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CRA-916-2015

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 16th OF OCTOBER, 2024CRIMINAL APPEAL No. 916 of 2015*CHHOTI BAI @ RANI B AND OTHERS**Versus**THE STATE OF MADHYA PRADESH*

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Mr. Ram Suphal Verma - Advocate for appellant.

Mr. Yogesh Dhande - Government Advocate for State.

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Reserved on : 18.09.2024

Pronounced on : 16.10.2024

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This Criminal Appeal having been heard and reserved for judgment, coming on for pronouncement on this day, Justice Devnarayan Mishra pronounced the following:

JUDGMENT

This criminal appeal is filed being aggrieved with the judgment and order passed by the 13th Additional Sessions Judge Bhopal (M.P.) in S.T. No.746 of 2012 dated 28.02.2015 by which the appellants have been convicted for the offence punishable under Sections 302/34 of the Indian Penal Code and sentenced to suffer R.I. for Life Imprisonment each with fine of Rs.5,000/- each, in default further R.I. of one year.

2. In nutshell the case before the trial Court was that the appellant



Chhotibai is the mother-in-law of the deceased, Shahid is his brother-in-law and Samreen is his sister-in-law. On 09.06.2012, he went to his in-laws' house to bring his wife back, on that, his wife said that she will come in evening. At 07:00 pm, he again went to his in-laws' house, the appellant no.1 mother-in-law started quarreling on the pretext that he had sold the ornaments of his wife, then the deceased stated that he was in need of money, thus he sold the ornaments of his wife, at that appellant no.2 Shahid Khan came there and dashed him as a result, the deceased fell down in the bathroom, on that, her sister-in-law Samreen poured petrol and Afreen threw a burning matchstick to set him on fire. He came out on the road, a person working in a hotel poured water on him and called 108 ambulance and sent him to the hospital. Information was received by Police Station-Gautam Nagar Bhopal which recorded *rojnamchasanha* 454. On 09.06.2012 at 20:30, the Police proceeded to hospital, he was given treatment and his dying declaration was recorded by the Executive Magistrate and by the Investigating Officer. A case was registered under Section 307 of the Indian Penal Code as Crime No.115 of 2012 at Police Station-Gautam Nagar Bhopal, District-Bhopal against the appellants and one juvenile Afreen. Spot map was prepared and the articles found on the spot were seized and sent for F.S.L. examination. During the treatment, Naeem died, marg vide no.16 of 2012 was registered as Exhibit-P/2 in Police Station-Gautam Nagar. Appellants were arrested. After investigation, charge-sheet was filed before the Judicial Magistrate First Class Bhopal. After committal, the case was sent to the Sessions Judge Bhopal and on transfer, the case was sent to trial Court.



3. The trial Court framed the charges under Sections 302 read with 34 of the Indian Penal Code, the appellants abjured their guilt and prayed for trial. The trial Court recorded the prosecution evidence and examined the appellants under Section 313 of the Code of Criminal Procedure. The appellants took defence that Naeem was making pressure on their daughter/sister Amreen to bring the dowry though they had ahead, given Rs.4,00,000/- to Naeem and with that he had purchased a plot at Karond but he was further demanding Rs.6,50,000/- to construct his home over the plot. They had expressed their inability as they were not having money, on that he threatened that he will falsely implicate them in a criminal case and was pressurizing the appellants. On refusal to meet his demands, he himself poured petrol over him and set himself on fire. The appellants are innocent. Appellants examined Amreen (D.W-1), Rajjak Khan (D.W-2) and Rashid Khan (D.W-3). Amreen had proved the complaint filed before the Senior Superintendent of Police Bhopal and Chairperson to Human Rights Commission Bhopal.

4. The trial Court after hearing the parties recorded the conviction against the appellants. Hence, this appeal.

5. Learned counsel for the appellants submits that the deceased was blackmailing the appellants and demanding money from his in-laws and when they expressed their inability to provide money, thereafter, deceased started pressurizing the appellants. He himself poured the petrol and set himself on fire and falsely implicated the whole family members by giving



motivated dying declaration. Deceased's wife has herself lodged the report to the higher authorities. Dying Declaration is not supported by any other evidence.

