

**(2007) 02 MP CK 0043**

**Madhya Pradesh High Court**

**Case No:** None

Smt. Mithla Bai

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** Feb. 13, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313, 374
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2007) 3 MPHT 84

**Hon'ble Judges:** Sushma Shrivastava, J; A.K. Shrivastava, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

A.K. Shrivastava, J.

Feeling aggrieved by the judgment of conviction and order of sentence dated 9-10-2004 passed by learned 4th Additional Sessions Judge, Katni (Fast Track Court) in Sessions Trial No. 92/2004, convicting the appellant u/s 302, IPC and sentencing her to suffer imprisonment of life and to pay a fine of Rs. 1,000/-, in default of payment of fine, rigorous imprisonment of six months, the accused-appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, 1973.

2. In brief the case of prosecution is that at about 8-9 a.m. on 11-4-2004 Laxmibai (hereinafter referred to as "the deceased") was in her room at that juncture accused-appellant, who is her sister-in-law (Devrani) came there and poured kerosene on her and lit the fire. It is said that the incident occurred because a day earlier, in the night some altercation took place between the deceased and the appellant on the issue of electric cable. The deceased was transmitted to the District Hospital at Katni from where an information was sent to the concerning police station, as a result of which Head Constable Suresh Jharia (P.W. 8) arrived in the hospital and recorded dying declaration of the deceased. After sometime deceased

breathed her last and information in regard to her death was sent to the police station, on the basis of which Merg intimation was recorded.

3. The investigating agency on receiving the information about the death of the deceased arrived in the hospital; prepared panchayatnama of the dead body, sent the dead body for post-mortem; prepared spot map; seized necessary articles; recorded the statement of the witnesses; arrested the accused and after completing the investigation submitted a charge-sheet in the Competent Court, which on its turn committed the case to the Court of Session from where the case was received by the Trial Court for its trial.

4. Learned Trial Judge on going through the averments made in the charge-sheet framed charge u/s 302, IPC against the appellant. Needless to emphasize, accused-appellant abjured her guilt and pleaded complete innocence. Her defence is maladroit implication.

5. In order to prove the charge framed against the accused-appellant, the prosecution examined as many as 13 witnesses and placed Exhs. P-1 to P-26, the documents, on record.

6. The defence of the accused is of maladroit implication and in her statement recorded u/s 313, Cr.PC she set-up the same plea. In support of her defence, she examined Vishaliram Rathore and Ramnath Singh as D.W. 1 and D.W. 2, respectively.

7. Learned Trial Judge placing reliance on the dying declarations and the evidence placed on record came to hold that the charge framed against the accused/appellant has been proved and eventually convicted her u/s 302, IPC and passed the sentence which we have mentioned hereinabove. Hence this appeal has been preferred by the appellant assailing the impugned judgment of conviction and order of sentence.

8. In this appeal Sushri Sangeeta Umathe, learned Counsel appearing for the appellant has submitted that there is no eye-witness to the incident and entire case of the prosecution hinges upon dying declaration (Exh. P-1) of the deceased recorded by Head Constable Suresh Jharia (P.W. 8) and the oral dying declaration given by the deceased to her husband Baijnath (P.W. 1), Kotwar of the Village Raju (P.W. 5) and her (deceased's) brother Dharam Singh (P.W. 11). The contention of learned Counsel is that the prosecution agency did not bother to get the dying declaration recorded by an Executive Magistrate and apart from this in the dying declaration certification in regard to the medical fitness of the deceased has not been obtained by the doctor on duty and, therefore, it poses a big question mark and put a deep dent on the veracity of the dying declaration (Exh. P-1) recorded by the Head Constable Suresh Jharia (P.W. 8). It has been further submitted by learned Counsel that the oral dying declaration was made before the witnesses who are very interested and, therefore, the oral dying declaration is having no credential value. She has also submitted that there is no direct evidence available against the

appellant and as such learned Trial Judge erred in convicting the appellant. Hence this appeal be allowed by acquitting appellant.

9. On the other hand, Shri R.S. Patel, learned Additional Advocate General appearing for the respondent/State argued in support of the impugned judgment and by placing reliance on the Constitution Bench decision of the Supreme Court Laxman Vs. State of Maharashtra, , has contended that even if no certificate of the doctor has been obtained, it will not dilute the case of prosecution and the dying declaration recorded by Head Constable Suresh Jharia (P.W. 8) is fully reliable. It has been further contended by learned Additional Advocate General that apart from the dying declaration recorded by the Head Constable, there is oral dying declaration given by the deceased to her husband Baijnath (P.W. 1), Kotwar of the village Raju (P.W. 5) and her brother Dharam Singh (P.W. 11) and for no rhyme or reason the oral dying declaration should be (sic : should not be) disbelieved. According to the learned State Counsel this appeal sans substance and the same be dismissed.

10. After having heard learned Counsel for the parties, we are of the view that this appeal deserves to be dismissed.

11. True in the present case no eye-witness has been examined by the prosecution. However, merely because there is no eye-witness to the incident, it cannot be said that the offence cannot be proved. On going through the dying declaration (Exh. P-1) recorded by Head Constable Suresh Jharia (P.W. 8) it is gathered that on receiving information from hospital that a patient has been admitted in burn condition he reached the hospital and recorded the dying declaration (Exh. P-1). He made inquiry from the doctor on duty about the mental status of the deceased and he gave certificate in that regard which is on Exh. P-16. On bare perusal of Exh. P-16 it is gathered that doctor on duty has specifically certified that deceased is able to give her statement.

