Dashrath Sahu Vs State Of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: Dec. 2, 2022

Acts Referred: Code Of Criminal Procedure, 1973 â€" Section 161, 374(2)
Indian Penal Code, 1860 â€" Section 34, 302
Evidence Act, 1872 â€" Section 32

Hon'ble Judges: Sanjay K. Agrawal, J; Rakesh Mohan Pandey, J

Bench: Division Bench

Advocate: Saloni Verma, Ashish Tiwari

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

(1) This criminal appeal filed by the appellants-accused under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and

order of sentence dated 16.05.2013, passed by the Court of learned Sessions Judge, Kabeerdham (Kawardha) in S.T. No.51/2012 (State of CG vs.

Dashrath Sahu and another), whereby they have been convicted for offence under Section 302 read with Section 34 of IPC and sentenced to undergo

life imprisonment with fine of Rs.1,000/- and, in default of fine, additional rigorous imprisonment for 06 months.

(2) The case of the prosecution, in brief, is that on 29.05.2011, at about 09:00 AM in the morning, within the ambit of Police Station Pandariya at

Village Kapadah, in the fields of Sunderlal, the accused-appellant herein in furtherance of their common object poured kerosene oil on Mohanlal

(hereinafter referred to as Ã¢â‚¬Å“deceasedÃ¢â‚¬) and set him ablaze, due to which he suffered deep burn injuries and died and, thereby, committed the

offence under Section 302 of IPC.

(3) The admitted and undisputed facts in the present case are: Jamuna Bai (PW-02) and Parsadi (PW-03) are are mother and father of deceased-

Mohanlal; Mamta (DW-01) is second wife of deceased-Mohanlal; the first marriage of deceased- Mohanlal was solemnized with one Rukhmani and

out of said wedlock they have one son, but as Rukhmani deserted deceased- Mohanlal and left him, he solemnized his second marriage with Mamta

(DW-01) and out of said wedlock they were having two children (sons); accused-appellants, namely, Santosh and Dashrath are brother and father of

Mamta (DW-01) and, accordingly, deceased- Mohanlal is son-in-law of appellant No.01-Dashrath and Ã¢â‚¬Ëœ JijaÃ¢â‚¬â„¢ of appellant No.2- Santosh. It is

further admitted and undisputed fact that 08 daysÃ¢â‚¬â„¢ prior to the date of incident, Mamta (DW-01) had gone to his paternal house i.e. at Village

Kapadah, where the incident in question took place.

(4) The further case of the prosecution, in nutshell, is that: on 29.05.2011 at about 02:15 deceased- Mohanlal was admitted in Primary Health Center,

Pandariya in burnt condition and, with regard to said fact, Dr. P.L. Kurre (PW-10) sent information to Police Station Pandariya vide MLC information

(Ex.P/14); further, Dr. P.L. Kurre (PW-10) medically examined the deceased and gave MLC report (Ex.P/15), whereby he referred deceased to

CIMS, Bilaspur for better treatment; meanwhile, Naib Tehsildar, namely, Shivkumar Yadav (PW-04) recorded dying declaration of the deceased-

Mohanlal vide Ex.P/02, whereby it is alleged that deceased stated that accused-appellants No.01 & 02 i.e. Dashrath and Santosh both assaulted him,

poured kerosene oil and set him ablaze; on 03.06.2011, during the course of treatment Mohanlal died; thereafter, the dead-body of deceased was sent

for postmortem examination and in the postmortem examination report (Ex.P/20A), conducted by Dr. R.K. Upadhyay (PW-13), it was opined that the

cause of death of deceased is due to burn injuries and septicemia; thereafter, marg. intimation was also registered vide Ex.P/04; from the place of

incident, vide seizure memo (Ex.P/05), burnt clothes, soil and motor-cycle were seized, which were sent for FSL examination, but no FSL report has

been brought on record by the prosecution; thereafter, statement of witnesses were recorded and, after due investigation, the police filed charge-sheet

in the Court of Judicial Magistrate First Class, District Pandariya (CG) and, thereafter, the case was committed to the Court of Sessions. The

appellants/accused abjured their guilt and entered into defence by submitting that they are innocent and have been falsely implicated.

