J

Bench : Division Bench

Advocate : Suman Mukherjee, Sudeep Dev

Final Decision : Dismissed

Judgement

Rajeev Kumar Dubey, J

This criminal appeal has been filed under Section 374 of the Cr.P.C. against the judgment dated 20.10.2008 passed by Third Additional Sessions Judge

(Fast Track Court), Raisen in Sessions Trial No.31/2006, whereby the learned Additional Sessions Judge found appellant Rakesh guilty for the offence

punishable under Section 302 read with 34 of IPC and sentenced him to life imprisonment with fine of Rs.500/- with default stipulation.

2. Altogether there were two accused and earlier co-accused Nanheveer, father of the present appellant Rakesh also filed this appeal along with

present appellant Rakesh but Nanhever died on 21/03/16 during the pendency of the appeal due to which against him appeal stands abated. So this

appeal was considered only against appellant Rakesh.

3. It is undisputed that deceased Nanhe Bai was the wife of appellant Rakesh Mehtara and deceased Lalit and Roshni aged about 5 years and 3 years

were the son and daughter of the appellant respectively. It is also undisputed that Dal Singh (PW/1), Munni Bai (PW/2) and Manohar Singh (PW/3)

are the father, mother and brother of Nanhe Bai respectively.

4. In brief the prosecution case is that Darshan Singh (PW/6) was resident of Village Dahalwada and worked as public health guard. On 18.10.2005,

at 9 am when he was returning to his house from the village, he got information that appellant Rakesh's house had caught fire. So he went to

appellant's house where he saw Nanhe Bai and her children Lalit and Roshni lying in the courtyard in a burnt state. On that, he took them to

Community Health Centre, Bareilly by Sarpanch's tractor trolley but Roshni died on the way. He took dead body of Roshni and injured Nanhe Bai

and Lalit to Community Health Centre Bareilly, where Dr. Mahendra Jain (PW/5) examined Nanhe Bai and Lalit and gave report (Ex.P-5 & P-6) and

also sent a letter (Ex.P/4) to the Station House Officer, P.S. Bareilly to the effect that Nanhe Bai and Lalit were brought to the hospital in injured state

and they sustained injuries due to burning from kerosene. Darshan (PW/6) also lodged the report of incident at Police Station Bareilly. On that, Head

Constable Meharban Singh (PW/11) registered inquest report No.0/05 (Ex.P/7) under Section 174 of CrPC and sent it for original registration to

Police Station Badi. On the information Pradeep Kumar Kaurav (PW/4) Nayab Tahsildar, Bareilly also went to CHC Bareilly and recorded the dying

declaration of deceased Nanhi Bai (Ex.P/3) in which Nanhe Bai stated that appellant Rakesh and his father Nanheveer set her ablaze after pouring

kerosene. At that time, her children were also with her so they also got burnt. Head Constable Anantram prepared the inquest report (Ex.P/8) of dead

body of deceased Roshni and Dr. R.G. Malani (PW/7) conducted postmortem of dead body of Roshni at CHC Bareilly and gave postmortem report

(Ex.P/12). Dr. Mahendra Jain (PW/5) after primary treatment referred Nanhe Bai and Lalit to Hamidia Hospital, Bhopal where Lalit died on

19.10.2005 during treatment. On that Merg No.0326/05 (Ex.P/22) was registered at Police Chowki Kohefiza of P.S. Hamidia and Head Constable

Sarjerao Bhosle prepared inquest memo (Ex.P/24) of dead body of Lalit and sent his dead body for postmortem along with application (Ex.P/5).

During treatment Nanhe Bai also died on 22.10.2005. So Merg No.0331/2005 (Ex.P/26) under Section 174 of CrPC was also registered at Police

Chowki Kohefiza of P.S. Hamidia and Executive Magistrate, Saroj Agnivanshi prepared inquest memo (Ex.P/1) of her dead body. Dr. Jayanti Yadav

(PW/12) and Dr. Neelam Shrivastava (PW/14) conducted the postmortem of dead body of Nanhe Bai and Lalit and gave the postmortem report

(Ex.P/20 & Ex.P/21) respectively. On receiving the inquest report (Ex.P/7) of deceased Roshni from P.S. Bareli and inquest report (Ex.P/22) and

(Ex.P/26) of deceased Lalit and Nanhi Bai from P.S. Hamidia for original registration, inquest Nos. 19/05, 20/05 & 21/05 (Ex.P/13 to Ex.P/15) were

registered at Police Station Badi. SDOP Bareli, Neeraj Soni (PW/10) inquired that inquest and during inquiry he recorded the statements of Dal Singh

