
(2011) 10 CHH CK 0027
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 121 of 1999

Shekh Ram Yadav

APPELLANT

Vs

State of M.P. (Now State of Chhattisgarh)

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

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

Citation : (2012) 1 Crimes 503

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Radhe Shyam Sharma, J.—This appeal is directed against the judgment dated 26.6.1997 passed by Session Judge, Raipur in Session Trial No. 392/1996. By the impugned judgment, accused/appellant Shekh Ram Yadav has been convicted u/s 302 IPC and sentenced to undergo imprisonment for life.

2. Case of the prosecution, in brief, is as under:

There was an illicit relationship between the appellant and deceased Fuleshwaribai, due to which, husband of the deceased had deserted her. The deceased, thereafter, was residing along with her children in a house outside the village. The appellant used to visit her there. He had started quarrelling and committing Marpeet with her prior to the fateful day, i.e., 18.5.1996. In the night of the fateful day, Tejram (PW16), son of the deceased, had gone out of the house on his duty, her elder daughter had slept in the house of neighbour Sadhana (PW4), her younger daughter Suruchi (PW14) had gone to Village Bade Munari and she (the deceased) was all alone at the house. At about 1 O'clock in that night, the appellant poured kerosene on the deceased and set her on fire with match-stick. Thereafter, the appellant started fleeing. Screaming, the deceased came out of the house behind the appellant. Purshottam (PW1), one Pyarelal and Pramila (PW5), residing in neighbourhood, saw the appellant fleeing

from the place of occurrence. Purshottam (PW1) tried to catch bicycle of the appellant, but the appellant succeeded in fleeing. The deceased told the neighboured and villagers that the appellant set her on fire and fled. She was admitted in Medical College Hospital, Raipur, where she died on 23.5.1996. Intimation regarding death of the deceased was sent by Medical College Hospital, Raipur to Police Station City Kotwali, Raipur vide Ex.P4. Merg Intimation (Ex.P3) was recorded in Police Station City Kotwali, Raipur on 23.5.1996 and thereafter regular Merg Intimation (Ex.P6) was recorded in Police Station Mandir Hasaud, Raipur on 9.6.1996. First Information Report (Ex.P17) was recorded by Jogendra Singh, Station House Officer, Police Station Mandir Hasaud (PW25) on 12.6.1996. The investigating officer reached Medical College Hospital, Raipur, gave notice (Ex.P7) to Panchas and prepared inquest. (Ex.P8) on the body of the deceased. Dead body of the deceased was sent for postmortem examination to Medical College Hospital, Raipur. The post-mortem was conducted by Dr. Arvind Nerulwar (PW23), who gave his report Ex.P15, in which, he opined that the cause of death was syncope due to burn.

In further investigation, spot-map (Ex. P1) was prepared by Patwari Devraj Diwan (PW11). Another spot-map (Ex.P2) was also prepared by Jogendra Singh, Station House Officer (PW25). Pink saree, red shoe, chimney, bidi, pieces of bangles and container of kerosene were seized vide Ex.P10. The appellant was sent for medical examination. He was examined by Dr. Kripashankar Rai (PW22). He gave his report Ex.P13.

After completion of the investigation, charge-sheet was filed against the appellant in the Court of Judicial Magistrate First Class, Raipur, who, in turn, committed the case to the Session Judge, Raipur, who conducted the trial and convicted and sentenced the appellant as mentioned above. Charge u/s 302 IPC was framed against the appellant. The appellant abjured the guilt. The prosecution examined Purshottam (PW1), Manharanlal (PW2), Sunita alias Tijiya (PW3), Sadhana Verma (PW4), Pramila (PW5), Dulari (PW6), Gautam (PW7), Raruha (PW8), Ramashankar Mishra (PW9), Pawan Kumar (PW10), Devraj Diwan (PW11), Vijay Laxmi (PW12), Kamal Narayan (PW13), Suruchi (PW14), Kisan Lal Verma (PW15), Tejram (PW16), Suklal (PW17), Khorbahara (PW18), Dr. P.L. Yadu (PW19), Khedau Singh Chouhan (PW20), Bharatlal Kurmi (PW21) Dr. Kripashankar Rai (PW22), Dr. Arvind Nerulwar (PW23), Ramkrishna Shukla (PW24) and Jogendra Singh (PW25). The appellant examined Ramdheen (DW1) In his defence.

