



1

CRA-1671-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN

ON THE 19th OF FEBRUARY, 2026CRIMINAL APPEAL No. 1671 of 2016*RAJVENDRA @ RAJVIND**Versus**THE STATE OF MADHYA PRADESH*

.....
Appearance:

Shri Jagat Kumar Dehariya - Advocate appointed as Amicus Curiae for appellant.

Shri Arvind Singh - Government Advocate for the respondent/State.

.....

J U D G M E N T

Per. Justice Ratnesh Chandra Singh Bisen

This criminal appeal under Section 374(2) of the Cr.P.C. has been filed by the appellant, being aggrieved by the judgment dated 12/05/2016 passed by the learned Sessions Judge, Damoh, District Damoh (M.P.) in S.T. No. 100069/2015, whereby the learned trial Court convicted the appellant under Section 302 of the IPC and sentenced him to undergo life imprisonment with a fine of Rs. 3,000/-, and in default of payment of fine, to undergo additional rigorous imprisonment for six months.

2. Learned counsel for the appellant submits that, in the present case, the prosecution story in brief is that on 11.02.2013 at 03:10 p.m.,



the deceased, Maya Bai, was admitted to District Hospital, Damoh, by her father-in-law Mitthu for treatment of burn injuries. She had sustained 100% burn injuries. During her treatment, her dying declaration was recorded by the Naib Tehsildar. She stated that her husband had an illicit relationship with one Kamla Bai. When she objected to it, the accused beat her. On 11.02.2013 at about 12:00 p.m., they had an altercation, during which the accused poured kerosene on her and set her ablaze. Her father-in-law Mitthu and neighbor Geeta Bai took her to the District Hospital. At the hospital, the police recorded a Dehati Nalishi based on her statement. The police also recorded her statement under Section 161 of the Cr.P.C. She died at about 09:30 p.m. on the same day. Thereafter, an FIR was registered under Section 302 of the IPC against the accused at Police Station Hindoriya. After investigation, a charge-sheet was filed and the accused was arrested. It is submitted that there are numerous contradictions and omissions in the depositions of the prosecution witnesses. The prosecution has failed to prove its case beyond reasonable doubt, and therefore, the benefit of doubt should be given to the accused. In these circumstances, the judgment passed by the trial Court deserves to be set aside and the appellant be acquitted of the aforesaid charge.

3. Shri Arvind Singh, learned Public Prosecutor for the State supported the judgment of conviction passed by the trial Court.

4. Heard the learned counsel for the parties.



5. From the evidence of Geeta Bai (PW-1), Darbari Basore (PW-2), and Mitthu Basore (PW-3), it is revealed that these witnesses reside near the house of the accused and the deceased. When they reached the scene upon learning of the incident, they saw a crowd gathered at the accused's house and found Maya Bai lying in a burnt condition inside the room. She was taken to District Hospital, Damoh, where she was alive at that time. These witnesses were declared hostile by the prosecution and were cross-examined with leading questions.

6. From the statement of Kamla Bai (PW-4), it is also evident that the accused's wife had suffered burn injuries and had died.

7. Basant Kumar Basore (PW-5), the brother of the deceased, stated that he received information about his sister being burned. He found her in a burnt condition at District Hospital, Damoh. His sister told him to take care of her child. On the same night at about 09:00 p.m., she passed away.

8. Bhadai Basore (PW-6), who is brother of the deceased Maya Bai, stated in his testimony that when he reached at District Hospital Damoh, his sister had already died.

9. Mahesh Mishra (PW-9) was posted as Naib Tehsildar at Tehsil Damoh on 11.02.2013, and by him, the dying declaration of the deceased Maya Bai was recorded at 4:00 PM on 11.02.2013 at the District Hospital Damoh, in which the deceased Maya Bai stated that due to her husband having an illicit relationship with Kamla Bai Basore,



there used to be fights day and night between her and the accused Rajendra, and today in the afternoon, when she objected, Rajendra poured kerosene on her and set her on fire. The dying declaration is Ex.P-13. From this witness's statement, it is also evident that before recording the statement of the deceased Maya Bai, he had examined her by the duty doctor to check her condition to give statement.

10. From the statement of Dr. Umesh Tantuvay (PW-7), it is revealed that this witness was posted as Medical Officer at the District Hospital Damoh on 11.02.2013 and on the said date at 3:10 PM, the injured Maya Bai was brought to the district hospital for treatment. On the same date, the Naib Tehsildar recorded the dying declaration of the injured Maya Bai at 4:00 PM in the women's surgical ward of the District Hospital Damoh. Before recording the statement by the Naib Tehsildar Mahesh Mishra, injured Maya Bai had been examined by him. After the examination, he noted on part-A to A of Ex.P-13 that the injured Maya Bai was fit to give the statement. The statement of the injured Maya Bai was recorded by the Naib Tehsildar in his presence.

