
(2007) 08 MP CK 0061
In the Madhya Pradesh High Court

Reeta Sonkar, Sushila Bai and Sunil

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (2007) ILR (MP) 1255

Hon'ble Judges : K.S. Chauhan, J;Arun Mishra, J

Bench : Division Bench

Judgement

Arun Mishra J

1. The three appeals have been preferred by 3 appellants Sunil, Sushila and Reeta. They have been convicted for committing offence u/s 302/34 of IPC and sentenced to rigorous life imprisonment and fine of Rs.2,000/-each, in default of payment of fine they have to undergo one year rigorous imprisonment. Apart from that accused Sunil has been convicted for committing offence u/s 498A of IPC and sentenced to undergo 2 years rigorous imprisonment and a fine of Rs. 2,000/-, in default of payment of fine he has to undergo 3 months rigorous imprisonment.

2. The prosecution case, in brief, is that marriage of deceased Krishna Bai was performed with accused Sunil 4 years before the incident. Sunil had illicit relationship with a "Sindhi" girl with whom he wanted to perform marriage and leave the deceased Krishna Bai. There used to be disputes between deceased Krishna Bai and accused Sunil, Krishna Bai was ill-treated. On the date of incident i.e.21.2.96 Sunil poured kerosene oil on Krishna Bai, Sushila caught hold of her, Reeta brought a match-box handed it over to accused Sunil and Sunil set ablaze the clothes of Krishna Bai. Her brother-in-law Anil put a blanket over her to extinguish the fire. She was referred to Victoria hospital. Her 3 dying declarations were recorded. Initial dying declaration (Ex.P.18) was recorded at 4:30 p.m. Second dying declaration (Ex.P.9) was recorded at 8:45 p.m. Third dying declaration (Ex.P.12) was recorded in the form of "Dehati Nalishi" at 9:20

p.m. Krishna Bai succumbed to the burn injuries on 10.4.96 after 48 days of the incident. Spot map (Ex.P.3) was prepared. Certain articles -kerosene oil bottle, match-box, piece of blouse were seized as per seizure memo (Ex.P.4). Post-mortem was performed. Accused were charge-sheeted.

3. Accused abjured their guilt and contended that they had been falsely implicated, they were innocent. Sunil was not in the house at the time of incident. When he came back in the evening, he was informed by his sister Babita that Krishna Bai caught fire accidentally while cooking the food. Anil had saved her. In defence also evidence has been adduced. The prosecution in all examined 14 witnesses. In defence 2 witnesses had been examined Anil Kumar and Jagdish. The trial court had convicted the accused persons and sentenced them in the aforesaid manner. Consequently the appeals have been preferred by them.

4. Shri Surendra Singh, learned Sr. Adv. with Shri Manish Mishra, for appellants, has submitted that 3 dying declarations were recorded, out of them in the first dying declaration name of the accused Reeta was not mentioned that she has participated in commission of offence in any manner. In later 2 dying declarations her name had been mentioned. Learned Sr. counsel has further submitted that Reeta has taken the deceased to hospital. She was residing nearby. Her marriage stood performed, on date of incident her conduct indicates towards innocence, otherwise she would not have accompanied Krishna Bai to the hospital, thus, she ought to have been acquitted. There was no allegation of harassment against her, only after the incident has taken place such an allegation has come for the first time as an after thought. He has further submitted that with respect to role played by Sushila, mother-in-law of deceased, though her name finds place in the dying declaration but there is contradiction with respect to role played by her while the deceased was set ablaze. He has further submitted that role attributed to Sushila Bai in that she poured kerosene oil or caught hold of deceased Krishna Bai but no smell of kerosene oil was found in the hair nor kerosene oil was found at the spot of incident or in the clothes of Krishna Bai, absence of kerosene oil indicates that implication of Sushila Bai to be false and renders dying declaration to be doubtful. He has further submitted that as against the accused Sunil prosecution case stands falsified due to the improvement made in dying declarations and absence of kerosene oil renders the dying declarations and entire story to be unreliable. The deceased Krishna Bai had caught the fire accidentally while she was cooking food as stated by defence witnesses. Consequently, the appellants be acquitted. He has relied upon certain decisions to be referred later.