(5) The prosecution in order to prove its case examined as many as 15 witnesses and exhibited 24 documents, whereas the appellants-accused in

support of their defence has examined 01 witness (DW-01), namely, Mamta and exhibited 03 documents.

(6) The learned trial Court after appreciating the oral and documentary evidence available on record proceeded to convict the appellants for offence

under Section 302 read with Section 34 of IPC and sentenced them as mentioned herein-above, against which this appeal has been preferred by the

appellants-accused questioning the impugned judgment of conviction and order of sentence.

(7) Ms. Saloni Verma, learned counsel appearing for the appellants submits that the learned trial Court is absolutely unjustified in convicting the

appellants for offence under Section 302 read with Section 34 of IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. She

submits that so far as appellant No.02- Santosh is concerned, deceased has not named him as an assailant in commission of crime in question nor any

overtact, pouring kerosene oil and setting ablaze to deceased has been alleged against him, therefore, the conviction of the appellant No.02 for offence

under Section 302/34 of IPC is liable to be set aside. She also submits that so far as appellant No.01 is concerned, there is no legal admissible

evidence available against him, except the dying declaration (Ex.P/02), which does not inspire confidence, as there is no certification by any doctor

that deceased was in a fit state of mind to make said dying declaration, as such, same is suspicious document. Jamuna Bai (PW-02), who is mother of

deceased, is not a reliable witness, as she has not seen the incident. Therefore, the conviction of appellant No.01 for offence under Section 302/34 of

IPC also liable to be set aside. Hence, the present appeal deserves to be allowed and accused-appellants are liable to be discharge from the offence in

question.

(8) Per-contra, Mr. Ashish Tiwari, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the

prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. He submits that in view of dying declaration

recorded vide Ex.P/02, which is proved by Parsadi (PW-03) and Shivkumar Yadav (PW-04) and the statement of Jamuna (PW-02) the learned trial

Court has rightly convicted the appellants for offence under Sections 302/34 of IPC. Thus, the present appeal deserves to be dismissed.

(9) We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost

circumspection.

(10) The question ripped before us for consideration is whether the dying declaration recorded vide Ex.P/02 and proved by Parsadi (PW-03) and

Shivkumar Yadav (PW-04) would be relevant under Section 32 of the Indian Evidence Act, 1872, as prosecution case is solely based on said dying

declaration (Ex.P/02).

(11) At this stage, it would be appropriate to notice here Section 32 of the Indian Evidence Act, 1872, which reads thus:

Ã¢â‚¬Å“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.Ã¢â‚¬"Statements, written or verbal, of

relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot

be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves

relevant facts in the following cases:Ã¢â‚¬

(1) when it relates to cause of death.Ã¢â‚¬"When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the

transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and

whatever may be the nature of the proceeding in which the cause of his death comes into question.

xxx xxx xxxÃ¢â‚¬â€‹

(12) Further, it would be important here to quote relevant part of the dying declaration (Ex.P/02) recorded by Naib Tehsildar, namely, Shivkumar

Yadav (PW-04), which reads as under:

A careful perusal of the dying declaration (Ex.P/02) would show that same was recorded at Primary Health Center, Pandariya by Naib Tehsildar,

namely, Shivkumar Yadav (PW-04) after having been certified by him i.e. Naib Tehsildar that deceased was in fit state of mind and was conscious to

give dying declaration, but it has not been certified by any doctor available in the hospital (Primary Health Center). However, Naib Tehsildar, namely,

Shivkumar Yadav (PW-04) in his cross-examination before the Court has clearly stated that doctor was present at the time of recording of dying

declaration and he has informed him clearly that deceased is in fit state of mind to give dying declaration. As such, though it has not been certified by

any doctor in the said dying declaration (Ex.P/02), but fact remains that dying declaration (Ex.P/02) was recorded on 29.05.2011 at 04:15 PM at