3. Smt. Renu Kochar and Shri Abhay Tiwari, learned counsel for the appellant argued that the case of the prosecution is based on the oral dying declaration, which is unreasonable and unreliable. According to Purshottam (PW1), they first went to police station, thereafter, they went to the hospital, but no intimation was given in the police station. The deceased was admitted in the hospital in burnt condition. At the time of admission of the deceased in the hospital, no intimation was sent by the hospital to police. The hospital sent intimation to

police only after death of the deceased in the hospital. Learned counsel further argued that the First Information Report (Ex.P17) was recorded at belated stage and no explanation is offered by the prosecution for this delay. Therefore, these facts create a doubt on the case of the prosecution. Learned counsel submitted that the death of the deceased appears to be accidental. The prosecution failed to establish its case. Hence, the appellant deserves to be acquitted of the charge framed against him.

4. On the contrary, Shri Ajay Dwivedi, learned Deputy Government Advocate for the State/respondent submitted that the impugned judgment of conviction and sentence passed by the learned Session Judge is impeccable and does not warrant interference by this Court

5. We have heard learned counsel for the parties at length and have perused the impugned judgment as also the record of the session case. The conviction of the appellant u/s 302 IPC is based on the oral dying declaration made by the deceased before Purshottam (PW1). Sadhana Verma (PW4), Dulari (PW6). Suklal (PW17) and Khorbahara (PW18).

6. The dying declaration is undoubtedly admissible u/s 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The Court must be satisfied that the deceased was in a fit state of mind to make the statement and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration.

7. In Heikrujam Chaoba Singh Vs. State of Manipur, the Hon'ble Supreme Court held as under:

3. An oral dying declaration no doubt can form the basis of conviction, though the Courts seek for corroboration as a rule of prudence. But, before the said declaration can be acted upon, the Court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. The dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability.

8. Now, we shall consider the evidence of oral dying declaration.

9. Purshottam (PW1) deposed that on Friday (the fateful day), at about 1 a.m. he was sleeping outside his house. He heard screaming of the deceased and saw

that the appellant was coming out from the house of the deceased and she was also coming out of the house behind the appellant. He caught the handle of bicycle of the appellant, but the appellant succeeded in fleeing. The deceased came to his house and lay down on a cot. At that time, Pramila (PW5), Sadhana Verma (PW4), Kishan (PW15) and Sunita alias Tijiya (PW3) also came there. The deceased narrated them the incident that she was set on fire by the appellant.

10. Sunita alias Tijiya (PW3) deposed that Purshottam (PW1) went to the house of Sadhana Verma (PW4) and narrated the incident to her (Sunita alias Tijiya (PW3)). Thereafter, Sunita alias Tijiya (PW3) went to the house of Purshottam (PW1), where her mother (the deceased) was lying on a cot in burnt condition. She did not ask anything from her mother.

11. Sadhana Verma (PW4) deposed that on Friday (the fateful day), at about 12:45 a.m., Purshottam (PW1) came to her house and knocked the door. When she opened the door, he narrated the incident to her that the appellant set the deceased on fire. Thereafter, she narrated the incident to Sunita alias Tijiya (PW3) and thereafter they went to the courtyard of the house of Purshottam (PW1), where the deceased was lying in burnt condition. The deceased told her that the appellant set her on fire.

12. Dulari (PW6) deposed that the deceased told her that the appellant set her on fire with a match-stick.

13. Khorbahara (PW18) deposed that on being asked, the deceased told him that the appellant set her on fire and fled. She was taken to police station.

14. Suklal (PW17) also deposed that on being asked, the deceased told him that the appellant set her on fire. At that time, Purshottam (PW1), Pyarelal, he himself, one Hemrai, Khorbahara (PW18), Ramdheen (DW1), one Parasram and Raruha (PW8) were present there.