5. Shri T.K. Modh, learned Dy. Advocate General, appearing on behalf of respondent-State, has submitted that no case for interference in these appeals was made out. After 4 years of marriage accused Sunil got rid of deceased Krishna Bai. He wanted to perform marriage with a "Sindhi" girl and due to that reason used to harass deceased Krishna Bai. It has come in the evidence of

witnesses that even Sushila and Reeta assisted to the husband and meted cruel treatment to the deceased. The dying declarations were reliable. In the initial dying declaration (Ex.P.18) omission of name of Reeta did not cause any dent the prosecution case, as later 2 dying declarations were consistent, they had been recorded on the same day in close proximity of time and there was no chance of tutoring the deceased Krishna Bai, consequently dying declarations (Ex.P.9 & P.12) were reliable, beside there was evidence of oral dying declaration made by Krishna Bai. Consequently trial court has rightly convicted the appellants. Thus, appeals deserve dismissal.

6. We have to consider the case in the backdrop of the fact that accused Sunil used to harass deceased Krishna Bai as he had illicit relationship with a "Sindhi" girl with whom he wanted to perform marriage. He used to give threat of "Chhor Chhutti" a customary form of divorce, he used to beat Krishna Bai. On the date of incident after having the food she came in the bed room where Sunil was lying in the bed, at that time some altercation and exchange of hot words with respect to relationship with the "Sindhi" girl appears to have taken place. On that as per version of deceased, accused Sunil poured kerosene oil on her, Sushila Bai caught hold of her, Reeta brought the match box and she was set ablaze by Sunil by lighting match-stick. Krishna Bai was taken for treatment initially to Dr. Anil Dubey. Considering the extent of burn injuries Dr. Anil Dubey advised to take Krishna Bai to the Victoria hospital, where she reached at 2:30 p.m. as apparent from bed-head ticket. In Victoria hospital she was examined by Dr. A.K. Jain (P.W.5), he has mentioned in the bed-head ticket (Ex.P.7) that arrangement be made for recording her dying declaration. It appears that police had set in the investigation on receiving information u/s 174 of Cr.P.C.

7. First dying declaration (Ex.P.18) was recorded by Prem Singh, Head constable of concerned police station. This document was admitted by the prosecution as stated by concerned AGP before trial Court on 13.2.98, when prayer was made by defence counsel to call Prem Singh, Head constable, it was opposed by the prosecution stating that prosecution admits the document i.e. dying declaration (Ex.P.18), consequently it was marked as exhibit and read in evidence being an admitted document. It is not in dispute that Reeta had accompanied Krishna Bai initially to Dr. Anil Dubey and also to the Victoria hospital. Coupled with this fact when we go through the initial version in first dying declaration (Ex.P.18) recorded at 4:30 p.m., there was total absence of name of Reeta, this statement had been signed by Krishna Sonkar, the deceased. Time 4:30 p.m. and date has also been mentioned in the statement (Ex.P.18). It was mentioned in the dying declaration by Krishna Bai that her husband abused her and also beaten her with stick and stated that she should obtain "Chhod-Chhutti" (divorce), her husband caught hold of her, Sushila Bai, mother- in-law, poured kerosene oil on her and Sunil set her ablaze with the help of the match stick. When she cried, Baby wife of Laxman, Laxman, Omwati D/o Banshilal and others came to the house. Her brother-in-law Anil put a blanket on her to extinguish the fire. She was taken to the hospital by her father- in-law and sister-in-law. Not even the presence of