11. From the evidence of Ramavatar Pandey (PW.13), it is revealed that this witness was posted as In-Charge at Police Chowki Bandakpur, Police Station Hindoria on 11.02.2013. Upon receiving information, he went to the women's surgical ward of the District Hospital Damoh, where injured Maya Bai orally recorded a Dehati Nalishi (Ex.P-19), in which the injured Maya stated that her husband



Rajvendra had an illicit relationship with a woman named Kamla Bai and when she objected, he used to beat her. On the date of incident, with the intention to kill her, her husband Rajvendra poured a container full of kerosene on her and set her on fire with a matchstick and fled. On the basis of Dehati Nalishi (Ex.P-19), he registered Crime No. 28/2013 under Section 307 IPC against the accused Rajvendra at Police Station Hindoria. The First Information Report is Ex.P-21.

12. Thus, from the evidence of Naib Tehsildar, Mahesh Mishra (PW-9), Dr. Umesh Tantuvay (PW-7) and Sub-Inspector Ramavatar Pandey (PW-13), it is proved that the deceased Maya Bai was admitted on 11.02.2013 in a burned condition in the Women's Surgical Ward, District Hospital Damoh, she was capable to speak and in her own dying declaration was recorded, in which she clearly stated that the accused Rajvendra had an illicit relationship with a woman named Kamla Bai and the dispute arose between the accused and the deceased Maya Bai on this account. On the date of the incident also there was a dispute between the deceased and the accused on this point and the accused poured kerosene on the deceased and set her on fire, as a result of which, the deceased's entire body was burnt. The deceased was admitted in District Hospital Damoh in a burnt condition, where she died during treatment.

13. As regards the argument made on behalf of the appellant that witnesses Geeta Bai (PW-1), Darbari Basore (PW-2), and Mitthu Basore (PW-3) stated in their testimonies that the deceased was not able to



speak, and therefore, the dying declaration becomes suspicious. Solely on this basis, the above argument made on behalf of the appellant is not acceptable in the context of the evidence of Naib Tehsildar Mahesh Mishra (PW-9), Dr. Umesh Tantuvay (PW-7), and Sub-Inspector Ramavatar Pandey (PW-13). Additionally, it is appropriate to mention here that from the evidence of Basant Kumar Basore (PW-5), it is revealed that when this witness reached the hospital and met his sister, there was a conversation with the deceased and the deceased told him to take care of her child. This fact proves that the deceased Maya Bai was speaking and she was in a condition to speak.

14. Khilan Singh Choudhary (PW-11) stated that he was posted as the Head Constable at Police Station Hindoria on 12.02.2013. On the said date, he had registered a Marg No.6/132 (Ex.P-17) upon presentation of a Marg No.0/15 (Ex.P-16) by Constable 125 Gayaprasad at Police Station Hindoria, due to death of deceased Maya Bai during treatment. Sub-Inspector Ramavatar Pandey (PW-13) prepared the dead body panchayatnama (Ex.P-9) on 12.02.2013 and sent the deceased's body for postmortem. Dr. Umesh Tantuvay (PW-7) conducted the postmortem of the deceased Maya Bai and according to this witness's opinion, the cause of death of the deceased was cardio-respiratory arrest due to 100% burns. The postmortem report is Ex.P-14.

15. Surendra Kumar Dwivedi (PW.12) stated that he was posted as Sub-Inspector at Police Station Hindoria on 12.02.2012 and the



statements of witnesses Geeta Bai, Mitthu Basore, and Darbari were recorded by him on 12.02.2013. On 13.02.2013, he had inspected the spot as pointed out by witness Mitthu and Darbari and prepared the spot map (Ex.P-2). From the place of incident, one kerosene container containing about half a liter of kerosene, pieces of burnt saree and blouse from which kerosene smell was emanating, pieces of four broken bangles, one matchbox and half-burnt matchsticks were seized by him in the presence of witnesses and seizure memo (Ex.P-3) was prepared. On 18.02.2013, the statements of witnesses Lalaram, Kailash, Magan Basore, Kashiram, Kadori Lal, Bhagwandas, Munna Basore, Dhuria, Kamala Bai and Shakun Bai were recorded as per their version.

16. Lakhan Lal Shrivastava (PW-10) stated that on 19.10.2013, he was posted as Inspector at Police Station Hindoria and on said date, during the investigation, he had recorded the statements of witnesses Bhadai Basore, Ramrani and Basant Basore as per their version. The accused was absconding and after the accused was arrested, supplementary challan proceedings were conducted by him.