(PW/1), Munni Bai (PW/2), Manohar Singh (PW/3). They informed Neeraj Soni (PW/10) that appellant Rakesh Mehtara who was resident of Village

Dahalwada married with deceased Nanhi Bai seven-eight years before the incident. Appellant Rakesh and co-accused Nanheveer demanded dowry

and appellant Rakesh used to beat her due to which Nanhi Bai often lived with her parents at village Bharkachh. One month before the incident, she

had come to her matrimonial house. On 18/10/2005, appellant Rakesh and coaccused Nanheveer set her ablaze after pouring kerosene and murdered

her and her children Roshni and Lalit. On that Neeraj Soni (PW/10) registered Crime No.219/2005 (Ex.P/17) and investigated the matter and during

investigation he recorded the statements of Dal Singh (PW/1), Munni Bai (PW/2), Manohar Singh (PW/3) and Darshan (PW/6) and on 07.11.2005

arrested co-accused Nanheveer and prepared arrest memo (Ex.P/18). He also sent viscera of deceased Nanhe Bai to FSL Sagar along with draft

(Ex.P/19) for chemical examination. On 30/12/2005, Hanumat Singh (PW/8) also arrested appellant Rakesh and prepared arrest memo (Ex.P/10).

After investigation, police filed charge sheet against the appellant and co-accused Nanheveer before Judicial Magistrate First Class, Bareli, who

committed the case to the Court of Sessions, Raisen. On that, S.T.No.31/2006 was registered. Learned Third Additional Sessions Judge Raisen,

framed the charge against the appellant and co-accused for the offences punishable under Section 302/34 of IPC and tried the case. The appellant

and coaccused abjured their guilt and took the defence that at the time of incident appellant Rakesh and co-accused Nanheveer were not at home.

They had gone to village Chainpur and Gaganwada for beating drums of Narmada yatra of Member of Parliament of the area. Deceased Nanhe Bai

set herself ablaze by pouring kerosene and committed suicide. She also burnt her children Roshni and Lalit due to which they also sustained burn injury

and died. Before his death, Lalit clearly stated that fact in front of Theu (DW/3), Kalyan Singh Rajput (DW/4) & Shalakram (PW/5) who reached on

the spot at the time of incident. Police wrongly implicated the appellant in the crime and also produced Anokhelal (DW/1), Sahab Singh (DW/2), Theu

(DW/3), Kalyan Singh Rajput (DW/4) & Shalakram (PW/5) in their defence. However, after trial learned Additional Sessions Judge found the

appellant and co-accused Nanheveer guilty for the offence punishable under Section 302/34 of IPC and sentenced him as aforesaid. Being aggrieved

from that judgment, appellant and co-accused filed this Criminal Appeal. Because coaccused Nanheveer died during pendency of appeal so appeal

filed by the co-accused Nanheveer stands abated and this court is only considering the case of the appellant Rakesh.

5. Learned counsel for the appellant submitted that prosecution did not produce any eye witness of the incident. Learned trial court only on the basis

of dying declaration of deceased Nanhe Bai wrongly found the appellant guilty for the aforesaid offence while from the statements of Anokhelal

(DW/1), Sahab Singh (DW/2), Theu (DW/3), Kalyan Singh Rajput (DW/4) & Shalakram (PW/5) who had reached on the spot soon after the incident

clearly proved that at the time of incident appellant and co-accused Nanheveer were not in the house, deceased Nanhe Bai after pouring kerosene on

herself set herself ablaze and committed suicide and she also set ablaze her children Roshni and Lalit and Lalit narrated that fact to Theu (DW/3),

Kalyan Singh Rajput (DW/4) & Shalakram (PW/5) on the spot but police did not record the statements of these witnesses. Pradeep Kumar Kaurav

(PW/4) also recorded the dying declaration of deceased Lalit to that effect which was suppressed by the prosecution. Even otherwise Pradeep

Kumar Kaurav (PW/4) Nayab Tahsildar, Bareilly who allegedly recorded the dying declaration of deceased Nanhi Bai (Ex.P/3) did not depose before

the trial Court about the name and act of the appellant/accused, which resulted in the murder, in the words spoken by the deceased. So the dying

declaration had not at all been proved according to law. Learned Trial Court without appreciating all these facts wrongly found the appellant guilty for

the aforesaid offence. Hence, counsel prayed that the impugned judgment be set aside and the appellant be acquitted of the said offences.

6. On the other hand, learned counsel for the respondent/State vehemently opposed the submissions of the learned counsel for the appellant and fully

supported the judgment of the Trial Court and submitted that from the prosecution evidence the guilt of the appellant is clearly proved. Learned trial

Court did not commit any mistake in holding the appellant guilty for the aforesaid offence and prayed for rejection of the appeal.