12. On bare perusal of dying declaration Exh. P-1, it is gathered that a day earlier to the incident some quarrel took place between the appellant and the deceased on the issue of some electric cable, as a result of which on the next day in the morning after sprinkling kerosene on deceased appellant lit the fire. In the dying declaration specific overt act of appellant of pouring kerosene and setting fire has been mentioned. If the dying declaration (Exh. P-1), letter (Exh. P-16) written by Head Constable to the doctor on duty to give certificate in regard to fitness of the deceased and testimony of Head Constable Suresh Jharia (P.W. 8) are kept in juxtaposition it would reveal that it was the appellant who poured kerosene on the deceased and lit the fire. It has also come in the evidence as well as in the dying declaration that a day earlier to the incident, there was hot exchange of words between the appellant and the deceased on the issue of some electric cable. According to us it amounts to motive to commit the offence. After giving our anxious and bestowed consideration and judging from all angles, we do not find any infirmity in the dying declaration (Exh. P-1) recorded by the Head Constable. We do

not find any substance in the contention of learned Counsel for the appellant that on dying declaration Exh. P-1 the doctor has not certified about the fitness of mental condition of the deceased therefore the same cannot be relied upon. According to us the said submission deserves to be rejected on two counts. Firstly on the ground that the said certificate was obtained on Exh. P-16 by the Head Constable which is a letter addressed to the doctor on duty. The second reason is that merely because on the dying declaration (Exh. P-1) said certificate is not here, it will not dilute the authenticity of dying declaration (Exh. P-1), which is otherwise found to be quite reliable. Even for the sake of argument this point is taken into consideration that certificate of the doctor in regard to the mental fitness was not obtained, it will not somersault the case of prosecution. In this context we may profitably rely the Constitution Bench decision of the Supreme Court Laxman (supra), wherein the Apex Court has specifically held that obtaining certificate from the doctor is rule of caution only and it is not mandatory. In this view of the matter, since there is written dying declaration of the deceased and we do not find any infirmity in it, we are of the view that learned Trial Judge did not err in placing reliance on the said dying declaration (Exh. P-1).

13. Apart from this after the incident took place deceased was screaming and on being asked by her husband Baijnath (P.W. 1) and her brother Dharam Singh (P.W. 11) who arrived after some time, deceased stated to them that appellant poured kerosene and lit the fire. We do not find any merit in the contention of learned Counsel for the appellant that the oral dying declaration given to these persons should not be believed because they are interested persons and closely related to the deceased. If the witnesses are closely related their evidence should be scrutinised with great caution and care. After carefully examining the evidence of these witnesses we are of the considered view that it has been fully established that oral dying declaration was given by the deceased to her husband as well as to her brother. Apart from this, there is an independent witness Raju (P.W. 5), Kotwar of the village, to him also deceased gave oral dying declaration. We have given our anxious and bestowed consideration to the reasonings assigned by learned Trial Court in Paras 33, 35 and 37 in which oral dying declaration has been placed reliance. The Supreme Court in the case of Vishram and others Vs. State of Madhya Pradesh, has held that in a case of murder if an oral dying declaration given to interested witnesses was found to be reliable, conviction could be accorded solely on the basis of oral dying declaration. Thus, we are of the considered view that learned Trial Judge did not err in placing reliance on oral dying declaration. We have given our anxious and bestowed consideration to the reasoning assigned by learned Trial Court and judging them from all angles, we do not find that learned Trial Judge erred in convicting the accused-appellant.

14. In his defence accused examined two witnesses, namely, Vishali Ram Rathore (D.W. 1) and Ramnath (D.W. 2) and has also placed a document of Panchnama Statement (Exh. D-4) signed by several residents of village wherein it has been

mentioned that deceased herself set the fire since a boil appeared on her private part and the inflammation and pain was unbearable to her. According to us, the defence appears to be concocted. In Para 5 of the cross-examination of Investigating Officer Suresh Chand Soni (P.W. 12) this document was confronted to him, but the Investigating Officer specifically denied that the document of Exh. D-4 was ever given to him or the facts mentioned in Exh. D-4 were ever stated by any of the inhabitant of the village. There is nothing on record in order to hold that the Investigating Officer was having enmity with the appellant. Police case-diary statement (Exh. D-9) of Ramnath Singh (D.W. 2) was recorded on 16-4-2004, but there is nothing in his police case-diary statement regarding the facts mentioned in Exh. D-4. On going through Panchnama Statement (Exh. D-4), it is gathered that the same was written on 11-4-2004 and if that would be the position, when the police case-diary statement u/s 161, Cr.PC of Ramnath Singh (D.W. 2) was recorded on 16-4-2004, definitely he would have stated the fact mentioned in Exh. D-4 in his case-diary statement if those facts were true. Since all these facts are totally missing in police case-diary statement (Exh. D-9), we are of the view that the defence put-forth by the accused-appellant appears to be concocted. Apart from this, learned Trial Court has considered this aspect of the matter in Paras 31 and 32 of the impugned judgment and found the defence to be unnatural and unbelievable. On perusal of the reasonings in that regard we concur with the view of learned Trial Court since it is based on right appreciation of the evidence of the defence witnesses.

15. Resultantly this appeal is found to be bereft of any substance and the same is hereby dismissed.