

HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.2173/2006

Appellant : Ramanda @ Yashvant Gond S/o
Nirbhaya Singh Gond, Aged about
24 years, R/o Thakur Mohalla
Bankhedi, P.S. Bankhedi, District
Hoshangabad (MP)

-Vs-

Respondent : State of Madhya Pradesh, through
Police Station Bankhedi, District-
Hoshangabad (M.P)

Present : **Hon. Shri Justice S.K. Gangele**
Hon. Shri Justice Anurag Shrivastava

None for the appellant.

Shri Prakash Gupta is appointed as amicus curiae to appear on behalf of appellant.

Shri Akshay Namdeo, Government Advocate for the respondent/State.

Whether approved for reporting : Yes/No

J U D G M E N T
(05.09.2017)

Per Anurag Shrivastava, J

This appeal under Section 374(2) of Cr.P.C. has been preferred by the appellant/accused against the judgment and conviction dated 30.08.2006, passed by Additional Sessions Judge, Sohagpur, District Hoshangabad, in Sessions Trial No.236/2005, whereby the appellant has been convicted for commission of offence under Section 302 of IPC with fine of Rs.500/-, with default stipulation.

2. The case of prosecution in brief is that the deceased Prahlad Gond was residing in Thakur Mohalla Bankhedi. In

the intervening night of 07.05.2005 and 08.05.2005 deceased was sleeping in the courtyard of his house. His son Pramod was also sleeping in the courtyard. At about 1:00 O' clock in the night, the appellant Ramanda came there, he was keeping a kerosine lamp in his one hand and a steel jug on other hand. He demanded Rs.50/- from the deceased to consume liquor. When deceased refused to give him money, the appellant poured the kerosine oil on the his person and dragged him to the Chabutra and set him ablaze. Seeing the incident, the Pramod, the son of deceased and other relatives douse the fire by pouring water on the deceased. The appellant ran away from the spot. Deceased went to police station Bankhedi with his son Pramod and daughter Lata Bai, and lodged the FIR Ex.P-4. Police registered the offence and sent him for MLC and treatment to community health center Bankhedi. He was given first aid there, his dying declaration was recorded by Naib Tahsildar and thereafter, he was referred to Jabalpur for further treatment. The deceased was admitted in the medical college, Jabalpur where he expired in the night. A Marg was registered in police station Gadha, Jabalpur and inquest was conducted. The dead body of deceased was sent for postmortem. The offence under Section 302 of IPC has been registered against the appellant at police station Bankhedi and after completion of investigation, charge sheet has been filed against the appellant.

3. The trial Court has framed the charges for the offence punishable under Sections 302 of IPC. The appellant abjured guilt and pleaded innocence. The prosecution has examined 13 witnesses in its support whereas the appellant has not examined any witness in his defence.

4. Learned trial Court, on appreciation of evidence adduced by the parties, arrived at the conclusion that the appellant has demand the Rs.50/- for consuming liquor from the deceased and on his refusal, he set him ablaze by pouring kerosine oil. Thus, the trial Court held the appellant guilty for commission of offence punishable under Sections 302 of IPC and sentenced him as mentioned herein above.

5. Heard arguments of learned counsel for the parties and perused the record.

6. The defence has not challenged the death of deceased Prahlad due to burn injuries sustained by him during the intervening night of incident. The appellant has given suggestion in his defence that "at the time of incident, the deceased was sitting in a water tank situated in the courtyard of his house, a kerosine lamp was also lit there. Accidentally, the lamp fell on the deceased and he sustained injuries due to fire caused by lamp". The doctor S.K. Chandaiya (PW-12) deposed that on 08.05.2005, he had examined the deceased Prahlad Singh at about 1:40 am in the community health center Bankhedi and found about 80% superficial first to second degree burn on his body. After giving first aid, he referred him to medical college Jabalpur. The statement of doctor is corroborated by MLC report Ex.P-10 given by him.

7. The deceased has expired in the night in medical college, Jabalpur. Doctor Abhishek Singh (PW-6) deposed that he had performed the postmortem of deceased in medical college Jabalpur and found superficial and deep burn injuries on the person of body of deceased. The burn of all

over the body. The cause of death was shock due to burn injuries. The statement of doctor is corroborated by postmortem report Ex.P-3. The appellant has not challenged the findings of postmortem given by doctor in cross examination. Therefore, the trial Court relying upon the MLC report and postmortem report of the deceased has rightly arrived at the conclusion that the death of deceased Prahlad was caused due to burn injuries. The death is homicidal.

8. Now the question arises whether the appellant has set the deceased on fire? In this regard, the prosecution has examined Pramod (PW-1) Lata Bai (PW-2) and Munna (PW-4) as eye-witnesses of the incident. Pramod and Lata Bai are children of deceased and Munna is his son-in-law, who were present on the spot at the time of incident.

