

(2009) 12 MP CK 0025

Madhya Pradesh High Court

Case No: None

Indu Bai

APPELLANT

Vs

State of Madhya
Pradesh

RESPONDENT

Date of Decision: Dec. 24, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)(v)

Citation: (2010) ILR (MP) 7

Hon'ble Judges: Sushma Shrivastava, J; Rakesh Saxena, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Sushma Shrivastava, J.

Appellant has preferred this appeal challenging her conviction and order of sentence passed by Special Judge, Chhindwara in Special Case No. 79/06, decided on 21.8.07.

2. Appellant has been convicted u/s 302 of IPC for committing murder of Asha Bai (deceased) and sentenced to life imprisonment with fine of Rs. 5,000/- by the impugned judgment.

3. According to prosecution, on 12.9.06 at village Jobnikhapa about 4 "O"clock in the evening appellant Indu Bai quarrelled with deceased Asha Bai (hereinafter referred to as "deceased"), a member of Scheduled Tribe, over a sum of Rs. 400/- alleging that deceased had stolen her four hundred rupees and poured kerosene oil over her body and set her ablaze. Deceased was taken to Sausar Hospital in burnt condition by her husband Aman, when he came back to house. The Police was informed by the hospital authorities and dying declaration of Asha Bai was recorded at Sausar

Hospital by the Executive Magistrate. Deceased, however, succumbed to her burn injuries in the hospital at 8.40 P.M. on the same day. The intimation of her death was sent to the Police, whereupon merg intimation was recorded at Police Station, Sausar and merg inquest was made. The dead body of deceased was sent postmortem examination. A plastic Can of kerosene oil, matchbox and burnt matchsticks as well as earth having smell of kerosene oil and broken pieces of bangles and burnt pieces of sari were seized from the spot. After merg inquiry, an offence was registered against the appellant and was investigated. After due investigation, appellant was prosecuted u/s 302 of IPC and 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act") and was put to trial. Appellant abjured the guilt and pleaded false implication.

4. Learned special Judge, after trial and upon appreciation of the evidence adduced in the case, acquitted the appellant of the charge u/s 3(2)(v) of the Act, but found her guilty for intentionally causing death of Asha Bai by pouring kerosene oil and setting her ablaze, convicted and sentenced her u/s 302 IPC as aforesaid by the impugned judgment, which has been challenged in this appeal.

5. We have heard the learned Counsel for the parties.

6. It was no longer disputed that deceased Asha Bai died of burn injuries. It is also reflected from the evidence of Dr. B.M. Aandeo (P.W-1) that deceased Asha Bai was admitted to Community Health Center, Sausar on 12.9.06 about 7:45 P.M. in burnt condition having sustained 90 to 98% burns of first to second degree and she died at 8:40 P.M. on the same day in the hospital. Her MLC report (Ex.P-2) and written intimation (Ex.P-3) sent by Dr. B.M. Aandeo (P.W-1) to the Police as well as written intimation of her death (Ex.P-5) to Police subsequently sent by him are also placed on record.

7. Dr. S.K. Saxena (P.W-2), who conducted the postmortem examination on the dead body of deceased Asha Bai on 13.9.06, also found smell of kerosene oil present over her body and antemortem burns over her face, neck, chest, abdomen, back and upper and lower limbs and blisters formed over her body; black particles were also found in her trachea and esophagus. In the opinion of Dr. S.K. Saxena (P.W-2), deceased Asha Bai died due to asphyxia and shock due to burn injuries. Her postmortem examination report (Ex.P-7) written and signed by Dr. S.K. Saxena (P.W-2) is also placed on record. It was thus clearly evident that deceased Asha Bai died of burn injuries.

8. Learned Counsel for the appellant, however, submitted that the trial court gravely erred in placing implicit reliance on the dying declaration (Ex.P-4) of the deceased and failed to consider that dying declaration was doubtful and the appellant was falsely implicated. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellant.

9. We have gone through the entire evidence on record. The dying declaration (Ex.P-4) of the deceased has been recorded by Executive Magistrate Y.K. Kulhada (C.W-3). Shri Y.K. Kulhada (C.W-3) categorically deposed in his evidence that on 12.9.06 he had gone to the Govt. Hospital, Sausar to record the dying declaration of indoor patient, Asha Bai admitted in the female ward and had recorded her statement (Ex.P-4) after obtaining medical certificate from the duty doctor B.M. Aandeo that she was fit to give statement and thereafter recorded her dying declaration (Ex.P-4) and also obtained her thumb impression thereon. According to Y.K. Kulhada (C.W-3), as per dying declaration made by deceased Asha Bai, appellant Indu Bai had quarrelled with her accusing her of theft of her four hundred rupees and poured kerosene oil over her and set her ablaze. Executive Magistrate Y.K. Kulhade (C.W-3) also testified that dying declaration (Ex.P-4) of the deceased recorded by him also bore his signatures as well as the certification made by Dr. B.M. Aandeo both on the top and at the foot of the dying declaration.