7. This court has gone through the record and arguments put forth by the counsels of both the parties. There is no ambiguity in the prosecution

evidence on the point that on 18.10.2005 at around 9 AM deceased Nanhe Bai, Lalit and Roshni sustained burn injuries at appellant Rakesh's

house situated at Village Dahalwada due to burning from kerosene which later led to their death. Darshan Singh (PW/6) clearly deposed that on the

date of incident at 9 AM when he was returning to his house from Village Dahalwada got information that Rakesh's house had caught fire. So he

went to appellant's house where he saw that Nanhe Bai and her children Lalit and Roshni were lying in the courtyard in burnt state. On that, he

took them to Community Health Centre, Bareilly by Sarpanch's tractor trolley but Roshni died on the way. In this regard his statement is also

supported from the inquest report (Ex.P/7) lodged by him at P.S. Bareilly which was also proved by Meharban Singh (PW/11) and on the point

prosecution story is also supported from the statement of Dr. Mahendra Jain (PW/5) who examined Nanhe Bai and Lalit at CHC Bareilly and gave

MLC report (Ex.P/5) & (Ex.P/6) respectively to the effect that they sustained burn injuries due to kerosene burn and the statement of Dr. R.G.

Malani (PW/7) who conducted postmortem of the dead body of Roshni at CHC Bareilly and gave postmortem report (Ex.P/12) and the statements of

Dr. Jayanti Yadav (PW/12) and Dr. Neelam Shrivastava (PW/14) who conducted the postmortem of dead body of Nanhe Bai and Lalit and gave the

postmortem report (Ex.P/20 & Ex.P/21) respectively in which it is mentioned that Roshni, Lalit and Nanhe Bai died due to burn injuries. On this point,

appellant has not given any significant challenge to the statements of above mentioned witnesses. So there is no reason to believe their statements in

this regard. Even defence witnesses Anokhelal (DW/1), Sahab Singh (DW/2), Theu (DW/3), Kalyan Singh Rajput (DW/4) & Shalakram (PW/5) also

admitted in their statements that on the date of incident when they reached appellant Rakesh's house they saw Nanhe Bai and her children Roshni

and Lalit lying down in an injured state, they had sustained burn injuries. So from the prosecution evidence, it is clearly proved that on 18.10.2005 at 9

AM Nanhe Bai wife of the appellant, and her children Lalit and Roshni sustained burn injury at the house of the appellant situated at Village

Dehalwada and due to those burn injuries Roshni died on the same day i.e., 18.10.2005, Lalit died on 19.10.2005 while Nanhe Bai died on 22.10.2005

and those burn injuries were caused due to kerosene.

8. On the point that on 18.10.2005, appellant and co-accused Nanheveer set ablaze deceased Nanhe Bai, Lalit and Roshni after pouring kerosene,

although, there is no eye witness of the incident but Pradeep Kumar Kaurav (PW/4) who recorded the dying declaration (Ex.P/3) of Nanhe Bai in this

regard clearly deposed that on 18.10.2005 he was posted as Nayab Tahsildar, Bareli. That day, on receiving information from the police, he reached

CHC, Bareli and recorded the dying declaration (Ex.P/3) of Nanhe Bai at 11.45 AM. He further deposed that before recording the dying declaration

of Nanhe Bai, he took certification from the doctor that Nanhe Bai is in fit condition to give statement and thereafter took her dying declaration in

question answer form and got her thumb impression on dying declaration (Ex.P/3). He further stated that after recording her dying declaration, he

again took certification from the doctor to the effect that, Nanhe Bai was in fit state during recording the dying declaration. In this regard, his

statement is also corroborated by the statement of Dr. Mahendra Jain (PW/5) who also deposed that on 18.10.2005 Nayab Tahsildar, P.K. Kaurav

(PW/4) recorded the dying declaration of Nanhe Bai (Ex.P/3) and he gave certification on it. In the dying declaration of Nanhe Bai (Ex.P/3), it is

mentioned that Nanhe Bai stated that father of her children assaulted her and her children and when she stopped him, father of her children and also

his father set her ablaze after pouring kerosene. Her husband and father in law set her ablaze. At that time her children were also in her lap so they

also got burnt. She further stated that till 6 months prior to the incident she had been living in her parental house. But at the instance of people, her

parents sent her to her matrimonial house. This dying declaration (Ex.P/3) is also corroborated from her oral dying declaration which was given by her

in front of her parents Dal Singh (PW/1), Munni Bai (PW/2) and brother Manohar Singh (PW/3). They also deposed that on the information that

Nanhe Bai had sustained burn injury, they reached Bareli Hospital, where they saw Nanhe Bai in an injured state, at that time, she told that appellant

and co-accused set ablaze her after pouring kerosene due to which she and her children Lalit and Roshni sustained burn injuries.

