

HIGH COURT OF MADHYA PRADESH AT JABALPUR

Cr.A. No.1357/1995

Laxmi alias Chhotelal

Vs.

State of M.P.

**Present : Hon'ble Shri Justice S.K. Gangele, Judge
Hon'ble Smt. Justice Anjuli Palo, Judge**

Shri Sandeep Kumar Dubey, Amicus curiae appointed through the High Court Legal Service Committee for the appellant.

Shri A.N. Gupta, learned GA for the respondent/State.

Whether approved for reporting

Yes/no

Law laid down :- Conviction can be solely based on dying declaration of the deceased.

Significant paragraphs :-

22 & 23

JUDGMENT
(12/02/2018)

Per : Smt. Anjuli Palo, J. :-

1. This appeal has been filed by the accused-appellant against the judgment dated 29.9.1995 passed by 1st Additional Sessions Judge, Mandla in Sessions Trial No.73/1990 whereby the appellant has been convicted under Section 302 of Indian Penal Code and sentenced for life imprisonment and fine of Rs.500/- with default stipulation.

2. It is not in dispute that appellant is the brother-in-law of the deceased. At the time of incident, wife of the deceased was living with the appellant.

3. In brief, the prosecution case is that on 18.2.1990 at about 10.00 PM at the house of appellant at village Bamni, Chhotelal (since deceased) came to take his wife Meerbai, but she was not willing to go with him. The appellant came with Chhotelal at his house. One Ramadhar Patel also came there. When Chhotelal and Ramadhar were sleeping, appellant came there and took a stove. Thereafter he poured kerosene oil on Chhotelal and set him on fire. On the same day, at about 11.45 pm Dr. A.K. Jain, Assistant Surgeon of Primary Health Centre recorded dying declaration of the deceased and sent the information to police station, Bamni District Mandla. Thereafter FIR was lodged by the deceased. After some time Chhotelal died. Charge sheet has been filed against the appellant under Section 302 of IPC.

4. Learned trial Court conducted trial and framed charge under Section 302 of IPC against the appellant. Appellant abjured guilt and pleaded that he has been falsely implicated by police.

5. Learned trial court after relying on the dying declaration of deceased and other evidence, found that the deceased was ablazed by the appellant after pouring kerosene oil on him. Medical evidence also supported the prosecution story. Hence, the appellant

has been convicted under Section 302 of IPC and sentenced for life imprisonment and fine of Rs.500/- with default stipulation.

6. The appellant challenged the impugned judgment on the ground that the learned trial Court has wrongly convicted him ignoring the probability of death of deceased by fire accident while cooking fish on stove. The defence story is supported by Dilip Kumar (PW2) and other witnesses. Bhulaiya (PW14) and Sukhram (PW5) also deposed that they heard about above fire accident of the stove. Motive also not established by the prosecution. The FIR not named against the appellant. The sister of the appellant initiated proceedings under Section 498-A of IPC against her husband (deceased), therefore, the appellant has been falsely implicated in this case without any evidence on record. Hence, the appellant prayed that he be acquitted from the charges levelled against him by setting aside the impugned judgment.

7. Learned Govt. Advocate has vehemently opposed the submissions of the appellant and contended that the learned trial Court has rightly held the appellant guilty for committing murder of the deceased. There is sufficient material on record against him. Hence, the appeal be dismissed.

8. We have heard learned counsel for the parties at length and perused the record.

9. It is not in dispute that appellant and deceased both were close relatives. The appellant is the brother-in-law of the

deceased. The prosecution story and the evidence of the witnesses also indicate that at the time of the incident, relationship between the deceased and his wife Meerabai was not cordial. At the time of incident, she was residing with her brother (appellant). When deceased came there to take her, Meerabai was not willing to go with him. It is presumed that the appellant was also annoyed with the deceased therefore it cannot be held that there is no motive to commit the offence. This fact has not been denied that at the time of incident, the appellant was present at the house of the deceased.

10. The conviction of the appellant is mainly based on the dying declaration of the deceased. In the case of **Shama Vs. State of Haryana [(2017) 11 SCC 535]**, wherein the Apex Court has held that

“One of principles, which is always to be kept in mind, while examining dying declaration of deceased, is that “a man will not meet his Maker with a lie in his mouth” - In absence of any kind of infirmity or/and suspicious circumstances surrounding execution of dying declaration, once it is proved in evidence in accordance with law, it can be relied on for convicting accused even in absence of corroborative evidence, but with a rule of prudence, that it should be so done with extreme care and caution.”

Ex.P7 is the FIR, which was lodged by the deceased against the appellant. Similarly his dying declaration was recorded by

Dr.N.L. Jain, Assistant Surgeon. As per statement of the deceased, kerosene oil was kept in the stove. After taking the stove, appellant opened lid of the tank of the stove then poured kerosene oil on the deceased and set him on fire.

11. The story about the defence that, deceased died in a fire accident while he cooking fish is not reliable. Police seized the stove in working condition and its lid separately from the stove tank vide seizure memo Ex.P1, Ex.P2,Ex.P3 and Ex.P4. (PW11). As per spot map Ex.P5, at place-B stove was kept and its lid was lying at place-D, which established that lid of stove was opened and thereafter kerosene oil poured on the deceased and he was set on fire. Proceedings of seizure of above articles conducted by Naveen Kumar S.O. and preparation of spot map has not been challenged. The police had not seized any food article or cooked fish from the spot. These circumstances do not reveal any possibility of fire accident.

