
(2022) 10 MP CK 0017
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 503 Of 2011

Sanju @ Ishwar And Others	Vs	APPELLANT
State Of Madhya Pradesh		RESPONDENT

Date of Decision : 13-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 174, 374

Citation : (2022) 10 MP CK 0017

Hon'ble Judges : Subodh Abhyankar, J; Satyendra Kumar Singh, J

Bench : Division Bench

Advocate : Jitendra Bajpai, Amit Singh Sisodia

Final Decision : Allowed

Judgement

Subodh Abhyankar, J

1] This appeal has been preferred under Section 374 of Cr.P.C. against the judgement dated 02/04/2011 passed in S.T. No.327/2010 by the Tenth Additional Sessions Judge, Indore (M.P.) whereby finding the appellant guilty, the learned Judge of the Trial Court has convicted the appellant as under:-

Conviction

Sentence

Section

Act

Imprisonment

Fine

Imprisonment in lieu of fine

302

IPC

Life imprisonment

5000/- each

1 Year RI

2] In brief, the facts giving rise to the present appeal are that on 02/11/2009 at around 8-9 pm when the deceased Balu @ Balram S/o Balwant was sitting in his room after having dinner, at that time, the appellants Sanju S/o Motiram, Krishna S/o Motiram and their father Motiram S/o Bapuji came to his house and started assaulting him and thereafter Krishna took the chimni which was lying there and poured its kerosene over the deceased Balu and put him on fire and ran away from the spot. The deceased came out of the house and his neighbour Santosh S/o Ladliram put off the fire by putting a blanket (Gudadi) and also informed the ambulance. The deceased was taken to M.Y. Hospital where the treating Doctor informed the police station Sanyogitaganj and the dying declaration of the deceased was also recorded, however, he succumbed to burn injuries on 09/11/2009. A marg under Section 174 was registered and his postmortem was conducted. After the investigation, charge sheet was filed against the appellants and they were tried before the Trial Court where after recording the evidence, the learned Judge of the Trial Court has convicted the appellants as aforesaid. Hence, this appeal.

3] Learned counsel for the appellants has assailed the aforesaid judgement on the ground that the dying declaration is not reliable piece of evidence as the deceased was already having a grudge against the appellants and was in the habit of drinking heavily which fact has also been substantiated by the statements of the father and brother of the deceased and his wife Ramkalabai (PW/4) has not supported the case of the prosecution and PW/8 Prembai who is a neighbour of the deceased who has also stated that the deceased has immolated himself by pouring kerosene. PW/2 Santosh who has not been declared hostile and who has accepted in his cross examination that when he went to save the deceased, he was excessively drunk and also used to drink every day and has also admitted that he did not smell kerosene or did not see the kerosene spilled on the floor and has also admitted that the deceased has committed suicide in front of him after pouring kerosene over himself.

4] Counsel for the appellants has submitted that PW/2 Santosh was the first person who was present on the spot who had tried to save the deceased by putting gudadi over him and has not been declared hostile and thus, his testimony is binding upon the prosecution. Similarly, there is material discrepancies in the dying declaration as recorded by the deceased and the other surrounding circumstances. It is further submitted that the chimni in question is actually a glass bottle which was also kept in the house only and there was no sign of any scuffle in the house or any sign that the deceased was burnt in the house only. Thus, it is submitted that the appellants ought to have been falsely

implicated by the deceased due to personal animosity deserves to be acquitted.

5] Learned counsel for the appellant has also relied upon a decision rendered by the Supreme Court in the case of Samadhan Dhudaka Koli Vs. State of Maharashtra reported as AIR 2009 SC 1059 para 16 regarding the discrepancy in the dying declaration.

6] On the other hand, learned counsel for the respondent/State has opposed the prayer and it is submitted that no illegality has been committed by the learned Judge of the Trial Court in appreciating the evidence and convicting the appellants as aforesaid. Thus, it is submitted that the appeal be dismissed.

7] Heard learned counsel for the parties and perused the record.

8] From the record, it is found that the incident has taken place on 02/11/2009 at around 8-9 O'clock in the night and the deceased has died on 09/11/2009 at around 4:30 pm. The dying declaration (Ex.P/9) of the deceased was recorded on 03/11/2009 by (PW/10) Lakhansingh Choudhary, the Naib Tehsildar. It is also found that the deceased was taken to the hospital by one Prakash who has not been examined by the prosecution. It is also found that so far as the crime detail form (Naksha Mouka) Ex.P/3 is concerned, it is mentioned in it that the chimni is kept on a box in which some kerosene and wick (batti) is also lying and it is also mentioned that there is no evidence in the room which suggests that there is any kerosene on the cot or on the clothes lying around. Pw/2 Santosh is the person who doused the fire by putting a gudadi on the deceased; it is surprising that he (Pw/2 Santosh) was not informed by the deceased about the persons responsible for the same. Pw/2 has also admitted that he did not see any kerosene spilled on the floor of the house or smell of it. Thus, prima-facie it appears that the incident did not take place in the house as suggested by the prosecution.