9. Although, appellant and co-accused Nanheveer took the defence that at the time of incident appellant Rakesh and co-accused Nanhevir were not at

home and had gone to village Chainpur and Gaganwada for beating drums of Narmada yatra of Member of Parliament of the area and deceased

Nanhe Bai set herself ablaze after pouring kerosene and committed suicide. She also burnt her children Roshni and Lalit. Before his death, Lalit

clearly stated this fact in front of Theu (DW/3), Kalyan Singh Rajput (DW/4) & Shalakram (PW/5) who reached on the spot at the time of incident.

Police wrongly implicated the appellant in the crime. But in this regard defence of the appellant and the statements of his defence witnesses do not

appear to be trustworthy.

10. Sahab Singh (DW/2) deposed that on the date of incident he had called co-accused Nanheveer to his house for beating drum. When Nanheveer

was beating drum in the village, her daughter in law (Nanhe Bai) set herself ablaze. At the time of incident appellant Rakesh and co-accused were not

on the spot. Appellant Rakesh had gone to field for cutting grass and Nanheveer was beating drum in the village. Other defences witnesses Anokhelal

(DW/1), Theu (DW/3), Kalyan Singh Rajput (DW4) & Shalakram (DW/5) also deposed that on the date of incident appellant Rakesh had gone to

field for cutting grass and Nanheveer had gone to beat drums. But in this regard the statements of these witnesses do not match with statement of

appellant. When learned trial court entered the appellant in to the defence under section 233 of Cr.P.C. appellant Rakesh stated that on the date of

incident he and his father (Nanheveer) had gone to village Chainpur and Gaganwada for beating drums of Narmada yatra of Member of Parliament of

the area, where Guddu informed him that deceased Nanhe Bai set herself ablaze by pouring kerosene and Nanheveer also in his defence stated that

on the date of incident he had gone to village Chainpur for beating drums of Narmada yatra of Member of Parliament of the area. On the way

Anokhe Lal (DW/1) met him and informed him that Nanhe Bai had set herself ablaze by pouring kerosene. So the statements of defences witnesses

Anokhelal (DW/1), Sahab Singh (DW/2), Theu (DW/3), Kalyan Singh Rajput (DW/4) & Shalakram (DW/5) that on the date of incident appellant

Rakesh had gone to field for cutting grass and Nanheveer was beating drum in the village become doubtful and cannot be believed.

11. Theu (DW/3), Kalyan Singh Rajput (DW/4) & Shalakram (DW/5) also deposed that Nanhe Bai set herself ablaze and on receiving that

information when they reached the spot, they saw Nanhe Bai lying in injured state. At that time, son of Nanhe Bai said that mother (Nanhe Bai) burnt

him. But defence witnesses Anokhelal (DW/1) and Sahab Singh (DW/2) stated that when they reached the spot, Lalit was unconscious. Darshan

Singh (PW/6) who took Nanhe Bai and her children from the spot to hospital has also stated that when he reached the spot, Nanhe Bai and her

children were not speaking but only screaming. So statements of Theu (DW/3), Kalyan Singh Rajput (DW/4) and Shalakram (DW/5) that when they

reached the spot Lalit told them that mother (Nanhe Bai) had burnt him do not appear to be correct. It appears that these witnesses gave false

statements in this regard only to protect appellant. Learned trial court rightly disbelieved the statements of defence witnesses.

12. Appellant neither gave any suggestion to Pradeep Kumar Kaurav (PW/4) that he also recorded the dying declaration of deceased Lalit at CHC

Bareilly nor did he produce any evidence showing that Pradeep Kumar Kaurav (PW/4) also recorded the dying declaration of deceased Lalit at CHC

Bareilly. Appellant did not even give any suggestion to Dr Mahendra Jain (PW/5) and Neeraj Soni (PW/10) who investigated the crime that Pradeep

Kumar Kaurav (PW/4) also recorded the dying declaration of deceased Lalit at CHC Bareilly. So the argument of learned counsel of appellant that

police suppressed the dying declaration of deceased Lalit also do not appear to be correct.

13. Although Pradeep Kumar Kaurav (PW/4) did not depose before the trial court about the name and act of the appellant which resulted into the

murder, in the words spoken up by the deceased but only on that ground it cannot be said that the dying declaration (Ex.P/3) of deceased Nanhe Bai

recorded by Pradeep Kumar Kaurav (PW/4) is not proved.