12. Dr. S.P. Dubey (PW6) conducted autopsy of the deceased and found particles of kerosene oil all over the body of the deceased. His hair were totally burnt which established that kerosene oil was poured on the deceased. His whole body was burnt including face, chest, stomach, hands, legs, back about 90%. Burn injuries were sufficient to cause his death. He died due to shock because of aforesaid burn injuries caused to him.

In such a situation dying declaration of the deceased cannot be disbelieved.

13. Dr. N.L. Jain (PW7) medically examined the deceased at the first instance at about 11.50 am on 18.2.1990. He also deposed that at that time deceased was conscious and was able to speak. Deceased narrated all the things happened with him to Dr. N.L. Jain (PW7) and thereafter he recorded dying declaration Ex.P8.

14. The Hon'ble Supreme Court in the case of **Jose S/o Edassey Thomas Vs. State of Kerala [(2013) 14 SCC 172]** has held as under :-

“Dying declaration recorded by doctor – Fitness of state of declarant's mind considering she was taken to hospital with 92% burn injuries – Doctor recorded and signed the dying declaration – He denied suggestion that because of 92% of burn injuries, patient may not be conscious – Doctor stated that the state of mind of injured was absolutely clear and she was speaking fluently – Held, there cannot be any thumb rule that a person sustaining a particular percentage of burn injuries would not be in a position to give any declaration – Other witnesses also deposed that she was in a fit state of mind – Medical report produced by Hospital also reflects that she was conscious and oriented – Fact, that doctor had not endorsed about condition of declarant at the time of dying declaration, held inconsequential.”

15. In the present case no witness has been examined to rebut the testimony of Dr. N.L. Jain and dying declaration Ex.P7 and

Ex.P8. The father of the deceased Sukhram (PW5), brother of deceased Prahalad (PW8) have established that deceased was conscious and was able to speak properly. Just after the incident, they reached on the spot. The deceased told them that the appellant set fire on him. They also saw him in burnt condition and extinguished the fire and brought the deceased to the hospital. They corroborated the testimony of each other.

16. In view of the aforesaid, we do not find any material omission and contradiction in the testimony of aforesaid witnesses.

17. Ramadhar (PW2) deposed that on the date of incident, he accompanied the deceased from village Tikarwar to his house. They consumed liquor at the house of the deceased. When they were sleeping, Ramadhar heard voice of family members of deceased Chhotelal. He woke up and saw that the deceased was ablaze. He had not stated against the appellant, may be for the simple reason that he belonged to the appellant's Village Tikarwara.

18. After considering the entire records, we find that dying declaration of the deceased are reliable which directly involve the appellant for committing crime against the deceased.

19. In the present case dying declaration was recorded by Dr. N.L. Jain only on that ground alone the prosecution case cannot

be disbelieved. The deceased also told about the cause of his death to the family members Sukhram and Prahad. Their testimony also supported the prosecution case.

20. In the case of **State of M.P. Vs. Dal Singh 2013 (1) 14 SCC 159** the Apex Court has reiterated the law of dying declaration as under :-

“The law does not provide who can record a dying declaration, nor is there any prescribed, form, format, or procedure for the same – The person who records a dying declaration must be satisfied that the mark is in a fit state of mind and is capable of making such a statement – Moreover, requirement of a certificate provided by a doctor in respect of such state of deceased, is not essential in every case.

21. Herein in the present case dying declarations of the deceased are credible and corroborated by other evidence, therefore, in our opinion, learned trial Court has rightly convicted the appellant on the basis of dying declarations of the deceased.

22. It is settled law that dying declaration can form sole basis of conviction without corroboration when it is voluntary true reliable free from suspicious circumstances recorded in accordance with the practice and principle as stated by the Supreme Court in cases of **Sukanti Moharan Vs. State of Orissa [(2009) 9 SCC 163, Raju Devade Vs. State of**

Maharashtra [(2016) 11 SCC 673] and Krishan Vs. State of Haryana [(2013) 3 SCC 280].

23. In the case of **State of Maharashtra Vs. Nishar Ramzan Sayyed [(2017) 5 SCC 673]** it was held if the medical officer gave his opinion about the conscious mental status of the deceased while he stated that the cause of death is burn injuries, spot panchanama was fully proved by Investigating Officer, whereby recovery of stove, kerosene oil, separate lid, etc. was proved; and there is no eye witness of the incident, even then prosecution case depends upon the dying declaration of the deceased. In the present case, the offence has been proved beyond reasonable doubt that the appellant had poured kerosene oil on the deceased and set him on fire.

24. In light of the above discussions and the principles laid down by the Apex Court in the aforesaid case, we find that the learned trial Court has rightly held the appellant guilty for committing murder of her brother-in-law. After considering the entire evidence on record, we are inclined to accept the findings of learned trial Court against the appellant.

23. In view of the foregoing discussions, we find that there is no case to interfere in the findings of the learned trial Court. This appeal deserves to be dismissed. Hence, it is dismissed.

24. The appellant is on bail, his bail bonds are cancelled and he is directed to surrender before the concerned trial Court within 15 days to undergo the remaining sentence, failing which the trial Court shall take appropriate action against appellant for suffering the remaining sentence.

25. Copy of this judgment be sent to the trial Court for information and compliance alongwith the record immediately.

(S.K. GANGELE)
JUDGE

(SMT. ANJULI PALO)
JUDGE