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THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
(DIVISION BENCH)
Criminal Appeal No.707/2010

Rambabu Ahirwar & ors. Appellants

Versus

State of M.P. Respondent

CORAM

Hon. Mr. Justice G.S. Ahluwalia, Judge.

Hon. Mr. Justice Deepak Kumar Agarwal, Judge.

Presence

Shri R.K.S. Kushwah, learned counsel for appellants.

Shri R.K. Awasthi, learned Public Prosecutor for the respondents/State.

JUDGMENT

(24th January, 2022)

PER JUSTICE DEEPAK KUMAR AGARWAL

The present criminal appeal filed u/S 374(2) of **IPC** assails the judgment dated 31.08.2010 passed in S.T. No. 171/2008 by which appellants have been convicted u/S 302 of **IPC** and sentenced to suffer life imprisonment with a fine of Rs. 500/- with default clause.

2. Death of one Sooraj Bai (wife of the appellant no. 1 Rambabu Ahirwar) who died due to burn injuries in an incident dated 21.04.2008

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has given rise to the prosecution in question where appellant No.1 Rambabu Ahirwar, appellant No.2- Biharilal Ahirwar and appellant No.3-Puniya Bai (husband, father-in-law and mother-in-law respectively of the deceased) are convicted and sentenced as aforesaid.

3. Appellant No.2- Biharilal Ahirwar died during pendency of this appeal and, therefore, appeal against him stands abated.

4. Bare facts giving rise to the prosecution in question are that on 20.04.2008, at around 08:00 pm, husband of deceased Soorajbai demanded money from the deceased for purchasing liquor. Father-in-law and mother-in-law of deceased tried to persuade her to fulfill the demand of their son but when she pleaded her inability to meet his demand, her husband by pouring Kerosene on her body set her on fire. When deceased was burning, her mother-in-law and father-in-law shut the door of the house. Deceased having suffered burns fell down on the floor. After about two hours, her husband by keeping her on a cart brought her to the hospital but did not get her treated. On the morning of very next day, her brother-in-law and brother admitted her in the hospital. Thereafter, report was lodged which also bore thumb impression of the deceased. On the basis of said Dehati Nalishi Ex.P-17, FIR Ex.P-15 bearing crime No. 69/2008 was registered. Before recording of Dehati Nalishi Ex.P-17, when deceased was admitted in

the hospital, her dying declaration (Ex.P-21) was recorded by Executive Magistrate Lateri Shri Brajesh Kumar Sharma (PW-13). During treatment, deceased was referred to Hamidiya Hospital where on 22.04.2008, deceased succumbed to the said burns. Postmortem of the deceased vide Ex.P-22 was conducted. Spot map vide Ex.P-09 was prepared. Burnt and partially burnt materials and other materials were seized. Seizure memo is at Ex.P-01. Glass vial Ex. P-2 was seized. Clothes of Appellant No.1 Rambabu was seized vide Ex.P-3 . Memorandum of appellant No.-1 (Ex. P-05) was prepared. Arrest memo of appellant No.1- Rambabu is exhibited as Ex. P-06. Visra (Ex.P-14) was seized. Arrest memo of appellant No.2- Biharilal is exhibited as Ex. P-19 and arrest memo of appellant No.3-Puniya Bai is exhibited as Ex. P-18. Intimation regarding death of deceased Ex.P-16 was prepared. Seized contraband article was sent for chemical examination to Forensic Science Laboratory, Sagar through Superintendent of Police, Vidisha vide draft letter Ex. P/20 and the information sent by Director of Medical Institute to Police Station Kohafiza is exhibited as Ex.P-23.

5. The dying declaration was recorded by the said Executive Magistrate Brajesh Kumar Sharma PW-13 on the basis of certification recorded by Dr. Prashant Kumar Jain PW-15 , Medical Officer, CHC

Lateri that the patient was conscious and was able to give her statement.

6. The dying declaration discloses that appellant no.1 husband of deceased poured kerosene over her and set her on fire while appellant No.2- Biharilal Ahirwar and appellant No.3-Puniya Bai (father-in-law and mother-in-law of deceased) shut the door of the house.

7. The deceased in the incident sustained burn injuries and was brought to the hospital by her brother-in-law and brother where her dying declaration was recorded on 21.04.2008, after certifying her to be conscious. Deceased after being clinically examined was found to have suffered superficial deep burns over neck, chest, abdomen with some patches of burn injury present over different parts of the body. The burn injuries were opined to be caused due to dry heat and duration of injury was opined to be within 24 hours of examination.