15. Now, we shall examine whether the above oral dying declaration is reliable and can be based for conviction.

16. Dr. P.L. Yadu (PW19) deposed that deceased Fuleshwaribai, aged about 30 years, was admitted in Medical College Hospital, Raipur on 18.5.1996. When she was brought to the hospital, she had sustained 65% bum injuries. While deposition, he submitted the bed head ticket (Ex. P11) relating to the deceased before the Court. A proposal passed by Gram Panchayat Mungesar is annexed to the bed head ticket (Ex. P11). Relevant portion of the proposal is extracted below:

(Matter in other language)

17. Bare perusal of the proposal passed by Gram Panchayat Mungesar, annexed to the bed head ticket (Ex.P11), reveals that it was passed in presence of Khorbahara (PW18), Suklal (PW17) and Ramdheen (DW1). They were present in the Panchayat in the capacity of ward members of the Gram Panchayat. Had the

deceased made any dying declaration, its mention would have taken place in the proposal passed by the Gram Panchayat. Non-mention of any declaration by the deceased in the proposal makes the case of the prosecution doubtful. The proposal only speaks about recommendation of the Gram Panchayat for sanction of Government aid to the deceased for her treatment as nobody was there to look after her. In this scenario, evidence of Khorbahara (PW18) and Suklal (PW17) appears to be doubtful.

18. Purshottam (PW1) and Suklal (PW17) deposed that Raruha (PW8) had lodged a report with Police Station Mandir Hasaud, but the prosecution did not produce the said report. Raruha (PW8) specifically deposed that he never lodged any report regarding the incident with police station. Jogendra Singh (PW25) deposed that he received information regarding death of the deceased from Police Station City Kotwali, Raipur. Thereafter, he went to the place of occurrence. He denied that any report was lodged with Police Station Mandir Hasaud prior to receipt of Merg Intimation (Ex.P3) from Police Station City Kotwali, Raipur. Had the appellant really set the deceased on fire, it would have been reported to police. Non-reporting to police to that effect makes the case of the prosecution suspicious.

19. The deceased was admitted in the hospital in burnt condition on 18.5.1996, but neither any report was made to police in this regard at that time nor the hospital sent any intimation in this regard to police. Had the appellant really set the deceased on fire, the deceased or the persons taking her to the hospital would have stated this fact to the doctor admitting the deceased in the hospital and this fact would have taken place in the entries of the bed head ticket (Ex.P11). The doctor would have informed police also and took steps in regard to recording of dying declaration of the deceased. No such steps were taken in this case, therefore, making of any oral dying declaration by the deceased before the abovementioned witnesses appears to be unreliable.

20. The above said proposal of the Gram Panchayat Mungesar, annexed to the bed head ticket (Ex.P11), was signed by its Sarpanch Vijay Laxmi (PW12). She nowhere stated in her deposition that the deceased made any dying declaration. Khedau Singh Chouhan (PW20) Is the Village Kotwar. He did not support the case of the prosecution. He deposed that on being asked, the deceased told him that she poured kerosene on her and set her on fire due to her children. Ramdheen (DW1) was also a ward member of Gram Panchayat Mungesar. He deposed that on being asked, the deceased told him that she was dying due to her children.

21. Purshottam (PW1) and Suklal (PW17) admitted in their deposition that Ramdheen (DW1), Sarpanch Vijay Laxmi (PW12), Pramila (PW5) and Kisan Lal Verma (PW15) were present at the place where the deceased was lying on the cot, but they did not depose about any dying declaration made by the deceased. Even Suruchi (PW14), daughter of the deceased did not support the case of the prosecution. Suklal (PW17) deposed in his cross- examination that when Village Kotwar Khedau Singh Chouhan (PW20) was making announcement regarding the

incident, it was getting 10-11 p.m. 4-5 Minutes thereafter, he reached the place of occurrence. According to the prosecution, the incident took place at about 1 a.m. He reached the place of occurrence at about 10-11 p.m. His evidence to that effect is doubtful.

22. The deceased sustained bum injuries on 18.5.1996 and died on 23.5.1996, whereas, statements of witnesses were recorded on 12.6.1996. There is no explanation offered by the prosecution for delayed recording of statements. This renders the case of the prosecution suspicious.

23. In the above facts and circumstances of the case, we are unable to sustain the conviction of the appellant on the basis of oral dying declaration allegedly made by the deceased before Purshottam (PW1), Sadhana Verma (PW4), Dulari (PW6), Suklal (PW17) and Khorbahara (PW18). We are of the view that the conviction based on the above set of evidence deserves to be set aside and the appellant is entitled to benefit of doubt.

24. Accordingly, the appeal is allowed. The conviction and sentence awarded to the appellant u/s 302 IPC is set aside. He Is acquitted of the charge framed against him. He is on bail. His bail bonds are cancelled and surety stands discharged.