6. Learned counsel for the appellants further submits that the prosecution witness Golu (P.W-6) who poured the water to extinguish the fire has clearly stated that Naeem poured the petrol by a plastic bottle on him and has himself set ablaze. This fact is corroborated by Ubed (P.W-7) and these prosecution witnesses have not been declared hostile by the prosecution, hence, the statement of the prosecution witnesses cannot be brushed aside and their defence has been probablized by the prosecution witnesses themselves. He has further submitted that the prosecution witness Nasir Maulana (P.W-4) and Abid Khan (P.W-5) were not on the spot and they have been wrongly stated to be the eye-witnesses and the trial Court has wrongly relied them as eye-witnesses as the Investigating Officer Santosh Sen (P.W-9) has clearly stated that no relatives of the deceased were present on the spot and the deceased was sent by 108 ambulance.

7. Learned counsel for the appellants further submitted that the trial Court has relied on the dying declaration but nowhere in the dying declaration, it is mentioned that the dying declaration was read over to the deceased and he accepted it as a true version of his statement.

8. Learned counsel for the appellants has drawn the attention of this Court to the judgment of *Jai Karan Vs. State of (N.C.T. Delhi) dated 27.09.1999* and in the judgment of *Shaikah Bakshu and others Vs. State of*



Maharashtra 2007 AIR SCW 4120. Learned counsel for the appellants further submitted that on the basis of judgment of *Sanju Vs. State of Madhya Pradesh*, judgment of the co-ordinate bench of this Court in *Criminal Appeal No.315 of 2008 dated 05.03.2018* that when the prosecution witness support the defence and are not declared hostile, then their statements cannot be brushed aside. He also relied on the judgment of the Apex Court in *Abhishek Sharma Vs. State (Govt. of NCT of Delhi)* passed in *Criminal Appeal No.1473 of 2011 dated 18.10.2023* that when the two dying declarations were recorded and the F.I.R. was not lodged, it was lodged after recording of the third dying declaration, in that situation, two dying declarations cannot be relied on. He further relied on the judgment of Nandu Singh Vs. State of Madhya Pradesh passed by the Hon'ble Apex Court in Criminal Appeal No.285 of 2022 dated 25.02.2022 and the judgment in the case of Shobhelal Vs. State of Madhya Pradesh, judgment of co-ordinate Division Bench of this Court on 16.03.2022 and *Smt. Kamla Vs. State of Punjab dated 18.11.1992* regarding the reliability and on what circumstances, the conviction can be based upon the dying declaration and prayed that in this case, the prosecution failed to prove that the dying declaration is trustworthy and reliable as the deceased himself poured the petrol and set himself on fire.

9. Learned Government Advocate submitted that the trial Court recorded the conviction purely on the basis of the evidence and the dying declaration that is reliable and the judgment is based on proper appreciation of the evidence and on the basis of minor contradiction and omission, the conviction cannot be set aside, hence the appeal be dismissed.



10. We have heard learned counsel for the parties and perused the record.

11. In this case, it is an admitted fact that the deceased was married with the daughter of appellant no.1 Chhoti Bai and with the sister of appellant nos.2 and 3.

12. On the point that the deceased got the burn injury, Dr. Pawan Singh (P.W-1) has stated that on 09.06.2012, he was posted as CMO in Hamidiya Hospital Bhopal, the patient, Naeem, son of Faizal was brought by 108 ambulance. He found that the patient was burnt by petrol, he referred the injured Naeem for special treatment in the burn ward. Dr. Vikram Bhatti (P.W-10) has stated that on 09.06.2012, he was posted as RSO in the burn ward and plastic surgery section in Kamla Nehru Hospital, on that date, patient Naeem Khan, son of Faizal Khan aged 30 years was admitted in the burn ward of the hospital. He further stated that on 09.06.2012, the patient was brought by 108 ambulance and as per history given by the patient that on 09.06.2012, at 08:00 pm, he was burnt in Gautam Nagar by his known persons and at the time of admission, the condition of the injured was generally poor. He got the burn injury in chest, stomach, neck, left hand, left leg and some part of the right leg and in the back portion, the left arm and left thigh was also burnt. The victim had 50 % burnt. P.W-10 proved the case history, Exhibit-P/19, Exhibit-P/20, Exhibit-P/20-C are prescriptions, the deceased died on 18.06.2012 at 04:00 pm.

13. Thus, it is clear that on 09.06.2012, at 09:27 pm, the deceased was



admitted in Hamidiya Hospital Bhopal in the burn ward and patient Naeem was brought by 108 Ambulance. On the same point, Omkar Shukla (P.W-8) has stated that on 09.06.2012, he was Head Constable at Police Station Gautam Nagar, on that date at 11:50 pm, he called the Magistrate to record the dying declaration of Naeem, Rojnamcha was registered regarding the entries Exhibit-P/11, thus it is stated that the Police got the information, departed to the hospital to record the dying declaration of the deceased.