8. Investigation in the matter was conducted and necessary formalities therein were completed. Chargsheet was filed. After committal of the case to the Court of Sessions, charges were framed u/S 302 [IPC](#) against the appellants. The appellants abjured guilt.

9. After death of the deceased, post-mortem was conducted. The report in that regard (Ex. P-23) discloses following injuries:

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(i) 2nd to 3rd degree burn present over cheeks, chest, neck on both sides all over right arm, forearm, dorsum of hand and thumb and thenar eminable all over except elbow joint and antecubital region i.e. healthy.

(ii) 2nd to 3rd degree burn present over left deltoid region and medial ½ of arm on anterior aspect, forearm on joint all over.

(iii) 2nd to 3rd degree burn present over anterior aspect of legs, lower ½ of both thighs on posterior aspect all over.

(iv) 2nd to 3rd degree burn present over chest and abdomen upto the iliac crest and on back on lateral ½ from shoulder joint to the iliac crest on both sides and neck to the T2 level. Blisters present over both ankle region.

(v) The cause of death of deceased was opined to be due to cardio-respiratory failure, as a result of burning and its complications.

10. The prosecution supported its case by producing 15 prosecution witnesses namely Nirale Bahi PW-1, Ashif Khan PW-2, Smt. Sunita Bai PW-3, Puran Chand PW-4, Banshi Bai PW-5, Parma PW-6, Yadvendra Dubey PW-7, Munshi Lal PW-8 , Santosh Bhargav PW-9, Mohd. Iqbal PW-10, Anit Tiwari PW-11, Rakesh PW-12, Brajesh Kumar Sharma PW-13, Dr. Geeta Rani Gupta PW-14 and Dr. Prashant

Kumar Jain PW-15 while the defence produced two witnesses namely Ramprasad DW-1 and Kumal Prasad DW- 2.

11. Appellant No.1 in his statement recorded under section 27 of Evidence Act admitted that he himself set the deceased on fire due to some dispute.

12. Learned trial Judge after marshalling the evidence recorded finding of guilt and convicted and sentenced the appellants as detailed supra.

13. Learned counsel for the appellants has raised the following grounds in support of his contentions:

(i) Learned counsel for the appellants attacking the dying declaration Ex. P-21 submits that the same is not in question and answer form. It is submitted that there is no certification on Ex. P-21 that the dying declaration was read over to the deceased after being written and what was the basis for arriving at the satisfaction by the doctor that the deceased was capable to give dying declaration.

(ii) It is further submitted that Dr. Prashant Kumar Jain PW-15 did not mention the pulse rate, blood pressure, temperature, heart beat in the endorsement made by him on the dying declaration. If a person suffers 80% burn injuries, his/her blood pressure becomes low and the person

becomes unconscious. Hence, the trial Court has erred in law by relying upon the said dying declaration.

(iii) It is also submitted that there is a marked contradiction between the testimonies of PW-15 Dr. Prashant Kumar Jain and PW-13 Dr. Brajesh Kumar. Dr Prashant Kumar Jain (PW-15) on one hand admitted in his statement that he made endorsement after recording of statement of deceased but since no opinion was taken by him before recording of dying declaration, there is no endorsement available prior to commencement of recording of the so-called dying declaration while Dr. Brajesh Kumar PW-13 in Para 6 of his statement stated that he asked the deceased at the time of recording of her statement and she orally replied that she is able to give her statement and therefore in this factual background, it is submitted that recording of dying declaration was impossible and thus a doubt is cast at the very existence of dying declaration by terming it to be a manufactured document to embellish and strengthen the prosecution story, which was otherwise untenable.

(iv) Neither family members of deceased nor Nirale Bhai (PW-1) and Asif Khan (PW-2) have supported the story of prosecution.

14. Learned counsel for the State supported the impugned judgment of conviction and sentence and submitted that there is no infirmity in the impugned judgment of conviction and sentence and findings

recorded by the trial Court do not require any interference by this Court. Hence prayed for dismissal of the appeal.

15. We have heard learned counsel for rival parties and also perused the record of the trial court.

16. The entire prosecution case hinges upon the dying declaration. It is trite law that conviction can be based solely on dying declaration if it is true and inspires confidence.