Primary Health Center by the Naib Tehsildar and deceased- Mohanlal died on 03.06.2011. As per, the statement of Naib Tehsildar, namely,

Shivkumar Yadav (PW-04) that doctor was present in the hospital (Primary Health Center) where dying declaration was recorded inspires confidence

and deceased- Mohanlal was in fit state of mind while making dying declaration (Ex.P/02), there is no good reason to disbelieve the said fact that

deceased was in a fit state of mind to make dying declaration (Ex.P/02). Thus, challenge in this regard is hereby rejected.

(13) It has further been submitted on behalf of the accused-appellants that Jamuna Bai (PW-02), who is mother of deceased, has seen the incident

that two appellants poured kerosene oil on deceased and set him ablaze and consequent to said burn injuries deceased was admitted in hospital and

died during the course of treatment on 03.06.2011. On one hand, Jamuna Bai (PW-02) in Para-03 of her statement before the Court has stated that:

appellants assaulted deceased, snatched the keys of his motor-cycle and also looted the money which deceased was carrying and, thereafter,

accused-appellants poured kerosene oil on deceased, on which, deceased ran away from there and, thereafter, accused-appellants alongwith others

caught hold Jamuna Bai (PW-02) and confined her in a room, whereas Jamuna Bai (PW-02) in her statement recorded under Section 161 CrPC vide

Ex.D/01 has not stated anything about said incident and has contradicted her statement given before the Court. As such, she has not seen the incident

to the extent that accused-appellants poured kerosene oil on deceased, set her ablaze and caused his murder. Thus, the case of the prosecution that

Jamuna Bai (PW-02) is eye-witness and has seen the incident is not apparent from the testimony of Jamuna Bai (PW-02).

(14) Now the question would be whether two appellants have been rightly convicted on the basis of dying declaration (Ex.P/02). Naib Tehsildar,

namely, Shivkumar Yadav (PW-04), who has recorded the dying declaration, has clearly stated before the Court that dying declaration (Ex.P/02) was

recorded in presence of Parsadi (PW-03) and Koriya Bai (not examined), in which deceased has clearly informed him and charged his in-laws who

poured kerosene oil on him and set him ablaze and charged accused-appellant No.02 Santosh, who is his brother-in-law, by stating that he used to

trouble him from past 2-3 days and has further charged accused-appellant No.01- Dashrath, who is his father-in-law, by stating that he has assaulted

him, poured kerosene oil and set him ablaze, in which dying declaration (Ex.P/02), deceased-Mohanlal has also put his thump impression apart from

the thump impression of witnesses, namely, Parsadi (PW-03) and Koriya Bai (not examined). Naib Tehsildar, namely, Shivkumar Yadav (PW-04) has

been subjected to some extent of cross-examination, but even in Para-10 he has clearly admitted that in dying declaration (Ex.P/02) it has not been

mentioned that appellant No.02- Santosh assaulted deceased, poured kerosene oil and set him ablaze, but it was the appellant No.01-Dashrath who is

the assailant for the crime in question. Similarly, Parsadi (PW-03) has also proved his presence at the time of recording of dying declaration (Ex.P/02)

and, as such, it is quite vivid that deceased was in a fit state of mind when dying declaration (Ex.P/02) was recorded and it was recorded in presence

of Parsadi (PW-03) and Koriya (not examined), in which though he has charged appellant No.02- Santosh by stating that he used to trouble him from

past 2-3 days, but has not named accused-appellant No.02- Santosh as an assailant in commission of crime in question, whereas deceased has only

named/charged accused-appellant No.01- Dashrath by stating that he has assaulted him, poured kerosene oil and set him ablaze.