17. From the evidence of None Singh Thakur (PW-15), it is revealed that after conducting postmortem of the deceased Maya Bai Basore, the Doctor had handed over him two sealed container containing hair and skin of the deceased Maya Bai, which he took and seized at Police Chowki Bandakpur, the seizure memo is Ex.P-15. The same fact is corroborated by the statement of Heeralal Rajak (PW-8) as he was this witness who seized the material mentioned in Ex.P-15 from None



Singh Thakur (PW.15) and prepared the seizure memo (Ex.P-15).

18. Pooran Lal Athya (PW-14) stated that on 28.10.2013, he was posted as Patwari in Patwari Halka No. 39/53, Village Bandakpur, and on the said date, he went to the scene of incident and prepared the spot map (Ex.P-4) in the presence of witnesses.

19. Dr. Abhay Jain (PW-16) was posted as Medical Officer at District Hospital Damoh on 11.02.2013. This witness admitted that on the said date, Maya Bai was admitted at 3:10 PM in 100% burned condition and she died on the same date at 9:25 PM. The intimation/information (Ex.P-28) regarding death of deceased was sent by him to the Police Station In-Charge, Kotwali, Damoh.

20. M.L. Choudhary (PW.17) was posted as Assistant Sub-Inspector at Police Station Kotwali, Damoh on 11.02.2013. From this witness's statement, it is revealed that on the said date, Compounder Bhagwandas from District Hospital Damoh had presented intimation (Ex.P-28) regarding death of deceased Maya Bai before him, based on which he recorded Marg No. 0/13 under Section 174 Cr.P.C., which is Ex.P-16.

21. Thus, upon analyzing the entire evidence presented by the prosecution in this case, the prosecution witnesses Geeta Bai (PW.01), Darbari Basore (PW-2), and Mitthu Basore (PW-3), who reached the place of incident, have supported only the fact that the deceased was



found in a burnt condition and was taken to the District Hospital Damoh, but not supported on other points. The prosecution's case rests solely on the dying declaration of the deceased Maya Bai.

22. Thus, considering the dying declaration in this case, the deceased Maya Bai was admitted to the District Hospital Damoh on 11.02.2013 at around 3:10 PM in a burnt condition for treatment. To record the dying declaration of the deceased Maya Bai, Naib Tehsildar Mahesh Mishra (PW.09) went in the evening on 11.02.2013 and recorded the dying declaration from 4:00 PM till 4:15 PM. The deceased stated that her husband Rajvendra had an illicit relationship with another woman Kamla Bai, due to which, there used to be fighting day and night between the deceased and the accused. On the date of the incident also, on the same issue, the accused poured kerosene on the deceased and set her on fire. Dr. Umesh Tantuvay (PW-07) has certified that the injured/deceased Maya Bai was in a fit condition to give the dying declaration and was speaking. Similarly, Sub-Inspector Ramavatar Pandey (PW-13) recorded the Dehati Nalishi (Ex.P-19) at the District Hospital based on the information given by the deceased, in which the deceased Maya Bai stated that the accused Rajvendra had poured kerosene on her and set her on fire, as a result of which, she burnt. No fact emerged in the cross-examination of the above three witnesses, namely Dr. Umesh Tantuvay (PW-07), Mahesh Mishra (PW-9) and Ramavatar Pandey (PW-13), on the basis of which, disbelieve could be placed on their statements.



23. The cause of the incident is also clear from the dying declaration that the accused had an illicit relationship with a woman named Kamla Bai, due to which, there were disputes between the deceased Maya Bai and the accused, and due to this dispute, the accused poured kerosene on the deceased Maya Bai and set her on fire.

24. The Hon'ble Supreme Court in case of *Purshottam Chopra and another Vs. State (Government of NCT of Delhi)*, reported in (2020) 11 SCC 489, has held that a dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

25. Additionally, it is noteworthy that after committing the incident, the accused absconded and he was arrested after almost more than two years from the incident. This fact also reflects the conduct of the accused. Kumari Divya Bansal (DW-1), who is the daughter of the deceased and the accused, admitted in paragraph 4 of her cross-examination that her grandfather Mitthu took her mother to the hospital and her father fled from the place of occurrence. This fact also proves that the incident was committed by the accused.

26. In view of aforesaid, we are of the considered view that the trial Court has properly appreciated the evidence on record and has



committed no illegality, perversity, or material irregularity in recording the conviction and sentence, therefore, no interference is warranted in the impugned judgment.

27. Accordingly, this appeal, being devoid of merit, deserves to be and is hereby **dismissed**.

28. Record of the trial Court be sent back.

(VIVEK AGARWAL)
JUDGE

(RATNESH CHANDRA SINGH BISEN)
JUDGE

sp/-