

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Criminal Appeal No.	1038 of 2007
Parties Name	Sevaklal vs State of M.P.
Bench Constituted	Hon'ble Shri Justice S.K. Gangele & Hon'ble Smt. Justice Anjuli Palo
Judgment delivered by	Hon'ble Shri Justice S.K. Gangele
Whether approved for reporting	Yes/No
Name of counsels for parties	For appellant: Shri R.S. Shukla, Amicus Curiae. For respondent/State: Shri S.D. Khan, Government Advocate.
Law laid down	
Significant paragraph numbers	

(J U D G M E N T)

Pronounced on : 30.01.2018

1. Appellant has filed this appeal against the judgment dated 18.04.2007 passed in Sessions Trial No.205/2006. The trial Court held the appellant guilty for commission of offence punishable under Section 302 of Indian Penal Code and awarded sentence of life imprisonment alongwith fine of Rs.1000/.

2. Prosecution case in brief is that relationship between the deceased and the appellant was not cordial. The appellant used to quarrel with the deceased and used to beat her. On the date of incident, at around 11 O'clock in the night, the deceased, who was the wife of the appellant, was sleeping in the house. The

appellant came there. He abused the deceased. Thereafter, he had taken the deceased at the corner of the room and sprinkled kerosene on her and ablaze her. After hearing cry, other family members came on the spot. The deceased was taken to the Police Station Shahgarh. She lodged report on 10.08.2006. Thereafter, she was sent to the government hospital. Her dying declaration was recorded. Deceased died after seven days of the incident. Police conducted investigation and filed charge-sheet against the appellant. The appellant abjured the guilt and pleaded innocence. The trial Court, after trial, held the appellant guilty for commission of offence and awarded sentence as mentioned above in the judgment.

3. Learned Amicus Curiae for the appellant has submitted that the trial Court committed error in convicting and sentencing the appellant. Prosecution witnesses have not supported the case. If the prosecution case is accepted as it is, then also, the offence committed by the appellant would fall under Section 304 Part I of IPC because the incident had happened all of a sudden. There was no intention of the appellant to kill the deceased. Hence, the sentence of the appellant be awarded as already undergone.

4. Learned Government Advocate has submitted that the prosecution has established the guilt of the appellant and the

trial Court has rightly convicted the appellant and awarded proper sentence.

5. Prosecution witnesses, even the family members of the deceased, turned hostile. Conviction of the appellant is based on the dying declaration of the deceased.

6. **PW-2 Chhigga**, is the father of the deceased. He deposed that the deceased was living with the appellant. After marriage when she used to come to him, she did not make any complaint about the accused. I do not know how the deceased was died.

PW-3 Bandu is the brother of the deceased. He deposed that the deceased committed suicide because the appellant did not send her to her father's house. **PW-4 Anari** is neighbour of the deceased and the appellant. He deposed that at around 11

O'clock in the night I was at my house. I had heard a sound 'दौड़े-दौड़े'. Thereafter, I went on the spot alongwith other persons. I

asked from the deceased that how she catch fire. She told me that she herself set her ablaze. **PW-5 Raju** is nephew of the

deceased. He deposed that after hearing cry, I reached on the spot and inquired from my aunty/deceased that how she catch fire. She told me that the appellant did not send her to her father's house and she herself set her on fire. Thereafter, I went

to the field to call my uncle. **PW-8 Mihilal** is another neighbour. He also turned hostile. He deposed that when I reached at the

house of the appellant, the deceased told me that she herself set her ablaze because the appellant did not send her to her father's house.

7. **PW-6 Dr. R.K. Chourasiya** examined the deceased after the incident. He deposed that the deceased was admitted in the hospital on 10.08.2006. She received burn injuries. Total percentage of burn injuries was 61% i.e. on face 9%, on neck 1%, on chest (internal) 9%, on chest (external) 9%, on the backside 9%, on stomach 6%, on right hand 9%, on left hand 9%, on right leg 3% and on left leg 6. I submitted a report, which is Ex.P7. Naib Tehsildar came to the hospital to record dying declaration of the deceased. I gave a certificate that deceased was in a fit condition to give dying declaration, which is mentioned on Ex.P8 and I signed the same. Deceased was conscious and she was able to give dying declaration.

