

**HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**  
**DIVISION BENCH : HON'BLE THE CHIEF JUSTICE SHRI**  
**HEMANT GUPTA AND HON'BLE SHRI JUSTICE ALOK VERMA**  
**Criminal Appeal No.194 / 2006**

Gopal s/o Bundichand Dhobi

Vs.

State of Madhya Pradesh

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Shri Avinash Sirpurkar, learned counsel for the appellant.

Shri Umesh Gajankush, learned counsel for the respondent/State.

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**J U D G M E N T**

**(Delivered on 28/04/2017)**

**Per : Alok Verma, J.**

The appellant stands convicted under Section 498-A and 302 IPC and sentenced to 3 years rigorous imprisonment and fine of Rs.1,000/- under Section 498-A IPC and life imprisonment and fine of Rs.1,000/- under Section 302 IPC with default stipulation by a judgment dated 19/11/2005, passed by Additional Sessions Judge, Ujjain in Sessions Trial No.252/2004.

**2)** This criminal appeal is filed challenging the aforesaid judgment of conviction and sentence by the sole appellant Gopal s/o Bundichand Dhobi.

**3)** The prosecution story in brief was that deceased Santoshbai was wife of the present appellant. The relationship between the couple was not very cordial. It is alleged that the

present appellant used to beat her and treat her with cruelty. He also left her about four years prior to the incident and it is also alleged that about 10 to 15 days prior to the incident, he brought her back to his house. It is further alleged that he used to doubt her character. On the date of incident i.e. on 24/07/2004 at about 04.00 a.m. when the deceased was at home of the present appellant, he poured kerosene on her and put her on fire. The deceased sustained about 95 superficial burn injuries on her body. She was shifted to District Hospital Ujjain and admitted to burn unit, where, she succumbed to her burn injuries on 31/07/2004.

**4)** Learned counsel appearing for the defence mainly challenged the reliance placed by learned trial court on dying declaration Ex.-P/17. According to him, when her mother Kalabai (PW/12) was intimated about the incident, she went to the hospital along with one advocate and other persons and on their advice, she tutored the deceased to implicate the present appellant falsely. He pointed out that mother of the deceased – Kalabai (PW/12) in para 5 of her statement stated that when she received intimation about the incident, she called one Advocate, whom she named as Suhail Advocate and other persons Vijay Naik and Rajju Bhaiya. With them she went to the hospital. She took an advice from the advocate regarding further course of action but she denied that she gave her statement, as suggested by the Advocate.

**5)** On the basis of this part of statement, learned counsel for the defence tried to raise a suspicion in respect of dying declaration.

**6)** Learned counsel appearing for the respondent/State

vehemently opposed the submissions made by learned counsel for the appellant and submitted that immediately after the deceased was shifted to the hospital and admitted in the burn unit, dying declaration was recorded. He pointed out that the deceased was examined by Medical Officer at 08.40 a.m., while the incident took place at 08.00 a.m. Within 40 minutes of the incident, she was examined by doctor, and thereafter, at 10.20 a.m., her dying declaration was recorded.

7) With a view to see whether the dying declaration Ex.-P/17 was doubtful or whether it could be relied for placing conviction of the present appellant, we have gone through the statements of various prosecution witnesses. The first witness examined by prosecution is Ibrahim Joseph (PW/1), the staff nurse, who admitted the deceased in the burn unit of District Hospital. She turned hostile and did not support the prosecution story. She resiled from her statement under Section 161 Cr.P.C. Ex.-P/1. Radha Chouhan (PW/2) is a neighbour, where the present appellant along with the deceased was residing at the time of incident. She specifically stated in her statement that when she asked the deceased how she sustained the burn injuries, she told that present appellant burnt her. Similarly, Manju Sharma (PW/3) is also a neighbour. He along with Mohd. Siddique (PW/5) reached on the spot hearing the cries of deceased. They saw the deceased sitting on the floor in burnt condition and there they both asked her how she sustained burn injuries and she narrated to them that the present appellant poured kerosene on her and put her on fire. Geetabai (PW/4) is land-lady of present appellant, who also supported the prosecution story stating

that the deceased told her that present appellant poured kerosene on the deceased and put her on fire. Dr. Ravindra Shrivastava (PW/8) examined her at District Hospital, where she was shifted immediately after the incident at 08.40 a.m. and he stated in his statement that the deceased told him that the present appellant burnt her in her house and this fact was mentioned by him in his report EX.-P/8. Dr. N.K. Sharma (PW/23) prepared the report Ex.-P/11. According to him, he was called by Station In-charge Kotwali Ujjain and he was requested by the Station In-charge to certify, whether the deceased was conscious and was in a condition to give her statement. He examined the deceased at 10.15 a.m. on 24/07/2004 and found her conscious and in a fit state to give her statement, and thereafter, before this witness the Executive Magistrate recorded her dying declaration Ex.-P/17.

**8)** The Executive Magistrate – P.L. Malwiya (PW/21) stated that he took her statement at 10.30 a.m. He also stated that he obtained certificate from the doctor that she was in a fit condition to give her statement. He denied that mother and brother of the deceased told the deceased to give her statement and implicate the present appellant. He only admitted that some of the family relatives were present with the deceased. However, no specific question was asked, whether mother of the deceased was present there or not. Similarly, no question was put to Dr. N.K. Sharma (PW/23), before whom the statement was recorded, whether mother of the deceased was present there or not and also no questions were put to Sohail Khan (PW/18), who was the Advocate and as per defence counsel, on his advice, the present appellant was falsely

implicated by the deceased. However, in cross-examination of this witness, no question was asked as to when they reached the hospital, whether they talked to the deceased prior to recording of her statement by the Executive Magistrate.

**9)** Under this situation, there appears to be no evidence available to disbelieve or doubt the dying declaration recorded by the Executive Magistrate Ex.-P/17. There is no evidence to show that the deceased was tutored either by her mother or by Sohail Khan (PW/18) or by any other person, who allegedly reached the hospital with mother of the deceased, and therefore, the arguments raised by learned counsel for the defence have no force and not acceptable.

**10)** Thus, we find that this appeal has no force and is liable to be dismissed and **dismissed** accordingly. The conviction and sentence passed by learned Additional Sessions Judge are affirmed. The seized property being valueless be destroyed.

Certified copy as per rules.

**( Hemant Gupta )**  
**Chief Justice**

**(Alok Verma)**  
**Judge**