

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**JUSTICE SUJOY PAUL  
&  
JUSTICE PRAKASH CHANDRA GUPTA**

**ON THE 20<sup>TH</sup> OF DECEMBER, 2022**

**CRIMINAL APPEAL No. 1086 of 2012**

**BETWEEN :-**

1. DEEN DAYAL S/O MULLA  
DHEEMAR, AGED ABOUT 22  
YEARS.
2. RAJESH KUMAR S/O  
MAKUNDI LAL RAJAK, AGED  
ABOUT 30 YEARS

**BOTH R/O DARGWAN P.S.  
BALDEOIGARH, DISTRICT  
TIKAMGARH (M.P.)**

**....APPELLANTS**

***(BY SHRI R. S. PATEL - ADVOCATE )***

**AND**

**STATE OF MADHYA PRADESH  
THROUGH POLICE STATION  
BHAGWA, CHHATARPUR, DISTT.  
CHHATARPUR (M.P.)**

**.....RESPONDENT**

***BY SHRI YOGESH DHANDE – GOVT. ADVOCATE***

.....  
*This appeal coming on for hearing this day, JUSTICE SUJOY  
PAUL passed the following:*

## J U D G M E N T

This Criminal appeal filed under Section 374(2) Cr.P.C. challenges the judgment dated 16.04.12 passed in Session Trial No. 142/2010 by learned First Additional Sessions Judge, Chhatarpur whereby appellants were held guilty for committing offence under Section 302 /34 of Indian Penal Code (IPC) for committing murder of Gajadhar @ Ajay and are directed to undergo sentence of life imprisonment with fine of Rs. 500/- with default stipulation.

2. Brief facts necessary for adjudication of this matter are that as per prosecution story, on 26.03.2010 Gajadhar @ Ajay aged about 30 years was at home situated near Bada Talab, Muhalla Ghuwara, District Chhatarpur. Gajadhar was sleeping at round 10:00 a.m. Appellants Rajesh Baretha and Deen Dayal Dheemar came to his house and poured kerosene oil over his body and set him ablaze. Gajadhar awake when kerosene oil was put on his body. Deen Dayal lit match stick and set him on fire. As per the story, nobody else was present in the home. Gajadhar screamed and ran away from the place of incident in order to get some help from neighbors. Imarti, Pragi, Gana, Maya and Kadori Lal helped him and extinguished the fire. Injured Gajadhar himself approached the Police Station Ghuwara to lodge the report but police asked him to go to Tikamgarh for treatment and further advised to lodge FIR at Tikamgarh itself. Gajadhar was taken to hospital by his brother Ram Bharose Rajak (PW-1) and his wife Rama (PW-3) and Hanumat (PW-6). The Statement / dying declaration (Ex.P-5), of Gajadhar was recorded by Vijay Kumar Richhariya, Executive Magistrate (PW-7). As per the case of prosecution,

Dr. B. Kathail (PW-15) certified that Gajadhar is in fit state of health to give dying declaration. In the dying declaration (Ex.P-5), Gajadhar clearly stated that on 26.03.2010 at around 10:00 a.m., Rajesh and Deendayal set him ablaze by pouring kerosene and by using a match stick. During the course of treatment, Gajadhar died on 07.04.2010 because of burn injuries arising out of incident of 26.03.2010. The information of death was given to Police Station Gopalganj, Distt. Sagar by Dr. Sunil K. Saxena (PW-11). Accordingly, a 'merg' intimation (Ex.P-18) was recorded by Sushma Shrivastava, ASI (PW-13). After completing other formalities, Dr. R.K. Khare (PW-12) conducted the post mortem and prepared his report.

3. In turn, offences punishable under Section 302 / 34 of IPC were registered against the appellants. During the investigation, 'site map' was prepared by Vikram Bhojak (PW-9) in the presence of Rambharose. Certain incriminating material were recovered from the scene of crime. The appellants were arrested, the incriminating material were sent for examination to FSL, Sagar. In due course, a charge-sheet was filed for aforesaid offences before JMFC, Bada Malhara, District Chhatarpur. The learned JMFC committed the case to the Court of Session for trial. Both the appellants abjured their guilt and prayed for conducting a complete trial.

4. Learned court below framed three points for its determination and recorded statements of 15 prosecution witnesses and 2 defence witnesses.

5. After recording evidence and hearing the parties, the court below passed the impugned judgment and held the appellants as guilty.

**Contentions of Appellants :**

6. Shri R.S. Patel, learned counsel for the appellants submits that the impugned judgment is based on oral dying declarations given to Ram Bharose Rajak (PW-1) and Rama (PW-3) and written dying declaration (Exhibit P-5) recorded by Vijay Kumar Richhariya, Executive Magistrate (PW-7). The incident had taken place on 26.03.2010 whereas Gajadhar died on 07.04.2010. Learned counsel for the appellants submits that the dying declaration is not trustworthy, if examined and compared with the statements of Ram Bharose Rajak (PW-1) and Rama (PW-3). Lastly, Shri Patel submits that there was no 'motive' on the part of appellants nor there existed any enmity on the strength of which it can be said that appellants committed crime of murder.