17. The Apex court in the case of **Atbir Vs. Government of NCT of Delhi reported in (2010) 9 SCC 1**, has culled out the following principles to be kept in view while dealing with a case based upon dying declaration:

“(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

18. Testing the present case on the anvil of the above law laid down by the Apex court in the case of **Atbir (supra)** it is noticed that dying deescalation of deceased (Ex.P/21) was recorded by the Executive Magistrate at the time when she was brought in a burnt state at the Community Health Centre Lateri wherein the deceased clearly stated that the appellant No.1 husband of deceased was arguing with her and asking for money to drink liquor which request was declined by her and enraged by her response, the appellant No.1-husband of deceased poured kerosene over her and set her on fire resulting into the deceased suffering burn injuries and when she was burning her father-in-law and mother-in-law shut the door of the house. The said dying declaration was recorded by Shri Brajesh Kumar Sharma, Executive Magistrate (PW-13) on 21.04.2008 at 3:30 pm. which bears certification of the doctor that the deceased was conscious during recording of statement. Ex.P/21 more or less contains clear allegation against the appellants about the commission of the offence punishable

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under section 302 of IPC. The said dying declaration Ex.P/21 is reproduced in toto as follows:-

” कथन

दिनांक 21.04.2008 समय 3:30 PM
स्थान शासकीय चिकित्सालय लटेरी

नाम – सूरज भाई उम्र 25 वर्ष पत्नी रामबाबू जाति – हरिजन पिता गंगाराम सिरौंज पति का धंधा – कारीगरी।

मैं शपथ पूर्व कहती हूँ। मेरे पति शराब पी के लड़ता है। मुझसे शराब को पैसे माँगे मेरे मना करने से मुझे मारा पीटा मेरी सास ने कहा कि पैसा क्यों नहीं दे देती मेने पैसा नहीं दिये तो मेरे ऊपर तेल डालकर आग लगा दी सा-ससुर भी थे। बाहर की सॉकर लगाकर चले गये। कुछ देर बाद मेरे पति आये सॉकर खोलकर मेरे ऊपर पानी डाला। मेरे अस्पताल ले जाने को कहा तो कही घुमाकर वापिस घर ले आया। आज मेरी बहिन सुनीता बाई को बुलवाया मेरी बहिन अस्पताल लेकर आई जो इलाज करवा रही है। मेरे ससुर का नाम बिहारी है। सास का नाम पुलिया बाई है।

Note: बयान लेने के दौरान मरीज पूरी तरह से होशो हवाश में था।”

19. Dr. Prashant Kumar Jain (PW-13) has proved the said dying declaration and testimony of this witness could not be discredited by the defence in cross-examination.

20. The trial court further found that the dying declaration Ex.P/21 does not show any contradiction. Essentially and substantially the allegation contained in Ex.P/21 clearly implicate the appellants.

21. The trial court has discussed the said dying declaration in detail in the impugned judgment and has also taken into account various decisions of the Apex Court and after weighing the evidence on record has found the dying declaration to be trustworthy and beyond any pale of doubt.

22. The said dying declaration having been proved and having been recorded after following pre-requisites which render a particular dying

declaration admissible in evidence, implicates the appellants exclusively in no uncertain terms and beyond all reasonable doubts for the murder of deceased-Sooraj Bai.

23. It is true that family members of deceased have not supported the story of prosecution but looking to the clinching evidence on record in shape of dying declaration implicating the appellants which is duly supported by the Dehati Nalishi lodged by the deceased herself and evidence of Brajesh Kumar Sharma, Executive Magistrate (PW-13) and Dr. Prashant kumar Jain (PW-15), the same is of no avail to the appellants.

24. In view of the aforesaid, the appellants have been rightly convicted u/S. 302 I.P.C., for life imprisonment with fine as enumerated in para 51 of the impugned judgment, which in the considered opinion of this Court warrants no interference.

25. Consequently, the appeal has no merit and therefore is **dismissed.**

26. Appellant No.1- Rambabu Ahirwar is in jail while appellant No.3- Puniya Bai is on bail, she is directed to surrender before the trial Court to serve remaining jail sentence on or before 07.03.2022, failing which the trial Court shall be at liberty to issue arrest warrant against her.

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(G.S. AHLUWALIA)
JUDGE

(DEEPAK KUMAR AGARWAL)
JUDGE

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