

(2008) 08 MP CK 0024
Madhya Pradesh High Court
Case No: None

Gopya alias Gopal

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Aug. 25, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 342, 452

Citation: (2009) ILR (MP) 508 : (2009) 4 MPHT 78

Hon'ble Judges: Sushma Shrivastava, J; Arun Mishra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Sushma Shrivastava, J.

Appellant has preferred this appeal challenging his conviction and order of sentence passed by Additional Sessions Judge, Burhanpur in S.T. No. 202/96, decided on 24.12.98.

2. Appellant has been convicted u/s 302 of IPC and sentenced to imprisonment for life by the impugned judgment.

3. According to prosecution, deceased Bharat (hereinafter referred to as "deceased") used to live with his father and sister at Kala Bagh, Burhanpur. His mother had illicit relations with the appellant and had started living with him. On 27.6.96 at about 5.30 P.M., appellant Gopya @ Gopal entered into the house of the deceased, uttered filthy abuses, quarrelled with him, poured kerosene oil over him, set him ablaze and fled away. Deceased Bharat was rushed to the Govt. Hospital Burhanpur. On receipt of telephonic information from the Hospital, after preliminary enquiry an offence was registered against the appellant at Police Station Ganpati Naka and was investigated. The dying declaration of the deceased was also recorded. Deceased Bharat, however, succumbed to his burn injuries on 28.6.96 at 5.30 A.M. The intimation of his death was sent to the Police, whereupon merged Cr.A.

No. 212/1999 intimation was recorded and merged inquest report was prepared. The dead body of deceased Bharat was sent for postmortem examination. During investigation kerosene oil container and half burnt clothes of the deceased were seized from the spot. Spot map was drawn. After due investigation, appellant was prosecuted u/s 452, 302, 342 of IPC.

4. Appellant abjured the guilt and pleaded false implication.

5. After trial and upon appreciation of the evidence adduced in the case, learned Additional Sessions Judge acquitted the appellant of the charge u/s 452 of IPC, but found him guilty u/s 302 of IPC for committing murder of Bharat, convicted and sentenced him as aforesaid by the impugned judgment. Hence, this appeal.

6. We have heard the learned Counsel for the parties and perused the evidence on record.

7. It was no longer disputed that deceased Bharat died of burn injuries. It is also reflected from the testimony of Dr. Ramesh Somani (P.W-4) that on 27.6.96 deceased Bharat aged about 15 years was brought to Nehru Hospital, Burhanpur with burn injuries over his head, face, neck, both upper arms and left thigh with 55-60% burns and the smell of kerosene was also present over his body. Dr. Pramod Kumar Chaturvedi (P.W-3), who conducted the autopsy on the dead body of deceased Bharat on 28.6.96, also found antemortem superficial and deep burns over his face, neck, chest, both upper limbs including shoulders and other parts of the body. In the opinion of Dr. Pramod Kumar Chaturvedi (P.W-3), the cause of death of deceased Bharat was shock due to extensive burns. The detailed postmortem report (Ex.P-6) of the deceased Bharat is also placed on record.

8. Learned Counsel for the appellant, however, submitted that the trial court gravely erred in convicting the appellant by placing implicit reliance on the dying declaration of the deceased recorded by Dr. Ramesh Somani (P.W-4) and the evidence of other partisan witnesses and failed to consider that the identity of the appellant was not established from the dying declaration.

9. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellant and submitted that the guilt of the appellant was fully established from the written dying declaration of the deceased as well as the oral dying declaration made by him to the witnesses.

10. The dying declaration of the deceased was recorded by Dr. Ramesh Somani (P.W-4) on 27.6.96. Dr. Ramesh Somani (P.W-4) categorically deposed in his evidence that upon receiving requisition from Police Station Ganpati Naka, he recorded the dying declaration of injured Bharat, son of Bitthal on 27.6.96 at 11.15 P.M. and after recording his statement (Ex.P-9) he had obtained the thumb impression of the deceased and also affixed his own signatures. He also endorsed certification on the dying declaration (Ex.P-9) that the declarant was fully conscious and in a fit state to

give the statement. The dying declaration (Ex.P-9) also contains the certification made by Dr. Ramesh Somani (P.W-4) both at the beginning and the foot of the dying declaration (Ex.P-9) that the declarant was in a fit condition to give the statement and remained fully conscious during his statement.