accused Reeta has been mentioned in (Ex.P.18) at the time of incident. Then, we find on record yet another dying declaration (Ex.P.9) recorded subsequently on the same day. It was recorded at 8:45 p.m. Doctor had certified that Krishna Bai was in a fit condition to give statement. In her second dying declaration (Ex.P.9) Krishna Bai has mentioned that Sunil had kept one "Sindhi" girl and wanted to obtain divorce with Krishna Bai and used to close the door and after playing tape-recorder to suppress the noise and used to beat her. She had cooked the food by 12:00 clock in the noon and completed other work, when she came to room her husband was lying in the bed, started abusing her. Her mother-in-law Sushila Bai poured kerosene oil, her sister-in-law Reeta brought the match-box and thereafter her husband Sunil set her ablaze. Anil her brother-in-law had put the blanket over her. She was having a son of 2 years. Name of "Sindhi" girl was Indrana. Her marriage was performed prior to 4 years. She could not even write a letter to their parents. Earlier too also she had been badly beaten. She was not allowed to visit her parental house. In this statement (Ex.P.9) she has assigned the specific role to all the 3 accused persons, role was assigned to Reeta Sonkar that she brought the match-box. This dying declaration (Ex.P.9) was recorded in presence of Dr. Smt. Chandralekha Jain (P.W.8). Dr. Smt. Chandralekha Jain (P.W.8) has also stated that aforesaid dying declaration was recorded and patient was conscious and was in a position to give the statement and her dying declaration had been recorded by Executive Magistrate cum Naib Tehsildar in her presence.

We find on record yet another third dying declaration (Ex.P.12) in the form of "Dehati Nalishi" recorded at 9:20 p.m. by I.O. Jayant Temre (P.W.13) in which deceased Krishna Bai has stated that her husband had relationship with the "Sindhi" girl with whom he wanted to perform marriage. At about 12:00 clock her mother-in-law Sushila Bai, sister-in-law Reeta, her husband Sunil and brother-in-law Anil were in the house. Anil was sleeping. Sunil started quarreling and beating her with stick. Sunil poured kerosene oil on her. Sushila Bai caught hold of her. Reeta brought the match-box and handed it over to Sunil, Sunil set her ablaze, due to that she has suffered burn injuries. Anil had put a blanket in order to extinguish fire. Several persons assembled. Reeta and others took her to Dr. Anil Dubey, thereafter she was taken to the Victoria hospital.

8. In view of the aforesaid dying declarations, it is apparent that deceased Krishna Bai had been consistent with respect to accused Sushila Bai, her mother-in-law and Sunil, her husband. It was Sunil who set her ablaze, there was discrepancy in the statements, whether Sunil or mother-in-law poured kerosene oil or caught hold of deceased. Whatever that may be, this kind of discrepancy was not enough so as to give any benefit of doubt to the accused Sushila and Sunil, as we find that statements of Krishna Bai with respect to them were quite reliable, however, when we consider the omission of name of Reeta in (Ex.P.18) and also considering the fact that her marriage stood performed at the time of accident, she was residing separately, there was no evidence on record of the period before incident to suggest that she used to harass or beat the

deceased, no such complaint was ever made by deceased Krishna Bai to any one before the incident as against Reeta; she was residing separately, absence of her name in initial dying declaration (Ex.P.18) was significant and created a doubt as to the complicity of Reeta in the case itself. Deceased Krishna Bai was fully conscious when her initial statement (Ex.P.18) had been recorded, she was conscious at the time when her second dying declaration came to be recorded at 8:45 p.m., she was also conscious when her third dying declaration had been recorded at 9:20 p.m. There is no reason whatsoever why she would spare accused Reeta in case she had played the role in setting her ablaze. There was no whisper in the first dying declaration (Ex.P.18) that Reeta was present on the spot. It appears that Rajtilak Sonkar (P.W.1), cousin of deceased Krishna Bai reached in the Victoria hospital in the evening after receiving information as to the incident. He initially went to Dr. Anil Dubey's place and thereafter to Victoria hospital, thus, it appears that Rajtilak (P.W.1), cousin of deceased Krishna Bai had reached by the time when her second and third dying declarations were recorded and later on an improvement had been made in the story that Reeta had also assisted in setting her ablaze by bringing a match-box. Even otherwise, there was no reason for the different persons to bring kerosene oil and match-box in order to set ablaze Krishna Bai. There was possibility of improvement made in second and third dying declarations after talking with relatives and a doubt is created as to the complicity of accused Reeta in the instant cases. Recording of aforesaid three dying declarations has not been disputed at bar. One of dying declaration had been admitted to be recorded as Ex.P.18. Two other dying declarations had been proved by evidence of Jayant Temre (P.W.13) and J.L. Ahte (P.W.14), beside Dr. Smt. Chandralekha Jain has stated that dying declaration (Ex.P.9) was recorded in her presence. Dr. G.K. Upadhyay (P.W.7) has stated that deceased suffered with 35% of burns at the time when she was admitted in the ward, intimation was given to police, that supports the investigation set up u/s 174 of Cr.P.C. in the course of which dying declaration (Ex.P.18) came to be recorded by Prem Singh, Head constable of concerned police station.