10. Dr. B.M. Aandeo (P.W-1) also corroborated this fact that before recording of dying declaration of the deceased he had examined her and found her fit to give the statement and also made an endorsement to this effect on the top as well as at the foot of the dying declaration (Ex.P-4), which also evidently bears his certification at "A" to "A" and "B" to "B" portion marked on Ex.P-4.

11. Learned Counsel for the appellant has strenuously urged that as per the evidence of Dr. B.M. Aandeo (P.W-1), the condition of the deceased was critical and very serious and in fact, she was not in a position to give statement, as also deposed to by number of prosecution witnesses including husband of the deceased, namely, Aman (P.W-3), Ganpat (P.W-4), and Pankaj (P.W-6) that deceased was lying unconscious, and thus the so called dying declaration was a suspicious document. Learned Counsel for the appellant further submitted that Aman (P.W-3), the husband of the deceased also did not support the fact of deceased making any oral dying declaration to him either during merg inquest or in his deposition. Learned Counsel for the appellant also submitted that although the merg inquest report was prepared on 13.9.06, though the dying declaration was purportedly recorded on 12.9.06, there was no mention of dying declaration of the deceased or the name of appellant as culprit in the merg inquest report, nor any history of homicidal burns was recorded in her medical report or postmortem requisition form. According to learned Counsel for the appellant, as per evidence of the treating doctor B.M. Aandeo (P.W-1) both hands, fingers and thumbs of the deceased were completely burnt, therefore, the obtaining of thumb impression of the deceased on the dying declaration (Ex.P-4) was also doubtful. Thus in the aforesaid circumstances dying declaration (Ex.P-4) was highly doubtful and not reliable.

12. Reliance was also placed by learned Counsel for the appellant on the decision of this Court rendered in the case of [Dhammu Choudhary Vs. The State of M.P.](#), as well decisions of the Apex Court rendered in the case of [State of Rajasthan Vs. Ashfaq](#)

[Ahmed, , State of Rajasthan Vs. Yusuf, ,](#) P. Mani v. State of T.N. (2006)2 Scc (Cri) 36, State of Maharashtra v. Sanjay (2005) Scc (Cri) 231, Raja Ram v. State of Rajasthan (2005) Scc (Cri) 1050], Chacko v. State of Kerala 2003(1) Scc 112, State of A.P. v. Shaik Moin : (2004)6 Supreme Court Cases page 34, Pamni Bai v. State of Madhya Pradesh 1996 (I) MPJR 375.

13. After bestowing our anxious consideration to the submissions made by learned Counsel for the appellant and having gone through the record, we find that there is nothing on record to indicate that Dr. B.M. Aandeo (P.W-1), who made a certification and endorsement on the dying declaration (Ex.P-4) to the effect that deceased was fit to give statement and Executive Magistrate Y.K. Kulhade (C.W-3), who recored the dying declaration (Ex.P-4) of the deceased, had an animus or ill-will against the appellant. Thus there are no reasons to suspect that these Govt. officials would manipulate the dying declaration (Ex.P-4) with false certification so as to falsely implicate the appellant. The mere fact that the condition of the deceased was found to be very serious and critical by the doctor at the time of her admission to the Govt. Hospital cannot lead to an assumption, in absence of any such evidence, that deceased was not able to speak or give statement, particularly when Dr. B.M. Aandeo (P.W-1) himself testified that he had examined her before recording her statement and found her fit to give the statement. The Apex Court in the case of [State of Haryana Vs. Harpal Singh and Others](#), also held that even where the pulse was not palpable and blood pressure was unrecordable, dying declaration could be recorded.

14. No doubt, some of the witnesses like Ganpat (P.W-4) and Pankaj (P.W-6) have deposed that they had seen Asha Bai lying unconscious in her courtyard and these witnesses were not declared hostile by the prosecution, but that does not negate or rule out the possibility of Asha Bai regaining consciousness in the hospital after getting some treatment. As such, it cannot be a ground to doubt the certification made by Dr. B.M. Aandeo (P.W-1) on the dying declaration as well as his statement on oath that he had examined the deceased before recording of her dying declaration and found her fit to give statement and further that she remained conscious during her statement. The submission made by learned Counsel for the appellant that bed head ticket of the deceased was not produced or seized by the Investigating Officer, also does not cause any dent in the prosecution case in view of the evidence and certification made by Dr. B.M. Aandeo (P.W-1) about the state of the deceased to make declaration.

