

HIGH COURT OF MADHYA PRADESH JABALPUR

Cr. A. No.2344/1997

State of Madhya Pradesh

Vs.

Ramesh Kumar

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

Whether approved for reporting: Yes/No

Name of counsel for the parties:

Shri A.N. Gupta, Govt. Advocate for appellant/State.

Ms. Saraswati Badgaiya, counsel for the respondent as amicus curiae.

Law laid down:-

Significant Paragraphs:-

J U D G M E N T
(15.03.2018)

Per : Smt. Anjuli Palo, J.

The State has challenged the impugned judgment dated 11.08.1997 passed by Sessions Judge, Bhopal in S.T. No.172/1996, whereby the accused/respondent has been acquitted from the charges under Sections 302 & 498-A of the IPC.

2. Charge sheet has been filed against the respondent for committing murder of his wife Lajwanti by pouring kerosene oil and ablaze her on 05.02.1996

3. The learned trial Court acquitted the respondent on the grounds that the prosecution has failed to prove that the respondent had poured kerosene oil on his wife and set her on fire. Learned trial Court held that death of the deceased was purely accidental and not homicidal.

4. Heard and perused the record.

5. It is not in dispute that deceased Lajwanti Bai was wife of the respondent. Their marriage was solemnized four months ago. The deceased unnaturally died due to burn injuries at the respondent's house.

6. Prosecution case is based on three dying declarations of the deceased. There is no direct evidence of the incident on record. Learned trial Court considered all the dying declarations of the deceased at paragraph 23 of the impugned judgment. The learned trial Court expressed that there were two dying declarations (one) Ex.P/1 written by A.K. Shobhne (PW-2) Naib Tahsildar and (two) Ex.P/11 written by Dr. J.K. Chourasiya (PW-10), both are inconsistent. Thus, the trial Court has not relied on the dying declaration Ex.P/1.

7. To the contrary, Dr. Pankaj Gupta (PW-5) stated that on 06.02.1996, he was posted as R.S.O. at Hamidia Hospital, Bhopal in the Casualty Ward and on that day Lajwanti Bai aged about 20 years was referred to Burn Ward while recording the history she told him that she was set on fire by her husband by pouring kerosene oil on 05.02.1996 at about 10:15 p.m. At that time, smell of kerosene oil was coming out from her body and her condition was critical.

8. A.K. Shobhne (PW-2) Naib Tehsildar, reached at Hamidia Hospital on 06.02.1996 at about 01:00 a.m. He has stated that as informed

by police, he reached at the hospital and recorded the dying declaration of Lajwanti Bai vide Ex.P/1. Dr. Pankaj Gupta (PW-5) corroborated the testimony of Shri A.K. Shobhne (PW-2). Dying declaration Ex.P/1 is consistent with the testimony of Dr. Pankaj Gupta (PW-5) in which the deceased narrated him that the respondent set her on fire by pouring kerosene oil.

9. Learned counsel for the respondent has submitted that in the dying declaration (Ex.P/1), there is no endorsement made by the doctor at the top that patient has given her statement in her senses and was fit to give statement. At the bottom of dying declaration, it has not been written by doctor that, the patient remained in her senses while giving the statement. Doctor who has signed at Ex.P/1 has not been examined. It is alleged by the respondent that the said "dying declaration" recorded by Shri Shobhne (PW-2) cannot be said to be free from doubt.

10. Learned Govt. Advocate has drawn our attention on the testimony of Dr. J.K. Chourasiya (PW-10), who has stated that initially the deceased was brought to the Casualty Ward on 5.2.1996. He has stated that the deceased caught fire at the time of cooking food by stove. It is apparently clear that the dying declaration Ex.P/1 and testimony of Dr. Chourasiya also have inconsistency in similar way. The testimony of Dr. Pankaj Gupta (PW-5) and Dr. J.K. Chourasiya (PW-10) had substantial contradictions. Therefore, the dying declaration recorded by Shri A.K. Shobhne (PW-2) does not inspire confidence.

11. It cannot be ignored that Dr. J.K. Chaurasiya (PW-10) is a prosecution witness but was not declared hostile and has not challenged the

aforesaid part of his testimony. This part of his evidence is binding on the prosecution as held by the Apex Court in **Javed Masad and others Vs. State of Rajasthan AIR 2010 SC 979**. Similarly in the case of **Ashok Kumar Vs. State of M.P. I.LR (2011) MP 2532**, it was held as under:-

“Doctor, who wrote the tehrir for Dying declaration and Naib Tahsildar, who recorded the Dying declaration stating that deceased told them that she got burnt by stove while preparing the food- Both are Government Servants and are independent witnesses- Nothing in cross examination to disbelieve them- Held- The trial Court committed illegality in not placing reliance on testimony of these witnesses.”