9. Rajtilak Sonkar (P.W.1) has stated that when he reached Victoria hospital, he was informed by Krishna Bai that her husband, mother-in-law and sister-in-law were responsible to set her ablaze. She has stated about the demand of dowry. He is close relative of deceased Krishna Bai. Tulsiram Sonkar (P.W.3) has also stated about the demand of dowry of Rs.50,000/-, however, he has admitted in cross-examination in para-5 that he had not informed the police about the demand of dowry of Rs.50,000/-. He did not disclose this fact to the police till her daughter was alive. He was unable to give any reason for not disclosing the fact of demand of dowry to the police till the death of Krishna Bai, though she survived for 48 days. He has not levelled any specific allegation against accused Reeta and Sushila with respect to demand of dowry. Sewakram (P.W.4), brother of deceased, has also stated about the oral dying declaration made by deceased in which he had named Sunil, mother-in-law Sushila Bai and sister-in-law Reeta

but that was made after several days of the incident and with respect to role of Reeta, her statement could not be said to be reliable, he has given the reason for incident that husband of deceased used to beat her on the issue of a "Sindhi" girl. He has not stated about the demand of dowry. Ram Bai (P.W.9), mother of deceased, has stated that Krishna Bai informed that all the accused persons used to beat her but that is not even the case of deceased Krishna Bai in any of the dying declarations, thus, there was exaggeration made in statement of Ram Bai with respect to Sushila and Reeta. Thus, we find that allegation of harassment of cruel treatment stands proved against husband in view of the dying declarations of Krishna Bai and statements of other witnesses in that regard.

10. The Apex Court has considered the effect of omission in the initial dying declaration and mention of name in subsequent dying declaration in *Balbir Singh and Anr. v. State of Punjab* AIR 2006 SC 4950. It was a case of death by burns. Victim in her dying declaration recorded by doctor stated that her husband had put kerosene oil upon her and upon igniting, locked door of bathroom from outside. Victim was rescued by neighbours. Victim in second dying declaration before Investigating Officer not only named her husband but also her mother-in-law. The conviction of accused husband u/s 302 of IPC was held to be proper and mother-in-law was given the benefit of doubt in view of inconsistencies between two dying declarations. It is rightly submitted at bar that each case has to be considered on its own facts. In our opinion, omission in first dying declaration has to be considered whether it could be said to be a material omission in the facts & circumstances of each case. In case in first dying declaration there was insignificant omission, it cannot be said that subsequent dying declaration giving the details has to be considered as an after thought. However, in the instant case, we find that inconsistency in first dying declaration with two later dying declarations is significant and coupled with the background of facts of the case that Reeta did not harass or beat at any point of time to the deceased Krishna Bai, she was married woman and residing with her husband in a different house though nearby the house in question where incident took place and she has taken the deceased Krishna Bai initially to Dr. Anil Dubey and thereafter to Victoria hospital, her conduct indicates that she was not a culprit, that is why her name was not mentioned in first dying declaration.