15. The Constitutional Bench of the Apex Court in the case of [Laxman Vs. State of Maharashtra](#), overruling its earlier decision rendered in the case of [Paparambaka Rosamma and Others Vs. State of Andhra Pradesh](#), has held that if the person recording the dying declaration is satisfied that the deceased was in a fit state of mind, dying declaration can be acted upon without examination by doctor. It would be useful to refer to the following observation made by their Lordships in the

aforesaid case:

What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

16. In view of the legal position enunciated above, the submission made by learned Counsel for the appellant that certificate given by Dr. B.M. Aandeo (P.W-1) that declarant remained conscious was not enough, sans merit.

17. The next submission of the learned Counsel for the appellant has been that despite recording of dying declaration earlier, the absence of the name of appellant in the merged inquest report also cast a serious doubt on the genuineness or authenticity of the dying declaration (Ex.P-4). However, the dying declaration (Ex.P-4) cannot be viewed with suspicion on that score. The Apex Court in its three Judges' Bench decision rendered in the case of [Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P.](#), has held that there is absolutely no requirement of law of mentioning of the FIR, name of the accused or the names of the eyewitnesses etc, in the merged inquest report. It would be profitable to refer to the following observation made by their Lordships in the aforesaid case:

It is well settled by a catena of decisions of this Court that the purpose of holding an inquest is very limited, viz., to ascertain as to whether a person has committed suicide or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eyewitnesses or the gist of their statement nor it is required to be signed by any eyewitness.

18. Similarly the dying declaration (Ex.P-4) of the deceased cannot be doubted or viewed with suspicion on the ground that word "homicidal" has not been mentioned before "history of burns" in her MLC report (Ex.P-2) and before "death due to burns" in the postmortem requisition form (Ex.P-6).

19. Moreover, there has not been even slightest indication or a faint suggestion during the cross-examination of any of the prosecution witnesses, nor there is any such material on record to reveal, that the death of the deceased by burns was suicidal and not homicidal. Therefore, the version made by the deceased in the dying declaration (Ex.P-4) and its genuineness cannot be doubted.

20. There are also no reasons to doubt that Executive Magistrate Y.K. Kulhade (C.W.-3) did not obtain the thumb impression of the deceased on the dying declaration (Ex.P-4) in view of his clear and categorical statement to this effect and his explanation that the thumb impression of the deceased was slightly blurred as it was taken in her lying or supine position.

21. Needless to repeat that Executive Magistrate Y.K. Kulhade (C.W-3) and Dr. B.M. Aandeo (P.W-1) both are Govt. officials, they can hardly have any reason to manipulate the dying declaration or to falsely implicate the appellant. In fact, there are no reasons to disbelieve the evidence of the Executive Magistrate Y.K. Kulhade (C.W-3) that deceased Asha Bai gave a dying declaration as per Ex.P-4 and there are no grounds to doubt that the dying declaration (Ex.P-4) is not the statement of the deceased.

22. There is nothing on record to indicate that the dying declaration (Ex.P-4) of the deceased was the result of any tutoring or prompting or product of imagination. Thus, there are also no reasons to doubt or suspect that dying declaration (Ex.P-4) was not true or voluntary statement made by the deceased. The dying declaration (Ex.P-4) is recorded in question- answer form and it unequivocally indicates that the appellant quarrelled with the deceased for the theft of four hundred rupees and burnt her alive by sprinkling kerosene oil over her.

23. Although the husband and daughter of the deceased, namely, Aman (P.W-3) and Ku. Radhika (C.W-2) and other witnesses have not deposed against the appellant and some of them have been declared hostile to prosecution, dying declaration (Ex.P-4) made by the deceased duly proved by Executive Magistrate (C.W-3) cannot be discarded on that count. Needless to emphasize, as also reiterated by the Apex Court in the case of [Muthu Kutty and Another Vs. State by Inspector of Police, Tamil Nadu](#), and [Satish Ambanna Bansode Vs. State of Maharashtra](#), that the dying declaration can form the sole basis for conviction if it is found to be true and voluntary.

24. The various citations referred to and relied upon by learned Counsel for the appellant, as mentioned hereinabove, have turned on different and distinguishable facts and are of no avail to the appellant in the instant case.

25. In view of the foregoing discussion, we are of the considered opinion, that the trial court did not err in relying upon the dying declaration (Ex.P-4) of the deceased and rightly held the appellant guilty for intentionally causing death of Asha Bai by pouring kerosene oil over her and setting her ablaze.

26. Thus, we find no merit in this appeal. We uphold the conviction of the appellant and life sentence with fine of Rs. 5000/- awarded to her u/s 302 of IPC. Appeal fails and is dismissed.