8. **PW-7 Anil Talaiya** is the Naib Tehsildar, who recorded dying declaration of the deceased. He deposed that I received request from the Station House Officer Incharge to record dying declaration of the deceased. I reached at Community Health Center, Bijawar and recorded dying declaration of the deceased. She was fit and conscious to give dying declaration. She stated that at around 11 O'clock in the night, there was a quarrel between her and her husband and in that event, the appellant

poured kerosene on her and ablaze her by igniting the matchbox. She further stated that at that time there was no other person present on the spot. When she cried, her jeth, jethani and jethout came there and they had taken her to the hospital. Dying declaration is Ex.P8. I signed the same.

9. **PW-10 Dr. N.K. Barsana** conducted postmortem of the deceased. He deposed that there were infected and cognitive burn injuries on the person of the body of the deceased. Cause of death was the burn injuries suffered by the deceased.

10. **PW-11 Bandiram Prajapati** is the Patwari, who prepared spot map, which is Ex.P13 and I signed the same.

11. **PW-14 B.S. Yadav** is the Investigating Officer. He deposed that the deceased had come to the police station alongwith the family members. She told me that the appellant ablaze her by pouring kerosene on her. On the information of the deceased, first information report Ex.P17 was recorded. I signed the same. Thereafter, deceased was sent to the hospital. I prepared spot map Ex.P19 and signed the same. I seized petticoat, matchbox and kerosene bottle from the spot vide seizure memo Ex.P20. I signed the same. He further deposed that on 10.08.2006 I recorded statement of the deceased, which is Ex.P21. Deceased stated in the aforesaid statement that the present appellant ablaze her. Thereafter, I sent a request to Naib

Tehsildar, Bijawar for recording dying declaration of the deceased and recorded the dying declaration. Appellant was arrested on 31.08.2006 by arrest memo Ex.P22. I signed the same.

12. The family members of the deceased and the neighbours, who reached at the spot, deposed that the deceased told them that she herself ablaze her because the appellant refused to send her to her father's house. Those witnesses have been declared hostile. The statements of the witnesses are contrary to their statements recorded by the police under Section 161 of Cr.P.C.

13. There are three documents, which are said to be the statements of the deceased. Ex.P17 is the first information report. It was recorded on 10.08.2006 at around 8:30 in the morning. The incident had taken place in the night of 09.08.2006. It is mentioned in the FIR that the appellant used to quarrel with the deceased. When the deceased was sleeping, appellant came there and he had ablaze her by pouring kerosene and igniting fire by using a matchbox. Thereafter, other family members i.e. son of jeth-Raju and jeth-Moti etc. came there. Dying declaration is Ex.P8. It was recorded by Naib Tehsildar on 10.08.2006 at around 10:15 AM. The doctor certified the fact that the deceased was in a fit condition to give the dying declaration. She stated in the aforesaid dying declaration that in

the night at around 11 O'clock, there was a quarrel between me and my husband and, thereafter, my husband had poured kerosene on me and ignited fire by a matchbox. When I cried, other family members i.e. jeth, jethani and jithout came there. They saved me and they had taken me on a tractor to the hospital. She further stated that there was often quarrel between me and my husband. The statement of the deceased under Section 161 of the Cr.P.C. was recorded by the Investigating Officer, which is Ex.P21. In the aforesaid statement it is mentioned that the present appellant ablaze the deceased.

14. It is well settled principle of law that a dying declaration is admissible in evidence and conviction can be based on dying declaration if it inspires confidence of the Court. The Apex Court in the case of ***Pawan Kumar vs State of Himachal Pradesh, (2017) 7 SCC 780*** has held as under in regard to admissibility of dying declaration:

27. [In Atbir v. Government of NCT of Delhi \(2010\) 9 SCC 1](#), the Court, after noting earlier judgments, has laid the following guidelines with regard to admissibility of the dying declaration:-

“22. The analysis of the above decisions clearly shows that:

(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.”*

28. *Recently, in Gulzari Lal (supra), the Court confirmed the conviction by placing reliance on the statement made by the deceased and recorded by the Head Constable on the basis of the principles stated in Laxman (supra). The analysis in the said case is as follows:-*

“23. In reference to the position of law laid down by this Court, we find no reason to question the reliability of the dying declaration of the deceased for the reason that at the time of recording his statement by the Head

Constable Manphool Singh (PW 7), he was found to be mentally fit to give his statement regarding the occurrence. Further, evidence of Head Constable Manphool Singh (PW 7) was shown to be trustworthy and has been accepted by the courts below. The view taken by the High Court does not suffer from any infirmity and the same is in order.