14. Naseer Maulana (P.W-4) stated that Naeem was the brother-in-law of his friend Abeed. In 2009, he committed suicide by setting himself on fire. He has further stated that Naeem was blackmailing the family persons of the appellants and had put himself on the fire. He stated that he himself saw the incident and Naeem in the burnt condition at Foota Makabra and brought the deceased Naeem by 108 ambulance to hospital. His friend Abid called 108 ambulance and a Naeem had told him that his in-laws had burned him.

15. Abid (P.W-5) has stated that Naeem was his brother-in-law, Chhoti Bai is his mother-in-law, Saheed is brother-in-law and Afreen is sister-in-law of Naeem. The marriage of Naeem was performed in 2011. On 09.06.2012, the deceased went to bring his wife back to her matrimonial home on that his wife said that she will return with him from her parental home in the evening and when in the evening, the deceased Naeem went to in-laws' house, quarrel took place between the family members of his wife and deceased Naeem and the quarrel got exacerbated, appellants after locking the deceased in a room, started beating him and by pushing him down in bathroom had put petrol on him and set him on fire. Naeem came out from the bathroom in the burning



condition and started rolling on the ground, this witness was sitting in the restaurant, when a boy working in the restaurant poured water on Naeem and saved him, he called the ambulance and admitted the deceased in Hamidiya Hospital. Regarding the statement, this witness in paragraph no.13 has stated that on the place of incident, he was there and Nasir has also stated that on the call of this witness, he reached on the spot.

16. On the presence of these witnesses, the Investigation Officer Omkar Shukla (P.W-8), in paragraph no.4 of the cross-examination has clearly stated that he got the information of the incident as per Exhibit-P-11/C that someone had set himself ablaze near Kalchuri Bhawan in his home and on that, he departed to the Kalchuri Bhawan, he found that the injured was being brought to the hospital by calling 108 ambulance. Except the employee working in 108 ambulance and the doctor, no other person of the family of the deceased was present on the spot and in paragraph no.5, this witness has further clarified that no relative of the deceased was found on the spot and he also denied the suggestions that Abid (P.W-5) and Nasir (P.W-4) were present on the spot. Thus, the presence of the witnesses that Abid (P.W-5) and Nasir (P.W-4) and they witnessed the incident is not trustworthy as Abid (P.W-5) and Nasir (P.W-4) were not present on the spot. But from the statement of this witness, a Police Officer, it is clear that the incident took place near Kalchuri Bhawan and it is also clear that the person, who caught the fire, incident had happened within the house and not on the road.

17. On this point, if the statement of Golu (P.W-6) is perused, this



witness has also clearly stated that he was working in the restaurant of Irshad, a restaurant/hotel situated near Foota Makbara and the appellants were also residing near that hotel/restaurant. This witness further stated that he went to supply tea to a tractor workshop which is beside his hotel. He saw that the appellant and Naeem were quarreling (bahas ho rahi thi), after that, the deceased ran away towards the street and returned from there and started rolling on the road. He poured water over him, he had not seen how Naeem caught the fire. After sometime, Police came there. Thus, this witness has stated that the incident took place near the house of the appellants. Furthermore, this witness has also stated that the oral altercation was going on between the appellant and the deceased, he has also supported the prosecution that the injured came towards the street and started rolling on the road and that he poured water to extinguish the fire.

18. This witness (P.W-6) stated that Naeem had himself poured the petrol and set himself on fire. Prosecution has not exhaustively cross-examined this witness but from paragraph no.4 of cross-examination, it is also clear that all the appellants were standing in their home. Furthermore, in the same vein, Ubed (P.W-7) has stated that on the date of incident, he was repairing vehicle, quarrel was going on between the appellant and the deceased. From the house of the appellant, the deceased came out and taking petrol from the motorcycle, poured petrol on himself and set himself on fire using a matchstick. They doused the fire and called 108 ambulance in which, he was sent to the hospital.

19. These witnesses have stated that the victim himself had put himself



on fire by pouring petrol and set himself on fire by lighting a matchstick. Except this fact, whole of the prosecution story is supported by the witnesses that the incident took place near the residence of the appellants, the quarrel was going on between the appellants and the deceased. Deceased was burning and rolling on the road and the person working in the restaurant poured water and doused the fire. Now, the question is that how much reliable are these witnesses?