(15) The Supreme Court in the matter of Gopal Singh another vs. The State of Madhya Pradesh and another AIR 1972 SC 1557 has clearly held with

reference to Section 32 of the Indian Evidence Act, 1872 that a dying declaration which does not contain complete names and addresses of the

persons charged with the offence, even though may help to establish their identity, is not of such a nature on which conviction can be based and it

cannot be accepted without corroboration and observed in Para-08 as under:

Ã¢â‚¬Å“8. But even if we resume that the High Court was right in concluding that the dying declaration established the identity of the appellants, it was

certainly not of that character as would warrant its acceptance without corroboration. It is settled law that a court is entitled to convict on the sole

basis of a dying declaration if it is such that in the circumstances of the case it can be regarded as truthful On the other hand if on account of an

infirmity, it cannot be held to be entirely reliable, corroboration would be required. See: Kushal Rao v. The State of Bombay AIR 1958 SC 22. In this

case, it must be first remembered that though the names of the appellants' fathers were known to Mod-Singh and others who accompanied him to the

Police Station, their fathers' names and present residence have not been mentioned. It is rather unusual for Police Officers not to enquire and record

in the first information the full name and address of the persons complained againstÃ¢â‚¬Â¦Ã¢â‚¬Â¦..Ã¢â‚¬â€‹

(16) The Supreme Court in the matter of Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 has clearly held that Section 32 of the

Indian Evidence Act, 1872 is an exception to the rule of hearsay and makes admissible, the statement of a person who dies, whether the death is

homicide or a suicide, provided the statement relates to the cause of death or deals with circumstances leading to the death.

(17) Reverting to the facts of present case in light of aforesaid principle of law laid down by their Lordships of Supreme Court in aforementioned

cases, it is quite vivid that in dying declaration (Ex.P/02), recorded by Naib Tehsildar- Shivkumar Yadav (PW-04), firstly deceased has clearly

charged his in-laws by stating that they poured kerosene oil on him and set him ablaze and secondly charged accused-appellant No.02 Santosh, who is

his brother-in-law, by stating that he used to trouble him from past 2-3 days and finally has further charged accused-appellant No.01- Dashrath, who is

his father-in-law, by stating that he has assaulted him, poured kerosene oil and set him ablaze. Further, in said dying declaration (Ex.P/02), deceased-

Mohanlal has also put his thump impression apart from the thump impression of witnesses, namely, Parsadi (PW-03) and Koriya Bai (not examined)

and as per the statement of Naib Tehsildar, namely, Shivkumar Yadav (PW-04) deceased was in fit state of mind at the time of recording of said

dying declaration (Ex.P/02). As such, so far as appellant No.02- Santosh is concerned, deceased- Mohanlal in dying declaration (Ex.P/02) has only

stated that he used to trouble him from past 2-3 days from the date of incident and no such statement has been made by the deceased in dying

declaration (Ex.P/02) against Santosh relating to his cause of death or any other statement which deals with circumstances leading to his death.

(18) In that view of the matter, the learned trial Court is absolutely unjustified in convicting the accused-appellant No.02-Santosh for offence under

Section 302/34 of IPC on the basis of dying declaration (Ex.P/02). However, the learned trial Court is absolutely justified in convicting accused-

appellant No.01- Darshrath for offence under Section 302/34 of IPC on the basis of dying declaration (Ex.P/02). Accordingly, the conviction of the

appellant No.02- Santosh for offence punishable under Section 302/34 of IPC as well as the sentence of life imprisonment awarded to him by the

learned trial Court is hereby set aside and, similarly, the conviction of the appellant No.01- Dashrath for offence punishable under Section 302/34 of

IPC as well as the sentence of life imprisonment awarded to him by the learned trial Court is hereby affirmed. Appellant No.2- Santosh is acquitted

from the charges under Section 302/34 of IPC and he be released from jail forthwith, if not required in any other case.

(19) Resultantly, this criminal appeal is allowed to the extent it relates to appellant No.02 and is dismissed so far as it relates to appellant No.01.