In *State of Gujarat Vs. Mohan Bhai Raghobhai Patel and another*, the Supreme Court justified acquittal of accused holding that conduct of accused throwing mattress over deceased, a burning woman creates doubt about prosecution version of accused having poured kerosene and setting her on fire. There was also absence of motive. In the instant cases, the conduct of Reeta was to take the deceased Krishna Bai immediately to the hospital and she had no motive to harass or to cause injury of any kind to the deceased Krishna Bai. In *Smt. Kamla Vs. State of Punjab*, there were 4 dying declarations made by the deceased revealing glaring inconsistency vis a vis naming the culprit. In one of dying declaration it was indicated to be an accident. Consequently conviction was set aside. In *Paras Yadav and others Vs. The State of Bihar*, there was inconsistency

in dying declaration with regard to part played by accused and participation of accused. Two of the accused were acquitted giving them the benefit of doubt. But in instant case all the three dying declarations mention about two other accused Sushila Bai and Sunil.

11. Shri T.K. Modh, learned Dy. AG for respondent-State, has relied upon decision of State of Rajasthan Vs. Kishore, , wherein the Apex Court has laid down that case of multiple dying declarations could not be thrown out on the basis of minor discrepancy, dying declarations have to be considered in material particulars, minor discrepancies were held to be inconsequential. We are of the same opinion. However, in the instant cases, we have found that Sushila cannot be given the benefit of doubt on the basis of minor discrepancies with respect to inconsequential deviation in the third dying declaration as to the role played by her, however, omission of name of Reeta in first dying declaration cannot be lost sight in the facts & circumstances of this case.

12. Coming to the submission raised by Shri Surendra Singh, learned Sr. counsel for appellants, that kerosene oil was not found in the hair, on the spot or in the clothes of deceased Krishna Bai, when we consider the kind of container from which the kerosene oil was poured, it was a bottle of hair oil converted into a "Chimni" and it was not a case of Krishna Bai that kerosene oil was put on her head, thus, absence of kerosene oil in her hair was of no consequence, the place where the incident had taken place was inhabited by several persons and the family was living therein, kerosene oil was not found on the floor was also not material as there was possibility of cleaning it and quantity in the hair oil bottle could not be said to be much mention in dying declaration with respect to pouring of kerosene oil and considering the extent of 35% burn injuries, it is obvious that she was set ablaze with the help of kerosene oil. The Apex Court in State of Rajasthan v. Kishore (supra) considered the case where the hair of deceased sent for chemical examination did not smell of kerosene oil, clothes belonging to the deceased seized by the police were not sent for chemical examination. The Apex Court observed in para-18 that the investigating officer P.W.8 committed grave irregularity in omitting to send the burnt clothes and other incriminating material for chemical examination to lend corroboration to the evidence. Mere fact that the investigating officer committed irregularity or illegality during the course of the investigation would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record acquittal on that account. The Apex Court also considered the attempt to screen the offence by destroying the evidence. Therefore, the absence of smell of kerosene oil on the hair sent for chemical examination does not render the dying declaration of the deceased suspect nor would it become unbelievable. The Apex Court held that the High Court, therefore, has not considered the evidence in the proper and legal perspective but felt it doubtful like Doubting Thomas with vacillating mind to accept the prosecution case for invalid reasons and wrongly gave to the accused the benefit of doubt. When we consider the facts of instant cases, kerosene bottle was seized from the spot though kerosene

oil was not found on the floor, it was not the case that kerosene oil was poured on the head, it was poured only on the clothes and a piece of pink blouse was seized as per seizure memo but it was not sent for the reasons best known to the Investigating Officer for chemical examination. Consequently, dying declarations of deceased which had been found to be reliable with respect to husband and mother-in-law could not be overlooked. Thus, we find that prosecution had been able to establish guilt of Sunil and Sushila beyond reasonable doubt, however, accused Reeta for the aforesaid reasons was entitled to be given the benefit of doubt.

13. Resultantly, We dismiss the appeals (Cr.A.No.565/98 & Cr.A.No.566/98) filed by accused Sunil and Sushila and allow the appeal (Cr.A.No.559/98) filed by Reeta Sonkar and acquit her for commission of offence u/s 302 of IPC. Sushila is on bail. Her bail-bonds are cancelled. It is stated by learned Counsel for appellants that Sunil has been released on probation by the State. We refrain to comment upon the aforesaid aspect in the appeals. However, fact is placed on record.