**Stand of Prosecution :**

7. Shri Yogesh Dhande, learned Government Advocate supported the case of prosecution and impugned judgment. He, after placing reliance on the judgment of Supreme Court in **Sham Shankar Kankaria vs. State of Maharashtra; (2006) 13 SCC 165** urged that the Apex Court laid down broad parameters to examine the validity and genuineness of a dying declaration. If dying declaration (Exhibit P-5) is examined on the parameters laid down by Supreme Court in the present case, no fault can be found in the dying declaration.

8. Learned counsel for the parties confined their arguments to the extent indicated above.

9. We have heard the parties at length and perused the record.

10. The Court below considered the dying declaration and other relevant material in this regard by devoting almost 10 paragraphs from Para 18 to 29 in the impugned judgment. As jointly urged by learned counsel for the parties, the solitary question before this Court for determination is whether the Court below was justified in basing its decision on oral and written dying declarations and whether in absence of ‘motive’ and previous ‘enmity’, the appellants deserve any benefit?

11. The dying declaration of Gajadhar was recorded by Vijay Kumar Richhariya, Executive Magistrate (PW-7). A plane reading of dying declaration shows that Dr. B. Kathail (PW-15) examined Gajadhar and recorded his finding that Gajadhar was conscious and fit for recording his statement. The dying declaration (Exhibit P-5) was proved before Court by Vijay Kumar Richhariya, Executive Magistrate (PW-7) and Dr. Kathail (PW-15). No amount of argument is advanced to show any infirmity in this dying declaration. The cross-examination of Dr. B. Kathail (PW-5) and Vijay Kumar Richhariya, Executive Magistrate (PW-7) could not cause any dent to their statements.

12. We have also examined the dying declaration (Ex.P-5) in juxtaposition to the oral dying declaration given to Ram Bharose Rajak (PW-1) and Rama (PW-3). A conjoint reading of all the three makes it clear that there is no material contradiction or infirmity in the written dying declaration Exhibit (P-5) and oral dying declarations given to Ram Bharose Rajak (PW-1) and Rama (PW-3).

13. The Apex Court in the case of **Sham Shankar Kankaria** (supra) opined as under:-

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja v. State of M.P.* [(1976) 3 SCC 104]);

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See *State of U.P. v. Ram Sagar Yadav* [(1985) 1 SCC 552 and *Ramawati Devi v. State of Bihar* [(1983) 1 SCC 211]);

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See *K. Ramachandra Reddy v. Public Prosecutor* [(1976) 3 SCC 618]);

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg v. State of M.P.* [(1974) 4 SCC 264]);

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh v. State of M.P.* [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 102])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath v. State of U.P.* [(1981) 2 SCC 654]);

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455]);

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769])

(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152]);

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390]);

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700] )”

**(Emphasis Supplied)**

**14.** In no uncertain terms, the Apex Court made it clear that there is no rule of thumb that dying declaration must be corroborated. In the instant case, the incident had taken place at the residence of Gajadhar when he was alone. Thus, corroboration was even otherwise not possible.

**15.** The Apex Court laid emphasis that dying declaration must be true and voluntary and in that event it can be accepted without corroboration. As per the findings given above, no doubt was created on dying

declaration during the course of hearing by learned counsel for appellant. After scrutiny of Ex.P-5, we find no reason to hold that dying declaration was untrue or involuntary.

16. We have carefully examined and scrutinized dying declaration and unable to hold that it was outcome of any tutoring, prompting or imagination. It was proved beyond doubt that Gajadhar was in a fit state to make the declaration.

17. Accordingly, in our opinion, the necessary ingredients for accepting a dying declaration are available in the instant case, and no fault can be found in the judgment of Court below where written dying declaration and oral dying declarations were accepted by Court below.

18. So far existence of 'enmity' and 'motive' is concerned, it is trite that in every case of direct evidence it is not necessary to establish the motive or enmity. If the crime is heinous and otherwise attracts necessary ingredients for committing offence under Section 302 of IPC, merely because motive and enmity is not established, appellant will not get any brownie points. In this case kerosene oil was poured on Gajadhar when he was sleeping. Then he was set on fire. Dying declaration is direct evidence to establish the same. This evidence which is worthy of credence is sufficient and question of motive is insignificant. [See : 1999 (8) SCC 428 **Rajesh Govind Jagesha Vs. State of Maharashtra**].

19. In our opinion, the prosecution could establish its case before the Court below beyond reasonable doubt. The Court below appreciated the evidence on the anvil of Evidence Act. The Court below assigned

justifiable reasons in the judgment and reached to a plausible conclusion.  
We find no infirmity or illegality in the impugned judgment.

**20.** Resultantly, the appeal fails and is hereby **dismissed**.

**(SUJOY PAUL)**  
**JUDGE**

**(PRAKASH CHANDRA GUPTA)**  
**JUDGE**

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