20. Learned counsel for the appellants has relied on the judgment of co-ordinate Bench of this Court in *Sanju (Supra)*. In paragraph no.12 of the judgment, the court held that when the prosecution witnesses had not supported the prosecution's case and such witness is not declared hostile, the defence can rely on evidence of such witnesses which would be binding on the prosecution and the statement cannot be brushed aside on the ground that the statement is not trustworthy. From the statements of P.W-6 and P.W-7, it is clear that quarrel was going on between the appellants and the deceased and it is also proved from the statements of these witnesses that Naeem was burning and he tried to save himself by rolling on the road. This fact is also proved that the person working in restaurant poured water to extinguish the fire.

21. Golu (P.W-6) in his statement stated that he had not seen how Naeem caught the fire. In the cross examination this witness has also clarified that when the deceased was burning, the appellants were present in their house. He saw that the appellant came towards the street and he was



burning.

22. The statement of Ubed (P.W-7) is attested from the statement of Santosh Sen, Investigating Officer (P.W-9), this witness has stated that he visited the spot and prepared a spot map in presence of Aabid (P.W-5) and Nasir (P.W-4). He recovered a plastic bottle of half a liter, in whose bottom there was 5.7 ML petrol. He had covered a matchstick box, classic deluxe printed on it smeared with the soil and two live matchsticks, two burnt matchsticks and scratch from the floor of the spot and seized all these materials and prepared a seizure memo (Exhibit-P/8). As per the statement of this witness, these materials were sent for F.S.L examination and as per FSL report (Exhibit-P/20), in the plastic bottle, burnt matchstick and pieces of floor of the spot, presence of petrol was found. Thus the petrol oil container bottle, matchstick and floor of the house where the incident as per the prosecution took place, presence of petrol was found, it shows that the incident has taken place within the house of the appellants and not on the road, as stated by these witnesses. In this scenario when the witness Golu (P.W-6) and Ubed (P.W-7) were working near the house of the appellants and it appears that they have been won over by the appellants and due to negligence of the prosecuting agency, it cannot be inferred that rest of the prosecution case is false and thus, due to distinction on facts, the judgment of *Sanju (Supra)* doesn't help the appellants.

23. Thus from the above discussions, it is clear that the deceased got the burn injury in his wife's house and from there he was brought by 108 in hospital and during treatment, he died.



24. Regarding the presence of the appellants and role of the appellants, the prosecution's case is based on the dying declaration. Tahsildar Varun Awasthi (P.W-2) has stated that on 09.06.2012, he was posted as Tahsildar T.T. Nagar Circle Bhopal. He recorded the statement of deceased Naeem Khan who was admitted in Kamala Nehru Hospital burn ward at 11:50 p.m. Before recording that statement, he got a certificate from the duty doctor whether the patient is in a fit condition to make the statement or not and after the certification of doctor he recorded the dying declaration.

25. Doctor Vikram Bhatti (P.W-10) has stated that on 09.06.2012, he was posted in the burn ward and Tahsildar Varun Awasthi sought his opinion regarding recording of the dying declaration, he examined the patient and opined that the injured was in a condition to record his dying declaration and that declaration was recorded at 11:50 p.m. He was present when the the dying declaration was recorded and he put his signature on Exhibit-P/2.

26. Doctor Varun Awasthi (P.W-2) has further stated that the deceased Naeem stated to him that on that date at about 7:00-8:00 pm, he went to his in-laws' house near Chhola Mosque Bhopal. His mother-in-law, two sister-in-laws and brother-in-law were present, they poured the petrol and set him on fire by a matchstick, 108 ambulance brought him to hospital. In the cross examination, this witness has stated that there is no mention in Exhibit-P/2 that Police Station Gautamnagar had sent him a request to record the dying declaration. The notice has been submitted along with the charge-sheet or not he cannot tell and this witness has clearly stated that no relative or police



were present when he recorded the dying declaration of the deceased.

27. Thus in the Exhibit-P/2 as recorded by the Tahsildar, the deceased has stated that on the date of incident he went to bring his wife from his matrimonial home and the accused persons after a brief altercation sprinkled petrol and put the fire by a matchstick, he ran away and tried to save by rolling on the road. Someone brought him to the hospital by ambulance. Looking to the injury suffered by the deceased, that he has 50% burn injuries as stated by the doctor and the Dr. Vikram Bhatti (P.W-10) wrote a letter (Exhibit-P/4) to CMO to record the dying declaration of the deceased, the dying declaration was recorded. Thus, it is clear that when the dying declaration was recorded, the patient was in a fit condition to make the declaration.