9. Pramod (PW-1) deposed that at the time of incident, in the night about 12-1:00 am, he was sleeping in the courtyard of his house. His father Prahlad was also sleeping near him, the appellant Ramanda came there. He was keeping kerosine lamp in his one hand and a jug of kerosine oil in his other hand. Appellant demanded Rs.50/- from the deceased to consume liquor when deceased refused to give him money, appellant poured the kerosine oil on the deceased and set him ablaze by kerosine lamp. Seeing in the incident, Pramod tried to catch the appellant, but he ran away. Pramod tried to douse the fire and he also sustained burn injuries. His sister Lata, brother-in-law Munna and other witnesses Munna Mistri, Sukkhu etc also arrived on the spot. He took his father to police station Bankhedi where his father lodged the FIR. The police sent him and his father for treatment to CHC Bankhedi, where Naib Tahsildar had recorded the statement

of his father. The doctor had medically examined the witness and his father, thereafter his father was referred to medical college Jabalpur for further treatment. His father has expired in the night during treatment in the medical college Jabalpur.

10. In cross examination, this witness Pramod has not made any substantial contradictory statement and has denied the suggestions given by defence that the deceased was burnt due to accidental fire. The statement of Pramod is duly corroborated by his sister Lata Bai (PW-2) and brother-in-law Munna (PW-4).

11. Lata Bai (PW-2) and Munna (PW-4) deposed that at the time of incident, they were sleeping in *Dahlan (Porch)* of the house, their father Prahlad was sleeping in the courtyard. The appellant came there and demanded Rs.50/- for consuming liquor from Prahlad. When Prahlad refused to give him money, the appellant poured the kerosine oil on him and set him ablaze by a kerosine lamp, which he was carrying in his hand. Lata, Munna and other witnesses doused the fire and took the deceased Prahlad to police station where he had lodged the report.

12. Other prosecution witness Munna (PW-3) deposed that on hearing hue and cry from the house of deceased and on seeing the fire, he arrived on the spot. He had seen the appellant running away also. The deceased told him that the appellant has demanded Rs.50/- from him for consuming liquor and set him ablaze.

13. The statements of Pramod, Lata Bai and Munna are also corroborated by the FIR Ex.P-4 lodged by the deceased

himself and dying declaration Ex.P-8 recorded by Naib Tahsildar Sudheer Kumar Jain in the community health center Bankhedi.

14. N.P. Parihar, ASI, police station Bankhedi (PW-8) deposed that on 08.05.2005 at about 1:30 am in the night, the deceased Prahlad came in police station Bankhedi and lodged the FIR Ex.P-4 against the appellant. He was brought by his son Pramod, daughter Lata Bai, son-in-law Munna Lal and neighbour Sukhlal. He had recorded the statement of deceased and above witnesses and sent the deceased for medical examination and treatment to CHC, Bankhedi. In the hospital, the dying declaration of deceased was also recorded by Naib Tahsildar on request of police. In cross examination, this witness has categorically deposed that at the time of lodging of report and in the hospital, the deceased Prahlad was fully conscious and capable of making statement.

15. Naib Tahsildar Sudheer Kumar Jain (PW-11) deposed that on 08.05.2005 at about 1:55 am, he had reached to CHC Bankhedi and recorded the dying declaration Ex.P-8 of Prahlad. As the hands of Prahlad were burnt therefore, he had obtained the thump impression of him in the dying declaration. In cross examination, PW-11 further deposed that the deceased was fully conscious and capable of making statement. His mental and physical condition and fitness was certified by the doctor also. This fact is corroborated by Dr.S.K. Chandaiya (PW-12) who deposed that he had examined the deceased at the time of recorded of dying declaration and found him fit to give statement. He had certified this fact on the dying declaration Ex.P-8 at C to C and D to D. Since deceased was alive for about 18 hours

after recording of dying declaration, he was conscious during his admission in medical college hospital Jabalpur, therefore it can be believed that at the time of recording of dying declaration he was fully conscious and the dying declaration made by him is reliable.

16. In his dying declaration the deceased has clearly stated that the appellant had set him ablaze. This dying declaration is fully corroborated by statements of eye witnesses Pramod (PW-1) Lata Bai (PW-2) and Munna (PW-4). Although they are close relatives of deceased but merely on this ground there testimonies can not be doubted. The incident occurred in the court yard of the house of deceased during summer season. It is quite natural that in the late hours of night the deceased and other members of family were sleeping in the courtyard. The presence of these witnesses in the house is natural and believable. In the late hours of night we can not expect the presence of any independent witness on the spot.

17. It is settled law that merely because witnesses are closely associated with or interested in the deceased, their evidence does not necessarily require corroboration before acting upon. Evidence of interested witness is to be considered with care and caution. Evidence of a witness cannot be discarded merely on the ground of his being an interested witness as a witness normally would not leave the real culprits and rope in innocent persons.

18. The Hon'ble Apex Court in the case of **Bhajju v. State of M.P.** [(2012) 4 SCC 327] in para 22 observed that :-

“The law is very clear that if dying declaration has been recorded in accordance with law, is reliable and

gives cogent and possible explanation of occurrence of events, then the DD can certainly be relied upon by the Court and could form the sole piece of evidence resulting in the conviction of the accused”.

19. In view of aforesaid discussion in our considered opinion the trial Court has rightly relied upon the dying declaration made by the deceased and also the evidence of prosecution witnesses Pramod (PW-1) Lata Bai (PW-2) and Munna (PW-4) and arrived at the conclusion that the appellant has committed murder of the deceased by setting him ablaze. The trial Court on proper appreciation of evidence held the appellant guilty for commission of offence punishable under section 302 of IPC and sentenced him accordingly.

20. Thus, the appeal is devoid of merit and is hereby **dismissed**.

(S.K. Gangele)
Judge

(Anurag Shrivastava)
Judge

Rashid