9] So far as the MLC (Ex.P/23) is concerned, it is prepared by the PW/19 Dr. Alok Verma who has stated that the deceased was brought to the hospital by one Prakash S/o Tejram who has informed that he found the deceased lying in front of his house on the road at around 9:00 O'clock in the night, which history has been written by him when the deceased was admitted in the hospital.

10] PW/14 Dr. A.K. Lanjewar has conducted the postmortem of the deceased Balu and has stated that the deceased had 80% burnt injuries and has also admitted in his cross examination that both his hands were completely burnt.

11] PW/13 Laxmilal Tiwari is the Head Constable who has also recorded Ex.P/11, the statement u/s.161 of Cr.P.C. of the deceased and had thereafter called Naib Tehsildar who had recorded the dying declaration of the deceased Ex.P/9. Pw/13 has stated that according to the deceased, the appellants had assaulted him and poured kerosene over him from a chimni and appellant Krishna set him on fire. He has also admitted that the wife of the deceased had informed him that the deceased was habitual of heavy drinking and also that the deceased used to quarrel with the residents of the village after drinking. He has also admitted that

the brother and father of the deceased, as also his wife and the other persons who had also come to the hospital were imploring him as to why he is naming the other persons when he himself is responsible for his acts..

12] PW/10 Lakhansingh Choudhary is the Naib Tehsildar who has recorded the dying declaration of the deceased. He has stated that he has also taken the endorsement of the Doctor that the deceased is fit to give dying declaration. He has stated that the deceased informed him that the appellants came to his house and started quarrelling with him and thereafter all three of them poured kerosene over him and put him on fire, to which, he ran out of the house and thereafter his neighbour Santosh put out the fire by putting blanket (guddi) on him. The deceased also informed him that he had some dispute with the appellants because of some money. He has admitted in his cross examination that the deceased did not inform him that the appellants poured kerosene over him from a cane (kuppi) and he also did not inform him that the deceased was burnt with the aid of a kuppi.

13] So far as the decision relied upon by the counsel for the appellants in the case of Samadhan Dhudaka (supra) is concerned, the Supreme Court has held that :-

"16. Consistency in the dying declaration, therefore, is a very relevant factor. Such a relevant factor cannot be ignored. When a contradictory and inconsistent stand is taken by the deceased herself in different dying declarations, they should not be accepted on their face value. In any event, as a rule of prudence, corroboration must be sought from other evidence brought on record."

14] From the dying declaration (Ex.P/9), it is found that the deceased informed the Tehsildar that the kerosene was poured over him from a cane (kuppi) whereas in his statement recorded under Section 161 of Cr.P.C. by PW/13 Laxmilal Tiwari, the Head Constable of PS Sanyogitaganj, the deceased informed that the accused persons used chimni which was kept nearby and poured kerosene from it and thereafter set him on fire with a matchbox. Thus, there is discrepancy in the dying declaration Ex.P/9 and the statement of the deceased Ex.P/11 so far as the manner in which the incident took place and the implement used to set him on fire, as in the dying declaration it is said to be a cane whereas in the 161 statement, it is said to be chimni.

15] It is also found that in the dying declaration (Ex.P/9), there is thumb impression of the deceased, whereas PW/14 Dr. A.K. Lanjewar has admitted that both hands of the deceased were completely burnt. It is also found that the Doctor who has endorsed the dying declaration has also not been examined and there is no endorsement on the foot of the dying declaration regarding the fitness of the deceased during the course when his dying declaration was recorded. In such facts and circumstances of the case, this Court is of the considered opinion that the dying declaration Ex.P/9 is a suspicious document and cannot be relied upon to convict the appellant, especially when there is no

other incriminating material available on record connecting the appellant with the offence.

16] It is also found that PW/13 Laxmilal Tiwari, the Head Constable has also admitted in his cross examination that the brother and father of the deceased as also his wife and other persons were asking him as to why he is taking the names of the appellants as he himself is responsible for deeds and the fact that PW/13 Laxmilal Tiwari has not been declared hostile, and even otherwise, there is no reason for this Court to disbelieve his statement as he is an independent witness and has also recorded the statement of the deceased under Section 161 of Cr.P.C.

17] As a result, this Court is of the considered opinion that the prosecution has not been able to prove the case against the appellants beyond reasonable doubt and in such circumstances, their conviction cannot be sustained as they are entitled to the benefit of doubt. Accordingly, the appeal is allowed, the impugned order dated 02/04/2011 passed in ST No.327/2010 by the Xth Additional Sessions Judge, Indore (M.P.) is hereby set aside. The appellants are in jail. They are directed to be released forthwith, if not required in any other case.