28. Another dying declaration was recorded by a Police Officer Santosh Sen (P.W-9) and this witness has stated that preliminary investigation was conducted by Head Constable Omkar Shukla (PW-8) and when he got information, he reached the burn ward of Kamla Nehru Hospital and on the basis of the statement that was recorded by him as a Dehati Nalishi (Exhibit-P/12). He stated that he had recorded statement of the deceased. Exhibit-P/12, on 10.06.2012 at 13:30. In (Exhibit-P/12), this fact is mentioned that on 09.06.2012, in the morning he went to his in-laws' house to bring his wife and wife said that she will come with him in the evening and when after working, at about 07:00 p.m. when he reached to the in-laws' house, then his mother in law started quarrelling alleging that why he had



sold the ornaments of her daughter. He replied that he was in need of money. On that Shahid pushed him as a result, he fell down in the bathroom when Amreen sprinkled petrol and Afreen set him on fire by a matchstick. Same fact was stated by the deceased in Exhibit-D/2. Thus, the subsequent dying declarations are consistent to previous statement Exhibit-P/2. It is apparent from the evidence of doctor (P.W-10), that the deceased was in such a condition that he was in a position to talk and was not unconscious.

29. The defence witnesses namely Amreen (D.W-1) and Rajjak Khan (D.W-2) and Rashid (D.W-3) admitted that on the date of incident, the deceased was present in his in-laws' house and all the appellants were present there and it is their defence that the deceased himself set on fire by sprinkling petrol.

30. On this aspect, the conduct of the appellants is to be seen as the deceased got burned, but no person of the family of his wife tried to save him, even though his wife Amreen was present in home, but she also did not try to save him and after the incident, none of the family members of the appellants brought the deceased to the hospital though they all were present in their home. If the deceased falsely implicated the family, he must have implicated his wife also but he has not mentioned that any act was done by his wife. After the incident none of the family members of the appellants visited the hospital and from the above discussion, it is also clear that the incident took place within the house of the appellants. Thus, the defence taken by the appellants that the deceased set himself on fire is not convincing hence this defence being not probablized, is rejected.



31. We have gone through the judgment of *Jai Karan (Supra)*, in this judgment, the principles laid down that on what basis the dying declaration can be relied on and in that the first rule is that the dying declaration can form the sole basis for the conviction and each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made, general proposition that a dying declaration is not a weak kind of evidence than other piece of evidence, than the dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to principles governing the weighing of evidence, that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say in the form of question and answer and as far as practicable in the words of maker of the declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, that in order to test the reliability of dying declaration the court has to keep in view the circumstances like opportunity of dying man for observation and the dying declaration must be scrutinized carefully. Same principles have been laid down in the *Shaikh Bakshu (Supra)*. Furthermore, it is held that if there is no mention in the dying declaration that it was read over and explained to the deceased the dying declaration cannot be acted upon. Same principles have been laid down in the *Abhishek Sarma (Supra)* in para nos. 9, 10 and 11 and in the judgment of *Kamla (Supra)*.

32. The Apex court in the case of *Surinder Kumar versus State of*



Punjab (2012)12 SCC 120 has stated that there is no format prescribed for recording the dying declaration and no format can be prescribed and thus, it is not obligatory that that dying declaration should be recorded in question and answer form. In some circumstances it may be possible and in some circumstances it may not be possible. Thus, the formalities that the dying declaration was read over to the deceased or not, it was in a particular format or not, all these are matters of caution. The same principle has been laid down in case of *Farhan Gowda and other versus state of Karnataka 2023 SCC Online 1370*, that court has to scrutinize that the dying declaration is not as a result of tutoring, prompting or imagination and when the deceased was conscious and it is truthful then the court may act upon the dying declaration.

33. In the light of the above principles, the dying declaration is corroborated by other prosecution evidence and is proved beyond the reasonable doubt, that the dying declaration is trustworthy inspires confidence of this Court.

34. The trial court has also properly discussed the dying declaration, hence no perversity is found in the impugned judgment. Thus from the statement of the prosecution witnesses, F.S.L report, the dying declaration P/2, D/2 and P/12 were are consistent to each other, can be acted upon and the trial court has rightly acted upon the dying declarations and convicted the appellants for offence punishable under Section 302/34 of the Indian Penal Code. Hence, the judgement and sentence passed by the trial Court is affirmed. Appeal being devoid of merits, is dismissed. The appellants are on



bail, their bail bonds are cancelled.

35. The appellants will surrender before the trial court to serve the remaining sentence, in default the trial court shall ensure arrest of the appellants and they be sent to serve the remaining jail sentence.

36. The case property be disposed of as per the order of the trial court.

37. With the copy of the judgment, record of the trial court be sent forthwith for necessary action and compliance.

(VIVEK AGARWAL)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

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