11. There are no reasons to disbelieve the evidence of Dr. Ramesh Somani (P.W.-4) that he recorded the dying declaration (Ex.P-9) of the deceased on being satisfied as to his fitness to give the statement. The evidence of Dr. Ramesh Somani (P.W-4) also indicates that declarant Bharat had not met any of his relatives at the time of recording of his dying declaration.

12. The dying declaration (Ex.P-9) clearly and unequivocally indicated that it was the appellant, who had poured kerosene oil over the deceased and set him ablaze. Learned Counsel for the appellant submitted that the identity of the appellant was not established from the dying declaration (Ex.P-9), as his father's name was not mentioned. However, there was no such suggestion or whisper in the cross-examination of any of the prosecution witnesses that the offender named in the dying declaration was some other person than the appellant or there was any other person in the village known as Gopya. It was also not disputed that alias name of the appellant was Gopya and appellant was also known as Gopya.

13. Besides, there is evidence of oral dying declaration of the deceased made to his father Bitthal (P.W-11), brother Shivaji (P.W-14) and sister Kokila (P.W-13) that appellant Gopal had burnt him. These witnesses clearly deposed in their evidence that the deceased had told them that appellant Gopal had burnt him. There are no reasons to disbelieve their version. Ordinarily the near relative of the deceased would not falsely name the appellant and save the real culprit/assailant of the deceased. It also transpires from their evidence on record that Gopal was familiar and well well-known to them and the mother of the deceased also started living with the appellant which had resulted into strained and inimical relations between the appellant and the deceased and his family. Thus, there remains no room for doubt about the identity of the appellant in the dying declaration (Ex.P-9) and his complicity in the crime.

14. There is nothing on record to indicate that the dying declaration (Ex.P-9) was the result of any tutoring or prompting or product of imagination. There are no reasons to doubt or suspect that dying declaration (Ex.P-9) is not a true or voluntary statement made by the deceased.

15. The dying declaration (Ex.P-9) made by the deceased cannot be rejected on the ground, as submitted, that it was not recorded by Magistrate. There is no requirement of law that dying declaration should necessarily be recorded by the Magistrate or it should be in a particular form. The Apex Court in the case of [Balbir Singh and Another Vs. State of Punjab](#), has observed as under:

The law does not provide that a dying declaration should be made in any prescribed manner or in the form of question and answers. Only because a dying declaration was not recorded by a Magistrate, the same by itself, in our view, may not be a ground to disbelieve the entire prosecution case.

16. However, in the instant case, the dying declaration (Ex.P-9) was recorded in question answer form and it clearly and unequivocally indicated that appellant Gopya, resident of Sindhipura poured kerosene oil over deceased Bharat and set him ablaze. Needless to emphasize, as also reiterated by the Apex Court in the case of [Dashrath @ Champa and Others Vs. State of Madhya Pradesh](#), that the dying declaration, if it is true and voluntary can form the basis of conviction without any further corroboration. More so, in the present case, besides the written dying declaration of the deceased, there is also the cogent and credible evidence of the oral dying declaration made by the deceased to his father Bitthal (P.W-11), brother Shivaji (P.W-14) and sister Kokila (P.W-13) to the effect that it was the appellant, who had burnt him.

17. In the wake of aforesaid, we are of the considered opinion that the trial court did not err in relying upon the written dying declaration (Ex.P-9) of the deceased as well as his oral dying declaration made to his father Bitthal (P.W-11), brother Shivaji (P.W-14) and sister Kokila (P.W-13) and rightly held the appellant guilty for intentionally causing the death of Bharat by pouring kerosene oil over him and setting him ablaze.

18. Thus, the conviction of the appellant, as recorded by the trial court u/s 302 of IPC and life sentence awarded to him do not warrant any interference in appeal.

19. Appeal, therefore, fails and is dismissed. The conviction of the appellant and sentence passed on him u/s 302 of IPC are upheld.