12. Dr. Pankaj Gupta (PW-5) further stated that in the case history of injured Lajwanti Bai, she narrated that she was set on fire by her husband but the case history was not produced in the Court. Further that, the deceased and her husband/accused had love affair two years before their marriage and the parents of girl/deceased were not in favour of their marriage. Chuhadmal (PW-6) father and Smt. Asha (PW-1) mother of the deceased clearly deposed, that they were not in visiting terms and neither they went to the house of deceased. Similarly, Lajwanti Bai did not visit the house of her parents. Their relations were strained. So that, learned trial Court has rightly held that possibility cannot be ruled out that the deceased could have been tutored. Therefore, the statement of Dr. Pankaj Gupta (PW5) do not help the prosecution.

13. With regard to oral dying declaration, the trial Court has found that the testimony of Smt. Anita (PW-2) is contradictory with other

witnesses. Smt. Anita (PW-2) is the real sister of the deceased and she comes under the category of interested witnesses. Normally, it can be easily presumed that she wanted to punish the respondent for the incident. It may be accidental because learned trial Court held that the prosecution has failed to prove the charge under Section 498-A of the IPC against the respondent. Their marriage was solemnized without the consent of parents of the deceased. Because of the same, their relationship with the respondent was strained. Hence, without corroboration from other evidence, the testimony of close relatives of the deceased cannot be relied upon.

14. It is important to mention here that Chuhadmal (PW-6) father of deceased in his cross-examination at para 15 has admitted that, he had demanded Rs.50,000/- from the respondent and his relatives. The conduct of Chuhadmal (father of deceased) is surprising. His daughter was burnt and it was alleged that the respondent set her ablaze. The question arises that for what purpose, he was demanding Rs.50,000/- from the respondent. It means that the statements of close relative of deceased are not true. It is a very strong circumstance to create reasonable doubt about the story narrated by them.

15. In this regard, the testimony of Dr. J.K. Chourasiya (PW-10) also create doubt on the prosecution case. He stated that when the deceased was brought to Hamidia Hospital, the appellant also came with her for treatment. His both hand were burnt as shown in his MLC report (Ex.P/12). This circumstance establish that the appellant was present on the scene of occurrence and he tried to save the deceased.

16. Dr. P.R. Dhurve (PW-4) clearly explained that during

postmortem of the deceased, he did not find the hairs of the deceased burnt. It indicates that incident may be accidental or may be suicidal.

17. We find that on the same set of evidence, there are two views possible. One is in the favour of appellant and other one is against the appellant. In such condition, this Court cannot opt other view, which is against the appellant.

18. This Court finds that the findings of the learned trial court are based on proper appreciation of evidence on record. No perversity or illegality has been found in the opinion of learned trial court. In the case of **Gemini Bala Koteshwara Rao and Ors Vs. State of Andhra Pradesh**

[AIR 2010 SC 589], wherein it has been held that:-

“It is open to the High Court to reappraise the evidence and conclusion drawn by the trial Court, but only in case when the judgments of the trial Court is stated to be perverse. The Apex Court explained the word “perverse” to mean against weight of evidence. Even though two views are possible as an appellate court this Court should not reverse the judgment of acquittal mere because the other view was possible.”

19. In the case of **K.Prakashan Vs. P.K. Surendran [(2008) 1 SCC 258]** and **T. Subramanian Vs. State of Tamil Nadu [(2006) 1 SCC 401]**, wherein it has been held that:-

“When the judgment of trial Court was neither perverse nor suffered from legal infirmity or non-consideration or misappropriation of evidence on record. As an appellate court this Court cannot not reverse the judgment of acquittal mere because the other view was possible. The prosecution cannot be said to have proved its case beyond reasonable doubt.”

20. In our considered view, the learned trial Court has duly appreciated the entire prosecution evidence in the right perspective. In case of **Madathil Naranananand Ors. Vs. State of Kerla and another, 2017 Cri.L.J. 732, Arulvelu and Another Vs. State, AIR 2009 SC (Supl.) 2887 and in case of Bindeshwari Prasad Singh @ B.P. Singh and ors. Vs. State of Bihar and another, AIR 2002 SC 2907**, the Supreme Court has held that in the absence of any manifest, illegality, perversity or miscarriage of justice, the order of acquittal passed by the trial Court may not be interfered by the High Court in exercise of its appellate jurisdiction. The aforesaid view has further been reiterated by the Supreme Court in cases of **Rathinam @ Rathinam Vs. State of Tamil Nadu and another, (2011) 11 SCC 140 and Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, (2010) 13 SCC 657.**

21. In the light of aforesaid principles laid down by the Supreme Court and as discussed above by us, this appeal has no merit and is hereby dismissed.

(S.K. Gangele)
Judge

(Smt. Anjuli Palo)
Judge