14. A Full Bench of Bombay High Court in the case of Ramesh s/o Gyanoba Kamble vs The State of Maharashtra reported in 2011 (6) Mh.L.J. 927

held that for proving a dying declaration recorded by person/Magistrate/ Executive Magistrate it is not essential requirement of law that the

recorder should repeat, while deposing before the Court, the contents of the declaration in the words spoken by the deceased as to the cause of his

death or as to any of the circumstances of the transaction which resulted in his death. In other words, the recorder of a dying declaration need not

depose before the Court, in the words spoken by the deceased, about the name/ description, and the act of the accused, which resulted in his death.

15. Even in this case the oral dying declaration of Nanhe Bai was also proved by her parents Dal Singh (PW/1), Munni Bai (PW/2) and her brother

Manohar Singh (PW/3), who clearly deposed that on the information when they reached CHC Bareilly they found Nanhe Bai in injured state and she

clearly stated to them that appellant and Nanhevir set her ablaze after pouring kerosene due to which she, Lalit and Roshni were burnt. There is no

contradiction in their statements in this regard. Even, from the record it appears that appellant also filed an application before the trial court stating that

the thumb impression on dying declaration of Nanhe Bai (Ex.P/3) was not hers and that of her mother Munni Bai (PW/2). On that, learned Trial Court

by order dated 25/02/08 directed the prosecution to get the thumb impression examined marked on dying declaration (Ex.P/3) by handwriting expert.

The handwriting expert after comparing the standard thumb impression of Munni Bai (PW/2) with the thumb impression marked on dying declaration

(Ex.P/3) gave report (Ex.D/1) to the effect that the standard thumb impression of Munni Bai (PW/3) did not match with the thumb impression,

marked on Nanhe Bai's dying declaration. This fact also strengthens the statement of Pradeep Kumar Kaurav (PW/4) that he took Nanhe

Bai's thumb impression on dying declaration (Ex.P/3) after recording her statement. Appellant in the cross-examination of Dal Singh (PW/1),

Munni Bai (PW/2) and Manohar Singh (PW/3) even gave suggestion to them that the character of Nanhe Bai was not good which also shows the

motive of the appellant to murder Nanhe Bai. Had appellant not set Nanhe Bai ablaze why would Nanhe Bai who was his wife, give false dying

declaration against him. There is no ambiguity in the dying declaration (Ex.P/3) of Nanhe Bai in which it is clearly mentioned that father of her

children assaulted her and her children and when she stopped him, father of her children and also his father set her ablaze after pouring kerosene. Her

husband and father in law set her ablaze. At that time her children were also in her lap so they also got burnt. Further, that dying declaration was also

supported from the statement of Dal Singh (PW/1), Munni Bai (PW/2) and Manohar Singh (PW/3). There is no ambiguity in their statements on the

point that in the hospital Nanhe Bai told them that appellant and Nanhevir set her ablaze after pouring kerosene due to which she, Lalit and Roshni

were burnt. So there is no reason to disbelieve Nanhe Bai's dying declaration in this regard.

16. It is well settled that the from dying declaration, after its careful scrutiny, if the Court is satisfied that it is true and free from any effort to induce

the deceased to make a false statement and if it is coherent and consistent, there is no legal impediment to form such dying declaration the basis of

conviction, even if there is no corroboration.

17. The Hon'ble Apex Court in the case of Bhajju @ Karan Singh vs State of M.P reported in (2012) 4 SCC 327 held that "the law is very

clear that if the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence

of the events, then the dying declaration can certainly be relied upon by the Court and could form the sole piece of evidence resulting in the conviction

of the accused".

18. In this case also, there is no ambiguity in the dying declaration so there is no reason to disbelieve the dying declaration of Nanhe Bai (Ex.P/3). In

the considered opinion of this Court, learned trial court did not commit any mistake in relying Nanhe Bai dying declaration and finding the appellant

guilty for murdering Nanhe Bai and her children Roshni and Lalit, so there is no reason to interfere with the findings of the trial court.

19. Although, it appears from the record that learned trial court found the appellant guilty for murdering Nanhe Bai, Rakesh and Lalit but learned Trial

Court only awarded sentence on one count but prosecution did not file any appeal in that regard.

20. Hence, appeal filed by the appellant/accused stands dismissed. The appellant, who is in the custody, shall serve the remaining part of the sentence,

in accordance with law. The period already undergone shall be set off from the period of substantive jail sentence.

21. Accordingly, the appeal stands dismissed.