

(2012) 06 CHH CK 0040
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 557 of 1996

Ram Prasad and Another

APPELLANT

Vs

State of Madhya Pradesh (Now State of Chhattisgarh)

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Evidence Act, 1872 — Section 32(1)
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2012) 3 Crimes 584

Hon'ble Judges : Rajeev Gupta, C.J.; Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Arun Kochar, for the Appellant; Arvind Dubey, Panel Lawyer for the State, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 29th of February, 1996 passed in Session Trial No. 85/93 by the Fourth Additional Session Judge, Bilaspur. By the impugned judgment, appellant No. 1 (A1) has been convicted under Sections 302 & 201 IPC and sentenced to undergo imprisonment for life & R.I. for 4 years and fine of Rs. 2,000 and appellant No. 2 has been convicted u/s 201 IPC & sentenced as above for the said offence. The facts, briefly stated, are as under:-

Deceased Chandrakali Bai was wife of appellant Ramprasad (A1). She was residing with the appellant No. 1. On account of certain dispute, on 23.4.92, appellant No. 1 said the deceased to go away from his house. He said that he will marry a second wife. Appellant No. 1 said the deceased to immediately leave his house, on which, the deceased said that she will leave his house tomorrow. On this conversation only, appellant No. 1 closed the doors of kitchen and poured kerosene on the deceased and set her on fire. The deceased received serious bum injuries. The further case of the prosecution is that when the deceased was being taken to the hospital, the appellants told her that she should say in the

hospital that she had received bum injuries while preparing meals. The case of the prosecution was based on two dying declarations (Ex. P8 & P6). The first dying declaration (Ex. P8) was recorded by Dr. R.N. Dhritlahre (PW8) and the second dying declaration was recorded by Investigation Officer, ASI S.R. Gupta (PW5). Dehatinalishi (Ex.P4) was also given by the deceased herself. The learned Session Judge treated dehatinalishi (Ex.P4) also as dying declaration and finding consistency in the above three dying declarations convicted and sentenced the appellants as aforementioned.

2. Mr. Arun Kochar, learned counsel appearing on behalf of the appellants, argued that the dying declarations are not reliable, therefore, conviction cannot be sustained. For appellant No. 2, he argued that in the first dying declaration (Ex. P8), there are no allegations against this appellant and the allegations that he also tried to convince the deceased to say that it was an accidental death comes in the two later documents (Ex. P6 & P4), therefore, the above omission was fatal.

3. On the other hand, Mr. Arvind Dubey, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Session Court.

4. We have heard learned counsel for the parties at length and have also perused the records of the sessions case.

5. The incident took place at about 13.00 hours on 23.4.92. The deceased was immediately taken to the hospital and her first dying declaration (Ex.P8) was recorded by Dr. R.N. Dhritlahre (PW8) at 14.45 hours. In the said dying declaration, the deceased made categorical statement that appellant No. 1 (A1) brought kerosene and poured it on her head and put her on fire by a match-stick. She also made declaration to the effect that appellant No. 1 (A1) had closed the doors of the house while putting her on fire. Dr. R.N. Dhritlahre (PW8) has deposed that he has recorded the dying declaration of the deceased at 14.45 hours on 23.4.92 who was in conscious condition.

6. The second dying declaration (Ex.-P6) was recorded by ASI S.R. Gupta (PW5) at about 15.10 hours on 23.4.92. ASI S.S. Gupta (PW5) deposed that he recorded the above dying declaration in presence of concerned Dr. R.N. Dhritlahre (PW8) and one Nathulal. In the second dying declaration also, the deceased made similar allegations against appellant No. 1 (A1) that he poured kerosene on her body and then put her on fire. However she added that she was being tutored by appellants" to say that she received bum injuries while preparing meals.

7. Dehatinalishi (Ex.P4) was recorded at the instance of the deceased at about 15.30 hours on 23.4.92. In this document also, she made similar allegations against the appellants (A1 & A2).

8. In appreciation of the above two dying declarations (Ex.P8 & P6) and

dehatinalishi (Ex.P4), we find that they are consistent so far as allegations against appellant No. 1 are concerned. The deceased made clear declarations that appellant No. 1 (A1) closed the doors of the kitchen and thereafter poured kerosene on her head and then set her on fire by a match-stick. The incident took place at about 13.00 hours of 23.4.92. The first dying declaration (Ex.P8) was recorded at 14.45 hours. The second dying declaration (Ex. P6) was recorded at 15-10 hours and dehatinalishi (EX-P4) was recorded at 15.30 hours on the same day i.e. on 23.4.92. Admittedly the deceased died at 18.25 hours on 23.4.92. While recording the two dying declarations the deceased was certified to be fully conscious by the Doctor.

9. In *Munnu Raja and Another Vs. The State of Madhya Pradesh*, the Supreme Court held that where after making the statement before the police the victim succumbs to his injuries the statement can be treated as a dying declaration and is admissible u/s 32(1) of the Evidence Act. Therefore, dehatinalishi (Ex.P4), which was the First Information Report, lodged by the deceased was rightly treated as a dying declaration and there can be hardly any dispute regarding it.

10. The witnesses who proved the dying declarations have been cross-examined at length by the defence, but the defence has not been able to elicit any such circumstance on which either their versions may be discarded or it may be said that they have falsely implicated appellant No. 1 by recording false dying declarations. Therefore, the learned Session Judge was right in treating the dehatinalishi (Ex. P4) as dying declaration and further in relying the three consistent dying declarations and holding that it was proved that appellant No. 1 put the deceased on fire by pouring kerosene on her body.

11. So far as conviction u/s 201 IPC is concerned, the case of the prosecution is that while the deceased was being brought to the hospital by the two appellants, they were tutoring her to make statement that she got bum injuries while she was preparing meals. The first dying declaration of the deceased (Ex. P8) was recorded at 14.45 hours on 23.4.92 and the two preparing meals. Other dying declarations were subsequent in time. In the first dying declaration, the deceased has not made any declaration relating to the above act of the appellants that she should say that she received burn injuries while preparing meals. The said allegations are coming in the two subsequent dying declarations (Ex.P6 & P4) only. We are of the view that the above omission in the first dying declaration was fatal to the prosecution and the Session Judge was not justified in relying that part of story and convicting the appellants u/s 201 IPC. In the above facts and circumstances of the case, the conviction of the appellants u/s 201 IPC, cannot be sustained.

12. For the foregoing reasons, the conviction and sentence awarded to appellant No. 1 u/s 302 IPC are maintained. However, the conviction and sentences awarded to the appellants u/s 201 IPC are set-aside. The appellants are acquitted of the charges framed u/s 201 IPC. The appeal is allowed to the extent indicated above.