24. The conviction by the High Court was based not only on the statements made by Maha Singh (deceased) but also on the unshattered testimony of the eyewitness Dariya Singh (PW 1) and the statement of the independent witness Rajinder Singh (PW 11).”

29. Tested on the anvil of the aforesaid authorities, we find that there is no reason to disregard the dying declaration. The Head Constable has recorded it as narrated by the deceased and the deceased has also written few words about the accused. The same has been recorded in presence of the doctor, PW-10, who had appended his signature. A certificate of fitness is not the requirement of law. The trial court has been swayed away by the burn injuries. It is worthy to note that there cannot be an absolute rule that a person who has suffered 80% burn injuries cannot give a dying declaration. In Vijay Pal v. State (Government of NCT of Delhi (2015) 4 SCC 749), the Court repelled the submission with regard to dying declaration made by the deceased who had sustained 100% burn injuries stating that:-

“22. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same. In the instant case, PW 1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the appellant that he has been falsely implicated because his money was deposited with the in-laws and they were not inclined to return, does not also really breathe the truth, for there is even no suggestion to that effect.

23. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbhai Raval v. State of Gujarat, (1992) 4 SCC 69 wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.”

15. In the present case, dying declaration of the deceased was recorded by Naib Tehsildar, who is an Executive Magistrate. There is a certificate of the doctor that the deceased was in a fit condition to give the dying declaration. Evidence of both these witnesses has been recorded before the Court. There is FIR, which was lodged by the deceased herself at the police station. There is also statement of the deceased given to the Investigating Officer under Section 161 of Cr.P.C. Hence, in our opinion, conviction of the appellant on the basis of dying declaration by the trial Court is proper.

16. Now the question is, what offence the appellant has committed? The incident had taken place in the night at around 11 O'clock on 09.08.2006. The deceased was died on 17.08.2006 i.e. after a period of seven days from the incident. The doctor PW-10, who performed postmortem of the deceased, deposed that the deceased died due to complexity of burn

injuries. The deceased received 60% burn injuries, as per the evidence of the doctor PW-6, who examined the deceased immediately after the incident. The Apex Court in the case of ***Maniben vs State of Gujarat, (2009) 8 SCC 796*** has held that the offence committed by the accused would fall under Section 304 part II if deceased died after 8 days after the incident of burning on account of septicemia, it reads as under:

“20. There is also evidence on record to prove and establish that the action of the appellant to throw the burning tonsil was preceded by a quarrel between the deceased and the appellant. From the aforesaid evidence on record it cannot be said that the appellant had the intention that such action on her part would cause the death or such bodily injury to the deceased, which was sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, in our considered opinion, the case cannot be said to be covered under clause (4) of Section 300 IPC. We are, however, of the considered opinion that the case of the appellant is covered under Section 304 part II IPC.”

17. A Division Bench of this Court in the case of ***Ganesh Ram vs State of Madhya Pradesh, 2010 (2) M.P.H.T. 350*** has held as under:

“Due to some minor quarrel in between the husband and wife with regard to preparation of tea, the appellant/accused without any intention poured kerosene on the wife deceased Pinki and thereafter set her on fire, due to which, she sustained 50 to 55 percent burn injuries and died near about 5 days after the incident due to complication of the burn injuries and in such circumstances, the appellant/accused can be convicted for the offence punishable under Section 304 Part I of IPC and not under Section 302.”

18. In the present case, the deceased in her dying declaration recorded by the Naib Tehsildar stated that there was a quarrel between her and her husband and in that event, the appellant had poured kerosene on her and ablaze her. She received 60% burn injuries. She died due to complexity of the burn injuries.

19. Looking to the aforesaid evidence on record, in our opinion, the offence committed by the appellant would fall under Section 304 part I of IPC. The appellant is in jail since 01.09.2006. He has completed more that 11 years of actual jail sentence. Hence, in our opinion, it would be just and proper if the appellant be awarded a sentence as already undergone.

20. Consequently, Appeal filed by the appellant is partly allowed. His conviction and sentence awarded by the trail Court is hereby set aside. The appellant is convicted for commission of offence punishable under Section 304 part I of IPC. He is awarded a sentence of already undergone. He is in jail. He be released forthwith, if he is not required in any other case.

(S.K. Gangele)
Judge

(Smt. Anjuli Palo)
Judge